

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human right to a clean, healthy and sustainable environment and the Special Rapporteur on the human rights to safe drinking water and sanitation

Ref.: AL GBR 6/2025

(Please use this reference in your reply)

11 June 2025

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; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human right to a clean, healthy and sustainable environment and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 54/10, 53/3, 55/2 and 51/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged human rights violations and abuses against workers and community members in the context of the activities of the Tsumeb Smelter ("Smelter") in Tsumeb, Namibia. In September 2024, Sinomine Resource Group Co., Ltd. became the owner of the Smelter. Previously, through its subsidiary in Namibia, Dundee Precious Metals Tsumeb (Pty) Limited, the Canadian company Dundee Precious Metals Inc. owned the Smelter from 2010 until 2024, after purchasing it from Weatherly International Plc (based in the United Kingdom).**

According to the information received:

The Tsumeb Smelter

The Tsumeb Smelter produces blister copper in Namibia. As such, the Smelter receives copper ore from other countries in Europe, Latin America and domestically to produce blister copper as an intermediate product to be later refined in Europe and Asia. The Smelter also produces sulfuric acid byproduct that is then sold to third parties.

The Smelter started operations in 1963, and the various changes of ownership over the years have been done in a way to hinder accountability, and create impunity.¹ In March 2010, Weatherly International Plc sold its subsidiary Namibian Custom Smelters (Pty) Ltd, which owned and operated the Tsumeb Smelter, to Canada-based Dundee Precious Metals Inc., for US\$3.5 million. The sale included a so-called "grandfather clause," which works as a non-assumption of liabilities clause, stating that Dundee Precious Metals Inc. would

¹ The Smelter was owned by Tsumeb Corporation Limited (1982-1998), then by Ongopolo Mining and Processing limited (2000-2006); then by Weatherly International Plc (2006-2011); then by Dundee Precious Metals Inc. (2011-2023).

not be held responsible for any environmental harm caused prior to the date of purchase. In 2016, Dundee Precious Metals Inc. stated that “The transaction between Company [Dundee Precious Metals Inc.] and WTI [Weatherly International Plc] was structured to ensure that no environmental or regulatory liabilities that belong to any of the mining operations were attached to the smelter (except where some joint assets and liabilities existed).”² On 30 August 2024, Dundee Precious Metals Inc. sold the Smelter to Sinomine Resource Group Co., Ltd. (hereafter “Sinomine”), a Chinese company, for US\$20 million with a continued exemption of liabilities for Dundee Precious Metals Inc., therefore placing liability on Sinomine.³

Prior to the sale of the Tsumeb Smelter by Dundee Precious Metals Inc. to Sinomine, the “Tsumeb Business Consortium”, a group of Tsumeb businesspeople, filed an objection with the Namibian Competition Commission to reject the sale of the Smelter from Dundee Precious Metals Inc. to Sinomine unless both companies agreed to take responsibility in rehabilitating the environment, conducting medical exams for all Tsumeb community members, and for Sinomine to take accountability for future contamination. However, the Namibian Competition Commission approved the sale without setting any conditions referenced in the Tsumeb Business Consortium’s objection.

Environmental Degradation caused by the Tsumeb Smelter

The Tsumeb Smelter has been in operation since the 1960s, and since then it has released smelting byproducts into the environment, including arsenic trioxide, sulfuric acid, sulfuric dioxide, lead, cadmium, and mercury. These hazardous substances contaminate the air, soil, and water, creating a serious danger to human health and the environment. Testimonies show that workers (including independent contractors) in the Smelter and community members in and around Tsumeb have suffered from the contamination generated by the Smelter’s operations.

Adverse Impact on Air Quality

The Smelter releases solid and gaseous emissions, airborne particles, and hazardous dust which has widespread adverse, serious impacts on air quality. The Smelter releases approximately 10 tons of SO₂ annually through tall, chimney-like emission pipes. The highest dust fallout concentrations have reached up to 2.4 g/m² per year.⁴ Community members in Tsumeb, Kuvukiland, Tsintsabis, Ondundu, Nomtsoub, Grootfontein, as well as communities in the transportation route (of the copper concentrate) from Walvis Bay to the Smelter, have suffered damaging consequences from hazardous air pollution.

