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**FIFTH SESSION – EIGHTH PARLIAMENT**  
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**SECOND REPORT**

**OF THE PORTFOLIO COMMITTEE ON ENVIRONMENT, WATER,  
CLIMATE AND HOSPITALITY INDUSTRY**

**ON**

**PRESERVATION AND PROTECTION OF WETLANDS PETITIONS**

**PRESENTED TO PARLIAMENT JUNE 2018**

**S.C. 6, 2018**

## **1.0 Introduction**

The Portfolio Committee on Environment, Water, Water and Hospitality Industry received a petition from the Blue Agenda on behalf of the residents of Kambuzuma Section 3. The Petition called on Parliament to compel the Minister of Environment or the Environmental Management Agency to revoke the Environmental Impact Assessment Certificate for the filling station (on a wetland in Kambuzuma Section 3) on the basis that the project would harm the environment and the affected residents who live near, amongst other reforms.

While the Committee was still conducting the said petition inquiry, two more petitions were submitted in February from Dzivarasekwa Residents Trust, on behalf of Dzivarasekwa residents, and Budiro Water Foundation, on behalf of Budiro residents respectively. The two petitions called on Parliament to compel the Environmental Management Agency to protect wetlands in Dzivarasekwa and Budiro amidst other requests.

The Committee deliberated on the two petitions received and resolved that a single wetlands protection and preservation report shall be produced since the issues raised were similar in terms of scope and content of the Committee's inquiry.

## **2.0 Objectives of the Enquiry**

The broad objective of the enquiry was to enable Committee Members to understand the governance and structural problems as well as the gaps in the relevant legislation designed to protect wetlands as a water resource and site of biodiversity. In more specific terms, the Committee sought to;-

- i. Understand the difficulties that occur in institutions that have the primary responsibility for the protection of wetlands;
- ii. Appreciate the complications arising from the non-implementation of legislation and misinterpretation of its provisions; and
- iii. To engage the representatives of the various residents and relevant stakeholders pursuant to the need to understand their concerns with regard to the wetlands issues raised in the petitions.

The last objective is consistent with section 141 of the Constitution of Zimbabwe, as read together with Standing Rules and Orders No. 182 (1), which compels Parliament to facilitate public involvement in its legislative and other processes and in the processes of its Committees and gives select committees the power to receive representations from interested parties.

### **3.0 Methodology**

To get an in-depth understanding of the scope and content of the petition, oral evidence was received by the Committee from the Blue Agenda. On 19 March 2018, the Committee visited Kambuzuma section 3 Filling Station to ascertain the facts that were raised during the oral evidence session by the petitioners.

A breakfast meeting for Members of the Committee on Environment, Water, Climate and Hospitality Industry and selected Members of the Portfolio Committees on Justice legal and Parliamentary Affairs and Local Government, Public Works and National Housing was organized by Zimbabwe Lawyers for Human Rights in conjunction with Harare Wetlands Trust to provide ecological and legal perspectives on wetland protection. Councilor Gomba from Harare City Municipality made a presentation highlighting the challenges facing the City Council regarding the protection of wetlands.

The Committee was apprised of the implications of extensive and endemic developments that were taking place on Harare's wetlands. These developments included, *inter alia*, building, construction and water extraction.

### **4.0 Committee's Findings**

#### **4.1 Gazetting of Harare Wetlands Map**

The petitioners sought for the urgent finalization of the re-gazetting of Harare Wetlands Map. It was submitted that several versions of the map exist. These maps are incomplete as many wetland areas are missing, including the corridors linking main wetland ecosystems along rivers and streams. The obtaining situation is that planning authorities have the power to

determine whether or not an area is a wetland. Therefore, petitioners argued that such circumstances allow circumvention of protective laws through claims that an area targeted for development is not a wetland.

#### **4.2 Environmental Impact Assessment certificates issuance procedure**

The petitioners called for a review of procedures in the issuance of the Environmental Impact Assessment (EIA) certificates. The Petitioners explained that EIA certificates are issued by the Director-General of Environmental Management Agency following his or her consideration of EIA Reports. The EIA Reports are prepared by consultants who are licensed by EMA. However, the fee for the consultants is paid by the project developer, leading to a conflict of interest for the consultants. Consultants who gain a reputation for issuing negative reports are unlikely to receive further engagements by developers. Accordingly, consultants lean towards producing reports which allow development on wetlands and often fail to consult adequately with stakeholders, even though the Act requires the Director-General to ensure that the consultations have taken place.

#### **4.3 Consultations with Stakeholders**

The petitioners submitted to the Committee that the Minister of Environment, Water and Climate should cancel the EIA Certificate the filling station at Kambuzuma section 3. They also informed the Committee that its construction was done without consulting residents. Residents in the ward and stakeholders only become aware of the project when development of the filling station had commenced. The law provides that the City of Harare requires that notice of the application of the development permit must be served on the owners of all properties adjacent to land on which the development is proposed. The owners are afforded an opportunity to lodge objections to the application. Petitioners also informed the Committee that the EIA certificate that was issued by EMA did not have the names of purportedly consulted residents.

#### **4.4 Inspection of EIA Reports**

The petitioners objected to the payment of a fee for public inspection of EIA reports at EMA premises. They explained that the right of inspection is crucial for those wishing to challenge

improperly granted certificates. The right is subject to the payment of a prescribed fee. EMA currently charges a total of \$300 for anyone wishing to view an EIA report and does not allow any photographs or copies to be made of the document. The petitioners were of the opinion that such provisions are a direct violation of their Environmental rights and access to information as guaranteed in the Constitution of Zimbabwe. EMA is in a conflicted position between approving developments and earning revenues from doing so. Furthermore, the Agency appears to treat the inspection of EIA Reports as revenue generating exercise, rather than a means by which concerned persons may exercise their rights to protect the environment as required by the Constitution. The levy or a fee of any amount, let alone a prohibitive \$300 is in all probability unconstitutional.

