

# The Challenge of Enforcing the Right to Water: The Case of the Vedanta PLC Mining Conglomerate in Zambia

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## 1. Introduction

Water is essential to the sustainability of human life. It is for this reason that it has been recognised as a human right. This right is widely recognised in international human rights law. However, it is still far away from being a daily reality for many people, especially in developing countries. This chapter presents a case analysis of how the right to water is hampered by Vedanta, a mining conglomerate operating in Zambia (until 2019) as a result of polluting and contaminating water sources the people depend on. It illustrates the real challenges of accessing justice in order to vindicate their right to water. Apart from this introduction and the conclusion, the chapter is divided into two distinct sections. The first section grounds the discussion by framing an understanding of the right to water in international human rights law by giving an overview of the right to water. The overview is premised on international human rights law, particularly the human rights treaty framework of the United Nations and the human rights framework of the African region. The second part discusses the substance of the chapter and demonstrates the three inter-related cases of victims of Vedanta's subsidiary in Zambia who organised themselves and sought justice from the Zambian Courts. Unable to obtain justice locally, they sought justice in the United Kingdom. This chapter is, therefore, an illustrative case commentary.

## 2. The Right to Water: An Overview

Water is increasingly being recognised as a human right. Its existence as a human right is now well established in the international human rights framework, both at the United Nations human rights treaty system level as well as the African regional level. It is provided both directly, or expressly, and indirectly, or implicitly, in many human rights treaties. A useful starting point is establishing the existence of the right to water in universal human rights treaties under the United Nations. Several UN human rights treaties expressly provide for the right to water. The conventions that directly provide for the right to water include the Convention on the Rights of the Child

(Article 24(2)(c)),<sup>1</sup> Convention on the Elimination of All Forms of Discrimination Against Women (Article 14(2)(h)),<sup>2</sup> and the Convention on the Rights of Persons with Disabilities (Article 28(2)(a)).<sup>3</sup> As already noted, the right to water may be provided for indirectly or implicitly. As an implicit right, the right to water is provided for in the Covenant on Economic, Social, and Cultural Rights (CESCR) (Articles 11 and 12) and the Covenant on Civil and Political Rights (Article 6). Several examples speak to this fact. Article 11 of the CESCR, for example, provides for the right to an adequate standard of living, while Article 12 provides for the right to the enjoyment of the highest attainable standard of physical and mental health. It is argued that the right to water is connected to these other rights because human life cannot be sustained without water. Without clean and adequate water, the rights to the highest standard of physical or mental health and an adequate standard of living would be futile. It is for this reason that the right to water is, therefore, recognised as a human right ‘that is essential for the full enjoyment of life and all human rights’ (UN General Assembly Resolution 64/292, 2010, para 1).<sup>4</sup>

The United Nations General Assembly in July 2010, adopted a resolution expressly recognising the right to water and declared ‘the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights’ (ibid.). The UN General Assembly Resolution was followed in September 2010 by the Human Rights Council resolution affirming the right to water. The Human Rights Council resolution associated the right to water with the rights to an adequate standard of living and highest standard of physical and mental health, life, and dignity, stating that it ‘affirms that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity’ (Human

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<sup>1</sup> Convention on the Rights of the Child, 1989. Available online: <https://www.ohchr.org/EN/professionalinterest/pages/crc.aspx> (accessed on 19 September 2021).

<sup>2</sup> Convention on the Elimination of All forms of Discrimination against Women. Available online: <https://www.un.org/womenwatch/daw/cedaw/> (accessed on 19 September 2021).

<sup>3</sup> Convention on the Rights of Persons with Disabilities 2006. Available online: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> (accessed on 19 September 2021).

<sup>4</sup> UN General Assembly Resolution 64/292, 2010. Available online: <https://undocs.org/pdf?symbol=en/a/res/64/292> (accessed on 19 September 2021).

Rights Council Resolution of 24 September 2010 (A/HRC/15/L.14, para 3).<sup>5</sup> The Human Rights Council called upon states to, *inter alia*, adopt mechanisms to achieve the progressive realisation of the right to access safe drinking and sanitation water, ensure transparency in planning and implementation processes for safe drinking water, meaningful participation of the people concerned, develop and implement effective regulatory frameworks for service providers, and to provide effective remedies for victims (*ibid.*).

