

PUBLIC INTEREST LITIGATION

Mutuso Dhliwayo

Zimbabwe Environmental Law
Association

Outline of Presentation

- Understanding / Defining Public Interest Litigation
- Importance / Rationale of Public Interest Litigation
- Zimbabwe Environmental Law Association experiences with PIL
- Challenges/ Frustrations of Public Interest Litigation
- Complimenting Public Interest Litigation

What is PIL

- A legal action to establish a legal principle or right that is of ***public*** importance and is aimed at social transformation
- It can also be about enforcement of rights ie Environmental, Economic , Social and Cultural
- A matter is in the public interest if the rights of the public or a section of the public is affected by the action complained of

Rationale or justification of PIL

- Change the situation of the marginalised people for the better
- Force state and non state actors to comply with the law
- Narrow or broad objective
- Winning the case – narrow objective
- Changing social policy or the law – broader objective
- Policy/ies can be formulated to implement judgments
- Government may may implement policies in response to Declaratory Judgments

Rationale / justification continued

- Improve social conditions for the affected groups
- Obtaining ammunition for social mobilisation and advocacy
- Building progressive jurisprudence
- Judgments can depoliticise an issue making it draw support across the political divide
- Generates popular debate and political momentum

ZELA experiences with PIEL

- ZELA Deed of Trust / Constitution identifies litigation as one of the strategies
- Few cases filed since 2001
- Environmental, Economic, Social and Cultural Rights not recognised as human rights
- Limited locus standi
- Building demand

ZELA experiences with PIEL

- Dora Community v Mutare City Council [**HC 1312/2005**]
- Manyame Park Residents v Chitungwiza Municipality [**HC 11552/2003**]
- Marange Development Trust v The District & Others [**HC12237/ 16**]
- Malvern Mudiwa & Others v Mbada Mining Pvt Ltd & Others [**HC 6334/ 09**]

Opportunities that now exist

- Communities are now aware of their EESCR after massive training and capacity building by ZELA
- Huge demand
- Wide spread non compliance with law by companies in the mining sector
- State abdication of duty to protect the public interest , the state is a player in the sector

Opportunities continued

- New Constitution of 2013
- Expanded Bill of Rights
- Broad/ expanded locus standi, section 85
- Access to information , section 62
- Right to administrative justice, section 68
- Freedom from arbitrary eviction , section 74
- Right to food and water , section 77
- Environmental rights , section 73
- New Constitutional court

Challenges / Frustrations

- Requires huge financial resources that go beyond project cycles
- It must be used not as the only strategy / but as part of broader strategy for social and political mobilisation
- Lack of Political will to implement laws and change laws
- Rule of law
- Communities may loose interest / litigation kills struggle ????

Challenges / Frustrations continued

- Lack of knowledge and capacity within the judiciary and law enforcement agencies especially on EESCR
- Environmental Law training for judges , the judiciary and law enforcement agencies
- Limited pool of lawyers with expertise and interest in PIL. Poorly remunerated. Passion & commitment

Conclusion

- PIL an important tool
- One of the tools and not the only tool
- Has indirect benefits
- Has its own challenges / frustrations

- **THANK YOU!!**