

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No. 32777/2020

In the application for admission as *amicus curiae* of:

**HUMAN RIGHTS WATCH**

Applicant

In the matter between:

**VARIOUS PARTIES ON BEHALF OF MINORS**

First to twelfth applicants

**[REDACTED]**

Thirteenth applicant

and

**ANGLO AMERICAN SOUTH AFRICA LIMITED**

Respondent

with

**AMNESTY INTERNATIONAL**

First *amicus curiae*

**THE SOUTHERN AFRICAN LITIGATION CENTRE**

Second *amicus curiae*

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**NOTICE OF MOTION**

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**TAKE NOTICE** that Human Rights Watch hereby makes application for an order in the following terms:

1. That Human Rights Watch is admitted as *amicus curiae* in the above matter.
2. That Human Rights Watch is granted leave to file written submissions and to present oral submissions at the hearing of this matter subject to any directions issued by the court.

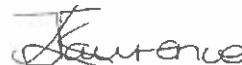
3. To the extent necessary, that Human Rights Watch's non-compliance with the time periods provided for in rule 16A of the Uniform Rules of Court is condoned.
4. That any party opposing this application is ordered to pay Human Rights Watch's costs, including the costs of two counsel.
5. Granting further and / or alternative relief.

**TAKE NOTICE FURTHER** that if any of the parties intend to oppose the relief sought in this application, they are required to deliver an answering affidavit by 4 November 2022 as directed by the Deputy Judge President.

**TAKE NOTICE FURTHER** that the affidavit of **ASHWANEE BUDOO**, together with annexes thereto, will be used in support of this application.

**TAKE NOTICE FURTHER** that Human Rights Watch has appointed **LAWYERS FOR HUMAN RIGHTS** as their attorneys of record and will accept notice and service of all documents in these proceedings at the address set out below or via email at the following email addresses: [JessicaL@lhr.org.za](mailto:JessicaL@lhr.org.za) and [Palesa@lhr.org.za](mailto:Palesa@lhr.org.za).

DATED AT JOHANNESBURG ON THIS 28<sup>TH</sup> DAY OF OCTOBER 2022



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**AND TO:**  
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**AND TO:**  
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**AND TO:**  
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**ANGLO AMERICAN SOUTH AFRICA LIMITED**

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with

**AMNESTY INTERNATIONAL**

First *amicus curiae*

**THE SOUTHERN AFRICAN LITIGATION CENTRE**

Second *amicus curiae*

**FOUNDING AFFIDAVIT**

I, the undersigned,

**ASHWANEE BUDOO**

do hereby make oath and say as follows:

1. I am the Deputy Director in the Africa Division of Human Rights Watch.
2. Human Rights Watch was founded and registered as a non-profit organisation in the United States (EIN: 13-2875808) with headquarters at 350 Fifth Avenue, New York, United States of America. I am based at the Johannesburg Office, situated at Isle of Houghton, Boundary Road, Parktown, Johannesburg.

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3. I am duly authorised to depose to this affidavit and bring this application on behalf of Human Rights Watch.
4. The facts set out in this affidavit are within my personal knowledge or appear from documents under my control, unless expressly stated or the context indicates otherwise, and are, to the best of my knowledge and belief, both true and correct. Where I rely on information supplied by Human Rights Watch and its employees, I believe that such information is true and correct.

### PURPOSE OF THIS APPLICATION

5. This is an application in terms of rule 16A of the Uniform Rules of Court for the admission of Human Rights Watch as an *amicus curiae* in the certification application before this court. Human Rights Watch also seeks leave to file written submissions and present oral submissions at the hearing of the certification application, subject to any directions that may be issued by the court.
6. This application is filed together with Human Rights Watch's written submissions for admission as an *amicus curiae* in the certification application in terms of a directive issued by the Deputy Judge President on 1 June 2022.
7. In this affidavit, I address the following:
  - 7.1. Human Rights Watch's interest in these proceedings and why it is best placed to make submissions on certain issues before the court;
  - 7.2. an overview of the submissions to be advanced by Human Rights Watch if it is admitted as an *amicus curiae*;

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- 7.3. why Human Rights Watch's submissions are different from the submissions made by the parties to the certification application and the other *amici curiae*; and
- 7.4. the position of the parties regarding Human Rights Watch's application to be admitted as an *amicus curiae*.

## HUMAN RIGHTS WATCH'S INTEREST IN THESE PROCEEDINGS

### About Human Rights Watch

8. Human Rights Watch is a non-profit, non-governmental, non-partisan international organisation devoted to defending the rights of human beings worldwide.
9. Established in 1978, Human Rights Watch is known for its accurate fact-finding reports, each year reporting on human rights conditions in approximately 90 countries. Human Rights Watch meets with governments, the United Nations, regional groups, financial institutions and corporations to press for changes in policy and practice that promote human rights and justice around the world.
10. Human Rights Watch is renowned for its independent, impartial and thorough reports. It employs around 450 people who are country experts, lawyers, journalists, and academics of diverse backgrounds. Human Rights Watch has extensive country and thematic expertise and its researchers are able to conduct deep, nuanced and accurate research on various human rights issues. Human Rights Watch has expertise in international human rights law, in particular and relevant in this matter, in relation to the intersection of business and human rights,

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gender and children's rights. Human Rights Watch is also regularly admitted as an *amicus curiae* in domestic courts across all regions globally.

