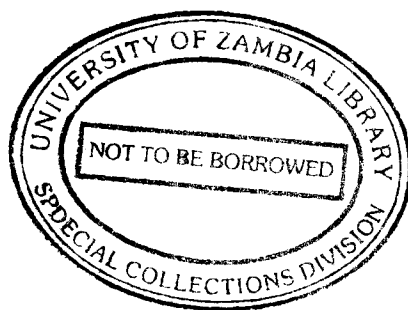


**THE SUSTAINABLE USE AND CONSERVATION OF BIODIVERSITY IN
ZAMBIA: A REVIEW OF THE FORESTRY SECTOR**



BY

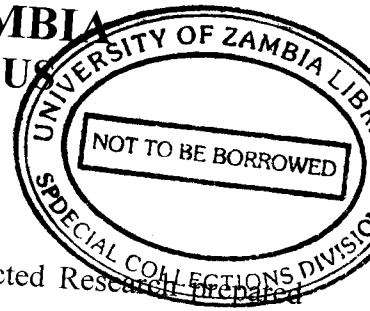
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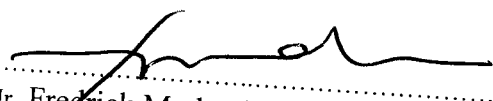
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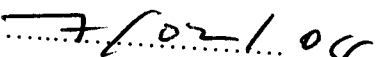


I, **Fredrick Mudenda**, do hereby recommend that this Directed Research prepared under my supervision by the said **Groy Shauma**, entitled:

**THE SUSTAINABLE USE AND CONSERVATION OF
BIODIVERSITY IN ZAMBIA: A REVIEW OF THE FORESTRY
SECTOR**

Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils the requirements pertaining to the format as laid down in the regulations governing Obligatory Essays


.....
Mr. Fredrick Mudenda (LL.M; LL.B; AHCZ)
Supervisor


.....
Date

**THE SUSTAINABLE USE AND CONSERVATION OF
BIODIVERSITY IN ZAMBIA: A REVIEW OF THE FORESTRY
SECTOR**

**BEING A DIRECTED RESEARCH SUBMITTED IN PARTIAL
FULFILLMENT FOR THE AWARD OF A BACHELOR OF LAWS DEGREE
(LL.B)**


BY

GROY SHAUMA (BSc)

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I **SHAUMA GROY** do hereby declare that I am the author of this Directed Research, and that it is a creation of my own ingenuity. I therefore, remain accountable for the contents, errors and omissions. I further declare that to the best of my knowledge, this work has not previously been presented in any University for academic purposes.


.....
February, 2008

FOREWORD

"We are all so blessed to live the lives that we do. I realize that we didn't get where we are alone. So many people have helped pave this road for all of us. I would like to pay a tribute and honour some of those who have come before and have been a bridge to my success. I salute you all".

Groy Shauma, 2007

DEDICATION

To my friend, Christine, and to my mother Livister, to my father Terry, to Norman and in memory of my sister and friend Gertrude

ACKNOWLEDGEMENTS

I wish to express my heartfelt appreciation to all who granted help and advice on this Obligatory Essay Particularly Mr. Fredrick Mudenda a Lecturer of Land Law and Real Estates and International Investment Law in the Faculty of Law who supervised this research in almost every minute and for his willingness to entrust so much of the development of the research paper to my judgment.

I wish to express my heartfelt gratitude to Dr. Matibini Patrick and Mr. Palan Mulonda for helping me to refine the subject matter of my research topic and for his technical advice. I am greatly indebted to Mr. Francis Mpampi and the late Davy Siame (Ministry of Environment and Natural Resources), May his Soul rest in Peace; for providing me with the relevant literature on the topic of my study. In addition, I am greatly indebted to the following colleagues for their constructive criticisms, comments and valuable suggestions: Messrs: - Justine Chitengi, Clement Kasonde, Prince Mwiinga, Sam Banda and Barrister Brigadier Siachitema, Lungisani Zulu and Francis Mwale JK, Muma Patrick and Allan jack Samabi. I am also greatly indebted to the following people; Rodgers Kaoma, Morgan Katati, Joseph Syanyabo, Eustace Ngoma, Anord Mulenga and Clifford Sichone and Brian Hapunda, as well as the graduating law class of 2007, I am grateful. The complete devotion and camaraderie I have shared with these people is really a valued source of inspiration.

Finally I thank my family whom I am proud of, words can never express how much I value and appreciate your support, encouragements and sacrifices you all made towards my academic life. I owe you too much. Above all, I thank the Almighty God for the insight, strength, ideas and guidance that he always gives to me,

Thank you.

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Thank you.

ABSTRACT

In Zambia more than 60 percent of the land is forest. The forests provide vital products for rural and urban dwellers, such as fuel wood, timber for construction and food. Generally forests provide shelter for animals and promote biological diversity conservation. Deforestation is mainly caused by uncontrolled forest product exploitation, illegal settlements, encroachment, clearing land for agricultural purposes and bush fires. This has brought about the need to restructure the forestry and related departments and also to reform both the law and policies in light of the current emerging consumption trends and land use practices that are unsustainable. Currently the Zambian Forestry Sector faces increasingly difficult challenges. The most obvious being the growing demand for forest products (especially fuel wood), Environmental services, the conservation of biological diversity, mitigation of global climate changes, protection from desertification and protection of soil and water resources, demands for achieving more equitable distribution of benefits from forests, for safeguarding the rights of local communities (forest dwellers), and for ensuring widespread participation in decision making related to forest management has added to the complexity and challenge of forest management and policy making today. Although Zambia has at least 19 pieces of legislation and a number of policies related to biodiversity in Zambia, the principal Act that governs the forest sector is the Forestry Act Number 39 of 1973. However, this Act emphasis on the “policing” sole of the forestry Department and the exclusion and restriction of local communities in forest management. Furthermore this Act took away all private ownership rights of trees, even where title to

land was held. In response to this the government has made a new forest policy that has the objective of ensuring rational and sustainable protection, management, production and utilization of forest resources. It recognizes the need for employing broad-based and participatory approaches to forest sector development. In addition the Zambian government has also enacted a new Forest Act of 1999 which contains salient provisions which addresses most of the challenging environmental issues. However this Act is still non operational citing financial, legal and administrative huddles. Also the government has ratified various International Environmental Instruments and also has made a global commitment to conserve natural resources as can committed to come up with various initiatives to promote conservation and sustainable use of forest resources, especially in this day and age of the growing threat of global warming and climate change.

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CHAPTER ONE

BACKGROUND OF THE LEGISLATION AND THE POLICIES THAT GOVERNS THE FOREST SECTOR.

CHAPTER ONE

BACKGROUND OF THE LEGISLATION AND THE POLICIES THAT GOVERNS THE FOREST SECTOR.

1.0 GENERAL INTRODUCTION

This chapter covers the basic aspects of the research. These being the background of the research, statement of the problem, objectives of the research, and the specific objectives of the study, relevance and the justification of the study and the methodology. Furthermore the chapter will discuss the significance of Biodiversity in Zambia, the review of the forest sector, the institutional capacity of the forestry sector and lastly an overview of Zambia' policy formulation and their implication on the sustainable use and the conservation of Biodiversity.

1.2 BRIEF BACKGROUND OF THE LEGISLATION AND THE POLICIES GOVERNING THE FOREST SECTOR.

The essay intends to do a case study of the sustainable use and conservation of biodiversity by looking at the Zambian perspective. The conservation and sustainable use of biodiversity is key to economic and social development. If managed sustainably biodiversity has the potential to enhance livelihood, community and national level for the purpose of raising funds for various development programmes. Zambia has various pieces of legislation which deal with the conservation of

biological diversity¹. However these laws are not adequate to address or to encompass the new emerging phenomenon of biodiversity use.² These laws were made a long time ago and hence looking at the current changes that have occurred. In light of the changing trends of both consumption and access to natural resources there is need to make a review of the sectors which forms the major components of biodiversity.³ This is because they are the major source of livelihood and subsistence. In any legal system because the law is dynamic, therefore there is need to make timely reviews of the various sectors to which the law applies. This makes it easier to identify the gaps in the pieces of legislation which makes its full implementation untenable and also to identify the provisions that need reform so as to align the law with the current prevailing trends in each respective sector.

1.3 STATEMENT OF THE PROBLEM

The study basically concerned itself with a review of the Forest sector. This was done by tracing the history of the use of biodiversity from the time Zambia became independent to date. The review was aimed at showing whether the legislation governing the management of this sector reflects the current changes of both consumption and increase in poverty which has led to the increase in dependence on natural resources. The research was further done in the bid to identify the provisions

¹ GRZ – Ministry of Environment and Natural Resources, (2000). “Bringing Forestry to the People towards 2000 and Beyond: An Overview of the Zambia Forestry Action Plan.” Lusaka – Zambia.

² MENR: “1998: Zambia Biodiversity Strategy and Action Plan. The Biodiversity Country Study.” Lusaka, Zambia

³ African Social Research (2002), Environmental Issues In Zambia, UNZA Press, Lusaka

of the legislation and policies which need reform in light of the changes pertaining to consumption and use of biodiversity.

The conservation and sustainable use of biodiversity should be a concerted effort of the various stakeholders which include the government, the people and other interested groups.⁴ The current existing legislation in Zambia pertaining to the conservation and sustainable use of biodiversity are not adequate to address the current trends in development and the ever changing patterns of environmental resources consumption. The advancement of technology and the ever escalating population of people have come with their own attendant problems.⁵ For example the increase in poverty and population have led to the over dependence on natural resources for their livelihood and subsistence, and also over-harvesting of both fish resources and wildlife resources. Forests play a major role in influencing local, regional and global climate. They also provide habitats for many wildlife species than any other biome. It is against this background that calls have been made to strengthen both the institutional and legal framework as it pertains to the environment and its management.⁶

⁴ MENR: "1998: Zambia Biodiversity Strategy and Action Plan. The Biodiversity Country Study" Lusaka, Zambia.

⁵ State Of The Environment 2000, A Report By The Environmental Council Of Zambia

⁶ Hillary Masundire and Joseph Matowanyika (2002), Biological Diversity in Southern Africa. The Path Ahead. The report of the Southern African Regional Workshop.

1.4 OBJECTIVES OF THE RESEARCH

1.4.1 Main Objectives

The study was basically concerned with a review of the Forestry Sector. However in this research paper the meaning of biodiversity was just confined to forest resources. This is because these biological resources are the primary sources of the livelihoods and economic development in Zambia. The review has endeavoured to show that the legislation governing the management of these sectors reflects the current changes of both consumption and increase of dependence on natural resources. The research further endeavoured to identify the provisions of the legislation which need reform in light of the changes. Finally the paper has expatiated the role of legislation in the conservation and sustainable use of biodiversity and also it has highlighted the steps that have been taken by Zambia to show its commitment at global level.

