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Diakonia

CIVIL SOCIETY
PARTICIPATION
IN
IMPLEMENTING
THE UNGPS IN
ZAMBIA

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CCCEC0



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The Danish Institute for Human Rights (DIHR) is Denmark's national human rights institution. Its mandate is to promote and protect human rights and equal treatment in Denmark and abroad. The Human Rights and Business Department is a specialised unit within the DIHR focusing on the role of the private sector in respecting human rights.

Diakonia is a joint development organisation of the Uniting Church in Sweden and the Swedish Alliance Mission. The organisation has been in existence since 1966 with the head office located in Sweden. Diakonia has regional offices in Africa, Asia, the Middle East/North Africa and Latin America, as well as local offices in most of the 28 countries where Diakonia has partner organisations. Diakonia's mission and overall goal is to change unfair structures – political, economic, social and cultural – that generate poverty and inequality, as well as oppression and violence. Diakonia works with individuals, local partner organizations and other actors to fulfil the right to a life in dignity for all people, regardless of their age, class, disability, ethnicity, gender, nationality, political conviction, religion or sexual orientation and identity. In Zambia, the organisation has been operational since 2003 working with various Civil Society Organisations in the areas of Democracy, Human Rights, Gender, Social and Economic Justice.

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1 INTRODUCTION

Since 2011 numerous actors including the UN Human Rights Council, the European Union, the Council of Europe, the Organization of American States, national human rights institutions and business associations have encouraged states to develop national action plans on business and human rights NAPs. NAPs articulate a state's priorities and actions to implement the UN Guiding Principles on Business and Human Rights (UNGPs). NAPs should be informed by a national baseline assessment (NBA), which is a study of the current state of UNGP implementation.

Participation of civil society in a NBA and NAP development process is fundamental to ensuring the legitimacy of the instrument. CSOs can provide up to date information on the business and human rights situations to inform the NBA development as well as ensure that a NAP responds to local realities and needs. A NAP development process requires buy-in and ownership from all relevant stakeholders (including Civil Society Organisations (CSOs), communities and businesses) to ensure that the ground is set for the implementation stage, which will benefit from stakeholder engagement and support. However, the level of stakeholder and rights-holder participation in a NAP processes around the world is often low. Where participation exists, it is mainly focused on consultative measures with no clarity on whether the participants' input have been considered.

In November 2017, Zambia accepted a recommendation from Kenya during the 3rd cycle of the Universal Periodic Review (UPR) to develop a national action plan on business and human rights and implement it together with the UNGPs.¹ The Zambian Human Rights Commission (ZHRC) - Zambia's national human rights institution – undertook and published a National Baseline Assessment on Business and Human Rights (NBA)² in Zambia in July 2016.³ The NBA, which addresses the state duty to protect (UNGP Pillar I) and access to remedy for victims of business-related abuses (UNGP Pillar III) was conducted by the ZHRC as a possible first step towards informing the formulation of a substantive NAP. In 2020, the ZHRC published a supplement to the Zambian NBA⁴ aimed at addressing considerations relating to the corporate responsibility to respect human rights (UNGP Pillar II). To date, despite the acceptance of a recommendation in the context of the UPR, there is no official commitment by the government to develop a NAP.

This case study documents the lessons learned from CSOs in Zambia in their engagement in promoting respect for human rights by business. It highlights the contribution of CSOs to the process of developing the NBA. The case study projects the potential role of CSOs in the process of formulating a NAP in Zambia while at the same time appraising the readiness of CSOs for this task. The case study also specifically appraises the extent to which gender considerations have been factored into efforts by CSOs in promoting human rights in relation to the impacts of business enterprises. Finally, it makes recommendations on how CSOs can be supported to optimise their contribution to a NAP development process.

2 METHODOLOGY

This report was commissioned by Diakonia and developed by the Danish Institute for Human Rights (DIHR). It is based on publicly available information and information from semi-structured interviews with stakeholders who have participated in the NBA development process or who work in addressing business and human rights. The interviews were conducted in February and March 2021.

The key informant interview guide was administered through semi-structured interviews. Six out of the projected eight respondents were reached (See Table 1, below) including a respondent each from: Diakonia Zambia; Oxfam Zambia office;⁵ Caritas Zambia;⁶ FIAN International Zambia;⁷ Zambia Human Rights Commission and the Zambia Chamber of Mines. The CSOs were selected by Diakonia Zambia as they all work under a programme partnership and collaboration with Diakonia Zambia. Zambia Chamber of Mines provided a written response to the questionnaire. Among the five respondents, four were male while one was female.

Respondent Category	Number of contacted respondents	Actual respondent
Civil Society Organisations	4	4
Zambia Human Rights Commission	1	1
Private sector actors	2	1
TOTAL	7	6

The interviews were focused on the participants' work with business and human rights, including how they gained expertise and knowledge in this field. Regarding the NBA process and CSOs participation, the interviews focused on the methods of participation, the engagement experience itself and the perspectives to the future NAP and its implementation. All the interviews were conducted online.