According to Lee and Best (2017), water should be ‘adequate’ for human dignity and, therefore, should not be simply treated as an economic good. This entails that in order to ensure that there is adequate water for human dignity in terms of quality, quantity, and access, the state must put in place active and effective measures. This necessarily means that the right to water, in terms of quality and quantity, is necessarily and ultimately connected to safe drinking water and sanitation, which are, in turn, ultimately linked to the right to life and health for the people (*ibid.*).

The General Comment on the right to water, that is, General Comment No. 15, conceptualises the right to water as entitling everyone to ‘sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use’ (Committee on Economic, Social and Cultural Rights, General Comment 15: The Right to Water (29th Session, 2003) UN Doc. E/C.12/2002/11 (2002), para 2).<sup>6</sup> The import of the definition is that although water may have several uses, which include use in industry and growth of crops, the right to water should give first preference or priority to the provision of water for personal and domestic use. The reason for this is self-evident. An adequate or sufficient amount of water is an absolute necessity for reducing water-related diseases, prevent dehydration and death, and invariably for drinking or consumption, domestic cleaning and hygiene, and cooking food for human consumption (*ibid.*).

In order for the right to water to be meaningful, water must be supplied in adequate quantities. Adequacy in this context entails, according to General Comment 15, three strands. These are that the water must be available (availability), it must be of appropriate quality for human consumption (quality), and it must be within easy reach (accessibility) (*ibid.*, para 12). By availability, it is meant that the supply of water

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<sup>5</sup> Human Rights Council Resolution of 24 September 2010 (A/HRC/15/L.14. Available online: <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session15/Pages/ResDecStat.aspx> (accessed on 19 September 2021).

<sup>6</sup> Committee on Economic, Social and Cultural Rights, General Comment 15: The Right to Water. Available online: <https://www.refworld.org/pdfid/4538838d11.pdf> (accessed on 19 September 2021).

to every concerned person should be sufficient and continuous or uninterrupted for personal and domestic use (which includes drinking, personal sanitation, washing of clothes, food preparation, as well as personal and household hygiene) (ibid., para 12(a)). Water is also required to be of appropriate quality. The reference to the quality of water entails that the water must be safe for human use and consumption; that is, it must be free of micro-organisms, chemical substances, and radiological hazards that may pose a danger to human health (ibid., para 12(b)). The third and final strand is that of accessibility. Accessibility to water means that the services and facilities providing water must be accessible without discrimination. Accessibility includes the physical reach of the facilities and services, affordability or economic reach of the water, provision of water without discrimination (especially for the vulnerable and poor people), and supplying water with appropriate and accessible information about the matters concerning water issues (ibid., para 12(c)).

The African region has its own regional human rights system. Under this regional human rights system, water is recognised as a human right. The African human rights treaties that expressly recognise the right to life include the African Charter on the Rights and Welfare of the Child (Article 14(2)(c)) and the Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Article 15(a)). These, however, limit the right to water to the categories of people they focus on, that is, children and women. They are not of general application to all the people.

A general direct provision of the right to water in the African human rights framework is to be found in the African Convention on the Conservation of Nature and Natural Resources (2003).<sup>7</sup> Although it is written from the perspective of preservation of nature and the environment, the Convention provides for essential ingredients of the requirements for the right to water in the following terms: 'The Parties shall manage their water resources so as to maintain them at the highest possible qualitative and quantitative levels. They shall, to that effect, take measures designed to:

- (a) Maintain water-based essential ecological processes as well as to protect human health against pollutants and water-borne diseases;

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<sup>7</sup> African Convention on the Conservation of Nature and Natural Resources, 2003. Available online: [https://au.int/sites/default/files/treaties/7782-treaty-0029\\_-\\_revised\\_african\\_convention\\_on\\_the\\_conservation\\_of\\_nature\\_and\\_natural\\_resources\\_e.pdf](https://au.int/sites/default/files/treaties/7782-treaty-0029_-_revised_african_convention_on_the_conservation_of_nature_and_natural_resources_e.pdf) (accessed on 19 September 2021).

- (b) Prevent damage that could affect human health and natural resources in another state by the discharge of pollutants; and
- (c) Prevent excessive abstraction, to the benefit of downstream communities and states (article VII).

