

Effectiveness of EIA process in the realization of the right to water and environmental health by Lincoln Majogo

It is undoubtedly clear that with the surge of industrialization particularly in developing giants such as China, Brazil, South Africa, the need to enact legislation preserving the environment and protecting environmental rights has rose with adverse number of environmental declarations being ratified. Climate change skeptics and advocates have already taken to the streets in protests against government's actions and laws that threaten the ecosystem with some overzealous fanatics even prophesying doom for the human race if their voices are not considered well. Of course these sentiments need to be viewed within the greater scope of the law, human life and economic development. Governments including the United States have responded with ambivalence to the calls as exhibited by the inconsistencies in the Paris Climate Accord ratified under the Obama presidency only to be abandoned during the Trump presidency.

The Environmental Management Act and its subsidiary legislation is comprehensive if not exhaustive, it seems the proper legal framework to regulate environmental rights exists in Zimbabwe. Zimbabwe finds itself in a catch 23 situation on the matter. Faced with a negative economic growth, skyrocketing inflation, unemployment, the only logical path to save her soul in the abundance of all the raw material she possesses is industrialization. The question though is: are the environmental laws in Zimbabwe prepared to cope up with such developments? This article seeks to unpack how environmental laws in Zimbabwe have been effective in so far as the preservation of the right to water and other environmentally related rights are concerned.

The primary legislation regulation environmental rights in the Constitution of Zimbabwe by virtue of section 73 which provides for that:

"every person has the right-

a)to an environment that is not harmful to their health or well being; and

(b) to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that—

(i) prevent pollution and ecological degradation

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting economic and social development and that under subsection 2 “the state must take reasonable legislative and other measures, within the limits of resources available to it, to archive progressive realization of the rights set out in this section”.

A simple reading of the section implores an understanding that environmental rights are critical to the survival of ecosystems that give life to both humans and animals. These rights are not just for the preservation of present generations but as well as future generations. The primary statute created under the auspices of section 73 of the Constitution which governs environmental rights is the Environmental Management Act Chapter 20:27(hereinafter referred to as EM) Act. The EM Act is complemented by subsequent pieces of legislation under it such as the Water Act, Forestry Act, Natural Resources Act, Atmosphere Pollution Act, statutory instruments. The effectiveness of these regulations can only be measured up against the facts available on the ground. An important principle to remember is that lawful environmental rights are those that do not do harm to the well-being and health of citizens.

It is an open secret that due to foreign currency shortages to purchase water treatment materials, outstanding debts owed to city council over unpaid rates, mismanagement and corruption amongst other factors, the water supplies to urban residents have been short of clean. Even in its dirtier form, such water has not been available to most residents against the provisions of section 76, 77 of the

Constitution on rights to clean water prompting most residents to depend on ground water. At such a crucial time where city councils are struggling to provide clean water for its residents and residents in turn have turned to alternative sources of ground water including expensive boreholes and wells, it is only logical that environmental bodies should seek to preserve its water bodies i.e. wetlands.

Section 2 of the EM Act defines a wetland as

any area of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary with water that is static or flowing, fresh, brackish or salt and includes riparian land adjacent to the wetland. Wetlands are natural reservoirs of water which are protected all over world.

The construction of Long Cheng plaza has been one of the most popular cases raised whenever discussions of this nature occur. It is an open secret Long Cheng Plaza is construction sitting on a wet land that preserves underground water which has become vital to the sustenance of public health especially in urban cities where tap water is a scarce resource and unreliable. This has led some to holding a belief that there is reluctance in the enforcement of laws in circumstances where big companies are involved for instance the Anhui Economic Corporation which undertook the construction of the Plaza.

Construction on wetlands is not only cultivating flooding dangers in the rainy seasons but also threatens livelihoods. The cement used for construction further pushes down water table meaning one can only access it through drilling a borehole. In such a dire economic situation in Zimbabwe, \$3000 US Dollars to drill a borehole is so exorbitant that such a solution whilst easily available is not accessible to the majority of citizens.

