

## **Terre des Hommes Submission on Child Rights to the U.N. Special Rapporteur on human rights and hazardous substances and wastes**

Terre des Hommes (TdH) welcomes the opportunity to contribute to the forthcoming report of the U.N. Special Rapporteur on human rights and hazardous substances and wastes, which will focus on children's rights and hazardous substances.

Terre des Hommes is a network of ten national organisations working for the rights of children and to promote equitable and sustainable development. To this end, TdH runs 870 development and humanitarian aid projects – supported by 1,120 local and national partner NGOs - in 67 countries supporting close to 4,822,000 million direct beneficiaries. An increasing number of projects address environmental issues, including through education and participation of children and youth.

Moreover, TdH raises general awareness about violations of children's rights and lobbies governments to make necessary changes in legislation and practice. Since 2011, TdH has been working to promote understanding of the relationship between children's rights and the environment, succeeding to build awareness and networks among UN bodies and international partners. In 2015, the UN Committee on the Rights of the Child accepted Terre des Hommes' proposal to hold the next UN CRC Day of General Discussion (DGD) on the topic of children's rights and the environment. The aim of the DGD, taking place in Geneva on 23 September 2016, is (1) to explore the relationship between children's rights and the environment and (2) identify what needs to be done for child rights – related law, policy and practice to take adequate account of environmental concerns and for environment – related law, policy to be child-sensitive. One of the working groups at the day will focus on children's exposure to environmental toxicants - a major challenge for children's rights.

For the upcoming report of the UN Special Rapporteur on human rights and hazardous substances and wastes, TdH would like to draw attention to a study it produced in 2015 on the child rights impact of pollution caused by lead mining in the city of Kabwe, Zambia. The study was submitted as an alternative report to the UN Committee on the Rights of the Child for its review of Zambia's Combined Second, Third and Fourth State Party Report on the UNCRC in January 2016 ([http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ZMB/INT\\_CRC\\_NGO\\_ZMB\\_22657\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ZMB/INT_CRC_NGO_ZMB_22657_E.pdf)).

### **Terre des Hommes findings on children's rights and exposure to hazardous substances: The Child Rights Impact of Pollution Caused by Lead Mining in Kabwe, Zambia**

This section seeks to respond to the questions posed in the questionnaire distributed to non-governmental organizations by the U.N. Special Rapporteur on human rights and hazardous substances and wastes by drawing some conclusions from the study on children's rights and lead mining in Kabwe. Terre des Hommes hopes that the

information provided will be useful to understand efforts made and challenges confronting Government and businesses in their efforts to protect the rights of the child from hazardous substances.

### Summary of the case

In 1902, rich deposits of potentially dangerous lead were discovered in the center of Kabwe -today Zambia's fourth largest city. Mining and smelting operations in the town ran almost continuously from 1904 until 1994 – when the site was temporarily closed down due to economic reasons (decline in lead prices) - without the government adequately addressing the dangers of lead. Over the decades, millions of lives have been potentially affected, with children bearing the brunt of the environmental burden. Now, Kabwe is left with a poisonous legacy of lead contaminated dust that pollutes the community's soil and water. Uncovered tailing dumps, which still exist at the mining site and store significant waste material classified as toxic, pose a particularly significant threat because of the continued risk of contamination and because of the massive size of the piles. From 2003 to 2011, the Zambian government carried out the Copperbelt Environment Project CEP) with support from the World Bank and the Nordic Development Fund to rehabilitate the mine area and improve human health<sup>1</sup>. Since very little remediation work was completed, the risks to the community remain as high as they were prior to the CEP.

In 2015, the World Bank announced it would support a follow-up to the earlier remediation project<sup>2</sup>. Terre des Hommes is of the opinion that such a project should be strongly anchored in children's rights in order to prevent further damage and protect the lives of all present and future generations of children growing up in Kabwe. A child rights approach should also guide all further mining operations: In 2012, Berkeley Mineral Resources bought the mine and have planned on reopening it through its subsidiary, Enviro Processing Limited. BMR is a London-based mineral processing company that focuses on processing tailings at former mines.

### Relevant findings from the study

- Zambia's economy is heavily reliant on the extraction of natural resources, mainly copper. The economic development of the country comes at a high environmental and human cost, while the capacity to deal with these challenges technically and financially is limited. Moreover, the fluctuation of commodity prices carries unpredictable risks. In the past, the slump in e.g. copper prices meant socio-economic decline that made it difficult for the government to cope with remaining environmental liabilities.
- Over the years the mine has changed ownership several times. Soon after independence in 1964, the Government of Zambia adopted a nationalisation policy. It became the major shareholder in the mining company in 1973 and took full ownership around 1982 through Zambia Consolidated Copper Mines

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<sup>1</sup> <http://www.worldbank.org/projects/P070962/zambia-copperbelt-environment-project-cep?lang=en>.

