



A NEGOTIATION HANDBOOK FOR COMMUNITIES AND TRADITIONAL LEADERS



BOOK 1: CITIZENS RIGHTS AND RESPONSIBILITIES

**Strengthened Accountability Programme
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Acronyms

DDCC	District Development Coordinating Committee
EITI	Extractive Industries Transparency Initiative
HRBA	Human Rights-Based Approach
ICMM	International Council on Mining and Metals
ILO	International Labour Office
JCTR	Jesuit Centre for Theological Reflection
MNE	Multinational Enterprise
OHCHR	Office the High Commissioner of Refugees
PDCC	Provincial Development Coordinating Committee
SAG	Sector Advisory Group
SAP	Strengthened Accountability Programme
UN	United Nations

1. INTRODUCTION

This Book is the first in a series of three books that together constitute the “Negotiation Handbook for Communities and Traditional Leaders”. The series of books is a product of the JCTR partnership with Diakonia and the Embassy of Sweden, under which the JCTR has been implementing the Strengthened Accountability Programme (SAP) in Solwezi in the North Western Province since 2014. One of the activities under the SAP was to produce a negotiation handbook for communities and traditional leaders to help them negotiate with local authorities and corporates. The series contributes to meeting the project outcome: “Targeted corporate sector acts transparently, are accountable to the rights holders, and contribute to socio – economic justice in targeted districts of North Western Province.”

Book 1 (Citizens Rights and Responsibilities) explains the rights and responsibilities of rights holders that traditional leaders and communities (as rights holders) need to know before they embark on any negotiations. The rights and responsibilities of rights holders are based on the human rights-based approach (HRBA) which says that ‘democracy’ (the authority of the state and its government to rule) is based on mutual respect and the protection of the rights of all the people in that country.¹

This book should be read together with **Book2 (Obligations of Corporates)** which provides basic information on corporate social responsibility and a summary of some laws of Zambia that provide traditional leaders and communities’ space to engage duty bearers and corporates; and **Book 3 (Negotiation Skills)** which defines negotiations and outlines the steps that traditional leaders and community members should follow in their engagement with government and corporates.

1.1 Who is this handbook for?

The negotiation handbook is a tool to be used by traditional leaders and their communities to enable them to demand accountability from local state institutions and compel corporates to demonstrate good corporate citizenship. The handbook will help traditional leaders, community leaders and members so that they can represent their communities and participate in making the decisions that affect them and to raise awareness of important issues when dealing with local and national government, and the large companies that operate in their areas.

1.2 Methodology

The methodology used in the development of this handbook was largely based on secondary data. This involved the review of the literature and laws on the rights and responsibilities of rights holders that traditional leaders and communities need to know as rights holders before they embark on any negotiations. The study also reviewed the literature and laws on Corporate Social Responsibility (CSR) that traditional leaders and communities need to be aware of, to enable them to negotiate and demand for good corporate citizenship from corporates operating in their communities. Through the JCTR office in Solwezi and project reports, the study obtained input from Traditional leaders, North-Western Council of Elders and communities on how best to involve communities and traditional leaders in negotiating with local government authorities and corporates operating in their communities.