1.4.2 Specific Objectives

1. To make a review of the Forestry sector so as to trace the changes in trends of consumption, access and management in light of the increase in population, development and poverty levels.
2. To highlight the extent to which the Acts governing the Forestry Sector and policies have been implemented and to identify the various obstacles that affect their full implementation.
3. To identify the gaps if any, that exist in the Forestry Act No. 39 of 1973 and the

forest policy of 1998 in the bid to identify provisions in this piece of legislation and the policy document that need reform in light of the current emerging trends which include increase in population, poverty, development and over-exploitation of natural resources.

1.5 RELEVANCE AND JUSTIFICATION OF THE RESEARCH

The significance of the research lies in its pioneering attempt to highlight the current legal impediments regarding the conservation and sustainable use of biodiversity. This is relevant in that today factors have changed which have a substantial impact on the way the conservation and sustainable use approaches have been effected. Therefore the justification is that the research did endeavour to identify the gaps in the piece of legislation governing the conservation and utilization of biological diversity and also has highlighted the provisions in the piece of legislation that need reform in line with the current changes.⁷

1.6 METHODOLOGY

1.6.1 Data Collection

To collect comprehensive data various research techniques were employed such as guided oral interviews of key informants, administering of printed open ended questionnaires and literature review.

⁷ Hillary Masundire and Joseph Matowanyika (2002), Biological Diversity in Southern Africa. The Path Ahead. The report of the Southern African Regional Workshop

1.6.2 Data Processing and Analysis

Simple but accurate and precise data analysis techniques were engaged in analysing the collected raw data. They included conceptual and analytical approaches which are social science techniques of descriptive, analytical and explanatory nature respectively.

1.7 REVIEW OF THE FORESTRY SECTOR

This Chapter provides information on the state of Zambia's forests today and on recent developments in the forest sector. It also looks into the future for forestry in Zambia.

More than 60 percent of land in Zambia is forest with an estimated area under forest cover of about 44.6 million hectares, in addition plantation forests are estimated to cover about 60,000 hectares⁸. These forests provide vital products for rural and urban dwellers, such as firewood, timber for construction and food. Generally forests provide shelter for animals and promote biological diversity conservation.⁹ Deforestation caused by uncontrolled forest products exploitation, illegal settlement, encroachment, clearing land for agricultural purposes and bush fires is high and has brought about the need to restructure the forestry and related departments, this is owing to the impact that other policies have on the conservation and sustainable use of biodiversity. And

⁸ State of The Environment (2002), A report by the Environmental Council of Zambia.

⁹ African Social Research (2002), Environmental Issues in Zambia, Unza Press, Lusaka.

also in the bid to make legislative reforms so that the forest biodiversity in Zambia are well managed and used in a sustainable manner.¹⁰ Forestry products contribute substantially to income, employment and substance in various parts of the country. Current unsustainable levels of utilization, while leading to short-term gains, will unless checked lead to long-term forest depletion and degradation. For this reason some policies and legislation in relation to forestry have been re-addressed to ensure enhanced focus on controlling the depletion and loss of forests in many parts of the country.¹¹

Also related research shows that there is a strong correlation between excessive desertification and climate change and global warming.¹²

1.8 CURRENT STATUS OF FORESTS IN ZAMBIA

The annual rate of deforestation in Zambia ranges between 250/000 and 300/000 hectares per year. Other studies have shown or put it at 900/000 hectares per year.¹³ The variation in estimates shows the uncertainty of the real situation due to the non availability of reliable data. this therefore calls for the an up to date inventory of the forest resources that are being cut or destroyed without clear knowledge of all the consequences and without

¹⁰ Ibid p. 52

¹¹ CONASA (2002), Policy and Legislation Review of the Fisheries, Forestry, Wildlife and Water Sectors vis-à-vis Community Based Natural Resources Management. CONASA; Lusaka.

¹² African Social Research (2002), Environmental Issues in Zambia, Unza Press, Lusaka

¹³ Chidumayo E N (1996), "Hand book of Miombo Ecology and Management. Stockholm Environmental Institute. Stockholm"

commitment to sustained use. Presently it is a great concern that forests in many parts of the country are disappearing.¹⁴ Deforestation in Zambia is caused by excessive cutting of trees on illegal coupes for Charcoal production, as well as forest clearing for agricultural expansion, unsustainable fuel wood collection, illegal settlements and cultivation in protected forest reserves over exploitation of timber and uncontrolled fires. It is also a consequence of population growth.¹⁵ Wood fuel is still the common energy source supplying about 90% of urban households used by most households. With increased population, the demand for food is increasing, areas under cultivation are increasing and hence deforestation is increasing exponentially.

The current trend in the conservation and sustainable use of forestry resources has been exacerbated by the lack of appropriate legislation to match the current use and consumption trends of forest resources. The current piece of legislation which is the forest Act Number 39 of 1973 does not provide for Community Participation in forest management. This had critical implications on the management of forest resources.¹⁶

¹⁴ Shakachite O., (2002). A Country Report for the Twelfth Session of the African Forestry and Wildlife Management Commission, Lusaka-Zambia

¹⁵ State of The Environment (2002), A report by the Environmental Council of Zambia. p.63

¹⁶ MENR: "2006: The National Report on a case study on the implementation of the Bonn Guidelines on Access to Genetic Resources and fair and Equitable Sharing of Benefits arising out of their utilization in Zambia." Lusaka, Zambia. p. 42

1.8.1 Forestry Sector - Institutional Framework

Forests Management activities involve a wide range of organizations and individuals ranging from the formal to the informal sector. The overall planning, coordination and monitoring of legitimate activities are the responsibility of the government through the Forestry Department which is a creature of the Forest Act Number 39 of 1973. The Forestry Department is the Public Sector Agency responsible for forest management in the country. It is mandated to manage and conserve resources to meet national and local demands for timber and other forest products and services. It is also empowered to control and manage all of a gazetted forest areas (a total area of 9.6% of Zambia), and trees and forest produce on non-gazetted forest land (60% of the country). The department is also mandated to carry out research on forests and forest products and offers a National Forest Extension Service. The Forest Department has five specialized divisions which include Beekeeping, forest products, research, forest management division, extension and regions, provincial division.¹⁷

The Department has representation at National Provincial and District levels, and functions at all three levels. The first level is the National and Functions include formulation and review of the forest policy and Co-ordination of its implementation reinforcement of rules and regulations pertaining to forestry

¹⁷ Ibid p. 41

development, preparing and ensuring effective implementation of various agreements relating to Access and Benefit Sharing Principles. At the provincial level the functions include, providing policy implementation guidelines to districts, coordinating and monitoring policy implementation and forest management activities, ensuring effective implementation of various agreements contained in the policy and Act, including Access Benefit Sharing Processes. The District level has several activities and those related to Access Benefit Sharing include providing extension services that promote Access Benefit Sharing Processes to local communities, private sector and interested parties in the district, collecting revenues realized from sale of forest products and¹⁸ building capacity of local communities.

1.9 ZAMBIA'S FORESTRY POLICY FORMULATION AND THEIR IMPLICATION ON THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY.

Biodiversity is affected by a wide way of policies in many sectors. The ways that policies affect biodiversity also varied, ranging from indirect creation of incentives for the unsustainable exploitation of natural resources.¹⁹The forestry sector is currently guided by the Forest Act No. 39 of 1973 and the Forest Policy of 1998. The 1973 Act removed provisions from the 1941 Forest Act that had empowered local and rural authorities to issue orders for the management of the forests and their exploitation and for them to realize a

¹⁸ Ibid

¹⁹ Ibid p. 26

direct financial benefit. The shift has been cited as the factor in increased encroachment and deforestation. The National Environmental Action Plan of 1994 identified deforestation as one of the five main areas of environmental concern to Zambia. Subsequently the Zambian government prepared the Zambia Forestry Action Plan (ZFAP) of 1994 to provide for a national framework for sustainable forest planning and management so as to enhance the contribution of the sector to socio-economic development process of the country and more especially to address the concerns of community and other stakeholders. The ZFAP process subsequently resulted in the 1998 Forest Policy and the Forest Act No.7 of 1999 that is yet to be activated. In addition to promoting JFM the 1999 Forest Act provides for the establishment of the Zambia Forestry Commission (ZAFCOM) as an institutional structure to replace the forestry Department.²⁰

In the bid to foster sustainable use and management of the biodiversity, the Zambian government adopted a National Conservation Strategy in 1985 and the National Environmental Action Plan (NEAP) in 1994 in an attempt to redress the imbalance between development and environment. The Environmental and Pollution control law was enacted in 1990 and the Environmental Protection Council was established two years later. New wildlife and forestry laws were enacted in 1998 and 1999, respectively, which are intended to strengthen the

²⁰ Ministry of Environment and Natural Resources (1998 a), National Forestry Policy Lusaka: Ministry of Environment and Natural Resources.

management of natural resources and the environment.²¹ However inspite of these policy and legal initiatives little has been achieved on the ground, to reduce the impoverishment of the environment which can be attributed to the unsustainable use of the forest resources. Lack of political will to foster the protection and sustainable management of environmental resources has made it difficult to formulate sound environmental policies the implementation of the 1999 Forestry Act which is not yet in force.²²

²¹ Ibid

²² Ibid p. 26

CHAPTER TWO

THE LEGAL FRAMEWORK GOVERNING THE FORESTRY SECTOR IN ZAMBIA

CHAPTER TWO

THE LEGAL FRAMEWORK GOVERNING THE FORESTRY SECTOR IN ZAMBIA

2.0 OVERVIEW OF FORESTRY LEGISLATION

2.1 The Forest Act Number 39 of 1973

The Forest Act number 39 of 1973 is still in force. Unfortunately this Act has no provision for community involvement in forest management though it does provide for access to forest resources through various licensing arrangements. By and large, the legislation precludes local communities as an institution to access and benefit from commercial forest utilization. However, legislation and policies in forestry management were revised in 1999 and 1998 respectively with the aim of devolving resource management powers and benefit sharing to local communities through various local level institutions.²³ This state of affairs limits the ability of Zambia in meeting the current trend of forestry resource management and sustainable use which emphasizes on the Access and Benefit Sharing.

