

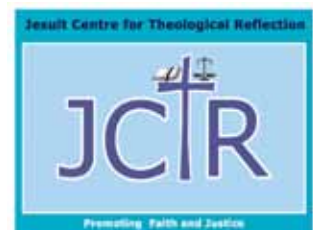


A STUDY ON FRAMEWORKS AND POLICIES FOR GOVERNANCE IN THE MINING SECTOR IN ZAMBIA



December 2017

By Griffin Nyirongo
for
The Jesuit Centre for Theological Reflection



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Acronyms

ACHR	African Convention on Human Rights
CBNRMF	Community Based Natural Resources Forum
CBO	Community based organisation
CCIA	COMESA Common Investment Area
CCPR	Covenant on Civil and Political Rights
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CESCR	Covenant on Economic, Social and Cultural Rights
COMESA	Common Market for East and Southern Africa
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
ECZ	Environmental Council of Zambia
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statements
EITI	Extractive Industries Transparency Initiative
FQM	First Quantum Minerals
GDP	Gross Domestic Product
GRI	Global Reporting Initiative
HRC	Human Rights Commission
HRW	Human Rights Watch
ICMM	International Council on Mining and Metals
IDA	International Development Association
ILO	International Labour Office
IPRGP	Improved Public Resource Governance Project
JCP	Joint Country Programme
JCTR	Jesuit Centre for Theological Reflection
KCM	Konkola Copper Mines
MCM	Mopani Copper Mines
MMDA	Mines and Minerals Development Act
MNE	Multinational Enterprises
MSD	Mines Safety Department
NAPSA	National Pension Scheme Authority
NCA	Norwegian Church Aid (NCA)
NELMP	National Employment and Labour Market Policy
NGO	Non-governmental organisation
NEP	National Environmental Policy
OHSI	Occupational Health and Safety Institute
OSH	Occupational Health and Safety
PPE	Personal protection equipment
R&D	Research and development
RPF	Resettlement Policy Framework
SADC	Southern Africa Development Cooperation
UN	United Nations
VAT	Valued Added Tax
WHO	World Health Organisation
ZCCM	Zambia Consolidated Copper Mines
ZCCM-IH	ZCCM-investment Holdings
ZDA	Zambia Development Agency (ZAD)
ZEITI	Zambia Extractive Industries Transparency Initiative
ZEMA	Zambia Environmental Management Authority
ZMERIP	Zambia Mining and Environment Remediation and Improvement Project
ZRA	Zambia Revenue Authority

Executive Summary

The study on governing frameworks in the mining sector will inform stakeholders on the current regulations and policies in place in the sector as well as the levels of respect for human rights for workers that can inform future interventions of the JCTR and partners in the sector.

Governing frameworks in the mining sector

Most of Zambia's large-scale copper mines are located on the Copperbelt Province and North-Western Province. Zambia like all states has an obligation to respect human rights and fundamental freedoms as enshrined in the international conventions and instruments that the country has signed and ratified such as the Universal Declaration of Human Rights. In addition, the mining companies adhere to various international conventions and practices under the auspices of international organisations such as International Labour Organisation (ILO) and United Nations (UN). These include the UN Global Compact Initiative, ILO Declaration on Fundamental Principles and Rights at Work and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

In line with the international conventions and instruments, Zambia has developed various policies and enacted specific laws protecting human rights and governing business activities.

Policies that have been put in place which has a bearing on human rights in mining operations include the Mineral Resources Development Policy, National Environmental Policy, National Employment and Labour Market Policy (NELMP) and National Resettlement Policy.

These policies are supported by various legislation that govern various aspects of the mining sector such as mineral exploration and mining regulations, employment, occupational and safety regulations, fiscal and environmental regulations. The Mines and Minerals Development Act is the primary law governing the mining sector in Zambia. Other relevant legislation governing the sector include the Companies Act, Zambia Development Agency Act, Constitution of Zambia, Employment Act, Industrial and Labour Relations Act, Occupational Health and Safety, Environmental Management Act, Income Tax Act and Value Added Tax Act. The Constitution of Zambia has made special provision with regards to protection of investments and provides for the protection of property from being deprived without just cause.

There are a number of laws in place in Zambia that rights holders can use to help them make demands from the duty bearers including the mining firms. These spaces for consultations are provided under the Local Government Act, Mines and Minerals Development, Environmental Management Act, Public Health Act.

Levels of respect for human rights in the mining sector

Businesses have a responsibility to respect human rights. This responsibility means companies must know their impact, avoid human rights infringements and address any potential or actual impact. Operations of businesses' can have a profound impact on human rights, either positive or negative.

Positive impacts on human rights

The study established a number of positive impacts on the respect for human rights by mining companies in Zambia. Mining companies have employed various policies through which human

rights are respected. The policies include safety and health, environment, human rights, code of business conduct and ethics, gender and HIV/AIDS policy.

With regard to workers' rights, mining companies have put in place measures to promote labour standards and social dialogue at the workplace. Mining companies have also put in place codes of conduct based on principles derived from international labour standards, namely the ILO Declaration on Fundamental Principles and Rights at Work and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

Though there are no laws in Zambia compelling businesses to undertake corporate social responsibility (CSR), mining companies have implemented various projects and made contributions to promote local development and to finance social projects in line with their corporate social responsibility activities. The contributions are made in cash or in kind. In kind payments are contributions made to finance infrastructure projects, health, education, roads, and market places. Cash payments are made to support local communities including compensation, projects related to the promotion of the agriculture and the grants provided directly to individuals. In some countries, CSR is compulsory with a legal framework regulating how much a company will spend on CSR and what activities will be covered.

CSR activities have had significant impact both within the mining companies and the local communities they operate in. CSR activities on core business operations to promote industrial harmony had resulted in reduced industrial disputes in the last three years and that there had been zero or reduced work place accidents. Communities have noted the improved access to and quality of social services (schools, clinics, clean water supply, and sports) and contribution to improving the livelihoods of local communities as some of the benefits of mining companies CSR.

In order to promote transparency in their operations some mining companies participate in global initiatives to promote transparency. The main global initiatives to promote transparency are the Global Reporting Initiative (GRI) and UN Global Compact Initiative. Another framework is the International Council on Mining and Metals (ICMM) 10 sustainable development principles.

Negative impacts on human rights

The business operation can be said to be negative where the rights of individual are infringed upon as a result of a company's operation. A number of practices by mining companies in Zambia were identified as being inconsistent with human rights and the fundamental principles and rights at work. Inconstancies' were identified in three categories, namely, freedom of association and collective bargaining, anti-discrimination and conditions at the workplace. The casualisation of the labour force that came with the privatisation process in the mining sector has been cited for the deterioration of conditions of work for mine sector workers in Zambia. The engagement by mining companies of labour broking and contractors has contributed to precarious work and casualisation. Most contractors to the mines do not allow union membership and deny collective bargaining and freedom of association.

Mining sector employees have been reported to face poor health and safety conditions. Concern has been raised about poor adherence to safety regulations by some mining firms, particularly Chinese owned mines. Incidences of safety and health hazards reported include lack of proper attire and equipment to prevent, for example, toxins and dust inhalation these hazards.

Environmental impacts include land deforestation and degradation, air pollution characterized by emissions of harmful gases including sulphur dioxides, nitrous oxides, and in some cases volatile

organic pollutants, and water pollution resulting in severe contamination of drinking water and of rivers and streams.

The investments into new mining areas have led to massive displacement of people who have had to be resettled. The level of compensation paid to interested and affected persons has been insufficient and do not reflect the lifestyle of the local communities. Though Zambia has a National Resettlement Policy, the current legislation does not adequately provide for the realisation of some of the policy objectives. Consequently, the country has resorted to using the World Banks' guidelines on resettlement of people that are displaced on account of a developmental project in the area. Local communities bemoan that there is a lack of transparency in the way the compensation is calculated especially as it relates to the affected people where the project is to be implemented.

Gaps and advocacy points in the frameworks and respect for human rights

Whilst it is evident that mining companies are alive to the need to uphold human rights at the workplace in line with the existing governance frameworks, the existence of human rights abuses in the mining sector suggest that there are gaps in the governance frameworks in Zambia in general and in the mining sector in particular. This study identified gaps in enforcement and implementation of laws, policy and legislation, absence of constitutional provisions relating to social and environmental rights, lack of appropriate legislation on resettlement of people displaced by developmental activities, non-domestication of international laws and policies, lack of consultation and transparency, and child labour in non- traditional mining sector.

Recommendations

Improving the level of upholding human rights in the mining sector will require addressing the gaps identified in the governance frameworks in the mining sector in Zambia. The following recommendations respond to the gaps identified in the frameworks as well as laws and regulations/policies that can be used for advocacy for human rights in the sector.

Regarding enforcement and implementation of laws

In order to make institutions responsible for monitoring and enforcing aspects related to human rights functional and effective it is recommended that:

1. The **Government** should make available adequate funding, support infrastructure (e.g. transport, equipment, etc.) and staffing levels to all the public agencies tasked with human rights oversight. The institutions include the Labour and Occupational Safety and Health Inspectorates, Mines Safety Department, ZEMA etc.
2. **Public agencies** tasked with oversight of the governance framework in the mining sector should conduct routine and periodic reviews of mining operations
3. **Government** must ensure that standard operating procedures are developed and communicated, and appropriate environmental impact studies carried out and approved before commencement of any mining operations
4. **Mining companies** must undertake regular maintenance of equipment and where need be, acquire advanced technologies to control pollution
5. To improve compliance to various legislation and regulations it is recommended that the **Government** revised substantially upward the amount of monetary penalties applicable to labour law and safety and health-related offences in order for these to become effective deterrents

Regarding constitutional provisions relating to social and environmental rights

6. The Zambian Constitution does not contain specific constitutional provisions relating to social and environmental rights that could reinforce social and environmental accountability. The **Government** must as a matter of urgency work towards including provisions for social and environment rights in order to guarantee citizens' rights to a safe, clean and healthy environment.

Regarding resettlement of people displaced by developmental activities

7. Zambia has a national resettlement policy for internally displaced persons, who include people that have been displaced to allow for mining developments'. However, the policy does not have the legal backing to compel mining developers to mitigate displacement and resettlement to pave way for mining and housing development. The **Government, in consultation with all stakeholders**, must develop appropriate legislation to among others, compel mining developers to prepare comprehensive resettlement planning and provide adequate compensation to displaced persons that restores displaced persons to previous levels of livelihoods or living standard and compensates for lost income.
8. In drawing up resettlement plans, **Government, in consultation with all stakeholders** must ensure that the benefits offered by resettlement programs are clearly established. In urban areas, this may cover: financial compensation; housing and service provision; transport, temporary accommodation and other provisions required for relocation such as credit facilities, training or job opportunities. In rural areas, this may cover land-for-land, participation in training and access to farming inputs and credit.
9. In order to ensure that mining companies are held accountable for the pledges made to local communities, it is recommended that agreements negotiated between **mining companies, government and local communities** must be publicised and stiff penalties imposed on non-compliance to ensure that mining companies deliver on promises made.

Regarding domestication of international laws and policies

10. Zambia's governance framework governing the mining sector should be informed and underpinned by its obligations under various international treaties and conventions. It is therefore recommended that the Government aligns domestic legislation pertaining to the mining sector governance framework to these treaties and conventions to address inconsistencies between the legislative provisions and the principles in ratified Conventions.
11. The **Government** should put into application the right to environment as a fundamental right and enact appropriate legislation guaranteeing citizens' rights to social and environment rights.
12. The **Government and stakeholders** should come up with a framework that ensures that all mining companies undertake CSR activities in line with government and local community development priorities. The framework could be by legislation or any format agreed upon through consultations by Government and stakeholders. Mining firms would be required to outline tangible CSR in local communities before being awarded mining rights.
13. **Mining companies** should ensure that there is strict enforcement of the supplier code of conduct to compel suppliers and contractor firms to adhere to conditions of service and work enshrined in labour laws and international conventions.
14. It is also recommended that the **Government** ratifies all unratified conventions especially the ILO conventions that guarantee labour standards and rights at work. Among the conventions that Zambia has not ratified are Occupational Health Services Convention (No. 161), Social Security (Minimum Standards) Convention (No. 102) and Labour Inspection Convention (No. 81).
15. It is recommended that the Government amends the Employment Act to include a provision requiring employers to ensure equal remuneration for the same work, similar work or work of

equal value irrespective of the origin, nationality, sex, age, race and disability. This will give effect to the provisions of ILO Convention No. 100, Convention on the Elimination of all forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Persons with Disabilities (CRPD).

16. In order to implement the principles relating to protecting workers from sickness, disease and injury arising from their employment, **Government** must quickly develop an elaborate national policy regarding Occupational Health and Safety (OHS) as advocated in Convention No. 155

Regarding consultation and transparency

17. Consultation of communities by mining corporates in implementing social and community projects has been very weak. Lack of consultations has contributed to conflict between mining companies and communities. To promote harmony in mining communities, it is recommended that the **mining companies, communities and other stakeholders** establish fora for consultations in all mining areas to address problems relating to the implementation of community projects, resettlement, compensation, environment, labour relations, etc.
18. Transparency and accountability in consultations will require **mining companies**, government and public agencies responsible for the mining sector to increase collaboration and information sharing amongst the mining companies and between them and other tripartite stakeholders in Government (both central and local) and in their respective host communities.
19. The **community leaders** must ensure that the views of all stakeholders in the community including youth, women, and persons with disabilities are taken into consideration to ensure transparent engagement.
20. **Public agencies** tasked with oversight of the governance framework that require holding public hearings such as the Environmental Impact Assessment process under ZEMA must ensure that information is made available to all stakeholders and in a manner that is accessible and comprehensible even at the local level.
21. Public agencies tasked with oversight of the governance framework must ensure that interested and affected persons are adequately sensitized prior to the period of the public hearing meetings
22. **International and local civil society organisation** must support community advocacy and provide training to build the capacity of local communities to participate meaningfully in consultations with the mining companies and other stakeholders such as the local council. The focus of the capacity building would include the development agreements that the government signed with mining companies, mining fiscal regime, environmental issues, resettlement, etc.
23. **Civil society organisations** should work towards establishing a network of educators and communicators to be supported to promote a wider dissemination of information throughout the country on the various issues affecting mining communities.

Regarding child labour in non-traditional mining sector

24. In order to prevent and eliminate child labour in the small-scale mining and other illegal mining communities sector, **civil society organisations** must embark on a sustained awareness-raising and mobilization of the local communities and development of multi-sectoral approach interventions that assist the children to transit into alternative sources of livelihood.
25. **Government** must strengthen the monitoring and enforcement capacity of institutions and agencies to curb the worst forms of child labour such as those engaged in hazardous work in the mining sector

1.0 Introduction

The Jesuit Centre for Theological Reflection (JCTR), a faith based organisation and a ministry of the Society of Jesus (Jesuits), is implementing the Joint Country Programme (JCP) whose goal is the enhancement of Governance of Public Resources in targeted areas through participation and accountability. The Improved Public Resource Governance Project (IPRGP) responds to the JCP Resource Governance Programme. It seeks to enhance governance of public resources in targeted areas through citizen participation and accountability. The project therefore contributes to the realization of the JCP goal of having a Zambia that is transparent and accountable in the management of national resources and guarantees citizens' benefits.