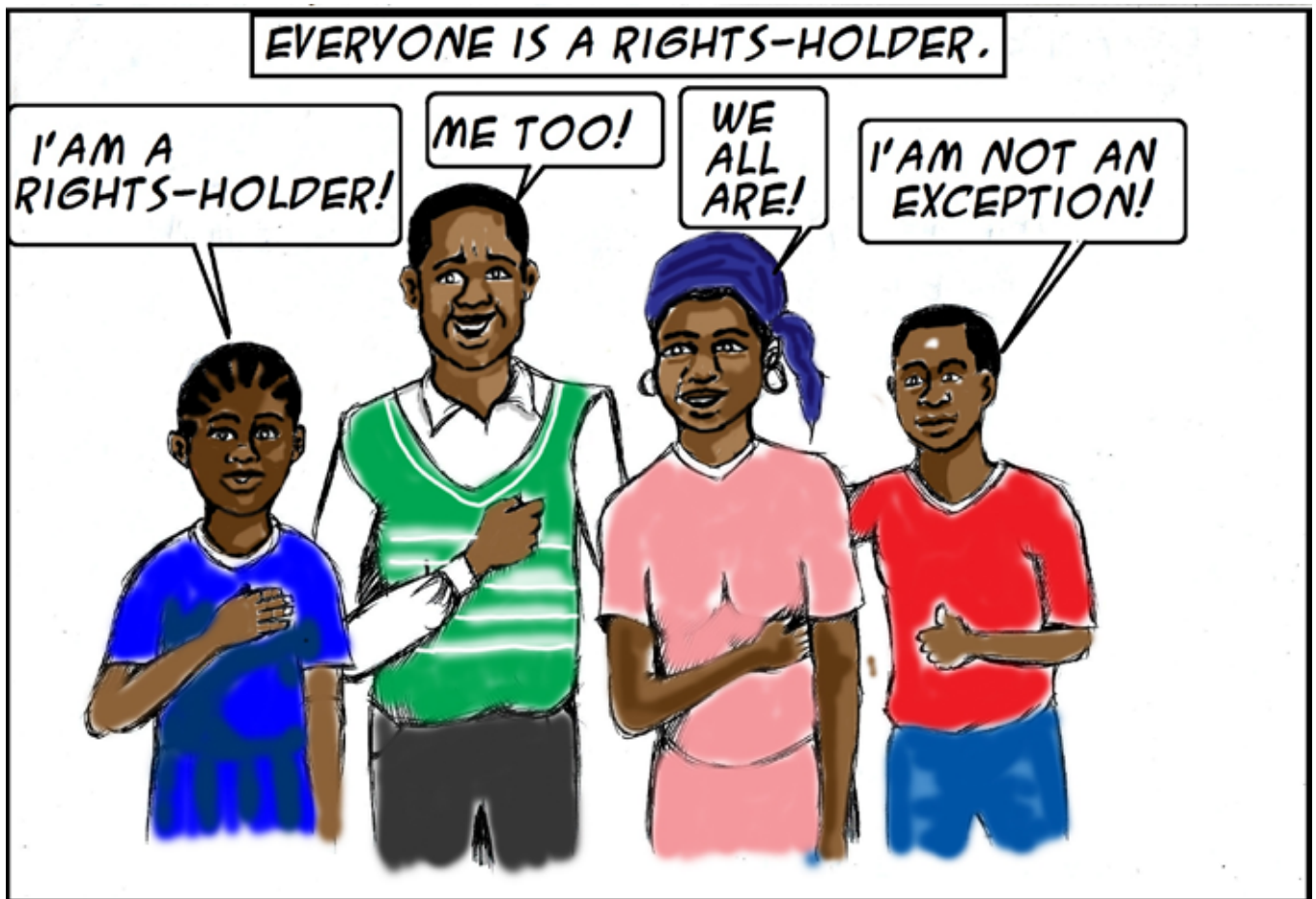
¹ Greater Manchester Voluntary Sector Support, <http://www.gmvss.net/?q=node/2067>

2. CITIZENS RIGHTS AND RESPONSIBILITIES

2.1 What are citizens' rights?

A right is a freedom that is protected, such as the right to free speech and religion. Individual rights refer to the freedom of each individual to pursue life and goals without interference from other individuals or the government.²

