

THE ENVIRONMENTAL LAWS OF ZIMBABWE: A UNIQUE APPROACH TO MANAGEMENT OF THE ENVIRONMENT

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I. INTRODUCTION

The primary purposes of this Article are to provide a comprehensive survey of Zimbabwe's domestic environmental laws, to analyze the fundamental provisions of such laws, and to examine the corresponding regulatory and administrative framework of the Zimbabwean government. In addition, the Article includes a comparison of the practical realities and considerations that confront Zimbabwe as a developing African nation. The underlying theme explored throughout this Article is the effect of Zimbabwe's unique environmental management policies, which utilize a bottom-to-top approach. The Zimbabwean government recognizes the need to include the indigenous population in policymaking, and, consequently, affords this population a significant degree of authority concerning environmental issues.

Part II of this Article provides background information concerning Zimbabwe's political history, structure of government, and economy. Part III describes the country's administrative framework for protection of the environment and considers various procedural concerns and enforcement mechanisms. Part IV examines Zimbabwe's substantive environmental legislation, including both international conventions and domestic laws. This Part describes the country's participation in and responses to international environmental policy, and discusses legislation concerning air quality, water quality, natural resources and wildlife, hazardous substances, chemicals, land use planning, energy, cultural resources, and noise. In conclusion, this Article recommends that in order to develop an effective environmental policy, Zimbabwe must coordinate the responses to environmental problems available in its simultaneously traditional and modern legal system.

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II. BACKGROUND INFORMATION

A. *Historical Overview*

Zimbabwe is a landlocked nation of 390,308 square kilometers with a population estimated at 10.2 million. Of this number, 98% are indigenous black Africans, 1% are white, and 1% are persons of Asian ancestry.¹ Zimbabwe's annual population growth rate of 3.5% is one of the highest in all of sub-Saharan Africa. Each year, the indigenous African population increases by an amount greater than the total combined population of all the minority groups.² Some 80% of Zimbabwe's terrain is grassland or savanna.³ These regions are home to the vast herds of wildlife that constitute one of Zimbabwe's major environmental management challenges.

Zimbabwe has been a sovereign member of the international community since April 18, 1980, when Britain officially granted independence to its former colony. Previously known as Rhodesia, Zimbabwe has a political history that is both turbulent and unique. The modern political era began in 1889, when legendary British entrepreneur Cecil Rhodes founded the British South Africa Company (BSAC) and was granted a royal charter to begin mineral exploration in the region.⁴

Rhodesia was officially declared to be a British sphere of influence in 1895.⁵ The nation's two major tribes, the Shona and the Ndebele, which constituted 75% of the region's African population, rose up in armed resistance to European penetration of their homeland. The British responded by sending troops into the region to protect white settlers.⁶ In 1897, the BSAC divided the territory into two administrative units—Northern Rhodesia and Southern Rhodesia.⁷

¹ See U.S. DEP'T OF STATE, ZIMBABWE: BACKGROUND NOTES 1 (1988).

² *Id.*

³ ZIMBABWE, A COUNTRY STUDY 74-75 (Harold D. Nelson ed., 1983).

⁴ See LEWIS H. GANN, A HISTORY OF SOUTHERN RHODESIA 82-84 (1965). In 1888, Cecil Rhodes and others formed a syndicate that obtained the Rudd Concession from the Ndebele king Lobengula. This group then amalgamated with a similar body to form the BSAC in 1889. R. KENT RASMUSSEN, HISTORICAL DICTIONARY OF RHODESIA/ZIMBABWE 37 (1979). Rhodes became the London-based commercial organization's managing director in Africa, and was its guiding force throughout the remainder of his life. *Id.* The BSAC's charter empowered it to make treaties with African rulers, to form banks, to own and distribute land, and to create its own police. In return, the BSAC promised to develop its territory economically, to respect existing African law, to allow free trade, and to tolerate all religions. *Id.* at 37-38.

⁵ An Administrator's Proclamation made "Rhodesia" the official name for both Zambia and Zimbabwe in honor of Cecil Rhodes. *Id.* at 268.

⁶ See MILES HUDSON, TRIUMPH OR TRAGEDY?: RHODESIA TO ZIMBABWE 12-15 (1981).

⁷ See GANN, *supra* note 4, at 23. When Northern Rhodesia became independent as "Zambia"

During Southern Rhodesia's early history, the BSAC allowed the white settler population to establish a legislative council. At first, this organization served as nothing more than an advisory group, which consulted with the directors of the BSAC on key issues arising within the territory. Gradually, the Legislative Council evolved into an elected body with authority to promulgate regulations concerning law and order in Southern Rhodesia. At all times the Council was a "whites only" organization.⁸

A major turning point in Rhodesian history occurred in 1923, when Britain terminated the BSAC's jurisdiction and formally annexed Southern Rhodesia as a Crown colony.⁹ The British government justified this action as a means both of protecting the interests of the steadily growing white settler population and of more fully developing the territory's natural resource base.¹⁰ In addition to highly fertile land, well suited for commercial agriculture, Southern Rhodesia possessed significant deposits of gold, zinc, copper, and chromium. Accordingly, Southern Rhodesia and South Africa soon became the most economically promising African territories held by the British. The two countries consequently attracted larger white settler populations than any of the other Crown colonies on the continent.¹¹

It is not surprising, therefore, that Southern Rhodesia and South Africa developed very similar policies of racial segregation, designed to maintain white settler control of both the economy and the political system. The constitution adopted in 1923 made Southern Rhodesia a self-governing member of the British Empire.¹² Only persons of European descent, however, were allowed to vote and hold office in the legislative body, which, in turn, elected Rhodesia's prime minister.¹³

Two years later, the colonial government initiated a policy of land apportionment, which established exclusively white and exclusively black residential zones. The country's valuable mineral regions and

in 1964, Southern Rhodesia dropped the "Southern" in its name. This last change was never recognized by either the British government or the United Nations. In 1979, the new nation adopted the African nationalist name "Zimbabwe." RASMUSSEN, *supra* note 4, at 268.

⁸ See PATRICK KEATLEY, *THE POLITICS OF PARTNERSHIP* 206-08 (1963).

⁹ In 1922, the BSAC's shareholders had accepted a cash offer from the government of South Africa to assume control of Zimbabwe, but the settlers rejected this proposal. RASMUSSEN, *supra* note 4, at 37-38. A year later, when Southern Rhodesia became a British Crown colony, the BSAC also surrendered its administration of Northern Rhodesia to the British Colonial Office. The company's interests in central Africa thereafter were only financial. *Id.*

¹⁰ See HUDSON, *supra* note 6, at 17-20.

¹¹ See KEATLEY, *supra* note 8, at 89-90.

¹² DAVID J. MURRAY, *THE GOVERNMENTAL SYSTEM IN SOUTHERN RHODESIA* 6-8 (1970).

¹³ According to Rhodesian law, as well as southern African custom, a "European" was any person of purely European descent, regardless of place of birth. RASMUSSEN, *supra* note 4, at 86.

commercially viable agricultural land were all designated "white zones." Although persons of European descent constituted less than five percent of the population, forty-five percent of the land was reserved for them.¹⁴

In 1934, the government announced an official "two pyramid" policy, which stipulated that the white and black races were to be managed separately, utilizing segregated schools, social services, and transportation facilities.¹⁵ At the same time, the growing black trade union movement was forcibly suppressed.

By the end of World War II, the implementation of oppressive policies had escalated. It became clear that independence and black majority rule would soon be won throughout most of the African continent. In response to this trend, the minority governments in Southern Rhodesia and South Africa took further steps to entrench white dominance in these countries. A key step in this direction occurred in 1950, when black residency was restricted to specifically designated "Native Reserves."¹⁶

As African demands for a voice in the government increased, the white leadership became more repressive. In 1960, the newly proclaimed Law and Order (Maintenance) Acts and the Emergency Powers Act severely restricted the civil rights and political activities of the

¹⁴ See ANTHONY VERRIER, *THE ROAD TO ZIMBABWE: 1890-1980*, at 35 (1986); MURRAY, *supra* note 12, at 14. When the Ndebele War concluded in 1894, a land commission formed to investigate the problems of relocating the Ndebele people. RASMUSSEN, *supra* note 4, at 328. This commission created two large reserves in Matebeleland, establishing the principle that African needs had to be met before land could be alienated to Europeans. *Id.* Because no guidelines for determining African land needs were established, however, piecemeal allocation of African land reserves resulted based on circumstances in individual districts. *Id.* By 1913, the commission had designated more than 100 separate reserves of vastly different sizes. The Land Apportionment Act of 1930 enlarged the reserves slightly, but they still accounted for only 22.4% of the whole country. *Id.*

¹⁵ See COLIN LEYS, *EUROPEAN POLITICS IN SOUTHERN RHODESIA* 31-32 (1959). The "two-pyramid" concept was designed to express the goal of completely separate European and African development. RASMUSSEN, *supra* note 4, at 330. The government largely abandoned the concept by the late 1940s, when the fragmentation of land and the growing economic interdependence of Africans and Europeans were seen to point up the impracticality of total territorial segregation. *Id.*

¹⁶ See DAVID MARTIN & PHYLLIS JOHNSON, *THE STRUGGLE FOR ZIMBABWE* 53-54 (1981). During the early 1960s, the Rhodesian government began combining these native reserves with the previously created reserves to form "Tribal Trust Lands." RASMUSSEN, *supra* note 4, at 328. This policy, however, was abandoned by the Rhodesian Front after it came to power in 1962. *Id.* The Rhodesian Front government articulated a policy of achieving "parity" between European and African lands, and formalized this policy in the Land Tenure Act of 1969. See *infra* note 149. Of course, "parity" meant apportioning equal total amounts of land to whites and blacks, despite the indigenous African population outnumbering the European population 24 to 1. RASMUSSEN, *supra* note 4, at 86.

black community.¹⁷ In 1961, the government banned the National Democratic Party (NDP); and in 1962, the Zimbabwean African Peoples Union (ZAPU) was also banned.¹⁸

The political confrontation that led to Rhodesia's becoming an "outlaw" government began in 1963, when the British government established a "Five Principles" policy aimed at guaranteeing civil rights for Africans and setting a timetable for transition to black majority rule within the colony.¹⁹ Encouraged by this development, a new black political organization, the Zimbabwe African National Union (ZANU), was founded that same year by Ndabarinbi Sithole.²⁰ These two events led to a white backlash, and in elections held the next year, the right-wing white settler party, the Rhodesian Front, swept the elections and placed Ian Smith in the office of prime minister.²¹ Smith called for the immediate recognition of Rhodesia's sovereignty based on white minority rule. In the following year's elections, Smith's party captured all

¹⁷ MARTIN & JOHNSON, *supra* note 16, at 66-67.

¹⁸ *Id.* at 69-70; ZAPU was an African national political party founded shortly after the NDP's disbandment. RASMUSSEN, *supra* note 4, at 358.