The right to water is also indirectly provided for under the African Charter on Human and Peoples' Rights. This is primarily accomplished under Article 16, which guarantees the right to the highest attainable state of mental and physical health. The relationship of this right to the right to water has been articulated in the jurisprudence of the African Commission on Human and Peoples' Rights in a plethora of decisions. Three cases can be discussed here to elaborate. One of the leading cases is that of *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions (COHRE) v. Sudan* 279/03-296/05. In this case, it was alleged that the government of Sudan was complicit in the destruction of wells and poisoning of water sources in the Darfur region. The African Commission on Human and Peoples' Rights, having established the facts, held that the misdeeds of the government predisposed the victims to serious health risks and was, therefore, a violation of their right to the highest attainable mental and physical health, as provided for under Article 16 of the African Charter on Human and Peoples' Rights (*ibid.*, para 211 and 212). In another case, that of *Free Legal Assistance Groups and Others v. Zaire* Communication 25/89, 47/90, 56/91, 100/93 (1995), the African Commission on Human and Peoples' Rights asserted that Article 16 of the African Charter on Human and Peoples' Rights obligates states to ensure that every individual shall have the right to enjoy the best attainable state of physical and mental health and that States Parties should, therefore, take the necessary measures to protect the health of their people. In the view of the Commission, the failure by the government to provide basic services such as safe drinking, among others, constitutes a violation of Article 16 of the African Charter (*ibid.*).

The case of *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria* 155/96, dealt with the pollution of the environment resulting from oil mining in Nigeria. It was alleged that the extraction of oil operations had caused massive environmental destruction and health challenges emanating from the contamination of the environment in the region of the Ogoni People of Nigeria and that oil had been exploited without any due regard for the health, well-being, and environmental safety of the local people. This was premised on the fact that the concerned companies, with the complicity of the government, were disposing of toxic wastes into the environment and local rivers and other waterways in violation of applicable international environmental standards. The mining companies were also alleged to have acted negligently by failing to ensure that their facilities did

not cause spillages in surrounding villages. These factors resulted in contamination of water, soil, and air, which has led to serious short and long-term health impacts. These include skin infections, gastrointestinal and respiratory ailments, as well as increased risk of cancers, and neurological and reproductive problems. The Commission held that the Nigerian government had a duty to protect its citizens, both through legislation and its effective enforcement, as well as protecting them from damaging acts that may be perpetrated by private parties or entities such as oil extracting companies.

The jurisprudence of the Commission, based on the African Charter on Human and Peoples' Rights, has an inherent weakness—namely, that the right to water is derivative of other substantive and directly protected rights, such as the right to health and dignity. From this angle, it is somewhat a subordinate right that is dependent on the articulation of the parent right. Takele Soboka Bulto has, therefore, argued: 'As the human right to water is protected through other rights, the human right to water is a derivative or subordinate right, the violation of which can only be complained of when the parent rights are violated. In this sense, the relationship between the human right to water and its source (parent right) is such that the former is a small subset of the latter' (Bulto 2011).

In 2015, the African Union adopted a resolution recognising the right to water and enjoining member states to 'protect the quality of national and international water resources and the entire riverine ecosystem, from watersheds to oceans' and to 'guarantee the justiciability of the right to water' (AU Resolution 300 on the Right to Water Obligations ACHPR/Res.300 (Ext.OS/XVII) 2015, para i and v).<sup>8</sup> The resolution, however, is not binding law. However, although it is not binding, it can be argued that to the extent that the resolution articulates the right to water based on binding AU statutes and precedents, it is giving effect to what is already binding those statutes and precedents.

Human rights impose both negative and positive obligations on states. In relation to the right to water, as in relation to other social and economic rights, states have four categories of duties. These are the duties to respect, protect, promote, and fulfil the right to water. There is no hierarchy between these duties.