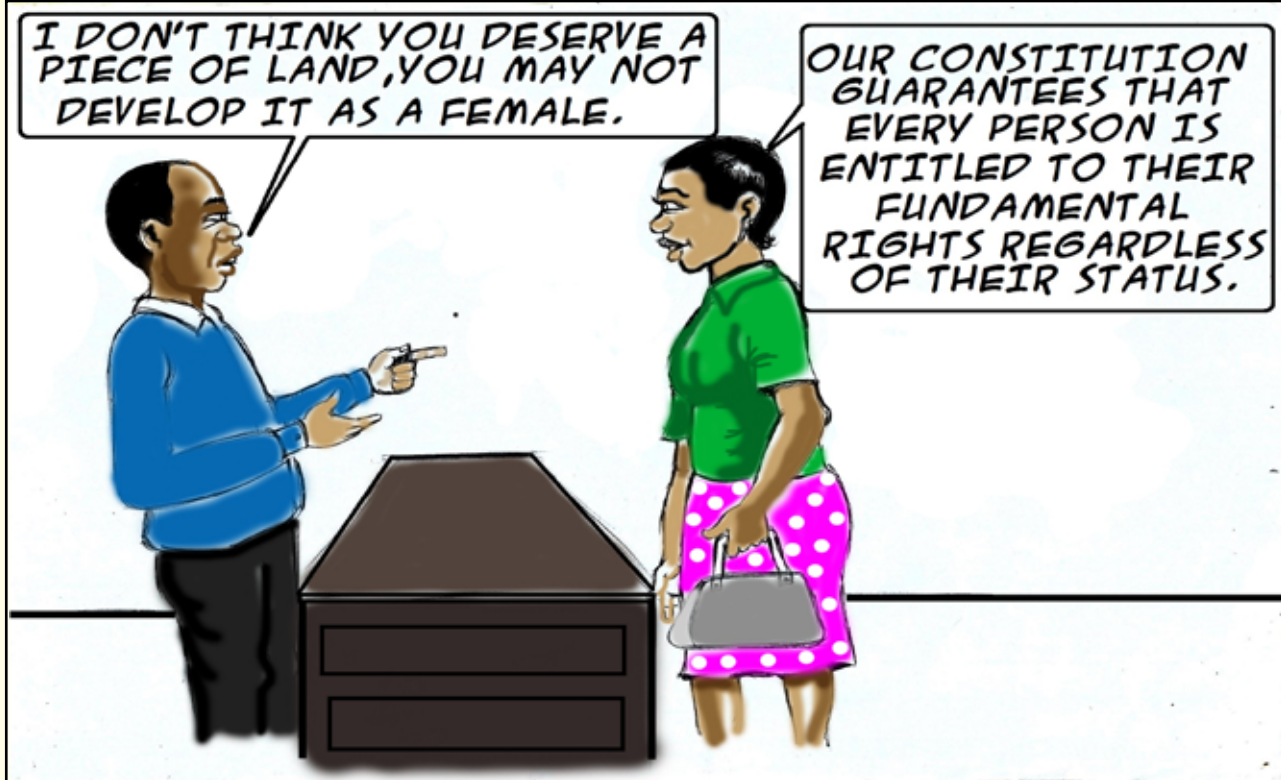
A rights-holder is entitled to the rights set out in various laws and regulations and is entitled to claim these rights. Rights-holders are individuals or social groups that have particular entitlements from specific duty-bearers. For example, every individual is entitled to mix with anyone of their choice without interference from the government. In general terms, all human beings are rights-holders under the Universal Declaration of Human Rights.³



The fundamental rights and responsibilities that traditional leaders and communities need to know as rights holders are found in Part III of the Constitution (Bill of Rights). The Constitution of Zambia guarantees that every person in Zambia is entitled to the fundamental rights and freedoms regardless of race, place of origin, political opinions, colour, creed, sex or marital status. If a person feels that their fundamental rights are interfered with by another individual or government, they can take up the matter to court. A person may take the government, individual or a company to court if they feel that their rights have been denied. There are, however, limitations designed to ensure that the enjoyment of the fundamental rights and freedoms by any individual does not interfere with the rights and freedoms of others or the public interest. The freedom to move freely anywhere in Zambia does not, for example, give one the right to enter another person's house without that person's permission. The following are the rights and freedoms that are in the Zambian constitution:

² Individual Rights and Community Responsibilities, <https://www.learningtogive.org/resources/individual-rights-and-community-responsibilities>

³ ibid



Box 1: Fundamental rights¹

a) **Right to life**

The life of every citizen, regardless of race, place of origin, political opinions, colour, creed, sex or marital status has the same value. Under this right, the government shall not take away from anyone his or her life intentionally except in execution of the sentence of a court in respect of a criminal offence for which the person has been convicted of.

b) **Right to personal liberty**

This right means that a person is free to do whatever they want to do, as long as they obey the law and respect the rights of others. However, a person's liberty may be restricted if he or she is serving a sentence in respect of a criminal offence for which the person has been convicted.

c) **Protection from slavery and forced labour**

A person has the right to not be treated like a slave, forced to perform certain kinds of labour or be owned by another individual like a piece of property.

d) **Protection from inhuman treatment and degrading treatment**

This right means that a person should not undergo something unpleasant such as torture, or inhuman or degrading punishment or other acts that intentionally inflict severe pain, suffering, anguish, humiliation or fear, whether physical or mental.

e) **Protection from deprivation of property**

This right is meant to prevent the Government from taking away a person's property without very good reason and following legal processes.