¹⁹ See HUDSON, *supra* note 6, at 45-46. The "five principles" were conditions cited by the British government as essential to any Anglo-Rhodesian constitutional settlement. They were first cited in a letter from the British Secretary of State for Commonwealth Relations to Ian Smith in September 1965. RASMUSSEN, *supra* note 4, at 93. The principles were: (1) unimpeded progress toward majority rule; (2) guarantees against retrogressive constitutional changes; (3) immediate improvements in the political status of Africans; (4) progress toward ending racial discrimination; and (5) acceptance of any Anglo-Rhodesian settlement by the people of Rhodesia as a whole. *Id.* A sixth principle was added shortly thereafter to ensure that neither the majority nor the minority oppressed the other. *Id.*

²⁰ ZANU was formed by dissident members of ZAPU, who had rejected Joshua Nkomo's leadership. RASMUSSEN, *supra* note 4, at 358. The immediate issue leading to the split between ZAPU and ZANU was disagreement over Nkomo's proposed strategy of forming a government in exile instead of working within Southern Rhodesia. In practice, however, no substantive ideological or strategic principles separated the two parties. *Id.*

²¹ HUDSON, *supra* note 6, at 43-44. Smith took office as Rhodesia's eighth Prime Minister on April 13, 1964, pledging to secure Rhodesia's independence under white rule. RASMUSSEN, *supra* note 4, at 305-06. After the Universal Declaration of Independence, *see infra* note 23, Smith underwent a remarkable reversal in his public statements concerning African political rights. *Id.* Although he had entered office vowing never to allow majority African rule during his lifetime, he softened his stance after a 1972 British government commission investigated the acceptability of proposals designed to increase African representation in Rhodesia's Parliament. *Id.* His first major shift occurred in 1976, when he announced he was willing to reconsider the whole issue of Rhodesian independence and to negotiate a transition to African majority rule within two years. *Id.* In 1977, Smith led parliamentary efforts to alleviate some laws pertaining to racial segregation and discrimination, and he also announced his acceptance of the principle of universal suffrage for Rhodesia. *Id.* Nevertheless, in 1978, he still insisted on special representation of Europeans in any new African government and had not handed over any real power to Africans. His efforts were dismissed as "irrelevant" by external nationalist leaders such as Joshua Nkomo and Robert Mugabe. *Id.*

of the seats in the nation's legislature.²² Based on his white mandate, Smith issued the Unilateral Declaration of Independence (UDI).²³ The British government responded that it alone was empowered to grant sovereignty to Rhodesia, and declared the colony to be in a state of rebellion.²⁴

Events in Rhodesia escalated quickly. In 1966, the United Nations Security Council voted in favor of mandatory sanctions on key Rhodesian imports and exports.²⁵ Meanwhile, within the colony both ZAPU and ZANU formed guerrilla organizations and initiated armed resistance to the Smith regime. Two years later, the United Nations established comprehensive sanctions that banned all trade with Rhodesia. In 1970, a white referendum within Rhodesia overwhelmingly supported the Smith proposal to declare the colony a republic.²⁶

By the mid-1970s, however, the economic sanctions had crippled the Rhodesian economy. In addition, many of the extreme right-wing white settlers had by this time opted to emigrate to South Africa.²⁷ When ZAPU and ZANU united in 1976 to form a single political organization—the Patriotic Front—it became clear that white minority rule was on the verge of collapse.²⁸ As a result, in 1978, a transitional government formed that included the leadership of both the Rhodesian Front and the Patriotic Front.²⁹ During the next year, the country's

²² HUDSON, *supra* note 6, at 46–47.

²³ *Id.* at 45. The UDI is the colloquial name for the proclamation issued by Smith's government on November 11, 1965, declaring Rhodesia to be an independent monarchy under Queen Elizabeth II. RASMUSSEN, *supra* note 4, at 333–34. The proclamation was the culmination of British-Rhodesian constitutional negotiations begun during the creation of the Southern Rhodesian Constitution of 1961. *Id.* Smith attempted to demonstrate popular support for independence by getting African chiefs to endorse his idea and by having the predominantly European electorate vote overwhelmingly for independence in a November referendum (58,091 in favor, 6906 against). *Id.*

²⁴ HUDSON, *supra* note 6, at 51–52.

²⁵ *Id.* at 58 & n.14, 77. International reaction to the UDI was swift and negative and no country, including South Africa, ever formally recognized Rhodesia's independence. RASMUSSEN, *supra* note 4, at 333–34. Britain declared the regime to be illegal, and joined the United Nations in instituting economic sanctions against its former colony. *Id.* Despite the ostensibly rigid positions taken by both the Rhodesian and British governments, they nonetheless continued to pursue a negotiated settlement to legitimate Rhodesia's separation from Britain. *Id.*

²⁶ See VERRIER, *supra* note 14, at 160–61. Rhodesia's 1969 Constitution renounced British sovereignty altogether and made Rhodesia a republic as of March of 1970. It created the office of the President, divided Parliament into two chambers, and instituted loyalty oaths for government officials. RASMUSSEN, *supra* note 4, at 70. For the first time, voter rolls were defined on an explicitly racial basis, and the possibility of eventual majority rule was denied. The government was granted wide powers to restrict civil rights and the legislature was given the judiciary's power to rule on the constitutionality of legislation. *Id.*

²⁷ VERRIER, *supra* note 14, at 166–68.

²⁸ MARTIN & JOHNSON, *supra* note 16, at 257.

²⁹ *Id.* at 290–92.

segregation laws and land reservation policies were repealed.³⁰ Significantly, however, these reforms did not result in diplomatic recognition. Instead, the coalition government paved the way for the reestablishment of British colonial rule, thereby rescinding the Unilateral Declaration of Independence.³¹ In 1980, the British held supervised elections that resulted in the election of a black majority government in Rhodesia.³² In April of the same year, Britain formally recognized the sovereignty of the Republic of Zimbabwe.³³

B. Government Structure

After gaining sovereignty for Zimbabwe in 1980, the nation's leadership restructured the government as a black-majority-dominated parliamentary democracy. The present constitution was enacted largely with the guidance of the British government at the Lancaster House conference of 1979.³⁴ The government's executive branch is headed by a president who serves both as head of state and as commander in chief of the armed forces. Most political analysts consider the presidency to be largely a ceremonial office, with the president's role akin to that played by a constitutional monarch.³⁵ The president's official actions must conform to the advice received from the party currently in power in the legislative branch, and the chief executive enjoys real power only upon the dissolution of parliament in the event of a vote of no confidence.³⁶

The president is not elected by the general public, but by the bicameral legislature.³⁷ The president acts on the advice of a cabinet, which comprises the prime minister, who serves as the head of the government, and the ministers of various executive agencies. All ministers and deputy ministers are chosen from elected members of the legislative branch.³⁸ Because there are presently a total of thirty ministers and twenty-four deputy ministers from a total of 140 members in the legislative branch, the president's cabinet constitutes a considerable percentage of Zimbabwe's legislature.³⁹ Currently, approximately

³⁰ HUDSON, *supra* note 6, at 138.

³¹ *Id.* at 139-40.

³² VERRIER, *supra* note 14, at 277-303.

³³ *Id.* at 303.

³⁴ *See id.* at 240-76.

³⁵ ZIMBABWE, A COUNTRY STUDY, *supra* note 3, at 190.

³⁶ *See id.*

³⁷ *Id.* The Zimbabwean president serves a six-year term, and is eligible for reelection only once. *Id.*

³⁸ *Id.* at 190-92.

³⁹ *Id.*

sixty percent of all ministerial posts are held by blacks, while the remaining posts are filled by whites and a few Asians. Since 1980, the percentage of black office holders has increased steadily because of a concerted effort on the part of the independent government to recruit and train upper-level black administrators.⁴⁰

The number of whites in positions of power far exceeds the percentage of the population they represent, and is an indication of the continuing influence that the European community enjoys in Zimbabwe. The presence of whites in elected and appointed positions is also indicative of the high level of racial tolerance within the government, which is unique to sub-Saharan Africa.⁴¹

Within the legislative branch, the forty-member senate is the weaker of the two houses. If senators do not review bills passed by the House of Assembly within ninety days, the bills are sent to the president without senatorial input.⁴² Ten of the senate's forty seats are reserved for whites elected by the white membership of the House of Assembly. Two senators are elected by the Council of Chiefs, with five others from each of the two major tribes, the Ndebele and the Shona. Fourteen senators are elected by the African members of the House of Assembly and six are appointed by the president upon consultation with the prime minister.⁴³ Interestingly, the seats controlled by African legislators can be given to members of any race and about one third of the seats regularly are filled by whites or Asians. That Africans assign seats to non-Africans, and that tribal chiefs who clearly represent the traditional societies of Zimbabwe hold seats in the Senate, is considered by most trained observers as a measurement of the efforts undertaken by the Zimbabwe government to establish interracial and intercultural cooperation in the modern era.⁴⁴

The 100-member House of Assembly is the dominant legislative body in Zimbabwe wherein most legislation is introduced and debated. The country's indigenous African population elects eighty of its members, and whites and Asians elect the other twenty. Members are elected for five-year terms, except in the case of a vote of no confidence.⁴⁵

⁴⁰ *Id.* at 192.

⁴¹ See LEWIS H. GANN, *THE STRUGGLE FOR ZIMBABWE* 121-23 (1981); HENRY WISEMAN, *FROM RHODESIA TO ZIMBABWE: THE POLITICS OF TRANSITION* 101-02 (1981).

⁴² ZIMBABWE, *A COUNTRY STUDY*, *supra* note 3, at 194.

⁴³ *Id.*

⁴⁴ See GANN, *supra* note 41, at 115-16, 121-23.

⁴⁵ ZIMBABWE, *A COUNTRY STUDY*, *supra* note 3, at 194-95.

Notably, despite Zimbabwe's years as a British colony, the country's legal system is based on the Roman-Dutch legal tradition, and is a product of close cultural and ideological ties between the once-dominant white settler community and its counterpart in South Africa.⁴⁶ The constitution is the supreme law of the republic, and all other statutes must be compatible with it. Thus, laws passed during the period of the Unilateral Declaration of Independence are valid only if they do not conflict with the substantive terms of the constitution.⁴⁷

Tribal law and custom are accepted as relevant authority in civil cases when all involved parties agree to their applicability. Since 1985, serious effort has been underway to combine the key elements of both the traditional African laws and the Roman-Dutch laws into a single body.⁴⁸

Zimbabwe's judiciary has both a Supreme Court and a High Court, and the Chief Justice serves as a member of both bodies. The Supreme Court enjoys original jurisdiction over cases in which the parties seek redress for alleged violations of human rights set forth in the constitution's Declaration of Rights. The Supreme Court also hears appeals from the High Court, but is not empowered to adjudicate the constitutionality of legislative actions.⁴⁹

The High Court is composed of nine associate judges, and possesses both original and appellate jurisdiction. The High Court reviews cases originating in lower courts on grounds such as absence of jurisdiction, corruption, gross irregularity, and inadmissibility of evidence.⁵⁰

A unique component of the court is the use of two assessors to assist the judge in criminal cases. This approach was introduced in Zimbabwe by the British, who first established the practice in colonial India. The assessors are regarded as experts on the habits, customs, and modes of thought and expression characteristic of members of the country's traditional societies.⁵¹

C. *Economic Profile*

The dominant economic activity in Zimbabwe is agriculture. Together, the modern commercial sector and the traditional subsistence

⁴⁶ *Id.* at 199.

⁴⁷ *Id.*

⁴⁸ See T.W. BENNETT, *THE APPLICATION OF CUSTOMARY LAW IN SOUTHERN AFRICA* 103-05 (1983).

⁴⁹ See ZIMBABWE, *A COUNTRY STUDY*, *supra* note 3, at 199.

⁵⁰ *Id.*

⁵¹ *Id.*

sector account for 40% of export earnings.⁵² The modern sector tends to be white settler dominated, accounting for 80% of all agricultural production and employing one third of those Africans who earn salaries on a full-time basis.

The main crops grown on the white-owned estates are maize, sorghum, groundnuts (peanuts), cotton, tobacco, sugarcane, coffee, and tea. Subsistence farmers, by contrast, are virtually all black Africans. These traditional farmers grow basic grains, fruits, and vegetables for noncash consumption.⁵³ Both the large commercial landholders and the traditional farmers raise cattle. White-owned commercial cattle production accounts for 70% of the marketed beef supply.⁵⁴

One of the major environmental conflicts currently ongoing in Zimbabwean society is the debate between the white population and traditional Africans over the preservation and management of the extensive forests that cover approximately 18% of the country. Whites overwhelmingly want such areas to be preserved in their natural state. The majority of the African population living at the subsistence level, however, wants to cut the forests for two reasons. First, for most Africans, wood is the only readily available energy source. Second, many want to transform the forest into farmland in an attempt to mitigate the steady population growth in the black community.⁵⁵

Mining and manufacturing are the two other major economic activities in Zimbabwe. The mining of gold, asbestos, nickel, copper, chromite, and coal accounts for 40% of all foreign exchange earnings. Mining interests are largely foreign owned, with American, British, and South African investors dominating this sector. The mining sector employs about one third of the regularly employed African work force, mostly at the middle and lower skill and income levels.⁵⁶

Manufacturing in Zimbabwe is highly diversified. This sector was vigorously developed during the UDI period, when the country attempted to satisfy all of its own consumer goods needs. Even today, more than 90% of all manufactured goods are consumed domestically. Manufacturing is the largest contributor to Zimbabwe's gross domestic product (GDP), and employs one third of the country's African laborers.⁵⁷

⁵² See F. GEORGE KAY, RHODESIA: A HUMAN GEOGRAPHY 104-06 (1970).

⁵³ *Id.* at 108-09.