The obligation to respect is generally considered to be a negative duty. This is because it is said to simply require the concerned state to simply refrain from

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<sup>8</sup> AU Resolution 300 on the Right to Water Obligations ACHPR/Res.300 (Ext.OS/XVII) 2015. Available online: <https://www.achpr.org/sessions/resolutions?id=149> (accessed on 19 September 2021).

interfering directly or indirectly with the enjoyment of the concerning economic, social, and cultural rights. The duty to respect means the state is enjoined to respect the freedom of individuals and peoples to use all of the resources at their disposal to meet their economic, social, and cultural needs and obligations as they see fit but within the confines of the law. However, this duty is not just negative because in certain circumstances it may require the state to take positive action. The state, for example, may need to take action to ensure that it passes appropriate legislation to guarantee the right to safe and clean water or to provide standards for the provision of water services for the private sector (ibid., para 5). The second duty is that of protection. This duty entails that the state acts deliberately by taking a positive measure to ensure that non-state actors such as corporate entities and individuals or even government agencies do not violate human rights, and if they do, a mechanism of redress is provided. The duty invariably includes providing a regulatory framework and monitoring mechanism for commercial and other non-state actors that may have an effect on the enjoyment of the people's rights (ibid., para 7).

Finally, states are under a duty to promote economic, social, and cultural rights. This requires states to adopt means or measures to enhance the people's awareness of their rights and to provide accessible information relating to the programmes and institutions adopted to realise the rights (ibid., para 8). This duty requires states to take positive steps in order to realise the people's rights. This obligation is 'a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights' (ibid.).

### **3. Enforcing the Right to Water: The Case of Vedanta PLC, a Polluting Mining Conglomerate**

#### *3.1. The General Context of the Case*

The impact of mining on both ground and surface water is well known. This is because water emanating from mining activities may be discharged into both surface and underground water sources. Such water often contains solid and other pollutants, which may make the water acidic, toxic, and unsuitable for human consumption and usage (Karmakar and Das 2012; Hall and Lobina 2012; Younger and Wolkersdorfer 2012; Montejano 2013). Often, this means that polluted mine water is discharged into a river near a mining site or some other surface body of water.

In the Zambian context, the water pollution and environmental problems have largely been associated with the Copperbelt Province, where large-scale mining of copper has been occurring since the 1920s (Lindahl 2014). As a result of mining, it is estimated that more than 10,000 hectares of land in the Copperbelt Province is

covered with mineral waste (ibid.). This often leads to contamination of freshwater sources with pollutants, depriving local communities of clean water and presenting an incessant potential for health problems. This is also compounded by the fact that the mining activities are located within the catchment area of the Kafue River, the main source of water for local communities. As a result of the mining activities, the Kafue River and surrounding tributaries are under continuous threat of pollution (ibid.). This situation presents a significant challenge for people who depend on water sources that may be polluted due to mining activities. As discussed, the challenge faced by many local people who may wish to enforce their right to clean water is the lack of systemic enforcement of the law, lack of easy and clear mechanisms for enforcing the right to water in the Zambian domestic sphere, insufficient capacity and rampant corruption by public officials, and an inadequately oriented justice system.

Vedanta PLC is the parent company of a multinational group, which for many years was listed on the London Stock Exchange, with interests in minerals, power, oil, and gas in four continents. It is incorporated and domiciled in the United Kingdom but with operations across the globe. It has a subsidiary and controlling share interest in Konkola Copper Mines (KCM), the largest copper mine in Zambia, which it acquired in 2004 (Das and Rose 2014). The Zambian economy is heavily dependent on copper mining. Copper accounts for about 75 per cent of the country's export earnings (ibid.). Due to the heavy reliance on copper, mining companies in the copper sector invariably play important roles in the country's economy and, consequently, in the political discourse of the country. The enormous financial muscles of mining companies often leave ruling political elites and government institutions beholden to the mining companies and, therefore, unable to effectively supervise mining activities to ensure they comply with the law and especially with environmental standards.

Konkola Copper Mines (KCM) is the subsidiary of Vedanta PLC in Zambia. KCM, since its acquisition by Vedanta Resources PLC in 2004, has, with impunity, been polluting the environment around its mining areas. Extensive and consistent instances of air pollution have been documented around KCM's smelter in the town of Chingola in the Copperbelt Province of Zambia. The mining activity has been consistently discharging toxic fumes of sulphur dioxide beyond the allowed limits, leading to environmental degradation in the surrounding areas of Chingola (Foil Vedanta 2020). KCM has also been discharging dangerous chemicals into the surrounding streams, leading to the death of fish, inability to use the water for farming, and contamination of the water (Foil Vedanta 2020). The people have often been left without clean drinking water. It has been estimated that the contamination of the rivers, including the Kafue River, indirectly affects up to 40 per cent of the



Zambian population, which depends on the same river for clean water for drinking and domestic use. Not only has the contamination of the streams denied the people a clean source of water, but it has taken the livelihood of surrounding communities who are predominantly small-scale farmers, as they cannot rely on fishing and farming anymore for survival. Pollution has also had a deleterious effect on the lives of people by causing multiple diseases and health complications (ibid.).