² Dundee Precious Metals Inc., Annual Information Form, 2016, p. 48, https://dundeeprecious.com/site/assets/files/10111/2017-aif_03-31-2017_final.pdf

³ Dundee Precious Metals Inc., Annual Report 2024, p. 34, p. 98, https://dundeeprecious.com/site/assets/files/16881/dpm_2024_annual_report.pdf

⁴ Bohdan Křibek a, et al. “Contamination of Soil and Grass in the Tsumeb Smelter Area, Namibia: Modeling of Contaminants Dispersion and Ground Geochemical Verification.” Applied Geochemistry, Pergamon, 5 August 2015, www.sciencedirect.com/science/article/pii/S0883292715300111?via%3Dihub.

Similarly, the Smelter's acid plant releases sulfur dioxide which has reportedly polluted surrounding air. According to witnesses, the Smelter's baghouse (the device to control air pollution) frequently fails to operate, and when this happens, atmospheric sulfur dioxide pollution worsens with the release of smoke. Witnesses have shared that breathing becomes more difficult due to increased emissions. They have also pointed out how the pollution adversely impacts local biodiversity, including causing the death of birds and plants.

Waste Disposal Practices and Adverse Impact on Soil Quality

The Smelter operations and its poor waste management practices cause soil pollution. During transportation, fine-powdered copper concentrate arriving at the Smelter (by train or trucks mostly from the Port of Walvis Bay) is reportedly released into the environment.

Waste management practices are illustrated by a 70 x 40-meters pit near the Smelter, which some testimonies refer to as "The Hillside." The pit is compacted with sand, then layered with a black tarp, and used to dump chemical waste. Once the pit is filled, a tent cover is placed on top of the pile and a new pit is dug out. According to testimonies, in 2015, another pit that was 20-meters deep on Smelter grounds called "dumping site #10" was filled with arsenic trioxide waste bags.

A number of researchers from various countries have confirmed high levels of arsenic in air, surface soil, settled dust samples, and locally grown plants in the Tsumeb area.⁵ Research conducted in 2012 by the Namibian Ministry of Environment and Tourism revealed Tsumeb soil had heavy metal content due to Smelter emissions.⁶ In 2011, the Federal Institute for Geoscience and Natural Resources, the University of Namibia, and the Namibian Directorate of Agriculture and Department of Water under the Ministry of Fisheries and Marine Resources confirmed elevated concentrations of arsenic, cadmium, copper, and lead in more than 550 soil samples taken from around the Smelter. Adjacent to the Smelter area, the maximum arsenic levels were 229 mg/kg.⁷ There is no universal guideline for permissible arsenic levels in soil. By comparison, as an example, in the United States, natural arsenic concentrations range from 0.1 mg/kg to 40 mg/kg. Results from a 2007 Geological Survey of Namibia into the investigation of vegetative material for heavy metal contamination around the Tsumeb Smelter confirmed the correlation between heavy metal concentration of most fruits and vegetables with Smelter production of heavy metals. Also, in 2014, research completed by the University of Namibia, in collaboration with the Federal Institute for Geosciences and

⁵ Ettler, V. et al., Composition and Fate of Mine- and Smelter-Derived Particles in Soils of Humid Subtropical and Hot Semi-Arid Areas, *Sci. Total Environ.*, 2016, at 329-339, 563-564. Fry, K. L.; Myers, J., Health Impact Assessment for the Environmental Impact Assessment of the Dundee Precious Metals Tsumeb Smelter Expansion Project (Revised 31 January 2019), https://dundeeprecious.com/site/assets/files/16518/10-appendix-i_health_impact_assessment.pdf; Schlaefli, Samuel, and York Geoffrey, Canadian Copper Company Leaves a Legacy of Toxic Waste in Namibia. *The Namibian*, 20 January 2025. <https://www.namibian.com.na/canadian-copper-company-leaves-a-legacy-of-toxic-waste-in-namibia/>.

⁶ Hasheela, I, Contamination mapping and land use categorization for Tsumeb. *Communications of the Geological Survey of Namibia*, 2018, **19**, 1-7.

⁷ Ellmies, R., et al., Environmental situation around the Tsumeb Smelter Complex, Namibia. *Communications of the Geological Survey of Namibia*, 2015, **16**, 1-9.