With scarce resources, the mining sector is key to contributing to national development through revenue earned on taxes and exports from the sector. Being a copper producing country, the human resource in this sector is valuable and their welfare a priority. With Zambia being a signatory of the Universal Declaration on Human Rights, it therefore becomes important for mining companies to comply with laws and regulations and uphold the worker's human rights. The governing frameworks for the mining sector must also compel any employer within the sector to observe these rights.

2.0 Objective of the Study

The object of the consultancy was to produce a report on governing frameworks in the mining sector which are currently in place as well as on respect for human rights. The report will inform stakeholders on the current regulations and policies in place in the sector as well as the levels of respect for human rights for workers that can inform future interventions of the JCTR and partners in the sector.

The study responds to the outcomes and results of the IPRGP. One of the outcomes the project contributes to is Outcome 3: Rights Holders in targeted areas, in conjunction with other organizations working on the same issues are enabled to contribute to improved policies and legal frameworks governing the mining sector by December 2018. The activity therefore contributes to Result 3.3: Frameworks and policies that improve governance in the mining sector in place. This also links to aspect of human rights under Outcome 4: Communities in conjunction with community based organisations (CBOs) in targeted areas are mobilised and capacities built to hold duty bearers in the mining industry accountable to community rights by December 2018 and contributes to Result 4.2: Duty bearers respect the rights of rights holders by improving service delivery. Therefore, information on human rights and frameworks and policies that improve governance in the mining sector are key to the optimal contribution of the sector to the nation.

2.1 Methodology

The study was a desk review based on secondary data. Information for this review was collected from secondary sources, consisting of published relevant legal and policy documents and reports on governance frameworks in the mining sector in Zambia and other countries. This included internet publications and reports from institutions such as JCTR, International Labour Office (ILO), United Nations (UN), Chamber of Mines, Trade Unions, employer organisation, Ministry of Mines, Human Rights Commission (HRC), Ministry of Labour and other key institutions.

3.0 Overview of the Mining Sector

Most of Zambia's large-scale copper mines are located in Copperbelt Province and North-Western Province. The Copperbelt has been the traditional centre for mining in Zambia. The Province hosts the large copper mines that were previously run by the state owned Zambia Consolidated Copper Mines (ZCCM). North-Western Province has been dubbed as the "New Copperbelt" as a result of the large copper mining developments that have opened over the last decade. The province is largely rural with limited infrastructure and is the most sparsely populated of Zambia's nine provinces. The major mining activities in North Western Province are found in Solwezi, the capital of the province. All the large mines are foreign owned, though the Zambian Government through ZCCM-investment Holdings (ZCCM-IH) has some shares ranging from 10 to 20%. The State, however, does not have free carry rights or options to acquire shareholdings. Free carry rights or options to acquire do not exist in the law statutes. Nevertheless, mines that were previously owned by the Government but sold to international mining houses feature what is referred to as 'a golden share'.¹ This is in respect to the minority shares the state continues to hold in these mines. Under the provisions of Section 27 of the Zambia Development Agency (ZDA) Act No. 11 of 2006, the Minister of Finance may retain a golden share in a state-owned enterprise.

Figure 1 below gives an overview of the mining sector, with the ownership structure.

Figure 1: Overview of the mining sector and ownership structure

Company	Shareholding structure		Public listed company/ subsidiary of a public listed company	Shareholders	Stock exchange listing
	Foreign %	Local %			
First Quantum Mining-Bwana Mkubwa	99.98	0.02	No	Cover Investments Ltd (99.98%) - Private entity, Kwalela M Lamaswala (0,02%)	
Kansanshi Mining Plc	80	20	Yes	First Quantum Minerals FQM (80%) - Private entity, ZCCM-IH (20%)- State owned company	Toronto Stock Exchange, London Stock Exchange
Konkola Copper Mines	79.42	20.58	Yes	Vedanta Resources (79.42%) - Private entity, ZCCM-IH (20.58%) - State owned company	London Stock Exchange
Lubambe Copper Mines	80	20	No	Konnoco (B) Inc. (80%) - Private entity, ZCCM-IH (20%) - State owned company	
Lumwana Mining Plc	100		No	Barrick Gold (Equinox Africa Ltd) (100%)- Private entity	

¹Silwamba, E and Jalasi, J, "Zambia Mining Law, 2017", <http://www.iclg.co.uk/practice-areas/mining-law/mining-law-2017/zambia>

Mopani Copper Mines	90	10	Yes	Glencore International AG (73,1%) - Private entity, First Quantum Minerals Plc (16,9%) - Private entity, ZCCM-IH (10%) - State owned company	Toronto Stock Exchange, London Stock Exchange
Chambishi Metals	90	10	No	Eurasian Natural Resources Corporation (ENRC) (90%) - Private entity, ZCCM-IH (10%) - State owned company	Toronto Stock Exchange, London Stock Exchange
NFC Africa Mining	85	15	Yes	CNMC Group (85%) - Private entity, ZCCM-IH (15%) - State owned company	Hong Kong Stock Exchange.
Luanshya Copper Mines	85	15	Yes	CNMC Group (85%) - Private entity, ZCCM-IH (15%) - State owned company	Hong Kong Stock Exchange.
Chibuluma Mines Plc	85	15	Yes	Metorex (Pty) Limited (85%) - Private entity, ZCCM-IH (15%) - State owned company	Hong Kong Stock Exchange.
Sino-Metals Leach Zambia	100		Yes	China Nonferrous Mining Corporation Ltd – CNMC (55%) -Private entity, Non-Ferrous Corporation Africa Mining PLC (15%) - Private, Entity, Hainan Sino-Africa Mining Investment Co., Ltd (30%) -Private entity	Hong Kong Stock Exchange.
Kalumbila Minerals Limited	100		Yes	First Quantum Minerals FQM (100%) - Private entity	Toronto Stock Exchange, London Stock Exchange
Chambishi Copper Smelting	100			China Nonferrous Metal Mining (Group) Company, 60% and Yunnan Copper Industry (Group), 40%	
Sable Zinc Kabwe	100		Yes	Metorex, 100%	
Albidon	100		Yes	Jinchuan Group Resources Holdings	
Kagem Mining (Gemfields)	100		Yes	GEMFIELDS (75%) - Private entity, KAGEM Mining Ltd (25%) - Private entity	London Stock Exchange

Source: Zambia Extractive Industries Transparency Initiative (ZEITI) Reconciliation Report for the Year 2013, December 2014,

4.0 Governance Frameworks in the Mining Sector in Zambia

Zambia like all states is subject to human rights obligations as a result of the international instruments which enshrine human rights and fundamental freedoms that the country has signed and ratified. Zambia has ratified the Universal Declaration of Human Rights International Covenant on Civil and Political Rights (CCPR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the International Labour Organisation's eight core conventions, and the African Convention on Human Rights. State parties have obligations towards all citizens to ensure that there is equality of treatment for all individuals based on the international bill of rights. The premise of the international bill of rights is non-discrimination, protection, equality, and accessibility of adequate standard of living and dignity for all humanity. The international bill of rights refers to; the Universal Declaration of Human Rights, and two legally binding treaties, the International Covenant on Civil and Political Rights (CCPR), and its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights.

The state is primarily responsible for protecting individuals from human rights abuses, including those committed by companies. This responsibility requires the State to take appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. Zambia has developed various policies and enacted specific laws protecting human rights and governing business activities. In addition, the mining companies adhere to various international conventions and practices under the auspices of international organisations.

4.1 Policy Framework²

Policies that have a bearing on human rights in mining operations are mining, environment, employment and water. Zambia does not have a policy on occupational health and safety, though health and safety measures are incorporated in some of the other policies.

4.1.1 Mineral Resources Development Policy, 2013

The Mineral Resources Development Policy, which was the result of a revision of the 1995 mining policy, reflects the diversity of operations associated with mining such as mineral prospecting, exploration, mining, processing and metal treatment operations. The vision of the policy is to have a vibrant, well organized private sector and private-public partnership-led mining sector contributing in excess of 20% towards the Gross Domestic Product (GDP) and sustainable economic development in the country by 2030. In order to realize the vision, the policy objectives of the government for the mining sector are, among others, to:

- i. Attract and encourage both local and foreign private sector participation in the exploration for and commercial exploitation of the Zambia's mineral resources;
- ii. Facilitate the empowerment of Zambians to become owners/shareholders in the mining industry;
- iii. Promote the development of a mining sector that is integrated into the domestic economy and which promotes local entrepreneurship, increased demand for local goods and services and creates employment for Zambians and also promotes value-addition;

²Section 4.1 draws from the Ministry of Mines and Mineral Development, "Environmental and Social Management Framework", Zambia Mining Environment Remediation and Improvement Project, July 2016

- iv. Encourage and facilitate orderly and sustainable development of small-scale mining sub-sector to enable it to contribute to economic development and wealth creation;
- v. Achieve a socially and internationally acceptable balance between mining and the biophysical environment and to ensure that acceptable standards of health safety and environmental protection are observed by all participants in the mining sector;
- vi. Promote research and development (R&D) and its application in the mining sector;
- vii. Encourage mining companies to develop a participatory and collaborative approach to mine planning, development and decommissioning taking into account the needs and concerns of local communities and thereby fulfilling their role as socially responsible corporate citizens; and
- viii. Ensure transparency and accountability in the management of mineral resources in the country.

4.1.2 National Environmental Policy (NEP), 2005

Zambia's National Environmental Policy is aimed at the promotion of sustainable social and economic development through sound management of the environment and natural resources. The policy seeks, among other things, to:

- i. Secure for all persons now and in the future an environment suitable for their health and well-being;
- ii. Promote efficient utilization and management of the country's natural resources and encourage, where appropriate long – term self-sufficiency in food, fuel wood and other energy requirements;
- iii. Facilitate the restoration, maintenance and enhancement of the ecosystems and ecological processes essential for the functioning of the biosphere and prudent use of renewable resources;
- iv. Integrate sustainable environment and natural resources management into the decentralized governance systems and ensure that the institutional framework for the management of the environment and natural resources supports environmental governance in local government authorities;
- v. Enhance public education and awareness of various environmental issues and public participation in addressing them; and
- vi. Promote local community, Non-governmental organisation (NGO) and private sector participation in environment and natural resource management.

4.1.3 National Employment and Labour Market Policy (NELMP)

The National Employment and Labour Market Policy was launched in 2005 with the main objective of creating adequate and quality jobs under conditions that ensure adequate income, protection of workers' and basic human rights. The policy makes specific provisions for safeguarding rights at places of work. Issues such as forced labour, child labour, freedom of association, and discrimination in employment are addressed. The policy also provides for measures to address occupational safety and health. The policy recognized that the majority of workers in Zambia face numerous occupational safety and health risks, and identified the mining, manufacturing, construction, electricity, forestry and agricultural sectors as being associated with more occupational safety and health risks.

4.1.4 National Resettlement Policy 2015

The overall objective of the National Resettlement Policy is to establish and protect resettlement schemes that are economically productive, socially secure and environmentally sustainable for persons settled voluntarily or involuntarily. The Policy also puts in place operational instruments to guide resettlement and compensation of Internally Displaced Persons (IDPs) in the country in line with the African Union Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention) which Zambia is Party to.

The specific objectives of the Policy are:

- i. To effectively manage the resettlement schemes and protect against illegal allocation of land in resettlements.
- ii. To create opportunities for self-employment on land for the target groups.
- iii. To improve access to public social services by creating viable settlements as opposed to unplanned scattered settlements.
- iv. To create new growth points for rural investment and development by providing social and economic infrastructure thereby stimulating economic growth.
- v. To bring under cultivation some of the idle arable land throughout the country in order to increase household and national food security through the establishment of resettlement schemes.
- vi. To ensure security of tenure for the land allocated to the settlers
- vii. To mitigate adverse and social economic impacts from land acquisition or restrictions on land use by providing compensation for loss of assets and/ or livelihoods to those that have been displaced in accordance with the law.
- viii. To provide resettlement assistance to persons displaced by natural disasters.
- ix. To ensure that resettlement activities are implemented with disclosure of relevant information, consultation and informed participation of those affected.

4.2 Legal Framework

The relevant legal frameworks that govern business activities in the mining sector include mineral exploration and mining regulations, employment, occupational and safety regulations, fiscal and environmental regulations.

4.2.1 Mineral exploration and mining

The following are the laws governing mining exploration, mining, and processing of minerals in Zambia

4.2.1.1 Mines and Minerals Development Act No. 11 of 2015

The Mines and Minerals Development Act No. 11 of 2015 of the Laws of Zambia (MMDA) is the primary law governing the mining sector in Zambia. The Mines and Minerals Development Act of 2015 vests all rights of ownership in, searching for, mining and disposing of, minerals in the Republic in the President on behalf of the Republic. The MMDA regulates aspects dealing with mining rights, licences, large-scale mining in Zambia, gemstone mining, health and safety, environmental protection, and geological services, royalties and charges.

The MMDA contains restrictions to artisanal mining, small-scale mining, and mineral trading permit and gold panning. The Act restricts these to be only undertaken by a citizen or a co-operative wholly composed of citizens. Small-scale mining shall only be undertaken by a citizen-owned, citizen-influenced or citizen-empowered company. According to the MMDA, a citizen-owned company means a company where at least 50.1% of its equity is owned by Zambian citizens, and in which the Zambian citizens have significant control of the management of the company.³ However, an applicant for artisanal mining or small-scale mining shall not be granted a mining licence in respect of radioactive minerals. There are no restrictions with respect to foreign ownership with regard to holders of large-scale mining licences.

³ This definition borrowed from the Citizens Economic Empowerment Act

The MMDA is superintended by the Ministry of Mines and Minerals Development, specifically by the Director of Mines. The MMDA gives specific functions to the Director of Mines, Director of Mines Safety, Director of Mining Cadastre and Director of Geological Survey while the Minister enjoys an appellate and supervisory role over the respective Director's actions. An aggrieved person may appeal to the Minister of Mines against the decision of the Director of Mining Cadastre, Director of Mines Safety, Director of Mines, Director of Geological Survey or the Mining Licence Committee. If a person is not satisfied with the decision made by the Minister, he/she can appeal to the Mining Appeals Tribunal. A person aggrieved by the decision of the Mining Appeals Tribunal can appeal to the High Court.

The Director of Mines is responsible to supervise and regulate the proper and effectual development of mines and conduct of mining operations in accordance with the provisions of the MMDA. The Director of Mines Safety has responsibility for matters concerning the environment, public health and safety in exploration, mineral processing and mining operations. The Director of Geological Survey undertakes the geological mapping of Zambia and exploration operations and provides data concerning the geology and mineral resources of Zambia. The Director of Mining Cadastre is responsible for the administration of mining rights and mineral processing licences. With the exception of the Department of Mine Safety whose office is situated in Kitwe on the Copperbelt Province, all the departments have their head offices in Lusaka, expect.

The Director of Mines Safety and the Zambia Environmental Management Agency may cause such environmental impact studies and other studies to be carried out as the Director of Mines Safety considers necessary to enable a decision on whether to grant mining rights or mineral processing licences.

4.2.1.2 The Explosives Act, Cap 115

The purpose of this act is to regulate the manufacture, use, possession, storage, importation, exportation, transportation and destruction of explosives. The act also provides for the health, safety and welfare of persons employed in explosives factories. The act empowers the inspectors of mines and inspectors of machinery, from Mines Safety Department, to carry out the duties of inspectors of explosives in explosives factories.