<sup>2</sup> <http://documents.worldbank.org/curated/en/2015/05/24592867/integrated-safeguards-data-sheet-concept-stage-zambia-mining-environmental-remediation-improvement-project-p154683>.

Limited. In 2000, all-state owned mining companies were privatized as a requirement under the Structural Adjustment Programme agreed with IMF and World Bank. The Kabwe mine was sold in 2012 to Berkeley Mineral Resources, which, through its subsidiary Enviro Processing Limited, has resuscitated mining operation. Rising commodity prices and advances in ore processing technology mean that lead mining has become profitable again. The Zambian Government retained the responsibility to address the environmental liabilities that were a result of the many decades of unregulated mining. This includes rehabilitating and restoring the environment affected by Kabwe mine. While Berkeley Mineral Resources has promised to prevent further pollution from reopening the mine, the company has stated that it is not responsible for past pollution or community rehabilitation.

- The official census in 2010 records a population of 202,914 people in Kabwe. However, it is believed that the number is closer to 300,000, with informal settlements that are not captured on the census. This is significant because it would mean more people, especially children, are affected than those reflected in official statistics. Based on the official census, an estimated 93,000 children under 14 years old reside in Kabwe. The majority of these (and the uncounted) children are at risk for some level of exposure to lead because of the scope of the pollution. Under the CEP only children projected to be affected were tested to determine blood lead levels. No census testing took place due to financial constraints.
- In neighbourhoods with paved roads, cement houses and ample vegetation to cut down on dust the lead levels are, on average, much lower than those of informal neighbourhoods. Several families living in homes next to the mine were successfully evacuated and resettled under the CEP. However, likely due to a lack of institutional or administrative controls, the evacuation was limited in its efficacy. In other words, without proper enforcement regulations in place, the local government was unable to enforce the evacuation to prevent resettlement. Squatters have since returned to live in nearly all of the previously evacuated areas. With a lack of community education, many of the families living in these areas are unaware of the lead risks and the reasons for the initial evacuation.
- The UNCRC requires that the best interests of the child be the primary consideration in all actions taken concerning the child (Article 3 (1)). As the Committee has emphasised, this entitles that decisions taken by administrative authorities on, inter alia, health and the environment should be assessed and guided by the principle. Childhood is a unique period of development and violations of children's rights stemming from environmental damage such as lead poisoning can have lifelong and irreversible consequences. However, the lead pollution in Kabwe has been mainly treated – if it all - as a matter merely of cost-benefit analysis<sup>3</sup>, while child rights require the Government of Zambia to consider it in light of its effect on the rights of the individual child to grow up in

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<sup>3</sup> World Bank. 2011. *Zambia - Copperbelt Environment Project*. Washington, DC: World Bank (<http://documents.worldbank.org/curated/en/2011/10/15583313/zambia-copperbelt-environment-project>).

dignity and freedom. The Government of Zambia is commended for implementing the Copperbelt Environment Project (CEP) between 2003 and 2011. These measures were, however, inadequate to protect the rights of all children in Kabwe in a comprehensive manner.