The study had a number of limitations. First, the small number of respondents reached is not a sufficiently representative sample. Secondly, all four CSOs selected for interview by Diakonia Zambia are international NGOs or local chapter of international NGOs, thereby offering secondary information relating to the experiences and capacities of local or community-based organisations. Thirdly, government actors and businesses requested to provide their views were not available. Finally, as highlighted above, gender balance was not reached.



3 BUSINESS AND HUMAN RIGHTS AND THE RIGHT TO PARTICIPATION

The United Nations Guiding Principles on Business and Human Rights (UNGPs) provides a global guiding framework for addressing human rights in the context of business operations. It is based on a three-pillar approach to business and human rights: the state duty to protect human rights; the corporate responsibility to respect human rights; and, access to effective remedy for victims of business-related abuses. The UNGPs define expectations and responsibilities for states and businesses. They provide civil society actors with a baseline standard to hold states and businesses to account.

3.1 RIGHT TO PARTICIPATION

Participation is a human right and a key element in the realisation of all human rights. As a human right, participation is detailed in international instruments including the International Covenant on Civil and Political Rights (Article 25) and the African Charter on Human and People's Rights (Article 13). Participation is most notably interconnected with the right to access to public information, freedom of expression, freedom of association and the right of peaceful assembly.

Under international human rights law, certain groups have an explicit right to participation and consultation, including ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which provides indigenous peoples with a right to be consulted in line with the principle of free, prior and informed consent. The Convention on the Rights of the Child (CRC) also states that children have the right to participate in decision-making processes that may be relevant in their lives and to influence decisions taken, including within the family, the school and the community.

The UNGPs highlight the importance of consultation in corporate human rights due diligence (Principle 18) and for the non-judicial mechanisms adopted to ensure access to remedy to victims of business-related human rights violations (Principle 31.h). Furthermore, the Guidance on National Action Plans on Business and Human Rights of the UN Working Group on Business and Human Rights notes that “NAP processes, including NAP development, monitoring and update must be both inclusive and transparent and take the views and needs of individuals or groups who may be impacted and other relevant stakeholders into account”.⁸ In addition, the OECD Due Diligence Guidance for Responsible Business Conduct urges states to ensure “meaningful stakeholder engagement.”⁹ CSOs can play a central role in supporting and facilitating the participation of rights-holders.

3.2 PARTICIPATION AND NAP PROCESSES

The UN Working Group points out that “consultation processes should be open and accessible to all relevant non-governmental stakeholders and might, for instance, take the form of workshops, online consultation, public hearings, targeted interviews, or written submissions”.¹⁰

In the context of a NAP process, to which an NBA is an important stage, different types of engagement have been used to allow for participation of civil society actors, such as:

- Stakeholder consultation meetings, hearings or dialogue;
- Selected or by invitation consultations;
- Bilateral meetings;
- Questionnaire survey;
- Capacity building workshops;
- Technical assistant (experts);
- Online consultations;
- Multi-stakeholder steering committee or advisory group;
- Draft consultation / invitation to comment draft;
- NBA consultation.

Many processes have used a mix of these approaches at different stages of a NAP development processes. Regardless the participation formula applied in a specific NAP process, “[t]he goal of participation is to ensure NAPs are relevant in terms of issues affecting right-holders, which in turn requires access to information to ensure their effective participation”.¹¹

State practice reveals that in at least 27 NAP processes¹² participation of civil society organisations, unions, NGOs, rightsholders or other social organisations were invited or able to participate (using a variety of mechanisms from a country to another in terms of methodology and scope) in the elaboration of the NBAs and/or the formulation, implementation and evaluation of NAPs. Participation is a vital element to a NAP process, and it must be promoted to strengthen their legitimacy, transparency, accountability, and effectiveness.

3.3 ENSURING A GENDER PERSPECTIVE IN BUSINESS AND HUMAN RIGHTS

Business-related human rights abuses often affect women and girls disproportionately. In 2019, the UN Working Group published a report on the Gender Dimensions of the Guiding Principles on Business and Human Rights.¹³ The report noted that women and girls experience unique and aggravated forms of gender-based discrimination, due to structural and social factors. They face additional hurdles in seeking access to effective remedies and intersecting and multiple forms of discrimination. In the context

of business activities, such discrimination is sometimes compounded by their age, colour, caste, class, ethnicity, religion, language, literacy, access to economic resources, marital status, sexual orientation, gender identity, disability, residence in a rural location, and migration, indigenous or minority status.

The UNGPs require states and businesses to pay special attention to gender considerations. In the commentary to Principle 3 of the UNGPs, States are required to provide appropriate guidance to businesses on “how to consider effectively issues of gender, vulnerability and/or marginalization.” The commentary to Principle 7 stipulates that states should provide adequate assistance to business enterprises operating in conflict affected areas, “to assess and address heightened risks of abuses, paying special attention to both gender-based and sexual violence.”

