



CONASA

*Community-Based Natural Resource Management
and Sustainable Agriculture*

**POLICY AND LEGISLATION REVIEW OF THE FISHERIES,
FORESTRY, WIDLIFE AND WATER SECTORS VIS-À-VIS
COMMUNITY BASED NATURAL RESOURCE MANAGEMENT**

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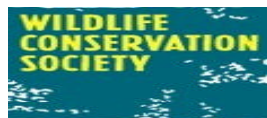
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EXECUTIVE SUMMARY

INTRODUCTION

Zambia is endowed with a wide array of natural resources comprising land, water, fisheries, forestry and wildlife. This resource base is spread throughout the country and is held in trust for the people of Zambia by the President of the Republic, unless or until lawfully transferred or assigned under the various natural resource laws. The administration of natural resources in Zambia is performed by Government authorities and departments falling under various line ministries, a scenario likely to create difficulties in the implementation of a comprehensive integrated community based natural resources management scheme. In assessing the law and policy under the various sectors, it will be shown that Zambia has made strides in trying to institutionalise community based natural resources management (CBNRM) notably in the forestry and wildlife sectors.

METHODOLOGY

This policy and legislation review made use of two research methods: literature review and interviews. Important documents in the literature review included legislation, Parliamentary debates, policies, national strategies, action plans and programme documents. Interviews were conducted with relevant officials in various government departments, divisions and ministries.

NATURAL RESOURCE INSTITUTIONAL AND LEGAL FRAMEWORK

The Constitution of Zambia establishes the institutional and legal framework for the State and assigns functions of policy formulation and legislative power to various organs of the State. In as so far as the natural resource sector is concerned, Part IX of the Constitution, which provides for 'Directive Principles of State Policy and the Duties of the Citizen', provides under Article 112(h) and (i) that the State shall strive to provide a clean and healthy environment for all and promote sustainable development of resources.

Together with other line ministries, the Ministry of Tourism, Environment and Natural Resources is mandated to formulate policy for the environmental and natural resources sector in Zambia. Other than the forestry and wildlife sectors and environmental protection, which fall directly under the Ministry, other sectors are the responsibility of other line ministries.

Institutional Frameworks by Sector

The sub-sectors in the natural resources sector are regulated by various pieces of legislation as follows:

- The Fisheries Act Chapter 200 of the Laws of Zambia of 1974 provides for a Fisheries Department to co-ordinate the development of commercial fishing in the

Republic and to control fishing and provide for the registration of fishermen and their boats.

- The Forestry Act No. 7 of 1999 establishes the Zambia Forestry Commission and defines its functions and provides for the establishment of national forests, local forests and joint forestry management areas. It also provides for the participation of local communities, traditional institutions, non-governmental organisations and other stakeholders in sustainable forest management. However, it is worth noting that the Forestry Act No. 39 of 1973 is still in force. Section 10 (1) of the Acts of Parliament Act Chapter 3 of the Laws of Zambia states that “subject to the provisions of this section, the commencement of an Act shall be such date as is provided in or under the Act, or where no date is so provided, the date of its publication as notified in the Gazette”. Section 1 of the Fisheries Act No.7 of 1999 provides that the Act shall come into operation on such date as the Minister may, by statutory instrument, appoint. In this regard, the Minister must issue a commencement order stating the date on which the Act will come into operation. The Minister responsible has not issued such commencement order. The effect is therefore that the Forests Act of 1973, which the Forests Act No.7 of 1999 purports to repeal, remains in force until the commencement order to bring the Act is issued.
- The Lands Act Chapter 184 of the Laws of Zambia of 1995 vests all land in the President and provides for statutory recognition and continuation of customary tenure. Section 20 of the Act establishes a Lands Tribunal, whose jurisdiction includes presiding over disputes and articulating land rights.
- The Mines and Minerals Act Chapter 213 of the Laws of Zambia of 1995, *inter alia*, establishes a Mining Advisory Committee. The Committee advises the Minister in charge of Mines and Minerals and the Director of Mining on matters relating to development agreements, refusal to grant or renew licences, termination, suspension or cancellation of licences, amendment of terms or conditions of any licence and determination of any appeals lying to the Minister.
- The Water Act Chapter 198 of the Laws of Zambia of 1948 vests ownership of all water in the President and provides for the ownership, control and use of water. Section 23 of the Water Act establishes the Water Board, which is the only body empowered to consider applications and grant water rights.
- The Zambia Wildlife Act No. 12 of 1998 establishes the Zambia Wildlife Authority (ZAWA). Section 5 of the Act outlines the functions of the Authority which include the establishment, control and management of national parks and for the conservation and enhancement of wildlife eco-systems, biodiversity and of objects of aesthetic, pre-historic, historical, geological, archaeological and scientific interest in national parks. It further provides for the establishment, control and management of game management areas as well as for the sustainable use of wildlife and the effective management of the wildlife habitat and game management areas so as to enhance the benefits of the GMAs both to local communities and to the wildlife estate.

COMMUNITY-BASED NATURAL RESOURCES MANAGEMENT CONCEPT

Community based natural resources management in Zambia is not new to the natural resources sector of the country though it could be argued that during the years of the centralist form of Government this form of management was greatly undermined. The Natural Resources Act Cap 315 of 1962 was enacted for purposes of providing for the establishment of the Natural Resources Board, the Natural Resources Tribunal and to provide for the preparation and enforcement of conservation plans in designated areas. Under the Act certain responsibilities of the Natural Resources Board were delegated to decentralised organs composed of private sector persons (community based natural resources management organs). These organs were organised at grass-root level and were established by the Natural Resources Board as Natural Resources Committees and Sub-Committees. Conservation committees were also established through the initiative of communities (land owners/tenants) in the specific areas by petition to the Board. Members of the community in the specific areas elected the committee members through a local electoral process. These committees were to operate as corporate bodies that could sue or be sued. According to the Act 'natural resources' referred to soils, waters, plant life and vegetation, animal life and fauna and other similar things.

The key functions of the conservation committees, natural resources committees and sub-committees were to plan and inaugurate the construction of works and taking of measures for the conservation of soil or of water and the improvement of water resources in their area and to co-operate with and assist the Board and the Minister in carrying out the objects and purposes of the Act.

Thus, the committees were to assist in all aspects of natural resource management including planning and implementation of conservation plans through a consultative process, preservation of natural resources and stimulation of public interest in the proper conservation and wise use and improvement of natural resources.

The Natural Resources Act of 1962 was repealed and replaced with the Natural Resources Act of 1970 which, *inter alia*, introduced the appointment of provincial and district natural resources committees,

Provincial and District Committees

The areas covered by the Provincial and District Natural Resources Committees included, among others:

- (a) Provision of general supervision over the natural resources of the province and or district and co-ordinated and reviewed plans for their conservation, wise use and improvement;
- (b) Stimulation of public interest in the conservation, wise use and improvement of natural resources;

- (c) Recommending to the Minister investigations into natural resources and the means for their preservation and improvement;

The Committees were established under the authority of the Natural Resources Act by the Minister and could be dissolved by the Minister.

The Natural Resources Act of 1970 was drastically affected by the enactment of the Environmental Protection and Pollution Control Act of 1990 which repealed all parts of the Act except Parts IV V and VI relating to the conservation and improvement of natural resources, control of bush fires, and conservation plans.

It is contended here that the Natural Resources Act Cap 315 of 1962 contained a better community based management practice. The community based organs/or practices were operational and directly developmental, that is to say, their primary focus was on the wise use of natural resources for resource sustainability. The conservation committees were established as bodies corporate, independent of direct Government control and political interference. The committees had definite development functions whose benefits to the community were clear. Proponents for the Act argue that an environment for authority, independence and responsibility was created and demanded of these bodies. Their rights and the rights of any person with respect to the provisions of the Natural Resources Act were addressed by the Natural Resources Tribunal, thereby effecting a system of checks and balances. By the structure of the law every one was treated as capable and equally endowed to develop and manage natural resources. Critics of the 1970 changes to the Natural Resources Act argue that the changes resulted in compromising the independence and roles of community based organs. The character and composition of the organs was changed. The functions of the committees changed to those of an administrative body covering established political boundaries, supervising the wise use of natural resources (more regulatory) and managed by the Minister and the Natural Resources Advisory Board as opposed to the former arrangement where the community was engaged in the wise use of the natural resources.

Recent policy and legislation developments in the natural resources sectors indicate that the Government has recognised the importance of managing the country's abundant natural resources jointly with the communities through the promotion of CBNRM principles.

GOVERNMENT INTERVENTIONS

National Conservation Strategy (NCS) 1985

It can be argued that Government recognition of the importance of involving local communities with an interest in the country's natural resources and the private sector in the management of the nation's resource base can be traced to the National Conservation Strategy (NCS) of 1985, formulated with a view to proposing policies, plans, organisation and action for the better management of the country's vast but fragile natural resources.

The NCS proposed a wide range of activities to integrate conservation with development. Notable among the proposals was the promotion of a conservation ethic among all Zambians with a view to having them involved as far as possible in decision-making and action in the environment.

National Environmental Action Plan (NEAP) 1994

Like the NCS, the NEAP also recognised the importance of local community participation in the management of the country's natural resources. Thus one of the three founding principles of the NEAP was local community and private sector participation in managing Zambia's natural resources. Government's aim was the adoption of sustainable policies, incentives and guidelines in the management and maintenance of ecosystems, ecological processes and the biological diversity of the country.

The Government also acknowledged that the economic units that actually allocated natural resource uses in Zambia were typically small, mostly households in rural areas. The effective managers of these natural resources were not Government officials, but the small farmers, beekeepers, hunters, and their villages. The need to redefine the role of Government entailed taking practical steps including institutional and policy reforms, such as reduction of central government role in the management of natural resources through increased devolution of responsibilities over natural resource management to local authorities and communities and the privatisation of public enterprises involved in natural resource utilisation.

POLICY AND LEGISLATIVE FORMULATION PROCESSES

Policy Process

The policy process refers to a mechanism for effective policy formulation, adoption, implementation and monitoring and evaluation and the consultation that takes place at all stages. Important aspects to note under this part are:

Key Players

The key players in the policy process in Zambia include line Ministries, the Policy Analysis and Co-ordination Division, Cabinet Office, Cabinet Committees and Cabinet itself. At all stages co-ordination is viewed as essential for ensuring that policy implementation is well co-ordinated and various actions harmonized by all implementers in order to achieve the intended results. Cabinet Liaison Officers are a key link between the ministries and the Policy Analysis and Co-ordination Division. Each ministry is also required to establish a Cabinet Liaison Committee (CLC), with the Minister as the Chairperson and the Permanent Secretary and other senior functionaries as members. The CLC is responsible for all matters pertaining to Cabinet business, including considering and approving Memoranda prepared within the Ministry; approving comments drafted for the Minister on Memoranda being circulated by other Ministries; providing guidance on the implementation of Cabinet decisions conveyed to the Ministry; and approving draft reports on the implementation of Cabinet decision before these are submitted to Cabinet.

Ad hoc Inter-Ministerial Committees of Officials (IMCO) may be constituted from time to time for the purpose of facilitating and ensuring effective consultation among stakeholders in the preparation of Cabinet Memoranda and implementation of Cabinet decisions. Meetings are convened by the Policy Analysis and Co-ordination Division, in consultation with the initiating Ministry(ies).

Legislation Process

The drafting of legislation in Zambia is co-ordinated by the Attorney-General's Chambers in the Ministry of Legal Affairs under the Chief Parliamentary Draftsman's Office. It is important to note that all laws of Zambia are shared out among the various ministerial portfolios and it is these portfolios that initiate legislation related to their respective jurisdictions and issue instructions to the Chief Parliamentary Draftsman's Office, under the Attorney General's Chambers for the drafting of bills. The drafting of a Bill by the Parliamentary Draftsman cannot commence unless Cabinet has approved the Bill in principle. Where a legislative proposal impinges on the activities of another Minister or Department, that Minister or Department should be consulted before instructions for the inclusion of the proposal in a bill are given to the Chief Parliamentary Draftsman.

The Role of the Ministry of Legal Affairs

The Ministry of Legal Affairs is there to assist, guide and advise the client ministry generally on the existing law, the legal principles involved and the likely effects of the proposed measures based on past experience of similar cases. This process enables the client ministry to identify the defects or problems inherent in the proposed legislation and how best to implement it. On accepting the advice the client ministry adopts the recommendation as its own policy but bearing in mind that the responsibility for policy implementation is not for the legal experts.

SECTORAL NATURAL RESOURCE MANAGEMENT POLICIES AND LEGISLATION

FISHERIES SECTOR

The fishing industry in Zambia contributes significantly to the national economy. Sources of fish in Zambia are capture fisheries and aquaculture. The demand for fish presently outstrips supply. The per capita consumption has decreased due to declining yields in capture lakes, which can be attributed to unsustainable fishing practices and increasing human population. This has led to a change in focus by Government, as reflected in its proposed draft policy document for the Agricultural Sector, which aims at promoting community based resource management of capture fisheries as a means of improving catches.

Policy

Zambia has had no specific and comprehensive policy on fisheries control and management. The Policy of Government at the moment can only be deduced from subsisting legislation. The Fisheries Policy as can be inferred from subsisting legislation namely, the Fisheries Act Chapter 200 of 1974, has never taken local communities (small scale fishermen) within a fishing area as key stakeholders in the management of the fisheries resource nor are there adequate and clear provisions recognising fishing communities living contiguous to a water body or fishing area. The Policy it can be argued, has never considered local communities as a possible unit of natural resource management that could be organised and empowered to manage the resource within their reach for their own benefit and that of the country as a whole.

The Ministry of Agriculture and Cooperatives has articulated a draft National Agricultural Policy running 2001-2010, which has as a sub-component fisheries. The overall objective of the proposed policy, as regards the fisheries sub-sector, is to increase fish production and promote sustainable utilization of fisheries resources so as to contribute to the economy through the generation of employment, income, and improved availability of fish. The proposed draft Policy adopts a dual approach for the development of fisheries in Zambia by advocating for the substantial improvement of yields of capture fishing through the promotion of sustainable fishing methods and through the promotion of aquaculture and consumption.

The proposed draft Policy has further outlined possible strategies for the realisation of policy objectives. These include, among others, provision of techniques in post-harvest handling, processing, and market information to fish producers, fish processors and fish traders to expand their operations and provision of the legal framework for community participation in sharing the responsibility for better management of aquatic resources. The overall objective of the proposed policy of increasing fish production while promoting the sustainable utilisation of fisheries resources presupposes the bringing on board of all resource users.

Legislation

Zambia's fishing industry has had a regulatory framework since 1929 when the Fish Ordinance No. 3 of 1929 was passed. The Fish Ordinance of 1929 was repealed by the Game Ordinance of 1941, which reduced the Fish Ordinance into a section entitled Control of Fishing. The control of fishing was effected through regulations passed under Section 27 of the Game Ordinance. This arrangement lasted until 1955 when The Fish Conservation Ordinance No. 37 of 1955 was passed. The objective of the Ordinance was to make new and comprehensive provisions for the conservation of fish and the control of fishing which was previously done through regulations passed under the Game Ordinance. The Fish Conservation Ordinance could be described as having embraced decentralisation by empowering native authorities to make orders and rules under the Native Authorities Ordinance for the control of fishing in their respective areas. This maybe attributed to the fact that the Ordinance was passed during a period when a strong

decentralised structure of native authorities was in place and cost-benefit sharing principles were practised.

Notwithstanding its positive aspects, the Fish Conservation Ordinance was repealed by the Fisheries Act No. 21 of 1974. It was Government's argument at the time that the Fish Conservation Act (as it came to be known) appeared in many respects not to be in line with Government policy. The different treatment given to the Western Province from the rest of Zambia was cited as a case in point. It was further argued that the Fisheries Conservation Act referred to Africans and accorded them different treatment whereas the proposed Act was meant to give equal treatment to all fishermen irrespective of race. However, it is worth noting that in a number of respects the proposed Act had not much difference from the old Act.

It is, however, interesting to note that the Fisheries Act No. 21 of 1974 did bring in a number of changes which have had an effect on community participation in fisheries management in Zambia and the way fisheries resource is managed national wide. The new Act introduced changes in:

- Licensing and payment of levy
- Registration of fishermen and boats
- Minister's powers to make regulations-
- Protection of certain areas-
- Power to restrict methods of fishing
- Abolition of honorary fish rangers-

The Fisheries Act Chapter 200 of the Laws of Zambia which was enacted by Parliament in 1974 has only seen one amendment through the passing of Act No.13 of 1994 which amended Section 21(3) to take care of inflation in as far as penalty fees are concerned and to provide for regulations under Section 21 dealing with fishing licence fees. This was done through Statutory Instrument No.36 of 1994. In addition the Fisheries Regulations of 1986 were passed to prohibit fishing throughout Lake Bangweulu, from 1 December to 28 February; in the Kafue River, from 1 October to 31 March; in the lower Zambezi River, from Chirundu to the Zambezi/Luangwa confluence, and in the lower Luangwa River, from 1 December to 31 March. The duration of the periods when fishing is prohibited in the various fisheries coincides with the breeding periods and allows time for the fish species to be nurtured to maturity.

The Fisheries Act was enacted to provide for the development of commercial fishing in Zambia, the control of fishing and the registration of fishermen and their boats and any other matters connected with or incidental to the provisions of the Act.

FORESTRY SECTOR

Forests are one of the most important natural resources of Zambia, covering sixty percent of the total land area of the country. Zambia's extensive forests and woodlands cover about 9.9 percent of the total land area gazetted as forest reserves. Of the total forest

estate, 44 percent is set aside for production, 30 percent for both production and protection while the remaining 26 percent is specifically for protection. The forestry estate occurs on State and customary land. For management purposes, the forest resources are divided into three zones: forest reserves, unreserved forests and industrial plantations. The major consumers of forest resources are households and the industrial sector. About 88 percent of households depend on the forest to meet their basic energy requirements.

Government has acknowledged, that in order to achieve sustainable management of forest resources, active participation of all stakeholders is inevitable so as to ensure effective forest management. It has further been noted that capacity building is necessary at all levels as a means of securing effective participation.

Policy

Zambia's Forestry Policy has been in existence for a very long time dating as far back as the pre-independence era. The Policy was first revised at independence. The Policy which was last reviewed within the context of the Zambia Forestry Action Programme (ZFAP) was found to be a constraint to effective management and utilisation of the forest resource. Under ZFAP a number of thematic studies in the forestry sector were conducted with a focus on forestry and land-use, conservation of forest ecosystems, forestry based industrial development, wood fuel and the institutional and legal framework.

One weakness of the Forestry Policy is that its existence failed to provide an environment for sustainable forestry development. At its inception in 1965, the Policy instituted the Forest Department as the sole actor in the sector, which enjoyed explicit and implicit powers as the largest and most formidable estate agent and manager in the country. The Policy was oblivious of the important roles played by local communities. However, the Policy made appreciable gains for the country by providing for the constitution of a sizeable forest estate which has in the past offered and continues to offer invaluable protection to the soil, agriculture, headwaters and catchment areas. It also provides habitat for other biological resources, critical services to dams and mining, raw materials to manufacturing as well as tangible commodities for commerce.

It is important to note that the immediate and underlying causes identified as contributing to the depressed performance of the forestry sector were lack of active and full participation of key stakeholders towards sustainable forest management, inept policy and legal framework, lack of institutional capacity and co-ordination, land tenure issues and prevailing socio-economic pressures. Zambia has now come up with a policy framework tailored to meet the requirements of sustainable forest resource ecosystem management. In order to urgently realise the development potential of the forest estate, a number of objectives and strategies have been put in place with a view to bringing on board the local communities.

Legislative Framework

Protection of forest areas in Zambia under the Forests Ordinance No. 46 of 1941 was through forest reserves and protected forest areas. The establishment of forest reserves and protected forest areas was done through declarations made by the Governor and later by the President in the Government Gazette. Declarations of forest reserves was restricted to State Lands while declarations of protected forest areas included freehold or leasehold land with the consent of the owner or occupier. Furthermore, with the consent of the Litunga any land the rights to which the Litunga of Barotseland and the people of the Barotse were entitled could be declared as protected forest areas. It is worth noting that the power to declare forest reserves and protected forest areas was later given to the Minister in charge of natural resources at the time.

Notable features of the 1941 forestry law were that within forest reserves and protected forest areas, a licence had to be obtained not only for cutting of trees, removal of timber, firewood, plants, grass, rubber, fruits, seeds, honey and other prescribed forest produce but also to reside there. A licence was also required in order to graze livestock or clear, cultivate or break up land for cultivation. Local authorities could also be authorised to issue permits for the felling and taking of forest produce in and from these areas and collecting the fees and royalties for the forest produce.

The Forest Act of 1941 No.46 was repealed by Forest Act No. 39 of 1973. The objectives of the 1973 Act were to provide for the establishment and management of national and local forests, to conserve and protect forests and trees, and to provide for the licensing and sale of forest produce. The national and local forests under the 1973 Act replaced the forest reserves and protected forest areas. The provisions restricting the activities in the reserves and the protection of forests on State Lands were maintained. The protection of ecosystems was done on a very small scale on the nature reserves created administratively under the Act. The nature reserves were intended for scientific, educational and research purposes only.

It is worth noting that the 1973 Act removed provisions from the 1941 Act which empowered local and rural authorities to issue orders for the management of the forests or to issue licenses for exploitation of forest produce, let alone for such authorities to obtain any benefits from such forests.

