

**Nkusuwila Nachalwe
Advocates**

The Air That I Breathe

Right to a clean environment

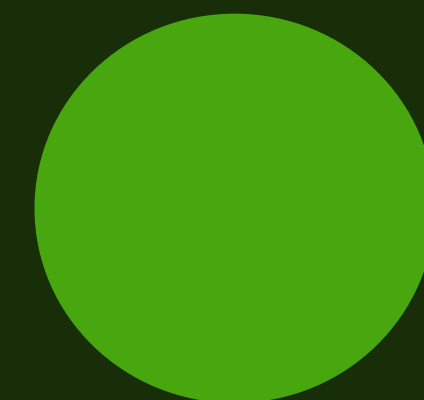
Nkusuwila N Mbao



RIGHT TO A CLEAN ENVIRONMENT

INTRODUCTION

- ❖ It is factual that the full enjoyment of human rights is compromised where environmental degradation and widespread pollution abound because of their adverse impact on human health and the environment.
- ❖ Kabwe, a town in Zambia with a long history of lead and zinc mining, is one of the most polluted places on Earth because of heavy metal contamination and lead poisoning suffered by its residents.
- ❖ With Zambia's over 100 years of mining history, air and water pollution are the most significant environmental problems facing communities in and around the copper mining areas.
- ❖ Therefore, the theme for this conference, **“The right to a clean environment-the air that I breathe”**, couldn't be more relevant.