⁵⁴ *Id.* at 109.

⁵⁵ See ZIMBABWE, A COUNTRY STUDY, *supra* note 3, at 141-44.

⁵⁶ See KAY, *supra* note 52, at 131-36.

⁵⁷ *Id.* at 142-43.

III. ZIMBABWE'S GENERAL ADMINISTRATIVE FRAMEWORK FOR ENVIRONMENTAL PROTECTION

A. Overall Structure

Zimbabwe's Ministry of Environment and Tourism is responsible for the administration of eleven national acts.⁵⁸ Some of these acts relate only indirectly to environmental protection, however, and there exist several other environmental acts that do not fall under the purview of the Environment Ministry. In fact, a total of six other ministries are engaged in environmental protection.⁵⁹

This overall administrative structure may be the result of several different factors. Zimbabwean authorities may believe that environmental issues are best addressed on a broad regulatory spectrum. In reality, as a practical concern, available funding (both international and domestic) may be specifically targeted for certain areas of concern.⁶⁰ It would make sense, therefore, to keep environmental legislation broadly dispersed.

Alternatively, Zimbabwe may fail to realize fully the threats facing its overall environmental health. More likely, though, Zimbabwe may lack the political will to create a highly centralized, fully encompassing bureaucracy to deal with all of the country's environmental problems. Zimbabwe consistently has demonstrated that environmental issues cannot be managed in a vacuum, but require an analysis of the economic, social, cultural, political, and human health impacts of such issues.⁶¹ Zimbabwean officials also believe that a bottom-up management approach, which includes significant input from indigenous populations, is absolutely essential to any effective environmental management policy.⁶² Accordingly, government authorities may feel that the creation of one dominant mechanism or bureaucracy would require the sacrifice of these important considerations.

B. Procedural Concerns

In Zimbabwe, anyone can initiate legislation or suggest amendments to existing legislation by submitting a written proposal. The

⁵⁸ See INDEX TO THE LEGISLATION IN FORCE IN ZIMBABWE, app. I (1992) [hereinafter INDEX].

⁵⁹ *Id.*

⁶⁰ United Nations Environment Programme, *First African Ministerial Conference on the Environment: Resolution 1.1*, at 104 (1985).

⁶¹ *Id.* at 119; see B. Bowonder, *Management of Environment in Developing Countries*, 7 ENVIRONMENTALIST 116-17 (1985).

⁶² UNEP, *supra* note 60, at 119.

relevant administrative authority will examine the proposal, seek the views of any interested parties, and decide whether or not to pursue the matter.⁶³ If approved, the proposal will be set out in legal form—that is, as a “draft bill”—by the country’s attorney general. Following further consideration and approval, the minister responsible will arrange for the bill to be introduced to Parliament.⁶⁴

A bill becomes an act when it successfully passes through Parliament, is approved by the President, and finally is promulgated. Each clause of the bill, however, is subject to strict scrutiny. During its passage through the House of Assembly, the bill goes through a first and second reading, a committee stage, a report stage, and finally a third reading.⁶⁵ An act has the force of law once it is published in the *Government Gazette*.⁶⁶

An act may have indefinite application unless otherwise specified. In fact, many of Zimbabwe’s current statutes can be traced back several decades.⁶⁷ An act may cease to exist if it is expressly repealed, if it is impliedly repealed by a newer inconsistent provision of another act, or if it includes a sunset provision that terminates the act after the passage of a predetermined period of time.⁶⁸

In civil cases, full legal capacity—that is, the capacity to acquire rights, to be subject to duties, and to sue or be sued—belongs to relatively few persons. Only legitimate, adult males who are unmarried, sane, solvent, and not convicted of any offense enjoy full legal capacity.⁶⁹ Other factors influencing capacity are age, sex, race, nationality, and domicile.⁷⁰

In the administrative context, any individual who is affected by a decision of a board, commission, authority, ministry, or administrative tribunal may seek review by the Supreme Court, which has the power to confirm, set aside, or vary the order.⁷¹ Such tribunals are created by statute and exist to deal with disputes arising from the interpretation and administration of a statute.⁷² Tribunals operate similarly to ordi-

⁶³ See D.A. REYNOLDS, AN INTRODUCTION TO [ZIMBABWEAN] LAW 30 (1983).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 31.

⁶⁷ A revised edition of Zimbabwe’s statutory law is published approximately every 10 years, and statutes are republished in amended form from time to time. JOHN REDGMENT, INTRODUCTION TO THE LEGAL SYSTEM OF ZIMBABWE 35 (1981).

⁶⁸ REYNOLDS, *supra* note 63, at 31–32.

⁶⁹ *Id.* at 47.

⁷⁰ *Id.*

⁷¹ *Id.* at 77–78.

⁷² *Id.* at 79.

nary courts of law, and the normal rules of evidence are generally followed, albeit with less formality than in courtroom proceedings.⁷³

Many of these independent tribunals have been placed under the Administrative Court, pursuant to the jurisdiction of the Administrative Court Act.⁷⁴ The primary objective of this Act is to ensure that the tribunals are staffed with qualified people who serve regularly as hearing officers. This provides for continuity within a tribunal and its agency, and instills confidence in aggrieved parties that their disputes will be handled competently.

Zimbabwe's legislative acts normally set out broad principles and include at the end a section granting the appropriate minister authority to formulate any regulations necessary for implementing the act's purposes.⁷⁵ These regulations are often voluminous and highly technical. The language of a statute and its corresponding regulations is subject to interpretation by the courts, although judicial review of the act itself is limited to ascertaining the legislature's intention in passing it.⁷⁶ Such review must analyze the language according to its plain meaning, unless such analysis would lead to an absurd result.⁷⁷ Notably, a court's function is not to foster the policy that it considers most appropriate, but only to spell out the letter of the law.

Review of regulations is limited to a consideration of the issue of *intra vires*—that is, whether the regulations promulgated are within the scope of the powers granted by the statute.⁷⁸ Unlike South Africa, Zimbabwe's magistrates have the power to declare regulations to be without legal force if they exceed the enabling powers granted under the statute.⁷⁹ Most regulations are never challenged in court because of the great expense associated with litigation.⁸⁰

A recent legislative development in Zimbabwe has affected the authority of many ministries. The Parastatals Commission Act significantly limits the powers of ministers to appoint board members, although they still must be consulted regarding such appointments.⁸¹ Members are appointed by specific commissions, which also scrutinize the reasonableness of a minister's official actions. These commissions,

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See REDGMENT, *supra* note 67, at 36–37.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 37.

⁷⁹ *Id.* at 37–38.

⁸⁰ *Id.* at 38–39.

⁸¹ See T.J. Nyapadi, *The Legal Status of Parastatals: Zimbabwe's Experience*, 6 ZIMB. L. REV. 147, 161 (1988).

in turn, have formulated administrative authority in vague terms. Many parastatal commissions have been formed in the environmental context, including the Forestry Commission, the Trustees of National Museums and Monuments, and others.⁸²

C. *Enforcement Tools*

Zimbabwe utilizes a number of mechanisms to enforce its environmental provisions. Most major environmental acts create an administering authority that is responsible for reviewing and issuing permits for regulated activities.⁸³ Guidelines on issuance of permits normally are located in the corresponding regulations. Moreover, environmental legislation nearly always provides for severe criminal sanctions against violators, with mandatory prison terms for subsequent violations—indicating that Zimbabwe takes enforcement of its environmental laws very seriously.⁸⁴

The Zimbabwean government also incorporates numerous economic incentives to encourage compliance with environmental regulations. These incentives are geared predominantly toward providing assistance to indigenous populations that otherwise would lack the resources to implement sound environmental policies. Most acts also provide for disclosure of relevant information by the regulated community to the appropriate authority.⁸⁵ Compliance with such requirements has been sporadic, however, and usually is not enforced until long after an environmental problem has developed.

The concept of environmental impact assessment has gained only informal recognition in Zimbabwe. For instance, most agencies and commissions will consider a variety of environmental impacts when making decisions, but no legal mandate exists requiring that a specific process be followed. Moreover, citizen enforcement provisions are rare in Zimbabwean legislation. Several commentators have suggested that if Zimbabwe wishes to address the concerns of indigenous populations in national policies, citizen suit provisions could facilitate this aim.⁸⁶

⁸² BULLETIN OF ZIMBABWEAN LAW no. 2, para. A437 (B. Hargrove ed., 1988).

⁸³ See INDEX, *supra* note 58, app. I, at A1-A9.

⁸⁴ See generally THE STATUTE LAW OF RHODESIA; THE STATUTE LAW OF ZIMBABWE.

⁸⁵ See generally *id.*

⁸⁶ See generally Nicholas A. Robinson, *Agenda 21: Working Towards a Global Partnership*, IUCN Environmental Policy and Law Paper, No. 27 (1994).

IV. SUBSTANTIVE ENVIRONMENTAL LAW OF ZIMBABWE

A. *International Conventions Concerning the Environment*

1. Scope of Zimbabwe's Participation

A logical starting point in determining the scope of a nation's involvement with environmental concerns is to measure that nation's participation in agreements of international environmental law. Zimbabwe has ratified, or is a signatory party to, at least eleven key international conventions concerning the environment.⁸⁷ The country is also a participant in several international agreements that indirectly serve to protect the environment.⁸⁸

2. Zimbabwe's Response to International Environmental Policy

Although Zimbabwe is party to numerous international environmental agreements, it should not be assumed that the country adopts entirely the prevailing, usually Western-oriented view of environmental issues. In fact, Zimbabwe, like many Third World nations, has voiced serious complaints about the degree to which international environmental law has been the product of primarily developed nations. In cooperation with other African states, Zimbabwe has sponsored several key initiatives aimed at establishing international environmental guidelines that better reflect the perspectives of African and other Third World nations.

⁸⁷ See *Status of Multilateral Treaties in the Field of Environment and Conservation*, IUCN Environmental Policy & Law Occasional Paper, No. 1 (3d ed. 1993). Zimbabwe has signed the following conventions that are open to acceptance by all members of the world community: the Law of the Sea Convention (1982); the Vienna Conventions on the Early Notification of and Assistance in the Case of Nuclear Accident or Radiological Emergency (1986); and the Rio Convention on Biological Diversity (1992). *Id.* Zimbabwe has also ratified the Convention for the Protection of World Cultural and Natural Heritage (1972); the Convention on International Trade in Endangered Species (1973), along with the subsequent Bonn and Gaborone Amendments; the Vienna Convention for the Protection of the Ozone Layer (1985); the Montreal Protocol on Substances that Deplete the Ozone (1987); and the Framework Convention on Climate Change (1992). *Id.*

With respect to regional agreements, Zimbabwe has participated in the First African Ministerial Conference on the Environment (1985), UNEP, *supra* note 60; the Harare Action Plan for Environmentally Sound Management of the Zambezi River System (1987); and the Agreement for the Establishment of Southern African Center for Ivory Marketing (1991). See INDEX, *supra* note 58, at app. I.

⁸⁸ *Id.* For example, Zimbabwe is a participant in the Convention Prohibiting the Stockpiling of Bacteriologic and Toxic Weapons. *Id.*

One of the most significant steps toward this end involved convening the First African Ministerial Conference on the Environment, which was held in Cairo in 1985. Representatives from forty-one African states—as well as the United Nations Environment Program, the Organization for African Unity, the International Union for the Conservation of Nature and Natural Resources, and the Economic Commission for Africa—were in attendance.⁸⁹ Although the delegates articulated a strong commitment to environmental protection, many of the documents produced stressed that the most pressing environmental issues facing Africa are population growth and declining agricultural productivity.⁹⁰ In addition, the presence of significant numbers of economic ministers and advisors at an environmental conference reflected the African view that economic problems represent the greatest threat to Africa's environment. This approach is further reflected in Zimbabwe's delegation of responsibility for protecting the environment and developing tourism to a single ministerial department, indicating its view that economic prosperity and environmental conservation are inextricably intertwined.

Another major theme articulated at the Conference was that developed nations that want Africa to preserve its environment must make international aid immediately available to help achieve this goal. Specifically, the Conference urged the more developed nations to fund training for African environmental managers and education for traditional people in environmental issues.⁹¹

The concerns raised at the Cairo Conference represent a synthesis of Zimbabwe's major criticisms concerning established environmental conventions. Zimbabwe, for instance, is particularly critical of CITES⁹²—which officials contend accomplishes little more than requiring a listing of species in need of protection, and fails to consider

⁸⁹ See UNEP, *supra* note 60, at 111–12.

