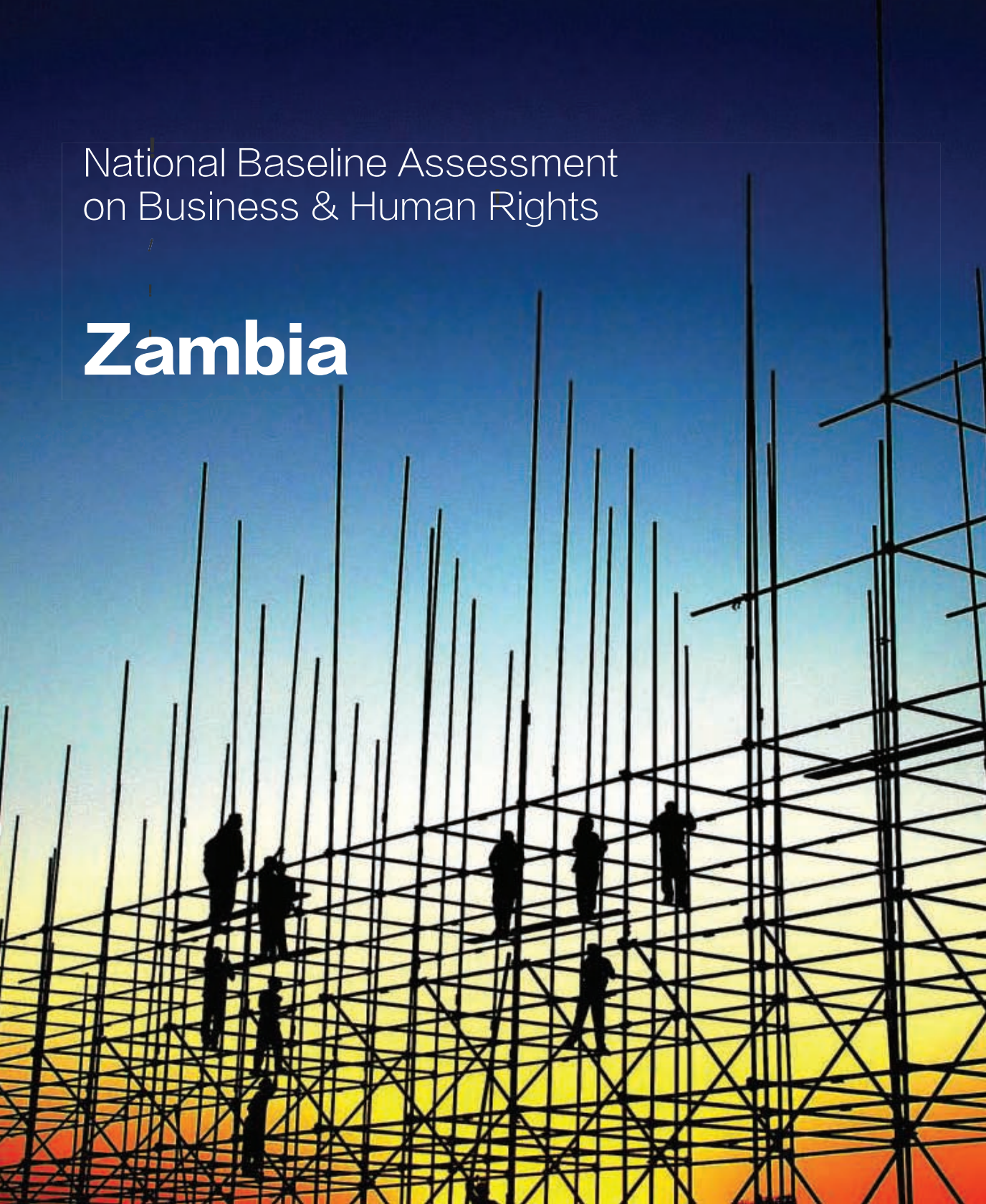


National Baseline Assessment on Business & Human Rights

Zambia



Human Rights Commission

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HUMAN RIGHTS



This Zambia National Baseline Assessment on Business and Human Rights was developed by the Zambia Human Rights Commission, with support from the Danish Institute for Human Rights.



The Zambia Human Rights Commission is the National Human Rights Institution in Zambia created in line with the Paris Principles. The Commission was established in 1997 under article 125 of the Zambian Constitution and mandated by the Human Rights Commission Act No. 39 of 1996 to promote and protect human rights in Zambia. The specific functions of HRC are to investigate all human rights violations, maladministration of justice, propose effective measures to prevent human rights abuse, visit prisons, other detention and related facilities with a view to assess and inspect conditions. The Commission is further mandated to carry out a continuing programme of research, education and facilitate rehabilitation of victims of human rights violations and abuse.

THE DANISH
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The Danish Institute for Human Rights (DIHR) is an independent, national human rights institution modelled in accordance with the UN Paris Principles. The Institute, which was established by statute in 2002, carries on the mandate vested in the Danish Centre for Human Rights in 1987. This encompasses research, analysis, information, education, documentation and the implementation of national and international programmes. The chief objective of the DIHR is to promote and develop knowledge about human rights on a national, regional and international basis predicated on the belief that human rights are universal, mutually interdependent and interrelated. The Institute believes that societies must be based on the rule of law, where the state protects and confers obligations on the individual while safeguarding the most disadvantaged and marginalized groups in society. The Institute cooperates with organizations and public authorities in Denmark, with academic institutions and humanitarian organizations in other countries, as well as with the Council of Europe, the EU, the OSCE, the UN, the World Bank and a range of international donors.



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Introduction

The Zambia Human Rights Commission is pleased to present this National Baseline Assessment on Business and Human Rights.

The Baseline provides a comprehensive account of the status of protection of human rights with regard to business activities in Zambia. In particular, the Baseline examines the measures that the Zambian Government has taken to protect human rights from the adverse impacts of business activities through laws, policies, regulation and adjudication, as well as the provision of remedy mechanisms. The Baseline identifies strengths and weaknesses in the Government's approach regarding business and human rights, and makes recommendations to address gaps.

In 2011, the United Nations Human Rights Council unanimously endorsed the United Nations Guiding Principles on Business and Human Rights, a framework that assigns responsibility to States and companies for addressing business-related human rights harms. Three years later, in June 2014, the Human Rights Council called on all of its Member States to develop National Action Plans (NAPs) to promote the implementation of the Guiding Principles in their respective national contexts.¹ To undertake a meaningful NAP, governments should know how far current law, policy, and other measures at the national level give effect to the State's duty to protect human rights under the Guiding Principles and other international business and human rights standards. A National Baseline Assessment (NBA) allows them to do so, by identifying initiatives already in place to regulate the

human rights impacts of businesses, and considering how businesses are impacting workers and communities.

This Baseline was carried out by the Zambia Human Rights Commission (ZHRC), with technical support from the Danish Institute for Human Rights (DIHR). Both organisations are National Human Rights Institutions with the mandate to promote and protect human rights. Both are A-status accredited by the International Coordinating Committee of National Human Rights Institutions, meaning that they are independent institutions free from government interference. The framework of the Baseline is based on the *National Action Plans Toolkit*, which was developed jointly by DIHR and the International Corporate Accountability Roundtable (ICAR).² The findings presented here are based on desktop research, as well as interviews and consultations with Zambian government, civil society and business stakeholders.

By providing a comprehensive and evidence-based account of the status of business and human rights in Zambia, the Baseline seeks to provide a platform for further dialogue between stakeholders about how to ensure that laws, policies and regulations facilitate business respect for the human rights of workers and communities. The Baseline also seeks to promote the development of a National Action Plan in Zambia that addresses the issues identified here.

The report is structured in two parts. Part 1 contains the introduction, including a brief overview of NAPs and the role of NBAs (Section 1.2), a description of the methodology applied to produce the



Baseline (Section 1.3), and an overview of the Zambian business and human rights context (Section 1.4).

Part 2 of the report outlines the key findings and recommendations of the Baseline assessment. Under Pillar I of the Guiding Principles the following topics are addressed: government commitment to implementing the Guiding Principles; participation in international standards and initiatives; collection and distribution of revenues from business activity; economic, social and cultural rights under the constitution; land ownership and acquisition; labour law; environmental law; access to information and corporate reporting; enforcement capacity;

businesses controlled by the State and State-owned enterprises; public service delivery; Government contracting and procurement; policy coherence; and investment negotiations and agreements. Under Pillar III judicial grievance mechanisms and non-judicial grievance mechanisms are addressed.

Annex I provides the complete National Baseline Assessment, a comprehensive overview of all laws, policies and regulations regarding the private sector that were examined as part of the Baseline, as well as gaps in their implementation. Annex II provides an overview of the stakeholder consultations.

National Action Plans & The National Baseline Assessment

In 2011, the Human Rights Council unanimously endorsed the Guiding Principles, a framework that articulates the roles and responsibilities of governments and businesses with regard to preventing and addressing business-related human rights harms. The framework consists of three complementary and inter-related pillars:

1. The State has the duty to protect against human rights abuses by third parties, including business enterprises;
2. Business enterprises have the responsibility to respect human rights, i.e. 'do no harm', regardless of whether the State takes up its own duties; and
3. Victims of business-related human rights harms must be provided with effective access to remedy.

Three years later, in June 2014, the Human Rights Council called on all of its Member States to develop NAPs to promote the implementation of the

Guiding Principles in their respective national contexts.³ NAPs are a well-established tool for governments to coordinate action and make concrete commitments to address a particular theme. NAPs on climate change, gender empowerment and poverty reduction have been undertaken by dozens of States. NAPs on Business and Human Rights aim to achieve the same internal collaboration and external target-setting. To date, human rights and business NAPs have been published by seven countries, including the United Kingdom, the Netherlands and Denmark. Niger, Mozambique and a number of other countries are currently in the process of preparing NAPs.⁴

To undertake a meaningful NAP, governments should know how far current law, policy, and other measures at the national level give effect to the State's duty to protect human rights under the Guiding Principles and other international



business and human rights standards. A NBA allows them to do so. A NBA identifies the laws, policies, regulation and other initiatives that are already in place to regulate the human rights impacts of businesses, includes information on how businesses are impacting workers and communities, and identifies gaps in protection.

NBAs should be carried out by neutral third parties and developed through

consultation with civil society, business and government actors. As such, National Human Rights Institutions (NHRIs) are perfectly placed to take up this role, and a number of ongoing NBAs are being carried out by NHRIs or involve strong NHRI participation. In Africa, current NBA processes in Zambia, Tanzania, South Africa and Kenya are led by, or involve the participation of, NHRIs.

Methodology

The framework for the Baseline is based on the DIHR-ICAR National Action Plans Toolkit. The Toolkit elaborates Pillar I and Pillar III of the Guiding Principles (Pillar II relates to company practice, so is not included) through a comprehensive overview of government protection of the human rights of workers and communities from business-related harms.

The Toolkit template was modified for the present assessment. Guiding Principle 2 and 7, for example, both of which relate to the conduct of businesses abroad, were omitted, as few Zambian companies operate in other jurisdictions. As can be seen in the Baseline (Annex I), other indicators were grouped or kept separated according to their relevance to the local context.

The core Baseline team consisted of five members of personnel from the ZHRC, led by the Head of Research, with support from two DIHR personnel.

The Baseline was conducted between June 2015 and January 2016 and involved the following steps:

1. Desktop research on laws, regulations, cases, reports and initiatives; analysis of secondary sources providing insights into the human rights impacts of businesses in Zambia (for the full list see the Endnotes)
2. Initial interviews in Lusaka with government, civil society and business stakeholders to verify the accuracy of the desktop research and fill in missing information (for the full list of stakeholders interviewed and consulted, see Annex II)
3. Preparation of the consultation draft of the Baseline
4. Further stakeholder consultation to verify the key findings of the draft Baseline
5. Finalisation and publication of the Baseline.



Business & Human Rights Context

Since 1995, Zambia's gross domestic product (GDP) has grown at an average of more than 5 percent per year. Growth in international confidence emanating from economic and structural reforms has seen a rise in foreign direct investment (FDI) in mining, construction, manufacturing and services, with production and exports growing apace.

According to 2010 Central Statistical Office (CSO) data, agriculture remained the largest employer, contributing 67 per cent of total employment, followed by wholesale and retail (10 per cent), community, social and personal services (9 per cent), manufacturing (3 per cent) and transport and communications (3 per cent).

Annual Growth Rate of Zambian GDP



Source: Bank of Zambia

In the past 10 years, growth in incomes and economies in the developing world (particularly the BRICS) has fuelled a worldwide boom in demand for commodities, and Zambia has been no exception. Between 2000 and 2010, mining's share of GDP grew to almost 10 percent of GDP. By 2012, construction more than doubled to 12.9 percent and transport, storage and communications grew by approximately two-thirds. These two sectors, as well as manufacturing and agriculture, now individually contribute more to GDP than mining. The structure of Zambia's economy is changing. Mining, construction, transport, storage and communications are growing, while the contribution of agriculture is shrinking.

Though mining and construction registered the most growth since the 1990s, they only employed 1.5 per cent and 1.7 per cent of the workforce, respectively.

In terms of gross domestic product, 2012 CSO data showed that wholesale and retail trade remained the largest (16 per cent), followed by construction (13 per cent) and agriculture (13 per cent). Though mining contributes significantly to export earnings, its GDP share remains low, equal to real estate and business services at 7 per cent.

The agricultural sector employs the majority of Zambians and makes a significant contribution to GDP. However,



it is worth noting that 40 to 60 per cent of Zambia's agricultural output is produced by medium and small scale farmers who mostly rely on family labour, with large-scale commercial farms contributing the minority of output and employment. The human rights impacts of agriculture, especially the use of 'casual' workers, child labour on tobacco farms and non-compliance with labour laws, have received considerable attention, and continue to be a concern for Zambian citizens and policymakers. In recent years, the tobacco industry has declined due to low prices and subsidisation of maize, driving many commercial farmers into wheat production, a sector that is highly mechanised and depends less on manual labour.

The construction, transport, wholesale and retail sectors have also attracted popular attention due to their human rights impacts. According to media and

NGO reports, few businesses provide workers with a living wage, and many give women workers lower pay and worse working conditions than men. Compliance with labour laws—providing protective equipment, paying social security and recognising adequate rest periods—continues to be poor.

Many of the most severe violations are in foreign-owned businesses and the informal sector. Construction, for example, is dominated by Chinese businesses and informal Zambian businesses, both of which reportedly deny Zambian workers the right to form or join trade unions, bargain collectively or carry out legal strike actions. These concerns, and the reasons behind them, cut across economic sectors and geographic regions.

The mining industry, the backbone of the Zambian economy, has also been at the centre of human rights concerns. These range from large-scale displacements to

Sectoral Percentage Share of GDP (1994 Constant Prices)

% Share of GDP at Constant Prices	Year												
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Agriculture, Forestry and Fishing	17.2	16.0	15.2	15.2	15.0	14.2	13.7	12.9	12.5	12.6	12.5	12.6	12.6
Mining and Quarrying	6.4	7.0	7.9	7.7	8.4	8.8	8.7	8.5	8.2	9.0	9.9	8.8	7.1
Manufacturing	10.5	10.4	10.7	10.9	10.9	10.6	10.8	10.2	9.9	9.3	9.2	9.3	9.6
Electricity, Gas and Water	2.9	3.1	2.9	2.7	2.6	2.6	2.7	2.5	2.4	2.4	2.4	2.4	2.3
Construction	4.9	5.0	6.0	6.9	7.9	9.1	9.8	11.1	11.4	11.7	11.8	12.0	12.9
Wholesale and Retail Trade	18.3	18.4	18.7	18.9	18.8	18.3	17.5	16.9	16.4	15.8	15.9	15.4	15.5
Restaurants, Bars and Hotels	1.9	2.0	2.3	2.4	2.4	2.5	2.8	2.9	2.8	2.9	2.4	2.4	2.3
Transport, Storage and Communications	6.0	6.2	6.1	6.1	6.1	6.5	7.4	8.3	9.1	9.2	9.9	10.5	10.9
Financial Institutions and Insurance	6.2	7.8	7.9	7.7	7.6	7.4	7.3	7.1	7.3	7.3	7.1	7.0	7.3
Real Estate and Business Services	5.5	5.4	5.5	5.4	5.3	5.1	4.8	4.6	4.4	4.1	3.7	3.4	3.1
Community, Social and Personal Services	7.7	7.8	7.7	7.4	7.1	7.5	7.7	6.1	6.6	6.6	6.6	6.7	6.8
Public Administration & Defense	4.4	4.2	4.0	3.9	3.7	3.7	3.2	3.4	3.3	3.1	2.8	2.9	3.0
Education	2.0	2.2	2.3	2.2	2.1	2.4	3.1	3.3	3.6	4.1	4.2	4.3	4.3
Health	0.5	0.6	0.5	0.5	0.5	0.5	0.5	0.4	0.5	0.5	0.5	0.5	0.6
Recreation, Religious, Culture	0.3	0.3	0.3	0.3	0.3	0.4	0.5	0.5	0.6	0.6	0.6	0.6	0.6
Personal Services	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.4	0.4
Less: ISM	-4.9	-4.8	-4.7	-4.6	-4.5	-4.4	-4.2	-4.1	-4.0	-3.8	-3.8	-3.5	-3.3
TOTAL GROSS VALUE ADDED	89.2	88.9	90.0	90.8	91.5	91.9	92.8	93.1	93.1	93.1	93.1	93.1	93.1
Taxes less subsidies on Products	10.8	11.1	10.0	9.2	8.5	8.1	7.4	6.9	6.9	6.9	6.9	6.9	6.9
TOTAL G.D.P. AT MARKET PRICES	100	100	100	100	100	100	100	100	100	100	100	100	100

Source: Central Statistical Office, 2012.



tax evasion, environmental pollution and poor working conditions. As in other sectors, these abuses arise from the intersection between companies, contractors and local and national government bodies, and victims of human rights abuses often do not know where to voice their complaints to have them addressed.

This Baseline aims to provide a resource to such victims, and to initiate a dialogue

between communities, government agencies and business enterprises to ensure that adverse business-related human rights impacts are prevented, mitigated and remedied.

Key Findings & Recommendations

Pillar 1: State Duty To Protect

GUIDING PRINCIPLE 1 EFFECTIVE POLICIES, LEGISLATION, REGULATIONS AND ADJUDICATION

Government Commitment to the Guiding Principles

The United Nations Guiding Principles on Business and Human Rights were unanimously endorsed by the UN Human Rights Council in 2011.⁵ The Guiding Principles state that: (i) governments have a duty to protect against human rights abuses by businesses; (ii) businesses have a responsibility to respect human rights; and (iii) victims of business-related human rights abuses must be provided with access to remedy.

The Human Rights Council called upon UN Member States to take deliberate steps to implement the Guiding Principles, including by reviewing laws, providing

guidance to companies and improving access to remedy for workers and communities that are adversely impacted by business activities.

Gaps in Implementation

- The Zambian Government has taken no deliberate steps to implement the Guiding Principles. This research found no examples in which the Government assessed its laws, regulations, policies or practices against the Guiding Principles or other international standards as a step toward more effectively preventing business-related human rights abuses.
- Investment authorities (the Zambia Development Agency and the Ministry



of Commerce, Trade and Industry) and other Government agencies provide no guidance on sustainable business practices or the Guiding Principles to foreign or domestic companies.

- No statutory body provides guidance to companies on the implementation of the Guiding Principles or other international business and human rights standards or frameworks.
- The Ministry of Mines, the Ministry of Commerce, Trade and industry, the National Construction Council and other responsible agencies do not provide any guidance to companies on the corporate responsibility to respect or the obligation to undertake human rights due diligence.

Recommendations to the Government

- Make a formal commitment to the Guiding Principles and commit to a National Action Plan for their implementation.⁶
- Map all relevant agencies with responsibilities related to preventing and addressing human rights impacts of businesses and provide training to the agencies on the Guiding Principles.
- Ensure that relevant agencies, such as the Ministry of Mines, the Ministry of Commerce, Trade and Industry, the National Construction Council and others, provide standards and guidance to companies and other stakeholders on their responsibilities under the Guiding Principles.
- Undertake sector-level analyses of the human rights risks and impacts associated with major industry sectors (e.g. extractive industries and agriculture) and take steps to address the risks and impacts identified.

Participation in International Standards & Initiatives

Zambia has signed a number of soft law instruments relevant to business and human rights, including the Abuja Declaration, the Beijing Platform for Action and the Africa Mining Vision. Zambia is also a voluntary member of the Extractive Industries Transparency Initiative, meaning that companies and the Government publicly report their payments and revenues, respectively.

Gaps in Implementation

- Despite evidence that public and private security forces have used excessive force in connection with the extractive industries, Zambia is not a member of the Voluntary Principles on Security and Human Rights or other initiatives or standards that address human rights in security arrangements for business operations.⁷
- Zambia has not supported or adopted the Guiding Principles on Large Scale Land Based Investments in Africa.
- Government commitments to soft law instruments have not been fully implemented in domestic law. The African Mining Vision, for example, has not been developed into a Country Mining Vision.

Recommendations to the Government

- Become a member of the Voluntary Principles on Security and Human Rights and provide guidance to Government agencies and companies on their implementation.
- Adopt and implement the Guiding Principles on Large Scale Land Based Investments in Africa.



- Implement the African Mining Vision by developing and implementing a Country Mining Vision and engaging in regional cooperation.
- The Ministry of Mines and the Ministry of Commerce, Trade and Industry should provide guidance to companies on joining and implementing the Voluntary Principles on Security and Human Rights.

Collection & Distribution of Revenues from Business Activity

The collection and distribution of revenues from business activities have profound importance for human rights, as they can prevent or enable the creation of an environment in which people are able to enjoy their rights. Under international human rights law, and as re-iterated in the Guiding Principles, States have the duty to protect against human rights abuses by businesses.

In Zambia, the extractive industries account for 9 per cent of gross domestic product, 67 per cent of exports and 30 per cent of Government revenues.⁸ Since 2005, foreign direct investment in Zambia has more than quadrupled, growing from \$356 million to \$1.5 billion per year.⁹ In the same period, however, the percentage of people living on less than \$1.25 per day has also risen, from 68.5 per cent to 74.3 per cent. The World Bank has noted that Zambia's increasing copper exports will not lead to socio-economic development if revenue is not translated into job creation in rural areas or invested in infrastructure or social services.¹⁰

Pursuant to tax laws, 95.87 per cent of extractive industries revenues are remitted to the central Government and 0.81 per cent to local councils.