Natural Resources in Germany, showed significant levels of lead, cadmium, and arsenic in 43 samples of tomatoes, carrots, corn, and pumpkins in Tsumeb.⁸

Additionally, because of the soil contamination resulting from the Smelter operations, grass does not sufficiently grow, leaves fall off plants, and citrus orchards blossom less.

Adverse Impact on Water Quality

Climate change studies report Namibia's most vulnerable resource is water. Namibians rely on boreholes and aquifers to fulfill their water needs. Tsumeb boreholes are infected with the parasite cryptosporidium. Cryptosporidium is a parasite that causes abdominal pain, nausea, vomiting, fever, weight loss, and dehydration. In 2023, the Tsumeb municipality commissioned an environmental impact assessment for environmental clearance for the design, supply, installation, construction, and commissioning of a new 400m³/h potable water treatment plant to provide Tsumeb community members a healthier water supply, with specific emphasis on cryptosporidium contamination and hardness removal.⁹

Tsumeb's water is further impacted by the Smelter's operation. The Smelter's arsenic dump sites have eroded and allowed arsenic to enter the water aquifer, thereby negatively impacting access to safe and clean water. It is unknown how many areas in the Smelter's various dump sites are lined to prevent leaching of waste into water. Dump sites that are lined may still contain toxic material from ongoing mine and Smelter operations since the 1960s.¹⁰ Furthermore, when the Smelter performs water maintenance, it refurbishes water from existing and new water canals (within the Smelter). It also conducts pollution control for oil and water separation through dams, pipelines, and drainage spines. The Smelter treats water used in its various plants through reverse osmosis and recycles it. The Smelter uses its recycled water in the smelting process and other plant needs. Upon request by the Tsumeb Municipality, the Smelter shares this recycled water to be used for public consumption and use. Community members are not informed that the water has been recycled in the Smelter's maintenance process. Witnesses have shared adverse impacts from drinking this water, including hair loss, abdominal pain, nausea, vomiting, fever, tongue irritation, and mouth sores, among others.

As a result of Smelter operations, the Tsumeb population and community members in surrounding areas do not have access to clean and safe water. Water in Tsumeb is collected from five boreholes, the Smelter controls three boreholes and the municipality controls two. A 2003 groundwater study confirmed that Tsumeb borehole WW38837 had arsenic concentrations of 0.11 mg/L (the World Health Organization's guideline for arsenic concentrations in drinking

⁸ Benjamin Mapani et. al, Contamination of Agricultural Products in the Surrounding of the Tsumeb Smelter Complex, 15 COMMUNS GEOL. SURV. NAMIBIA, 2014, 92, 102 (2014)

⁹ Green Earth Environmental Consultants, Environmental Impact Assessment for the Design, Supply, Installation, Construction and Commissioning of a Potable New Water Treatment Plant for Tsumeb, Oshikoto Region, 2023, 1-60

¹⁰ Tsumeb Corporation Limited, The mine at Tsumeb / Tsumeb Corporation Limited, [Amax Journal, Summer 1964, Vol. 2, No. 2](#)

water is 0.01 mg/L).¹¹ From 2006 to 2011, the Division of Engineering and Environmental Geology in Windhoek, Namibia conducted a study for Tsumeb, Namibia on contamination mapping and land use categorization. The study found higher levels of arsenic and other toxic metal contamination closer to the Smelter.

Reportedly, in 2009, Namibia Custom Smelters (Pty) Ltd, commissioned a study from Synergistics Environmental Services (Pty) Ltd (South Africa) to identify environmental risks associated with Smelter operations in preparation for the sale of the Smelter to Dundee Precious Metals Inc. The study confirmed Tsumeb boreholes have elevated levels of sulfates.

Community member testimonies detail contamination of water drawn from taps connected to impacted aquifers in Tsumeb and Kuvukiland, an informal settlement without running water and sanitation infrastructure. According to inhabitants, when tap water is used in or around Tsumeb, it has a brown tint along with white particles. For those boiling their water in response to municipality advisories, they describe the water as generally clear, but with white and gray residue referred to as “caulk” or “scale.” Unlike bacteria, arsenic cannot be removed from the water through boiling alone.

Some community members in Tsumeb rely on collecting water from communal taps directly pulling from boreholes with potentially contaminated water. At points of extreme necessity due to water scarcity and rising unaffordable water prices, community members in Soweto, a residential area in Tsumeb, could only access water from public toilet facilities.

