

The Conflict Between Mining Investment and the Communal Land Rights of Indigenous Communities in Zimbabwe: Case Study of Nharira Hills

Emmaculate Murawu, Blessing Manezhu and Tendai Ganduri¹

Abstract

The chapter draws from section 10 of the Communal Land Act [Chapter 20:04] which allows the President to alter purposes of communal land usage. Under the country's second President Emmerson D. Mnangagwa, Zimbabwe envisions becoming a middle-income economy by 2030. This has led to rigorous diplomatic and economic re-engagement efforts with the global community. As such, foreign direct investments are a priority and mining has become a leading industry that is being exploited at an unprecedented rate to facilitate the country's expansion. This, however, has far-reaching consequences for indigenous land inhabitants such as the Nyamwenda of Nharira Hills who were evicted to pave way for mining by a Chinese company. Guided by the conflict theory, the chapter explores the consequences for human rights that such mining developments have, especially for local communities. Data was collected through multiple methods including desk reviews, documentary analysis, and key informant interviews, transect walks and observation. The Nyamwenda and Nharira communities at large experienced numerous losses largely of intangible socio-cultural value. While Zimbabwe enshrines most international human rights statutes in its Constitution, the Nharira case exemplifies a lagging position in terms of implementation. Without opposing economic development, the chapter proposes reconciliation of Acts of Parliament to the Constitution for sensitivity towards indigenous peoples' property rights. Further, the chapter proposes a clear implementation framework in terms of legal and administrative procedures in cases where land is reserved for mining activities. .

Keywords: Nharira, constitution, land rights, indigenous people, Chinese investments

1 Introduction

The chapter takes a socio-legal approach to analyse human rights consequences of mining developments in Zimbabwean communities. A special consideration of the case of the Nyamwenda of Nharira Hills located about twenty-four kilometres to the west of Harare towards Norton is hereby made. The Mwembe people of Moyo Ziruvi clan commonly known as the Nyamwenda of Nharira Hills are officially recognised as custodians of the Nharira heritage. The group was, however, forcefully evicted from their inhabited land to pave way for mining activities. In turn, the mining caused the destruction of the Nyamwenda's cultural and religious shrines among other socio-cultural artefacts. The community, therefore, bemoans a forsaking of the nation's history as evidenced through an escalating dearth of reverence towards traditional heritage sites and practices. Consequently, the community suggests that socioeconomic ills such as droughts and diseases devilling the country are consequences of 'careless' decisions that forsake the nation's traditional values.² Beyond that, the key argument is that land constitutes a person's identity, and a separation is comparable to living without a soul. In a rather appalling manner, which numerous human rights conventions have sought to redress, the circumstances at Nharira are indicative of a perpetuating indigenous peoples' loss

¹ The authors are all human rights professionals and researchers active in Zimbabwe.

² Emphasis is added. This is in allusion to the conscious decisions made to advance economic merits over preservation of indigenous people's cultural heritage which is essentially of national significance.

of a voice and authority.³ Unfortunately, these events continue despite the existence of a Constitution that advances indigenous people's rights including the right to property and enabling circumstances to prosperity.⁴

The purpose of this chapter is threefold. In the first instance, the chapter assesses Zimbabwe's adoption of regional and international human rights principles in respect of indigenous people's rights and economic developments. Next, an exploration of the human rights the Nyamwenda and Nharira community at large perceive to have lost because of the mining developments in their community is done in view of the law as it is. The paper aims to use those insights to provide recommendations that facilitate human rights-based futures for communities. Those are then put into relation with the often competing need for economic advancement. Zimbabwe is celebrating a decade of its Constitution which came into effect in 2013. As such, this chapter is a contribution to the assessment of the country's progress in terms of implementation.

2 Background: A Land, History and Socio-Cultural Legacy – The Significance of the Nharira Hills

The Nharira Hills are a collection of independently standing hills. Despite the distances between them, the hills are conjoined by their historical, cultural and traditional religious uses. Studies have often suggested that the term Gwiranenzara Hills collectively refers to the Nharira Hills, alas, they are a collection. Each of the hills has its own name and cultural significance. Further, they have a complementary role in the performing of traditional rites. Namely, the hills are Gwiranenzara, Bvopfo, Chembudzi, Chikomo chaDzapasi, Chikomo chaMachembere, Gwendesu, Mafemera, Washamira, Ziware raMachembere, Zvingwere and Zvematura.⁵ Gwiranenzara, Bvopfo and Ziware raMachembere have alternative names which are Gwiranemuzvo, Stonehearst and Sam Levy, respectively.

The hills have almost similar cultural artefacts and uses, and some are interconnected with each other through underground tunnels. Most known are the Somerby tunnels which interlink with the Chinhoyi caves.

The reigning chief of the Mwembe people of the Moyo Ziruvi clan, Chief Ziruvi took over following the death of his father the celebrated Chief Mushore and acclaimed spirit medium who dwelt amongst the Nharira Hills.⁶ Chief Mushore is believed to have mostly lived in Bvopfo and Gwiranenzara whereas the latter is believed to be his final resting place.

The Gwiranenzara Hills were declared a national heritage site in 2000 but became a target of mining activities soon after the death of Chief Mushore. Out of respect, which extended to

³ The chapter considers indigenous peoples as those with particular social and cultural practices and ancestral ties with their land.

⁴ Government of Zimbabwe. *Constitution of Zimbabwe*. 2013, Section 282. <constituteproject.org/constitution/Zimbabwe_2013.pdf> (accessed 3 January 2023).

⁵ On average, these are the hills that local interviewees could identify. This is significant in this chapter as it correlates to their perceived losses. There are other hills as suggested by Morreira and Illif (2021) and these are; *Chevakadzi, Chiburi, Chiturike, Chizhanje, Chemukoreka, Gnoriono, Marimizike, Maringapasi* and *Zvetsoko*. See S. Morreira and F. Illif, 'Sacred Spaces, Legal Claims: Competing Claims for Legitimate Knowledge and Authority over the Use of Land in Nharira Hills, Zimbabwe', in A.S. Steinforth and S. Klocke-Daffa (eds.), *Challenging Authorities*, (Palgrave Macmillan, Cham, 2021) . p. 301.

⁶ See T. Chara, 'Stranger than Fiction. Revisiting Sekuru Mushore's mysteries', *The Sunday Mail*, 14 March 2021, Revisiting Sekuru Mushore's mysteries | The Sunday Mail> (accessed 20 September 2022).

socio-political obeisance, Sekuru Mushore had derailed plans of an even earlier occupation at Gwiranenzara. In the later turn of events even the periphery of Gwiranenzara Hills was occupied and active mining currently takes place. Besides the Gwiranenzara Hills being Sekuru Mushore's resting place, the Moyo royal ancestry are also buried in the caves. Additionally, artefacts of socio-cultural and economic value such as grains, jewellery, and pottery were also hidden in the secret tunnels.⁷ As such, the hills are sacrosanct religious and cultural entities. Due to the perceived sacredness of these underground places, Chief Ziruvi acknowledged that he would only go there when summoned by the spirits, especially to Gwiranenzara.