In the development of NAPs on Business and Human Rights, two approaches have been adopted by states seeking to address gender. The first approach integrates gender considerations across the various substantive thematic areas in business and human rights. The second approach addresses gender as a substantive standalone thematic area. There is further scope for gender to be addressed through a combination of the two approaches.¹⁴

More concretely, addressing gender in business and human rights requires states and business enterprises to shun gender-blind policies, laws and frameworks for accountability. States and business enterprises should, for instance, make provision for: gendered due diligence and impact assessments; gender-sensitive remedy frameworks; gender-inclusive value chains; gender-sensitive safeguarding frameworks; and, gender inclusion in assessing the impact of investment, formulating trade and tax policies, among others. To address the socio-cultural aspects of gender discrimination, there is need for sensitisation, awareness raising among the society and appropriate programmes for empowering women and girls.



Photo by DIHR

4 CIVIL SOCIETY ENGAGEMENT IN PROCESSES TO IMPLEMENT THE UNGPS IN ZAMBIA

4.1 HOW HAVE CSOS BEEN INVOLVED IN BUSINESS AND HUMAN RIGHTS WORK?

Diakonia Zambia has been working in Zambia since 2003, with a programme focus on human rights, democracy, gender equality, social and economic justice, and conflict and justice.¹⁵ It is presently implementing the “Strengthened Accountability Programme” in partnership with several CSOs and other stakeholders, with the aim of improving collaboration between local state authorities, the private sector and communities. Four of the CSOs interviewed under this study include Diakonia Zambia and three of its partners: Oxfam, Caritas Zambia and FIAN International Zambia. They work on a broad range of human rights issues including the following topics with business and human rights relevance:

- Labour rights;
- Environmental protection;
- Climate change;
- Land rights;
- Right to food and water;
- Right to health;
- Gender; and,
- Rights of persons with disabilities.

The CSOs interviewed work and engage on business and human rights through a variety of approaches:

- **Creating awareness and capacity building** for rights-holders, state actors and businesses on business and human rights to enhance their capacity to promote business and human rights. Oxfam has led awareness creation on gender issues, FIAN International Zambia on right to food, while Caritas Zambia has undertaken wide outreach on labour rights. Diakonia Zambia and Oxfam routinely strengthen the capacities of their project partners as well as of stakeholders and rights-holders on human rights. Oxfam provides technical support to the Ministry of Mines to promote the development of a policy frameworks for protecting women's rights in artisanal mining.
- CSOs are instrumental in **referring complaints** from rights-holders to the appropriate remedy channels and in linking rights-holders with appropriate service providers. Provision of legal aid for rights-holders and victims of human rights abuses in order to access justice. The ZHRC noted that CSOs regularly refer cases of human rights abuses to remedial mechanisms including to the ZHRC itself.
- **Monitoring business respect for human rights** and contributing to state monitoring mechanisms. Many CSOs provide input to state monitoring processes, most prominently the UPR process. Diakonia Zambia and Oxfam Zambia have participated and supported the participation of their partner organisations in the UPR process.
- **Conducting research** to inform understanding and advocacy for business and human rights. Oxfam Zambia documented a case study illustrating how it supports the efforts of women's-rights organisations to popularise and lobby for the ratification, domestication, and implementation of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Africa Women's Protocol) in Zambia.¹⁶ Caritas Zambia and partner organisations undertook a baseline study of a social accountability monitoring partnership.¹⁷
- **Collaboration with state and businesses for technical support:** CSOs use their technical expertise to support government and business enterprises in developing human rights policies and safeguarding frameworks, respectively. Oxfam has provided support to the Ministry of Justice, while Diakonia Zambia and their partners have engaged with the Zambia Chamber of Mines which has provided a platform to interact with mining companies on human rights and Corporate Social Responsibility (CSR) programmes in the mining sector.