Gaps in Implementation

- The Government has not developed legislation, policy or other measures to ensure that local communities benefit from revenues generated from business operations in their area.
- The framework for distributing revenue from the central authorities to provincial and local councils is not clear, and the use of these revenues is opaque.
- For the revenues remitted to local councils, there are no clear guidelines for how they should be spent, nor that their use is communicated to local communities.

Recommendations to the Government

- Develop and implement a clear plan for sharing natural resource revenues that stipulates roles, responsibilities and distribution between the central Government, local councils and local communities. The plan should be developed through a participatory and multi-stakeholder process.
- Issue guidelines to local councils specifying that extractive industries revenue spending should: (i) be aligned with local and national human development objectives; (ii) take a human rights-based approach to prioritisation; and (iii) be transparent and compatible with human rights standards.



GUIDING PRINCIPLES 1 & 3 LAWS, POLICIES, REGULATIONS & THEIR ENFORCEMENT

Economic, Social and Cultural Rights under the Constitution

The State duty to protect against human rights abuses by businesses extends to impacts on health, livelihoods, culture and environment. It includes all human rights.

Zambia was ranked 141st out of 187 countries on the 2014 Human Development Index. Education, life expectancy and per capita income have risen steadily since 2000, albeit slowly, and Zambia is now slightly above the average for Sub-Saharan Africa.¹¹

These improvements, however, mask significant disparities between rural and urban areas, and an economy heavily dependent on natural resource extraction. In 2010, the most recent year for which data is available, Zambia had the highest rate of income inequality in the world.¹²

Gaps in Implementation

- Under the current Constitution, citizens cannot make legal claims against the Government for failing to uphold economic, social and cultural rights. It is possible to make claims against business actors via other avenues, such as civil or criminal laws, but Government behaviour remains un-actionable.

Recommendations to the Government

- The Draft Constitution, which includes economic, social and cultural rights in the Bill of Rights, thus making them actionable, should be passed as soon as possible.

Land Ownership & Acquisition

There are two basic types of land tenure in Zambia: customary and State.¹³ Customary land is administered by local chiefs or traditional leaders, and makes up between 80 per cent and 96 per cent of the land in Zambia.¹⁴ The Lands Act permits the holder of customary land to convert land into leaseholds with permission from local chiefs.¹⁵

The Constitution protects the right to own property and prohibits deprivation of property without due process or proper compensation.¹⁶ The Commissioner of Lands, within the Ministry of Lands, Natural Resources and Environmental Protection, is responsible for land administration on behalf of the president. At the local level, more than 100 district councils are authorised to administer land on behalf of the Ministry of Lands. These councils process applications for leaseholds and permissions for conversion of customary tenure.¹⁷

In recent years, investments in mining, tourism and agriculture, as well as increasingly industrial development, have led to displacements of communities. These developments, accompanied by a growing population and increasing urbanisation, have resulted in mounting pressure on land. Poor people are the most vulnerable to displacement as their land rights are often not formally recognised.¹⁸

The Zambia Human Rights Commission reported in 2010 that communities had been displaced without being informed



beforehand, and that subsistence farmers had been resettled in urban areas. Displacements sometimes moved people further away from health facilities and schools.¹⁹

Gaps in Implementation

- Processes and procedures related to land acquisition, lease and use by companies are not clear. For example, it is not established under the Lands Act or other relevant law whether the company or the Government should negotiate with communities when purchasing land. Furthermore, the interaction between Government bodies—the Ministry of Lands and the Ministry of Mines, for example—is not clearly defined in law, resulting in duplicated, overlapping and inefficient processes. The role of local councils in private-sector land acquisitions is similarly ambiguous.
- Information on land status, use and acquisition is not systematically gathered or published by the Government. According to official statistics, approximately 94 per cent of the land in Zambia is customary land, with 6 per cent classified as statutory land.²⁰ These figures, however, do not exclude forests and game parks from customary tenure, and do not include a number of recent land acquisitions that converted large blocs of customary land into statutory land. Once land has been transferred from customary to statutory land, it cannot be transferred back. No updated land audit or chiefdoms map provides business, government or civil society actors with information about who should be consulted when acquiring or leasing customary land.

- There are no detailed guidelines in the law on the process to be followed in the event of resettlement or displacement of persons associated with land use for business investment. Though the Lands Act requires ‘consultation’ by businesses when purchasing land, this term is not defined, and it is not clear which actions meet the requirement under the law. Furthermore, the law does not state that such consultation should be compatible with human rights or take a human rights-based approach.
- The Lands Act does not provide guidance for calculating and distributing compensation in cases where a company purchases, leases or uses land or displaces its residents.

Recommendations to the Government

- Clarify the processes and procedures for land acquisition, lease and use by companies in the Lands Act, Draft Land Policy, Draft Resettlement Policy and other relevant laws and policies. Ensure that these procedures are clearly communicated to businesses and citizens.
- The Lands Act should elaborate the basic provisions in the Constitution to specify the calculation of compensation when land purchases or resettlement are carried out.
- Undertake a comprehensive land audit, including a new chiefdoms map, to provide an accurate account of land ownership. This audit should be carried out by an independent third party.
- The security of tenure provided in the Customary Land Bill should require



consultation with affected communities when land is earmarked for investors.

- The new Resettlement Policy and Guidelines for Compensation and Resettlement should be promptly finalised and publicised.
- The Lands Act (section 3(4)) and Draft Lands Policy should state that customary land purchase, lease or access by a company should require meaningful consultation (noting the constituent elements of free, prior and informed consent as defined in international law) and an access plan.
- Set aside some land as exempt from outright purchase. The Government should also reserve lands for qualified ownership arrangements whereby, for example, company purchase of land is contingent upon providing community access to communal areas for grazing or burial sites.
- The Draft Lands Policy should be presented for public consultation and comment, finalised and implemented to ensure full compatibility with international human rights standards.
- The Draft Customary Land Bill, which has been developed to address some of the gaps identified above, should be passed.

Labour Law

Zambia's labour laws generally comply with international standards. Zambia's 2012 Labour Force Survey, the most recent available, indicated that 88.7 per cent of employees worked in the informal sector, making them ineligible for benefits and protections under the Labour Law.

Ninety-seven per cent of agricultural workers were informally employed.²¹

In recent years, the issue of casual labour has emerged as a major concern. Casual labour is generally defined as the employment of a worker for more than six months on recurring contracts, without job security, pension, union representation or rest leave. Data on the prevalence of casual labour is not gathered by official statistics agencies, but estimates by the Mineworkers Union of Zambia indicate that up to 37 per cent of mining workers in Zambia are employed on a casual basis.²²

Vulnerable groups, such as persons with disabilities, are under-represented in employment. In 2005, the most recent year for which data is available, the employment rate for persons with disabilities was 45.5 per cent, compared to 58 per cent among persons without disabilities.²³

Women suffer more from unemployment than men, especially in urban areas (urban female unemployment is 36 per cent). In the formal sector, one employee out of four is female, and only 21 per cent of managers are women, falling short of the 2005 domestic SADC target of 30 per cent.²⁴

The activities of trade unions are restricted, and the Zambia Congress of Trade Unions has reported a steady deterioration of basic workers' rights in the private sector. For example, new workers in some companies, particularly multinationals, have been asked to sign statements pledging that they will not join a union as a condition of employment. There was particular concern about the behaviour of Chinese multinationals.²⁵



Gaps in Implementation

- Labour laws do not define or prohibit the casualization of labour. The Anti-Casualization Draft Bill has been tabled before Parliament for enactment into law, but has not been passed.
- The procedures for conducting a lawful strike are prohibitively long and require review. Furthermore, union members and their leaders are not protected under the law for reprisals by employers for workplace actions.
- District Child Labour Committees are inadequately resourced to conduct inspections to curb child labour.²⁶

Recommendations to the Government

- The Anti-Casualization Draft Bill should define and address casualization and provide for equal and decent employment opportunities for vulnerable groups.
- The Labour Department, including District Child Labour Committees, should be adequately resourced to execute their mandate.
- Procedures for holding a lawful strike should be reviewed and amended.
- Harmonise legislation providing for different labour related matters for ease of enforcement and monitoring of compliance.

Environmental Law

The Constitution declares that it is the State's responsibility to uphold laws and conduct its affairs in a way that will preserve, develop and utilise Zambia's natural resources in a sustainable way.²⁷

The 2011 Environmental Management Act ensures the right of every person to a

clean, safe and healthy environment,²⁸ and The Mining and Minerals Development Act of 2008 provides regulations for environmental protection in mining.²⁹

In recent years, business impacts on the environment have emerged as a major challenge. The growing footprint of the mining sector has been associated with air and water pollution, as well as the degradation of livelihoods for those relying on the land for food or income. A 2010 study found that the Copperbelt Province, home to much of the mining industry, is one of the most polluted areas in Zambia, with the Kafue River showing higher levels of pollutants than other African rivers.³⁰

Environmental impact assessments (EIAs) are required for any project likely to have a negative impact on the environment.³¹ Regulations for EIAs are set out in the 1997 Statutory Instrument no. 28, and public consultations are required for large business projects.³² The Zambia Human Rights Commission has reported, however, that in practice, local consultations were often conducted only with local chiefs, and did not include direct engagement with community members. Notifications of consultations were reportedly announced just a few days before consultations took place, and the environmental briefs produced as part of an EIA were long and complicated, leaving communities in the dark about what they contained.³³ Civil society organisations were not always aware that EIA processes were taking place, hindering them from participating.³⁴

Gaps in Implementation

- The provision in the Environmental Management Act requiring that EIAs include social issues does not specify



which social issues should be considered, and does not define what such consideration would entail.

- Provisions requiring public consultation as part of an EIA are similarly undefined. The law does not require EIAs to include non-technical summaries or to be available in local languages.
 - The Environmental Management Act does not require EIA practitioners to have specific professional skills or certifications.
 - The Zambia Environmental Management Agency (ZEMA) has restricted capacity to monitor impacts and pollution due to limited financial resources, equipment and personnel. The agency is only present in four districts, and does not have a sufficient number of social or technical specialists to carry out its mandate. It reportedly lacks the necessary equipment to measure contamination levels in air and water, leaving it dependent on companies to report pollution levels.³⁵
 - Pursuant to the Environmental Management Act 2011 (section 115(1)), the Minister can overrule a decision by ZEMA to approve or decline the go-ahead of projects based on environmental considerations, and there is evidence that this occurs in practice.³⁶
- That EIAs include meaningful consultation (referencing the constituent elements of free, prior and informed consent, as defined under international law) with affected communities.
 - That decisions made by ZEMA to decline or approve projects can only be overruled by an independent and impartial body, such as a court or tribunal.
 - ZEMA is mandated to provide environmental information to the public (Environmental Management Act 2011, section 86(1)) and to ensure that a central environmental management system includes all EIAs and management plans (section 87). These provisions should be expeditiously implemented.
 - Provide ZEMA with additional resources to enable the agency to effectively implement its mandate, including financing, equipment, training and human resources.
 - The Draft Regulations for Environmental Impact Evaluators proposes the establishment of a registration and certification process for impact assessment practitioners. These regulations should be promptly enacted and implemented.
 - Facilitate continuous training of ZEMA staff, impact assessment consultants, community leaders, and the judiciary on the promotion and protection of environmental rights.

Recommendations to the Government

- Amend the Environmental Management Act 2011 to require:
 - That EIAs address clearly defined social and human rights issues.



Access to Information & Corporate Reporting

Access to information is a component of the right to freedom of expression and is elaborated in a number of international and domestic legal instruments. Recent years have seen growing calls by consumers, regulators and investors for companies to report not only on their financial performance but also on their environmental and social impacts. Governments and international bodies have produced guidance on the content and form of such non-financial reporting, and a number of non-governmental organisations (e.g. The Sustainability Accounting Standards Board, International Integrated Reporting Council, Global Reporting Initiative, Carbon Disclosure Standards Board) have produced frameworks to elaborate how, and what, to report.

According to the Guiding Principles, 'State encouragement of, or where appropriate requirements for, [human rights] communication are important in fostering respect for human rights by business enterprises.' The Guiding Principles ask States to consider issuing binding non-financial reporting requirements 'where the nature of business operations or operating contexts pose a significant risk to human rights.'³⁷

Gaps in Implementation

- The Government does not currently require any non-financial reporting by companies. The Companies Act, the Securities Act, and the Banking and Financial Services Act all require financial disclosure by private and public companies, but do not include detailed non-financial aspects relevant

for compliance with the Guiding Principles.

- Companies listed on the Lusaka Stock Exchange are required to report on their observance of a number of additional standards, including some that have human rights relevance (e.g. the OECD Guidelines for Multinational Enterprises). However, only 23 companies are listed, most of which are foreign-owned and required to make such disclosures in the jurisdictions where they are headquartered.
- The Access to Information Law has been pending since 2002 but has not been enacted.

Recommendations to the Government

- The Access to Information Law should be promptly passed and implemented.
- All legislation relating to corporate reporting (e.g. Companies Act; Registration of Business Names Act) should be amended to include requirements for non-financial reporting, clearly including information addressing labour, environment, social and human rights issues.
- Issue guidance to businesses about what type of information to include in non-financial reporting, clearly defining labour, environment, social and human rights issues and targets.



Enforcement Capacity

The Ministry of Labour is responsible for inspecting worksites for compliance with Zambian labour law. The Zambia Environmental Management Agency (ZEMA) is responsible for inspecting business operations for environmental damage. The Ministry of Mines, Energy and Water Development is mandated to ensure compliance with occupational health and safety standards in mining.³⁸ The Occupational Health and Safety Institute carries out medical examinations, while the Occupational Safety and Health Inspectorate also conducts labour inspections.³⁹

Gaps in Implementation

- The research carried out for this Baseline found that most State agencies were under-resourced to implement their mandates to prevent and address business-related human rights abuses. This includes inspection agencies, licensing bodies and remedy mechanisms. In many areas, the law complies with international standards, but weak enforcement means that human rights abuses by companies are not investigated, addressed and remediated.
- Most State agencies' enforcement of laws focuses on businesses in the formal sector. As the vast majority of economic activity (89 per cent) in Zambia is informal, this leaves many significant human rights impacts unaddressed.⁴⁰
- The Ministry of Labour's enforcement powers are limited to making corrective recommendations (Employment Act, Section (64) and (65)). If the erring party disputes the

recommendation, remedial measures can only be enforced through the courts, a process that is slow and expensive.

- Police and other law enforcement officers are not sufficiently trained on human rights, especially as they relate to business activities.
- Foreign investors in Zambia operate in an enforcement gap. The Zambia Development Agency only monitors foreign investors receiving tax incentives, and does not coordinate with the Ministry of Labour or ZEMA to ensure that the business operations of foreign investors are systematically inspected.
- Revenue collecting bodies, such as the Zambia Revenue Authority, the Road Transport and Safety Agency and others, do not have the capacity to adequately track revenues or ensure that company activities match the reported revenues. Furthermore, under-resourcing of the supreme audit institution undermines the State's ability to ensure that businesses comply with their tax obligations.

Recommendations to the Government

- Increase resources to institutions such as ZEMA, the Patents and Company Registration Agency, the Zambia Development Agency, the Zambia Revenue Authority, the Labour Department, the Ministry of Commerce, Trade and Industry and others involved in promoting and protecting human rights related to business-activities, to ensure that these agencies are able to carry out their mandates effectively.



- Increase training on human rights for relevant Government departments and agencies to ensure that they are sensitised to the human rights responsibilities of businesses, common forms of human rights abuses and their remedy.
- Address human rights impacts in the informal sector. This may include, for example, carrying out impact assessments of key sectors, such as retail, construction or agriculture, and issuing recommendations for sector-wide efforts to improve conditions. These measures should be implemented in partnership with relevant domestic and international organisations (e.g. International Labour Organisation).

GUIDING PRINCIPLE 4 BUSINESSES CONTROLLED BY THE STATE & STATE-OWNED ENTERPRISES

The Guiding Principles state that, ‘where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations.’ This means that the State has an enhanced and particular obligation to ensure that any businesses that it owns or controls (such as State-owned enterprises or financial institutions that receive substantial State support) exercise respect for human rights.

Zambia has a number of large State-owned enterprises, including the Zambia Telecommunications Company, Zambia State Insurance Corporation, Zambia National Commercial Bank, Indo-Zambia Bank, Development Bank of Zambia, Zambia Consolidated Copper Mines-Investment Holdings, Ndola Lime, Zambia Electricity Supply Corporation and many others.

Since the closure of the Zambia Industrial and Mining Corporation and other key corporations such as the Industrial Development Corporation of Zambia and

the Finance and Development Corporation in the 1990s, State-owned enterprises in various sectors have been operating under the direct supervision of line ministries. In 2013, the Government began reorganising and reforming the system for regulating State-owned enterprises, a process that culminated in the establishment of the Industrial Development Corporation, a holding company that administers Government-controlled shares in companies.

Gaps in Implementation

- State-owned enterprises are regulated like privately owned companies, with no reference to the special obligations of the Government as specified in the Guiding Principles. The Government has no dedicated policy or guidance outlining the expectation that State-owned enterprises respect human rights.

Recommendations to the Government

- Develop and implement a policy stating that that State-owned enterprises must respect human rights and are obligated to exercise human



rights due diligence as outlined in the Guiding Principles.

GUIDING PRINCIPLE 5 PUBLIC SERVICE DELIVERY

The Guiding Principles note that States retain their duties under international human rights law to provide equitable public services regardless of whether those services are privatised.

In Zambia, a number of public services are provided by private or semi-private companies. Companies providing water and sewerage services, for example, operate as private companies but are wholly owned by local authorities.

In addition to some public services being provided by private actors, some companies provide services to their employees or the communities where they operate. The most prominent example of this is mining companies, many of which provide education, healthcare, water and sanitation to local communities. Mopani Copper Mines, for example, runs two hospitals, seven township clinics and several workplace clinics. Konkola Copper Mines runs two hospitals and eight clinics. These health facilities are available for free to employees and dependants and available to the public at a subsidised fee.⁴¹ Out of the 10 hospitals and 37 clinics previously operated by ZCCM, less than half continue to be run by mining companies, while the others have been handed over to the Government. Many of the company-run facilities are reportedly in better condition than those run by the Government.⁴²

Gaps in Implementation

- The Government does not assess the potential human rights implications of outsourcing the delivery of public services to private providers, nor are the private or semi-private companies that implement such services required to respect human rights and implement human rights due diligence.
- There is no systematic, publicly available information regarding which private sector companies provide public services to their employees or local communities. The legal regulations and standards governing these arrangements are unclear.
- There do not appear to be any Government controls or oversight in place to ensure that company-provided public services are implemented according to the requisite standards and effectively monitored for compliance with domestic and international standards. As such, it is not guaranteed that such services are provided in accordance with the Government's duties to protect, respect and fulfil human rights.
- Corporate social responsibility projects, including the delivery of public services, can be deducted from companies' tax burden, and are not necessarily aligned with national or local human development priorities,



nor coordinated with local communities.

Recommendations to the Government

- Monitor the delivery of any public services by companies to ensure that they meet the applicable standards, as well as the State's obligations under international law to protect, respect and fulfil human rights.
- Develop and implement a policy that governs company social spending that includes, at minimum, the

requirement that such spending is aligned with local and national human development objectives and that activities are designed and implemented in consultation with local communities pursuant to a human rights-based approach. Furthermore, such projects should include a long-term sustainability plan that includes the possibility of handover to appropriate Government or civil society actors.

GUIDING PRINCIPLE 6 GOVERNMENT CONTRACTING & PUBLIC PROCUREMENT

Just as the State retains its human rights obligations when it acts as a business, so do these obligations remain when the State contracts with businesses. Nearly half of Zambia's GDP consists of public procurement, and some of the country's largest and most impactful projects are in fact commissioned by the State.⁴³

The Zambia Public Procurement Agency (ZPPA) is responsible for managing State procurement, but does not issue individual tenders. More than 600 individual procurement agents in Government departments issue their own bidding tenders and carry out the award process, with ZPPA playing an oversight role.

Gaps in Implementation

- Bidding companies are monitored for financial criteria, but not on environmental, social or human rights performance. While procurement criteria include due diligence on contractors to ensure that they have not been convicted of crimes or are under sanctions, it does not include

non-financial criteria such as the existence of a human rights policy or due diligence procedures.

- There is no law, policy or other guidelines requiring the Ministry of Labour or ZEMA to provide information to ZPPA on labour violations or environmental damage. Therefore, companies that are found to violate the law or pollute the environment may not be barred from making further bids.
- The Government does not provide any advisors or systematic information that assists companies in carrying out procurement contracts in line with human rights requirements.

Recommendations to the Government

- Integrate human rights criteria throughout the public procurement system, including pre-qualification, award criteria, tender evaluation, monitoring and termination.



- Bar companies found to violate human rights or environmental standards from participating in further bids.
- ZPPA should provide human rights-based procurement best-practice guidelines to its procurement agencies.

GUIDING PRINCIPLE 8 POLICY COHERENCE

The Guiding Principles state that government duties under human rights law should be consistently implemented across departments and between the local and national level. This means that governments are obligated to assess the policies and practices of all agencies to ensure that the State duty to protect against business-related human rights abuses is effectively implemented across government agencies and activities.

Gaps in Implementation

- The interaction between State bodies charged with regulating the practices of business activities is unclear. Land acquisition by companies, for example, falls under the remit of at least four government institutions (Ministry of Lands, ZEMA, Office of the Vice President, local authorities and Ministry of Chiefs and Traditional Affairs).
- As noted previously, the interaction between ZDA and the Ministry of

Commerce when assessing investors is not clear. Monitoring the environmental, social and human rights impacts of businesses is spread across the Government (ZEMA, Ministry of Labour, etc.) without clear lines of reporting, coordination or collaboration.

Recommendations to the Government

- Identify and review key regulatory activities related to business human rights impacts (e.g. land acquisition, lease or use; investment contracts; taxation and revenue management; labour conditions; environmental impacts) to clarify the responsibilities of relevant ministries.
- Coordinate the monitoring of business activities between all agencies that conduct site visits, particularly ZEMA, the Ministry of Labour, ZDA and ZPPA.



GUIDING PRINCIPLE 9 INVESTMENT NEGOTIATIONS & AGREEMENTS

The Guiding Principles state that investment arrangements (State-investor contracts, bilateral investment treaties or any other investment agreements, treaties or negotiations) should not prevent States from exercising their human rights duties, and should be formulated and implemented in a manner that is consistent with business respect for human rights.