Gwiranenzara which are synonymously called Gwiranemuzvo Hills also have *nharira dzemuzvo*. These are grains believed to have been stored away by the ancestors and the name strongly resonates with the hills' name. As applicable to other hills, this is reflective of a traditional Shona naming system that derives from a person or object's most special or outstanding attribute. Amongst other uses, the hills are used for traditional ceremonies such as *mukwerera*.⁷ As the Nyamwenda peoples argue, the hills are not only crucial to the Nharira community but the entire nation. Despite the peoples' belief or appreciation of the traditional practices, the Nharira chief pleads for good rains and fortunes on the nation's behalf. Community members acknowledged that the rains are mostly abundant and harvests bounty even during the harshest farming seasons across the country. This has perpetuated the belief that such circumstances are due to observation of traditional rites particularly by the community's traditional leadership.

The history of the Nyamwenda reflects their dedicated custodianship of the Nharira Hills as religious and cultural sites. During the colonial era of the country in the 1960s, Sekuru Mushore had a gentleman's agreement with Ross Hinde the then legitimate white settler farmer at Saffron Walden Farm. The duo agreed that the former could have three months long stays once per annum to perform rain-making ceremonies in the hills.⁸ Despite this agreement, a desire for permanent residency on the ancestral land caused Sekuru Mushore and his community to illegally settle on the farm. This was resisted through evictions and burnings of the huts of the illegal tenants by the colonial law-keepers. Post-independence, several developments ensued and these include the fast-track land reform programme, assessment and verification of the "cultural, historical and archaeological significance of the Nharira Hills. This saw the hills being gazetted a national heritage status in 2000 for purposes of protecting the burial sites, rock paintings, cave deposits and the grain bins."⁹

During the colonial era, the Nharira area was split into large commercial farms namely Rasper, Kilworth, Lilfordia, Saffron Walden, and Bardwell also known as Stonehurst. Postindependence, the Land Acquisition Act gazetted the fast-track land reform programme which saw white settlers being evicted. The farms were then divided into smaller plots for the national land settlement programme.⁹¹⁰¹¹ The land was redistributed to individuals and entities

⁷ Morreira and Iliff, *supra* note 4, p. 296. ⁷ A traditional rain-making ceremony.

⁸ Morreira and Iliff, *supra* note 4, p. 301. ⁹ Morreira and Iliff, *supra* note 4, p. 306.

⁹ Chapter 20:10 which is now the Gazetted Land (Consequential Provisions) Act Chapter 20:28 in terms of Section 16B and Schedule 7 of the former Constitution (Constitution of Zimbabwe Amendment (No. 17) Act, ¹⁰), and now Section 72(4) of the current Constitution (Constitution of Zimbabwe Amendment (No. 20) Act, ¹¹) and the Land Acquisition Act [Chapter 20:10] (now the Gazetted Land (Consequential Provisions) Act [Chapter 20:28]).

through official land offer letters, leases or permits and through this process, Sekuru Mushore obtained an offer for the Saffron Walden Farm. He also facilitated the issuance of offer letters to members of his family and nominated community members for purposes of safeguarding other hills and performing cultural rites.¹²

The land reform programme created a scenario whereby sections of the Nharira Hills fell within different plots. The Mwembe people in question became residents of an area falling within Somerby Farm. The land remained communal land as it was not redistributed during the land reform programme due to its small size. They settled there in 2001 under Sekuru Mushore as custodians of the Somerby caves. It is from this location that in December 2018 the community was evicted and relocated to three hector settlements at Stonehurst Farm. The evictions were done to pave way for mining activities by Chinese-owned Berrytech Investments (Pvt) Ltd at Bvopfo Hills. The company first started in 2007 but had operations suspended after the community's outcry. Operations were later resumed in 2012 after the company was issued an Environmental Impact Assessment (EIA) by the Environmental Management Agency. By October of the same year, the company had started re-pegging. It was only at the beginning of 2019, after evictions of the Nyamwenda the previous December that the company began reconstructing a mine at the site.¹³ This was not an isolated incident as other cultural custodians at sites such as Sam Levy and Kilworth were also evicted. The Ministry of Mines has allegedly continuously eluded providing information on issued mining rights. However, it is believed that mining claims have been granted for the entire Nharira area.¹⁴ There is a general belief that the mining activities, which also led to the evictions of the Nyamwenda community, began after the partitioning of districts. This exercise transferred Nharira from Mhondoro North to Zvimba South District and later to Zvimba East District in 2000 and 2008 respectively. The community argues, in contrast, that the entire Nharira traditionally falls under the Nyamwenda jurisdiction. It is noteworthy that the traditional authority was transferred to Chief Zvimba and Beperere of the Gushungo clan after the administrative partitioning, allegedly, for political gain by the then President Robert Gabriel Mugabe.¹⁵ As such, Chief Ziruvi lost his official recognition and was excluded from consultative protocols. He remains uninformed of developments in the community including mining trajectories at the periphery of Gwiranzara which is a short distance from his residence. Further, it is alleged that following the community's initial outcry, the mining activities were continued out of need to honour existing relations between Zimbabwe and China. However, the operations were supposed to be ceased after the lapse of permits. Yet, the contrary occurred with the granting of widespread expansions. .

The Indigenous and Tribal Peoples Convention upholds respect and protection of cultures, spiritual values, land and territories.¹⁶ A relationship with land constitutes identify forms of human beings yet, unfortunately, is often overlooked.¹⁷ Increasingly, indigenous groups are

¹² Morreira and Iliff, *supra* note 4, p. 303.

¹³ *Ibid*, p. p.303.

¹⁴ Morreira and Iliff, *supra* note 4. p. 30.

¹⁵ *Ibid.*, p. 310.

¹⁶ See L. Swepston, 'Indigenous and Tribal Peoples Convention, 1989 (No. 169)', in *The Foundations of Modern International Law on Indigenous and Tribal Peoples* (Brill Nijhoff) p. 345..

¹⁷ S. Weil, 'The Need for Roots: Prelude to a Declaration of Duties Towards Mankind' (Ark. New York, 1987). p. 43.

threatened with being uprooted from their natural territories to pave way for economic advancements.¹⁸

2.1 Conceptual Framework

The chapter is guided by the conflict theory. The theory was first proposed by Karl Marx in 1848 and propounds issues of competition and structural inequality. A key argument of the theory is that due to competition for limited resources, society is drawn into conflicts and social order becomes obtainable through domination and power.¹⁹ Instead of conformity and consensus, the theory explains how the vulnerable are suppressed. The Nyamwenda and Nharira community at large are feeble against the status quo which is enabled through the legislature. The loss of normal habitats impacts mental, psychological and spiritual well-being and this results in conflicts at an early stage. Further, cultural norms are eroded due to forced evictions and they are replaced by prescribed norms.²⁰ Accordingly, the Nharira case constitutes a typical example of how the absence of war and physical demonstrations does not imply peace. The theory explains influential and powerful actors prescribe outcomes in society through means often void of consent.