KCM has not, in any meaningful way, been held accountable for these activities. It has largely been able to continue conducting its affairs with impunity. The economic power of the mine makes it possible for it to capture the ruling elite and shield it away from accountability. A Judge of the High Court aptly opined: 'The only hypothesis for a powerful multinational to supposedly act with impunity and immunity, is that they thought they were politically correct and connected' (see the case of *James Nyasulu and 2000 Others v. Konkola Copper Mines PLC and Others* 2007/HP/1286 (2011)). The shielding of KCM from accountability can also be inferred from the fact that in 2017, a lawyer from Leigh Day, who was meeting the victims of the pollution to brief them on progress on their case in the United Kingdom, was arrested by the Zambian police. The vehicle in which the police officers came had labels indicating that it belonged to KCM (Lusaka Times 2017; Leigh Day 2017). It is presumably this situation that prevented the government from taking any meaningful measures to stop the environmental degradation and, for our interest, water contamination and pollution. Without any meaningful help from the government, in order to vindicate their rights, the affected members of the community had to mobilise themselves to seek redress in court.

It is in this context that the cases discussed below should be understood. The cases relate to members of the community who mobilised themselves to seek redress in court for contamination of their water by KCM and the resultant illnesses they suffered. It should be noted that the Zambian Constitution does not expressly include the right to water. As a result, the most viable way to affect the people was to approach the courts on the basis of the common law tort of negligence by arguing that the mining companies had a duty to care for the affected communities, which was breached. Although Zambia has legislation on environmental management, enforcing its standards is heavily dependent on public officials and not individual members of society. This often leaves affected citizens with limited avenues for seeking redress when their water sources are polluted by the mines.

### 3.2. *The Cases*

The major act of pollution which gave rise to the cases occurred in 2006. The accused filed their first case in the Zambian High Court in 2007, which was only determined by the Court in 2011, in favour of the community members. Thereafter, KCM appealed to the Supreme Court. The Supreme Court agreed with the High Court in finding the mining company liable but significantly reduced the compensation payable, making the victory of no consequence. Unable to find meaningful justice within Zambia, the communities, with the help of a pro bono law firm (Leigh Day) in the United Kingdom, brought an action in 2016 against the parent company, Vedanta Resources PLC, incorporated and headquartered in the United Kingdom. The action in the UK was opposed by Vedanta and the Zambian government, mainly on the ground of lacking jurisdiction. This preliminary issue proceeded all the way to the United Kingdom Supreme Court and was determined in favour of the community members, allowing the matter to be heard by the United Kingdom courts in 2019. The main matter is yet to be determined. These cases illustrate the challenges community members face to vindicate their right to water when the contamination of the water is caused by a powerful mining conglomerate. These cases are discussed in detail below. However, it must be mentioned that KCM was expropriated by the Zambian government in May 2019, although the expropriation was still subject to litigation at the time of writing, and the reasons for the expropriation are entirely irrelevant to the enforcement of environmental standards.

The first case is that of *James Nyasulu and 2000 Others v. Konkola Copper Mines PLC and Others 2007/HP/1286 (2011)*. The action, in this case, was brought by James Nyasulu, together with 2000 other members of the community affected by the pollution caused by KCM. The plaintiffs were all residents of the town of Chingola, where the KCM mine is located. The residents' main source of water was a stream in which KCM was discharging the effluent from its mining operations. It was alleged that on 6 November 2006, one of the KCM's tailings pipelines ruptured, leading to the discharge of effluent which was high in acidic content into the river. This led to the pollution of the water source in the streams and other rivers downstream, including the Kafue River which supplies water to about 40 per cent of the Zambian population. On 8 November 2006, the Environmental Council of Zambia (now Environmental Management Agency), the main statutory body responsible for environmental management in the country, wrote the KCM instructing it to cease operations of its tailings leach plant in view of the pollution of the Kafue River. The instruction was not heeded. After consuming the polluted water, the respondents suffered from varying illnesses.