4.2.1.3 The Ionizing Radiation Act, Cap 311

The objective of the Ionizing Radiation Act is to protect the public and workers from dangers arising from the use of devices or materials capable of producing ionising radiation. The act requires that those who want to venture into prospecting and/or mining of radioactive minerals apply for a license prior to commencement of operations. The act stipulates the occupational exposure limits for various categories of workers and regulates the possession, sell, disposal, importation and exportation of radioactive materials. Furthermore, it regulates the installation, servicing and maintenance of radioactive devices and radiation premises. To operationalise its provisions, the act has provided for the establishment of the Radiation Protection Authority (RPA).

4.2.1.4 The Companies Act Chapter 388 of the Laws of Zambia

The Companies Act provides for the formation, management, administration and winding-up of companies in Zambia. The Act also provides for the registration of charges over the undertakings or properties of companies, and the registration of foreign companies doing business in Zambia. All companies including foreign companies must register with the Register of Companies before

the commencement of business. A body corporate formed outside Zambia is deemed to have an “established place of business” if it has any of the following in Zambia:

- i. a branch or management office;
- ii. an office for the registration of transfer of shares;
- iii. a factory or mine; or
- iv. any other fixed place of business

4.2.1.5 Zambia Development Agency Act

The ZDA Acts main objective is to foster economic growth and development by promoting trade and investment in Zambia through an efficient, effective and coordinated private sector led economic development strategy. The Act establishes the Zambia Development Agency as a one stop facility, among other matters, to:

- i. attract and facilitate inward and after care investment;
- ii. provide and facilitate support to micro and small business enterprises;
- iii. promote exports
- iv. streamline bureaucratic procedures and requirements faced by investors;
- v. facilitate industrial infrastructure development and local services;
- vi. promote greenfield investments through joint ventures and partnerships between local and foreign investors;

4.2.2 Employment and Labour Relations⁴

The following laws have a bearing on the nature of labour relations found in the Zambia mining sector.

4.2.2.1 Constitution of Zambia (Cap 1)

The Bill of Rights (PART III) of the Constitution) protects the rights of all individuals and ensures that there is justice. The Constitution protects the individual from doing any work against his or her will. Forcing a person to work against his or her will is known as forced labour. This means that a person should not perform any work if the person does not want to do so. It also means that a person cannot be forced to work for a new employer without his or her agreement even when the business is taken over by a new owner.

The Constitution also offers protection from property being taken away. No one should take away from a person any form of property, including wages or allowances or any benefits which such person has earned or is due to them. An employer, cannot take away workers’ wages and allowances to which they are entitled when they have already worked for them

The Constitution gives workers and employers the freedom to establish or join organisations of their own choosing for the protection of their interests. This may include a trade union or a business association. Workers and employers cannot be forced to join or establish an organisation against their will.

Any form of discrimination on the basis of race, tribe, sex, place of origin, marital status, political opinions, colour or creed is prohibited under the Constitution. The Constitution also prohibits the

⁴ Sections 4.2.2.1 to 4.2.2.8 draws extensively from Nyirongo G and Mwondela K, “Summary of the Zambian Labour and Employment Laws Relevant to Micro, Small and Medium Enterprise” in the Construction sector”, ILO, 2012

employment of a person who is between the age of fifteen and eighteen years in any employment that would negatively affect his or her health or education or interfere with his or her physical or moral development.

4.2.2.2 The Employment Act (Cap 268)

The Employment Act is the primary law governing the employment of persons in Zambia. It covers issues relating to the engagement of persons on contracts of service; the form of and enforcement of contracts of service; and the protection of wages of employees. The Act prohibits the employment of persons below the age of sixteen unless it is done under terms, conditions and type of employment approved by a Labour Officer.

The Act provides for the employer to pay the expenses of moving a worker from one place to the place of work within Zambia and grants maternity leave to female workers who have completed at least two years of continuous employment. In addition, every female employee is entitled to one day's absence from work each month without having to produce a valid medical certificate. An employer shall not end the employment of a female worker or impose any other penalty or disadvantage for reasons connected with pregnancy.

The Employment Act also prescribes when a contract of service can be lawfully ended and conditions thereof. For example, all wages including overtime pay and allowances shall be payable to the worker on the day of termination of employment. Employment can be terminated by redundancy if the business ceases to operate or the businesses scale of operation reduces and the number of workers required reduces, provided notice of thirty (30) is given before the redundancy is made. In the event that employment is ended because of unsatisfactory conduct or performance, the affected worker should be given the opportunity to be heard on the charges laid against him/her. Enforcement of the provisions of the Employment Act lies with the Labour Officer. The Labour Officer has the powers to enter freely at any time and to inspect a workplace and to carry out any examination, or inquiry necessary to ascertain whether employers and workers are complying with the Act. All disputes relating to contracts of employment shall be referred to the Labour Officer.

4.2.2.3 Employment Act (Special Provisions) Act (Cap 270)

The provisions of this Act have effect only when a State of Emergency comes into force under the Constitution. The purpose of the Act is to protect the continued employment or conditions of service of workers only if it is in the public interest. Under this Act, the President may make regulations to stop dismissal or termination of employment even when notice of dismissal or termination has been given to workers except in circumstances prescribed by the regulations.

4.2.2.4 Industrial and Labour Relations Act (Cap 269)

The Industrial and Labour Relations Act covers matters relating to negotiations of conditions of service between employers and workers and the settlement of any disputes among them. The Act safeguards workers' rights by forbidding discrimination against workers on grounds of race, sex, marital status, religion, political opinion or affiliation, tribe or social status. The Act also forbids any discrimination against Trade Unions and grants workers the right to go on lawful strike, with the exception of those engaged in essential services. Workers engaged in essential service workers include those who provide the service for the maintenance of safe and sound conditions in a mine.

The Act also guarantees the rights of employers. Employers have the right to join and to participate in the activities of any an association registered under this Act whose main objectives are to promote the employers' interest. An employer cannot be discriminated against on the ground that he or she is or is not a member of any association.

Every employer employing twenty-five (25) or more eligible workers must register himself with the Labour Commissioner within three months of employing the workers for purposes of entering a recognition agreement with a registered employer trade union to which his/her workers belong. The employer and trade union must thereafter enter into collective bargaining in order to conclude and sign a collective agreement.

The Act further provides guidelines on procedures to be followed when a dispute arises between employers and workers. A collective dispute exists when a dispute is presented in writing to the employer or to the workers through their union listing all their claims and demands. The dispute is declared when the employer or the workers through their union fails to answer the demands or claims, formally rejects claims or demands made and has made no counter offer or where both parties have held a meeting to negotiate but have failed to reach a settlement. According to the Act, such a dispute should be referred to a mediator jointly appointed by the workers and the employer or by a board of conciliation.

Disputes can also be referred to the Industrial Relations Court which was specifically set up to resolve employment and labour disputes. The Industrial Relations Court has the power to:

- i. decide on any matter affecting the rights, obligations and privileges of workers, employers and representative bodies;
- ii. review awards and decisions in collective disputes; and,
- iii. interpret terms of awards, collective agreements and recognition agreements.

4.2.2.5 Employment of Young Persons and Children's Act (Cap 274)

The purpose of the Employment of Young Persons and Children's Act is to regulate the employment of children and young persons. A child means a person under the age of fourteen (14) years, and a young person is defined as a person who is above the age of 14 years and is under the age of eighteen (18) years. The Act prohibits the employment of a child in any public or private industry. The employment of young persons below the age of sixteen (16) years in an industry is prohibited under the law. However, there are some exceptions for a young person who is above the age of 16 years to be employed under a contract as an apprentice certified by the Labour Officer. Even when a young person is employed there are restrictions. Young persons aged 16 to 18 years shall not be employed at night in any industrial undertaking nor can they be employed in any type of employment or work which is likely to affect their health or safety or morals.

4.2.2.6 Minimum Wages and Conditions of Employment Act, No. 13 of 1994

The Minimum Wages and Conditions of Employment Act gives guidelines to the Minister of Labour to set the minimum wage and minimum conditions of employment for workers who do not belong to any Union that can act on their behalf. The Minimum Wages and Conditions of Employment Act cover the category of workers who are not represented by any union or association to negotiate wages or conditions of employment on their behalf. This category of workers is referred to as "protected workers". The Act provides the minimum wage for various categories of workers such as domestic workers, shop workers, general worker, cleaner, handy person, office orderly, guards or watch persons, drivers, receptionist, telephonists or typist, and persons engaged as qualified clerks. This law gives the Minister of Labour the power to issue a Statutory Instrument (SI), to set the minimum wages and minimum conditions of service for any group of protected workers. The conditions which the Minister can set include;

- i. the wages to be paid to workers by the hour, day, week or month
- ii. the number of hours of work in any day or week
- iii. the number of working days in any week or month

- iv. the amount to be paid for over time done outside the normal hours of work or the normal working days
- v. the amount to be paid for any piecework
- vi. the amount to be paid for food or housing allowance

The Minimum Wages Statutory Instruments are applicable to all workers except those:

- i. employed by the government, local authorities;
- ii. those whose wages are regulated in the process of collective bargaining conducted under the Industrial and Labour Relations Act; and,
- iii. workers whose contracts are governed by specific employment contracts attested by a Labour Office.

The minimum wage requirements also provide for leave at the rate of two days per month, normal weekly hours for a worker not to exceed forty-eight hours, termination of employment, overtime, maternity leave for female workers, retirement benefits, sick leave, funeral assistance in the event of death of the worker, worker's spouse or registered child, transport allowance if the worker lives more than three kilometres from the place of work, lunch allowance and protective clothing to a worker for any work done that is likely to be injurious to the worker.

The Labour Commissioner is responsible for ensuring that a protected worker is paid the minimum wages and minimum conditions of service. To ensure that this law is followed by the employers, the Labour Commissioner or Labour Officers have the right to enter any premises or land where any protected worker is employed to conduct inspections on the wages and conditions of service.

4.2.2.7 The National Pension Scheme Act No. 40 of 1996

The National Pension Scheme is the main scheme in Zambia managed and administered by the National Pension Scheme Authority (NAPSA) and is compulsory. The scheme provides benefits for retirement, old age and to dependants of a deceased member. All businesses, companies or organisations which employ people in Zambia are required to register as contributing employers with NAPSA. An employer will make deductions from the wages of their workers every month which will be sent to NAPSA as contributions to the pension scheme. The employer shall also make a contribution to be added to the worker's contributions. There are some exceptions. In 2000, the two major mine companies, Konkola Copper Mines (KCM) and Mopani Copper Mines (MCM) asked for an exemption from subscribing to NAPSA and put their workers on a private-operated money purchase pension scheme managed by an off-shore private company.⁵

4.2.2.8 Pension Scheme Regulation Act

The Pension Scheme Regulation Act allows employers to set up or manage pension scheme other than NAPSA under the NAPSA Act. An employer is not allowed to establish or manage a pension scheme unless it complies with this Act. This scheme may be used by both the worker and the employer and can only be entered into with special permission from the Minister who may allow an exemption from NAPSA. Any registered pension scheme must set up a fund in a separate multi-employer trust or it must be associated with a trust into which all contributions, investment earnings, surpluses from insurance and other monies are paid.

⁵ Matenga, Chrispin Radoka "The Impact of the Global Financial and Economic Crisis on Job Losses and Conditions of Work in the Mining Sector in Zambia", International Labour Office - Lusaka, 2010

4.2.3 Legislation governing the health and safety

Establishing health and safety standards for factories is one example of enacting legislation and regulations that have the effect of requiring companies to respect human rights.⁶ These standards are put in place to protect workers against conditions that can put their lives or health in danger. There are a number of legislations governing health and safety in the mining sector in Zambia.

4.2.3.1 Mines and Minerals Development Act No. 11 of 2015

The Mines and Minerals Development Act has provisions for safety and health in the mining sector. The Act provides that consideration must be made of environmental and human health when granting mining rights or mineral processing licences. In deciding whether or not to grant any mining right or mineral processing licence, consideration will be taken into account on the need to ensure that any mining or mineral processing activity prevents any adverse socio-economic impact or harm to human health, in or on the land over which the right or licence is sought. The Act also provides for measure to be put in place to ensure the regulation of work and machinery connected with exploration, mining or mineral processing in so far as safety and the protection of life are concerned.

4.2.3.2 Medical Examination of Young Persons (Underground Work) Act, Cap 216

The Act provides for the implementation in Zambia of the International Labour Organisation's Convention Number 124 concerning medical examination of young persons for fitness for employment underground in mines. Specifically, the Act requires that no employer shall employ or require to work underground in a mine any person under the age of twenty-one years unless, after a thorough medical examination carried out by or under the supervision of an approved physician, such person is certified by the physician to be in every way physically fit for such employment or work.

4.2.3.3 Occupational Health and Safety Act 36 of 2010⁷

The Occupational Health and Safety Act provides for the safety, health and welfare of workers and the establishment of health and safety committees at work. It covers substances (or materials) for use at work and provides for the protection of persons against risks to health and safety. Employers of ten or more persons must set up a health and safety committee consisting of members representing the employer and some representing the workers with the consent of the workers or trade union. The role of the committee includes promoting cooperation between workers and workers in order to uphold safe working conditions and sharing information on work-related safety with workers.

An employer must ensure the safety, health and welfare of his workers by placing a worker in an occupational environment that is adapted to their physical and psychological ability. This includes ensuring that the workplace is safe, tools provided for use by workers are used and stored, safely and training is provided to employees in the use of materials, and first aid and proper supervision to ensure health, safety and welfare of workers is provided. The Occupational Health and Safety Institute (OHSI), under the Ministry of Health is the mandated for conducting regular medical surveillance on the miners, and developing and implementing programmes to eliminate or reduce risks to health or safety or to improve occupational hygiene, occupational health and safety.

⁶ United Nations, "Frequently Asked Questions About the Guiding Principles on Business and Human Rights", 2014

⁷ Sections 4.2.3.4 and 4.2.3.5 have drawn extensively from Nyirongo G and Mwendela K, "Summary of the Zambian Labour and Employment Laws Relevant to Micro, Small and Medium Enterprise" in the Construction sector", ILO, 2012

4.1.4.1 Workers Compensation Act No. 10 of 1999

The Workers Compensation Act is a law aimed at compensating workers who are involved in accidents and suffer disabilities, or contract diseases at their place of work. The Act repealed the Workers Compensation Act, 1964 Cap 217 and the Pneumoconiosis Act, 1950 Cap 217, and merged the functions of the Workers' Compensation Fund Control Board and the Pneumoconiosis Compensation of fund for the compensation of workers disabled by accident occurring, or diseases contracted in the course of employment.

The Act is implemented by the Workers Compensation Board. By this law, employers are required to contribute to a Workers' Compensation Fund at the Workers Compensation Board. This Fund is used to compensate the workers when they get injured or suffers disease from their places of work. Every employer carrying out business in Zambia is required to register with the Workers Compensation Board. Employers are required to make contributions to the Workers Compensation Board after the Board has assessed whether the employer is eligible to contribute. The law requires that employers must provide and maintain first aid equipment and services at their work premises to deal with any accidents

Under the Act, the employer is responsible for compensating the worker when, in the course of performing their work at the employer's work place, the worker:

- i. suffers any injury caused by the negligence, carelessness or other wrongful instructions by any person acting on behalf of the employer;
- ii. contracts disease caused by the negligence, carelessness or other wrongful instructions by the employer; or
- iii. suffers disease caused by the negligence, carelessness or other wrongful instructions by any person acting on behalf of the employer

The Workers Compensation Fund compensates the worker if the injury or disease suffered by the worker is not caused by the negligence, carelessness or other wrongful act of the employer.