Wetlands are essential in containing droughts since they absorb water very fast but when construction is undertaken especially without regulation from the authorities,

even wells dug up after dry too fast because the flow of water underground has been disrupted and forced down by the cement. This is true for a substantial number of wells dug in residential areas for instance dwellers in Damofalls, Ruwa where tap water is inaccessible in some phases and borehole and wells are alternatives. In other residential towns this has resulted in long water queues where it takes hours to fill in a bucket because the water is too deep down the well and the queues are too long.

Such concerns were also aired out in parliament by Maridadi, a former TV personality who moved a motion in parliament to have wetlands preserved, arguing that the water problems in Harare were as a result of the destruction of natural water reservoirs. He even urged council to be bold enough to destroy an illegal structures and he had this to say “*one typical example is the Long Cheng Plaza in Belvedere. Madam speaker, the Long Cheng Plaza sits in the heart of wetlands in Zimbabwe*” It is with such background in mind that one can say the environmental laws in Zimbabwe with regards to conservation of precious wetlands have been in some cases been rightly deemed ineffective.

It is common cause that the EIA is a process of 60 days in which public consultations are held to hear how the community feels with regards to prospective projects. What happens is one applies for an EIA, a developer submits what is called a prospectus to EMA containing the information regarding the environmental assessment on the project. An EIA report will then set out the project, its long term and short term effects, the likeliness of communities being affected, the methodology used by the developer in compiling the report amongst other factors.

Within sixty days, the Director General in terms of section 100 of the (EM) Act considers the report and makes a decision allowing or disallowing the project to carry on. The director can cause a further assessment to be done if in his opinion the initial report does not meet the requisite qualifications of a good project. Factors that may influence the director includes lack of proper mitigation of dangers or harms which the community may face such as floods if there are staying near flood plains or diseases amongst other factors.

Of importance is the provision that provides for that if at the end of 60 days the director has not made a decision, it is implied that the project has been approved. This raises serious concerns in situations here there is a backlog of proposals filed at EMA and by the end of 60 days, some proposals wouldn't have been looked at with due diligence. This is often the case because the process itself is expensive and requires ample time if competence and diligence are to be expected. The effect of the provision is that unapproved projects may be carried out regardless of non compliance with health and environmental regulations and this is quite dangerous to public health. It has been suggested that the period of 60 days be extended to cater for scenarios were EMA faces insurmountable backlogs of proposals to be approved.

The drilling of boreholes itself should be done after proper consultation with city catchment councils yet in a substantial number of cases in residential areas, boreholes are being drilled without consultation. There's very little follow up by the responsible bodies (catchment councils) in supervising and enforcing the drilling of boreholes in a manner that is safe and harmless to environmental rights which citizens have. Part of the problem is the managing bodies for instance catchment councils may not have sufficient resources to do the work and in the

absence of such resources, its effectiveness in carrying out tasks promptly is impaired.

Not only has such factors impaired the management bodies with regards to preservation of water sources but also in the enforcement of anti-litter dumping regulations in urban cities. Section 83 of the EM Act prohibits against dumping of litter. Regulations including a fine have been put in place but their enforcements have been only on paper. A walk in the CBD particularly high density zones like Rezende Mall, Rotten Row Rd, and Mbare will tell a scary tale of litter everywhere with no fines being enforced leaving one with questionable doubts over vision 2030 of transforming Harare to a sunshine city.

Whilst one can impugn this on lack of sufficient funds to enforce regulations, the problem seems to be more of ignorance of town users rather than negligence of EMA. It seems very few people do understand the repercussions of their actions and with more awareness campaigns and provisions of bins, this problem can be dealt with. Already EMA in conjunction with Harare City Council has made noticeable inroads through its awareness programs including EMA High School Debates which held at their offices in Harare, TV ads and availing of bins in the CBD.