- Article 24 (2) of the UNCRC provides a direct link between the environment and children's right to health. In fulfilling its obligations under this right, a State Party is required to take into consideration the dangers and risks of environmental pollution. Lead poisoning in Kabwe heavily impacts on the enjoyment of children's right to health. Prior to the mine and processing plant closing, there were no pollution laws regulating emissions from the mine and smelter plant. In turn, air, soil, and vegetation were all subject to contamination, and ultimately, over the decades, millions of lives have been potentially affected without the government effectively addressing the dangers of lead. While efforts have been made to mitigate the impact of lead from the 1970s onwards, these stopped short of providing concrete solutions to prevent lead exposure and to stop the massive health impacts of lead contamination. The CEP carried out between 2003-2011 provided guidance and project plans to implement comprehensive soil remediation work, but that work was never fully implemented due to lack of time and financial resources. After 2010 most activities abruptly halted. While an Integrated Case Management Program was created under the Copperbelt Environment Project to treat children with elevated blood lead levels, the program only accepted children under seven, and once a child reached seven years old, they were no longer allowed to be part of the program under the CEP – due to financial constraints. Scoping studies done prior to the project estimated that out of those persons impacted by lead in soil in Kabwe approximately 20,000 were aged 0-5 years, and 40,000 aged 6-18 years (World Bank 2011, p55). In the end, only children projected to be affected (5986) were tested to determine blood lead levels, and only 2,822 of these received treatment in the form of nutritional supplements or chelation therapy (World Bank 2011, p21). According to the World Bank, “*(T)he overall project objective in Kabwe was to reduce blood lead levels in affected children to initially an interim lead level of 25ug/dL and ultimately to the WHO recommended level of 10ug/dL*” (p68). The Case Management Program led to a reduction of blood lead levels between 20-25 percent in the case of treatment with nutritional supplements (for children with blood lead levels between 20-64 micrograms per deciliter) and by up to 74 percent for chelation treatment (for children with blood lead levels beyond 65 micrograms per deciliter). However, due to various constraints attributed to inadequate funds the programme was unable to sustain progressive reductions in the geomeans and was unable to achieve the intended interim geomean of 25ug/dL (World Bank 2011, p70); the blood lead levels recorded at the end of the project were still much higher than the 10 µg/dL used by WHO as the threshold for concern. With elevated lead levels in soil persisting, even those children treated under the CEP risk re-exposure. Lacking sustained resources, the local Zambia Consolidated Copper Mines – Investment Holding Limited (ZCCM-IH) office has been unable to continue effective monitoring of local children post CEP. It is, furthermore, not clear what measures have been taken by the government of Zambia to cater to

the needs of those children permanently disabled as a result of lead pollution in a sustainable manner (e.g. through infrastructure and provision of services to enable appropriate access to education and skills training facilities).

- There is very little up to date knowledge about the current state of children's health in the area. According to ZCCM-IH, all health information gathered under the CEP was supposed to be kept and stored by the District Medical Office. It is unknown where this information currently resides. When TdH collected research data in 2014, ZCCM-IH had run out of test strips for the LeadCare I blood testing machine. Each time a blood test takes place, a test strip is needed for the blood sample. Furthermore, nurses reported that these must be sent to the capital Lusaka, a two-hour drive to the south, to test for lead. This means that they have no practical way to test blood lead levels in children. The nurses are also unable to provide chelation because of limited financial resources and a lack of access to the necessary therapies. Parents were told to feed at risk children milk, soybeans and leafy green vegetables, all thought to block lead uptake by the body. But distribution of nutritional goods to counter lead has been inadequate since the CEP ended in 2011. Many of the food items are too expensive for families to afford, especially families with multiple children.
- All children have a right to play (Article 31 of the UNCRC). The UN Committee on the Rights of the Child has emphasized in this regard that while children *„have a spontaneous urge to play and participate in recreational activities and will seek out opportunities to do so in the most unfavourable environments (...) certain conditions need to be assured, in accordance with children's evolving capacities, if they are to realize their rights under article 31 to the optimum extent“*<sup>4</sup>. This includes *„(A)n environment sufficiently free from waste, pollution, traffic and other physical hazards to allow them to circulate freely and safely within their local neighbourhood“*. Lead contamination in Kabwe heavily interferes with children's right to meet, play and interact in an environment that is sufficiently free from waste and pollution. An environmental assessment commissioned by TdH showed that several playgrounds and football fields have high concentration of lead. These are areas where children gather from many different households. The most significant pathway for lead to enter the body at Kabwe is the ingestion and inhalation of lead contaminated soil. It should be noted that it takes only a very small amount of lead ingestion to result in elevated blood lead levels and health impacts. During the CEP eleven lead free children play parks were rehabilitated and ZCCMIH restored the dilapidated Clayton Park in Kabwe Town Centre. However, the Municipal Council faced financial resource challenges to continue maintaining the parks after CEP, as also indicated by children interviewed in affected neighbourhoods. As a result of non-maintenance and because children play wherever the opportunity arises (e.g. lead contaminated dumps; recreational fields and bare land areas; backyards), they are at risk of high exposure to lead because of the scope of the pollution.

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<sup>4</sup> CRC Committee, 'General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts' UN Doc. CRC/C/GC/17, para.32.



For example, children have been spotted playing on the banks of the local canal, which are known to contain contaminated soil removed from the bed. Parents from the affected communities reported that local health and environmental officials had told them to prevent children from playing outside. The protection measure has been inadequate and ineffective. Children can be seen playing soccer barefoot in the dusty fields that are contaminated with lead. Without providing safe alternatives where children can still enjoy their right to play it is futile to imagine that they will just stop playing in the contaminated fields. Besides, stopping them in that way interferes with their right to play.

