

**Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the rights of persons with disabilities**

REFERENCE:  
AL ZAF 3/2021

27 May 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and Special Rapporteur on the rights of persons with disabilities, pursuant to Human Rights Council resolutions 45/17 and 44/10

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged ongoing human rights violations and environmentally damaging consequences of the lead contamination in Kabwe, Zambia, affecting a large residential area.

According to the information received:

Lead poisoning has affected the residents of Kabwe, Zambia, for generations. Kabwe is the capital of Zambia's Central Province, with a population of over 200,000. The city was home to a lead mine from 1904-1994 and smelter.

In 1904 a British company opened the mine. Between 1925 to 1974, the company Anglo American operated the mine. After independence, Zambia nationalized the mine in 1974 and closed it in 1994. A comprehensive clean-up of Kabwe was never undertaken.

More than 25 years after the mine closed, residents live in a lead-polluted environment – schools, play areas, homes, and backyards lie in areas with high lead levels. The main townships affected are Chowa, Waya, Kasanda, Mutwe Wansofu, Makandanyama, and Makululu. It is estimated that at least 76,000 people continue to live in lead contaminated areas. Many of these areas are very poor, and some are in informal settlements where lead dust is a particular hazard.

The main source of contamination, the old mine, continues to exist and pose significant health damage to the population, including children. Although the old mine is fenced, a public road passes through it, allowing free access to the public. In addition, the distance of strands in the fencing also allows for people to enter the old mine. People reportedly access the old mine to take soil for paving the roads in the nearby townships damaged by heavy rains.

In December 2016, the Zambian Government began a five-year World Bank-funded project, the Zambia Mining and Environmental Remediation and Improvement Project (ZMERIP), to clean up lead-contaminated neighbourhoods and conduct testing and treatment in Kabwe. The Project however does not address the full scale of the contamination; in particular, it

does not plan to address the source of the contamination, Kabwe mine’s waste dumps, nor does it plan to clean up affected townships in a comprehensive manner. An earlier World Bank programme, from 2003 to 2011, was described by the Bank as unsatisfactory<sup>1</sup>. The current project’s appraisal document (basic document to describe plans and strategy) also refers to the poor performance of the previous project.<sup>2</sup>

In 2012, the Zambian Government granted a large-scale mining license for much of the former mine area to a British company called Berkeley Mineral Resources (BMR) to recover lead, zinc, and vanadium from the waste. With the license, the company acquired the Kabwe tailings stockpiles as well as all other mined or unmined resources at the former mine.

Enviro Processing Limited (EPL)—a BMR subsidiary—submitted an environmental impact statement to the Zambia Environmental Management Agency (ZEMA), stating that it was planning to clean up the former Kabwe mine by removing lead and zinc from the tailings through chemical processing. ZEMA approved the environmental impact statement in 2016. According to experts, EPL’s proposal fails to demonstrate how any harmful impacts of the proposed reprocessing activities would be prevented or mitigated.

In 2018, Jubilee Metals Group, a South African company, entered into a joint venture with BMR and became the designated sole operator of the project; subsequently, Jubilee Metals acquired EPL. Jubilee Metals changed BMR’s plans by, among other things, proposing a method to recover the highly valuable metal vanadium as well.

In 2019 Jubilee Metals bought a refinery right next to the former Kabwe mine for processing multiple metals. According to information made available, no new environmental impact assessment has been presented by Jubilee Metals, even though government officials themselves have previously stated that this would be necessary.

*On the nature of lead contamination and how it is affecting children*

Lead is a cumulative toxicant that affects multiple body systems and is particularly harmful to young children. The World Health Organization (WHO) has identified it to be 1 of 10 chemicals of major public health concern, needing action by Member States to protect the health of workers, children and women of reproductive age<sup>3</sup>. It is important to highlight that according to WHO - there is no level of exposure to lead that is known to be without harmful effects<sup>4</sup>.

Young children are especially vulnerable to the toxic effects of lead and can suffer profound and permanent adverse health effects and disabilities, particularly affecting the development of the brain and the nervous system.