⁹⁰ *Id.* at 112–22. For instance, Zimbabwe's Minister of Natural Resources and Tourism specifically noted that the problems caused by continuing population growth necessitate the development of environmentally sound methods for improving the land's carrying capacity. *Id.* at 119.

⁹¹ *Id.* at 111–22.

⁹² SIMON LYSTER, INTERNATIONAL WILDLIFE LAW 240–41 (1985). The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in wild animals and plants. The Convention prohibits, with few exceptions, international commercial trade in species threatened with extinction, as listed in Appendix I. *Id.* at 240. Species listed in Appendix II, which are not yet threatened but are in danger of becoming so in the future, may be exported and imported if this would not be detrimental to their survival. *Id.* Appendix III provides a mechanism whereby a party to the Convention with domestic legislation regulating species not listed in Appendices I or II may seek the support of other parties in enforcing its domestic legislation. *Id.*

related human issues. Zimbabwe further contends that for truly effective environmental conservation to occur, the economies of African nations and the needs and views of people living adjacent to protected habitats must be considered.⁹³

Zimbabwe has proposed alternative policies that consider not only the needs of a specific environmentally threatened area or species, but also those of the entire biological community, including humans. Accordingly, Zimbabwe's environmental managers often cite a model provided by the United Nations Economic, Social, and Cultural Organization (UNESCO) through its Man and the Biosphere Programs (MAB). MAB's fundamental philosophy is that any entity in need of protection must be considered within the larger surrounding ecological community, and that humans are certainly part of that community. Consequently, the MAB approach challenges the assumptions upon which many earlier environmental conservation policies were based—that humans and animals must be separated and that governments must establish programs in which humans sacrifice economic, recreational, or other opportunities for the sake of endangered fauna.⁹⁴ The MAB approach argues that segregated preserves might be possible in more developed nations, where the amount of land involved is small and the economic burden can be borne by local communities. In the developing world, however, it is simply not realistic to assume that such sacrifices are bearable, given the denser population of local communities and the large tracts of land involved in preservation efforts.⁹⁵

Importantly, the MAB program avoids the Western-oriented strict preservation mentality. It minimizes the exclusion of humans from environmentally sensitive areas and maximizes the potential for local residents to actually participate in the system. Zimbabwe's Hwange National Park was organized along MAB guidelines in 1989, as was Amboseli National Park in Kenya. Both have reported an increase in

⁹³ See ANIMAL EXTINCTIONS: WHAT EVERYONE SHOULD KNOW 118-28 (R.J. Hoage ed., 1985).

⁹⁴ P.H.C. LUCHS, PROTECTED LANDSCAPES: A GUIDE FOR POLICY-MAKERS AND PLANNERS 15-17 (1990). The MAB's conceptual model views any environmental zone as a series of concentric circles. The innermost circle must be preserved solely for the use of indigenous species. Within its boundaries no human activity except occasional monitoring is allowed. *Id.* at 23-24. The surrounding circle, often referred to as the "Casual Interaction Zone," allows some human activity not directly associated with environmental protection. *Id.* For example, at select times local residents might be allowed to graze their livestock within that zone. The next circle might allow grazing year round and grant access to carefully supervised tourist groups. The next circle contains the hotels, shops, and other facilities that serve those tourists, as well as the traditional people's residences. *Id.*

⁹⁵ For an articulate synthesis of this contention, see V. GEIST, NECESSARY WILDLIFE MANAGEMENT PROGRAMS IN BIOSPHERE RESERVES (1991).

cooperation between governmental officials and local residents.⁹⁶ The MAB approach appears to provide a workable structure for addressing some of the key issues raised at the Ministerial Conference on the Environment in Cairo.

Other examples of attempts by African nations to design alternative environmental management programs can be discerned in the activities of the African Nongovernmental Organizations Environmental Network (ANEN). This association brings together interest groups within African nations that are affected by environmental regulations.⁹⁷ ANEN's task is to serve as a conduit between local residents and government officials to ensure that the needs of both the environment and the human community are balanced. Key activities initiated by ANEN include establishing environmental education programs for local residents, undertaking research, and ensuring that the maximum number of local people obtain employment within protected areas. ANEN has received both endorsement and funding from UNESCO.⁹⁸

Like officials in many Third World countries, Zimbabwean authorities realize that economic realities—especially in the face of rapid population growth—necessitate utilization rather than passive preservation of natural resources. For example, wildlife that generates tourist dollars obviously rates high on the government's list of resources. The infrastructure needed to make wildlife accessible to tourists, however, cannot be developed in a way that will destroy the very ecosystem upon which that wildlife depends. To do so would not only injure the interests of Zimbabwe's economy, but simultaneously violate numerous international agreements protecting wildlife.⁹⁹ Accordingly, Zimbabwe apparently seeks to strike a balance between the exploitation and the protection of its wildlife. The terms "sustainable development" or "sustainable exploitation" often are used to describe this effort.¹⁰⁰ Clearly, the MAB and ANEN programs represent deliberate steps in this direction.

⁹⁶ P.F. FOLLIOT, *SOCIAL AND ENVIRONMENTAL CONSEQUENCES OF NATURAL RESOURCE MANAGEMENT POLITICS* 41-42 (1991).

⁹⁷ Simon Muchiru, *African NGO's Environmental Network: Focusing on Environmental Action*, 2 *COLO. J. INT'L ENVTL. L. & POL'Y* 319-20 (1991).

⁹⁸ *Id.* at 320-23.

⁹⁹ United Nations Environment Programme, *Minutes of the Third African Ministerial Conference on the Environment*, at 8-12 (1990).

¹⁰⁰ AFRICA CONTEMPORARY RECORD at A116-17 (Colin Legum & Marion E. Doro eds., 1987-88).

Whereas Zimbabwe supports the sustainable development concept in principal, internal realities have affected practical application of this concept. Primarily because Zimbabwe is in the unique circumstance of possessing many pristine nature reserves and environmentally sound regions that are yet to be developed, the country's leaders believe that Zimbabwe should be exempt from certain internationally imposed environmental restrictions.¹⁰¹ For example, while elephants are an internationally protected species under CITES, Zimbabwe actually suffers from an excess population of elephants. The Zimbabwean government therefore believes that existing international controls should not apply to its particular circumstances.¹⁰²

It is clear that Zimbabwe, in coordination with other African states, is in the process of evolving its own international guidelines that it believes address the environmental realities of Southern Africa more effectively than existing regulations and procedures. Zimbabweans and other Africans understand that it is in their best interest to protect the environment that sustains them. Accordingly, Zimbabwe's bottom-up management approach to solving environmental problems, such as wildlife conservation, should be encouraged, and not hindered by the global community.

B. *Zimbabwe's Domestic Legislation*

1. Protection of Air Quality

The Zimbabwean government's efforts to protect air quality are channelled primarily through the Atmospheric Pollution Prevention Act of 1971.¹⁰³ This Act provides for the control of air pollution caused by noxious and offensive gases, smoke, dust, and fumes from internal combustion engines. Zimbabwe's Ministry of Health is the agency responsible for administration of the Act.¹⁰⁴ The Act, however, also establishes an Air Pollution Advisory Board, which advises the Health Minister concerning the control, abatement, and prevention of air

¹⁰¹ See UNEP, *supra* note 60, at 108, 119; see also Randy Simmons & Urs Kreuter, *Save An Elephant—Buy Ivory*, WASH. POST, Oct. 1, 1989, at D3. This article points out that Zimbabwe's wildlife population, including many endangered species, is burgeoning primarily as a result of environmentally sound management practices. The authors argue, therefore, that many of the international bans on exporting wildlife products make no sense when applied to Zimbabwe. Simmons & Kreuter, *supra*, at D3.

¹⁰² See AFRICA CONTEMPORARY RECORD, *supra* note 100, at A431.

¹⁰³ See Atmospheric Pollution Prevention Act (1971), THE STATUTE LAW OF ZIMBABWE, ch. 318.

¹⁰⁴ INDEX, *supra* note 58, at app. I.

pollution, as well as an Air Pollution Appeal Board, which reviews appeals from those who challenge the Health Minister's actions under the Act.¹⁰⁵ The Appeal Board is subject to the provisions of another Act, akin to the United States Administrative Procedures Act, which regulates the procedures of the Board and the rights and obligations of any person appearing before it.¹⁰⁶

In terms of noxious and offensive gases,¹⁰⁷ the Minister of Health has authority to declare any region to be a gas control area, and to declare any process to be a specified process subject to regulation under the Act.¹⁰⁸ Once the Minister's findings are publicly recorded, any emission or conduct of a specified process within a control area must first be authorized by a registration certificate.¹⁰⁹ The officer in charge of issuing such certificates must consult with any local authorities who may be affected by the proposed emission or process, and must then be satisfied that all reasonable measures pursuant to prevailing technical knowledge will be utilized to reduce emissions and ensure that all plant apparatuses and appliances are properly maintained.¹¹⁰ In addition, authorized officers of the Health Ministry have the power to enter any premise in an established gas control area to investigate compliance with the Act.¹¹¹

In cases of pollution caused by smoke or dust, the Minister of Health also has the authority to declare any area to be a smoke or dust control area.¹¹² If the Minister of Health identifies such a control area, then the Health Ministry—or any local jurisdiction in which the Minister vests authority—may treat smoke and dust emissions as nuisances.¹¹³ Thus, any officer with vested authority may notify persons of their violation, and within thirty days may implement measures necessary to abate the nuisance, including entry onto the alleged violator's premises. Once a proper authority has adopted measures to abate a

¹⁰⁵ See Atmospheric Pollution Prevention Act, *supra* note 103, §§ 3–4, 35–36.

¹⁰⁶ See Commissions of Inquiry Act (amended 1981), THE STATUTE LAW OF ZIMBABWE, ch. 80. For example, the law requires the Appeal Board to give notice and provide interested parties with an opportunity to be heard.

¹⁰⁷ Noxious and offensive gases (such as carbon monoxide, fumes or smoke from industrial processes, and odors from meat or fish processing plants) are defined broadly to include anything that the Minister of Health declares to be noxious or offensive. Atmospheric Pollution Prevention Act, *supra* note 103, §§ 2, 5, 39.

¹⁰⁸ This is accomplished by publishing a notice of the Minister's findings in the government's weekly *Gazette*. *Id.* § 5.

¹⁰⁹ *Id.* §§ 5–7.

¹¹⁰ *Id.* §§ 7–8.

¹¹¹ *Id.* § 12.

¹¹² *Id.* §§ 15, 24

¹¹³ *Id.* §§ 15–32.

dust nuisance, the authority may recover the costs of such measures from the violator or from the state.¹¹⁴ The Minister of Health also has authority to promulgate regulations for the control of dust and smoke emissions.¹¹⁵

The Act also addresses the problem of fumes caused by internal combustion engines, and specifically requires that such engines incorporate approved emission control devices. The Minister is directed to promulgate regulations that would classify engines and specific emission devices, delineate emission standards, provide for testing and inspection, and designate newer, more efficient engines.¹¹⁶ The Health Ministry has promulgated voluminous regulations concerning these matters.¹¹⁷

The Act also forbids any person or government officer who obtains confidential information pursuant to the Act from making disclosures of such information unless the disclosures are consented to or required by a legal proceeding.¹¹⁸ In addition, anyone who fails to comply with any issued notice, who contravenes any provisions, or who obstructs any vested authority acting pursuant to the Act may be found guilty of a crime, and subjected to a fine or imprisonment.¹¹⁹ Moreover, the Health Minister may make a regulation only upon consultation with the Minister of Finance.¹²⁰ This requirement is a further indication of Zimbabwe's view that environmental and economic concerns are not mutually exclusive.

2. Protection of Water

There are three main river systems in Zimbabwe. The Zambezi and the Limpopo originate outside Zimbabwe, and the Sabi has its source on the eastern slopes of Zimbabwe's highveld.¹²¹ The Zambezi River collects runoff from nearly all lands in the north and terminates at Victoria Falls near Zimbabwe's northwestern border. The Limpopo and Sabi Rivers collect runoff from the eastern and southeastern slopes of the country.¹²²

¹¹⁴ *Id.* § 26.

¹¹⁵ *Id.* §§ 21, 30.