The Government provides incentives for companies to operate in high-priority sectors (manufacturing and infrastructure) and to create 'high-quality' jobs, defined as those requiring technical expertise. Incentives for investors include:⁴⁴

- Zero per cent tax rate on dividends for 5 years from year of first declaration of dividends.
- Zero per cent tax on profits for 5 years from the first year profits are made. For year 6 to 8 only 50 per cent of profits are taxable and in years 9 and 10 only 75 per cent of profits are taxable.
- Zero per cent import duty on raw materials, capital goods and machinery for five years.
- Deferment of VAT on machinery and equipment including trucks and specialized motor vehicles.

Zambia is currently party to 13 bilateral investment treaties and eight regional trade treaties.⁴⁵ Investment Promotion Agreements between Zambia and other States are published every year in the Ministry of Commerce Annual Report, and are announced publicly when they are

signed and come into force. Most Investment Promotion Agreements concern double taxation and remittances.

Gaps in Implementation

- The Government has not provided any guidelines or standards specifying that investment treaties and contracts (including State-investor contracts) contain human rights criteria and do not limit the Government's ability to regulate for increased environmental and human rights protection. Many such agreements are not publicly available.
- The Ministry of Commerce, Zambia Development Agency and Zambia Public Procurement Agency investigate whether potential investors have been convicted of crimes in other jurisdictions, they do not undertake systematic risk screening according to environmental, social or human rights performance. Furthermore, the interaction between these agencies and other Government inspection bodies, notably, the Ministry of Labour and ZEMA, is unclear, without obligations to coordinate between relevant agencies or report inspection findings across Government departments.
- Though investors receive incentives for operating in certain sectors, they are not incentivised to respect human rights.

Recommendations to the Government

- Include human rights criteria in investment agreements and contracts



with foreign investors in accordance with the UN Principles for Responsible Contracts, i.e. consider human rights from the outset. Ensure that relevant agencies monitor foreign investment projects for compliance with these principles, and that information on the human rights obligations of companies operating in Zambia is available to the public.

- Include non-financial criteria, particularly regarding environmental and human rights performance, in risk

screening and due diligence assessments of foreign investors. Clarify that the Ministry of Commerce has the ultimate duty to carry out and act on the findings of such risk screening.

- Revise the current incentives on labour to include decent work criteria in line with International Labour Organisation standards. Include environmental and human rights performance in the incentives criteria.

Pillar 3: Access to Remedy

GUIDING PRINCIPLES 25 & 26 JUDICIAL GRIEVANCE MECHANISMS

States have the obligation to provide effective judicial remedies to victims of business-related human rights abuses. This means not only establishing courts and other bodies to investigate and adjudicate business-related complaints, but also ensuring that the justice they deliver is swift, consistent, equitable and available to all without discrimination.

Zambia has a number of judicial remedy mechanisms relevant for addressing business-related human rights harms. Complaints of labour exploitation, including failing to pay wages and forcing employees to work, can be lodged with local labour officers, who will arrange for corrective action to be taken. Complaints can also be lodged directly with the Labour and Industrial Relations Court.⁴⁶

The Judicial Complaints Authority receives complaints regarding the misconduct of judicial officers.⁴⁷

Gaps in Implementation

While most Zambian institutions providing judicial remedies are adequately mandated, there are numerous practical barriers to access to justice for citizens, including:⁴⁸

- Cases are slow to process and can be expensive.
- In cases of human rights abuses by businesses, most citizens do not know where to file a claim. In disputes over land, traditional and formal courts, as well as the Land Tribunal, may have jurisdiction depending on the tenure under which the land is owned.



- Where judgments have been made in favour of victims of human rights violations, especially against the Government, compensation has been delayed or not paid at all.
- All of these practical barriers add up to the fact that very few successful cases of litigation against companies have been carried out. In the few cases where a judgment against a company was ordered, payment amounts have been small, and the process of accessing justice has taken years.⁴⁹

Recommendations to the Government

- Address critical issues regarding access to justice, including barriers to access to judicial remedies and prompt enforcement of judgments. This includes: ensuring speedy hearing of cases; further decentralising courts to more districts and the High Court to more provinces; recruiting more staff to the Legal Aid Board; providing more resources to honour court judgements; and decentralising the Industrial Relations Court to all provinces.
- The Ministry of Justice and judicial institutions should disseminate easy-to-understand information that clarifies judicial remedy mechanisms responsible for business-related human rights abuses. This information should be localised to the district level and presented in a form that is readily understandable to citizens.
- Agencies that deal with investigations of individual complaints (e.g. ZEMA, Ministry of Labour) should publicise the applicable remedy bodies.
- The Legal Aid Board should be decentralised so that it is available in regions where the most common and severe business-related human rights abuses take place.

GUIDING PRINCIPLES 25, 27, 28 & 31 NON-JUDICIAL GRIEVANCE MECHANISMS

The Guiding Principles recommend that, in addition to judicial mechanisms, States should establish alternative bodies where victims of business-related human rights abuses can seek redress. For these bodies to be considered effective, the Guiding Principles state that they must be legitimate, accessible, predictable, equitable, transparent, and rights-compatible and provide a source of continuous learning (operational-level mechanisms should, in addition, be based on engagement and dialogue).⁵⁰

Zambia has a number of non-judicial remedy mechanisms available to victims

of business-related human rights abuses. Land disputes, which most often relate to boundary issues, ownership claims and inheritance, are typically resolved by local traditional leaders.⁵¹ If a dispute cannot be resolved at this level it proceeds to senior and paramount chiefs. The Land Tribunal is intended as an accessible alternative to the formal court system.⁵²

The Zambia Human Rights Commission monitors human rights conditions and oversees local human rights committees in nine provinces. It has the power to investigate complaints and can make recommendations for compensation or



other actions to remedy human rights abuses.⁵³

The Anti-Corruption Commission investigates complaints of corrupt practices, and the Legal and Prosecutions Directorate within the Commission is responsible for prosecuting cases under the Anti-Corruption Act.⁵⁴ Depending on the nature of the allegations, the Commission may facilitate an administrative settlement or intervention that would provide some form of remedy to a victim of human rights violation. Complaints against police action can be reported to the Police Public Complaints Authority.⁵⁵

Gaps in Implementation

- Aside from the formal court system, which can be slow and expensive, other agencies do not have dedicated non-judicial complaint mechanisms. Though ZDA, the Ministry of Commerce and ZPPA monitor company activities, they do not have mechanisms for citizens to file complaints.
- The Government has not provided guidance to companies regarding operational-level grievance mechanisms.
- The State does not collect or publish information about available non-judicial bodies, such as the International Finance Corporation's Compliance Advisor Ombudsman or operational-level complaint mechanisms.
- Court-annexed mediation, though faster than the judicial system in resolving some human rights-related matters, is still relatively new and remains unaffordable to most

vulnerable groups and those living in rural areas.

- The Zambia Human Rights Commission, which is mandated to hear human rights-related complaints, is under-staffed and under-resourced. Though mandated to have 150 staff, it currently has only 53.

Recommendations to the Government

- The Ministry of Justice should disseminate easy-to-understand information that clarifies non-judicial grievance mechanisms for business-related human rights abuses (for example the International Finance Corporation's Compliance Advisor Ombudsman or the OECD's National Contact Points).
- The Zambia Human Rights Commission's complaints function should be expanded to make binding recommendations. Its funding should be increased to enable it to fully and effectively implement its mandate to promote and protect human rights.
- The Ministry of Commerce, Trade and Industry and the Ministry of Justice, in collaboration with community representatives and the Chamber of Mines, should provide guidance to extractive industries companies on human rights due diligence, including a component on operational-level grievance mechanisms that meet the effectiveness criteria outlined in Guiding Principle 31.
- Train more mediators, lower the cost and publicise the Court-Annexed Mediation mechanism to increase access, especially for vulnerable groups.
- Increase funding and improve the operations of the Land Tribunal.



ANNEX I: National Baseline Assessment on Business and Human Rights



Pillar 1: The State Duty to Protect

GUIDING PRINCIPLE 1

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

1.1. International and Regional Legal Instruments

Has the government signed and ratified relevant international and regional legal instruments?

Indicators & Scoping Questions	Implementation Status
<p>International Human Rights Legal Instruments</p> <p>Has the government signed and ratified relevant international human rights legal instruments such as ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, ICMW, CRPD, CRPD, the core ILO Conventions and any corresponding protocols?</p>	<p>The Zambian Government has ratified or acceded to most of the major international and regional human rights instruments. However, Zambia has a dualist system of law, meaning that international and regional legal instruments are not directly applicable domestically. They must first be translated into national legislation, policy or administrative measures before they can be applied. However, there is no</p>
<p>Notable gaps with regard to the implementation of international human rights instruments are as follows:</p> <p>International Covenant on Civil and Political Rights (ICCPR acceded 1984)</p> <ul style="list-style-type: none"> • Derogation clauses in Part II of the Zambian Constitution whose interpretation tends to curtail the enjoyment of certain rights in Article 17 (2) and (3), Article 23 (4). • Criminal and civil defamation laws, section and obscenity laws, and provisions of the penal code such as the Official Secrets Act and the State Security Act. • Some provisions and implementation of the Public Order Act, CAP 150. • Provisions in the Non-Governmental Organisation Act No. 15 of 2015. • Delays in enactment of the Access to Information law. 	



GUIDING PRINCIPLE 1

policy to guide domestication of international and regional human rights law.

International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded 1984)

- Economic, social and cultural rights are not enforceable under the current Constitution.
- Current legislation is inadequate to compel government to make public participation mandatory and obtain public consent when implementing projects that may have socio-cultural and environmental impacts. For example, Part VII of the Environmental Management Act provides for public participation in environmental decision-making, but does not prescribe how this should be carried out. Instead, it provides that “The Minister may, by statutory instrument, make regulations to enhance the ability of the public to acquire, receive or disseminate information, to participate in decision-making and to provide views on environmental issues.”

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, Ratified 1975)

The ICERD has not been fully domesticated into comprehensive domestic law. For example, the Commission, in its submission to OHCHR for a UPR compilation on Zambia, stated that “The Commission therefore supports the recommendation by the Committee on the Elimination of Racial Discrimination (CERD) to Zambia...that it facilitate the constitutional review process and amend Article 21(1) of the Constitution so as to ensure the full implementation of the prohibition of racial discrimination. The Committee draws the attention of the State party to its general recommendation XXX (2004) on non-citizens. It also stresses that respect for customary law and practices should not be ensured through a general exception to the prohibition of racial discrimination, but should rather be implemented through positive recognition of customary rights.”⁵⁷

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW ratified 1985)

- There is need to fully domesticate CEDAW and address constitutional limitations contained in Article 23 (4).



GUIDING PRINCIPLE 1

- Marriage is not defined in the Marriage Act-

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT acceded 1998)

- There is no law criminalising Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Only civil action can be taken against the perpetrator and the State.
- There is no law outlawing corporal punishment in all settings-

Convention on the Rights of the Child (CRC ratified 1991)

- There is no provision in the constitution of a child in statutes.
- There is a need to fully investigate the CRC and remove constitutional limitations which allow it to be non-justiciability of ECSR.

Convention on the Rights of Persons with Disabilities (CRPD ratified 2010)

The Act does not repealed provisions of the Criminal Procedure Code (CPC) that allow for the detention of persons with mental disability at the president's pleasure and does not provide for review of such detentions.

International Conventions for the Protection of All Persons from Enforced Disappearance (CPED ratified 2010)

- The Convention has not yet been investigated.
- **Optional protocol to the ICCPR (ratified 1988)**
- Very few people are aware of the mechanism and hence there is a need for awareness promotion among members of the public.
- Zambia has signed but not ratified the following international instruments:
 - Optional Protocol to the Convention against Torture (signed on 27 September, 2010)
 - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (signed on 29 September, 2002)
 - Optional Protocol to the Convention on the Rights of the Child on the sale of children



GUIDING PRINCIPLE 1

<p>child prostitution and child pornography (Signed on 29 September, 2008)</p> <ul style="list-style-type: none"> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (signed on 29 September, 2008) Optional Protocol to the Convention on the Rights of Persons with Disabilities (Signed on 29 September, 2008). <p>Zambia has signed for acceptance of the treaty procedures for the following:</p> <ul style="list-style-type: none"> CAT Article 20 (accepted on 13 February, 1999) CED Article 23 (accepted on 13 April, 2011). <p>Zambia has not signed, ratified or acceded to the following international human rights instruments:</p> <ul style="list-style-type: none"> Optional Protocol on the Protection of the Rights of All Migrant Workers and Members of their Families (not ratified) Optional Protocol on communications procedure Optional Protocol relating to the elimination of the death penalty Optional Protocol to the Covenant on Economic, Social and Cultural Rights relating to communication procedures. 	<p>The Zambian government has signed and ratified a number of regional human rights instruments, including the African Charter on Human and People's Rights.</p>
<p>Regional Human Rights Legal Instruments</p> <p>Has the government signed and ratified relevant regional human rights legal instruments, such as the African (Banjul) Charter on Human and Peoples' Rights, the American Convention on Human Rights, the European Convention</p>	<p>The Zambian government has signed and ratified a number of regional human rights instruments, including the African Charter on Human and People's Rights.</p>
<p>African Charter on Human and People's Rights (ratified 1984)</p> <ul style="list-style-type: none"> Gaps include those noted with regards to ICESCR, CESCR and CAT, above. There is no domestic law providing for effective action as provided for under Article 9 of the Charter. <p>African Charter on the Rights and Welfare of the Child (ACRWC ratified 1992)</p> <ul style="list-style-type: none"> Gaps include those noted with regard to ICCPR, AFRCH, CAT, and ACHR, above. <p>Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (ratified 2006)</p>	<p>The Zambian government has signed and ratified a number of regional human rights instruments, including the African Charter on Human and People's Rights.</p>



GUIDING PRINCIPLE 1

for the Protection of Human Rights and Fundamental Freedoms; and any corresponding protocols?

- Some gaps include those highlighted under CEDAW, above.
- **SADC Protocol on Gender and Development (signed in 2002)**
- Gaps include those noted with regard to ILO, UNICEF and CEDAW, above.

1.2. International and Regional Soft Law Instruments

Has the government signed relevant international and regional soft law instruments?

Indicators & Scoping Questions

International Human Soft Law Rights Instruments

Has the government signed relevant international human rights soft law instruments?

- The Zambian Government has signed a number of international human rights soft law instruments, including:
 - Lima Declaration of Gender Equality and Auditing Precepts (1977)
 - Maputo Declaration on Agricultural and Food (2003)
 - Rio Declaration on Environment and Development (1992)
 - Beijing Declaration and Platform for Action (1995)

Implementation Status

The Zambian Government has signed a number of international human rights soft law instruments, including:

- Lima Declaration of Gender Equality and Auditing Precepts (1977)
- Maputo Declaration on Agricultural and Food (2003)
- Rio Declaration on Environment and Development (1992)
- Beijing Declaration and Platform for Action (1995)

There is a need to improve the implementation of international human rights soft law instruments. The following are the gaps:

- **Lima Declaration on Gender Equality and Auditing Precepts (1977)**
 - There is a need to improve the appointment of heads of state Audit Institution (SAI), and inadequate implementation of the SAI mandate, e.g. audit of revenue law and providing advice meant to improve tax revenue collections.⁵⁹

Maputo Declaration on Agriculture and Food (2003)

Lack of domestication of the Declaration. For example, the agriculture budget allocations for 2011 to 2013 indicated that on average only half of the target of 10% of Zambia's annual budget had been allocated to the agricultural sector. Between 2007 and 2012, Zambia's expenditure allocation share in the national budget averaged 8.2% and this may have affected the creation of decent jobs in agriculture, a sector that employs the majority of people in the country. These gaps also apply to the Malabo (CAADP) Declaration.

Rio Declaration on Environment and Development (1992)



GUIDING PRINCIPLE 1

<p>The Zambian Environmental Management Act (2011) does not specifically demonstrate the Declaration; especially Principle 10 of the Declaration, which requires the participation of members of the public in decision-making, providing access to relevant information, and providing effective and appropriate redress and remedy where required.</p> <p>Beijing Declaration and Platform for Action (1995)</p> <p>Many of the provisions have not been implemented in domestic law and policy. Gaps include non-tangible domestication of the Declaration, especially those relating to strategic objectives F1 to F6 (women and girls' equality, article 1, 10-13 (human rights of women as they relate to stereotyping and discrimination).</p> <p>Recently, the Government's response to the United Nations Questionnaire on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcome of the 2000 World Summit for Women Session of the General Assembly (2000) does not provide responses on the following areas:</p> <p>The Government has only provided responses to six out of twelve thematic areas. These were women and poverty, women's education and training, violence against women, women in power and decision-making, women and the media, and the rights of the girl child.</p>	<p>The Zambian government has signed a number of regional human rights soft law instruments, including:</p> <ul style="list-style-type: none"> Grand Bay (Mauritius) Declaration and Plan of Action (1999)
<p>Notable gaps with regards to the implementation of regional human rights soft law instruments are as follows:</p> <p>Grand Bay (Mauritius) Declaration and Plan of Action (1999)</p> <p>The declaration provides for inter alia; ratification of international and regional human rights treaties for those countries that have not and regular submission of reports to treaty bodies as required. Further, it recommends the development and adoption of national action plans on human rights. No policy has been adopted by the Government on the above ratification of treaties in general and human rights treaties in particular. The Government is behind in submission of treaty reports, resulting in treaty bodies not periodically providing constructive observations and</p>	<p>Regional Human Rights Soft Law Instruments</p> <p>Has the government signed relevant regional human rights soft law instruments, such as the American Declaration of the Rights and Duties of Man and the ASEAN Human Rights Declaration?</p>



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recommendations. No human rights action plans have so far been developed.

1.3. UN Guiding Principles on Business and Human Rights

Is the State actively implementing the Guiding Principles?

Indicators & Scoping Questions

Implementation Status

Gaps

Formal Statement of Support

Has the State given a formal statement of support for the Guiding Principles?

None found

The Zambian Government has not given a public statement in support of the Guiding Principles.

Implementation Structures

Has the State put in place relevant structures to ensure implementation of the Guiding Principles, for example, through the establishment or designation of a body tasked with implementation measures or through the allocation of internal resources?

None found

The Government has also not enacted specific administrative measures to implement the Guiding Principles.

Capacity-Building

Has the State put in place measures to capacitate government actors and local citizens with knowledge and information on the Guiding Principles, for example, through workshops, conferences, or other events?

None found

The Government has so far not put in place any measures to capacitate government actors and local citizens with knowledge and information on the Guiding Principles.

Information

Has the State disseminated information about the Guiding Principles

None found

The Government has not disseminated any information about the Guiding Principles.



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through public media sources, internal guidance documents, or other materials?

1.4. Other Relevant Standards and Initiatives

Is the State supporting or participating in other standards and initiatives relevant to business and human rights?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Standards</p> <p>Has the government supported other standards on business and human rights, such as the IFC Performance Standards, the OECD Guidelines for Multinational Enterprises, and the UN Global Compact?</p>	<p>Company Law and the LuSE Code of Corporate Governance require the disclosure of most non-financial items recommended by the OECD Guidelines for Multinational Enterprises.⁶³</p> <p>Large public companies and Government agencies, including the Zambia Electricity Supply Corporation (ZESCO), Energy Regulation Board (ERB), Lusaka Water and Sewerage Company (LWSC), and the Rural Electrification Authority (REA), use international performance standards such as the International Finance Corporation's Social and Environmental Performance Standards (the IFC Performance Standards) when undertaking pre-project implementation due diligence.⁶⁴</p> <p>There are also many private sector projects in Zambia that seek international financing, some of which are required to meet the IFC Performance Standards as a qualifying criteria for doing so.⁶⁵</p> <p>Some types of development projects also refer to the IFC Performance Standards. For example, the Millennium Challenge Compact between the Millennium Challenge Corporation (an independent US Foreign aid agency) and the Zambian</p>	<p>The Government has not taken steps to support or participate in business and human rights standards; for example, requiring businesses to adhere to the IFC Performance Standards or the OECD Guidelines for Multinational Enterprises. It appears that companies implementing international performance standards are doing it voluntarily or are influenced by international finance institutions that are financing projects implemented by such companies.</p> <p>Some public companies in which the State has shares, such as Konkola, have been convicted of polluting the Copperbelt.⁶⁷ This indicates that performance standards have not been implemented consistently in practice.</p>



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<p>Initiatives</p> <p>Has the government participated in initiatives, multi-stakeholder or otherwise, on business and human rights, such as the Global Network Initiative (GNI), the International Code of Conduct for Private Security Service Providers Association (ICoCA), and the Voluntary Principles on Security and Human Rights (VPs)?</p>	<p>Government, focusing on clean water supply and sanitation, requires that the program will be implemented in compliance with the Millennium Challenge Compact (MCC) Environmental Guidelines, and the IFC Performance Standards.⁶⁶</p> <p>The Extractive Industry Network Zambia was registered in 2002 with the Institute of Societies. It is hosted by the Institute of Finance and Economics. The Advisory Board has representatives from the Ministry of Labour, the Ministry of Commerce, Trade and Industry, and mostly organisations, learning institutions and the private sector.</p>	<p>There is no evidence that the Government participates in, or actively works towards implementing, the following business and human rights initiatives, all of which are relevant for the Zambian context given that the extractive industries and agricultural sectors play a major role in the economy and society:</p> <ul style="list-style-type: none"> ▶ Voluntary Principles on Security and Human Rights (2000) ▶ Acceding to the Vision (2009) ▶ Guiding Principles for Large Scale Land Based Investments (2007)
<p>Zambia is a member of the Extractive Industry Transparency Initiative (EITI) and the Government of Zambia's SecRetariat, annually publishes a report on security and human rights paid to the State and local authorities in the form of a human rights</p>	<p>Zambia is a member of the Extractive Industry Transparency Initiative (EITI) and the Government of Zambia's SecRetariat, annually publishes a report on security and human rights paid to the State and local authorities in the form of a human rights</p>	<p>There is no evidence that the Government participates in, or actively works towards implementing, the following business and human rights initiatives, all of which are relevant for the Zambian context given that the extractive industries and agricultural sectors play a major role in the economy and society:</p> <ul style="list-style-type: none"> ▶ Voluntary Principles on Security and Human Rights (2000) ▶ Acceding to the Vision (2009) ▶ Guiding Principles for Large Scale Land Based Investments (2007)

1.5. National Laws and Regulations

Does the general law of the state provide protection against business-related human rights abuses?



