

PUBLIC PARTICIPATION IN ZAMBIA

The Case of Natural Resources Management

2013

By Nosiku Sipilanyambe Munyinda and
Lee M Habasonda

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Preface

The right to participate in the conduct of public affairs is protected in many human rights instruments such as the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR) and the Arab Charter on Human Rights (ACHR). This can be referenced, respectively, in Article 21 of UDHR, Article 25 of ICCPR, Article 13 of ACHPR, and Article 24 of ACHR. The African Union (AU) adopted the African Charter on Democracy, Elections and Governance during the 8th Ordinary Session of the Assembly of the Heads of State and Government convened in Addis Ababa, Ethiopia on 30 January 2007. The contents of the Charter provide an unprecedented support to the universally accepted principles and pillars of democracy and reaffirm the centrality of democratic governance for sustainable development stability and security in Africa.

In addition to constituting a human right in itself, public participation is acknowledged as a precondition for genuine realisation of all other human rights in the UN General Assembly resolutions and in the general comments of the UN treaty bodies. In these instruments, participation constitutes both a fundamental right and a cross cutting core human rights principle, obliging a system in which people can participate actively and informed in the realisation of all their rights and freedoms.

Participation is a crosscutting principle in most UN documents and is stated as a method to be applied for specific groups in newer human rights instruments such as the disability convention and the convention on the rights of the child.

The principles of participation and inclusion are cornerstones in the UN common understanding of a Human Rights-Based Approach. According to the UN common understanding "Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized".

This can be paraphrased as: People who participate take responsibility, and thereby become free individuals that engage in the societal development for the benefit of the family, community and society as a whole. Participation is a way to create social capital and mutual trust in society, which in turn provides a societal or community framework for realising peoples' capabilities. Consequently the society becomes dynamic and government structures do not stand alone in the protection and realisation of rights.

In addition to elections, including the right to be elected and the right to vote, public participation is also about participating between elections, by expressing your views freely about the society you are living in, and by having your voice heard, either alone or with others, and by any possible peaceful means, such as in the press or via social media, by demonstrating etc.

Other rights that must necessarily be present if the right to participation is to be exercised are the rights to freedom of expression, association and assembly. These freedoms are protected by UDHR (Articles 19 and 20), ICCPR (Articles 19, 21 and 22) and ACHPR (Articles 9, 10 and 11). In addition, access to information is a prerequisite for meaningful participation in society, whether one is talking about voting, expressing ones views or entering into a societal dialogue. The right to information is specifically protected by Article 19 of UDHR, Article 19 of ICCPR and Article 9 of ACHPR.

From a human rights perspective, participation goes beyond elections and the rights of the majority. It is about building a free space and creating conditions for space where it is possible to carry out free debate and express disagreement with decisions made by the State. The free space should allow for conflicts to be addressed and compromise or consensus to be sought. Participation should be based on equal rights for all and dignity of fellow human beings. Participation is a mode of governance where those in minority are considered an equal member of the political community.

Participation should be enjoyed by all individuals including women and men, children, minorities, privileged or non-privileged, empowered or non-empowered. UDHR, ICCPR and ACHPR all stress that the rights set out shall be enjoyed equally by all without any discrimination.

**By Charlotte Flindt Pedersen,
International Director,
The Danish Institute for Human rights.**

Executive Summary

The study was commissioned in order to examine the current situation of public participation and identify the obstacles and opportunities for meaningful public participation in Zambia. The study provides stakeholders with a clear understanding of public participation's nature, channels and effectiveness using case studies in natural resource management and was completed with a view to assess opportunities for the government and civil society in enhancing and facilitating participation mechanisms.

Public participation is driven by an interplay of factors including individual capacity, available channels, platforms and willingness on the part of government authorities to provide platforms and engage genuinely with the public.

There are opportunities for public participation within and outside government at various levels. Periodic elections allow citizens to vote and hold leaders accountable. Parliamentary Select Committees are open to public or expert submissions and Council meetings are open to the public. Sector specific initiatives also hold public meetings to create awareness and engage communities. Additional platforms for participation include the Sector Advisory Groups and Provincial and District Development Coordinating Committees. In the area of natural resource management, there are community-based natural resource management boards. These platforms were set up to strengthen public participation in public affairs.

While implied in major legal and policy documents, the public participation framework remains incoherent and uncoordinated. Respondents in this study found it difficult to adduce clear mechanisms through which participation is organised.

There are a number of reasons many citizens and civil society organisations may find it difficult to participate in public affairs. First, although public participation is considered “open” to citizens and other non-state actors, there is only implied basis in the legal and policy documents on which stakeholders can participate. In the majority of instances, participation is based on the personal goodwill of the concerned technocrats or the political will of the politicians. While there has been a progression towards individual driven initiatives, the past culture of government led public initiatives appears to have become embedded in society and continues to inform current participation. This makes the population slow in responding appropriately to the dynamics of market-led participation, which is dependent on individual initiative, creativity and capacity. Unfortunately the government has been slow to decentralise its structures to encourage individual and local participation since independence in 1964 and the population has been accustomed to a top down approach in participating in public affairs. In addition, the study findings suggest that where there is no direct monetary benefit for those involved, participation is usually low.

Second, public participation seems to be much more facilitated at the national level, making it difficult for those located in outlying rural areas to participate and influence public policy. In most cases only a few NGOs, business entities and traditional leaders – the so called “usual suspects” – are regularly involved in participation. In most instances civil society and business actors participate by giving feedback to a proposed position; in other words, participation is reactive rather than proactive.

Third, the extent of government accommodation and responsiveness to civil society participation appears to

be limited.

In terms of natural resource management, individual engagement in public participation is affected by lack of trust in future developments and a growing sense of alienation of individuals from their immediate natural resources such as land, wildlife and minerals. In many public efforts, consultations may be completed initially but consequent public consultations are rarely fulfilled. The study shows that affected communities are often sidelined once the projects have started. Furthermore, there are insufficient formal procedures at local level to ensure that once development projects have been set up and are operational, financial benefits reach the local people and the intended targets. An additional obstacle is that Environmental Impact Assessment regulations do not check the implementation of benefit sharing and mitigating activities as the case demonstrated in Lumwana and Kalumbila mines in Solwezi. This is further compounded by the inefficiency in the procedures which makes it challenging to monitor Environmental Impact processes. These barriers could contribute to resentment towards legitimate use of resources by investors for development purposes.

Finally, it is also important to note that the formal public participation framework has not mainstreamed gender, people with disabilities, people living with HIV/AIDS and other vulnerable groups. Gender is only accommodated at the level of the Sector Advisory Groups and District Development Coordinating Committees, while other vulnerable groups are not accommodated. Even in this regard, gender is incorporated in the District Development Coordinating Committees only in cases where stakeholders find it necessary to set up a sub-committee on gender. Inclusion of women and other vulnerable groups are yet to be mandatory considerations in the public participation framework in Zambia.

Summary of recommendations

Overall Recommendation on the interaction in public participation

There is a need to reduce the societal dependence on government led public initiatives and avoid the cultural legacy of expecting a top down approach to decision making. This can be achieved by individuals taking more ownership and responsibility over matters of public concern and understanding participation to be a duty and obligation rather than a choice.

Recommendations for the Government's interaction in public participation

- 1 . Develop platforms for public participation which are relevant, coordinated and accessible in order for the public to participate in governance and development in a meaningful manner. This will improve accountability and transparency in development and economic processes and enable rights holders and duty bearers to engage in constructive dialogue and joint action planning.
- 2 . Apply an “open door” policy in governance and take affirmative steps to ensure broad-based involvement early in the development of new projects. This will allow for the government to utilise the value of a holistic approach to public participation, whereby development will be relevant for the community and enjoy their support.
- 3 . Develop a public participation framework which is crosscutting, coordinated and holistic. This will provide the overall framework for the different policies, laws and practices that promote public participation and allow for the government to utilise the value of a holistic approach to public participation, whereby development will be relevant for the community and enjoy their support.

- 4 . Take positive steps to ensure an enabling environment for public participation by protecting and promoting freedom of expression; freedom of assembly; freedom of association; prohibition of discrimination; participating in development and access to information.
- 5 . Improve quality and quantity of information in order to enhance timeliness and appropriateness of the content that is being communicated to various stakeholders. This will empower individuals to assert their rights and hold government accountable on governance and public matters.
- 6 . Create interactive public consultations and mainstream aspects of equality, democracy, representativeness, transparency and influence in order to improve the quality of participation.
- 7 . Improve public participation in all aspects of natural resource management and apply bottom-up approaches to natural resource management in order to ensure local development and economic priorities are aligned with community priorities and addressing community concerns.
- 8 . Establish clear guidelines and regulations to guide business engagement with local communities, clarifying roles and responsibilities of government, businesses and local communities. This will improve accountability in all engagements relating to natural resource governance and establish clarity on what communities can expect from government and private businesses
- 9 . Establish a legal framework for public participation in all stages of the EIA process, which can reduce conflicts and tensions between businesses, government agencies and communities.

Recommendation for non-state actors in public participation

Recommendations for civil society

- 1 . Develop participatory accountability mechanisms that are oriented around constituencies at grassroots level rather than around donor and/or government priorities. This could contribute to evidence based advocacy and greater accountability and legitimacy to engagements with members, broader public and government. Furthermore, this would advance the CSOs ability to present the views of the constituencies at national levels and within consultation platforms with government
- 2 . Formalise and coordinate interactions with government by establishing clear modalities for accessing information and accreditation to relevant decision making processes in a transparent manner. This will enable the CSOs to have enough prior notification before meetings and ensure wide consultation with citizens.
- 3 . Advocate for a review of the NGO Act to facilitate rather than limit civil society presence in the outlying districts in the country. The cost of registering an NGO in each district is prohibitive; consequently many CSOs are restricted to operate from one district or national level only.
- 4 . Advocate for an enabling environment for public participation by ensuring adequate implementation of existing laws and policies and by ensuring all legislation is compliant with international human rights standards, in particular in relation to freedom of association, assembly and expression and access to information
- 5 . Engage with communities, government and private sector actors to develop solutions for community participation in natural resource management

Recommendations for private sector actors

- 1 . Broaden stakeholder engagement to include community members and vulnerable groups in addition to traditional leaders and government authorities

- 2 . Improve the mechanisms for community consultation during EIA processes and ensure continuous community engagement and communication regarding implementation of the EIA recommendations
- 3 . Establish mechanisms for continuous community engagement in the prioritisation and implementation of CSR activities
- 4 . Establish accessible and responsive grievance mechanisms, where community members can address their concerns, complaints and suggestions heard

Recommendation for individuals

- 1 . Individuals should appreciate that participation is a duty and responsibility that constitute their claim to citizenship and it is the opportunity for them to take part and influence local and national development. CSOs could play a role through sensitisation of communities.

Acronyms

ABZ	Alliance for a Better Zambia
ACHPR	African Charter on Human and Peoples' Rights
ADC	Area Development Committees
CCZ	Council of Churches of Zambia
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CSI	Civil Society Index
CSO	Civil society Organisation
CBO	Community Based Organisations
CRB	Community Resource Boards
DDCC	District Development Coordinating Committee
DIHR	Danish Institute for Human Rights
DOF	Department of Forestry
ECZ	Electoral Commission of Zambia
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statements
EITI	Extractive Industry Transparency Initiative
EMA	Environmental Management Act
EMP	Environmental Management and Monitoring Plan
FGD	Focus Group Discussion
GRZ	Government of the Republic of Zambia
HRC	Human Rights Council
IAP	Interested and Affected Parties
ICCPR	International Covenant for Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
MEA	Multilateral Environmental Agreements
MMD	Movement for Multiparty Development
MP	Member of Parliament
MoU	Memorandum of Understanding
NAREP	National Restoration Party
NGO	Non-Governmental Organisation
NGDO	Non-governmental development organisations
NPE	Zambia National Policy on the Environment
NRM	Natural Resource Management
OBI	Open Budget Index
OHCHR	United Nations Human Rights Office of the High Commissioner
POA	Public Order Act
PDCC	Provincial Development Coordinating Committees
SADC	Southern African Development Community
SAG	Sector Advisory Groups
SNDP	Sixth National Development Plan
UPND	United Party for National Development
UPR	Universal Periodic Review
UDHR	Universal Declaration of Human Rights
VAG	Village Action Groups
ZHRC	Zambia Human Rights Commission
ZAWA	Zambia Wildlife Authorities
ZAMEC	Zambia Media Council
ZANIS	Zambian News and information services
ZEMA	Zambia Environmental Management Agency
ZNFU	Zambia National Farmers Union

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1 Introduction, Background to the Study and Methodology

1.0 Introduction

1.0.1 Studying public participation

In recent years, there has been a trend in international human rights law to expand the responsibilities of governments to include and consult stakeholders in decision making processes. Participation has been incorporated into the human rights based approach to development as a goal in itself as well as a cross cutting principle.

Public participation is an instrument of deliberative democratic systems that seeks to capture the concerns and opinions of the people affected by governments' decisions, or of the citizenry in general. Effective and meaningful public participation can therefore have a profound impact on democratic governance and the realisation of other human rights such as economic, social and cultural rights.

This report examines public participation and peoples' ability to assert their right to participate in governance and national development processes in Zambia. In addition, it assesses the extent to which the Zambian government has created an enabling environment for meaningful public participation and further discusses the level of participation and its relationship with legal and policy frameworks. The implementation of legislation and policies is addressed through case studies in public participation in natural resources management. The report further reviews the role of CSOs and other non-state actors in representing their membership, constituencies or interest groups and the influence they exert on national processes, policy formulation and implementation. The report discusses public participation in the context of international and domestic instruments relating to participation. At the global level, the right to public participation is expressed in the Universal Declaration of Human Rights (UDHR); legally provided for by the International Covenant on Civil and Political Rights (ICCPR) of 1966 and is elaborated in later international conventions and soft law. The four core rights embedded in the two instruments above are the right to participate in the conduct of public affairs, the right to freedom of expression and information, the right to freedom of assembly and the right to freedom of association (DIHR, 2012). At the domestic level, the Constitution and other subsidiary laws affecting participation form the framework for the analysis.

The ultimate aims of the study are three fold: to contribute to a better understanding of public participation, to assess the environment in which it occurs in Zambia and to share recommendations for specific steps that can be taken to enhance participation where there are gaps. A central theme of this report concerns how the rights to public participation are dependent on the legal and policy environment and how this environment impacts their effectiveness.

1.0.2 Understanding public participation

The right to participate in the conduct of public affairs, governance and development is a right in itself and a crosscutting principle in a democratic society. Often participation is associated with elections, but public participation entails more than voting at regular intervals; it is also about being able to express your views freely about the society you live in; expressing your vision for development and democracy; ensuring the

overnment provides avenues for everyone to be heard in matters of concern; and it is also about freedom of assembly and association for people which can help unite people and use the avenues available for participation in a meaningful and effective manner.

From a human rights perspective, participation goes beyond elections and the rights of the majority. It is about building a space and creating conditions where there is possibility of free debate and the ability to express disagreement with decisions made by the state, where conflicts can be addressed and compromise or consensus can be sought in a peaceful and free manner. It is a mode of participation that ensures the equal rights and dignity of fellow human beings and provides a mode of governance where those in minority are considered an equal part of the political community. The population's capacity for meaningful participation can be limited by poor organisation or simply by the ignorance of rights, inadequate access to reliable information or lack of available remedies. There is a close link between the capacity of participating in the conduct of public affairs and the right to education, the right to work, the right to health as well as the right to an adequate standard of living. Accordingly, public participation is closely related to the governments' obligations on economic, social and cultural rights.

A more general definition of public participation refers to the practice of involving members of the public in the agenda setting, decision making, and policy forming activities of organisations or institutions responsible for policy development. (Rowe, Frewer, 2005:253). This definition, however, lends itself to variable interpretations as the public may be *involved* in policy formation in a number of different ways or at a number of *levels*. In some cases, the public may "participate" by being the passive recipients of information from the governing bodies concerned. In other cases, public input may be sought, as in the solicitation of public opinion through questionnaires, or there may be active participation of public representatives in the decision making process itself such as through the representation on a board or advisory committee.

Another study by Rowe and Frewer uses three different descriptors to differentiate initiatives that have in the past been referred to as public participation based on the *flow of information* between participants and sponsors. These are *public communication*, *public consultation*, and *public participation* (Rowe, Frewer, 2005). Whatever starting point is adopted for public participation, it must serve to encourage citizens from diverse backgrounds to take part in the running of affairs in their communities.

An active and inclusive public participation environment can only be achieved when all individuals enjoy the basic right to participate in the conduct of public affairs, as well as the freedoms of expression, information, assembly and association (DIHR, 2012:46). Participation also implies a responsibility for demanding respect for the rights of others. Once excluded from participation, people can no longer demand their rights. In this way, exclusion from participation is often closely linked with other forms of exclusion and marginalisation. If participation were a simple, bounded and well-understood process, then one particular participation mechanism might suffice to enable it to be effectively achieved; but participation as widely understood (and imprecisely defined) can take many forms, in many different situations (contexts), with many different types of participants, requirements and aims for which different mechanisms may be required to maximise effectiveness (Rowe, Frewer, 2005:251).

¹The working group consists of professionals from the Human Rights Commission of Zambia, Zambia Council for Social Development, an independent law lecturer, Misozi Lwatula and the Danish Institute for Human Rights.

1.1 Background to the Study

In 2012, the Danish Institute for Human Rights (DIHR) initiated this study in partnership with a working group in Zambia. The working group consists of professionals from the Human Rights Commission of Zambia, Zambia Council for Social Development, an independent law lecturer, Misozi Lwatula and the Danish Institute for Human Rights. The study aims to analyse the conditions, barriers and opportunities for public participation in Zambia. The overall purpose of this study is to build a knowledge base on the various aspects of public participation, thereby contributing to constructive dialogue based on facts rather than perceptions. Through a vision driven process based on the values and principles of the international and regional human rights standards, it is possible to move away from a fragmented approach of addressing isolated issues reactively towards a joint vision that is shared among actors. This vision provides the basis for a strategic process that enhances the potential for proactive action and ensures that interventions are aligned and that all stakeholders are working towards a shared vision for the future. This study is expected to feed into the development of a comprehensive and holistic strategy addressing barriers for public participation.

The study was carried out over a period of nine months in sessions from October 2012 to July 2013. The study was organised in such a way that it had two lead researchers and two teams of four research assistants, who helped in carrying out field work in the target areas. Three target areas were identified for the study to demonstrate participation in natural resource management: Eastern, Lusaka and North-Western provinces. In the process of writing this report, the members of the working group on public participation have reviewed and commented on the report and the final draft of the report was presented and discussed in consultation processes in all three target areas.

1.1.1 General objective

The main objective of the study is:

To examine the current situation of public participation and identify the obstacles and opportunities for meaningful public participation.

The following key questions were addressed by the study and in the following order:

- (i) To what extent is there an enabling legal and policy environment for citizens/public to participate in governance and national development processes in Zambia? How are legislation and policies implemented?
- (ii) To what extent do CSOs and other organised non-state actors have the capacity to represent their membership/constituencies and what is their level of influence on national policy formulation and implementation?
- (iii) To what extent are citizens/public able to assert their right to individually participate in governance and various national development processes in Zambia and what is the actual level of participation?
- (iv) What is the current situation and what obstacles and opportunities exist for meaningful public participation in Zambia?

The study employed case studies of natural resource management in the identified areas to demonstrate the level of public participation and the implementation of laws and policies associated to public participation at community level.

1.2 Methodology

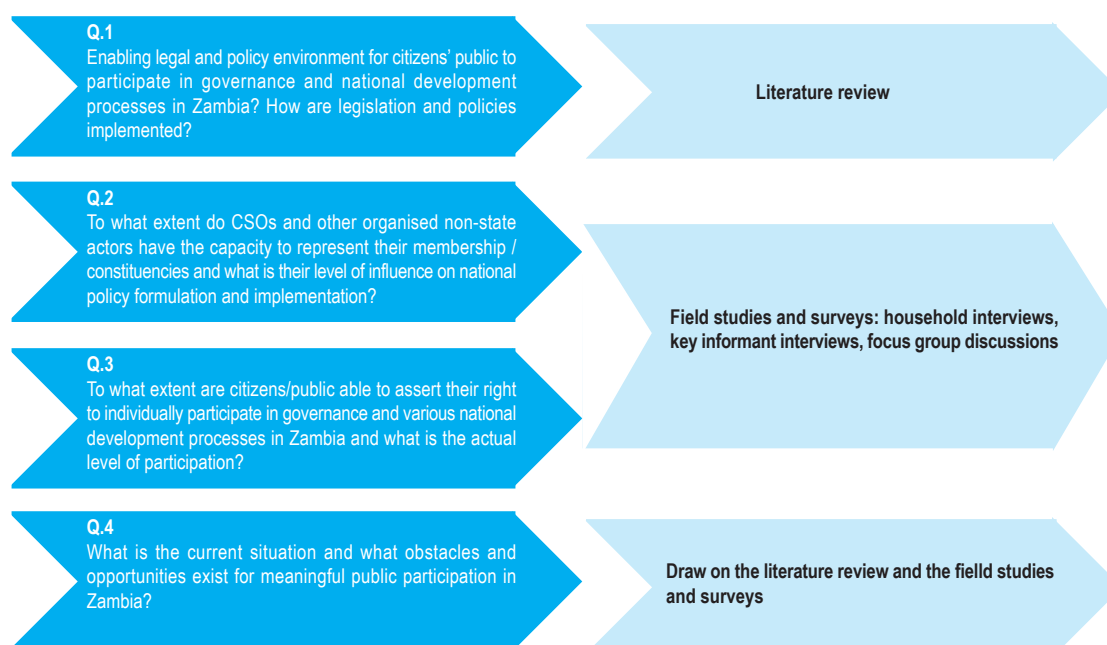
1.2.1 Justification and rationale of the study

This study is important for several reasons. Firstly, participation is an important factor when assessing the legitimacy and public acceptance of governance arrangements and outcomes. Secondly, participation harnesses local knowledge for substantive improvement of decisions and plans and for resolution of political, societal and developmental conflicts. Thirdly, the study was necessary, as no other comprehensive study of public participation has been carried out in Zambia. Many of the studies available address selected issues, which do not allow for a broader overview of public participation. The study stands out from other studies by including a multilevel approach to the analysis of public participation and by taking departure in the international human rights framework. Lastly, the study was also important for the purposes of adding to the existing knowledge base on public participation.

1.2.2 Study method

This study used a combination of study methods including literature review, household interviews, key informant interviews, focus group discussions and case studies in selected communities. This section briefly describes the study methods used. Figure one below illustrates the different methods applied to collect data and analyse the four study questions.

FIGURE 1: STUDY METHODS



A desk study of existing literature review was carried out to consult secondary sources of data mainly to address question one. Field studies and surveys, which included household interviews, key informant interviews, focus group discussions and case studies, were applied for questions two and three. Question four is directed at both the summary and the conclusions which draw on the earlier findings.