#### **4.5 Challenging the development**

The petitioners pointed out that, according to the law, only residents adjacent to the proposed development have specifically been given the right to appeal the issuance of the development permit in terms of the Urban Councils Act, and have no more than 30 days to do so. The petitioners submitted that legal proceedings are obviously expensive. Even if Kambuzuma residents were consulted, they would need to contact an interested stakeholder (usually an NGO) to engage lawyers for a legal challenge. Even with the involvement of an NGO, the property developers would have far greater financial resources to pursue what would likely to be a protracted litigation. Therefore, the financial resources would not have been available for the legal challenge and the development of the filling station at Kambuzuma section 3 would still proceed unchallenged.

#### **4.6 National Environmental Council**

The petitioners made submissions that decisions of the Minister and the Environmental Management Board should be informed by the advice from the National Environmental Council. Yet the National Environmental Council has not been constituted as required. Accordingly, policy directives made by the Minister without such advice are *ultra vires* the Act.

#### **4.7 Reports to be laid before Parliament**

The petitioners presented that Ministerial directions should form part of annual reports which the Board is required to submit to the Minister and which the Minister is obliged to lay before Parliament. The Minister is also obliged to submit a report to Parliament on the state of the environment at the end of every five year period. Consequently, there has been no compliance with any aspect of this process before.

#### **4.8 National Environmental Plan**

Petitioners pointed out that all ministerial policy directives should be in accord with the National Environmental Plan, guidelines for environmental management plans and environmental action plans. The Environmental Management Act specifically stipulates that the preparation and implementation of Regional and Master Plans, in terms of the Regional, Town and Country Planning Act, must pay regard to the National Environmental Plan. It further espouses that no project shall be implemented otherwise than in compliance with a National Environmental Plan. Petitioners submitted that the National Environmental Plans have not yet been reviewed or developed as required by the Act. The law requires that National Environmental Plans be reviewed at least once every ten years from the date fixed by the Minister bringing the plan into effect. If such plans were properly in place and provided strong protections for wetlands, they could not be easily overridden by Ministerial discretion. Thus, the absence of such frameworks leaves the Minister with unlimited discretionary power.

#### **4.9 Synchronisation of wetlands Laws**

It was submitted that the Environmental Management Act and the Water Act both require different permits and permission for essentially the same activity and, together with the Zimbabwe National Water Authority Act, duplicate the provisions of each other. While the Environmental Management Act prevails over other legislation which conflicts with its provisions, it is unreasonable to require a developer or other party to seek multiple permits for the same activity. It is worth noting that the Zimbabwe National Water Authority, in a rather unsatisfactory manner duplicates the functions of the National Environmental Council in that one of the functions of the authority is also to advise the Minister on the formulation of

national policies and standards on ... water resources planning, management and development and...environmental protection.

## **5.0 Analysis of the Key Issues**

Two issues emerged pivotal and critical. These can be summarised as follows; there is need to;

- a) Close the gaps and resolve governance and structural problems existing in the relevant legislation designed to protect wetlands for the full and proper implementation of the law; and
- b) Address the complications arising from the non-implementation of legislation and the misinterpretation of its provisions.

The Committee observed that the primary reason why development continues to take place on wetlands is due to the fact that state bodies that ought to be protecting wetlands prioritize development and developers ahead of their constitutional obligation with regard to the environment and stakeholders' constitutional rights. These bodies are often conflicted. Thus, in the case of the City of Harare, for example, the Council's desire for the short term advantage of increased revenue from rates levied on the property developed undermines the long term necessity of preserving the City's water supply. The downturn of these priorities is facilitated by the fact that the wetland areas have not been identified and listed as such.

### **5.1 Governance and structural problems – The Environmental Management Act**

#### **a) Power and Discretion of the Minister**

It was submitted that at the heart of the problem is the amount of power and discretion vested in the Minister of Environment, Water and Climate and the insufficient constraints on possible improper executive action. While the power vested in the Minister could be deployed in a beneficial manner, in practice the Minister's power is usually exercised in a way which has an adverse impact on wetlands. For example, a Minister concerned with environmental conservation has ample power to issue a directive prohibiting any erection of any building at a wetland. However, a Minister more concerned with allowing developments, may utilize his or

her discretion to the detriment of the environment. Thus, the extent of the power vested in the Minister is a double edged sword.

The Environmental Management Board is tasked with the running of the Agency. The Board members are appointed by the Minister after consultation with the President. Although the Board members have some security of tenure, they are likely to be reluctant to oppose the wishes of the Minister.

The Director-General is appointed by the Board, with the approval of the Minister, for a period and on such terms as the Board may fix. This structure and system of appointments renders EMA susceptible to political influence and to making determinations which are based on considerations outside environmental protection.

#### **b) The National Environmental Council**

The failure to constitute the National Environmental Council has a severe and adverse effect on the governance of EMA and the protection of wetlands. All Ministerial decision-making ought to be informed by expert advice from the Council. Part of the general duties of the Minister is to formulate policies for environment management and to recommend to Government the international and regional conventions on the environment to which Zimbabwe should become a party and to secure the incorporation of such conventions into domestic law. The Act specifically requires that this policy formulation is made with the advice of the National Environmental Council. The Council also advises on national goals and objectives and the determination of policies and priorities for the protection of the environment. Accordingly, had the Council been constituted it could have advised the Minister that there should be no development on wetlands other than in cases of an exceptional and pressing public interest which overrides the value of the wetland as a source of water.