4.1.4.2 Factories Act Cap 441

The Factories Act specifies regulations to ensure that the workplace is safe and healthy for all workers. The Act regulates the safety, health and the welfare of workers and allow for the inspection of factory plant and machinery. All factories operating in the Republic of Zambia are required, by this law, to register with the Factories Inspectorate in the Ministry of Labour within three (3) months of starting the operation of their factories. All plant and machinery in all types of factories must meet the conditions referred to in the Factories Act. The Act also requires all factories to be kept in a clean condition, maintain safety conditions in their premises and provide suitable safety and protective gear to their workers in line with the type of operations of their factory to avoid injury to the health of workers.

All factories are required to report any industrial diseases or accidents at their premises to the Factory Inspectorate in writing using the form supplied by the Ministry of Labour. The Act empowers Inspectors of factories to enter, inspect and examine, during the day or at night, any factory and every part of any factory.

All factories are required to clearly put notices in their places including the following:

- i. The Summary of the Act which can be obtained from Government Printers;
- ii. The Address of the nearest Inspector of Factories and the Labour Officer;
- iii. The Rules, including Safety Rules, which are used in running the factory and should be followed by the management, workers and all visitors.

4.2.4 Environment

Zambia is rich in minerals such as copper, cobalt, and zinc with mining activities operating on a large-scale. Exploitation of these minerals brings with it environment challenges.

4.2.4.1 Mines and Minerals Development Act No. 11 of 2015

Part VI of the Mines and Minerals Development Act has provisions for environmental protection in the mining sector. The Act provides that consideration must be made of environment and human health when granting mining rights or mineral processing licences. In deciding whether or not to grant any mining right or mineral processing licence, consideration will be taken into account on the following:

- i. the need to conserve and protect the air, water, soil, flora, fauna, fish, fisheries and scenic attractions, the features of cultural, architectural, archaeological, historical or geological interests; and
- ii. the need to ensure that any mining or mineral processing activity prevents any adverse socio-economic impact or harm to human health, in or on the land over which the right or licence is sought.

4.2.4.2 The Environmental Management Act, No 12 of 2011

The Environmental Management Act provides for integrated environmental management and the protection and conservation of the environment and the sustainable management and use of natural resources. The Act also provides for the prevention and control of pollution and environmental degradation, and conduct of environmental assessments of proposed policies, plans, programmes and projects to assess the likely impact on environmental management. The holder of a mining right is required to have approved environmental authorisation from the Zambia Environmental Management Agency (ZEMA) before commencement of operations.

4.2.5 Framework to guarantee investments⁸

The Constitution of Zambia (Amendment) Act No. 2 of 2016 has made special provision with regards to protection of investments. Article 16 of the Bill of Rights of the Constitution provides for the protection of property from being deprived without just cause. The definition of property includes prospecting rights and mining rights. In addition, the Constitution in Article 10.3 has made special provision reconfirming the protection of investment in Zambia to promote foreign investment and to protect and guarantee such investments through agreement with investors and other countries and any compulsory acquirement of an investment such only be done under customary international law and subject to Article 16(1) of the Constitution (Bill of Rights) of 1996 Constitution Amendment.

In addition, Zambia has, through the provisions of Investments Disputes Convention Act Chapter 42 of the Laws of Zambia, domesticated into National Law the Convention on the Settlement of Investment Disputes between states and nationals (multinationals) of other states. Zambia has also ratified the Southern Africa Development Cooperation (SADC) Protocol on Finance and Investment, the Common Market for East and Southern Africa (COMESA) treaty and the investment agreement for the COMESA Common Investment Area (CCIA) Agreement. There is also a provision for an Investment Protection Agreement that also protects investments from arbitrary possession by the government.

⁸ Section 4.2.5 draws from Silwamba, E and Jalasi, J, "Zambia Mining Law, 2017", <http://www.iclg.co.uk/practice-areas/mining-law/mining-law-2017/zambia>

Notwithstanding the investment guarantees, there are circumstances that allow the government to compulsorily acquire any real property (land), interest and personal property for the public benefit. The Lands (Compulsory Acquisition) Act allows the President of the Republic of Zambia to compulsorily acquire any real property (land), interest and personal property for the public benefit. The appropriation under the Constitution is subject to the grant of fair and reasonable compensation.

4.2.6 Framework to Enable Citizens to Make Demands Concerning the Mining Sector

There are no specific formal spaces that have been created for citizen participation concerning mining developments. Nevertheless, there are a number of laws in place in Zambia that rights holders can use to help them make demands from the duty bearers including the mining firms.

4.2.6.1 The Local Government Act provides opportunities for the communities to:

- i. attend council meetings:
- ii. access council meetings minutes:
- iii. 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)
- iv. lobby local authorities to provide community development, public amenities, public health, sanitation, drainage, etc.

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

- i. get compensation for land acquired for use by the holder of mining rights
- ii. make a claim for compensation within a period of three years from the date when that claim accrued, failing which the claim shall not be enforceable
- iii. reclaim the mining area upon cessation of mining operations by the holder of the mining right or mineral processing licence
- iv. claim for compensation for damage to the environment, human and animal health or to socio-economic conditions
- v. 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

4.2.6.3 The Environmental Management Act has provisions allowing communities to:

- i. participate in the formulation, implementation, and monitoring of environmental policies, strategies, plans and programmes
- ii. be informed of the intention of public authorities to make decisions affecting the environment and of available opportunities to participate in such decisions
- iii. participate in public hearings on any document under public review

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

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

4.2.7 Mining fiscal regime

The mining sector has been a major contributor to the Zambia economy. The sector is the country's largest earner of foreign exchange and contributes significantly to the tax revenue. According to the Zambia Extractive Industries Transparency Initiative (ZEITI), Zambia's mining sector contributed more than 77% of total export revenue in 2014.⁹ Five companies contributed approximately 70% of the revenue from the sector and payments made by one company, Kansanshi Mining, accounted for more than one third of the revenues. There has, however, been growing concern over the amount of tax revenues from the mining sector. In 2014 the total contribution to the national treasury was 7.3% (excluding Pay As You Earn (PAYE)) and 8.75 (including PAYE).¹⁰ It is widely held that under private ownership, mines have been remitting meagre revenue even during favourable market conditions, a result of tax policies that provided overly generous terms to companies as well as practices of transfer pricing. The study by UK Aid and World Bank equally concluded that the reason for the low tax-take lies in the generous tax concessions contained in the Development Agreements that were signed by the Government and the mines at the time of privatization.¹² Attempts by the Government to make changes to the development agreement have been resisted by the mining companies. In 2009, for example, when a new tax regime consisting of an effective tax rate (47 percent) within the international range (40-50 percent, was challenged by the mining industry, which argued that the invariability clauses in the original Development Agreements precluded such changes.¹³

Figure 2 shows some examples of development agreements signed by the Zambian Government and some of the mining companies.

Figure 2: Examples of Development Agreements Prior to 2008

Company	General terms and conditions
Konkola Copper Mine (KCM)	<ul style="list-style-type: none"> • Stability period (originally 20 years for Anglo America Corporation, amended to 16 years following acquisition by Vedanta four years after the initial sale) • Company income tax fixed at 25 percent (on net income arising from all mining activities) for duration of stability period • Royalty rate of 0.6 percent on gross revenues, except in the first five years, charged at 0 percent. Throughout the stability period, royalty payable deductible against liability of corporate income tax. • Customs duty set at 15 percent, payment of which was limited to US\$16 million in the first year, and US\$15 million per year, inclusive for four years thereafter • Excise duty on purchase of electricity set at 0 percent • Withholding tax of 0 percent; after expiry of stability period, charged at 10 percent • Loss carry forward permitted for 10 years from date incurred • Capital expenditure deductible allowance of 100 percent • Price participation payment to be treated as expense and thus deductible when calculating corporate income tax; royalty payments also deductible for income tax liability purposes • VAT on mine products charged at 0 percent. • Facilities to be treated as single large-scale mining unit.

⁹ Zambia Extractive Industries Transparency Initiative (ZEITI) Reconciliation Report for the Year 2013, December 2014

¹⁰ Zambia Extractive Industries Transparency Initiative (ZEITI) Reconciliation Report for the Year 2013, December 2014

¹¹ Simpasa, Anthony, Degol Hailu, Sebastian Levine and Roberto Julio Tibana, "Capturing Mineral Revenues in Zambia: Past Trends and Future Prospects", United Nations Development Programme and EU-UN Global Partnership on Land, Natural Resources and Conflict

<http://www.un.org/en/land-natural-resources-conflict/pdfs/capturing-mineral-revenues-zambia.pdf>

¹² ZUK Aid and World Bank, "What would it take for Zambia's Copper Industry to reach its potential?", 2011, [http://siteresources.worldbank.org/INTZAMBIA/Resources/copper-mining-summary-note\(online-copy\).pdf](http://siteresources.worldbank.org/INTZAMBIA/Resources/copper-mining-summary-note(online-copy).pdf)

¹³ *ibid*

Mopani Copper Mine (MCM)	<ul style="list-style-type: none"> • As in the case of KCM, except: • Stability period was set at 15 years • Excise duty on purchase of electricity set at 10 percent of the amount paid to ZESCO by Copperbelt Energy Company and only payable after expiry of stability period
Kansanshi	<ul style="list-style-type: none"> • Stability period of 15 years • Royalty rate of 3 percent on net back value, however, actual royalty rate was scaled down to 0.6 percent in tandem with KCM and MCM • Import duty exempt for level above 5 percent under section 97(1) of the Act • Payment of duty on rural electrification levy at applicable rate for duration of stability period
Chambishi	<ul style="list-style-type: none"> • Same as in KCM/MCM, except: • Stability period of 15 years • Company income tax of 35 percent, but, if listed on Lusaka Stock Exchange, reduced to 30 percent • Royalty rate of 2 percent on net back value and payment deductible for income tax liability purposes • Excise duty on purchase of electricity same as in the case of Mopani • VAT on mine products charged at 0 percent
Chibuluma	<ul style="list-style-type: none"> • Similar to Chambishi incentive structure • As in KCM/MCM

Source: Anthony Simpasa, Degol Hailu, Sebastian Levine and Roberto Julio Tibana, "Capturing Mineral Revenues in Zambia: Past Trends and Future Prospects",

Besides the development agreements, Zambia's mining sector's fiscal regime, which has undergone several changes during recent years, is administered by the following laws:

4.2.7.1 Mines and Minerals Development Act No. 11 of 2015

The Mines and Minerals Development Act sets the mineral royalty rate and provides for the collection and assessment of mineral royalty. Accordingly, the holder of a mining licence shall pay a mineral royalty at the rate of nine percent for open cast mining operations and six percent for underground mining operations. The mineral royalty payable on industrial minerals is set at six percent of the gross value of the minerals produced or recoverable under the licence. Mineral royalties for holders of mining rights are payable at the rate of 5% on base metals (except copper) and energy and industrial minerals; and 6% for gemstones and precious metals. Where the mineral is copper, the mineral royalty rate will be 4% when the price of copper is less than US\$4,500 per tonnes; 5% where the price of copper is more than US\$4,500 but less than US\$6,000 per tonne; and 6% where the price of copper is more than US\$6,000.

The collection, assessment, enforcement of, and right of appeal with respect to, any mineral royalty is administered under the provisions of the Income Tax Act. The MMDA vests the powers of administering the mineral royalty to the Commissioner-General of the Zambia Revenue Authority (ZRA). The Act also gives powers to Commissioner-General to prohibit a holder of a mining licence who fails to pay any mineral royalty or provisional mineral royalty payable by the holder of the mining licence to dispose any mineral from the mining area concerned, or from any other mining area held by that holder, until an arrangement has been made that is acceptable to the Commissioner-General for the payment of the outstanding mineral royalties.

4.2.7.2 Income Tax Act

The Income Tax Act sets the corporate income tax rate applicable to companies carrying out business in Zambia. For the mining sector, the rate is currently set at 30%. There is no variable profits tax though there is a limitation on the deduction of losses to 50% of taxable income. Withholding tax on dividends declared by a company carrying out mining operations is charged at the rate of 0%.

4.2.7.3 Valued Added Tax Act (Cap 331)¹⁴

Valued Added Tax (VAT) is an indirect tax which was introduced in Zambia in 1995 to replace sales tax. The Act imposes a tax on the supply of goods and services in Zambia and the importation of goods into Zambia. The mechanism of VAT is as follows:

- i. For VAT purposes the sale or disposal of goods or the rendering of services is called supplies.
- ii. When a business that is registered for VAT supplies goods or services, VAT is charged and collected by the business, the VAT on these supplies is called output tax.
- iii. When a business that is registered for VAT purchases goods or services, the VAT incurred on these supplies received is called input tax.
- iv. At the end of each tax period, the VAT due is arrived at by deducting the total input tax on supplies received, from the total output tax on supplies made.
- v. Where the output tax exceeds the input tax for the period, the difference must be paid to ZRA.
- vi. If the input tax exceeds the output tax a VAT refund is due. VAT refunds will normally be made within thirty (30) days from the date of lodgement of the return.

The Zambia Revenue Authority (ZRA) charges VAT on all the equipment and raw materials that are imported by mining companies and other exporters. Under the current law, the VAT is supposed to be refunded once the copper they produce is exported. In order to be sure that copper has actually left the country, ZRA is required to confirm that the goods have left the country. This process of verification is an administrative one and is carried out in accordance with rules issued by the Commissioner-General under VAT Rule 18 which was introduced in 1997. Under VAT Rule 18 the Commissioner-General requires an exporter to produce four things to be eligible for a refund:

- i. Copies of export documents for the goods, bearing a certificate of shipment provided by the Authority;
- ii. Copies of import documents for the goods, bearing a certificate of importation into the country of destination provided by the customs authority for the country;
- iii. Proof of payment from the purchaser of the export goods
- iv. Such other documentary evidence as the authorized officer may reasonably require

Due to challenges in the administration of VAT with respect to exporters in general and mining sector in particular, Statutory Instrument No. 55 of 2013 was issued which added two additional requirements, namely:

- i. A tax invoice for the exported goods; and
- ii. Documentary evidence proving that payment for the exported goods had been made into the exporter's bank account in Zambia.

However, most exporters faced various challenges, such as providing documentary evidence proving that payments for the exported goods had been paid into the exporter's bank account in Zambia, and therefore did not satisfy the prerequisite for the VAT refund from ZRA. This resulted in ZRA

¹⁴ Zambia Revenue Authority, "Value added Tax Guide"

accumulating unpaid claims for refunds by exporters - mainly the mining companies. Subsequently, Statutory Instrument No. 55 of 2013 was repealed in 2014. Since then the mining companies have been pushing ZRA and Government to pay them the VAT refunds, claiming that non-payment of the refund could cripple their operations.