<sup>1</sup> [http://documents1.worldbank.org/curated/en/615451468170065644/pdf/ICR19040P070960sclosed0Dec02702011\\_0.pdf](http://documents1.worldbank.org/curated/en/615451468170065644/pdf/ICR19040P070960sclosed0Dec02702011_0.pdf)

<sup>2</sup> <http://documents1.worldbank.org/curated/en/214971482116474950/pdf/1482116472340-000A10458-Zambia-Mining-Final-11292016.pdf>

<sup>3</sup> WHO official website <https://www.who.int/en/news-room/fact-sheets/detail/lead-poisoning-and-health>  
WHO official website <https://www.who.int/en/news-room/fact-sheets/detail/lead-poisoning-and-health>

Exposure of pregnant women to lead results in the exposure of the foetus, and high levels of lead can cause miscarriage, stillbirth, and premature birth and low birth weight. Lead also causes long-term harm in adults, including increased risk of high blood pressure and kidney damage. Lead poisoning occurs when lead builds up in the body, often over months or years. Even small amounts of lead can cause serious health problems. Children younger than 6 years are especially vulnerable to lead poisoning, which can severely affect mental and physical development. At very high levels, lead poisoning can be fatal<sup>5</sup>. Socio-economic factors also influence exposure to lead, since families living in vulnerable conditions are more likely to live near industrial plants or work directly in them.

An elevated blood lead level in children is defined by the U.S. Centre for Disease Control as being above 5µg/dl. A 2018 medical study estimated that in Kabwe's affected townships, over 95 percent of children have blood levels over 10µg/dl. And about half of children in affected townships are estimated to have blood lead levels over 45µg/dl, at which point medical intervention is urgently needed. Adults are also affected, and pregnant women face particular risks.

Between 2016 and 2019, public health facilities in Kabwe generally lacked testing equipment, treatment, and database necessary to track cases of children who died or were hospitalized because of lead poisoning. Children who had been tested and found to have very high blood lead levels before 2016, when test kits were still available, did not receive treatment. Parents expressed concerns of feeling helpless, scared, and abandoned by the health system.

In early 2020, the Zambian Government started testing and treatment in Kabwe, with the help of funding provided by the World Bank. By December 2020, a total of 8,737 children had been tested at clinics in hotspot areas, of which 15 percent were receiving treatment, according to a status report by the World Bank<sup>6</sup>. A news article by the World Bank stated that by the end of 2020, about 2,500 children had been found to have blood lead levels of 45 µg/dL and higher, and that some of them had been placed on chelation therapy, the most common treatment for lead poisoning<sup>7</sup>. It did not detail how many children were treated and why treatment was not provided to all children.

Despite some positive steps, significant challenges remain. Children who receive chelation medicine are currently being returned into a contaminated environment; this means that they will be re-exposed to lead. In addition, children over the age of 15 and adults, in particular women of reproductive age, have no access to testing and treatment yet, although the Zambian Constitution, in line with UN standards defines a child as a person below the age of 18.

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<sup>5</sup> Definition by Mayo Clinic, <https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717>

<sup>6</sup> <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/834491608582370666/disclosable-version-of-the-isr-zambia-mining-and-environmental-remediation-and-improvement-project-p154683-sequence-no-08>  
<https://www.worldbank.org/en/news/feature/2020/12/17/living-with-lead-in-zambia-creating-hope-for-the-children-of-kabwe>

In 2016 the UN Committee on the Rights of the Child (CRC) recommended to Zambian authorities to undertake all necessary measures to protect the rights of the children in Kabwe, including by ensuring their consideration in all future lead mining activities, such as the new World Bank-funded environmental project."<sup>8</sup>

In 2019 the African Committee of Experts on the Rights and Welfare of the Child stated that lead pollution, especially in Kabwe, is significantly affecting the health and wellbeing of children by affecting their right to clean water and healthy environment. The Committee recommended that the State Party undertakes studies to assess the situation and identify the cause and impact of the pollution. The Committee also recommended that Zambia adopts strict regulation and accountability on companies that undertake mining and contribute to the lead pollution and encouraged to evacuate children in most affected areas and devises strategies on how to clean the pollution.<sup>9</sup>

