

#9 STRATEGIC LEGAL EMPOWERMENT INITIATIVE FOR COMMUNITY-BASED WASTE MANAGEMENT GROUPS IN HARARE

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1. Introduction

The purpose of this paper is to profile and give a critical account of the legal tools and strategies used by the Zimbabwe Environmental Law Association (ZELA) to develop and nurture the capacity of five urban based waste management groups in Harare from 2003 to 2007. This paper concerns legal capacity development and improving the advocacy capabilities of waste management groups. Nevertheless, I have always been asked, *what has the law got to do with “waste management and poor people rummaging through dumpsites”?* My answer has always been to explain the relevance of the set of legal tools we used to empower five voluntary waste management groups to exist as strong forces for community participation in decision-making processes and in poverty reduction activities.

Before our intervention the waste management groups had teething problems, including

- ♦ lack of the legal capacity to negotiate, engage and conduct business transactions with the public and private sector as separate legal entities,
- ♦ limited knowledge and understanding of environmental rights, legal procedures and relevant statutory instruments or regulations.

All the five groups could not effectively participate in decision making processes on budgeting and planning by local government institutions.

Structurally, the paper is divided into key sections touching on the following issues; problems faced by the groups before registration, a statement of the legal tools used, the gaps, weaknesses and challenges identified during the process, a critique of the key results and a set of recommendations or key actions to address the challenges. The paper will also include a brief analysis of the evaluation tools used to assess the impact of the project and the question of sustainability. In effect, the problems, key lessons, weaknesses and opportunities will be juxtaposed and discussed in the context of the current economic, political and social situation obtaining in Zimbabwe.

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2. Defining the problem

The legal empowerment initiative was undertaken by ZELA under the Environmental Justice Project which was launched in 2003. The strategic objective of the legal initiative was to empower community-based waste management groups to exist as legal entities capable of transacting and negotiating business deals with the public and private sector in their own names. Under this project five waste management groups² which are working in poor and low-income suburbs of Harare were registered. The five groups were run largely by volunteers engaged in environmental clean-up campaigns, waste collection, recycling and reuse, in response to the failure of Harare Municipality to provide adequate waste collection services.

The need to adopt a mix of legal tools to empower and strengthen the capacity of community-based waste management group arose out of the realization that these groups faced a number of legal challenges beyond their institutional capacity. The first and major problem faced by the five groups was that they did not exist as legal entities and were not viewed as legitimate and bona fide entities but as loose groupings of individuals primarily concerned with income generation. This perception resulted in their failure to effectively engage the local authority and the private sector in business transactions and to lease land for their operations. Examples include not being granted a lease for land by the municipality because the group was not a registered entity. Furthermore, it was difficult for them to open and operate bank accounts to save their meagre earnings. The reason why these groups were not viewed as bona fide entities was because they were not registered to exist as legal entities in terms of the law, and so lacked legal capacity.

In addition, because of the legitimacy perception many groups even feared to engage decision-makers at the local and national levels for service provision and could not demand efficient service delivery. As loose groups of individuals with a common agenda and concerns, the groups could not effectively network and seek financial or technical support from donor or support agencies that normally prefer to work with registered and legally recognized groups. To escape from this predicament some of the groups entrusted other organizations with the management of their finances and other transactions on their behalf. However, this often resulted in operational bottlenecks and mistrust.³

The second challenge faced by the five groups in terms of capacity was their limited knowledge of environmental, social and economic rights and how to claim them. Limited understanding by group members of their rights and obligations, as well as failure to appreciate the legal avenues for claiming and enforcing their rights were identified by ZELA as an acute problem in most waste management initiatives. The majority of the group

² *Two by Two Waste Recovery and Management Trust* in Epworth Suburb, *Dzivarasekwa Environment Conservation Trust* in Dzivarasekwa Suburb, *Mabvuku Environmental Trust* in Mabvuku Suburb, *National Coalition for Sustainable Development Trust* in Epworth Suburb and the *Zimbabwe Urban Environment Waste Management Group* working in Mbare and Highfields Suburbs