According to the Chamber of Mines the non-payment of VAT refunds will have short and long term impacts.¹⁵ In the short term, cash flow constraints due to lack of refunds has resulted in cancellation, suspension or deferment of capital projects, slowing down of production levels, pushing back payments to suppliers by 90 days or more and reduction on Corporate Social Responsibility(CSR) programs. The long-term impacts are projected to affect mine production, production costs, jobs (direct, indirect and induced), suppliers of goods and services to the mining industry will have no business, and overall reduced revenue collection by Sarthe total amount of Value Added Tax (VAT) due to the mining companies as at 8th December, 2015, was K5.25 billion.¹⁶

¹⁵ Chamber of Mines, "Submission to Parliament Expanded Committee on Estimates", 22nd October 2014 <http://mines.org.zm/download/submission-to-parliament-expoanded-committee-on-estimates/>

¹⁶ National Assembly of Zambia, "Debates - Wednesday, 9th December, 2015", <http://www.parliament.gov.zm/node/4841>

5.0 Levels of Respect for Human Rights in the Mining Sector

The responsibility for business with regard to human rights is to respect human rights. This responsibility means companies must know their impact, avoid human rights infringements and address any potential or actual impact.¹⁷ The responsibility of businesses to respect human rights is not dependent on the States’ abilities and/or willingness to fulfil the states own human rights obligations. Operations of businesses’ can have a profound impact on human rights, either positive or negative.

5.1 Positive levels of respect for human rights

Mining companies have undertaken various actions to observe and preserve human rights in their operations. . Actions that demonstrate the mining companies’ commitment to respect human rights include the development of policies to promote human rights in their operations, respect of labour rights and unilateral undertaking of CSR to improve the living standards of people.

5.1.1 Policies in place to respect human rights in mining sector and objectives¹⁸

Mining companies have employed various policies through which human rights are respected. Research carried out by audit and advisory firm Mazars, indicated that listed mining and resources companies across the world were keen to comply with the UN’s Guiding Principles on Business and Human Rights.¹⁹ The survey collated the responses of mining companies listed on the London, Johannesburg, Toronto, and the Australian stock exchanges. It revealed that 94% of respondents agreed that mining firms should take responsibility for compliance with human rights within their own organisations and those of their subcontractors. Encouragingly, it also found that 65% of respondents were actively working towards compliance with the Principles noting that they must keep up the momentum in order to maintain public confidence in their efforts. A study commissioned by the ILO, in Zambia, found that mining companies had various policies in place through which businesses respected human rights. Figure 3 below shows the various policies in place and their objectives

Figure 3: Policies in place to respect human rights in mining sector and objectives

Policy	Objectives of policy
Safety and health policy	<ul style="list-style-type: none"> To continually improve occupational health and safety performance through setting and achieving goals and taking into account evolving stake holder expectations and best practices; Providing a working environment that is conducive to good health and safety and appropriate personnel protective equipment
Environmental policy	<ul style="list-style-type: none"> Protection of the local community, land, flora and fauna from harm resulting from mining operations/ activities

¹⁷ UN and United Nations Human Rights Office of the High Commissioner, “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework”, 2011

¹⁸ Sections 5.1.1 to 5.1.4 draws extensively from G Nyirongo, “Mining Sector Actors Mapping Study”, ILO Office Lusaka, 2015

¹⁹ Mazars “Mining companies committed to UN human rights principles”, 2012, <http://www.mining.com/mining-companies-committed-to-un-human-rights-principles-study/>

Human rights policy	<ul style="list-style-type: none"> Promote effective human rights compliance program to avoid infringing on the rights of employees and others as guided by internationally recognized human rights principles, such as, Universal Declaration of Human Rights; Disciplinary code of conducts upholds rights of individuals
Social policy	<ul style="list-style-type: none"> To continually improve community development through sustainable community investment programmes Developing sustainable programmes aimed at uplifting the welfare of communities.
Security policy	<ul style="list-style-type: none"> To establish security strategies, plans, standards, policies and procedures with a focus on preventing security incidents; To establish programs that protect employees, company assets and shareholders from loss arising out of theft, fraud, etc.
Supplier code of ethics	<ul style="list-style-type: none"> To promote ethical conduct from its supplier community with regard to various aspects such as creating safe working conditions and a healthy work environment for all of their workers who provide goods or services, work against corruption in all its forms, procedures for termination of suppliers who fail to meet these standards
Supplier code of ethics	<ul style="list-style-type: none"> To promote ethical conduct from its supplier community with regard to various aspects such as creating safe working conditions and a healthy work environment for all of their workers who provide goods or services, work against corruption in all its forms, procedures for termination of suppliers who fail to meet these standards
Code of business conduct and ethics	<ul style="list-style-type: none"> To ensure that the company and employees act in an honest and ethical manner at all times in areas such as compliance with the laws applicable to the Company's business in the countries of operation, not making payments or provision of gifts to public officials soliciting for favours, discouragement of use of company funds, time, equipment, supplies, facilities, or other resources for political purposes, insider trading, unauthorised disclosure of company information etc.
Gender policy	<ul style="list-style-type: none"> To increase the number of female employees through affirmative actions
HIV/AIDS policy	<ul style="list-style-type: none"> To protect the human rights of its workforce, promote non-discrimination and improve the quality of lives for the affected employees and their families with regards to education, prevention, treatment, and general employee health and wellness
Water Management Policy	<ul style="list-style-type: none"> To promote the responsible use of water resources taking into account the need to balance the needs of many different users

The policies are disseminated to company employees and stakeholders through various mechanisms. Policies are disseminated at seminars and workshops for employees; induction programmes for new employees; and refresher courses for employees returning from leave. Policies are also posted on the internet and notice boards, and numerous safety and health notices are widely placed around the mine surface area and underground.

5.1.2 Impact on labour rights

Labour rights are the rights of workers, as enshrined in international labour standards drawn up by the International Labour Organization (ILO). Mining companies have put in place measures to promote labour standards and social dialogue at the workplace. Mining companies have put in place codes of conduct based on principles derived from international labour standards, namely the ILO Declaration on Fundamental Principles and Rights at Work (Fundamental Declaration) and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

(referred to as the MNE Declaration). The MNE Declaration was adopted by the ILO Governing Body in 1977 as a result of discussions among ILO constituents about the social impact of business. The Declaration on Fundamental Principles and Rights at Work was adopted in 1998.

The Fundamental Declaration declares that all ILO Member States, even if they have not ratified the eight core conventions concerning fundamental rights at work have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize the principles concerning the fundamental rights which are the subject of those Conventions.²⁰ Zambia has ratified all the eight fundamental Conventions, and according to the U.S. Country Reports on Human Rights Practices for 2013, freedom of association and the right to collective bargaining are generally respected. The government generally protects unions’ right to conduct their activities without interference.²¹

The MNE Declaration is the only ILO instrument that contains recommendations for enterprises in addition to governments and employers’ and workers’ organizations. The objective of the MNE Declaration is to encourage the positive contribution that multinationals can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise.

To give effect to the MNE Declaration, mining companies have implemented various positive measures. Figure 4 shows some of the actions/measures that mining companies in Zambia have taken to implement the labour standards related recommendations of the MNE Declaration.

Figure 4: Actions/measures that mining companies have taken to implement the labour standards dimension of the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

MNE Declaration Recommendation	Practical actions/measures
Extend equality of opportunity and treatment in employment	<ul style="list-style-type: none"> • No discrimination in employment • Equal opportunities promoted at all levels and disavowing all forms of discrimination • Priority is given to recruiting labour and employees from local communities and only sourcing skills from outside when they are not available within local communities
Promoting security of employment, providing reasonable notice of intended changes in operations and avoiding arbitrary dismissal	<ul style="list-style-type: none"> • All employees under 55 years of age are on permanent and pensionable engagement

²⁰ There are eight fundamental Conventions, which cover collective bargaining, forced labour, child labour and discrimination. The eight conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948, No 87; Right to Organize and Collective Bargaining Convention, 1951, No 98; Forced Labour Convention, 1930, No 29; Abolition of Forced Labour Convention, 1957, No 105; Minimum Age Convention, 1973, No 138; Worst Forms of Child Labour Convention, 1999, No 182; Equal Remuneration Convention, 1951, No 100; and Discrimination (Employment and Occupation) Convention, 1958, No 111.

²¹ Danish Trade Union Council for International Development Cooperation, “Zambia: Labour Market Profile 2014”

Provide training for all levels of workers to meet needs of enterprises as well as development policies of the country;	<ul style="list-style-type: none"> • Scholarships for further education to mining and non-mining students • On-the-job training, apprenticeships and secondments • Providing the opportunity to improve workers' skills and capabilities to raise their social and economic opportunities • Support for technical trade schools that are not owned by mining companies but by other stakeholders • Mining companies have invested in technical training, managerial training for employees and contractors
Provide wages, benefits and conditions of work not less favourable than those offered by comparable employers in the country concerned	<ul style="list-style-type: none"> • Between 1998 and 2010, the formal sector in the majority of Copperbelt mining districts continued to be double the national share. • In Solwezi, formal employment has also increased rapidly, and is about three percentage points above the national figure
Provide the best possible wages, benefits and conditions of work, within the framework of Government policies, to meet basic needs of employees and their families	<ul style="list-style-type: none"> • Compensating employees to enable them to meet their basic needs taking into account inflation, food basket and comparisons with other companies in the industry • Competitive conditions of industry employment in place
Respect the minimum age for admission to employment	<ul style="list-style-type: none"> • No one below the age of 16 is employed
Maintain highest standards of safety and health at work	<ul style="list-style-type: none"> • Appropriate personal protective equipment (PPE) given to all employees • Dust and noise levels monitored • Annual medical examinations conducted at the Occupational Health Management Board
Examine and address the causes of industrial safety and health hazards	<ul style="list-style-type: none"> • Employment of safety officers
Provide information on good practice observed in other countries, and effect necessary improvements	<ul style="list-style-type: none"> • Establishment of multi-stakeholder forum comprising representatives of the affected communities, including traditional leaders, government officials from all relevant departments, non-government organizations, and experts on global best practices in resettlement
Observe industrial relations no less favourable than those observed by comparable employers in the country	<ul style="list-style-type: none"> • Conditions are collectively bargained and comparisons with other companies in the industry taken into consideration;
Respect freedom of association and the right to collective bargaining, providing the facilities and information required for meaningful negotiations	<ul style="list-style-type: none"> • Provision of Union office space and venues for meetings within mine area
Provide workers' representatives with such facilities as may be necessary to assist in the development of effective collective agreements	<ul style="list-style-type: none"> • Negotiations are held outside the work place to avoid disturbances • Transport and lunch are provided, ITC facilities provided etc.

Provide workers representatives with necessary information required for meaningful negotiations	<ul style="list-style-type: none"> • Industrial relations such as effective communication with the union and employees, freedom of association and employee rights like formation of Union(s), collective bargaining are applied • Information on company performance in all areas of operation is shared with the Union during the monthly and adhoc meetings
Provide for regular consultations between labour and management on topics of common interest.	<ul style="list-style-type: none"> • Deployment of industrial relations officers in all departments to monitor conflict • Monthly and adhoc meetings held with unions • Management and union seminars with MLSS officers to acquaint both management and workers with labour laws
Provide means for employees to lodge complaints in the event that a labour standard is violated without suffering any prejudice	<ul style="list-style-type: none"> • Existence of grievances procedure and channels for appeals

5.1.3 Payments and transfers made unilaterally towards community investment

Though there are no laws or framework in Zambia compelling businesses to undertake corporate social responsibility, mining companies have implemented various projects and made contributions to promote local development and to finance social projects in line with their corporate and social responsibilities (CSR) activities. The contributions are made in cash or in kind. In kind payments are contributions made to finance infrastructure projects, health, education, roads, and market places. Cash payments are made to support local communities including compensation, projects related to the promotion of the agriculture and the grants provided directly to individuals. In some countries, CSR is compulsory with a legal framework to back it. The law regulates how much a company will spend on CSR and what activities will be covered.

For example, India's Companies Act 2013 (Companies Act) compels companies of a certain size to undertake Corporate Social Responsibility.²² The Act requires every qualifying company to spend at least 2% of its average net profit on CSR activities. The Act also specifies the activities that can be done by the company to achieve its CSR obligations, and include eradicating extreme hunger and poverty, promotion of education, promoting gender equality and empowering women, reducing child mortality and improving maternal health, combating HIV and AIDs, malaria and other diseases, ensuring environmental sustainability, employment enhancing vocational skills, social business projects, contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women.

²² Mansukhlal Hiralal & Company, 2015, India: Corporate Social Responsibility - Indian Companies Act 2013 <http://www.mondaq.com/india/x/366528/Corporate+Governance/Corporate+Social+Responsibility+Indian+Companies+Act+2013>

Figure 5: Social payments and transfers made unilaterally to promote local development and to finance social projects in line with the EITI reporting requirement.

Mine	2013 in kind payments (ZMK)	2013 cash payments (ZMK)	2013 Total (ZMK)	2014 in kind payments (ZMK)	2014 cash payments (ZMK)	2014 Total (ZMK)
Albidon Zambia Limited				7,411,500	271,789	7,683,289
Bwana Mkubwa		3,038,780	3,038,780	34,116	47,591	81,707
Kansanshi	25,496,360		25,496,360	29,266,643		29,266,643
Konkola	13,132,221		13,132,221		151,822,193	151,822,193
Lubambe		3,500	3,500	108,237	23,344	131,580
Lumwana	8,632,789	105,000	8,737,789	2,714,497	15,407	2,729,904
Mopani	4,716,803	16,276,749	20,993,552		145,929,250	145,929,250
Chambishi M	77,641		77,641		201,724	201,724
NFC Africa		52,530	52,530			
Luanshya	4,203,630		4,203,630		4,450,955	4,450,955
Chibuluma	651,236		651,236	1,343,157	1,851,573	3,194,730
Sino-Metals		456,487	456,487	218,514		218,514
Kalumbila	90,253,631	4,934,002	95,187,633	76,311,866	7,815,233	84,127,099
Kagem		156,800	156,800		189,620	189,620

Source: Zambia Extractive Industries Transparency Initiative (ZEITI) Reconciliation Reports for the Year 2013 and Year ended 2014

CSR activities have had significant impact both within the mining companies and the local communities they operate in.

5.1.3.1 Impact of CSR activities on industrial harmony

In the study by ILO on the mining sector, mining companies reported that CSR activities on core business operations to promote industrial harmony had resulted in reduced industrial disputes in the last three years and that there had been zero or reduced work place accidents. The investment that mining companies had made in employees training had provided the opportunity to improve workers' skills and capabilities in order to raise their social and economic opportunities.

There are instances where mining companies have granted workers conditions beyond the requirements of the Zambian laws and regulations. In promoting freedom of association and collective bargaining, some companies have provided office space and venues for meetings within the mine areas to the Trade Unions. Some have undertaken collective bargaining annually. Improvement in conditions of service include facilitating workers access housing loans from lending institutions; provision of excellent workplace health and safety conditions and personal protection equipment; canteen, drinking and bathing water, and adequate change houses are in place; and mobile phones and/or free talk time provided for critical workers.

5.1.3.2 Impact of CSR activities on the community

There was general agreement among mining companies and stakeholders on the impact of CSR on the local communities. Both noted the improved access to and quality of social services (schools, clinics, clean water supply, and sports) and contribution to improving the livelihoods of local communities. CSR activities had also provided skills to many in the community who otherwise would not have had access to any training.

