**Zimbabwe Environmental Law Association (ZELA) input into the UN Working Group on Business and Human Rights**

**Investors, ESG and Human Rights**

**30 September 2023**

Zimbabwe Environmental Law Association (ZELA) exist to fight against socio-economic injustices and to promote the rights of marginalised and vulnerable communities in natural resource rich areas in Zimbabwe, and Southern Africa. Evidence from ZELA’s programming indicates that host mining communities suffer from the violation of economic environmental, social and cultural rights by state and business actors. Issues such as forced relocations, no or inadequate compensation, water and air pollution, environmental degradation and violation of customary burying grounds are common cause. Below is our responses to the United Nations Working Group on Business and Human Rights input from stakeholders to take stock of implementation of the Guiding Principles on Business and Human Rights (UNGPs), and emerging issues relating to investors and Environmental, Social, and Governance (ESG).

**What do you understand Environmental, Social, and Governance (ESG) in finance to mean? How are human rights standards and frameworks considered by investors, if at all, in ESG?**

Environmental, Social and Governance (ESG) standards are a set of non-financial performance indicators. Investors typically use them to assess a company’s performance from a sustainability and societal impact perspective, to inform investment decisions, and companies typically use them to de-risk a project and measure their risk profile for investors. The International Council of Mining and Metals (ICMM) launched the performance indicators on environmental, social and governance (ESG) criteria looking at aspects including biodiversity, diversity, pollution and waste, human rights and mine closure.[[1]](#footnote-1) These principles are hinged on establishing relationships between a mine and the host community which requires mining companies to demonstrate supply chain integrity and transparency. As such, some progressive mining companies are moving in the direction of developing mining-specific standards on ESG to guide monitoring and disclosures, beyond the current independent reporting requirements under national legal frameworks

***Which are the main types of investors using ESG approaches, for example, in decision-making or engagements? On what basis are they making decisions on human rights, climate change and other related matters?***

The main type of investors that are using ESG approaches are those that are mandated to disclose sustainability information by virtue of the stock exchanges they are listed on. They utilise the different metrics for reporting ESG issues as guided by their stock exchange listing. Their decisions on human rights, climate change and other related matters are based on their internal policies on these issues and their performance after using such polices as benchmarks.

**To what extent do ESG approaches present constraints or opportunities for investors and businesses overall?**

ESG approaches present an opportunity for investors to clearly assess the impacts of the business they are investing in before making a commitment in such a business. By critically analysing the sustainability reports that are produced by the investors, they can see what impacts that business has on the various aspects which can help safeguard human rights of the respective communities. ESG approaches provide an opportunity for businesses to benchmark their policy commitments and actual actions on the ground to see how they are doing based on the metrics of measurement. ESG approaches provide an opportunity for self assessment.

**State duty to protect human rights**

***What State, regional, and international mechanisms and regulations exist to promote or restrict investment/financing using an ESG approach that takes human rights into account and how do they align with the UNGPs? How do these mechanisms and regulations promote or inhibit business respect for human rights consistent with the UNGPs?***

State mechanisms such as National Action Plans on Business and Human Rights are important tools that can also take an ESG approach to ensure that the financiers take into account human rights impacts of their projects. The NAPs are implemented in line with UNGPs however, there are still many countries especially in the Global South that have not yet developed NAPs. For instance, in African only three countries (Kenya, Uganda and Nigeria) have NAPs. Many are however, in the process of undertaking consultations, and therefore should also consider ESG approaches that can be integrated into UNGP policies. In countries like Zimbabwe, the mining industry association ( The Chamber of Mines) has expressed that the issue of ESG reporting is still new to the mining sector in Zimbabwe and the full realisation of its benefits is affected by the lack of a common framework of reporting among other challenges. This points to the need for national legal framework to be robust on ESG reporting. The Chamber of Mines highlighted that there is a process that is still at early stages to develop framework to share mining royalties between the central and local authorities. See. <https://zela.org/the-role-of-environmental-social-and-governance-esg-reporting-in-promoting-responsible-sourcing-and-investment-in-the-extractive-sector/>

**To what extent do current regulations ensure adequate information and disclosure for investors adopting an ESG approach to understand human rights impacts of businesses?**

Accessing ESG information from investors especially those that are entering into Joint Venture Agreements with the Governments especially in Africa is still difficult. Although there is legislation such as Freedom of Information Act in Zimbabwe which allows citizens to access information held by government, in practice the information is inaccessible. While the Zimbabwe Development and Investment Agency (ZIDA) Act requires investors that pass-through ZIDA to protect the environment and operate responsibly, the Agency has also not be accessible and provide information to the public. The is coupled with the lack of regulations on responsible investment at to hold the investors to account.