³ Transaction of business activities by other organizations happened in the case of the *Dzivarasekwa Environment Management Trust*, when Environment Africa gave funds to the groups, but had to purchase all the required materials for the project on behalf of the waste management group. This was partly due to the fact that the group had no capacity to manage the project and funds as well as legal capacity.

members did not even know about the existing legal and policy framework on environmental management in general and waste management in particular. Yet it is within the ambit of the law that such groups are established and can apply for a waste management licence⁴. Within that context, ZELA realized the need to promote awareness of the environmental law among community-based projects and to develop the capacity of community groups to use the law to protect and enforce their rights.

Thirdly, with the human rights violations and the erosion of democracy and good governance in Zimbabwe, there was an urgent need to empower grassroots organizations to engage decision-makers at the local and national level especially in waste management planning and budgeting. As a result, the groups never bothered to monitor how the municipality was spending the revenue from waste collection charges, yet as a matter of fact the municipality was not offering waste collection services. As a loose groups of individuals they found it difficult or were even afraid to engage decision-makers regarding services. Given the urgent need for waste management groups to engage decision-makers, it was important for ZELA to help them to raise their voices and capacity for advocacy to influence local and national policy- and decision-making processes. The fundamental and urgent need was to develop the capacity of local action groups so that they could leverage community participation in service delivery and assist in holding environmental service providers accountable. On the other side, local municipalities and public bodies were more prepared to deal with coordinated demands for service provision made by legally recognized and empowered groups than with similar demands from individuals.

The fourth and final problem tackled by the project tackled, together with Practical Action, was the inadequate institutional and systemic project management capabilities of the groups. The internal institutional arrangements and governance structures of the groups themselves influenced the effectiveness of their project management and created conflicts, overlaps of function and inadequate financial systems. Most of the groups only benefited the inner circle of group members.

3. The legal tools used

To strengthen the capacity of the five waste management groups, ZELA invested time and resources in developing a package of legal tools designed to address the issue of legitimacy and establish their legal capacity. The first tool used to address the issue of legitimacy and lack of legal capacity was registration of the groups as trusts in terms of the common law. ZELA chose to register them as common law trusts since this is the quickest way to constitute any group as a legal entity in Zimbabwe. It is more difficult and cumbersome to get a group registered as a welfare organization under the Private Voluntary Organizations Act due to the complex and often politically influenced application process.

ZELA received requests for registration from all the five groups. The registration process included a participatory needs assessment and consultation process by ZELA to identify the core problems faced by each particular group. ZELA would then do the notarial work needed

⁴ The licence is given in terms of Section 15 of the Environmental Management (Effluent and Solid Waste Disposal) Regulations SI 6/2007

for formalising the group and registering it as a trust with the Registrar of Deeds. In law however, the legal constitution of a trust is effected by the appearance and appending of signatures by all the founder members and trustees before a notary public. The registration process was coupled with targeted legal training and education on the legal implications and about the rights, duties and obligations of office bearers, trustees, founders and beneficiaries as stated in the Notarial Deed of Trust and Donation. The Notarial Deed of Trust and Donation normally states the objectives of the trust, sets out the powers and duties of the trustees in connection with meetings, dissolution, beneficiaries of the trust and vacation of office. ZELA purposefully advised the groups about the legal significance of these provisions. The targeted training sessions were also aimed at strengthening and improving the operational systems of the trusts.

To ensure continual and complete engagement, ZELA also offered regular legal training and education to the five registered waste management groups on their environmental rights. The objectives of the legal training clinics were to improve understanding and appreciation of environmental rights and duties, increase capacity to identify cases of rights violations and to ensure that the groups knew about the legal avenues for claiming and enforcing their social, economic and environmental rights. During the training sessions ZELA would also seek to ensure that the groups understood about the legal and policy frameworks for waste management, especially the procedures to follow when applying for a licence to operate a waste management enterprise. The other tool that was used during the training sessions was the distribution of summarized versions of relevant legislation and policies in the vernacular as well as other legal materials and publications. Nonetheless, the value of the legal clinics lay in the fact that they were participatory and liberating, thereby equipping members of the five groups with confidence and knowledge about their rights and how to claim them. Some of the workshops were jointly organised with Practical Action or Environment Africa.