#### Human Rights Watch's interests

11. Human Rights Watch has an interest in assisting this court in its determination of whether it is in the interests of justice to certify the proposed class action. There are two main reasons why Human Rights Watch seeks admission as an *amicus curiae* in this matter.
12. The first is that the parties, and in particular the respondent, have brought Human Rights Watch into this matter by their reliance on research by Human Rights Watch on lead contamination in the Kabwe district. In 2019 Human Rights Watch published a report entitled "'We have to be worried' – the impact of lead contamination on children's rights in Kabwe, Zambia" ("the Human Rights Watch report"). The respondent relies on this report to sustain its argument that it is not responsible for the harms caused to the applicants. The respondent also relies on submissions made by Human Rights Watch to the United Nations Committee on the Rights of the Child ("CRC") on the impact of lead pollution on children's rights ("the CRC submissions").
13. Human Rights Watch seeks to clarify the context and purpose of the report and the CRC submissions. The Human Rights Watch report and the CRC submissions in no way exculpates the respondent for liability for the violations identified in that report. Human Rights Watch therefore has an interest in demonstrating that the respondent's reliance on its research is misplaced.
14. Human Rights Watch is best placed to address the court in this regard.

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- 14.1. Human Rights Watch conducted field research in Kabwe and Lusaka, Zambia, in June and November 2018, and in April 2019. The Human Rights Watch report was published in August 2019 and documents the Zambian government's response to the lead contamination in Kabwe and its impact on children's rights. A copy of the report was attached to the applicants' founding affidavit as ZMX10.
- 14.2. In September 2021, Human Rights Watch made submissions to the CRC on the impact of lead pollution on children's rights and the right to education. A copy of the submission was attached to the respondent's supplementary answering affidavit as SA2. The submission updated and complemented Human Rights Watch's previous submissions to the CRC in December 2019 on *inter alia* the impact of lead pollution on children's rights. A copy of Human Rights Watch's CRC submissions in December 2019 is attached as 'HRW1'.
15. The second reason for Human Rights Watch's application to be admitted as an *amicus curiae* is that Human Rights Watch has a unique repository of knowledge about both the facts of the human rights violations at Kabwe, and about the principles of corporate accountability under international human rights law and standards. Human Rights Watch is well-positioned to provide an in-depth analysis of the principle of due diligence as understood in international human rights standards and applied in this matter.

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## SUBMISSIONS TO BE ADVANCED BY HUMAN RIGHTS WATCH

16. If admitted, Human Rights Watch will make submissions on two broad issues.

### The Human Rights Watch report

17. The first issue relates to the parts of the Human Rights Watch report that are not raised by the respondent.
18. The respondent argues that the certification application must fail *inter alia* because Zambian Consolidated Copper Mines Limited ("ZCCM") is responsible for the current uncontrolled and polluted conditions and is liable for the ongoing exposure to harm by the community. The respondent substantiates this claim by relying on the Human Rights Watch report and the CRC submissions. Its utilisation of the report in this regard is misplaced.
19. The respondent relies on selective parts to substantiate its opposition to the applicants' claim. For example, the respondent alleges that Human Rights Watch recognises that the failures of ZCCM and the Zambian government have directly led to the situation in Kabwe and that Human Rights Watch's criticism is fairly directed at these failures. In doing so, the respondent fails to draw the court's attention to the purpose and context of the Human Rights Watch report and the CRC submissions.
20. The Human Rights Watch report was conceptualised and designed to document and address the Zambian government's response to lead contamination in Kabwe. The fact that the Zambian government was the central focus of the report, does not exculpate the respondent or any other business enterprise from liability

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(in tort law or otherwise) for any adverse impact it may be shown to have caused or exacerbated.

Companies' responsibilities under international human rights law

21. I am advised that one of the factors to be weighed in deciding whether to certify a class action, is whether there is a cause of action raising a triable issue. In the determination of whether the class action raises triable issues of fact, a court will consider if the evidence available (and potentially available) will make out a *prima facie* case. The applicants' cause of action against the respondent is grounded in the tort of negligence. One of the components of the tort of negligence that requires proof is the breach of the duty of care through negligent conduct.
22. If admitted as an *amicus curiae*, Human Rights Watch will make submissions regarding corporate accountability for human rights violations under international law and standards. Our focus would be on principles of due diligence and the way in which they interact with the duty of care under tort law. As I discuss below, no other party or *amicus curiae* addresses this particular issue.
23. The principles of corporate responsibility under international human rights law and standards are contained in the United Nations Guiding Principles on Business and Human Rights ("the Guiding Principles").
24. There are three parts to the Guiding Principles: (i) the duties of states under international human rights law to prevent human rights violations caused by third parties. This is known as the "state duty to protect" and is the first pillar of the Guiding Principles; (ii) the second pillar is the responsibility of corporations to respect international human rights ("the corporate responsibility to respect"); and