- **Coalition and Platform Building:** Larger international CSOs have developed grant-making programmes targeting a pool of mainly national CSOs with the aim of magnifying civil society voices on business and human rights, and harness the expertise, experiences and networks of the various CSOs in the coalition. CSOs interviewed stated that there is no national platform or coalition of CSOs dedicated to the subject of business and human rights. The existing platforms mainly address sectorial issues such as the Zambia Alternative Mining Indaba (ZAMI) which has provided a platform for CSOs to engage in dialogue to address policy gaps and to build solidarity and advocacy for better enforcement of the law to protect human rights in the context of mining.
- **Undertaking advocacy and policy dialogue** to influence the development and enforcement of laws and regulations by the government. Oxfam co-convenes CSOs and multi-stakeholder platforms to advance policy dialogue in the mining sector, including through the ZAMI. The ZAMI has previously addressed such issues as: displacement of communities from land and revenue-sharing in mining operations; and, CSR. The fifth ZAMI held in 2016, by civil society organisations, faith-based organisations, academics, development partners based in Zambia and other stakeholders from Zambia, Kenya, Ghana, South Africa, Uganda, Mozambique, Zimbabwe and Australia, urged the Zambian government to implement strict legislation to curb illicit financial outflows, as well as ensure that the poor who are hosts to mining companies benefit from mining activities.¹⁸ The ZAMI also urged the government and private investors to respect the Free, Prior and Informed Consent (FPIC) of indigenous peoples and local communities, in instances where such persons are displaced to pave way for mining projects.¹⁹
- **Influencing value-chain and sector-wide platforms:** CSOs have contributed to influencing multi-stakeholder initiatives addressing specific sectors or issues such as the Extractive Industries Transparency Initiatives (EITI). According to the respondents, whereas many CSOs in Zambia work on human rights issues connected to business, their work is not always primarily defined by the frameworks and parameters for engaging on the subject of business and human rights. Many CSOs situate their work under the broader frameworks of Economic, Social and Cultural Rights. Some of the CSOs interviewed utilise the UNGPs to guide their respective programmes, while others utilise other normative or policy frameworks or even sector-wide frameworks and guidelines, including:
 - the International Covenant on Economic Social and Cultural Rights (ICESCR);
 - the International Covenant on Civil and Political Rights (ICCPR);
 - the African Mining Vision;

- the United Nations Global Compact; and,
- the Extractive Industries Transparency Initiative (EITI)

The entry-point for many CSOs into business and human rights is informed by the respective organisational strategies, influenced by several considerations:

- **Availability of internal expertise and staff capacity:** Two of the four CSOs interviewed gained interest in business and human rights as a result of training on theoretical and practical aspects of business and human rights, which contributed to their institutional knowledge and skills on the subject. These training workshops were convened of the respective organisations' own initiatives. A training programme by the Southern African Litigation Centre (SALC) provided Caritas Zambia with the skills of identifying actual abuses of human rights by businesses and by the state and using the UNGPs among other frameworks to guide litigation against the state in municipal courts. Two of the CSOs interviewed have technical grounding in business and human rights, while the other two are in the process of developing internal expertise on the subject. In the case of Caritas Zambia, knowledge on business and human rights was gained through intensive training workshops by Shift in 2014 and by the Southern African Litigation Centre (SALC) in 2018, as well as through on-the-job experience and exposure. FIAN International Zambia has gained expertise on business and human rights over many years by engaging on the subject, including on policy issues and on redress and accountability frameworks on business and human rights.
- **Subject-matter relevance:** Some CSOs have been attracted to programming on business and human rights because of the relevance that the subject has for the organisations' programme beneficiaries and in the broader socio-economic context of Zambia. For instance, many complaints of human rights abuses stem from the extractives and agricultural sectors in Zambia. They mainly manifest as labour, environmental and land rights violations, which have been the focus of many CSOs.²⁰ Caritas Zambia, for instance, works on such issues as: labour rights (particularly, on fair remuneration and working conditions at the work-place); environmental justice; as well as engaging companies on good human rights practices. Oxfam Zambia works on such aspects as: the human rights of vulnerable persons and communities, including, women, persons with disabilities and communities faced with human rights abuses by companies; and, human rights generally in the extractives sector.
- **Donor and development partner priorities:** Donor and development partner priorities have also shaped the programme priorities of CSOs in Zambia. For instance, the larger donor funded programmes implemented by Diakonia Zambia and Oxfam Zambia have developed projects which

contribute to, among others, the protection against human rights abuses by businesses. Diakonia Zambia, Caritas Zambia and FIAN International Zambia have stated that availability of funding for programmes, often requires alignment of the grant applicant's proposed projects with the donor's subject specifications as laid out in the call for proposals.

4.2 WHAT ARE THE MODES OF PARTICIPATION IMPLEMENTED IN THE NBA DEVELOPMENT PROCESS IN ZAMBIA?

The ZHRC took up the initiative of developing an NBA²¹ and the subsequent development of a supplement on the corporate responsibility to respect in the mining and agricultural sectors,²² in the absence of a state-led process, as part of a strategy of setting the stage for a state-led process of formulating a NAP. The NBA provides a comprehensive account of the status of protection of human rights with regard to business activities in Zambia. It examines the measures that the Zambian Government has taken to protect human rights from the adverse impacts of business activities through laws, policies, regulation and adjudication, as well as the provision of remedy mechanisms. The NBA identifies strengths and weaknesses in the government's approach regarding business and human rights and makes recommendations to address gaps.²³

According to the ZHRC, CSOs contributed to the development of the NBA in a number of ways:

- CSOs provided data and information on aspects of business and human rights, including on technical aspects of the study. For instance, Oxfam Zambia and Zambia Land Alliance provided reviews of issues generated from the initial baseline study;
- CSOs helped in mapping stakeholders and rights-holders for participation in the development of the NBA; and,
- CSOs participated in the review and validation of the Draft NBA report.