Similarly, the Council ought to review and make recommendation to the Minister pertaining to the National Environmental Plan, guidelines for environmental management plans and environmental action plans. All these plans could provide strong protections for wetlands.

These plans have not been developed or updated, and there is no Council to advise on these processes if they had been undertaken. Indeed the absence of the Council may well be a reason that these plans have not been developed.

The Council is also required to promote co-operation among public departments, local authorities, private sector, non-governmental organisations and such other organisations engaged in environmental protection programmes. The absence of such co-ordination is a major impediment to environmental protection.

**c) Appeals of EIA Certificate**

Where the grant of an EIA Certificate has been allowed or refused, the appeal lies to the Minister who alone determines the issue. It is poor governance policy to place such determining power in the hands of a single individual given that the developments in question are often multimillion dollar projects, it creates opportunities and the temptation for corrupt activity. Although the Minister's decision may itself be appealed this presents practical difficulties for those seeking to protect wetlands from developers.

**d) Hearings by and Jurisdiction of the Board**

While the Board may conduct hearings into any matter relating to environmental management as provided for by the Act, at the hearing anyone who has an interest in the subject-matter of the hearing must as far as reasonably practicable, be notified of the questions at issue and given facilities for making such representations on those questions as he may wish. In practice, the Board only allows persons, whose actions are being investigated to make submissions, losing the benefit of submissions from often well informed stakeholders on the issue in question.

The Environmental Management Act is also vague on the outcome of these hearings. It seems that the Board may only make "recommendations" and even this is only implicit. Furthermore, the Board has no punitive jurisdiction and thus appears to only have the power to recommend prosecutions of violators of environmental protections. In practice, the Board occasionally "recommends" that an offending party pay a fine, but there is no process

established for this and it is unlikely that such recommendations have been followed by offending parties.

No punitive powers are provided for EMA generally. The Act makes no provision for the imposition of penalties by the Board or any officer of the Agency. The Regulations provide that the Agency, through its authorised officers, may issue a “spot fine” (ticket) to any offender who contravenes the Regulations. There is no such thing as a spot fine under Zimbabwean law, and the Agency could not in any event determine the guilt of an offender and impose a penalty. This is a purely judicial function under the Constitution. The Regulations are badly drawn in this regard and almost certainly both unconstitutional and *ultra vires* the Act. EMA inspectors frequently complain of inadequate powers in the face of offenders.

## **5.2 Governance and structural problems – Harare City Council**

At the root of the governance problem at the Harare City Council is the failure to implement constitutional provisions which provide for the devolution of power from central government to a municipal level. Section 264(1) of the Constitution of Zimbabwe provides:

*Whenever appropriate, governmental powers and responsibilities must be devolved to provincial and metropolitan councils and local authorities which are competent to carry out those responsibilities efficiently and effectively.*

One of the purposes of such devolution is “to recognise the right of communities to manage their own affairs and to further their development.” In violation of these principles, the executive of the Harare City Council, comprising the seven Directors of Departments, Chamber Secretary and Town Clerk is appointed and dismissed by central government and not the elected councillors.

Consequently, council is in fact controlled by these unelected officials appointed by central government. These individuals have considerable executive authority which is exercised with insufficient checks and balances, again opening the door to rent seeking and corruption as has been exposed by the recent report of the *Smith Commission of Enquiry* into corruption at the Council. These officials have the power to dispense or withhold favours from councillors.

Such favours include nominating councillors for attendance at workshops and conferences which involve *per diems*, sitting and fuel allowances, the allocation of stands and employment for councillors' friends and relatives. Few councillors do not eventually find or feel themselves beholden to the unelected executives.

In addition, although development permits ought to be issued by the City of Harare as a body, in practice, this function is delegated to the Council's twelve member Environmental Management Committee. Applications for development permits are made to the Department of Works. A single individual in the Department of Works may process the application, with responsibility to ensure procedural requirements are met, and to consider any objections which may be raised to the proposed development. The individual assesses these objections, and makes his or her own summary of them. None within the Department of Works have any expertise or training in environmental issues. The Director of Works then makes a recommendation to the Environmental Management Committee. The recommendation is usually accepted by possibly compromised councillors in the Committee. As in the case with the granting of EIA Certificates, a single individual ends up having inordinate power to determine an application in favour of a developer.

Where Directors have been responsible for decisions against the interests of residents and the environment, as unelected officials answerable ultimately to central government, they cannot be removed from office by the electorate on this account or by the electorates' representatives in the Council.

### **5.3 Problems with the Law**

#### **a) Ecologically Sustainable Development**

The manner in which section 73(1) of the Constitution of Zimbabwe has been phrased is problematic. The section provides the right-

- (b) *To have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that-*
  - ii) *promote conservation; and*

*iii) secure ecologically sustainable development and use of natural resources while promoting economic and social development.*

No provision was made for the fact that some areas may not be amenable to sustainable development and that in these areas, economic development ought never to take place.

#### **b) Alignment with the Constitution**

Since there can be no sustainable development on wetlands, the Environmental Management Act should be aligned with the Constitution. This would provide for an absolute prohibition on construction on wetlands, other than in the case of overriding public necessity when another constitutional right would be infringed if the development did not proceed. This would also advance the constitutional right to clean water and obligations to protect biodiversity.