Desk study

A desk study of international human rights law and Zambian legislation and policy related to public participation was carried out. In the assessment of the implementation of these laws and policies the report draws on material from the UN Human Rights Council (HRC), case law and civil society and media reports.

Household interviews

The household interview survey questionnaires were used to collect data through a personal household interview conducted by research assistants that were trained by the lead researchers. All adult members of the household over 18 years of age who were at home at the time of the interview were invited to participate and to respond to the questions. Household interviews were not carried out in Lusaka because they did not provide the best opportunity for understanding case studies.

Key informant interviews

These were qualitative in-depth interviews with people who were well informed of policy and practices at the national and community level. The purpose was to collect information from community leaders, professionals or residents who have first-hand knowledge concerning the laws and policies and how they are implemented at the community level. These experts, with their particular knowledge and understanding, provided insight on the nature of issues, procedures, challenges and proposed recommendations for solutions. The major technique that the study used to conduct key informant interviews was the face-to-face interview (See Annex 1, interview guide).

Focus group discussions

Focus group discussions (FGD) were used to explore the issues that cannot be explained statistically such as the range of opinions and views on public participation. They were useful in providing insights into different opinions among the various interest groups involved in the issues of public processes. Groups of 5-20 people from similar backgrounds or experiences were gathered to discuss public participation, all of who represented an organisation. The lead researchers guided the discussions with assistance from the research assistants who took notes. A working group member also attended the FGDs. The lead researcher introduced the discussion and helped the groups to engage in an open but orderly manner to address the objectives of the study. The discussions were also recorded in audio.

The strength of the FGDs was that it allowed the participants to agree or disagree with each other which provided insights into how people in those groups thought about the issue of public participation. The FGDs also gave insight into the range of opinions and ideas and the inconsistencies and variation that exist in their particular communities in terms of their experiences and practices.

Case studies

The selection of case studies was based on an area being endowed with natural resources and the natural resources being actively used by the public. The case studies on natural resources were based on land and pollution in urban Lusaka, Lusaka province; copper mines in Solwezi, North-Western province; and wildlife and forestry in Mfuwe, Eastern province. Case studies were used as examples for in depth analysis of the various aspects of public participation in the area of natural resources to help further gain an appreciation for public participation.

1.2.3 Sampling frame, criteria and techniques

This study was multi-dimensional where multiple sampling techniques were used for specific groups of informants. For government and other formal institutions, multi-staged sampling was done, which began with developing a sampling frame with all possible government departments in the area listed in the *Zambian Yellow Pages*. Thereafter, purposive sampling was done to select only those departments that the study had an interest in. Finally stratified sampling was used to select a number from each category e.g. choosing between wildlife, fisheries, forestry etc.

A similar approach was taken for civil society organisations (CSOs). With regards to individual households and members of society, cluster sampling was used in combination with systematic sampling methods. Firstly, the areas were divided into various geographical zones; these were thereafter divided into defined geographical areas depending on the system present in the locality e.g. townships, villages etc. The defined geographical areas were assigned numbers and a sample was randomly chosen from these. Individual households and people were thereafter picked systematically using the 5th number.

Participants in the focus group discussions were chosen on the basis that a person represented an organisation. It was deemed that the informants who were selected were representative of the general population and biases were avoided in this exercise. (Annex 2 lists the institutions and participants interviewed and the groups where the FGDs were held).

1.2.4 Research approach and data collection

The different levels of information were obtained by examining the enabling environment through legal and policy document reviews, assessment of institutional practices and determination of the role of civil society and other important non-state actors such as businesses and individual participation. The key research subjects were identified at the national, district, community and individual level. Separate research instruments were designed for each method of study for each target group of respondents. The questionnaires were shared for comments between the researchers, statistician and the working group. During training prior to the field study, questionnaires were pretested for their rigor and suitability for use to the intended research subjects. Adjustments were made accordingly and the instruments were finalised and validated. (See Annex 1 for these instruments).

Enabling environment level

At the national and district level, key informant interviews took place amongst government department and municipal officials. 34 of the interviews were done in Lusaka, seven in Solwezi and another five in Mfuwe. This brings the total to 46 key informant interviews under the enabling environment or government/state level. These informant interviews supplemented the desk study, which was carried out on the enabling environment.

Civil society level

As the political environment is a function of the democratic system, the levels of civil society engagement reflect particular characteristics of public participation. A total of 17 civil society representatives and six other non-state actors were interviewed in Lusaka, Solwezi and Mfuwe.

Household level

The social influence processes at the household level is an important predictor of public participation, particularly in terms of relevant role modelling, role expectations and availability. Individual interviews took place amongst

household heads in Solwezi and Mfuwe, with 174 households and 93 households respectively bringing the total to 267. This provided quantitative and qualitative information on social influences, forms of social control, social expectations as well as attitudes and beliefs regarding public participation in public and natural resource management affairs.

Individual level

Focus group discussions (FGDs) took place amongst individuals in the communities. Three focus group discussions were facilitated in each district of Lusaka, Solwezi and Mfuwe and each group consisted of 5-20 people. The FGDs were undertaken in order to gain a more detailed understanding of the factors impacting on public participation and how these factors act as predictors, drivers and causes for natural resource depletion. All the above levels of data collection were complemented by secondary data sources such as reports, newspapers and any literature that was relevant to the study. Box 1 below gives a description of research subject definitions.

Box 1:

Research subject description

Government Representatives: public officials working for government agencies and departments.

Traditional leaders: Leaders in charge of villages and chiefdoms who include headmen and chiefs.

Civil society leaders: Leaders of non-governmental organisations, Faith-based organisations, Community-based Organisations that operate outside the realm of the government.

Community: A group of interacting people living in a common location and organised in social units larger than a household.

Household: As defined by Zambia Census (2000): A group of persons who normally eat and live together under the same roof. Who may or may not be related by blood, but make common provision for food or other essential for living and have only one person whom they all regard as the head of the household.

Household Head: As defined by the Zambia Census (2000): The person all members of the household regard as the head. H/She is the one who normally makes day to day decisions governing the running of the household.

1.2.5 Data collation and analysis

The quantitative data was collated and entered into Epi-data and exported to Statistical Package for Social Sciences (SPSS) for analysis. Both descriptive and deductive inferences were made on the data to show associations between variables and make comparisons between and among the study areas. Thematic content analysis was used for qualitative data to highlight common themes, show variations, describe relations and describe individual experiences. A comprehensive dataset has been developed on public participation, which can be used to make further analysis on any desired aspect of public participation in Zambia.

1.2.6 Validation of study findings

The study findings were subject to stakeholder scrutiny in the three study areas. Comments received from these consultations were incorporated in the final report. The post study endorsement was important to ensure that the study findings, as reported in the initial report, were a true reflection of the views of the respondents in the study. It was also an opportunity to accommodate any recent changes and update the information.

1.2.7 Ethical considerations

Participation of all respondents in this survey was strictly voluntary. Measures were taken to assure the respect, dignity and freedom of each individual participating. During training of the data collectors, emphasis was placed on the importance of obtaining informed consent and avoiding compulsion of any kind as well as assuring complete confidentiality of study subjects. Names of respondents would not be asked or recorded anywhere on the questionnaires. It was reiterated that the findings from this study investigating public participation would be used to inform policy and advocacy concerning rights related to participation in general, specifically in natural resource management, but not for any other purpose.

It was only after all this was done that the data collector proceeded and obtained informed consent from each participant, whether taking part as an individual or as a group. Respondents were also made aware that they were free to not take part in the research or to end their participation at any time if they so desired. Furthermore, confidentiality was strictly assured and data was managed, stored and used for analysis in a proper and professional manner.

1.2.8 Limitations of the study

The Scope of the study was purposive and focused on public and natural resource participation rights. Based on the interdependence of the rights under discussion, there has been provision for references to all other rights with a bearing on participation.

The other limitation relates to geographical coverage of the study, which focused on selected communities in Lusaka, Solwezi and Mfuwe. While several lessons and inferences can be made based on data from these places, they may be unique and could limit the extent of generalisation of the findings.

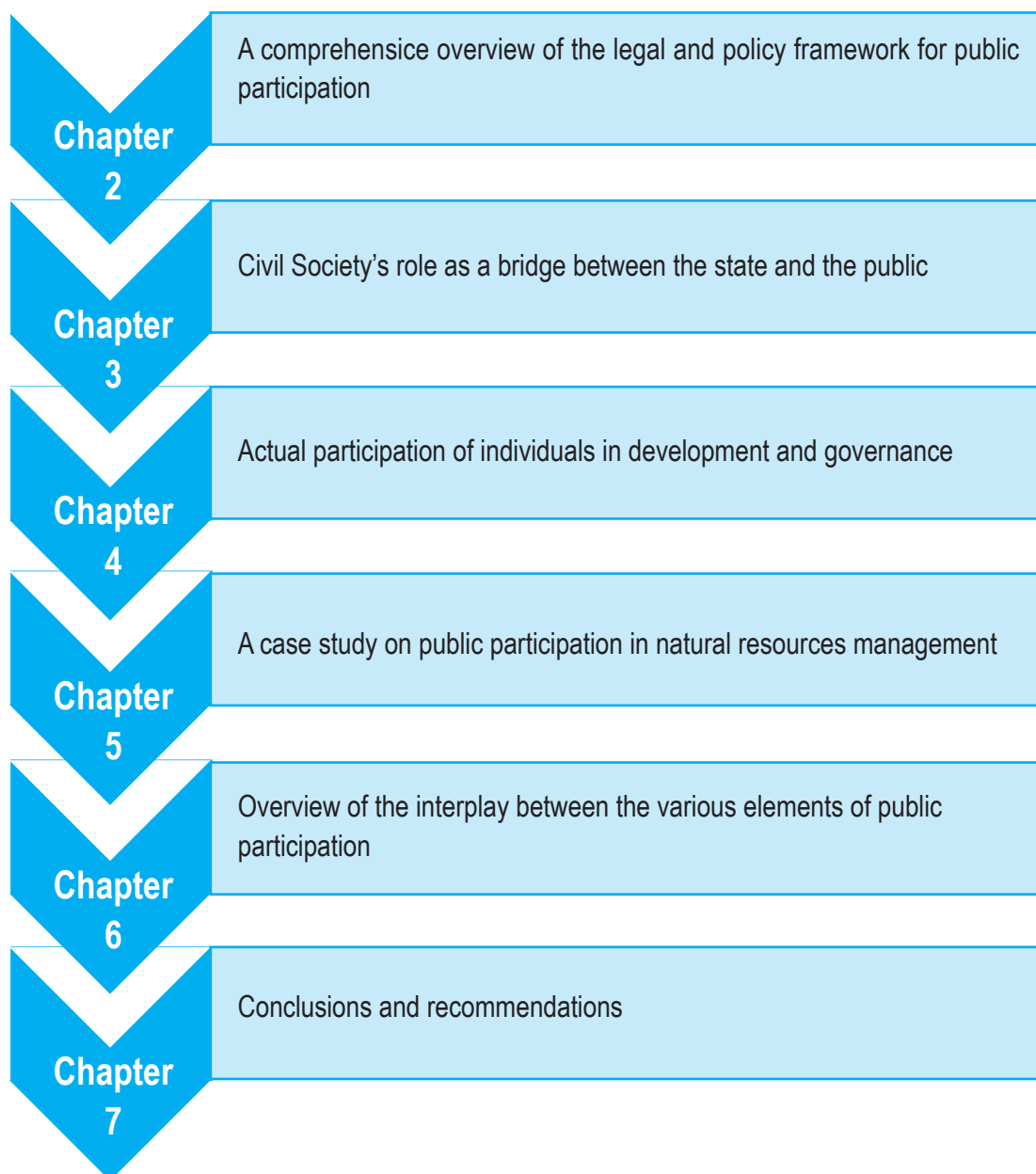
Other limitations in the study relate to data collection. The inability to collect localised information in some offices such as the Zambia Wild life Authorities and Zambia Development Agency posed a challenge. Furthermore, representation of some vulnerable groups may not have been adequate due to the random sampling design of the household survey. However, efforts were made to include them in the Focus Group Discussions and Key Informant Interviews.

1.2.9 Structure of the report

The structure of the report is such that it attempts to discuss participation in a way that enables the reader to appreciate the theoretical and practical dimensions of participation in the study. Chapter two presents a comprehensive overview of the legal and policy framework for public participation; chapter three discusses civil society's role as a bridge between the state and the public; chapter four looks at the actual participation

of individuals in development and governance; chapter five's case study on public participation in natural resources management further unpacks conditions, opportunities and barriers for meaningful contribution of community members in relation to utilisation of natural resources in the extractive industry and wildlife management sector; an overview of the interplay between the various elements of public participation is provided in chapter six; and chapter seven concludes the report by identifying a set of conclusions, which have paved the way to recommendations pointing to steps to take to improve the conditions for enhanced public participation in Zambia. This is demonstrated in the illustration below.

FIGURE 2: ILLUSTRATION OF CHAPTERS OF THE STUDY



2 Legal and Policy Framework for Public Participation

2.0 Enabling environment

An enabling environment includes open and responsive state institutions, a conducive legal and policy framework for participation as well as structures, procedures and opportunities that allow the public to engage in the conduct of public affairs (DIHR, 2012). The right to participation must be protected by law, both as a right and as a principle of governance. Legislation must protect the right to form associations and organisations, the right to freedom of expression and information and the right to peaceful assembly and protest. Legislation must be in conformity with the international and regional human rights standards and all undue restrictions should be removed. The right to public participation should also be implemented through the mandates, policies and practices of public institutions which should reflect the need to be open, responsive, transparent and accountable to the public (DIHR, 2012:53). Clear monitoring mechanisms of state institutions and the implementation of such laws are also important to avoid gaps between good laws and flawed practices. It is against this background that the analysis of Zambia's legal and policy environment for public participation is being carried out. Key conventions on public participation include the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) 1966, Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) 1979, Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD) and the African Charter on Human and Peoples' Rights (ACHPR).

2.1 International legal framework and avenues for public participation

The right to participate in the conduct of public affairs is enshrined under Article 21 in the UDHR and under article 25 in ICCPR, including treaty bodies and their general comments. The ICCPR is legally binding for the countries that have ratified the covenant. Zambia is a party to several human rights mechanisms that provide for the right for public participation including the ICCPR (ratified in 1984), the ICESCR (ratified in 1984), CEDAW (ratified in 1985) and the ACHPR (1984).

2.1.1 The International Covenant on the Civil and Political Rights (ICCPR)

The ICCPR presents a straightforward approach seeking to ensure citizens positive civil and political rights. Article 19 addresses individuals' right to express themselves. Article 19 states that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Article 21 guarantees the right to assembly while article 22 mandates the freedom of association. Article 25 of the ICCPR states that "every citizen shall have the right and the opportunity... to take part in the conduct of public affairs, directly or through freely chosen representatives". More importantly, ICCPR articles are stated in such a way as to make it clear that states are obliged to ensure conditions are in place so that people can enjoy their rights.

These rights, as with similar rights found in the Zambian Constitution, highlight not only the positive rights of the citizens, but also points to the government's responsibility to ensure these rights can be realised. When taken together, the above articles from the ICCPR construct an environment in which citizens have the right

(a) to information that will (b) allow them to hold and express informed opinions, as individuals or organisations, that they are then entitled to (c) take into the political arena. Article 25 also enshrines the right to be elected and to vote. Although scant mention is made of the way in which these rights are to be realised, they certainly set the tone for a participatory form of governance. The human rights committee has also made a general comment to elaborate on article 25 which points to the manner in which rights to participation must be understood.

2.1.2 Human rights commitments to vulnerable groups

CEDAW is a convention adopted in 1979 by the United Nations General Assembly. The Zambian government has demonstrated its political will and commitment to eradicating discrimination against women, has acceded to or ratified international treaties that guarantee human rights without distinction based on sex or other grounds and have joined the international community in endorsing several plans of action for the full, equal and beneficial integration of women in all development activities (CEDAW/C/ZAM/3-4).

In terms of participation, Article 7 of CEDAW states that “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organisations and associations concerned with the public and political life of the country”.

Zambia has a legal regime wherein international instruments are not self-executing and require enabling domestic legislation to be directly enforceable. Although CEDAW has not been fully incorporated through such legislation, there are certain provisions in Zambian laws that reflect the Convention's standards on the adoption of recent legal reforms aimed at eliminating discrimination against women and promoting gender equality, namely the Zambian Development Agency Act (2006); the Citizens Economic Empowerment Act (2006); the Anti-Human Trafficking Act (2008); the Anti-Gender-Based Violence Act (2011); the Education Act (2011); and the Statutory Instruments (Nos. 1, 2 and 3) on Minimum Wages and Conditions of Employment (2011) aimed to regulate the informal sector (UN 2011).

2.1.3 Zambia at the Universal Periodic Review

Zambia was up for the first Universal Periodic Review (UPR) in 2008 and for its second review in 2012. The UPR process is a critical point of departure for analysis of Zambia's efforts to comply with the right to public participation as set out in international human rights law. Through a review of the submissions and reports from the two UPR reviews, this section analyses Zambia's efforts to respect, protect and fulfil the right to participate in the conduct of public affairs and related rights and freedoms such as freedom of expression, association and assembly and access to information. Furthermore, attention is given to information and recommendations on natural resources and vulnerable groups to the extent that these are related to public participation. Table one illustrates the recommendations from the 2008 review and Zambia's response and efforts to implement the recommendations.

TABLE 1: UPR RECOMMENDATIONS TO ZAMBIA, 2008

Recommendation UPR 2008	Implementation, post 2008 UPR review
Source: UPR database	
Recommendations accepted by Zambia	
Recommended the swift adoption of the bill on freedom of information. (Norway)	The bill on freedom of information has not been adopted (OHCHR Compilation Report, 2012). The delegation of Zambia stated it will soon be tabled before Parliament (Working Group report, UPR 2012).
Recommended that international treaties adhered to by Zambia enjoy full implementation and that the incorporation in domestic law be accelerated. (Democratic Republic of Congo)	Since the last review, Zambia has enacted the following Acts: the Anti-Human Trafficking Act 2008, the Anti-Gender-Based Violence Act of 2011, the Persons with Disabilities Act 2012 and the Education Act No. 23 of 2011(Working Group report, UPR 2012). The draft Constitution contains progressive clauses on children's rights (Working Group report, UPR 2012).
Take all appropriate measures to improve the situation of women's rights on the ground and retain in the draft Constitution currently under discussion both the provision on equality before the law regardless of sex and the provision prohibiting any law, culture, custom or tradition that undermine the dignity, welfare, interests or status of women. (Canada)	CEDAW informed that they remained concerned that the Convention had not been incorporated into domestic law and its provisions could not be invoked before the courts and it recommended that Zambia fully incorporate the Convention into domestic law (OHCHR Compilation Report, 2012). The draft Constitution will protect women from discriminatory laws and practices in the area of personal and customary law (Working Group report, UPR 2012).
Systematically and continuously integrate a gender perspective in the follow-up process to the review. (Slovenia)	A national Draft 2012 UPR report went through national consultations in all ten provinces, with participants from Government and CSOs (Zambia National report, UPR, 2012). The National report provides no evidence that the Government met this recommendation in the consultation process.
Consider developing a strategy that ensures that the experiences of community practitioners are taken into account in the development of its national strategies to improve health standards in maternal neo-natal and child health. (New Zealand)	UNICEF informed that the creation of the Ministry of Community Development, Mother and Child Health and of the Ministry of Chiefs and Traditional Affairs was envisioned to contribute to further strengthening of community participation and engagement and facilitating integration of community experiences into policy discussions. (OHCHR Compilation Report, 2012)
Recommendations rejected by Zambia	
Consider taking steps to change the Defamation Act in the Criminal Code in order to broaden the space for exercising the freedom of expression. (Norway)	
Continue the reform of the Criminal Code in relation to the prosecution of journalists. (Ireland)	The United Nations Country Team (UNCT) added that it was necessary to reform the penal code to protect journalists from prosecution (OHCHR Compilation Report, 2012).
Amend the Criminal Code to decriminalise same-sex activity between consenting adults. (Canada).	The delegation stated that the Constitution-making process would give the people the opportunity to determine whether specific rights for LGBT persons should be enshrined in the Constitution (Working Group report, UPR 2012).

The reaction of Zambia to the recommendations indicates the political will to address issues on public participation as they are reflected in international human rights law. The delay in adoption of the Access to Information Bill indicates that the Zambian government is hesitant to secure the freedom of information to the Zambian people. While several recommendations address women's rights, Zambia has only to a limited extent taken measures to implement these recommendations. CEDAW has not yet been domesticated into national law and no information was provided on integration of a gender perspective in the UPR follow-up process. Overall, this indicates that Zambia is yet to take measures to ensure women's voices are heard in the UPR process and national policy making.

From the list of recommendations rejected by Zambia, it is evident that the Zambian government is unwilling to reform legislation that restricts freedom of expression, such as the Defamation Act, and other provisions in the Criminal Code. Freedom of expression is a key prerequisite for the public to participate effectively in public affairs; however, the government appears to be reluctant to protect this fundamental right. Table two illustrates the recommendations and Zambia's responses in the second UPR review that relate to the right to public participation.

TABLE 2: UPR RECOMMENDATIONS TO ZAMBIA, 2012

Recommendation UPR 2012 (Working Group report, UPR 2012)
Recommendations accepted by Zambia
Lobby for and implement access to information legislation to encourage greater transparency and government ability (102.4). (United States of America)
Continue giving priorities to human rights education and awareness-raising in the Government's plans, strategies and programmes, and to enhance the participation of civil society and private sector, as appropriate, as a complementary driving force in this regard (102.15). (Thailand)
Ensure that the freedoms of assembly and expression are upheld and respect the 2003 Supreme Court ruling stating that these freedoms are fundamental (102.32). (United States of America)
Implement CEDAW's call to put in place a strategy to eliminate violence, harmful practices and stereotypes against women in line with the Convention (102.44). (Slovenia)
Strengthen the governance of natural resources to ensure, amongst others, their sustainable utilisation (102.69). (Namibia)
Recommendations pending response by Zambia
Consider ratifying the remaining instruments in a progressive manner and have them effectively incorporated in the national legislation for effective implementation (103.10). (Kenya)
Hold a transparent and inclusive Constitutional reform process and referendum by ensuring that consultative bodies, such as National and Sector Group Convention, are composed of a representative balance of civil society and government stakeholders (103.14). (United States of America)
Apply special temporary measures in all areas where women are underrepresented or under unfavourable conditions. (Chile)
Repeal any law limiting the right to free expression in the media (103.51). (Iraq)
Take the necessary steps to ensure that its legal system and policies are in full compliance with its international obligations in respect of freedom of expression and that the media and journalists are guaranteed the necessary freedoms to carry out their work independently and without fear of prosecution (103.52). (Ireland)

Make the necessary legislative changes, including restricting the scope of the Public Order Act, to ensure the fullest possible freedoms of association and expression; and to ensure the police enforce these and other laws in a proportionate manner, including in Western Province (103.53). (United Kingdom of Great Britain and Northern Ireland)

Zambia did not respond to the list of pending recommendations before the deadline in March 2013. Consequently, the Human Rights Council (HRC) adopted the outcome without the responses, which are still unknown.