4.3 THE PERCEPTION OF CSO ENGAGEMENT BY OTHER STAKEHOLDERS

In Zambia, stakeholders have different perceptions of the role of CSOs. According to a CSO respondent interviewed, some business enterprises are apprehensive about engaging with CSOs, especially where CSOs, "adopt approaches considered to be activist in agitating for human rights."²⁴ Those interviewed noted that some businesses feel that CSOs may add little value in technical capacity on human rights that could practically benefit their businesses. On the other hand, more progressive businesses have embraced the technical support provided by CSOs in promoting human rights in their operations. Oxfam, for instance, has worked with business enterprises through the Zambia Chamber of Mines to improve the safeguarding of the rights of members of host communities and to influence progressive CSR practices.

This support relates to:

- Capacity building of company staff on human rights;
- Technical support for the development of operational level grievance redress mechanisms;
- Guidance and advice to enhance accountability and safeguarding at company level.

According to interviewees, some stakeholders, especially those representing rights-holders, have embraced CSOs as agents for the protection of the rights of rights-holders. Some interviewees felt that CSOs have a more cordial relationship with actors such trade unions; communities affected by company operations; marginalised groups; and the general public. This has enabled CSOs to gain sufficient trust and cooperation to be able to intervene on behalf of affected rights holders. It has also contributed to the deep understanding of CSOs of human rights issues at community or sectoral levels.

Some state actors in Zambia generally favour the adoption by CSOs of what they may perceive as constructive cooperation with businesses, as opposed to more 'activist engagements'. There are, however, instances where CSOs have, through 'activist approaches', successfully called upon the state to address companies who have committed human rights abuses. Caritas Zambia successfully intervened on behalf of the Bonge community to facilitate the payment of compensation for land by the private developer to the community. In certain instances, CSOs refer cases of human rights abuses to the ZHRC, who in turn refers the said cases to appropriate state bodies and remedy mechanisms. This is especially the case where CSOs perceive the said grievances to be weighty or sensitive, thereby requiring support of the ZHRC. For instance the Black Mountain in Kitwe, local CSOs sought the ZHRC's intervention on behalf of aggrieved parties some of whose colleagues and relatives had died from the reclamation of copper mining sites, in 2020. Similarly, local CSOs approached the ZHRC on account of eviction of communities without compensation in North Western Province. It is illustrative that CSOs consider state-based watchdog institutions to have an enhanced status for influencing the state's actions in protecting human rights.

4.4 HOW HAVE CSOS INCORPORATED A GENDER PERSPECTIVE IN THEIR WORK ON BUSINESS AND HUMAN RIGHTS AND IN THE NBA DEVELOPMENT PROCESS?

CSOs have supported processes for gender inclusion in the development of the NBA, including through:

- Participating in the identification and mapping out of stakeholders and rights-holders for participation in the NBA development process. Many of the women key informants to the NBA development process were identified by CSOs.
- Gender disaggregated data collected by CSOs was used in the NBA development process.

Most CSOs interviewed opine that the application of gender consideration in the work of CSOs is inadequate and largely ineffective. In many cases, interventions by CSOs on gender are episodic and non-comprehensive in coverage across the projects. Often, efforts at integrating gender are not rooted foundationally into CSO projects, but are incorporated incidentally.²⁵ However, some CSOs have made deliberate efforts to integrate gender into their work:

- Under the “Gendered Tool Project,” Oxfam has led a team of its partner CSOs in developing a tool which has been used in engendering the participation of communities on human rights and good governance issues.
- Through the “Show Me the Money Project,” Caritas Zambia has developed a programme which aims to ensure that women’s rights are protected in the extractives sector. It seeks to enhance the economic benefits of women in the sector. Caritas Zambia has also conducted a study on COVID-19 and its effects on women in the extractives sector.
- Oxfam Zambia has provided support in establishing and operationalising the Women in Extractives Sector Platform which has promoted the participation of women in advancing policy conversations in the sector.
- FIAN International Zambia’s work addresses the impacts of investments on gender with the aim of ensuring that women’s economic, social and cultural rights are upheld.

4.5 HOW EFFECTIVE HAVE CSOS BEEN IN DRIVING POLICY DIALOGUE ON BUSINESS AND HUMAN RIGHTS?

From the interviews with respondents, it would seem that CSOs have been at the fore-front of promoting dialogue on business and human rights. Oxfam, for instance, has engaged with the EITI Multi-stakeholder Group as an observer, contributing in terms of technical support to the group as regards business and human rights in the extractives sector.

According to respondents under this study, CSOs were at the forefront of efforts to promote amendments to the Zambian Constitution in 2016, especially aiming at enhancing the scope of protections provided relating to Economic and Social Rights, through the Bill of Rights in the Zambian Constitution. Zambia held a constitutional referendum on 11 August 2016 on this issue. While the majority of voters voted in favour of the amendments, the number of registered voters in favour fell below the 50% threshold required to validate the result and the amendment failed.