The tale of waste management has been something of irresponsibility and gross negligence. Section 70 of the EM Act provides for that waste licenses should be sought to discharge waste. Whilst it is inconceivable that city councils in conjunction with EM Act can provide waste management systems without rates from beneficiary of services, cases of corruption have been reported to be on the rise suggesting the lack of political will from council leaders to provide an efficient

waste management system. This in turn has caused the rise of illegal dumping sites.

A place of peculiar interest on a growing base for illegal dumping is Newlands site just after remand prison where there are piles of litter threatening not only the design of the place but the health of the public. Responsible authorities should ban such sites and EMA should increase its supervision in urban areas where overpopulated places often start illegal sites such as the one cited above. Again this suggests lack of effectiveness of environmental laws dealing with waste management.

Also, effectiveness of environmental laws has been called to question as some have been seen in the open defiance of regulations with regards to burning vegetation. It is common because that fire seasons(31 July-31 October) are particularly dangerous times in which one can undertake to burn dry grass and hence this action can only be taken with the utmost diligence and with a permit of the police in compliance with section 67 of the Forestry Act. Such laws are constantly breached as the burning of vegetation often happens with no police permits and also against the prescribed time frames in the regulations with adverse effects on public health being felt in all ways. Burning of vegetation should be done during the night in areas around high density suburbs where the emissions have the least impact on public health and in most cases vegetation is burned during the day forcing members of the public to inhale toxic substances that impair their physical health. Such acts violate an individual's right to clean air.

The same has been true with laws regulating the cutting down of trees as regulated under section 41 of the Forestry Act. Whilst it is only logical that trees are cut since the majority of the population resides in the rural areas where electricity is a

scarce commodity it is not to say such acts have no impact on the environment and its inhabitants. It is an open secret trees provide shelter for animal life as well as herbs for traditional medicine not to mention oxygen and fruits, the unregulated cutting down of trees has threatened animal life and food security. The national tree planting activities are commendable in their bids to ensure that there are adequate trees to provide us with life but it is not to say the ineffectiveness of the law in these aspects should be condoned.

In other sectors such as mining and construction, ambivalence continues to grip the nation over the effectiveness o the laws with regards to the environment. Whilst it is true that one needs an EIA certificate as well as a permit to embark on construction of buildings on land, it has not been the same for mines particularly informal miners in Zimbabwe. The growth of unlicensed miners particularly in the Jumbo region in Mazowe only means that this type of mining is only being done without proper regulations to ensure that citizens are not harmed by the hazardous gasses produced in the mines.

The land degradation caused by the illegal gold miners speaks volumes on the effectiveness of environmental laws and their lack of particularly mining sites. To add on, illegal mining activities only mean there is no supervision and the lack of such causes recklessness for instance miners often use mercury and cyanide during mining operations and the liquids are often dumped into rivers and dams threatening aquatic life. Fish farming is a substantial source of employment for societies in Zimbabwe and with aquatic life being threatened, jobs could be lost and livelihoods thrown into a dark fate of gloom.

Conclusion

What can be done then? It is commendable the president, His Excellency Cde Emmerson Mnangagwa has taken positive measures in raising environmental awareness through his proclamation of making every first Friday of every month a national clean-up campaign day.

City councils are also encouraged to take positive measures to promote payment of rates and debts owed to them to improve efficiency in refuse collection and provision of clean water. Motton Jeffrey water treatment plants can be revitalized and given new technological edges to boost its capacity to treat large volumes of water for the overpopulated urban councils.

A concern has been raised that environmental enforcement bodies are in fragmentation which reduces effectiveness in dealing with environmental rights. An interdepartmental body could be helpful in creating a centralized line of command and its procedures in implementing the much needed actions in addressing environmental issues highlighted above. Rampant corruption needs to be fought hard to stop the illegal selling of stands pegged on wetlands by town councilors.