Implementation of the Access to Information Bill s was again a recommendation in the 2012 UPR review; and yet again Zambia accepted this recommendation. Furthermore, Zambia accepted to ensure that the freedoms of assembly and expression are upheld and respect the 2003 Supreme Court ruling (*SCZ NO. 12/2003*) stating that these freedoms are fundamental (102.32).

In response to criticism of press restrictions, Zambia argued that it recognises and accepts the principle of media self-regulation and maintains no restrictions on media freedom. The government exemplified this with the establishment of the self-regulating body, Zambia Media Council (ZAMEC), in July 2012, which will be financed through the media institutions and operate independently without government interference (Working Group report, Addendum, UPR, 2013). However, Zambia did not respond to the three recommendations to repeal any law limiting the right to free expression in the media (103.51); to ensure full compliance with international obligations in respect of freedom of expression and protect journalists from prosecution (103.52); and to ensure the fullest possible freedoms of association and expression (103.53). This indicates that the government is not fully committed to legally protect freedom of expression.

In the Working Group report for the UPR 2012, public participation in environmental management was an area subject to attention by the Zambian delegation. This is likely to have been discussed in relation to the recommendation on strengthened governance of natural resources to ensure, amongst others, their sustainable utilisation (102.69). The delegation recalled that the Environmental Management Act (EMA) No. 12 of 2011 augments for participatory processes for local communities in decision making in relation to the use of their natural resources. This could illustrate that the government prioritises participation for local communities in decision making in use of natural resources and that the government considers it to be implemented in a satisfactory manner, as no challenges in respect to the implementation of EMA were mentioned. Contrarily, a Joint Submission from civil society (Joint Submission 4²) states that one of Zambia's environmental problems is lack of key stakeholders' participation in governance of the natural resources and additionally expressed concern for the inadequate staff in the respective government departments, which they conclude has contributed to the downward trend in environmental sustainability (OHCHR Summary Report, 2012:11). It is evident that there are disputes between the government and civil society, represented by the view of Joint Submission 4, on the extent to which civil society participates in the governance of natural resources. The case study of the report will examine this in greater detail.

In the national report, Zambia states that the country has a vibrant civil society as a result of the enabling environment that government has created and that Zambia's civil society has been actively involved in raising awareness on pertinent human rights issues, including the UPR process (Zambia National Report, UPR, 2012:4). This statement is in conformity with the fact that Zambia did not mention to have any challenges in creating

² Joint Submission 4 consists of the following organisations: Edmund Rice International, Franciscan International, International Presentation Association, Istituto Internazionale Maria Ausiliatrice, VIDES International (OHCHR Summary Report, 2012).

an enabling environment for civil society in the long list of challenges and constraints in the implementation of recommendations. This considered together with the government's description of civil society could illustrate that the government is of the understanding that they have created an enabling environment for a vibrant civil society.

Related to the issues of creating an enabling environment for public participation, the NGO Act was subject to reflections and justifications in the Working Group report for the UPR 2012. The report makes reference to a number of concerns raised by civil society and the delegation of Zambia expressed that the government was engaged in discussions with civil society to find the best way of creating an environment that enhanced the freedoms of civil society to operate without any unjustified restrictions (Working Group report, UPR, 2012:11). Furthermore, the Special Rapporteur on extreme poverty and human rights reiterated her recommendation that Zambia must remove the provisions in the Act that impose excessive restrictions on the activities of CSOs (OHCHR Compilation Report, 2012). However she made this recommendation without giving clear reference to any specific provisions in the NGO Act. A joint statement from civil society (Joint statement 5³) is more direct in this regard as they state that the NGO Act restricts the environment for civil society by making restrictions on freedom of association due to the registration procedures and accompanying of criminal sanctions; increasing the risk of excessive executive interference in NGO activities and by the imposition of a forced self-regulatory framework (OHCHR Summary Report, 2012).

The Public Order Act was likewise subject in the Working Group report for the UPR 2012, whereby the delegation justified that the Public Order Act was in conformity with the provisions of the Constitution and that the restrictions permitted under article 21 of ICCPR have been affirmed in the Zambian courts (Working Group report, UPR, 2012). However it stands in contrast to another joint submission from civil society (Joint Submission 2⁴) which states "that although the Constitution guaranteed the right to assemble, the Police and Government continued to use the Public Order Act to deny citizens the right to demonstrate and hold processions. The law has also been used against opposition political parties during political events" (OHCHR Summary Report, 2012). It is clear that there is no agreement in the UPR review 2012 on whether the Public Order Act and the NGO Act presents restrictions on the environment for public participation in Zambia.

Zambia accepted the recommendation to implement CEDAW's call to put in place a strategy to eliminate violence, harmful practices and stereotypes against women in line with the CEDAW Convention (CEDAW, 102.44). In the OHCHR Compilation Report 2012, CEDAW complimented Zambia's efforts to increase women's representation in parliament, however, CEDAW was concerned about the lack of quota systems as well as the gender-biased views, negative practices and poor socio-economic status which prevented women from fully accessing the right to participate in public life, particularly at the level of decision making (OHCHR Compilation Report, 2012). This confirms that Zambia's efforts to convert the political willpower to significantly improve women's rights are only slowly realised and that much remains to be done in order to ensure non-discrimination of women in enjoying the right to public participation, which is founded in the right to participate in public life.

³ Joint Submission 5 consists of the following organisations: CIVICUS, Alliance for Citizen Participation Web, and Zambia Council for Social Development (OHCHR Summary Report, 2012).

⁴ Joint Submission 2 consists of the following organisations: Southern African Centre for the Constructive Resolution of Disputes, Hope for Human Rights, Anti-Voter Apathy Project, Transparency International Zambia, Federation for Trade Union in Zambia/Zambia Union of Financial Institutions and Allied Workers, Prisons Care and Counselling Association, Zambia Media Women Association, Zambia (OHCHR Summary Report, 2012).

It is evident from the UPR review of Zambia in 2012 that the stakeholders involved in the review have conflicting assessments on Zambia's compliance with international human rights law in relation to public participation and the interlinked rights and freedoms. It is noticeable that the government has shown limited political will to adopt and implement access to information legislation, despite it being both subject to recommendations and accepted by the government in 2008 and 2012. Furthermore, it was documented in this analysis that there is disagreement between the government and civil society on the extent to which the government has created an enabling environment for public participation and to the extent to which civil society participates in governance of natural resources. This question will be further examined in the following chapters of this report. The UPR 2012 Working Group report states, "Zambia was committed to ratifying all human rights instruments and to ensuring that those undertakings under international law were properly translated into domestic law and that progress has been and will continue to be made in this regard" (Working Group report, UPR, 2012). Consequently, it appears there is no political will to domesticate the remaining instruments in a progressive manner because Zambia did not initially accept the recommendation (103.10) that proposes *progressive* ratification and domestication of the remaining instruments.

2.1.4 The African Charter on Human and Peoples' Rights (ACHPR)

The Zambian government signed the ACHPR on 17 January 1983 and ratified the charter on 10 January 1984. The ACHPR is a product of independence movements as countries in Africa gained their independence. The specific sections of the Charter applicable here are Articles 7, 9, 11 and 13. Article 7 states that every individual shall have the right to have his cause heard. This includes: "the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force". Accordingly, Article 7 explicitly allows the citizens of the signatory states to appeal directly to international law in the domestic courts.

Further, Article 9 of the Charter states that "Every individual shall have the right to receive information" and "Every individual shall have the right to express and disseminate his opinions within the law". Article 11 states that "Every individual shall have the right to assemble freely with others". Article 13 states that "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law".

2.2 Domestic legal framework and avenues for public participation

2.2.1 The Constitution of the Republic of Zambia

Zambia is governed by a Constitution, which prescribes rights and duties of the state and obligations by citizens. The Constitution of the Republic of Zambia (Cap 1 of 1996 of the Laws of Zambia) provides for the basic rights including those related to public participation in national affairs. In looking at the Constitution, several articles are related and interdependent to the right to public participation; however, the articles do not have any direct reference to public participation. These articles include Article 19 on Freedom of Conscience, Article 20 on Freedom of Expression, Article 21 on Freedom of Assembly and Association and Article 75 that refers to the voting right.

When attempting to assess the current state of meaningful public participation in Zambia, one notes that the right to participate is not reflected directly in any of the articles of the Constitution. This obviously leaves a

negative mark when unfolding the current state of public participation. As such, this is in itself an indication of a limited enabling legal environment for public participation in Zambia. This is due in part to the notion that the right to public participation is implicit and necessitates a longer ‘journey’ of efforts to contract the right vis-à-vis other rights. The new draft Constitution has attempted to include participation by providing for it through specific sector groups or issues.

2.2.2 The government’s (legal and policy) contribution to meaningful public participation

Some of Zambia’s legislation and policies provide for engagement with the public including freedom of expression, association and assembly and the right to contest and vote in elections. There are also policy provisions on a variety of measures intended to promote participation at local level and the inclusion of some vulnerable groups. The legal framework also provides clauses curtailing some rights, such as freedom of expression, in its Penal Code and other Statutes. The following section discusses these rights and measures to ascertain the levels of meaningful participation.

Freedom of expression

Under the Zambian Penal Code, certain sections limit the freedom of expression. Section 57 and section 69 protect the President’s reputation and the dignity of the office; section 71 makes it an offence for any person “without justification or excuse as would be deemed sufficient in the case of defamation of a private person”; section 116A deals with contempt of court; and section 177(1) deals with “obscene matters or things” and makes a person, if convicted, liable to imprisonment for five years (article 19, 2012:1). Some of these sections present a serious challenge to the freedom of expression in Zambia. For example, section 57 of the Penal Code gives wide discretionary powers to prosecute “seditious intention”, demonstrated in the case of 17 January 2011, whereby Mwala Kalaluka of The Post newspaper was charged with seditious intention and assistant station manager of Radio Liseli, Nyambe Muyumbana, was charged with the publication of seditious material while covering a secessionist movement in the west of the country (Article 19, 2012:1). This matter has not yet been concluded and has been inactive since the change of government.

One of the core reasons why the Penal Code is problematic with regards to freedom of expression is that several of the formulations in the sections of the Penal Code are left without any definition or defence making it easily open to abuse. It leads to an environment where freedom of expression becomes indirectly challenged by the level of uncertainty associated with actions of expression that can be linked to the Penal Code. For example, section 69 of the Penal Code that protects the President’s reputation and the dignity of this office ensures that “any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence” and liable for up to three years in prison. The issue in question here is again the failure to define what “defamatory” or “insulting” means in this context. Article 19 describes this as amenable to a number of ordinary democratic activities (Article 19, 2012:2); thus, by looking at section 69 of the Penal Code through this lens, the article does present a serious threat to the freedom of expression for media, civil society and the citizens of Zambia. The instrument most commonly used to restrict freedom of expression in Zambia is criminal defamation. This is provided for in section 191 to 198 of the Penal Code, provisions which are incompatible with international standards on freedom of expression (Article 19, 2012:2). The case of Darius Mukuka who was sentenced to 18 months in prison with hard labour under section 69 of the Penal Code on 17 March 2010 illustrates the ‘power’ behind the Penal Code. Mukuka had been having a drink in a bar when an item by a derogatory Bemba epithet was read out and expressed his opinion that the President was “lying to people” and “failing to govern

the nation”(Article 19:3). However, the President later pardoned Mukuka, but the broad provisions in the penal code that allow for arrest in such cases remain (Article 19, 2012:3). The Mukuka case illustrates how freedom of expression has been stifled and where the powers within the Penal Code have been tested. Cases like this contribute to a fragile environment of freedom of expression where people feel intimidated when expressing critical views on the governance of the country. Furthermore, it can lead to a situation where the media rarely publish critical stories about the Government or of the governing party and it can also lead to self-censorship among journalists, especially the ones who work for state-run outlets (Article 19, 2012:3).

Freedom of expression is also affected by Section 53 of the Penal Code, which effectively gives the President blanket powers to ban publications. Other statutes prescribe prison sentences for false reporting, insulting the President, sedition and defamation. Additionally, journalists can still be jailed under the notorious Parliamentary and Ministerial Code of Conduct Act for refusing to disclose confidential sources of information. In December 2003, the Independent Broadcasting Authority (Independent Broadcasting Authority Act No. 17 of 2002) and the Zambia National Broadcasting Corporation (Zambia national Broadcasting Corporation (Amendment) Act, 2002 [No. 20 of 2002]) came into effect to set up independent boards for the regulator and national broadcaster; however, these have not yet been fully enforced. To date, the regulation of broadcasting and the national broadcaster are still under the control and influence of the Minister of Information who indirectly exercises control of the right to freedom of expression by the state.

The existence of independent newspapers and broadcasters is negated by the government’s use of the powerful state-owned media that includes Zambia National Broadcasting Corporation radio and television, three newspapers (Zambia Daily Mail, Times of Zambia and Sunday Times of Zambia) and of the Zambian News and Information Services agency (ZANIS). While there is no direct interference from the state, journalists practice self-censorship, which affects freedom of expression (Article 19, 201:3).

Another piece of legislation related to freedom of expression is the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010, which provides for the disclosure of conduct adverse to the public interest in the public and private sectors. The Act provides for a framework within which public interest disclosures shall be independently and rigorously dealt with; provide for procedures in terms of which employees in both the private and the public sectors may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers. It further safeguards the rights, including employment rights, of persons who make public interest disclosures and provides a framework for protection of persons who make a public interest disclosure. This law is intended to promote whistle blowing and participation of citizens in curbing corrupt activities. Its impact, however, is yet to be ascertained.

Freedom of association

One of the laws that affect public participation in Zambia is the NGO Act of 2009. The Act provides for the co-ordination and registration of non-governmental organisations (NGOs); establishment of the Non-Governmental Organisations’ Registration Board and the Zambia Congress of Non- Governmental Organisations; Constitution of the Council of Non-Governmental Organisations; enhancement of the transparency, accountability and performance of non-governmental organisations (NGO Act No.16 of 2009).

The NGO Act passed in August 2009 requires all NGOs to register every five years and to supply annual reports on their activities, accounts and sources of funding along with the personal assets of their officials. Registration of an NGO can be denied on the basis that the objectives are against public interest. However, public interest

is not defined in the law. This is particularly worrying, considering that the NGO Registration is dominated by government, because the chair, vice chair and eight out of 16 other members are appointed by the minister in charge. The NGO Registration board has broadly-defined powers to influence NGO operations through a “code of conduct” with regards to suspension or deregistration for non-compliance (Article 19, 2012:4). A case from 2010 provides evidence that the Act is used to silence critical NGO for example the Southern Africa Centre for Constructive Resolution of Disputes, a persistent critic of abuses of power, was deregistered after losing a six year battle on the basis that it was “dangerous to state security” (The Post newspaper, February 2010).

The right to peaceful assembly

Under the Constitution of Zambia, Article 21 states that “Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his/her interests.”

However, in practise the government controls freedom of peaceful assembly by requiring organisations to apply for permits before they conduct public meetings. The Public Order Act (POA) Cap 113 of the Laws of Zambia regulates the conduct of public meetings, processions and assemblies. De facto permits for rallies or demonstrations are required in the form of seven-day police notification (POA, Article 19). However, the arbitrary reasoning sometimes given for denial suggests that these are normally politically motivated. The use of the Public Order Act by the Zambia Police Service to quell opposition rallies and demonstrations has gained momentum since 2011 as the new ruling party attempts to restrict opposition parties from holding public rallies (Article 19, 2012:4; USA Government, 2012; Freedom house, 2012; Amnesty international, 2012; Human rights watch, 2012). There are concerns that the Public Order Act is in urgent need of review as a law and the manner of its implementation. For example, in November 2012, the Law Association of Zambia challenged the legality of the Act arguing, among other things, that it is clear that in its current form, the Public Order Act is not advancing liberties but is curtailing inalienable rights, which include freedom of speech and expression and freedom of assembly (Zambia’s Human Rights Report, 2012; Lusaka Times November 1, 2012).

Significant attempts to review the Public Order Act include rulings by the Zambian High Court in the famous cases of *Christine Mulundika v the People (1996) 2 lrc 175* and the *Medical Doctors Association and 51 Others v The Attorney General, Appeal no. 39/2002, SCZ NO. 12/2003*. In both cases, the court ruled that the state cannot sanction peoples’ right to public participation and quashed sections of the Public Order Act that were inconsistent with the Constitution of Zambia vis-à-vis public participation. However, despite the court’s ruling, police have continued to disregard the ruling and use the Public Order Act to deny freedom of assembly to political opposition and other critical groups. Of late, opposition leaders, such as Elias Chipimo Jr of NAREP, Hakainde Hichilema of the UPND and Nevers Mumba of the MMD, have all been arrested and charged for unlawful assembly using the Public Order Act (Zambia Human Rights Report, 2012). On 7 June 2012, the Police violently dispersed and beat 44 protesters belonging to the opposition UPND (Daily Nation, 10 June 2012).

The right to vote and contest in elections

One way in which Zambians participate in public affairs is through elections. The Constitution of the Republic of Zambia provides for periodic elections to elect the President of the Republic of Zambia, Members of Parliament (MPs) and Local Representatives in Councils. Since the re-introduction of multiparty democracy in 1991, Zambia has had tripartite elections in 1991, 1996, 2001, 2006, 2011 and a presidential by-election following the death

of President Levy Mwanawasa in August 2008. The country also holds several parliamentary by-elections. However, the extent to which election outcomes reflect the freely expressed will of the voters has been mixed over the years (EISA, 2012).

The Electoral Act (No 12 of 2006) provides for a comprehensive process for elections to the Office of the President and to the National Assembly; to empower the Electoral Commission of Zambia in matters relating to elections and enable the Commission to make regulations providing for the registration of voters and for the manner of conducting elections; to provide for offences and penalties in connection with elections; to provide for the appointment of conflict management officers; to provide for election petitions and the hearing and determination of applications relating to elections to parliament; to repeal and replace the Electoral Act, 1991; and to provide for matters connected with or incidental to the foregoing. It is clear from the provisions above that the Electoral Act is very important as far as public participation in electing the President, the Members of Parliament and Council officers is concerned.

Recent participation in the 2011 general elections showed slight improvement in election turnout. For instance, 53.65 percent of the 5,167,154 million registered voters turned out in the 2011 elections (www.ECZ.zm); this amounted to an increase of 8.25 percent over the 2008 Presidential By-Election. There was a noticeably strong turnout of young voters as well as a balanced turnout of both female and male voters in polling stations. Six out of the nine provinces recorded a voter turnout higher than 50 percent. The Copperbelt province recorded the highest voter turnout of 59.50 percent of 845,569 registered voters. The lowest voter turnout was recorded in the Central Province, with 46.87 percent of 482,013 registered voters. Although Lusaka has the second-highest number of registered voters in Zambia, 52.05 percent turned out to vote in the 2011 elections. This percentage could be attributed to the tense security context that prevailed ahead of the elections (www.ECZ.ZM).

Public engagement

Policy

The executive arm of government drives policy formulation in Zambia. In addition to Ministers and Permanent Secretaries, important actors at the ministerial and inter-ministerial level include Cabinet Liaison Officers, Cabinet Liaison Committees, the Policy and Coordination division, ad-hoc inter-ministerial committees of officials and the Attorney General's Chambers.

There are opportunities for policy consultation within and outside government at every level. According to the government, consultation is essential at all stages of the policy process in order to ensure a well-coordinated implementation process as well as harmonisation of the roles of all implementing agencies (GRZ Cabinet Handbook 2010:17). The inter-ministerial policy committees have a provision to include "any other experts, as deemed necessary by the Committee", which allows for the inclusion of either state or non-state experts. Additional opportunities for policy interface include the Sector Advisory Groups (SAGs), Provincial and District Development Coordinating Committees (PDCCs and DDCCs) and Area Development Committees (ADCs). Established in the early 2000s, these platforms were set up to strengthen participatory approaches to decision making.

Sector Advisory Groups are one of the major points of interface in policy implementation. The alignment of SAGs to themes reflected in the national development plans was established in 2003 in order to provide a platform for engaging stakeholders on development related policy concerns. The SAGs meet on a quarterly

basis and are headed by the Permanent Secretary of the lead ministry in the relevant sector. The membership of the groups is drawn from the private sector, faith-based groupings, academia, individual experts and the donor community. Membership is by invitation from the government or sometimes as a result of a request to join. There are no limitations on the number of members or composition of SAGs; the only condition for membership is a loose requirement that “an organisation should be actively operational and functionally effective”. Consequently, those affiliated to an organisation are more likely to participate and individual participation is not guaranteed unless one is a well-known expert. According to the Cabinet guidelines, SAG proceedings should focus on sharing information on the performance and outcomes of policy, providing alternatives, and strategizing on partnerships, particularly with regard to implementation.

Legislation

One of the first and most obvious areas in which reference to public participation can be found is within the Standing Orders of the Parliament. These Standing Orders guide parliament in its daily activities and routines. It is an instruction manual on how parliament is to go about its daily business while in session and acts as the main theoretical link between the people and the governance process within a democratic context. The extent to which ordinary people are allowed into the process and procedure of parliamentary business is quite important. Parliament is often open to the public, though not necessarily in a manner that allows them to engage with parliament. Nevertheless, acting as the representatives of the people, the parliamentarians are, in theory, those to whom the interests and concern of the people are delegated. Consequently, the business of parliament directly concerns the people to whom, again in theory, the parliamentarians are accountable to. As a common measure of a government’s transparency, the chambers of parliament are constructed in such a manner as to allow public viewing of on-going affairs and debates. This is confirmed in the Standing Orders of the Zambian Parliament. Visitors may be present in the Chamber in designated areas, but shall withdraw when called upon to do so by the Speaker or the Chairperson of Committees. Furthermore the Members of Parliament should be accessible to the people and parliamentary material should be printed and distributed to ensure information is accessible to the population. In many cases, and this is an arguable point in developing countries, publications containing the laws and business produced by parliament come at a price; perhaps limiting access to these by whole segments of the population. All publications by the Assembly may be sold to the public at such rates and places as the Speaker may decide (The National Assembly of Zambia Standing Orders, 2005).

The dedicated and persistent visitor to the Zambian Parliament could, if aware of this right, call upon Section 213 to gain access to all materials within parliament. All persons shall be entitled to read and, if they so desire, take extracts from or copies of all papers laid upon the table except papers declared confidential to members by the Minister when laying them.

One of the primary and most functional components of the parliamentary system is the committees. The committee system within a parliamentary structure is one of the most effective methods of engaging with the public on specific issues; although it restricts the public in terms of agenda setting and influence because of the use of ministries. Committees are usually grouped according to government ministries within the executive branch. Ideally, this setup is meant to enhance the capacity of MPs to act as the watchdog of their executive counterparts, seeking to ensure that policies are in line with legislation and that delivery of government services is taking place.