The shift in the management system from local-people-oriented to the concentration of all power in the central government and its bureaucracy, that is towards a centrally planned state, coincided with the introduction of a one-party State and its policy of a centrally-commanded economy using a top-down management system. This resulted in increased rate of encroachment and degradation of protected forests.

In order to correct the identified weaknesses in the forestry law, Government in 1999 came up with a new piece of legislation, the Forest Act No. 7 of 1999. The Forestry Act of 1999 was necessitated by a number of factors which, including the need to resolve difficulties of community participation under the 1973 Act; the need to harmonise the

Forestry Act with other relevant pieces of legislation; and the need to reflect relevant provisions arising from international conventions and agreements to which Zambia is a state party. This Act has been regarded as a positive development in the protection and management of forests in Zambia in that it once again, like the 1941 Act, brings on board the concept of decentralisation. Some of the innovative provisions introduced by the 1999 Act are:

- Protection of the ecosystem and bio-diversity
- Sense of ownership and cost-benefit sharing.
- Application of appropriate terminology
- Requirement for management plans
- Conservation Orders
- Recovery Plans for Protected Flora
- Some changes pertaining to licensing
- Import and Export of Forest Produce
- Search Warrants

WILDLIFE SECTOR

Government has created nineteen (19) National Parks, totalling some 64,000 sq. km or 8% of the country. Management of these areas is delegated to the Zambia Wildlife Authority (ZAWA). The Authority up until the year 2002 administratively fell under the Ministry of Tourism which has since been merged with the Ministry of Environment and Natural Resources. Wildlife conservation in Zambia is regulated by the Zambia Wildlife Act No. 12 of 1998, which allows the President to declare certain areas of the country as national parks and game management areas (GMAs).

Policy

The Policy for National Parks and Wildlife in Zambia adopted in 1998 does in an explicit manner recognise community participation in the management of the country's wildlife estate first and foremost through its mission statement which encourages the promotion, appreciation and sustainable use of wildlife resources by facilitating the participation of local communities in the management of the wildlife estate. The Policy further entrenches community based natural resources management by involving local communities in the planning process and management of parks. Throughout any planning process, local communities and the general public at the international, national, provincial and district levels will be given opportunity to voice concerns about planning and management of parks. In relation to local communities, other policy initiatives include the empowering of the Integrated Resources Development Boards to collect revenues due to them by way of license issue, concessions granted and other services rendered, or from the use of wildlife resources in their areas.

The wildlife sector in Zambia is regarded as having pioneered the concept of community based natural resource management through the Administrative Design Management Project (ADMADE) and the Luangwa Integrated Resource Development Programme

(LIRD). These programmes are considered to have been major success stories within Zambia when it comes to implementing community based natural resource management principles.

Legal Framework

Zambia has had a long history in so far as wildlife legislation is concerned. Legislation for the sector spans from 1925 when the first Game Ordinance was passed which was later repealed by Ordinance No. 47 of 1941. It is worth noting that in 1954 the Fauna Conservation Ordinance No.43 of 1954 was passed with a view to repealing Ordinance No. 47 of 1941. The Repealing Section, however, gave the Governor the option to repeal different sections or parts of the said Ordinance at different dates. This was the case as not all sections of the Game Ordinance were repealed. The two pieces of legislation, renamed as the Game Act, Chapter 106 of the 1962 Edition of the Laws, and the Fauna Conservation Act, Chapter 241 of the 1964 Edition of the Laws were jointly repealed by the National Parks and Wildlife Act No. 57 of 1968.

It is worth noting that the Game Ordinance of 1941 was responsible for the repealing of the Fish Ordinance of 1929. However, the whole Ordinance was reduced into Section 27 of the Game Ordinance under the title Control of Fishing. It can however, be argued that this state of affairs only subsisted up to 1955 when the Fish Conservation Ordinance was passed. This is also confirmed by the fact that the Fauna Conservation Ordinance did not include a provision on control of fishing even though intended to repeal the Game Ordinance. The only relic left of this arrangement was in the name of the institution charged to administer the law namely, the Game and Fisheries Department.

The Game Act, as the Game Ordinance came to be known, did not provide for local community participation in the management of the wildlife estate except to some degree in the Barotse Province (Western Province). African inhabitants living within the territorial limits of the Barotse Province and living under the tribal rule of the Paramount Chief managed their own wildlife resource through the institution of the Barotse Royal Establishment with very little interference from the Colonial Government. This exemption was carried over by the Fauna Conservation Act which went further to explicitly provide that that no person could hunt any game animal other than birds within the Barotse Protectorate Controlled Area except with the permission of the Paramount Chief of Barotseland who could grant permission to any person or class of persons.

The National Parks and Wildlife Act No.57 of 1968 which repealed the above mentioned Acts, provided for the establishment, control and management of national parks, the conservation and protection of wildlife and objects of aesthetic, prehistoric, historical and scientific interest in national parks; the establishment of game management areas; the licensing of hunting; the control, possession, transfer, sale, import and export of wild animals; and other incidental or connected matters. It is important to note that apart from honorary game rangers appointed under the two repealed Acts, the National Parks and Wildlife Act of 1968 was the first piece of legislation to establish a National Parks Board which could draw membership from out side the civil service. It should be further noted

that the Board with the approval of the Minister could establish one or more committees to carry out any special or general functions determined by the Board. While it is encouraging to note that the Act made provision for the participation of non state actors in the management of the wildlife estate , the Act is not clear as to the criteria used to co-opt non state actors on to the committee so as to show whether key stakeholders were on board. Structurally, these committees were not community based thereby limiting the chances of local community participation.

In as far as the declaration of game management areas was concerned, local communities living in those areas were never consulted though the Act expected them to co-operate with the authorities when it came to the conservation of wildlife and the scenic beauty. In a nutshell the Act never provided for effective local community participation in the management of the country's wildlife estate wherever it occurred.

The National Parks and Wildlife Act No. 57 of 1968 was repealed by the National Parks and Wildlife Act No.10 of 1991. This piece of legislation ushered in some innovative provisions in the area of community based natural resources management in Zambia and in particular the wildlife sector. In addition to retaining the Committees of the Board under the previous Act the new Act created Integrated Resource Development Committees.

A number of factors contributed to the innovative provisions in the new Act. Firstly the parliamentary debates on the participation of local communities in wildlife conservation led to the birth, in the 1980s, of community based wildlife conservation schemes in Zambia, the most well-known of these being the Administrative Management Design (ADMAD) and the Luangwa Integrated Resource Development Project (LIRD) in game management areas. These initiatives led to the formulation of wildlife utilisation schemes providing local communities living within game management areas with affordable sources of meat and employment benefits. The local communities were involved through the employment of village wildlife scouts to police their home area rather more effectively than civil servants scouts coming from other parts of the country.

The Act, however, fell short in many aspects. Although providing for integrated resource development committees, the Act was not clear as to the criteria used by the Minister to establish the said committees nor was their composition structure spelt out. It was, therefore, difficult to secure the participation of key stakeholders by law in the event of a minister becoming insensitive to local community participation. The establishment of committees through appointments rather than a democratic process could have had a negative impact on their legitimacy.

The National Parks and Wildlife Act No. 10 of 1991 was in turn repealed by the Zambia Wildlife Act No. 12 of 1998. The new piece of legislation is a result of a combination of widespread and detailed consultations with all stakeholders with an interest in the wildlife sector at local community level, among traditional leaders, professional hunters, resident hunters as well as all interested groups in the public and private sectors at the national level. The rationale advanced by Government for replacing Act No. 10 of 1991 was that

Government wanted to, as far as possible, give practical effect to the visionary MMD policy on the need to transform all government departments whose activities had an economic potential, into self-sustaining statutory organisations that would function along commercial lines. It was argued that the then Department of National Parks and Wildlife was ideally situated for such a transformation. It is important to also note that the advent of the Third Republic in November, 1991 fundamentally transformed the political, economic and social landscape of the Republic. The command economy under the one-party political system was replaced by the liberalised market economy under the multi-party democratic political system.

The Zambia Wildlife Act No.12 of 1998 can be described as a milestone in so far as the management of Zambia's wildlife estate is concerned. Other than creating the Zambia Wildlife Authority and prescribing its functions, the Act introduced innovations in:

- Protection of the ecosystem and bio-diversity
- Ownership of wildlife animals
- Enhancement of economic and social well-being of local communities
- Application of appropriate terminology
- Restrictions on mining in national parks
- Requirement for management plans
- Changes pertaining to game management areas
- Some changes pertaining to licensing
- Empowerment of village scouts
- Situation of self-defence, defence of property
- Power to release arrested persons on a bond
- Penalties

For the first time there was recognition that for wildlife conservation and its management to be sustainable, local communities needed to be intimately and practically involved in protecting and deriving benefits from what is rightfully their natural heritage.

WATER SECTOR

Zambia is considered a fortunate country in Southern Africa, receiving relatively substantial rainfall, and endowed with major perennial rivers, lakes, swamps and flood areas. The principal source of water is rainfall, which recharges both surface and ground water reservoirs. Assessments indicate that there is enough water in the major basins to meet present and medium term water demands. Surface water covers 45,000 square kilometres or 6% of the country.

Policy

The Water Sector is looked at as a cross-cutting resource in the natural resources sector. Some key policy measures adopted in order to achieve sustainable water resources development are:

1. Recognising the important role of the water sector in the overall socio-economic development of the country
2. Vesting control of water resources in the country under State control through review of water legislation to incorporate all water bodies
3. Promoting water resources development through an integrated management approach
4. Promoting adequate, safe and cost effective water supply and sanitation services with due regard to environmental protection

In recognition of the importance water plays in the economic development of the country, the Government formulated the National Water Policy in November 1994. The water sector had for a long time been identified with an inherently weak institutional capacity, deteriorated facilities and service delivery. The need was obvious to develop a National Water Policy that would guide developments in the conservation, management, demand and supply of the water resources in the country, particularly in view of the changed macro-economic environment in which liberalisation and private enterprise investment and community participation have become the norm. The water sector is one of the principal sectors with vital links to other sectors in the economy.

The National Water Policy is aimed at promoting a sustainable water resources development with a view to facilitate an equitable provision of adequate quantity of water for all competing groups of users at acceptable costs and ensuring security of supply under varied conditions. The policy recognises the importance of water for public health, food production, the productivity of industry, the production of energy, the natural environment and other important aspects that enhance the quality of life. The policy objectives are outlined in Chapter 6 under “Water sector”.

Legal Framework

Water resources management in Zambia is governed by Act No. 34 of 1948, which makes provision for ownership, control and use of water. In terms of jurisdiction, the Act is not applicable to (a) the Western Province; (b) the Zambezi River; (c) the Luapula River; and (d) that portion of the Luangwa River which constitutes the boundary between Zambia and Mozambique.

Ownership of water is vested in the President and there is, therefore, no right of property in water. Everyone has the right to the primary use of public water, which is found in its natural channel in places where lawful access may be had. The use of water for domestic use is automatic as it is an inalienable right of all persons and factored into the legislation.

The Act makes a distinction between ‘private water’ and ‘public water’. Public water is all water, visible or not, flowing or found in or above the bed of a public stream, lake, swamp or marsh. A watercourse consists in most cases of running water, which will find

its way into a larger drainage system where access by others will be made. This determines its public nature.

Private water on the other hand is defined as water that will not extend into a general system and hence be accessible to the public. Under the Water Act, all ground water is defined as private water. This, however, does not mean that it acquires characteristics of private property. In most cases the Water Act does not regulate its use. However, in cases where it is found that a borehole owner has water that far exceeds his requirements and another person wishes to benefit from the water, it is possible for the Water Board to issue rights to this water to the second person provided it is proved that the requirements of the second person cannot be obtained by any reasonable means on his own property and what is available to the first person is more than adequate for his requirements. The second person would have to pay for the cost incurred in making the water available to him (s. 10). This provision has, however, never been put to the test. This proves that the use of private water is not exclusive.

Key provisions in the Act deal with such issues as:

- Purposes of Use of Water
- Mode of Acquisition of Water Rights
- Order of Priority for water rights
- Tenure of Water Rights
- Easements
- Pollution

STRATEGIES FOR ENHANCING STAKEHOLDER PARTICIPATION IN THE POLICY AND LEGISLATION PROCESSES WITHIN THE NATURAL RESOURCES SECTOR.

Based on the assessment made from interviews conducted with state and non-state actors, the following are suggested as being possible strategies that the Forum of stakeholders could employ in trying to enhance and realise community based natural resource management:

1. In the area of policy and legislative formulation the Forum will have to, as a matter of priority and urgency, court Cabinet Office and in particular the Management Development Division under which the Public Sector Capacity Building Project, inaugurated in October 2000, is being managed with a view to giving input to the on-going review of policy and legal formulation processes. This will afford the Forum an opportunity to have non-state actors feature prominently in policy and legislative formulation, especially during the initial stages.
2. Forum members will need to be thoroughly inducted in policy and legal formulation procedures of Government so as to make it possible for the creation of a tracking system within the Forum. The tracking system is intended to keep Forum members

and through them all other key stakeholders informed on the status of policy and legislative developments within Government.

3. The Forum will have to establish contact and on a regular basis court the Parliamentary Subcommittee entrusted with natural resources sectors as a means of lobbying legislators and at the same a means of checking the Executive through the Action Taken mechanism.
4. The Forum will need to identify friends of the Forum from within government and beyond with a view to influencing public opinion and perceptions leading to possible change. Friends of the Forum should include technocrats within Government line Ministries entrusted with initiation of policy and legislation and co-operating partners of the State capable of providing both financial and technical support necessary for effecting change and new developments.
5. The Forum will do well by having small working groups that will specialise in specific natural resources so as to enhance effectiveness and efficiency and to build the requisite expertise and contact with relevant authorities. The Forum should at all costs maintain constant links with Cabinet Liaison Officers of line Ministries dealing with natural resources and should specifically maintain constant links with staff of the Policy and Analysis Co-ordination Division at Cabinet Office and lawyers within the Attorney-General's Chambers and in particular the Legislative Drafting Department for purposes of enhancing the tracking system alluded above.
6. The Forum will have to as a matter of urgency facilitate the establishment of community based resource boards or institutions so as to enhance information from the local level to the Forum at national level. In this regard, community resource boards will require to have legal persona as a matter of urgency and will need capacity building in understanding policy and legislative measures in the natural resources sector. In this regard, it is further suggested that policies and laws affecting the various community resource boards should be simplified and translated into languages local communities can read and understand best.

1.0 INTRODUCTION

Zambia is a nation endowed with a wide array of natural resources comprising land, water, fisheries, forestry and wildlife. The President of the Republic holds this resource base, spread throughout the country, in trust for the people of Zambia, unless or until lawfully transferred or assigned under the various natural resource laws. The vesting of the nation's natural resources in the President of the Republic, who is the Head of State, forms the basis of Government control and administration in the natural resources sector. Government authorities and departments falling under various line ministries perform the administration of natural resources in Zambia. It is worth noting that this scenario could create difficulties in the implementation of a comprehensive integrated community based natural resources management scheme. However, as will be discussed in this review, Zambia has made strides in trying to institutionalise community based natural resources management (CBNRM) notably in the forestry and wildlife sectors. This review will further assess the law and policy formulation processes in Zambia with a view to establishing whether or not these processes create sufficient room for none-state stakeholders to actively participate in law and policy formulation in Zambia. This review is intended to show whether or not stakeholders beyond Government in the natural resources sector do influence law and policy regulating their sectors. The review is carried out within the context of a natural resource management stakeholder forum intended to encourage a process of sector issue review and analysis by forum group members who represent their respective stakeholder interests.

1.1 METHODOLOGY USED FOR THE ASSIGNMENT.

The policy and legislation review exercise entailed scrutiny of documents of various character with emphasis placed on policy documents, legislation, national strategies and action plans as well as programme documents. A number of interviews were conducted with individuals possessing vast experience in the fields under consideration while a number of experts were subcontracted to give expert opinions on a number of thematic issues. Among those interviewed included policy analysts in the Policy Analysis and Co-ordination Division (PAC) and draftsmen in the Legislative and Drafting Department of the Ministry of Legal Affairs. Others were officers under the Directorate of Game Management Areas, Zambia Wildlife Authority and officers under the Departments of Fisheries, Forestry and Water Affairs.

2.0 NATURAL RESOURCE INSTITUTIONAL AND LEGAL FRAMEWORK FOR ZAMBIA.

Zambia is a unitary, indivisible, multi-party and democratic sovereign state where all power resides in the people who exercise this power through democratic institutions of the State established under the Zambian Constitution, which is the supreme law of the land. The Constitution binds all persons in the Republic together with all legislative, executive and judicial organs of the State at all levels.

The Constitution of Zambia further establishes the institutional and legal framework for the State and assigns functions of policy formulation and legislative power to various organs of the State.

Article 50 of the Constitution, which assigns the function of policy formulation to Cabinet, provides:

“The Cabinet shall formulate the policy of the Government and shall be responsible for advising the President with respect to the policy of the Government and with respect to such other matters as may be referred to it by the President”

Article 44(3)(b) of the Constitution grants power to the President to:

“initiate, in so far as he considers it necessary and expedient, laws for submission and consideration by the National Assembly”

while Article 62 of the Constitution provides that:

“The legislative power of the Republic shall vest in Parliament which shall consist of the President and the National Assembly.”

In so far as the natural resource sector is concerned, Part IX of the Constitution, which provides for ‘Directive Principles of State Policy and the Duties of the Citizen’ provides under Article 112(h) and (i) the following:

“112. The following Directives shall be the Principles of State Policy for the purpose of this Part:

...

(h) the State shall strive to provide a clean and healthy environment for all;

(i) the State shall promote sustenance, development and public awareness of the need to manage the land, air and water resources in a balanced and suitable manner for the present and future generation;”

As pointed out earlier, the Constitution of Zambia only establishes the principal institutions of the State whilst the inner workings of these State organs and their

processes is left to organic laws, customs, practices, instruments of various character and judicial precedents.

Article 44(2)(e) of the Zambian Constitution empowers the President, subject to the provisions of the Constitution, to “establish and dissolve such Government Ministries and departments subject to the approval of the National Assembly”. Pursuant to this power, the President established the Ministry of Environment and Natural Resources which has since been merged with the Ministry of Tourism under which the wildlife sector falls.

It is worth noting that whereas the Ministry of Tourism, Environment and Natural Resources is mandated to formulate policy for the environmental and natural resources sector in Zambia, the environmental and natural resources sector in Zambia is multi-sectorial in character involving other line ministries. Apart from the forestry sector and very recently the wildlife sector, which fall directly under the newly merged Ministry, the other sectors fall under different line ministries. The following are the sectors by ministry;

1. Fisheries- Ministry of Agriculture, Food and Fisheries;
2. Lands- Ministry of Lands;
3. Mineral resources- Ministry of Mines and Mineral Resources;
4. Water- Ministry of Energy and Water Development;
5. Wildlife- Ministry of Tourism. (Until very recently belonged to the Ministry of Tourism, which has since been merged, with the Ministry of Environment and Natural Resources.)

2.1 Institutional Frameworks by Sector

2.1.1 Fisheries

The Fisheries Act Chapter 200 of the Laws of Zambia of 1974 provides for a Fisheries Department to coordinate the development of commercial fishing in the Republic and to control fishing and provide for the registration of fishermen and their boats. This Act is currently under review with a view to making amendments compatible with sustainable resource management. The Act in its present state does not provide for local community participation in the management of the fisheries resource. The Act, which is a 1974 piece of legislation, repealed the 1955 Fish Conservation Act, which accorded different treatment to the Western Province from the rest of Zambia. Institutionally it can be said that fisheries fell under the Department of Game and Tsetse Control between the period 1941 to 1974 when a Department of Fisheries was established.

2.1.2 Forestry

The Forestry Act No. 7 of 1999 establishes the Zambia Forestry Commission and defines its functions and provides for the establishment of national forests, local forests and joint forestry management areas. It provides for the participation of local communities, traditional institutions, non-governmental organizations and other stakeholders in sustainable forest management. The Act further makes provision for the conservation and use of forests and trees for the sustainable management of forest eco-systems and biological diversity. It is important to note that the Commission which is supposed to be autonomous of the Ministry of Tourism, Environment and Natural Resources has not yet been constituted and as such the Forestry Department established under the Forests Act No.39 of 1973 is still in charge of forest management in Zambia.

2.1.3 Lands

The Lands Act Chapter 184 of the Laws of Zambia of 1995 provides that all land in Zambia shall vest absolutely in the President and shall be held by him in perpetuity for and on behalf of the people of Zambia. The Act further provides for statutory recognition and continuation of customary tenure and in his regard, the President cannot alienate any land situated in a district or an area where land is held under customary tenure:

1. Without taking into consideration the local customary law on land tenure which is not in conflict with the Land Act;
2. Without consulting the chief and the local authority in the area in which the land to be alienated is situated and in the case of a game management area, the Director General of the Zambia Wildlife Authority, who shall identify the piece of land to be alienated;
3. Without consulting any other person or body whose interest might be affected by the grant; and
4. If an applicant for a leasehold title has not obtained the prior approval of the chief and the local authority within whose area the land is situated.