#### **c) Wetlands Identification: Definition versus Mapped Geographical Areas**

A central problem with the Environmental Management Act lies in the means by which wetlands are identified. Following the Ramsar Convention, the Act attempts to identify wetlands through the following definition:

*Wetland means any area of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, and includes riparian land adjacent to the wetland.*

The definition would be workable if it were accompanied by provisions setting out how and who determines whether a particular area falls within the definition, and thus constitutes a wetland. This omission constitutes a loophole which has been repeatedly exploited by those who wish to see development taking place on wetlands. Laws protecting wetlands are easily evaded through officials involved in the processes leading to the authorisation of development, making a determination that the land in question is not a wetland. These determinations are made notwithstanding the fact that the officials may lack any of the necessary expertise or scientific knowledge to make the determination. Consultants producing EIA Reports may also make similar unjustified findings. Although an incorrect

characterisation of land can be challenged, it then falls to the Minister or the Courts to decide the issue and both may also not have the necessary skills to make the decision, especially in a case where there are competing scientific assessments. Hence, to avoid this problem, it is imperative that mapped geographical areas are held to be wetlands as a matter of law rather than fact or science. It will then be clear that the law pertaining to wetlands applies to these areas, regardless of any contrary opinion as to the topography of the area in question.

#### **d) EIA Certificate before Development Permit**

One means by which the legislation probably intended to partially address the problem is through section 97(5) of the Environmental Management Act. The section requires that;

*A licensing authority shall not issue a licence under any enactment with respect to a [development] project...unless the Director-General has issued a [EIA] certificate...”*

In terms of this section, a developer is required to obtain an EIA Certificate through EMA before approaching the licencing authority (the City of Harare) for a development permit. EMA can then use the expertise of the Agency to determine whether or not the area is a wetland or not, before the developer proceeds further.

The City of Harare has been hesitant to comply with this provision, presumably reluctant to relinquish its power of authorising development projects at the first instance. The Department of Works and City of Harare have taken the position that it is sufficient to grant permits subject to the condition that an EIA Certificate is later obtained. The Department of Works itself determines whether the area in question is a wetland or not before issuing the permit. Although a court ruling has determined that this procedure violates the Environmental Management Act, officials within the Department have stated that “they would like to believe the judgement is wrong” and that the provision does not apply as “a development permit is not a licence”.

#### **e) EIA Certificates by Default**

The Act provides that the Director-General must issue or refuse an EIA Certificate within 60 days of receiving an EIA Report, failing which the project is to be deemed approved.

Approval by default does nothing to protect the environment as required by section 73 of the Constitution. The converse should apply, that the project is deemed refused.

**f) Appeals to the Minister**

As alluded to already, it is against the precepts of good governance to allow a single individual the power to approve or deny the implementation of what may be a multimillion dollar development project. The Act requires the Minister to make his or her determination with due expedition but no specific timeframe is set. Furthermore, in order to appeal the Minister's decision to the Administrative Court a record of the proceedings by which the determination was reached, or the reason for the decision, must be submitted to the Court. Yet the Act places no obligation upon the Minister to produce the record as a matter of course, presenting would be appellants with considerable difficulty.

**g) Private Ownership of Wetlands**

In some jurisdictions, where land use has been subjected to so many restrictive regulations as to make the land owner's use of the property impossible, the courts have treated this as tantamount to unlawful expropriation and have set aside regulations on this basis.

This argument has been raised on behalf of developers, who have claimed that a prohibition of building on wetlands prevents them from using the land for the purpose for which it was purchased. Department of Works officials have raised similar arguments holding that the City would be subjected to punitive legal action if they denied a building permit to a developer who had bought land at the time the land was designated residential by the Municipality. The officials state that once the land has been designated as residential, they are legally obliged to grant a development permit. The officials further hold that it is unjust that a person who has bought land for investment purposes intending to develop the land or sell it to a developer, is then unable to do so by virtue of the land being considered a wetland. These arguments fail to recognise wetlands as an essential water source.

The Water Act vests all water in the President and prohibit the private ownership of water. Recognition that wetlands fall under the Water Act would render private ownership of

wetlands unlawful. The regulatory taking problem then would not arise if the ownership of the land is void.

In this context it should be noted that the Environmental Management Act permits the President to compulsorily acquire land for the improvement or proper management of the environment, subject to the payment of compensation as provided for in terms of section 71 of the Constitution. Private ownership of wetlands could be resolved in this manner.

However, it would be preferable for specific legislation governing wetlands to cover the problem where private individuals appear to hold title over wetlands.

### **5.3 Domestication of Multilateral Environmental Agreements Affecting Wetland Protection**

Zimbabwe is a party to several international treaties and conventions which have a bearing on the protection of wetlands. Of prime importance is the Ramsar Convention on Wetlands. The preservation of wetlands is necessary to ensure the fulfilment of all these rights. As havens for biodiversity, Zimbabwe's obligations as a signatory to the Convention on Biodiversity require the conservation of wetlands. Section 34 of the Constitution of Zimbabwe requires that:

*The State must ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law.*

Article 2.1 of the Ramsar Convention provides that each Contracting Party must designate suitable wetlands within its territory for inclusion in a "List of Wetlands of International Importance." The Monavale Vlei has been designated in this manner. Similarly, the 1992 Convention on Biological Diversity requires contracting parties to establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity. However, international treaties such as the Ramsar Convention, though binding on the State, do not form part of the law of Zimbabwe, unless they have been incorporated into the law through an Act of Parliament.

Had the National Environmental Council been constituted as required and the bodies advised the Minister appropriately, the Minister ought then to have advised government that the

Ramsar Convention and Convention on Biodiversity are two conventions which ought to be incorporated into domestic law. The Minister then would be constitutionally obliged to bring legislation to Parliament to accomplish this in terms of section 34 of the Constitution. The Minister would also be duty bound to designate various areas as wetlands. So designated, the provisions of section 113(2) of the Environmental Management Act would apply. There would be no possibility of claimed ambiguity of what is and is not a wetland. There would be no disturbance of the wetland that could take place without written authority of the Board and the Minister as well.