3 Methodology

Data was collected through a desk review, documentary analysis, legal analysis and extrapolation. Additionally, primary data was collected through key informant interviews with traditional leaders, in-depth interviews with members of the community as well as transect walks and observation which complemented narratives provided by the community. Participants in key informant interviews included the chief, a community member involved in traditional rites such as the *mukwerera* ceremony, a member of the Nyamwenda police and the evictees. Most informants were generous in their responses and provided a detailed history of the contestations over the land, losses and preferred future. The evictees were apprehensive and generally unwilling to disclose information. They unanimously suggested to engage the chief as he was the most suitable informant in terms of knowledgeability and authority. Having explained the importance of hearing their personal experiences and reiterating their rights as informants, the respondents mostly remained silent through a series of questions. This provoked questioning of whether “intimidations or violence often supported by the state” had occurred in this case of forced evictions.²¹ The answer was not far as the experiences of force, threats and physical assault upon them had been well documented.²²

¹⁸ Centre on Housing Rights and Evictions (COHRE) COHRE International Secretariat, ‘Global Survey on Forced Evictions: Violations of Human Rights 2003-2006,’ December 2006. < [COHRE Forced Evictions Global Survey No.10 2006 by The Centre on Housing Rights and Evictions \(COHRE\) - Issuu](#) > (accessed 12 September 2022).

¹⁹ P. Kivisto (ed), *Illuminating social life: Classical and contemporary theory revisited*, (Pine Forge Press, 2011) . p. 155.

²⁰ C. L. Robertson and S. J. Hoffman, ‘Conflict and Forced Displacement. Human Migration, Human Rights and Science Health’. *Nursing Research*, (2014) , < [journals.lww.com/nursingresearchonline/FullText/2014/09000/Conflict_and_Forced_Displacement__Human_Migration,.1.aspx](#) > , (accessed 21 November 2022).

²¹ Amnesty International, ‘Indigenous People,’ 2022, <[amnesty.org/en/what-we-do/indigenous-peoples/](#)> , (accessed 10 September 2022).

²² Kubatana, ‘ZLHR Challenges Eviction of Community Members from Sacred Heritage Site’, *Kubatana.net*, 18 December 2018, <[kubatana.net/2018/12/18/zlhr-challenges-eviction-community-members-sacred-heritage-site/](#)> (accessed 3 September 2022).

Due to the limited responses that the relocated informants offered, each interview was a pertinent complimentary piece in generating a complete script from the displaced Nyamwenda. Interviews were then extended to indigenous locals who had an appreciation of the local affairs and who also had a relationship with the hills despite not having been displaced. While focus group discussions had been scheduled, the reluctance of participants regrettably led to the abortion of the planned data collection. As an alternative, additional interviews were conducted with migrant locals for an assessment of an outsiders' envisaged value of the hills. A tour with three participants, each from the respective categories (evictee, indigenous, and migrant locals) provided insights into spaces held dear and where possible, the extent of land degradation because of the mining activities.

4 The Lived Realities

The locals and affected Nyamwenda were particularly shocked by having had neither consultative engagements nor information about the land privatisation plans and scheduled evictions communicated to them. Yet, this was not even the culmination of the disrespect for the communities' right to be consulted as they later became aware of the administrative dissections of the land and consequently the newly presiding traditional leadership. Neither consultations nor notices before immediate evictions and consequent mining activities at the hills were issued to any member of the concerned community. All informants stated unanimously that they were solely given 24 hours to vacate their land and properties. . There was a heavy police presence and the Nyamwenda faced physical violence. In the absence of civil engagements, the entire process translates to forced evictions. As a common form of violence, forced evictions are coercive and aim to dislodge habitants from their housing or land whereas, typically, the evictees have little to no legal protection.²³ . From the list of characteristics that describe forced evictions, the following apply to the Nharira case: removal from dwellings against will, use of force, disregard of human rights obligations and action motivated by the need to pave way for mining activities.²⁴ There is a shocking lack of accountability considering the contradiction between the legal framework and what transpired at Nharira Hills. The sections below consider the legal consequences of the experience.

4.1 A Divergent Course from Conventions on Human Rights

The Nharira case reflects an ambush approach on community. Military studies reveal as a technique, ambush works to surprise, weaken, capture, or kill the enemy.²⁵²⁶ Supported by force through a show of power, the strategy psychologically disbands people and for the Nyamwenda, it caused submission and immediate relocation to allocated spaces. This was, however, after having spent a night directly exposed to elements of the weather as they were barred from accessing their homes.²⁷ In contravention of the protection of the United Nations Declaration for Human Rights (UNDHR), the action disregarded human dignity. The Nyamwenda were obstructed from the right to shelter, subordinated under force by the police

²³ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions', *CESCR*, 20 May 1997, <refworld.org/docid/47a70799d.html > (accessed 8 September 2022).

²⁴ *Ibid.*

²⁵ United States Marine Corps, 'Actions on the Objective – Ambush', *Marine Corps Training Command*, <benning.army.mil/Infantry/DoctrineSupplement/ATP3

²⁶ [.8/chapter_08/CombatPatrols/ActionsontheObjective_Ambush/index.html#:~:text=6%2D102%2C%20as%20sault%20by%20fire](http://benning.army.mil/Infantry/DoctrineSupplement/ATP3/8/chapter_08/CombatPatrols/ActionsontheObjective_Ambush/index.html#:~:text=6%2D102%2C%20as%20sault%20by%20fire) > (accessed 5 September 2022).

²⁷ Kubatana, *supra* note 21.

and had no opportunity to access legal representation. Before considerations of the Nyamwenda community as an indigenous group, these basic human rights applied nonetheless based on simply being human.²⁸

The UNDRH emphasises equality, freedom from discrimination, human dignity, the right to remedy by a competent tribunal and non-interference towards the realisation of rights.²⁹ Amongst other conventions, developments at Nharira contravened the International Covenant on Civil and Political Rights (ICCPR)²⁸, the African Charter on Human and People's Rights (ACHPR)³⁰ and the Convention on the Rights of the Child.³¹ The latter ought to ensure the consideration of the best interests of the child as a primary factor in all instances.³² Regrettably, the state failed as children were among the evictees and slept outside their normal shelters which was a clear violation of the provisions of the Zimbabwean Constitution.³³ The interests of the child constitutes one of the four principal pillars for interpreting and implementing the children's rights. The events at Nharira represented an undeniable failure to uphold them.

To the Nyamwenda, not being priorly informed was as degrading as the evictions. One indigenous local commented, “*pane kakubatena senge tisiri vanhuwo* (there is treatment of others as lesser beings)”. The informant was not directly affected by the evictions, but, as a resident within an area with progressing mining developments, there was apprehension that a similar crisis would befall them. The lack of engagement, in this case, amounts to deprivation of an opportunity to participate. Indigenous people are already disproportionately more vulnerable to such infringements which is only worsened by poverty; a condition they commonly live in.³⁴

There was an opportunity for participation through dialogue but this was circumvented. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the national Constitution compel consultations between the State and concerned communities to ensure informed consent before initialising legislative or administrative measures that would affect concerned communities.³⁵

4.2 The Constitution and Implementation Frameworks

The Constitution of Zimbabwe is the supreme law of the country, and any opposing practices or inconsistent circumstances would be legally void.³⁶ The Constitution weaved into itself the United Nations fundamental human rights. As such, rights to dignified treatment, personal security, equality, right to property and non-discrimination are salient in the document.³⁷ Rural local authorities and traditional leaders are responsible for the administration of communal land

²⁸ See UNDHR, Article 1 and Article 7.

²⁹ *Ibid.*, Articles 2-3, 5, 8 and 30 respectively. These reiterate the need for equality and protection before the law, the right to property and the promotion of human rights.. ²⁸ See Article 26 which asserts equity and equality before the law.

³⁰ Adopted by the second ordinary session of the Assembly of the African Union in Maputo on 13 September 2000, CAB/LEG/66.6; entered into force on 25 November 2005; ratified by Zimbabwe on 5 September 2008.