Committees within the Zambian Parliament have certain obligations to the public that are spelled out in its Standing Orders. Apart from House-keeping Committees and Select Committees, the sittings of all Sessional

Committees of the National Assembly shall be held in public provided that on its own resolution, a committee may decide to conduct its business in camera (Standing Orders, 2005:130). The Parliamentary Select Committee system provides MPs with an opportunity to dissect policy proposal (bills) submitted by the executive to the legislature for consideration. Government officials and members of the public, particularly CSOs, are invited to make submissions on particular policy and legislative issues. The committees, through the Clerk of the National Assembly, can invite individuals or organisations deemed relevant to their deliberations. Others are free to send in their submissions as long as these contributions are related to the matter before the committee. In effect, this means that all members of the public, barring any specific resolution on the part of the committee, are able to attend committee meetings should they so choose. This is, however, a long way from actual participation in the business of committees, but it does increase the information available to citizens, and thus reinforces one of the fundamental pillars of effective public participation. Perhaps unfortunately, gaining entrance (or inclusion) into the work process of the committees is, as in other countries, only by invitation. Portfolio, general purposes and Select Committees have power to invite submissions from members of the public and interested persons and institutions on any matter within their term of reference (Standing Orders, 2005:146).

In an attempt to encourage interface between parliament and the public, parliament has now established parliamentary offices located in every constituency so that the electorate can channel their views on matters related to the constituency. However, the efficacy of the parliamentary system still needs investment as many MPs have employed professionals who are not seen as the legitimate representatives.

Vulnerable and marginalised groups

Zambia has made efforts to implement CEDAW through various policies, programmes and initiatives such as: the policy that reserves 30 percent of titled land specifically for women at a subsidised rate, as prescribed in the National Gender Policy (2000); the introduction of a bursary scheme for female students enrolled in science and technical subjects to ensure greater gender equality in these areas; the incorporation of human rights teaching in the curriculum at the primary and secondary levels in public schools; the adoption of the Mental Health Policy; the launch of the Campaign for Accelerated Reduction of Maternal Mortality in Africa; the development of the Fifth National Development Plan (2006-2010) to achieve the Millennium Development Goals by 2015; the elaboration of the National Gender Communication Strategy; and the establishment of the Police Public Complaints Authority (2003), the Inter-ministerial Committee on Trafficking (2004), the Strategic Plan of Action (2004), and the Parliamentary Committee on Legal Affairs, Governance, Human Rights and Gender Matters (CEDAW/C/ZAM/3-4). The Zambian government has also attained a 50 percent threshold in decision making at the High Court and Supreme Court levels (CEDAW/C/ZMB/CO/5-6)

Equal participation of women in public life is one of Zambia's priority areas, as women are underrepresented at all levels of decision making in government, parliament, political parties, the private sector, special public service committees and other institutions. Women constitute over 53 percent of the electorate yet less than 12 percent of elected officials are women, and women constitute less than 10 percent of senior government officials (HRCNC:2012).

After the 2011 tripartite elections, Zambia witnessed a significant drop in the number of women elected to both parliament and council. The representation of women in parliament and at council level dropped from 14 percent to 11.3 percent and 7 percent to 6.1 percent respectively (NGOCC, 2011; The Post Newspaper, 29 December 2011; Daily Mail, 29 December 2011; Zambian Watchdog, 28 December 2011). With these statistics it was

not unexpected that the first PF Cabinet had only two female ministers; which have since risen to four female ministers (NGOCC, 2012). However, in spite of the low number of women in elected positions cited above, President Michael Sata appointed a sufficient number of women in various decision making positions. The government has also adopted a public service training policy which contains affirmative action measures to train women employed in civil service so they would qualify for higher positions (OMCT, May 2013). The results of these measures are yet to be ascertained.

Zambia has a further obligation under Article 12 of the ICESCR to promote the highest standard of health which is impeded by the criminalisation of same sex relationships. Criminalisation fosters discrimination and stigma and thereby creates barriers to services, particularly access to health. There have been limited reports of prosecutions for same-sex sexual activity in Zambia. In April 2011, the Lusaka Magistrates Court sentenced two boys to reformatory school for engaging in “indecent acts” (CHRI, 2012). The boys were sentenced to undergo 12 months of imprisonment at a reformatory school in order to grow up as “law-abiding citizens”. While there have been few convictions, the impact of the penal provisions on the lesbian, gay, bisexual, transgender and intersex (LGBTI) community generates fears of arbitrary detention, discrimination, harassment and extortion. Equally, LGBTI activists that have sought to fight against discrimination based on sexual orientation have also been silenced. In April 2013, a Zambian gay activist, Paul Kasonkomona, was arrested following an appearance on a television talk show in which he expressed support for LGBTI rights. Kasonkomona was charged under section 178(g) of the Zambian Penal Code, Chapter 87 of the Laws of Zambia, for “soliciting in a public place for an immoral purpose”. This offense, derived from the English Vagrancy Act of 1898, was repealed in England in 1956 but remains in force in Zambia (Hivos, 2012). A 2007 report by the International Gay and Lesbians Human Rights Commission stated that LGBTI rights groups in Zambia have in the past been prohibited from registering by the Ministry of Home Affairs Registrar of Societies (CHRI, 2012). In February 2012, there was a sustained backlash following statements made by the UN Secretary General that Zambia should take advantage of constitutional reform to implement stronger protection against discrimination on the basis of sexual orientation. Newspapers, such as *The Southern Time*, called it his “gay crusade” and pressure was put on the government to clarify its position on gay rights (CHRI, 2012). The government ministers responded that the “government will not entertain the amendment of the law prohibiting homosexuality” and the political opposition stated that reform would be “abrogating values”. Organisations, including the Zambia Episcopal Conference and the Evangelical Fellowship of Zambia, applauded the government’s stance in “show[ing] the international community that Zambia has her own culture which should be respected”. The Law Association of Zambia equally stated “gay rights in Zambia were (sic) impossible because homosexuality was a criminal offence under the current laws” (Ibid, 2012).

According to CEDAW, there is concern about the de facto discrimination faced by certain disadvantaged groups of women, in particular older women, women with disabilities, refugee women and women in detention, many of whom suffer social marginalisation, exclusion, violence, poverty and isolation in all areas of Zambian society and particularly in rural areas.

2.3 Local level participation

The local government system was established under the Local Government Act Cap 281 of 1991. Councils comprise of the mayor and elected councillors who represent ward boundaries as defined by the delimitation commission and the local MPs. Councils are mandated to deliberate on development challenges and have powers to formulate by-laws for their municipality or district.

Sub-committees set the agenda for the council's deliberations. The main actors are the councillors who are the elected representatives of the people at ward level and are expected to bring the community agenda to the council sessions. Members of public (experts and eminent citizens) are sometimes invited to local council sessions depending on the matter at hand and the expertise required. At this level, opportunities for engagement for non-state actors are mainly in the form of social, religious, cultural and other community associational activities that bring the "targeted" experts and eminent citizens in contact with members of the public (ZGF:19). PDCCs and DDCCs were set up in 2003 as development structures supporting the ADC, providing a "bottom-up" (decentralised) mechanism of governance. According to the 2003 Cabinet Directive, all organisations and institutions operating in a particular district are expected to register with the District Councils in order to become members of the DDCCs. Each DDCC should be divided into sub-committees based on the nature of organisations operating in the district. The sub-committees discuss development policy concerns and identify matters for the DDCC agenda. Deliberations at the DDCC level are expected to feed into PDCC deliberations, which, in turn feed into the national framework. Non-state actors should ensure that they belong to or are represented in all these structures (ZGF, 2012:20).

The Local Government Act (CAP 281 of the Laws of Zambia) provides for an integrated three-tier local administration system and defines the functions of local authorities. As with the Standing Orders of Parliament, the Act also provides that documents produced by local governments must be made accessible to members of the public.

In this case, however, there is some variation as there is no fee or payment required in order to access the documents produced by the local councils. Under the Act (article 109, part xii of miscellaneous provisions), it is provided that a document shall be open to the inspection by any person or class of persons: (a) any such person may, without payment, take copies thereof or make extracts there from; (b) the council may supply a copy thereof or any extract there from to any such person on payment of such charge, if any, as may be imposed under this Act. A document shall be deemed to be open to the inspection of any person or class of persons at all reasonable times if it is open to such inspection at the offices of a council during the normal office hours of the council. Furthermore, it is also provided that a public notice required to be given by a council or by an officer of a council shall be given by publication of the notice in a newspaper circulating in the area of the council or in such other manner as the minister may approve.

This study shows that with regard to physical access to the chambers of local government, Council Committees are open to the public. It should be noted, however, the Local Council Meetings **are not open to the public**, as no mention is made of this within the text of the document. Unfortunately this limitation also includes documents related to council meetings. It is generally accepted that public participation in local government affairs is increasingly viewed as an integral part of a healthy grassroots democracy. This is supported by the household interviews that were carried out in the target areas. Indeed, one of the most important sectors of local government work and public participation is that of budget formulation (Local Government Act, Cap 281 of the Laws of Zambia). It is thus evident that considerable inroads could be made to increase public participation in the affairs of local government if the relevant sections of the above legislation were promoted amongst the public.

A spirit of public participation, however, must be incorporated into the principal framework that outlines the way in which local government is to operate and be structured. Unless specific provision is made for local councillors to consult with the public regularly, then there is no obligation to do so and local level government

can act in isolation from the public should it so choose.

2.3.1 Participation of Rural people and involvement of traditional Authorities

The newly created Ministry of Chiefs and Traditional Affairs is very critical in promoting participation of rural people and involvement of traditional authorities in public affairs. The Zambian government recognises the need for traditional leaders and their constituents to engage in dialogue in order to foster development in rural areas. In addition to the role of the Ministry, participation of rural people and involvement of traditional authorities is provided for under the Chiefs Act (Cap 287 of the Laws of Zambia). The Act provides for the role of traditional leaders and how rural people are represented in public affairs. An analysis of the extent of public participation in relation to the Act shows the role expected of traditional leaders in national development.

Specifically, chiefs are formally recognised in Zambian law through two separate legislations:

- (i) The Chiefs Act of 1965 (Cap 287 of the Laws of Zambia) defines a chief as a person who is recognised by the President under the provisions of the Act as the Litunga of Western Province, a Paramount Chief, Senior Chief, Chief or Sub-Chief or a person who is appointed as Deputy Chief. The Chiefs Act also empowers the President to withdraw recognition of Chiefs. In practice this does not mean someone stops being a chief but it does mean that the said chief would not enjoy certain privileges. These include “subsidies” set out under the Chiefs Act, as well as other entitlements such as subsidised vehicle loans. For their part, chiefs have a responsibility to maintain public order in their area of influence. It requires them “to preserve the public peace in his area and to take reasonable measures to quell any riot, affray or similar disorder which may occur in that area”.
- (ii) Since 1965, the Zambian Constitution has contained a provision for chieftaincy. The current Constitution, amended in 1996(CAP287, Article 2) specifically defines the institution of chiefs as “a corporation sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the peoples concerned”. It also makes references to the Chiefs Act (1965) in terms of defining who might be recognised as chief.

The Local Government Act (1995) provides for representation of chiefs at the council level. Under the Act, the composition of the local council shall include, “two representatives of the Chiefs, appointed by all the Chiefs in the district”. However, chiefs are forbidden to hold Mayoral offices.

Taken together, the Local Government Act (1995) and the Development and Registration of Villages Act (1971) provide the main institutional framework on how chiefs ought to be integrated in development at the local level. However, the incentive for chiefs to be involved with development appears weak. It is one thing to give chiefs a *right* to get involved in local discussions and planning, but quite another to ensure that their participation is meaningful and generates positive social returns. If the current government wants to involve chiefs in development, it needs to focus on how it can shape their incentives more strongly than previous governments have done (www.houseofchiefs.com).

The perception of respondents during the FGD sessions was that while the chief is given the legitimate place to represent their chiefdoms at local level, there was a sense in which they felt that chiefs have succumbed to elite capture and do not necessarily represent views of their constituencies. Discussants noted that chiefs and civil servants make decisions without taking them to the people for their approval. However, local authorities are pleased that chiefs and their constituencies have a platform and their views are both heard and considered

during council meetings. It is this varying perception of the actors that draws interest to this study; making clear there is need to bridge these two expectations as they can impact meaningful participation.

2.4 The policy framework for public participation

An analysis of the extent of public participation in relation to the policy environment is highly significant. According to the government, consultation is essential at all stages of the policy process in order to ensure a well-coordinated implementation process as well as harmonisation of the roles of all implementing agencies (GRZ Cabinet Handbook, 2010:17). For this purpose, both intra and inter-ministerial consultations are an integral part of the development of policy proposals from conceptualisation until the final documents are approved by the minister.

The National Decentralisation Policy (2002) and the National Gender Policy (2000) are among the most significant and relevant policies in understanding public participation. The study also reviews other policy platforms such as national development plans and the constitution making process. Other policies have a limited mandate at district level and therefore commit limited resources towards public participation.

2.4.1 The National Decentralisation Policy

The National Decentralisation Policy (2002) was developed to overcome the highly centralised and exclusive structure and systems of governance inherited from the colonial era. The policy encapsulates the theme of "empowering the people" by providing for the "strengthening of local government to facilitate more effective citizen participation in governance and accountable, delivery of public services as the basis for decentralisation" (GRZ, Ministry of Local Government and Housing, 2002). The long-term vision of this policy is to achieve "a fully decentralised and democratically elected system of governance characterised by open, predictable and transparent policy making and implementation processes at all levels of the public service, effective local community participation in decision making and development administration while maintaining sufficient linkages between central and local government" (Ibid, 2002). In February 2013, the Patriotic Front government approved the National Decentralisation Policy to empower provinces and districts to manage their own affairs for effective social economic development. Despite this approval, not all functions were transferred to the councils, as central government retain some core functions over essential national matters. According to the Minister of Local Government, "the central government will continue to build capacity in councils for them to improve performance of such core functions as planning and budgeting, personnel and financial management," (Lusaka times, 10 April 2013) The government through cabinet will also provide leadership and direction to implementation of devolution and implementation of the national decentralisation policy (Ibid).

2.4.2 The National Gender Policy

In the context of public participation, vulnerability implies the inability of a person to actively participate in public affairs due to social or physical status, nationality, economic, education or age reasons. The most significant policy document that tackles issues of vulnerability in Zambia vis-à-vis public participation is the National Gender Policy, 2000. Gender refers to the socially constructed roles and responsibilities assigned to women and men in a given culture or location (Calasanti, Slevin, 2001:1). According to the primary findings in this survey, the degree of participation in public affairs between men and women in Zambia varies. Traditionally, Zambian men have an upper hand in participating in various spheres of social, economic and political life

compared to women. This is consistent with other findings in a study by Calasanti (2001). A review of the formal policy formulation guidelines shows that there is no mention of gender in terms of the policy formulation process or structure or in terms of representation and participation (ZGF:18). Therefore, public participation is not equally distributed among men and women, resulting in a gender gap in public participation. The National Gender Policy guides on customary and statutory laws that perpetuate gender inequality and provides proposals to redressing inequalities in public participation in both the short and long term. The policy proposes that at least 30 percent of all participants at all levels of government be allocated to women. Several civil society leaders and others involved in gender and human rights matters who were interviewed for this study believed this policy is targeted at resolving the historical injustice of women's participation. Many women who took part in this study stressed that this arrangement has hindered them from participating effectively in public affairs in their communities.

People living with HIV/AIDS constitute another vulnerable group under the National Gender Policy, especially since HIV is most prevalent among women compared to men (ZDHS, 2012). The effects of HIV/AIDS affect the family, which is the core unit of the nation. HIV is changing the landscape with regard to public participation. The findings of this study show that HIV/AIDS is posing a new challenge where women and children are heads of families. For instance, many women who participated in this study expressed that HIV/AIDS has posed a serious challenge because they cannot participate in community programmes; rather, they have to focus on providing food for their families since their husbands have died from HIV/AIDS. As such, there needs to be a change in the manner in which participation is governed as a lot of women and children are remaining dispossessed as a result of the death of their husbands or fathers.

2.4.3 Public participation in the constitution-making process

Zambia has had several constitutional review commissions since the early 1970s. These have come at a huge cost to Zambian taxpayers. Lack of effective participation at grassroots and household level has largely contributed to these constitutional failures (www.zambianconstitution.net). For example, in 2009 alone, over ZMW150 million was spent on the National Constitution Conference, which eventually failed to enact a people driven Constitution. Much of the failure was due to lack of effective participation of key stakeholders such as civil society, representative political players and the general public (The Post Newspaper, November 11, 2009). However, on 16 November 2011, President Michael Sata appointed an 18 member Technical Committee that is mandated to draft Zambia's Constitution. The Technical Committee has so far undertaken activities that seem to encourage broader and effective participation of different stakeholders such as civil society and the general public (The Post Newspaper, 25 November 2011). The Technical Committee undertook consultations at district, provincial and national levels; although selection of delegates left many people unhappy despite a pre-set criterion for participation. While many people were consulted and participated in the process, it remains to be seen whether their input will be reflected in the final draft of the Constitution.

2.4.4 Public participation in the development process

In the Sixth National Development Plan, the Zambian government urges all *Zambians* from all walks of life to be fully committed and *participate in the development process* of the country. The Sixth National Development Plan was developed through a consultative process and provides a comprehensive medium-term strategy for an all-inclusive development agenda. It builds on the achievements and lessons learnt during the implementation of the Fifth National Development Plan and uses SAGs to achieve wider participation. As observed, SAGs are

limited in that individuals who do not belong to organisations are left out, as well as those that are rural, poor and uneducated. This can create the appearance that SAGs are elitist.

2.5 Summary of enabling environment for public participation

In terms of the enabling environment, it is evident that while Zambia has committed itself to a number of international human rights standards and domestic law, more is still required to facilitate public participation. Although policy and legislative platforms and spaces exist in policy and legal documents, they are not effectively used and consequently, optimal participation is still an on-going project. There is therefore need for government to create relevant, coordinated and accessible platforms for the public to participate in public affairs. Public participation is a valuable element in governance of public affairs if government applied a holistic approach to engage the public.

3 Civil Society’s Role as a Bridge Between the State and the Public

3.0 Civil Society – a vehicle for public participation in national policy formulation and implementation in Zambia?

This chapter focuses on civil society’s role in enhancing public participation at various levels. Given the previous studies around this topic, this chapter draws from primary data sources consulted during the study and secondary data generated by United Nations (UNECWA, 2010) and the 2010 CIVICUS Civil Society Country Index (CSI) Report for Zambia (CIVICUS, 2011). These reports highlight characteristics of civil society organisations (CSOs) and make recommendations on how they can be more effective in meeting their various roles. The report includes an additional dimension focussing on the advocacy role that CSOs play and evaluate to what extent they engage the public to enhance their participation in policy formulation and implementation in Zambia.

Representative structures and an active civil society among other important elements can ensure the availability of information and mass communication on issues of public interest and allow the basis for collective public action and dialogue vis-à-vis the state. For participation to be effective, it is necessary to have well-functioning and legitimate organisations that can represent the demands and concerns of rights holders and play an intermediary role between the state and the public. In the same way, CSOs also communicate information from duty bearers to rights holders; thus playing a very critical bridging role between the communities and the government and vice-versa. A common understanding of what constitutes civil society is necessary for this discourse.

3.1 What is Civil Society?

While this report is not an academic discussion on CSOs, it is imperative that a common understanding

“Civil society can exist where there is no democract, but democracy cannot exist where there is no strong civil society”

Broadbent, 1993

is established on the terms and concepts that will be used within this chapter. Despite there being several definitions of “civil society”, there are some common elements among the various scholars’ views. Saadeddine Ibrahim (1997) describes civil society as “a group of free, voluntary organisations which occupy the public space between family and state in order to achieve the interests of individuals, committed in that endeavour to the values and standards of respect, mutual consent, tolerance and peaceful management of conflict”. Forester and Sunar in their 2011 publication refer to CSOs as “organizations which work in the arena between the household, the private sector, and the state to negotiate matters of public concern.” (Forester and Sunar, I, 2011). In meeting these roles, CSOs have been categorised under different sectors with some being non-governmental organisations (NGOs), institutions concerned with research, community groups, trade unions, advocacy groups, faith based organisations, media organisations and any such groups that serve as intermediaries between the household and the state. Box 2 below describes some common Civil Society groups.

Box 2:

Common Civil Society Terms

Civil society organisations: these are groupings of individuals and associations, formal and informal, which belong neither to the public sector nor to the profit-making private sector;

Non-governmental organisations: they are often and mistakenly equated with civil society. NGOs work in a broad spectrum of fields, from humanitarian aid, to human rights promotion, to environmental protection;

Community-based organisations: their constituency – of both activists and beneficiaries – resides within a recognizable geographical entity, such as a neighbourhood, a village or a district. CBOs rely mainly on the voluntary contributions of labour and material resources of their members, though they may also receive funds from Non-governmental organisations;

Non-governmental development organisations: they are specialized in channelling funds for development and work at the international level channelling aid from North to South. Most developing countries have their own NGDOs. Unlike northern organisations, southern NGDOs engage with other civil society entities in carrying out development projects or in mobilizing the local population;

Advocacy NGOs: they provide such services as research and training, information gathering and dissemination. The most common forms of advocacy NGOs are chambers of commerce and federations of CBOs. At the international level, they include the International Council for Social Welfare, Amnesty International, and the World Business Council for Sustainable Development;

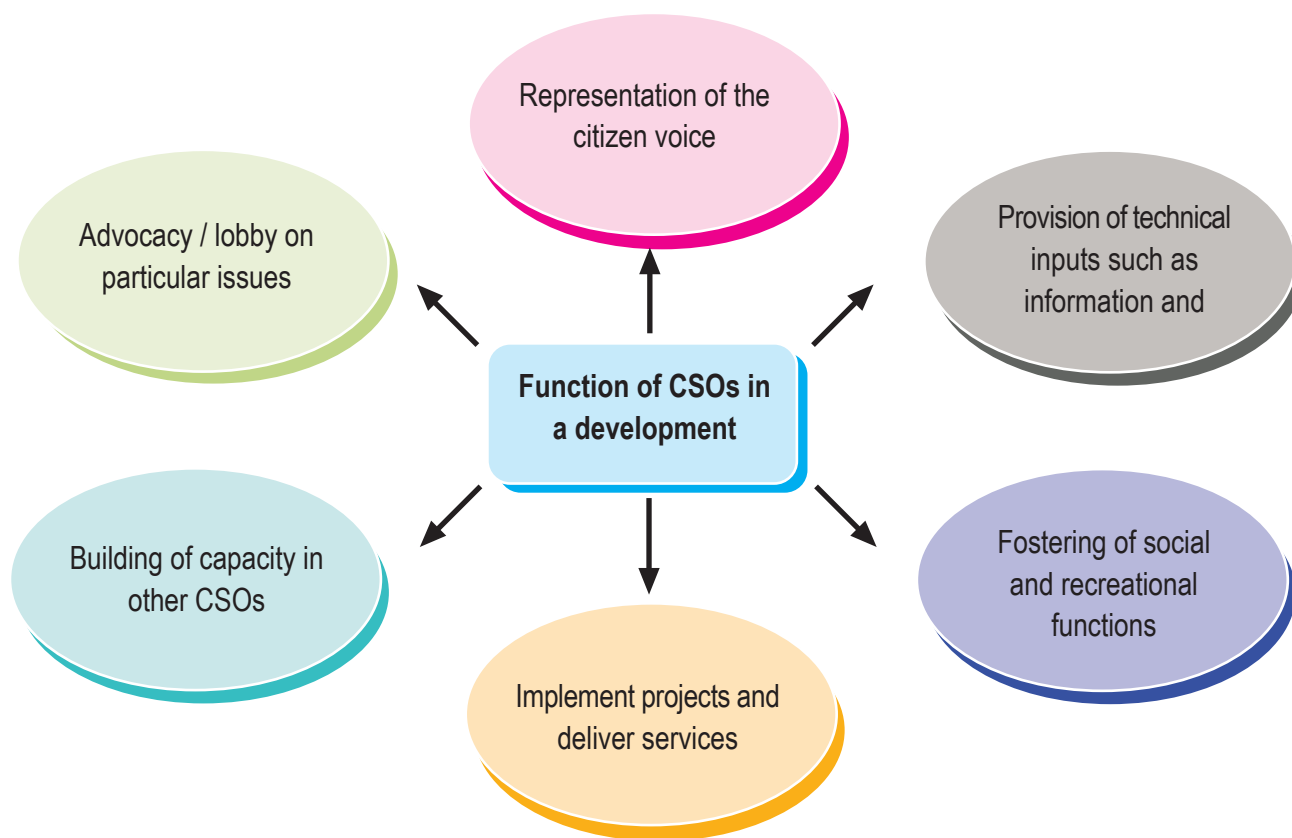
Interest group associations: they include associations of professionals, such as lawyers or doctors or architects. They also include producer and consumer co-operatives, and associations for business executives or retired persons, in addition to unions whose primary function is to protect the interests of their members at the workplace.