Some of the clear successes of CSOs relate to their role in monitoring compliance with human rights and in facilitating access to remedies for aggrieved parties. However, CSOs have also registered successes through their approaches and substantive contribution to the protection and promotion of human rights in other ways, including:

- International CSOs – including such grant-making organisations as Diakonia Zambia and Oxfam - have developed and overseen programmes which have rallied project collaborations among different local CSOs. These collaborations have contributed to a complementary and efficient way of working among the CSOs. It has also helped harness cross-learning for knowledge and skills-sharing by CSOs on business and human rights.
- CSOs have been integral in promoting approaches for gender inclusion and safeguarding. For instance, Oxfam coordinated the development of the “Gendered Tool Project” which promotes the participation of communities to participate in matters that affect them, through a gender lens. The tool has been used in three districts in the Copper Belt region where there are large agricultural interests. Secondly, Oxfam and its CSO partners have supported the participation of women in influencing policies by supporting the development and operationalisation of the Women’s Extractive-Sector Platform. For Diakonia Zambia, Gender is integrated across its projects. Diakonia Zambia has also influenced its project partners to follow suit.
- CSOs have engaged with companies especially in the mining sector to ensure that companies understand their role in addressing human rights. Through the EITI Multi-stakeholder Group, Oxfam has provided technical support to state and businesses on business and human rights.
- Caritas Zambia and other Diakonia partner organisations have successfully pushed for the compensation of community members in Bonge, who had been wrongfully dispossessed of their land. FIAN International Zambia has engaged with companies to improve their compliance with human rights by, among others, successfully advocating for host communities to access to water and grazing land held by companies.



5 CHALLENGES, GOOD PRACTICE, AND RECOMMENDATIONS

5.1 CHALLENGES TO CSO PARTICIPATION IN NBA PROCESS

The following were identified as challenges experienced by CSOs in the NBA development process:

- Insufficient information on the process relating to possible formulation of a NAP including information on: the roles of different actors, coordination of the process, timelines and the status of government commitment to the process.
- According to the CSOs interviewed, many CSOs in Zambia working on business and human rights issues did not have sufficient project funds to enable them to undertake activities that would contribute to the NBA development process. Some of these activities include: conducting surveys and research to inform the process; mobilising and coordinating participation of rights-holders; and, participating in consultations, among others.
- Some CSOs interviewed stated that many CSOs with whom they collaborate did not have adequate technical capacity on business and human rights, thus their contribution to the process was limited.

Based on interviews, some of the challenges faced by CSOs in their interventions aimed at implementing the UNGPs more generally are:

- The objectives of many projects initiated by CSOs for promoting business and human rights do not always survive beyond the finalisation of the project. Many of these interventions are not structured to enable continuity beyond the project phase.
- Many CSOs work in silos, resulting in disjointed efforts by CSOs at addressing issues that are common to their work. Consequently, they often lose out on learning and complementarity in skill-sets, networks and suffer limited reach for their respective advocacy goals. In Zambia, there is no dedicated platform for CSOs for the purpose of coordinating interventions and reinforcing capacities for business and human rights related work.
- Interventions by some CSOs are episodic; addressing human rights issues that are current, without seeking to address the foundational policy and implementation gaps. Thus, some of the interventions are ineffectual in sustaining the desired outcomes over time.

- The Constitution of Zambia and other pieces of legislation do not adequately protect economic, social and cultural rights. CSOs are, therefore, restricted in the manner and frameworks through which they may seek accountability for violations of human rights by companies.
- Many CSOs have not effectively addressed gender and other intersectional issues in their programming or in the substantive content of their work, thus failing to address crucial perspectives of human rights.

5.2 GOOD PRACTICES IN ENCOURAGING CSO PARTICIPATION PROMOTING BUSINESS AND HUMAN RIGHTS

Social organisation and the use of platforms: CSOs in Zambia have played a key role in influencing human rights through platforms and multi-stakeholder initiatives. Oxfam and its partner CSOs participate in the EITI multi-stakeholder group,²⁶ comprising of representatives from government, companies and civil society, with the role of overseeing the implementation of the EITI in Zambia. This multi-stakeholder group (MSG) / platform is the main decision-making body responsible for setting objectives for EITI implementation, ensuring and monitoring disclosure of EITI data, and ensuring that any findings contribute to public debate. CSOs provide technical expertise to the process and address policy proposals with stakeholders through the group. In addition, through the Zambia Alternative Mining Indaba (ZAMI), CSOs have contributed to dialogue on legal reforms in the extractives sector. Platforms such as EITI and ZAMI could provide viable avenues of sector-wide consultations in the NAP development process, as well as knowledge and information on the extractives sector. In Peru, networks and platforms which are exclusively for CSOs for advancing work on business and human rights have increased the impact of CSOs on public policies - including the NAP process - and cases related to business and human rights.²⁷ CSO platforms are useful for: sharing updates on relevant developments and work; planning and jointly developing strategies on their work; capacity building and peer experience sharing; and, developing project and informal collaborations. Similarly, CSOs in Peru have developed CSO platforms dedicated to addressing gender aspects relating to human rights, including in the development of the Peruvian NAP and in other policy conversations on business and human rights.²⁸

Tools to empower and facilitate participation: Oxfam Zambia and its partner organisations in Zambia have developed the “Gendered Tool” which has been piloted in three districts in the Copper-Belt region where there are large agricultural investments and new granite mines. The tool aims to enhance the gendered dimensions in the participation of communities through consultations in resource governance in Zambia. The gendered tool could be

useful in supporting the effective participation of women and girls in a NAP development process.