¹¹⁶ *Id.* §§ 33-34.

¹¹⁷ For a comprehensive survey of such regulations, see BULLETIN OF ZIMBABWEAN LAW (B. Hargrove ed., 1988-92) [hereinafter BULLETIN].

¹¹⁸ Atmospheric Pollution Prevention Act, *supra* note 103, § 37.

¹¹⁹ *Id.* § 38.

¹²⁰ *Id.* § 39(4).

¹²¹ See ZIMBABWE, A COUNTRY STUDY, *supra* note 3, at 78.

¹²² *Id.* at 78-79.

Although Zimbabwe has no natural lakes, it boasts some 7000 artificial dams, used primarily for electricity generation and irrigation.¹²³ The main complaint about these dams is that they only irrigate commercial sugar plantations in the south of the country while leaving arid regions totally unserved. This contributes to significant soil erosion and deforestation in the unserved areas.

Prior to independence, Zimbabwe's primary legislation protecting water was the Fish Conservation Act.¹²⁴ Although the Act's main purpose was the conservation of indigenous fish,¹²⁵ it also contained a prohibition against water pollution. Specifically, the Act forbade the deposit or discharge into water of any substance that was injurious or potentially injurious to fish or to the marine life that sustained them.¹²⁶ First offenses of this provision were punishable by fine and/or imprisonment for up to twelve months.¹²⁷ The Act is no longer in force in Zimbabwe, however, because it has been repealed and subsumed by the Parks and Wild Life Act.¹²⁸

Currently, Zimbabwe has three acts that relate to water resources: the Regional Water Authority Act (1976), the Water Act (1976), and the Zambezi River Authority Act (1987).¹²⁹ Only the Water Act contains provisions of environmental significance, while all three of the acts are aimed primarily at balancing existing legal water rights and establishing commissions to regulate dam operation, water supply and usage, and navigation upon the waterways.

The Water Act's environmental-type provisions, which are found in the corresponding regulations,¹³⁰ appear limited to dealing with emergency situations that pose a risk of environmental damage. For

¹²³ COLIN STONEMAN & LIONEL CLIFFE, *ZIMBABWE: POLITICS, ECONOMICS, AND SOCIETY* 150 (1989).

¹²⁴ Fish Conservation Act (1961), *THE STATUTE LAW OF RHODESIA*, ch. 124. More than 100 varieties of fish are native to Zimbabwe. RASMUSSEN, *supra* note 4, at 93. The development of modern dams has greatly enlarged the country's fishing waters, particularly in Lake Kariba, which has the country's only commercial fishing industry. *Id.*

¹²⁵ The Act established three separate controlled fishing areas: fishing reserves where no fishing was allowed, controlled areas where fishing was allowed only by permission of the Minister of Land and National Resources, and fish conservation areas where fishing was restricted in terms of time and amount. The Act also forbade the killing of fish by dynamite or electricity or the introduction of nonindigenous fish into an area. Fish Conservation Act, *supra* note 124, §§ 3 et. seq.

¹²⁶ *Id.* § 10.

¹²⁷ *Id.* § 10(2).

¹²⁸ See *infra* notes 173-83 and accompanying text. Zimbabwe's fishing industry is relatively small and has had only a minor impact on the country's overall economy. See *ZIMBABWE, A COUNTRY STUDY*, *supra* note 3, at 153-54. The largest commercial fishing areas, for example, report only about 1000 tons annually. *Id.* at 154.

¹²⁹ INDEX, *supra* note 58, at app. I.

¹³⁰ See BULLETIN, *supra* note 117.

instance, the Ministry of Energy and Water Resources and Development issued a declaration of a state disaster for Lake Chivero in 1991 because excessive algae buildup had produced unsanitary conditions on the lake.¹³¹ This declaration allowed the Ministry to distribute funds to local authorities, to mitigate any environmental harm that occurred, and to study and investigate methods of preventing similar environmental problems. Zimbabwe's environmental policy toward water quality is apparently a reactive, ad hoc approach that utilizes existing nonenvironmental legislation as a conduit for official governmental action. Hence, environmental protection of water resources obviously needs to be addressed in a more comprehensive fashion.

3. Protection of Natural Resources and Wildlife Preservation

a. *Natural Resources*

Zimbabwe protects its natural resources through a number of comprehensive laws. First, the Natural Resources Act provides for the conservation of a wide range of resources.¹³² Second, the Forest Act¹³³ and the Mines and Minerals Act¹³⁴ provide for the protection and management of these respective resources. The Natural Resources Act broadly defines natural resources to include soils, waters, minerals, animals, trees and vegetation, marshes, swamps, and anything else the President proclaims to be a resource.¹³⁵ The Ministry of Environment and Tourism is responsible for administration of the Act.¹³⁶

The Act also establishes a Natural Resources Board and a Natural Resources Court. The Board is primarily designed to supervise natural resource utilization, to conduct public education campaigns, and to recommend legislation necessary for proper resource conservation.¹³⁷ The Board's decisions and declarations concerning resource utilization are legally binding on all interested parties, provided that proper procedure and notice are afforded.¹³⁸

¹³¹ *Id.* at no. 3, para. D884. These conditions threatened wild flora and fauna as well as the health of humans who utilized the lake.

¹³² Natural Resources Act, THE STATUTE LAW OF ZIMBABWE, ch. 150; Natural Resources Amendment Act (1975).

¹³³ Forest Act, THE STATUTE LAW OF ZIMBABWE, ch. 125; Forest Amendment Act (1981).

¹³⁴ Mines and Minerals Act (1961), THE STATUTE LAW OF ZIMBABWE, ch. 165; Mines and Minerals Amendment Act (1974).

¹³⁵ Natural Resources Act, *supra* note 132, § 2.

¹³⁶ INDEX, *supra* note 58, at app. I.

¹³⁷ See Natural Resources Act, *supra* note 132, § 10.

¹³⁸ *Id.* §§ 6, 7, 15, 16, 17.

The Natural Resources Court has jurisdiction over appeals from any person who considers the Board's decision to be inequitable, unreasonable, or unduly harsh.¹³⁹ The Court is composed of three persons, one of whom is appointed by the Minister of Justice and serves as the chief officer in all proceedings.¹⁴⁰ The chief officer must be a former judge with at least ten years of experience, while the other court members are selected on a case-by-case basis from a list approved by the Minister of Environment and Tourism.¹⁴¹ The Court's decisions are made by a majority vote, and may confirm, vary, or set aside any decision of the Board.¹⁴² Persons may appeal from the Natural Resources Court's order to the Appellate Division of the Supreme Court¹⁴³ whether there exists only a question of law, or a mixed question of law and fact. The standard of review for such appeals is reasonableness on the basis of the evidence that was presented to the Natural Resources Court.

The substantive environmental provisions of the Natural Resources Act can be classified into two broad categories: conservation and improvement of natural resources in Tribal Trust Lands and conservation in other areas. The government's conservation efforts in nontribal lands focus on setting aside or acquiring land, constructing projects to conserve or improve natural resources (especially water and soil), and establishing intensive conservation areas.¹⁴⁴ Once an area is declared an intensive conservation area, all resource preservation and improvement measures within it are supervised by established conservation committees.¹⁴⁵ These committees, composed of landholders in the intensive area, are subject to supervision by the Natural Resources Board. This regulatory structure further illustrates Zimbabwe's bottom-up management approach to environmental protection.

Natural resource conservation measures in Tribal Trust Lands may utilize the same methods found in nontribal lands. The principal difference, however, is that in order for the Natural Resources Board to enact a conservation measure, the measure must be approved by the Board of Trustees of Tribal Trust Lands.¹⁴⁶ In addition, the Presi-

¹³⁹ *Id.* § 23.

¹⁴⁰ *Id.* § 22.

¹⁴¹ *Id.* § 22(4), (5).

¹⁴² *Id.* §§ 23(3), 26.

¹⁴³ *Id.* § 36.

¹⁴⁴ *Id.* §§ 41, 46, 48, 49.

¹⁴⁵ *Id.* §§ 52, 53.

¹⁴⁶ These trustees are appointed pursuant to the Land Tenure Act, THE STATUTE LAW OF ZIMBABWE, ch. 148, § 6; Land Tenure (Repeal) Act (1975).

dent may, upon the report of any minister, authorize protection measures applicable to tribal lands.¹⁴⁷

Zimbabwe's natural forests consist almost entirely of savanna hardwood trees, which constitute the chief source of fuel and construction material for the rural population.¹⁴⁸ The Land Apportionment Act of 1930 and the Land Tenure Act of 1969¹⁴⁹ together established over 750,000 hectares of total state forest reserves.¹⁵⁰ Over the past two decades, serious deforestation has occurred on communal lands located outside these reserves.¹⁵¹

Zimbabwe's Forest Act provides the Ministry of the Environment with a comprehensive framework for the management of state forests and the conservation of the country's timber resources.¹⁵² The principle regulatory bodies established under the Act are the Forestry Commission and the Mining Timber Permit Board. The Forestry Commission's duties include: making recommendations concerning forest policy to the Minister of the Environment; managing the utilization of state forests and reserves; maintaining forest nurseries; conducting research pertaining to all forestry matters; and providing advice and informational material.¹⁵³ The Commission's broad powers also authorize the purchase and sale of timber products; the construction, operation, and leasing of sawmills; the maintenance of necessary roads, equipment, and livestock; as well as the issuance of promissory notes and the levying of charges for services rendered.¹⁵⁴ The Commission's

¹⁴⁷Natural Resources Act, *supra* note 132, § 62.

¹⁴⁸ZIMBABWE, A COUNTRY STUDY, *supra* note 3, at 152. The country's indigenous woodlands are of limited economic potential except in the dry region of Matabeleland North Province, where teak and other native hardwoods are profitably exploited. RASMUSSEN, *supra* note 4, at 94. The eastern highlands are ideally suited for rapid tree growth, but indigenous trees of commercial potential are concentrated in only a few small areas, which are now protected as reserves. *Id.*

¹⁴⁹By the mid-1960s, virtually all land already reserved for Europeans was privately owned or controlled, thereby limiting the expansion of European commercial agriculture. RASMUSSEN, *supra* note 4, at 146-47. Despite most European farms being clearly underutilized, the Rhodesian Front government sought to expand the amount of land available to white farmers while more rigidly segregating African and European areas. The resulting Land Tenure Act converted most existing "unreserved land" into European areas. *Id.* The Act divided the country into three basic categories of land: European, African, and "national"—the last comprising most of the national parks and game reserves. European and African areas were equalized, each with 46.6% of the total country. *Id.* The law's promulgation was followed by vigorous government efforts to evict African squatters from European areas and the tightening of controls over European entry into African areas. In March 1977, the House of Assembly amended the Land Tenure Act to allow Africans some access to formerly reserved European areas. *Id.*

¹⁵⁰ZIMBABWE, A COUNTRY STUDY, *supra* note 3, at 153.

¹⁵¹*Id.*

¹⁵²See generally Forest Act, *supra* note 133.

¹⁵³*Id.* § 8.

¹⁵⁴*Id.* § 9.

central responsibility, however, is the management of any areas that the state has identified as protected forests.

In general, the Forest Act forbids the cutting of timber from any state land or the removal of any indigenous trees from private land unless one first obtains a permit from the Mining Timber Permit Board.¹⁵⁵ In its review of permit applications, the Timber Board initially must consider whether undue damage to the locality would result from the proposed action, and whether sufficient alternative stores of the timber at issue are available.¹⁵⁶ In addition, the Board may suspend or cancel an existing permit if it determines that circumstances justify revocation.¹⁵⁷

The Act contains other substantive provisions designed to conserve timber resources through various methods. In addition to fulfilling the permit process, owners or occupiers of private land must provide notice to the Forest Commission if they intend to remove indigenous timber.¹⁵⁸ The Minister of Environment and Tourism may also require private land owners to adopt any conservation measures the Minister deems necessary.¹⁵⁹

Zimbabwe's President enjoys a broad range of powers for the enforcement of conservation measures under the Act.¹⁶⁰ The President has the authority to regulate timber trade primarily through import and export regulations. The burning of vegetation for any purpose is strictly regulated.¹⁶¹ Any intentional violation of the Forest Act that causes damage to woodlands is punishable by a substantial fine and up to ten years in prison. Any other contravention of the Act is subject to a significant fine or up to two years imprisonment.¹⁶²

By 1990, the Forest Commission's direct control over Zimbabwe's national forests encompassed approximately 30,000 hectares.¹⁶³ Such control involves primarily the closely monitored harvesting of natural forests under government control. Currently, the Commission is attempting to complete a major reforestation program in communal areas that is designed to provide stands of fast growing trees for fuel and building materials.¹⁶⁴

¹⁵⁵ *Id.* §§ 33, 39, 43.