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Indicators & Scoping Questions	Implementation Status	Gaps
<p>Constitution</p> <p>Does the constitution contain wording aimed at human rights protection?</p>	<p>Part III of the Constitution of Zambia provides for fundamental rights and freedoms. Part IX provides for economic, social and cultural rights, or what is referred to as the directive principles of State policy.</p>	<p>Some derogations under Part III of the Constitution are inconsistent with international law. A good example is the provision under Article 23 (4), which has consistently been cited by the CEDAW Committee concluding observations for compromising women’s rights⁶⁸. Another example is Article 20 (3), the provisions of which seriously compromise freedom of expression.</p> <p>A derogative clause in view of directive principles of State policy is provided for in Article 111 which states that the directive principles of State policy outlined in this part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.</p> <p>This constitutes a major hurdle to the State’s ability to respect, protect and fulfil economic, social and cultural rights and goes against the principles of human rights, of interrelatedness, interdependence, inalienability, universality and indivisibility of rights.</p>
<p>Labour Law</p> <p>Has the government put in place labour laws and regulations to ensure the protection and promotion of workers’ rights?</p>	<p>The Employment Act CAP 268 is the basic employment law, and provides for the basic employment contractual terms such as minimum contractual age; establishment of employment contracts; settlement of disputes arising from such contracts, and conditions of employment such as leave, facilities etc.</p> <p>The Industrial and Labour Relations Act CAP 269 (ILRA) provides for industrial relations, including collective</p>	<p>The Ministry of Labour does not issue any guidelines to company owners or managers about their human rights obligations, nor does it sensitise workers to their rights and available redress mechanisms.</p> <p>Though International Labour Organisation conventions and the ICESCR provide for equal pay for equal work, the Employment Act (CAP 268) does not provide for specific wording to this effect.</p> <p>Ministry of Labour linkages with ministries addressing vulnerable groups,</p>



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bargaining and the establishment of workers' and employers' organisations, their registration and their administration. The Act was introduced in 1964, with major revisions in 1971, 1990, 1993 and 1997.

The 1993 and 1997 changes were particularly important as they were designed to support economic liberalisation. The Joint Industrial Council (JIC) system, created to institutionalise collective bargaining, survived the changes, but the 1997 amendments to the Act removed the mandatory nature of the JICs.

The Industrial and Labour Relations Act (ILRA) established the Office of the Labour Commissioner, who is responsible for inspecting workplaces with regard to health and safety and workers' rights.

The minimum wages and conditions of employment (for workers) (amended by 2011) is a statutory instrument no. 47 of 2011 provides for provisions and wages regarding how much show workers can be paid.

The Minimum Wages and Conditions of Employment (General) (no. 47 of 2011) sets the minimum wages by category of workers.

Environmental Law
The constitution recognises the right to a healthy environment.

Has the government put in place environmental laws and regulations to ensure the

for example the Ministry of Youth Empowerment of the citizens Economic Empowerment Commission are not well resourced.

The Office of the Labour Commissioner is under-resourced in carrying out its mandate, hindering the implementation of labour rights in practice.

The Ministry of Labour is understaffed to perform its mandated role. The Ministry oversees 53 field stations out of 103 districts, and lacks resources to reach remote workplaces.

The Ministry of Labour focuses on the formal sector, to the exclusion of informal workers, despite the majority of the population being employed in the informal sector.

Even though the State, through the Industrial and Labour Relations Act (ILRA) 269, recognises the right of workers to strike in labour disputes, the right to strike is subject to so many procedural requirements that it is near to impossible for workers to hold a legal strike. As a result, no legal strikes have been held in Zambia since 1994.⁶⁹

Zambia's Environmental Management Act has the following gaps:

- The Constitutional recognition of the right to a healthy environment is not justiciable, as with all rights under section 2 of the constitution. While the Environmental Management Act provides for a clean and



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<p>protection and promotion of the rights of its citizens to a healthy environment, and livelihoods including, for example, clean water, clean air, and cultivatable land?</p>	<p>decision-making:</p> <p>(1) The public have the right to be informed of the intention of public authorities to make decisions affecting the environment and of available opportunities to participate in these decisions.</p> <p>(2) The public shall have the right to participate in decisions concerning the formulation of environmental policies, strategies, plans and programmes and to participate in the preparation of laws and regulations relating to the environment.</p> <p>(3) The Agency and the appropriate authorities shall establish mechanisms to collect and respond to public comments, concerns and questions relating to the environment including public inquiries and public hearings.</p> <p>92. Public review of decisions shall be conducted in the prescribed manner.</p> <p>93. Public hearings for any document under public review shall be conducted in the prescribed manner.</p> <p>94. The Minister may, by statutory instrument, make regulations to enhance the ability of the public to acquire environmental information, to participate in decision-making and to protect the environment.”</p> <p>In terms of addressing the rights of minorities and indigenous peoples, the legislation provides for protection of the environment and provides for punitive measures. The</p>	<p>healthy environment, it recognises this as subject to the constitutional provision, “Nothing shall be done in effect.</p> <ul style="list-style-type: none"> • The social component of the environmental impact assessment (EIA) requirement is not sufficiently specified in the law. The result is that impact assessments are generally focus on environmental rather than social and human rights issues, and that any coverage of social issues is minimal at best. • It provides community consultation in the EIA process is hampered by lack of information about projects and consultation concentrates on public hearings, rather than making provisions for in-depth community engagement and consultation during the EIA process itself. The Act does not provide for attention to vulnerable groups in environmental decision-making.⁷⁰ • The current legal framework does not require EIA consultants to be qualified or accredited. • The Zambia Environmental Management Authority (ZEMA) is not sufficiently resourced to implement its environmental monitoring functions. For example, whilst ZEMA is mandated to perform monitoring of environmental impact Management Plans, the Agency is only staffed to half of its allocated staff levels, hindering its ability to carry out the mandate. • No legal provision addresses cumulative impacts on the environment by companies. Only individual company impacts are regulated. • Final appeals regarding the go-ahead or not of projects may be
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<p>law provides that every person has a duty to cooperate with the State organs and State institutions and other persons.</p> <p>The Environment Protection Fund, under the Ministry of Mines, secures against future environmental liabilities that may arise from mining operations fail to meet their environmental responsibilities at closure of business.</p>	<p>decided by the Minister without seeking criteria to guide such decision-making, or requiring that such decisions are determined by an independent tribunal.</p> <ul style="list-style-type: none"> The law provides for public participation in decision-making but does not describe clearly how through the public influences decision-making. <p>The Environmental Protection of the Environment Protection Fund is repeatedly beset with numerous problems, including the Ministry of Mines being unable to hold defaulting companies accountable. Furthermore, mining companies do not fully contribute to the Fund. They also do not provide bank bonds or guarantees validated by the Bank of Zambia as required by laid down procedures and there is also failure by management (Ministry of Mines) to take action against defaulting companies.⁷¹</p>
<p>The Constitution provides for a right to property and requires the State to compensate land owners in cases of expropriation. Agrarian law is vested in the president.</p> <p>The Mining Act (Chapter 97:01 of 1995 provides for protection of both customary and customary land rights. Allocating customary land for investment requires consent from local chiefs and their traditional leadership. Customary tenure is obtained through the chief and does not result in a document or land title certificate.</p> <p>Under the current law, traditional chiefs are limited in how much land they can allocate to companies. Blocs of land</p>	<p>Though the law clearly defines the process of purchasing customary land, it does not provide sufficient safeguards to ensure that customary leaders act in the interests of their constituency.</p> <ul style="list-style-type: none"> The Government has no mechanisms in place to monitor or track purchases of customary land by companies, nor to monitor whether
<p>Property and Land Management</p> <p>Law</p> <p>Has the government put in place land management laws and regulations to ensure the protection of the rights of its citizens, including the recognition of customary land rights and the incorporation of traditional considerations into environmental and social impact assessments and resource licensing</p>	<p>The current law, traditional chiefs are limited in how much land they can allocate to companies. Blocs of land</p> <ul style="list-style-type: none"> The law does not regulate or specify in detail the administration of customary land tenure, for example how chiefs should allocate land to investors. Though the law clearly defines the process of purchasing customary land, it does not provide sufficient safeguards to ensure that customary leaders act in the interests of their constituency. The Government has no mechanisms in place to monitor or track purchases of customary land by companies, nor to monitor whether



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practices?

more than 250 hectares are acquired with authority from the president. Once land has been acquired, it cannot revert back to customary land, it remains State land.

The Lands Act also creates the Land Tribunal. Government administrative orders requires that 30% of land allocation be reserved for women, which has since 2014 been increased to 40%.

There are a number of other initiatives to strengthen Zambia's land governance, including:

- Amendments to the Lands Act to be introduced by parliament)
- Draft Land Policy (latest draft from 2014)
- Policy has been in draft for some years
- Customary Land Administration Bill (not yet published)
- National Research Policy, approved by Cabinet but not yet published)
- Researching and formalisation Guidelines
- Workers' compensation policy and national land titling commenced in 2013

promises made by companies during the negotiation phase of the creation of a Resettlement Plan are being fulfilled.

- Some women still resist the registration allocated under affirmative action in their husband's name.
- The Lands Act does not guarantee protection of customary areas of land that are used for subsistence purposes, for example for the collection of firewood.
- Valuation amounts used by the Government Valuation Department only assess the physical value of land, and do not include economic aspects such as the land's common use or cultivation.
- The Zambia Development Agency is mandated to set up a land bank that outlines what land is available for investment, but this has not been established.
- Administration is too centralised to adequately administer land. For example, the issuance of title certificates is only possible through the Ministry of Land Headquarters and key information about land matters is held only by the Ministry of Lands.
- The task of land banks is to assist in determining the extent of land ownership.

Health and Safety Law

Has the government put in place health and safety laws and regulations to ensure the physical and mental health of workers and

The Ministry of Labour is mandated to enforce the relevant legislative and statutory instruments pertaining to workplace health and safety.

The Factories Act (1966) CAP 441, the Mines and Minerals Act (2008) CAP 213, the Workers Compensation Act (1999)

The Labour Department and Occupational Safety and Health Inspectorates, which are charged with the responsibility of enforcing health and safety laws through the inspection of workplaces, are poorly resourced to effectively undertake their mandates.



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communities?

CAP 271 and the Occupational Health and Safety Act (2010) are the main pieces of legislation dealing with health and safety issues in the workplace. Review of health and safety legislation is currently ongoing and it is anticipated that by the end of the process the scope of coverage will be increased.

Safety standards in the mining sector are enforced by the Mines Safety Department (MSD) of the Ministry of Mines and Minerals Development (MMD). MSD is mandated to enforce the relevant legislative and statutory instruments, formulate new legislation and regulations, evaluate all aspects of safety in mining operations, offer technical advice and training, and offer exemptions from the relevant regulations where appropriate. The Occupational Safety and Health Services Department promotes and enforces occupational health and safety standards at places of work outside the mining sector, to ensure a safe and healthy working environment.

The Workers' Compensation Act provides compensation for disabilities and diseases suffered during the course of employment. As concerns equality of treatment, the Act covers all workers in Zambia regardless of nationality. It also covers accidents that occur or diseases contracted outside Zambia. Section 9(1) states that if an accident occurs or a disease is contracted by the worker while temporarily employed by a Zambia-based employer outside of Zambia, the worker shall be entitled to compensation in the same



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<p>Corporate and Securities Law</p> <p>Has the government put in place corporate and securities laws and regulations to support ethical corporate behaviour and business respect for human rights, such as through financial reporting, incorporation/registration, and stock exchange listing requirements?</p>	<p>manner as if the accident or disease had occurred or been contracted in Zambia.⁷³</p> <p>The Securities Act (2005) CAP 354 regulates the behaviour of corporate entities listed and intending to list on the Lusaka Stock Exchange. Currently, 23 companies are listed on the Stock Exchange.</p> <p>All listed companies are obliged to publish interim and annual financial statements within three months after the financial year. Listed companies are also required to disclose in the national printed media information that can affect the value of the price of their securities.</p>	<p>The legal requirement to furnish financial and non-financial reports on the performance of corporations is only applicable to the 23 companies listed on the Lusaka Stock Exchange. Non-financial disclosure is limited to information that can affect the value of the price of securities only.</p> <p>There is no specific guidance in law or policy regarding coverage of human rights and social impacts in reporting.</p>
<p>Tax Law</p> <p>Has the government put in place tax laws and regulations to support ethical corporate behaviour?</p>	<p>The Zambia Revenue Authority is the main administrator of tax law in Zambia. The legislative framework for taxation is provided under the Income Tax Act (2012) CAP 323 and the Customs and Excise Act (2014) CAP 322. The taxation of companies in Zambia is marked by multiple rates and preferential treatment. There are tax incentives and different tax rates across sectors.</p> <p>There is a general corporate tax rate of 35%, though sector-specific tax rates are typically lower: 15% for agriculture, 30% for mining, 15% for manufacturing of fertiliser, 15% for non-traditional exports, and 15% for charitable organisations.</p> <p>Each year, the Government publishes a 'yellow book' listing</p>	<p>Incentives and differential tax rates result in a low corporate tax yield. The corporate income tax burden is 2.7% of GDP, lower than the regional average of 2.94%.</p> <p>The Government's 'yellow book' listing all expenditures for the year is publicly available, but at a fee, limiting access for vulnerable populations.</p> <p>Even though the Mines and Minerals Act provides for revenue sharing, there has been no constitutional amendment to remove limitations placed on the discretion of the State regarding budgetary allocations to facilitate revenue sharing or policy guidelines on how the revenue sharing would be done.</p> <p>The vast majority of taxes and royalties paid by companies are remitted to the national treasury, without a clear legal framework for a proportion</p>



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	<p>all Government expenditures in full. The Mines and Minerals Act provides for revenue sharing.</p>	<p>of revenue distribution to local communities, where the impacts of investment may be most acute.</p>
<p>Trade Law Has the government put in place trade laws and regulations to support the protection and promotion of human rights within trade practices?</p>	<p>Trade laws are quite fragmented in Zambia, spread across the Zambia Competition and Consumer Protection Act (2013), Zambia Weights and Measures Act CAP 403, the Zambia Bureau of Standards Act CAP 416, the Local Government Act CAP 281, the Energy Regulation Act CAP 436, the Banking and Financial Services Act no. 25 of 2005, the Securities Act CAP 354, the Companies Act CAP 388 and many others.</p>	<p>In general, trade laws lack adequate implementation by responsible organs. For example, a World Bank study found that “Although a large part of the legal infrastructure for consumer/investor protection has been put in place, the Securities Exchange Commission does not have the capacity, either in terms of manpower or training, to fully implement the regulatory structure.”⁷⁴</p> <p>The Zambia Competition and Consumer Protection Commission lacks specific powers to overrule decisions of other regulatory agencies where the resulting actions will contravene the Competition and Consumer Protection Act. For example, after the privatisation of Zambia Telecommunication (Zamtel) in 2010, the regulatory agency, ZICTA, imposed a moratorium on the licensing of new entrants into the mobile telephone market until 2015 and the Commission was unable to stop this development.⁷⁵</p>
<p>Procurement Law Has the government put in place laws and regulations to support the incorporation of human rights considerations into the procurement by the State of goods and services from the private sector?</p>	<p>See UN Guiding Principle 5, below.</p>	<p>See UN Guiding Principle 5, below.</p>



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Anti-Bribery and Corruption

Has the government put in place laws and regulations aimed at promoting anti-bribery and combatting corruption within and across governments?

The key legislation to curtail bribery and corruption is the Anti-Corruption Act no. 3 of 2012, Prohibition and Prevention of Money Laundering Act no. 14 of 2001 and the Forfeiture of Proceeds of Crime Act no. 19 of 2012.

The Anti-Corruption Commission and the Drug Enforcement Commission are the key institutions enforcing laws to curb bribery and corruption in Zambia.

According to a report by Transparency International Zambia, the president controls the entire government machinery, including appointments of key personnel and control of funds.⁷⁶ The Anti-Corruption legislation does not regulate political party funding and expenditure on elections.⁷⁷

Though independent in law, all the institutions involved in combating bribery and corruption reportedly lack meaningful autonomy in practice, and are inadequately resourced to effectively carry out their mandates.⁷⁸

Consumer Law

Has the State put in place consumer laws and regulations to ensure business respect for human rights and to promote consumer interest in the human rights impacts of purchased products and services?

Zambia Competition and Consumer Protection Act no. 9 of 2013.

The Zambia Competition and Consumer Protection Commission (ZCCPC) is a statutory body set up to monitor and implement laws relating to competition and fair trade. The Commission makes its operations public through annual reports and publishes information through regular press releases. The Commission also holds workshops on a regular basis with Government institutions, companies, the judiciary and other competition authorities, among others.

Some weakness inherent in the 1994 Competition and Fair Trading Act, especially in the area of consumer protection and the administrative powers of the ZCCPC have been addressed in the new Competition and Consumer Protection Act no. 9 of 2013. The application of the laws and regulations governing competition and consumer protection are applied to all institutions, private, public and foreign

The Commission, due to inadequate resources, is only present in Lusaka and not the other parts of the country, hampering its outreach.

There is also inadequate public knowledge of their mandate including access to remedy offered by the Commission. The Zambia Competition and Consumer Protection Commission is limited in its powers to regulate monopolies, but can intervene to prevent mergers that create monopolies.

Consumer law is not grounded in international standards in providing remedies and redress to victims of human rights abuses. State organs are ill equipped, underfunded and inaccessible to most people in need of their services.



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alike. However, political interference and the categorisation of some activities as strategic in public institutions have introduced distortions in the market. In the new Act, the agency seeks to be more transparent and non-discriminatory by widely consulting stakeholders in relation to mergers and acquisitions, consumer protection and safety, and unfair trading. Media outlets are also used to highlight the enforcement of competition and consumer provisions.

The Zambia Bureau of Standards Act CAP 416 establishes the Zambia Bureau of Standards, a specialised organ serving the country in standardisation, standards formulation, quality control, quality assurance, import and export quality inspections, certification and removal of technical barriers to trade.

The Zambia Weights and Measures Act no. 13 of 2013 empowers the Zambia Weights and Measures Agency to ensure the accuracy of all measuring equipment and that of actual versus stated quantities on the labels of pre-packaged consumer goods.

Non-Discrimination Law
Has the State put in place anti-discrimination laws and regulations to support ethical corporate behaviour and business

The Zambian Constitution provides for protection from discrimination of all forms in article 23 (2).

There is no specific law that comprehensively deals with discrimination in all its forms.



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<p>respect for human rights?</p> <p>Privacy and Technology Law</p> <p>Has the State put in place information security and privacy laws and regulations to support ethical corporate behaviour and business respect for human rights?</p>	<p>The State has put in place laws regarding information security and privacy. The Electronic Communications and Transactions Act no. 21 of 2009 provides for protection of privacy in electronic communications and transactions.</p>	<p>The application of the law relates mostly to information and communications technology use. The legislation does not specify an organ responsible for its implementation. Few people know its provisions or how they can access remedy and redress when their right to privacy is violated.</p>
<p>Disclosure and Reporting</p> <p>Has the State put in place laws and regulations to support disclosure and reporting by corporations on human rights, labour rights, environmental impacts, corporate social responsibility, or other ethical issues?</p>	<p>See <i>Corporate and Securities law above and non-financial reporting under 3.3 below.</i></p>	<p>See <i>Corporate and Securities law above and non-financial reporting under 3.3 below.</i></p>
<p>Human Rights Defender and/or Whistleblower Protection</p> <p>Has the State put in place laws and regulations aimed at supporting business respect for the rights of human rights</p>	<p>The Public Interest Disclosure (Whistleblower Protection) Act no. 4 of 2010 provides for disclosure of conduct that is adverse to the public interest, in the public and private sectors. The law safeguards the rights of people who make public interest disclosures and provides a framework within which persons who make public interest disclosures shall be protected.</p>	<p>The State has not enacted a specific law, apart from provisions under the bill of rights in the Constitution, which protects human rights defenders. The Whistleblower Act is tilted towards protection of persons disclosing information regarding misappropriation of public resources and not human rights issues.</p>



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defenders and/or whistleblowers?

1.6. Investigation, Punishment, and Redress Measures

Do relevant State agencies responsible for law enforcement address business and human rights?

Indicators & Scoping Questions

Sector Risk Assessment

Is the State undertaking or supporting any specific activities to identify specific business sectors or activities that may have particularly negative impacts on human rights, such as the extractive, apparel, and other sectors?

None found

The State has not undertaken or supported directly any specific activities to identify specific business sectors or activities that may have particularly negative impacts on human rights, such as the extractives industries sector or the agricultural sector, two key industry sectors for Zambia.

Implementation Status

Gaps

Vulnerable Group Assessment

Is the State undertaking or supporting any specific activities to identify specific impacts on particularly vulnerable groups, such as women, children, minorities, and indigenous peoples?

The Anti-Gender-Based Violence Act no. 1 of 2011 seeks to domesticate some of the provisions of CEDAW and other relevant human rights instruments and soft laws relating to non-discrimination and the rights of women and girls.

The Employment of Young Persons and Children’s (Amendment) Act 2004 addresses the ILO Minimum Age Convention no. 138 of 1973.

The Children’s Code Bill, which is yet to be

Women in Law in Southern Africa (WLSA) has pointed out that the Anti-Gender-Based Violence Act includes the term ‘domestic relationships,’ which excludes some forms of gender violence such as violence associated with prostitution; violence in the workplace; and violence by the police and security forces, including torture of detained women.⁷⁹

There is a general lack of implementation of many provisions in the Act. One such provision is the creation of gender-based violence fund to be used for empowerment of victims.