Likewise, once these wetlands are so designated the National Environmental Plan should provide that no development should take place on the wetlands other than in the most exceptional circumstances and under most strict conditions. The Minister of Local Government, Public Works and National Housing could direct that the City of Harare develops Local Authority Environmental Action Plans which accord with the National Environmental Plan. The City's Master Plan and Local Area Plans would be obliged to recognise areas statutorily designated as wetlands. In this way, it would be unlawful for development permits and EIA Certificates to be issued as has been done previously.

Even where these conventions do not form a binding component of the Zimbabwe's municipal law, the constitutional rights given above must be interpreted and applied in conformity with these conventions and treaties.

## **6.0 Recommendations**

Informed by this pertinent observation, the Committee recommends the Executive to urgently consider the following pursuant to the need to preserve and protect our wetlands.

**6.1** The Executive should consider establishing an Environmental Commission in the manner of the Independent Commissions by January 2019. The Environmental Commission should be responsible for the appointment of the Environmental Management Board, in order to secure the Board's independence from executive interference. Among further functions, the Commission would also perform the functions currently provided for by the un-constituted

National Environmental Council. While the establishment of the Commission is being considered, the National Environmental Council should be constituted as required by law by end of July 2018.

**6.2** The Minister of Environment, Water and Climate should review and update the National Environmental Plan as required by the Environmental Management Act by end of January 2019. The Plan should proscribe any development on wetlands other than in exceptional cases of a public interest, which overrides the need for the wetlands, and under strict conditions.

**6.3** The Minister of Environment, Water and Climate in liaison with the Minister of Local Government, Public Works and National Housing should direct the development and production of Local Authority Environmental Action Plans which follow the National Environmental Plan as provided by the Environmental Management Act by end of May 2019.

**6.4** The Executive should establish an Environmental Tribunal to investigate violations of environmental laws by end of July 2018. The Tribunal should be composed of legally qualified commissioners with expertise in environmental issues and have punitive jurisdiction. It should take over the functions of the EMA Board in this regard and be the body to which appeals from the decisions of the Director-General of EMA lie.

**6.5** The Minister of Environment, Water and Climate should bring a new bill to Parliament governing wetlands and covering the problem of private individuals holding title deeds over wetlands by May 2019. The bill should provide that the consultant should not be paid by the developer to avoid compromises on the preparation of the Environmental Impact Assessment reports. The bill should also incorporate and consolidate all relevant existing legislation in order to remove the duplications relating to wetlands.

**6.6** The Minister of Environment, Water and Climate should ensure that legislation on wetlands provide for a default position that development must be stopped once legal proceedings challenging construction on a *prima facie* wetland have been initiated. Legislation must also provide that all development on wetland is prohibited other than in the most exceptional of circumstances. The onus should lie on the developer to approach the courts proving why development on wetlands is in the public interest and should proceed.

Wetlands should be treated solely as a water resource and legislative provisions protecting water resources and banning the private ownership of water should specifically be stated as applying to wetlands.

**6.7** The Minister of Environment, Water and Climate should carry out an audit to ascertain the current private ownership of wetlands by end of July 2018. Legislation should also be crafted to specifically govern the process of the expropriation of wetlands in the public interest.

**6.8** The Minister of Environment, Water and Climate should map all wetlands with expert input and their territorial footprint legislated by end of July 2018.

**6.9** The Minister of Environment, Water and Climate should domesticate the provisions of the Ramsar Convention and Convention on Biodiversity and liaise with the Minister of Local Government, Public Works and National Housing to incorporate them into Zimbabwe's municipal law.

**6.10** The Minister of Environment, Water and Climate should scrap off the EIA Certificate inspection fees by end of July 2018.

**6.11** The Minister of Environment, Water and Climate should strictly comply with the requirement to submit statutory reports on the activities of EMA and the state of the environment as provided for in the Environmental Management Act.

## **7.0 Conclusion**

With the above submissions, Mr. Speaker Sir, I now commend this report for consideration by this August House.

I thank you!

**ANNEX A.**

**PARLIAMENT OF ZIMBABWE**

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**FORM OF PETITION**

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**TO THE HONOURABLE SPEAKER AND MEMBERS OF PARLIAMENT, IN  
PARLIAMENT ASSEMBLED**

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**4<sup>TH</sup> SESSION – EIGHTH PARLIAMENT**

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**PRESENTED TO PARLIAMENT ON 31 OCTOBER 2017**

## **Petition to the Undersigned**

Kambuzuma Local Environmental Action Plan (herein referred to as The Blue Agenda) composed in terms of Section 95 of the Environmental Management Act (chapter 20:27)

**Chairperson – Miriam Chidonza**

**Secretary – David Sibanda**

Representing the Blue Agenda, No 987 Sec 3 Kambuzuma

Whose members are residents and ratepayers of Harare staying in Kambuzuma. Respectfully shows;

That your Petitioners

1. Being citizens of Zimbabwe ;
2. And whose Funding Methods are :member subscriptions ;

**COGNISANT** that the Parliament of Zimbabwe is mandated by the Constitution of Zimbabwe under Sections 119(1) and (3) to protect the Constitution and democratic governance in Zimbabwe; to ensure that provisions of the Constitution are upheld and that all institutions and agencies of government at every level act Constitutionally; and to ensure accountability of all institutions and agencies of the state and government at every level to Parliament

