

Sunday, Lusaka (28th April, 2024)



ZAMBIA URGENTLY NEEDS ENVIRONMENTAL COURT - ZIEM

...Thanks EU for Strengthening the Respect for Environmental Rights in Zambia' (SR4ER) Project...

Lusaka, Sunday (April 28, 2024)

Zambia Institute of Environmental Management (ZIEM) Executive Director, Morgan Katati, says progressive provisions in the Bill of Rights should also constitute the annexed provision to allow for the introduction of an Environmental Court in Zambia.

This came to light during the launch of a three-year project from 2024 to 2026 dubbed 'Strengthening the Respect for Environmental Rights in Zambia' (SR4ER) funded by the European Union (EU) to be implemented by Hivos, Centre for Environment Justice (CEJ), and Zambia Institute for Environmental Management (ZIEM).

Mr. Katati said an Environmental Court is needed because many cases have gone before the courts of law addressing issues of Environmental Rights but that there are still challenges within the legal process on how effective that should work, moving forward.

He said Environmental Rights in Zambia can be traced by referring to Article 256 of the Constitution of the Republic of Zambia that provides for any person to cooperate with State Organs and other persons in order to maintain clean, healthy and safe environment.

"The Constitution further provides for respecting, protecting and safeguarding the Environment. The Article provides for ensuring ecologically sustainable development on the use of natural resources. It also prevents any acts that are harmful to the environment. Other provisions away from the Constitution also guarantee Environmental Rights in form of declaration as contained in Section 25 of the Bill of Rights that say that the State shall recognise the role of Civil Society in promoting and protecting the Bill of Rights in Zambia. Article 57 also provides the Right to every person in Zambia to a safe, clean and healthy environment. Section 58 in the Bill of Rights provides that the State shall take reasonable measures for progressive realisation of Economic, Social and Environmental Rights. It is important to know that respecting Environmental Rights in Zambia should go side by side with addressing the Rights of the citizens," he said.

The ZIEM Executive Director said there are teething issues because the principle of justiciability of Environmental Rights is still not guaranteed in Zambia's Bill of Rights, adding that this makes the exercise of Rights, the oversight, prevention and the response to violations challenging to citizens.

Mr. Katati said the capacity of communities to realize their Rights and claim for the Rights is an area that has been challenging in terms of understanding how their Rights are embedded in them within the Constitution.

"The other issue is that Section 26 of the Bill of Rights states that the Legislation does not give effective Rights or Freedoms, the Constitutional Court shall develop Human Rights Jurisprudence. The other issue is that the issue of Environmental Statutes. We have Environmental Statutes in Zambia such as the Environmental Management Act that has been amended progressively but not even the latest amendment has addressed the issue of cumulative impact. As a result of not having specific provisions on Cumulative Environmental Impacts, this has resulted in what is called Environmental Legacy," he said.

The Environmental Legal Expert said Environmental Legacy issues in Mufulira's Kankoyo, Kabwe lead poisoning and other areas have Cumulative Environmental Impacts that Zambia's legal system might face serious challenges to address.

"Apart from the Cumulative Environmental Impacts not being in the Zambia's Statutes, the other issue is that of Retrospective Application of the Law. For example, for the people in Kabwe, technically, cannot go to court to ask Government to address lead poisoning through the legal process effectively because the Retrospective Application of the Law will kick in and it will not give responsibility to the State to address. In Communities like that, they will rely on administrative measures which Government has been ably managing. Going forward, Cumulative Environmental Impacts should be included in Zambia's Statutes," he said.

Mr. Katati said the Reparation to Environmental Rights Violations is another issue that requires attention to realise Environmental Rights in Zambia which the Law does not ably define.

"With this, we have seen consistency in in terms of jurisprudence of Environmental Law where cases are tried say at the level of High Court where there is determination of damages. Determination of damages demands that there must be critical evidence to be provided for serious determination of the damages. The capacity of the people who suffer these violations is terribly low that it is difficult for them to bring figures on the table for such determination to be effective. It is important that such Reparation measures are enhanced in the laws," he said.

Meanwhile, Centre for Environment Justice (CEJ) Head of Research and Studies, Freeman Mubanga, paid tribute to the European Union for the opportunity to execute a project that will impact positively on the protection of Environmental Rights among citizens in Zambia.

And HIVOS Regional Director, Nana Zulu, said the Project marks a significant milestone for a collective journey towards Environmental justice and sustainability in Zambia.

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