The Land Act further establishes the Land Development Fund under Section 16(1), which Fund is vested in the Minister responsible for Finance and managed and administered by the Minister responsible for land. The two Ministers mentioned above are required under Section 18 to apply the moneys of the Fund to the opening up of new areas for development of land and where a local authority wishes to develop any area in its locality to provide money to develop the area so identified. Section 20 of the Act establishes a Lands Tribunal presided over by a Chairman and Deputy Chairman both qualified to be judges of the High Court for Zambia. The Tribunal has jurisdiction to:

1. Inquire into, and make awards and decisions in any dispute relating to land under the Land Act;

2. To inquire into, and make awards and decisions relating to any dispute of compensation to be paid under the Land Act;
3. Generally to inquire and adjudicate upon any matter affecting the land rights and obligations, under the Land Act, of any person or the Government; and
4. To perform such acts and carry out such duties as may be prescribed under the Land or any other written law.

2.1.4 Mineral Resources

The Mines and Minerals Act Chapter 213 of the Laws of Zambia of 1995 establishes under Section 83, the offices of Director of Mines, Director of Mine Safety and Director of Geological Survey, who are public officers entrusted with the responsibility of supervising and regulating the prospecting for and mining of minerals in Zambia. Section 88 of the Act establishes a Mining Advisory Committee, which advises the Minister in charge of Mines and Minerals and the Director of Mines on matters relating to development agreements, refusal to grant or renew licences, termination, suspension or cancellation of licences, amendment of terms or conditions of any licence and determination of any appeals lying to the Minister.

The Act, under Part XI, and in particular Sections 91 and 92, provides for an appeals mechanism for any person aggrieved by the decisions of the Director of Mines and Minister in charge of Mines and Minerals and makes provision under Section 93 for appeals to the High Court to determine such decisions in accordance with the provisions of the Mines and Minerals Act and the circumstances of the case. A determination of the Court under this Section may include such directions to the Minister as the court thinks fit for the disposal of the matter and it shall be the duty of the Minister to give effect to any such directions.

It is worth noting that Part IX of the Act provides for environmental protection. Section 75(a) of the Act provides that:

“In deciding whether or not to grant any mining right, the Minister shall take into account the need to conserve and protect-

...

- (a) the air, water and soil, flora, fauna, fish, fisheries and scenic attractions ...in or on the land over which the right is sought, and the Minister may cause such environmental impact studies and other studies to be carried out as the Minister considers necessary to enable such a decision to be made.”

2.1.5 Water Resources

The Water Act Chapter 198 of the Laws of Zambia of 1948 vests ownership of all water in the President and provides for the ownership, control and use of water. There is

therefore no right of property in water. However, everyone has the right to use water found in its natural channel in places where lawful access may be had. The use of water for domestic use is automatic as it is considered an inalienable right of all. Section 23 of the Water Act establishes the Water Board, which is the only body empowered to consider applications and grant water rights. Any person wishing to be granted a water right is obliged to apply to the Secretary of the Water Board who is mandated to receive all applications. All applications have to be recorded, investigated by the Water Officer who is the technical adviser to the Board and later advertised for a period of thirty days in the Government Gazette and a local newspaper circulating in the area as required by Section 24(2) of the Act. After the expiry of the period of objections, the Secretary presents them to the Water Board after which a statutory period of thirty days is given for notice of a public hearing by advertising in the Government Gazette and a local paper in the area. When the Water Board is convened to consider applications, applicants are requested to attend the inquiry if they so wish and persons objecting to any application are informed of the date of inquiry and encouraged to attend personally to lodge their objections.

In arriving at a decision over an application, the Water Board has wide discretionary powers to issue and attach whatever conditions in its opinion are suitable given a situation as provided by Section 27 of the Act. Under Section 29 of the Act, any person aggrieved by any decision of the Water Board may appeal to the High Court.

2.1.6 Wildlife

The Zambia Wildlife Authority (ZAWA) is established under Section 4 of the Zambia Wildlife Act No. 12 of 1998, which repealed Act No.10 of 1991. The repealed Act was responsible for the running of the former National Parks and Wildlife Department under the then Ministry of Tourism. Section 5 of the ZAWA Act outlines the functions of the Authority which include the establishment, control and management of national parks and for the conservation and enhancement of wildlife eco-systems, biodiversity and of objects of aesthetic, pre-historic, historical, geological, archaeological and scientific interest in national parks. It further provides for the establishment, control and management of game management areas as well as for the sustainable use of wildlife and the effective management of the wildlife habitat and game management areas so as to enhance the benefits of the GMAs both to local communities and to the wildlife estate.

Part III of the Act, in particular Section 6, provides for community resource boards within local communities along geographic boundaries contiguous to a chiefdom in a game management area or a particular chiefdom with common interest in the wildlife and natural resources in that area. The function of a community resource board as provided by Section 7 is to promote and develop an integrated approach to the management of human and natural resources in a game management area or an open area falling within its jurisdiction. Furthermore, a community resource board has power to:

1. Negotiate, in conjunction with the Authority, co-management agreements with hunting outfitters and photographic tour operators;

2. Manage the wildlife under its jurisdiction, within quotas specified by the Authority;
3. Appoint village scouts to exercise and perform the duties of a wildlife police officer under the supervision of a wildlife police officer in the area falling under the board's jurisdiction;
4. In consultation with the Authority, develop and implement management plans which reconcile the various uses of land in areas falling under the board's jurisdiction; and
5. Perform such other functions as the Authority or Director-General may direct or delegate to it.

3.0 COMMUNITY BASED NATURAL RESOURCES MANAGEMENT CONCEPT IN ZAMBIA.

3.1 INTRODUCTION

Community based natural resources management in Zambia is not new to the natural resources sector of the country though it could be argued that during the years of the centralist form of Government this form of management was greatly undermined. To establish this fact the roles and extent of community responsibility and participation as contained in the Natural Resources Act Chapter 315 of the Laws of Zambia 1968 will be outlined.

The Natural Resources Act Cap 315 of 1962 was enacted for purposes of providing for the establishment of a Natural Resources Board, a Natural Resources Tribunal and to provide for the preparation and enforcement of conservation plans in designated areas. Under the Act certain responsibilities of the Natural Resources Board were delegated to decentralized organs, which were composed of private sector persons (community based natural resources management organs). The entrusted organs were organized at grass-root levels and were established by the Natural Resources Board as Natural Resources Committees and Sub-Committees. Conservation committees were also established through the initiative of communities (land owners/tenants) in the specific areas by petition to the Board. Members of the community in the specific areas elected the committee members through a local electoral process. These committees were to operate as corporate bodies that could sue or be sued.

Under the Act, the term ‘natural resources’ had the following meaning:

- (a) The soils of Zambia
- (b) The waters of Zambia
- (c) The plant life and vegetation of Zambia and the vegetation products of the soil
- (d) The animal life and fauna of Zambia, including mammals, birds, reptiles, fish, insects and natural products derived from them
- (e) Other such things, whether similar to the foregoing or not, which the Minister may by statutory notice declare to be natural resources.

The key functions of the entrusted organs (conservation committees, natural resources committees and sub-committees) were:

- (a) To plan, inaugurate and cause to be undertaken, the construction of works and takings of measures for the conservation of soil or of water and the improvement of water resources in the area.

- (b) Generally to co-operate with and assist the board and the Minister in carrying out the objects and purposes of the Act or undertake functions approved by the Board.

The latter implies the committees were to assist in all aspects of natural resource management including, but not limited to, the following responsibilities:

1. Planning and implementation of conservation plans through a consultative process
2. Preservation of natural resources through measures of pollution control, preserving flora and fauna, management of fires, land drainage, control of farming methods and the construction and maintenance of works for conserving water or soil and other works to improve natural resources
3. To stimulate public interest in the proper conservation and wise use and improvement of natural resources.

It is notable that the Natural Resources Board and its entrusted organs were executive in character. The Natural Resources Tribunal, a regulator, provided an avenue for anyone aggrieved by any actions of the Executive to seek redress.

The Natural Resources Act of 1962 was repealed and replaced with the Natural Resources Act of 1970 which was enacted for the following purposes:

- (a) To provide for the establishment of a Natural Resources Advisory Board, to prescribe its powers and functions;
- (b) To provide for conservation of natural resources and the appointment of provincial and District Natural Resources Committees,
- (c) To provide for conservation plans;
- (d) To provide for the establishment of Fire Authorities.

Under this legal regime the community based organs, that is to say the Provincial and District Natural Resources Committees, were established to follow definite political boundaries (Provincial and District). The composition of the committees was drawn from both the public and private sectors. Their functions were derived from the Natural Resources Advisory Board.

3.2 PROVINCIAL AND DISTRICT COMMITTEES

The areas covered by the Provincial and District Natural Resources Committees included:

3.2.1 Provincial Committees

- (a) Provided general supervision over the natural resources of the province and coordinated and reviewed plans for their conservation, wise use and improvement;
- (b) Stimulated public interest within the province in the conservation, wise use and improvement of natural resources;
- (c) Recommended to the Minister investigations into natural resources and the means for their preservation and improvement;
- (d) Generally co-ordinated and directed the work of district natural resources committees within the Province;
- (e) Appointed subcommittees with the approval of the Minister;
- (f) With the approval of the Minister, directed any owner or occupier of land in the province to adopt such methods of farming and land use as it deemed necessary for the conservation of soil fertility and protection of natural resources.

3.2.2 District Committees

- (a) Kept under constant review the conservation status of natural resources within the district and made recommendations thereon to the provincial natural resources committees;
- (b) Generally assisted in planning for the preservation, wise use and improvement of natural resources within the district;
- (c) Stimulated public interest in the conservation of natural resources at district level;
- (d) Considered, investigated and reported upon any matter referred to it by the Minister or the provincial natural resources committee concerned;
- (e) Co-operated with and assisted the provincial natural resources committee of the province within which it was situated.

The Committees were established under the authority of the Natural Resources Act by the Minister and could be dissolved by the Minister.

The Natural Resources Act of 1970 was drastically affected by the enactment of the Environmental Protection and Pollution Control Act of 1990 which repealed all parts of

the Act excerpt Parts IV, V and VI relating to the conservation and improvement of natural resources, control of bush fires, and conservation plans. The status of the remaining parts is not clear, though it has been reported that these have since been incorporated into the Forests Act of 1999.

It is contended here that the Natural Resources Act Cap 315 of 1962 appeared to contain a sound community based management practice. The community based organs/or practices were operational and directly developmental, that is to say, their primary focus was on the wise use of natural resources for resource sustainability. Further, each conservation committee was established as a body corporate independent of direct Government control and political interference. The committees were established as and when justified and covering any proposed area. They had definite development functions whose benefits to the community was clear. They could sue and be sued and were subject to all laws affecting their operations as a body corporate. Proponents for the Act argue that an environment for authority, independence and responsibility was created and demanded of these bodies. Their rights and the rights of any person with respect to the provisions of the Natural Resources Act were addressed by the Natural Resources Tribunal, thereby effecting a system of checks and balances. By the structure of the law every one was treated as capable and equally endowed to develop and manage natural resources.

Critics of the 1970 changes to the Natural Resources Act argue that the changes resulted in compromising the independence and roles of community based organs. The character and composition of the organs was changed. For example, public officers were brought in to work as an integral part of committees, and all members being appointed by the Minister unlike in the 1962 arrangement where members of the community elected persons within their communities as members of the committees. The functions of the committees changed to those of an administrative body covering established political boundaries, supervising the wise use of natural resources (more regulatory) and managed by the Minister and the Natural Resources Advisory Board as opposed to the former arrangement where the community was engaged in the wise use of the natural resources. Any form of development and management of natural resources came under direct Government control unlike in the former arrangement. Further these committees were subject to dissolution by the Minister while the benefits for resource use, was not direct or easily identifiable to the community. The scenario ushered in was therefore, that of Government organs with community representation as opposed to community-based organs.

With respect to natural resources conservation in general, community based management practices during the period 1970 onwards took a downhill trend that resulted in the withdrawal of authority and independence in the operations of community based organs. The streamlining of roles of the community based organs resulted in these organs operating more as an extended administrative arm of Government for the control and management of natural resources and less as participants in the wise use of these natural resources. However, one can safely argue that the late 90s saw a change towards pro-

community-based natural resource management in the forestry and wildlife sectors as will be discussed below.

The Zambian Government has recognised and acknowledged the fact that the state cannot manage the country's abundant natural resources alone but would have to promote community-based natural resource management (CBNRM). The Government's commitment to CBNRM principles can be seen from recent policy documents and legislation in the natural resources sectors of the Zambian economy. The Policy for the National Parks and Wildlife in Zambia of April 1998 does for the first time expressly recognise local community participation in conservation by encouraging local communities residing in chiefdoms and geographic areas which are contiguous to any wildlife estate or open area to apply and register as Integrated Resource Development Boards (IRDBs) with the Zambia Wildlife Authority (ZAWA). The IRDBs will have the responsibility of developing management strategies for their respective areas. The National Forestry Policy of July 1998 equally encourages a participatory approach in the management of forests in Zambia by promoting partnerships between State agencies, local communities and individuals in the areas of conflict resolution and cost-benefit sharing among stakeholders.

4.0 GOVERNMENT INTERVENTIONS IN THE NATURAL RESOURCES SECTOR

4.1 NATIONAL CONSERVATION STRATEGY (NCS) 1985

It can safely be argued that Government recognition of the importance of involving local communities with an interest in the country's natural resources and the private sector in the management of the nation's resource base can be traced to the National Conservation Strategy (NCS) of 1985. The Strategy was formulated with a view to proposing policies, plans, organization and action for the better management of the country's vast but fragile natural resources and aimed at providing firmer ground on which decisions for national development could be made. The National Conservation Strategy proposed a wide range of activities to integrate conservation with development. Notable among the proposals was the promotion of a conservation ethic among all Zambians with a view to having them involved as far as possible in decision-making and action in the environment.

Community participation in the various conservation activities that were envisaged under the Strategy was seen as an important factor as the activities would cover vast areas and involve considerable human resources and finances. It was further felt that if Government activities were to be catalytic only, community participation would both reduce the burden on Government and engender the necessary community responsibility for conservation. In addition, having communities involved themselves at all levels of conservation and management would ensure that their needs were served and would contribute to the sustainability of interventions made.

4.2 NATIONAL ENVIRONMENTAL ACTION PLAN (NEAP) 1994

Like its predecessor the NCS, the NEAP also recognised the importance of local community participation in the management of the country's natural resources. Thus one of the three founding principles of the NEAP was local community and private sector participation in natural resources management.

The Government recognised the need to promote and maintain the welfare of the people by adopting sustainable policies that would maintain ecosystems, essential ecological processes and the biological diversity of the country. Natural resource use needed to be sustainable, for the benefit of both the present and future populations.

An implementation program to achieve these goals required appropriate policies, incentives, guidelines and public involvement at local, provincial and national levels. Government accepted the need to review the existing economic framework and policy measures, and went on to establish the relationship between the environment and the economy. This review was carried out through the preparation of the NEAP.

The Government, in recognising community participation in natural resources management, acknowledged that the economic units that actually allocated natural resource uses in Zambia were typically small, mostly households in rural areas. The

effective managers of these natural resources were not Government officials, but the small farmers, beekeepers, hunters, and their villages. An effective strategy to improve resource use could therefore only operate through rural households and villages by providing a logical framework of co-operation. For instance, if fishing families saw the benefit from reduced off take during the breeding season, the off take was more likely to be controlled. Thus the empowerment of local communities was seen as an appropriate approach to sustainable resource management.

The NEAP for one established that Government in the past, relied on ownership and the centralised management of natural resources. This system was unable to ensure equitable and efficient use of these resources because it failed to provide incentives to individual resource users to participate in management. The result was increased enforcement costs, beyond what Government could afford, even with donor assistance. There was therefore, need to redefine the role of the central government in natural resources management, and address the issue of individual incentives for resource users in order to promote efficient and sustainable resource use.

Practical steps identified included institutional and policy reforms, such as reduction of central government role in the management of natural resources through increased devolution of responsibilities over natural resource management to local authorities and communities and the privatisation of public enterprises involved in natural resource use. However, provision of incentives was identified as a necessary inducement to individual users to engage in sustainable resource use as well as allowing the market to regulate the use of these resources.

Lack of resources in rural areas, including a lack of budgetary resources for local government, precluded genuine local control. For this reason, it was argued that the right to tax ought to have been given to local authorities. This, it was thought, would give local authorities the power and opportunity to apply resources according to need based on the level of development and the natural resource endowment.

5.0 POLICY AND LEGISLATIVE FORMULATION PROCESSES IN ZAMBIA.

5.1 DEFINITIONS

5.1.1 Policy

Policy is a plan of action by any entity and in this instance, Government, which sets out goals and objectives to be met by the State in order to meet the aspirations of the citizenry as articulated to them by political entities seeking control of government machinery and resources. It sets out strategies to achieve the stated goals and objectives, which normally take the form of legislation, programmes and projects and administrative practice.

5.1.2 Legislation

Legislation is the process of formulating rules and regulations governing a civilised society and includes the laws so made. It is an expression of the will of the people, through democratically elected representatives, on how they should be governed for the greater good of society.

5.2 POLICY PROCESS

The policy process refers to a mechanism for effective policy formulation, adoption, implementation and monitoring and evaluation and the consultation that takes place at all stages. The four stages of the policy process are as follows:

5.3 THE KEY PLAYERS IN THE POLICY PROCESS

Under the Policy Process, the key players are line Ministries, the Policy Analysis and Co-ordination Division, Cabinet Office, Cabinet Committees and Cabinet itself. At all stages co-ordination is viewed as essential for ensuring that policy implementation is well coordinated and various actions harmonized by all implementers in order to achieve the intended results.

In order to enhance intra and inter Ministerial consultation in the policy process Government establishment provides for the appointment of Cabinet Liaison Officers (CLOs). Cabinet Liaison Officers are responsible for coordinating all Cabinet business within their Ministries, including the preparation and handling of Cabinet Documents. These are appointed by their Permanent Secretaries in close consultation with their Ministers. As representatives of Permanent Secretaries in the day to day contacts with the Policy Analysis and Coordination Division and other line Ministries, the functions of Cabinet Liaison Officers include the following:

- (a) to ensure that all major stakeholders are consulted in the preparation of policy proposals for Cabinet Consideration;

- (b) to provide the central point of contact between their Ministries and the Policy Analysis and Coordination Division on the one hand and their Ministries and other Ministries on the other;
- (c) to ensure and facilitate consultation with stakeholders and other Ministries in the preparation of Cabinet Memoranda;
- (d) to provide the Secretariat for meetings of Inter-Ministerial Committees of Officials;
- (e) to ensure that Cabinet Memoranda prepared by their Ministries conform with the requirements of the Cabinet Handbook and the Guide to Writing Cabinet Memoranda;
- (f) to monitor all forthcoming Cabinet business in their Ministries and provide timely advice to the Policy Analysis and Coordination Division on such matters;
- (g) to ensure that the Policy Analysis and Coordination Division is informed of any special circumstances affecting Cabinet Memoranda submitted by their Ministries (for example, any reasons for listing them for urgent considerations);
- (h) to ensure that the stipulated deadlines and standards submission of Cabinet Memoranda are complied with; and
- (i) the handling and security of all Cabinet documents held within the Ministry and ensuring that they are returned to the Policy Analysis and Coordination Division for safe-keeping after use.

In addition, the Handbook provides for the establishment of Cabinet Liaison Committees (CLC) in each Ministry and Inter-Ministerial Committee of Officials (IMCO).

5.3.1 Cabinet Liaison Committees

In order to ensure effective Intra-Ministerial consultation, each Ministry is required to establish a Cabinet Liaison Committee (CLC) whose membership should be as follows:

- (a) the Minister (Chairperson)
- (b) Deputy Minister;
- (c) Permanent Secretary;
- (d) Director/Head of Departments; and
- (e) Cabinet Liaison Officer (Secretary)

The CLC shall be responsible for all matters pertaining to Cabinet business, including:

- (a) considering and approving Memoranda prepared within the Ministry before such Memoranda are circulated to other Ministries for comments;
- (b) approving comments drafted for the Minister on Memoranda being circulated by other Ministries;
- (c) providing guidance on the implementation of Cabinet decisions conveyed to the Ministry; and
- (d) approving draft reports on the implementation of Cabinet decision before these are submitted to Cabinet.

CLCs should meet at least once in a month.

5.3.2 Inter-Ministerial Committee of Officials

Inter-Ministerial Committee of Officials are ad hoc bodies that may be constituted from time to time for the purpose of facilitating and ensuring effective consultation among stakeholders in the preparation of Cabinet Memoranda and implementation of Cabinet decisions. The Policy Analysis and Co-ordination Division, in consultation with the initiating Ministry (ies), who also provide the Secretariat, convene meetings of Inter-Ministerial Committees of Officials. Membership of Inter-Ministerial Committees of Officials is generally as follows:

- (a) one officer from the Policy Analysis and Coordination Division (Chairman)
- (b) the Cabinet Liaison Officer and relevant technical staff from the initiating Ministry;
- (c) the Cabinet Liaison Officers and appropriate technical staff from relevant Ministries;
- (d) a Secretariat, to be provided by the initiating Ministry; and
- (e) other experts, as deemed necessary by the Committee.

The functions of the IMCO include:

- (a) collecting and collating data on any problem or carrying out preliminary analysis of the problem;
- (b) discussing and developing alternative solutions to the problem;

- (c) determining whether the chosen solution requires a Cabinet decision or administrative measures;
- (d) assisting initiating Ministries by providing relevant additional data and information required to justify the desired Cabinet decision;
- (e) reviewing all relevant technical data and considering the views of all stakeholders;
- (f) facilitating and directing the writing of the required Cabinet Memoranda;
- (g) determining how to incorporate Minister's comments on drafts into final Cabinet Memoranda;
- (h) planning and co-ordinating the implementation of Cabinet decisions; and
- (i) monitoring and evaluating the implementation of each decision of Cabinet in order to determine whether it was satisfactorily implemented and whether the desired outcome was achieved.