Nevertheless Access Benefit Sharing (ABS) programmes in forestry include the Provincial Forest Action Programme (PFAP) funded by the Finish Government. The programme focuses on Joint Forest Management (JFM) approaches with aspect of capacity building and enterprise development. The overall objective of the programme is to improve livelihoods and the status of Zambia's forests. The programme purpose

²³ MENR: "2006: The National Report on a case study on the implementation of the Bonn Guidelines on Access to Genetic Resources and fair and Equitable Sharing of Benefits arising out of their utilization in Zambia." Lusaka, Zambia.

is the implementation and sharing of sustainable collaborative forest management practices in pilot areas.²⁴ This programme is a direct response which aims to reform the current law so as to involve people in the management of forest resources as advocated in the forest policy of 1998 which was formulated in line with the current institutional and peoples consumption patterns of forestry resources. This policy encourages a participatory approach in the management of forests in the country by promoting partnerships between agencies, local communities and individuals in the areas of conflict resolution and cost benefit sharing among shareholders. The PFAP programme though, it has been formulated so as to mirror the current institutional and community needs, unfortunately it has not been fully implemented owing largely to lack of political will by the government to reform the law governing the Forestry Sector citing cost implications that will go with the said reforms.²⁵ An enabling policy framework in the Forest Policy of 1998 is in place but however outdated legislation (Forest Act of 1973 Cap 199) is in force whose main theme is State Control and Ownership. This has affected the implementation of JFM. Some of those aspects relating to participatory management require comprehensive and substantive legislative framework which at the moment is lacking. As a result JFM cannot take place under the 1973 Forest Act, which does not provide for community involvement as articulated in Joint Forest Management in the PFAP.²⁶

²⁴ State of the Environment 2000, A Report by the Environmental council of Zambia.

²⁵ MENR (2006), National Report on a case study on the implementation of the Bonn, Guidelines on assess to genetic resources and the fair and equitable sharing of benefits arising out of their utilization in Zambia. Department of Environment and Natural Resources.

²⁶ Ministry of Environment and Natural Resources (1998) National Forestry Policy. Lusaka: Ministry of Environment and Natural Resources.

2.2 SHORTCOMINGS OF THE EXISTING FOREST LEGISLATION AND ITS IMPLICATION ON THE MANAGEMENT OF FOREST RESOURCES

The current Forestry Act 1973 has various provisions that act as legal bottlenecks to the full implementation of sound forestry policy. The existing Forestry legislation is premised on the colonial forestry Act 1943. This Act has become archaic as it does not mirror the current situation as regards the protection and sustainable use of natural resources.²⁷ The largest flaw in the Act which has a very serious implication on the management and sustainable use of biodiversity is that it does not provide for community involvement as articulated in the Joint Forest Management in the PFAP. This by and large has led to the indiscriminate cutting of trees and the unsuitable use of forestry resources mainly because since then communities are not considered to be partners in the conservation and protection of forestry resources. They don't use the forestry resources on a sustainable manner.²⁸ Specifically, revenue sharing arising from use of forest resources, decentralization of licensing to communities and the structure of the forest fees are the key legal problems hindering community based Forest Management under the 1973 Act. The Act does not make mention or make reference to their concept of participatory collaboration or Joint Forest Management (JFM). This is because at the time it was enacted, the government policy objective as regards forest resources was to vest the ownership, control and management of all

²⁷ CONASA (2002) Policy and legislation Review of the Fisheries, Forestry and Wildlife and Water Sectors, vis-à-vis Community Based Natural Resources Management. CONASA: Lusaka.

²⁸ State of the Environment (2000), A Report by the Environmental Council of Zambia.

forest trees and forest produce on the Zambian land in the State, this power being exercised on behalf of government by the chief Conservator of Forests.²⁹

Another flaw in the Act is that it does not have an enabling provision for the transfer of ownership.³⁰ Hence under the current legal framework, there is no provision to foster the inclusion of both the community and other stakeholders in the management and sustainable use of forest resources.

The Land's Act Chapter 184 of the laws of Zambia of 1995 governs land management in Zambia. The Act states that all the land in Zambia is vested in the President on behalf of the people of Zambia. Land is in two categories namely State and Customary land. On State land the Commissioner of lands is responsible for the alienation of land to would be developers through a leasehold arrangement to a maximum period of 99 year, while traditional authorities (Chiefs) are responsible for the land allocation on customary land. Granting of title on customary land is only possible with the prior consent of the Chief and the local authority in the area where the piece of land is being sought

The state plays a major role in biodiversity conservation in Zambia given that the majority of the forests, wildlife reserves, wetlands, botanical and geological gardens and gene collection are done under state control (MENR, 1999), the property rights regime determines the way in which the benefits accruing from biodiversity use are

²⁹ Ibid p.43

³⁰ Ministry of Tourism, Environment and Natural Resources (2006), National Report on a case study on the implementation of the Bonn, Guidelines on assess to genetic resources and the fair and equitable sharing of benefits arising out of their utilization in Zambia. Department of Environment and Natural Resources.

distributed. Historically, communal ownership of biological and other resources has to a large extent been replaced by state and private ownership. Most of the existing protected wildlife and forest reserves were established during the colonial era upon what used to be customary land. The premise was that the government could share the benefits more appropriately. However, over the years it is the communities who live adjacent to the protected areas who suffer the negative consequences of environmental degradation and erosion of biodiversity without compensation. The marginalization of the communities has tended to promote opportunities for the over exploitation of the natural resources by these communities. The basis of the Community based natural resources management programme being implemented in various parts of the country is the need to reserve the loss of environmental degradation and to improve livelihoods of the local communities.³¹

In light of the many outdated laws in the 1973 Forestry Act which are associated with the current mismanagement of the forestry sector, a new Act, The Forest Act No. 7 of 1999, in which the various provisions viewed as legal bottlenecks have since been reformed. The 1999 Forest Act provides for community involvement, in forestry Manager but however, it has not come into effect because of financial, legal and administrative huddles.³²

³¹ The Lands Act Cap 184 of 1995 of the Laws of Zambia.

³² CONASA (2002) Policy and Legislation Review of the Fisheries, Forestry, wildlife and Water Sectors vis-à-vis, Community Based Natural Resources Management. CONASA: Lusaka.

A further legal complication is that even in the Forest Act No. 7 of 1999 Joint Forest Management is only allowed in local forests which a number of other substantive provisions of the Act already require amendments once it is in force.³³

On the whole even if the Forest Act No. 7 of 1999 also has various flaws and through not fully operational, is a positive development. The biggest development in the Forest Act No. 7 of 1999 is that it provides for the participation of local communities, traditional institutions, Non-Governmental Organizations, and other stakeholders in the sustainable forest management. This has in turn broadened the legal provision for more institutions to be involved in sustainable forest management and allows for different roles and responsibilities to be performed by various stakeholders.³⁴ Though elaborate, institutional and administrative arrangements are in place at various levels for the implementation of ABS through Joint Forest Management, the participation of stakeholders is still impeded by the non-enforcement of the empowering Act (Forest Act No. 7 of 1999).³⁵ However, under the Joint Forest Management in the new Act, the local Forest Committee will have the powers to develop and implement in conjunction with the forest commission, management plans for the Joint Forest Management Areas and to negotiate in conjunction with the commission co-manage agreements with other stakeholders³⁶

The various shortcomings existing in the current forest Act have far reaching

³³ Ibid.p.20.

³⁴ GRZ (1999) Forestry Act No. 7 of 1999. Ministry of Environment and Natural Resources, Lusaka.

³⁵ Ministry of Tourism, Environment and Natural Resources (2006), National Report on a case study on the implementation of the Bonn, Guidelines on access to genetic resources and the fair and equitable sharing of benefits arising out of their utilization in Zambia. Department of Environment and Natural Resources.

³⁶ Section 38 of the Forest Act of 1999.

Implications which have created legal bottlenecks, this in turn has led to the overexploitation of forest resources.

Under the current Forest Act 1973 in force, the monitoring and evaluation capacity in the department is limited. There are many weaknesses in forest planning, monitoring and evaluation. These include a lack of an overall monitoring and evaluation plan at various levels, lack of reliable data on forest resources and utilization and lack of mechanisms and systems to transfer responsibilities to local communities under the Forest Act of 1973 which is still in force.³⁷

Lack of capacity of the Department has made forestry extension difficult. The need for forestry extension is great now in Zambia given the high incidences of deforestation, soil degradation, fuel wood shortages and poverty. Extension work is even more important for implementation of ABS related projects and programmes. However, Forestry extension work can best be described as invisible due to a number of constraints and challenges, which boarder on the non-enforcement of the 1999 forestry Act. These constraints and challenges include shortage of trained extension staff with the necessary skills particularly in ABS, inadequate extension facilities materials, funds and equipment and lack of incentives for both the extension staff and communities.³⁸

³⁷ CONASA (2002) Policy and Legislation Review of the Fisheries, Forestry, wildlife and Water Sectors vis-à-vis, Community Based Natural Resources Management. CONASA: Lusaka.

³⁸ Ministry of Environment and Natural Resources (1998 b), Zambian Action Plan. Lusaka : Ministry of Environment and Natural Resources

Under the current legislation governing the forestry Sector, the non-involvement of the local communities, traditional institutions, non-governmental organizations and other stakeholders in sustainable forest management has led to the development of the perception that they are not equal and important partners and vehicles through which forest management policies are to be implemented. This is because the local and broad participation has become a priority for development.³⁹

2.3 THE BIODIVERSITY ACT OF 2006

To reaffirm her global commitment to the management of biodiversity, Zambia has gone a step further by domesticating the United Nations Convention on Biodiversity (Incorporating the United Nations Convention into the Domestic Legislation of Zambia.)

The Act has been defined as an Act to ensure the conservation and sustainable use of biological resources and genetic resources and related knowledge and technologies in order to maintain and improve biodiversity as a means of sustaining all life support system recognize protect and support the inalterable rights of local communities including farming communities over biological resources, knowledge and technologies recognize, and protect the rights of breeders, provide an appropriate system of access to biological resources, community knowledge and technologies subject to the prior informed consent of the Natural biodiversity Authority and the local communities promote appropriate mechanisms for a fair and equitable sharing of benefits arising from the use of biological and genetic arising from the use of biological and genetic

³⁹ Chidumayo, E.N, (1998). "Biodiversity in Zambia: An Overview. A Paper presented at the First Natural Biodiversity Workshop." Lusaka: Zambia 5-6 August, 1998.

resources and related knowledge and technologies, ensure the effective participation and agreement of local communities in making decisions regarding the distribution of benefits which may derive from the use of biological resources knowledge and technology; promote and encourage the building of natural and grass root scientific and technological capacity, relevant to the conservation and sustainable of biological resources provide appropriate institutional mechanisms for the effective implementation and enforcement of the rights of local communities including farming communities and breeders and the conditions access to biological resources.⁴⁰

The Act has introduced salient provisions that are critical to the effective and proper management of natural resources. This includes: Access to Biological Resources, which is provided for in Section 4(1)⁴¹. This provision addresses the issue of informed prior consent of the local communities and access to biological resources, or knowledge or technology of the local people. The Act has gone further by proscribing the access to biological resources in contravention of the requirement of the Act.