⁴ This section has been adapted from the Constitution of Zambia and the Human Rights Commission, Cayman Island Government The Bill of Rights in Simple Terms <http://www.humanrightscommission.ky/portal/page/portal/hrthome/publications/education/simple-bill-of-rights>

f) **Protection for privacy of home and other property**

Under this right, the respect of a person's private and family life and home is protected. Every individual has the right to live with reasonable personal privacy, taking into account the rights and freedom of others.

g) **Provisions to secure protection of law**

This right guarantees a person that is charged with a criminal offence to a fair trial within a reasonable time by an independent and impartial court.

h) **Freedom of conscience**

Every person is free to hold particular beliefs and practice a religion of one's choice. This right protects citizens from being forced to practice a religion against their will. Also an individual should respect the choices of other people.

i) **Freedom of expression**

A citizen has the right to voice opinions and express their views, either on their own or in a group, provided they do not go against the rights of other persons. This right includes freedom to receive ideas and information and freedom to communicate ideas and information without interference.

j) **Freedom of assembly and association**

Every citizen has the right to assemble freely with others in a peaceful way. This includes the right to associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his or her interests.



k) **Freedom of movement**

This right allows citizens and persons who are lawfully in Zambia to move freely anywhere in the country. Under this right, every person can choose where to live within Zambia, and to leave the country whenever they wish. However, a person's freedom of movement may be lawfully restricted through bail conditions or a sentence imposed by the courts for an offence the person committed.



l) **Protection from discrimination**

Under this right no person should act or behave differently towards any person because of the other person's race, tribe, sex, place of origin, marital status, disabilities, political opinions or creed. This right also gives an individual protection from the government acting in a discriminatory manner in relation to all other Rights that the Bill of Rights guarantees.

m) **Protection of young persons from exploitation**

This right protects young person from being employed or to be engaged in any occupation or employment which would affect the child's health, education, physical, mental or moral development.

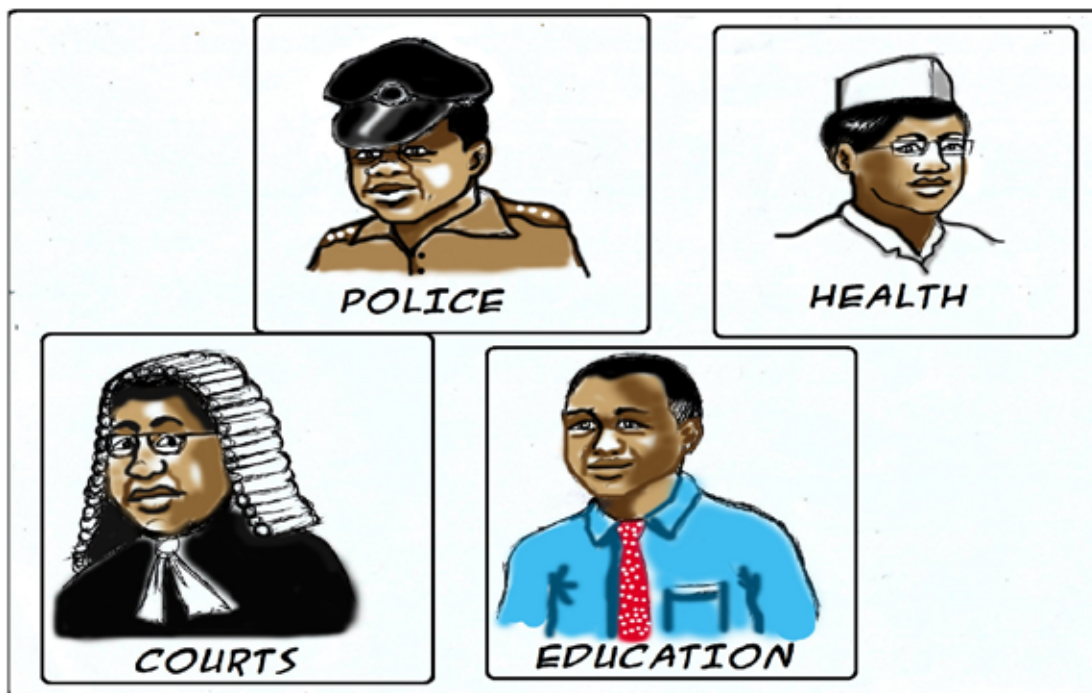


2.2 What are citizens responsibilities?

A responsibility is a duty or something that is expected of, such as protecting, respecting and fulfilling the rights of every citizen. The state is the primary (main) duty-bearer and has the legal responsibility to protect, respect, and fulfil the rights of the rights-holder. The state includes all the functions of the government (e.g. parliament, government departments, ministries, local authorities, courts, police, education, health and any other workers delivering a service on behalf of the state).⁵

Though the term duty bearer is most commonly used to refer to State actors, individuals (e.g. parents), local organizations, private companies, aid donors and international institutions can also be duty-bearers depending on the context.⁶ For example, parents have duties and responsibilities with regard to ensuring the well-being of children; traditional leaders, as custodian of community land held in trust for their subjects, have a duty and responsibility to ensure that the land is accessible to all the subjects.