5.1.4 Participation in global initiatives to promote transparency

As part of the mining companies' commitment to promoting transparency in their operations some mining companies participate in global initiatives to promote transparency. The main global initiatives to promote transparency are the Global Reporting Initiative (GRI) and UN Global Compact Initiative. Another framework is the International Council on Mining and Metals (ICMM) 10 sustainable development principles.

The GRI has pioneered and developed a comprehensive sustainability reporting framework that helps businesses, governments and other organizations understand and communicate their impacts, whether they are positive or negative, on issues such as climate change, human rights and corruption.²³ As of 2015, 7,500 organizations used GRI Guidelines for the sustainability reports. A sustainability report is a report published by a company or organization about the economic, environmental and social impacts caused by its everyday activities, and its commitment to a sustainable global economy.²⁴

The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally acceptable principles in the area of human rights, labour, environment and anti-corruption. By doing so, business, as a primary driver of globalization, can help ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere. With over 12,000 corporate participants and other stakeholders from over 145 countries, it is the largest voluntary corporate responsibility initiative in the world.²⁵

Since 2003, ICMM's Council committed member companies to implement and measure their performance against 10 sustainable development principles. The principles are based on the issues identified in the Mining, Minerals and Sustainable Development project and were benchmarked against leading international standards, including the Rio Declaration, the Global Reporting Initiative, the Global Compact, OECD Guidelines on Multinational Enterprises, World Bank Operational Guidelines, OECD Convention on Combating Bribery, ILO Conventions, and the Voluntary Principles on Security and Human rights.

Reporting under these initiatives is mainly done at the level of the parent companies. Local mining company operations are published in the parent companies reports. FQM Sustainability Report cover Kansanshi Mining Plc and Kalumbila Minerals Limited; Mopani Copper Mines is included in the Glencore Sustainability Report; CNMC Social Responsibility Report contains Luanshya Copper Mines; and Lumwana Mining Plc is in the Barrick Gold Responsibility Report. At the local level, Konkola Copper Mines and Luanshya Copper Mines have published books outlining their CSR activities in 'A hand that extends beyond mining' and '50 Years of Friendship, 05 Years of Transformation', respectively. Some companies also publish quarterly newsletters and CSR reports. Three parent companies, namely Barrick Gold (Lumwana Mine), Vedanta Resources (Konkola Copper Mines) and Glencore (Mopani Copper Mines) participate in the UN Global Compact initiative.

²³ Global Reporting Initiative (GRI) <https://www.globalreporting.org>

²⁴ Also known as Responsibility Report/ Ecological Footprint Reporting / Environmental Social Governance /reporting, Triple Bottom Line reporting, and Corporate Social Responsibility reporting

²⁵ United Nations Global Compact, www.unglobalcompact.org/aboutthegc/

5.2 Negative impacts on human rights

The business operation can be said to be negative where the rights of individual are infringed upon as a result of a company's operation. For example, workers may be exploited, and communities displaced to give way to a mine development without adequate resettlement plans or compensation. Mining companies in Zambia have in some cases been found wanting in upholding human rights and labour standards in the sector. These shortcomings have contributed to industrial, environment and community unrest.

5.2.1 Impact on employment and labour relations

A study commissioned by ILO identified a number of practices by mining companies in Zambia as being inconsistent with human rights and the fundamental principles and rights at work. Inconstancies²⁶ were identified in three categories, namely, freedom of association and collective bargaining, anti-discrimination and conditions at the workplace.²⁶ Whilst most mining companies adhered to the fundamental rights of workers with respect to workers directly employed by the mining companies, mining companies were seen to tacitly encourage precarious work through engagement of contractor companies who in turn engaged workers on casual employment terms. Due to the short-term nature of employment contracts, most contractors to the mines do not allow union membership thereby denying workers collective bargaining and freedom of association. In other cases, the contracts of these workers are not attested by the Labour Officer as required under the law. This means that a number of provisions are not included in the contracts, thereby disadvantaging the worker. However, it should be pointed out there are some jobs such as sinking of shafts which are done once in a long while and the labour to undertake this job cannot be employed on permanent basis. Nevertheless, the concern has been with jobs that are of a permanent nature but were workers are employed on short term contracts. To address this concern, the Ministry of Labour and Social Security amended the Employment Act banning casualisation of labour. The amended act prohibits the engagement of an employee for a job which is permanent in nature on casual terms of employment and prescribes penalties for that.

Stakeholders interviewed in an ILO study in the mining sector stated that there was discrimination at the work place in that there were huge disparities in remuneration between local workers and expatriates. This applies to jobs where the local work force has the expertise or competency to fill the position. A report on labour perspectives of Chinese investments in Zambia, found that the Chinese copper mine paid its workers 30% less than other copper mines in the country.²⁷ The report also noted that out of the 2000 Zambian workers employed in the Chambishi Copper Mine, only 72 were permanent workers. The rest were casual labourers without employment and income security.

The Impact Assessment on the effects of the mining industry on workers' rights and sustainable business practices in Zambia likewise found that Chinese owned mines were characterized by potentially unstable jobs, low salaries, limited fringe benefits for workers on the mining houses' payroll, and a lack of recognition for unions and collective bargaining. Workers described a high level of corporate tolerance for harassment and violence among the workforce and highlighted the relative differences in work conditions and pay between expats and Zambians, which were perceived as discriminatory. Workers on the payroll feared that they could easily lose their jobs if they contradicted management.²⁸

²⁶ Nyirongo, G 2015, optic cited

²⁷ Baah, Anthony Yaw and Herbert Jauch (Eds) "Chinese Investments in Africa: A Labour Perspective", African Labour Research Network, 2007

²⁸ Dwight Ordonez, "Impact Assessment: The effects of the mining industry on workers' rights and sustainable business practices in Zambia", ILO, August 2015

A HRC State of Human Rights Report also alluded to unfavourable labour standards in the mining sector.²⁹ These included rampant casualisation of the unskilled workforce. It was found that employees are given three month contracts which have to be continuously renewed thereby depriving them of all the associated benefits of long-term employment such as pensions, medical insurance and so on.

Human Rights Watch (HRW) reported that labour violations in the Chinese-owned mines include low wages, long working hours, a lack of safety standards, and the undercutting of domestic mining unions.³⁰ The Report further noted that contrary to copper mining and processing standards throughout Zambia, the Chinese-owned mines often require twelve-hour shifts as opposed to the eight-hour shifts outlined in Zambian mining standards.

In follow-up research in October 2012, Human Rights Watch found that some Chinese firms had made notable improvements on reducing work hours and respecting freedom of association, but that miners continued to face poor health and safety conditions and threats by managers if they tried to assert their rights.³¹

The casualisation of the labour force that came with the privatisation process in the mining sector has been cited for the deterioration of conditions of work for mine sector workers in Zambia. The engagement by mining companies of labour broking and contractors has contributed to precarious work and casualisation. Most contractors to the mines do not allow union membership and deny collective bargaining and freedom of association. A study on the Impact of the Global Financial and Economic Crisis on Job Losses and Conditions of Work in the Mining Sector in Zambia found that labour employed by contractors and labour brokers accounted for close to half (48.3%) of the total labour force in the mining industry.³² Regarding work conditions, salary levels and the right to freedom of association, the impact assessment study noted that there two types of employees in the mining sector: that of employees on the mining houses' payroll, with adequate conditions of service conditions and labour standards; and workers engaged by contractor firms providing a service to the mining company, with precarious jobs, low pay and limited fringe benefits even when working several years for the same firms.³³ To redress this Government amended the Employment Act in 2015 to prohibit casualisation, that is, the employment of persons in jobs that are permanent in nature on casual terms of employment.

5.2.2 Impact on occupational health and safety

Mining sector employees have been reported to face poor health and safety conditions. Concern has been raised about poor adherence to safety regulations by some mining firms, particularly Chinese owned mines. A Human Rights Watch (HRW) report detailed safety and health hazards resulting from toxins and dust inhalation, as well as the lack of proper attire and equipment to prevent these hazards. Notably, HRW pointed out that the poor safety standards in Zambia's Chinese-run mines resemble the labour abuses occurring in mines in China. According to the US Bureau of Democracy, Human Rights and Labor, miners in Zambia continued to face poor health and safety conditions and threats by managers if they tried to assert their rights.³⁴ Miners developed serious lung disease,

²⁹ Human Rights Commission, "State of Human Rights Report in Zambia", 2010

³⁰ Saralyn Salisbury, "Labor Abuses in Zambia's Copperbelt, Sub-Saharan Africa", Human Rights Brief, <http://hrbrief.org/2012/02/labor-abuses-in-zambia%E2%80%99s-copperbelt/>

³¹ Human Rights' Watch, "Zambia: Safety Gaps Threaten Copper Miners, Government, Chinese State-Owned Subsidiaries Make Uneven Progress", <https://www.hrw.org/news/2013/02/20/zambia-safety-gaps-threaten-copper-miners>

³² Matenga, Chrispin Radoka, "The Impact of the Global Financial and Economic Crisis on Job Losses and Conditions of Work in the Mining Sector in Zambia", International Labour Office, Lusaka, 2010

³³ Dwight Ordonez, optic cited

³⁴ US Bureau of Democracy, "Human Rights and Labor, Zambia-Country Reports on Human Rights Practices for 2015", <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dclid=252743>

such as silicosis, reportedly due to poor ventilation and constant exposure to dust and chemicals. Workers in the Chinese owned mines reported unsatisfactory corporate practices, and procedures regarding safety and health, poor quality of personal protection equipment (PPE) and the limited commitment or action taken by these companies regarding OSH.³⁵

The Human Rights Commission has also documented infringements on the health hazards of people within and around the mining areas.³⁶ This is as a result of occupational and environmental exposure to harmful pollutants discharged from the mines which find their way into the air, water and soil that people use, leading to chronic human health effects including cancers, reproductive failure, neuro developmental effects and endocrine disruption. Acknowledging the paucity of research support to establish a causal effect relationship in a Zambia, the HRC nevertheless concluded that it was safe to assume that the effects evidenced in other countries apply to Zambia. In addition, the miners are often exposed to dust and other particulates during their working hours leading to high cases of Silicosis, Pneumoconiosis, and other such related respiratory tract infections.

The Occupational Health and Safety Institute (OHSI) conducts roughly 105,000 examinations per year and by its latest estimates had detected 2% of the silicosis cases and 10% of the tuberculosis cases among workers, and like other public institutions in the sector, its establishment is insufficient to cover its operations.³⁷

5.2.3 Environmental Impacts

The Human Rights Commission highlights some of the negative impact of mining activities on the environment. Because of the large portion of land that is required for the mines to be operational, mining companies invariably have to carry out large-scale land clearance leading to massive deforestation. This consequently leads to environmental damage. For example, in Kitwe's Amcor area the land could not yield any crops due to the mine waters that used to be damped in the area. Air pollution characterized by emissions of harmful gases including sulphur dioxides, nitrous oxides, and in some cases volatile organic pollutants is a normal feature in mining activities. Areas such as Kankoyo in Mufulira have paint peeling off houses and very poor soil fertility as a result of acid rain.

Water pollution is another negative impact of mining activities. According to the HRC report, the Kafue River generally has more elevated levels of pollutants compared to other rivers draining the African continent. The government has a duty to provide its citizens a clean environment with safe drinking water, but with all the pollution arising from the mines, it is very challenging to meet this obligation. The hazardous waste that emanates from mining operations is one of the most challenging environmental impacts of mining. Recently, water supply to some Copperbelt towns was cut off following discharge of sulphur into the Kafue River by a Chingola based mining company.³⁹ The Nkana Water and Sewerage Company (NWSC) was forced to shut down the water treatment plant due to elevated levels of sulphites in Kafue River, which had also affected the fish.

Similar negative environmental impacts were observed in a study on mining sector actors in Zambia, where both mines and stakeholders interviewed acknowledged that pollution by the mines resulted in environmental degradation. Stakeholders attribute environmental impacts to lack of standard operating procedures and use of old and malfunctioning equipment. Effluent discharges above the

³⁵ Dwight Ordonez, optic sited

³⁶ Human Rights Commission, "State of Human Rights Report in Zambia", 2010

³⁷ Dwight Ordonez, optic sited

³⁸ Human Rights Commission, 2010 optic cited

³⁹ Daily Nation, "Kafue River in Sulphur Poisoning", Thursday December 8, 2016

limits and sulphur dioxide emissions have resulted in severe contamination of drinking water and of rivers and streams, damaging crops of farmers in direct contact with the fumes, and acid mist affecting residents in close proximity to the mining areas.

Other environmental and health impacts linked to copper mining operations on the Copperbelt and Kabwe are documented in the Zambia Mining Environment Remediation and Improvement Project document "Environmental and Social Management Framework".⁴⁰ The Copper smelters have been responsible for substantial amounts of Sulphur Dioxide (SO₂) emissions into the atmosphere, which have caused crop damage, acid rain, soil erosion, and air and water pollution. The contamination from ongoing mining operations, is further aggravated by wind-borne dust particles (from dry tailing dams) resulting in the accumulation of metals (copper and cobalt and other elements) in soil. Most of the Copperbelt has 50 times higher concentrations of copper in surface soil than in subsurface samples⁵, while SO₂ concentrations in the air range between 500 and 1000 µg/m, well exceeding the Zambian guideline of 50 µg/m³⁶. It is estimated that in the early 2000s, the total SO₂ emissions in Zambia was 346,700ton/year, of which the mining industry (mostly the copper smelters) contributed to over 98%. Areas northwest and west of the large Nkana and Mufulira smelters have SO₂ concentrations between 500 and 1000 µg/m, which exceed the Zambian guideline of 50 µg/m³⁷. This is the case with most residential areas in the Copperbelt cities of Mufulira and Kitwe.

The Kafue River has shown highly elevated concentrations (<0.45 µm) of dissolved copper and cobalt within the mining areas. Leaves and roots of cassava and sweet potato grown in the contaminated areas of the Copperbelt contain elevated metal concentrations, while backyard vegetables gardens are affected by necrosis due to the accumulation of heavy metals in the soil and SO₂ on plant leaves. A study of SO₂ concentrations in flue gases and on the bark of the Australian red cedar in the Copperbelt showed levels of 1,402 µg/m³ in raw flue gases (exceeding the threshold value of 1,000 µg/m³) at almost 25 km away from the emissions source. Copper smelting activities on the Copperbelt result in atmospheric emissions between 300,000 and 700,000 tons/year, far exceeding the WHO limit of 125,000 tons/year. Surface soil samples contain ten 50 times higher concentrations of copper than subsurface samples in most of the Copperbelt. Recent incidents of accidental breaks in leaching tanks of mining companies resulted in over 100 hectares of maize and vegetable crops being destroyed by SO₂ emissions along the Kitwe-Chingola roads on the Copperbelt. Root crops tend to generally contain more lead than leaf or fruit crops. People residing in some areas in Kitwe on the Copperbelt are unable to grow backyard vegetables gardens, which are being affected by necrosis due to the accumulation of heavy metals in the soil and SO₂ on plant leaves.

