Protecting Environmental, Economic, Social and Cultural Rights of Communities living in/adjacent to Mining Areas

Shamiso Mtisi
Environmental Lawyer
Zimbabwe Environmental Law Association (ZELA)
shamiso@zela.org
I will Talk About

• Conceptual and legal position on environmental, economic, social and cultural Rights (EESCR)
• Analysis of problems faced by communities
• Profile of Case study communities being affected by mining operations
• Package of legal and non-legal tools/interventions being used to promote and protect community rights
Conceptual and legal position on Environmental, Economic, Social and Cultural Rights

• EESC rights relate to basic necessities of life e.g. clean environment, water, work, food, housing, health care, education, culture etc.

• Environmental, economic, social and cultural rights have a bearing on poverty.

• Rights have been categorised as; 1st generation rights which are civil and political rights; 2nd generation rights which include economic, social and cultural rights and 3rd generation rights which include environmental rights (group rights).
• However, all rights are human rights; including EESCR just like civil and political rights

• All human rights are universal, indivisible and interdependent and interrelated

• For example deprivation of EESC rights constitutes threat to the right to life

• National legislation; constitutions may recognise environmental, economic, social and cultural rights

• Laws may also be passed to provide measures for protection and implementation of these rights
Problems faced by communities living in/around mining communities

- Despite natural resources abundance Africa still faced with underdevelopment, poverty, conflict and corruption: ‘resource curse’: Are we expecting too much too quickly from a continent still trying to wean itself of the shackles of colonialism???
- Most local people are often burdened with environmental costs and remain marginalised and poor as most have limited employment opportunities, no economic share in natural resources wealth extraction, poor community infrastructural development etc
- Displacements to make way for mining operations
• Environmental harm
• Limited access to information and participation in decision and planning processes
• Fear and lack of confidence amongst the people to question gvt and mining companies
• Limited knowledge of channels to demand and claim the right to benefit from natural resources and other rights
Case study communities in mining areas-Zimbabwe

- Zimbabwe Environmental Law Association (ZELA) working with mining communities
- Chiadzwa/Marange Diamond Mining
- Mutoko communities-Black Granite mining
Chiadzwa/Marange Diamond Mining

- Deposits discovered around 2006
- Rumours say they are the largest deposits in the world recently discovered (shows limited geological assessments and information on deposits)
- Tension in diamond mining area
• Area declared a protected area: secured by the security forces to bring order to the fields
• Restrictions on public transport, movement and business operations
• Proposal to relocate families from the diamond fields: 12 families already relocated
• Limited consultations and access to information on compensation (govt and mining companies not effectively communicating with the people)
Chiadzwa has been declared a protected area
People need to benefit from diamonds
• Mining companies failed to comply with environmental and planning laws on Environmental Impact Assessments (EIA) (skeletal consultations and after they had started operations contrary to the law)
• EIAs important for assessing the potential environmental, social, economic and environmental impact of projects (impact on community livelihoods critical)
• Environmental degradation e.g. water pollution of Odzi River and siltation of local dams
• Mining contracts not made public, (limited access to information, hence suspicion and speculation)
• KPCS has not yet allowed country to sell diamonds from Chiadzwa: Yet people are hungry, clinics have no medicine, schools have no books, roads in a poor state? Most Zimbabweans want revenue from diamonds; some clamouring to be paid in diamonds
• Stockpiles of diamonds
• Mistrust between CSOs Vs Govt on diamond issues
• No community involvement in mining as yet, although applications for community share have been made
• Gvt passed law on Indigenisation and Economic Empowerment that recognise need for establishment of community trusts
The limited benefits so far!

- Some people in Chiadzwa employed by the two mining companies
- Potential for downstream businesses for the local population
- Some people (artisinal miners in the community) accumulated wealth when the diamond fields were not secured by the military and police
Granite Mining in Mutoko District

