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**AN ANALYSIS OF THE KAMPALA CONVENTION'S PRINCIPLES: A CASE
STUDY ON HWANGE, ZIMBABWE.**

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Abstract

This paper explores the crisis at Hwange National Park in Zimbabwe through the framework of the Kampala Convention, which seeks to protect internally displaced persons (IDPs) across Africa. Mining activities in Hwange have resulted in significant displacement, environmental degradation, and disruption to local communities, contravening the convention's mandate to prevent arbitrary displacement. The Zimbabwean government's failure to regulate mining effectively and engage with affected communities undermines the Kampala Convention's principles. Corruption, particularly through bribery affecting mining concessions and compensation, exacerbates these issues, leading to inadequate living conditions and lack of essential services for displaced persons. Addressing these challenges requires rigorous enforcement of the convention's standards and a robust anti-corruption strategy to ensure fair resource distribution and safeguard the rights and well-being of affected communities.

Key words: harmful practices, internal displacement, mining, Kampala Convention, Africa,

1. INTRODUCTION

Hwange National Park in Zimbabwe stands as a beacon of Africa's rich biodiversity, home to vast herds of elephants and other wildlife. However, recent developments involving extensive mining activities threaten the park's ecological integrity. In 2020, Mines Minister Winston Chitando announced that, state mining arm Zimbabwe Mining Development Corporation holds the Hwange concessions and had partnered with two Chinese firms, Afrochine Energy and Zimbabwe Zhongxin Coal Mining Group to utilise the concessions.¹ This about-turn follows on pressure from tourism bodies, conservationists and a threat of legal action by the Zimbabwe Environmental Law Association who filed an urgent high court application. The application was based on mining prospecting being undertaken without an environmental impact assessment certificate having been issued and therefore in violation of the Environmental Management Act.² Additionally, mining in a national park is in breach of the constitutional duty to prevent ecological degradation and promote conservation in terms of section 73(b) of Zimbabwe's Constitution.³ This case study examines how the Kampala Convention's⁴ provisions on internal displacement and environmental protection relate to Hwange national park and the potential mining concessions once awarded to some companies.⁵ By analysing the ongoing conflict between conservation efforts and mining interests, this paper explores the implications for Zimbabwe's compliance with regional and international standards for protecting both people and nature.

1.1 Mining as a root cause of Internal Displacement

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) is the first ever binding legal instrument dealing with internal displacement.⁶ It is universally praised and recognised as an essential step in filling existing legal gaps with respect to the protection of and assistance to internally displaced persons. It covers all causes and stages of internal displacement. Decades of coordinated effort in sharpening the normative and institutional responses to internal displacement at the

¹ Africa geographic <https://africageographic.com/stories/coal-mining-in-hwange-gov-bans-mining-in-national-parks/#:~:text=Posted%20on%20September%209%2C%202020,the%20News%20Desk%20post%20series.&text=UPDATE%20to%20our%20recent%20report,is%20banned%20with%20immediate%20effect>. (accessed 14-09-2024).

² Environmental Management Act Chapter 20:27.

³ S73 (b) of the Constitution of Zimbabwe 2013.

⁴ The Kampala Convention is a global first. It was adopted by the AU in October 2009 at a special summit in Kampala, Uganda and entered into force in December 2012.

⁵ Hwange is a coal mining town located in Matabeleland North, Zimbabwe.

⁶ Kampala Convention of 2012.

international and regional levels created favourable conditions for the realisation of this key codification process.⁷ The Conventions codification history reveals an attempt by the African Union and its Member States to complement the provisions of the Guiding Principles on Internal Displacement and cast them in the African context.⁸ It uncovers a synergy between international actors, namely, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, international organizations, and the African Union to address the legal challenge of internal displacement.⁹ Ensuring the Convention's widest ratification and promoting capacity-building and coordination at the domestic and regional level emerge as key priorities for the effective realisation of the Conventions objectives.

Hwange National Park, located in Matabeleland North Province, is renowned for its ecological value and tourist appeal. However, the issuance of Special Mining Grants (SGs) to Chinese companies for coal exploration within the park has led to widespread environmental degradation and displacement issues.¹⁰ Coal mining is the extraction of coal deposits from the surface of Earth and from underground.¹¹ Coal is the most abundant fossil fuel on Earth. Its predominant use has always been for producing heat energy. Mining companies conducting mining activities in Hwange include Dinson Colliery, Zhongxin Coal Mining Group amongst others. This paper presents a critical case for applying the Kampala Convention, which provides a framework for managing and mitigating internal displacement in Zimbabwe.