Whilst the ESG reports that are produced by mining companies are informative in terms of disclosing what the companies are doing to address the social, environmental, and economic related concerns of communities where mining is taking place, monitoring of ESG by communities is very low. It is unfortunate that the ZSE listing requirements provide a detailed regulatory framework for listed mining companies to promote access to information on corporate environmental and social data based on the performance of their operations instead of the principal mining law. The Mines and Minerals Act which is the principal mining law regulating all mining operations in the country despite the worried concerns on the impact of Chinese mining investments and the broader mining sector fails to integrate principles of environmental and social sustainability reporting. Due to this lack of corporate environmental and social data disclosure laws broadly to the mining sector, it is the reason why some Chinese mining investments have been implicated in violations of rights in the country.

**How can States encourage and regulate accurate communication of ESG practices by businesses and investors to prevent misleading or unsubstantiated claims regarding respect for human rights?**

National laws on reporting Requirements should create offences for businesses and investors who make false claims.

**How can policies, programs, plans and activities in one State concerning regulation of investors in relation to human rights have potential or actual adverse or positive human rights impacts outside of their territory or jurisdiction?**

States that have progressive laws and policies on obligations of investors must ensure that there are administrative platforms or non-judicial mechanisms through their embassies or consular so that victims canto hold the companies accountable. It is difficult to access remedies if there are no easily accessible platforms. The embassies and consular offices should have the powers to monitor violations of their companies investing in other jurisdictions.

**How can States better advance human rights-compatible regulation and policies concerning investors and financial institutions generally in a manner that fulfils their international legal obligation to protect human rights?**

The legally binding instrument is the first step that will address the obligations of investors and States must adopt the binding treaty once adopted by the UN. Human rights institutions within states should also benchmark using internationally agreed human rights obligations of the State. Furthermore, national laws should make it an obligation for investors to have internal policies that align with UNGPs, and failure to develop to the policies which must be accessible should result of cancellation of licenses

**Corporate responsibility to respect human rights**

***To what extent are investors aware of their responsibility to respect human rights? Are some types of investors more likely than others to align their practices with the UNGPs? Does it depend on the type of investor?***

Investors are aware of their responsibility to respect Human Rights however this knowledge and responsibility often comes into conflict with the investor’s main goal of making profit hence we often see reports of investors not complying to UNGP practices. For instance, in Zimbabwe, there are currently two stock exchanges which are the Zimbabwe Stock Exchange Limited (ZSE)[[2]](#footnote-2) and the Victoria Falls Stick Exchange.[[3]](#footnote-3) The core mandate of both the stock exchanges is to facilitate long term capital raising through listing of securities as well as offering secondary market securities trading and issuer regulation services.[[4]](#footnote-4) Currently, the Zimbabwe Stock Exchange has 65 listed entities and only three mining companies are listed namely Bindura Nickel Company (BNC), Rio-Zim, and Hwange Colliery.[[5]](#footnote-5) As part of the efforts by the Zimbabwe Stock Exchange to foster sustainability reporting by its listed companies, the Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules, 2019 provides for an entire section on sustainability information and disclosure.[[6]](#footnote-6) In terms of these listing requirements, it shall be the responsibility of the Board of the listed company to disclose in the chairman’s statement the relevance of sustainability to the organisation.[[7]](#footnote-7) The Chairman’s report should also include the organisation’s strategy for addressing sustainability issues. Furthermore, to the sustainability reporting, the listed mining company must disclose its sustainability policy, including mitigation of risks, sustainability performance data and other material information which deepens stakeholder’s understanding of corporate performance. A listed company should provide a balanced and objective view of its performance by including both positive and negative impacts on the environment and society. Importantly, the reporting should also include how the listed mining company relates to its stakeholders and contribute to sustainable development. Internationally accepted reporting frameworks are encouraged in disclosing the company’s sustainability performance, but guidelines specifically mentioned are on the Global Reporting Initiatives (GRI) Sustainability Reporting Guidelines or Standards.[[8]](#footnote-8) The GRI Sustainability Reporting Guidelines set out general principles and indicators that listed companies can use to measure and report their economic, environment and social performance. Specific mentioning is made of listed companies that operate in industries that are extremely sensitive to environmental and social issues such as oil and gas, mining and metals sector whose high environmental and social exposure and impacts warrant specialized reporting frameworks for meaningful assessments of organisational risk and performance.[[9]](#footnote-9)

There are only three listed companies under the ZSE, which are however, not Chinese owned companies. This, therefore, means that the industry specific sustainability reporting information and disclosure provisions triangulated in terms of the regulation on integrating financial and non-financial disclosures( environmental and social) be included are not applicable to them and broadly all operating companies in the countries not listed. Impressively, the mining industry related sustainability reporting of listed companies should be referenced to a standalone comprehensive sustainability report prepared separately and available to stakeholders. The reporting can also be in a standalone sustainability report giving a comprehensive disclosure of environmental and social issues and the report should be referenced in any reporting of annual financial statements by providing a summary of sustainability information linked to the standalone report.