5.4 POLICY FORMULATION STAGE

This is the stage in the policy formulation process where issues or problems are identified and analysed, the various options for addressing the problems or issues are evaluated, and finally, the preferred course of action or approach is recommended. The key players at the policy formulation stage are ministries, Policy Analysis and Coordination Division and other relevant stakeholders.

5.4.1 The Ministries

The policy formulation begins with a Ministry where the following activities take place:

- (a) the problem to be addressed is identified and defined by the concerned Ministry. This involves consultation between the Minister, Permanent Secretary and technical staff in the Ministry;
- (b) the Permanent Secretary informs the Cabinet Liaison Officer;
- (c) as soon as the issue has been identified it should be processed through the Cabinet Liaison Committee (CLC) described above;
- (d) as soon as the Cabinet Liaison Committee has passed the issue for consideration by Cabinet, the Cabinet Liaison Officer should inform the Policy Analysis and Coordination Division;

- (e) as soon as the Cabinet Memorandum has been prepared by either the initiating Ministry or the IMCO the Memorandum will be circulated to Ministers for their comments;
- (f) Ministers should not combine several Cabinet Memoranda when seeking comments from other Ministries or when submitting comments on originating Ministries;
- (g) The Minister is responsible for ensuring that the Memorandum is appropriate for presentation before it is approved. It is essential that the Minister's written approval is on record for the issue of any Memorandum. Similarly, the issue of Memoranda for Cabinet Committees must be authorised by the Minister concerned;
- (h) Letters circulating Cabinet Memoranda to other Ministries for comments should be signed by the Permanent Secretary of the initiating Ministry and addressed by name to the Permanent Secretary;
- (i) Ministry should ensure that comments on the Memoranda being circulated are reproduced without editing or paraphrasing;
- (j) The final version of the Cabinet Memoranda are sent to the Policy Analysis and Coordination Division. The Ministry should ensure that the documents are classified 'Secret'. This is sent to the Policy Analysis and Coordination Division in form of a diskette accompanied with a hard copy and typed in double spacing;
- (k) The Ministry also sends a Ministerial file, accompanied by a letter personally signed by the Permanent Secretary requesting the Secretary to the Cabinet to include the Item on the Agenda; and
- (l) If the Memoranda is accompanied by annexures the initiating Ministry will send 80 copies of such annexures.

5.4.2 The Policy Analysis and Coordination Division

The Policy Analysis and Coordination Division is the other player in the policy process where the following activities take place:

- (a) once PAC receives the proposal from the Ministry it analyses the issue and determines whether or not it requires Cabinet decision or should be considered through an Inter-Ministerial Committee of Officials;
- (b) as soon as it is determined that a matter requires Cabinet consideration, the Ministry is advised on the type of Cabinet Memoranda to be prepared that is an Agenda, Legislation or Information Memoranda;

- (c) if the issue involves more than one stakeholder, Policy Analysis and Coordination Division should call for an Inter-Ministerial Committee of Officials (IMCO);
- (d) the Committee of Officials will meet to facilitate and ensure effective consultation among stakeholders in the preparation of Cabinet Memoranda and implementation of Cabinet decisions; and
- (e) meetings of Inter-Ministerial Committees of Officials should be convened by the Policy Analysis and Coordination Division, in consultation with the initiating Ministry(ies), who also provide the Secretariat.
- (f) After receiving the initiating Minister's final approved Memoranda, the Policy Analysis and Coordination Division should again critically analyse the Memorandum and ensure that it;
 - (i) adheres to all format, layout and procedural rules approved rules outlined in the Guide to Writing Cabinet Memoranda;
 - (ii) all major stakeholders have been consulted in its preparation;
 - (iii) attachments are marked 'Secret' the materials well researched and factual; and
 - (iv) it is well written and builds a logical case that Cabinet can easily follow.
- (g) The Policy Analysis and Coordination Division will not place on the Agenda any Cabinet memoranda which does not adhere to all format, layout and procedural rules and approved rules as outlined in the Guide to Writing Cabinet Memoranda.

5.4.3 Other Stakeholders

Other key players to be consulted on the policy formulation process are:

- (a) the Minister of Finance and National Planning, on all Memoranda referring to Budgetary and Financial Matters;
- (b) the Attorney-General, on all Legislation Memoranda and memoranda having legal implications;
- (c) the Minister of Defence, on all memoranda with implications on national defence and security;
- (d) the Minister of Foreign Affairs, on all memoranda with implications on international cooperation and agreements; and

- (e) the Minister of Home Affairs, on all matters with implications on internal security.

All the above stakeholders and other Ministries are required to comment on the policy memorandum circulated. Ministers are obliged to provide comments within 14 days on the Cabinet Memoranda circulated to them by other Ministries and should ensure that each memorandum being circulated for comments is sent separately and that comments on each are sent individually to the originating Ministries.

5.5 THE POLICY ADOPTION STAGE

This is the stage where the recommended course of action or approach is presented before a decision-making organ for approval. The key players in the policy adoption stage are Policy Analysis and Co-ordination Division, Cabinet Committee, Ministers and Cabinet.

5.5.1 The Policy Analysis and Co-ordination Division

The Policy Analysis and Co-ordination Division prepares the notes, Agenda and the documentation for Cabinet Committees and Cabinet.

The Policy Analysis and Co-ordination Division is required to write the Minutes of Cabinet and Cabinet Committee Meetings and, in doing so, reflects only the final decision(s) arrived at and makes no reference to opinions expressed by individual Ministers. The Minutes should contain, for each memorandum considered, the Recommendation(s) of the initiating Minister and the Conclusion(s) reached during Cabinet or Cabinet Committee deliberations.

Notes taken during meetings for the purpose of writing the Minutes should not be used for any other purpose or exposed to any unauthorised persons. All members of the Cabinet Secretariat must adhere strictly to the confidentiality requirements in the handling of records of Cabinet Meetings.

After the Meeting the Policy Analysis and Co-ordination Division conveys Cabinet decisions to Permanent Secretaries of Ministries concerned, with copies to the initiating Minister(s) and Permanent Secretaries.

5.5.2 The Cabinet Committees

Cabinet Committees are another key player, which is the first to discuss the issue before it is presented to Cabinet. The responsibilities of the current committees are as follows:

- (a) **Defence and Security Committee**, whose main responsibilities include consideration of matters relating to National Defence and Security, organisation and administration of the Ministries of Defence and Home Affairs, and such defence and internal security wings as Zambia Army, Zambia Air Force, Office of the President (Special Division), Zambia Police and Immigration Department.

The Committee is also responsible for international peace-keeping operations, agreements on defence and security, armed conflicts, warfare and refugees;

- (b) **Foreign Affairs Committee**, whose main responsibilities include consideration of matters relating to foreign policy and foreign affairs, international relations and co-operations, international organisations such as the United Nations (UN) and the Commonwealth, regional and sub-regional organisations such as the Organisation of African Unity (OAU) (which, pursuant to the Constitutive Act of the African Union, will become the African Union (AU) in July 2002), Southern African Development Commission (SADC) and Common Market for Eastern and Southern Africa (Comesa), organisation and administration of the Ministry of Foreign Affairs and Zambia's Missions Abroad;
- (c) **Economic Restructuring and Development Committee**, whose main responsibilities include consideration of matters relating to the formulation, review and evaluation of macroeconomic and fiscal policies, general performance of the economy and all economic policy proposals and the Structural Adjustment Programme (SAP);
- (d) **National Disaster and Drought Relief Committee**, whose main responsibilities include consideration of matters relating to plans and procedures for averting or dealing with major disasters, emergency operations, include mobilisation of resources for emergencies;
- (e) **Social Restructuring and Development Committee**, whose main responsibility is consideration of matters relating to the formulation, review and evaluation of social and cultural development policies. This includes the disbursements and utilisation of both local and donor funds for the rehabilitation of infrastructure, including roads, bridges, schools, hospitals and other public infrastructure; and
- (f) **Legislation Committee**, whose main responsibilities include consideration of matters relating to the enactment of new legislation, revision of existing laws and examination, from the point of view of legal drafting, all draft bills before their publication.

5.5.3 The Ministers

The initiating Minister is another key player who has to convince Cabinet Committee and Cabinet to adopt the recommendation.

5.5.4 The Cabinet

The most important player is Cabinet, which must approve the recommendations before they can be implemented. Cabinet in some circumstances may vary the recommendations at this Stage.

5.6 THE POLICY IMPLEMENTATION STAGE

This is the stage where the set of activities is undertaken to ensure that the decision as approved is being implemented. The key player is the Ministry. Ministers are responsible for ensuring that action is taken promptly by their Ministries to implement Cabinet decisions conveyed to them.

If it is a crosscutting issue an IMCO may be reconvened to plan the implementation. Unless otherwise directed, it is the duty of the initiating Ministry to take follow-up action with other affected Ministries on decisions of Cabinet that require collective action by the concerned Ministries. Where Cabinet decisions require legislation, Ministries should immediately lodge drafting instructions with the Attorney-General's Chambers through the Permanent Secretary, Ministry of Legal Affairs as outlined in Chapter Three of the Guide to Writing Cabinet Memoranda.

5.7 THE POLICY MONITORING AND EVALUATION STAGE

This is a process of following up the implementation of policy in order to ensure that approved decisions are being implemented. It is also the stage of ensuring that the implementation of the policy in question is making the desired impact. The key players are the Ministry, the Policy Analysis and Co-ordination Division and Cabinet.

5.7.1 The Ministry

The Ministry is one of the key players. The Ministry should submit to the Policy Analysis and Co-ordination Division, in Agenda Memorandum format, progress reports on the implementation of Cabinet decisions for which they are responsible; and

5.7.2 The Policy Analysis and Co-ordination Division

The Policy Analysis and Co-ordination Division is one of the key players. It requests for a quarterly report on progress in the implementation of Cabinet decisions.

The Policy Analysis and Co-ordination Division receives and appraises the implementation report and submits it to Cabinet for consideration. As soon as the Policy Analysis and Co-ordination Division has received progress reports from all Ministries a Special Meeting of Cabinet will be convened to consider the reports.

5.7.3 The Cabinet

Cabinet receives the Report and adopts it, which helps it monitor the implementation of its decision.

5.8 LEGISLATION PROCESS

The drafting of legislation in Zambia is co-ordinated by the Ministry of Legal Affairs under the Chief Parliamentary Draftsman's Office. It is important to note that all laws of Zambia are shared out among the various ministerial portfolios and it is these portfolios that initiate legislation related to their respective jurisdictions and issue instructions to the Chief Parliamentary Draftsman's Office, under the Attorney General's Chambers for the drafting of bills. Instructions to the Parliamentary Draftsman take the form of ordinary narrative prose unless there are special circumstances and the Parliamentary Draftsman has previously agreed to accept instructions in the form of a draft bill.

The drafting of a Bill by the Parliamentary Draftsman cannot commence unless Cabinet has approved of the Bill in principle. Instructions for bills comprise two parts, namely, a General Statement and Detailed Instructions. The General Statement contains a comprehensive statement in general terms setting out-

- (a) all relevant background material relating to the proposals to be included in the bill, including all known legal implications and difficulties, to enable the draftsman to see in perspective and context the facts and problems with which the bill is intended to deal;
- (b) the circumstances out of which the proposals to be included in the bill arose and the nature of the problem to be dealt with in the bill;
- (c) the principal objectives intended to be achieved by the bill and;
- (d) how it is proposed to achieve those objectives and how the bill is expected to operate in practice.

If the proposed legislation deals with a technical subject the instructions should include sufficient material on the subject to enable the draftsman gain an understanding of the technicalities and technical terms involved sufficient to draft the bill.

Detailed instructions are furnished in respect of all matters to be dealt with in the proposed legislation. These detailed instructions should, in respect of each legislative proposal to be included in the bill-

- (a) deal with every aspect of the proposal and indicate every requirement which the Ministry considers to be necessary to give effect to the proposal;
- (b) indicate any administrative provisions which it is considered necessary to include in the proposed legislation to give effect to the proposal;

- (c) if it appears to the Ministry that provisions of other legislation satisfactorily deal with the subject of the proposal, provide a reference to that legislation and indicate whether inquiries have found it to operate satisfactorily;
- (d) if the proposal would result in some activity being prohibited or regulated, indicate the sanction proposed for the enforcement of the legislative provision giving effect to the proposal;
- (e) suggest the penalties to be imposed for any offence arising under the provision;
- (f) indicate existing legislation that will require amendment or consideration to give effect to the proposal;
- (g) indicate any known consequential amendments that will be necessary as a result of the legislative provision giving effect to the proposal;
- (h) indicate any transitional or savings provisions required to be included in the Bill;
- (i) indicate whether any provisions of the Bill are to have a retrospective operation;
- (j) in case of instructions for amending legislation, indicate the provision of the principal Act which the Ministry considers should be amended to give effect to the proposal;
- (k) if the Ministry has any decided view on either the form or position of the legislative provision to give effect to any of its instructions, furnish particulars;
- (l) furnish references to any known decided cases or copies of any legal opinions available to the Ministry that may affect the proposal;
- (m) indicate any specific regulation-making powers that may be required;
- (n) furnish copies of reports of committees, etc., or, if the reports are readily available, references to reports that deal with proposals;
- (o) be consistent with the instructions for the remainder of the legislative proposals; and
- (p) be expressed in simple, non-technical language where possible.

Where a legislative proposal impinges on the activities of another Minister or Department, that Minister or Department should be consulted before instructions for the inclusion of the proposal in a bill are given to the Chief Parliamentary Draftsman.

If all of the proposed provisions of a bill are not to commence at the same time, the instructions should indicate clearly the different times at which it is proposed that different provisions should commence. In furnishing instructions in accordance with this paragraph, ministries should ensure that the provisions that are to commence earlier than others are not rendered ineffective because their operation depends on the commencement of the other provisions.

Legally contentious provisions, such as provisions for very heavy or unusual penalties or changing the onus of proof, evidentiary provisions and provisions conferring wide powers of entry or search should be considered by the Attorney-General as the principal legal adviser to the Government before instructions for their inclusion in a bill are given to the Chief Parliamentary Draftsman.

All of the main principles of the legislative scheme to be embodied in a bill should have been decided upon by the sponsoring ministry and be expressed in the instructions furnished to the Parliamentary Draftsman. The aim of the ministry should be to prepare instructions that are complete and show that every aspect of the legislative proposals dealt with in the instructions has been thoroughly considered and worked out and that all of the effects of the proposals have been anticipated and approved by the minister concerned. Inadequate or ill-conceived instructions can lead to a failure of the resultant legislation to implement approved policy decisions in the manner envisaged by the Government or, at least, to a considerable delay in the preparation of the legislation.

Instructions should not be overloaded with proposals for legislative provisions that can be dealt with administratively. Nor should they contain proposals for legislative provisions, other than a suitable regulation-making power, to deal with matters of a purely administrative nature if those matters can be satisfactorily dealt with by regulations to be made under the proposed legislation. Purely informative provisions which are to have no legal effect should be eschewed.

Where a person or body is to be given power to make decisions affecting the person or the rights or property of persons, consideration should be given to the question of whether there is to be a right of appeal against the decisions and, if so, to what body the appeal is to lie.

If proposed legislation is to bind the State, the instructions should say so, since the State is only bound if express provision is made to that effect or the application of the legislation to the State arises by necessary implication. Instructions should not require any provision to bind the State without Cabinet's express approval.

After instructions for the drafting of bill have been furnished to the Chief Parliamentary Draftsman, the Departmental officer concerned in the preparation of the bill should be readily available to arrange promptly any conferences required by the draftsman with that officer and any other Departmental officers whose expert knowledge can contribute to the drafting of the required bill.

Departmental officers attending conferences for the setting of bills should have the detailed knowledge, ability and authority to make decisions on most of the questions that inevitably arise in drafting. If their decisions are to be reviewed by superior Departmental officers, their function becomes not much more than that of a messenger, and await confirmation of their highly tentative decisions. Perhaps even worse is for the draftsman's time to be wasted and the drafting of the bill consequently delayed because two or more Departmental officers attending a conference argue at length about the draftsman. A Departmental officer attending on the settlement of a proposed amending bill should particularly have a detailed knowledge of the provisions and operation of the Principal Act to be amended.

Requests for the Draftsman to include in a bill additional provisions, which although approved by Cabinet were not the subject of the original instructions, should be avoided to the maximum extent possible. If additional provisions are requested after the draftsman has devised the legislative scheme appropriate for the original instructions and has commenced to draft the provisions necessary to give effect to the scheme, the work undertaken by the draftsman to that stage can quite often be rendered useless by instructions to include additional provisions that do not fit in with that legislative scheme. There is no reason why most additional provisions required cannot be made the subject of a further bill. Ordinarily, additional provisions of any importance will not be included in a bill without Cabinet's prior approval, or if their importance does not warrant a prior Cabinet approval, without the sponsoring minister's express approval.

On completion of the first draft of a bill, it will be sent to the sponsoring ministry for consideration whether its provisions meet the wishes of the minister and the ministry. Any alteration required will be made by the draftsman with the concurrence of the ministerial officers concerned or a further draft will be prepared for consideration, and this process will be repeated to the minister and the ministry.

Prompt consideration of these drafts should be given and the draftsman should be quickly advised of any alterations required. It should be realised that the draftsman is usually working on 3 or 4 bills at the same time and that, if queries raised by him or drafts prepared by him are not considered promptly when referred to the ministry concerned, the continuity of his consideration of the proposed bill is interrupted and subsequently delay occurs in picking up the threads.

When a bill is drafted and approved by Cabinet, the Parliamentary Draftsman arranges for it to be printed by the Government Printer ready for introduction into Parliament and two copies of the printed bill are forwarded to the Ministry. The time

necessary for the printing of bill necessarily depends on its length, the number of other bills that are with the Government printer for printing and the volume of other Parliamentary printing required at the time and therefore cannot be accurately estimated. Accordingly, a ministry should not, without first consulting with the draftsman, give any promise that a Bill will be ready for introduction at a particular time merely because it is aware that the Bill has been drafted.

5.8.1 The Role of the Ministry of Legal Affairs in the Preparation of Legislation

Paragraph fifty (50) of the Cabinet Handbook states that every proposed legislation must first be referred to the Attorney-General's Chambers to decide whether or not it should be submitted to Cabinet for approval in principle. It must be noted that the ministry responsible for the portfolio of the subject on which legislation is proposed must, at all times, remain responsible for the policy of the proposed legislation.

The Ministry of Legal Affairs, on the other hand, is there to assist, guide and advise the client ministry generally on the existing law, the legal principles involved and the likely effects of the proposed measures based on past experience of similar cases. This process enables the client ministry to identify the defects or problems inherent in the proposed legislation and how best to implement it. On accepting the advice the client ministry adopts the recommendation as its own policy but bearing in mind that the responsibility for policy implementation is not for the legal experts.

Once this process is done with, a Memorandum is submitted to Cabinet for a decision. This is done to explain the policy adequately in simple and clearly worded language. Where the drafting of a statutory instrument is necessary clear and complete written instructions must be forwarded to the Attorney-General's Chambers. It should be noted that no drafting of legislation is undertaken on oral instructions. Where it is found that the policy approved by Cabinet and the policy contained in the layman's instructions are at variance the client ministry is obliged to seek further approval in principle from Cabinet, unless the difference is so minor that it can be sorted out administratively.

5.8.2 Commentary:

In March 2000, Zambia adopted the National Capacity Building Programme for Good Governance in Zambia whose broad objective is to advance measures for the promotion of institutional effectiveness for both policy design and implementation. The Programme, which is premised on the assumption that good governance thrives when there is an efficient and effective public service, a productive private sector and a vibrant civil society, acknowledges the fact that civil society activities should be encouraged in order to promote public participation in the governance of the Country.

In this regard, Government through the Programme emphasises the need for wide consultation on issues of national importance with the general public and interest groups through various fora and methods. Government under the same Programme commits itself to improving public awareness on governance issues by encouraging a more open,

dynamic and widespread approach to the exchange of information. Government in this Programme recognises that public participation in the development of policy goes beyond political dialogue between political parties, non-governmental organisations advocacy and lobby mechanisms through members of Parliament. In this regard, Government will through the Programme develop mechanisms that will enable it engage in meaningful dialogue with the whole populace as it develops and implements policy. One such mechanism is the issue of pre-legislation issue or green papers on major reform policies to encourage wider public debate before policies coagulate into legislation or implementable decisions. The Zambia Information Services will in this respect play a crucial role in the dissemination of information on government policies through the publication of provincial papers and through the translation of policy papers in to local languages.

It can safely be argued that Government has put in place a Programme tailored to create an environment conducive for public and stakeholder participation in the policy and legislation formulation processes of the nation. However it is equally important to note that the current procedures and processes are those designed during the era of heavy executive centralisation and over-classification of government business documentation.

It is important to note that some measure of classification in as far as government documentation and deliberations are concerned is necessary for the smooth running of any government business. However, this should not lead to undermining effective participation of the public and stakeholders in national affairs in line with accepted principles of good governance.