THE STATE IS THE PRIMARY DUTY-BEARER WHEN IT COMES TO FUFILLING THE RIGHTS OF CITIZENS.



There are also cases where something can be both a right and responsibility. For example, voting is both a right and a responsibility. It is an individual's right to vote and it is also the individuals' responsibility to vote.

⁵ Greater Manchester Voluntary Sector Support, <http://www.gmvss.net/?q=node/2067>

⁶ Gender equality, UN coherence and you, Glossary, <http://www.unicef.org/gender/training/content/resources/Glossary.pdf>



It is the responsibility of citizens, as a rights-holder, to hold the duty-bearer to account for their actions or lack of. When it comes to exercising or claiming rights, rights holders (citizens) must also accept the responsibilities that come with it. It is also the responsibility of every citizen to protect not only our own rights but each other's rights as well. The responsibilities of every citizen are found in Part IV of the Constitution of Zambia.

Box 2: Responsibilities of citizens⁷

It is the responsibility of every citizen of Zambia's to:

- a) *be patriotic to Zambia and promote its development and good image*
- b) *pay taxes and duties lawfully due and owing to the State*
- c) *protect and conserve the environment and utilise natural resources in a sustainable manner;*
- d) *maintain a clean and healthy environment*
- e) *provide national, defence and military service when called upon by the State*
- f) *co-operate with law enforcement agencies for the maintenance and enforcement of law and order*



⁷ Constitution of Zambia

In addition a citizen is duty-bound to make an effort to:

- a) *acquire a basic understanding of the Constitution and promote its ideals and objectives*
- b) *register and vote, if eligible, in national and local government elections and referenda*
- c) *develop one's abilities to the greatest possible extent through the acquisition of knowledge, continuous learning and the development of skills*
- d) *foster national unity and live in harmony with others*
- e) *understand and enhance Zambia's place in the international community*

Failure by a citizen to discharge their responsibilities is punishable by the courts of law. For example, one can be punished for failing to pay taxes. On the other, failing to discharge one's duties, for example not registering and voting in national elections, is not punishable.

2.3 How can citizens demand or claim their rights?

Whilst it is expected that duty bearers recognise that the entitlements of rights-holders need to be respected, protected and fulfilled, it is also the responsibility of rights-holders both directly and through organizations representing their interests to take the lead in demanding for the fulfilment of human rights and development.

Traditional leaders and communities can demand their rights through a number of ways.

- a. They can use the right to vote to elect leaders who will promote their interests.
- b. Use available structures to voice out and lobby for their interest and claim their rights
- c. Negotiate for better returns for their natural resources.

3. LEGAL FRAMEWORK TO ENABLE CITIZENS TO MAKE DEMANDS UPON DUTY BEARERS

3.1 What laws or regulations are in place in Zambia that traditional leaders and communities can use to help them make demands from the duty bearers including the mining firms and local authorities?

Though there are formal spaces that have been created for citizen participation in the budgetary and service delivery processes, for various reasons- these spaces have largely been populated by Government functionaries to the exclusion of civil society.⁷ The spaces created include the District Development Coordinating Committees (DDCCs), the Provincial Development Coordinating Committees (PDCCs), and the Sector Advisory Groups (SAGs). The participation in the DDCCs, PDCCs and SAGs is intended to be broad to include Civil Society. These structures lack real legal mandate and do not compel the government to utilise them as primary means of encouraging citizens participation. Nevertheless, there are a number of laws in Zambia that can be used by traditional leaders and members of the community to demand greater participation in decision making on matters that affect the community and to negotiate for good corporate citizenship from corporates operating in their communities.

Box 3: Local Government Act Chapter 281

The Local Government Act provides opportunities for the communities to:

- a) Attend council meetings:
- b) Access council meetings minutes:
- c) Scrutinise proposed by-law and lodge an objection in writing to the proposed by-law (for example a by-law proposing to increase property rates)
- d) Lobby local authorities to provide community development, public amenities, public health, sanitation and drainage etc.