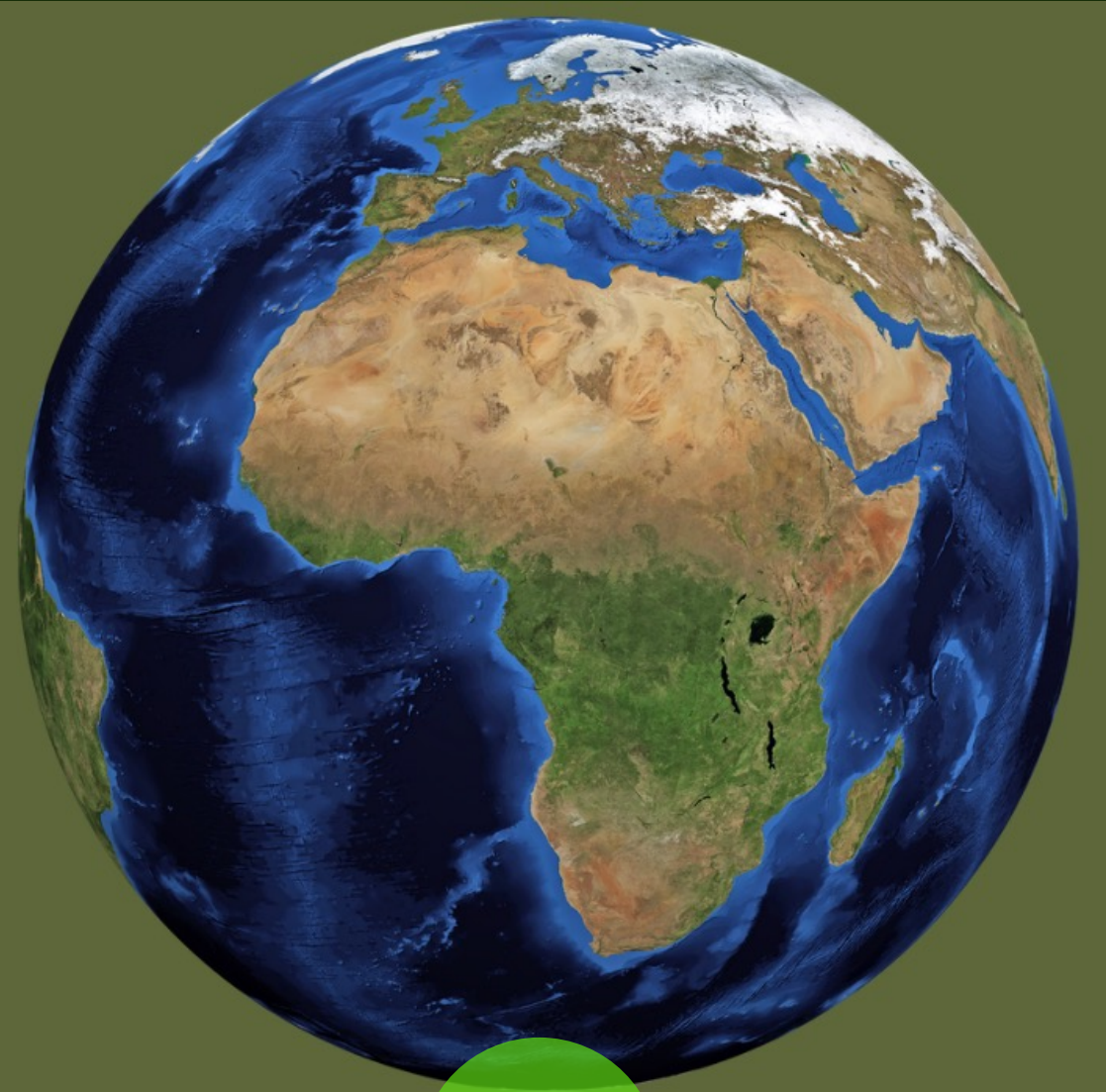


RIGHT TO A CLEAN ENVIRONMENT

CONCEPTUAL BASIS OF THE RIGHT TO A CLEAN HEALTHY & SUSTAINABLE ENVIRONMENT

The right is founded on the concept that the environment is essential for human well-being, dignity, and survival and aligns with the notion that every individual has inherent dignity and worth and is entitled to live in a safe, clean, and healthy environment.

Therefore, environmental conditions significantly impact a person's ability to enjoy other rights, such as the right to life (the most natural human right), health, and adequate standard of living.



A. International Environmental Law

- Landmark recognition as a fundamental human right on 8th October 2021 by Resolution A/HRC/RES/48/13 of the United Nations Human Rights Council.
- Adoption as a first-generation human right by the United Nations General Assembly on 28th July 2022 by Resolution A/RES/76/300.
- The African Charter on Human and Peoples' Rights alludes to the right in article 24 when it enacts that all peoples shall have the right to a general satisfactory environment favourable to their development.



B. National Environmental Law

- Globally, national Constitutions, laws and policies, including Sub Sahara African countries, enshrined the right before the formal recognition and adoption by the United Nations.
- Zambia's Constitution recognises the significance of a sound environment, polluter pays and precautionary principles, sustainable development under Article 255.
- Article 256 only creates a duty to cooperate with the state to maintain a clean, safe and healthy environment as well as prevent acts harmful to the environment.

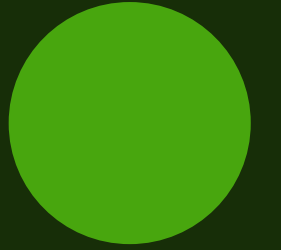




RIGHT TO A CLEAN ENVIRONMENT

- The Environmental Management Act under section 4 (1) provides that subject to the Constitution, every person living in Zambia has the right to a clean, safe and healthy environment.
- However, the Constitution does not enshrine a similar justiciable legal right under the Bill of Rights, attributed to a failed Referendum in 2016. The Bill of Rights can only be amended through a Referendum.
- The failed Referendum rendered the right in the Environmental Management Act ineffective because it was premised on a non-existent mirror Constitutional right.