Role of the Zambian Human Rights Commission in coordinating the NBA

development process: The initiative by the ZHRC, as Zambia's NHRI, in leading the development of the Zambia NBA on Business and Human Rights underlines the crucial role that it could play in the NAP development process. The ZHRC's capacity to mobilise and coordinate participation of stakeholders and rights-holders – including CSOs – in the NBA process makes it a useful actor, especially in the process of developing the NBA.



5.3 RECOMMENDATIONS

This study makes recommendations to distinct actors on how they can encourage and support the contribution of CSOs to promoting human rights in the context of business activities and in the development of a NAP in Zambia:

RECOMMENDATIONS TO STATE ACTORS

Make an official commitment to developing a NAP and develop – alongside relevant stakeholders – a methodology and timeline for developing a NAP, building upon the NBA. A NAP development process should be inclusive and participatory, explicitly integrating gender dimensions. The process should be transparent and participatory. NAP processes in other countries, including Kenya, have benefited from establishing a multi-stakeholder steering committee. A government department or inter-ministerial body should be tasked with leading with the process and form the government element of the multi-stakeholder steering committee. The state should dedicate sufficient resources to the process, including, human and financial resources and logistical support in mobilising effective public and stakeholder engagement and providing technical support, capacity development and mobilising and facilitating the participation of stakeholders and rights-holders.

Facilitate sustained policy dialogue on human rights by using its convening power and influence over diverse stakeholders to convene multi-stakeholder platforms and spaces for policy dialogue on human rights in the context of business practices. Access to these platforms would enhance the constructive contribution of CSOs to policy dialogue, capacity development on business and human rights and information sharing.

The Zambia Human Rights Commission should continue to advocate for policy dialogue on business and human rights and for a NAP process in which it could play a key role as a steering committee alongside the designated government department or inter-ministerial body leading the process. This would complement the capability of the government in reaching and effectively engaging specific stakeholders and rights-holders, including CSOs, thanks to the Zambia Human Rights Commission's acceptability as an independent actor and its networks and relationships with civil society.²⁹

RECOMMENDATIONS TO BUSINESS ENTERPRISES OPERATING IN ZAMBIA

Engage with civil society, including through multi-stakeholder platforms and/ or bilateral dialogue, technical support, programmes developed by individual or a collective of business organisation. This could include the development of sectoral standards and guidelines for businesses, including how they should work with and consult civil society, grounded in international human rights laws and standards.

RECOMMENDATIONS TO CIVIL SOCIETY ORGANISATIONS

Undertake capacity building on business and human rights and the UNGPs to enhance the ability of CSOs to engage in policy dialogues and work to ensure business respect for human rights.

Integrate gender into their work to promote the protection of substantive rights of women and girls and to enhance their participation in policy dialogue on business and human rights. CSOs could develop tools to support the integration of gender dimensions into their programmes.

Establish standing CSO and multi-stakeholder platforms dedicated to facilitating structured, regular and wide consultation, learning and engagement of CSOs in policy dialogue on business and human rights. As in the case of Peru, CSOs in Zambia could also develop platforms dedicated to addressing gender in the context of business and human rights in a more comprehensive manner.

RECOMMENDATIONS TO INTERNATIONAL ACTORS INCLUDING DONORS/ COOPERATION PARTNERS

Continue consulting with local CSOs, other stakeholders and rightsholders in developing donor-funded programmes with the aim of designing programmes which are relevant to the Zambian context and which address the operational needs of CSOs – including capacity development. These projects could effectively address the inclusion and participation of rights-holders in policymaking on business and human rights and address long-term sustainability of donor funded projects, beyond the funding cycle.

Provide funding to kick start a NAP development processes in Zambia, complementing other sources of funding.

Convene policy dialogue platforms and harness human rights movements by leveraging their unique relationship with the state, businesses and CSOs.

5.4 CONCLUSION

CSOs have played a significant role in contributing to the protection of human rights by the state and the respect for human rights by business enterprises in Zambia. They have gained trust among rights-holders as agents for the protection of human rights. There is great scope for CSOs in Zambia to contribute further, considering that most CSOs have mainly acted as watchdog entities, holding state and businesses to account. Only a few CSOs have provided technical and advisory support to the state and businesses on business and human rights in Zambia. To play both roles effectively and optimally, CSOs will need to develop appropriate strategies to effectively engage the state and businesses, based on the context. The technical and operational capacities of CSOs to engage effectively should also be developed.