Existing child labour laws do not address the provisions of the ILO Convention on Worst forms of Child Labour no. 182 of 1999. The Employment of Young persons and Children Act also falls short when it comes to implementation on



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<p>Police</p> <p>Have police authorities been provided with information and training on issues related to business and human rights? Are the police given statutory authority to address business-related human rights harms?</p>	<p>enacted into law by parliament, will aim to comprehensively address the Convention.</p> <p>The Persons with Disabilities Act no. 6 of 2012 is intended to promote and protect the rights of persons with disabilities. The Government, working with stakeholders, has developed a Disability Implementation and Action Plan and is currently undertaking a baseline study to understand the constituents of people with disabilities and how different groups can benefit from the legislation.</p> <p>The Citizens Economic Empowerment Commission (CEEC) Act creates the Citizens Economic Empowerment Commission and a Citizens Empowerment fund. The Fund provides resources to business owners in rural areas, and reserves 30% for women entrepreneurs.</p>	<p>the ground. There are still young persons and children under the age of 15 who are involved in labour, contrary to legislative provisions and the ILO Convention.⁸⁰</p> <p>The implementation of the Persons with Disabilities Act has generally been ineffective to date due to lack of a comprehensive and coherent action plan. Many buildings are not yet wheelchair access compliant and workplaces still discriminate against people with disabilities. In 2005, the employment rate of persons with disabilities was 45.5% of the population, compared to an employment rate of 58% among persons without disabilities.⁸¹</p> <p>There is lack of autonomy and independence in the implementation of the Citizens Economic Empowerment Commission’s mandate.</p> <p>The funds are limited and accessed mostly by those who are well connected whilst the poor and marginalised find it extremely difficult to access the funds.⁸² Administration of the funds is not decentralised enough for access by the rural poor majority.</p>
	<p>The police have the authority to address business-related human rights impacts when such impacts amount to the commission of a crime.</p>	<p>There is no publicly available record of information or training that has been provided to police regarding human rights principles or the Guiding Principles.</p> <p>There is also no information regarding the availability of guidance on police interaction with businesses, including prevention and redress of human rights violations. For example, In July 2006, four NFC mine workers were shot and wounded by the company’s management in combination with police while protesting during a wage dispute. In 2007, police shot and killed five miners</p>



GUIDING PRINCIPLE 1

<p>Labour, Health, and Safety</p> <p>Are relevant labour, health, and safety authorities aware of potential or actual adverse impacts by business on labour, health, and safety? Are such State actors given statutory authority to address business-related human rights harms?</p>	<p>The Occupational Health and Safety Act no. 36 of 2010 provides for the creation of the Occupational Health and Safety Board, which functions as a State oversight organ regarding implementation of the Occupational Health and Safety policy.</p>	<p>during violent protests over the working conditions at the Chambishi Mine.⁸³ Neither the mining company nor the Zambia Police were held accountable.</p> <p>The Occupational Health and Safety Board reports to the Minister of Health, which may compromise its independence and impartiality in the execution of its mandate.</p> <p>The statute has no criminal and civil sanctions provisions that can be enforced against businesses that violate occupational health and safety regulations.</p>
<p>Environment</p> <p>Have relevant environmental authorities been provided with information and training on issues related to business and human rights? Are such State actors given statutory authority to address business-related human rights harms?</p>	<p>The Zambia Environmental Management Authority (ZEMA) is the relevant statutory authority.</p> <p>To the extent that ZEMA is mandated to monitor environmental impacts and issue fines for non-compliance, as well as seek amendment of, or reject, project proposals based on anticipated adverse environmental impacts (that also impact on human rights) it can be said that ZEMA has statutory authority to address business-related human rights harms.</p>	<p>No guidance or training on business and human rights appears to have been provided to ZEMA personnel.</p> <p>ZEMA is insufficiently resourced to effectively exercise its mandate to monitor environmental impacts and seek their mitigation or redress. Such lack of resourcing includes: financial, equipment (e.g. limited air pollution monitors) and human resources (e.g. ZEMA is only present in four districts, and very few staff members have been hired to act specifically as social experts).</p>
<p>Tax</p> <p>Have relevant tax authorities been provided with information and training on issues</p>	<p>The State organ that administers taxes is the Zambia Revenue Authority, whose mandate and powers are provided for</p>	<p>There is no evidence of training in the Guiding Principles for tax authorities.</p>



GUIDING PRINCIPLE 1

related to business and human rights and connections to local tax laws? Are such State actors given statutory authority to address business-related human rights harms?

under the Zambia Revenue Authority Act no. 10 of 2014.

Judicial and non-judicial grievance mechanisms

See Pillar III below.

See Pillar III below.



GUIDING PRINCIPLE 3

In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

3.1. Development and Enforcement of Relevant Laws and Regulations

What laws and regulations exist that directly or indirectly regulate business respect for human rights?

See section 1.5, above.

3.2. Relevant Policies

Have policies that seek to foster business respect for human rights been adopted and publicly communicated by the State?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>National Action Plans</p> <p>Has the State introduced and/or implemented policies to help facilitate business respect for human rights through the adoption of National Action Plans (NAPs) on business and human rights, corporate social responsibility, development, anti-</p>	<p><i>None found</i></p>	<p>The Government has not yet developed a National Action Plan on Business and Human Rights.</p>



GUIDING PRINCIPLE 3

discrimination, government transparency, women’s rights, or human rights in general?

Sector-Specific Policies

Has the State introduced and/or implemented sector-specific policies to help facilitate business respect for human rights within particularly high-risk industries, such as the extractive, apparel, and other sectors?

The Ministry of Commerce has prioritised a number of sectors, including manufacturing, agriculture / forestry, construction and tourism as areas for future growth. In recent years, the Government has made significant investments in infrastructure to facilitate Zambia’s move into higher-value sectors and activities.

Government prioritisation of specific industry sectors does not include addressing the human rights impacts of those sectors, nor does it incentivise companies in those sectors to identify and address their social impacts. Investments in infrastructure have not been coupled with extra controls on environmental, social and human rights impacts.

Most sector-specific laws and policies lack implementation by the State, especially those regarding businesses and violations of human rights.

Apart from the extractive industries sector, other sectors that have a significant contribution to GDP and employment—such as construction, wholesale and retail—do not have transparency initiatives or sector-specific efforts to improve their human rights performance.

3.3. Corporate Reporting and Public Communications

What type of reporting and public communications by business enterprises on how they address their human rights impacts is required by law?

Indicators & Scoping Questions

Financial Reporting

Is corporate financial reporting required by the State? Is the law

Implementation Status

Publicly listed companies are required to send a copy of the annual accounts to each shareholder.
Banks are required to publish their annual statements in a newspaper of general

Gaps

No law or policy obligates all companies to report on their non-financial performance and ensure that human rights impacts are included in the consideration of factors



GUIDING PRINCIPLE 3

clarifying that, in some cases, human rights impacts are ‘material’ to the economic performance of the reporting company?

circulation in Zambia. Unlike publicly listed companies, banks are required to produce a statement of changes in financial positions and changes in shareholders’ equity from the last fiscal year in their annual report. Annual financial statements have to be made available to the Secretariat even if they are not published according to Lusaka Stock Exchange (LUSE) listing rules.

The Companies Act requires financial statements to include a balance sheet, income statement, and explanatory notes and must be accompanied by an auditor’s report. In addition, companies are not required to file a cash flow statement; however, the LUSE listing rules require firms to prepare their financial statements in accordance with the issuer’s national law and Generally Accepted Accounting Practices (Listing Rules 8.51 (a)). Large listed firms generally include a cash flow and changes in equity statement in their annual reports.

Companies are required to file consolidated financial statements, except in the case that the company is a wholly-owned subsidiary of another company incorporated in Zambia.

The Companies Act also requires that directors include a board report in the annual report.

The securities regulator monitors compliance through on-site inspections and following the public press against filings. Sanctions for non-compliance may include warnings, fines, suspensions, public reprimands, restatements, civil penalties and criminal penalties (Securities Act, Sections 48-52).

material to the economic performance of the company.

Non-Financial Reporting
Is corporate non-financial reporting required and enforced by the State? Is the law clarifying that, in

There are very limited human rights reporting requirements for companies as provided for under the Companies Act CAP 388. However, companies listed on the Lusaka Stock Exchange are required under the Securities Act CAP 354, to report on all their activities locally and elsewhere to the Stock Exchange and the Securities and

See above



GUIDING PRINCIPLE 3

some cases, human rights impacts are ‘material’ to the performance and operations of the reporting company?

Exchange Commission; these reporting requirements focus on assessment of risk to investors, and do not focus on human rights, nor do they include consideration of the supply chain. They are also encouraged to comply with OECD guidelines as part of enhancing good corporate governance in the boardrooms.⁸⁴

Voluntary CSR reporting by extractive industries companies has brought about public disclosure of vital information to the general public on how much the Government receives in terms of taxes; this in turn empowers citizens to make demands for certain development undertakings from Government. However, this transparency is limited to the extractive industries and apart from voluntary disclosure on CSR spending, no other vital information is disclosed regarding responsible business behaviour and adherence to international standards and the Guiding Principles.

Public Consultations

Are there legal requirements for companies to have public consultations before, during, and after the commencement of a major project that may impact local communities? Is there a requirement for the free, prior, and informed consent (FPIC) of impacted communities? Is there a mandatory public release of environmental and social impact assessments by companies?

There are legal requirements for companies to have public consultations before commencement of a major project that may impact local communities.

For more information, see the explanation on Environmental Law in section 1.5, above.

The requirements for public consultation and participation do not extend to project implementation and the project closure or exit phase.

There is no legal requirement for the free, prior, and informed consent (FPIC) of impacted communities. The environmental impact assessment final decision is determined by the Environmental Management Agency and it is not mandatory to publicly release decisions arising from environmental and social impact assessments by companies.

3.4. Guidance and Incentives



GUIDING PRINCIPLE 3

Does the State provide guidance and incentives for companies in terms of business respect for human rights?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Guidance based on industry sectors, human rights issues and company size</p> <p>Has the State developed guidance for businesses on respecting human rights that is appropriate to different industry sectors (for example, high-risk sectors such as extractives), particular human rights issues (for example, working conditions, discrimination), and different types of corporations (for example, MNEs, SMEs)?</p>	<p>The State provides incentives to foreign investors (tax holidays, lower corporate tax rates, duty-free imports, etc.) based on whether they operate in priority sectors and the number of jobs their investment creates.</p> <p>The State also provides incentives to companies that create a large number of 'high-quality' jobs, meaning those that require education or qualifications, and are likely to result in up-skilling of the Zambian workforce.</p>	<p>The State does not provide incentives to companies that manage their human rights impacts or engage in dialogue with their stakeholders over non-financial criteria. Though the legal framework regarding tax incentives is freely available, it is not clear if companies are receiving individual incentive contracts, and agreements with companies are generally not publicly available.</p> <p>The State has not developed any guidance for specific industry sectors on respecting human rights.</p>
<p>Guidance on expected outcomes and best practice</p> <p>Has the State provided indicators of expected human rights outcomes, information regarding relevant national laws and regulations, and examples of best practice and due diligence methods?</p>	<p><i>None found</i></p>	<p>The State has not developed indicators of expected human rights outcomes, information regarding relevant national laws and regulations, and examples of best practice and due diligence methods in relation to human rights and business.</p>
<p>Incentives</p> <p>Has the State provided incentives for business respect for human rights?</p>	<p><i>None found</i></p>	<p>The State does not provide incentives for businesses to respect human rights.</p>

3.5. National Human Rights Institutions (NHRIs)



GUIDING PRINCIPLE 3

Has the State formally recognized and supported the role of NHRIs in promoting implementation of the Guiding Principles?

Indicators & Scoping Questions	Implementation Status	Claps
<p>NHRI Establishment, Recognition and Support</p> <p>Has the State established a National Human Rights Institution (NHRI)? If so, how was the NHRI established, and what kind of recognition and support does the State provide for the NHRI?</p>	<p>The State established a National Human Rights Institution (NHRI), the Zambia Human Rights Commission (ZHRC), in 1996 under Article 125 of the Zambian Constitution. The functions of the Commission are provided for in the Human Rights Commission Act. These include establishing a programme of research, education, information and rehabilitation of victims of human rights abuse; conducting investigations into allegations of human rights abuses and visiting prisons and other places of detention. Section 9 of the enabling Act provides that the Commission 'has powers to 'do all such things as are incidental or conducive to the performance of the functions of the Commission'. This provision gives the Commission the mandate to deal with any other issues as long as they are in line with the functions of promoting and protecting human rights.</p>	<p>There is no formal State recognition of ZHRC as a key institution in promoting implementation of the Guiding Principles.</p> <ul style="list-style-type: none"> • Even though the ZHRC has a wide mandate that allows for addressing business-related human rights impacts, it has not been provided with adequate resources in terms of financing, human resources and political backing to work actively in this area.
<p>NHRI Focus on Business and Human Rights</p> <p>Does the NHRI's mandate include business and human rights? Does the State finance NHRI activities within the field of business and human rights? Does the State support the NHRI in providing guidance on human rights to business enterprises?</p>	<p>ZHRC, as a NHRI, is established with a wide mandate that allows it to implement the Guiding Principles. The Commission is currently increasing its work in business and human rights. For example, by providing training on business and human rights to parliament and engaging with other NHRIs, both globally and regionally, on the topic. Business and human rights is part of the current Strategic Action Plan of the Commission.</p>	



GUIDING PRINCIPLE 4

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

4.1. Businesses Owned or Controlled by the State

Does the State exercise special measures to support the human rights performance of State-owned or -controlled business enterprises?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Human Rights Due Diligence Requirements</p> <p>What types of human rights due diligence measures by State-owned or -controlled business enterprises are required by the State? How do associated government departments ensure that effective human rights due diligence is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of human rights performance information in management reports to relevant State agencies)?</p>	<p>Zambia has 41 wholly State-owned enterprises.⁸⁵</p>	<p>There are no dedicated policies applying to State-owned enterprises, nor are they subject to greater requirements than privately owned companies. They are regulated like all other private-sector actors.</p> <p>The only due diligence required of businesses is the environmental impact assessment (<i>see 4.2 below</i>). There is no law or policy requiring State-owned or controlled businesses to undertake supply chain management for the promotion of respect for human rights.</p> <p>There is further no evidence that the State has set out any other special measures to support the human rights performance of State-owned or controlled business enterprises.</p>
<p>Supply Chain Management Requirements</p> <p>What types of supply chain management measures by State-owned or -controlled business enterprises are required by the State? How do</p>	<p>ZPPA is currently developing guidelines on green procurement under the proposed revised</p>	<p>There is no evidence in law or policy that the State requires State-owned or controlled businesses to undertake supply chain management to ensure respect for human rights.</p>



GUIDING PRINCIPLE 4

associated government departments ensure that effective supply chain management is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of supply chain information in management reports to relevant State agencies)?

procurement framework to include green supply chain management.

4.2. Businesses Receiving Substantial Support and Services from State Agencies

Does the State exercise special measures to support the human rights performance of businesses receiving substantial support and service from State agencies (for example, export credit agencies, public banks, public pension funds, official investment insurance or guarantee agencies, development agencies, or development finance institutions)?

Indicators & Scoping Questions

Human Rights Due Diligence Requirements

What types of human rights due diligence measures by State-owned or -controlled business enterprises are required by the State? How do associated government departments ensure that effective human rights due diligence is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of human rights performance information in management reports to relevant State agencies)?

Implementation Status

The Development Bank of Zambia (DBZ) was established in 1972 pursuant to section 3 of the DBZ Act CAP 363 as a joint venture between the Government, Public Sector Financial Institutions, the domestic private sector and foreign institutions. It is committed to tackling poor and costly access to capital for investment and removing micro-level structural rigidities that hinder public and private investment growth, productivity, wealth, and employment creation.
DBZ endeavours to develop Zambia and empower its citizens by providing short, medium and long term financing and technical assistance to clients.

The Government also has shares in local banks such as

Gaps

There is no evidence in law or policy that businesses receiving substantial support and services from State agencies are required to take into account human rights considerations.



GUIDING PRINCIPLE 4

Supply Chain Management Requirements

What types of supply chain management measures by State-owned or -controlled business enterprises are required by the State? How do associated government departments ensure that effective supply chain management is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of supply chain information in management reports to relevant State agencies)?

Zanaco Bank and Indo-Zambia Bank.

None found

There is no policy or legislation in place to deal with supply chain management and human rights.



GUIDING PRINCIPLE 5

States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

5.1. Public Service Delivery

Does the State ensure that human rights are protected in situations where private enterprises provide for government services that may impact upon the enjoyment of human rights?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Legislative or Contractual Protections</p> <p>Has the State adopted legislative or contractual protections for human rights in delivery of privatised services by the central or local government, for example, for the provision of services related to health, education, care-delivery, housing, or the penal system? Do such protections include a State-performed human rights impact assessment of the potential consequences of a planned privatisation of provision of public services, prior to the provision of such services? Do public procurement contracts clarify the State's expectation that businesses respect human rights in delivering services and comply with human rights standards?</p>	<p>The State has adopted legislative protections for human rights in the delivery of privatised services by local authorities related to public health, education and housing.</p> <p>In the provision of water and sanitation services, the National Water and Sanitation Council (NWASCO) was established as an independent regulator to implement policy. The powers of NWASCO are vested in the Water Supply and Sanitation Act no. 28 of 1997. NWASCO regulates local authorities and commercial utilities providing water and sanitation and other non-commercial water and sanitation services run by local authorities and private entities.</p>	<p>There is no evidence that legal protections include requirements for the State to assess and address any potential human rights impacts of the consequences of privatising public services.</p> <p>Furthermore, there is no policy that guides the provision of such services by private businesses to ensure that they are carried out in line with the relevant national and international standards.</p>
<p>Awareness-Raising</p> <p>What measures does the State take to promote</p>	<p>The Copperbelt Environmental Project (CEP) was created with assistance from the World Bank to deal with environmental liabilities left by private companies and a fund was created to avoid burdening new mine owners with environmental issues they did not create.</p> <p>There are also companies established to provide specific services by the State, especially in the area of provision of water, in each</p>	<p>There is no evidence that the Government has undertaken an analysis of the human rights impacts of private companies providing public services where this is not part of their core business (e.g. private mining companies providing health care</p>



GUIDING PRINCIPLE 5

awareness of and respect for human rights by businesses that the State commercially contracts with?

Screening

What kind of screening processes does the State have in place to promote business respect for human rights? Does the State engage in selective processes that give preferential treatment to companies that demonstrate respect for human rights? Does the State exclude from the bidding process those companies that have demonstrated poor respect for human rights (such as poor and hazardous working conditions, as well as excessive use of force or maltreatment of individuals receiving care)?

Monitoring and Oversight

Do relevant State agencies effectively oversee the activities of the enterprises that provide services on behalf of the State? Does the State provide for adequate independent monitoring and accountability mechanisms of the activities of the private providers? Does the State provide for specific oversight of high-risk services, such as those related to health and security?

Other Measures

province.

In the area of provision of housing services, the National Housing Authority has been established to build houses. Some companies have been engaged by the State to build housing units. Some foreign companies (primarily from China) have entered into contracts with the Zambia Development Authority to build housing units in Lusaka and elsewhere.

Many health facilities, especially in Lusaka and other major town, are run by private businesses. Religious institutions also operate a number of health services institutions across the country.

In addition to some public services being provided by private or semi-private companies, a number of business enterprises provide education and health care to their employees or surrounding communities. This is most prevalent in the extractive industries sector, especially by companies that took over mines from formerly nationalised operations. Most of the services provided by companies are for their own employees and their families. Others who wish to access the services are required to pay a fee, which is normally too high for vulnerable people. For example, Mopani Mines runs two ISO-certified hospitals, seven township clinics and several workplace clinics. KCM runs two hospitals and eight clinics. These facilities are available free to employees and dependants but are also available to the general public at a subsidised fee.⁸⁶

None found

facilities to workers and local communities).

The Environmental Protection Fund is not aligned to the Guiding Principles.

The State is not party to the International Code of Conduct for Private Security



GUIDING PRINCIPLE 5

Is the State a party to the Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict?

Providers, nor the Voluntary Principles on Security and Human Rights.



GUIDING PRINCIPLE 6

States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

6.1. Public Procurement

Which types of requirements or incentives to respect human rights can be found in legislative measures or in terms of public procurement?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Planning for Procurement Needs and Risks</p> <p>Have State agencies decided whether their contractors must comply with specific human rights or protect against defined human rights harms as a contract obligation? If so, have State agencies made an effort to expand the scope of protection and clarify specific human rights definitions to resolve vagueness?</p>	<p>Each Government agency is responsible for its own procurement. The Zambia Public Procurement Authority (ZPPA) oversees 600 procurement agents as an umbrella body, providing guidance, standards and oversight. ZPPA's procedures require all procurement processes (above a spending threshold) to be carried out transparently through an open-bidding process taking no less than four weeks. Bidders are chosen based on financial criteria. ZPPA also administers a grievance mechanism wherein unsuccessful bidders can challenge the process by which they were not chosen as the contractor.</p>	<p>There is no policy or legal provision that bars contractors with records of human rights abuses from public procurement, except where a bidder is under a UN embargo.</p> <p>There have been no evident efforts to expand the scope of project screening requirements to include environmental, social or human rights considerations. Pre-award screening consists exclusively of assessing whether bidding companies are under UN sanctions or have been convicted of a crime in a foreign jurisdiction.</p>
<p>Providing Notice During Bid Solicitation</p> <p>Do State agencies notify potential contractors when there is a significant risk of a human rights violation that</p>	<p><i>None found</i></p>	<p>There is no evidence that State agencies notify potential contractors when there is a significant risk of a human rights violation that undermines fair competition.</p>



GUIDING PRINCIPLE 6

undermines fair competition? Does such notice trigger specific disclosure and compliance obligations?

Screening and Selection

In addition to evaluating price and capacity, do State agencies evaluate whether potential contractors are responsible, based on integrity and business ethics and on compliance with domestic law that protects the safety and health of workers and communities? Do State agencies engage in selective or targeted public procurement, such as preferential award to discriminated groups (for example, ethnic minorities) or to companies working to achieve specific human rights objectives (for example, gender equality)? Do State agencies require contractors to certify that they know their subcontractors, including specific locations of production or supply, and that they have management systems to ensure compliance? Do State agencies exclude companies with commercial contracts in high-risk countries or a bad human rights record from public procurement?

Section 61 of the Procurement Act allows ZPPA to refuse bids by companies that have been convicted of crimes in other jurisdictions or are under sanctions, where such information is available. All procurement contracts include a requirement for the bidder to follow all Zambian laws.

In awarding contracts, State agencies have no criteria for what constitutes the most economically advantageous tender, including human rights criteria.

There is no policy or law requiring State agencies to engage in selective or targeted public procurement, such as giving preferential awards to groups who are discriminated against or to companies working to achieve human rights objectives.

Contractors are not required to certify that they know their subcontractors or the locations of production or supply, or that they have management systems to ensure compliance with human rights standards.

There is further no evidence that in addition to evaluating price and capacity, State agencies evaluate whether potential contractors are likely to operate in a way that respects human rights.

Award Stage

Do State agencies have criteria and sub-criteria for what constitutes the most economically advantageous tender, including human rights criteria? Have State agencies taken steps to clarify how human rights

Small- and medium-size enterprises, Zambian companies and companies that ‘promote development’ are given extra eligibility points in the awarding of contracts.

As of September 2015, ZPPA was developing

There is no evidence that the State takes steps to clarify how human rights standards and policies might be used to form part of the award criteria for a particular contract.

Procurement awards are not made on the basis of non-financial criteria, and ZPPA is not mandated to do so.



GUIDING PRINCIPLE 6

standards and policies might be used to form part of the award criteria for a particular contract? Do State agencies require contractors to disclose information on their supply chain, including specific subcontractors and the addresses of factories or sites of supply? Do State agencies confirm a contractor’s assurances and required development of compliance plans during the award stage?

an e-procurement database that would publish information about all tenders and awarded bids publicly.