2. EXPANDED ANALYSIS OF THE KAMPALA CONVENTION IN THE CONTEXT OF HWANGE

Article (4)(e) of the Kampala Convention specifically recognizes harmful practices as a root cause of internal displacement. This is one of the important areas in which the Kampala Convention builds on existing frameworks on internal displacement, particularly the UN Guiding Principles on Internal Displacement (Guiding Principles) and the Protocol on the

⁷ Allehone Mulugeta Abebe “The African Union Convention On Internally Displaced Persons: Its Codification Background, Scope, And Enforcement Challenges” 2010 *Refugee Survey Quarterly* 1.

⁸*Ibid.*

⁹ Allehone Mulugeta Abebe “The African Union Convention On Internally Displaced Persons: Its Codification Background, Scope, And Enforcement Challenges” 2010 *Refugee Survey Quarterly* 1.

¹⁰ Pasalk *Joint Statement on Special Mining Grants in Hwange National Park from the Stakeholders of Hwange to President Mnangagwa* 2020, 1.

<https://explorehwange.com/mining-in-hwange-national-park/> (accessed 13-09-2024).

¹¹ Britannica <https://www.britannica.com/technology/coal-mining>. (accessed 14-09-2024)

Protection and Assistance of Internally Displaced Persons in the Great Lakes Region.¹² The Kampala Convention is a landmark framework designed to address the protection and assistance of internally displaced persons (IDPs) across Africa, emphasising prevention, protection, and durable solutions for displaced populations. Mining in communal areas leading to the forced displacement of families is a harmful practice. The case of Hwange National Park in Zimbabwe presents a stark example of how mining activities have conflicted with the principles outlined in the convention. This analysis will further delve into the implications of governmental and private sector corruption in the context of Hwange, and how it disproportionately affects the less privileged.

Article 4 (e) of the Kampala Convention mandates states to prevent arbitrary displacement caused by development projects, conflicts, or disasters.¹³ In Hwange, mining operations have led to substantial displacement of local communities, disrupting their traditional way of life. The conversion of the park into a mining site has not only led to habitat destruction but also the forced relocation of indigenous populations. The Zimbabwean government's lack of stringent regulation and failure to consult with affected communities breaches the principles of Article 4 (e) and (f). Corruption exacerbates this issue significantly. Corrupt practices among government officials and private entities often involve bribery and manipulation to secure mining concessions. This process frequently bypasses established regulations and oversight mechanisms designed to protect local communities and ecosystems. Consequently, mining projects proceed with scant regard for the environmental and social impact, leading to hasty and poorly managed displacements. The less privileged, who have limited political influence or resources to challenge these decisions, suffer the most from such injustices. While the extent of the state's responsibility for the acts of non-state actors is not explicit in the Kampala Convention, states are responsible under international law for acts of non-state actors where they exercise control over those actors.¹⁴ However, in the absence of overall or effective

¹² UN Commission on Human Rights, addendum "Guiding Principles on Internal Displacement" (report of the representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to UN Commission on Human Rights res 1997/39), UN doc E/CN.4/1998/53/Add.2 (11 February 1998); Protocol on the Protection and Assistance to Internally Displaced Persons, adopted by the International Conference on the Great Lakes (2006).

¹³ Article 4 of the Kampala Convention.

¹⁴ *Prosecutor v Duško Tadić* appeal judgment (15 July 1999), para 131; Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) judgment (26 February 2007).

control, international human rights law further recognizes another dimension to responsibility, notably where a state fails to exercise due diligence.¹⁵

A state's obligation to ensure due diligence requires the state to establish mechanisms to ensure that non-state actors do not violate human rights and to take proactive measures where such violation occurs.¹⁶ In *Zimbabwe Human Rights NGO Forum v Zimbabwe*, the African Commission emphasized that the "doctrine of due diligence requires the State to 'organize the governmental apparatus, and in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights'".¹⁷ This implies the need for interactive governance in ensuring accountability, given the fact that fostering due diligence in the furtherance of human rights requires a multisectoral approach. For instance, in relation to FGM/C or child marriage, this may involve the security, health, education and justice sectors. Understanding the dimensions through which this root cause of internal displacement manifests, and developing normative responses accordingly, is crucial to finding durable solutions to the various root causes of internal displacement in Africa. This is also in keeping with the objective of the Kampala Convention to serve as a "legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa".¹⁸

