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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

REFERENCE: UA Health (2002-7) Toxic waste (1995-14)
NGA 6/2012

21 December 2012

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes pursuant to Human Rights Council resolutions 15/22 and 18/11.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **alleged on-going lead contamination and poisoning in Zamfara State, Nigeria**. As your Excellency's Government is aware, we sent an Allegation Letter regarding several cases of lead poisoning in the State of Zamfara on 9 May 2011 (NGA 1/2011). We would like to draw your attention to new developments since then.

According to the information received:

Artisanal gold mines are found throughout Zamfara State in northwestern Nigeria. The high levels of lead found in the earth coupled with the use of rudimentary mining methods have reportedly resulted in a lead poisoning epidemic among children. Children are allegedly exposed to lead through various means, including when they process ore in the mines, when the miner members of the family return home covered with lead dust, and when the lead-filled ore is manually or mechanically crushed at home.

It is alleged that approximately 400 children have died from lead poisoning in Zamfara State since March 2010 when the unprecedented epidemic was first discovered. Although medical care has been provided to approximately 2000 children throughout Zamfara State and seven villages have been decontaminated, much remains to be done. The most contaminated town in Zamfara is allegedly the village of Bagega, which has approximately 8000 residents.

In May 2012, President Jonathan reportedly pledged approximately US\$5 million to clean up areas that have been contaminated with lead during artisanal gold mining operations, with a specific focus on the Bagega area. The funds were also to be used to promote safe mining practices, such as introducing processing equipment that reduces the risks of lead exposure.

Despite the Government's pledge, no money has allegedly been released. According to information received, hundreds of children in Bagega and surrounding areas continue to needlessly suffer the effects of lead poisoning. Moreover, medical treatment is ineffective unless decontamination takes place, since treating children while they are still actively exposed to lead makes their bodies more susceptible to the harms of lead poisoning. Moreover, children who are successfully treated will be re-exposed to lead contamination.

Importantly, it is alleged that the remediation of Bagega must start immediately to ensure that decontamination is completed before the beginning of the rainy season. In order to meet this tight deadline, the pledged funds must be released urgently.

As it is well established that children are particularly susceptible to harm from lead, concern is expressed that high levels of lead exposure can cause brain, liver, kidney, nerve and stomach damaged, and it can result in permanent intellectual and developmental disabilities.

While welcoming your Excellency's Government's pledge to financially support the remediation of lead contaminated areas and to promote safer mining practices, and steps taken to remediate the lead contamination, we express serious concern that more children may die or become permanently disabled, should the decontamination not be completed before the rainy season begins in 2013.

While we do not wish to prejudge the accuracy of the reports received, we would like to recall the relevant international human rights obligations that your Excellency's Government has undertaken. We wish to draw your attention to article 6.1 of the International Covenant on Civil and Political Rights, acceded by your Excellency's Government on 29 July 1993, which states that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." We would also like to call your attention on General Comment No. 6 (1982) of the Human Rights Committee on the right to life. According to the Human Rights Committee, the expression 'inherent right to life' should not be interpreted in a restrictive manner. The protection of the right to life therefore requires States to adopt positive measures to implement this right, including measures to reduce infant mortality, increase life expectancy and eliminate malnutrition and epidemics. (para. 5).

In addition, Article 6 of the Convention on the Rights of the Child (CRC), which your country ratified on 19 April 1991, recognises that every child has the inherent right to life and that requires that States Parties ensure to the maximum extent possible the survival and development of the child. It further requires State Parties to take all effective and appropriate measures to diminish infant and child mortality

With regard to the right to the highest attainable standard of health of the affected communities, we wish to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by your country on 29 July 1993 – which recognizes the right of everyone to the highest attainable standard of physical and mental health.

We also wish to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which notes that health facilities, goods and services have to be accessible to everyone without discrimination, further elaborating that accessibility has four overlapping dimensions, such as non-discrimination, physical accessibility, economic accessibility and information accessibility (para. 12(b)). General Comment No. 14 further holds that the right to health also extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment (para. 4).

We would also like to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (E/C.12/2000/4) that describes the normative content of article 12 and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfil the right to health. In paragraph 11 of the General Comment No. 14, the Committee interprets the right to health as “an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, and adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information...” States have an obligation to ensure equal access for all to the underlying determinants of health (para. 36). In relation to the right to healthy natural and workplace environments, the General Comment provides that improvement of all aspects of environmental and industrial hygiene comprises, inter alia, “preventive measures in respect of occupational accidents and diseases” and “the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.” (para.15).

Moreover, the Article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation.

Similarly, we would like to draw the attention of your Excellency's Government to the definition of “worst forms of child labour” enshrined in ILO convention no. 182, to which your Excellency's Government is a member state: “(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

Article 24 and 16 of the African Charter on Human and Peoples' Rights, to which Nigeria is a party, also confers upon all peoples the right to a general satisfactory environment favourable to their development and the right to health respectively. The African Commission on Human and Peoples' Rights has stated, in Communication No. 155/96 (2001), that these two intertwined rights oblige “the State to take reasonable and

other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources”.

As it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful if your Government could provide additional information on the matters referred to and the allegations contained in the present letter, particularly regarding the following issues:

1. Are the alleged facts accurate?
2. What measures have been put in place to prevent a deleterious impact on the health of the children and communities in Zamfara State, Nigeria as a result of the artisanal gold mines?
3. What measures are being taken to ensure the enjoyment of the right to health of children in Zamfara State, Nigeria?
4. Does the Government plan on providing the funds that it has pledged to remediate the lead contamination and promote safer mining practices in time for completion before the rainy season begins?
5. To what extent, if at all, has your Government provided small-scale artisanal gold miners, their families and members of local communities with information and training related to promoting safer mining practices and reducing lead contamination in homes?
6. What steps has your Government taken to end unsafe child labor in gold mines?

We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the highest
attainable standard of physical and mental health

Marc Pallemmaerts

Special Rapporteur on the implications for human rights of the environmentally
sound management and disposal of hazardous substances and wastes