The legal clinics also involved advocacy training and identification of advocacy issues to enable the groups to strategically position themselves to effectively lobby and advocate for policy changes at the municipal level as well as to enable them to demand consultation and participation in decisions that affect their operations. ZELA also gave legal advice to the groups. At the national level ZELA organized policy dialogue meetings with legislators and relevant government departments to advocate for policy and legal changes that would be responsive to the special needs and interests of waste management groups.

4. The results

The application and implementation of the stated legal tools achieved positive results for the five waste management groups by specifically improving their legal and institutional capacities.

The prime result was the ability of all the groups to gain functional confidence and self-belief to systematically engage the Harare Municipality on policy issues and procedures for their operations. As a result of the registration, all the groups have grown to be valuable agents for promoting community participation in solid waste management and in demanding equitable and fair service provision from the municipality. Furthermore, all the groups have been called by the Harare Municipality for meetings and consultations on issues to do with waste management, as key stakeholders. The registration process also enabled the groups to exist

as credible small business enterprises with a community development agenda. This is more evident with the groups that have been getting financial benefits from waste recycling and reuse. The intervention of Practical Action in providing technical assistance has also helped some of the groups to develop their business activities.

At the policy level, four groups were involved in the consultation process for the formulation of the draft National Waste Management Strategy which started in 2006. In Mabvuku suburb the group managed to identify and report to ZELA cases of environmental rights violations, illegal waste disposal and water shortages, on behalf of the community.

Another positive note is that the legal capacity building process helped two of the groups to secure small grants of US\$ 5,000 each from the Global Greengrants Foundation for their environmental activities in waste recovery, recycling and reuse. ZELA facilitated the grant applications since it had already established links with the donor. In addition, the groups managed to create linkages and networks with international organizations such as the International Labour Organisation (ILO) which promotes small business development. To a larger extent the registration of the five groups led other international and local civil society organizations to have the confidence to work with the waste management groups.

Further, as a result of the registration, two of the groups managed to effectively negotiate with the municipality of Harare to lease a piece of land for their waste management operations. Before the lease was offered, one of the key conditions was that the groups should exist as legal entities before they would be offered a piece of land. Therefore, the registration process helped the two groups to secure land. The other key result is that all the five waste management groups managed to open bank accounts and started managing their own funds. After the training and registration, there have also been general improvements in the management of these groups as well as reduced conflicts over control of resources.

To assess the impacts and results of the project ZELA used a number of performance evaluation and monitoring tools. In particular, ZELA developed a Monitoring and Evaluation Framework for the purposes of tracking and monitoring performance and progress for all projects and programmes. The project impact was assessed through project site visits and review of the financial, project and other documents kept by the trusts. The evaluation process exposed a number of institutional capacity problems that will be discussed under the section on weak links.

The sustainability of the legal tools that were used was dependant on ZELA's continuous advice and education programme. ZELA committed itself to continue to provide the intellectual and legal backstopping to the five groups. To sustain their capacity the groups based their hope on their income-generating activities as well as on their willingness to work on a voluntary basis to uplift their capacities.

5. The weak links or challenges

Through this process a number of weak links and disconnects were observed in the operations of the waste management groups since 2006. Firstly the operating environment for the groups adversely affected their activities. The strained social, economic and political situation in the country affected most of the project activities and the capacities of all five groups. The charged political environment made it difficult for the groups to effectively