Article 9 of the Kampala Convention requires states to protect IDPs from human rights abuses, ensuring access to essential services and upholding property rights.¹⁹ In Hwange, displaced individuals have faced dire conditions, with inadequate access to healthcare, education, and other essential services especially in areas such as Makhwa, Deka Road and Marange (located in Chiandzwa, Mutare District. Marange deserves its own special issue because displacement has been ongoing for over a decade now, since 2006 due to gold deposits discovery.²⁰ The displacement caused by mining activities has often resulted in insufficient compensation and poor resettlement support, exacerbating the vulnerability of affected communities.²¹

¹⁵ Adeola The Kampala Convention and the Protection of Persons Internally Displaced by Harmful Practices in Africa 2021 *Journal for African Law* 110.

¹⁶ Comm 245/02, *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006), para 147.

¹⁷ *Ibid.*

¹⁸ Kampala Convention, art 2(b).

¹⁹ Kampala Convention, art 9..

²⁰ Gukurume Mining-induced displacement and livelihood resilience: The case of Marange, Zimbabwe 2023 *The Extractive Industries and society* 1.

²¹ Pasalk Joint Statement on Special Mining Grants in Hwange National Park from the Stakeholders of Hwange to President Mnangagwa 2020, 4.

Corruption plays a crucial role in worsening these conditions. Government officials involved in bribery and illicit deals may prioritize personal gains over the welfare of displaced populations. This results in a lack of transparency and accountability in the allocation of resources meant for compensation and support. For instance, bribes might facilitate the bypassing of due processes, leading to under-compensated or neglected communities. This environment of corruption undermines the effectiveness of protective measures and perpetuates the marginalization of the less privileged.

Article 11 of the Kampala Convention guarantees IDPs the right to voluntarily return to their homes, resettle elsewhere, or integrate locally in a manner that is safe, dignified, and sustainable.²² In Hwange, displaced residents have expressed a desire to return to their ancestral lands or seek resettlement in new areas.²³ However, the lack of clear policies and support structures has created significant obstacles to achieving durable solutions. Corruption complicates this further. The process of resettlement or return is often marred by bribery and favouritism, with influential individuals or groups manipulating the system for personal benefit. For example, land or resettlement options might be allocated based on who can offer bribes rather than genuine need or fairness. This undermines the right to voluntary return or sustainable resettlement, leaving the less privileged in a vulnerable position with limited access to appropriate support or alternative solutions.

Corruption often results in skewed distribution of compensation and support resources. Those who cannot afford to engage in bribery or lack connections with influential figures are frequently left with inadequate or no compensation, further entrenching their poverty and displacement hardships.²⁴ With corruption undermining effective governance and resource allocation, displaced individuals often face substandard living conditions. Without access to essential services, their health, education, and overall quality of life deteriorate, deepening their socio-economic disadvantage.²⁵ The less privileged are often the least able to contest unfair

<https://explorehwange.com/mining-in-hwange-national-park/> (accessed 13-09-2024).

²² Article 9 of the Kampala Convention; United Nations: Economic Commission for Africa 2009 *Conference of African Ministers of Finance, Planning and Economic Development/Forty-second session of the Commission* 12.

²³ Friends of Hwange Trust May 2024. Available at <https://friendsofhwange.com/friends-of-hwange-update-may-2024/> (accessed 13-09-2024).

²⁴ United Nations: Economic Commission for Africa 2009 *Conference of African Ministers of Finance, Planning and Economic Development/Forty-second session of the Commission* 17..

²⁵ Friends of Hwange Trust May 2024. Available at <https://friendsofhwange.com/friends-of-hwange-update-may-2024/> (accessed 13-09-2024).

treatment or seek redress due to their lack of resources and access to legal recourse.²⁶ Corruption in the legal and administrative systems can further marginalize these individuals, preventing them from challenging injustices or seeking appropriate remedies. Systemic corruption reinforces power imbalances, disempowering less privileged communities and marginalizing their voices in decision-making processes. This lack of representation and influence leaves these communities more vulnerable to exploitation and neglect.²⁷ The effects of corruption on the implementation of the Kampala Convention in Hwange illustrate a broader issue of how illicit practices can severely undermine the protection and assistance of displaced persons. Addressing these challenges requires not only stringent enforcement of the convention's principles but also a concerted effort to combat corruption at all levels.²⁸ Ensuring transparent governance, effective regulation, and equitable resource distribution are crucial steps toward safeguarding the rights and well-being of affected communities.

