

**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 OTH 193/2021

27 May 2021

Dear Mr. Coetzer,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or has a high risk of occurring. The process involves sending a letter to the concerned actors identifying facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your company, information we have received concerning potential human rights violations and environmentally damaging consequences of on-going 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.

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.

**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.**

#### *New mining operations in Kabwe*

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 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.

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 grateful for your observations on the following matters:

1. Please provide information on the above-mentioned allegations and your company's exact plans are for the waste piles in Kabwe? Have these plans been made public?
2. Please provide information about the human rights due diligence policies and processes put in place by your company to identify, prevent, mitigate and account for how you address adverse human rights impacts of your activities, in line with the UN Guiding Principles on Business and Human Rights (UN Guiding Principles).

3. Please provide information on how your company has submitted an environmental impact statement assessment on the project involving the refinery right next to the former Kabwe mine for processing multiple metals which Jubilee Metals has acquired in 2019?
4. What steps is your company taking to mitigate any harmful impacts of the planned reprocessing activities?
5. Please provide information on whether your company has established or participated in an effective operational-level grievance mechanism to address adverse human rights impacts caused by its operations, in line with the UN Guiding Principles. Please also provide any information as to whether such a mechanism has been used to address any concerns or impacts arising out of the mining project, as well as information on any outcomes or remedies provided as a result.

This communication and any response received from your company will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your company to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been also sent to the Governments of Zambia and South Africa.

Please accept, Mr. Coetzer, 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 relation to the above-mentioned facts and concerns, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights.

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.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. 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.

Furthermore we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Principles 11 to 24 and Principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have cause or contributed to adverse impacts. Moreover, the commentary of the Principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”. The commentary of Guiding Principle 13 notes that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business

relationships with other parties.(...) Business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services”.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Furthermore, business enterprises should remedy any actual adverse impact that they cause or to which they contribute. Remedies can take a variety of forms and may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome (commentary to Guiding Principle 25).

We also wish to recall 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 guarantee the right of every individual to life, liberty and security.

We find it opportune to recall article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). 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.