Adverse Impacts on Human Health caused by the Tsumeb Smelter

Health Symptoms

Workers exposed to arsenic inhalation at the Smelter have experienced coughing with yellow sputum, lung issues, and chest pain. Arsenic exposure has also caused acne-like pimples, formally known as arsenic induced hyperkeratosis. Testimonies from Tsumeb and Ondundu community members have confirmed experiencing pruritus (itchy skin), asthma, coughing, lung disease, and shortness of breath.

Doctors treating Smelter workers and Tsumeb community members have confirmed a correlation between pollution from the Tsumeb Smelter and health symptoms experiences by those exposed to said pollution. Testimonies reflect that doctors have verified high rates of illness among Smelter workers and community members including skin rashes, itching skin, allergies, coughing, sneezing, viral infections, and upper respiratory problems. Testimonies reflect that community members also experience rashes and pruritus, hair loss, abdominal pain, nausea, vomiting, fever, tongue irritation, and mouth sores after bathing, washing, and drinking Smelter contaminated water.

¹¹ Dundee Smelter Expansion Project Environmental Impact Assessment and Groundwater and Surface Water Study, SLR ENVIRONMENTAL CONSULTING (NAMIBIA) (2016) at 32.; See also World Health Organization: WHO. “Arsenic,” December 7, 2022. <https://www.who.int/news-room/fact-sheets/detail/arsenic>.

In 2016, Dundee Precious Metals, Inc. commissioned an Environmental and Social Impact Assessment (ESIA) for approval of its Upgrade and Optimisation Project at the Smelter.¹² Researchers found Smelter workers significantly at risk of suffering from occupational lung cancer.

Erectile dysfunction and infertility also impact workers and community members, with documented female infertility, miscarriages, and malformations in newborns from exposure to arsenic and lead pollution.

Barriers to Medical Information and Care

Smelter workers experience heavy barriers to medical care, including affordable health treatment and a lack of access to independent doctors. According to worker testimonies, the Smelter pays for an on-site clinic that many workers frequent as they cannot afford private doctors. According to workers testimonies, when they visit the on-site Smelter clinic, doctors tell them if their arsenic levels are high or not. If they are told their arsenic levels are high, they receive a notice directing them to take “time off” by staying home to mitigate arsenic exposure or are transferred to a different Smelter location with potentially less arsenic exposure. They are allowed to return to their original post once the Smelter deems they are healthy enough. Although the on-site clinic doctors inform workers of their arsenic levels, the doctors fail to provide them with their medical diagnosis and specific health information, both of which are needed for workers to seek proper treatment for exposure to contaminants. Workers and community members believe the Smelter strongly influences and is involved in Tsumeb hospitals. Workers’ testimonies share that even if they were to find a private non-Smelter affiliated Tsumeb doctors, these doctors utilize Smelter medical equipment, such as the X-ray machine, thus continuing to establish a close relationship between health facilities and resources viable in and outside of the Smelter.

Workers fear seeking medical care from the on-site Smelter clinic or private doctors (paid by the Smelter) because of unpaid time-off or potential job termination. Additionally, workers face hostility when trying to access their medical records, including receiving formal warnings or termination. For example, employees are required to have medical exams via the in-house physician but are not given access to medical information from the visit. If the worker asks for their medical information, they could suffer consequences such as being issued a warning or losing their job.

Sinomine continues the Smelter practice of hindering access to medical information. While all workers are required to undergo medical testing, those who request access to their results are “strong armed” into signing indemnity forms before their request is granted. Sinomine’s use of indemnity forms is to shield the company from being held legally liable for paying medical bills incurred by its workers. If workers fail to sign the indemnity forms, they are then

¹² Myers, J. Health Impact Assessment for the Environmental Impact Assessment of the Dundee Precious Metals Tsumeb Smelter Expansion Project, Revised 31 January, 2019; https://dundeeprecious.com/site/assets/files/16518/10-appendix-i_health_impact_assessment.pdf.

restricted from accessing their medical records from Smelter-run clinics. These practices breach Namibia's Ethical Guidelines for Health Professions, which states that patients have a right to access their medical information.