Box 4: Urban and Regional Planning Act No. 3 of 2015

Under the Urban and Regional Planning, citizens can:

- a) Lobby for sustainable urban and rural development through the promotion of environmental, social and economic sustainability in development initiatives
- b) Participate in consultations where land falling under customary tenure is to be included in an integrated development plan
- c) Access proposed local area plans
- d) Enter into planning agreements with a local authority in order to develop a customary area and facilitate the implementation of an integrated development plan or local area plan in the customary area
- e) Be represented on Regional Planning Authorities and Provincial Planning Authorities by representatives of the chiefs and civil society organisations
- f) Be consulted in the planning and preparation of a regional development plan, an integrated development plan, local area plan or sectoral plan
- g) Participate in public hearing for the draft regional development plan, integrated development plan, local area plan or sectoral plan

Box 5: Mines and Minerals Development Act No. 11 of 2015

The Mines and Minerals Development 2015 provides for the community to:

- a) *Get compensation for land acquired for use by the holder of mining rights*
- b) *Make claim for compensation within a period of three years from the date when that claim accrued, failing which the claim shall not be enforceable*
- c) *Reclaim the mining area upon cessation of mining operations by the holder of the mining right or mineral processing licence*
- d) *Claim for compensation for damage to the environment, human and animal health or to socio-economic conditions*



- e) *Seek arbitration in the event that a holder of a mining right fails to pay the compensation demanded or where the owner or lawful occupier of any land is dissatisfied with any compensation offered*

Box 6: Environmental Management Act No. 12 2011

The Environmental Management Act has provisions allowing communities to:

- a) *Participate in the formulation, implementation and monitoring of environmental policies, strategies, plans and programmes*
- b) *Be informed of the intention of public authorities to make decisions affecting the environment and of available opportunities to participate in such decisions*
- c) *Participate in public hearings on any document under public review*

Box 7: The Forest Act No. 4 of 2015

The Forest Act provides for the:

- a) *Participation of local communities, local authorities, traditional institutions, non-governmental organisations and other stakeholders in sustainable forest management through:*
- b) *Establishment of community forest management groups by persons living in close proximity to or deriving their livelihood from or having strong traditional ties to the forest for the purpose of communal control, use and management of a forest.*
- c) *Participation through representation by three persons representing the local community in the area, elected by the local community and a representative of the Chief on a joint forest management committees for that area which is responsible for managing and developing the joint forest management area and distributing the benefits amongst the local communities in the area*
- d) *Participation through consultations in the planning and preparation of a forest management plan*

Box 8: Education Act No. 23 of 2011

The Education Act expects the government to:

- a) *Provide early childhood care, development and education; basic education, including adult literacy education; and high school education, subject to resource availability*
- b) *Make general and vocational education progressively available and accessible to all persons*
- c) *Provide free basic education*
- d) *Ensure that a parent shall enrol a child who has attained the school-going age*
- e) *Ensure equal access to quality education to all learners including poor and vulnerable children.*
- f) *Ensure that no child is turned away from public school on grounds that the applicant is unable to pay, or has not paid, the school fee or has no uniform*

The Act also requires parents and guardians to:

- a) *Ensure that children are enrolled and attend school.*
- b) *Not to marry or marry off a learner who is a child*

Box 9: Public Health Act Chapter 295

The Public Health Act allows members of the community to make demands from the local authority to:

- a) *take all lawful and practicable measures to maintain the district in a clean and sanitary condition*
- b) *take all lawful and practicable measures for preventing pollution of any supply of water within its district that is dangerous to the public health*
- c) *take legal action against any person causing or responsible for polluting any supply of water*

4. INTERNATIONAL STANDARDS AND FRAMEWORKS THAT GUIDE BUSINESSES TO BE RESPONSIBLE GOOD CORPORATE CITIZENS

There are a number of reference standards that provide a framework for socially responsible action by businesses. These are the United Nations (UN) Global Compact, United Nations Guiding Principles on Business and Human Rights and the International Labour Office (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises (MNE) and Social Policy. In addition, there are two arrangements that are specific to the mining sector, namely, the International Council on Mining and Metals (ICMM) 10 sustainable development principles and the Extractive Industries Transparency Initiative (EITI). It must be noted that these frameworks are not legally binding but they can be used as references by communities to demand for good corporate citizenship from corporates operating in their respective communities.



4.1 The UN Global Compact

The Global Compact is a call to businesses worldwide to help build the social and environmental framework that ensures that people everywhere have a chance to share the benefits of the global economy. The Global Compact encompasses ten principles which address human rights, labour relations, the environment and corruption.