The procedures for legislative formulation as outlined above are sufficiently elaborate in character. However, from a non-state actor perspective, no specific room is created for stakeholders to give input at the most critical stages of the process. By critical stage is meant a point during the process when final binding decisions are under consideration.

Legislative formulation processes normally begin on a consultative note with all stakeholders giving input to the process. However, it is important to note that the Constitution of Zambia under Article 44(3)(b) gives the Executive arm of Government, through the President, power to initiate laws for submission and consideration by the National Assembly. By implication therefore, legislative formulation processes take the form of an executive act where the primary responsibility of legislating for the nation is within the purview of Government who decide what form, in terms of consultation, the process should take.

It is worth noting, that in Zambia once the process is in motion and an issue is before Cabinet, debate or input is not possible as the matter is purely Government business at this stage and all documentation is classified as top secret and cannot therefore be handled by a person who is not an authorised civil servant. Further, it is worth noting that consultation is restricted to Government line ministries and deliberations are in so far as scrutiny is concerned are handled by the Legislation Committee of Cabinet. It is evident that stakeholders beyond government who might have given input to a draft bill have

very little if any say at this stage. The decisions of the Legislation Committee of Cabinet are to a large extent final in so far as what goes to the National Assembly is concerned. This procedural structure to some extent undermines the principle of transparency in so far as legislation formulation is concerned as key stakeholders and the public at large are kept guessing on the form and content an instrument affecting them will take. This situation is further worsened by poor information exchange between Government and civil society to an extent that major amendments go through without stakeholder input. The only check to this weakness in the past and presently has been the National Assembly during debates following the ministerial statement introducing a bill to the House. At times the Executive has had to make amendments to bills to take into account stakeholders' concerns after interventions by parliamentarians.

The key function of Cabinet as provided for under Article 50 is to formulate the policy of the government and has the responsibility for advising the President with respect to the policy of the Government. It is a responsibility expressly assigned to the Executive through Cabinet. A reading of the internal policy formulation procedures of Government makes it evident that they are designed for an internal executive act. While a lot of consultation with all major stakeholders takes place prior to submitting draft policy to Cabinet as in the case of legislation, very little consultation if any ever takes place with stakeholders beyond Government. As pointed out above those considered to be key players in the policy formulation process are all state operatives. The compositions of committees that sit to consider policy critically are equally state operatives. The Agenda memorandum circulated is strictly a Government instrument of consultation targeting Cabinet members prior to discussion. The practice is that those consulted within Cabinet hardly have sufficient time to consult their constituents beyond Government due to time restrictions and hardly consult widely within their ministries as their positions are normally those known by their planning units or directorates.

A major weakness in the current policy formulation mechanisms relates to the manner of deliberating in that those that record the business of Cabinet do not record views not adopted but only record conclusions reached through the principle of collective responsibility. This has a danger of overlooking vital arguments that may be held by some members and which could in future prove helpful when considering the same or a similar matter. Furthermore, vital contributions by stakeholders risk being thrown out at this stage as Cabinet has the discretion of varying recommendations and only those matters agreed upon see the light of day.

It is worth noting that the mechanism does not provide for consultative forums beyond Government to exist as a matter is under discussion for purposes of receiving last minute representations or clarifications from stakeholders. Another weakness relates to the dissemination of Cabinet decisions to stakeholders beyond Government. The decision of Cabinet after considering a recommendation is classified information. This is a good practice in so far as it safeguards the integrity and confidentiality of Cabinet as a supreme policy making organ. However, it becomes a negative element in so far as transparency and good governance is concerned when it impedes the free flow of information to key stakeholders who have a right to information especially information that affects them.

Lastly but not the least, whereas the procedures provide for the monitoring and evaluation of policy implementation by the Policy Analysis and Co-ordination Division, the mechanism does not create monitors and evaluators outside government with a view to soliciting the opinion of other stakeholders.

6.0 SECTORAL NATURAL RESOURCE MANAGEMENT POLICIES AND LEGISLATION

This part of the Report will endeavour to outline and analyse policy and legislative developments in the fisheries, forestry and wildlife sectors and to a lesser extent the water sector in so far as the relate to local community participation in natural resources management in Zambia. Sectorial policy and legislation will be analysed within the context of prevailing overall Government policy at a particular time. Arguments advanced by Government for the changes made will be outlined and so will the actual changes made. These will be assessed with a view to establishing the level of local community involvement in natural resource management. Where gaps, inconsistencies, conflicts appear the same will be highlighted.

6.1 FISHERIES SECTOR

The Fisheries Sector in Zambia covers approximately 45,000 sq. km or 6% of the country. This consists of lakes, wetlands, rivers and palustrine systems. Zambia's major fisheries include Lakes Bangweulu, Chambeshi, Itezhi-tezhi, Kafue, Kariba, Luapula, Luangwa, Lukanga, Mweru, Mweru Wantipa, Tanganyika and Upper Zambezi. The fisheries sector in Zambia is managed by the Fisheries Department falling under the Ministry of Agriculture and Cooperatives. The fisheries sector, which is considered a sub-sector of the agricultural sector, has physical presence in almost all the districts of Zambia. The annual fish catch estimates in metric tonnes from 1974, when the Department was established, to 2000 ranged from 47,000 to about 70,000. On the other hand the estimates of aquaculture annual fish production in metric tonnes from 1987 to 2000 ranged from 1,000 to 8,500. The Department as currently constituted comprises two wings namely Research and Extension Services with structures going as far as camp level managed by assistant fish officers.

The fishing industry in Zambia contributes significantly to the national economy. Sources of fish in Zambia are capture fisheries and aquaculture. The demand for fish presently outstrips supply. The per capita consumption has decreased due to declining yields in capture lakes which can be attributed to unsustainable fishing practices and increasing human population. This has led to a change in focus by Government, as reflected in its proposed draft policy document for the Agricultural Sector, which aims at promoting community based resource management of capture fisheries as a means of improving catches.

6.1.1 Policy and Legal Framework:

6.1.1.1 Policy

Zambia has had no specific and comprehensive policy on fisheries control and management. The Policy of Government at the moment can only be deduced from subsisting legislation. The Fisheries Policy as can be inferred from subsisting legislation

namely, the Fisheries Act Chapter 200 of 1974, has never taken local communities (small scale fishermen) within a fishing area as key stakeholders in the management of the fisheries resource nor are there adequate and clear provisions recognising fishing communities living contiguous to a water body or fishing area. The Policy it can be argued, has never considered local communities as a possible unit of natural resource management that could be organised and empowered to manage the resource within their reach for their own benefit and that of the country as a whole. It is also important to note that the management of the sector as currently constituted is over centralised with the Minister almost holding all powers.

It is important to appreciate the fact that the fisheries sector falls under the agricultural sector and is seen as a sub-sector contributing to the main sector which is agriculture. This situation, it can be argued, has greatly affected the articulation of a fisheries policy that would stand separately from the national agricultural policy. However, this notwithstanding, the Ministry of Agriculture and Cooperatives has articulated a draft National Agricultural Policy running 2001-2010 which has as a sub-component fisheries. The overall objective of the proposed policy, as regards the fisheries sub-sector, is to increase fish production and promote sustainable utilization of fisheries resources so as to contribute to the economy through the generation of employment, income, and improved availability of fish. The proposed draft Policy adopts a dual approach for the development of fisheries in Zambia by advocating for the substantial improvement of yields of capture fishing through the promotion of sustainable fishing methods and through the promotion of aquaculture and consumption.

The proposed policy goes on to outline specific objectives for the fisheries sub-sector as follows:

- (a) To contribute to increased food security and nutrition through increased production
- (b) and consumption of fish;
- (c) To promote sustainable fisheries management;
- (d) To promote aquaculture production;
- (e) To strengthen management strategies and the dynamics of the aquatic resources;
- (f) To provide information through applied research programmes that will form the basis
- (g) for fisheries planning, management and development;
- (h) To conduct research programmes that will yield information on fish stock sizes and recommend appropriate harvesting levels;

- (i) To undertake limnological studies to assess the biomass of zooplankton phytoplankton in order to determine the fish food levels in the natural aquatic environment;
- (j) To conduct fishing gear trials in order to provide the appropriate fishing gear and methods;
- (k) Promote research to identify better performing fish species for aquaculture;
- (l) To undertake appropriate environmental assessments and monitoring with the aim of minimizing adverse ecological changes related to economic and social consequences of water extraction, land use, discharge of effluent, use of drugs and chemicals and other aquaculture activities;
- (m) Promote research in the production of appropriate fish feeds.

The proposed draft Policy has further outlined possible strategies for the realisation of policy objectives. These include:

1. Provide techniques in post-harvest handling, processing, and market information to fish producers, fish processors and fish traders to expand their operations;
2. Provide the legal framework for community participation in sharing the responsibility for better management of aquatic resources;
3. Conserve and maintain bio-diversity of aquatic resources through improved monitoring, creation of fish sanctuaries and restocking over-fished water bodies.
4. Facilitate capacity building among stakeholders in the fisheries sub-sector;
5. Promote aquaculture by providing appropriate extension services and the production and distribution of quality fish seed;
6. Collaborate with neighbouring countries in the management of aquatic resources in shared water bodies;
7. Strengthen legislation providing for sustainable utilisation of the fisheries resources.
8. Identify priority needs for fisheries research in consultation with stakeholders;
9. Promote co-operation between research institutions within the country and neighbouring states;
10. Develop short, medium, and long-term fisheries research plans for the country;

11. Maintain and regularly update the fisheries database in all fisheries research centres;
12. Strengthen institutional and scientific research capacity for effective implementation of research programmes;
13. Assess the ecological impact of exotic fish species on indigenous fish species in all aquatic systems;
14. Conduct fish feed trials to determine the suitable feeds for aquaculture;
15. Conduct fish stock assessment studies in all fishery areas;
16. Devise appropriate and effective methods for fishing, fish handling and processing;
17. Strengthen and improve fisheries data collection, analysis and dissemination systems.

The proposed Policy on the fisheries sub-sector clearly brings on board local communities in the management of fisheries in Zambia. However, as stated above, the document is only a draft that will require debating on and subsequently possible approval by Cabinet. This notwithstanding, the document deserves comment from a community based natural resources management point of view.

The overall objective of the proposed policy of increasing fish production while promoting the sustainable utilisation of fisheries resources presupposes the bringing on board of all resource users. Practice has shown that this is only achievable when resource users are able to see benefits associated with sustainable utilisation. The specific objectives of the proposed policy document aim at building the necessary institutional capacity required for the attainment of increased fish production. The proposed policy further comes up with strategies tailored to operationalise the objectives and notable among the strategies is the institutionalisation, through legal reform, of community participation in the management of the country's aquatic resources and capacity building through the provision of techniques in post-harvest handling, processing and market information to all those involved in the fish industry. The proposed policy further recognises the need for consultations with stakeholders as an important attribute of a successful community based natural resource management scheme. How community participation is to be effected is not clear from a reading of the draft policy document.

6.1.1.2 Legal Framework

Zambia's fishing industry has had a regulatory framework since 1929 when the Fish Ordinance No. 3 of 1929 was passed. The Fish Ordinance of 1929 was repealed by the Game Ordinance of 1941, which reduced the Fish Ordinance into a section entitled Control of Fishing. The control of fishing was effected through regulations passed under

Section 27 of the Game Ordinance. This arrangement lasted until 1955 when The Fish Conservation Ordinance No. 37 of 1955 was passed. The objective of the Ordinance was to make new and comprehensive provisions for the conservation of fish and the control of fishing which was previously done through regulations passed under the Game Ordinance.

The Fish Conservation Ordinance could be described as having embraced decentralisation by empowering native authorities to make orders and rules under the Native Authorities Ordinance for the control of fishing in their respective areas. However, where the orders or rules in relation to the control of fishing passed by the native authorities were inconsistent with the provisions of the Fish Conservation Ordinance, the provisions of the latter prevailed. It is worth noting that though control of fishing ceased to be provided for under the Game Ordinance and its successor the Fauna Conservation Ordinance of 1954, management of fisheries continued to be carried out by one department, initially known as the Game and Tsetse Control Department under the Game Ordinance and later as the Game and Fisheries Department under the Fauna Conservation Ordinance.

It is worth noting that the Fish Conservation Ordinance of 1955 was divided into five parts with Part I dealing with Preliminary issues under which definitions fell, Part II General Restrictions under which powers of native authorities, powers to restrict and regulate fishing, prohibited methods of fishing and powers to restrict methods of fishing fell, Part III Fishing under which licences and permits, their cancellation, suspension or variations fell as well as trespass upon private property, Part IV Offences and Penalties under which powers of search, seizure and arrest were spelt out, forfeitures, cancellation of licences, conduct of prosecutions, payment of fines to native authorities were provided and Part V General Provisions under which restrictions on introduction of fish, appointment of honorary fish rangers, making of regulations, issuance of orders, exemptions, delegation of powers and remittance of fees were spelt out.

The Fish Conservation Ordinance, it can be argued, was passed during a period when a strong decentralised structure of native authorities was in place and cost-benefit-sharing principles were practised. This is seen when one looks at Section 3 of the Ordinance which provided that:

“ Nothing in this Ordinance contained shall be construed as being in derogation of the powers of native authorities to make orders and rules under the Native Authorities Ordinance for the control of fishing in their areas:

Provided that the provisions of such orders or rules in relation to the control of fishing shall not be inconsistent with the provisions of this Ordinance, and where there is any inconsistency between the provisions of such orders or rules and the provisions of this Ordinance the latter shall prevail.”

The above provision is indicative of the level of decentralisation in the management of the fish resource at the time. However, the review has not established how far downwards this decentralisation went.

Section 20(1)(a) of the Ordinance provided that:

“ The Governor in Council may from time to time make regulations applicable to the Territory or to any part thereof-

(a) prescribing the fees to be paid for anything to be done under this Ordinance and prescribing that any fees so paid may be allocated in whole or in part to native treasuries;”

The above provision is illustrative of the fact that benefits did accrue to native authorities, how far these benefits trickled downwards has not been established by this review. Another notable feature of the Ordinance was the institution of Honorary fish rangers provided for under Part V is suggests the participation of non-state actors in the management of the fish resource. Section 19(1) of the Ordinance provided that:

“The Member may appoint fit and proper persons to be honorary fish rangers for the purpose of assisting in the carrying out of the provisions of this Ordinance.”

The above positive provisions notwithstanding, the Fish Conservation Ordinance was repealed by the Fisheries Act No. 21 of 1974. It was Government’s argument at the time that the Fish Conservation Act (as it came to be known) appeared in many respects not to be in line with Government policy. The different treatment given to the Western Province from the rest of Zambia was cited as a case in point. It was further argued that the Fisheries Conservation Act made to Africans and accorded them different treatment whereas the proposed Act was meant to give equal treatment to all fishermen irrespective of race. However, it was noted that in a number of respects the proposed Act had not much difference from the old Act.

It is, however, interesting to note that the Fisheries Act No. 21 of 1974 did bring in a number of changes which have had an effect on community participation in fisheries management in Zambia and the way fisheries resource is managed national wide. The following notable changes were made to the repealed law of 1955, namely:

1. **Licensing and payment of levy-** It was argued that the Fisheries Act was intended to suit the Zambian way of life and also to encourage fish production. Whereas the repealed law provided for the licensing of nets and payment of levy, the Fisheries Act of 1974 did away with the licensing of nets and payment of levy. Similarly the licensing of boats was done away with. It was Government’s argument that the licenses and levy imposed an obstacle on the fishermen and had a disincentive effect.
2. **Registration of fishermen and boats-** it will be observed that the Fish Conservation Act made no provision for registration of fishermen and boats used in fishing.

However, the Fisheries Act of 1974 made provision for this. It was Government's argument that if the management and control of fishing activities were to be scientific the keeping of up to date data of the number of fishermen and fishing crafts or vehicles was crucial. It is worth noting that the registration of fishermen is done without payment or a fee while registration of boats is done for a fee. It is further worth noting that registration of fishermen is restricted to those that fish in areas designated commercial fishing areas. Subsistence fishermen need not be registered so long as they are not fishing in areas designated commercial.

3. **Minister's powers to make regulations**- Notable in the Fisheries Act are the powers given to the Minister under Section 8 to make regulations regarding the fishing activities in the waters designated commercial fishing areas. It was Government's argument that this was necessary to ensure a sustained off-take of fish, as commercial fishing areas were not subjected to controlled fishing. This it was argued would forestall over-fishing which in the long-term would if not checked under the fishing industry and the economy at large. It is equally worth noting that the Fisheries Act further empowers the Minister to make fishermen keep records of information relating to fishing in the commercial fishing areas.
4. **Protection of certain areas**- the Fisheries Act empowers the Minister to protect certain areas, which may be considered suitable only for subsistence or recreational fishing. It was Government's argument that certain important areas needed to be set aside purely for recreational or subsistence fishing or otherwise if this was not done, commercial fishermen could render such areas unsuitable or unrewarding to subsistence or recreational fishermen.
5. **Power to restrict methods of fishing**- the Fish Conservation Act of 1955 provided a limit of one year in which the Minister's order to prohibit a method of fishing considered to be unduly destructive could be applied. However, the Fisheries Act of 1974 does not place a limit on the period in which the Minister's order to prohibit a method of fishing considered destructive could continue to be valid. It was Government's contention that this would give more room to the responsible Minister to manoeuvre so as to ensure that a particular fishing ground recovers sufficiently before it could once again be subject to the same method of fishing that was prohibited.
6. **Abolition of honorary fish rangers**- the Fish Conservation Act of 1955 as stated above provided for honorary fish rangers for purposes of assisting in the carrying out of the provisions of the Act. It is important to note that Fisheries Act of 1974 has done away with the institution of honorary fish rangers. It was Government's argument that it found it unnecessary to make provision for the employment of honorary fish rangers as it had enough staff to adequately deal with the implementation of the Fisheries Act.

The Fisheries Act Chapter 200 of the Laws of Zambia which was enacted by Parliament in 1974 has only seen one amendment through the passing of Act No.13 of 1994 which

amended Section 21(3) to take care of inflation in as far as penalty fees are concerned and to provide for regulations under Section 21 dealing with fishing licence fees. This was done through Statutory Instrument No.36 of 1994.

The Fisheries Act was enacted to provide for the development of commercial fishing in Zambia, the control of fishing and the registration of fishermen and their boats and any other matters connected with or incidental to the provisions of the Act.

The provisions of the Act are arranged in six parts with Part I providing preliminary issues of Title and Interpretation, Part II Control of Fishing, Part III Special Fishing Areas and Licences, Part IV Commercial Fishing, Part V Offences and Penalties and Part VI for General matters.

It is important from the onset to appreciate the fact that the Fisheries Act is too centralised in character when it comes to administration of the sub-sector. This is evident from the language of the Act and the actual provisions which only refer to the Minister in-charge of the sub-sector and the Director of Fisheries. Part II of the Act dealing with the control of fishing is instructive. It is further worth noting that the Act as currently drafted is not consultative in character as all decisions appear to be taken administratively without prior consultation with stakeholders of the sub-sector. This is seen under Part III Section Six dealing with the prescribing of areas. The Section provides as follows:

6(1) 'The Minister may, for the purposes of recreational, subsistence, or research fishing, by statutory order declare any area of water to be a prescribed area and shall in such order specify for which of the foregoing purposes the area is so declared.'

6(2) 'The Minister may, in respect of any prescribed area designated as such under the provisions of subsection (1), regulate the method of fishing to be used therein and may prohibit the use of nets.'

It is evident from the above provisions that no consultations are carried out with stakeholders within the prescribed areas in question and the decision appears top-down in character. Where there appears to be a request by any interested party for a special fishing licence, the Minister enjoys wide discretionary powers.

A careful reading of Part IV of the Act dealing with commercial fishing leaves no doubt that the Act is pro-commercial fishing and this seems to run throughout the Act. While the Act recognises all categories of fishermen when dealing with issues of registration, prohibition of certain fishing methods, restriction on introduction of fish and offences and penalties generally, it does not provide mechanisms for better co-ordination and improvement of small-scale fishermen from local communities as is the case with commercial fishermen. This is illustrated by Section Twelve which provides as follows:

12(1) 'For the better co-ordination and improvement of commercial fishing in any commercial fishing area, the Minister may in respect of such area appoint a

committee to be known as the Fishing Development Committee which shall submit its reports to the Minister.’

12(2) ‘The members of any Fishing Development Committee shall be appointed by the Minister under such terms and conditions and for such periods as the Minister may prescribe.’

The above provisions bring out two important points worth noting namely, the pro-commercial fishing nature of the Act and the over centralised nature of the Act as seen by the appointments to the Fishing Development Committees. It is clear that the Act does not take into account the democratic principles of local governance as a means to drive the fisheries sub-sector. This is also evident if Section 21 on Regulations is closely looked at. The entire management of the fisheries resource is left in the hands of the Minister who, by statutory instrument, is empowered to make regulations for the better carrying into effect of the Act. At no point are local communities considered as a unit of management. The above is a confirmation of Government policy at the time of centralising in all sectors of the economy. The abolition of the institution of honorary fish rangers and the none involvement local authorities in the making of regulations are cases in point.