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- (iii) the third pillar provides for access to remedies for victims of human rights violations.
25. Due diligence is a component of pillar two, namely a corporation's responsibility to respect human rights. The due diligence standard refers to the processes and activities by which businesses identify, prevent, mitigate, and account for how they address their adverse human rights impacts.
26. International norms, such as the Guiding Principles, recognise that companies should undertake human rights due diligence measures to ensure their operations respect human rights and do not contribute to human rights abuses. Human rights due diligence includes steps to assess actual and potential human rights risks, take effective measures to mitigate those risks, and act to end abuses and ensure remedy for any that occur in spite of those efforts. Companies should also be fully transparent about these efforts.
27. If admitted, Human Rights Watch will make submissions on the nature of the due diligence principle as developed in international human rights standards, and the way in which notions of the duty of care and the components of due diligence interact in practice.
28. Human Rights Watch's submissions further will illustrate how the concept and requirements of due diligence provide useful guidance in an analysis of the nature and content of the applicable standard of care and whether the relevant duty of care has been met by a business enterprise.
29. I respectfully submit that the submissions will assist this court in assessing whether there is a *prima facie* case on the evidence in its determination of

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whether the proposed class action raises a triable issue.

### **THE SUBMISSIONS ARE DIFFERENT FROM THOSE OF THE OTHER PARTIES**

30. Human Rights Watch has carefully reviewed the written submissions of the applicants and the respondent, as well as the first and second *amici curiae*. The submissions that Human Rights Watch intends to advance have not been traversed by any of the parties in the certification application.

#### The respondent's reliance on Human Rights Watch's report and the CRC submissions

31. As I note above, the respondent relies on the Human Rights Watch report and the CRC submissions. Human Rights Watch will draw attention to aspects of the report, its purpose and context, that are material and relevant to the issues before the court and to which the court's attention would otherwise not be drawn.
32. If admitted, Human Rights Watch's submissions will demonstrate that its report and submissions to the CRC do not support the contention that ZCCM is solely responsible for the current uncontrolled and polluted conditions and is liable for the ongoing exposure to harm by the community, to the exclusion of any other party – including the respondent.

#### Due diligence and the duty of care under international human rights law

33. While the applicants and the *amici curiae* rely in part on the Guiding Principles, none of the parties makes submissions on the second pillar i.e., what are the responsibilities and duties of corporations under international human rights law and standards. This includes the notion of human rights due diligence, as described in the Guiding Principles.

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34. While it is correct that states – and in this instance, Zambia – have the primary responsibility to respect, protect, and fulfil human rights under international law, private entities, including businesses, also have internationally recognised responsibilities regarding human rights.
35. This is where the aforementioned second pillar becomes important. The Guiding Principles specify that businesses should exercise human rights due diligence to identify human rights risks associated with their operations, take effective steps to prevent or mitigate those risks, and ensure that the victims of any abuses have access to remedies. A company's responsibility to respect human rights in its operations, includes ensuring that it mitigates – or at least does not profit from – human rights violations that pre-exist its operations. These issues are not addressed by the parties or other *amici*.

#### **POSITION OF THE PARTIES TO THESE PROCEEDINGS**

36. On 25 January 2022, Lawyers for Human Rights informed the parties of Human Rights Watch's interest in these proceedings and, on 1 April 2022, requested written consent to be admitted as an *amicus curiae*. The 25 January 2022 letter was attached to the applicants' replying affidavit as ZMX157 and a copy of the letter dated 1 April 2022 is attached as 'HRW2'.
37. On 5 April 2022, the applicants' attorneys of record provided written consent on behalf of the applicants for the admission of Human Rights Watch as an *amicus curiae*. A copy of the letter from Mbuyisa Moleele Attorneys is attached as 'HRW3'.
38. The respondent refused to consent to Human Rights Watch's request on the

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basis, *inter alia*, that in its view Human Rights Watch would not bring anything new to the matter and that its proposed intervention would duplicate the intervention of others. A copy of the correspondence exchanged between Human Rights Watch and the respondent is attached as 'HRW4' to 'HRW6'.

39. As explained above, Human Rights Watch has carefully reviewed the parties' written submissions in the certification application. As a result, Human Rights Watch has narrowed its proposed intervention from what it had originally proposed to the parties on 1 April 2022 to the two grounds detailed herein.
  
40. I am advised that rule 16A requires parties seeking admission as an *amicus curiae*, where the written consent of the parties has not been obtained, to apply to the court to be admitted within 25 days after the filing of the affidavit in which the constitutional issue was first raised. However, due to the nature of these proceedings, the timeframes for the exchange of affidavits between the parties, the volume of the record, and the need to consider the parties' written submissions, Human Rights Watch was not in a position to determine the nature of its intervention to ensure compliance with the requirements for admission within the time period stipulated in rule 16A. As such, and to the extent required, Human Rights Watch seeks condonation for its non-compliance with the time periods provided in rule 16A.

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**CONCLUSION**

41. Human Rights Watch seeks the relief in the notice of motion to which this affidavit is attached.


**ASHWANEE BUDOO**

I hereby certify that the deponent has acknowledged that s/he knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at JOHANNESBURG on this the 28<sup>th</sup> day of OCTOBER 2022, and that the regulation contained in Government Gazette Notice R.1258 of 21 July 1972, as amended, and Government Notice No. R. 1648 of 19 August 1977, as amended, having been complied with.