In 2020 CRC presented a list of issues to Zambian authorities prior to submission of the combined fifth to seventh periodic reports of Zambia asking, inter alia, to inform the Committee about the actions taken to clean up the lead contamination in Kabwe and explain what has been the financial investment in addressing this issue so far and the results. The CRC also asked to provide information on the measures taken to assess the impact and address the consequences of lead contamination in Kabwe on children's health, including the availability of free testing and free treatment for lead poisoning<sup>10</sup>.

### *On artisanal small-scale mining*

The Zambian Government has allegedly issued several licenses for small-scale mining, and there are also ongoing unlicensed mining operations. Enviro Processing Limited (EPL), the subsidiary of Jubilee Metals, holds a small-scale mining license in Kabwe. In late 2018, the Government had reportedly granted two other licenses to other companies.

Artisanal and small-scale mining (mining with little or no machinery), both with and without a license, has become the main activity at the mine in the absence of a central mining company. Small-scale mining at the former mine site poses risks to residents' health by creating another pathway for exposure to lead dust. Small-scale mining for lead poses severe health risks and affects children in Kabwe in distinct ways. First, children risk exposure to particularly high levels of lead when adult family members work at the mine and return home with lead on their body, clothes, tools, or shoes. Second, older children themselves work at the mine. Third, small-scale mining produces additional dust that risks blowing into nearby residential areas.

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/Z/MB/CO/2-4&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/Z/MB/CO/2-4&Lang=En)

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Concluding observations and recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report the Republic of Zambia on the status of the implementation of the African Charter on the Rights and Welfare of the Child  
List of issues prior to submission of the combined fifth to seventh periodic reports of Zambia  
[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fZMB%2fQP R%2f5-7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fZMB%2fQP R%2f5-7&Lang=en)

### *Remediation Efforts*

The Zambian Government to date has not conducted a remediation or reclamation (land restoration) program. The World Bank-funded project is intended to carry out remediation in homes at affected townships and some schools to reduce lead exposure. According to the World Bank, remediation was completed in 2020 at one school, the Mine Primary School. Other remediation activities have been delayed due to Covid-19 and due to other factors that predated the pandemic. The World Bank's December 2020 status report describes overall implementation of the project as "moderately unsatisfactory."<sup>11</sup>

The Zambian Government has indicated that it will not be able to comprehensively address the full scale of the contamination in affected homes, schools, play areas, health centres, and other public spaces. Road paving is not planned as part of the project although unpaved roads, which spread lead dust, present a significant exposure risk for those walking or living or spending time in buildings near roads.<sup>12</sup>

Furthermore, the project's remediation plans do not address the source of the contamination, namely the Kabwe mine's waste dumps.

The former mine area contains over three million tons of tailings (waste from the mining process), about 2.5 million tons of slag (waste from the smelter), and other waste. The most visible waste dump is a large, dark pile of slag, locally known as the "Black Mountain" because of its dark colour. No meaningful work has been undertaken to remove the source of the contamination or seal the site. Lead dust from the uncovered waste dumps continues to blow over to nearby residential areas and threaten community health.

Further mining and re-processing activities permitted by the Zambian Government in the area pose additional health risks.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concerns regarding the situation of ongoing lead contamination in Kabwe and the serious human rights violations it results in, affecting the life, health and well-being of local residents, including children, who are particularly vulnerable to the damage caused by lead poisoning and bear its long-term consequences on their health.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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

<sup>11</sup> <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/834491608582370666/disclosable-version-of-the-isr-zambia-mining-and-environmental-remediation-and-improvement-project-p154683-sequence-no-08>

<sup>12</sup> Annex of HRW report, <https://www.hrw.org/report/2019/08/23/we-have-be-worried/impact-lead-contamination-childrens-rights-kabwe-zambia>

grateful for your observations on the following matters:

1. Please provide any additional information and any comments that you may have on the above-mentioned allegations.
2. Please highlight the steps that your Excellency's Government has taken, or is considering to take, to protect against human rights abuse by business enterprises domiciled in South African territory and/or within its jurisdiction, such as Jubilee Metals. Please provide information on what measures your Excellency's Government has taken to ensure that such business enterprises conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations (including abroad), as set forth in the UN Guiding Principles on Business and Human Rights.
3. Please describe any guidance that your Excellency's Government has provided to South African domiciled business enterprises on respecting human rights throughout their operations in line with the UN Guiding Principles, including by setting out the Government's expectations as to how human rights due diligence should be conducted, how to consult meaningfully potentially affected stakeholders, and how to remedy any negative human rights impacts.
4. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure that business enterprises domiciled in your territory and/or jurisdiction establish or participate in effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on this subject matter has been sent to the Government of Zambia, as well as to Jubilee Metals.

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

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

Gerard Quinn  
Special Rapporteur on the rights of persons with disabilities

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, wish to draw the attention of your Excellency's Government to obligations under international human rights instruments, to which South Africa is party, recalling article 3 of the Universal Declaration of Human Rights (UDHR) and article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which South Africa ratified on 10 December 1998, which guarantee the right of every individual to life, liberty and security.

As highlighted by the Human Rights Committee in General Comment no. 36, duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para 26). Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para 62).

We would also like to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by South Africa on 12 January 2015. The article enshrines the right to the highest attainable standard of physical and mental health, which is also guaranteed as a part of the UDHR, article 25 read in terms of the individual's potential, the social and environmental conditions affecting the health of the individual, and in terms of health care services. In its General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) 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, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information". Accordingly, States have a duty to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data.

The CESCR has stated that "corporate activities can adversely affect the enjoyment of Covenant rights", including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the "obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities" (E/C.12/2011/1, para. 1).

Furthermore, article 24 of the Convention on the Rights of the Child (CRC) recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health, and the concomitant duty of the State to provide adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

We would like to recall the duty of all States to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the

implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the UN General Assembly (A/74/480). This obligation derives implicitly, but clearly, from any number of rights and duties enshrined within the global human rights framework, under which States are obligated to respect and fulfil recognized human rights, and to protect those rights, including from the implications of exposure to toxics. Those rights include the human rights to life, health, safe food and water, adequate housing, and safe and healthy working conditions. The duty to prevent exposure is further reinforced by the national and regional recognition of the right to a safe, clean, healthy and sustainable environment, including clean air. The existence of the State's duty to prevent exposure is reinforced by the right to full respect for the bodily integrity of the person, which helps to provide context to the extent to which every person should have the right to control what happens to their body (see A/HRC/39/48). Read together, international human rights clearly establish a duty of the part of your Excellency's Government to prevent exposure to hazardous substances and wastes.

Finally, we would like to highlight the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011 by the Human Rights Council in its resolution (A/HRC/RES/17/31) following years of consultations involving Governments, civil society and the business community. The Guiding Principles have been established as the authoritative global standard for all States and business enterprises with regard to preventing and addressing adverse business-related human rights impacts. These Guiding Principles are grounded in recognition of:

- a. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached."

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8). In accordance with these legal obligations, Guiding Principle 1 reiterates that the State has a duty "to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises." Moreover, Guiding Principle 3 reiterates that States must take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication." In addition, this requires, *inter alia*, that a State should "provide effective guidance to business enterprises on how to respect human rights throughout their operations". Lastly, in accordance with the right recognized in treaty and customary international law (see for example ICCPR article 2 (3)), the Guiding Principles reiterate that States must ensure that victims have access to effective remedies, also in instances where adverse human rights impacts linked to business activities occur.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Under Pillar II of the UN Guiding Principles, business enterprises, in turn, are expected to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights. Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact. Similarly, where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible (see commentary to Guiding Principle 19). Moreover, where business enterprises “identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes” (Guiding Principle 22).

CESCR Recommendation N.24 (2017) also states that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective”.