**AWARE** that

Section 73(a) and (b) provides that *every person has the right to an environment that is not harmful to their health and to have the environment protected for the benefit of present and future generations through inter alia prevention of ecological degradation, promotion of conservation and security ecologically sustainable development and use of natural resources while promoting economic and social development*

Section 77(a) of the Constitution provides that *“every person has the right to safe, clean, and potable water “and that “the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realization of this right”*

Section 149(1) provides for *“every citizen and permanent resident of Zimbabwe to .....Petition Parliament to consider any matter within its authority including the enactment, amendment or repeal of legislation”*

Section 194(e), (f) and (h) provide for *‘peoples ‘needs to be responded within a reasonable time and the public be encouraged to participate in policy making;’ public administration that is accountable to Parliament and the people “and “transparency ....by providing the public with timely , accessible and accurate information”*

Section 97(5), 99,108 and Part XI of the Environmental Management Act (chapter 20:27) set procedures relating to Environmental Impact Assessments (EIAs ) ;public consultants on EIAs and availing of the Environmental Impact Assessment report for public inspection.

The Environmental Management Act sets out principles relating to environmental management which include :inter relatedness and linkage of elements of environmental ;placing people and their needs at the forefront; participation of all interested and affected parties ;socially ,environmentally and economically sustainable development ;prevention of negative impact on environment and peoples` environmental rights as well as specific attention in management and planning procedures of sensitive ,vulnerable and stressed ecosystems;

**MINDFUL** that the Declaration of Rights in the Constitution of Zimbabwe in

- I. Section 44 provides for the duty to respect, protect promote and fulfill fundamental human rights and freedoms;
- II. Section 56 guarantees equality and non-discrimination including “*the right not to be treated in an unfairly discriminatory manner on such grounds as inter alia ,gender and economic status*”
- III. Section 59 guarantees freedom to, *inter alia*, petition;
- IV. Section 62(1)provides for the” *rights of access to any information held by the State or by any institution or agency of government at every level in so far as the information is required in the interests of public accountability*”
- V. Section 68(1) and (2) provide for the right to administrative justice stating that “*Every person has the right to administrative conduct that is lawful ,prompt ,efficient ,reasonable ,proportionate ,impartial ,and both substantively and procedurally fair*”; and “*Any person whose right ,freedom ,interested or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct*” respectively;

**REMEMBERING** that Zimbabwe has ratified the Ramsar Convention which provides for preservation and protection of wetlands ,the International Covenant on Economic ,Social and Cultural Rights (ICESRC) ,General Comment 15 which provides “*the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses* “;the Convention on the Elimination of All Forms of Discrimination Against Women (Article 14 ,paragraph 2) which stipulates that “*States parties shall ensure to women the right to enjoy adequate living conditions particularly in relation to [...]water supply* “the Convention on the Rights of the Child (Article 24,paragraph 2) which requires States parties to combat disease and malnutrition “*through the provisions of adequate nutrition`s foods and clean drinking water*”

**DISTURBED** by the construction of a filling station on a wetland in Kambuzuma Section 3 without consultations of affected residents who reside near the area as required under Section 99(h) of the Environmental Management Act;

**CONCERNED** that the City of Harare in its 2018 budget statement proposed to increase water tariffs by close to 150% that is from 0,25c per cubic meter to 0,70cper cubic metre.The high purification costs are emanating from bad raw water quality and ultimately the push for tariff increase;

**ACKNOWLEDGING** the role of wetlands in water provisioning, purification of raw water free of charge, flood attenuation services and carbon sinks function;

**WORRIED** that the marginalized and already vulnerable members of Kambuzuma will carry burden of high cost purification ,changing climatic patterns and heat waves and that availability of potable water will be further compromised in a city that is constructed at its watershed;

**GRAVELY CONCERNED** about 17 meters siltation of Lake Chivero and continuous depletion of water sources.

### **PETITIONERS PLEA AND PRAYER**

The petitioners beseech the Parliament of Zimbabwe to

- I. Compel the responsible Minister or the Environmental Management Agency to cancel the Environmental Impact Assessment Certificate for the filling station because the project will harm the environment and the affected residents who live near were not consulted.
- II. Review procedures in the issuing of Environmental Impact Assessment reports. The current framework where the fee charged by the consultant is paid by the developer creates conflict of interests for the consultant who have to weigh the costs of gaining a reputation for issuing negative reports and unlikely to receive further engagement in the future ;
- III. Request an Annual Report from the responsible Minister as provided for in Section 24 of the Environmental Management Act and also request for submission of policies and priorities for the protection of the environment from the National Environmental Council;
- IV. Push for the re-gazetting of Harare Wetland map(as a Statutory Instrument)so that development in the capital city is socially ,environmentally and economically sustainable;

**WHEREFORE** your petitioners pray that your Honorable House will be pleased to take our case into favorable consideration, and grant such relief as it may deem fit,  
**AND** your petitioners, as in duty bound will ever pray.