Source: United Nations Research Institute for Sustainable Development (UNRISD), 2002, Visible Hands: Taking Responsibility for Social Development, p. 93.

Regardless of how they are defined and grouped, CSOs are crucial actors for promoting participation and advocating the protection of human rights through informing, mobilising and representing the public. Despite categorical differences, all these CSOs have one or more of the following functions that direct their activities.

This is illustrated in Figure 3.

FIG. 3: FUNCTIONS OF CSOS



Source: Adapted from the UK Overseas Development Institute

The functions of CSOs illustrated in figure 3 can be summarised in the following areas:

- Advocacy for public concerns;
- Providing services to various sectors of society spanning from individuals to entire communities;
- Enhancement of opportunities for participation at grassroots level;
- Serving the interest of members.

It has been argued CSOs are increasingly becoming more concerned with provision of services to society, partly due to a strong push from the donor and international community that often seek alternatives to government mechanisms for channelling developmental resources and efforts (UNECWA, 2010). Theoretically, CSOs can reach out to the most remote beneficiaries, which state actors may have limited resources to address. Our study confirmed these findings to some extent, although this was mainly seen in rural CSOs. This is elaborated further in the section discussing the landscape of CSOs in Zambia below.

Given this background to CSOs, they are placed in a conceptually unique position to enhance communication and dialogue between various arms of government, the community and local administration. They can also serve as mediators and facilitators to different stakeholders creating a necessary and effective forum for dialogue. Close partnerships with CSOs provide government an opportunity to demonstrate principles of transparency and democratic maturity. All these functions are to a great extent dependant on the CSOs showing a good track record of activities and community engagement to ensure credibility and garner strong trust and support from

their constituents.

3.1.1 The Evolution of Civil Society in Zambia

Zambia's civil society has been shaped by a history of authoritarian traditions; first during the colonial era and later during one-party rule in a welfare state. For several decades, civil society was largely restricted to activity within the agendas and control of the state. This often led to covert resistance by civil society. The trade unions, churches and student movements were the dominant actors in these activities during both the colonial era and one party state era. These organisations eventually formed the nucleus of a powerful citizens' movement that eventually led to a peaceful transition to multi-party democracy in 1991. From then on, the new multi-party democracy framework favoured donor priorities and suppressed social trends thus giving a boost to civil society activity in Zambia.

During the last decade, CSOs have formed very successful coalitions to add their voice to pertinent national issues. One example is that of the Oasis Forum, which is a consortium of three church mother bodies⁵. This coalition has successfully mobilised communities in preventing what are perceived as constitutional violations, such as the unsuccessful bid by the then President Late Frederick Titus Jacob Chiluba to run for a third term in office. In the recent past, the forum has also voiced concerns over attacks on CSOs who had gathered at a Church in Matero to pray and peacefully protest over the government's decision to remove fuel and maize subsidies (Lusaka Times, 2013).

The constitution making process is another avenue within which a number of CSOs have participated in their individual capacities and as coalitions. This participation has been received with mixed feelings by the government and there seems to be a growing reluctance by the present government in having participation reach lower levels. This was exemplified by a ban affected by the Minister of Justice, Honorable Winter Kabimba, on having parallel workshops to discuss any contents of the draft Constitution that CSOs, on behalf of citizens, deemed suitable. The advocacy NGO, Young African Leadership Initiative (YALI), found itself in the middle of this ban. They felt the apparent citizen apathy and low attendance at the district discussions on the draft constitution could be attributed to low understanding of the issues being discussed, thus justifying the need for more CSO involvement (Post, 2012). Due to growing concerns, the Oasis Forum drafted a private members bill on the constitutional process to be tabled in parliament in the near future (Mwebantu, 2013).

3.1.2 Civil Society Landscape in Zambia

This study, in addition to the review of previous work compiled by an assortment of organisations, conducted a series of interviews and Focus Group Discussions (FGDs) with a number of CSOs involved in various functions in the study areas (Annex 2 lists the institutions and participants interviewed and the groups where the FGDs were held). The CSI report of 2010 mapped civil society in Zambia including professional bodies, trade unions, gender-based groups, human rights and advocacy groups, service-oriented CSOs, faith-based organisations, international NGOs and the media. They went on to assert that approximately 43 percent of CSOs are classed as education, youth and child development organisations; perhaps reflecting an emphasis on and funding support for activities which address Millennium Development Goals (MDGs). Sizeable concentrations of CSOs were found to be in the fields of governance (13%), HIV/AIDS (11%), employment (10%) and water and sanitation (10%). In this study, the CSOs interviewed also reflect the situation as shown in the CIVICUS study. Table three shows the variety of the 17 CSOs covered during this study by their role and function.

⁵ Evangelical Fellowship of Zambia, Council of Churches in Zambia and the Zambia Episcopal Conference.

TABLE 3: MAIN FUNCTIONS OF SELECTED CSOS INTERVIEWED IN THE STUDY

Name	Poverty eradication	Advocacy	Research	Service delivery	Capacity building	Coordination mobilization
Action Aid	X		X			
Adventist Development Rural Agency (ADRA)				X		
Caritas Zambia		X	X	X		
Extractive Industry Initiative		X	X			
Foundation for Democratic Process (FODEP)		X				
Jesuit Center for Theological Reflection		X	X			
Media Institute of Southern Africa-Zambia						X
Operation Young Vote		X				X
South Luangwa Conservation Society		X		X	X	
Southern African Center for the Constructive Resolution of Disputes		X				
SPLASH				X		
Transparency International – Zambia (TIZ)		X				
Women for Change	X	X	X	X		
Women in Law and Development		X	X			
Youth Alive Zambia		X				
Zambia Agency for People with Disabilities		X				
Zambia Land Alliance		X	X			
TOTAL	2	13	7	5	1	2

The study showed that most CSOs interviewed are involved with advocacy (76%), research (41 %) and service provision and poverty eradication (41%), while fewer organisations are involved in coordination (11%) and capacity building (6%). Given the purposeful sampling criteria employed in this study to focus on CSOs that had within their mandate a public participation purpose, it is not surprising that our findings have excluded the more development oriented CSOs as was reflected in the CIVICUS report. This notwithstanding, a substantial number of the CSOs indicated they perform more than one of these functions. It is interesting to note that CSOs in the more rural communities of Mfuwe and Solwezi Districts are more active in the area of service delivery and seemed to play a significant role in representing the interests of their constituents be it women, youth, people living with HIV/AIDS in the acquisition of benefits derived from various development programs; this is in agreement with the UNECWA report which asserts that this CSO role seems to be gaining more momentum and acceptance by donors. This study found that government seemed to interfere less with CSOs partnering with them on developmental issues and the CSOs were more readily accepted and given space to participate in government fora such as district planning meetings. In contrast, most of the Lusaka based CSOs focus on research and advocacy on issues related to governance in the political, social or economic spheres of the country. It is also interesting to observe that some CSOs cooperate on a number of issues as seen from the Civil Society Fora in Mambwe and Solwezi which ensures one voice during district planning and other government meetings. These are governed by Memoranda of Understanding (MoU), which stipulates how they will conduct themselves and defines their reporting and accountability mechanisms. A sample of the North-Western CSO Forum MoU is attached as Annex 3 for reference. At the national level, there have been coalitions formed often during elections to make certain that CSOs speak with one voice at these very crucial periods in the national agenda. The Oasis forum is one such example as has been elaborated in preceding sections.

The findings from this study indicates that rural CSOs have strong constituencies but weak policy links, while urban CSOs have strong policy links but weak presence at the grassroots and constituency level. In Solwezi, the CSO representatives consulted alluded to the fact that a number of them operated at community level but had no funding or connections to attend government meetings. They also did not have the basic educational level to confidently engage with policy makers on issues that are often technical in nature and documentation available only in English. The urban CSOs, on the other hand, have the opportunities to participate at policy making fora if accredited by government. This dichotomy in roles between rural and urban CSOs has implications with regard to effective engagement of the public in their participation during decision making processes.

3.2 Regulatory environment for civil society participation in Zambia

The extent to which CSOs can actively engage in their various functions depends largely on what is permissible and what is restricted in the context within which they operate. It is critical that CSOs have the knowledge and understanding of what the policy environment dictates. This understanding will often define the relationship between government and civil society. In Zambia, there are different types of regulatory mechanisms for different sectors of civil society, but not one piece of legislation covers the whole sector. The NGO Act of 2009 vests too much power in a government-controlled NGO registration board. This is a 15 member board comprising of two members appointed by the Minister, representatives from the Ministries responsible for Health, Home Affairs, Economic Planning, Community Development and Local Government and seven members elected by the NGO Congress and lastly the registrar as an ex-officio member. Furthermore the act places stringent requirements on NGOs, including the obligation to report their sources of funding, activities and the assets of their personnel. These perceived restrictions have resulted in a number of CSOs refusing to register under this new act and there have been calls for government to review the act taking into account concerns raised by the CSOs (Lusaka Times, 2013).

The previous chapter on enabling environment for public participation discussed various pieces of legislation that have bearing on effective functioning of CSOs. The definition in the NGO Act does not include other CSOs including faith-based organisations, community based organisations (CBOs) and media organisations. The NGO Act does, however, give discretion to the minister responsible for its enforcement to include any organisation that they feel should be regulated under this act. These organisations are governed by the Societies Act of 1958, which has been criticised for vesting too much power with the state. For instance, it allows government to cancel the registration of any society at their discretion and stipulates a requirement for government to give prior approval of any foreign funding to a CSO. The Public Order Act has also been seen to give the police force excessive authority to regulate public meetings and licence the right to assemble. This may inhibit the activities of some CSOs to organise meetings with their constituents and gather evidence and material for their advocacy campaigns.

Another legal hurdle CSOs encounter is with regard to the access to information, which is critical to their functioning effectively. There is still no freedom of information legislation as illustrated by the MISA-Zambia Report of 2012 which surveyed an array of government institutions to ascertain their openness and secrecy in relation to information provision. They found that “there is absolutely no transparency and efficiency in providing information to members of the public” (MISA, 2012).

The government has to a limited extent been supportive of CSO participation in policy formulation and national agenda setting, but there are still a number of areas that require attention. While, some individual organisations

or coalitions have been allowed to participate in the National Development Planning process, and some have seats in the SAGs, there still remains a large number of CSOs that are yet to have the privilege of voicing their views in these fora. Moreover, several CSOs, particularly those that are more active in political governance, have been given the space to add their voices to important events such as the constitution making process and other such government endeavours. This often excludes, however, CSOs more inclined towards capacity building or service delivery activities. This study revealed that invitations to government functions and meetings sometimes depend on political affiliations and patronage. This was particularly highlighted in study areas where the CSO representatives mentioned that perceived opponents to the policies of the government are sidelined from attending government decision making fora. An example was given where invitations for meetings would be given directly to a subordinate in an organisation because they were perceived to be government sympathisers. In Solwezi and Lusaka, some interviewees expressed sadness; regardless of the limited provisions and goodwill from the government, the peoples' effective participation was in some instances hampered by late delivery of notices and relevant documentation for various meetings. Postponements of scheduled meetings, such as council planning meetings, were also said to be communicated late thereby causing the organisations to miss these engagements. The technical nature and bulk of government documents also reduces CSOs ability to consult their constituents prior to attending these important discussions. For some of the smaller CSOs, the language of these reports also acts as a barrier to effective participation in government processes. Therefore, more often than not, they represent their own views and seldom speak from a well-informed perspective of their constituencies at these meetings. This situation is further compounded by the restrictive and often discretionary legislative environment within which CSOs are supposed to fulfil their role. Interactions with government should therefore be formalised with clear modalities for accessing information and accreditation to relevant decision making processes in a transparent manner. This will ensure CSOs have sufficient notification prior to meetings and ensure wide consultation with citizens.

3.3 Effectiveness of civil society representation of constituents in national policy formulation and implementation

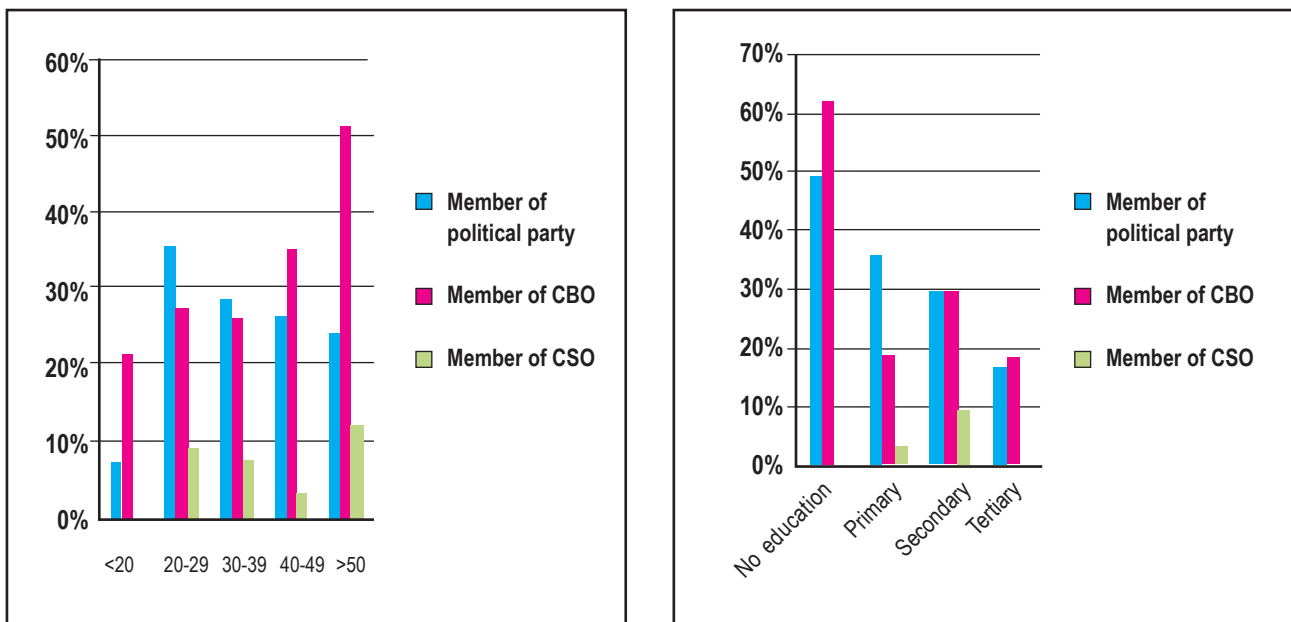
Given the bridging role that civil society has in relation to national policy formulation and implementation, it is imperative that their level of engagement with constituents be examined. A number of previous reports have given different views of how effective CSOs are in executing this function. They have been summarised below:

- The United Nations Research Institute for Sustainable Development asserts that the impact of interventions by CSOs in comparison to government interventions in the areas of poverty alleviation and provision of services did not show positive results (UNRISD, 2002);
- Another United Nations report claims “NGOs have often attracted exploitative leadership, especially in national level organisations. The benefits they seek include finances and privileges, the prestige and influence associated with visibility, and access to those in positions of power and authority” (UNECWA, 2010);
- The CIVICUS report, having looked at both internal and external characteristics of CSOs, concluded that there was low civic engagement in Zambia indicative of socio-economic and political challenges being faced. Further, the report states that most citizens spend more time sourcing for means of survival to the detriment of active civic participation (CIVICUS, 2011).

This study provides further empirical evidence. Specifically in the study areas, only 8 percent of the respondents were members of a CSO compared to the 29.2 percent and 31.5 percent for political parties and CBOs respectively. In the interviews, CBOs were separated from CSOs as these were taken to be the organisations that were formed

from the communities and were more concerned with developmental activities that were local in nature. Figure four and five illustrates this further.

FIGURE 4 AND 5: INDIVIDUAL AFFILIATION TO CSOS AND OTHER ORGANISATIONS IN THEIR COMMUNITY



There were marginally more males than females who were members of CSOs and the age distribution showed that those above 50 years of age and people with no education were more involved with CBOs. In terms of education, all levels were equally represented though it is worth noting that for political party membership, those that were younger and had less education were the highest in number. This low number of membership to CSOs presents a very worrisome picture as it brings to question whose voices the CSOs represent when in government led fora. The communities bemoaned the fact that CSOs were mostly found in Lusaka and along the line of rail with inadequate presence in far flung rural areas. This meant that the communities’ concerns over various developmental issues were not taken into consideration when discussions were being held at central government level. The communities also accused the CSOs of not being practical enough as they did not ensure the masses were aware of their rights and duties. They also felt there should be a monetary incentive to attract people to meetings called by CSOs. The various sentiments from the communities could be summarised in this one statement: “a lot of people talk but nobody hears them”. In other words, the best way to reach community members in these areas is through political parties or CBOs. This supports the earlier assertion that CSOs in the areas studied do not represent the “general public”.

In their defence, CSOs attributed their inadequate presence in most local communities to legislation which stipulated that they pay exorbitant fees to register their organisations at district level. They found this to be prohibitive thereby rendering them “urban” CSOs who only went to the local communities on donor driven initiatives thus reducing the sustainability of these interactions. As observed, many CSOs are concentrated along the line of rail. At community level, civil society functions are carried out by the CBOs. The CSOs also cited challenges related to coordination and partnerships within and among themselves. They cited ideological differences and competition which rendered them ineffective in representing the public’s view on a number of issues. In Solwezi, an example was given where one CSO had stopped branding their vehicle for fear of

public hostility, as it was perceived they had betrayed the communities in negotiations regarding resettlement as a result of the opening of a new mine in the area.

When it came to individual participation in community led events, this study revealed that belonging to a CSO does have a positive bearing on individual participation in these activities as illustrated in table 4 below.

TABLE 4: CORRELATIONS BETWEEN MEMBERSHIP OF CIVIL SOCIETY ORGANISATION AND CONTRIBUTION TO COMMUNITY LEVEL ACTIVITIES

Member of civil society organisation	Frequency of contribution to community level activities					Total
	Weekly	Monthly	Quarterly	Yearly	Never	
Yes	4 20.0%	4 20.0%	3 15.0%	3 15.0%	6 30.0%	20 100.0%
No	7 2.9%	22 9.1%	29 12.0%	40 16.5%	144 59.5%	242 100%
Total	11 4.2%	26 9.9%	32 12.2%	43 16.4%	150 57.3%	262 100%

Correlation significance =0.00 (p<0.05) significant differences

This table shows that of all the respondents who said they were members of a CSO in their area; a third indicated that they never contributed to community level activities. This, when compared to the close to 60 percent from the ones who did not belong to a CSO, provided a significant difference statistically implying that belonging to a CSO actually predisposed one to be more involved in community level activities. Similarly, the claim that membership to a CSO has beneficial impacts on individual participation can be further supported by table five below.

TABLE 5: CORRELATIONS BETWEEN MEMBERSHIP OF CIVIL SOCIETY ORGANISATION AND PARTICIPATION IN COMMUNITY MEETINGS ORGANISED BY CIVIL SOCIETY

MEMBER OF CIVIL SOCIETY ORGANISATION	FREQUENCY OF ATTENDING COMMUNITY OR ORGANISATIONAL MEETING CIVIL SOCIETY ACTIVITIES					TOTAL
	WEEKLY	MONTHLY	QUARTERLY	YEARLY	NEVER	
YES	1 4.8%	5 23.8%	5 23.8%	5 23.8%	5 23.8%	21 100.0%
NO	3 1.2%	12 4.9%	10 4.1%	29 11.8%	191 78.0%	245 100.0%
TOTAL	4 1.5%	17 6.4%	15 5.6%	34 12.8%	196 73.7%	266 100.0%

Correlation significance =0.00 (p<0.05) significant differences

From table five above, it is clear that only 23.8 percent of the people who belong to a CSO have never attended community or organisational meetings hosted by CSOs, compared to 78 percent of those who were not members. While this is a positive finding, it raises concerns to the mobilisation capacity of these CSOs. It is evident that there is inadequate engagement with the community at large to attract people to these community or organisational meetings. This is even more worrisome considering that only 8 percent of the individuals in the household survey were members of a CSO. This effectively means that the rest of the community are not represented by CSOs and unless people use other avenues to air their issues, their voices will remain unheard.

3.4 Summary of civil society's role as a bridge between the state and the public

In conclusion, the question posed at the beginning of this chapter is raised once again: “are CSOs a vehicle for public participation in policy formulation and implementation in Zambia”? The communities consulted during the study seemed to understand the multiple roles that CSOs have to play in enhancing public participation. They had very high expectations and they expressed a desire for CSOs to “just tell us what to do”. Community members also articulated their readiness to be part of the solution if only they were invited to join the discourse. Despite the fact that people know what CSOs should be doing, they did not seem proactive enough to take the initiative to engage with organisations and demand that they also be included in the decision making processes that affect them. In contrast, however, service delivery CSOs present in both Mfuwe and Solwezi had a high number of community volunteers overseeing and providing leadership in the implementation of their projects. This same spirit of voluntarism could be readily available for the CSOs working in the area of advocacy and research.

