



FILE REF ZHRC/CI/0149/16

In the matter between:

Mazvihwa Community

COMPLAINANTS

And

MUROWA DIAMONDS (Pvt) Ltd

RESPONDENT

INVESTIGATIVE REPORT

1. Introduction and background

- a.** This report contains findings of the Zimbabwe Human Rights Commission (ZHRC/Commission), pursuant to an investigation undertaken by the ZHRC into a complaint lodged by Albert Chiwenga on behalf of the Mazvihwa community in Zvishavane. The complaint involved allegations of violation of environmental rights and right to health by Murowa Diamonds (Pvt) Ltd (hereinafter referred to as the Respondent). The investigation was conducted from the 28th to the 30th of June 2017.
- b.** The complainants are about two hundred (200) households who live in a rural community near Murowa Diamond Mine, many of the households have lived in this community for several decades before mining commenced in 2004.
- c.** In determining its role in this matter, the ZHRC considered that the set of facts gives rise to human rights violations of Chapter 4, Part 2 of the

Declaration of Rights in the Constitution of Zimbabwe, particularly Section 73 on environmental rights and other regional and international human rights instruments.

2. Detailed background of complaint:

- a.** Complainants are community members residing near Murowa Diamond Mine under Chief Mazvihwa in Zvishavane. They allege that as a result of mining activities, Murowa Diamond Mine has been polluting the environment in Mazvihwa community due to mine blasts which produce excessive dust.
- b.** They further allege that in 2012, a number of children at Baradzanwa Primary School near Murowa Diamond Mine were taken sick due to excessive dust emissions from the mine.
- c.** The children were treated at Murowa Hospital. The case of dust pollution was taken up with the Environmental Management Agency (EMA) and the Ministry of Health and Child Care. However despite the two offices conducting investigations and coming up with reports which the ZHRC was furnished with, complainants allege that the case has not yet been resolved.
- d.** It is further alleged by complainants that the blasting at Murowa Diamond Mine has resulted in some of their houses cracking. To date more than 200 households have been affected.
- e.** To rectify the situation, the respondent constructed about 9 houses for some of the affected complainants. Complainants, however fear that their houses will no longer be safe for human habitation if the blasting continues.
- f.** Complainants further aver that they lodged their complaints with the company management to no avail as the company does not respond to their queries. Efforts to engage in a dialogue with the company management concerning the dust levels have been fruitless as the company management in Zvishavane does not cooperate.
- g.** Complainants sought assistance from the ZHRC to intervene by investigating violation of their rights through dust pollution and the issue of cracking houses.

Photos of cracked houses in Mazvihwa-Zvishavane



3. Mandate of the ZHRC

- a. ZHRC's jurisdiction in this matter is derived from Section 243 (1) (d) of the Constitution of Zimbabwe. Complainants are entitled to the right to an environment that is not harmful to their health or wellbeing as enshrined in Section 73 (1) (a) of the Constitution.

4. Methodology

In carrying out the investigations, the ZHRC employed a number of methods which included desk research, individual interviews with complainants, Chief Mazvihwa, Ward councillor, EMA official and the District Environmental Health Officer. Correspondences and reports from the respondent, EMA and the Ministry of Health and Child Care (MoHCC) were also referred to in the investigation.

4.1. Desktop Research

4.1.1. The ZHRC conducted legal research into the legal framework governing human rights locally, regionally and internationally. This was done in order to identify and assess the human rights if any that were violated by the alleged conduct of the respondent Company. Use of relevant case law was also pertinent in the research.

4.2. Interviews

4.2.1. The ZHRC interviewed some of the complainants after it had secured responses from the respondents in order to make a balanced assessment of the situation. Reports of consultants who carried out an assessment of the levels of dust emissions and the impact of blasting in Mazvihwa community and those from EMA and the District Environmental Health Officer were also made reference to.

4.2.2. Interview guides were developed to facilitate interviews with Complainants and Respondent.

These instruments were used to extract qualitative data.