³¹ See UNDHR, Article 3.

³² Kubatana, *supra* note 21.

³³ See Government of Zimbabwe, *supra* note 3, Section 19.

³⁴ Amnesty International, *supra* note 20.

³⁵ See UNDHR, Articles 10, 15, 17 and 19.

³⁶ Government of Zimbabwe, *supra* note 3, Chapter 1 (2) (1).

³⁷ *Ibid.*, Chapter 4, Part 1 (46) (1b).

guided by relevant Acts of Parliament.³⁸ In the case of privatisation of communal land; the Communal Land Act³⁹ and the Mines and Minerals Act⁴⁰ are respectively applicable.

Communal land usage is limited to residential, agricultural, and pastoral purposes. The inhabitants of the land are mostly identifiable as a traditional community and have distinguishable land rights; either individually or collectively. The evicted Nyamwenda identified as a collective group religiously and culturally connected to the Nharira Hills. The rights of indigenous groups are enshrined in the Constitution which conditions that deprivation should only be in the interests of “[...] defence, public safety, public order, morality, health or town and country planning; or [...] in order to develop or use that or any other property for a purpose beneficial to the community [...]”.⁴¹ In case of change of land usage, those concerned should be issued a notice of intention to acquire the property, be compensated fairly as agreed between both parties and in case of any contestations, have an opportunity to be heard before the law.⁴² The human rights enshrined in the Constitution were, therefore, not maintained in this case as the battle for legal arbitration only ensued after resettlement. Where evictions should be done or are inevitable, the Constitution requires that the process be “fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom”.⁴³

4.2.1 The Communal Land Act – Consequences for Inhabitants

The Constitution has a comparatively progressive position on human rights but the supporting instruments leave gaps for rather regressive outcomes. Communal land in Zimbabwe is governed under the Communal Land Act. The constitution describes communal land as “land set aside under an Act of Parliament and held in accordance with customary law by members of a community under the leadership of a chief”.⁴⁴

Under the Communal Land Act, authority over the land is vested in the President and managed on his behalf by responsible ministers and rural district councils. This means the President can declare when communal land ceases to be as such to pave way for other developments in the best interests of the country. Before the execution of any plans, the concerned Minister in his or her representative role of the President is mandated to consult with the rural district council under whose jurisdiction the land in question falls.⁴⁵ Traditional leadership in form of chiefs or village headmen have a co-dependant relationship with local government authorities in so far as communal land planning is concerned.⁴⁶ Accordingly, the State holds de jure ownership over communal land while rural communities and individuals exert de facto rights. A dweller on communal land does not have a title and can therefore, neither sell, mortgage, lease nor transfer the land. Usufruct rights in respect of agriculture, housing and pasture are awarded by local councils communities that have traditionally used the land in question⁴⁷ The Communal Land Act stipulates that the responsible Minister can set aside areas of communal land for respective

³⁸ *Ibid.*, Chapters 14 and 15.

³⁹ Communal Land Act, Chapter 20:04, passed as Act 20 of 1982 amended 2016.

⁴⁰ Mines and Minerals Act, Chapter 21:05, Revised Laws of Zimbabwe, 1996, an Act to consolidate and amend the law relating to mines and minerals, Supplement to the Government Gazette, p. 659-752.

⁴¹ Government of Zimbabwe, *supra* note 3, Chapter 2 Part, Section 71 (3b).

⁴² *Ibid.*, Section 3c.

⁴³ *Ibid.*, Section 86 (2).

⁴⁴ *Ibid.*, Section 332.

⁴⁵ *Ibid.*, Chapter 2, Section 8 (2) a1.

⁴⁶ Government of Zimbabwe, *supra* note 3 Section 8 (2) a-b.

⁴⁷ *Ibid.*, Section 8.

developmental plans, engage the rural district council under whose jurisdiction the land falls and accordingly publish a notice in the Government Gazette.⁴⁸ The Act further provides the need to make the approved plans known to the people in the areas affected “[...] as appear to him [designated Minister] sufficient to disseminate the terms of the notice within the area of the land concerned.”⁴⁹

The Act leaves fairness subjective to the authorities’ discretion. As happened in the case of the Nharira, occupants of a communal property can consequently be presented with what amounts to an eviction notice without prior or adequate knowledge. Consequently, inhabitants are deprived of a timely opportunity to seek legal counsel and representation as per their constitutional rights.⁵⁰

Considering the aforesaid, the grounds for legal contestation that due processes were followed in the case of Nharira are fertile. In so far as recalling state land concerns, the law is clear; it allows repossession of communal land and relocation of affected inhabitants as was done. Effectively, there is neither security nor communal land tenure rights in Zimbabwe. Communal land can be recalled when the state deems it necessary. This provision only exempts settlers by virtue of the Mines and Minerals Act.

4.2.2 Vision 2030 and the Mines and Minerals Act

The President of Zimbabwe, Emerson Dambudzo Mnangagwa, ushered in a re-engagement drive to mend and expand Zimbabwe’s economic and diplomatic relations with the global community. Relations with the West in particular are historically marred by tensions on grounds of perpetration against human rights and regressive economic reforms.⁵¹ These contested circumstances caused the country to be sanctioned with economic and diplomatic restrictions since the Mugabe era and these have been retained to date.⁵² Upon ascension to the country’s highest office, President Mnangagwa introduced his working mantra Zimbabwe is open for business. This was validated by the National Development Strategy (NDS1) 2021-2025, National Investment Policy (NIP) and Investments Guidelines and Opportunities in Zimbabwe (IGOZ). Collectively, NDS1, NIP and IGOZ are the blueprint towards attaining the Government of Zimbabwe’s vision of an upper middle-income society by 2030. In the IGOZ, mining comes first among opportunities available for appropriation.⁵³ Irrefutably, the industry is lucrative and highly prioritised. This seems utilitarian given its 60 per cent contribution to export earnings and 16 per cent contribution to the national gross domestic product (GDP).⁵⁴ Besides the open call to the global community for business investments, China dominates the industry.

⁴⁸ *Ibid.*, Section 10.

⁴⁹ *Ibid.*, Section 10 (3) d.

⁵⁰ See Government of Zimbabwe, *supra note* 3, Section 71.

⁵¹ M. Musiwaro, ‘Zimbabwe’s Economic Meltdown: Are Sanctions Really to Blame?’, *The Washington Quarterly* (2021), p. 95.

⁵² *Ibid.*

⁵³ Government of Zimbabwe, ‘Investments Guidelines and Opportunities in Zimbabwe,’ January 2018, <<http://www.zimfa.gov.zw/index.php/media-centre/downloads?download=8:investment-guidelines-andopportunities-in-zimbabwe>>, (accessed 8 September 2022), p. 19.