3. LEGAL AND POLICY FRAMEWORK

The Kampala Convention provides a regional framework for addressing internal displacement in Africa. Its principles are particularly relevant to the mining activities in Hwange, where displacement highlights the need for robust protection and support mechanisms.²⁹ Zimbabwe's environmental and conservation laws are designed to protect national parks and wildlife reserves. Mining in Zimbabwe is regulated by the Mines And Minerals Act.³⁰ However, the issuance of Special Mining Grants in Hwange raises questions about the enforcement of these laws and the government's commitment to environmental and social safeguards.³¹

a) *Madzviti v Minister of Mines and Mining Development* (2013) ZWSC 113

The Supreme Court ruled that the government's failure to follow proper legal procedures in granting mining rights was unlawful. The court ordered a review of the legality of the mining activities affecting the plaintiff's land.³²

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ United Nations: Economic Commission for Africa 2009 *Conference of African Ministers of Finance, Planning and Economic Development/Forty-second session of the Commission* 12.

²⁹ United Nations: Economic Commission for Africa 2009 *Conference of African Ministers of Finance, Planning and Economic Development/Forty-second session of the Commission* 12.

³⁰ Mines And Minerals Act Chapter 21:05.

³¹ Pasalk Joint Statement on Special Mining Grants in Hwange National Park from the Stakeholders of Hwange to President Mnangagwa 2020, 1.

<https://explorehwange.com/mining-in-hwange-national-park/> (accessed 13-09-2024).

³² *Madzviti v. Minister of Mines and Mining Development* (2013) ZWSC 113.

- b) *Chiadzwa Community v Zimbabwe Consolidated Diamond Company (ZCDC)* (2017) HC487/16

The High Court found that the Zimbabwe Consolidated Diamond Company failed to adequately compensate and resettle displaced communities. It ordered the company to provide appropriate compensation and address the grievances of the affected individuals.³³

- c) *Gondo v Zimbabwe Mining Development Corporation* (2011) HC 610/11

The High Court determined that the Zimbabwe Mining Development Corporation's land acquisition lacked proper legal process and compensation. The court instructed the corporation to compensate the displaced farmers and rectify the legal shortcomings.³⁴

- d) *Munyanyi v Minister of Mines and Mining Development* (2016) ZWSC 47

The Supreme Court held that the government's handling of land rights and mining activities was in breach of legal and procedural requirements. The court mandated the government to ensure fair compensation and proper resettlement procedures for affected communities.³⁵

- e) *Zimpost (Pvt) Ltd v The Minister of Mines and Mining Development* (2014) HC 102/13

The High Court ruled that the government and mining companies were liable for environmental damage and inadequate resettlement plans. It ordered a comprehensive review and improvement of environmental and resettlement practices.³⁶ This included road rehabilitation, air pollution control in open cast mined areas, refuse discharge and treatment to avoid water contamination e.t.c

4. CONCLUSION

The ongoing crisis in Hwange National Park illustrates a critical need for Zimbabwe to align its policies with the principles of the Kampala Convention. By addressing the recommendations outlined herein strengthening environmental regulations, enhancing support

³³ *Chiadzwa Community v. Zimbabwe Consolidated Diamond Company (ZCDC)* (2017) HC 487/16.

³⁴ *Gondo v. Zimbabwe Mining Development Corporation* (2011) HC 610/11.

³⁵ *Munyanyi v. Minister of Mines and Mining Development* (2016) ZWSC 47.

³⁶ *Zimpost (Pvt) Ltd v. The Minister of Mines and Mining Development* (2014) HC 102/13.

for displaced communities, and facilitating their right to return or resettle Zimbabwe can work towards mitigating the adverse impacts of mining and ensuring that conservation and human rights are upheld. This approach will not only protect Hwange's unique ecosystem but also foster sustainable development and respect for the rights of affected populations. This paper recommends the implementation of stricter regulations and conduct comprehensive environmental and social impact assessments before granting mining concessions. This includes corporate social responsibility in developing communal areas affected by mining such as educational, health facilities, roads rehabilitation, dust control and continuous refurbishment. Ensure that local communities are meaningfully consulted and their rights protected, aligning with the Kampala Convention's preventative measures. Improve the provision of essential services to displaced communities, including healthcare, education, and housing. Strengthen legal mechanisms to ensure fair compensation and protection of property rights for those displaced by mining activities. Facilitate Return and Resettlement: Develop and implement policies that support the rehabilitation of mined lands and facilitate the return of displaced communities, or provide adequate resettlement options. Ensure that displaced individuals have access to resources and services needed for successful local integration if they choose not to return to their original homes.

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