4 Participation of Individuals in Development and Governance

4.1. Experience with individual engagement

This chapter discusses the actual participation of individuals in development and governance. As noted in previous discussions, participation requires that all individuals are aware of their rights and have the ability and opportunity to engage in their local context and address barriers to the enjoyment of their rights. For engagement to be meaningful, individuals must have adequate knowledge of social, civic, administrative, legal and political structures in society. They also need knowledge of relevant administrative and legal procedures to be followed in order to interact with public agencies and to claim entitlements or to seek remedies (DIHR, 2012:46).

This requires mechanisms for civic awareness and access to information as well as openness and accessibility of local governance structures. Claiming rights at local or national level requires adequate organisation and level of mobilisation as well as the establishment of fora for dialogue and structures of interaction between individuals and public structures. Special emphasis should be placed on the concerns of groups that are marginalised or excluded from public participation. It is against this background that the analysis of the public's ability to assert their right to participate in governance and development processes in Zambia is necessary. The study explored individual participation in mineral resource development processes in Solwezi and wildlife conservation in Mfuwe; these activities serve as dominant pre-occupations in the two areas. Peoples' participation in these areas is largely the basis in which the ability of individuals to participate is assessed. The purpose was to examine participation of individuals in practice in the development and governance processes.

4.2. Discussions of study findings from the case studies

In Solwezi, 85.1 percent and Mfuwe 92.5 percent of respondents were aware of the right to participate in public affairs whereas 65.5 percent and 78.5 percent understood how they could exercise their right to public participation respectively. The study also showed that 87.4 percent in Solwezi and 92.5 percent in Mfuwe have ever exercised their human rights and freedoms. While respondents claimed awareness and understanding of the rights, little evidence exists to show real exercise of these rights as the table below shows.

TABLE 6: AWARENESS OF RIGHTS

Type of rights and freedoms ever exercised by people who are already aware of the right to participate in public affairs ¹	MFUWE		SOLWEZI ²	
	YES	NO	YES	NO
Participation in public affairs	56 (70.0%)	24(30%)	48 (37%)*	82 (63%)
Freedom of expression	61 (77%)	28 (23%)	57 (44%)	73 (56%)
Freedom of Assembly	63 (79%)	17 (21%)	80 (62%)*	50 (38%)
Freedom of association	45 (56%)	35 (44%)	63 (49%)	67 (51%)
Prohibition of Discrimination	15 (19%)	65 (81%)	55 (42%)*	75 (58%)
Participate in development	40 (50%)	40 (50%)	66 (51%)*	64 (49%)
Vote and stand of in an election	66 (83%)	14 (17%)	108 (83%)*	22 (17%)
Access to information	18 (23%)	62 (77%)	46 (35%)	84 (65%)

¹The table includes those respondents who are aware of the right to public participation: Mfuwe: 80 and Solwezi: 130.

* Significant differences

The table above shows whether respondents who stated they are aware of the right to public participation have actually exercised these rights. In both locations the right most people have exercised is the right to vote, while fewer people have engaged in other types of participation, such as participation in development and freedom of association. The types of participation differs between the two locations when it comes to freedom of assembly, which is used more extensively in Solwezi, and prohibition of discrimination and access to information, which is more common in Mfuwe.

The significance test shows, that people in Solwezi who are aware of the right to public participation are more likely to exercise the right than people who are not aware of the right to public participation. This includes freedom of expression, access to information, prohibition of discrimination and participation in development. There is no significant correlation in Mfuwe and thus no conclusion can be made based on these figures. These results indicate that the reason why people in Mfuwe do not participate is not a lack of awareness about the right to participation itself but could rather a result of inadequate awareness about the specific ways in which people can participate, such as by associating and assembling. It is possible that there are low levels of awareness in Mfuwe due to accessibility and flow of information. Mfuwe largely relies on the community radio station for information whose coverage is limited by the licence offered by the government; whereas Solwezi is more accessible and exposed to more sources of information.

The study results show that the primary mechanism for the public to learn of public issues and national development processes in Zambia is by reading newspapers, listening to radio and watching television. The table below shows the frequencies by which citizens learn about their rights.

TABLE 7: PERCENT OF RESPONDENTS SOURCES OF INFORMATION ABOUT THE RIGHTS TO PARTICIPATION IN PUBLIC AFFAIRS

MFUWE

Background Characteristics	Television	Radio	Brochures	Relatives/ Friends	Church	Books	Newspaper
Sex							
Male	34.9	65.1	16.3	39.5	27.9	37.2	30.2
Female	53.5	53.5	13.9	23.3	18.6	27.9	20.9
Education level							
No education	33.3	33.3	0.0	0.0	33.3	0.0	0.0
Primary	28.6	76.2	0.0	19.1	9.5	19.9	9.5
Secondary	41.7	50.0	10.4	39.6	27.1	27.1	25.0
Tertiary	78.6	71.4	57.1	28.6	28.6	78.6	57.1
Total	44.2	59.3	15.1	31.4	23.3	32.6	25.6

SOLWEZI

Background Characteristics	Television	Radio	Brochures	Relatives/ Friends	Church	Books	Newspaper
Sex							
Male	61.6	75.3	13.7	39.5	34.3	46.6	54.8
Female	80.0	76.0	14.7	23.3	54.7	53.3	57.3
Education level							
No education	50.0	60.0	0.0	50.0	0.0	20.0	23.0
Primary	46.4	78.6	17.9	75.0	60.7	39.3	39.3
Secondary	73.8	76.2	10.7	53.6	45.2	53.6	58.3
Tertiary	85.3	70.6	20.1	35.3	32.4	50.0	64.7
Total	70.9	75.7	14.1	31.4	44.6	50.0	56.1

The radio has a wider reach and is ranked as the most critical platform serving as a source of knowledge for peoples' rights. In order to understand how the media cover different public issues, it is important to take into account the media culture in Zambia. Key variables include the degree of diversity and competition among the major media outlets, the role of political parties, civil society, churches and the extent of government control and the prevailing styles of reportage. There is little diversity and competition among the major newspapers and while community radio stations attempt to offer diversity of news they always run the risk of their licences being revoked if government does not feel comfortable with the news diversity that they carry (MISA, 2012). The major newspapers and radio stations with wider coverage are under government control and news coverage is often one sided. In other words, government has a high degree of influence on information dissemination to the public.

Individual members of political parties and civil society groups, including churches, are provided a media platform if their agenda corresponds with the agenda of the media controllers. This has to some extent determined levels of individual participation through media. However, the recent emergence of web based social media has begun to challenge this domination; although even web-based social media are based on the agendas of those who control the sites. This also affects access to information. People often tend to use the media where their views are acceptable and accommodated. This media dichotomy has affected individual participation in public affairs and depending on which platform one uses, participation is limited or enhanced.

TABLE 8: PARTICIPATION IN COMMUNITY ACTIVITIES

Type of rights and freedoms ever exercised	Ever participated in community level activities					
	MFUWE			SOLWEZI		
Dependent variables	YES	NO		YES	NO	
Participation in public affairs	36 (62.1%)	22 (37.9%)	58	21 (44.7%)	26 (55.3%)	47
Freedom of expression	36 (59.0%)	25 (41.0%)	61	31 (50.0%)	31 (50.0%)	62
Freedom of Assembly	37 (57.8%)	27 (42.2%)	64	46 (53.5%)	40 (46.5%)	86
Freedom of association	27 (57.4%)	20 (42.6%)	47	37 (53.6%)	32 (46.4%)	69
Prohibition of Discrimination	5 (33.3%)	10 (66.7%)	15	28 (50.9%)	27 (49.1%)	55
Participate in development	25 (55.6%)	20 (44.4%)	45	37 (53.6%)	32 (46.4%)	69
Vote and stand of in an election	36 (52.9%)	32 (47.1%)	68	50 (41.3%)	71 (58.7%)	121
Access to information	9 (50.0%)	9 (50.0%)	18	26 (54.2%)	22 (45.8%)	48

* Respondents were allowed to provide multiple answers

The table above shows the correlation between respondents who have ever participated in community level activities and the type of rights and freedoms ever exercised by the respondents for each case study in Mfuwe and Solwezi. For Mfuwe, the table shows that there is a significant relation /correlation between participation in community level activities and the dependent variables. In relative terms, this means that people in Mfuwe, who participate in community level activities, are more likely to have exercised participation in public affairs and prohibition of discrimination compared to those who are not aware of the right to public participation. There are no significant correlations for Solwezi and therefore no conclusion is adduced.

4.3 Forms of participation

58.6 percent of respondents in Solwezi and 70.9 percent in Mfuwe are aware of procedures for public participation in their community. However, only 54.6 percent in Solwezi and 58.7 percent in Mfuwe are satisfied with these procedures. This implies that there are obstacles to individual participation. Respondents observed that while procedures may exist they are not accessible and are written in technical language, which discourages people from participating.

The respondents noted that channels for participation are not clear and where they are invited to participate, the language is inappropriate as it was always in English and favoured those who were literate.

TABLE 9: PUBLIC ACTIVITY

Public activity participation	MFUWE		SOLWEZI	
	YES	NO	YES	NO
Council Budgeting	5 (5%)	88 (95%)	14 (8%)	160 (92%)
Council Meeting	9 (10%)	84 (90%)	49 (28%)	125 (72%)
Prioritisation of development projects	23 (25%)	70 (75%)	42 (24%)	132 (76%)
Sitting of Service	13 (14%)	80 (86%)	30 (17%)	144 (83%)
CDF allocation	7 (8%)	86 (92%)	7 (4%)	167 (96%)

Generally there are low levels of individual participation in public activities and prioritisation of development projects enjoys more participation than the other activities in Mfuwe. The same applies for Solwezi. However, participation in council meeting activities has a higher score in Solwezi. Participation in Solwezi may be higher due to its accessibility in terms of road infrastructure and new mines that have opened up and allowed for rapid change of attitudes towards participation. In general the low rates of participation in both study sites may be due to procedural obstacles and limited knowledge and awareness among the citizens on their lack of impact in budgeting, meetings and other significant activities in the districts.

TABLE 10: LEVEL OF INDIVIDUAL PARTICIPATION IN DECISION MAKING AT COMMUNITY/VILLAGE

Background Characteristics	Weekly	Monthly	Quarterly	Yearly	Don't participate
Sex					
Male	0.0	8.7	3.9	14.2	73.2
Female	0.7	5.0	0.7	10.7	82.9
Education level					
No education	0.0	25.0	12.5	12.5	50.0
Primary	1.6	11.5	3.3	6.6	77.1
Secondary	0.0	6.2	1.4	14.5	77.9
Tertiary	0.0	0.0	1.9	13.2	84.1
Age					
Less than 20	0.0	0.0	0.0	7.1	92.9
20 – 29	1.0	4.1	2.0	15.3	77.6
30 – 39	0.0	6.3	1.3	7.5	85.0
40 – 49	0.0	2.9	2.9	14.7	79.4
50+	0.0	19.5	4.9	14.6	61.0
Total	0.4	6.7	2.3	12.4	78.3

The frequency of participation from the table above shows that age, gender and education play a role in participation and decision making at community level. The data shows that participation in community level activities increase with age; in particular those over 50 are more likely to participate in community level activities and do so very frequently. The gender balance shows that men have a slightly higher level of participation than women. The figures indicate that education has a relatively big influence on participation; the higher the level of education the less likely respondents were to participate in community activities. For example 25% of persons with no education participate in community level on a monthly basis compared to 0 percent of persons with a tertiary education. However, the figures above are too small to provide a clear correlation which was shown through discussions and interviews. The age, gender and education variables also show that they are critical in determining the forms of participation that the respondents are involved in. The respondents indicated letter writing, attending public meetings, mobilising others and meeting local leaders as some forms of participation they have been involved in.

Based on the above information and desk study, major avenues for public participation in Zambia among others are those related to:

- Educating the public;
- Informing the public;
- Achieving a good consensus;
- Eliciting views, or some other aspect of a process or outcome.

Through interviews and discussions, respondents expressed they felt their participation was not effective. This was attributed to the fact that many decisions were made elsewhere and were largely communicated to them for their information and compliance. They noted that under these circumstances it was difficult to hold government accountable for many of their actions.

More specifically, the study shows that individual engagement occurs by participating in closed door meetings, writing letters, attending public meetings and considering documents drafted for approval such as the draft Constitution. Some people are only engaged at the level of selecting representatives, while others explain the contents of government plans in their community. Some represent their constituencies while others just attend public meetings out of their own interest. Consequently there are different levels of participation by individuals. An in-depth analysis of individual participation shows that two main aspects emerge out of public participation processes in Zambia. The first concerns the inclusiveness of the participation exercises and the second concerns the quality of the participation exercises in achieving their intended purposes.

In terms of inclusiveness, individuals who are women, youth, living with disabilities or those who are not traditional village leaders are rarely involved in structured public process engagements. The patriarchal nature of rural communities tend to lend more weight to participation of men, village heads and chiefs whereas in peri-urban and urban areas those affiliated to organisations such as NGOs, the church or political parties tend to dominate participation in public activities.

In many of the forms of participation discussed above aspects of equity, democracy, representativeness, transparency, and influence, among others are not given adequate attention. Concerns over the perceptions of those involved in the participation exercise or the wider public, and whether they believe that participation has been honestly conducted is almost always a secondary matter. However, while most citizens feel happy about being included in participation of public matters when the opportunity occurs, they also see it as a way of recognition in their society. It is not apparent whether their invitation to participate is to empower them or to

appease them. The selection of representatives is rarely done democratically and people are often chosen on the basis of whom they know from the sponsoring agencies. It was also evident that in many cases, the same people tended to participate in different public initiatives carried out at community level. This is probably due to these individuals building confidence and capacity over time to assert their rights and become the usual choices for governing agencies to invite to meetings and other events.

In terms of the quality of participation achieving its intended purpose, the varied forms of participation taking place in the study sites are relevant but their effectiveness is questionable. While representatives of public agencies are convinced that they engage the public adequately, it is evident that in most participation exercises it is much more about public agencies meeting the legal or policy requirements than engaging with serious intent to collect genuine input and participation from the citizens and to act on those views. As a result there is little scrutiny on the quality of participation by members of the communities. Otherwise why do citizens in these study areas for example wait for garbage to accumulate to unsanitary levels before they act? Why do they not ensure the towns are clean and garbage is not strewn all over? The lack of self-mobilisation by individuals to clean their environment and waiting for authorities to do it is quite common. This could be indicative of lack of ownership of the public processes and resources. Public participation as initiated by policy makers should focus on ensuring that all interests are represented in the national development and governance processes and that these individuals are represented at an early stage in those processes. Government agencies should do more with regard to learning and creating more interactive public consultations. There is also need for an “open door” policy for taking affirmative steps to ensure broad-based involvement early in the development of new projects. One barrier to individual participation regards the stringent procedures for participation in consultations or national development issues. Many respondents of the study observed that the inability to comprehend with procedure requirements often affected their participation. A number of respondents have to use others to fill in important forms when participating in a cooperative or women club, for example. This is complemented by lack of information which is not always available from government points of dissemination. Illiteracy, especially among women in rural communities, is still a barrier to individual women participation.

In addition, there seems to be a gap in monitoring the purposes and real outputs of participation in several areas where participation of individual citizens is concerned. There are no deliberate people channels or platforms for harnessing communities’ views and inputs into development and governance processes outside the local resident committees, political representation or traditional leadership. There is need for the state to implement measures to create platforms and monitor participation as this is part of the legal obligations and commitment that Zambia has made as set out in international and national law. It is therefore imperative that effectiveness of the individual rights to participate is further interrogated. Policy makers would do well to set up monitoring mechanisms to ensure genuine public participation and not merely formal rituals which tend to diminish the role of citizens.

Summary of individual participation

The radio has a wider reach and is ranked as the most critical platform serving as a source of knowledge for peoples’ rights. The study shows that while procedures for participation may exist they are not accessible and are written in technical language which discourages people from participating. Furthermore channels for participation are not clear and where they are, the language is inappropriate as it is always in English and favours those who are literate. The study also shows that age, gender and education play a role in participation and decision making by individuals at community level. The study shows that invitations to public events are through social connections to politicians and government officials.

5 Case Study on Public Participation in the Management of Natural Resources

Public participation in natural resources management (NRM) is particularly relevant in the Zambian context given that natural resources form a livelihood for a vast majority of households particularly in rural areas. Consequently any policy decisions and implementations made on the resources have a direct impact on the people; either through loss of ecological values derived from that resource or experiences of pollution and degradation arising from the exploitation of that resource. This means that individuals must be involved at various stages and levels of processes where decisions are made that affect natural resources.

The Human Dimensions Research Unit at Cornell University summarises citizen participations in NRM as being able to:

- Improve relationships between stakeholders (which can increase their ability to work together toward management objectives);
- Increase the capacity of citizens or agencies to participate constructively in management (by providing them with skills, experience, or knowledge);
- Change beliefs, attitudes, or behaviours (to help management processes occur more smoothly) (Lauber, 2000).

In addition to the contextual framework introduced in chapter one, this summary sets a foundation for the discussion on individual participation in NRM in the study areas under observation. This chapter presents findings of the case studies that were undertaken in Solwezi and Mfuwe and Lusaka to ascertain features of public participation in the context of NRM. As with the preceding chapters, the three-tier system will be used and accordingly this chapter will focus on the enabling environment, civil society and individual engagement as they all relate to NRM. Focus will be placed on mining and wildlife management as they are the predominant natural resources in these areas. Lusaka had the additional advantage of being the policy making capital where most decisions relating to these natural resources are made. These findings are a reflection of both primary and secondary data sources as compiled through an extensive literature review, key informant interviews, household survey questionnaires and focus group discussions. A more elaborate description of the study methodology was given in the first chapter.

5.0 Enabling environment for public participation and access to information in natural resources management

International environmental issues entered the global scene from the mid-1960s with the publication of Rachel Carson's "The Silent Spring", which highlighted the long-range deposition of very toxic chemicals from their point of original deposition (Carson, 2002). In 1973, the international community met in Stockholm, Sweden and established the United Nations Environment Programme (UNEP); the first United Nations body, which was given the task of managing all matters relating to environmental management. Since then, several Multilateral Environmental Agreements (MEAs) related to climate change, biodiversity, wildlife management and chemicals management have been signed and ratified by Zambia among many other countries. The Rio Earth Summit of 1992 in its decision document Agenda 21 included what has become known as "Principle 10", which looks into participation of various groups and access to information as the cornerstone of effective environmental

management and implementation of the various MEAs (United Nations, 1993). The formulation of the Aarhus Convention of 1998 puts principle 10 of Agenda 21 into practice. It clearly spells out the procedures and requirements for access of environmental information to citizens and stakeholders. Its main aim is to encourage parties to effectively engage the public in the management of natural resources to actualise the aspirations of Agenda 21 (Aarti, 2008).

Domestication and implementation of the provisions of Principle 10 of Agenda 21 and the Aarhus Convention has been a challenge in Zambia. This is partly due to the unavailability of information, particularly as it relates to the stocks and amounts of resources present, but more so because of the bureaucratic and red tape procedures for providing such information to people that requests it. Chapter three and four of this report discuss the barriers faced by both CSOs and the public in accessing information that should ideally be in the public domain. This hampers effective participation of relevant stakeholders in management of natural resources. Additionally, private businesses also have a responsibility to provide information on their activities to the public.

The UN Guiding Principles on Business and Human Rights of 2011 were developed in recognition of the following:

- The State duty to protect against human rights abuses by third parties, including business;
- The corporate responsibility to respect human rights. Companies are expected to comply with all applicable laws and to avoid violating human rights wherever and however they operate;
- The need for rights and responsibilities to be matched to appropriate and effective remedies of business human rights abuses (OHCHR, 2011).

At Lumwana Mine in Solwezi, there have been initiatives to involve the public in development projects the company is undertaking in the area. Similar initiatives are found in Mfuwe, which will be discussed in subsequent sections of this chapter.

The Constitution of Zambia through its Directive Principles of State Policy (The Constitution of Zambia, Part IX, Cap 1 of the Laws of Zambia) has several ambitions in as far as environmental and natural resources management are concerned. However, there are no specific provisions for specific natural resources. Article 112 of the Constitution affirms that the state shall endeavour:

- To provide clean and safe water; adequate medical and health facilities and decent shelter for all persons and take measures to constantly improve such facilities and amenities;
- To provide a clean and healthy environment for all;
- To promote sustenance, development and public awareness on the need to manage the land, air and water resources in a balanced and suitable manner for the present and future generations.

The Constitution goes further and adds a responsibility in Article 113 on every citizen to the effect that we should all contribute to the well-being of the community where we inhabit including the observance of health controls.

The Constitution primarily focuses on the duties of the citizens rather than the obligations of the state and the rights of the citizens. Similar to general governance, as highlighted in chapter two of this report, the Constitution is silent on public participation in relation to NRM. While there is a duty on the part of the state to raise awareness on the need to manage natural resources, there is no explicit provision for involving the public in decision making processes that affect their natural resources.

The Zambia National Policy on the Environment (NPE) in keeping with the principles enshrined in the Constitution also declares that “Natural resource conservation, protection and sustainable utilisation can only be promoted if local authority and community participation, empowerment and social and economic benefits from natural resources are guaranteed” (GRZ, 2009). Unlike the Constitution, the NPE appears to focus more on the rights than the duties of citizens. Nevertheless, no specific guidelines have been included for the modalities of actually implementing this aspiration of promoting local and community participation in NRM. This has given the much needed impetus to implementing agencies to include in the various pieces of legislation provisions of community participation in the sector specific management of natural resources. Table 12 shows the Acts, their objectives and provisions of public participation in the management of the resource where available.

TABLE 12: RELEVANT NATURAL RESOURCES LEGISLATION AND PROVISIONS FOR PUBLIC PARTICIPATION

Name of Policy/Legislation	Objectives	Provisions for Public Participation
National Policy on Environment of 2008	To provide a framework management guide for the management of Zambia’s environment and natural resources so as to ensure that they are managed on sustainable basis and retain their integrity to support the needs of the current and future generation without compromising either of the two.	Promotes local authority and community participation for successful NRM and conservation.
Wildlife Act of 2008	To establish the Zambia Wildlife Authority and define its functions; provide for the establishment, control and management of National Parks, Game Management Areas and enhance the benefits of Game Management Areas both to local communities and to wildlife; to involve local communities in the management of National parks and Game Management Areas.	Formation of Community Resource Boards under part IV
Mines and Mineral Development Act of 2008	“An Act to revise the Law relating to prospecting for, mining and prospecting of minerals, to repeal and replace the Mines and Minerals Act of 1995, and to provide for matters connected with or incidental to the foregoing”	Not apparent though Public participation is implied in the Environmental Management Regulations as they relate to EIA.
Environmental Management Act	An Act to coordinate and regulate environmental management in Zambia.	Parts VI and VII provide for public participation and access to information.