4.2.3. Individual complainants who were interviewed revealed the following;

- The blasting at Murowa Diamond Mine was resulting in cracking of their houses .They pointed out that the blasting usually occurred around 6am and they were affected by the loud noise from the blasting.
- Complainants also noted that, as a result of the blasting, clouds of excessive dust engulf and pollute the community which results in them coughing and they feared that in the long run they may be affected by diseases such as tuberculosis.
- They further indicated that it would be prudent if Murowa Diamond Mine could relocate them to a more appropriate area which is fit for human habitation and far away from the mine blasts.

4.2.4. Chief Mazvihwa's Submissions

- a) The Chief indicated that he was aware of complaints of cracking of houses and dust pollution in his community.
- b) He revealed that the community leaders, including himself were not consulted when the consultants who were hired by Murowa Diamond Mine conducted their assessments of the levels of dust emissions and the effect of blasting to the cracking of houses
- c) He further pointed out that the issue had previously been raised with the respondent at a community meeting in Mazvihwa.
- d) The mine had made an undertaking to facilitate relocation of the affected families who lived within the ten kilometre radius of the mining area. However the number of the affected families who were willing to be relocated had not yet been ascertained for onward transmission to the respondent.

4.2.5. Councillor Mvuto's Submissions

- a) The councillor pointed out that the mine was in the habit of engaging in secret meetings with people, who were vocal and who asserted their rights.
- b) He pointed out that the management at the mine were insincere to the plight of the community and were not keen on practising corporate social responsibility and taking remedial action such as rebuilding the cracked and damaged houses.

4.3. Participant observation

4.3.1. This was used to gain intimate familiarity with the community and their activities through intensive involvement with people in their environment. The ZHRC went into 10 homes of some of the complainants in order to assess the extent of the alleged damage of the cracked houses. Using observations helped the Commission to comprehend the intensity of the level of damages and the prevalence of dust pollution.

4.4. *Inspection in loco* (On-site inspection)

The ZHRC visited the vicinity of the mine, nearly 500 meters from the blasting site to assess the intensity of the blasts and dust pollution.

5. Respondent's submissions

- 5.1. In a letter of response written to the ZHRC on the 27th of January 2017, the respondent averred that it commenced its mining operations in 2004 and since inception, the company had established systems and programmes that monitor the environmental impact of all its activities within the surrounding community and environment.
- 5.2. The results of the programmes have shown that there has never been a significant dust impact on the neighboring community from the mine operations. More so, all the activities were carried out within the

confines of the law and were regulated and monitored periodically by the Ministry of Mines and Mining Development and EMA.

- 5.3. It was further pointed out that the allegation that in 2012 a number of children were taken sick due to excessive dust emissions was unfounded because the allegations were investigated by the Ministry of Health and Child Care and it was found that the sickness was not as a result of dust emissions from the Mine.
- 5.4. Respondent denied allegations that the blasting at Murowa Diamond Mine had resulted in some houses cracking. It was pointed out that investigations that were conducted by two independent consultants, Greunen of South Africa and Shumba and Associates revealed that the blasting at the mine had no direct or indirect impact on the community and that the cracks were not as a result of the activities at the mine.
- 5.5. A third investigation that was conducted by Shava and Associates consultancy at the behest of the local Member of Parliament corroborated the earlier findings of the consultants hired by the respondent to the effect that the blasting at the mine had no direct or indirect impact on the community.
- 5.6. The nine houses constructed were meant to relocate the occupants away from the pits to remove them from the blasting zone.
- 5.7. Respondent noted that they had engaged with the community on the matter through joint assessments on the cracking of houses in 2010; commissioning of assessments by two consulting companies on the issue of cracking of houses in 2011; construction of nine households in Gute area in 2010; monitoring and evaluation in Headman Madzoke's area in 2014; a technical inspection by EMA and a participatory engagement meeting attended by the local MP and traditional leaders in 2016.

District Health Environmental Officer's Submissions.

- 5.8. The ZHRC conducted an interview with the District Health Environmental Officer in Zvishavane on the allegation of Baradzanwa Primary School pupils who allegedly fell sick due to excessive dust in 2015. He pointed out that his office in collaboration with EMA carried

out an investigation and came up with a report. ZHRC was furnished with the report whose findings were as follows;

- 5.8.1. The affected Baradzanwa Primary School is approximately 5 kilometers from the mine and the school headmaster Mr E Mpofu denied ever having school children hospitalised.
- 5.8.2. The blastings are normally done at 17:00 hours by which time school children would have gone home.
- 5.8.3. The alleged dust and smell emanating therefrom affects mainly school children.
- 5.8.4. Smells from the blastings can be detected 5 kilometers away.
- 5.8.5. There was a bout of flue that occurred some time in 2012 but community members think that it was caused by dust from the mine.
- 5.8.6. Discussion with the ward councillor Mr Mvuto corroborated the claims .
- 5.8.7. On a health viewpoint, the mining activities are not a threat to the health of the community as claimed.