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**COMMISSIONER OF OATHS**

Full names:

Address:

Capacity:

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**SIBUSISIWE NDLELA**  
 Commissioner of Oaths  
 Attorney  
 SECTION 27  
 1st Floor, South Point Building  
 87 De Korte Street, Braamfontein





**Submission by Human Rights Watch  
to the Committee on the Rights of the Child  
on Zambia  
*85<sup>th</sup> pre-sessional, 2019***

This submission focuses on the impact of lead pollution on children's rights, and the protection of students, teachers, and schools during armed conflict. It relates to article 24, 28 and, 31 of the Convention on the Rights of the Child.

**Impact of Lead Pollution on Children's Rights (article 24 and 31)**

Lead exposure around the former lead and zinc mine in Kabwe, which operated from 1904 to 1994, is having disastrous effects on children's health. More than one-third of the population of Kabwe, Zambia— over 76,000 people—live in lead-contaminated townships. Studies estimate that half of the children in these areas have elevated blood lead levels that warrant medical treatment.

At present, children living in nearby townships continue to be exposed to high levels of toxic lead in soil and dust in their homes, backyards, schools, play areas, and other public spaces. The Zambian government's efforts to address the environmental and health consequences of the widespread lead contamination have not thus far been sufficient, and parents struggle to protect their children.

Children are especially at risk because they are more likely to ingest lead dust when playing in the soil, their brains and bodies are still developing, and they absorb four to five times as much lead as adults. The consequences for children who are exposed to high levels of lead and are not treated include reading and learning barriers or disabilities; behavioral problems; impaired growth; anemia; brain, liver, kidney, nerve, and stomach damage; coma and convulsions; and death. After prolonged exposure, the effects are irreversible. Lead also increases the risk of miscarriage and can be transmitted through both the placenta and breastmilk.



Human Rights Watch conducted three field research missions to Zambia between June 2018 and April 2019 and found that government efforts to address lead pollution have been far from adequate. Human Rights Watch also found that government-run health facilities in Kabwe currently have no chelation medicine for treating lead poisoning or lead test kits in stock, and no health database has been established to track cases of children who died or were hospitalized because of high lead levels.

In December 2016, the government began a five-year World Bank-funded project to clean up lead-contaminated neighborhoods and conduct new rounds of testing and treatment. Government officials and World Bank representatives told Human Rights Watch that the government intended to start the remediation and health components later in 2019. The project is intended to carry out remediation to reduce lead exposure in at least three townships and includes plans for testing and treating at least 10,000 children, pregnant women, mothers, and other individuals.

In recent months, several activities have started, such as health worker training, the procurement of chelation medicine, and greater information-sharing about the project with the community and the public. The government also recently announced it would also include 10 schools in the project.

Human Rights Watch welcomes this project, but is concerned about the serious delays in implementation: Three years after the launch, the project is just starting to get off the ground. Community leaders and groups in Kabwe have expressed frustration about the process and told Human Rights Watch that they had been left in the dark.

Furthermore, Human Rights Watch is concerned that that the project will not address the full scope of lead poisoning and contamination. In particular, the project does not address the source of the contamination, the mining waste. More than six million tons of mining waste are out in the open, and dust blows over nearby residential areas. If the source of the contamination is not addressed, the project risks not being sustainable.

Small-scale mining, that is mining with little or no machinery, is also a major issue and is now the main activity at the former Kabwe mine. Small-scale mining for lead is extremely hazardous, as residents risk getting exposed further to lead when adult family members work at the mine and return home with lead on their body, clothes, tools, or shoes. While the government has issued some licenses for mining, there are also unlicensed, illegal mining operations.

The government has also granted a large-scale mining license for much of the former mine area to the Berkeley Mineral Resources company. This company, together with its South African business partner Jubilee Metals, is planning to recover zinc, lead, copper, as well as the highly valuable metal vanadium. Jubilee Metals has bought a refinery right next to the former Kabwe mine for zinc processing, and has said it anticipates producing during 2020. Waste processing carries the risk of creating further problems by generating additional dust and polluting the water.<sup>1</sup>

*Human Rights Watch recommends to the Committee that it call upon the government of Zambia to:*

- Develop a program for sustainable, comprehensive lead remediation, testing, and treatment in Kabwe. The program should be developed in conjunction with relevant ministries, affected communities, civil society groups, youth groups, and other relevant stakeholders. In particular:

#### *Remediation*

- Develop a remediation plan that will allow for long-term containment or removal of lead waste.
- Ensure that private operations for reprocessing minerals are part of this plan and carefully scrutinized and monitored by the government for human rights and environmental impacts, including through environmental and social impact assessments.
- Ensure that small-scale mining operations are licensed and regularly monitored for compliance with national laws and regulations.
- Invite all households in contaminated townships to participate in the voluntary remediation program to clean both yards and home interiors.
- Remediate all contaminated schools, play areas, health centers, and other public areas.
- Pave roads in contaminated townships to reduce dust.
- Conduct regular monitoring of soil and air lead levels in Kabwe, and publish the results.