• Area produces the best black granite used for making floor tiles, tomb stones, building etc
• Exported to different countries, Spain, Italy, South Africa etc
• Mutoko remains poor
• Quarry operations affecting the people; causing land degradation, deforestation and leaving huge pits that has caused loss of livestock and people’s lives.
• Roads and bridges destroyed by heavy trucks
Abandoned black granite rocks
Another block of black granite
There are more than 15 black granite mining companies in Mutoko District
- Haulage trucks cause dust and vibrations (villagers allege that these cause miscarriages, many fruit trees are now barren and houses and school buildings on the roadside are cracking)
- Explosives endangers people’s health
- No meaningful investment in schools, clinics and road repairing in the area by gvt which collects royalties and by mining companies
- Community farmland and pastures lost in some cases
• Some families relocated but fail to get enough compensation
• Allegations of discrimination in employment as the youth in area are easily victimised when the community members raise concerns on operations of quarrying operators. Poor working conditions in the mines
Some people are displaced while others live in the shadows of dynamites
Many people lose livestock
• Cultural rights not respected as miners have in some cases blasted sacred mountains with graves
• Failure to comply with their EIA commitments
• Corporate social responsibility not based on big community development projects but only donations of food handouts and other small items: No major investment in roads, clinics, schools and developing the area or major agricultural projects
• Mining companies say, they pay royalties to government and therefore, people should ask government to develop the area
• Dispute between miners and local authority on payment of levies in the High Court
• Community feel miners are getting more money than they are declaring to government, so would want to trace revenue generation and distribution.
Legal and non-legal tools being used to promote and protect community rights

- Various legal and non-legal tools used by ZELA and other partners to protect and promote the environmental, economic, social and cultural rights of communities in mining areas
- Projects being implemented to equip the poor to demand and claim their rights with various degrees of success and failures
Legal and Policy Research

• ZELA undertook community research on environmental, economic, social and cultural rights
• Contains policy and legal recommendations
• Published a book on promoting EESC rights in East and Southern Africa
Community Rights Training

• Training workshops and inspirational talks on how communities can claim and demand their EESC
• Train them on EESC
• Talk about the legal strategies that can be used; litigation, advocacy, conflict resolution, petition writing etc
• Teach them advocacy strategies
Public Interest litigation

• Two separate actions, the first, through an Urgent Chamber Application (HC 6334/09) and the second through Summons (HC 6337/09) filed in the High Court of Zimbabwe.

• Urgent Chamber Application: seeking an order to interdict/stop government and mining companies from evicting or relocating the people from Chiadzwa until there is an agreement on compensation and other amenities to be provided
• **Result:** The High court dismissed the urgent application stating that it was not urgent: wrong decision and put question mark on Zimbabwe judiciary’s capacity to protect the poor people.

• However, case ensured that government revealed through the affidavits and other information used during the hearing, its plans and how it intends to proceed.

• 12 relocated families at least provided with accommodation (though not very adequate), school, water and food: Govt trying but no guarantee that these people will not be forgotten.
• Case also ensured that government moves with caution on the issue of relocation
• Action taken through summons: seeking order to interdict security forces from prohibiting public transport from entering Chiadzwa area
• **Result:** Still pending in the High Court: No hearing date set as yet
• The wheels of justice are very slow in Zimbabwe;
• The judiciary lacks judicial activism
• Use of alternative conflict resolution mechanisms may help
Capacity Building

• Build community capacity to demand for environmental justice
• Identification of community champions who can advance community rights
• Formation and registration of community trusts and training them on project management and organisational management
• Trusts to spearhead community rights (Chiadzwa and Mutoko)
• To eliminate fear and lack of confidence that often prevent many individuals from requesting for information and from demanding and claiming their rights
Public Hearings and Legislator Outreach Programme

• Organise outreach visits for legislators to meet communities (Mutoko and Chiadzwa)

• Legislators made commitment to play an oversight role over operations of mining companies and government operations
Advocacy Work and Issues

• Constitutional reform process: recognition of environmental, economic, social and cultural rights (success in having environmental and natural resources questions included as part of questions that will be used to gather community views in the ongoing constitutional outreach programme)

• Advocating for reforms of Mines and Minerals Act to provide scope for community shares in mining ventures

• Lobbying for legal reforms to make Corporate Social Responsibility a legal issue
• Lobbying for Certification of diamonds so that the country can trade its diamonds to trigger economic recovery;
• Lobbying government to join the Extractive Industry Transparency Initiative (EITI) to make revenue, payments and mining contracts public so as to promote transparency and accountability to remove suspicion
• Use of other market mechanisms (GRI, International Financial Reporting Standards, making Corporate Social responsibility a legal requirements etc); industry now working on developing a CSR Code
• Indigenisation and Economic Empowerment Act recognise need for community trusts: use of the CAMPFIRE concept in mining
• $500 000 prescribed asset threshold
• All companies to submit indigenization implementation plans
• Business to dispose of 51% of shares (sell or donate)
• ownership schemes or trusts for employees, management and communities considered as indigenisation
• What is position of those displaced?
Partnerships/Coalition

- Building a national coalition on extractive and natural resources sector
- Organise skills exchange programmes for activists from East and Southern Africa
THANK YOU ALL