5.9. EMA District Environmental Officer's Submissions

The ZHRC conducted an interview with the Zvishavane District Environmental Officer who pointed out that they carried out a snap survey on air pollution in Mazvihwa in 2014 and they found out that the dust emissions were within the permissible levels that cannot be harmful to people and the environment. She further pointed out that there were no records to confirm that any person or school children were hospitalised due to exposure to dust from the mine or diagnosed of dust related ailments. The ZHRC was furnished with EMA's inspection report.

6. Applicable law

6.1. Constitutional Framework

In terms of the Constitution of Zimbabwe Amendment (No.20) Act, 2013, (*herein after referred to as the Constitution*). Section 73 (1) thereof provides that every person has a right to;

a) an environment that is not harmful to their health or well-being;
b) have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that

i) prevent pollution and ecological degradation

ii) promote conservation; and

iii) secure ecologically sustainable development and use of natural resources while promoting economic development

- 1) The environmental right as provided by section 73 is in two parts, a fundamental human right and a directive principle requiring a state to take positive steps towards the attainment of the right.
- 2) The first part encompasses two aspects, a right to an environment that is not harmful to health and the right to an environment not harmful to well-being.
- 3) The definition of what an environment entails is significant to recognition and enforcement of the said right. It should be recognized that environment is a relational concept; it denotes an interrelationship between man and his surroundings. This is according to *The Environmental Management in South Africa R.F Fuggle and M.A Rabie*.
- 4) In Zimbabwe there is legislative attempt to define the concept of the environment. The Environmental Management Act Chapter 20:27, provides that;

“Environment” means—

(a) *the natural and man-made physical resources, both biotic and abiotic, occurring in the lithosphere and atmosphere, water, soil, minerals and living organisms whether indigenous or exotic, and the interaction between them;*

(b) ecosystems, habitats, spatial surroundings and their constituent parts whether natural or modified or constructed by people and communities, including urbanised areas, agricultural areas, rural landscapes, and places of cultural significance;

(c) *the economic, social, cultural or aesthetic conditions and qualities that contribute to the value of the matters set out in paragraphs (a) and (b);”*

- 5) The meaning of the phrase “wellbeing” was considered in a South African case *HTF Developers (pty) Ltd v The Minister of Environmental Affairs and Tourism 2006 (5) SA 512 (T)* Murphy J suggested that the term is

“open ended and manifestly ... incapable of precise definition. Nevertheless it is critically important in that it defines for the environmental authorities the constitutional objectives of their tasks”

- 6) The directive principle as provided by section 73 (1) (b) of the environmental right, creates a right imposing a constitutional imperative on the state to secure the environmental right by “reasonable legislation and other measures”.

- 7) It is paramount to note that the environmental right is not absolute. Section 73 (2) provides that;

“the state must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realization of the rights ...”

- 8) It is thus conceivable that the limitation clause could be used to justify certain actions or inactions detrimental to the environment on the basis that such actions or inactions constitute “**reasonable and justifiable**” limitation of the environmental right.

6.2. Environmental Management Act

- 1) The legislative framework for management and enforcement of environmental law is embedded mainly in the Environmental Management Act.
- 2) The general principles of environmental management are provided in section 4 of the Act. Of particular relevance to this case is section 4(2) which provides that;

“ any person who causes pollution or environmental degradation shall meet the cost of remedying such pollution or degradation”

- 3) The functions of the Agency are also provided in section 5 of the Act. Of particular relevance is the Agency’s duty to impose penalties and to ensure that persons or institutions that are responsible for causing environmental harm will meet the cost of remedying. It provides that;

“(g) any person who causes pollution or environmental degradation shall meet the cost of remedying such pollution or environmental degradation and any resultant adverse health effects, as well as the cost of preventing, controlling or minimizing further pollution, environmental damage or adverse health effects;

(h) global and international responsibilities relating to the environment must be discharged in the national interest

- 4) The Act also provides for a fund in terms of section 52. The object of the fund are amongst other things to rehabilitate degraded environments and to clean up polluted environments.

