



SUBMISSION OF MEMORANDUM
TO THE COMMITTEE ON ENERGY, WATER DEVELOPMENT AND
TOURISM
OF THE
NATIONAL ASSEMBLY
ON THE
RAMIFICATIONS OF THE ENVIRONMENTAL MANAGEMENT (AMENDMENT) BILL
NO. 6 OF 2023
FROM
THE ZAMBIA CLIMATE CHANGE NETWORK

DATE: 16th JUNE 2023

1. INTRODUCTION

Chairperson and Honorable Members of the Committee;

This submission is being made jointly by the Zambia Climate Change Network (ZCCN), network Members (Environment Africa, Environmental and Public Health Trust, Zambia Alliance of Women) and other partners namely Global Platform/Action Aid Zambia, Dr. Progress Nyanga from the University of Zambia, and Mr. Nicholas Kasoma from Levy Mwanawasa Medical University- School of Public Health.

ZCCN is a recognized membership based organization for civil society organizations working on Climate Change in the country. The Zambia Climate Change Network (ZCCN), is a platform whose strategic thrust is on climate justice and sustainable development in Zambia.

2. BACKGROUND

The Government of Zambia is obliged to put in place a favorable legal framework that can be enforced to ensure ***environmental sustainability***. Zambia's Vision, whose focus is attaining a prosperous middle-income status by 2030 emphasizes a development pathway that is anchored on sustainable environment and natural resource management principles. This means attainment of socio-economic development which meets the needs of the current generation without compromising the ability of future generations to meet their own needs.

3. SITUATIONAL ANALYSIS

Environmental management in Zambia is anchored on the Environmental Management Act of 2011. New emerging issues and challenges faced in the enforcement and implementation of the current Act do indeed require that it should be amended.

According to the 2007 National Policy on Environment, the main challenges being faced in Zambia are over-exploitation of resources, the limited absorptive capacity for communities to become involved in natural resource management, illegal exploitation of resources and land degradation, pollution, soil erosion and loss of productivity and deficiencies in natural resource management.

As Civil Society Organizations (CSOs) we have observed that enforcement of regulations to address environmental degradation is still persistent and that weaknesses exist within the Environmental Management Act of 2011. We note among these the non-compliance to conditions of the Act by many entities including activities being conducted in sensitive ecological areas such as National parks and forests, the continued pollution of our rivers and lakes including underground water.

We also have continued to receive banned toxic chemicals that are imported and used without adequate regulations. According to the report of the UN Special Rapporteur on toxics Baskut Tuncak released on 9th July in 2020, “The ability to manufacture and export toxic substances banned from use domestically is one, albeit large, element of how States have institutionalized externalities through discriminatory national laws and an outdated system of global governance for chemicals and wastes,”.

Chairperson and Honorable members of the Committee,
ZCCN has undertaken an analysis of the Environmental Management Amendment Bill in relation to the six (6) amendments proposed. We therefore make the following submissions:

4. SUBMISSIONS ON THE SPECIFIC ISSUES OF THE MEMORANDUM.

4.1 Object (a): Revise the function of the Zambia Environmental Management Agency.

Key Concerns and Recommendations

We note that on point 5 of page 5, the amendment bill states that the object is to amend the functions of the Agency yet it goes beyond to even include amendment of the composition and governance structure of the Board of the Agency. In the composition there is representation of part time members from the ministries responsible for -energy; mines; green economy; and agriculture. However, the proposed structure does not include key ministries responsible for health, water development and sanitation, local government, finance and national planning, who are key in environmental management.

With regard to the Ministry of Mines, there is no inclusion of “*minerals development*” which if left out from the bill, mineral development might not be regulated at all. Inclusion of the Attorney General to the composition is very welcome for the provision of legal guidance.

The inclusion of non -governmental organizations in the amendment is very welcome; even though, our observation is that CSOs are underrepresented, with only one slot compared to three representatives from the private sector. We wish to emphasize that NGOs work and represent a wide constituency of diverse people, communities and ecosystems and are key in environmental management. We also propose the inclusion of traditional leaders, youth, and disability groups.

On point 6 of page 6 – inserting of 12A “*The Board may, by direction in writing and on conditions that the Board considers necessary, delegate to the Director-General any of its functions under this Act*” We commend this to be an important amendment as it will bring efficiency and more specific directives to the Director General.

However, point 7 of page 6 – Amendment of 13 of the principal Act does not sit well and is not clear on the other aspects as it reads, “*delegate any of the functions conferred on the Director General under this Act to any other staff of the Agency that the Director General considers necessary*”; when the Director General is actually an ex-official who will bring efficiency and appointed from within the board. There is a danger that other staff may also undermined the office of the General.

With regard to the point that the Emoluments Commission is to determine emoluments of the Director General and other staff, this is commendable as it shall bring transparency.

On point 8 page 6 – section 29 of the principal Act, the amended act should simplify the licenses application process and increase the penalties to compel more compliance and deter one from accumulating fines and penalties which should affect one negatively. In subsection (5), the deletion of the word “fourteen” and the substitution therefore of the word “thirty” days is acceptable as it gives more time to appeal if aggrieved.

Our key observation however is that the Minister’s functions seem to have not been amended. This is of concern in that the Minister still has the power to overrule the Agency out of vested

political or personal interest. We therefore recommend that the decisions of the ZEMA Board should be final in that the Minister is the one that appoints the Board members.

4.2 Object (b): Harmonize the provisions relating to solid waste management with the Solid Waste Regulation and Management Act, 2018.