#### *Health and Education*

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<sup>1</sup> Human Rights Watch, *We Have to Be Worried: The Impact of Lead Contamination on Children's Rights in Kabwe, Zambia*, (New York: Human Rights Watch, 2019) <https://www.hrw.org/report/2019/08/23/we-have-be-worried/impact-lead-contamination-childrens-rights-kabwe-zambia>

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- Ensure that all children in Kabwe are given access to free testing and, as appropriate, free treatment for lead poisoning. Make sure that the initial round of testing and treatment reaches all children under the age of 5 as well as pregnant and breastfeeding women; and that children previously tested and found to have elevated lead levels are given access to follow-up testing and treatment.
- Track lead poisoning in the Health Management Information System (HMIS) or develop a separate database for Kabwe to track cases of lead poisoning, including lead-related hospitalization and mortality.
- Ensure children with disabilities and learning barriers in affected areas are tested for lead.
- Provide accommodations and individual learning support for children with learning barriers.

### **Protection of Education During Armed Conflict (article 28)**

Zambia was among the first countries to endorse the Safe Schools Declaration, joining in May 2015.<sup>2</sup>

As of October 2019, Zambia is contributing 1007 troops to United Nations peacekeeping forces. Peacekeeping troops are required to comply with the UN Department of Peacekeeping Operations “UN Infantry Battalion Manual” (2012), which includes the provision that “schools shall not be used by the military in their operations.” Moreover, the 2017 Child Protection Policy of the UN Department of Peacekeeping Operations, Department of Field Support, and Department of Political Affairs notes: “United Nations peace operations personnel shall at no time and for no amount of time use schools for military purposes.”

*Human Rights Watch encourages the Committee to pose the following questions to the government:*

- Are protections for schools from military use included in any policies, rules, or trainings for Zambia’s armed forces?

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<sup>2</sup> The Safe Schools Declaration is an inter-governmental political commitment that provides countries the opportunity to express political support for the protection of students, teachers, and schools during times of armed conflict; the importance of the continuation of education during armed conflict; and the implementation of the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict*. See Global Coalition to Protect Education from Attack, Safe Schools Declaration, [http://www.protectingeducation.org/sites/default/files/documents/safe\\_schools\\_declaration-final.pdf](http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf).

*Human Rights Watch recommends to the Committee that it call upon the government of Zambia to:*

- Congratulate the government of Zambia on endorsing the Safe Schools Declaration, thereby committing to use the *Guidelines for Protecting Schools and Universities from Military Use in Armed Conflict*.

# LAWYERS FOR HUMAN RIGHTS

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1 April 2022

ATT: **MBUYISA MOLEELE ATTORNEYS**  
**Applicants' Attorneys**  
By email: [zanele@mbmlaw.co.za](mailto:zanele@mbmlaw.co.za)

**WEBBER WENTZEL**  
**Respondent's Attorneys**  
By email: [nick.alp@webberwentzel.com](mailto:nick.alp@webberwentzel.com)

Dear Madam/Sir,

RE: **Admission As Amicus Curiae In Terms Of Rule 16a Of The Uniform Rules Of Court In The Matter Of Various Parties On Behalf Of Minors V Anglo American South Africa Limited, 2020/32777**

1. We refer to the above-mentioned matter and confirm that we act for Human Rights Watch ("HRW"), a non-profit organisation that investigates and reports on human rights violations around the world. Our client hereby seeks your written consent to be admitted as an *amicus curiae* in these proceedings in terms of Rule 16A of the Uniform Rules of Court.
2. Human Rights Watch investigates and reports on abuses happening in all corners of the world. HRW was established in 1978 and is one of the oldest global non-governmental organisations. HRW has researchers working in over 100 countries, uncovering facts and creating written records of human rights violations. Based on this investigative and independent research, HRW engages, inter alia, with governments and corporations to advance the enforcement and protection of human rights.

#### HRW's interest in this matter

3. **HRW report on Kabwe:** On 23 August 2019, HRW published a report entitled "*We Have to Be Worried' The Impact of Lead Contamination on Children's Rights in Kabwe, Zambia*" ("**the Report**"). The Report documents widespread lead contamination in Kabwe and its harmful impact on the health of residents of Kabwe, specifically children. Both the Applicants and the Respondent rely on the Report to substantiate their respective positions. The Report appears regularly in both parties' affidavits and is therefore seminal to the case as a whole. As the author of the report, our client is best placed to provide the Court with a comprehensive, neutral, and independent summary of the report and its findings.
4. **Expertise in international human rights law:** HRW has expertise in international human rights law, in particular in relation to the intersecting international law principles on: (i) business and human rights; (ii) gender equality; (iii) children's rights; (iv) the right to health; and (v) environmental justice.

5. **Expertise in South African constitutional law:** HRW holds an important presence in South Africa, particularly in cases relating to corporate accountability, mining, environmental justice and gender equality. HRW has engaged with business and government in South Africa, including in relation to the accountability of corporations for human rights violations. As a result, HRW has developed expertise in relation to the South African Bill of Rights and the application of the Bill of Rights to juristic persons. It is therefore well-placed to make submissions relating to constitutional imperatives in this regard.
6. As far as our client is aware, no other party or potential amici has advanced the specialised arguments outlined herein.