RIGHT TO A CLEAN ENVIRONMENT

ENVIRONMENTAL DEGRADATION IMPACT ON HUMAN RIGHTS

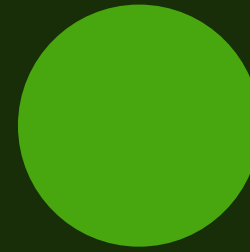
- Enjoyment of fundamental human rights is hampered by environmental degradation that results from anthropogenic activities such as mining in the case of Zambia;
- Copper smelters are responsible for substantial Sulphur dioxide (SO₂) emissions, causing acid rain, soil erosion, crop damage and air and water pollution.
- With Zambia's over 100 years of mining history, air and water pollution are the most significant environmental problems facing communities in and around the copper mining areas.
- Invariably, this negatively impacts human health and the environment, adversely affecting the enjoyment of the rights to **Life, Health** and an **Adequate Standard of Living**.





RIGHT TO A CLEAN ENVIRONMENT

- Unlike Zambia, which has no legal justiciable right in the Constitution, South Africa is a shining example of the justiciability of this right as demonstrated by the **Deadly Air- A case in defence of the Right to Breathe Clean Air by the Trustees for the time Being of Groundwork Trust & Another vs Minister of Environmental Affairs & Others**
- The Government was liable for having breached section 24 (a) of the Constitution, which establishes the right to an environment that is not harmful to the health and well-being of residents due to the poor air quality in the Highveld Priority Area.



RIGHT TO A CLEAN ENVIRONMENT

ENVIRONMENTAL INTEGRITY & HUMAN DIGNITY



- Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.
- Environmental integrity is essential for ensuring the well-being of humans and the natural environment and complements sustainable development principles.

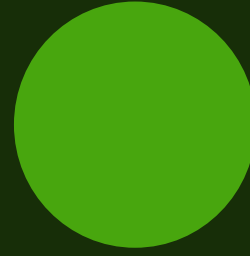




RIGHT TO A CLEAN ENVIRONMENT

- When implemented in law, environmental integrity connotes different conservation strategies that seek to restore or maintain vital ecosystems and limit human influence on the environment.
- This can take the form of environmental impact studies when undertaking projects that impact the environment adversely.
- Where impacts are identified, mitigatory measures are embedded and/or alternative projects with lesser impacts are preferred, thereby preserving the integrity of the environment and ecosystems.





RIGHT TO A CLEAN ENVIRONMENT

- In Zambia, the legal framework exists, but robust enforcement measures need to be implemented if the right is to be upheld and human dignity preserved
- Domestication of International Law is critical in giving effect to the right. Zambia espouses the doctrine of dualism, which requires international treaties to be enacted into national to apply
- With no enshrined right, it leaves people vulnerable to the impacts of environmental degradation and prevents them from holding the State accountable for ecologically destructive practices such as suspension of environmental liability during the privatisation of copper mines





ROLE OF ENVIRONMENTAL PROTECTION IN ACTUALISING SDGs & AGENDA 2030 FOR SUSTAINABLE DEVELOPMENT

- Protection of the right facilitates the realisation of SDGs and shows the link between the environment, human rights and sustainable development.
- Scholars argue that effectively executing the right to a clean environment fosters SDGs, and the more legal instruments protecting the environment, the more sustainable development is achieved.





RIGHT TO A CLEAN ENVIRONMENT

- In Zambia's case, the absence of a justifiable right has a bearing on the following SDGs:
 - SDG 3 and 6- Good health and well-being; clean water and sanitation – Zambia has battled a cholera outbreak since October 2023, with hundreds of fatalities attributed to lack of clean water and sanitation.
 - SDG 7- Affordable clean energy- most people depend on charcoal and wood fuel for domestic cooking.
 - Which adversely impacts human health due to indoor air pollution attributed to carbon monoxide poisoning leading to death.





- Large-scale charcoal production impacts ecosystems and exacerbates deforestation and climate change, directly hampering SDG 13 on Climate Action and SDG 15 on life on land combating desertification.
- From the foregoing, the nexus between human rights and environmental protection couldn't be clearer. When environmental protection is championed, the integrity of human rights is upheld



THANK YOU