¹⁵⁶ *Id.* § 44.

¹⁵⁷ *Id.* § 45.

¹⁵⁸ *Id.* § 48; Forest Amendment Act, *supra* note 133, § 10.

¹⁵⁹ *Id.* § 49.

¹⁶⁰ *Id.* §§ 55, 56.

¹⁶¹ *Id.* §§ 57-61, 65.

¹⁶² *Id.* § 68-69.

¹⁶³ ZIMBABWE, A COUNTRY STUDY, *supra* note 3, at 152.

¹⁶⁴ *Id.* at 153.

Zimbabwe's current Mines and Minerals Act is a voluminous piece of legislation originally enacted to consolidate the country's various laws relating to minerals.¹⁶⁵ The Ministry of Mines is responsible for administration of the Act.¹⁶⁶ Rights to the mineral wealth of Zimbabwe are vested in the Office of the President, however, and any acquisition of mining rights is subject to the President's ultimate approval.¹⁶⁷

Despite its broad scope, the Act contains only a few environmental-type provisions. First, there are guidelines that regulate the prospecting and pegging process so as to protect the structural integrity of surface lands and underground reefs.¹⁶⁸ Second, the Act contains provisions forbidding the obstruction and diversion of subterranean and flood waters, as well as the pollution of private or public water supplies.¹⁶⁹ Third, the Act requires mine operators, upon completion of their work, to clean the mines of potentially hazardous debris.¹⁷⁰ In addition, the country's dams and reservoirs must be left intact, and the Act strictly prohibits mining operations that cause the salinization of any water supply.¹⁷¹ Finally, the cutting or use of any wood in the course of a mining operation is subject to the further restrictions of the Forest Act.¹⁷²

The larger purpose of the Mines and Minerals Act is unrelated to environmental protection. The Zimbabwean government apparently believes that the Natural Resources Act sufficiently guards against potential harm resulting from mining operations. Zimbabwe would be well advised, however, to consider including additional environmental provisions in the Mines Act, and to institute mechanisms that would coordinate the activities of the Ministry of Mines and the Ministry of Environment and Tourism.

b. *Wildlife Preservation*

The Zimbabwean law currently in effect for protection of wildlife is the Parks and Wild Life Act.¹⁷³ This Act consolidates two previously

¹⁶⁵ See generally Mines and Minerals Act, *supra* note 134.

¹⁶⁶ INDEX, *supra* note 58, at app. I.

¹⁶⁷ See Mines and Minerals Act, *supra* note 134, §§ 2-3.

¹⁶⁸ *Id.* §§ 31, 34-39, 61-83, 401.

¹⁶⁹ *Id.* §§ 180, 182-84.

¹⁷⁰ *Id.* §§ 198.

¹⁷¹ *Id.* §§ 413, 407.

¹⁷² *Id.* § 402.

¹⁷³ Parks and Wild Life Act, THE STATUTE LAW OF ZIMBABWE, ch. 135; Parks and Wild Life Amendment Act (1975).

separate laws—the National Parks Act of 1965 (Chapter 159)¹⁷⁴ and the Wildlife Conservation Act of 1960 (Chapter 135).¹⁷⁵

Zimbabwe boasts seventeen well-maintained national parks, which consistently rate among Africa's best reserves.¹⁷⁶ Unlike the many remote wilderness regions of Africa, Zimbabwe's parks are easily accessible by both land and air.¹⁷⁷ Accordingly, the parks generate a robust tourist industry. National parks fall under the control of the Ministry of Environment and Tourism.¹⁷⁸ The Department of National Parks, a subagency of the Ministry of Environment and Tourism,¹⁷⁹ enjoys a broad range of administrative powers, and plays a central role in many park and wildlife projects.

The Parks and Wild Life Act generally prohibits the hunting or capture of animals in a national park unless a license or permit has been duly issued by an appropriate authority.¹⁸⁰ Determining the appropriate authority in a given situation depends on where the hunting occurs. If the hunting takes place in one of Zimbabwe's game reserves—which are areas established by the President—a permit must be obtained from the Ministry of Environment and Tourism.¹⁸¹ The Ministry may grant permits for the purposes of scientific research, disease control, public safety, or proper management of wildlife.¹⁸²

Hunting or capture that does not occur in hunting reserves or controlled hunting areas, which are established by the Minister of Environment and Tourism, requires a permit obtained from the Department of National Parks.¹⁸³ Such permits are usually issued for the purposes of domestication and breeding programs, protection of property and persons, scientific or educational research, or the provision of food for indigenous populations in remote areas.¹⁸⁴ Hunting in

¹⁷⁴ See INDEX, *supra* note 58, at app. I.

¹⁷⁵ Conservation of the country's vast wildlife resources was initiated by European landowners in the Wankie District, part of which became the first government-designated game reserve in 1928. RASMUSSEN, *supra* note 4, at 96–97. Efforts to protect game intensified after the creation of the National Resources Board in 1942. This led to the National Parks Act in 1949, and the Wildlife Conservation Act of 1960. *Id.* Some reserves, such as Wankie, became national parks, which differ from nonpark reserves in that they are developed to accommodate vacationers and tourists. Sites are selected for national parks only if they have poor agricultural potential. *Id.*

¹⁷⁶ See generally MARK W. NOLTING, AFRICA'S TOP WILDLIFE COUNTRIES 377–407 (1989).

¹⁷⁷ *Id.* at 378.

¹⁷⁸ See INDEX, *supra* note 58, at app. I.

¹⁷⁹ See Dick Pitman, *Zimbabwe Wildlife Management Policies*, 22 CERES 34 (Fall 1990).

¹⁸⁰ Parks and Wild Life Act, *supra* note 173, §§ 24–25, 29–30, 37, 47–48.

¹⁸¹ *Id.* § 25.

¹⁸² *Id.* §§ 25, 37.

¹⁸³ *Id.* § 47.

¹⁸⁴ Wildlife Conservation Act (1961), THE STATUTE LAW OF ZIMBABWE, ch. 135; Wildlife Conservation Amendment Act (1972), §§ 34, 35.

private game reserves requires written permission from the private owner of the land.¹⁸⁵ Because these areas are designated by the President, however, any hunting of animals thereon must also conform to whatever terms the President has established.¹⁸⁶

Other provisions of the Act provide exemptions for killing an animal in self-defense or as the result of an accident. Strict regulations also exist concerning the capture of wild birds or any specially protected animal.¹⁸⁷ Moreover, the Act requires that any ivory or rhinoceros horn taken within Zimbabwe's borders be registered with the Ministry of Environment and Tourism.¹⁸⁸

A unique feature of the Parks and Wild Life Act is that wildlife remain state property, but landholders are responsible for any wild animals on their lands, and are permitted to use them for economic purposes such as sport hunting and tourism. As a result, the amount of private land reserved as wildlife habitats has increased dramatically in Zimbabwe.¹⁸⁹ In addition, many wildlife ranchers have formed a Wildlife Producers Association, which is an active participant in major wildlife conservation projects.¹⁹⁰

Two criticisms are often leveled against the Act, however. First, Zimbabwe's legislation is strongly biased toward protecting the existing cattle industry, and toward preventing wild game meat from entering the market.¹⁹¹ The wildlife industry has therefore been denied significant economic returns. Second, many communal lands in rural areas have significant wildlife populations, but residents do not enjoy the same rights as private landholders over such wildlife.¹⁹² Most of the economic benefits derived from wildlife, therefore, fall into the hands of larger landholders.

One way to combat this disparity would be to invoke a clause in the Parks and Wild Life Act to give Local District Councils legal status equivalent to that of private landholders.¹⁹³ Such councils are well suited to manage wildlife on communal lands and to ensure that the local community benefits directly from its wildlife resources. The principal challenges are to educate traditional communities concerning

¹⁸⁵ *Id.* §§ 6-7.

¹⁸⁶ *Id.* § 7.

¹⁸⁷ Parks and Wild Life Act, *supra* note 173, §§ 35, 36, 62.

¹⁸⁸ *Id.* §§ 71, 72, 74, 76.

¹⁸⁹ See Pitman, *supra* note 179, at 31.

¹⁹⁰ *Id.* at 32.

¹⁹¹ *Id.* at 32-33.

¹⁹² *Id.* at 33.

¹⁹³ *Id.*

the potential benefits of wildlife management and to curb any tendency toward opportunistic overuse of the resource.

The Department of National Parks has devised the Communal Areas Management Programme for Indigenous Resources (CAMP-FIRE), specifically designed to assist Local Councils in the establishment of sound wildlife utilization programs.¹⁹⁴ Another agency, the Zimbabwe Trust, has established a Wildlife Community Development Programme designed to enhance Local Councils' institutional capacity to manage natural resources.¹⁹⁵

Zimbabwe's wildlife management and utilization policies, which contrast with a strict preservationist view, have actually contributed to significant increases in wildlife populations. Zimbabwe's elephant population, for example, has approximately doubled since 1981.¹⁹⁶ Zimbabwe's reserves constitute some of the last remaining habitats for many endangered species, including the white rhinoceros, the black rhinoceros, crocodiles, and many species of wild cats.¹⁹⁷

Zimbabwe has legislated a variety of other acts related to animal protection. The most significant are: (1) the Animal Health Act,¹⁹⁸ which provides for the eradication and prevention of animal diseases; (2) the Trapping of Animals (Control) Act,¹⁹⁹ which strictly regulates the use of animal traps; (3) the Prevention of Cruelty to Animals Act,²⁰⁰ which primarily regulates pet shops and kennels; and (4) the Bees Act,²⁰¹ which provides for control of disease in bees, conservation of wild bees, and regulation of commercial beekeeping. These laws are essentially designed according to preservationist or aesthetic approaches to wildlife. Many of the acts, therefore, may receive only secondary consideration from a Zimbabwean government that is apparently moving toward a more sustainable utilization approach to wildlife management.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 34.

¹⁹⁶ See R. Watts, *The Other Side of the Elephant Story*, NEW AFR., July 1992, at 26, 26.

¹⁹⁷ Simmons & Kreuter, *supra* note 101, at D3.

¹⁹⁸ Animal Health Act, THE STATUTE LAW OF ZIMBABWE, ch. 121; Animal Health Amendment Act (1990).

¹⁹⁹ Trapping of Animals (Control) Act (1973), THE STATUTE LAW OF ZIMBABWE, ch. 134; Trapping of Animals (Control) Amendment Act (1981).

²⁰⁰ Prevention of Cruelty to Animals Act (1960), THE STATUTE LAW OF ZIMBABWE, ch. 71; Prevention of Cruelty to Animals Amendment Act (1983).

²⁰¹ Bees Act (1973), THE STATUTE LAW OF ZIMBABWE, ch. 122; Bees Amendment Act (1981).

4. Regulation of Hazardous Substances

Zimbabwe regulates hazardous substances primarily through the Hazardous Substances and Articles Act.²⁰² A hazardous substance is defined in the Act generally as anything that may endanger the health of human beings or animals because of its toxic, corrosive, irritant, sensitizing, inflammable, or radioactive nature.²⁰³ By notice in the official government publication, the *Gazette*, the Minister of Health may declare any such substance or mixture of substances to be a Group I, Group II, or Group III hazardous substance.²⁰⁴ Group I substances may not be imported, manufactured, sold, possessed, stored, conveyed, or used.²⁰⁵ Group II hazardous substances may not be transferred or sold unless the supplier and the premises where the sale takes place are licensed, and may be used only in accordance with the conditions set forth in a validly issued permit.²⁰⁶ Group II substances are also subject to whatever special conditions the Hazardous Substances Control Board may declare.²⁰⁷ Group III substances are specified in accompanying regulations and are usually regulated in terms of proper storage, handling, labeling, and manufacturing.²⁰⁸

The Hazardous Substances Control Board established under the Act provides general policy directives to the regulated community, advises the Minister of Health concerning all pertinent matters related to hazardous substances, and exercises discretionary authority in the approval or denial of license applications.²⁰⁹ The Act also creates a licensing officer for hazardous substances who is responsible for implementing administrative tasks delegated by the Board.²¹⁰ The officer performs only ministerial, nondiscretionary functions such as processing applications and registering individuals or premises with licenses.