Box 10: The ten principles of the UN Global Compact⁹

Human rights

- a) *Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence*
- b) *Businesses should make sure that they are not taking part in or encouraging human rights abuses.*

Labour relations

- c) *Businesses should uphold the freedom of association and the recognise the right to collective bargaining*
- d) *Businesses should encourage elimination of all forms of forced and compulsory labour*
- e) *Businesses should encourage effective elimination of child labour*
- f) *Businesses should encourage elimination of discrimination in respect of employment and occupation*

Environment

- g) *Businesses should support a precautionary approach to environmental challenges*
- h) *Businesses should undertake initiatives to promote greater environmental responsibility*
- i) *Businesses should encourage development and use of environmentally friendly technologies.*

Combating corruption

- j) *Businesses should work against all forms of corruption, including extortion and bribery*

4.2 The UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights do not impose legal obligations on business or change the nature of existing human rights instruments. They aim to define what the existing human rights instruments mean, for both States and companies. The UN Guiding Principles contain recommendations to governments and businesses.

Box 11: UN Guiding Principles on Business and Human Rights¹⁰

The recommendations to businesses include:

- a) *Business enterprises should respect human rights. This means that they should avoid infringing the human rights of others and address adverse human rights impacts in which they are involved.*
- b) *The responsibility of business enterprises to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work*



⁹ The Ten Principles of the UN Global Compact, <https://www.unglobalcompact.org/what-is-gc/mission/principles>

¹⁰ "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

4.3 The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration) provides guidance to governments, employers' and workers' organisations, multinational enterprises and national enterprises, in the areas of employment, training, conditions of work and living conditions and industrial relations. The ILO MNE Declaration is not mandatory, nor is it a code of conduct for business. Rather, it is a checklist or reference for companies in the area of social responsibility.

Box 12: ILO MNE Declaration principles¹¹

Employment

- a) *increasing employment possibilities*
- b) *promoting equality of opportunity and equal treatment in employment*

Training

- c) *providing appropriate training for employees in the host country*

Working and living conditions

- d) *no pay, benefits or working conditions which are less favourable than those enjoyed by comparable workers in the host country*
- e) *adequate wages for workers and their families to meet their basic needs*
- f) *effective abolition of child labour*
- g) *instruction about particular dangers and the corresponding safety measures when new products and/or processes are introduced*

Labour relations, including

- h) *freedom for workers and employers to organise and associate*
- i) *right for workers to make complaints without suffering disadvantages.*

4.4 The International Council on Mining and Metals (ICMM) 10 sustainable development principles

The ICMM 10 Principles serve as a best-practice framework for sustainable development in the mining and metals industry. Membership of ICMM requires a commitment to the ICMM 10 Principles

Box 13: International Council on Mining and Metals (ICMM) 10 sustainable development principles¹²

- a) *Implement and maintain ethical business practices and good of corporate governance.*
- b) *Integrate sustainable development issues within the corporate decision-making process.*
- c) *Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities.*
- d) *Implement risk management strategies based on valid data and sound science.*
- e) *Seek continual improvement of our health and safety performance.*
- f) *Seek continual improvement of our environmental performance.*
- g) *Contribute to conservation of biodiversity and integrated approaches to land use planning.*
- h) *Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products.*
- i) *Contribute to the social, economic and institutional development of the communities in which we operate.*
- j) *Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders.*

11 International Labour Office, 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Geneva

12 ICMM 10 Principles, <https://www.icmm.com/en-gb/about-us/member-commitments/icmm-10-principles>

4.5 The Extractive Industries Transparency Initiative (EITI)

The EITI Standard is an international standard that ensures transparency regarding the mining of countries' oil, gas and mineral resources. The EITI standard guide mining companies on how to report various activities in the oil, gas and mining sectors and ensures that this information is available to the public. Under the Extractive Industries Transparency Initiative (EITI), mining companies voluntarily report on how much they pay in national and local taxes and how much they spend on CSR activities