From table 12 above, some of the acts namely the Wildlife Act and to a larger extent the Environmental Management Act explicitly provide for public participation in the discharge of their functions. The other sector piece of legislation concerned with minerals is silent on participation as an important aspect of environmental governance. The Environmental Management Regulations under the Ministry of Mines do imply public participation in the conduct of Environmental Impact Assessments (EIAs) related to mining projects. Even in former legislation, enforcement and realisation of meaningful public participation still remain a challenge. The study found that while at national level there was policy direction, the operationalisation of these provisions at local level is a challenge. Local implementation and laws do not have clear platforms for engagement of individuals or groups. A case in point is the initiative of forming Community Resource Boards (CRBs), which is a positive initiative on paper whose actual implementation remains a challenge, as was found in the FGD held with members of the Kakumbi FGD and other members of that community. The CRB representatives acknowledged receipt of 50 percent of all revenue ensuing from wildlife licenses on a quarterly basis. This money was disbursed as follows: 5 percent to the Chief, 35 percent for projects, 40 percent for NRM/resource protection and 20 percent for administration. The representatives said they undertook community projects targeting education, health and wildlife protection; however, they further said participation from the community in these ventures was low and called for a large stakeholder meeting to map a way forward on how to best utilise proceeds from government. The CRB representatives also mentioned that there had been audit queries with regards to the financial operations of the previous board. Given that Mfuwe had six CRBs, the representatives admitted that there was poor coordination among and between the different CRBs and they only met at workshops and infrequent study visits. The traditional leaders spoken to in Mfuwe echoed these sentiments. They asserted that the CRBs misused funds and “just paid themselves sitting allowances”. In this way, the CRBs did not add value to people’s lives; in cases of conflict, individuals still had to source their own funds to channel complaints to the Zambia Wildlife Authority (ZAWA) offices in Mfuwe and Lusaka. An example was given of a local who had bought a boat using personal funds to help the people cross the river during the rainy season, which was also the period that crocodile infestation was high.

In the mining sector, there were calls for the mechanisms available in the Wildlife Act to be replicated with regards to the distribution of benefits of minerals to the local communities. It was strongly felt that while the locals were the ones suffering from the impacts of mining ranging from pollution, influx of migrants and a strain on services, the benefits were not specifically targeted at them and examples were given of the poor state of most roads, the inadequate clinics, schools and low unemployment in the areas where the mines were operating. The people spoken to echoed the need to have a mechanism similar to CRBs in the mining sector. However, given the challenges CRBs are facing in the wildlife sector, this recommendation should be implemented with very stringent controls on transparency and *modus operandi* of these institutions.

5.0.1 Government avenues for public participation in NRM

It is evident from the previous section that government, in promulgating policies and laws relating to sustainable management and utilisation of natural resources, demonstrates recognition of the cardinal role the public must play for this to succeed. Policies and legislation have made a number of provisions mostly in the undertaking of EIA for the public to participate in a meaningful manner before major decisions are made with regards to development projects. Furthermore, according to interviews with government officials, the communities have been given an avenue of revenue sharing from the economic use of natural resources through initiatives mostly seen in the wildlife sector, where 40 percent of all funds collected for hunting licenses and other such ventures involving wildlife are given back to the community through their leaders; this includes traditional leaders, CRBs

and Village Action Groups (VAGs). While this was true, members of the community had reservations on the effectiveness of these initiatives as the benefits rarely trickled down to the intended beneficiaries. All of the government respondents echoed this fact and reiterated the belief that the public have been given various avenues to participate in NRM through regular and ad-hoc meetings and invitations to give their comments and views during the EIA process. The government officials almost unanimously agreed that the public were aware of laws, policies and practices which provided for public involvement as these were made available through various means including television, drama shows, magazines and displays at events such as the Agricultural and Commercial show. Some mentioned that they even made available financial and other logistical support to enable the public to effectively participate in their decision making processes such as the planning of development activities. In addition, events such as tree planting exercises and extension programmes also actively involve the general public, civil society and the private sector as partners in government programmes and public affairs. One of the respondents pointed out that public participation, apart from giving a sense of ownership to the community, has more tangible benefits such as job creation which translated into improved livelihoods for people thereby contributing to the country's GDP. He gave the example of the national tree planting activities which would create in the region of 2000 jobs countrywide.

The government officials highlighted rampant poaching, deforestation due to charcoal burning, animal human conflicts and illegal mining as some of the major natural resource threats prevalent in their areas of jurisdiction. Destruction of natural wetlands and land degradation were also given as some of the major natural resource issues. They cited increased economic activities in mining and hospitality, poverty, increased utilisation of fertilisers, criminality, poor planning and inadequate prioritisation of development activities as some of the driving forces giving rise to these threats. In Solwezi, examples were given where dynamites were used for illegal fishing due to poverty, which in some cases resulted in loss of limbs and fatalities. The government sector respondents acknowledged the critical role civil society plays in the management of resources, with many saying they provide checks and balances to government agencies. Additionally, according to the officials, CSOs are partners in disseminating information to the public and are often a vehicle through which public opinions of certain issues are communicated to government offices. The Ministry of Agriculture in Mambwe District illustrated this by sharing that their Permanent Secretary has signed a Memorandum of Understanding (MoU) with various organisations, particularly with NGOs who would be working on a range of projects in the District.

The government officials also stated that traditional leaders play a vital role as they were often seen as depositories of knowledge and channels through which information could be disseminated to the general public. They also had an authoritarian role in their communities and therefore were usually obeyed without question. Some, however, thought that while traditional leaders were often the recipients of revenue from government in the revenue sharing arrangements, most often these resources were not utilised to benefit the communities, thus negating the aspirations as enshrined in legislation. It had been found that working with smaller community groups, such as those dealing with women, youth and people living with HIV / AIDS, meant that benefits reached the locals faster than if they had gone through the chiefs. An example was given during the FGD with the Kakumbi CRB in Mfuwe regarding funds that had been given to the local chief for the engagement of the local people to lay ZESCO poles. Sadly, despite the communities completing the work as requested, they were yet to receive the promised remuneration.

5.1 Civil society as effective partners in natural resources management

As discussed in the previous section, collaboration between the state and civil society is vital to NRM. In the wildlife sector, and to some extent the mining sector through the provisions of the Environmental Management Regulations on EIA, an enabling environment does exist for meaningful participation of civil society. This has to a limited extent led to the few achievements seen in Zambia through the various mechanisms elaborated in the preceding section as discussed by the government officials and confirmed by the CSOs. The perceptions of CSOs as collected during this study add credence to the fact that their involvement and participation in NRM is of critical importance. There still remain, however, some limitations that will be discussed further in this section.

5.1.1 Avenues Available for CSO Participation in NRM

The respondents from civil society confirmed government officials' views that they worked closely with the local authorities, key government Ministries, such as the Ministry of Health, and other NGOs in their localities. This was done through mechanisms such as the ones highlighted in Mfuwe where invitations to stakeholder meetings, membership to the CSO Forum, Game Management Area Committees constituted such avenues. In addition, in performing their "bridging role", the CSOs engage the public through VAGs, CRBs and headmen. Activities undertaken by these groups include the building of capacity within communities for tree planting, water and sanitation provision, enhancement of food security and sustainability. While it is notable that civil society is primarily involved in issues relating to service delivery, there is a need to explore their engagement (or lack of engagement) in advocacy, lobbying and in facilitating policy dialogue between citizens, state actors and private businesses.

Additionally some CSOs, such as Community Markets for Conservation, facilitate agro-diversification through the use of business models to find economic answers that will see to an end the poverty that often plagues rural small-scale farmers. This CSO also advocates for improved farming practices thereby reducing land degradation and improving soil fertility. If participating farmers pledge to stop poaching and other such vices, full economic benefits are guaranteed to them (COMACO, website).

Others, such as Adventist Relief Agency and Caritas, provide assistance to marginalised groups in society with community disaster risk reduction through the promotion of drought resistant crops, such as cassava, and restocking of livestock (goats and chickens) at village level. Both organisations also promote forestation in order to cope with the high rate of forestry depletion observed in the area.

The South Luangwa Conservation Society operates under a Memorandum of Association with ZAWA and provides technical support to the authority and the local CRBs on matters related to sustainable wildlife management. This is done by providing employment to locals in the mitigation of human-wildlife conflict, holding workshops to discuss various aspects of human-animal conflict and holding informal meetings with government officials where the public can speak and air their concerns. In addition, they rehabilitate and rescue animals caught and snared by traps and also run the Uyoba Community School. All this is financed through the Luangwa Conservation Fund which received donations from tourists visiting participating lodges and facilities in the area. The communities spoken to during FGDs welcomed these initiatives and said they, to some extent, aided in poverty alleviation in the area.

With regards to NRM, the role of CSOs seems to be confined to that of capacity building and service delivery. There was a gap in relation to their advocacy role, although some CSOs such as the Catholic Commission for Justice and Peace (also known as Caritas) and Extractive Industries Transparency Initiative were seen to be in the forefront lobbying government to ensure that mineral taxes and revenues were disclosed in a transparent manner and shared equitably with the people. These lobbies are active at national level with no advocacy happening at local level. There thus remains a significant opportunity for CSOs in the NRM sector to grow more towards advocacy and also in mobilising and collaborating with other like-minded organisations to ensure that the avenues for public participation are utilised effectively.

While CSOs should ideally act as the “go betweens” between government and the community, in the NRM sector, the findings indicate that this communication, if at all, is one sided. There seemed to be very little input that came from the public on the activities of the CSOs in relation to their interventions. The communities were mere recipients and their contribution was often in putting together resources for the maintenance of equipment donated and forming committees to resolve any conflicts that arose in the utilisation of the donations. There was no mention of any mechanism that existed for CSOs to obtain feedback or collect public views and perceptions over issues that were local priorities for them to push for government action.

5.1.2 The Role of private business in NRM

The business community is another significant sector that has a major role to play in enhancing public participation in NRM. The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption. Furthermore the UN Guiding Principles on Business and Human Rights set out a framework for the business responsibility to respect human rights.

In this study, an in-depth analysis was made of the Lumwana Mining Company operating in Solwezi District and owned by Barrick –a gold mining company that prides itself on having operations in four continents. This mine has been in operation since 2005 when an EIA was undertaken and various commitments were made in relation to the mitigation of environmental and social impacts. Three chiefdoms namely Mumena, Mukumbi and Matebo are within this mine’s surface area. Barrick has taken a Corporate Social Responsibility (CSR) approach to its engagement with these communities as illustrated in their four pillars of CSR that focus on Code of Business Conduct and Ethics, Employees, Environment, Health and Safety and lastly Community. Some of the “Local Economic Development” initiatives undertaken by Barrick in the communities are:

- “Nsabo Yetu”- Our Wealth women savings empowerment program;
- AFI- Poultry Support Program;
- AFI- Banana field;
- AFI- Wheat promotion scheme;
- Waste recycling;
- Basketry training; and
- YAPYA Dairy project.

In community development, the company has supported the establishment and implementation of sustainable, community driven local development plans. This has been done through projects supported by the Lumwana Development Trust fund, running of the Lumwana Mine School, granting of high school scholarships and awards and dissemination of health messages during major public events such as World AIDs Day, Malaria

Day and others. With regards to infrastructure investments, the company has constructed classroom blocks, an information centre, a maternity wing and a staff house at the local clinic. Table 13 shows the employment trends in the three chiefdoms through the period of mine operation.

TABLE 13: CUMULATIVE EMPLOYMENT 2006 – DEC 2012

Chiefdom	Total	Demobilized	Current
Mukumbi	2274	992	1282
Mumena	1767	770	997
Matebo	1319	605	714
	5360	2367	2993

While the company feels that they have invested massively in the community; perceptions on the ground were found to be contrary. The locals say these investments are much less than was expected and they are made to feel as though the company is doing them a favour by implementing these projects. The government officials and traditional leaders also did not seem to understand the difference between CSR and the Environmental Management and Monitoring Plan (EMP) commitments the company had made at the time of the EIA. These conflicts have escalated into a situation where there is a lot of tension in the area, because of lack of consensus on expectations to the company. The company asserts that because they pay tax, the government should also be seen to be investing part of that revenue into the community directly, while communities feel it is the responsibility of the mining companies to contribute to local development.

5.1.3 CSO perception on awareness levels on public participation

The CSO representatives spoken to during interviews and FGDs stated that the awareness levels on avenues available for public participation were very low and highlighted the negative role of traditional beliefs regarding gender issues. One respondent pointed out that rural women’s participation in a lot of the programmes was hindered due to the perceived gender disparity. On the political front, as was highlighted in chapter three of this report, the CSOs involved in NRM also asserted that the political environment was not very conducive at times since the attendance to meetings often followed political affiliation which were organised on party lines. This was seen as a catalyst for conflict and tension. Illiteracy was also given by many as perhaps the single most important factor that determined the extent and quality of public participation in NRM. This could inadvertently derail the development potential of the country.

These assertions from CSO respondents bear credence given the vague nature of policy and legislation with regards to participation. None of the laws have clear stipulations on how participation will be ensured or what types of organisations will be consulted in the management of natural resources. This results in ad-hoc arrangements being made often at the discretion of the government officials in charge of the decision making processes. Evidence from the NRM case study confirms what is obtaining in other areas of governance as already highlighted in chapter three under CSOs being a vehicle for public participation.

The CSOs recommended that in order to create a better environment in which the public could be involved in

NRM the public should be given a sense of responsibility and belonging thereby creating a stronger ownership towards the natural resources. They also echoed the need for increased awareness on the available avenues of public participation through continued sensitisation on the value of community involvement in the management of their resources. A number of them pointed out that the public should be allowed to initiate projects and their role would then be to support and provide resources for the implementation of such. A bottom-up approach should be used for maximum participation.

5.1.4 Challenges of CSO engagement in NRM

A study undertaken by the Zambian Civil Society Environmental Fund identified four problems or challenges faced by CSOs engaged in environmental issues as:

- Limited access to funding, particularly for institutional support;
- Inadequate technical and institutional capacity in some CSOs working on environmental and natural resource management;
- Lack of a coordinating mechanism for CSOs working on environmental and natural resource management;
- Inadequate consideration of cross cutting issues in these activities
(Civil Society Environmental Fund website).

This is further compounded by the very limited geographical coverage of most of these organisations as they are often centralised with limited presence in remote, rural areas. Calls were made from CSOs spoken to in Mfuwe and Solwezi to have more organisations such as the Zambia National Farmers Union (ZNFU) and other organisations with a national mandate to decentralise and have more presence on the ground. This would result in a more representative voice when dialogue with the government was called for and a more credible constituency. At present, most of the CSOs speak for a very narrow sector of society. Their potential, however, should not be underestimated and other natural resource based government institutions, such as the Department of Forestry and Ministry of Lands, would do well to emulate the initiative by ZAWA and the Ministry responsible for Minerals and enter into formal MoUs with credible CSOs to further facilitate the effective implementation of their mandates and ensure that the misunderstandings that sometimes arise with the public are curtailed through this platform of “middle-men”. This would also enhance transparency and accountability as information from the government would reach the public in a user friendly format; and through the CSO, feedback would be given to the government on what the communities were saying about various policies and programmes, thus fostering meaningful participation.

5.2 Individual engagement in natural resource management

Often individuals are either affected or interested parties to decisions about NRM and therefore have an interest in influencing the decision outcomes by providing information regarding their values, beliefs, aspirations and other such relevant information. Additionally, individuals and communities have a better understanding of their resources and their indigenous knowledge is a very rich reservoir of baseline data that can be used in making major environment related decisions. More than half (68%) the respondents spoken to said there were developmental projects in their areas which included road construction, water development, farming and waste management projects. The government was said to be the main body that initiated these projects (36%) followed by community led initiatives (14%) and lastly individuals (5%) and CSOs (5%). It was also interesting to find the government was the major player that the people felt consulted them, with 20 percent attributing their involvement to government will. This was followed by traditional leadership as shown in Table 14.

TABLE 14: CONSULTATION IN DEVELOPMENTAL ACTIVITIES

	Who Consults?	Frequency	Percent
Valid	Development/Individual	13	4.9
	Government	52	19.5
	Community	8	3.0
	Traditional leadership	14	5.2
	Private Business(non-Zambia)	1	.4
	CSOs	4	1.5
	Donors	6	2.2
	Total	98	36.7

It was unfortunate to note the low level of CSO and private business engagement with communities when it came to consultations for developmental activities. In all the study areas, examples were given where the public were involved in decision making regarding the prioritisation of projects for their areas. In Solwezi, community members cited an instance where pit latrines were installed for the community without their input; upon their commissioning, they sealed the latrine opening with a concrete layer and opted to use the structures as maize sheds for the storage of their produce. A success story was narrated in Mfuwe where the women in the community were consulted in the placement of boreholes in their locality. There was a greater sense of ownership among members of that community and the boreholes were well maintained as a consequence.

Community members have also been found to be effective partners in the implementation of management actions. As seen with the example of ZAWA and CSOs working with local structures to employ village scouts in the protection of wildlife, this has greatly aided the operations of government agencies that may in most cases not have the necessary human capacity to enforce their regulations. Participation was perceived to be higher in urban areas as opposed to rural areas; one respondent put it down from 70 percent to 30 percent respectively. Politics was also seen as another hindrance to meaningful participation. The Mambwe District, which is pro MMD, serves as a good case in point where one respondent said that a lot of time was wasted on disputes along party lines instead of discussing development priorities. Invitations to meetings and public discussions were also sometimes along party lines with the ruling party receiving more access.

With regards to participation of vulnerable groups in NRM, it was revealed during interviews with duty bearers and government officials that there were no deliberate provisions for the engagement of special and vulnerable groups in NRM even though the communities are in a few cases encouraged to form organised groups such as CBOs which government finds easier to deal with. The government agencies assume that the already existing structures would cater to them. In a few cases related to access to basic food and farming inputs the Ministry responsible for agriculture made deliberate efforts to ensure that vulnerable groups, including widows, persons with disabilities and people living with HIV/AIDS, were allocated a specific quota. The underlying condition was that they could be vulnerable but should be “viable” in order to be able to carry out the activity for which the input was meant. For example, in the distribution of fertiliser, only women that were capable to farm would benefit from this subsidised commodity; the situation was similar with disabled people. This approach entails a high risk of further marginalisation of those groups, which are most vulnerable.

However, the vulnerable group representatives interviewed refuted the assumption by government officials that those that were vulnerable were adequately catered for in the allocation of resources, and they found it difficult to access avenues to engage with government on their concerns. Often their concerns were very specific and different from those of the general populations, therefore special provisions should be made to guarantee their participation. An example was given where, due to a person's physical disability or advancement in age, the change of tenure of a common property to private hands would cut off these already marginalised groups from the common property. This would result in them having to walk longer distances to collect firewood for their energy needs and in the case of water, find alternative sources of the resource. They therefore felt that it was imperative that every effort be made to include them in consultations on issues to do with the management of resources as they would most likely be the ones severely affected by any negative consequences.

5.3 Public participation in the environmental impact assessment process

An EIA is a thorough investigation of conditions within the environment of a proposed development or project followed by an assessment of the impacts that the development of the project will have on the environment in its totality i.e. physical, biological and social-economic aspects. This process is applied prior to major decisions and commitments being made to the project. In addition to a broad definition of environment is being adopted whenever appropriate social, cultural and health effects are also considered. Box three gives an overview of the EIA process in Zambia.

Box 3:

Overview of the EIA Process in Zambia

The provision for EIA is made through legislation, administrative order or policy directive. In Zambia, Statutory Instrument No # 28 of 1997- EIA Regulations provides procedures for EIA and identifies minimum thresholds for EIA. In order to ensure the EIA is implemented smoothly and in a satisfactory manner, the EIA Regulations require that it is open and involves all 'Interested and Affected Parties' (IAPs), such as local communities, government authorities, developers, investors, CSOs to name some. However, no specific modalities of what this involvement entails are given. The process must create effective coordination and communication avenues amongst planners, project proponents, government and private sector, NGOs, communities, traditional leaders, general public and others. The SI is very specific at which stage of the process this communication should be done but does not prescribe the form it should take.

Environmental Project Brief (EPB) is an EIA prepared in respect of projects with very low negative impacts on the environment. Under the EIA regulations, the law states that a developer shall not implement a project for which a project brief is required, unless a project brief has been concluded in accordance with the said regulations and the Zambia Environmental Management Agency (ZEMA) has issued a decision letter – the community members can influence this process during the review process in writing to the ZEMA Director General and through direct presentations at the public hearings organised in the local area where the project will be implemented. The decision can be one of three options: an approval with conditions, deferment pending further information or a rejection with valid reasons. This decision can be appealed at two levels by the developer, either to the Minister responsible for Environment or to the Courts of Law. Thereafter, monitoring and auditing of the project should be undertaken by the various government agencies. In Zambia, no formal mechanisms exist for community participation in the follow up actions to an EIA.

The EIA Process was seen by the government officials consulted during the study as a very critical entry point for engagement of the public in NRM. There were also many views of how it could be made more effective to improve its uptake at the local level. While it provides an opportunity for public engagement in the developmental process on projects that had major impacts, the government officials themselves reported that this was mostly a formality where they were even consulted after major decisions had been made, and usually not enough time was given to review reports and thus make meaningful comments.

The Wildlife Act seems to be the outstanding piece of legislation where strides have been made in working closely with the public where the management of their resource is concerned. This is, however, mostly restricted to the area of revenue sharing. There is still the challenge of effective engagement in the decision making process as the people spoken to felt they were not consulted before licenses were issued and private lodge owners were allowed to operate within their areas. The Mining and Minerals Development Act through the environmental regulations has made it mandatory for the public to be given an opportunity to provide their input during the EIA process. Accordingly, all EIAs undertaken in the mining sector have a record of public consultation, a requirement also under the ZEMA-EIA Regulations. The problem in this case arises during the implementation phase of these projects. The table below shows that none of the respondents had been consulted in any developmental projects post implementation phase while 56.3 percent were consulted during the inception and implementation phases of the developmental projects. Only one respondent said they had taken part in more than one of the developmental phases.

TABLE 15: CORRELATION BETWEEN PARTICIPATION IN EIA AND STAGE AT WHICH INDIVIDUALS WERE CONSULTED

Stage at which individuals were consulted in developmental projects	Ever participated in EIA		Total
	Yes	No	
Inception	23 27.7%	60 72.3%	83 100.0%
Implementation	1 33.3%	2 66.7%	3 100.0%
More than one stage	1 100.0%	0 .0%	1 100.0%
Total	25 28.7%	62 71.3%	87 100.0%

From the respondents who said they had participated in an EIA, 61.7 percent of them said that the participation was meaningful; those that did not find participation to be meaningful cited the limited nature of the consultations as one of the reasons for its meaninglessness.