Furthermore The Act reaffirms the rights possessed by the local communities and indigenous communities over the natural resources in their communities. Section 16 of the Act enshrines and protects the norms, practices and customary laws found in and recognized by the local and indigenous community whether such law is written or not. Also the Act vests the rights to withdraw or place restriction on the consent or access so granted previously this is a positive step in the management of natural

⁴⁰ The Biodiversity Act of 2006

⁴¹ Ibid

resources in that the local or indigenous have now been recognized so be the owners and also they reserve the right to grant access or not to the natural resources, and in an event that consent is given but after it is discovered that the activities as specified in the permit will be likely to be detrimental to the socio-economic life of its natural and cultural heritage. It reserves the right to withdraw the consent.⁴²

Lastly the Act gives the local communities the right to exercise its inalienable right to access, use and exchange or share its biological resources in sustaining its livelihood system as regulated by its custom any practices and laws.

This Act has been seen to be instrumental in fostering the conservation and management of biological resources in that local communities are key in this process.

⁴² Ibid

CHAPTER THREE

ZAMBIA'S FORESTRY POLICY FRAMEWORK AND ITS IMPACT ON THE CONSERVATION OF BIODIVERSITY

CHAPTER THREE

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3.0 ZAMBIA'S FOREST POLICY FORMULATION AND THEIR IMPACT ON THE SUSTAINABLE USE, CONSERVATION, AND PLANNING OF BIODIVERSITY

The chapter discusses the policies that were formulated (The 1965 Forest Policy and the 1998 Forest Policy) by the Zambian government and the current Forest Policy and make an evaluation whether they are adequate and effective to foster sustainable use and conservation of forest resources.

After Independence Zambia was pursuing policies based on socialist ideologies, where the government was at the centre of the economy. This can also be evidenced by making reference to certain policies and legislation such as the Forest Policies and the Forest Legislation which placed the stewardship of forest resources exclusively in government. This excluded other stakeholders from being partners in the management, planning and sustainable use of forest resources. These stakeholders include the local communities and Non-Governmental Organizations.⁴³

⁴³ CONASA (2002) Policy and Legislation Review of the Fisheries, Forestry, Wildlife and Water Sectors vis-à-vis Community Based Natural Resources Management. CONASA: Lusaka.

3.1 THE FOREST POLICY OF 1965, ITS SHORTCOMINGS AND THE SALIENT FEATURES OF THE 1998 FOREST POLICY INTRODUCED TO ADDRESS THE SHORTFALLS OF THE 1965 FOREST POLICY

The first Forestry Policy in Zambia was formulated in 1965 as a set of instructions to the Forestry Department.⁴⁴ This policy was rigid and gave full control to the central government over ownership, planning and management of forests. This policy had no provision for community participation in forest management. In 1973 the Forest Act No. 39 was enacted. This like the Forest Policy of 1965 emphasized the “policing” role of the Forestry Department and the exclusion or restriction of the local communities in Forest Management⁴⁵. Further this Act took away all private ownership rights of trees, even where title to land was held.⁴⁶

3.2 THE FOREST POLICY OF 1998

The 1965 Forest Policy gave exclusive control for the control of forests and ownership planning and management to the central government. This was done by way of giving the Forestry Department exclusive powers as the state agent and also manager for growing and harvesting trees. The Forest Department was mandated to establish meant that the local communities had no say over the decisions which were made by the government.⁴⁷

⁴⁴ MENR: “2006: The National Report on a Case Study on the Implementation of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization in Zambia. Lusaka, Zambia

⁴⁵ GRZ –Ministry of Environment and Natural Resources (1998). “Zambia Forestry Action Plan Volumes I, II and III”.

⁴⁶ The Forest Act of 1973 No. 39 of the Laws of Zambia. S.22

⁴⁷ Ibid. p.20.

The rigidity of the original policy – the 1965 Forest Policy; framework is illustrated by conflicting objectives for forests held by the Department and the local communities. The two conflicting interests was a serious source of the failure of the previous Forest Policy whose emphasis was “policing” rather than collaborative and participatory for Joint Forest Management (JFM). The local communities viewed the forest officers who were agents of government as enemies rather than partners in the management of national resources located in their areas. Whereas the Forest Officers would like to protect the forests for their own sake, the local communities would like to derive benefits from their products, hence the conflict.⁴⁸ The Forest Policy was also essentially a set of instructions to the Forest Department, without expressly defining the issues it sought to address; the policy did not provide strategies or action plans, hence the revision which culminated into the new 1998 Forest Policy. This has been as a positive step in the bid to conserve and sustainably utilize natural resources. This is because archaic legislation and policies which do not mirror the prevailing circumstances on the ground. This aspect to some extent can be cited as one of the factors that contributed greatly to the indiscriminate use of natural resources and the general degradation of the environment.⁴⁹ This is because also some major decisions that led to the loss of big tracks of forests can be said to have been made based on political expediency without giving through to what consequences that would have on the environment.⁵⁰ Many areas have been opened up for agriculture use and also the

⁴⁸ MENR: “2006: The National Report on a Case Study on the Implementation of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization in Zambia.” Lusaka, Zambia

⁴⁹ Ibid.

⁵⁰ African Social Research (2002) Environmental Issues in Zambia, UNZA Press, Lusaka.

heavy dependence on natural resources has led to the loss of big quantities of biodiversity. This has culminated in floods and climate change in certain areas of the country such as Livingstone. Some natural calamities such as flood and climate change can lead to environmental changes that may be irreversible, such as desertification.⁵¹

The Forest Policy of 1998 is the policy that succeeded the 1965 forest policy which vested exclusive control of forests and ownership planning and management to central government. The birth of the Forest Policy of 1998 has been said to be key in fostering conservation and sustainable use of natural resources.⁵² The major point of departure between the original Forest Policy of 1965 and the new Forest Policy of 1998 is that the 1998 Forest Policy has incorporated the local community participation and involvement in Forest Management.⁵³ The objective of the new Forest Policy of 1998 is to ensure rational and sustainable management and utilization of the forest resources using a broad-based and participatory approach to ensure that all stakeholders are recognized and active. The new Forest Policy addresses itself to four main areas of concern. These include; resource management and development, resources utilization, capacity building and gender equity.⁵⁴

⁵¹ State of the Environment (2000), A Report by the Environmental Council of Zambia.

⁵² CONASA (2002) Policy and Legislation Review of the Fisheries, Forestry, Wildlife and Water Sectors vis-à-vis Community Based Natural Resources Management. CONASA: Lusaka.

⁵³ Ibid.

⁵⁴ Ibid, p 65.

3.3 IMPACT OF THE 1998 FOREST POLICY ON THE CONSERVATION AND SUSTAINABILITY OF BIOLOGICAL DIVERSITY

However, the new Forest Policy has the objective of ensuring national and sustainable protection, management, production and utilization of the forest resources. It recognizes the need for employing broad-based and participatory approaches to forest sector development.⁵⁵

The Forest Department is responsible for formulating national forest policies, adopting forest plans and the general management and control of forest resources in order to meet national and local demand for timber and other forest products and services. The Forestry Department is also mandated to carry out research on forests and extension services.⁵⁶

After 1991 the Zambian economy was liberalized, though this was good to promote rapid growth of various sectors of the Zambian economy, it came with its attendant problems for example competition between foreign companies and local companies were somehow unfair. This resulted in the total collapse of some companies, and then people who were laid off, resorted to total dependence on natural resources, fish, and wildlife for dependence in the new forest policy to reflect the concept of Joint Forest Management.⁵⁷ The new Forest Policy is backed by new forest Act⁵⁸ also the Act is

⁵⁵ CONASA (2002) Policy and Legislation Review of the Fisheries, Forestry, Wildlife and Water Sectors vis-à-vis Community Based Natural Resources Management. CONASA: Lusaka.

⁵⁶ *ibid*

⁵⁷ GRZ – Ministry of Environment and Natural Resources, (2000). “Bringing Forestry to the People towards 2000 and Beyond: An Overview of the Zambia Forestry Action Plan.” Lusaka – Zambia.

still non operational. Planning under the Forestry Department has mainly been concerned with the production of timber for industries, other wood products and forestry development. Forestry plans have usually been restricted to designated areas such as forest reserves and plantations and the implementations of these plans has been the responsibility of the forestry Department through its provincial and district offices.⁵⁹ Also there has been no comprehensive forest resource assessment since the 1960s; this means that the current plans have been based on inconsistent estimates. This has resulted in loss of forest resources and encroachment.⁶⁰

Trends in Forestry policies and institutional arrangements are having direct impacts on forest management. This has prompted government forestry administration to make efforts to decentralize control over forest resource management. This implies changes in management practices to those, which have a closer relation to local conditions. Local community participation and involvement in forest management is on the increase. Zambia has gone a long way in developing and encouraging local communities in the management of forest resources. The development of local or participatory management system, in which local communities play an important role in the day-to-day management and protection of forest resources, has been rapid.⁶¹ This has been catalyzed by the Zambia Forest Action Plan and the Provincial Forestry Action Plan, Planning Processes that have resulted in management arrangements

⁵⁸ The Forest Act of 1999.

⁵⁹ CONASA (2002) Policy and Legislation Review of the Fisheries, Forestry, Wildlife and Water Sectors vis-à-vis Community Based Natural Resources Management. CONASA: Lusaka.

⁶⁰ State of the Environment (2000), A Report by the Environmental Council of Zambia, Lusaka.

⁶¹ Ibid.

fashioned as appropriate to local conditions. These include (JFM), Community forestry Programmes; integrated Conservation and Development Programmes used mainly in conjunction with nature conservation efforts. Joint Forestry Management is a collaborative management approach, which has been adopted in Zambia.⁶² It is based on the principle that local communities become directly involved in the management of public forests and in doing so, benefit directly from the use of the forests. Both the Zambia Forestry Policy and the Act of 1998 (not yet in force) back this concept.

3.4 STRATEGIES ADOPTED BY THE GOVERNMENT TO MANAGE AND FOSTER SUSTAINABLE UTILIZATION OF FOREST RESOURCES.

3.4.1 The Zambia Forest Action Plan

The Zambia forestry Action Plan forms part of the Zambia environmental Action Plan (NEAP) and was started in April 1995.⁶³ The ZFAP essentially was a framework for strategic planning in forestry, and an entry point for raising awareness of issues related to the forest sector, preparing or updating the Forest Policy, preparing specific action programmes project and stimulating financial and political support to implement these initiatives. A local planning process known as the provincial forestry Action Plan has been on-going in three provinces of Zambia, namely the Copperbelt, Luapula and Central Province. This is mainly at the local level.⁶⁴

⁶²Ministry of Environment and Natural Resources (1998). "Zambia Forestry Action Plan Volumes I, II and III".