Dated at Harare, this 31 day of October, 2017

**ANNEX B.**

**PARLIAMENT OF ZIMBABWE**

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**FORM OF PETITION**

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**TO THE HONOURABLE SPEAKER AND MEMBERS OF PARLIAMENT, IN  
PARLIAMENT ASSEMBLED**

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**5<sup>TH</sup> SESSION – EIGHTH PARLIAMENT**

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**PRESENTED TO PARLIAMENT ON 27 FEBRUARY, 2018**

**The Petition is of the Undersigned:**

Residents of Dzivarasekwa  
Contact Person –Shepherd Chikoore  
Chairperson –Angeline Kamangwana  
Secretary –Alice Kasinamunda

Representing Dzivarasekwa Conversation Trust, 858/A Ndira road Dzivarasekwa 3. Whose members are residents and ratepayers of Harare staying in Dzivarasekwa. Respectfully shows That your Petitioners

Being citizens of Zimbabwe;  
And whose Funding Methods are member subscriptions;

**COGNISANT** that the Parliament of Zimbabwe is mandated by the Constitution of Zimbabwe under Sections 119(1) and (3) to protect the Constitution and democratic governance in Zimbabwe ; to ensure that provisions of the Constitution are upheld and that all institutions and agencies of government at every level act Constitutionally ; and to ensure accountability of all institutions and agencies of the state and government at every level to Parliament;

**AWARE** that

Section 73(a) and (b) provides that *every person has the right to an environment that is not harmful to their health and to have the environment protected for the benefit of present and future generations through inter alia prevention of ecological degradation, promotion of conservation and security ecologically sustainable development and use of natural resources while promoting economic and social development*

Section 77(a) of the Constitution provides that *“every person has the right to safe, clean, and potable water “and that “the State must take reasonable legislative and other measures , within the limits of the resources available to it, to achieve the progressive realization of this right”*

Section 149(1) provides for *“every citizen and permanent resident of Zimbabwe to .....Petition Parliament to consider any matter within its authority including the enactment, amendment or repeal of legislation”*

Section 194(e), (f) and (h) provide for *‘peoples’ needs to be responded within a reasonable time and the public be encouraged to participate in policy making;”public administration that is accountable to Parliament and the people “and “transparency ....by providing the public with timely, accessible and accurate information”*

Section 97(5), 99, 108 and Part XI of the Environmental Management Act (chapter 20:27) set procedures relating to Environmental Impact Assessments (EIAs ) ;public consultants on EIAs and availing of the Environmental Impact Assessment report for public inspection.

The Environmental Management Act sets out principles relating to environmental management which include :inter relatedness and linkage of elements of environmental ;placing people and their needs at the forefront; participation of all interested and affected parties; socially, environmentally and economically sustainable development ;prevention of negative impact on environment and peoples` environmental rights as well as specific attention in management and planning procedures of sensitive ,vulnerable and stressed ecosystems;

**MINDFUL** that the Declaration of Rights in the Constitution of Zimbabwe in

- I. Section 44 provides for the duty to respect, protect promote and fulfil fundamental human rights and freedoms;
- II. Section 56 guarantees equality and non-discrimination including “*the right not to be treated in an unfairly discriminatory manner on such grounds as inter alia ,gender and economic status*”
- III. Section 59 guarantees freedom to, *inter alia*, petition;
- IV. Section 62(1)provides for the” *rights of access to any information held by the State or by any institution or agency of government at every level in so far as the information is required in the interests of public accountability*”
- V. Section 68(1) and (2) provide for the right to administrative justice stating that “*Every person has the right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial, and both substantively and procedurally fair*”; and “*Any person whose right ,freedom ,interested or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct*” respectively;

**REMEMBERING** that Zimbabwe has ratified the Ramsar Convention which provides for preservation and protection of wetlands ,the International Covenant on Economic ,Social and Cultural Rights (ICESRC) ,General Comment 15 which provides “*the human right to water entitles everyone to sufficient ,safe, acceptable ,physically accessible and affordable water for personal and domestic uses* “;the Convention on the Elimination of All Forms of Discrimination Against Women (Article 14 ,paragraph 2) which stipulates that “*States parties shall ensure to women the right to enjoy adequate living conditions particularly in relation to [..]water supply* “the Convention on the Rights of the Child (Article 24,paragraph 2) which requires States parties to combat disease and malnutrition “*through the provisions of adequate nutritious foods and clean drinking water*”;

**DISTURBED** by the construction of houses ,urban agriculture and planting of gumtrees on Dzivarasekwa 4 wetlands without Environment Impact Assessment certificates as required under Section 97(5) of the Environmental Management Act and that the public is only allowed to inspect Environmental Impact Assessment reports;

**CONCERNED** that the high water purification costs in Harare are emanating from bad raw water quality that is brewed by, among other things, failure to properly manage catchments and wetlands;

**ACKNOWLEDGING** the role of wetlands in quality water provision, purification of raw water free of charge, flood attenuation services and carbon sequestration;

**WORRIED** that vulnerable members of Dzivarasekwa carry the burden of poor potable water quality ,high cost of water purification ,changing climatic patterns and heat waves ,and that availability of potable water will be further compromised in a city that is constructed on its watershed;

**GRAVELY CONCERNED** about the extent of siltation of Lake Chivero whose root causes lie on human activities on wetlands and river banks;

#### **PETITIONERS PLEA AND PRAYER**

The petitioners beseech the Parliament of Zimbabwe to

- I. Compel the responsible Minister or the Environmental Management Agency to urgently address the re-gazetting of Harare Wetlands Map as well creation of a well-coordinated institutional framework on wetlands preservation
- II. Review of Section 108 of the Environmental Management Act(Chapter 20:27) and allow the public to have copies of Environmental Impact Assessment reports so that access to information required in the interests of public accountability and protection of environmental rights is protected .
- III. Request an Annual Report from the responsible Minister as provided for in section 24 of the Environmental Act and also request for submission of policies and priorities for the protection of environment from the National Environmental Council;

Compel the Environmental Management Agency to protect wetlands in Dzivarasekwa so that sustainable water provision is guaranteed for future generations in Harare.