- Children have the right to seek, receive and impart information and ideas of all kinds (Article 13 of the UNCRC). More specifically, according to Art. 24 2(e) of the UNCRC State Parties should ensure that *„all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health (...)“*. Furthermore, Article 29 (1) of the UNCRC on the aims of education provides that: *“States Parties agree that the education of the child shall be directed to: [...] (e) The development of respect for the natural environment.”* The Copperbelt Environment Project aimed, inter alia, to empower the citizens of Kabwe with information on lead poisoning and its effects. Capacity was built with local authorities with regard to their ability to carry out educational campaigns to the local communities. More than 20,000 local children received education on the dangers of lead and ways to reduce exposures through targeted school programs. Moreover, the lead monitoring program included home visits to improve educational outreach for children with high blood lead levels. However, without sustained funding, these programs did not continue. The number of children reached under CEP was ultimately only a third of the approximately 60,000 children the World Bank estimated were living in Kabwe at the time, and the project ended in 2011. Children at a recent workshop organised by Environment Africa, a local NGO implementing a local terre des hommes funded pilot remediation project, stated that *“this is the first time we are being invited to a workshop as children to come and talk about lead. No one has ever invited children to meetings like this”*. It appears that much more needs to be done to empower not only the children, but the general population in Kabwe with information on lead poisoning for them to fully participate in addressing the problem. During an environmental assessment of 2014, local leaders such as nurses, teachers, and political figures, showed strong knowledge of the problems in Kabwe when asked about educational outreach, health effects, and exposure pathways. However, interviews with the general population, revealed much less knowledge with regard to lead. CEP did not adequately address community needs regarding environmental education to deal with the effects of lead contamination.

## Conclusion

In the Concluding Observations following its review of Zambia’s State Party Report the UN Committee on the Rights of the Child included (policy) recommendations on the Kabwe case that may be relevant to the questions posed in the questionnaire by the U.N.

Special Rapporteur on human rights and hazardous substances and wastes:

***Children's rights and the business sector***

*21. The Committee is concerned about the negative impact of the mining sector, in particular the activities of lead mining in Kabwe, on the rights of children, such as the right to health, development and play and their standard of living.*

*22. In the light of the Committee's general comment No.16 (2013) on State obligations regarding the impact of business on children's rights, it recommends that the State party:*

*(a) Establish a clear regulatory framework for the mining industries operating in the territory of the State party to ensure that their activities do not negatively affect or endanger environmental and other standards, particularly those relating to children's rights;*

*(b) 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;*

*(c) Ensure effective implementation by companies, especially mining companies, of international and national environmental and health standards and effective monitoring of implementation of these standards, and appropriately sanction and provide remedies when violations occur, as well as ensure that appropriate international certification is sought;*

*(d) Require companies to undertake assessments, consultations and full public disclosure of the environmental, health-related and human rights-related impacts of their business activities and their plans to address such impacts;*

*(e) Be guided by the United Nations "Protect, Respect and Remedy" Framework, accepted unanimously in 2008 by the Human Rights Council, while implementing these recommendations<sup>5</sup>.*

The Kabwe case illustrates well that - in terms of children's rights - the best environmental harm is the one that never takes place. In other words, States (and business) should take strong measures to **prevent** children's exposure to hazardous substances. Once harm is caused, the consequences are often hard to control, especially in countries with limited financial and technical resources. Over decades, the Zambian Government has failed to properly regulate lead mining operations in Kabwe and address its impact on the (human) environment. An economic approach to resource extraction, based on short-term benefits and limited legal responsibilities, exacerbates the situation. As a result, the Government is now struggling to find a sustainable and ethical solution for the waste legacy as exemplified by the unsuccessful remediation efforts under the CEP. Given the high cost of a comprehensive remediation programme even the new World Bank sponsored project may have to make a trade – off between achieving positive long-term effects by tackling the sources of pollution and addressing the potential effects that lead pollution has already had on children. While such a solution is preferable from the perspective of a cost-benefit approach, it cannot be satisfactory when seen from a child rights lens which requires duty bearers to consider measures in light of the effects on the rights of the individual child.

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A child rights approach, if applied to law, policy and practice related to toxic environmental pollutants, can provide a clear normative framework, including to assess the adequateness of the aims, standards and assessments that guide protection measures, and thus help to prevent long-lasting impacts on children's lives. This includes the recognition that children have special entitlements like the right to play that should be considered in policy responses to pollution. States are the primary duty bearers in this regard, but third parties, like the World Bank or business enterprises, have responsibilities, too, especially if they exert influence on the ability of the state to comply with child rights duties. The Government of Zambia, for example, financially depends on the World Bank for the remediation of the lead mine in Kabwe. Children's rights should, therefore, be taken into consideration in its decision-making.