Bidders for Government contracts are not obligated to release information on their social performance, supply chain or use of contractors, and ZPPA auditors are not mandated (nor qualified) to assess based on such criteria.

Contract Terms

Is the State taking steps to ensure that human rights requirements, material to the procured good or service, are a part of contractual performance clauses? Have State agencies inserted compliance obligations into contract terms? When a State agency identifies a risk of harm or human rights violations, does it authorize contract officers to insert into the contract an obligation to comply with the domestic law of the country of production or supply?

None found

Procurement contracts do not include non-financial criteria.

Auditing and Monitoring

Do State agencies have information systems to audit and monitor contractors to ensure that the contractor meets its performance or compliance obligations and does not adversely impact human rights? Do such systems respond to work complaints? Are such systems independent from, yet accountable to, the State?

ZPPA monitors projects for compliance with the contractual terms of the procurement. This primarily applies to payment of taxes and social security for workers. The Agency has a program to promote ‘green’ procurement, i.e. projects that protect the environment and promote sustainability.

There is no evidence that ZPPA identifies risks of human rights violations. It does not authorize contract officers to insert into contracts an obligation to comply with the domestic law of the country of production or supply. ZPPA contracts do not include social or human rights criteria (beyond the requirement to follow all applicable Zambian laws), and the Agency does not monitor projects for social impacts or



GUIDING PRINCIPLE 6

		<p>labour conditions. Auditing for working conditions and environmental impacts are the responsibility of the Ministry of Labour and the Zambian Environmental Management Agency, respectively; there is no dedicated system for information-sharing between the relevant agencies.</p> <p>ZPPA has only 15 staff performing audits, though they are budgeted for between 30 and 40. Their full staff allocation is 95 employees, but as of September 2015, they only had 53 staff members.</p>
<p>Enforcement of Contract Terms and Corrective Action</p> <p>Do State agencies dedicate staff to enforcement of the contract terms and provide them with detailed policies? Have State agencies put in place procedures to correct adverse human rights impacts identified, such as financial or other remedies if a contractor violates human rights? Do the procedures favour changing the behaviour of the contractor to improve their human rights performance rather than simply terminate the relationship? Do State agencies provide for due diligence as both a defence and as a remedy for breach of compliance standards?</p>	<p><i>See above</i></p>	<p><i>See above</i></p>

6.2. Other Commercial Activities

Has the State taken measures to promote awareness of and respect for human rights by other enterprises with which the State conducts commercial activities?



GUIDING PRINCIPLE 6

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Business Partnerships</p> <p>Does the State take measures to promote respect for human rights among other businesses with which it engages in commercial relationships, such as through business partnerships for economic development and innovation (for example, growth funds, or strategic support for innovation in certain sectors, such as green energy or medical technology)?</p>	<p>There is no evidence of any measures taken by the State to promote respect for human rights in businesses with which it engages in commercial relationships.</p>	<p>There is no clear legal and policy framework to guide implementation of the Guiding Principles in this regard.</p>



GUIDING PRINCIPLE 8

States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

8.1. Policy Coherence

Have efforts been made within the State to support knowledge and understanding for human rights and business and the State duty?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Clear Commitment</p> <p>Has the State developed a firm written commitment to business and human rights, and has this commitment been communicated to governmental departments? Further, does this commitment help to clarify the role of different departments (for example, labour, business, development, foreign affairs, finance, or justice)?</p>	<p><i>None found</i></p>	<p>The State has not provided a firm written commitment to business and human rights.</p>
<p>Roles and Responsibilities</p> <p>Has the State developed a clear division of responsibilities to help coordinate human rights and business issues between and across different government agencies and departments?</p>	<p><i>None found</i></p>	<p>The State has not developed a clear division of responsibilities to coordinate human rights and business issues.</p>
<p>Resources</p> <p>Has the State provided the responsible entity or office with adequate resources in terms of economic funding and political backing, in order for it to work actively in contributing to meeting the duty of the State to protect</p>	<p><i>None found</i></p>	<p>There is no specific entity or office given the mandate and resources to deal with business and human rights issues.</p>



GUIDING PRINCIPLE 8

human rights within individual areas of responsibility and expertise?

Guidance and Training

Has the State developed guidance material and training to help clarify the roles of different departments in promoting and protecting human rights with regard to the role of business?

None found

The State has not developed guidance material or conducted training to help clarify the roles of different departments in promoting and protecting human rights with regard to the role of business.



GUIDING PRINCIPLE 9

States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

9.1. Bilateral and Multilateral Investment Agreements and Arbitration of Disputes

Has the State put in place policies, guidance, monitoring, and reporting for relevant ministries or agencies with regard to the conclusion of bilateral and multilateral investment agreements and with regard to the arbitration of disputes?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Human Rights Provisions in IIAs and BITs</p> <p>Has the State worked at promoting the inclusion of specific human rights provisions in International Investment Agreements (IIEs) and Bilateral Investment Treaties (BITs)?</p>	<p>Zambia has signed 13 Bilateral Investment Treaties (BITs) since 1966 and is currently negotiating with a number of countries. Zambia has, however, only ratified five of the 13 BITs.</p> <p>Out of the six BITs that are publicly available in English language on Investment Policy Hub (of UNCTAD) only the BIT between Zambia and Finland contains clauses explicitly referring to labour rights, health, safety and environmental measures; protecting the Zambian regulatory space to adopt measures to ‘protect public health and safety, including environmental measures necessary to protect human, animal or plant life’. None of the other five agreements make reference to human rights, labour rights, environmental matters or sustainability.</p>	<p>Whilst a number of the IIAs include provisions that address the protection of health and safety, labour, environmental and even human rights aspects, there is a notable absence of such provisions in the BITs that are publicly available.⁸⁸ This can in part be attributed to the nature of the agreements themselves, but also due to Zambia’s technical capacity to negotiate the contents of such agreements in its own favour.</p>
<p>Inclusion of Social Issues in IIAs and BITs</p> <p>Has the State worked at promoting the inclusion of social issues, such as the environment, labour rights, or social rights, in International Investment Agreements and Bilateral</p>	<p>Out of the eight other International Investment Agreements listed on Investment Policy Hub, all available in English language, the vast majority include references to the protection of the environment, including co-ordination for the sustainable development of natural resources and environmental policy measures, and the protection of labour rights. Similarly, most of these agreements refer explicitly to the protection of the State’s right to regulate in the public interest, including with regard to aspects such as health and safety, labour rights or environmental matters, and note that the State shall not derogate from such measures for the purpose of investment promotion (e.g. COMESA Investment Agreement).</p> <p>Investment Promotion and Protection Agreements (IPPAs) are bound to existing national laws</p>	



GUIDING PRINCIPLE 9

Investment agreements

and do not provide further guarantees. This means that existing laws that seek to promote and protect human rights remain applicable and no clauses will be included in IPPAs that nullify provisions in domestic law.

IPAs are published every year in the Ministry of Commerce Annual Report, and are accessible publicly when they are signed and come into force. Most IPPAs concern double taxation and royalties. Zambia has not had notable investor-State disputes.⁸⁷

Stabilisation Clauses

Has the State put in place measures to ensure that stabilisation clauses do not limit the host government's ability to meet its human rights obligations?

The State has put in place measures to ensure that stabilisation clauses do not limit its ability to meet human rights obligations. Zambia's previous (pre-2008) mining laws had authorised the Zambian government to enter into agreements with investors. This included freezing and balancing clauses. As well as the ability to void the laws relating to mining projects, the new mining laws (Mines and Minerals Development Act) also universally provided that existing investment agreements were no longer subject to the new law. Accordingly, a number of investors who had entered into agreements with the government that included stabilisation clauses under the previous regime were grandfathered into the new law. The enactment of the Mines and Minerals Development Act 2008, however, excluded the practice of negotiating individual deals with investors. The new law, therefore, partially ended the practice of ushering in a new wave of investor-State dispute resolution.

The Mines and Minerals Development Act has put in place measures to ensure that stabilisation clauses do not limit its ability to meet human rights obligations. However, pre-2008 agreements as well as agreements in other industry sectors may not include such provisions.

The law states that investments can be expropriated in the national interest though the term 'national interest' is not fully clarified.

9.2. Government Agreements

Has the State put in place policies and guidance for relevant ministries and agencies with regard to the conclusion of government agreements?

Indicator 9.1: Mining Contracts

Implementation Status

The Government gives preference to companies owned or co-owned by Zambians or bidding as

Gaps

State due diligence of investment



GUIDING PRINCIPLE 9

Agreements

Does the State take measures to ensure that human rights considerations are made in agreements between the State and corporations? Are such agreements aligned with the UN's Principles for Responsible Contracts?⁹⁰

a joint venture with a Zambian-owned company. Standard contracts stipulate that all companies operating in Zambia must follow all local laws, and include anti-corruption clauses to safeguard public interests.

State bodies, including the Ministry of Commerce, Zambia Public Procurement Agency and Zambia Development Agency, perform due diligence checks on potential investors to ensure they are not subject to international sanctions and have not engaged in illegal activity in other jurisdictions.

Investment incentives offered under the ZDA Act

The Zambia Development Agency (ZDA) Act of 2006 offers a wide range of incentives in the form of allowances, exemptions and certificates for companies. The Act provides for investment thresholds that investors have to meet in order to qualify for fiscal and non-fiscal incentives. There are five categories of investors, with different incentives offered under the ZDA Act.

Investments of US\$10 million and above

This category of investors is entitled to a range of incentives that is more robust for additional incentives other than what they might already qualify for under the ZDA Act.

Investments of US\$500,000 and above in Priority Sectors or Products and Multi-Facility Economic Zones

This category is entitled to being entitled to the general incentives, in addition to the following additional incentives:

- (i) Zero per cent tax rate on dividends for 5 years from the year of first declaration of dividends;
- (ii) Zero percent tax on profits for 5 years from the first year that profits are made. For years 6 to 8, only 50% of profits are taxable. In years 9 and 10, only 75% of profits are taxable.
- (iii) Zero percent import duty on raw materials, capital goods and machinery, including trucks and specialized motor vehicles for five years.

investor's laws. These include any human rights treaties, such as obligations to human rights violations in either jurisdictions or the existence of a human rights policy or community engagement.

Negotiators should negotiate in accordance with the Principles For Responsible Contracts, i.e. consider human rights from the outset.

ZDA only monitors for the implementation of tax agreements and incentives, not of environmental and social criteria.



GUIDING PRINCIPLE 9

(iv) Deferment of VAT on machinery and equipment, including trucks and specialised motor vehicles.

There are other incentives for investors in micro and small enterprises and investors who invest less than US\$500,000 in priority sectors or products.

The last category is for that of investors who invest any amount in a sector or product not provided for in the priority sector or product under the Act. This category of investors is at least 50% entitled to general incentives provided under the various pieces of legislation.

Income Tax incentives

- Income earned by shareholders in the first year of listing on the Lusaka Stock Exchange qualifies for a 2% discount on the basic annual ordinary tax rate. Companies with more than one-third of their shareholding in the priority sectors are eligible for a 7% discount;
- Implements, machinery and plant used in agriculture, manufacturing or tourism qualify for wear and tear allowance of 50% of the full value in the first two years;
- Buildings used for manufacturing, mining or other activities benefit from a wear and tear allowance of 10% in the first year and 5% in subsequent years;
- Duty free importation of most capital equipment for the mining and agricultural sectors;
- Corporation tax at 15% on income from:
 - mining;
 - fertilizer production;
 - Non-traditional exports (all exports other than copper and cobalt);
- Farm works allowance of 100% of expenditure on stumping, clearing, prevention of soil erosion, bore holes, aerial and geophysical surveys and water conservation;
- Development allowance of 10% of the cost of capital expenditure on growing coffee,



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<p>bananas, citrus fruits or similar plants;</p> <ul style="list-style-type: none"> • Farm improvement allowance—capital expenditure incurred on farm improvement is allowable in the year of incurring the expenditure; • Dividends paid out of farming profits are exempt for the first five years, from which the distributing company commences business; • Limited allowance of 10% on capital expenditure incurred on the construction or improvement of an industrial building is deductible; • Foreign exchange losses of a capital nature incurred on foreign currency used for the building and construction of an industrial or commercial building are tax deductible; • Dividends declared by companies, including those of motor vehicles, motor cycles and bicycles are exempt for the first five years; • Carry Forward of Losses for <ul style="list-style-type: none"> - Copper and Gemstone Mining (10 years) - Other minerals (5 years) - Non-mining (5 years) 	<p>Investment agreements were repealed with the enactment of the Mines and Minerals Development Act of 2008, and the practice of negotiating individualised terms with each investor was formally stopped.⁹²</p> <p>Investor protection and promotion agreements (IPPAs) between Government and companies are still being offered through the ZDA Act, but remain confidential. The standard IPPA template expressly excludes stabilisation clauses and states that fiscal terms and tax schedules</p>
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GUIDING PRINCIPLE 9

will not form part of IPPAs and will instead follow those provided in the national laws.⁹³

ZDA monitors the implementation of these agreements. The investment promotion agreements between countries are available in the annual report. The Ministry of Finance approves the investment incentives.



GUIDING PRINCIPLE 10

States, when acting as members of multilateral institutions that deal with business-related issues, should:

- (a) Seek to ensure that these institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
- (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuses by business enterprises, including through technical assistance, capacity building and awareness-raising;
- (c) Draw on these Guiding Principles to promote shared understanding and address international cooperation in the management of business and human rights challenges.

10.1. Membership in Multilateral Institutions

How does the State seek to ensure that the institutions it is a member of do not restrain its duty to protect nor hinder the business responsibility to respect?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Internal Procedures and Commitment</p> <p>Has the State established procedures and measures to ensure support for business and human rights frameworks, including the Guiding Principles, in positions taken internationally and regionally that exemplify, on human rights screening and documenting of operations, as well as training of trade and development officials on business and human rights frameworks)?</p> <p>Promotional Activities</p> <p>Does the State promote its duty to protect and the corporate responsibility to respect from multilateral institutions, including international trade and financial</p>	<p>Zambia is a member of a number of international and regional bodies including the United Nations African Union, Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA) and the African Development Bank (ADB). There is no evidence that Zambia has significant influence over these bodies regarding human rights and</p>	<p>There is no evidence that the State has established procedures and measures to ensure support for business and human rights frameworks, including the Guiding Principles, in positions taken internationally and regionally that exemplify, on human rights screening and documenting of operations, as well as training of trade and development officials on business and human rights frameworks)?</p>



GUIDING PRINCIPLE 10

institutions, the UN system, regional institutions, and with business organisation and workers associations?

business in its own territory or others.

Pillar III: Access to Remedy

GUIDING PRINCIPLE 25

As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

25.1. Redress for Business-Related Human Rights Abuses

Has the State put in place measures to ensure redress for business-related human rights abuses?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Sanctions</p> <p>Has the State put in place mechanisms that introduce civil liability, criminal sanctions, and administrative sanctions, such as fines or limited access to government funding, for human rights abuses?</p>	<p>The relevant policies, legislation, and regulations in place are highlighted below:</p> <p>Constitution</p> <p>The Constitution provides for Article 28 (1) sets an enforcement provision regarding civil liability in relation to human rights violations: ‘Subject to clause (2), every person alleges that any of the provisions of Articles 11 to 26 inclusive has been contravened or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court’.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> The Constitution of Zambia 1996, whilst providing for justiciability under the Bill of Rights (Part V of the Constitution), excludes economic, social and cultural rights from this part (Article 70). This means that rights-holders cannot seek redress for any breaches of economic, social and cultural rights under the Constitution. This has been amended in the Draft Bill for a new Constitution, where both civil and political rights are captured in the Bill of Rights and Justiciable
<p>Financial or Non-Financial Compensation</p> <p>Has the State put in place</p>	<p>Courts of Law</p> <p>The courts may adjudicate civil and criminal cases alleging violation of human</p>	



GUIDING PRINCIPLE 25

mechanisms that seek redress or compensation, such as fines or restoration of livelihood, to human rights abuses?

Prevention of Harm

Has the State put in place mechanisms that introduce processes for the prevention of harm, such as injunctions or guarantees of non-repetition, for human rights abuses?

Apologies

Has the State put in place mechanisms to promote apologies for human rights abuses?

rights.

Article 91 of the Constitution creates the following courts:

- the Supreme Court of Zambia;
- the High Court for Zambia;
- the Industrial Relations Court;
- the subordinate courts;
- the local courts; and
- such lower courts as may be prescribed by the Constitution.

Section 19 of the Subordinate Courts Act provides for jurisdiction of the Subordinate Court which includes criminal and civil jurisdiction of the aforesaid court.

Sections 9 and 10 of the High Court Act provide for civil and criminal jurisdiction of the Court.

The jurisdiction of the Industrial Relations Act is provided for under Section 8 of the Local Courts Act CAP 35.

The Industrial and Labour Relations Act CAP 269 provides under Section 81 (1) that:

(1) The Court shall have original and exclusive jurisdiction to hear and determine any industrial relation matters and any proceedings under this Act.

(2) The Court shall have jurisdiction to commit and punish for contempt any person who disobeys or unlawfully refuses to carry out or to be bound by, an order made against that person by the Court under this Act.

(Section VI, Article 16) provides that this Bill has not been passed.

- The Bill has several implications where the Constitution and other bodies of law interact. For example, the Environmental Management Act no. 12 provides for a 'right to clean, safe and healthy environment' (Article 4) but subject to the Constitution this right is non-justiciable and cannot be claimed by rights-holders.

- Due to a weak inspections regime, State measures are ineffective in regulating and redressing formal and informal sector human rights harms. The Office of Labour, whilst mandated to inspect the informal sector, is under resourced to effectively carry out its mandate.

- The Supreme Court judgement of 1999, held that other courts other than the Industrial Relations Court, can hear labour-related grievances such as breach of contract, unlawful dismissal etc. However, the powers to redress employers whose employment has been terminated vests in the Industrial Relations Court.



GUIDING PRINCIPLE 25

In terms of criminal and administrative sanctions, such as fines or limited access to Government funding, for human rights abuses, there are several specific legal provisions regarding different areas of possible human rights violations, for example:

- Workers Compensation Act CAP 271: The statute provides for mandatory responsibility contributions to the compensation fund and appropriate compensation for workers who sustain injuries in the course of work.
- Environmental Management Act no. 12 of 2011: Provides for establishment and enforcement of the Environmental Management Agency and regulations in order to take legal and non-judicial redress mechanisms into account for environmental protection.
- Penal Code Act CAP 87: provides for offences which may cover criminal offences which may cover:
- Depending on the specific circumstances, such as bribery, violence, fines as a way of punishing an offending entity. This is regulated by the Fines and Fines Act 2019.
- High Court Act CAP 16:10 (Order XXVII on Injunctions): The Superior Courts Act CAP 25:01 also provides for powers of granting injunction under Order XXVII. These orders provide for court procedures in placing injunctions.

State-Based Mechanisms

Has the State put in place judicial and non-judicial mechanisms and mechanisms where grievances can be raised and addressed? How the

see Guiding Principle 27, below.

see Guiding Principles below.



GUIDING PRINCIPLE 25

State identified and removed barriers (financial, legal, practical, and evidentiary) to accessing those mechanisms?	
Non-State-Based Mechanisms Has the State supported non-State based mechanisms?	See Guiding Principle 28, below.
Other Measures Has the State put in place other measures to ensure redress for business related human rights abuses?	None found

25.2. Roles and Responsibility Within States

Has the State defined clear roles and responsibilities within the State on access to effective remedy?

Indicators & Scoping Questions	Implementation Status	Gaps
Competent Authorities Has the State defined competent authorities to investigate allegations of business-related human rights abuse? If so, are these authorities equipped with the knowledge necessary in order to attribute the abuses to the relevant redress mechanism?	See Guiding Principles 26 and 27, below.	See Guiding Principles 26 and 27, below.



GUIDING PRINCIPLE 25

25.3. Public Information Sharing and Accessibility

Has the State developed measures through which to inform about grievance mechanisms available, grievances received, and relevant processes?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Public Information on the Mechanism</p> <p>Has the State made efforts to promote public awareness and understanding of remediation mechanisms, including how they can be accessed and their accessibility? Does the State inform about the outcome of grievances and actions for follow-up when systemic issues are identified?</p>	<p>Mostly absent</p>	<p>Gaps/Findings</p> <ul style="list-style-type: none"> There is very little information publicly available regarding available state measures to remedy and redress business-related human rights violations.
<p>Accessibility</p> <p>Does the State ensure that the mechanisms are available to all affected stakeholders (including, for example, women, peoples with disabilities, children, and indigenous peoples)? This includes providing services such as legal aid and legal counselling, as well as support to, for example, the NHRI, CSOs, or trade unions that work to ensure greater accessibility with grievance mechanisms.</p>		<ul style="list-style-type: none"> The Government has not taken concrete steps to promote public awareness and understanding of remediation mechanisms. Individual institutions publicise remediation services that they offer, but this information is fragmented and does not reach groups that are at the highest risk of business-related human rights abuses. Furthermore, while specific mechanisms might in principle be available to all affected stakeholders, it is not clear to what extent the Government has taken steps to ensure these measures to respond to and include, for example, women, peoples with disabilities, children, and indigenous peoples, the nature of lack of policy guidance and well packaged information.



GUIDING PRINCIPLE 26

States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

26.1. Judicial Mechanisms

Has the State put in place a judicial mechanism with the competency to adjudicate business-related human rights abuses within the national jurisdiction of the State? If so, are these mechanisms in line with the criteria of impartiality, integrity, and ability to accord due process?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>National and Regional Courts</p> <p>Do the national and regional courts have the competency to adjudicate business and human rights abuses, including for abuses that take place outside of their territorial jurisdiction, as permitted by the Guiding Principles and international human rights law? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?</p>	<p>The relevant judicial mechanisms for settlement of business-related human rights abuses across the country include:</p> <p>The Supreme Court</p> <p>The Supreme Court of Zambia is the apex court of appeal and has full jurisdiction and powers to hear and determine any the Constitution and laws, as outlined in Article 92 of the Constitution. The Supreme Court of Zambia has the final say on all matters, including the interpretation of the Constitution.</p> <p>The High Court</p> <p>The High Court of Zambia is established under Article 91(1) (b) of the Constitution of Zambia CAP 1. Article 94 (1) of the Constitution states that the High Court of Zambia shall have, except as to the proceedings in which the Industrial Relations Court has exclusive jurisdiction under the Industrial and Labour Relations Act,</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> A 2009 study by the African Human Security Initiative found that the judiciary suffers from an insufficient number of judges—for example, only 40 Supreme Court Judges for a country of 12 million people—and a lack of gender equality.⁹⁵ Consultations for this baseline indicated that while some progress has been made in terms of the gender imbalance, that the problem of understaffing remains.⁹⁶ Findings on the judiciary has been found to be inadequate, contributing to allegations of corruption by adjudicators. Access to justice is not always sufficient. This results from a combination of factors, possibly restricts access to legal representation, that may be sourced from legal Aid Board lacks autonomy from the Ministry of Justice.