⁵⁴ London School of Economics Consulting, ‘Sustainability Impact Assessment in Support of Negotiations with Partner Countries in Eastern and Southern Africa in view of Deepening the Existing Interim Economic Partnership Agreement Case Study: Mining Sector in Zimbabwe and Madagascar’, *London School of*

The Mines and Minerals Act was first introduced during the colonial era and has been in existence for a longer period than NDS1 and the NIP. The latter reinforce the Act into a powerful provision towards expanding and safeguarding mining interests in Zimbabwe.⁵⁵ A, communal land is entirely available for prospecting.⁵⁵ Communal land inhabitants have surface rights to land, even after discovery of minerals on one's household. Only those with mining rights are entitled to conduct mining activities. It is worth noting that most people in Zimbabwe live on communal land. Consequently, the larger population are a vulnerable group in terms of land ownership and rights.⁵⁶ Miners have more superior land rights which leaves affected communal land dwellers up for eviction or co-existence with the miner. Where co-existence is considered, inhabitants under Communal Land Act should not infringe the miner's interests.⁵⁷ In the event that relocations are the best way forward, compensation respective to entitlements as provided in the Act through which land is occupied should be made.⁵⁸ Royalties from the mining are channelled to the State. There are no provisions for direct payments to communities but, the local authorities can receive payments from mining companies under directive of the Minister.⁵⁹

5 Findings

Zimbabwe is celebrating ten years since the declaration of human rights through its Constitution of 2013. While the provisions for protection and further developing the scope of economic, social and cultural rights in Zimbabwe are upheld in the Constitution, the country still lags behind in terms of implementation. Research findings from the Nharira case reflect that economic, social and cultural rights largely remain endowed on paper. On the other hand, implementing statutes such as the Miners and Minerals Act are segregational. We argue that in consideration of the law as it is, the evictions could have been lawfully executed. Further, we observe how human rights are typically disregarded in such processes. We also dispute the fairness of the prevailing legal provisions in view of how economic considerations are of higher regard compared to intangible components that define the socio-cultural grounding of the human existence. The existence of legal provisions that leave gaps for inequality implies an uneven turf of existence for humanity and this requires rectification. The following testaments from the Nyamwenda and Nharira community at large assist in bringing to light consequences of unnegotiated mining investments in communities.

5.1 Loss of Legitimate Traditional Leadership and the Shortcomings of Customary Law

The Nharira community considers political weaponisation of traditional leadership as one of country's biggest challenges. This is in view of the administrative dissections and appointment of illegitimate chiefs as the community does not recognise them. The general sentiment is that appointments should be done following the traditional norms of succession and the role of the

Economics and Political Science. May 2021, <lse.ac.uk/business/consulting/reports/sia-in-support-of-the-negotiations-witthesa5> (accessed 2 September 2022).

⁵⁵ Government of Zimbabwe, *supra* note 3, Section 10 (3) d.

⁵⁵ Government of Zimbabwe, *supra* note 3, Section 26 (a).

⁵⁶ J. Nyoni, 'USAID Strategic Economic Research and Analysis – Zimbabwe (Sera) Program Land Tenure and Land Marketability in Zimbabwe: Policy Options and Recommendations', *Nathan Associates Inc* (2016), <pdf.usaid.gov/pdf_docs/PA00MDKB.pdf> (accessed 2 September 2022).

⁵⁷ Communal Land Act, *supra* note 38, *Ibid.*, Part 3, Section 10 (3d).

⁵⁸ See Government of Zimbabwe, *supra* note 3, Section 12.

⁵⁹ Government of Zimbabwe, *supra* note 3, Part XV.

State should only be to endorse those decisions.⁶⁰ Legitimate chiefs are argued to be more intimately appreciative of cultural and traditional demands of their geographical jurisdictions.⁶¹ As such, in case of developments requiring mediations an honourable legitimate chief would consider his bestowed mandate to protect his people and the land. These sentiments are problematic given how traditional leadership is guided by customary laws. Customary laws are rules developed from a people's customs and traditions practised since time immemorial.⁶² In Zimbabwe, these laws remain largely unwritten.⁶³ The Constitution of Zimbabwe recognises African customary law where any unwritten law is also law.⁶⁴ The de facto circumstances are that in terms of land distribution indigenous locals should have preference.⁶⁵ Traditional leadership works with local authorities in the administration of districts in Zimbabwe.⁶⁶ Their rule does not necessarily subscribe to the formal boundaries of districts since numerous chieftainships can fall within one district.⁶⁷ In the unwritten state of the customary laws and competing roles for power and influence, customary laws are riddled by challenges of inadequate tenure thereby causing partial protection from the courts.⁶⁸ The inhibitive extent of the traditional leaders' roles, as provided in the Communal Land Act, perpetuate these circumstances.⁶⁹

5.2 Loss of Socio-Cultural Identity

Despite the lack of a consultative process in the Nharira ordeal, the authorities made land relocation arrangements. The procedure lacked consent, the extent of readiness for immediate human occupation was questionable, and the intimate relationship between people and their ancestral land was largely disregarded. For the Nyamwenda, the hills in question directly connected them to their ancestors and were a site for related cultural and religious practices. It was for such purposes that they settled on the land in the first place since territoriality "provides a means of reifying power".⁷⁰ Indigenous inhabitants gain their strength from their land through the belief that the spirit of the ancestors buried in the land cares and protects their living

⁶⁰ O. Dodo, 'Traditional leadership systems and gender recognition: Zimbabwe', 1 (1) *International Journal of Gender and Women's Studies* (2013) p. 30.

⁶¹ There are many cultural practices in Zimbabwe. Some practices are specific to certain groups of people while others are more widely practised. However, the values that underpin the way of life, particularly customs and traditions, vary between cultural groups guided by their traditional customs and traditional leadership.

⁶² Pfumorodze and Chitsove, *infra* note 66.

⁶³ *Ibid.*

⁶⁴ Government of Zimbabwe, *supra* note 3, Section 281 (1).

⁶⁵ I. Scoones *et al.*, 'Zimbabwe's land reform: myths and realities', *The Zimbabwean*, 18 November 2010, <ids.ac.uk/download.php?file=files/dmfile/zimbabwean3pdf.pdf> (accessed 2 September 2022).

⁶⁶ J. Pfumorodze and E. Chitsove, 'Update: The Law in Zimbabwe', *GlobaLex*. July/August 2021. <nyulawglobal.org/globalex/Zimbabwe1.html> (accessed 3 September 2022).

⁶⁷ T. Chigwata, 'The role of traditional leaders in Zimbabwe: are they still relevant?', 20 (1) *Law, democracy and development* (2016) p. 71.

⁶⁸ P. B. Matondi and M. Dekker, 'Land rights and tenure security in Zimbabwe's post fast track Land Reform Programme', *A Synthesis report for LandAct*. March, 2011, <humanitarianlibrary.org/sites/default/files/2013/08/Zimbabwe_RuzivoTrust_ASC_0.pdf> (accessed 6 September 2022).

⁶⁹ See Constitution of Zimbabwe, Section 10. Land governance in event of land repossession by the state largely remain the business of presiding Minister and local government.

⁷⁰ R. Sack (ed.), *Human Territoriality: Its Theory and History*, (Cambridge University Press, Cambridge, 1986). p. 32.

descendants.⁷¹ In turn, the descendants conduct religious rites in gratitude and honour of their ancestors.⁷² Land is not just a place but a story place of ancestral history which defines and shapes a peoples' understanding of themselves.

The UNDRIP stipulates the rights of indigenous people such as full enjoyment, equality, security and self-determination whereby they can freely distinguish their cultural development among other provisions.⁷³ Further, the State is mandated to put in place effective mechanisms that prevent or rectify any action that deprives indigenous people of their integrity as distinct peoples, of their culture, ethnic identities or seeks to dispossess them of their land.⁷³ While the country complies with international standards through its Constitution, implementation remains a challenge. For the Nyamwenda, the separation with the land effectively implied the creation of a void, a loss of true being which was replaced by mere existence as a body without a soul.