#### **HRW's position if admitted as an *amicus***

7. HRW's position is that the Respondent's interpretation of the Report is erroneous. The findings of the Report trigger international and domestic legal considerations. Under both international human rights law and South African constitutional law, juristic persons such as the Respondent may be accountable for human rights violations.

#### **HRW's proposed submissions**

8. If admitted as an *amicus curiae*, HRW's submissions will:
  - 8.1 Provide an independent analysis of the Report, which only it, as the author, can do. This insight is necessary given that all parties use the report to substantiate their competing arguments;
  - 8.2 Contribute unique expertise regarding *all* the intersecting human rights issues relevant to the matter, namely, business and human rights, women's rights, children's rights, the environment, the right to healthcare, and specialized international law perspective in so far as it relates to this case;
  - 8.3 Provide legal analysis of the position in international law regarding corporate accountability for human rights (known as "Business and Human Rights"). Sources include: the United Nations Guiding Principles on Business and Human Rights; the Gender Framework for the United Nations Guiding Principles on Business and Human Rights; reports of UN special rapporteurs (experts) in relation to business accountability for women's rights, children's rights, the right to health; the Guiding Principles on Extreme Poverty;
  - 8.4 Demonstrate how the international law obligations relating to "do no harm" and due diligence obligations apply to the Respondent in this matter;
  - 8.5 Demonstrate that, in accordance with section 8(2) of the Bill of Rights, the South African Constitution imposes human rights obligations on *both* the State *and* juristic persons in certain circumstances. As such, the Respondent has a duty of care not only under the law of delict but also under constitutional law; and
  - 8.6 To the extent that extraterritoriality is not addressed by any other party, provide input regarding the extra-territorial application of the Constitution.

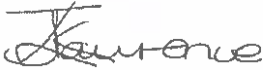
#### **Relevance of Human Rights Watch's submissions to the proceedings**

9. It appears that no other party or potential amicus has addressed the international and constitutional law principles outlined above.

### Conclusion

10. As per our letter of 25 January 2022 addressed to your offices, our client indicated that it may apply to intervene as an *amicus curiae* once the Applicant filed its replying affidavit. Having perused such documentation, our client is of the view that it has technical and unique contributions to make.
11. We therefore are instructed to request written consent in accordance with Rule 16A of the Uniform Rules of Court for admission of HRW as *amicus curiae* in this matter in order to:
  - 11.1 Submit written submission on the issues outlined above within twenty days of receipt of both parties' written confirmation of consent hereto; and
  - 11.2 Present oral submissions at the hearing of this matter.
12. We are advised that the matter has not yet been set down for hearing. Our client submits that they have no intention of delaying proceedings and will ensure that its intervention is timely.
13. Please notify us in writing by 16h00 on 08 April 2022 whether your clients consent to our client's admission as *amicus curiae*. Such consent can be sent by email to [jessical@lhr.org.za](mailto:jessical@lhr.org.za) and [charne@lhr.org.za](mailto:charne@lhr.org.za).

Yours faithfully,



---

**LAWYERS FOR HUMAN RIGHTS**

Per: Jessica Lawrence

05 April 2022  
Our ref: Z. Mbuyisa

**LAWYERS FOR HUMAN RIGHTS**

By Email

[jessical@lhr.org.za](mailto:jessical@lhr.org.za)

[charne@lhr.org.za](mailto:charne@lhr.org.za)

Sir/Madam

**RE: Case no. 2020/32777 – VARIOUS PARTIES ON BEHALF OF MINORS V ANGLO AMERICAN SOUTH AFRICA LIMITED**

We refer to your letter dated 01 April 2022. We confirm receipt and have no objection to your clients intervening in our application as *amici curiae* to advance the arguments mentioned in paragraph 8 of your letter.

Yours Faithfully



Per: S.Z. Mbuyisa



Tuesday, October 25, 2022 at 15:46:02 Central European Summer Time

**Subject:** RE: Admission as Amicus Curiae in the Matter of Various Parties on Behalf of Minors V Anglo American South Africa Limited case no.: 2020/32777  
**Date:** Friday, 08 April 2022 at 12:44:44 Central European Summer Time  
**From:** Nick Alp  
**To:** Jessica Lawrence  
**CC:** Charne Tracey, Prianka Soni, Zanele Mbuyisa  
**Attachments:** image001.png, image002.png

Dear Madam

Thank you for your further letter of 5 April 2022 which we have considered, together with our Client.

Our Client does not consent to the admission of your Client as *amicus curiae* at this stage. We will obviously revisit the position if an application is made for your Client to be so admitted.