The old mining town of Kabwe shows unacceptably high levels of lead in the soil due to past lead mining in the area. While the closure of several old lead smelters and mining operation in 1994 resulted in loss of employment and income generation opportunities, it also left an unattended legacy of an unhealthy environment in certain parts of Kabwe town. The content of lead in soil in certain areas is as high as 26,000 mg/kg in most polluted areas and generally land up to 14 km from Kabwe has been found to unsuitable for agricultural purposes.

5.2.4 Negative impact on local community

The investments into new mining areas have led to massive displacement of people who have had to be resettled. Mining developments entail moving people from their original places where they have lived and tilled to new areas. Focus group discussions conducted by the Human Rights Commission

⁴⁰ Ministry of Mines and Mineral Development, "Environmental and Social Management Framework", Zambia Mining Environment Remediation and Improvement Project, July 2016

with the Armco Community of Kitwe and interviews with regulators such as ECZ, ZCCM-IH revealed some interesting findings:⁴¹

- i. During re-locations, some of the communities are informed well in advance by the relevant authorities or traditional leaders while others are informed overnight giving them less time to prepare physically and emotionally.
- ii. In many situations, the investors involve the public in projects through processes such as public hearing just to highlight the economic benefits and promises of social benefit which in most instances they do not fulfil.
- iii. They do not emphasise issues of social, cultural and disruption of the way of life of the local community.

Prior to the development of the National Resettlement Policy in 2015, most mining developments compensation and resettlement procedures were based on the World Banks' guidelines on resettlement of people that are displaced on account of a developmental project in the area. The World Bank policy and procedures stipulate that involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs; and where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. It also states that displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs. It emphasizes that the displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, and whichever is higher.

Nevertheless, local communities narrated that there is a lack of transparency in the way the compensation is calculated especially as it relates to the affected people where the project is to be implemented. The full impacts of displacing people are not taken into consideration in the calculation of the compensation package. In the ILO Study on CSR in the mining sector, stakeholders attributed the negative impact of mining on the community to lack of transparency and poor consultation of communities by mining corporates in implementing social and community projects and unfulfilled promises by mining firms. A JCTR report found that community dissatisfaction with mining companies was as a result of the community's perception that projects being implemented by mining companies were of poor quality due to limited consultation and involvement of government departments in the implementation of projects. From the mining companies' perspective, conflict between the mining companies and host communities is fuelled by the expectations that the company should provide all social services and employ everyone in the local community to address the high unemployment amongst people in host communities.⁴²

In addition, the Human Right Commission discovered that the compensation to the affected parties especially those who are affected directly by the project do not reflect the lifestyle of the local communities. As a result, it is common to find a person involved in farming activities as a way of livelihood being compensated by building them modern house which come with a lot of unforeseen costs and responsibility such as electricity bills, waters bills, and ground rates to be borne by the occupants who in most cases have lost their source of livelihood. Subsequently, these people are overwhelmed with these bills and resort to renting out the houses and moving back to the hazardous area or similar marginalised areas.

⁴¹ Human Rights Commission, 2010 optic cited

⁴² Nyirongo, G 2015 optic cited

6.0 Gaps and Advocacy Points in the Frameworks and Respect for Human Rights

It is clear from the foregoing that whilst there are policy and legislative frameworks in place, the level of respect for human rights in the mining sector is far from the optimal. It is equally clear that mining companies are alive to the need to uphold human rights at the workplace as evidenced by measures that mining companies are implementing to counteract human rights abuse in the mining sector. This dichotomy in the respect of human rights' in the sector is indicative of gaps in the governance frameworks in Zambia in general and in the mining sector in particular. This study identified the following gap in the governance frameworks as some of the reasons resulting in the shortcomings in the mining companies' respect of human rights.

6.1 Gaps in enforcement and implementation of laws

One of the fundamental principles of the international human rights system is that human rights must be respected, and where their rights have been violated, victims must have access to an effective remedy. Remedy for human rights harm refers to both the *processes* of providing remedy for an adverse human rights impact and the substantive *outcomes* that can counteract, or make good the impact.⁴³ This entails that institution responsible for monitoring and enforcing aspects related to human rights are functional and effective. Unfortunately, this cannot be said of most of the public agencies tasked with human rights oversight.

The Zambia Decent Work Profile noted that the biggest challenge to maintaining a safe work environment in Zambia lay in the inadequacies of the institutions tasked to enforce regulations.⁴⁴ Enforcement of safety and health legislation is severely constrained by inadequate funding which results in the lack of support infrastructure with which to carry out inspections, thus limiting the ability to carry out the statutory functions. The Labour and Occupational Safety and Health Inspectorates which are charged with the responsibility of enforcing labour laws through the inspection of work places and factories are severely handicapped in effectively carrying out their functions. The Mines Safety Department (MSD) has equally remained grossly underfunded and thus faces inadequate staffing, as well as shortage of transport and fuel to carry out inspections. This situation has limited the Department's ability to perform its statutory functions satisfactorily and, consequently, the Department has been relegated to taking a reactive role often involving attending to emergencies after accidents have already occurred. Human Rights Watch, quoting mine workers, also concluded that rather than undertaking proactive, preventative inspections, Mines Safety Department officials most often came to worksites only in response to accidents.

The inadequacies in public agencies regulating the mining sector were attributed to the failure by some of the relevant public agencies to keep abreast with the fast-growth that the sector has experienced – at both the national and sub-national levels. Funding for the agencies regulating the sector has not been commensurate with the growth in mining operations, and these agencies have also experienced difficulties in retaining skilled geologists and engineers, not least because of the high demand (and rising salaries) from the industry itself. Human Rights Watch found that the Zambian Ministry of Mines, Energy, and Water Development made little progress in 2012 in

⁴³ UN Guiding Principles on Business and Human Rights

⁴⁴ ILO, "Zambia Decent Work Country Profile", ILO, 2013

holding responsible companies and managers who put miners in dangerous work situations. The Mines Safety Department has been woefully underfunded and understaffed through 2012, leaving it unable to fulfil its responsibilities.⁴⁵

The lack of enforcement and implementation of laws is equally widespread in the extractive sector beyond the boundaries of Zambia. A study on biodiversity and the extractive industries in Botswana, South Africa and Zimbabwe concluded that the major factor undermining social and environmental accountability in the extractive sector in all three countries is the limited – or lack of any – enforcement of existing laws and policies.⁴⁶ Just as the case in Zambia, the study found that on paper the countries have well-established institutions and progressive laws, but implementation and enforcement are lagging behind allowing pollution, human rights violations and biodiversity loss linked to extractive industries to continue.

It is not surprising therefore that, in a study on CSR in the mining sector, both mining companies and stakeholders agreed that one of the measures to reduce environmental accidents is to increase compliance to national statutory regulations and applicable international conventions. This could be achieved by strengthening the capacity of the statutory bodies to enforce regulations governing environmental control and conducting routine and periodic reviews of mining operations. Stakeholders, in addition, felt that Government must ensure that standard operating procedures developed and communicated, and appropriate environmental impact studies carried out and approved before commencement of any mining operations. Mining companies must undertake regular maintenance of equipment and where need be, acquire advanced technologies to control pollution.

Enforcement of legislation is further undermined by the low levels of fines for violation of various legal frameworks. Small fines do not promote compliance with OSH regulations: The monetary amount of applicable fines for OSH violations is very low, the MSD is allowed to apply ZK 135 (US\$ 20) for each breach of regulation; In the case of environmental law violations, which are based on charging units, fines can go up to a maximum of ZK 1,800 (US\$ 230).⁴⁷

6.2 Gaps in policy and legislation

There are a number of gaps in the policy and legal framework governing the mining sector.

6.2.1 Absence of constitutional provisions relating to social and environmental rights

The Zambian Constitution does not contain specific constitutional provisions relating to social and environmental rights that could reinforce social and environmental accountability. The Bill of Rights that was rejected at the referendum had provisions for including social and environment rights. Article 44 guaranteed a person's rights to a safe, clean and healthy environment, while Article 45 compelled the state to take reasonable measures for the progressive realisation of economic, social, cultural and environmental rights. The absence of constitutional provisions relating to social and environmental rights that could be used to advance social and environmental accountability was identified as a critical gap in other southern African countries, especially in Botswana.⁴⁸ Even in Zimbabwe and South Africa, where these rights have been included in their constitutions,

⁴⁵ Human Rights Watch, "Zambia: Safety Gaps Threaten Copper Miners, Government, Chinese State-Owned Subsidiaries Make Uneven Progress", <https://www.hrw.org/news/2013/02/20/zambia-safety-gaps-threaten-copper-miners>

⁴⁶ Kabemba, Claude "Land, biodiversity and the extractive industries in southern Africa -Legal and institutional gaps", <http://www.osisa.org/other/regional/legal-and-institutional-gaps>

⁴⁷ Dwight Ordonez, optic sited

⁴⁸ Kabemba, Claude, optic sited

their enforcement remains a major challenge as they are not treated in the same way as civil and political rights. The state and judiciary often treat these rights as progressive rights that can only be implemented when the state has adequate financial resources.

6.2.2 Lack of appropriate legislation for resettlement of people displaced by developmental activities

Issues surrounding displacement and resettlement to pave way for mining and housing development have been cited as a major cause of tension and conflict between the mining companies and host communities. Even though a national resettlement policy has been in place since 2015, mining developments are not compelled to prepare comprehensive resettlement planning and compensation paid to displaced people has been found to be inadequate. This is largely due to the absence of appropriate legislation to compel mining developers to mitigate displacement and resettlement to pave way for mining and housing development.

Preparation of a comprehensive formal resettlement action plans would commit mining developers to carry out census, social-economic survey, hold consultations with project affected people, monitoring, reporting, etc. Compensation calculation would go beyond the current conditions which provide for the payment of compensation at market value for losses of land, buildings, crops and other damages arising from the acquisition of land for mining activities, but does not cater for moving costs or rehabilitation support to restore previous levels of livelihoods or living standard nor compensation for lost income due to mining activities.

The Government of Zambia recognises this shortcoming and has requested World Bank IDA financing for support to the Zambia Mining and Environment Remediation and Improvement Project (ZMERIP), and to that effect prepared a Resettlement Policy Framework (RPF) to review relevant policies and legislation and assess the potential implications for resettlement and compensation.⁴⁹

6.2.3 Non-domestication of international laws and policies

There is no doubt that significant progress has been made by Zambia in ratifying various and domesticating human rights and related international conventions. However, more still needs to be done in domestication and application of international instruments to enhance the respect of human rights in the country. For example, it has long been recognised that issues of the environment are human rights issues. The linkage between human rights and the environment was established as far back as 1972 at the first United Nations Conference on Environment and Development in Stockholm-Sweden culminating into the well-known Principle 1 of the Stockholm Declaration recognizing environmental rights' as a fundamental right under domestic law.⁵⁰ Zambia is yet to domesticate the right to social and environment rights.

Human rights are indivisible, interrelated and interdependent. The indivisibility of human rights means that all human rights, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; or economic, social and cultural rights, such as the rights to a clean environment, work, social security and education, or collective rights, such as the rights to development and self-determination, are rights existing and must be enjoyed in a holistic manner. Consequently, environmental rights cannot be divided from other rights because they are, interrelated and interdependent.

⁴⁹ Ministry of Mines and Mineral Development, "Resettlement Policy Framework", Zambia Mining Environment Remediation and Improvement Project, July 2016

⁵⁰ Human Rights Commission optic cited

With regard to employment and labour rights, the Zambia Labour Law Reform Issues Paper highlighted key shortcomings of Zambia's labour statutes. Zambia's labour legislation and labour policies should be informed and underpinned by its obligations as a Member of the ILO.⁵¹ The shortcomings of Zambia's labour statute relate to inconsistencies between the legislative provisions and the principles in ratified ILO and UN Conventions, failure to give effect to constitutional imperatives and national policy priorities and inconsistencies between the provisions in the legislation. Zambia has ratified 48 of its Conventions aimed at improving labour standards and rights at work, out of which 44 are in force.⁵² In addition, Zambia's ratification of other UN Conventions including the UN Convention on the Rights of the Child (UNCRC), the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Convention on the Rights of Persons with Disabilities (CRPD) and the UN Convention on the Elimination of all forms of Racial Discrimination (CERD) also require Zambia to ensure the protection of vulnerable groups in the labour market.

While Zambia is commended for ratifying all the seven ILO Conventions related to Freedom of Association and Collective Bargaining, existing legislation, such as the Industrial and Labour Relations Act need to be conformed to ratified Conventions to ensure their application. Recent direct requests and observations by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to Zambia have referred to, inter alia, the need to bring the Industrial and Labour Relations Act in conformity with the two freedom of association Conventions. To promote Fundamental Principles and Rights at Work in Zambia, there is need to introduce a compulsory formal public education system as well as improve the quality of education in line with the two Conventions concerning Child Labour; the implementation of the Anti-Human Trafficking Act in conformity with the Forced Labour Conventions; introduction of a legal guarantee for equal remuneration between men and women for work of equal value, as well as legal provisions prohibiting sexual harassment.⁵³

Examples of areas of inconsistency that the Issues Paper highlighted include: the absence in the labour legislation measures to expressly operationalise the principle of equal remuneration for work of equal value; and the principle that workers should be protected from sickness, disease and injury arising from their employment. The Employment Act does not presently provide for discrimination and equal treatment, yet the country has ratified ILO Convention No. 100 (Equal Remuneration Convention, 1952), CERD, CEDAW and the CRPD.

The principles relating to protecting workers from sickness, disease and injury arising from their employment OSH are set out in the key Conventions on OHS, namely the Occupational Safety and Health Convention, 1981 (No.155); the Occupational Health Services Convention, 1985 (No. 161); and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). Zambia does not have an elaborate national policy regarding OHS as advocated in Convention No. 155.⁵⁴ The ILO, through Convention No. 155, advocates the implementation of a national policy on OHS issues.⁵⁵

Other Conventions relevant to the present study that Zambia has not ratified include Social Security (Minimum Standards) Convention, 1952 (No. 102) and Labour Inspection Convention, 1947 (No. 81). Ratification of the Labour Inspection Convention could contribute to measures increasing the

⁵¹ Kalula, Evance Prof, Pamhidzai H. Bamu; Juliana Masabo; Rutendo Mudarikwa; Suzanna Harvey, "Zambia Labour Law Reform Issues Paper", ILO 2013

⁵² ILO, Ratifications for Zambia, ILO, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103264

⁵³ Kalula, Evance Prof et al, optic cited

⁵⁴ *ibid*

⁵⁵ The process of developing a national policy on OSH is underway and is likely to be completed in 2017

resources available to the Ministry to enable it to recruit and train more qualified labour inspectors and increase the availability of material resources to ensure the greater visibility and effectiveness of the inspectorate.