While CSOs have played their part in promoting the inclusion and participation of rights-holders in policy dialogue of business and human rights, CSOs' capacities for addressing dimensions of marginalisation, including gender, could be enhanced. While CSOs advance agency for human rights protection for the wider civil society, they could do more to support direct engagement of rights-holders in governance and policy dialogue, where appropriate.

Building upon the development of the Zambian NAP, CSOs could be part of the advocacy aimed at influencing a state-led NAP development process, providing technical support and in mobilising and facilitating rights-holder engagement in a NAP development process.

Endnotes

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- 2 Zambia National Baseline Assessment on Business and Human Rights, 2016 : https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/zambia_nba_on_business_human_rights_2016.pdf
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- 4 HRC and DIHR, The Corporate Responsibility to Respect Human Rights: The Case of Mining and Agriculture Sectors in Zambia – A Supplement to the Zambian National Baseline Assessment on Business and Human Rights, 2020.
- 5 Oxfam Zambia has worked in Zambia since the early 1980s. Its approach is to work with partners and stakeholders to contribute to developing sustainable livelihoods within the context of HIV and AIDS, health and education, water and sanitation, and strengthening community capacity to cope with disasters and on economic and social rights including: economic empowerment; access to education, health, and water; and, women's rights, among others. See - Oxfam International, Zambia: <https://www.oxfam.org/en/what-we-do/countries/zambia>
- 6 Caritas Zambia has been working in Zambia since 2001 to promote human dignity through promotion of fundamental human development by targeting the poor and marginalised, through its core programme areas: organisational development, gender equality, HIV/AIDS prevention, sustainable agricultural, emergency response and preparedness, and governance and human rights. See Caritas' website, Caritas Zambia: <https://www.caritas.org/where-caritas-work/africa/zambia/>
- 7 Since 1986, FIAN International Zambia has been engaged in promoting the right to food and nutrition, mostly working through communities and movements. See FIAN International Zambia's website at: <https://www.fian.org/en/fian-international:>
- 8 [UNWG_NAPGuidance.pdf](#) (ohchr.org)
- 9 OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>
- 10 UN Working Group on Business and Human Rights. Guidance on National Action Plans on Business and Human Rights. Pg. 8 On line: [UNWG_NAPGuidance.pdf](#) (ohchr.org)
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- 12 E.g. the NAP processes in Belgium, Chile, Colombia, Czechia, Finland, France, Georgia, Germany, Indonesia, Ireland, Italy, Japan, Kenya, Luxembourg, Malaysia, Mexico, the Netherlands, Norway, Poland, Scotland, Spain, Sweden, Switzerland, Thailand, Ukraine, United Kingdom and United States of America. Source: [National Action Plans on Business and Human Rights \(globalnaps.org\)](https://globalnaps.org)
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- 18 Zambia Alternative Mining Indaba urges govt. to curb illicit financial flows and to ensure mining benefits poor communities, Business and Human Rights Resource Centre, June 2016: <https://www.business-humanrights.org/en/latest-news/zambia-alternative-mining-indaba-urges-govt-to-curb-illicit-financial-flows-and-to-ensure-mining-benefits-poor-communities/>
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- 22 Zambia Supplementary National Baseline Assessment on Business and Human Rights, "The Corporate Responsibility to Respect Human Rights: The Case of Mining and Agriculture Sectors in Zambia," 2021.
- 23 <https://globalnaps.org/country/zambia/>
- 24 Quote taken from interview with respondent from one of the CSOs, February, 2021.

- 25 Insights by key informants from CSOs, the Zambia Human Rights Commission and private sector organisations, interviewed by the DIHR in the development of this case study in February and March, 2021
- 26 EITI, Establishment and Governance of Multi-Stakeholder Groups, 2018: https://eiti.org/files/documents/guidance_note_14_on_establishment_and_governance_of_msgs.pdf
- 27 DIHR and Diakonia, Civil Society Participation in the Development of a Business and Human Rights National Action Plan in Peru, 2021
- 28 Ibid.
- 29 In other countries including in Kenya, NHRIs have played a key role in policy dialogues on business and human rights. The Kenya National Commission on Human Rights (KNCHR), which is the Kenyan NHRI, co-coordinated the Kenyan NAP development process alongside Kenya's Department of Justice (DOJ). The KNCHR and the DOJ provided secretariat support to the process, including convening meetings and coordinating the implementation of processes and development of outputs. As both a State advisor on human rights and an independent watchdog institution, the KNCHR was widely acceptable to many rights-holders and stakeholders, thereby complementing the role of the Government. Moreover, an NHRI brings in relevant technical expertise on human rights, which is crucial in the NAP development process. Similarly, the HRC could play a key role in coordinating the Zambian NAP development process.

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