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<p>unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and power as may be conferred on it by the Constitution or any other law.</p> <p>The High Court of Zambia is a superior court of record and has jurisdiction to supervise any civil or criminal proceedings before any Subordinate Court of the Court, and may make such orders, issue such writs and give such directions as it may consider appropriate for ensuring that justice is duly administered by any such Court.</p> <p>The Industrial Relations Court is established under Article 233 of the Constitution of Zambia and Part XI of the Industrial and Labour Relations Act CAP 269. Currently, there are two courts of appeal in Zambia and the other in Ndola. The Court has extensive jurisdiction in all industrial relations matters, including:</p> <ul style="list-style-type: none"> • Inquiring into and making decisions on collective bargaining agreements; • Interpreting the terms of collective agreements and negotiation agreements; and • Generally adjudicating upon any matter affecting the collective rights, obligations and privileges of employees, employers and representative organisations. <p>Subordinate Courts</p> <p>These are the lower courts and the courts of the first instance. The Subordinate Courts are a creation of the Subordinate Courts Act CAP 28.</p>	<p>the geographic reach of magistrates' free legal services is limited, law awareness among the poor and women of the rural areas, and the lack of lawyers in lower courts.⁹⁸</p> <p>Another major concern is the poor knowledge and use of international human rights instruments relevant to the administration of justice, even among judges.⁹⁹</p> <ul style="list-style-type: none"> • According to the Institute for Security studies, the Director of Public Prosecutions lacks autonomy, efficiency and effectiveness.¹⁰⁰ • Renewal of judges' contracts is subject to the executive branch.
<p>Labour Tribunals</p> <p>The Industrial Relations Court is responsible to the majority of people as the Court is established as just two</p>	<p>The Industrial Relations Court is responsible to the majority of people as the Court is established as just two</p>



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<p>Do national labour tribunals have the competency to adjudicate business and human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?</p>	<p>Act CAP 269. It has exclusive jurisdiction to hear most industrial and labour related grievances.</p>	<p>provinces. The gaps identified above, namely funding, renewal of judges' contracts and the insufficient number of judges, also apply.</p>
<p>Other Mechanisms Do other judicial mechanisms have the competency to adjudicate on business related human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?</p>	<p>The Lands Tribunal is created under Part IV of the Lands (amendment) Act CAP 184. It is a quasi-judicial mechanism. The main objective of establishing the Tribunal was to give the public a fast-track method of resolving land disputes that is efficient and cost-effective compared to the regular court system. The Lands Tribunal is a circuit court and can sit at any place in Zambia where there is a dispute. It investigates and makes awards and decisions relating to any dispute of compensation relating to the Lands Act. The Tribunal is based in Lusaka and the appeal is to the Supreme Court. The judiciary provides two Alternative Dispute Resolution (ADR) mechanisms. One is the Court Annexed Mediation for resolution of non-criminal human rights violations. Mediation was introduced in Zambia through Statutory Instrument No. 71 of 1997.</p>	<p>Accessibility to the Lands Tribunal is a major challenge, although it is a circuit court in reality due to funding most hearing are in Lusaka and Ndola. Poor funding and transport are also major constraints. Most under-privileged persons are unable to access the Lands Tribunal mainly due to its limited jurisdiction and lack of mandate to arbitrate over land disputes in customary areas and Statutory Improvements Areas where most under-privileged persons are situated.¹⁰¹ Court Annexed Mediation is only available in Lusaka and Ndola, limiting accessibility to those far away from the two centres.</p>

26.2. Barriers for Access to Judicial Remedy

Has the State taken measures to ensure that there are no barriers to access to judicial remedy for addressing business-related human rights abuses?



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Indicators & Scoping Questions	Implementation Status	Gaps
<p>Legal Barriers</p> <p>Has the State taken measures to ensure that there are no legal barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring that it is possible to hold corporations accountable under domestic criminal and civil laws, meaning that liability exists under the law; (2) ensuring that all members of society can raise complaints, including indigenous peoples, migrants, women, and children, and are afforded the same legal protection as for the wider population; (3) ensuring that extraterritorial harms can be addressed within the courts, as permitted by the Guiding Principles and international human rights law; and (4) ensuring that issues such as conflicts of law, statutes of limitations, parent company liability, and standards of liability do not result in barriers to victims of business-related human rights harms in accessing the courts?</p>	<p>The State has taken some measures to ensure that there are no barriers to prevent legitimate cases from being brought before the courts. For example, by decentralising courts to most districts and creating circuit courts. The Government has also created, under the Legal Aid Act CAP 34, the Legal Aid board to provide legal representation to those who cannot afford private legal service providers.</p> <p>The law itself provides for clear procedures in bringing criminal and civil litigations at different levels of courts, regarding abuses of human rights by businesses. It further provides that all members of society, including indigenous peoples, migrants, women, and children, are afforded the same legal protection as for the wider population and can raise complaints.</p>	<p>The decentralisation of courts is still limited to mostly urban districts along the lines of rail and provincial centres, thereby limiting access. Subordinate courts are present in only 54 out of 72 districts and on average, 15% of Magistrates serve rural areas whilst 85% are in urban areas.¹⁰²</p> <p>The circuit courts are poorly resourced.¹⁰³</p> <p>The law does not provide for extraterritorial harms to be addressed within the courts, as permitted by the Guiding Principles and international human rights law.</p>
<p>Practical and Procedural Barriers</p> <p>Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring financial support, (2) providing legal representation or</p>	<p>The State has created the Legal Aid Board to provide legal representation for the poor, class actions and multi-party litigations.</p> <p>The State also provides training to State prosecutors and judicial officials.</p>	<p>The Legal Aid Department is not very effective because it is underfunded and understaffed.¹⁰⁴</p> <p>The Legal Aid Fund charges a fee for users and is insufficiently funded, limiting accessibility for rights-holders.</p> <p>Civil society organisations and trade unions are not adequately</p>



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guidance, (3) providing opportunities for class-actions and multi-party litigation; (4) allowing for recovery of attorneys' fees; (5) preventing retaliatory actions against claimants; (6) reforming access to evidence; and (7) providing training for prosecutors and judges.

The Public Interest Disclosure (Protection of Whistleblowers) Act 2010 provides general and specific protection for whistleblowers from retaliatory actions.

supported by the Government in promoting grievance mechanisms for rights-holders, particularly vulnerable and marginalised groups. Paralegal services are similarly under-resourced.

The Legal Aid Committee was established by the Legal Aid Act to determine how legal aid should be distributed. The Committee is underutilised, however, and in practice decisions regarding receipt of legal aid are made by the Director of the Legal Aid Board at the head office or lawyers in provincial centres.

The law does not provide for financial support to litigants who cannot afford expenses attached to the judicial process or recovery of attorney fees.

Access to justice in Zambia is very expensive, slow and complicated for ordinary people, especially vulnerable and marginalised individuals and groups.

According to a survey carried out by the Danish Institute for Human Rights in 2012, 73% of juveniles in Zambia had never had legal representation. Eighty-two percent of survey respondents said that it would be difficult for them to access legal services. Distance was the greatest obstacle cited by respondents (over 60%), followed by cost (over 25%).¹⁰⁵

Social Barriers

Has the State taken measures to ensure that there are no social barriers to prevent legitimate cases from being brought before the courts? This

See above

There is no law or policy put in place by the State to specifically protect human rights defenders. Many human rights defenders in Zambia operate

Lack of awareness of rights-holders about their rights as well as the mechanisms themselves constitute major barriers to access to justice.

Judicial institutions have made limited efforts to sensitise people



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includes: (1) addressing imbalances between the parties, (2) targeted awareness-raising among vulnerable groups (for example, women, indigenous people, and children), (3) availability of child-sensitive procedures to children and their representatives, (4) legal aid and other type of assistance, (5) efforts to combat corruption, and (6) protection of human rights defenders.

as non-governmental organisations. The State has enacted a Non-Governmental Organisations Act no. 16 of 2009, to provide for regulation and coordination of civil society in Zambia. Part V of the Act provides for self-regulation of NGOs by creating the Zambia Congress of Non-Governmental Organisations and the Council of Non-Governmental Organisations.

about their role, their mandate, and how they can be accessed. Lack of gender sensitivity amongst the judiciary has been noted as a barrier to access to justice, with consideration of gender equality found to be particularly problematic in rural areas.¹⁰⁶

Corruption has been reported in judicial agencies. In the 2012 DHR survey, the police were perceived to be the most corrupt justice agency by 68% of respondents, followed by the Prosecution Services (59%), with legal aid providers ranked as the least corrupt (23%).¹⁰⁷

The cost of legal services is prohibitive for much of the population.

According to a number of NGOs consulted in the preparation of this Baseline Assessment, the NGO Act, in practice, poses significant hindrances to their work. Section 6 (1) – (4) provides for an NGO registration board, most of whose members are State agents. Only 7 members out of 15 are appointed by NGOs and are subject to veto by the Minister.

The Chairperson and Vice Chairperson are appointed by the Minister. Areas of operational focus of NGOs must be authorised by the board and appeals for deregistration are sent to the Minister for final decision-making. As such, the Minister has a significant role in permitting and restricting the areas of operational focus chosen by NGOs.

26.3. Remedy for Abuses Taking Place in Host-States



GUIDING PRINCIPLE 26

Has the State taken measures to address the issue of access of victims to judicial remedy for abuses by domiciliary companies in host States?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Remedy of Extraterritorial Effect</p> <p>Has the State put in place measures to promote access to remedy of claimants (including vulnerable groups such as indigenous peoples, women, and children) that have been denied justice in a host State, enabling them to access home State courts?</p>	<p>There is very little information available regarding State measures in place to promote access to remedy of claimants that have been denied justice in a host State, enabling them to access Zambian courts for remedy.</p> <p>An exception is section 9(1) of the Workers Compensation Act no. 10 of 1999, which states that if an accident occurs or a disease is contracted by the worker while temporarily employed by a Zambian based employer outside Zambia, the worker shall be entitled to compensation in the same manner as if the accident or disease had occurred or been contracted in Zambia.¹⁰⁸</p>	<p>There are no State laws, policies or any other measures identified, other than section 9(1) of the Workers Compensation Act no.10 of 1999, that are in place to promote access to remedy of claimants (including vulnerable groups such as indigenous peoples, women, and children) that have been denied justice in a host State, enabling them to access Zambian courts.</p> <p>It is also not clear how well known section 9(1) is to workers of Zambian companies abroad and how many have used the mechanism so far.</p>
<p>Forum Non Conveniens</p> <p>Does the State allow a court considering a forum non conveniens motion to consider factors against dismissal?</p>	<p>The State allows courts considering a forum non conveniens motion to consider factors against dismissal in addition to factors 90in favour of dismissal.</p>	<p><i>None found</i></p>



GUIDING PRINCIPLES 27 & 31

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

27.1. Types of Non-Judicial Mechanisms

Has the State provided effective and appropriate non-judicial grievance mechanisms?

Indicators & Scoping Questions	Mechanisms in Zambia	Gap
<p>Mediation-Based Mechanisms</p> <p>Does the State provide access of claimants to mediation-based non-judicial mechanisms such as National Contact Points under the OECD Guidelines? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?</p>	<p>The judiciary in Zambia was a traditional Dispute Resolution System. Mechanisms, primarily the judicial system, were referred to under existing laws. The Arbitration Act no. 19 of 2001 replaced the Arbitration Act no. 3 of 1933), arbitration was not available in the enactment of the Arbitration Act no. 19 of 2001. Courts were known to supervise the arbitration process. Other than judicial system based remedy mechanisms, there are no other mechanisms available.</p> <p>The Zambia Law Development Commission has an administrative mechanism for resolving complaints, especially of land disputes between neighbouring chiefdoms.</p> <p>The Anti-Corruption Commission's Integrity Committee is an administrative mechanism that hears cases related to public-sector corruption and transparency in ministries, departments and agencies. The concept has been extended</p>	<p>The fees payable to mediators may not be affordable to some, in particular vulnerable and marginalised individuals and groups.</p> <p>ADR mechanisms are relatively new mechanisms and still require promotion to the general public.</p> <p>The mechanisms (ADR) do not meet the effectiveness criteria under Guiding Principle 31, in particular accessibility is an issue as the ADR mechanisms are only available in certain centres; furthermore, there is a fee to register and witness compensation:</p> <ul style="list-style-type: none"> As far as the schedule of occupational diseases under the Workers Compensation Act, the review mechanism is not timely and limited. However, the generally accepted approach is to review and update the schedule whenever there is a change in the list of
<p>Adjudicative Mechanisms</p> <p>Does the State provide access of the claimant to adjudicative mechanisms such as government-run complaints offices, can these mechanisms be used for remedying business-related human rights abuses, can these mechanisms be used for remedying business criteria set out in UNGP 31?</p>	<p>The Zambia Law Development Commission has an administrative mechanism for resolving complaints, especially of land disputes between neighbouring chiefdoms.</p> <p>The Anti-Corruption Commission's Integrity Committee is an administrative mechanism that hears cases related to public-sector corruption and transparency in ministries, departments and agencies. The concept has been extended</p>	<p>The fees payable to mediators may not be affordable to some, in particular vulnerable and marginalised individuals and groups.</p> <p>ADR mechanisms are relatively new mechanisms and still require promotion to the general public.</p> <p>The mechanisms (ADR) do not meet the effectiveness criteria under Guiding Principle 31, in particular accessibility is an issue as the ADR mechanisms are only available in certain centres; furthermore, there is a fee to register and witness compensation:</p> <ul style="list-style-type: none"> As far as the schedule of occupational diseases under the Workers Compensation Act, the review mechanism is not timely and limited. However, the generally accepted approach is to review and update the schedule whenever there is a change in the list of



GUIDING PRINCIPLES 27 & 31

Other Mechanisms

Does the State provide access to other viable of non-judicial mechanisms? Can these mechanisms be used for remedying business related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?

to private companies as a way of providing corruption or abuse of office related non-judicial redress (see Guiding Principle 28, below).

The Competition and Consumer Commission Act provides for a tribunal that hears and decides matters related to competition and consumer matters.

The Workers' Compensations Fund created under the Workers' Compensation Act provides compensation to workers who suffer injuries during the course of work.

- The Commission has investigated the Police Public Complaints Authority.

- The Judicial complaints authority.

The last two institutions are not fully operational with a complaint. However, they have not received the lowest level provincial reports. These institutions sometimes address information, education and communication materials for local communities that they also travel to follow up or investigate complaints.

Occupational Diseases in the accompanying regulation 194.¹⁰⁹ This has resulted in the schedule being outdated.

- There are limitations in the coverage of workplaces, especially in the informal sector, by the Occupational Safety and Health laws, including the Workers' Compensation Act.¹¹⁰

The compensations paid out by the Workers Compensation Fund are often inadequate¹¹¹.

Overall, policy cohesion that allows for close working relationships across mechanisms is lacking. Quick referral of cases across mechanisms and inter-institutional exchange of information do not appear to be facilitated in law or practice.

27.2. Role of the NHRI

Has the State provided specific competency to the national human rights institution (NHRI) to perform the role as a non-judicial mechanism for addressing grievances?

Indicators & Scoring Criteria

Implementation Status

Gaps



GUIDING PRINCIPLES 27 & 31

Complaints-Handling Role

Has the State given the NHRI the mandate that allows it to receive and handle complaints relating to corporate human rights abuses?

The Human Rights Commission (ZHRC) is established under article 125 of the Zambian Constitution and mandated by the Human Rights Commission Act no. 39 of 1996 to promote and protect human rights in Zambia, for all persons.

The ZHRC has insufficient capacity to execute its mandate. This is due to limited human resources, finances and State support.

Supportive Role

Has the State given the NHRI the mandate that allows the NHRI to be in a supportive role to claimants, such as through mediation, conciliation, expert support, or legal aid?

The functions of ZHRC are to investigate all human rights violations, maladministration of justice, propose effective measures to prevent human rights abuse, visit prisons and other detention related facilities with a view to assess and inspect conditions.

The Human Rights Commission is only available in 6 out of the 10 provinces and has no district offices anywhere in the country. It only has 53 members of staff (with majority being support staff) out of an establishment of 154.

Awareness-Raising

Has the State given the NHRI the mandate to promote awareness on remedy to and redress for corporate human rights abuses?

The HRC is further mandated to carry out a continuing programme of research, education and facilitate rehabilitation of victims of human rights abuse to enhance the promotion, protection and respect for human rights in the country. In Zambia, the Human Rights Commission carries the overall mandate of promoting and protecting human rights including investigating business-related human rights abuses and the State has not designated another entity with the responsibility of investigating business-related human rights abuses.

The State has given ZHRC the mandate to receive and investigate human rights violations or abuse, including those perpetrated by businesses as long as the complaint satisfies the admissibility criteria and the violation does not amount to a crime.

Training

Has the State given the NHRI the mandate to provide training of relevant stakeholders on their access to remedy for corporate human rights abuses?

The Commission also facilitates mediation and conciliation between claimants and defendants, including referring those that require legal aid to the appropriate service providers.

Under Section 9 (e) of the Human Rights Act no. 39 of 1996, the law mandates ZHRC to provide education and information in the promotion and protection of human rights including on remedy to and redress for

Counselling

Has the State given the NHRI the mandate to provide counselling on which remedy to



GUIDING PRINCIPLES 27 & 31

access?	corporate human rights abuses.		
<p>27.3. Barriers for Access to Non-Judicial Remedy Has the State taken measures to ensure that there are no barriers to access to non- judicial remedy for addressing business-related human rights abuses?</p>			
Indicators & Scoping Questions		Implementation Status	Gaps
<p>Practical and Procedural Barriers Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being heard by non-judicial mechanisms?</p>		See <i>Guiding Principle 26</i>	See <i>Guiding Principle 26</i>
<p>Other Barriers Has the State taken measures to ensure that there are no other barriers to prevent legitimate cases from being heard by non-judicial mechanisms?</p>		See <i>Guiding Principle 26</i>	See <i>Guiding Principle 26</i>



GUIDING PRINCIPLES 28 & 31

States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

28.1. Facilitating Access to Mechanisms

Has the State supported access to effective non-State-based grievance mechanisms dealing with business-related human rights harms?

Indicators & Scoping Questions	Implementation Status	Gaps
<p>Business-Based Grievance Mechanisms</p> <p>Has the State supported access to business-based grievance mechanisms (such as whistle-blower mechanisms or project-level grievance mechanisms) through efforts such as dissemination of information and support for access (for example, through guidance documents and tools)?</p>	<p>Companies such as Konkola Copper Mines have established Integrity Committees with guidance and support from the Anti-Corruption Commission. Under the Anti-Corruption Act no. 3 of 2012, it is mandatory for all Government institutions to establish Integrity Committees. For companies, it is voluntary.</p> <p>Other than this, there is no evidence that the State has supported access to company or multi-stakeholder grievance mechanisms for business-related human rights abuses.</p>	<p>Zambian law does not require companies to establish grievance mechanisms to hear employee or community complaints.</p>
<p>Multi-Stakeholder Grievance Mechanism</p> <p>Has the State supported access to multi-stakeholder grievance mechanisms through efforts such as dissemination of information and support for access?</p>	<p><i>None found</i></p>	<p>The Government is not actively supporting access to multi-stakeholder grievance mechanisms.</p>
<p>Organisational-Based Grievance Mechanisms</p> <p>Has the State supported access to organisational-based</p>	<p><i>None found</i></p>	<p>The Government is not actively supporting access to organisational-based grievance mechanisms.</p>



GUIDING PRINCIPLES 28 & 31

<p>grievance mechanisms (including the union systems) through efforts such as dissemination of information and support for access?</p>		
<p>International Grievance Mechanisms</p> <p>Has the State supported access to international grievance mechanisms through efforts such as dissemination of information, support for access (for example, through legal aid) as well as support for establishing contact between the claimants in international system?</p>	<p>Several complaints to international grievance mechanisms have been made, particularly to the Compliance Advisor Ombudsman of the International Finance Corporation. However, there is no evidence that the State has supported access to these grievance mechanisms or issued guidance to communities on how to access them.</p>	<p>The Government is not actively supporting access to international grievance mechanisms.</p>
<p>Regional Grievance Mechanisms</p> <p>Has the State supported access to regional grievance mechanisms through efforts such as dissemination of information and support for access (for example, through legal aid)?</p>	<p><i>None found</i></p>	<p>The Government is not actively supporting access to regional grievance mechanisms.</p>
<p>Other Mechanisms</p> <p>Has the State supported access to other grievance mechanisms through efforts such as dissemination of information and support for access?</p>	<p>In customary land disputes, cases can be appealed to the senior or paramount chief.</p>	<p>The Customary Land Bill should address the role of this type of dispute resolution.</p>



ANNEX II:

Stakeholders Consulted

Development of this Baseline Assessment involved two sets of stakeholder consultation. A stakeholder matrix was used to identify stakeholders to be consulted.

The first consultations consisted of telephone discussions and visiting identified institutions to assess relevance of information to be provided by each stakeholder. That was followed by a series of one-on-one or small group interviews with relevant stakeholders that took place in Lusaka from 31 August-4 September 2015. As part of preparation for the interviews, ZHRC provided stakeholder institutions with the relevant sections of the draft Baseline and oral guidance prior to the interviews and consultations. The consultations were conducted jointly by ZHRC and DIHR. The following stakeholder institutions were consulted:

1. Zambia Public Procurement Authority
2. Zambia Chamber of Mines
3. Zambia Land Alliance
4. Oxfam
5. ActionAid
6. Ministry of Commerce, Trade and Industry
7. Ministry of Labour and Social Services
8. Zambia Development Agency
9. Zambia Environmental Management Authority
10. Lusaka Stock Exchange Limited
11. Zambia Law Development Commission
12. Extractive Industry Transparency Initiative
13. National Water and Sanitation Council
14. Zambia Bureau of Standards
15. Media Institute of Southern Africa (Zambia Chapter)
16. Independent Broadcasting Authority
17. Energy Regulation Board
18. Road Transport and Safety Agency
19. Zambia Weights and Measures Agency
20. Ministry of Finance
21. Anti-Corruption Commission
22. Citizens Economic Empowerment Commission

23. Lusaka City Council
24. Ministry of Information and Broadcasting
25. Office of the Human Rights Adviser to United Nations in Zambia
26. Ministry of Mines and Minerals Development

The second consultation consisted of a 2-day workshop, held in Lusaka on 26-27 October 2015. The workshop was facilitated by five personnel from ZHRC and was based on small group discussions on the draft of the key findings and recommendations and the second consultation draft of the Baseline template. The following stakeholders participated:

1. Zambia Public Procurement Authority
2. Ministry of Commerce, Trade & industry
3. Office of the Vice President (Resettlement Department)
4. Ministry of Lands
5. Judiciary
6. Ministry of Labour and Social Services
7. Ministry of Justice
8. Women and Law in Southern Africa (WLSA)
9. Zambia Land Alliance
10. Zambia Association of Women on Land Rights
11. Zambia Chamber of Mines
12. Zambia Congress of Trade Union

¹ Human Rights Council Res. A/HRC/26/L.1, para. 11 of the Human Rights Council, 26th Sess., June 10-27, 2014 (June 27, 2014), available at <http://www.norway.no/undocs.org/pdf/EFT1/Statements/26th-Session-of-the-Human-Rights-Council/Item-3-Promotion-and-protection-of-human-rights/Business-and-human-rights-Resolution-/#.U63LWGSxPgJ>.