Your sincerely

**Nick Alp | Partner | Webber Wentzel**

T: +27115305339 | M: +27832122353 | [nick.alp@webberwentzel.com](mailto:nick.alp@webberwentzel.com) | [www.webberwentzel.com](http://www.webberwentzel.com)

---

**From:** Jessica Lawrence <[Jessical@lhr.org.za](mailto:Jessical@lhr.org.za)>

**Sent:** 05 April 2022 13:48

**To:** Prianka Soni <[Prianka.Soni@webberwentzel.com](mailto:Prianka.Soni@webberwentzel.com)>; Nick Alp <[nick.alp@webberwentzel.com](mailto:nick.alp@webberwentzel.com)>; Zanele Mbuyisa <[zanele@mbmlaw.co.za](mailto:zanele@mbmlaw.co.za)>

**Cc:** Charne Tracey <[Charne@lhr.org.za](mailto:Charne@lhr.org.za)>

**Subject:** Re: Admission as Amicus Curiae in the Matter of Various Parties on Behalf of Minors V Anglo American South Africa Limited case no.: 2020/32777

Dear Madam,

Kindly find attached correspondence for your attention.

Kind regards,  
Jessica

---

**From:** Prianka Soni <[Prianka.Soni@webberwentzel.com](mailto:Prianka.Soni@webberwentzel.com)>

**Date:** Monday, 04 April 2022 at 13:38

**To:** Jessica Lawrence <[Jessical@lhr.org.za](mailto:Jessical@lhr.org.za)>, Zanele Mbuyisa <[zanele@mbmlaw.co.za](mailto:zanele@mbmlaw.co.za)>, Nick Alp <[nick.alp@webberwentzel.com](mailto:nick.alp@webberwentzel.com)>

**Cc:** Charne Tracey <[Charne@lhr.org.za](mailto:Charne@lhr.org.za)>

**Subject:** RE: Admission as Amicus Curiae in the Matter of Various Parties on Behalf of Minors V Anglo American South Africa Limited case no.: 2020/32777

Good Day,

Please see attached correspondence for your attention with the two letters referred to therein attached.

Thank you,

**Prianka Soni | Senior Associate | Webber Wentzel**

T: +27115305784 | M: +27729006484 | [prianka.soni@webberwentzel.com](mailto:prianka.soni@webberwentzel.com) | [www.webberwentzel.com](http://www.webberwentzel.com)

---

**From:** Jessica Lawrence <[Jessical@lhr.org.za](mailto:Jessical@lhr.org.za)>

**Sent:** 01 April 2022 10:47

**To:** [zanele@mbmlaw.co.za](mailto:zanele@mbmlaw.co.za); Nick Alp <[nick.alp@webberwentzel.com](mailto:nick.alp@webberwentzel.com)>

**Cc:** [Charne@lhr.org.za](mailto:Charne@lhr.org.za)

**Subject:** Admission as Amicus Curiae in the Matter of Various Parties on Behalf of Minors V Anglo American South Africa Limited case no.: 2020/32777

Dear Sir/Madam,

We refer to the above matter.

Kindly find attached correspondence for your attention.

Kind regards,

**Jessica Lawrence**

Head: Johannesburg Law Clinic  
Refugee and Migrant Rights Programme

**Lawyers for Human Rights**

Johannesburg Office & Law Clinic

Tel: (011) 339 1960/066 076 8845

4<sup>th</sup> Floor, South Point Building

87 De Korte Street

Johannesburg 2001

Cell: 082 772 9857

Fax: (011) 339 2665

[www.lhr.org.za](http://www.lhr.org.za)

**LAWYERS FOR  
HUMAN RIGHTS**

Celebrate pride – this month and every month

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# WEBBER WENTZEL

in alliance with > Linklaters

Jessica Lawrence  
Lawyers for Human Rights  
4<sup>th</sup> Floor Southpoint Corner Building  
87 De Korte Street (corner Melle)  
Braamfontein  
2001

By email: [jessical@lhr.org.za](mailto:jessical@lhr.org.za)

90 Rivonia Road, Sandton  
Johannesburg, 2196  
PO Box 61771, Marshalltown  
Johannesburg, 2107, South Africa  
Docex 26 Johannesburg  
T +27 (0) 11 530 5000  
F +27 (0) 11 530 5111  
[www.webberwentzel.com](http://www.webberwentzel.com)

Your reference  
Jessica Lawrence

Our reference  
Nick Alp  
3036121

Date  
04 April 2022

Dear Madam

## Admission as Amicus Curiae in terms of Rule 16A of the Uniform Rules of Court in the matter of Various Parties on behalf of Minors v Anglo American South Africa (Pty) Limited – Case Number: 2020/3277

1. We acknowledge receipt of your letter 1 April 2022 in which you have sought our client's written consent for your client to intervene as *amicus curiae* in the above matter on the terms proposed in your letter under reply.
2. In terms of your letter, your client seeks to intervene in order to make written and oral submissions on the following issues which will:
  - 2.1 "Provide an independent analysis" of its report published on 23 August 2019 entitled: "*We have to be worried' The Impact of Lead Contamination on Children's Rights in Kabwe, Zambia*" ("the Report"); and
  - 2.2 deal with certain international and constitutional law principles and obligations, more full set out in paragraphs 8.2 to 8.6 of your letter ("the international and constitutional law principles").
3. As to these:
  - 3.1 We do not consider that it is necessary (nor appropriate) for an author of a published report to "*provide the Court with a comprehensive, neutral, and independent summary of the report and its findings*" as is your client's intention as recorded in paragraph 3

Draft Letter To LHR 2022-04-04.Docx

**Senior Partner:** JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davles PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Elser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Holfeid PM Holloway J Howard ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo NP Mngomezulu P Mohanlall M Moloi N Moodley LE Mostert VM Movshovich C Murphy A Ngubo ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjattan GI Rapson K Rew SA Ritchie J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Thivani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans

**Chief Operating Officer:** SA Boyd

SPN  
[Signature]

of your letter under reply. As you correctly point out, the Report is already before the Court. It is our view that the Report speaks for itself and that the Court is as best placed as anyone to read it comprehensively and neutrally, analyse it independently, and understand its findings.