5.3 Vilification of Sacred Spaces

In the process of losing their identity through separation with the ancestral land, the Nyamwenda simultaneously lost the sacrosanctity of their lost dwelling place. The mining activities at the once sacred spaces extract grains of the soil that once held their traditional faith. The Nyamwenda had a revered and endearing approach to the hills as their sacred place of worship and the connection with their ancestors. Reverend speech was to be used always, artefacts or behaviour offensive to the indigenous traditional faith were not tolerated and delinquent behaviour was believed to bring bad omen to the assailant. With the commencement of the mining activities, it seemed also, these values were withered away. .

The reverence of the hills now seemingly only remains in the memory of the locals whereas some have even began questioning the religion and sacrosanctity of the hills. As apparent, the Chinese miners persisted despite having desecrated the sacred spaces in a deeply horrendous manner. One immigrant local suggested,

[...] *ndokwave kuitirirwa mabasa ose erima ikoko; vobva vasiya zvinhu zvavo imomo*
(the hills are now undignified. They have become places for the works of darkness [implied sexual immorality] and lovers leave evidence of their immoral deeds there)
[...]. The miners break open the hills, level it out and dig further in leaving patches of hollow ground [...]. Nothing is left unused, even quarry dust is used for making bricks and sold back to us [...].

With such activities, the once perceived importance was eroded. In consequence of that, the land has allegedly become a hideout for adulterous lovers and thieves while it was once a sacred place of worship and ancestral presence. .

The interviewed migrant locals were mostly present as beneficiaries of the land reform programme or workers at the mines. Despite their direct economic benefit, they agreed that the community had more to lose as the mining did not directly benefit them in any way.

⁷¹ J. Artkinson, 'Trauma Trails: Judy Atkinson', *Sharing Culture* [Judy's Story - Sharing Culture](#), (accessed 13 September 2022).

⁷² M. Kickett, 'Examination of how a culturally appropriate definition of resilience affects the physical and mental health of Aboriginal people, Doctoral dissertation', *University of Western Australia, School of Population and Global Health*, 2012 <research-repository.uwa.edu.au/en/publications/examination-of-how-a-culturallyappropriate-definition-of-resilie > (accessed 13 September 2021). ⁷³ See UNDRIP, Articles 1-3.

⁷³ *Ibid.*, Article 8 (2 a-b).

The Nharira community believes that the Chinese are deeply religious people who practice their own traditional and spiritual rites. Further, they believe that for their protection, the Chinese miners engage their ancestors and fumigate the hills through these traditional rituals. Such actions would then protect them from the consequences the subsequent mining activity could potentially bring upon them. Considering such views, the Nharira community bemoans the double-fold embarrassment the circumstances bring to the community and nation at large. In the first instance, the Nyamwenda had to pave way for the mining activities and next, in the battle of the ancestors, theirs were fumigated silent as there are no bad omens known to have befallen the miners. However, some incidences of supernatural activity are believed to have happened and caused suspension of mining activities at some sites, for example, at the heart of Gwiranenzara and Ziware raMachembere.

The reality at Nharira recalled the question of whether, supposedly in the event of discovery of precious minerals under the Great Walls of China, the Chinese themselves would tear down the walls to a grotesque and unredeemable state, particularly, by an enterprising foreign national. The question applies to other historically and culturally significant heritage sites such as the

Pyramids of Egypt whose existence premise a spirituality comparable to that of the Nharira Hills. To answer this rhetoric question, the thought of how wars were started over comparatively less-worthy causes in the history of mankind came to mind.

In equal essence of how other heritage sites bear an analogous worth to their indigenous locals and countries, the Nharira hills are equally valuable to the Nyamwenda. Accordingly, there is a need for the State to be firm in preservation of the heritage sites in honour of its Constitution. On the contrary, there is an outcry over how the Nharira heritage sites were preserved during the colonial era only to be destroyed in the post-colonial. As the Constitution provides, there is a need for motivated efforts to preserve traditional cultures, heritage and sacred sites.⁷⁴ Economic pursuits undoubtedly bring income to the state coffers, however, balance is a necessity. A suggestion was made to preserve such heritage entities by law, with a breach by an individual or a State entity being accompanied by serious consequences.

5.4 An Embezzled Religious and Recreational Space

The Nharira community practices different religious beliefs as per every individual's constitutional right.⁷⁶ While the Nyamwenda and other community members are of an indigenous African traditional religion, the rest of the community belongs to various other religions, most often of Christianity. The use of the affected hills was not restricted to those of African traditional religion but, within customarily approved parameters, anyone could enjoy their existence. Individuals could simply walk to the hills for some air as comparable to a stroll in the park. In case of personal problems, one could go up the hills and tell them (the problems) to the ancestors or pray about it to their God. The hills proffered a space for individual worship, meditation and relaxation. Due to the mining activities the community at large lost a space of therapeutic and psychologically calming effect.

⁷⁴ Government of Zimbabwe, *supra* note 3, Section 282.

⁷⁶ *Ibid.*, Section 60 (1).

5.5 Lost Conservation Opportunities

The Nharira Hills are viewed as a gift. The community benefitted from them through fruits and firewood. It is noteworthy that use of aids, such as axes and wheelbarrows, was forbidden for the gathering of firewood. Hands had to be used to collect firewood from the ground, break off branches from trees and carry the firewood back home. These values of conservation and sharing which informed such practices also prevailed for other provisions the hills gifted. In a fashion similar to how vilification of sacred spaces caused a shift of perceptions and attitude, the conservation opportunities that once prevailed because of reverence towards the hills were also lost. Further, the geographical location of the Nharira Hills is not beneficial either since it is situated between a high-density suburb of Harare and the town of Norton. There is an ongoing challenge of dwindling household incomes, increasing cost of electricity and power cuts in Zimbabwe. Consequently, there is a spike in deforestation as people seek alternative energy sources. The traditional values that once helped with responsible extraction of resources are undermined.

The poaching communities are aware of the Nharira community police which is made up of members of the Moyo clan and their followers. They took it upon themselves to persecute perpetrators. The police is aware that some members view this exercise in mockery. Some members perceive such practises as absurd considering the severity of actions directed towards countrymen gathering firewood in direct comparison to the little counteraction towards miners who disregard the significance of hills, caves, shrines, ancestral graves and traditional artefacts. The local police has remained motivated to preserve what they can as the battle for recognition and conservation of their cultural heritage continues.

The circumstances that befell the Nharira Hills created a general apprehension within the community. There is grave concern of an imminent threat to the futures of other heritage sites and indigenous peoples' rights. This is in hindsight of the growing number of other contested mining investment cases. For example, Zhongxin Coal Mining Group and Afrochine Smelting were granted rights to prospect for minerals in the pristine area of Hwange National Park⁷⁵. The case of granite mining in Mutoko by another Chinese company is also another contested issue and these examples are only a fraction of ongoing mining exploits across the country. ⁷⁶ParkOne informant suggested that, "we are in a difficult position as a nation [...] because of financial gain, all these (cultural sites) are at risk [...] it is not surprising that we will wake up one day and find even Inyangani Mountain under detonations".

6 Comparative Perspectives

The circumstances at Nharira are not isolated occurrences. The legal cases below present realities of higher considerations of economic expansions and continued struggles for preservation of traditional territories by marginalised groups.

