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Environmental regulation refers to the imposition of limitations or responsibilities on individuals or other entities to prevent environmental damage, protect public health and improve the degraded environment.¹ We are going to outline the importance of environmental regulation for foreign investments and how environmental concerns can be best met in a bilateral investment treaty.

Foreign investment is very important to the host nation especially in developing countries as it brings about employment, innovations infrastructure development and economic growth among others. Stated that host nations tend to relax environmental regulations to attract foreign investment because of the benefits that come with it without having regard for the adverse effects on the environment.

Therefore, putting in place environmental regulations for foreign investment is important to protect the environment and in **Article 43 (1) c of the constitution**.² This gives citizens the duty to protect and conserve the environment and sustainably utilize natural resources, which means that environmental regulations are important to preserve the environment not only for the present but for future generations. In addition, with regards to foreign investments, they are important to limit emissions, and waste management so that not only investors enjoy the benefits but the local individuals as well while preserving the natural resources of the country.

Furthermore, the other importance is according to **section 91(2) of the Environmental Management Act**.³ States that the public shall have the right to participate in decision-making concerning laws and regulations for the environment. Thus, these regulations are important in the sense that they allow the general public to address the concern of the environment because the activities affect their health and the environment which contributes to climate change. Therefore, regulations need to be put in place regarding foreign investment because they protect the health of the citizens and the environment from hazardous substances, harm and damage.

¹ Phil McManus, *"International Encyclopedia of human geography"*, second ed, 2020 p.241-246.

² Article 43(1) c of the Constitution of Zambia of 2016

³ Section 91(2) of the Environmental Management Act No.12 of 2016

In the case of **James Nyasulu and 2000 others v Konkola copper mines**.⁴ The members of the community brought action against the mining company due to the polluted drinking water by the chemicals discharged from the mine, which demonstrates the importance of regulations for foreign investments in the protection and prevention of damage by these investors.

In addition, environmental regulations for foreign investment are important as they meet the needs of the present generation without compromising the ability to meet future needs.⁵ This means that adopting sustainable practices balances economic development and environmental conservation. In short putting regulations promotes sustainable development regarding the environment by meeting the needs of the present with the local individuals and investors while preserving the environment for the future generation with the regulations put in place.

The other importance of environmental regulation for foreign investment is that it strengthens the **host country's reputation and investor confidence**.⁶ These strong regulations demonstrate a country's commitment to sustainability which attracts conscious investors who prioritize ethical and sustainable investments, and who have the willingness to undertake financial activities available in the host country.

When regulations are put in place the environment is protected from hazardous chemicals, pollution is reduced and the use of non-renewable resources is minimised which brings about **innovation and green technology**.⁷ Failure to comply with these environmental regulations brings about legal penalties like fines and project shutdowns so that there is compliance with the regulations enforced.

⁴ Nyasulu v Konkola Copper Mines and others (HP 1286 of 2007)

⁵ International institute For Sustainable Development, "*Sustainable Development*", 1st June 2022 accessed on 7th march 2024 at <https://www.iisd.org/mission-and-goals/sustainable-development>

⁶ K. Jereny KO, "Economics Note: Investor Confidence", October 2017 p.2

⁷ Science Direct, "Environmental Regulation-An overview", 10 January 2024, accessed on 5th March 2024 at <https://www.sciencedirect.com/topics/social-sciences/environmental-regulation>

The second part will discuss will focus on how environmental concerns could be best met in a bilateral treaty. According to **principle 4 of the Rio Declaration** which states that the state and people should co-operate in good faith in partnership for the fulfilment of the principle. Article 14(2) of the Finland-Zambia BIT, provides that the agreement shall not prevent a contracting party from adopting measures to maintain public order, protect health and safety and environmental measures to protect human, animal and plant life.⁸ From this provision, it can be seen that to deal with environmental concerns certain regulations need to be put in place.

Furthermore, promoting sustainable practices and encouraging investments that contribute positively to the environment, local communities and overall, the country.⁹ This can include cycling properly, managing waste and using renewable energy, so when this is included in a bilateral treaty then environmental concerns can be handled.

In **PART IX of the Environmental Management Act**, the provisions have been put in place about enforcement and compliance of the legal provision put in place.¹⁰ Therefore, in a bilateral investment treaty what is agreed upon must be complied with and failure to do so certain enforcement will be set to protect the environment from harm and damage so that future generations can benefit as well.

According to **section 91 of the Environmental Management Act**.¹¹ Public participation is recognised therefore, to deal with environmental concerns in a bilateral investment treaty the public should be free to participate and address issues that are concerning them because the environment does consist of them as well and what affects the environment affects every individual. In **James Nyasulu and 2000 others v Konkola copper mines**.¹² It was seen that the people in the community were free to address the issue of the water pollution caused by the waste discharge by the company which caused health concerns, which demonstrates the principle of public participation.

⁸ Article 14(2) of the Finland-Zambia BIT

⁹ Humanium, "*The Principle of Non-Discrimination*", 2nd march 2021, accessed on 8th March 8, 2024 at <https://www.humanium.org/en/the-principle-of-non-discrimination/>

¹⁰ PART IX of the Environmental Management Act No.12 of 2011

¹¹ Section 90 of the Environmental Management Act No.12 of 2011

¹² Nyasulu v Konkola Copper Mines and Others (HP 1286 of 2007)

An environmental impact assessment in a bilateral investment treaty is another thing that must be conducted for investors to ascertain whether their project is capable of being started. An environmental impact assessment is “*a systematic examination conducted to determine whether or not an activity or project has or will have any adverse impacts on the environment.*”¹³ This is to prevent any adverse effects from occurring, which shows that in a bilateral investment treaty, an environmental impact assessment is vital to ascertain whether the project an investor wants to venture in is capable of being conducted without causing effects on the environment that would cause adverse effects like climate change, this can also be noted in **principle 6 of Stockholm** which addresses prevention of certain activities if they can likely to cause effects to the environment.¹⁴

The **15 Rio Declaration** addresses the precautionary principle.¹⁵ This principle brings about setting certain precautions that need to be put in place to avoid any damage to the environment which includes setting clear environmental standards that investors need to adhere to like emission limits, discharge of waste management and using renewable energy.

In conclusion, the following are the importance of environmental regulations of foreign investment and how certain environmental concerns can be best met in a bilateral investment treaty.

¹³ Section 2 of the Environmental Management Act No.12 of 2011

¹⁴ Principle 6 of Stockholm Declaration

¹⁵ Article 15 of Rio Declaration

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