- 3.2 With regard to the international and constitutional law principles, you have stated in paragraph 9 of your letter under reply that it appears that no other party or potential amicus has addressed these principles. We draw to your attention that the Centre for Applied Legal Studies ("CALs") has sought and received the parties' written consent for their clients (Amnesty International Ltd and the Southern African Human Rights Litigation Centre Trust), to intervene as *amici curiae* in order to make written submissions and present oral submissions on the same international and constitutional law principles which your client seeks to advance. We refer you to CALs' attached letters dated 22 and 30 March 2022, respectively. As you know, one of the critical criteria for admission as an *amicus curiae* is whether the submissions to be advanced will be different (and useful to the Court). We would suggest therefore that you defer further consideration relating to the proposed intervention of your client until such time as you have had an opportunity to consider the written submissions to be filed by CALs.

Yours faithfully



**WEBBER WENTZEL**

Nick Alp  
Partner

Direct tel: +27 11 530 5339

Direct fax: +27115306339

Email: [nick.alp@webberwentzel.com](mailto:nick.alp@webberwentzel.com)

CC Mbuyisa Moleele Attorneys: [zanele@mbmlaw.co.za](mailto:zanele@mbmlaw.co.za)

SPN  


# LAWYERS FOR HUMAN RIGHTS

Johannesburg Law Clinic  
4<sup>th</sup> Floor Southpoint Corner Building  
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Braamfontein, 2001

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Fax (011) 339 2665  
Web [www.lhr.org.za](http://www.lhr.org.za)

5 April 2022

**ATT: WEBBER WENTZEL**  
**Respondent's Attorneys**  
By email: [nick.alp@webberwentzel.com](mailto:nick.alp@webberwentzel.com)

**CC: MBUYISA MOLEELE ATORNEYS**  
**Applicants' Attorneys**  
By email: [zanele@mbmlaw.co.za](mailto:zanele@mbmlaw.co.za)

Dear Sir,

**RE: Admission as Amicus Curiae In Terms Of Rule 16a Of The Uniform Rules Of Court In The Matter Of *Various Parties On Behalf Of Minors V Anglo American South Africa Limited, 2020/32777***

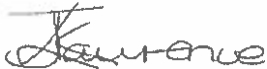
1. We refer to the above-mentioned matter, our letter of 1 April 2022, and your correspondence of 4 April 2022.
2. The content of your letter is noted. We confirm that our response is limited to the two objections raised in your letter and will not deal with the entirety of our client's intended submissions as outlined in our letter of 1 April 2022.
3. We note our disagreement with your assessment of our intended submissions in both respects. We reiterate that as Human Rights Watch's (HRW) report is seminal to the case as a whole, HRW as the authors of the report, ought to make submissions to the Court given the parties' varying interpretation and reliance on the report in their legal submissions.
4. We further maintain that our intended input is different to other parties or potential amici, which is why our client made an undertaking in our letter of 1 April 2022 to not duplicate legal submissions already before the Court.
5. We note that the specific areas of international law on which each potential amicus will focus is different. Our client intends to make submissions relating to the intersectionality of *all* human rights issues relevant to the matter, namely, women's rights, children's rights, the environment, the right to healthcare, and specialized international law perspective in the context of business and human rights in so far as it relates to this case.
6. Our client remains of the view that it has technical and unique contributions to make as *amicus curiae* that will be of assistance to the Court.
7. We therefore are instructed to request written consent once again, in accordance with Rule 16A of the Uniform Rules of Court, for admission of HRW as *amicus curiae* in this matter in order to:

Wayne Ncube LLB (NMMU) LLM (Wits); Jessica Lawrence LLB (UJ) LLM (UJ); Charné Tracey LLB (Wits); Nyiko Manyasa LLB (UL); Mamefwe Sebei BA Law (UP) LLB (UNISA) MA (Wits); Nabeelah Mia BSocSci (Law and Psychology) (UCT) LLB (UCT) LLM (UCLA)

JPN  
AB

- 7.1 Submit written submission on the issues outlined in paragraph 8 of our letter within twenty days of receipt of both parties' written confirmation of consent hereto; and
- 7.2 Present oral submissions at the hearing of this matter.
8. Kindly notify us in writing by 16h00 on 08 April 2022 whether your client consents to our client's admission as *amicus curiae*.

Yours faithfully,



---

**LAWYERS FOR HUMAN RIGHTS**

Per: Jessica Lawrence