Apartheid legacy

Despite Namibia's independence from South Africa in 1990, its apartheid legislation, severe forms of segregation, and history of colonialism have left resounding impacts. Today, there are vast inequalities between white and black Namibians, with white Namibians still controlling a large share of the economy. These structural inequalities are particularly apparent with disparities evident in education, work, housing, water, and access to health and medical care.

In Tsumeb and throughout Namibia, black Namibians face employment limitations. Specifically, in Tsumeb, for many black Namibians, the Smelter is their only means of employment. The Smelter further perpetuates inequality between white and black Namibians, by offering white Namibians a higher starting salary than black Namibians. For example, Dundee Precious Metals Inc.'s pay scale employed white Namibians in higher management positions while reserving manual labor positions for black Namibians, such as loading, machinery, and handwork positions.

Impeding Access to Information

The government of Namibia and the Smelter management, under both Dundee Precious Metals Inc. and now Sinomine, have continuously denied workers and community members information relating to their health and the environment.

Under Section 33 of the Namibian Access to Information Act, the Namibian government has a duty to disclose accurate and timely information on environmental and health risks stemming from companies to the public, including from the Tsumeb Smelter operations. However, the Namibian government has not disclosed said information, and many workers and community members cannot afford to pay the filing fees to request relevant health and environmental information.

Inaccessibility of Environmental Information

The Tsumeb municipality has failed to adequately promote access to information on water contamination or public access to environmental impact assessments. Reportedly, Tsumeb municipality relies primarily on communication platforms such as churches, Facebook, letter mail, leaflets, loudspeakers on cars, and radio messaging to share information. However, the municipality's communication efforts are insufficient for Kuvukiland, whose community members' ability to receive information is limited.

The Smelter has failed to provide accurate and accessible information relating to its release of dangerous toxic chemicals into the air, water, and soil, which have harmful effects on human health and the environment. In 2012 Dundee Precious Metals Inc. implemented an air quality monitoring technology to

collect and process data for regular air quality reports.¹³ Sometime after 2012, the company reported normal air quality, however, according to testimonies, the sensors on a community farm were inoperable for three to four weeks.

The Smelter has also failed to provide adequate and accessible ESIA information to community members. Sinomine recently commissioned ESIAAs on their proposed Multi-Metal Recycling and Alkali-Metal Salts projects. The Metal Recycling project aims to produce valuable metals such as zinc, lead and gallium, while the proposed Alkali-Metal Salts Project aims to produce cesium sulphate and various cesium salts.¹⁴ Sinomine, however, has been very selective of who has access to the ESIA information. At the ESIA initiation process, Sinomine provided information to the Ministry of Labor, while some community members were only provided a flyer informing them that ESIAAs would be conducted.

The Namibian government, Dundee Precious Metals Inc., and Sinomine have repeatedly attempted to delegitimize research on Tsumeb's water, environment, and community health. The Namibian government has barred researchers from publishing their findings in scientific journals. Simultaneously, Smelter management has deflected responsibility by blaming previous Smelter owners, while claiming to monitor for potential environmental contamination. Furthermore, the Smelter has interfered with the integrity of research by exerting pressure on scientists conducting studies and altering routine Smelter operations. For example, in 2012, the Smelter interfered with the Zambian research team, who was invited by the Tsumeb Constituency, the electoral body for Tsumeb and the surrounding areas, to examine the Smelter's environmental impact. The Smelter preemptively changed work shifts, shut down some of the machines, and temporarily ceased operations before testing began to allow dust to settle, in order to skew research results.

Access to Justice

Namibia's history of apartheid is still felt in Tsumeb with how those affected by the Smelter can seek remedies. Reportedly, Smelter leadership differs in their response based on whether the complaint comes from a black or white Namibian. A Namibian's ability to access Smelter management and express their concerns is heavily influenced by a person's economic or social standing or racial identity. Unlike black Namibians, white Namibians in Tsumeb generally have an easier time accessing Smelter management to have their concerns heard and addressed.