² Danish Institute for Human Rights and International Corporate Accountability Roundtable, *National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks* (2014), available at: <http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-tools-examples/implementation-tools-examples-of-initiative/pdfs/2014-12-10-dihr-national-action-plans-project>.

³ Human Rights Council Res. A/HRC/26/L.1, Rep. of the Human Rights Council, 26th Sess., June 10-27, 2014 (June 27, 2014), available at: <http://www.unhcr.org/refugees/pdf/EFT1/Statements/26th-Session-of-the-Human-Rights-Council/Item-3-Promotion-and-protection-of-human-rights/Business-and-human-rights-Resolution-/#.U63LWGSxPgJ>.

For an up-to-date list of National Action Plans in progress and completed see the Business and Human Rights Resource Centre National Action Plans page: <http://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-tools-examples/implementation-tools-examples-of-initiative/pdfs/2014-12-10-dihr-national-action-plans>.

⁴ United Nations (21 March 2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, United Nations Human Rights Council (A/HRC/17/31).

⁵ National Action Plan on Business and Human Rights is a government-led policy document that articulates the State’s priorities and future actions to support the implementation of the UN Guiding Principles.

⁷ For example, in July 2006, four NFC mine workers were shot and wounded by police officers while protesting a wage dispute. In 2007, police shot and killed five miners during violent protests over the working conditions at the Chambishi Mine—Reported in Brian Chama (2010) Economic Development at the Cost of Human Rights, page 3. <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1113&context=hrbrief>

⁸ <https://eiti.org/Zambia>

⁹ World Bank data

¹⁰ World Bank Country Assistance Strategy for the Republic of Zambia, 2008-2011:
<http://documents.worldbank.org/curated/en/2008/04/9399400/zambia-country-assistance-strategy>

¹¹ United Nations Development Programme, 2014 Human Development Index: <http://hdr.undp.org/sites/default/files/hdr14-report-en-1.pdf>.

¹² World Bank data: http://data.worldbank.org/indicator/SI.POV.GINI?order=wbapi_data_value_2010+wbapi_data_value&sort=asc

¹³ Oakland Institute, Understanding Land Investment Deals in Africa – Zambia Country Report, 2011:
http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_country_report_zambia.pdf

¹⁴ Mweembe Muleya Mudenda, the Challenges of Customary Land Tenure in Zambia, October 2006:
http://www.fig.net/pub/fig2006/papers/ts50/ts50_03_mudenda_0740.pdf; Oakland Institute, Understanding Land Investment Deals in Africa – Zambia Country Report, 2011: http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_country_report_zambia.pdf

¹⁵ Ministry of Lands, Energy and Water Development, Guidelines on Land Alienation:
http://www.ministryoflands.gov.zm/index.php?option=com_content&view=article&id=60&Itemid=87

¹⁶ The Constitution (1996).

¹⁷ USAID Land Tenure and Property Rights Portal, Zambia – Land Tenure and Property Rights Profile, July 2010:
http://usaيدlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Zambia_Profile.pdf

¹⁸ University of the Western Cape Institute for Poverty, Land and Agrarian Studies Policy Brief 41 (2015)
http://www.plaas.org.za/sites/default/files/publicationspdf/PLAAS_ADC%20policy%20brief_Zambia_Web.pdf

¹⁹ UNDP, Human Rights Commission, 2010 State of Human Rights Report in Zambia – Human Rights and the Environment:
http://www.hrc.org.zm/media/state_of_human_rights_report_2010.pdf

²⁰ Muleba Michael, 2012. Status of Customary Land in Zambia and how it affects the rights of indigenous local communities

²¹ Zambia 2012 Labour Force Survey: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ed_emp_msu/documents/genericdocument/wcms_231731.pdf

²² Ibid.

²³ International Labour Organisation, Inclusion of People with Disabilities in Zambia, 2014, Page 1. http://www.ilo.org/wcmsp5/groups/public/---ed_emp/ifp_skills/documents/publication/wcms_115100.pdf

²⁴ Sida Gender Country Profile – Zambia (2008), page 22. http://www.sida.se/contentassets/a1201ac9cd75447ca13ecffe8475be9d/sida-gender-country-profile--zambia_338.pdf

²⁵ International Trade Union Confederation, 2007 Annual Survey of violations of trade union rights - Zambia, 9 June 2007, available at:
<http://www.refworld.org/docid/4c52ca020.html> [accessed 30 October 2015]

²⁶ International Labour Organization (2012) “Decent work country profile-Zambia” page 30.

²⁷ Southern African Institute for Environmental Assessments, Zambia: http://www.saiea.com/dbsa_book/zambia.pdf

²⁸ Environmental Management Act (2011): http://www.zema.org.zm/index.php/environmental-legislation/doc_download/16-environmental-management-act-no-12-of-2011 .

²⁹ Human Rights Commission, 2010 State of Human Rights Report in Zambia – Human Rights and the Environment:
http://www.hrc.org.zm/media/state_of_human_rights_report_2010.pdf

³⁰ Sida’s Helpdesk for Environment and Climate Change, Environmental Policy Briefs – Zambia, 2010:
<http://sidaenvironmenthelpdesk.se/wordpress/wp-content/uploads/2011/06/Zambia-Environment-and-climate-change-policy-brief-EEU-Final-version.pdf>; Human Rights Commission, 2010 State of Human Rights Report in Zambia – Human Rights and the Environment:
http://www.hrc.org.zm/media/state_of_human_rights_report_2010.pdf

³¹ Human Rights Commission, 2010 State of Human Rights Report in Zambia – Human Rights and the Environment:
http://www.hrc.org.zm/media/state_of_human_rights_report_2010.pdf

³² Southern African Institute for Environmental Assessments – Zambia, 2007: http://www.saiea.com/dbsa_book/zambia.pdf

³³ Human Rights Commission, 2010 State of Human Rights Report in Zambia – Human Rights and the Environment:
http://www.hrc.org.zm/media/state_of_human_rights_report_2010.pdf

³⁴ Ibid.

³⁵ Interview, Southern Africa Resource Watch, Kitwe, Zambia, 4 June 2013

³⁶ A good case in point would be the Kangaluwi Open Pit Copper Mining Project in the Lower Zambezi National Park where the Minister overruled ZEMA’s decision not allow the project to proceed, endangering the environment and people’s sustainable livelihoods.

³⁷ Guiding Principle 3

³⁸ Human Rights Watch, You’ll Be Fired if You Refuse - Labor Abuses in Zambia’s Chinese State-owned Copper Mines, 4 November 2011:
<http://www.hrw.org/sites/default/files/reports/zambia1111ForWebUpload.pdf>

³⁹ International Labour Organization, Decent Work Country Profile – Zambia, 2012:
<http://www.ilo.org/public/english/region/afpro/lusaka/download/publication/dwcp2012.pdf>

- ⁴⁰ Zambia Labour Market Profile, 2014 (Page 15). http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/Imp_zambia_2014_final_version_revised.pdf
- ⁴¹ International Council on Mining and Metals, Enhancing mining's contribution to the Zambian economy and society, page 74. <http://www.icmm.com/document/7065>
- ⁴² Neo Simutanyi, Copper mining in Zambia, page 9 <https://www.issafrica.org/uploads/Paper165.pdf>
- ⁴³ Stakeholder consultation, September 2015.
- ⁴⁴ Zambia's Investor Guide Handbook, April 2012, page 6-7. <http://images.mofcom.gov.cn/zm/accessory/201209/1347391687778.pdf>
- ⁴⁵ <http://investmentpolicyhub.unctad.org/IA/CountryOtherIias/232#iialnnerMenu>
- ⁴⁶ Ministry of Labour and Social Security, Structure and Core Functions – Employer's Guide: http://www.mlss.gov.zm/employers_guide.html
- ⁴⁷ Electoral Institute for the Sustainability of Democracy in Africa, Zambia: Human Rights Commission, December 2009: <http://www.eisa.org.za/WEP/zamagency1.htm>
- ⁴⁸ Institute for Security Studies (2009). The Criminal Justice System in Zambia. www.apcof.org/files/8603_M159FULL.pdf
- ⁴⁹ Institute for Security Studies (2009). The Criminal Justice System in Zambia. www.apcof.org/files/8603_M159FULL.pdf
- ⁵⁰ These are the eight effectiveness criteria for non-judicial grievance mechanisms that are outlined in Guiding Principle 31.
- ⁵¹ Oakland Institute, Understanding Land Investment Deals in Africa – Zambia Country Report, 2011: http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_country_report_zambia.pdf
- ⁵² The Ministry of Lands, Energy and Water Development, Guidelines on Land Dispute Resolution: http://www.ministryoflands.gov.zm/index.php?option=com_content&view=article&id=61&Itemid=86.
- ⁵³ Commonwealth Secretariat, The Zambian Human Rights Commission – Statement of Compliance with the Paris Principles: http://www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/EAD2B633-38F9-4317-9DE8-A1CD03F3663E_ZambiaHumanRightsCommissionPresentation.pdf
- ⁵⁴ Anti-Corruption Commission, Functions: http://www.acc.gov.zm/?page_id=139.
- ⁵⁵ The Zambia Police Amendment Act No. 14 of 1999
- ⁵⁶ Environmental Management Act, section 94 (1)
- ⁵⁷ UNHCR Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report for the Universal Periodic Review on Zambia, Page 2. <http://www.refworld.org/pdfid/4f9660982.pdf>
- ⁵⁸ 'In a review of SAIs in East Africa, Rakner and Wang conclude that 'the supreme audit institutions are not able to fulfil their assigned tasks due to lack of finances, infrastructure and human capacity.' (2005: v) This is also the experience of SAIs in many other developing countries' concluded Van Zyl, Ramkumar and Paolo de Renzio, in Responding to the challenges of Supreme Audit Institutions: Can legislatures and civil society help? www.u4.no/publications/...to...challenges-of...audit-institutions.
- ⁵⁹ Parliamentary Public Accounts Committee (PAC) chairperson Vincent Mwale called for [the] involvement of the Auditor General's office in the mining sector to validate reports they present to the government...to enhance transparency. But Chifungula said her office requires capacity and expertise to audit the mines. See <http://business-humanrights.org/en/zambian-auditor-general-says-eiti-backed-training-will-increase-office-s-competence-to-audit-mining-companies-reduce-illegality-in-sector>.
- ⁶⁰ Benin, S and Yu, B. 2012. Complying with the Maputo Declaration Target Trends in public agricultural expenditures and implications for pursuit of optimal allocation of public agricultural spending http://www.resakss.org/sites/default/files/pdfs/ReSAKSS_AW_ATOM_2012_FINAL.pdf
- ⁶¹ UN Women, 2015, Implementation of the Beijing Declaration and Platform for Action (1995) and the outcomes of the twenty-third special session of the General Assembly (2000) in the context of the twentieth anniversary of the Fourth World Conference on Women and the adoption of the Beijing Declaration and Platform for Action 2015: Guidance note for the preparation of national reviews, page 12 and 13. <http://www.unwomen.org/~media/Headquarters/Attachments/Sections/CSW/59/BeijingPlus20-GuidanceNote-en.pdf>.
- ⁶² Zambia's Response to the United Nations Questionnaire On Implementation of the Beijing Declaration and Platform for Action (1995) And the Outcome of the Twenty-Third Special Session of the General Assembly (2000) For preparation of regional review and appraisals in the context of the 15th anniversary of the adoption of the Beijing Declaration and Platform for Action <http://213.55.79.31/beijing/beijingplus15/Questionnaire/DAW/English/Zambia.pdf>
- ⁶³ World Bank, Corporate governance country assessment-Zambia, 2006, Page 3.
- ⁶⁴ A Senior Official in the Office of the Vice President stated during consultations
- ⁶⁵ For a list of IFC supported projects in Zambia see: <http://ifcextapps.ifc.org>
- ⁶⁶ <https://www.mcc.gov/where-we-work/program/zambia-compact>
- ⁶⁷ Nyasulu and Others v Konkola Copper Mines Plc and Others (2007/HP/1286) [2011] ZMHC 86 (1 January 2011)
- ⁶⁸ Concluding observations of the Committee on the Elimination of Discrimination against Women Zambia (2011) para. 13 and 14.
- ⁶⁹ 2007 Annual Survey of violations of trade union rights – Zambia. <http://www.refworld.org/docid/4c52ca020.html>
- ⁷⁰ The Act provisions leave so much space for the agency to decide how the public participates in environmental decision making and does not address decision making based on the Free, Prior, Informed Consent principle which though not mandatory seeks to adequately provide for public participation in decision making.
- ⁷¹ Management of Environmental Degradation Caused by Mining Activities in Zambia, page 35. <http://www.ago.gov.zm/reports/Special/2014/OAG%20Management%20of%20Environmental%20Degradation.pdf>
- ⁷² Statement by a senior Ministry of Lands official

- ⁷³ International Labour Organisation, Decent Work Country Profile -Zambia (2012)
- ⁷⁴ World Bank Diagnostic Review of Consumer Protection and Financial Literacy in Zambia, Page 18. <http://responsiblefinance.worldbank.org/~media/GIAWB/FL/Documents/Diagnostic-Reviews/zambia-CPFL-Vol-I.pdf>
- ⁷⁵ OECD Investment Policy Review of Zambia, page 36. <http://www.oecd.org/investment/investmentfordevelopment/48720875.pdf>
- ⁷⁶ National Integrity Systems, TI Country Study Report (2003), Page 74 <http://www.afrimap.org/english/images/documents/file42651c174cd78.pdf>
- ⁷⁷ National Integrity Systems, TI Country Study Report (2003), Page 74 *ibid*
- ⁷⁸ National Integrity Systems TI Country Study Report, Zambia (2003) page 71 <http://www.afrimap.org/english/images/documents/file42651c174cd78.pdf>
- ⁷⁹ Southern Africa Gender protocol comment Anti-gender Based Violence Act passed in Zambia. <http://www.genderlinks.org.za/article/zambia-anti-gender-based-violence-act-passed-2011-10-07>. Accessed on 5th November, 2015.
- ⁸⁰ ILO, Decent work profile – Zambia, 2012. Page 30-33. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_188575.pdf
- ⁸¹ ILO, inclusion of people with disabilities in Zambia. www.ilo.org/wcmsp5/groups/public/---ed_emp/-ifp_skills/documents/publication/wcms_115100.pdf
- ⁸² "Yes I owe CEEC, admits Margaret Mwanakatwe." <https://www.lusakatimes.com/2015/07/27/yes-i-owe-ceec-admits-margaret-mwanakatwe/> dated July 25, 2015 accessed on November 4th, 2015
- ⁸³ Chama, Brian. "Economic Development at the Cost of Human Rights: China Nonferrous Metal Industry in Zambia." Human Rights Brief 17, no. 2 (2010): 2-7. <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1113&context=hrbrief>
- ⁸⁴ OECD Investment Policy Review of Zambia (2011) page 68 – 73. <http://www.oecd.org/investment/investmentfordevelopment/47662751.pdf>
- ⁸⁵ Zambian State Owned enterprises:
- African Reinsurance Corporation
 - Afrox Zambia Limited
 - Contact Haulage Limited
 - Development Bank of Zambia
 - Engineering Services Corporation
 - Indeni Petroleum Products Limited
 - Indo-Zambia Bank Limited
 - Kagem Mining Limited
 - Kariba Mineral Limited
 - Lusaka Trust Hospital
 - Medical Stores Limited
 - MOFED (London) Limited
 - MOFED (Tanzania) Limited
 - Mpulungu Harbour Corporation
 - Mukuba Hotel
 - Mulungushi Village Complex Limited
 - Mupepetwe Engineering Company
 - Nanga Farms PLC
 - National Airports Corporation
 - National Housing Authority
 - National Savings and Credit Bank
 - Nitrogen Chemicals of Zambia Limited
 - Tazama Pipeline Limited
 - Tanzania Zambia Railways (TAZARA)
 - Times of Zambia
 - Zambia Forestry and Forests Industries Corporation (ZAFFICO)
 - Zambia – China Mulungushi Textiles of Zambia
 - Zambia Daily Mail
 - Zambia Education and Publishing House
 - Zambia Electricity Supply Corporation Limited
 - Zambia National Broadcasting Corporation
 - Zambia National Building Society
 - Zambia National Commercial Bank
 - Zambia Printing Company
 - Zambia Railways Limited
 - Zambia State Lotteries Board
 - Zambia Telecommunication Corporation
 - Zamcapitol Enterprises
 - Zambia Postal Services (ZAMPOST)
 - Zambia Consolidated Copper Mines (ZCCM) – Investment Holdings (IH)
 - Zambia State Insurance Corporation (ZSIC) Group
- ⁸⁶ ICCM, Enhancing mining's contribution to the Zambian economy and society (2014), page 74. www.icmm.com/document/7065
- ⁸⁷ Mulumbika, Tobias (2014) 'Presentation for the 2014 World Investment Forum'. <http://unctad-worldinvestmentforum.org/wp-content/uploads/2014/10/Mulumbika.pdf>
- ⁸⁸ Enabling legal frameworks for sustainable land use investments in Zambia, (2015) page 11.
- ⁸⁹ Ashurst London Mining briefing

Report of the Special Representative of the Secretary-General on the Issue of Human rights and Transnational Corporations and Other Business Enterprises, John Ruggie, United Nations (2011), Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations: Guidance for Negotiators, (A/HRC/17/31/Add.3).

The PRS principles for responsible contracts are:

- **Pre-negotiations preparation and planning:** The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.
- **Management of potential adverse human rights impacts:** Responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.
- **High-level standards:** The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.
- **Stabilization clauses:** Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or standards that are necessary and appropriate to meet its human rights obligations.
- **'Additional goods or services provision':** Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be carried out in a manner compatible with the State's human rights obligations and the investor's human rights responsibilities.
- **Physical security for the project:** Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.
- **Community engagement:** The State should have an effective community engagement system throughout its life cycle, starting at the earliest stages.
- **Project monitoring and compliance:** The State should be able to monitor the project's compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference with the project.
- **Grievance mechanisms for non-beneficiaries or third parties:** Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism.
- **Transparency/Disclosure of contract terms:** The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

⁹¹ Zambia Investor Guide, 2012, Page 9-10. <http://images.scribd.com/asset/images/000/000/000/1347391687778.pdf>

⁹² Enabling legal frameworks for sustainable land use investments in Zambia: legal assessment report. Page 12. www.cifor.org/.../enabling-leg.

⁹³ Enabling legal frameworks for sustainable land use investments in Zambia: legal assessment report, 12. *ibid*

⁹⁴ Cheelo and 9 Others v Zambia Consolidated Copper Mines Limited (Case No. 27 of 1999) [1999] ZMSC 50 (7 September 1999)

⁹⁵ Institute for Security Studies (2009) 'Policy Brief: The Criminal Justice System in Zambia' http://www.apcof.org/files/8603_M159FULL.pdf

⁹⁶ Statement by consulted senior Judiciary official

⁹⁷ *Ibid*.

⁹⁸ Institute for Security Studies (2009). *ibid*

⁹⁹ Institute for Security Studies (2009). *ibid*

¹⁰⁰ Institute for Security Studies (2009). *ibid*

¹⁰¹ http://www.un.org/esa/dsd/dsd_english/nationalReports/zambia/Land.pdf

¹⁰² DIHR study on Access to Justice in Zambia, 2012, page 123. http://www.say-zambia.org:8080/jspui/bitstream/2242/3078/1/DIHR_Study%20access%20to%20Justice%20Zambia_2012.pdf

¹⁰³ DIHR study on Access to Justice in Zambia, 2012. *ibid*

¹⁰⁴ DIHR A human rights approach, 2009, page 196. <http://sutyajnik.ru/documents/3751.pdf>

¹⁰⁵ DIHR study on Access to Justice in Zambia, 2012, page 91. http://www.say-zambia.org:8080/jspui/bitstream/2242/3078/1/DIHR_Study%20access%20to%20Justice%20Zambia_2012.pdf

¹⁰⁶ Institute for Security Studies (2009). *ibid*

¹⁰⁷ DIHR study on Access to Justice in Zambia, 2012, page 137.

¹⁰⁸ *Ibid*.

¹⁰⁹ Zambia Country Profile on Occupational Safety and Health, 2012, page 33. http://www.ilo.org/wcmsp5/groups/public/-/sectors/occupational-safety-and-health/policy/wcms_208195.pdf

¹¹⁰ Zambia Country Profile on Occupational Safety and Health, 2012, page 45. *ibid*

¹¹¹ Workers' Compensation Fund Strategic Plan for 2010 – 2015, page 18.

About Human Rights Commission

The Human Rights Commission (HRC) is a National Human Rights Institution established pursuant to Article 230 of the 1991 Constitution of Zambia as amended by Act No 18 of 1996 and Act No 2 of 2016. The functions and powers of the HRC are now spelt out both in the Constitution and the HRC Act, Chapter 48 of the laws of Zambia.

What we do:

- Investigate any human rights abuses
- Investigate any maladministration of justice
- Ensure that the Bill of Rights is upheld and protected
- Propose effective measures to prevent human rights abuse
- Visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the person held in such places and make recommendations to redress existing problems.
- Establish a continuing programme of research, education, information and the rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights.
- Do all such things as are incidental or conducive to the attainment of the functions of the Commission.

For information about our current work please visit our website at www.hrc.org.zm

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This report was published by
The Human Rights Commission - Zambia
with Support from the Danish Institute for Human Rights (DIHR)