⁷⁵ J. Watts, 'Chinese mining firms in Zimbabwe pose threat to endangered species, say experts', *The Guardian*, 3 September 2020, <[theguardian.com/world/2020/sep/03/chinese-mining-zimbabwe-pose-threat-endangeredspecies-hwange-national-park](https://www.theguardian.com/world/2020/sep/03/chinese-mining-zimbabwe-pose-threat-endangeredspecies-hwange-national-park)> , (accessed 13 September 2022).

⁷⁶ Mining Zimbabwe, 'Chinese companies fall short of CSR', *Mining Zimbabwe Magazine Issue 58*. 26 April 2022, <miningzimbabwe.com/chinese-companies-fall-short-on-csr/> (accessed 13 September 2022). ⁷⁹J. Tarusarira, 'The grass versus the people: Sacred roots of environmental conflict in the Chilonga communal lands in Zimbabwe', 6 (1), *Zeitschrift für Religion, Gesellschaft und Politik* (2022) , p. 72.

6.1 Livison Chikutu and 2 Others v. Minister of Lands

A trio of the Hlengwe Shangani tribe, a Zimbabwean ethnic minority from Chilonga, Chiredzi applied to have sections 4 and 6 (1) (b) of the Communal Land Act declared unconstitutional. This was in a bid to interdict the commercial production of lucerne grass⁷⁹ which would cause the relocation of 13 840 Indigenous Shangani people from their indigenous land spanning 12940 hectares.⁷⁷ The applicants argued that the land in question was their ancestral heritage from time immemorial, as such, they sought a departure from the Communal Land Act that currently governed them. They stated that relocations undermined and violated the rights to human dignity, property, equal protection, culture and heritage. Further, no consultations had initially been done and at a later point when conversations were initiated, a consensus could not be reached. In making a ruling, the judge argued that land was invested in the President by virtue of his powers provided to him for purposes of development. While the lack of consultations remained a fact, that did not warrant constitutional determination. Further, spans of land would be left for the people's habitation. As such, the case was dismissed.

6.2 Green Fuel Company v. Chisumbanje Community

The *Chisumbanje* case involves forced evictions to pave way for Greenfuels Company's biofuel project. The evictions were forcefully conducted. Villagers under Chief Garahwa reported of beatings and being barred from the land by armed security and dogs.⁸¹ The company later tried to engage the community but that was marred by conflict. An affected informant in Chisumbanje suggested the need for a more human approach through consultations with the community from the onset and queried:

How do you expect us to accept a deal that is imposed on us and further displaces us while at the same time ignoring our livelihoods and cultural concerns? I am not entirely opposed to the project but I am just not happy with the process as the government failed to engage us during the project inception. It is not fair to us, since we have built a history in this community and we cannot just pack and leave it behind just like that.⁸²

In case of any land contestations and evictions, a lack of consultations equals the absence of free and informed consent.⁸³

In the *Chisumbanje* case, the project initially started in the 1960s to capacitate the then colonial government's irrigation project at their Agricultural and Rural Development Authority (ARDA) farm. The project did not commence due to escalated inflation and budgetary constraints.⁸⁴ Through the present-day Build Operate and Transfer (BOT) agreement with private investors for a period exceeding 20 years, the project required about 40 000 hectares of land for expanded sugar plantations and ethanol plant.⁸⁵ As a consequence of the US600 million project, 1754 households were displaced in 2008.⁸⁶ This occurrence was in line with the problematic notion of viewing land as a novel way for business deals and new profit opportunities.⁸⁷ As a consequence, farming opportunities that sustained the community were lost.

6.3 Satond Investment v. Munashe Shava

⁷⁷ D. Mavhinga, 'Chilonga Evictions Show Government Insensitivity', *Zimbabwe Independent*, 12 March 2021, <hrw.org/news/2021/03/12/chilonga-evictions-show-government-insensitivity> , (accessed 8 September 2022).

The overarching dominance of mining can be seen through *Satond Investment v. Munashe Shava* case.⁸⁸ The two co-existed on a piece of land and the applicant had mining rights whereas

⁸¹ C. Benard Chiketo, 'Green Fuel 'annexes' 500h of cotton, maize fields', *Nehanda Radio*, 13 December 2018, <nehandaradio.com/2018/12/13/green-fuel-annexes-500h-of-cotton-maize-fields/> (accessed 5 September 2022). ⁸² C. Mandihlare, 'Large Scale Acquisition and its Implication on Rural livelihoods: The Chisumbanje Ethanol

Plant Case-Zimbabwe. A Research in Partial fulfilment of the requirement for obtaining the degree of Master of Arts in Development Studies', *International Institute of Social Sciences*,

<

academia.edu/68423481/Large_Scale_Land_Acquisition_and_Its_Implication_on_Rural_Livelihoods_The_Chisumbanje_Ethanol_Plant_Case_Zimbabwe > (accessed 29 August 2022).

⁸³ P. Zamchiya *et al.* 'The silent dispossession of Customary Land Rights holders for urban development in Zimbabwe', *Institute for Poverty, Land and Agrarian Studies*, 21 June 2021, <plaas.org.za/the-silentdispossession-of-customary-land-rights-holders-for-urban-development-in-zimbabwe/> (accessed 18 September 2022).

⁸⁴ E. K. Makombe, "I Would Rather Have My Land Back": Subaltern Voices and Corporate/State Land Grab in the Save Valley', *The Land Deal Politics Initiative*. February 2013, [Microsoft Word - LDPI WP 20 \(iss.nl\)](#)>, (accessed 16 September 2022).

⁸⁵ P. Mutopo and M. Chiweshe, 'Large-scale land deals, global capital and the politics of livelihoods: Experiences of women small-holder farmers in Chisumbanje, Zimbabwe', *International Journal of African Renaissance Studies-Multi-, Inter-and Transdisciplinarity*. (2014) p. 94.

⁸⁶ E.K. Makombe, *supra* note 84.

⁸⁷ P. Mutopo and M. Chiweshe, 'Large-scale land deals, global capital and the politics of livelihoods: Experiences of women small-holder farmers in Chisumbanje, Zimbabwe', *International Journal of African Renaissance Studies-Multi-, Inter-and Transdisciplinarity*. (2014) p.98.

⁸⁸ *Satond Investments (Private) Limited vs. Munashe Shava*, High Court of Zimbabwe (HH 336-18, 2018), (18 May 2018 and 20 June 2018).

the defendant was a farmer. The case circumstances are that the defendant instructed his employees to farm on a land within the miner's jurisdiction thereby disturbing the miner's operations. The court considered the miner's superior land tenure rights, as such, a ruling in favour of the applicant was made in terms of Section 22 of the Mines and Minerals Act. To avoid any doubt, Section 179 of the Act was alluded to in the ruling. The section stipulates that a landowner had inferior rights to a miner's which is why the defendant had to exist without infringing Satond Investment's rights.