⁶³ GRZ – Ministry of Environment and Natural Resources, (2000). "Bringing Forestry to the People towards 2000 and Beyond : An Overview of the Zambia Forestry Action Plan.". Lusaka – Zambia.

⁶⁴ Ibid.

Alajarvi⁶⁵ has predicted that enhanced forest sector interventions brought through the implementation of the ZFAP as well as better management and control methods would increase productivity (volume growth) by 50% in indigenous forests and 20% in plantation forests. This is based on the assumption that better agricultural production and increased activities in agro forestry and farm forestry reduce the pressure on forest land use.

3.5 IMPACT OF THE ZAMBIA FORESTRY ACTION PLAN (ZFAP) ON THE CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY

Overall, the Provincial Forest Action Plan (PFAP) has resulted in a co-operation and sustainable management culture within the forestry Department based on dialogue with forestry stakeholders, including non-governmental organization, the private sector and local communities.⁶⁶

A more competitive environment and the need for efficiency in the management of forest resources have meant that the role of the public sector is shifting from one of implementation to one of facilitation and coordination. Hence other stakeholders such as the private sector, non-governmental organizations, the scientific community and other entities are increasingly important. These initiatives by the government were meant to expand the spectrum so as to include as many stakeholders as possible in the

⁶⁵ Alajarvi P. (1996), "Forest Management and Inventory, International Consultant Report", ZFAP Secretariat, MENR, Lusaka.

⁶⁶ GRZ – Ministry of Environment and Natural Resources, (2000). "Bringing Forestry to the People towards 2000 and Beyond: An Overview of the Zambia Forestry Action Plan." Lusaka – Zambia.

management of forestry.⁶⁷ This proved to be more effective in that the people are challenged and made responsible for the management of natural resources in their areas also they are also educated and helped to endeavour adopt only those practices that have no negative impact on both natural and human ecosystems.⁶⁸

3.5.1 The National Environmental Action Plan (NEAP)

In order to address the increasing loss of biological diversity, the government of the Republic of Zambia (GRZ) developed the National conservation Strategy (NCS) in 1985. In 1994 the NCS was replaced by the National Environmental Action Plan (NEAP) which provided updated information on environmental depletion, deforestation, land degradation, air and water pollution and inadequate sanitation. The NEAP's overall objective was to integrate environmental issues of concern into the social and economic development planning process of the country. The principles, on which the NEAP was founded, include rights of a citizen to a clean and healthy environment and local communities and private sector participation in natural resources management.⁶⁹

3.5.2 The National Biodiversity Strategy and Action Plan (NBSAP)

In 1992, Zambia recognizing the need to have a concerted effort to fight against uncontrolled loss of biodiversity developed the National biodiversity Strategy and Action Plan (NBSAP) as a master plan to meet the objectives of The Convention on

⁶⁷ GRZ – Ministry of Environment and Natural Resources (1998) Provincial Forestry Action Plan - Book 5. Ndola – Zambia.

⁶⁸ Ibid.

⁶⁹ GRZ – Ministry of Environment and Natural Resources, (2000). “Bringing Forestry to the People towards 2000 and Beyond : An Overview of the Zambia Forestry Action Plan.”. Lusaka – Zambia.

Biological Diversity of 1992 (CBD) following Zambia's signing and ratification of the Convention in 1992 and 1993 respectively. The NBSAP has been instrumental in the management of biodiversity and it addresses six (6) goals each with strategies addressing a number of issues including the concept of Access and benefit sharing in recognition of the important role communities play in biodiversity conservation.⁷⁰

3.5.2.1 Environment and Natural Resource Policies and Forests

Policies in the environment and natural resource sector impact on forests and they all provide broad support to sustainable forest management and utilization. The 1990 Environmental Protection and Pollution Control Act and the 1970 Natural Resources Act and their associated policies provide umbrella strategies, legislation and institutions to co-ordinate environmental management across different sectors of the economy in Zambia⁷¹.

Wildlife policy and legislation are extremely important to the forest sector because they deal with wild species and habitat conservation, in and outside National Parks – they define wildlife to include any vegetation which is indigenous to Zambia and grows naturally without cultivation.⁷²

The Zambia Wildlife Act of 1998 and Wildlife Policy of 1993 provide for the formation of Community Resource Boards in regions adjacent to or within Game Management Areas. These Boards have the function of promoting and developing

⁷⁰ The National Biodiversity Strategy and Action Plan (NBSAP) (1992).

⁷¹ Hachileka. E Chunduma, and Mupimpila, C (1998) The Effectiveness of benefit sharing in Community Based Wildlife Management Programmes in Zambia. Social Recovery Fund, Lusaka.

⁷² Hachileka. E Chunduma; and Mupimpila, C; Supra, footnote 78, p. 15

natural resource conservation and are given the power to negotiate wildlife co-management agreements with the private sector, manage wildlife quotas, police and protect wildlife, implement management plans, retain wildlife revenues and raise funds from both domestic and international sources. These boards are analogous to the Joint Forest Management Committees specified in draft forest legislation – as such they provide an important niche for the integration of the forest and wildlife sectors at the local level, and can undoubtedly strengthen community-based forest management efforts.⁷³

Whereas the Energy Policy of 1995 is supportive of the forest sector, containing as a major goal the better management, conservation and provision of wood fuel from forest areas, no mention of forests is made in either the Water Policy of 1994 or the Water Act of 1949. Both are concerned almost entirely with controlling and regulating water abstraction and use. They do not consider the need to protect water supplies and sources, and in particular neglect the important role of forests in providing watershed catchment protection.⁷⁴ Although there is a potentially important niche for forestry concerns to be incorporated into the workings of the water sector, no support is provided from either policy or legislation.⁷⁵

3.5.2.2 Land-related Policies and Forests

Although there is no integrated land policy in Zambia, a complex body of legislation relate to the terms and conditions under which land can be held and used. There are

⁷³ Chabwela H N (1998) The Wildlife Sector: A Situation Analysis, Environmental Support Programme for Zambia. MENR/ IUCN Zambia Country Office.

⁷⁴ State of the Environment (2000), A Report by the Environmental Council of Zambia.

⁷⁵ Ibid

three basic categories of land tenure which relate to all lands and ecosystems, including Forest Reserves. These include State Land leaseholds, leasehold and traditional tenure arrangements on Customary Lands.⁷⁶

All land in Zambia has been held by the state since reforms made under the Land Conversion of Titles Act of 1975 which abolished freehold title as well as all sales, transfer and other alienation of land for value and allowed renewable leasehold titles of up to 100 years for State Land. The Land Act of 1995 provides for the statutory recognition and continuation of traditional forms of tenure on Customary Lands – formerly Reserves and Trust Lands – and their conversion into leasehold tenure of up to 99 years after approval by the relevant Chief or Local Authority.

Although under the leasehold system rights to land-based natural resources are allocated to the leaseholder and for customary lands to community members under the ultimate authority of traditional leaders, a number of legal instruments place restrictions on land use and override some of these rights such as ownership of forests and trees.⁷⁷

The Forest Act, Land Act and Land Acquisition Act of 1970 all permit the compulsory acquisition of land by the state if this is considered to be in the public interest – which includes the protection of trees and establishment of Forest Reserves. The Local Government Act of 1991, Town and Country Planning Act of 1962 and Agricultural Lands Act of 1960 also contain a series of provisions which require landholders to

⁷⁶ GRZ (2006 Fifth National Development Plan 2006-2010.) Ministry of Finance and National Planning.

⁷⁷ Mudenda, F. (2007) Land Law in Zambia, Unza Press, The University of Zambia, Lusaka

take measures to conserve natural resources, prevent soil erosion, protect forests and woodlands and maintain water courses.⁷⁸

Although all these instruments have the potential to be used in the interests of sustainable forest management and to encourage tree planting, they are geared more towards ensuring that agricultural land is used productively rather than that natural resources are conserved. Especially, agricultural policy presents a possible threat to forest integrity by encouraging the expansion of crop and livestock production, often at the expense of forests. All also may present disincentives to forest conservation because they undermine the degree to which landholders have control over the resources on their land, rather than empowering their increased participation in forest management.⁷⁹

6 THE NEED FOR THE REFORM OF THE FORESTRY POLICY AND LEGISLATION

Zambia's Forestry Legislation is based on the Forestry Act of our former colonial masters that is the Forestry Ordinance of 1944. And the factors that were considered before coming up with the Forest Ordinance have undergone tremendous changes. For example the population and poverty have been increasing exponentially. This has translated into increased demand for the consumption of the natural resources,

State of the Environment (2000), A Report by the Environmental Council of Zambia.
Ministry of Tourism, Environment and Natural Resources (2006), National Report on a case study on the
implementation of the Bonn, Guidelines on assess to genetic resources and the fair and equitable sharing of
benefits arising out of their utilization in Zambia. Department of Environment and Natural Resources.

increased demand for food which has led to the clearing of vast tracts of land.⁸⁰ Also the major switch from socialist policies which were pursued in the second republic to capitalistic policies being promoted by the current political regime (The MMD government) has promoted a liberalized economy which has attracted a lot to investors. The current regime has promoted economic development in many sectors of the economy at the expense of environmental conservation. The negative impacts on biodiversity can also stem from the absence of appropriate policies.⁸¹ For example lack of land - use planning in general – and of land use planning sensitive to biodiversity specifically – represents one of the most significant omission within the policy environment of Zambia – in most cases the plans formulated by the authorities make little or no mention of biodiversity loss, reflecting the fact that policy makers are of often minimally aware of the scope and importance of this issue for development planning.⁸² Another important aspect that needs immediate attention is that of inadequate policies which result in cases of economic externalities such as the emission of air or water which has become common place because of the current development in both the industrial and mining sectors, which damages ecosystems or threatens species but whose costs are not borne by those responsible for the pollution.⁸³ Regulatory policies are needed to fill these gaps so as to compensate for the absence of economic incentives or disincentives. Thus enforcement of the “polluter pays” principle will help to control environmental damage in cases where

⁸⁰ Biodiversity Support Programme “1993: African Biodiversity : Foundation for the Future; A Framework for Integrating Biodiversity conservation and Sustainable Development” USAID, Washington, 1993.

⁸¹ The Post Newspaper, Thursday Edition, February 8, 2007.

⁸² Biodiversity Support Programme “1993: African Biodiversity: Foundation for the Future; A Framework for Integrating Biodiversity conservation and Sustainable Development” USAID, Washington, 1993.