An individual seeking a license must apply in writing to the Licensing Officer, who then forwards the application to the Board. The Board may conduct further investigation or require additional infor-

²⁰² Hazardous Substances and Articles Act (1971), THE STATUTE LAW OF ZIMBABWE, ch. 322; Hazardous Substances and Articles Amendment Act (1978).

²⁰³ *Id.* § 16.

²⁰⁴ *Id.*

²⁰⁵ *Id.* § 18.

²⁰⁶ *Id.* §§ 19, 23.

²⁰⁷ *Id.* § 23.

²⁰⁸ *Id.* § 47.

²⁰⁹ *Id.* §§ 3-15.

²¹⁰ *Id.* § 20.

mation, and then may either approve or deny the application.²¹¹ Upon denial of the application, the applicant may appeal within thirty days of the Board's decision to the Hazardous Substances Control Appeal Tribunal.²¹²

The Act also forbids false or misleading advertisements concerning the nature of a hazardous substance, and imposes on employers a strict liability standard for acts of their employees.²¹³ Violations of the Act are punishable by a fine and imprisonment.²¹⁴

The central problems in this area are that the regulations concerning disposal of hazardous materials are limited and that enforcement is sporadic. Zimbabwe clearly needs to reexamine and strengthen its hazardous substance regulations.

5. Chemical Regulation

Zimbabwe's Health Ministry administers three different acts relating to chemical regulation: the Drugs and Allied Substances Control Act,²¹⁵ the Dangerous Drugs Act,²¹⁶ and the Food and Food Standards Act.²¹⁷ The first establishes a Drugs Control Council that regulates drug registration, sale, labeling, production, possession, use, and distribution.²¹⁸ The Act's corresponding regulations spell out in greater detail the standards applicable to various chemicals. The Act also requires the registration and licensing of pharmaceutical premises, renewable on a periodic basis.²¹⁹ Any challenge to the Council's decisions is appealable to the Drugs Control Appeal Board, which may repeal, modify, or uphold the Council's orders.²²⁰

²¹¹ *Id.* §§ 22-24.

²¹² *Id.* §§ 28-36. The Tribunal comprises one member appointed by the President, who must have been either a judge or a practicing attorney for the past 10 years, and two other members selected from a list of hazardous substance specialists compiled by the Minister of Health. *Id.* In addition, any questions of law may be appealed to the Appellate Division. *Id.* § 36. This composition ensures that the proceedings will be vested with an appropriate degree of legal formality and will simultaneously be capable of addressing any highly technical or scientific issues.

²¹³ *Id.* §§ 41, 45.

²¹⁴ *Id.* § 43.

²¹⁵ Drugs and Allied Substances Control Act (1969), THE STATUTE LAW OF ZIMBABWE, ch. 320; Drugs and Allied Substances Control Amendment Acts (1987 & 1988).

²¹⁶ Dangerous Drugs Act (1955), THE STATUTE LAW OF ZIMBABWE, ch. 319; General Laws Amendment Act (1989).

²¹⁷ Food and Food Standards Act (1971), THE STATUTE LAW OF ZIMBABWE, ch. 321.

²¹⁸ Drugs and Allied Substances Act, *supra* note 215, §§ 16, 19, 26, 28.

²¹⁹ *Id.*

²²⁰ *Id.* §§ 32-40.

The Dangerous Drugs Act is designed primarily to control the importation, production, distribution, and use of dangerous drugs.²²¹ The Act covers coca leaves, hemp, opium, cocaine, morphine, and any new drug that may be produced, as well as any other substance that the Minister of Health declares to be a dangerous drug.²²² The Act is designed to protect human health by granting to the Health Minister direct authority to control drug manufacturing, importation, and exportation. The Magistrates Courts have special jurisdiction over matters arising under the Act as a result of Zimbabwe's policy of imposing strict felony sanctions against drug law violators.²²³

The Food and Food Standards Act's principal purpose is to establish strict guidelines to prevent the manufacture and sale of adulterated and falsely described foods.²²⁴ The regulations that correspond to this Act provide a comprehensive list of general guidelines for acceptable food content.²²⁵ The Minister of Health can delegate his administrative power to a local authority, including Tribal Councils,²²⁶ ensuring that the law does not infringe indigenous customs that affect food preparation and consumption.

Another chemical regulation statute is the Fertilizers, Farm Feeds and Remedies Act.²²⁷ This Act is administered by the Ministry of Lands, Agriculture and Resettlement,²²⁸ and is primarily designed to regulate the use of fertilizers. The Ministry appoints a public servant to act as the registering officer, who in turn receives all applications for the registration of fertilizers. The officer then determines whether the fertilizer conforms to corresponding regulations concerning composition, fitness, purity of constituent properties, and proper labeling and packaging.²²⁹ If the fertilizer in question satisfies the standards, it will be registered and considered usable by the general public in accordance with applicable conditions imposed under the Act.

²²¹ See generally Dangerous Drugs Act, *supra* note 216.

²²² *Id.* §§ 3, 7, 10, 13.

²²³ *Id.* § 20.

²²⁴ Food and Food Standards Act, *supra* note 217, §§ 4-11. The Minister of Health also has authority to inspect, seize, and dispose of any foods or mixture of foods that pose a danger to human health. *Id.*

²²⁵ *Id.* § 27.

²²⁶ *Id.* § 21.

²²⁷ Fertilizers, Farm Feeds and Remedies Act (1952), THE STATUTE LAW OF ZIMBABWE, ch. 111; Fertilizers, Farm Feeds and Remedies Amendment Acts (1976 & 1986).

²²⁸ See INDEX, *supra* note 58, app. I, at A6.

²²⁹ Fertilizers, Farm Feeds and Remedies Act, *supra* note 227, §§ 3, 21.

The Act specifically forbids the importation of any fertilizer or feed that contains animal bone or animal byproducts. The regulations also specify the permissible amounts of various contents, prescribe a sterilization process for fertilizers, and define the proper use and disposal of fertilizers.²³⁰ This Act is unique in regulating only one specific source of potential environmental hazards, rather than addressing the source within a larger, more encompassing law.

6. Land Use Planning

a. *The Urban Sector*

Zimbabwe's statutory tradition of urban planning has been shaped largely by its colonial legacy.²³¹ The European settlements of the late nineteenth century utilized gridiron layouts, and achieved physical planning primarily through bylaws and public health ordinances.²³² The first form of effective land use planning in Zimbabwe was established by sanitary boards, which had the power to make bylaws and to collect fees from landowners.²³³ These laws were intended to foster orderly land development and to enhance property values through strict development controls.²³⁴

In 1933, Zimbabwe (then Southern Rhodesia) passed the Town Planning Act, which granted local municipalities the authority to promulgate urban planning schemes.²³⁵ The central purpose behind the 1933 Act was a desire to control the urban-type sprawl triggered by an increase in automobile use.²³⁶ Land use regulation was dominated by the perceived need to attract local and European investment. Accordingly, the government appointed a town planning officer and formed a new planning department under the authority of the Ministry of Justice and Internal Affairs.²³⁷

In 1945, a new Town Planning Act that further elaborated the focus of urban planning schemes was passed.²³⁸ The focus of such schemes was the control of land subdivision and building regulations.

²³⁰ *Id.*

²³¹ See ANTHONY O'CONNOR, *THE AFRICAN CITY* 32-37 (1983).

²³² See K. H. Wekwete, *Developments of Urban Planning in Zimbabwe*, 5 INT'L J. URB. POL'Y & PLANNING 57, 64 (1988).

²³³ *Id.* at 64.

²³⁴ *Id.*

²³⁵ See O'CONNOR, *supra* note 231, at 35.

²³⁶ See Wekwete, *supra* note 232, at 64-65.

²³⁷ See O'CONNOR, *supra* note 231, at 35-36.

²³⁸ See Wekwete, *supra* note 232, at 65.

In accordance with these schemes, general plans were first outlined for one broad area, and more detailed design guidelines were later provided for local areas.²³⁹ By the 1970s, however, these schemes came under increasing criticism.²⁴⁰ Eventually, an advisory commission created to examine the 1945 Act concluded that strengthening was needed in both flexible strategic planning and opportunities for public participation.²⁴¹

Consequently, in 1976, the Rhodesian government passed the Regional, Town and Country Planning Act.²⁴² This Act introduced the use of regional and master plans as well as a two-tier urban planning system.²⁴³ The master plans utilized a development control approach and envisaged land use and building regulation continuity within a region.²⁴⁴ Since Zimbabwe's independence, master plans have focused on technical public planning but have ignored broader social and economic implications.²⁴⁵ Moreover, many local authorities currently do not have planning departments; and master plans often are not integrated with other existing national, provincial, or local plans.²⁴⁶ There is also a shortage of adequate human and financial resources to implement such plans.²⁴⁷

The Ministry of Local Government, Rural and Urban Development is responsible for overall administration of the 1976 Act.²⁴⁸ The Act is implemented by the Department of Physical Planning and its provincial offices.²⁴⁹ The Department operates in all eight provinces and provides expertise to any authority developing a master plan.²⁵⁰ Links from the Department to local government structures were established under the Urban Councils Acts, Rural Councils Acts, and District

²³⁹ *Id.*

²⁴⁰ *Id.* at 60.

²⁴¹ *Id.* at 66.

²⁴² Regional, Town and Country Planning Act (1976), THE STATUTE LAW OF ZIMBABWE. The main objectives of the Act were

to provide for the planning of . . . areas with the object of conserving and improving the physical environment and in particular promoting health, safety . . . and general welfare . . . ; to authorize the making of regional plans, master plans, and local plans, whether rural or urban; . . . to regulate the subdivision and consolidation of pieces of land

Id. pmb.

²⁴³ See Wekwete, *supra* note 232, at 66.

²⁴⁴ *Id.* at 67.

²⁴⁵ See *id.* at 67-69.

²⁴⁶ *Id.* at 68.

²⁴⁷ *Id.* at 68-69.

²⁴⁸ INDEX, *supra* note 58, at app. I.

²⁴⁹ *Id.*

²⁵⁰ See Wekwete, *supra* note 232, at 67-68.

Councils Acts.²⁵¹ These Acts authorized various territorial units to plan, develop, and tax land; to manage the assets of the built environment; and to plan physical and economic development.²⁵²

On the whole, master plans have established a relative degree of certainty about development patterns in the country. The narrow focus on technical issues and the lack of available resources, however, have seriously limited the effectiveness of regional planning in Zimbabwe.

b. *The Agricultural Sector*

Historically, Zimbabwe's agricultural sector comprises two very different types of land holdings: commercial farms owned by white Europeans, and smaller communal farms operated by native Zimbabweans.²⁵³ The large-scale commercial farms have not experienced much overall growth in the past two decades, and are not likely to be vehicles for future growth.²⁵⁴ These farms still account for over twelve million hectares (thirty-two percent of total land area), however, and receive seventy percent of the country's available agricultural subsidies and credits.²⁵⁵ The farms maintain an effective lobbying voice via the Commercial Farmers Union, which enables them to impact national agricultural policies.²⁵⁶

After gaining independence, Zimbabwe launched an ambitious Land Resettlement Program.²⁵⁷ By 1988, over 40,000 families had been resettled on nearly three million hectares of land acquired from the large-scale farms formerly owned by colonial landholders.²⁵⁸ One model of resettlement provides individual households with five to six hectares of land for cultivation, and also grants them access to common grazing areas.²⁵⁹ A second approach creates a cooperative on a

²⁵¹ THE STATUTE LAW OF ZIMBABWE, chs. 214, 211, 231. The Rural Councils and District Councils Acts were repealed by the Rural Districts Councils Act (RDCA), § 166 (1988). The Acts remain in force, however, with respect to any councils that have not been abolished by the terms of § 10 of the RDCA. INDEX, *supra* note 58, at 175.

²⁵² See Wekwete, *supra* note 232, at 70.

²⁵³ See STONEMAN & CLIFFE, *supra* note 123, at 129-30.

²⁵⁴ *Id.* at 130.

²⁵⁵ *Id.* at 131.