Concerns and Recommendations

We note on Page 3 on the Definition of Waste that the proposed amendment that adds the words, “but does not include solid waste” is misleading because solid waste is already mentioned in the text. It should therefore not be amended as each type of waste has its own definition. It is our submission that we need to maintain “domestic” waste.

With regard to the other amendments under this object, these should be maintained but there is need replace the word “*Sea*” with “*water bodies*” as there are no seas in Zambia.

4.3 Object (c): The Domestication of the Kigali Amendment to the Montreal Protocol on substances that deplete the ozone layer

Concerns and Recommendations

We commend the Government of Zambia for the move to domesticate the Kigali Amendment of the Montreal Protocol that Government ratified in 2021. We recall Chairperson that ZCCN made a submission in support for its domestication in a previous sitting of the Committee. Our submissions Chairperson to this Committee are as follows;

On Page 4 on the definition of controlled substance, Section 11 of the amendment act: amendment of Section 31 of the principal Act, the amendment act recognizes the recommendation from the Agency for the Minister to make regulations for the importation, exportation and consumption of a controlled substance or related equipment. However, we are concerned that the clause in Section 11 (c) (4) of the Environment Management (Amendment) No. of 2023 gives more powers to the Minister as indicated in our submission earlier on the Functions of ZEMA that the Boards decision must be final.

We note on Section 11. *“Amend section 31 of the principal Act by insertion of provisions that clearly state the licensing and permitting system for the handling and trade of ozone-depleting substances”*. Our submission is that this system should include requirements for obtaining licenses, permits, and authorizations to ensure responsible use and compliance with the Kigali Amendment.

Further on; *“Amend section 31 of the principal Act by insertion of provisions for reporting and monitoring”*. We strongly recommend that this amendment includes provisions for the regular reporting of ozone-depleting substances related data and information, such as consumption, import, export, and stock levels of ozone-depleting substances. There is also need to define *“monitoring and reporting”* requirements to facilitate compliance and enhance transparency.

We therefore submit that the Amendment should;

- i. Clearly state the licensing and permitting system
Clearly state the provisions for reporting and monitoring of ODS-related data and information.

Lastly, we are pleased to note that the provisions under Kigali Amendment to the Montreal Protocol on substances that deplete the ozone layer will be made executable in Zambia.

4.4 Object (d): Provide for the registration of pesticides or toxic substances.

Concerns and Recommendations

On this matter our concerns are the current regulations (ZEMA ACT of 2011); Environmental protection and pollution control Act; Dangerous Drugs Act; Plant Pests and Diseases Act; Environmental Management ACT; Controlled Substance Act), all provide for the licensing and registration of pesticides but do not give clear guide on classification of pesticides that are restricted or banned.

We there recommend that the Amendment includes the following;

- i. The need to have a catalog of permitted pesticides or toxic substances in Zambia in line with the Montreal Protocol
- ii. The need to domesticate the Stockholm, Rotterdam, Basel and Minamata conventions to which Zambia is also party to.

We note that with the provisions of Regulation 40 of SI 112 of 2013, it is possible to ban, severely restrict or restrict the use or production of a pesticide if the unregulated use or production is or is likely to be harmful to human health, animal or plant life and the environment. However, the legislation **does not contain criteria for implementation of the provisions under regulation 40** and it has therefore not been used to ban or restrict pesticides in Zambia. Except 3 chemicals where the country has filled in a "No Consent to Import" response under the Prior Informed Consent (PIC) Procedure of the Rotterdam Convention.

4.5 (e): Revise the provision on summary imposition of penalties.

Concerns and Recommendation.

Under this section, we are concerned that the penalty units do not contribute to curbing environmental pollution and we submit that there is need to revise penalties depending on the size of operations/ income of the offender and the volume of or suspension of operations to deter offenders as the current fees can be taken advantage of to those companies that make high profits.

4.6 General Comments and Recommendations

We recognize that The Environmental Management Act of 2011 and the proposed Amendment Bill of 2023 provides for sustainable management of natural resources, protection of the environment and the prevention and control of pollution. However, the board is unfairly represented, and silent on the protection and promotion of children's environmental rights.

There is a need to include fair representation of line ministries, integrate gender, children, youths and persons living with disabilities in the development of relevant regulations policies, such as environmental planning.

5. Recommendations and the way forward

We submit that the Amendment Bill should be taken back to address the fundamental issues that highlighted below:

- i. The Minister's powers should also be limited other than situations where on their own discretion overrule the Director general of ZEMA and the Boards decision
- ii. The provisions of the Kigali Amendment of the Montreal Protocol should be executed in Zambia
- iii. Penalties for offenders need to be revised upwards to curb pollution
- iv. There is a need to include representation of line ministries such as health, water development and sanitation, local government and rural development, land, natural resources, finance and national planning and increase the number of NGOs in consideration youth and disability groups.
- v. Inclusion of representation from the Traditional leadership in the governance structure of the Board of the Agency.
- vi. More inclusive consultations need to be undertaken to include people in rural areas, gender, youths, children and people with disabilities during the next review.

6.0 Conclusion

The Zambia Climate Change Network and on behalf of other CSOs would like to thank the Chair and the entire Committee members of the Energy, Water Development and Tourism including the Office of the Clerk of the National Assembly for having invited us to make this submission and hope that our concerns shall be addressed.

Signed,



Monica Chundama.

Board Chairperson- Zambia Climate Change Network (ZCCN)

DELEGATION

ZCCN Staff and Board members

Environment Africa

EAPHET

Levy Mwanawasa Medical University

University of Zambia

Zambia Alliance of Women

Global Platform/ActionAid Zambia