⁸³ Ibid.

responsibility can be ascertained.⁸⁴ However, most biodiversity loss in Zambia is not by industrial pollution, and reforms of this nature should not be expected to alter present patterns of biodiversity loss substantially. This just forms part of the larger picture.⁸⁵

Lastly the forests Act which is currently in force emphasizes on “policing” and the sole responsibility of forest management is vested in the government. This means many stakeholders have been left out and hence the local communities are viewed and as enemies and not equal partners in the management of forests.⁸⁶ Forest management can only be effectively carried out if the people are incorporated as equal parts in the management of forests and if they are taken to be the “implementers” of government programmes, initiatives and projects, this is because they are the ones who are solely dependent on natural resources for their income and subsistence. Hence the new forestry policies and legislation should reflect this very vital reality on the ground.⁸⁷

CONSTITUTIONAL REFORMS (Mungomba Draft Constitution)

From independence, Zambia has amended its Constitution three times; this notwithstanding the Constitution does not contain comprehensive salient features to address matters to do with environmental management and natural resources conservation. Although there are pieces of subordinate legislation that address matters to do with the environment and natural resources, they have proved to be inadequate

African Social Research(2002) – Environmental Issues in Zambia, UNZA Press, Lusaka.

ibid.

State of the Environment (2000), A Report by the Environmental Council of Zambia, Lusaka.

ibid.

and also in most cases they are contravened. Thus it has been argued that, enshrining environmental rights and laws pertaining to the protection of the environment will be seen as a progressive step towards the protection of the environment and the conservation of natural resources. This is because they will enjoy a higher a protection by the highest law of the land.⁸⁸

This lacuna has been addressed in the Mungomba Draft Constitution, which incorporates salient features regarding the protection of the environment and the sustainable use of natural resources. This if incorporated in the new Constitution will be seen as a major departure of the new Constitution from the previous ones. As regards the Constitutional provisions on the environment and natural resources, there are very important provisions that have been introduced in the Constitution. This has been regarded as a progressive step to the better management and sustainable use of natural resources⁸⁹. Thus many environmental issues which do not enjoy Constitutional protection have been addressed in the Draft Constitution and have also been granted Constitutional protection. The Draft Constitution addresses environmental issues such as Article 361: This particular provision has put a guideline on how policy should be formulated. In this regard the government shall not formulate any policy that will be in contravention with the Constitution.

⁸⁸ African Social Research (2002) Environmental Issues in Zambia, UNZA Press, Lusaka.

⁸⁹ Constitution Review Commission, (2005), Draft Constitution of the Republic of Zambia, Lusaka, Zambia

This has been seen as a major shift in the perception of the formation of environmental policies which in most cases was done on expedient grounds so as to further the political agenda of a particular political regime in power.

Also where environmental protection is concerned the Draft Constitution has made it obligatory to ensure that the citizens are co-operating with the state organs and institutions so as to foster ecological sustainability and also to discontinue an act which is harmful the environment. This particular provision will give powers to the authorities to stop an act or omission which is harmful to the environment thus it will be enforceable to all those who do not maintain a clean and healthy environment.

Another salient feature that has been introduced in the Mungomba Draft Constitution is that of the protection of genetic and biological resources and the introduction of comprehensive systems of environmental impact assessment and environmental audits.⁹⁰

Furthermore the protection has also been extended to intellectual property rights and the indigenous knowledge of the local people. However of very vital importance is that the Draft has addressed the concept of the enforcement of environmental rights as provided for under Article 364 of the Draft Constitution which is couched in the following manner;

⁹⁰ Constitution Review Commission, (2005), Draft Constitution of the Republic of Zambia, Lusaka ,Zambia

Article 364(1) If a person alleges that a right to a clean and health environment recognized and protected under this Constitution, has been, is being, or is likely to be, contravened, in addition to any other legal remedies which are available in respect to the same matter, that person may apply to the constitutional court for redress.⁹¹

Also where damage has been occasioned or loss has been suffered a person shall have recourse to the courts of law be entitled to compensation in accordance with the determination which will be done by a court of competent jurisdiction.

As regards agreements relating to natural resources, Article 365 of the Draft Constitution provides that they shall be made with the constitution and further it provides that royalties shall be paid with respect of any exploitation of natural resources.⁹²

These Constitutional reforms if considered for incorporation in the would be new or amended Constitution will redefine the way natural resources are managed and also eliminate legal bottlenecks that have made the conservation and sustainable use of biodiversity legally unattainable. Hence if matters to do with the environment are enshrined in the constitution, they will enjoy a higher protection by the highest law of the land and thus enforceable.

3.8 OBSTACLES TO POLICY REFORMS

In Zambia the prevailing situation in the environmental sector clearly suggest that there is urgent need for policy reforms, this is because in the absence of sound

⁹¹ Ibid Article 365

⁹² Constitution Review Commission, (2005), Draft Constitution of the Republic of Zambia, Lusaka, Zambia

environmental policies, it is very difficult to coordinate a spectrum of human activities.⁹³ There is need to act now before the situation becomes irreversible. However, several kinds of problems are handicapping implementation. These can be classified into two basic categories: Conceptual and Practical Constraints on policy reforms.⁹⁴

3.8.1 Conceptual obstacles to reforms

The underlying premise of proposals for modifying national accounts is that depletion of natural resources should be assessed as a cost to society. For example the substantial loss of forestry resources in the southern province has led to the increased poverty for people who are highly depended on the natural resources for their livelihood and subsistence.⁹⁵

3.8.2 Practical Obstacles to Policy Reforms

3.8.2.1 Political Context

Several studies have shown that land pressure, the need for foreign exchange, and high poverty levels pose major barriers to improving sustainability of resource use and conservation of biodiversity. Decision makers may feel that they have little choice but to acquiesce to activities that may prove detrimental to biodiversity.⁹⁶ In Zambia due to increase in population and poverty and also the ever increasing number of people

⁹³ CONASA (2002) Policy and Legislation Review of the Fisheries, Forestry, Wildlife and Water Sectors vis-à-vis Community Based Natural Resources Management. CONASA: Lusaka.

⁹⁴ Biodiversity Support Programme “1993: African Biodiversity: Foundation for the Future; A Framework for Integrating Biodiversity conservation and Sustainable Development” USAID, Washington, 1993.

⁹⁵ Biodiversity Support Programme “1993: African Biodiversity: Foundation for the Future; A Framework for Integrating Biodiversity conservation and Sustainable Development” USAID, Washington, 1993.

⁹⁶ Ibid. P.96.

joining the list of the unemployed has forced decision makers to look on natural resource exploitation in rural areas, even at the expense of biodiversity, if this reduces the demand for jobs, housing and other services in overstressed urban areas.⁹⁷ Shifting cultivators who often open forested areas for agriculture, charcoal burners and artisanal miners, can be all seen as self employed, and their initiative might be welcomed by the government that is hard pressed to cope with economic crises. One challenge, posed to the current political regime is to find ways of minimizing the adverse biodiversity impacts of such enterprises, without imposing an unrealistic burden on the government, unable to provide alternative jobs or other means of gaining livelihoods. Lastly lack of political will on the part of the government to recognize the fact that even other policies on other sectors of the economy have an impact on biodiversity management has led to loss of biodiversity. This is because biodiversity is a complex and multidisciplinary topic, and therefore any strategy, for conservation must involve actions and reforms across many existing sectoral lines as well as across academic disciplines.⁹⁸

A final practical obstacle relating to policy reforms is the fact that policies and activities work at cross purposes, most important issues lie outside the purview of the Forestry Department and priority may be given to conventional development projects, especially those identified as foreign exchange earners, for example the controversial

⁹⁷ State of the Environment (2000), A Report by the Environmental Council of Zambia.

⁹⁸ Fifth National Development Plan, 2006.

Kafue Township Steel Plant, while suggestions for restraint in natural resource exploitation have been labeled as “anti-growth”.⁹⁹

⁹⁹ The Post Newspaper, Thursday Edition, February 8, 2007.

CHAPTER FOUR

***INTERNATIONAL LEGAL INSTRUMENTS THAT GOVERN
THE SUSTAINABLE USE AND CONSERVATION OF
FORESTRY RESOURCES TO WHICH ZAMBIA IS A PARTY***

CHAPTER FOUR

INTERNATIONAL ENVIRONMENTAL LEGISLATION RATIFIED BY ZAMBIA

INTERNATIONAL LEGAL INSTRUMENTS THAT ZAMBIA HAS RATIFIED WHICH GOVERN THE MANAGEMENT OF FOREST RESOURCES

This chapter will discuss the various international legal instruments which have a bearing on the conservation and sustainable use of Forestry Resources in light of the concept of globalization. Today looking at the seriousness of the consequences resulting from environmental pollution and poor land husbandry practices, emphasis is being made not only to adopt local strategies to ensure effective conservation and sustainable use of natural resources but also the concept of a global village has led to the formulation of international instruments.¹⁰⁰ Each and every country which is a signatory to any of these instruments should ensure that they only promote activities that promote the spirit of the legislation. Thus in the case of Zambia apart from the local policies and legislation governing the protection and sustainable use of natural resources, it is also a signatory to a spectrum of international legislation.¹⁰¹ This chapter will discuss about major objectives of these pieces of legislation and the extent to which Zambia has complies with core provisions of these conventions. Furthermore it will discuss the local impact of these conventions on the protection of the environment.¹⁰²

⁰ African Renewal – United Nations Department of Public Information Vol. 21 No. 2 July, 2007.

¹ State of the Environment (2000), A Report by the Environmental Council of Zambia.

² Ibid. p. 141

4.1 THE UNITED NATIONS CONVENTION ON BIOLOGICAL DIVERSITY (1992) (CBD)

The 1992 Convention on Biological Diversity (CBD) provides a comprehensive framework for stopping the loss of biological diversity. The framework is a carefully balanced, legally binding international treaty that commits its parties to the triple objective of conserving biological diversity, utilizing natural resources sustainably, and fairly and equitably sharing benefits derived from the use of genetic resources.¹⁰³ In 1999, Zambia developed the Natural Biodiversity and Action Plan (NBSAP) as a master plan to meet the objectives of the CBD following Zambia's signing and ratification of the convention in 1992 and 1993 respectively. The latter objective that talks about the access and benefit sharing arising from the use of natural resources is of particular importance to developing countries, including Zambia, as they harbour most of the world's biological resources, but in general they don't obtain a fair share of the benefits derived from the use of their resources for investment purposes, and use of their resources for the development of products and their derivatives such as pharmaceuticals and cosmetics.¹⁰⁴

As a state party to the convention, it is the responsibility of Zambia to regulate and control access and negotiate benefit sharing of both natural and genetic resources. One of the key issues in ensuring conservation and sustainable management of biological resources is to address the third objective in line with the concept of "Access and Benefit Sharing" as provided for in the CBD. ABS is critical to

¹⁰³ The United Nations Convention on Biological Diversity (1992) (CBD).