²⁵⁶ *Id.*

²⁵⁷ For an articulate synthesis of the major issues surrounding this program, see J. Cusworth, *Institutions, Projects, and Farmers: Land Resettlement in Zimbabwe*, 2 INT'L J. PUB. SECTOR MGMT. 5 (1989); see also Andrew Meldrum, *The Land Question (Land Ownership in Zimbabwe)*, AFR. REP., Mar.-Apr. 1991, at 26; Susie Jacobs, *Land Resettlement and Gender in Zimbabwe: Some Findings*, 29 J. MOD. AFR. STUD. 521 (1991).

²⁵⁸ See STONEMAN & CLIFFE, *supra* note 123, at 131.

²⁵⁹ *Id.*

large farm upon which several families combine their efforts to run the farm as a single operating unit.²⁶⁰ A third ad hoc model may be emerging in which families settle around a core estate and share a communal grazing area on a rotating basis.²⁶¹

In 1986, in an attempt to expand access to large-scale farms, the Zimbabwean government passed the Land Acquisition Act.²⁶² The Commercial Farmers Union (CFU) criticized this Act because it required a taking of sixty percent of the large-scale farms. The CFU contended that this taking would lead to a proportional decrease in production and employment.²⁶³ Statistics reveal, however, that the Resettlement Program actually has led to net increases in production from the land.²⁶⁴

Today, approximately four million people live in communal areas where household units occupy arable lands that the government has allocated to them.²⁶⁵ The rapid population expansion is becoming problematic, however, as more families encroach on less agriculturally suitable communal land.²⁶⁶ This encroachment has led to a host of environmental problems ranging from soil erosion to serious deforestation.²⁶⁷ In an effort to reverse this process, the government has required farmers to use high-yield varieties of maize and cotton, has opened more marketing channels, and has provided farmers with additional credit and technical support services.²⁶⁸

The Ministry of Land, Agriculture and Rural Resettlement has additional regulatory authority over a variety of acts, all of which contain environmental-type provisions. The most significant acts are: (1) the Cold Storage Commission Act,²⁶⁹ which regulates slaughterhouses and the sale and processing of beef; (2) the Dairy Act,²⁷⁰ which ensures that dairy products are pure, wholesome, and unadulterated; (3) the Locust Control Act,²⁷¹ which combats crop infestation; (4) the Seeds Act,²⁷² which requires registration of all sellers of seed, and which

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Land Acquisition Act, THE STATUTE LAW OF ZIMBABWE (1986).

²⁶³ STONEMAN & CLIFFE, *supra* note 123, at 132.

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 133.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ Cold Storage Commission Act (1960), THE STATUTE LAW OF ZIMBABWE, ch. 105.

²⁷⁰ Dairy Act (amended 1976), THE STATUTE LAW OF ZIMBABWE, ch. 107.

²⁷¹ Locust Control Act (1971), THE STATUTE LAW OF ZIMBABWE, ch. 126.

²⁷² Seeds Act (1965), THE STATUTE LAW OF ZIMBABWE, ch. 133.

stipulates that seeds must meet certain high-yield capabilities; and (5) the Plant Pests and Diseases Act,²⁷³ which aims to eradicate certain forms of agricultural diseases. Most provisions of these acts protect both human health and the natural environment through the application of sustainable management strategies.

7. Energy Regulation

Zimbabwe has no domestic oil or natural gas resources, but boasts substantial coal deposits, significant hydroelectric potential, and abundant woodland to meet its fuel requirements. In addition, the climate is ideally suited for solar energy development, and several private companies are actively pursuing this potential.²⁷⁴ Currently, Zimbabwe's national energy policy is directed toward achieving overall self-sufficiency.²⁷⁵ The country has recently expanded its thermal power generation, primarily through the use of coal, and its hydroelectric production, because of the installation of a new thermal electricity generation plant at Hwange.²⁷⁶ Zimbabwe has opted for a self-sufficiency approach rather than purchasing readily available and inexpensive electric supplies from neighboring Zambia or Mozambique.²⁷⁷

Plans for development of rural energy supplies currently center on electrification through the construction of additional transfer stations and transmission lines.²⁷⁸ In the interim, the majority of the rural population still relies on wood as its principal fuel source, resulting in serious deforestation in many regions.²⁷⁹ The government's attempts to encourage rural people to utilize charcoal as an alternative energy source have been largely unsuccessful.²⁸⁰ In addition, Zimbabwe's current tree-planting scheme is only in its initial stages, and lacks serious financial backing.²⁸¹

Several major problems are associated with Zimbabwe's national energy policy. First, the government is sacrificing potential environmental efficiency for an ideological need for self-sufficiency. This is evidenced by its unwillingness to purchase cheap, readily available

²⁷³ Plant Pests and Diseases Act (1964), THE STATUTE LAW OF ZIMBABWE, ch. 128.

²⁷⁴ STONEMAN & CLIFFE, *supra* note 123, at 148.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 149.

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.* at 149-50.

²⁸⁰ See BULLETIN, *supra* note 117, at 165.

²⁸¹ See STONEMAN & CLIFFE, *supra* note 123, at 150.

hydroelectric power from neighboring states.²⁸² Second, the government is not seriously addressing the environmental concerns associated with coal-driven thermal energy production, such as water and air pollution and hazardous waste generation.²⁸³ Third, Zimbabwe's reliance on the construction of dams for hydroelectric plants has created environmental problems ranging from water pollution to habitat destruction.²⁸⁴ Finally, the acts that regulate energy production contain provisions that only marginally relate to environmental protection.²⁸⁵

8. Protection of Cultural Resources

Zimbabwe defines its cultural resources broadly to include land, buildings, natural resources, fauna, flora, and any objects that have a national, archaeological, historical, or aesthetic interest.²⁸⁶ The Ministry of Environment and Tourism protects cultural resources through the National Trust Act.²⁸⁷ This Act establishes a national trust that is administered by a National Trust Council, which has the power to hold real and personal property for the purpose of preserving them for the public benefit.²⁸⁸ This Council has the authority to acquire property, exercise full powers of property ownership, and regulate public access to national trust property.²⁸⁹

More importantly, the Council has the power to enact legally binding bylaws concerning national trust property.²⁹⁰ These bylaws contain numerous environmental protection provisions, such as regulation of timber removal, surface excavation, fire usage, and public nuisances.²⁹¹ Mining on trust property is strictly forbidden.²⁹²

The National Trust Act remains a largely underutilized means of achieving environmental protection, since the corresponding bylaws could provide an ideal conduit for environmental regulation of all trust property. However, the bylaws have only been used to address a limited number of environmental problems.

²⁸² *Id.* at 148–49.

²⁸³ See generally THE STATUTE LAW OF RHODESIA; THE STATUTE LAW OF ZIMBABWE.

²⁸⁴ See STONEMAN & CLIFFE, *supra* note 123, at 149–50; see also ZIMBABWE, A COUNTRY STUDY, *supra* note 3, at 164–65.

²⁸⁵ See generally THE STATUTE LAW OF RHODESIA; THE STATUTE LAW OF ZIMBABWE.

²⁸⁶ National Trust Act, THE STATUTE LAW OF ZIMBABWE, ch. 314; National Trust Act Amendment (1990).

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.* §§ 4–5, 17.

²⁹⁰ *Id.* § 18.

²⁹¹ See National Trust Act, *supra* note 286, § 18.

²⁹² *Id.* § 19.

The Ministry of Home Affairs administers the National Museums and Monuments Act.²⁹³ This Act establishes a Board of Trustees that administers all monuments and museums in Zimbabwe, and preserves ancient, historic, and natural objects of social and scientific value.²⁹⁴ The Board's preservation efforts have been largely successful, primarily because the Board also has the power to make bylaws.²⁹⁵ The bylaws cover all national monuments, and are strictly enforced.²⁹⁶

9. Noise Regulation

Zimbabwe addresses noise regulation primarily through nuisance laws. Such laws attempt to balance the rights of a property owner to use and enjoy his land against an unreasonable interference with a neighbor's property rights.²⁹⁷ Nuisances are divided into two categories: private nuisance law governs interference with only one or a limited number of neighbors, whereas public nuisance law deals with actions that affect the public at large, or at least a considerable segment of the public.²⁹⁸ Zimbabwe has adopted, without much variation, Anglo-American common law nuisance doctrines.

A variety of legislative provisions in the private nuisance category impose penalties on violators. Most of these provisions are contained in local government bylaws, such as the City of Harare's noise ordinances.²⁹⁹ The Miscellaneous Offenses Act addresses nuisances caused by odor, visual blight, and noise.³⁰⁰

Legislative provisions that address public nuisances focus chiefly on pollution that affects public health. The most significant provisions are the Public Health Act, the Regional Town and Country Planning Act, and the Factories and Works Act.³⁰¹ Zimbabwe, however, has chosen to use private nuisance laws to address the majority of its noise problems at the local government level.³⁰²

²⁹³ National Museums and Monuments Act (1980), THE STATUTE LAW OF ZIMBABWE, ch. 313.

²⁹⁴ *Id.* §§ 3-19. In 1936, the Southern Rhodesian Legislative Assembly established the Historical Monuments Commission (HMC), entrusting it with the tasks of designating, controlling, repairing, restoring, and investigating pre-1890 African sites and pre-1910 European edifices. RASMUSSEN, *supra* note 4, at 115-16. By 1975, the HMC had designated 140 National Monuments on both public and private lands. *Id.*

²⁹⁵ National Museum and Monuments Act, *supra* note 293, § 42.

²⁹⁶ *Id.* §§ 42, 43.

²⁹⁷ See G. FELTOE, A GUIDE TO THE ZIMBABWEAN LAW OF DELICT 69-71 (2d ed. 1985).

²⁹⁸ *Id.* at 69.

²⁹⁹ *Id.* at 70-71.

³⁰⁰ *Id.* at 71 (citing *Wright v. Pomona Stone Quarries*, S-140-88 (upholding as defense to nuisance action that nuisance existed before plaintiff arrived)).

³⁰¹ *Id.*

³⁰² *Id.* at 69-71.

V. CONCLUSION

Zimbabwe's environmental legal regime is working well in several areas. Its wildlife and nature preservation policies, which stress a controlled sustainable utilization approach, are yielding positive results. This success is largely the result of including the indigenous population in policy formulation and in the government's sharing derived economic benefits with that population.

The laws concerning air pollution prevention, chemical regulation, and cultural resources protection are fairly comprehensive and appear to be adequately protecting their respective areas of environmental concern. In addition, Zimbabwe's land use planning program recognizes the pressing problems and environmental consequences of rapid population growth.

Several weaknesses remain with Zimbabwe's overall environmental regulatory system. First, because water pollution is addressed only in a few isolated instances, a comprehensive water protection statute is urgently needed. Second, Zimbabwe's energy and natural resource utilization policies are dominated by the government's ideological pursuit of nonreliance on outside sources. Thus, sound environmental principals often receive only secondary consideration. Throughout Zimbabwe's laws, legal provisions dealing with the disposal of hazardous waste are limited. These provisions fail to provide any regulatory mechanism for dealing with hazardous waste sites or for imposing liability on polluters.

There is also no national legislation requiring environmental impact assessments to be performed for projects that may have an adverse effect on the environment. The tendency in some areas, therefore, may be to overlook potential environmental problems. Zimbabwean authorities should seriously consider implementing an official mechanism to coordinate the activities of the ministries that are responsible for environmental protection.

Environmental statutes should also include citizen participation provisions, which would not only enhance environmental enforcement, but would provide direct means for the indigenous population to participate in environmental policy formulation and enforcement. The Zimbabwean government needs to increase compliance with its various environmental provisions, primarily through stiffer enforcement practices.

It should be noted, however, that Zimbabwe is dealing with problems not found in more developed nations. Specifically, Zimbabwe is experiencing significant population growth, which results in numerous environmental stresses. As a relatively poor nation, Zimbabwe lacks the

trained personnel and capital resources necessary to implement most of its environmental laws.

Zimbabwe also suffers from various internal political complications. For example, a relatively powerful white minority often opposes traditional policies, and Zimbabwe's simultaneously modern and traditional legal system often produces conflicting responses to environmental problems. Zimbabwe desperately needs a device to coordinate environmental problems between these two systems.

Undoubtedly, neglected areas still remain in Zimbabwe's environmental policies. Nevertheless, Zimbabwe is addressing its most pressing environmental concerns without sacrificing either its traditional values or its economic objectives.