One point is clear from an appraisal of the Fisheries Act and that is the Act does not provide a legal framework within the sub-sector conducive for community based natural resources management. The Act falls far short of enhancing principles of sustainable development in the fisheries sub-sector. However, Government through the Fisheries Department has embarked upon a number of community based fisheries management projects. These include the Zambia/Zimbabwe Project, which focuses on research, extension services and organisation of fishing villages into bigger units of fisheries management. The Project has zoned the fishing area into four zones with the area chief as head of all the zones and assisted by village headmen who are in-charge of each zone. The Fisheries Department staff are as secretariat to the Village Fisheries Committee. These committees discuss how to develop the area. Under this arrangement, a percentage of the fish levy is plough back into the community concerned for purposes of developing schools, roads etc. In the western Province Government in conjunction with the International Conservation Union (IUCN) is running another community based fisheries management project. Furthermore, the Dutch through SNV and in conjunction with the Fisheries Department are running another community based fisheries management project in Lake Mweru. However, these interventions can only bear fruit if community based natural resources management can be institutionalised within the sub-sector. It is worth noting that the proposed draft Policy advocates for legal reform that would recognise community participation in the management of the fisheries resources.

6.2 FORESTRY SECTOR

Forests are one of the most important natural resources of Zambia, covering sixty percent of the total land area of the country. Zambia’s extensive forests and woodlands cover about 9.9 percent of the total land area gazetted as forest reserves. Of the total forest

estate, 44 percent is set aside for production, 30 percent for both production and protection while the remaining 26 percent is specifically for protection. The forestry estate occurs on State and customary land. For management purposes, the forest resources are divided into three zones: forest reserves, unreserved forests and industrial plantations. The major consumers of forest resources are households and the industrial sector. About 88 percent of households depend on the forest to meet their basic energy requirements. It makes sad reading that forestry's contribution to the national economy is grossly under-reported and the value of the natural forests is unknown. It is, however, important to note that Zambia's abundant forest resources are threatened due to competition for forestland and hence the need for sustainable forest management. It is public knowledge that sustainable development should aim at meeting the objectives of the society in an equitable, economically viable and ecologically sound manner.

Government has acknowledged that in order to achieve sustainable management of forest resources, active participation of all stakeholders is inevitable so as to ensure effective forest management. It has further been noted that capacity building is necessary at all levels as a means of securing effective participation.

6.2.1 Policy and Legal Framework

6.2.1.1 Policy

Zambia's Forestry Policy has been in existence for a very long time dating as far back as the pre-independence era. The Policy was first revised at independence. The Policy which was last reviewed within the context of the Zambia Forestry Action Programme (ZFAP) was found to be a constraint to effective management and utilisation of the forest resource. Under ZFAP a number of thematic studies in the forestry sector were conducted with a focus on forestry and land-use, conservation of forest ecosystems, forestry based industrial development, woodfuel and the institutional and legal framework.

The Forestry Policy as it existed failed to provide an environment for sustainable forestry development. At its inception in 1965, the Policy instituted the Forest Department as the sole actor in the sector. It gave explicit and implicit powers to the Department as the largest and most formidable estate agent and manager in the country. The Department enjoyed unchallenged monopoly in the forestry sector. The Policy was oblivious of the important roles played by local communities. On the other hand, the political and socio-economic environment had been such that it encouraged continued forest clearing for agricultural production as opposed to conservation and management of the natural ecosystem. However, the Policy made appreciable gains for the country. It provided for the constitution of a sizeable forest estate which has in the past offered and continues to offer invaluable protection to the soil, agriculture, headwaters and catchment areas and provides habitat for other biological resources, critical services to dams and mining, raw materials to manufacturing as well as tangible commodities for commerce.

The major tenet of the Policy was its centralist approach. The determination of areas for forest reservation was not borne out of consensus with other stakeholders but merely

imposed. Severe shortages of development resources prevented the Forest Department from “reaching out” to local communities. This greatly reduced the possibility of a common forestry goal between the Department on the one hand, and the citizenry on the other. This state of affairs gave the impetus for the adoption of a new Policy with dynamic elements for effective participation of all stakeholders so that appropriate and timely interventions can be enforced to ensure sustainable forestry development.

It is important to note that the immediate and underlying causes identified as contributing to the depressed performance of the forestry sector were lack of active and full participation of key stakeholders towards sustainable forest management, inept policy and legal framework, lack of institutional capacity and co-ordination, land/ tree tenure issues and prevailing socio-economic pressures.

Zambia has come up with a policy framework tailored to meet the requirements of sustainable forest resource ecosystem management. In order to urgently realise the development potential of the forest estate, the following objectives and strategies have been put in place with a view to bringing on board the local communities.

In order to ensure adequate protection of forests, empowering of local communities and the promotion and development of forest and non-wood forest products a number of strategies have been put in place.

The Forest Act of 1973 has been revised and a new Act, the Forests Act No.7 of 1999 has been passed which incorporates joint forest management and facilitates the participation of local communities, traditional institutions, non-governmental organisations and the private sector in the management and development of the forests sector. It further goes on to provide for the formation of forest committees for effective co-ordination, management and mobilisation of resources. It also encourages forest ownership by individuals in the spirit of the Land Act of 1995.

It may be worth noting that over the years forest management has centred mostly on policing with the Forest Department as the sole player sidelining the communities that live and are in direct contact with the forest on a daily basis. This scenario led communities to view forests as belonging to the State and not to them and as such shunned government efforts in the management. It can safely be argued that under the new policy arrangement all key stakeholders particularly local communities will be involved in the management of the forest and forest products.

The forest sector, it should be appreciated, has several linkages with other institutions, whose activities may be based, or to a large extent rely, on goods and services provided by forest resources. In order to implement the measures outlined in the policy document, a number of institutional and legal reforms have been and are being undertaken. The role of Central government under this scheme will be to assume the overall responsibility for forest resources development. Central Government will formulate and review forest policy and co-ordinate its implementation. From an institutional point of view, a new autonomous body called the Forest Commission shall be established to take over the

functions of the Forestry Department. The Commission once functional will be responsible for co-ordination, implementation and enforcement of rules and regulations pertaining to forestry development.

Under the new scheme, local government will formulate by-laws, enforce them and facilitate proper and smooth forest estates in conformity with policy and within the existing legal framework and will be involved in setting aside land for forest purposes and participate in joint forest management. Another notable feature of the policy is that traditional leaders shall be involved in the administration and management of forest estates within the area of their jurisdiction. They shall encourage a setting aside of land for forest purposes and will advise government on policy formulation and implementation as well as facilitate local communities participation in management and utilisation of forest areas.

The local communities including community-based organisations shall equally advise government on policy formulation and implementation. They shall be the key actors in planning and management of forest at local levels while traditional healers shall participate in joint forest management and foster sustainable utilisation and provide indigenous knowledge on medicinal species of plants for conservation of biological diversity.

6.2.1.2 Legal Framework

Forestry legislation has had a long development history in Zambia spurning from the Forests Ordinance No. 21 of 1925 through the Forest Ordinance No. 46 of 1941 which was repealed by the Forests Act No.39 of 1973. Act No. 39 of 1973 though still in force is scheduled for repeal once the Forestry Act No.7 of 1999 commences and enters into force. The Forests Ordinance No. 46 of 1941 inherited by Zambia at independence had gone through four minor amendments before it was repealed by the Forests Act No. 39 of 1973 which currently is Chapter 199 of the Laws of Zambia.

Protection of forest areas in Zambia under the Forests Ordinance No. 46 of 1941 was through forest reserves and protected forest areas. The establishment of forest reserves and protected forest areas was done through declarations made by the Governor and later by the President in the Government Gazette. Declarations of forest reserves was restricted to State Lands while declarations of protected forest areas included freehold or leasehold land with the consent of the owner or occupier. Furthermore, with the consent of the Litunga any land the rights to which the Litunga of Barotseland and the people of the Barotse were entitled could be declared as protected forest areas. It is worth noting that the power to declare forest reserves and protected forest areas was later given to the Minister in charge of natural resources at the time.

Notable features of the 1941 forestry law were that within forest reserves and protected forest areas, a licence had to be obtained not only for cutting of trees, removal of timber, firewood, plants, grass, rubber, fruits, seeds, honey and other prescribed forest produce but also to reside there. A licence was also required in order to graze livestock or clear,

cultivate or break up land for cultivation. The Minister was further empowered under the 1941 law to authorise, by statutory instrument, any local authority, municipal council, township council or rural council to participate in the management of any forest reserve or protected forest area by issuing permits for the felling and taking of forest produce in and from these areas and collecting the fees and royalties for the forest produce. The funds so collected were placed into the general fund or revenue of the council or local authority.

The local authorities and rural councils including those administered by chiefs and village headmen were also given power by the Minister to issue orders relating to the cultivation and exploitation of forest produce. These provisions allowed local communities not only to participate in the control and management of the protected forests, but also provided them with the benefits from the conservation of these areas. It has been argued, that this, undoubtedly took away part of the bitterness and resentment the people had felt when they no longer had access to the protected forest areas at the these areas were created.

The Forest Act of 1941 No.46 was repealed by Forest Act No. 39 of 1973. The objectives of the 1973 Act were to provide for the establishment and management of national and local forests, to conserve and protect forests and trees, and to provide for the licensing and sale of forest produce. The national and local forests under the 1973 Act replaced the forest reserves and protected forest areas. The provisions restricting the activities in the reserves and the protection of forests on State Lands were maintained. The protection of ecosystems was done on a very small scale on the nature reserves created administratively under the Act. The nature reserves were intended for scientific, educational and research purposes only.

It is worth noting that the 1973 Act removed provisions from the 1941 Act which empowered local and rural authorities to issue orders for the management of the forests or to issue licenses for exploitation of forest produce, let alone for such authorities to obtain any benefits from such forests. Whereas the 1973 Act empowered the responsible Minister to appoint honorary wildlife rangers as an attempt to include ordinary local people in the protection of forest reserves, the honorary wildlife rangers did not play a direct role in the decision making processes relating to the control and management, or the exploitation, of forest produce.

It can be argued that the shift in the management system from local-people-oriented to the concentration of all power in the central government and its bureaucracy, that is towards a centrally planned state, coincided with the introduction of a one-party State and its policy of a centrally-commanded economy using a top-down management system. It can be argued that the rate of encroachment and degradation of protected forests increased substantially following the removal under the 1973 Act, of the provisions empowering local and rural authorities to participate in the management and benefits of the forests. This state of affairs led Government to realise that the viability of forest reserves required the co-operation and support of the local people, and the provision of concrete benefits to those who directly bear the costs of conservation.

In order to correct the identified weaknesses in the forestry law, Government in 1999 came up with a new piece of legislation, the Forest Act No. 7 of 1999. The rationale for the Act was to among other things:

- (a) give legal effect to certain aspects of the Forestry Policy of 1998;
- (b) ensure sustainable forest resources management and utilisation;
- (c) develop capacity of all stakeholders; and
- (d) promote the participatory approach to forestry management development and utilisation by developing close partnership among stakeholders.

The Forestry Act of 1999, it must be noted, was necessitated by a number of factors, which included:

- (a) the need to resolve difficulties of community participation under the 1973 Act;
- (b) the need to harmonise the Forestry Act with other relevant pieces of legislation; and
- (c) the need to reflect relevant provisions arising from international conventions and agreements to which Zambia is a state party.

The Forests Act, No.7 of 1999 of the Laws of Zambia, though not fully operational, is a positive development in the protection and management of forests in Zambia in that it once again, like the 1941 Act, brings on board the concept of decentralisation. The Act has gone a step further to embrace principles of democratic governance in the style and management of forests in Zambia as will be shown later. The Act, was enacted to establish the Zambia Forestry Commission and define its functions; to provide for the establishment of National Forests, Local Forests and joint forest management areas; to provide for the participation of local communities, traditional institutions, non-governmental organisations and other stakeholders in sustainable forest management; to provide for the conservation and use of forests and trees for the sustainable management of forests ecosystems and biological diversity; to provide for the implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna, the Convention on Wetlands of International Importance Especially as Water Fowl Habitat, the Convention on Biological Diversity and the Convention to Combat Desertification in those Countries Experiencing Serious Drought and / or Desertification, particularly in Africa; to repeal the Forests Act, 1973; and to provide for matters connected with or incidental to the provisions of the Act. It is worth noting some of the innovative provisions introduced through Act No.7 of 1999 in the protection and management of forests in Zambia.

1. **Protection of the ecosystem and bio-diversity-** the primary objective or purpose for the establishment of National Forests under Act No. 7 of 1999 Section 12 is to secure

forest resources of national importance and conserve ecosystems and biological diversity in addition to improving forest resource management and sustainable utilisation as well as protecting water catchments and head waters. Section 12 of Act No. 39 of 1973 on the other hand concerns itself more with the conservation of National Forests with a view to securing supplies of timber but does not go beyond to look at the entire ecosystem and biological diversity of which National Forests are a part.

2. **Sense of ownership and cost-benefit sharing-** the objective of declaring Joint Forest Management Areas under Part V of Act No. 7 of 1999 is intended to create a sense of ownership in the forest resource in local communities by availing them responsibilities through their involvement in the Forest Management Committees provided for under Section 26 and through sharing in the benefits accruing to a Joint Forest Management Area provided for under Section 27. This is a complete shift from Act No. 39 of 1973, which through its centralist mode of forest management alienated a sense of ownership from the local communities.
3. **Application of appropriate terminology-** the Forest Act No. 39 of 1973 was out of date in terms of the latest terminology prevailing in international conservation circles. Act No. 7 of 1999, has introduced new terms like ecosystems and bio-diversity to describe appropriately living organisms and non-living components respectively.
4. **Requirement for management plans-** Act No. 7 of 1999 provides for the preparation of management plans for each National Forest, Local Forest or Joint Forest Management Area or forest plantation according to the purposes for which they are established under the Act. The management plans are supposed to include such maps and descriptive matter as may be necessary and provide for all the matters referred to in the Second Schedule to the Act. It is worth noting that the management plans are to consultative in character in line with principles of democratic governance.
5. **Conservation Orders-** In order to allow the Commission to effectively execute its mandate, Act No. 7 of 1999 under Section 35 provides for conservation orders to be issued by the responsible Minister, through a statutory instrument, on recommendation of the Commission and after consultation with a local authority and other stakeholders in an area, to an occupier of any land to adopt such measures as the Commission may deem necessary for the conservation of natural resources on land in an open area and the prevention of injury to natural resources by acts or omissions of the occupier. This provision is meant to ensure an integrated approach to the conservation of forests in particular and other natural resources in general. It is important to note that Act No. 39 of 1973 never provided for conservation orders.
6. **Recovery Plans for Protected Flora-** While Act No. 39 of 1973 under Part V empowered the responsible Minister to declare certain trees as protected for purposes of conserving them, Act No. 7 of 1999 goes a step further to provide for recovery plans meant to promote the regeneration, growth and survival of protected flora, in consultation with all stakeholders including local communities.

7. **Some changes pertaining to licensing-** Act No. 7 of 1999 introduces under Section 43 classes of licences and outlines specifically under which circumstances the licences may be issued and for what period. The Act further, while providing for licence fees, abolishes the fixing of prices for forest produce in line with Government policy of a free market economy. This is a complete shift from Act No. 39 of 1973, which, under Section 32, empowered the Minister to both prescribe fees and fix prices for various kinds of forest produce.
8. **Import and Export of Forest Produce-** A notable innovative feature of Act No. 7 of 1999 is the introduction of Part XI on the import and export of produce structured to regulate the import and export of forest produce. The Part is critical in monitoring the off-take of timber from Zambian forests and the introduction of foreign species in the country.
9. **Search Warrants-** Act No. 39 of 1973 under Sections 62 and 63 provided for the search of premises by forest officers and police officers without warrants. In the case of searches the only restriction imposed by law related to searches in private dwelling-houses were the presence of the occupier or a person of apparent age living in the house was a pre-requisite to the search. Act No. 7 of 1999 under Section 63 makes a complete shift from Act No. 39 of 1973 by providing that any search would have to be made with a warrant. This innovation is made in the interest of preserving human rights and minimising the violation of the Constitutional provision of the right to privacy.

The above innovative provisions notwithstanding, it is worth noting Part V of Act No. 7 of 1999 dealing with joint forest management which can be said to be a landmark in as far as community based natural resources management in the forestry sector is concerned. The provisions of Part V provide that:

25. (1) The Minister may, on the recommendation of the Commission, local community or owners or occupiers of an area in a forest, declare by statutory instrument, any local forest, forest plantation or open area, a joint forest management area.
- (2) Any area proposed to be declared a joint forest management area under this section shall not be so declared unless the local community has given consent.
26. (1) The Commission may in consultation with a local community living in or adjacent to a joint forest management area and with the approval of the Minister, constitute a forest management committee for that area which shall comprise the following members-

- (a) one person who shall be appointed by the Chief in that area to represent the Chief;
 - (b) a representative of the Commission;
 - (c) three persons representing the villagers in that area elected by the villagers;
 - (d) one representative of a local authority in the area;
 - (e) one representative of holders of licenses under this Act in that area;
 - (f) a representative of the Department of Agriculture;
 - (g) a representative each from the Departments of Water, Lands and Fisheries; and
 - (h) a representative of the Zambia Wildlife Authority.
- (2) The Chairperson and Vice Chairperson of a Committee shall be elected by the members from amongst themselves.
- (3) A Committee constituted under this section may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Committee but such person shall have no vote.
- (4) A member of a Committee constituted under this Act shall hold office for a period of three years and may be re-appointed for a further like period.
- (5) The Minister may dissolve a Forest Management Committee constituted under this section if satisfied that the Committee-
- (a) has mismanaged the finances of the Committee;
 - (b) has failed to render a report to the Commission or has misrepresented facts in a report submitted under Section twenty-eight; or
 - (c) is engaged in activities inconsistent with the functions of the Committee specified in Section twenty-seven.
27. (1) The functions of a Committee shall be to manage and develop the Joint Forest Management Area and distribute the benefits amongst the local communities.

- (2) Without prejudice to the generality of subsection (1) a Committee shall have power to-
 - (a) develop and implement, in consultation with the Commission, management plans for the joint forest management area aimed at reconciling the various uses of land in that area;
 - (b) negotiate, in conjunction with the Commission Co-management agreements with other stakeholders; and
 - (c) perform such other functions as the Commission or the Director-General may delegate to it.
 - (3) The development and implementation of management plans in a joint forest management area shall be in accordance with such regulations as the Minister may, in consultation with the Commission, prescribe.
28. (1) Subject to the other provisions of this Act, a percentage of the revenues payable under this Act as determined by the Commission, in respect of licences issued, concessions granted or services rendered from the use of forest resources within a joint forest management area shall be payable to a fund set up by a committee for this purpose.
- (2) There shall be paid out of the funds of a committee such money as may be required to meet the cost of technical and administrative services including that provided by the Commission.
 - (3) There shall be paid into the funds of a committee such moneys as the committee may, with the approval of the Commission, accept by way of grants and donations from any source within and outside Zambia.
 - (4) A committee shall cause to be kept proper books of account and other records relating to its accounts;
 - (5) The Commission, the Director-General and any member from that local community shall open the accounts referred to in subsection (3) for inspection.
 - (6) A Committee shall, not later than one hundred and eighty days after the end of the financial year, submit to the local community and to the Commission, through the Director-General-
 - (a) an audited balance sheet;
 - (b) an audited statement of income and expenditure; and

(c) a report concerning its activities during that financial year.

(7) Any person who misuses any money belonging to a Committee shall be liable to a surcharge.

A critical look at the Forests Act, Chapter 199 of 1973 and the Forests Act, No.7 of 1999 brings out the major changes brought about by the latter piece of legislation. As pointed out above the concept of joint forestry management affords local communities to have a say in how forests within their areas are to be managed and afforded an opportunity to share in the benefits accruing from the forestry resource. Notable under this scheme of arrangement is the democratic and representative character of forest management committees provided for under Section 26 of the Act. Another characteristic worth noting is the consultative nature of declaring joint management areas under Section 25 of the Act. The say given to local communities in this regard is cardinal for the successful implementation of the community based forestry management. The functions of a committee as provided for under Section 27 makes it possible for local community participation in the development and implementation of management plans. The Act under Section 28 further makes it possible for local communities to benefit from the proceeds earned from the use of forest resources within a joint forest management area.

It can be safely argued that the Forest Act, No.7 of 1999 is very specific when it comes to outlining purposes of local forests in as far as accruing benefits to local communities are concerned. Whereas the Forest Act of 1973 provides for the conservation and development of forests with a view to securing supplies of timber and affording protection to land and water supplies in a given local area, the Forest Act No.7 of 1999 goes beyond this in that the conservation and development of forests is meant for meeting the social, cultural and economic needs of a given local community in addition to other purposes.

Notable in the new Act is the establishment of the Zambia Forestry Commission, a body corporate with perpetual succession. This is provided for under Part II of the Act and worth noting are some of the provisions of Section 5(2) (f), (j), (l) and (p) which oblige the Commission to put in place measures intended to operationalise community based management in the forestry sector. As pointed out above Act No.7 of 1999 awaits a commencement order from the Minister concerned, however, the current arrangement has taken up community based natural resource management principles. This was done through Statutory Instrument No.50 of 1999 in which community participation can still take place before the Act comes into force. This it is hoped will lay sufficient foundation for the new piece of legislation once in force.