engage in policy advocacy as any attempt to challenge decision-makers at local government level was bound to be viewed as political manoeuvring. Interference with local government structures by central government also affected the operations of the waste management groups as the Municipality of Harare could not operate independently from government and could not make good decisions. On the economic front, hyperinflation, rising prices of basic goods and services, the collapsing infrastructure as well as suppressed industrial production affected the waste management groups to a larger extent. An interesting but moot point is that due to low industrial production levels, waste production has also been low, making waste less readily available for the groups to recycle and reuse. Consequently, the operational levels of the waste management groups have also plummeted and been significantly affected by the economic, social and political turmoil. The other problem with the economic situation is that sometimes the groups receive late disbursement of fees from the Municipality, especially in Epworth since the municipality pays 50% of the fees that it collects to the CNM Environmental Group (which had signed a contract with the municipality to collect waste from households). Furthermore, the fees normally lost much of their value before being transferred to the group.

Another weak link observed was that the current legal framework was generally not supportive of capacity building for community-based waste management groups in Zimbabwe. Although the Environmental Management Act, Section 4 (1) (a) provides scope for community participation in the promulgation of policies and laws related to environmental protection, Section 15 of the Environmental Management (Effluent and Solid Waste Disposal) Regulations SI. 6/2007 states that any person who wishes to operate a Waste Collection Enterprise is required to apply for a licence. My reading of the above provision indicates that it is mainly focused on waste management business enterprises, without making a distinction between established business entities interested in establishing waste management enterprises with the intention of making huge profits, and small community-based groups whose objective is to help the community but at the same time generate a small income to ensure their sustainability. This legal position leaves community-based management groups to compete with large, established companies. Therefore, in that respect it can be stated that the legal framework is not supportive of the special needs of community-based waste management groups which are often led by poor volunteers.

A third weak link is that, although in outlook the groups appear to be based on community aspirations, in fact they are commonly driven by a group of mostly male champions who are passionate about waste management within their community. This – in theory and practice – leaves scope for exclusion of other community members and women. It also often leads to failure to harness the potential professional and technical capacity that may lie within the community. It also breeds jealousy and conflicts within the community.

Another problem is that since the law is a technical field it requires constant and sustained campaigns to enhance capacity and the understanding of the legal issues. Unfortunately, the financial resources available to ZELA may not permit this. Latent conflicts also occur between the waste management groups, perhaps caused by uncoordinated interventions by various organizations targeting some groups for support and ignoring others. For example ZELA registered only two waste management groups in Epworth and recommended one group for funding from the Global Greengrants. At the same time only one group in Epworth

signed a contract for waste collection with the Municipality and this appears as a monopoly to the other groups.

6. Recommendations

Recognising the importance of community-based waste management groups as a vehicle for promoting community participation in solid waste management, it is important to make some recommendations to improve their capacity and advocacy skills. Firstly, in order for the groups to grow and be able to increase their operations, there is need for them to partner with civil society organisations to advocate for the reform of laws and policies to ensure the inclusion of provisions that recognise and take into account their special needs. Such needs include simple licensing requirements and payment of concessionary fees as well as incentives for the groups.

It is also recommended that the groups should try to engage professional advisors to improve their institutional and management structures. The groups also require consistent and concerted educational campaigns on how to claim and enforce their rights in relation to service delivery, as well as on how to negotiate with the public and private sectors.

It has also been noted that legal capacity building on its own is not enough to empower community-based waste management groups so that they emerge as a strong force in advocating for policy changes and to generate enough income for poverty reduction. There is a need for ZELA to strengthen its work with other organizations that offer technical and practical assistance – what I call *hardware assistance*, such as bicycles and other equipment and technical training – to the groups. The approach of Practical Action should be extended and sustained.

7. Conclusion

This paper has sought to demonstrate the usefulness of the legal tools that ZELA used to empower waste management groups in Zimbabwe. The advantage of using the law is that the groups now exist as legal and legitimate entities that are recognized by the public and private sectors and have learned about their rights and duties in relation to service delivery and how to claim their rights. During this process many challenges involving capacity development were encountered, such as the current economic and political environment which makes planning and budgeting extremely difficult. However, ZELA still believes that the best formula to improve community capacity is to adopt a mix of strategies that includes policy, legal and technological assistance.