The High Court Judge found against KCM. The judge asserted that there was gross recklessness in the operation of the mine in relation to polluting the environment, as the mine did not seem to care whether human beings died or not, wantonly contaminating the water sources for the people. The judge emphasised that by polluting the environment and contaminating the water, KCM deprived the people living in the surrounding areas of the right to life, which the judge considered to be a fundamental constitutional right. The judge was appalled by the behaviour of KCM, asserting that the company bore 'moral, criminal and civil liability for this appalling tragedy' (ibid.). The despicable disregard for human life by KCM was succinctly stated by the judge in the following terms: 'Here is a Multinational Enterprise, which has no regard for human life for the sake of profit and turned the residents of Chingola into "Guinea Pigs" and showed no remorse. In their countries of origin such recklessness would have been visited by severe criminal and civil sanctions' (ibid.).

The judge hypothesised that KCM's impunity was a result of its political influence and connections, which made it feel immune from accountability. Having found against KCM, the High Court Judge ordered KCM to pay K 4 million to each of the 2001 plaintiffs, as general damages, and K 1 million as punitive damages. The total figure came to about K 10 billion (about USD 2 million) (ibid.). The judge indicated that this was necessary in order to deter similarly situated entities from wanton destruction of the environment, human life, and animals.

The judge asserted that the only hypothesis for a powerful multinational to supposedly act with impunity and immunity was that they thought they were politically correct and connected. However, the judge affirmed that the courts have a duty to protect poor communities from the powerful and politically connected. The High Court agreed with the plaintiffs' pleadings that KCM was shielded from criminal prosecution by political connections and financial influence, which put them beyond the pale of criminal justice. The judge asserted that the fact that Zambia was in dire need of foreign investment to improve the well-being of its people should not mean the people should be dehumanised by 'greed and Crude Capitalism, which puts profit above human life' (ibid.). The decision momentarily gave the people a sense of having achieved justice. However, KCM appealed to the Supreme Court.

The second case, that of *Konkola Copper Mines PLC v. James Nyasulu and 2000 Others Appeal No. 1/2012 (2015)*, was filed in the Supreme Court in 2012, challenging the decision of the High Court. It was finally determined in 2015. Although the Supreme Court agreed with the decision of the High Court with regard to contamination of the water and that KCM was responsible, it reversed the order for damages as

determined by the High Court. The Supreme Court took a very narrow legalistic approach to the quantification of damages. It held that the judge based his decision to award damages on 12 unidentical medical reports; that is, there were no medical reports supporting the claims of the rest of the plaintiffs, and, therefore, their illnesses resulting from the contamination of their source of water, was not proved. They had not suffered a personal injury.

According to the Supreme Court, once the High Court had established that KCM had polluted the water source, he should have referred the matter to the Deputy Registrar of the High Court for assessment of damages. The Supreme Court reasoned that ordering damages, as the High Court had ruled, could have ‘the danger of conferring a benefit on other respondents, who would not otherwise have been entitled to such damages depending on the extent of the injury suffered’ (ibid.). The consequence of the decision was that only 12 people would receive very modest compensation, which in no way reflected the gravity of the contamination of water sources for the people.

Unable to obtain justice from the Zambian Courts, the members of the community looked for avenues of holding KCM accountable beyond the Zambian jurisdiction and commenced an action in court in the United Kingdom against Vedanta PLC, the parent company for KCM in Zambia. Pamela Sambo has argued that it is the failure of the Supreme Court to find an appropriate remedy and the inadequacy of the remedy the Supreme Court ordered that forced the victims to seek justice outside the country: ‘This omission, together with the aspect of the inadequate damages eventually awarded to the claimants who lost their livelihood as subsistence farmers led to a multiplicity of actions in search of justice outside this jurisdiction’ (Sambo 2019). In 2016, they filed a suit for compensation in the United Kingdom, with the help of Leigh Day, a pro bono law firm. The action in the United Kingdom targeted the parent company, Vedanta Resources PLC, which is incorporated in the United Kingdom and was then the holding company for KCM. When the case was filed, Vedanta opposed mainly only the ground that the British Courts had no jurisdiction to hear the matter, as the Zambian Courts were better placed. This objection proceeded all the way to the United Kingdom Supreme Court. It was finally determined in 2019 in the case of *Vedanta Resources PLC and Another (Appellants) v. Lungowe and Others (Respondents)* [2019] UKSC 20. The UK Supreme Court decided in favour of British Courts hearing the matter, thereby clothing the British Courts with the necessary jurisdiction to determine the main matter. The case was then remitted back to the lower court to hear the case on merits.