6.3 WILDLIFE SECTOR

The Zambia Wildlife Act No.12 of 1998 in Section 4 establishes the Zambia Wildlife Authority (ZAWA). Under the Schedule to the Act, ZAWA had the following membership:

- (a) a member of the Environmental Council of Zambia;
- (b) a representative of the Wildlife and Environmental Conservation Society of Zambia;
- (c) a member of the Zambia National Tourist Board;
- (d) a representative of the Ministry responsible for fisheries;
- (e) the Inspector-General of Zambia Police;
- (f) the Commissioner of Lands;
- (g) a member with wide business and commercial experience in the private sector;
- (h) a representative of the Tourism Council of Zambia;
- (i) a representative of the Ministry responsible for finance;
- (j) a representative of the Ministry responsible for legal affairs;
- (k) two representatives of community resources boards;
- (l) a representative of the Ministry responsible for tourism; and
- (m) two other persons.

The above composition was found to be too big and ineffective and in 2001, changes were effected through the Zambia Wildlife (Amendment) Act No.13 of 2001. Section 2 (1) of Act No.13 aforesaid provides that the Authority shall consist of members appointed by the Minister as follows:

- (a) the Permanent Secretary in the Ministry responsible for tourism;
- (b) a representative of the Ministry responsible for finance;
- (c) a representative of the Ministry responsible for legal affairs;
- (d) two patrons of community resources boards;
- (e) a representative of the Tourism Council of Zambia;
- (f) a member with wide business and commercial experience in the private sector;
and
- (g) two other persons.

The Mission Statement of ZAWA is to conserve Zambia's precious and unique wildlife. To that purpose it promotes the appreciation and sustainable use of wildlife resources by:

1. facilitating the active participation of local communities in the management of the wildlife estate;
2. promotion and development of tourism;
3. enhancing the recognition of the economic value of wildlife resources amongst public and private stakeholders; and
4. education of the general public.

Government has created nineteen (19) National Parks, totalling some 64,000 sq. km or 8% of the country. Management of these areas is delegated to the Zambia Wildlife Authority (ZAWA). The Authority up until the year 2002 administratively fell under the

Ministry of Tourism which has since been merged with the Ministry of Environment and Natural Resources. Wildlife conservation in Zambia is regulated by the Zambia Wildlife Act No. 12 of 1998, which allows the President to declare certain areas of the country as national parks and game management areas (GMAs).

6.3.1 Policy and Legal Framework

6.3.1.1 Policy

The Policy for National Parks and Wildlife in Zambia adopted in 1998 does in an explicit manner recognise community participation in the management of the country's wildlife estate first and foremost through its mission statement which encourages the promotion, appreciation and sustainable use of wildlife resources by facilitating the participation of local communities in the management of the wildlife estate. The Policy further entrenches community based natural resources management by involving local communities in the planning process and management of parks. Throughout any planning process, local communities and the general public at the international, national, provincial and district levels will be given opportunity to voice concerns about planning and management of parks. Opportunities for public participation will vary but may include one or a combination of public workshops and meetings, informal work sessions on particular issues, and public reviews and comments on draft documents in local languages appropriate to the areas concerned. How this will operate in practice is yet to be tested on the ground bearing in mind that local governance institutions are just being set-up. The Policy document, however, does acknowledge that local people and other landholders are the best custodians of the wildlife estate and other renewable resources on their land.

In relation to local communities, other policy initiatives include the empowering of the Integrated Resources Development Boards to collect revenues due to them by way of license issue, concessions granted and other services rendered, or from the use of wildlife resources in their areas. Local communities residing in chiefdoms and geographic areas which are contiguous to any wildlife estate or any open are encouraged to participate in conservation by applying and registering as integrated resources development boards (IRDBs) with the Zambia Wildlife Authority (ZAWA). Management and sustainable use of wildlife resources outside national parks has been made the preserve of democratically elected representatives of the local communities themselves with the day to day running being left to the IRDB secretariat. As an incentive to any IRDB, all revenue and benefits accruing from the sustainable utilisation of the natural resources in the concerned are to be ploughed back into the resource generating communities.

The wildlife sector in Zambia could be said to have pioneered the concept of community based natural resource management through the Administrative Design Management Project (ADMADe) and the Luangwa Integrated Resource Development Programme (LIRDP). These programmes which have been running in Zambia for the last fifteen years or so have been major success stories within Zambia when it comes to implementing community based natural resource management principles.

In so far as implementing the Wildlife Policy is concerned, a lot has taken place within the Zambia Wildlife Authority (ZAWA) and the local communities within game management areas is concerned. A development within ZAWA worth noting is the creation of a specific directorate known as the Game Management Area Directorate, whose main role is to co-ordinate activities within the game management areas. To date twenty-five community resource boards have been formed through a democratic process while seventeen are yet to be formed. However, there are a number of bottle necks that appear to delay the implementation of the Wildlife Policy and these are the none operationalisation of the GMA Directorate under ZAWA which is supposed to register community based natural resources boards and facilitate their work and the lack of technical support for the community resource boards for purposes of establishing their legal persona.

6.3.1.2 Legal Framework

Zambia has had a long history in so far as wildlife legislation is concerned. Legislation for the sector spans from 1925 when the first Game Ordinance was passed which was later repealed by Ordinance No. 47 of 1941. It is worth noting that in 1954 the Fauna Conservation Ordinance No.43 of 1954 was passed with a view to repealing Ordinance No. 47 of 1941. The Repealing Section, however, gave the Governor the option to repeal different sections or parts of the said Ordinance at different dates. This was the case as not all sections of the Game Ordinance were repealed. The two pieces of legislation, renamed as the Game Act, Chapter 106 of the 1962 Edition of the Laws, and the Fauna Conservation Act, Chapter 241 of the 1964 Edition of the Laws were jointly repealed by the National Parks and Wildlife Act No. 57 of 1968.

It is worth noting that the Game Ordinance of 1941 was responsible for the repealing of the Fish Ordinance of 1929. However, the whole Ordinance was reduced into Section 27 of the Game Ordinance under the title Control of Fishing. It can however, be argued that this state of affairs only subsisted up to 1955 when the Fish Conservation Ordinance was passed. This is also confirmed by the fact that the Fauna Conservation Ordinance did not include a provision on control of fishing even though intended to repeal the Game Ordinance. The only relic left of this arrangement was in the name of the institution charged to administer the law namely, the Game and Fisheries Department.

The Game Act, as the Game Ordinance came to be known, did not provide for local community participation in the management of the wildlife estate except to some degree in the Barotse Province as the Western Province was then called. Under Section 55 of the Act the Barotse Province was exempt in so far as the application of the Act was concerned. The implication of this exemption was that the African inhabitants living within the territorial limits of the Barotse Province and living under the tribal rule of the Paramount Chief managed their own wildlife resource through the institution of the Barotse Royal Establishment with very little interference from the Colonial Government. This exemption was carried over by the Fauna Conservation Act which went further to explicitly state under Section 47 (2) that no person could hunt any game animal other

than birds within the Barotse Protectorate Controlled Area except with the permission of the Paramount Chief of Barotseland who could grant permission to any person or class of persons. However, it is important to note that the autonomy enjoyed by the Royal Establishment in the management of the wildlife resource was to a degree controlled by the Colonial Government when it came to issuance of hunting licences without paying a fee. The Governor of the territory had to be consulted and his approval sought before any such licence could be issued. The two Ordinances while giving the Barotse Royal Establishment powers of management over the wildlife estate in the territory do not stipulate the benefits that accrued to the local communities within Barotseland. It can be argued, that the mode of administration and political structures obtaining in Barotseland at the time could have influenced the manner in which management of natural resources was carried out.

The National Parks and Wildlife Act No.57 of 1968 which repealed the above mentioned Acts, provided for the establishment, control and management of national parks, the conservation and protection of wildlife and objects of aesthetic, prehistoric, historical and scientific interest in national parks; the establishment of game management areas; the licensing of hunting; the control, possession, transfer, sale, import and export of wild animals; and other incidental or connected matters. It is important to note that apart from honorary game rangers appointed under the two repealed Acts, the National Parks and Wildlife Act of 1968 was the first piece of legislation to establish a National Parks Board which could draw membership from outside the civil service. It should be further noted that the Board with the approval of the Minister could establish one or more committees to carry out any special or general functions determined by the Board under Section 16 and were at liberty to co-opt as members persons who were not public officers. While it is encouraging to note that the Act made provision for the participation of non state actors in the management of the wildlife estate, the Act is not clear as to the criteria used to co-opt non state actors on to the committee so as to show whether key stakeholders were on board. It can further be argued, looking at the structure of these committees, that they were not community based thereby limiting the chances of local community participation. Section 17 of the Act provided for the functions and duties of the Board. A critical look at the Section shows the non consideration of local communities either as custodians with an interest or partners of government in the management of the wildlife estate.

In as far as the declaration of game management areas was concerned, local communities living in those areas were never consulted though the Act expected them to cooperate with the authorities when it came to the conservation of wildlife and the scenic beauty. In a nutshell the Act never provided for effective local community participation in the management of the country's wildlife estate wherever it occurred.

The National Parks and Wildlife Act No. 57 of 1968 was repealed by the National Parks and Wildlife Act No.10 of 1991. It is encouraging to note that this piece of legislation ushered in some innovative provisions in the area of community based natural resources management in Zambia and in particular the wildlife sector. In addition to retaining the Committees of the Board under the previous Act the new Act created Integrated Resource Development Committees. Section 37 of the said Act provided that notwithstanding

sections on committees of the board, the Minister, could by statutory order, establish integrated resource development committees to manage any national park or game management area in a manner the Minister deemed fit. Section 38 stipulated the functions of the said committees and provided that they were to promote and develop an integrated approach to the management of human and natural resources in a national park or game management area falling within their respective jurisdictions. Section 39 stipulated that the secretariat for each integrated resource development committee would be manned by such public officers as the Minister would appoint on such terms and conditions as the Minister would determine. Section 40 of the Act provided that all revenues payable under the Act, in respect of licences issued, services rendered or from the use of wildlife resources, in an area falling under the responsibility of an integrated development committee would be payable to a fund set up by a committee for its purposes.

The above innovative provisions were as a result of a number of factors. Firstly the parliamentary debates on the participation of local communities in wildlife conservation led to the birth, in the 1980s, of community based wildlife conservation schemes in Zambia, the most well-known of these being the Administrative Management Design (ADMAD) and the Luangwa Integrated Resource Development Project (LIRDP) in game management areas. These initiatives led to the formulation of wildlife utilisation schemes providing local communities living within game management areas with affordable sources of meat and employment benefits. The local communities were involved through the employment of village wildlife scouts to police their home area rather more effectively than civil servants scouts coming from other parts of the country. It can be argued that the Act legally formalised the participation of local communities in the management and conservation of wildlife. Apart from legally formalising the participation of local communities in the management of national parks and game management areas, the 1991 Act had almost all the features of its predecessor, Act No.57 of 1968.

The above notwithstanding, the Act though introducing progressive provisions in so far as natural resources management by local communities was concerned fell short in many aspects. The Act though providing for integrated resource development committees, was not clear as to the criteria used by the Minister to establish the said committees nor was their composition structure spelt out. It was therefore difficult to secure the participation of key stakeholders by law in the event of a minister becoming insensitive to local community participation. The establishment of committees through appointments rather than a democratic process could have had a negative impact on their legitimacy. The fact that resource committee secretariats were manned by public officers appointed by the Minister meant that very little capacity building, in terms of management skills, was ever created within local communities. It can be argued that the presence of central government in these secretariats did not augur well in so far as the creation of a sense of ownership was concerned. The appropriation of revenues to a fund set up by an integrated resource development committee under Section 40 was an innovative idea in the area of development and poverty reduction within local communities, however, the Act though stating that the said resources were to be used for the committees' purposes, the

management of the funds was still under central government control through the centrally appointed secretariats.

The National Parks and Wildlife Act No. 10 of 1991 was repealed by the Zambia Wildlife Act No. 12 of 1998. The new piece of legislation is a result of a combination of widespread and detailed consultations with all stakeholders with an interest in the wildlife sector at local community level, among traditional leaders, professional hunters, resident hunters as well as all interested groups in the public and private sectors at the national level. The rationale advanced by Government for replacing Act No. 10 of 1991 was that Government wanted to, as far as possible, give practical effect to the visionary MMD policy on the need to transform all government departments whose activities had an economic potential, into self-sustaining statutory organisations that would function along commercial lines. It was argued that the then Department of National Parks and Wildlife was ideally situated for such a transformation. It is important to also note that the advent of the Third Republic in November 1991 fundamentally transformed the political, economic and social landscape of the Republic. The commandist economy under the one-party political system was replaced by the liberalised market economy under the multi-party democratic political system.

The Zambia Wildlife Act No.12 of 1998 can be described as a milestone in so far as the management of Zambia's wildlife estate is concerned. The Act was passed to create the Zambia Wildlife Authority and to define its functions; to provide for the establishment, control and management of National Parks and for the conservation and enhancement of wildlife eco-systems, biodiversity, and of objects of aesthetic, pre-historic, historical, geographical, archeological and scientific interest in National Parks; and for the promotion of opportunities for the equitable and sustainable use of the special qualities of National Parks; to provide for the establishment, control and management of Game Management Areas; to provide for the sustainable use of wildlife and effective management of the wildlife habitat in Game Management Areas; to enhance the benefits of Game Management Areas both local communities and to wildlife; to involve local communities in the management of Game Management Areas; to provide for the development and implementation management plans; to provide for the regulation of game ranching; to provide for the licensing of hunting and control of the processing, sale, import and export of wild animals and trophies; to provide for the implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna, the Convention on wetlands of International Importance Especially as Water Fowl Habitat, the Convention on Biological Diversity and Lusaka Agreement on co operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and flora; to repeal the National Parks and Wildlife Act, 1991; and to provide for matters connected with or incidental to the provisions of the Act.

The Zambia Wildlife Act No. 12 of 1998 has brought with it a number of innovative features among many others:

1. **Protection of the ecosystem and bio-diversity-** the primary objective for the establishment of national parks under Act No. 12 of 1998 is the protection of the

ecosystem and bio-diversity, given the important role it plays in the development and survival of mankind. The case of the Kafue National Park and its surrounding game management areas illustrates the important role, ecosystems and bio-diversity play in peoples lives as advanced by Government. Kafue National Park and its adjacent game management areas are part of the Kafue Catchment. Here, it is argued by Government, that the adopted forms of land use are non-consumptive use of natural resources, that is, game viewing and photographic tourism and the consumptive use of natural resources such as sport and subsistence hunting.

2. **Ecologically-friendly land use**- the ecologically-friendly nature of these forms of land use as components of the Kafue catchment enhances the capacity of that catchment to provide a sustainable supply of water downstream. It is argued by Government, that any other unfriendly forms of land use adopted in the catchment area would have adversely affected the steady provision of the water supply downstream, thus making it highly unsustainable.
3. **Ownership of wildlife animals**- the objective of ownership of wild animals in the Act is to allow the Minister responsible for wildlife to make an exception in situations where a land holder and leasehold title holder may be granted the right to own wild animals found resident on that person's land. The rationale for this measure is to encourage landholders to conserve wild animals where these may be found. Government believes that granting the right to the economic use of species of wild animals on one's land is an effective incentive to that landholder to conserve a valuable wildlife resource.
4. **Enhancement of economic and social well being of local communities**- the enhancement of economic and social well being of local well being is based on the premise that local communities share land with wildlife. Government strongly believes that the best way to involve rural people in the conservation and economic utilisation of wildlife resources as they already share their land with wild animals is through the establishment of community resource boards, which is Part III of the Act and will be look at more critically below. The boards when established are intended to embrace the principles of democracy, transparency, accountability and equity. Most importantly, the Act recognises traditional rulers as custodians of wildlife resources, by bestowing chiefs as designated patrons of community resource boards.
5. **Application of appropriate terminology**- the repealed National Parks and Wildlife Act No. 10 of 1991 was out of date in terms of the latest terminology prevailing in international conservation circles. Act No. 12 of 1998, has introduced new terms like ecosystems and bio-diversity to describe appropriately living organisms and non-living components respectively.
6. **Restrictions on mining in national parks**- unlike the repealed National Parks and Wildlife Act No. 10 of 1991, Act No. 12 of 1998 provides for the carrying out of an environmental impact assessment before any mining right may be exercised in any

national park. The purpose of this measure is to ensure minimum disturbance to the environment or to the integrity of the national park in question.

7. **Requirement for management plans-** Act No. 12 of 1998 provides for the preparation and implementation of management plans in respect of national parks and game management areas. The management of all national parks and game management areas is to be effected through approved management plans intended to provide ecologically sensitive guidelines, including under what limitations or conditions their resources may be put use. The management plans are meant to promote and, indeed, require the systematic development of these protected areas.
8. **Changes pertaining to game management areas-** Act No.12 of 1998, improves upon Act No. 10 of 1991, firstly, providing for the sustainable utilisation of wildlife resources as one clear objective for declaring a game management area and, secondly, requiring that settlements conform to the provisions of an approved simple management plan for that game management area. These provisions are designed to enhance the long-term conservation of wildlife in the game management areas.
9. **Some changes pertaining to licensing-** Act No. 12 of 1998, introduces two new types of licenses, that is, the photographic tour operator's license and the hunting outfitter's license. The first license is intended to cater for the tourist lodge and camp owners or managers engaged in non-consumptive tourism, while situated in national parks or game management areas. The hunting licence outfitter's caters for hunting outfitters normally resident in Zambia and are operating hunting blocks within game management areas and conducting commercial safari hunting primarily for foreign clientele. The non-resident licence has replaced the safari licence under the repealed Act No. 10 of 1991 for persons not normally resident in Zambia while the national and the resident licence has replaced district licences for persons normally resident in Zambia.
10. **Empowerment of village scouts-** in recognition of the role village scouts under the ADMADDE programme have played in the conservation of wildlife, Act No. 12 of 1998 empowers the village scouts corps under the supervision of the wildlife police officers to exercise and perform the duties of wildlife police officers in the jurisdictions covered by the communities resources board.
11. **Situation of self-defence, defence of property-** in order above all else to safeguard human life and to safeguard property, the Act No. 12 of 1998 empowers any person to kill any problem animal in self-defence or in defence of another person when it becomes necessary or inevitable to do so. Equally, if an animal destroys property such as crops or household, the owner then may kill that problem animal.
12. **Power to release arrested persons on a bond-** Act No.12 of 1998 empowers the wildlife police officer in the field, when it is not practically possible to bring an arrested person before a court of law, to release that person on executing a bond for a reasonable amount with or without sureties. This provision, introduced in the interest

of preserving human rights, minimises violations of the Constitution by wildlife police officers who, due to long distances, may sometimes hold suspects longer than necessary before they appear in courts of law.

13. **Penalties-** Although Act No. 12 of 1998 imposes stiffer penalties to provide a deterrence to would be poachers, the more humane approach to be adopted by wildlife police officers will be to educate the public at large and the rural communities in particular about the benefits of conservation of wildlife resources.

The above mentioned innovative provisions have regulations flowing from them namely:

1. The terms and conditions under which game farming or ranching may be established and conducted. The purpose is to regulate the orderly development of game farming and ranching in Zambia;
2. The implementation of relevant international treaties and agreements to which Zambia is a party. The purpose is to enable the Government meet its obligations under international treaties and agreements;
3. The terms and conditions of keeping species of wild animals in captivity. The purpose is to ensure that standards and control related to game farming or ranching are maintained and observed; and
4. The purpose of and procedures for preparing management plans for national parks and game management areas. There is need to maintain uniform standards in preparation of game management areas.

For the first time there is recognition that for wildlife conservation and its management to be sustainable, local communities need to be intimately and practically involved in protecting and deriving benefits from what is rightfully their natural heritage.

The provisions of Act No.12 are arranged in fifteen parts with Part III providing for community resource boards. This Part, it can be argued is a landmark in the development of wildlife legislation in Zambia as it for the first time recognises and institutionalises explicitly local community participation in the management of the wildlife estate in Zambia. Part III of the Act provides that;

6. (1) A local community along geographic boundaries contiguous to a chiefdom in a Game Management Area or an open area or a particular chiefdom with common interest in the wildlife and natural resources in that area, may apply to the Authority for registration as a community resources board.
 - (2) The Authority shall register as a board, a local community which, in addition to the pre-requisites described in subsection (1), meets the requirements of subsection (3) and shall, in consultation with the board,

develop management plans for the Game Management Area or open area or any part thereof which is under its jurisdiction.

- (3) A board registered under subsection (2) shall comprise-
 - (a) not more than ten but not less than seven representatives from the local community who shall be elected by the local community,
 - (b) one representative of the local authority in the area; and
 - (c) a representative of a chief in whose area a board is established to represent that chief.
 - (4) Notwithstanding subsection (2) a board may invite any person, whose presence is, in its opinion, desirable, to attend and to participate in the deliberations of a meeting of the board, but such a person shall not vote on any matter.
 - (5) A chief in whose area a board is established shall be a patron of that board.
 - (6) The Minister may, in consultation with the Authority and the particular board, determine the allowances and honorarium which shall be payable to a chief referred to in subsection (5).
 - (7) The Authority shall, in consultation with the Minister and majority of the members of the local community represented by that board-
 - (a) if satisfied that a board is no longer able to perform its functions under this Act, dissolve that board; or
 - (b) if satisfied that a board is no longer viable in the area, de-register that board.
 - (8) Subject to the other provisions of this Act, a board may regulate its own procedure:

Provided that the board shall cause minutes to be kept of the proceedings of every meeting of the board.
 - (9) The board may convene any meeting at any time for the conduct of its business under this Act.
7. (1) The functions of a board shall be to promote and develop an integrated approach to the management of human and natural resources in a Game Management Area or an open area falling within its jurisdiction.