¹⁰⁴ MENR: 2006: The National Report on a Case Study on the Implementation of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization in Zambia. Lusaka, Zambia

conservation and sustainable management of biological resources. In the context of the CBD, access to generic resources refers to the permission to acquire and use genetic resources while benefit sharing means the sharing of benefits arising from use, whether or not, of genetic resources and their derivatives, and may include both monetary and non monetary returns.¹⁰⁵

2 THE UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION

The United Nations Convention to Combat Desertification is a major achievement of the international community stemming from the United Nations Earth Summit in Rio de Janeiro in 1992; the Convention is an innovative document which breaks new ground in international environmental law.¹⁰⁶

Zambia realizing how the increase in human activity due to the increase in population and the ever increasing reliance on natural resources for livelihood and subsistence, has ratified various International Instruments in the bid to address the indiscriminate utilization of natural resources. The United Nations convention to Combat Desertification was ratified on the 19th of September 1996. This International instrument contains salient provisions that address key issues pertaining to the environment such as strategies that emphasizes on the sustainable use of resources. Zambia has since embarked on various strategies and projects so as to prevent

¹⁰⁵ Ibid. P.1

¹⁰⁶ State of the Environment (2000), A Report by the Environmental Council of Zambia.

desertification various parties of the country in line with the provisions of The United Nations Convention to Combat Desertification.

4.3 THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

Climate change is defined by the Intergovernmental Panel on Climate Change, as the climate due to natural variability or as a result of human activity¹⁰⁷. The United Nations Convention on Climate Change (UNFCCC) on the other hand defines it as a change in climate attributed directly to human activity that alters the composition of the global atmosphere and which is an addition to the natural climate variability observed over comparable time periods¹⁰⁸. Finally, climate change refers to any change of classical 30 year climatology regardless of the causes.¹⁰⁹

The first Intergovernmental Panel on Climate Change Assessment Report compiled in 1990 concluded that continued accumulation of atmospheric greenhouse gases would lead to climate change whose rate and magnitude were likely to have adverse effects on both natural and human ecosystems. This report served as a basis for the negotiations of the UNFCCC.¹¹⁰

Zambia signed the UNFCCC on the 11th of June 1992 in Rio de Janeiro during the United Nations Convention on Environment and Development, and ratified it in

¹⁰⁷ African Renewal – United Nations Department of Public Information Vol. 21 No. 2 July, 2007.

¹⁰⁸ State of the Environment (2000), A Report by the Environmental Council of Zambia.

¹⁰⁹ Supra. p.10

¹¹⁰ State of the Environment in Zambia (2000), A Report by the Environmental Council of Zambia, Lusaka, Zambia. P.37.

March 1993¹¹¹. The UNFCCC entered into force on 21st March 1994. The convention calls on all parties to among other things, address the issues of greenhouse gas emission inventories and develop appropriate adaptation measure. More specifically Article 4 of the UNFCCC calls upon all parties to prepare national communications that describe inventories of greenhouse gas emissions, mitigation or adaptation to climate change. To date, Zambia has completed the following studies¹¹²:

- (i) Greenhouse Gas Inventories,
- (ii) Vulnerability and Adaptation Studies, and
- (iii) Mitigation Studies.

Climate change is one of the environmental stresses, which generated a lot of debate in the recent years. The adverse impact will compound and enhance poverty. For example, there was 17% fall in maize harvest in 1993/94 compared to the 1992/93 season yield in the southern African region as a whole and Zambia in particular because the region suffered a climatically unfavourable growing season.¹¹³

Having realized that the threat which climate change poses on human on the environment, and also as a way of ensuring compliance to the provisions of the UNFCCC Zambia has adopted various strategies that go in line with the provisions of the UNFCCC.¹¹⁴ These include, carrying out greenhouse Gas Inventories so as to determine the extent to which the various sectors of the country contribute to the

Ibid
Ibid. P.2.
Ibid p. 134
Ibid p. 135

emission of greenhouse gases in the environment, although in this area Zambia has not done enough in that even if research shows that the transport sector produces 1211-553Gg or CO₂ (Carbon Dioxide) representing 53 per cent of total emission, nothing has been done to regulate this.

.1 Zambia's vulnerability to the impact of climate change

There is no policy to check and regulate emission from motorized vehicles and emissions from mining activities and fossil fuel burning.¹¹⁵ And also even if the country has endeavoured to embark on mitigation measures in light of a number of impacts this phenomenon of climate change has had on both natural and human ecosystems. This has only managed to produce minimal positive results. The major cause has been that the root cause is not adequately addressed. These include, bad land husbandly practices, emissions from motorized engines. In the last past five years the population of second hand vehicle has doubled, this has led to the increase in the amount of carbon dioxide being released in the environment.

In light of the current existing situation where the many industries and companies that pollute the environment of carry on activities that lead to environmental degradation there is need to introduce principles such as "The polluter Pays Principle" especially as regards to industries participation in environmental management. However, as the

State of the Environment in Zambia (2000), A Report by the Environmental Council of Zambia, Lusaka, Zambia.

law stands most companies get away without facing the law even where it is clear that such activities have adverse effects on both human and natural ecosystems.¹¹⁶

From the foregoing it is evident that there is need to reform the covering a spectrum of sectors such as the transport sector, forestry sector, and the mining and agricultural sector.

African countries including Zambia are particularly vulnerable to impacts of climate change because of factors such as widespread poverty, re-current drought, and inequitable land distribution and over dependence on rain-fed agriculture.¹¹⁷

4.4 THE KYOTO PROTOCOL (2005)

Zambia also has ratified the Kyoto Protocol in 2005, which was formulated as a global response to global warming and its effects¹¹⁸. Thus Kyoto Protocol binds 35 Industrial nations to cut emissions of greenhouse gases. By 2012 Zambia realizing the major changes that have occurred though attributable to natural causes are rather accelerated by various human activities. These human activities include burning of fossil fuel, such as industrial processes electricity generation, and motor cars.¹¹⁹ Gases created by such activities are building up in the atmosphere, trapping too much of the sun's heat and raising the earth's temperature – a process known as global warming. As the earth heats up, it alters rainfall and other weather and climate patterns, threatening human,

¹¹⁶Environmental Council of Zambia, Supra footnote 98.

¹¹⁷Environmental Council of Zambia, 2000 "Initial National Communication Under United Nations Framework Convention on Climate change" (In Print)

¹¹⁸State of the Environment in Zambia (2000), A Report by the Environmental Council of Zambia, Lusaka,

¹¹⁹ibid

animal and plant life with potentially calamitous climate change.¹²⁰ Aware of the country's vulnerability, the Zambian government has long supported international efforts to combat global warming and climate change. The government has ratified the 1994 UN Convention to combat desertification.¹²¹ Furthermore Zambia was one of one of the first signatories to the 1992 United Nations Framework Convention on climate change and the 1997 Kyoto Protocol, the first and to date the only international treaty setting binding limits on pollution emissions. But because of Zambia's small industrial base and limited transport system and power grids generates comparatively few greenhouse gases, reducing emissions has been the region's top priority.¹²² Instead the government, civil society and their development partners are focused on planning for the coming climate shocks and assisting vulnerable communities to adapt, to climate changes and severe weather events like droughts and floods. Research clearly shows that back home Zambia has not done enough to ensure compliance with the Kyoto Protocol.¹²³ There is no regulation to monitor and control emission of gases from the mining industries and other industries whose production processes involve the burning of fossil fuels and also there is no strict policy to control and monitor the levels of emissions from the vehicles.¹²⁴ Also failure to control indiscriminate cutting of trees has been cited as one of the causes of the current increase of greenhouse gases in the atmosphere. There is need to manage the forest

AFRICAN RENEWAL – United Nations Department of Public Information Vol. 21 No. 2 July, 2007.
State of the Environment in Zambia (2000), A Report by the Environmental Council of Zambia, Lusaka,
Zambia.
ibid. P.138.
AFRICAN RENEWAL – United Nations Department of Public Information Vol. 21 No. 2 July, 2007, P.16.
State of the Environment in Zambia (2000), A Report by the Environmental Council of Zambia, Lusaka,
Zambia.

resources because research has proved that, trees have the capacity to absorb carbon dioxide and other harmful greenhouse gases from the atmosphere.¹²⁵

¹²⁵ Chidumayo, E.N., (1996). "Handbook of Miombo Ecology and Management. Stockholm environmental Institute: Stockholm."

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATION

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 CONCLUSIONS

This chapter will discuss conclusions that have been drawn from the review of the Forest sector. And also it will give recommendations as to the approach to be taken to foster sustainable use and conservation of forest resources. In light of the emerging challenge such as poverty, population increase and desertification, which has been cited to be major problems that have changed consumption patterns of natural resources and led to the unsustainable methods of natural resource use, especially in this day and age where known activities have led to the destruction of both natural and human ecosystems.

This dissertation was aimed at reviewing the Forest Sector. This was done by way of looking at the former and current legislation and policies governing the forest sector and the factors that impact on the sustainable use and conservation of forest resources. Forests form the core of biodiversity.¹²⁶

A review of the forest sector shows that the country's forest resource is being depleted slowly due to many factors. According to Shakachite¹²⁷ forests in Zambia are being cut or destroyed without clear knowledge of all the consequences and without

¹²⁶ MENR: "2006: The National Report on a Case Study on the Implementation of the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilization in Zambia". Lusaka, Zambia, P.1

¹²⁷ Shakachite, O., (2000) "A Country Report for the Twelfth Session of the African Forestry and Wild Life Management Commission", Lusaka – Zambia

commitment to sustained use. Presently, it is a great concern that forests in many parts of the country are disappearing. Deforestation in Zambia is caused by excessive cutting of trees on illegal coupes for charcoal production, as well as forest clearing for agricultural expansion, unsustainable fuel wood collection, illegal settlements and cultivation in protected forest reserves, over exploitation of timber and uncontrolled forest fires. It is also a consequence of population growth.

The pressure on the forest resources has been very heavy and if this is not checked, it will lead to deforestation and associated environmental problems which are a threat to human and animal ecosystem conservation will emerge.¹²⁸

Further a review of the forest sector shows that this problem has been compounded by the presence of outdated forest legislation and unsound policies and also legislation and policies governing other related sectors that promote other sectors at the expense of the destruction and great loss of forest resources. The provisions in the Forest Act of 1973 as regards protecting biological resources is based on western world concepts and excluded local knowledge and value systems and in the process antagonized local communities in the management of biodiversity.¹²⁹

Mayo, E.N., (1996). "Handbook of Miombo Ecology and Management. Stockholm environmental Stockholm."
Zambia (2002) Policy and Legislation Review of the Fisheries, Forestry, Wildlife and Water Sectors vis-à-vis Community Based Natural Resources Management. CONASA: Lusaka.