In coming to this conclusion, the Supreme Court was, among other factors, influenced by the fact that there was cogent evidence that there was a real risk that substantial justice will not be obtainable in that foreign jurisdiction in Zambia. This, however, did not mean a lack of independence or competence of the Zambian judiciary. This derived from two concerns: 'first, the practicable impossibility of funding such group claims where the claimants were all in extreme poverty; and secondly, the absence within Zambia of sufficiently substantial and suitably experienced legal teams to enable litigation of this size and complexity to be prosecuted effectively, in particular against a defendant (KCM) with a track record which suggested that it would prove an obdurate opponent' (ibid.). The Supreme Court concluded that there was a possibility based on this that the plaintiffs could not obtain substantial justice. The fact that only 12 people in the original Zambian case had medical certificates or medical evidence was telling. It was also felt that the Zambian legal profession lacked the resources and experience with which to conduct such litigation successfully.

Although the main matter is yet to be determined by the United Kingdom Courts, the fact that the Supreme Court allowed the case to proceed is a preliminary victory for the plaintiffs, as it provides a possibility of a decision that will vindicate their rights and particularly hold Vedanta and KCM accountable for polluting the water sources of the people. The decision of the Supreme Court was welcomed by the members of the community. Paul Nyasulu, who was the main plaintiff in the first High Court case, reacted as follows:

The Supreme Court judgment will finally enable justice for the thousands of victims of pollution by KCM's mining activities, who have suffered immensely since 2006 to date, in the Chingola district of Zambia. Their livelihoods, land and health have been irreparably damaged by pollution which has rendered the River Kafue completely polluted and unable to support aquatic life. Some have already died as a result. We are very grateful to the British Supreme Court for allowing the case to be tried in the UK where we trust that justice will finally be done. As our thirteen years of legal battles have shown, we have been unable to get justice in Zambia. (Foil Vedanta 2019)

Although the decision of the UK Supreme Court now offers the possibility of substantial justice to the community members whose water sources were polluted by KCM, the length of the process, which started in 2006 and had not concluded by 2019, demonstrates the real challenge faced by ordinary community members

to enforce their right to water against a powerful multinational.<sup>9</sup> The cases also implicitly demonstrate the failure of Zambian institutions, and consequently the Zambian government, from protecting the people's right to water.

#### 4. Conclusions

Water is a fundamental human right. Without it, other rights would suffer. Having it as a right, however, is not adequate, as there are still practical challenges many poor people face. This often includes finding redress when the natural sources of water are polluted by mining corporations. This chapter brought these practical challenges to the fore. The chapter gave an overview of what constitutes the right to water under international human rights law. It specifically discussed the challenge the victims of KCM's water pollution faced to vindicate their right to water. The chapter demonstrated the challenge poor people face against a more powerful mining conglomerate. With limited resources, corrupt or compromised government institutions, and inadequately acquainted legal profession, fate coalesced against the community members. The government failed to come to their aid. The Zambian judiciary, too, was unable to provide substantial justice to the victims. The picture one perceives from the case analysis is one of systemic failure of public institutions to defend the right to water of poor people. This allowed the mining giant to continue to pollute the water sources with impunity. All the institutions that should have helped to defend the right to water of the poor people seem to have contrived against them and left them at the mercy of the culprit mining company, without any effective remedy. In order to gain appropriate redress, the victims had to approach another jurisdiction, the United Kingdom, where the Courts were more responsive.

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Bulto, Takele Soboka. 2011. The Human Right to Water in the Corpus and Jurisprudence of the African Human Rights System. *African Human Rights Law Journal* 11: 348.

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<sup>9</sup> In January 2021, Vedanta settled the matter out of court and brought an end to the case filed in London. The terms of the settlement, however, are not disclosed and remain confidential.

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