5.3.1 Tricked into signing settlement agreements?

The participants at the Solwezi FGDs were mostly concerned with the post implementation phase of the EIA process. They expressed their displeasure and dissatisfaction with the adherence on the part of the developers to the commitments made during the EIA process. This was particularly true regarding the resettlement plans where the people felt “hoodwinked” into signing agreements only to be met with a myriad of complications at the new settlements. The communities feel that they have lost their sources of livelihood as with the case of those affected by the Kasanshi Golf Estate in Solwezi where residents are now residing in marginalised land which is not productive. Further, they feel that the investors are now reaping profits and not channelling enough back into the communities to give them a meaningful source of income. They also expressed concerns about suffering adverse effects of pollution with an example of contaminated drinking water from the mining activities. One government official suggested forming committees at local level, through which mineral royalties would be paid and development activities facilitated. It was also interesting to note that out of those households interviewed who had indicated that they understood how to participate in public affairs; only 20 percent of these had ever taken part in an EIA process. Correspondingly, 10.5 percent of those that had no understanding of public participation had actually taken part in an EIA. This suggests that in the citizen’s perception, “public affairs” and EIA were two disjointed issues –a dichotomy illustrated by Table 16. As a result, there is a need for more thought and action to be put in place for individual participation in NRM in Zambia. While people feel they have high awareness levels, they fail to participate in actual decision making through local government structures and even less so in the EIA process. This has led to growing resentment towards the very resources the people were expected to protect and safeguard.

TABLE 16: CORRELATIONS BETWEEN UNDERSTANDING HOW TO EXERCISE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS AND PARTICIPATION IN EIA PROCESS

Understand how to participate in public affairs	Ever participated in EIA		Total
	Yes	No	
Yes	35 20.0%	140 80.0 %	175 100.0 %
No	8 10.5 %	68 89.5 %	76 100.0 %
Total	43 17.1 %	208 82.9 %	251 100.0 %

The Human Rights Commission in their State of Human Rights Report (Human Rights Commission, 2012) concluded that despite there being legal provisions for public participation in the EIA Regulations, the practice itself still had limitations with regards to the inclusion of grass root levels of the community, accessibility and comprehension of EIA documents by locals and inadequate political will. The Zambia Human Rights Commission (ZHRC) highlighted the potentially significant role that CSOs could play if partnered with the government agencies tasked with the responsibility of managing this process. Table 17 shows performance of the country in the EIA process based on the International Best Practice Principles in EIA Practice. This table should be

interpreted with reference to Annex 4 which details an excerpt from the ZHRC report on EIA Practice in Zambia as seen from a human rights dimension.

TABLE 17: PERFORMANCE OF ZAMBIA IN ITS EIA PRACTICE

Guiding Principle	Performance Status
Focused	Fully complaint
Rigorous	Partially compliant
Transparent	Non-compliant
Credible	Partially compliant
Efficient	Partially compliant

5.4 Summary of public participation in NRM in Zambia

The various respondents interviewed during the study gave opposing views on the quality of participation from the public in NRM; some felt it was meaningful as the public consultations resulted in good information being put forward which could later be used in decision making. This was exemplified in the sitting of boreholes, where it was found that in situations where public views were taken into account, there was better use of the resource as the people had a sense of ownership and thus took better care of it. The opposing group however based their opinion on the premise that since no evaluation has been done at local level to ascertain the assimilation of the information given and whether or not people used it in decision making, it was difficult to conclude that participation was meaningful. They also admitted that due to the centralised nature of most government offices and functions, it was not possible in most cases for ordinary citizens to have access to the decision makers and thus they were unable to put their individual concerns forward. For example, decisions to do with issuance of licenses were centralised. Usually, the government officials consulted the people through organised groups such as civic groups, traditional leaders etc. leaving the weaker individuals unrepresented and therefore voiceless. CSOs also have their own limitations and in most cases face many hindrances to effectively engage with constituents and thus speak from a well-informed position when government officials do invite them for dialogue.

In conclusion, the government representatives all admitted that despite opportunities and avenues available for the public to participate in NRM, there was still room for improvement as participation was still low in many areas. This was attributed to factors such as poverty, illiteracy, ignorance of issues and a growing resentment that the benefits accruing from the commercial utilisation of the resources did not in all cases trickle down to them. Gender inequalities were also cited as being major hindrances to meaningful participation as it was noticed that in a lot of situations, men were more vocal and involved when compared to females. It was also said that in some cases the people were just “not concerned” and it was a constant struggle for government officials to get them to concern themselves with the many issues surrounding sustainable NRM. Lastly, a common perception was that these resources were God given and therefore the locals were reluctant to follow regulations. There was need for more public sensitisation and awareness raising activities.

6 Overview of the Interplay between the Various Elements of Public Participation

6.0 Factors affecting participation by individuals in Zambia

An analysis of individual participation in public affairs seems to suggest several inter related factors as contributing to lack of meaningful participation; these include structural, distal and proximal factors. One distal factor responsible for the state of public participation is the past culture of government led public initiatives. While there has been a progression towards individual driven initiatives, the past culture appears to have been embedded in society and makes the population slow to respond appropriately to the dynamics of market-led participation which is dependent on individual initiative, creativity and capacity. Unfortunately the government has been slow to decentralise its structures to encourage local participation since independence in 1964 and the population has been accustomed to a top down approach in participating in public matters. The past one party state governance culture is also an obstacle in the sense that it brings back memories of fear and victimisation in the minds of the population. Narratives centred on the consequences of expressing dissenting views in a manner inconsistent with the dictates of the one party state are a further source of apathy. During this period, actions against the government often received punishment; thus to question or challenge government action is still an arena for the courageous. This reality instils a sense of caution towards public participation and is a feature that continues to manifest itself in the current governance milieu of the country. It is also true that participation in public affairs is largely associated with being aligned to the politically correct agencies. To participate in various public spaces one has to be seen to be on the correct political side. However, with an evolving political culture and a younger generation taking over leadership, it is envisaged that this culture will slowly die away. In addition to the past culture of governance, proximal factors such as limited direct benefits for people who participate in public affairs seem to discourage participation. In many instances, due to poverty, participation is seen as a way of raising money for sustenance rather than to promote common good. The study seems to suggest that where there is no direct monetary benefit, participation is usually low. It is therefore not far-fetched to observe that the money motive drives participation in many public initiatives. Evidently, citizens do not see participation as a duty or obligation of every citizen.

Other factors affecting individual engagement are lack of trust in future developments and a growing sense of alienation of individuals from their immediate natural resources such as land, wildlife and minerals. In many public efforts, particularly those to do with natural resources, a substantive number of respondents in the study feel used as their inputs are rarely considered especially after the first consultation phase. Public consultation may be done initially but consequent public consultations are not usually fulfilled and the people are sidelined once the projects have started. In other instances, the negative impact of the project may affect the communities without their knowledge and opportunity to provide mitigation measures in their interests. This could have an implication on the way communities' view their involvement in future projects.

Furthermore, there are insufficient formal procedures at the local level to ensure that once development projects have been set up and are operational, financial benefits reach the local people and the intended targets. As the case demonstrated in Lumwana and Kalumbila mines in Solwezi, an additional obstacle is that EIA regulations do not check the implementation of benefit sharing and mitigating activities. This is further compounded by

the inefficient procedures which make it challenging to monitor EIA processes. These barriers could contribute to resentment towards legitimate use of resources by investors for development purposes. In conclusion, it is fair to argue that individuals face several constraints to participate in public affairs ranging from structural factors, such as procedures, past experiences or current exigencies such as illiteracy. In the final analysis it is important to recognise that participation is affected by insufficient motivation or incentives at individual level.

6.1 Role of civil society and formal institutions in enhancing public participation

There are a number of factors that affect public participation in Zambia. Among the most prominent are poor levels of literacy, cultural practices and laws such as the NGO Act and the Public Order Act. The poor levels of literacy are compounded by the overarching patrimonial power of chiefs over their people. For individuals, lack of basic skills has led to unemployment or low-paying dead end jobs. The lack of education has also led to many citizens acquiring a status of permanent political outsiders, with no or limited opportunity to have their voices heard; and to the possibility of watching their children repeat the cycle. For the study areas, low literacy levels have sidelined the illiterate people from participation in economic development, diminished the effectiveness of local government and citizen and community participation and have placed a heavy financial and educational burden on the school system. Furthermore, cultural practices coupled with low levels of literacy inhibit equal and open participation from ordinary citizens in that procedures do not enable them to directly address their traditional leadership unless required to do so by the traditional authorities. The situation does not help the exclusion of women and other marginalised groups as many of the decision making structures and platforms for participation are dominated by men. This has led to the incapacity of citizens to adequately use the available platforms and channels.

The study has also shown that government has the monopoly on information disseminated which affects the quality and quantity of information available. The timeliness and appropriateness of the language seems to be poor for the majority of citizens in outlying areas of the country. Participation is further affected as there is limited flow of information between duty bearers and rights holders. It is apparent that the government is yet to give priority to information dissemination and meaningful feedback from citizens for purposes of engagement in public affairs.

Government and civil society need to view participation as a concept that, beyond development and economic growth, seeks to include greater opportunities and wider choices for people to enjoy decent livelihoods. Beyond the capacity of individuals, these choices are realised in the interplay between an organised society and an effective and legitimate state. Inclusive citizenship is a condition of and results for state-building. The very notion of citizens endowed with rights has been absent in Zambia not only during the one party rule, but reaches the current democratic dispensation which has inherited structures from the past and have been slow to change. Enhanced public participation will only be realised when a holistic approach is taken to include all sectors of the Zambian society.

7 Recommendations and Conclusion

7.1 Recommendations for the Government's interaction in public participation

- 1 . Develop platforms for public participation which are relevant, coordinated and accessible in order for the public to participate in governance and development in a meaningful manner. This will improve accountability and transparency in development and economic processes and enable rights holders and duty bearers to engage in constructive dialogue and joint action planning.
 - decentralise channels for the conduct of public affairs.
 - initiate programmes at all levels to create awareness and ensure access to information on the role that individuals should play in promoting governance, e.g. national resource management and economic development.
 - accelerate implementation of the Decentralisation Policy

- 2 . Apply an “open door” policy in governance and take affirmative steps to ensure broad-based involvement early in the development of new projects. This will allow for the government to utilise the value of a holistic approach to public participation, whereby development will be relevant for the community and enjoy their support.
 - Establish an early notification system for upcoming projects utilising the traditional leadership and government offices in the affected areas as these have been found to be the ones mostly utilised by the people
 - Build relationships with CBOs, which are in closer touch with the communities and can be used to mobilise the people thus reaching a broader section of society and ensuring ownership and sustainability of projects undertaken in the local areas
 - Promote inclusiveness in public participation in partnership with CSOs in order to ensure inclusion of marginalised and vulnerable groups in the conduct of public affairs. Specific emphasis should be given to women, youth, people living with disabilities and people living with HIV/AIDS
 - Ensure invitations for public consultations are communicated widely and with adequate notice, and make all relevant documents relating to the consultations freely available
 - Strengthen the relationships with non-state actors such as traditional leaders, CSOs, business community, opposition parties and religious bodies.
 - Engage the Human Rights Commission and other human rights actors in the follow up and implementation of UPR recommendations

- 3 . Develop a public participation framework which is crosscutting, coordinated and holistic. This will provide the overall framework for the different policies, laws and practices that promote public participation, like the Environmental Management Act, and allow for the government to utilise the value of a holistic approach to public participation, whereby development will be relevant for the community and enjoy their support.
 - Initiate dialogue between state and non-state actors to define modalities for a crosscutting public participation framework and develop a joint understanding of interpretation of the right to public participation, in particular the freedom of association, assembly and expression and access to information.
 - Ensure the public participation framework stipulates how the right to take part in the conduct of

public affairs is executed; which platforms for public participation are available and how the public can engage with these platforms; how the public participation framework is enforced and which complaints mechanism are available to the rights holders; and mandatory mechanisms and procedures for ensuring participation of women and other vulnerable groups

- Make inclusion of women and other vulnerable groups a mandatory consideration in the public participation framework
 - Review relevant legislation and policies guiding public participation to ensure compliance with the public participation framework. Relevant documents include the Constitution, the Public Order Act, the NGO Act, the Penal Code, the Access to Information bill, Local Government Act, the Chiefs Act, the National Decentralisation Policy, the National Gender Policy and the Sixth National Development Plan.
- 4 . Take positive steps to ensure an enabling environment for public participation by protecting and promoting freedom of expression; freedom of assembly; freedom of association; prohibition of discrimination; participating in development and access to information.
- Review and revise the legal framework for public participation to ensure the international human rights standards for public participation are fully protected in domestic legislation such as the Constitution, the Public Order Act, the NGO Act, the Penal Code and the Access to Information bill
 - Liberalisation of the media
 - Train police and magistrates on the application of legislation guiding public participation, in particular the Public Order Act
 - Improve access to information about policy processes, e.g. by translation into different languages and simplification of complex documents
- 5 . Improve quality and quantity of information in order to enhance timeliness and appropriateness of the content that is being communicated to various stakeholders. This will empower individuals to assert their rights and hold government accountable on governance and public matters.
- Give priority to the flow of information between the duty bearers and right holders thereby releasing government monopoly over public information
 - Ensure all relevant information from government ministries and agencies are made available to all citizens in appropriate formats and language
- 6 . Create interactive public consultations and mainstream aspects of equality, democracy, representativeness, transparency and influence in order to improve the quality of participation.
- Develop tools and capacity amongst state actors to improve the quality of participation
 - Improve learning on interactive public consultations and participatory methods within government agencies
 - Ensure public officials are content with the consultation and participation processes and those processes are correctly followed and governed
 - Invest in capacity building initiatives for local authorities to enable them to effectively interface with the public and provide accurate information on government policies and programs.
- 7 . Improve public participation in all aspects of natural resource management and apply bottom-up approaches to natural resource management in order to ensure local development and economic priorities are aligned

with community priorities and addressing community concerns.

- Include clear guidance for public participation in the National Policy on Environment
 - Include provisions for public participation in the Mines Act and/or develop a policy that include procedures, structures and processes for public participation in relation to the extractive industry
 - Evaluate the Community Resource Boards and state-civil society partnerships developed by ZAWA and assess the opportunities for applying a similar approach to minerals, land and other natural resources
 - Improve the monitoring and accountability mechanisms within Community Resource Boards, in particular in relation management of funds for community projects
 - Establish / improve the platforms between tour operators, private companies, Community Resource Boards, civil society and state institutions
- 8 . Establish clear guidelines and regulations to guide business engagement with local communities, clarifying roles and responsibilities of government, businesses and local communities. This will improve accountability in all engagements relating to natural resource governance and establish clarity on what communities can expect from government and private businesses
- Improve the framework for prior consultation and community based monitoring and grievance mechanisms (e.g. through existing or new ZEMA and ZHRC offices). Particular attention should be given to relocation of communities and continuous monitoring after project initiation
 - Review legislation and policies guiding profit and benefit sharing in communities to assess compliance with international best practise
 - Include provisions for public participation and human rights compliance in contracts between government and private corporations (e.g. with regards to consultation, complaints mechanism, access to information and benefit sharing)
 - Amend investment policy to take into account the right to public participation in natural resource management
 - Explore opportunities for engaging smaller community groups to improve benefit sharing mechanisms
- 9 . Establish a legal framework for public participation in all stages of the EIA process, which can reduce conflicts and tensions between businesses, government agencies and communities.
- Make provisions in the EIA regulation that secure room for the creation of community monitoring groups as platforms for on-going public participation in auditing post EIA commitments by investors and government
 - Make all information about EIA processes available for various duty-bearers and right-holders
 - Identify best practice on EIA including identification of mechanisms for monitoring, evaluation and supportive provisions for marginalised groups, which enables them to engage in a meaningful manner
 - Establish partnerships with civil society to ensure effective grassroots engagement in the EIA process
 - Establish feedback and grievance mechanisms where communities can address concerns and complaints regarding the implementation of the EIA commitments
 - Explore opportunities for establishing mechanisms for channelling mining royalties directly back to the communities

7.1 Recommendation for civil society organisations, other non-state actors and individuals interaction in public participation

Recommendations for civil society

- 1 . Develop participatory accountability mechanisms that are oriented around constituencies at grassroots level rather than around donor and/or government priorities. This could contribute to evidence based advocacy and greater accountability and legitimacy to engagements with members, broader public and government. Furthermore, this would advance the CSOs ability to present the views of the constituencies at national levels and within consultation platforms with government
 - Build relationships and networks between national NGOs and CBOs and other formations in local communities, e.g. by establishing local offices of national NGOs and facilitate access to national fora for CBOs
 - Develop information systems for channelling concerns and opinions of locally based organisations and stakeholders to national level
 - Initiate education and mobilisation campaigns at local level ensure broad based support and engagement in advocacy for public participation in governance and development. Initiatives could include quarterly meetings to educate citizens of their right to participation, door to door sensitisation campaigns, active involvement in day to day community activities and civic education on civil rights and duties.
 - Promote the integration of community structures into decision making processes
 - Organise public discussions with a wide range of stakeholders on various issues of public concern where people can develop ideas and solutions to local problems, thereby enhancing public participation
 - Engage with traditional leaders to strengthen their role as facilitators of public participation, for example through training on participatory decision making and the legal and institutional framework for public participation
 - Strengthen the advocacy capacity of locally based CSOs and CBOs to complement their development and service delivery activities
- 2 . Formalise and coordinate interactions with government by establishing clear modalities for accessing information and accreditation to relevant decision making processes in a transparent manner. This will enable the CSOs to have enough prior notification before meetings and ensure wide consultation with citizens.
- 3 . Advocate for a review of the NGO Act to facilitate rather than limit civil society presence in the outlying districts in the country. The cost of registering an NGO in each district is prohibitive; consequently many CSOs are restricted to operate from one district or national level only.
- 4 . Advocate for an enabling environment for public participation by ensuring adequate implementation of existing laws and policies and by ensuring all legislation is compliant with international human rights standards, in particular in relation to freedom of association, assembly and expression and access to information.
 - Popularise and educate the public on decentralisation policy – particular focus on how communities can do local lobby/advocacy at local level under the framework of the policy
 - Review and develop advocacy strategies for bringing legislation in compliance with human rights

standards and principles (the Public Order Act, the NGO Act, the Penal Code, the Access to Information bill, Local Government Act, the Chiefs Act)

- Monitor implementation of the National Decentralisation Policy, the National Gender Policy and the Sixth National Development Plan.

5 . Engage with communities, government and private sector actors to develop solutions for community participation in natural resource management

- Decentralise civil society advocacy for revenue transparency (e.g. through the Extractive Industries Transparency Initiative)
- Carry out civic education and awareness raising on public participation in natural resource management to establish a clear understanding of the avenues available for participation and to clarify what communities can expect from government agencies and private companies respectively
- Engage in dialogue with local stakeholders to establish and/enforce mechanisms accountability mechanisms when traditional leaders and Community Resource Boards administer benefit sharing schemes on behalf of communities
- Build a knowledgebase within civil society about the legal and policy framework for public participation in natural resources in Zambia as well as international best practise. For example by initiating an analysis of public participation provisions in EIAs in Zambia compared to international best practise
- Engage stakeholders in an assessment of the possibilities to replicate the Community Resource Boards for wildlife management to the mining sector
- Monitor labour rights and advocate for fair and transparent human resource polices and recruitment practises by businesses
- Establish public monitoring mechanisms of animal-human conflict, including regular recording of damage on human, property and land by animals

Recommendations for private sector actors

6 . Broaden stakeholder engagement to include community members and vulnerable groups in addition to traditional leaders and government authorities

7 . Improve the mechanisms for community consultation during EIA processes and ensure continuous community engagement and communication regarding implementation of the EIA recommendations

8 . Establish mechanisms for continuous community engagement in the prioritisation and implementation of CSR activities

9 . Establish accessible and responsive grievance mechanisms, where community members can address their concerns, complaints and suggestions heard

Recommendation for individuals

10 . Individuals should appreciate that participation is a duty and responsibility that constitute their claim to citizenship and it is the opportunity for them to take part and influence local and national development. CSOs could play a role through sensitisation of communities.

7.2 Overall Recommendation on the interaction in public participation

There is a need to reduce the societal dependence on government led public initiatives and avoid the cultural legacy of expecting a top down approach to decision making. This can be achieved by individuals taking more ownership and responsibility over matters of public concern and understanding participation to be a duty and obligation rather than a choice.

7.3 Conclusion

The study has highlighted that there is a disconnect between government and the public in their perception about participation. Government is convinced that it has adequate mechanisms in place for public participation, whereas civil society and individuals raise serious concerns about the lack of opportunities for people to have their voices heard. Although there is some degree of legal and policy provisions for consultations and participation, the implementation of these do not translate into meaningful, people-centred and genuine participatory processes that gives people the opportunity to influence their own lives and livelihoods.

Zambia is a party to several international human rights mechanisms that provide for the right to public participation. Despite these commitments there are still elements on the part of the state that contradict the spirit of these commitments. The study has highlighted instances where the state indirectly compels persons to belong to the ruling party to access state resources and development and in instances disregard the law relating to freedom of assembly. During by-election campaigns, government leaders are often heard warning voters of no development if they vote for the opposition. Furthermore, use of excessive force against citizens is common. The law on contempt of court is not in line with international standards on freedom of expression. The right to participate is not directly referred to in any of the articles of the Constitution. This is indicative of a limited enabling legal environment for public participation in Zambia.

General awareness and platforms available for consultations by the government are usually through accreditation and the prior notification given to the stakeholders is usually short, making it impossible to have meaningful consultations with their constituents. The study shows that there are varied forms of participation that take place in the study sites that are relevant but ineffective. While representatives of public agencies are convinced that they engage the public accordingly, it is evident that in most participation exercises it is much more about public agencies meeting the legal or policy requirements than engaging with serious intent to collect genuine input and participation from the citizens and to act on those views.

Generally there are low levels of participation among citizens. However, in order for citizens to be involved and participate is highly dependent on information being available to them in a sufficiently comprehensible form about how policies are being formulated or implemented or how resources are being used. There is still room for improvement in this area.

The study has shown that marginalised groups still need the relevant support, which should be provided by government institutions to enable them to engage with policy formulation and public affairs in a meaningful manner. The case studies in natural resource management participation have underscored the fact that citizens have little influence in terms of access to land, its utilisation and displacement in cases where land is required for investment. Sharing of benefits from natural resources exploitation in communities is not participatory hence a source of conflict.

In order to achieve meaningful participation in Zambia, there is need to build individual and institutional capacity and provide clearly defined systems for public participation at both individual and institutional levels. Further, measures must be taken to break down local elite interests that promote patronage which undermines local participation and accountability. In addition, all public processes must seek to understand the nature of the power relationships and informal networks of patronage at the local level in order to nurture genuine participation that will be both meaningful and effective.

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Annexes

- ANNEX 1: Data Collection Instruments
- a. Individual Questionnaire
 - b. Civil Society Interview Guide
 - c. Focus Group Discussion Guide
- ANNEX 2: List of Participants
- ANNEX 3: MoU for Civil Society Forum
- ANNEX 4: HRC Excerpt on EIA Guiding Principles
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