**How effective are international instruments, institutions and guidance that promotes HRDD, such as by the UN Global Compact, Equator Principles, Principles of Responsible Investment, Investor Alliance for Human Rights, Business for Social Responsibility and other entities, effective in increasing awareness of human rights impacts among investors and other businesses? Please provide examples of participation, integration, or adherence of investors in these instruments and bodies.**

The instruments are not effective since they are not binding on members states. It therefore crucial to have a strong legally binding instrument.

**What does appropriate investor action entail in the event that a client or portfolio company causes or contributes to a potential or actual adverse human rights impact?**

Appropriate investor action entails full investigation into the matter and providing a remedy for the aggrieved party. It also means the investor needs to assess whether there were any loopholes in its policies which led to the adverse human rights impact and subsequently address it at that level.

**Are there any roles which stock exchanges could play in ensuring investors, and the businesses in which they invest, respect human rights?**

Stock exchanges should provide ESG reporting guidance for businesses that list with them so that it is easier for the businesses to report adequately on different metrics. This also helps in providing information that is uniform, easy to assess and compare.

**Access to remedy**

***State-based judicial and non-judicial mechanisms***

**What steps have States taken to investigate, punish, and redress business-related human rights abuses connected to investors, and how effective are they? What challenges and opportunities for participation by affected stakeholders and/or redress have you observed?**

States do have laws and policies put in place to protect the people against human rights abuses by any investor or business operation. However, the implementation of these laws and policies is what is at stake. The channels for accessing remedies are usually costly on the part of the complainant hence we see them being a victim of business-related abuse. Some of the challenges span to access remedies span from the high costs of litigation to evidential hurdles, access to crucial information, establishing jurisdictional links, or evidentiary hurdles and burden of proof for liability. These insurmountable barriers to accessing justice are exacerbated by weak legal and regulatory frameworks within states for the provision of free legal services. In the face of these struggles, the legally binding instrument to regulate the activities of TNCs and other business enterprises provides an opportunity to adopt strong provisions. Without a strong, binding treaty that addresses hurdles to accessing justice, the hope of realizing corporate accountability will never be fulfilledOne of the major challenges for access to remedy is evidentiary burden, expensive legal fees,

***Non-State based mechanisms***

***What measures and mechanisms, including grievance mechanisms, should be provided at the investment-level that enable individuals or communities affected by the business in which the investor has invested (e.g. the portfolio company) to report adverse human rights impacts to the investor and seek effective remedy for human rights and environmental abuses? How effective are these in providing remedies to the victims? Please provide examples of business or industry association actions in this area.***

It should be requirement that for an investor to be allowed to invest in a state, they should have an independent redress mechanisms set in place to enable individuals and communities affected by their operations to report their complaints. For example the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC), a major industry association responsible for coordinating and formulating industry corporate social responsibility initiatives, recently launched guidelines and procedure on Mediation and Consultation mechanism for stakeholders in the mining sector that are affected by Chinese investors

1. See: [International Council on Mining and Metals Mining Principles](https://www.icmm.com/mining-principles) [↑](#footnote-ref-1)
2. A licensed securities exchange in terms of the Securities and Exchange Act (24:25). [↑](#footnote-ref-2)
3. Established in terms of the Exchange Control (Special Provisions for Securities Listed on Victoria Falls Stock Exchange) Regulations, 2020. [↑](#footnote-ref-3)
4. See; <https://www.zse.co.zw/about-us/> [↑](#footnote-ref-4)
5. See; <https://www.zse.co.zw/companies-2/> [↑](#footnote-ref-5)
6. PART XXI, Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules, 2019 [↑](#footnote-ref-6)
7. Section 399, Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules, 2019 [↑](#footnote-ref-7)
8. Section 401, Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules, 2019 [↑](#footnote-ref-8)
9. Section 402, Securities and Exchange (Zimbabwe Stock Exchange Listings Requirements) Rules, 2019 [↑](#footnote-ref-9)