**WHEREFORE** your petitioners pray that your Honourable House will be pleased to take our case into favorable consideration, and grant such relief as it may deem fit,

**AND** your petitioners, as in duty bound will ever pray.

Dated at Harare, this 27 day of February, 2018

**ANNEX C.**

**PARLIAMENT OF ZIMBABWE**

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**FORM OF PETITION**

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**TO THE HONOURABLE SPEAKER AND MEMBERS OF PARLIAMENT, IN  
PARLIAMENT ASSEMBLED**

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**5<sup>TH</sup> SESSION – EIGHTH PARLIAMENT**

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**PRESENTED TO PARLIAMENT ON 28 MARCH, 2018**

**The Petition is of the Undersigned:**

Residents of Budiriro

Contact Person –Augustine Mberi

Chairperson –Claud Kaharo

Secretary –

Representing Budiriro Water Foundation ,Address No 4455-75<sup>th</sup> Close ,Budiriro 3,Harare

Whose members are residents and ratepayers of Harare staying in Budiriro

Respectfully shows

That your Petitioners

3. Being citizens of Zimbabwe ;

4. And whose Funding Methods are :member subscriptions ;

**COGNISANT** that the Parliament of Zimbabwe is mandated by the Constitution of Zimbabwe under Sections 119(1) and (3) to protect the Constitution and democratic governance in Zimbabwe ; to ensure that provisions of the Constitution are upheld and that all institutions and agencies of government at every level act Constitutionally ; and to ensure accountability of all institutions and agencies of the state and government at every level to Parliament.

**AWARE** that

Section 73(a) and (b) provides that *every person has the right to an environment that is not harmful to their health and to have the environment protected for the benefit of present and future generations through inter alia prevention of ecological degradation, promotion of conservation and security ecologically sustainable development and use of natural resources while promoting economic and social development*

Section 77(a) of the Constitution provides that *“every person has the right to safe, clean, and potable water “and that “the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realization of this right”*

Section 149(1) provides for *“every citizen and permanent resident of Zimbabwe to .....Petition Parliament to consider any matter within its authority including the enactment, amendment or repeal of legislation”*

Section 194(e), (f) and (h) provide for *‘peoples needs to be responded within a reasonable time and the public be encouraged to participate in policy making; “public administration that is accountable to Parliament and the people “and “transparency ....by providing the public with timely, accessible and accurate information”*

Section 97(5) ,99,108 and Part XI of the Environmental Management Act (chapter 20:27) set procedures relating to Environmental Impact Assessments (EIAs ) ;public consultants on EIAs and availing of the Environmental Impact Assessment report for public inspection.

The Environmental Management Act (Chapter 20:27) sets out principles relating to environmental management which include :inter relatedness and linkage of elements of environmental ;placing people and their needs at the forefront; participation of all interested and affected parties ;socially ,environmentally and economically sustainable development ;prevention of negative impact on environment and peoples` environmental rights as well as specific attention in management and planning procedures of sensitive ,vulnerable and stressed ecosystems.

**MINDFUL** that the Declaration of Rights in the Constitution of Zimbabwe in

- I. Section 44 provides for the duty to respect, protect promote and fulfil fundamental human rights and freedoms;
- II. Section 59 guarantees freedom to ,*inter alia*, petition;
- III. Section 68(1) and (2) provide for the right to administrative justice stating that “*Every person has the right to administrative conduct that is lawful ,prompt ,efficient ,reasonable ,proportionate ,impartial ,and both substantively and procedurally fair*”; and “*Any person whose right ,freedom ,interested or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct*” respectively;

**REMEMBERING** that Zimbabwe has ratified the Ramsar Convention which provides for preservation and protection of wetlands ,the International Covenant on Economic ,Social and Cultural Rights (ICESRC) ,General Comment 15 which provides “*the human right to water entitles everyone to sufficient ,safe, acceptable ,physically accessible and affordable water for personal and domestic uses*”

**DISTURBED** by the construction of houses perpetuated by land barons and urban agriculture on wetlands between Budiriro 5A and 3 ,which combined has dried up a stream which is used to flow and feed quality raw water into Lake Chivero,

**CONCERNED** that the City of Harare in its 2018 budget statement proposed to increase water tariffs by close to 150% that is from 0,25c per cubic metre to 0,70cper cubic metre and the proposed increase is emanating from high water purification costs in Harare which are caused by bad raw water quality that is brewed by, among other things ,failure to properly manage catchments and wetlands.

**ACKNOWLEDGING** the role of wetlands in quality water provisioning, purification of raw water free of charge, flood attenuation services and carbon sequestration;

**WORRIED** that there seem to be discord at the City of Harare on the relationship between the Environmental Management Act (Chapter 20:27 ) vs The Regional ,Town and Country Planning Act (Chapter 29:12) as well as the institutional framework that should guide management of catchments and wetlands;

**GRAVELY CONCERNED** about the extent of siltation of Lake Chivero whose root causes lie on human activities on wetlands and river banks;

## **PETITIONERS PLEA AND PRAYER**

The petitioners beseech the Parliament of Zimbabwe to

- I. Call City of Harare residents who are illegally settled on the wetlands, Upper Manyame Catchment Council and the Environmental Management Agency to account to Parliament on the issue of preservation of Budiriro wetlands;
- II. Compel the Ministry of Environment, Water and Climate to urgently finalize the re-gazetting of Harare Wetlands Map as well as creation of a well-coordinated institutional framework on wetlands preservation.
- III. Compel the responsible Minister to produce and share with public ; policies and priorities for the protection of the environment formulated by the National Environmental Council ;
- IV. Compel the Environmental Management Agency to protect wetlands in Budiriro so that sustainable water provision is guaranteed for future generations in Harare

**WHEREFORE** your petitioners pray that your Honourable House will be pleased to take our case into favorable consideration, and grant such relief as it may deem fit,  
**AND** your petitioners, as in duty bound will ever pray.

Dated at Harare, this 28<sup>TH</sup> day of March, 2018