At the regional level, Zambia belongs to the Southern African Development Community (SADC), which has developed various guidelines codes of practice addressing various OSH issues in the workplace. Some of the codes include the HIV/AIDS Code of Practice and the Code of Practice on the Safe Use of Chemicals. Though Zambia is party to these codes there is very little awareness about their existence, particularly the Code of Practice on the Safe Use of Chemicals.⁵⁶

6.3 Lack of consultation and transparency

Though there is legislation that provides for communities and citizens to have their voices heard on issues relating to mining developments, most of these have not been effective. Consultation of communities by mining corporates in implementing social and community projects has been very weak. Lack of consultations brings about misunderstanding between mining companies and communities. Through consultations companies can avoid many of the problems relating to resettlement, compensation, environment, labour relations, etc. Companies can avoid many of these problems if they confer with the community and at the outset on how they wish to be engaged and commit to open and transparent communication and engagement.⁵⁷

AJCTR report noted that following the revelation of low community appreciation of mining corporates interventions in their areas, the mining corporates (Lumwana and Kansanshi) present acknowledged weak consultation between mining companies and communities in deciding and implementing community projects and committed to involve communities in deciding and implementing future community projects.⁵⁸

Gaps in consultations were highlighted in the study on 'Job and Wealth Creation Impact of Mining Community Development Programmes in Zambia'.⁵⁹ The study found that there were a peculiarity in the underlying issues depending on the age and location (rural/urban) of the mining operation. At Kalumbila mine, the burning issue noted was that of the social, economic and geographical displacement arising from the mine's disputed acquisition of 518 square kilometres of traditional chieftom land. In locations with long standing mining operations such as Kansanshi (Solwezi), Chingola, Luanshya, Kitwe and Mufulira, the challenges of rapid urbanization are exacerbated by deep misgivings in the community about air, water and soil pollution resulting from the mining companies' activities in addition to damage to road infrastructure and housing that has resulted from the transportation of heavy equipment and the mines' blasting operations, respectively. End of mining life issues in terms of the socio-economic dislocation resulting from threatened or lost livelihoods; and, discontinued mining operations and the resulting environmental and infrastructural legacy were evident in respect of Ndola's Bwana Mkubwa and imminent with regard to Nchanga Open Pit mine.

The common underlying cause for mistrust felt by the host communities were the weaknesses and gaps in consultation, information sharing and other accountability mechanisms on the part of the mining companies. In addition, the study found that none of the mining companies were found to

⁵⁶ Zambia Country Profile on Occupational Safety and Health: prepared by George Mwiya Mukosiku with assistance from the International Labour Organization

⁵⁷ International Council on Mining and Metals (ICMM), "Good Practice Guide: Indigenous Peoples and Mining", <http://hub.icmm.com/document/1221>

⁵⁸ JCTR, "Promoting Faith and Justice", Social Accountability Project Annual Report 2015

⁵⁹ Mondoloka A, "Job and Wealth Creation Impact of Mining Community Development Programmes in Zambia", ILO, 2013

have established effective channels of communication that are credible with, and acceptable to, their respective host communities. There was also little evidence of collaboration and information sharing amongst the mining companies and between them and other tripartite stakeholders in Government (both central and local) and in their respective host communities. A report by the on mining sector actors commissioned by the ILO also concluded that that mining companies have implemented CSR activities were implemented with minimum involvement of government or community consultation.⁶⁰

The Human Rights Commission demonstrated gaps in consultations in the current Environmental Impact Assessment (EIA) process. Though the EIA process has attempted to provide opportunities for informing the public such as the holding of Public Hearing Meetings in the locality in which the project is planned to be implemented, there are flaws in the information flow particularly at local level.⁶¹ There is inadequate sensitization to the interested and affected persons prior to the period of the public hearing meetings, the reports are often bulky and accessibility to them is very limited to the common man, not only in getting hold of the documents but also being able to comprehend the messages contained therein. Sometimes, the information on EIAs is posted on the internet or press statements are released. Most Zambians do not have access to the internet or can afford a copy of the daily newspapers. Even where the Environmental Impact Statements (EIS) are placed at the ECZ⁶² offices and local authorities, many local people do not have the time to sit and go through these often very bulky, and technical reports to ensure their understanding and meaningful participation. Furthermore, those representing the community do not always hold consultations with the local people on their views of the projects. It is for this reason that reaction to EIAs which have been effective have come from civil society both local and international. A case in point is the copper mining development that was planned in the lower Zambezi.

The global protest came after the Minister of Land, Natural Resources and Environmental Protection issued a licence to a subsidiary of an Australian company to mine copper from the Lower Zambezi National Park.⁶³ The Minister had used his statutory powers and invoked public policy objects in granting the license, in spite of the advice by the Zambia Environmental Management Authority (ZEMA) and other concerned parties that were concerned that such a massive project could have serious impacts on biodiversity, water and people downstream. The Zambia Environmental Management Authority (ZEMA) had earlier rejected the project Environmental Impact Assessment (EIA) following an appeal lodged by civil society led by the Community Based Natural Resources Forum (CBNRMF), a forum associated with Birdlife International. It took a High Court injunction to halt government approval of a plan by an Australian investor to mine copper from the Lower Zambezi National Park.

The study on biodiversity and the extractive industries in Botswana, South Africa and Zimbabwe also found that, in some cases, communities are not consulted as prescribed in legislation, while in many other instances, only token public consultation processes are undertaken by mining companies to make it look as if they are complying with the law.⁶⁴ The study noted that in reality, mining companies have no intention of listening to local people or implementing concrete steps to curb environmental damage and protect communities. In Zimbabwe, social and environmental accountability is also limited by the requirement that anyone who wants to access an EIA report held by the Environmental Management Agency

⁶⁰ Nyirongo, G, 2015, optic cited

⁶¹ Human Rights Commission, optic cited

⁶² The ECZ is now called the Zambia Environment Management Authority

⁶³ Mwathe, Ken "Zambian High Court overturns government Copper Mining plan in Lower Zambezi", 2014

<http://www.birdlife.org/africa/news/zambian-high-court-overturns-government-copper-mining-plan-lower-zambezi>

⁶⁴ Kabemba Claude, optic cited

The study on the development agreements exemplifies gaps in consultations on the mining fiscal regime. The study noted that one of the reasons that the Zambian people have benefited very little from the upturn in the copper prices was that there was no consultation with stakeholders or public discussion of the terms of the development agreements.⁶⁵ Most people spoken to in the study expressed their disappointment at generally not seeing the benefits of having minerals in the country while the costs as they relate to environmental, health and social impacts are borne by the general population.

6.4 Child labour in non-traditional mining sector

While there is no evidence of child labour in the formal mining sector, child labour is prevalent in the non-traditional mining sector. The Rapid Assessment of Child Labour in Non-Traditional Mining Sector in Zambia found children below the age of 18 years employed or engaged themselves of their own accord in the small-scale mining sector.⁶⁶ The high involvement of working children could be explained by the lack of further prospects of either furthering their education or attending skills training or getting into formal employment. Children who were involved in mining activities worked under harsh and hazardous conditions. These included working long hours, working all the days of the week, exposure to excess heat both from the sun and fire and dangerous chemical substances. Most of the working children had serious wounds or scars on their limbs, head and other exposed parts of their bodies from accidents they were involved in on the mining sites. Child miners were prevalent in those who conduct mining operations at an artisanal family level with very basic tools such as picks and shovels, individual-owned or engaged by illegal miners who invade the large number of mining plots whose owners are absent. Others were employed by groups of scavengers that sift through the dump sites of the established mines within the protected area.

It is equally important to take into account that the impact of mining activities on the social welfare of children. Migration of workers employed in the new mines in the North Western Province from other parts of Zambia has exerted pressure on various social services, which in turn has a bearing on children's welfare. A study on mine growth and socio-economic impact in north-western province found that most of the schools in the area surrounding Lumwana Copper Mine (LMC) report a shortage of teachers and classrooms.⁶⁷ This was attributed to the fact that most of the schools in Lumwana area were built before LMC was operational; they were intended for a smaller population.

⁶⁵ Lungu, John "The Politics of Reforming Zambia's Mining Tax Regime", Southern Africa Resource Watch. Southern Africa Resource Watch (SARW), 2009, http://archive.resourcegovernance.org/sites/default/files/Politics_Reforming_Zambia_Mining_Tax_Regime.pdf

⁶⁶ Chrispin Matenga, "Rapid Assessment of Child Labour in Non- Traditional Mining Sector in Zambia", EU and ILO-IPEC, 2008

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7.0 Conclusions and Recommendations

7.1 Conclusion

This study has established that Zambia has a policy and legal framework that governs the mining sector. The governance structure for the mining sector covers various aspects including mining activities, environment, employment and labour relations, and fiscal regimes. Notwithstanding the existence of governance frameworks, the study found that there are both positive and negative impacts of mining operations on the respect of human rights in the mining sector. This is largely due to the gaps that exist between the existing governance frameworks. Among the gaps that the study identified were gaps in enforcement, consultation and lack of domestication of international obligations.

7.2 Recommendations

Improving the level of upholding human rights in the mining sector will require addressing the gaps identified in the governance frameworks in the mining sector in Zambia. The following recommendations respond to the gaps identified in the frameworks as well as laws and regulations/policies that can be used for advocacy for human rights in the sector.

7.2.1 Regarding enforcement and implementation of laws

In order to make institutions responsible for monitoring and enforcing aspects related to human rights functional and effective it is recommended that:

1. The **Government** should make available adequate funding, support infrastructure (e.g. transport, equipment, etc.) and staffing levels to all the public agencies tasked with human rights oversight. The institutions include the Labour and Occupational Safety and Health Inspectorates, Mines Safety Department, ZEMA etc.
2. **Public agencies** tasked with oversight of the governance framework in the mining sector should conduct routine and periodic reviews of mining operations
3. **Government** must ensure that standard operating procedures are developed and communicated, and appropriate environmental impact studies carried out and approved before commencement of any mining operations
4. **Mining companies** must undertake regular maintenance of equipment and where need be, acquire advanced technologies to control pollution
5. To improve compliance to various legislation and regulations it is recommended that the **Government** revised substantially upward the amount of monetary penalties applicable to labour law and safety and health-related offences in order for these to become effective deterrents

7.2.2 Regarding constitutional provisions relating to social and environmental rights

6. The Zambian Constitution does not contain specific constitutional provisions relating to social and environmental rights that could reinforce social and environmental accountability. The **Government** must as a matter of urgency work towards including provisions for social and environment rights in order to guarantee citizens' rights to a safe, clean and healthy environment.

7.2.3 Regarding resettlement of people displaced by developmental activities

7. Zambia has a national resettlement policy for internally displaced persons, who include people that have been displaced to allow for mining developments'. However, the policy does not have the legal backing to compel mining developers to mitigate displacement and resettlement to pave way for mining and housing development. The **Government, in consultation with all stakeholders**, must develop appropriate legislation to among others, compel mining developers to prepare comprehensive resettlement planning and provide adequate compensation to displaced persons that restores displaced persons to previous levels of livelihoods or living standard and compensates for lost income.
8. In drawing up resettlement plans, **Government, in consultation with all stakeholders** must ensure that the benefits offered by resettlement programs are clearly established. In urban areas, this may cover: financial compensation; housing and service provision; transport, temporary accommodation and other provisions required for relocation such as credit facilities, training or job opportunities. In rural areas, this may cover land-for-land, participation in training and access to farming inputs and credit.
9. In order to ensure that mining companies are held accountable for the pledges made to local communities, it is recommended that agreements negotiated between **mining companies, government and local communities** must be publicised and stiff penalties imposed on non-compliance to ensure that mining companies deliver on promises made.

7.2.4 Regarding domestication of international laws and policies

10. Zambia's governance framework governing the mining sector should be informed and underpinned by its obligations under various international treaties and conventions. It is therefore recommended that the **Government** aligns domestic legislation pertaining to the mining sector governance framework to these treaties and conventions to address inconsistencies between the legislative provisions and the principles in ratified Conventions.
11. The **Government** should put into application the right to environment as a fundamental right and enact appropriate legislation guaranteeing citizens' rights to social and environment rights.
12. The **Government and stakeholders** should come up with a framework that ensures that all mining companies undertake CSR activities in line with government and local community development priorities. The framework could be by legislation or any format agreed upon through consultations by Government and stakeholders. Mining firms would be required to outline tangible CSR in local communities before being awarded mining rights.
13. **Mining companies** should ensure that there is strict enforcement of the supplier code of conduct to compel suppliers and contractor firms to adhere to conditions of service and work enshrined in labour laws and international conventions.
14. It is also recommended that the **Government** ratifies all unratified conventions especially the ILO conventions that guarantee labour standards and rights at work. Among the conventions that Zambia has not ratified are Occupational Health Services Convention (No. 161), Social Security (Minimum Standards) Convention (No. 102) and Labour Inspection Convention (No. 81).
15. It is recommended that the **Government** amends the Employment Act to include a provision requiring employers to ensure equal remuneration for the same work, similar work or work of equal value irrespective of the origin, nationality, sex, age, race and disability. This will give effect to the provisions of ILO Convention No. 100, Convention on the Elimination of all forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Persons with Disabilities (CRPD).
16. In order to implement the principles relating to protecting workers from sickness, disease and injury arising from their employment, **Government** must quickly develop an elaborate national policy regarding Occupational Health and Safety (OHS) as advocated in Convention No. 155

7.2.5 Regarding consultation and transparency

17. Consultation of communities by mining corporates in implementing social and community projects has been very weak. Lack of consultations has contributed to conflict between mining companies and communities. To promote harmony in mining communities, it is recommended that the **mining companies, communities and other stakeholders** establish fora for consultations in all mining areas to address problems relating to the implementation of community projects, resettlement, compensation, environment, labour relations, etc.
18. Transparency and accountability in consultations will require **mining companies**, government and public agencies responsible for the mining sector to increase collaboration and information sharing amongst the mining companies and between them and other tripartite stakeholders in Government (both central and local) and in their respective host communities.
19. The **community leaders** must ensure that the views of all stakeholders in the community including youth, women, and persons with disabilities are taken into consideration to ensure transparent engagement.
20. **Public agencies** tasked with oversight of the governance framework that require holding public hearings such as the Environmental Impact Assessment process under ZEMA must ensure that information is made available to all stakeholders and in a manner that is accessible and comprehensible even at the local level.
21. Public agencies tasked with oversight of the governance framework must ensure that interested and affected persons are adequately sensitized prior to the period of the public hearing meetings
22. **International and local civil society organisation** must support community advocacy and provide training to build the capacity of local communities to participate meaningfully in consultations with the mining companies and other stakeholders such as the local council. The focus of the capacity building would include the development agreements that the government signed with mining companies, mining fiscal regime, environmental issues, resettlement, etc.
23. **Civil society organisations** should work towards establishing a network of educators and communicators to be supported to promote a wider dissemination of information throughout the country on the various issues affecting mining communities.

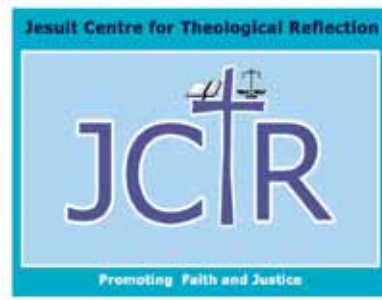
7.2.6 Regarding child labour in non- traditional mining sector

24. In order to prevent and eliminate child labour in the small-scale mining and other illegal mining communities sector, **civil society organisations** must embark on a sustained awareness-raising and mobilization of the local communities and development of multi-sectoral approach interventions that assist the children to transit into alternative sources of livelihood.
25. **Government** must strengthen the monitoring and enforcement capacity of institutions and agencies to curb the worst forms of child labour such as those engaged in hazardous work in the mining sector
26. **Civil society organisations** should conduct further studies to ascertain the impact on mining development and the resultant labour migration into the North Western Province on child welfare. Lack of education places may lead to children dropping out of school and entering the labour market as child labourers

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