- (2) Without prejudice to the generality of subsection (1), a board shall have power to-
 - (a) negotiate, in conjunction with the Authority, co-management agreements with hunting outfitters and photographic tour operators;
 - (b) manage the wildlife under its jurisdiction, within quotas specified by the Authority;
 - (c) appoint village scouts to exercise and perform the duties of a wildlife police officer under the supervision of a wildlife police officer in the area falling under the board's jurisdiction;
 - (d) in consultation with the Authority, develop and implement management plans which reconcile the various uses of land in areas falling under the board's jurisdiction; and
 - (e) perform such other functions as the Authority or Director-General may direct or delegate to it.
 - (3) The preparation and implementation of management plans in Game Management Areas and open areas shall be in accordance with such regulations as the Minister may, in consultation with the Authority, prescribe.
8. (1) There shall be a secretariat for each board which shall consist of such properly qualified officers as the board may appoint, on such terms and conditions, as it may determine.
 - (2) The Authority may, in consultation with a board, second officers to the board.
 9. (1) A board shall establish a fund to enhance the economic and social well-being of the local community within the area described in Section six.
 - (2) In addition to the revenues referred to in Paragraph (o) of Sub-Section (1) of Section five, there shall be paid into the fund of a board such moneys as the board may-
 - (a) with the approval of the Authority, accept by way of grants and donations from any source within Zambia; and

- (b) with the approval of the Minister, accept by way of grants and donations from any source outside Zambia.
- (3) A board shall cause to be kept proper books of account and other records relating to its accounts.
- (4) The accounts referred to in Sub-Section (3) shall be open for inspection by the Authority, the Director-General or any other member of that local community.
- (5) A board shall, not later than ninety days after the end of the financial year, submit to the Authority, through the Director-General-
 - (a) an audited balance sheet;
 - (b) an audited statement of income and expenditure; and
 - (c) a report concerning its activities during that financial year.
- (6) Any person who misuses any money belonging to a board shall-
 - (a) be liable to a surcharge; and
 - (b) be guilty of an offence and be liable, upon conviction, to a fine not exceeding fifty thousand penalty units or to a term of imprisonment not exceeding twelve months or to both.
- (7) A board shall submit half yearly reports to the Director-General.
- (8) The accounts of a board shall be audited annually by independent auditors appointed by the board with the approval of the Authority.

The above-cited provisions have brought about a number of noticeable changes when compared with the Act it repealed. Firstly whereas the integrated resource development committees provided for under Section 37 of the repealed Act were established by the Minister who also provided the manner in which they were to be run, Section 6 of Act No. 12 of 1998 gives the responsibility of establishing community resource boards to the local communities themselves who through their own constitutions are also empowered to decide on how to manage their affairs. It is noteworthy that Act No. 12 of 1998 goes further to stipulate the mode of registration of community resource boards and the requirements to be met in terms of composition, dissolution, benefits accruing and conduct of meetings. Section 38 of the repealed Act provided for the functions of an integrated resource development committees as being those of promoting and developing an integrated approach to the management of human and natural resources in their areas of responsibility, whereas Section 7 of Act No. 12 of 1998, that assigns functions to boards, goes beyond that by specifying the powers of the community resource boards and

the manner of operation. It is encouraging to note that whereas under the repealed Act secretariats to the integrated resource boards were manned by public officers appointed by the Minister, Section 8 of Act No. 12 of 1998 gives power to boards to hire secretariat staff on terms and conditions determined by the boards themselves. Where the need of seconding officers from the Authority is felt, this has to be done in consultation with the relevant board. In the area of revenues, the repealed Act made provision for the payment of all revenue raised from a given area under an integrated resource development committee into a fund set up by that respective committee for its purposes. Act No. 12 of 1998 goes a step further by defining the purpose for the establishment of the fund under Section 9 which stipulates that the fund shall be for the enhancement of the economic and social well-being of the local community concerned. The Section goes further to provide for other sources of revenue in addition to the funds accruing under the Act in Section 9(2) where boards are at liberty to source funding in form of grants and donations from sources with and out side Zambia. The Act further requires boards to account for all money accruing to them and stipulates penalties for misuse of board funds.

The Zambia Wildlife Act No. 12 of 1998 as opposed to Act No. 10 of 1991 incorporates the good governance principle of consultation before any executive act is passed. Notable in this area is the declaration of national parks and game management areas. Under the repealed law the President of the Republic could declare, by statutory order, any area of the land in Zambia to be a national park under Section 27 or a game management area under Section 54 without consulting any stakeholders or affected local communities. Under Act No. 12 of 1998 the President of the Republic is obliged to consult the Authority and the affected local communities before declaring a national park under Section 10 or a game management area under Section 26.

6.4 WATER SECTOR

Zambia is considered a fortunate country in Southern Africa, receiving relatively substantial rainfall, and endowed with major perennial rivers, lakes, and swamps and flood areas. The principal source of water is rainfall, which recharges both surface and groundwater reservoirs. Assessments indicate that there is enough water in the major basins to meet present and medium term water demands. Surface water covers 45,000 square kilometres or 6% of the country. The Department of Water Affairs under the Ministry of Energy and Water Development is responsible for the management of water resources, which includes planning, utilisation and conservation. The Water Board authorises, on behalf of the President, the use, diversion and apportionment of all water, and regulates the use of public water, other than that for domestic use. The Water Affairs Department and the Water Resources Unit of the NCSR undertake water resources inventories and assess and monitor the quality of both surface and ground water. The Water Act also provides for the offence of polluting public water, so as to render it harmful to man, plants and animals.

6.4.1 Policy and Legal Framework

6.4.1.1 Policy

The Water Sector is looked at as a crosscutting resource in the natural resources sector. Some key policy measures adopted in order to achieve sustainable water resources development are:

5. Recognising the important role of the water sector in the overall socio-economic development of the country
6. Vesting control of water resources in the country under State control through review of water legislation to incorporate all water bodies
7. Promoting water resources development through an integrated management approach
8. Promoting adequate, safe and cost effective water supply and sanitation services with due regard to environmental protection

Defining clear institutional responsibilities of all stakeholders in the water sector for effective management and co-ordination. In recognition of the importance water plays in the economic development of the country, the Government formulated the National Water Policy in November 1994. The water sector had for a long time been identified with an inherent weak institutional capacity, deteriorated facilities and service delivery. The Government recognised the need to develop a National Water Policy that would guide developments in the conservation, management, demand and supply of the water resources in the country particularly in view of the changed macro-economic environment in which liberalisation and private enterprise investment and community participation have become the norm. The water sector is one of the principal sectors with vital links to other sectors in the economy.

The National Water Policy is aimed at promoting a sustainable water resources development with a view to facilitate an equitable provision of adequate quantity of water for all competing groups of users at acceptable costs and ensuring security of supply under varied conditions. The policy recognises the importance of water for public health, food production, the productivity of industry, the production of energy, the natural environment and other important aspects that enhance the quality of life.

The policy objectives are:

1. To enhance water resources development for national growth by multiplying the value of the nation's output of goods and services and improving national economic efficiency.
2. To promote overall water quality management for the use of the resource on a sustainable basis and for the preservation of the natural environment.

3. To improve the standard of living of the urban, rural and peri-urban population by providing adequate, safe and reliable water supply and sanitation services in a cost-effective manner.
4. To promote efficient water resources allocation, conservation and ensure reasonable returns on investment in the water industry by development efficient water tariff policies based on the principles of fairness and equity.
5. Recognising water as an economic good

There has been some notable progress with regard to policy implementation, including the establishment of a statutory body, the National Water and Sanitation Council (NWASCO) to perform regulatory functions under the Water Supply and Sanitation Act.

6.4.1.2 Legal Framework

Water resources management in Zambia is governed by Act No. 34 of 1948 (hereinafter called 'the Water Act') which makes provision for ownership, control and use of water. In terms of jurisdiction, the Act is not applicable to (a) the Western Province; (b) the Zambezi River; (c) the Luapula River; and (d) that portion of the Luangwa River which constitutes the boundary between Zambia and Mozambique.

Western Province, formerly known as Barotseland Protectorate, was a separate entity from the rest of Zambia and the affairs of the Protectorate were regulated by the Barotse Royal Establishment through the institution of the Litunga, his Prime Minister the Ngambela and his Indunas who managed various portfolios of the territory ranging from water, forestry, fisheries and land administration. This scenario meant that laws passed by the then Legislative Council for Northern Rhodesia could not per se apply to Barotseland as a system of government was already in place through the Royal Establishment. This influenced the 1948 Water Ordinance (later known as the Water Act). This legacy continues up to today in the water sector.

The Zambezi River, Luapula River and the said portion of the Luangwa River are not governed by the Act because they are international waters and are governed by the relevant international law.

According to Section 5 of the Act, ownership of water is vested in the President. There is, therefore, no right of property in water and everyone has, according to Section 8, the right to the primary use of public water, which is found in its natural channel in places where lawful access may be had. The use of water for domestic use is automatic, as it is an inalienable right of all persons and factored into the legislation.

The Act makes a distinction between 'private water' and 'public water'. Public water is all water, visible or not, flowing or found in or above the bed of a public stream, lake, swamp or marsh. A watercourse consists in most cases of running water, which will find

its way into a larger drainage system where access by others will be made. This determines its public nature.

Private water on the other hand is defined as water that will not extend into a general system and hence be accessible to the public. Under the Water Act, all ground water is defined as private water. This, however, does not mean that it acquires characteristics of private property. In most cases the Water Act does not regulate its use. However, in cases where it is found that a borehole owner has water that far exceeds his requirements and another person wishes to benefit from the water, it is possible for the Water Board to issue rights to this water to the second person provided it is proved that the requirements of the second person cannot be obtained by any reasonable means on his own property and what is available to the first person is more than adequate for his requirements. The second person would have to pay for the cost incurred in making the water available to him (s. 10). This provision has, however, never been put to the test. This proves that the use of private water is not exclusive.

Purposes of Use of Water

In terms of Section 2 of the Water Act, three types of use of water are recognised: primary, secondary and tertiary. Primary use of water refers to use of water for domestic purposes and the support of animal life (including dipping of cattle). This may be used by anyone at anytime provided it does not exceed a reasonable amount. This is a derivation from the riparian system of water allocation.

The Act defines secondary use as the use of water for the irrigation of land and pisciculture. In Zambia, most applications for water include both the primary and secondary purposes. These purposes cater for the majority of consumers in Zambia.

Tertiary use of water refers to use of water for industrial, mechanical and hydroelectric purposes. In addition, the Act under Part III makes special provision for the use of water for urban, railway and mining purposes.

Mode of Acquisition of Water Rights

The Water Board is the only body empowered to consider and grant water rights. The Board comprises a Chairperson and Directors of Water Affairs; Agriculture; Resettlement; Energy; Commissioner of Lands; Environmental Council of Zambia; Chief Health Inspector; Deputy Director of Agriculture- Technical Services; Members and representatives from the Zambia National Farmers Union.

Applications for water rights are made to the Secretary of the Water Board. All applications are recorded, investigated by the Water Officer and later advertised for a period of thirty days in the Government Gazette and a local newspaper circulating in the area (s.24 (2)). After the expiry of the period of objections, the Secretary, summarises all the applications and attaches the Water Officer's comments and presents them to the Water Board. A statutory period of thirty days is given for notification of a public inquiry by advertising in the Government Gazette and a local paper in the area.

The Water Board is then convened by the Chairperson to consider applications in summary form. Applicants are requested to attend the inquiry if they so wish and anyone who wishes to object is informed of the date of the inquiry and encouraged to attend and lodge their objections.

In terms of Section 27 of the Water Act, the Water Board has a wide discretion and may refuse an application in whole or in part and attach whatever conditions it deems necessary to the granting of an application.

In as far as community participation is involved, the Act does not provide for effective ways for such participation other than during the granting of water rights. The Act does, however, create room owners of land to apply for water rights for primary, secondary or tertiary. However, most local communities do not have title to their land, making it difficult for them to apply for public or private water for any of the uses stated above.

Order of Priority

The Act does not specify any order of priority as far as water rights are concerned. However, there seems to be some relative privilege placed on primary use. While, in accordance with Section 9, any person may make an application to the Secretary for permission to impound and store or divert water from a public stream for primary, secondary or tertiary use, which application the Water Board may grant with terms and conditions attached, any such grant must be made with reasonable regard to the primary use of water and any existing rights lawfully granted for any other purpose.

Compensation must be paid to affected holders in cases where the Water Board has to vary or revoke any registered water right to cater for other requirements. This includes cases where a local Authority wishes to appropriate public water to supply a community under its jurisdiction pursuant to Section 21.

Tenure of Water Rights

Under Section 51 of the Water Act, the owner of any water rights may forfeit his rights under certain circumstances spelled in the Act. Under that section, the Secretary may, with the approval of the Chairperson of the Water Board, by notice of writing call upon such owner to show cause why his rights should not be forfeited in whole or in part. This may happen where the owner of any right:

- (a) fails to make full beneficial use of the same for a consecutive period of three (3) years; or
- (b) fails to comply with any condition imposed under certain provisions of the Act requiring any works to be constructed and maintained.

A three (3) months period is allowed within which the recipient of the notice may make his objections, failure to which the rights are forthwith declared forfeited to the extent specified in the notice. The Board, however, rarely interferes with water rights. Water rights can be said to be relatively secure.

Most water rights are issued for a renewable period of five years. This is not a hard and fast rule as applicants have the right to put their case forward and request for water rights that are more than five years. There are cases where rights have been granted for longer periods. Earlier, water rights such as those for the mining companies and some local authorities were issued in perpetuity. Water rights are no longer issued in perpetuity.

Temporary Permits

The issuance of temporary permits is provided for in Section 24(7) of the Water Act, whereby the Board “may, pending investigation and consideration of an application, grant to the applicant a temporary permit to use water for such period and on such conditions as the Water Board may think fit’. The Board may grant a temporary permit, which is valid in most cases for a period of one year. Not having the status of a water right, this a permit that allows a person to use water for a specific period of time until such a time as documentation or relevant data is available or to use public water before the Board convenes to consider the right for a permanent grant. These permits are issued faster than normal grants because there is less scope for public participation. This is an internal circulation of a memorandum consisting of relevant data associated with the application.

Right of Appeal

Under the Act in Section 29, any person who is aggrieved by a decision of the Water Board may, within thirty days, appeal to the High Court against such decision.

Easements

Pursuant to Section 36 of the Water Act, the granting of any water right to a person does not authorise the exercise of any easement or other right on or over the land of another person. The Water Board may at its discretion grant to a person having the right to take water or supervise or control the use of water a right of storage, a right of passage or a right of abutment or any of all such rights or any other rights as the Water Board may feel necessary (s.37). The granting of such does not, however, give the person acquiring such rights a proprietary interest in respect of the land.

Easements play an important role in the exercise of water rights. This is where the administrative system is progressive because it factors in access everyone. Three forms of easements are recognised under the Act:

Right to Storage

The right of storage, provided for in Section 39 of the Act, is the right to occupy the lands of another person by submerging it with water by means of a dam or weir. This happens where a water rights holder does not have a suitable site to construct works, but a suitable site exists on some neighbouring property. The two parties may reach agreement as to the portion of land to be submerged the proportionate costs towards construction and the amount of water to be abstracted as compensation for the land lost under water. In most cases, the persons concerned either for a corporate body under the title of the dam,

thereby carving out portions of the area of the dam from their title deeds and the dam becomes an entity on its own.

Right to Passage

This is where a person finds that the lands currently being occupied do not abut the stream and yet irrigation has to take place. The person then passes either underground pipes or a lined canal through lands belonging to another in order to reach a stream or river. Such a person has the right of access to the works for the purposes of inspection and maintenance of the works (s.40). Under Section 40(2) the landholder is entitled to use an amount of water that corresponds to the share of funds contributed or land inundated. Further they have a right of access to enable them maintain the canal or pipeline. The Water Board may also grant a right of easement of passage to anyone to pass works along a public road and issue conditions for the proper use of works to ensure the prevention of danger and inconvenience to the public.

Right of Abutment

Every dam or weir that is constructed across the bed of stream or river must have one of its walls on either side of the stream. In the case where the land on the other side is occupied by another person, the Water Board may grant to anyone the right to abut one wall on another person's land. In such cases, the owner upon whose land the weir or dam will abut is entitled to demand a proportionate share of water for his own use as compensation for the lands that have been submerged by water. In some cases the two parties arrive at some form of arrangement to satisfy each party's requirement.

Pursuant to Section 45, all easements must be registered with the Registrar of Lands and Deeds within three months of being granted.

Pollution

The Water Act imposes a direct obligation on users of water not to cause any pollution. Under Section 55 of the Act, any person who wilfully or through negligence pollutes or fouls any public water so as to render it harmful humans, animals or vegetation is guilty of an offence. On the Water Board, the Water Officer has the duty to ensure that public streams are not fouled and to instil measures that applicants may put into place to forestall pollution. This responsibility is shared with the Environmental Council of Zambia.

Statutory Instruments

Under Section 46 of the Act, the Minister is empowered to make regulations through statutory instruments. Among the existing regulations include:

1. No. 20 of 1993, Water Board (Fees and Charges) Regulations
Water has an economic value and these regulations lay the basis for charging users of water for the water they abstract
2. No. 53 of 1994, Water Board (Water Measurement) Regulations

These regulations give the Board power to instruct the establishment of water measuring or hydrographic stations on areas it considers necessary and beneficial to water right holders.

3. No. 119 of 1994, Water Board (Works) Regulations

These regulations are aimed at regulating the design and construction of all hydraulic structures. In addition the Water Board may destroy any unlawful structure if it deems it necessary.

7.0 STRATEGIES FOR ENHANCING STAKEHOLDER PARTICIPATION IN THE POLICY AND LEGISLATION PROCESSES WITHIN THE NATURAL RESOURCES SECTOR.

It can be observed from the changes in the legal regime that natural resource conservation practices have been split into sub-sectors (Fisheries, Forestry, Water and Wildlife, etc.) with each sub-sector developing new institutions. A number of these regimes have, within them, provisions for community participation or community based practices. It can be further noted that a number of these institutional and legal regimes have developed and are being developed on the assumption that they will be to a great extent self-financing from returns to be drawn from the services they provide. The fragmenting of the natural resource conservation activities does not provide for an integrated or holistic approach to natural resources management though this is what each sector is purporting to be working towards as highlighted in their respective statements of policy. All natural resources are a part of one interdependent system. It can be argued that the fragmentation of roles is not compatible with rational natural resources management. The implication is also that one sector, the natural resources sector, is being serviced by too many institutions (including community based organs) some of which have the same roles and all are chasing after the same financial resources from more or less the same users of these resources.

It is against this background that key stakeholders beyond Government should begin to strategize on how they can influence policy and legislation processes which traditionally are within the purview of the State and in most cases than not tend to be closed and are unknown to key stakeholders. The creation of a natural resources consultative forum is a good idea in as far as the promotion of the bottom-up approach to policy and law formulation is concerned. However, in order to be effective the Forum will have to address institutional structures as well as effective participation of stakeholders within the natural resources sector. The review has outlined policy and legislation processes within Government with a view to exciting debate on the suitability of the processes in question and as a starting point for effective engagement of stakeholders in policy and legal formulation processes.

An assessment made from interviews conducted with state and non-state actors suggest the following as being possible strategies that the Forum of stakeholders could employ in trying to enhance and realise community based natural resource management. The following are some of the strategies the Forum can use:

1. In the area of policy and legislative formulation the Forum will have to, as a matter of priority and urgency, court Cabinet Office and in particular the Management Development Division under which the Public Sector Capacity Building Project is being managed with a view to giving input to the on-going review of policy and legal formulation processes. This will afford the Forum an opportunity to have non-state actors' feature prominently in policy and legislative formulation, especially during the initial stages.

2. Forum members will need to be thoroughly inducted in policy and legal formulation procedures of Government so as to make it possible for the creation of a tracking system within the Forum. The tracking system is intended to keep Forum members and through them all other key stakeholders informed on the status of policy and legislative developments within Government.
3. The Forum will have to establish contact and on a regular basis court the Parliamentary Subcommittee entrusted with natural resources sectors as a means of lobbying legislators and at the same a means of checking the Executive through the Action Taken mechanism.
4. The Forum will need to identify friends of the Forum from within government and beyond with a view to influencing public opinion and perceptions leading to possible change. Friends of the Forum should include technocrats within Government line Ministries entrusted with initiation of policy and legislation and co-operating partners of the State capable of providing both financial and technical support necessary for effecting change and new developments.
5. The Forum will do well by having small working groups that will specialise in specific natural resources so as to enhance effectiveness and efficiency and to build the requisite expertise and contact with relevant authorities. The Forum should at all costs maintain constant links with Cabinet Liaison Officers of line Ministries dealing with natural resources and should specifically maintain constant links with staff of the Policy and Analysis Co-ordination Division at Cabinet Office and lawyers within the Attorney-General's Chambers and in particular the Legislative Drafting Department for purposes of enhancing the tracking system alluded above.
6. The Forum will have to, as a matter of urgency, facilitate the establishment of community based resource boards or institutions so as to enhance information from the local level to the Forum at national level. In this regard, community resource boards will require to have legal persona as a matter of urgency and will need capacity building in understanding policy and legislative measures in the natural resources sector. In this regard, it is further suggested that policies and laws affecting the various community resource boards should be simplified and translated into languages local communities can read and understand best.

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