Workers face further obstacles to accessing remedies regarding their working conditions and resulting adverse impacts on their health. The Mineworkers Union of Namibia ("MUN") has presented themselves as the "voice" of workers, but when workers seek information or have complaints about their

¹³ Sustainability Report 2013, Dundee Precious Metals, p. 47, <https://dundeeprecious.com/site/assets/files/14768/dpm-sustreport2013.pdf>

¹⁴ Tortoise Environmental Consultants. Environmental and Social Impact Assessment for the Proposed Multi-Metal Recycling Project at Sinomine Tsumeb Smelter, Tsumeb, Oshikoto Region (2024); Tortoise Environmental Consultants. Environmental and Social Impact Assessment for the Proposed Alkali-Metal Salts Project at Sinomine Tsumeb Smelter, Tsumeb, Oshikoto Region (2024).

health and working conditions, the MUN erects barriers to keep information from Smelter workers. After filing a complaint with the MUN, many Smelter workers did not receive a response. Without a response, Smelter workers are further impeded in their access to crucial information necessary to understand and improve their health and working environment.

The MUN and another Namibian workers' union (this is not their official name) have corporate interests which conflict with their duty to represent workers. The MUN has its own corporation which invests in projects, while in 2013 the other Namibian workers' union corporation owned more than 10 per cent of Weatherly International Plc. Namibian projects.¹⁵ The union companies' history of investments in Smelter projects poses a potential conflict in their interest to aid workers in their health and working conditions complaints as they may not want to jeopardize their financial investments.

Without prejudging the accuracy of these allegations, we express our most serious concern regarding the adverse human rights and environmental impacts of the Tsumeb Smelter. Smelter's past and present owners' apparently have and continue to disregard the safety of work conditions and the environmental concerns resulting from the Smelter's operation, affecting the populations' rights to clean and safe drinking water, health, and a clean, healthy, and sustainable environment. This situation is even more preoccupying as the people of Tsumeb and surrounding communities rely on the Smelter for employment and support to the local economy.

Legal provisions that shield Smelter owners liability for the environmental and human rights harm they have caused and may cause in the future, such as in this case the so called "grandfather clause," is of great concern and does not align with international standards. In the above-mentioned case, such clause fosters *de facto* impunity. It allows for the Smelter to continue releasing sulfur dioxide, arsenic and other hazardous substances that pollute the air, soil and water of the region, degrading further the environment and threatening the health of the population and the workers alike.

The situation seems further aggravated because of the lack of independence of the medical personnel from the Smelter, the limited independent research on the effects of the Smelter on workers, the population and the environment and the limited access to information.

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 any additional information and/or comment(s) you may have on the above-mentioned allegations.

¹⁵ Weatherly is granted environmental clearance to the mining license for Tschudi, Weatherly International, PLC 25 Apr. 2013.

2. Please provide your views on the exemption of liabilities clauses in the context of change of owner of companies that have activities that impact the environment and human rights.
3. Please provide any information on your interactions with the company domiciled in your country in relation to their operations in Tsumeb and any assessment of the impact of their activities on human rights and the environment in Namibia.
4. Please highlight the steps that your Excellency's Government has taken, or is considering taking, including policies, legislation, and regulations, to fulfil its obligations to protect the population against human rights abuses by business enterprises under its jurisdiction as set forth by the UN Guiding Principles on Business and Human Rights (UNGPs). In this context, please provide information on the steps taken to ensure that businesses conduct human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their activities, including requiring human rights due diligence. Please provide information on the means taken by your Excellency's Government to ensure that businesses provide for or cooperate in the remediation of adverse impacts they have caused or contributed to, in line with the corporate responsibility to respect human rights.
5. Please provide information on preventative measures your Excellency's Government has taken, or is considering taking, to mitigate smelting byproducts' impact and contamination, domestically and abroad, by business enterprises domiciled in your State.

This communication and any response received from your Excellency's Government 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.

While awaiting a reply, we urge that all necessary measures be taken to potentially halt the alleged violations and/or prevent their re-occurrence by companies domiciled in your country.

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 Excellency's Government's to clarify the issue/s in question.

Please be informed that a letter on this subject matter has also been sent to those business enterprises that are or have been involved in operating the Tsumeb Smelter, as well as their home-States, including Canada, China and Namibia.

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

Lyra Jakulevičienė

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Astrid Puentes Riaño

Special Rapporteur on the human right to a clean, healthy and sustainable environment

Pedro Arrojo-Agudo

Special Rapporteur on the human rights to safe drinking water and sanitation

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw the attention of your Excellency's Government to obligations under international human rights instrument.

As highlighted by the Human Rights Committee in general comment No. 36, the 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). Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. 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).