Box 14: The Extractive Industries Transparency Initiative (EITI) Requirements¹³

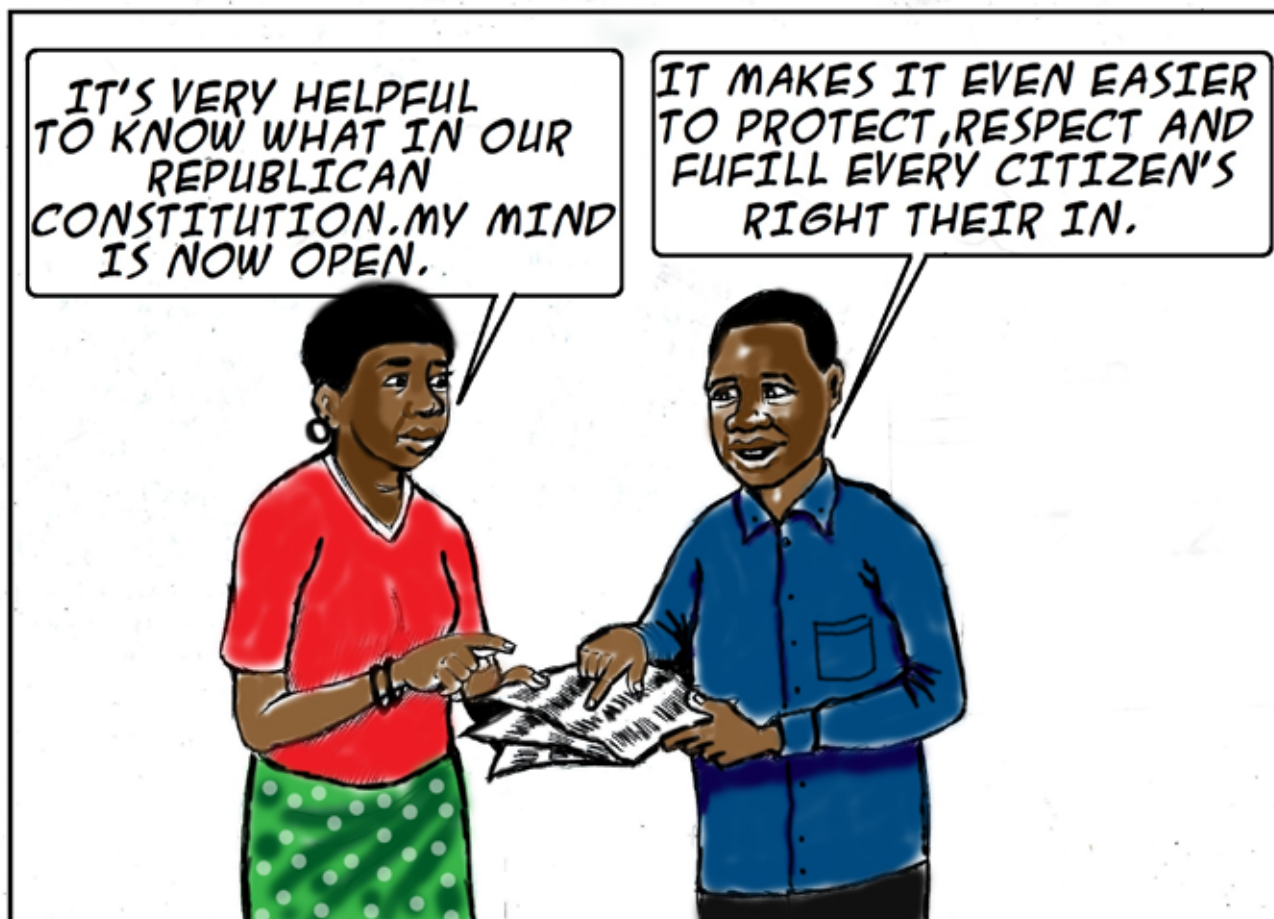
The EITI requires:

- a) *Effective oversight by the multi-stakeholder group*
- b) *Timely publication of EITI Reports*
- c) *EITI Reports that include contextual information about the extractive industries*
- d) *The production of comprehensive EITI Reports that include full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies*
- e) *A credible assurance process applying international standards*
- f) *EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate*
- g) *That the multi-stakeholder group takes steps to act on lessons learned and review*

¹³ New EITI Requirements, 2013, <https://www.doi.gov/sites/doi.gov/files/migrated/eiti/FACA/upload/EITI-New-Requirement-Chart-060413.pdf>

5. CONCLUSION

All human beings are entitled to fundamental rights and with them come responsibilities. It is government obligation to ensure that citizens enjoy these rights. It is equally citizens' obligations to ensure that they enjoy these rights without infringing upon the rights of other citizens. Knowledge of ones rights and responsibilities places one in a better position to contribute positively to society.



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Vision:

"A just Zambian society guided by faith, where everyone enjoys fullness of life"

Mission Statement:

"From a faith inspired perspective the JCTR promotes justice for all in Zambia, especially for the poor, through research, education, advocacy and consultations"

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Book

Advocacy on Living Conditions

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