JUSTIFICATION FOR POLICY AND LEGAL REFORMS

Existing forest policy and legislation are outdated, and by and large fail to reflect either today's concerns or the current situation in the forest sector in Zambia. Both are relics of statements made under colonial rule. In particular the Forest Policy is still based on policy established in 1949 and amended in 1965, and few substantive changes have been made to the Forest Act since the New Act was adopted in 1974 repealing Colonial Statutes. For these reasons, the new Forest Policy and Legislation for Zambia are in the process of being drafted and it is hoped that both will soon be formally adopted by Government. Zambia has also formulated various strategies which are very comprehensive but their full implementation has been met with difficulties in the current legal and current policy framework.

A major problem with the existing forest policy and legislation is that it vests monopoly of control over forests resources in the state (S.22 of The Forest Act of 1973), thereby permitting very few other groups any opportunity to participate in forest management or utilization of forest resources. As a result, people feel that they have little stake in forests and have few incentives to manage or utilize them sustainably. An important aim of the draft policy and legislation is to increase the role of local communities and the private sector in forest related activities as well as operating under a policy goal and legal framework of the participation of all stakeholders in forest management, the draft Forest Act for the first time establishes a category of forests to be managed in collaboration with local communities and private sector. Under the new Law, any national, local or plantation Forest can be declared a

statutory Joint Forest Management Area under the control of a locally elected committee which has the powers to develop and implement management plans negotiate forest revenues. Under arrangements local communities and private sector will share much more in both the responsibilities and the benefits from the sector will be provided. Zambia also having recognized the importance of biodiversity to human existence and also having noticed the impact which the various human activities have on the environment, it has ratified various international environmental instruments. This has been done in the bid to try and combat various activities and control the way the environment is utilized.

2 FINDINGS AND RECOMMENDATIONS

Having reviewed the Forestry Sector, the trends of consumption and, the various factors that have impacted on the natural resources and the legislation both domestic and international legislation, the author will in this chapter offer proposals which in his considered view are a necessary recipe in achieving an effective and efficient policing system and enforcement of the legislation governing the utilization and sustainable use of natural resources.

2.1 Recommendation on the Participatory Management of Natural Resources

The author found that the major factors that have a big impact on natural resources are human activities which are associated with environmental degradation, and with the loss of biodiversity. Rural African people throughout most cultures and societies have traditionally been practitioners of complex environmental processes designed to

conserve, and in some instances nurture their environment. Western conservation efforts were imposed from outside, during the colonial period, when specially selected sites were set aside and most human exploitation within them was prohibited.

Rather than being an integral component of the existing social system, these national parks and reserve forests were imposed from outside. Given the historical antecedents of today's protected area system in Sub-Saharan Africa, it is perhaps not surprising that the attitudes of conservation policies vest control of natural resources in the government. This legacy is one of the reasons that new approaches towards people-oriented conservation have been introduced in recent years. The author recommends that the current policies should recognize the local people as being key in the fostering of conservation strategies. Also the author recommends that since the local people depend on forest resources for their livelihood and subsistence, there are need to intensify the forest extension services to the local people so that they can be educated on the new conservation strategies and technologies and also educate them on the importance of the conservation and sustainable use of biodiversity.

Recommendation on Policy and Legal Reforms

The author found that the current status of the forest in Zambia as shown by the various studies (Chidumayo, 1996), show that as compared to the inventory which was made in 1965 which is always set as a reference point, there has been a serious decline in forest resources. Forests in Zambia are being cut and destroyed without clear knowledge of all the consequence. The author further found that deforestation in

Zambia is caused by excessive cutting of trees on illegal coupes for charcoal production as well as forest clearing for agricultural expansion, unsustainable fuel wood collection, illegal settlements, over exploitation of timber and uncontrolled forest fires. Also the pressure on the forest resource has been very heavy because of the ever increasing population. The author also found out that the Forest Act of 1973 is rigid and gives full control to central government over ownership, planning and management of forests. This piece of legislation has no provision that recognizes the local people as being equal partners in forest management. Therefore from that background the author recommends that there is urgent need to reform the law so that the current sound foreign policies can easily be implemented and enforced. This is because trends in forestry policies, institutional arrangements and legislation are having a direct impact on forest management. Hence there is need to reform the law in line with what is prevailing in the forestry sector and also in light of the major human activities and natural changes that have changed consumption patterns of biodiversity.

5.2.3 Recommendation on the formulation of Cross-Sectoral Policies

The author found that most sectors of the government have policies which govern how they operate. Several sectors that have a direct impact on the economic status of the country are governed by policies that are revised periodically so that they can keep pace with the new changes for example, the mining, tourism, and agricultural sectors. However, certain sectors which don't seem to be important are usually overlooked, for example the Forestry Sector. The author also found that this has to do with a political

regime in government and their commitment to the conservation of natural resources. In most cases emphasis is placed on the developmental projects that will further the political agenda of a particular political regime. For example, in Zambia emphasis has been placed on the development of the mining and agricultural sector at the expense of the conservation of forestry resources. Thus even if forest policies stipulate how it should be governed, lack of political will to foster use of biodiversity has led to the loss of natural resources. Most of the developmental projects have led to the displacement of the local people from their indigenous land. For example, in Mazabuka area, the local people who had formally occupied the area where the Munali Nickel Mine is currently situated have been displaced to another area away from their indigenous land.

From this back ground the author thus recommends that there is need to harmonize the formulation of the policies that govern various sectors so that they don't operate at cross purposes. A balance should be struck between the fostering of development and sustainable use of biodiversity, so that the environment is not harmed. In this regard the current legislation and policies governing the environment should be formulated in light of the current appreciation of the strong link between environmental sustainability and economic development.

Recommendation on institutional capacity

The author found out that as outlined in the research of the key institution's capacity (Forest Department) to administer and implement the Forestry Policy, the findings

ught out a number of weaknesses ranging from inadequate involvement of stakeholders in decision making, weak institutional arrangements in terms of financial systems, human capacity, records and accountability, legal and policy constraints, lack of funds, limited technologies and inadequate information system. The forest department has the legal mandate through the Forestry Act 1973 to manage the forest resources in Zambia. Its duties include forest policy implementation and general supervision. The above shortcomings are the obstacles to the full implementation of most of the objectives of the Forestry Department which it has tried to implement through its many initiatives and strategies. Therefore the author recommends that there is need to expedite measures to bring the new forest Act of 1999 into force so that it can foster institutional reforms. The 1990 Forestry Act and the Forestry Policy of 1998 have been a direct expedient response to the need to bring about institutional reforms and also to involve local people in the management of forest resources as advocated in the Forest Policy of 1998 and the Forest Act of 1999, which is still not yet in force. The 1999 Forest Act will provide for the creation of the Zambia Forestry Commission (ZAFCOM) which will institute many institutional reforms and hence address issues such as, participatory management approach, funding of various initiatives and strategies aimed at forestry management, forest mapping for better planning, staff problems (human capacity) and involvement of stakeholders. This is because currently the Forestry Department has failed to manage the forests properly due to increase in population, change in consumption trends. All this has largely been attributed to the existence of archaic policies and legal bottlenecks.

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The author also recommends that since most of the forests are located on traditional land and administered by the chiefs and their headmen and women, the traditional management of forests is based on customary laws where rights and decisions about utilization of forest products originate from the chiefs and are granted to the people and also commercial operators have to seek permission to operate from the chief. However, all revenue goes straight to the central treasury without benefiting the local people. The author also found that the district councils are supposed to participate in the management of forest resources outside reserves, especially on resource utilization and gazetting of forests. They are also supposed to be consulted by the Forestry Department before granting licenses in areas outside the forest reserve with an entitlement to receive 20 percent of license revenues. The councils rarely receive these funds though due to lack of capacity to engage accordingly.

Following these findings the author recommends that: In this setup it has been difficult to enforce most of the laws and implement policies that are key in the conservation and sustainable use of biodiversity. Following these findings the author recommends the recognition of the local institutions (traditional institutions) and the district councils and put them to be the “implementers” of the policies. This is because most of the forest resources are located on traditional land and with the jurisdictions of district councils. Thus there is need to empower, recognize and integrate the local institutions and authorities in the institutional framework of the forestry sector.

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Following these findings the author recommends that: In this setup it has been difficult to enforce most of the laws and implement policies that are key in the conservation and sustainable use of biodiversity. Following these findings the author recommends the recognition of the local institutions (traditional institutions) and the district councils and put them to be the "implementers" of the policies. This is because most of the forest resources are located on traditional land and with the jurisdictions of district councils. Thus there is need to empower, recognize and integrate the local institutions and authorities in the institutional framework of the forestry sector.

5.2.5 Recommendation Access Benefit Sharing (ABS)

The author found that the people depend on natural resources for their livelihood and subsistence. Hence they should have access to the natural resources and also benefit from the exploitation of the natural resources in their localities. These benefits pertain to intellectual property rights and matters of traditional knowledge and research and development. Under the current Forest Act of 1973, only the Forest Department can receive forest resource use funds. However, under the Forest Act of 1999 the conditions, obligations of various stake holders, procedures and mechanisms of benefit sharing in terms of percentage of revenues payable in respect of different licenses for Joint Management Areas are well articulated.

The author recommends that the policies and conservation strategies should fully address the aspect of Access Benefit Sharing (ABS) which will act as an incentive package for local communities to support sustainable forest management particularly in Joint Forest Management areas (JFM's) in local forests, open areas or plantation forest areas.

5.3 DOMESTICATION OF RELEVANT INTERNATIONAL TREATIES

As explained in chapter four (4) of the dissertation, the author recommends that Zambia should domesticate various conventions dealing with environmental protection. Also the local policies and legislation should be formulated in line with the salient provisions in the International conventions whose aim is to promote sustainable use and conservation of biodiversity and also to address the issue of the

current emerging trends of climate change. The local efforts will reflect Zambia's global commitment to combat and foster strategies aimed at conserving biodiversity.

Lastly the author recommends that Zambia should adopt adaptation strategies against climate change so as to address the vulnerability in key sectors such as water resources, biodiversity, agriculture, fisheries, forestry, tourism and settlements. This is because climate change has been considered to be a serious threat to sustainable development and also natural and human ecosystems. Hence the domestication of the United Nations Convention on Biodiversity has been hailed as a positive step towards biodiversity conservation.

The above considered recommendations mark, the end of this Directed Research.

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6. Zambia Wildlife Act No. 12 of 1998
7. Lands Act; No.29 of 1995 Cap 287
8. The Biodiversity Act of 2006
9. The Constitution Cap 1

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1. The United Nations Framework
2. Convention on Climate Change (UNFCCC)
3. The Kyoto Protocol
4. The United Nations Convention to Combat Desertification
5. The United Nations Convention on Biodiversity 1992

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