States have a duty to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes to the General Assembly (A/74/480). This obligation derives implicitly, but clearly, from a range of rights and duties enshrined in the global human rights framework, under which States are obliged to respect and fulfill recognized human rights, and to protect those rights, including from the consequences of exposure to toxic substances. These rights include the human rights to life, health, food and safe drinking water, a healthy environment, adequate housing, and safe and healthy working conditions.

We would like to remind your Excellency's Government that, under international law, including the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, ratified by Namibia in 1995, States have obligations regarding the control and transboundary movement of certain toxic substances and wastes. One such obligation is contained in article 4 of the Basel Convention: "Each Party shall require that hazardous wastes or other wastes, to be exported, are managed in an environmentally sound manner in the State of import or elsewhere."

Both the General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. In this regard, we would like to draw the attention of your Excellency's Government to the 2024 report of the Special Rapporteur on the human right to a healthy environment (A/79/270) including an overview of the right, highlighting the obligation of States to respect, protect and fulfill the right to a healthy environment, including in relation to the right of everyone to enjoy a non-toxic environment in which to live, study and play, as well as the right to access to information, public participation and access to justice.

Moreover, we would like to remind your Excellency's Government to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The principles provide that States must ensure a safe, clean, healthy, and sustainable environment in order to respect, protect and fulfill human rights (principle 1); States must respect, protect and fulfill human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2); and States must ensure effective enforcement of their environmental standards against public and private actors (principle 12).

In addition, we would like to stress that the Special Rapporteur on human rights and the environment has identified non-toxic environments in which people can live, work, study and play as one of the six substantive elements of the right to a clean, healthy, and sustainable environment as recognized by the Human Rights Council and General Assembly. In his report on the topic written in collaboration with the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, (A/HRC/49/53), he concluded that "the substantive obligations stemming from the right to a non-toxic environment require[s] immediate and ambitious action to detoxify people's bodies and the planet. States must prevent toxic exposure by eliminating pollution, terminating the use or release of hazardous substances, and rehabilitating contaminated communities." The Special Rapporteur has also recommended to "prohibit the production and use of substances that are highly toxic, bioaccumulative and persistent (including carcinogens, mutagens, endocrine disruptors, reproductive toxins, immune system toxins and neurotoxins) with limited exemptions where uses are essential for society."

Gender- and sex-related health harms from exposure to hazardous substances include infertility, miscarriage, stillbirth, premature birth or low birthweight, cancers and metabolic disorders across society, with grave implications for the rights to health, to family life, to physical and mental integrity and to a clean, healthy and sustainable environment. In his report on the impact of toxics on gender (A/79/163), the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes recommends, among other, that states increase awareness about sexed and gendered harms from toxics and provide community-specific, accessible information and actionable advice on exposures as well as ensuring that the long-term health and financial impacts of preterm birth, low birthweight and other adverse birth outcomes are included in assessments of the danger posed by an industry, facility or chemical, together with health and well-being costs of other reproductive health impacts such as subfertility or infertility.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

1. "States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms;
2. 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;

3. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

The guiding principle 1 reiterates the State's duty to "protect against human rights abuses by business enterprises on its territory and/or under its jurisdiction". The guiding principle 2 provides that States should make clear that all companies domiciled on their territory and/or under their jurisdiction are expected to respect human rights in all their activities. In addition, the guiding principle 3 reiterates that States must take appropriate measures to "prevent, investigate, punish and remedy such abuses through effective policies, laws, regulations and adjudication". In addition, it requires, among other things, that a State "provide effective guidance to business enterprises on how to respect human rights throughout their operations".

Furthermore, on access to remedy, the guiding principle 25 stresses that the State must take appropriate steps to ensure, through judicial, administrative, legislative and other appropriate means that when business-related human rights abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy. According to guiding principle 26, States should take appropriate measures to ensure the effectiveness of domestic judicial mechanisms when dealing with business-related human rights abuses, including by considering how to limit legal, practical and other obstacles that may lead to denial of access to remedy.

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 fulfill 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.

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 caused or contributed to adverse impacts.

It is also important to recall that the Committee on Economic, Social and Cultural Rights, in its general recommendation 24 (2017), states that "the extraterritorial obligation to protect requires States parties to take measures to prevent and remedy violations of Covenant rights that occur outside their territory as a result of the activities of business entities over which they may exercise control, in particular in cases where remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective."

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 provide 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).