6.4 Shangani Holistic v. South African Pearline Mineral Exploration Firm

In line with the country's Vision 2023, this case reveals how a bias towards economic pursuits generally impacts the status quo. The Oppenheimer family, through their company Shangani Holistic was granted a court interdict that protected its cattle ranch from exploration by the defendant. The family acquired and inhabited the land in 1937. They were not affected by the land reform evictions of white settlers. It has been widely argued that the request was granted on the basis of their political relationship with the former President Robert Mugabe, economic merits of their existence and recognition of the property as their natural home after a 63 year long stay.⁷⁸ The same economic merits worked as well in the legal case against Pearline

⁷⁸ L. Ndebele, 'Oppenheimer family goes to court to block mineral exploration at their Zimbabwe cattle ranch', *News24*, 3 July 2022, <news24.com/news24/africa/news/oppenheimer-family-goes-to-court-to-block-mineral-exploration-at-their-zimbabwe-cattle-ranch-20220703#:~:text=Podcast,Oppenheimer%20family%20goes%20to%20court%20to%20block,at%20their%20Zimbabwe%20cattle%20ranch&text=Nicky%20Oppenheimer.&text=A%20court%20has%20stopped%20a,owned%20by%20the%20Oppenheimer%20family.>, (accessed 13 September 2022).

Minerals. In carrying out the ruling, it was considered that a huge herd of cattle would have to be relocated, the export supply of beef disturbed, retrenchment of some farm workers would be inevitable and children would be uprooted from their school at the farm. In contrast to the Nyamwenda who sought the preservation of graves and pottery that is of cultural significance as well as shrines for religious practices respective to their small community, the Oppenheimer case had grounded economic merits. As such, the interdict was granted despite arguments that the stretch of the farm was rich in diverse minerals including gold, copper, graphite and lithium.⁷⁹ The rulings above are indicative of how mining and large-scale economic pursuits are of higher recognition over other smaller economic pursuits as demonstrable in the *Munashwe Shava* case. The bias also overlooks how land is a form of social identity and basic subsistence as in the *Chisumbanje* case. The uneven considerations ignore how land is a traditional and religious symbol that interconnects people to their faith and heritage as in the Nharira and Chilonga cases.

7 Recommendations

The crisis being brought about by mining developments in Zimbabwe is not an isolated phenomenon. Mining investments are a growing concern across the globe and efforts to address human rights issues within affected communities have become more pressing considering the growing plight.⁸⁰ We approach the law as it is in making recommendations. Presently, the law permits the change of purposes of land usage and limits property rights.⁸¹ These provisions leave gaps that contradict provisions of the Constitution. Accordingly, the recommendations are not based on the absence of the law but need for implementation frameworks that can sustain values of equality and fairness. In hindsight, this can be noted in most African countries with adequate laws that are rendered insufficient due to the political culture of impunity.⁸² Some state officials, powerful politicians and other influential persons are perpetrators of human rights but often untouchable. However, as a signatory to the Kampala Convention of 2009 on internally displaced people, the country can enhance and catalyse efforts for mainstreaming indigenous people's rights in its economic developmental agenda. This can be achieved through inclusion and participation of earmarked and displaced persons. In the first instance, this begins with obtaining consent of those to be relocated. The beneficiation and protection of communities can come through deliberate consultative efforts by authorities. In the case of the Nharira, there exists widespread concern over neglect due to a lack of consultative processes and accessibility of authorities. While they fail to support affected communities, they are also inaccessible when community leaders seek their audience.

In the case of the Nharira Hills, a consultative process would have influenced a community-informed solution and negotiated relocation plan. As they argued, the community would have assisted in crafting a mutually-beneficial arrangement that advanced economic advancements while also preserving their cultural heritage and human rights. Yet, this was made impossible due to the Ministry of Mines' decision to refrain from being transparent on the magnitude of issued claims.⁹⁴ Such information would present an opportunity for

⁷⁹ *Ibid.*

⁸⁰ The Economic, Social and Cultural Council (ECOSOCC) of the African Union, 'Making the Kampala Convention work for IDPs. Guide for Civil Society on supporting the ratification 31 and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa.' *Africa Union*, July 2010, <internal-displacement.org/sites/default/files/publications/documents/2010-making-the-kampalaconvention-work-thematic-en.pdf> (accessed 21 November 2022).

⁸¹ Government of Zimbabwe, *supra* note 3, Section 71 (3).

⁸² ECOSOCC, *supra* note 91.

⁹⁴ Chara, *supra* note 5.

authorities, including national museums and monuments and local councils to work together in safeguarding national heritage and the indigenous peoples' rights.

Zimbabwe is advancing the component of concerned persons' consent through the Mines and Minerals Act Amendment Bill. This position will improve the protection of the rights of communities. It will also improve the protection of the rights of communities. As such, we propose catalysed processing of the matter so that it speedily becomes law. In the meantime, a moratorium on all evictions to ensure the protection of indigenous locals' rights would be necessary.

The Nharira community expressed a need for authorities to show that they care. Communities are strong critics even in their eco-socially inferior positions. The community expressed that in the event of officials evidencing of sensitivity towards community needs, confidence in the systems, good governance and good will could be resuscitated. The general sentiment in Nharira made an imprint that every circumstance could be amicably resolved but required both authorities and communities to be intentional about achieving that goal.

A clear implementation framework is also invaluable as it would identify and mandate all responsible stakeholders including representatives of affected communities, government ministries and investors to encourage an agreed course of action. Further, clear channels of communication, a transparent case progression, and a tracking system would be necessary. The platform can be live for the duration of the mining activity until post-mining assessments and remedial action where necessary is carried out.

For effective consultative processes and the protection of rights of communities, the role of the civil society cannot be over emphasised. As the State cannot audit itself, there is a need for engagements based on good faith with international, humanitarian and civil society organisations. The Kampala Convention recognises the role these stakeholders play in respective phases of displacements and beyond. Apart from financial resources, their expert and technical involvement in negotiations and planning is invaluable.⁸³ While relations between the State and civil society in Zimbabwe have been tense over the years, success stories have been registered in some interventions such as education, humanitarian aid during disasters and rights for vulnerable groups such as children and people living with disabilities. It is urgently needed that communities scheduled for internal relocations due to economic developments as equally, be recognised as vulnerable groups whose rights require dedicated interventions in Zimbabwe. Communities directly bear environmental and socio-cultural hazards associated with industries such as mining.⁸⁴ As such, agreements attached to conditions of issuing a mining license should mandate social corporate responsibility. Further, for added security, transparency and accountability; agreements between mining entities should be entered into for a direct share of royalties with the hosting community. Information of such agreements should also become public so that communities, through their traditional leadership, local government authorities and the legislative arm of the State can hold the miners accountable.

⁸³ ECOSOCC, *supra* note 91.

⁸⁴ "physical and economic displacement, criminal activity, social dislocation, inflationary pressures, impacts on services such as health, education, water, sewerage, communicable diseases, and gender-based violence *etc.*, as well as and environmental impacts such as dust, erosion, vibration, and noise and water pollution", See G.L. Smith and L. Brooks, 'Incorporation of the socio-cultural dimension into strategic longterm planning of mineral assets in South Africa', 118(4), *Journal of the Southern African Institute of Mining and Metallurgy*, (2018) p. 331.

8 Conclusion

This chapter has argued for the urgent need to find a balance between economic pursuits through mining and preventing intangible losses caused by evictions from communal land. This goal can be achieved through consultative processes that ensure consent, compensation and preservation of the human rights of local communities. In sum, an open, meaningful and participatory approach that involves all concerned stakeholders including miners, legitimate traditional leadership, community, non-governmental organisations, respective ministries and local authorities, is necessary. In line with various conventions the country subscribes to, implementation of respective recommendations would assist in the country's efforts to plug the prevailing gaps and effectively implement respective constitutional mandates.