6.3. International law

The United Nations Guiding Principles on Business and Human Rights (UNGPs)

- 6.3.1 The UNGPs are the authoritative global standard on business and human rights which were unanimously endorsed by the United Nations Human Rights Council in 2011. The 31 principles set expectations of states and companies about how to prevent and address negative impacts on human rights by business. The Guiding Principles apply to all states and all businesses worldwide and today are being implemented by companies, governments and their stakeholders on every continent.
- 6.3.2. The principles have three pillars linked to them namely: the duty of the State to protect citizens from negative impacts of business activities, the duty of corporates to respect rights of citizens as well as the right of citizens to access remedies in the event of human rights violations by corporates.
- 6.3.3. The duty to protect sets in from the time the State signs and ratifies human rights treaties and conventions which should then be translated into domestic laws with enforcement processes. This duty includes respecting human rights in what the state does, protecting human rights against abuse by others, and fulfilling human rights over time where that requires considerable resources, for example in providing access to education or clean water. The State is supposed to put in place adequate standards and regulations for protection of its citizens from harmful business activities. The standards and regulations should be enforceable if they are to be effective as protection mechanisms.
- 6.3.4. The duty to respect by corporates means that all businesses should put in place appropriate policies and processes in a proactive effort to respect human rights.

Those businesses that operate or have parts of their value chain in countries where governments fail to fulfill their own duties to protect human rights have to make additional efforts to respect human rights in light of the risky environment they operate in. Businesses should also have the right policies and processes in place in order to try and prevent these negative impacts of their business activities and to respond appropriately and timeously should they occur.

- 6.3.5. Murowa Diamond mine is a corporate that is impacting on the environmental rights of residents of Mazvihwa community .The UNGPs on Business and Human Rights are therefore useful as a reference point in this case. All the residents of Mazvihwa whose rights are being violated due to mining activities have a right of access to remedy. The UNGP's on Business and Human Rights stipulate that when a corporate violates human rights, the victims have a right to effective remedy. This right and many other ancillary rights such as environmental rights and right to health are inalienable so neither the State nor corporates can take them away. Furthermore, these rights are set out in more detail in the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights .
- 6.3.6. The UNGP's on Businesses and Human Rights make it clear that all companies everywhere have a responsibility to respect human rights, which entails avoiding having negative impacts on human rights and to address such impacts where they do occur. In this case, Murowa has a responsibility to mitigate the impacts of blasting and excessive dust emissions which negatively affect the health and wellbeing of the complainants. More so, as a way of ensuring effective remedy, the mine has a responsibility of rehabilitating the damaged houses or consider relocating the victims to safe locations.

International Covenant on Economic, Social and Cultural Rights

- 6.3.5 Article 12 paragraph 1 provides that State parties to the International Covenant on Economic, Social and Cultural Rights should recognise the right of everyone on the highest attainable standard of physical and mental health.
- 6.3.6 Article 12 paragraph 2 (b) provides that the steps to be taken by the State Parties to the present Covenant to achieve the full realisation of these rights

shall include those necessary for the improvement of all aspects of environmental and industrial hygiene.

7. Findings

- 7.1.** Blasting is occurring at Murowa Diamond Mine in Mazvihwa community as witnessed by the ZHRC on 29 June 2017 at around 7:15am.
- 7.2.** The blasting activity results in vibration of the ground and shaking of walls and roofs and rattling of windows of houses. The most affected houses are those in the vicinity of the blasting site, approximately one kilometre from the blasting site.
- 7.3.** The blast noise is audible over a very large area surrounding the area of mining operation. The occurrence of the blasting causes a startling effect. The ZHRC experienced the impact of the blast at a homestead located approximately five hundred meters from the blasting zone.
- 7.4.** The dust produced by the blasting is noticeably whitish and it results in temporary clouding of the surrounding area. The dust results in pollution of surrounding water bodies and also covers the vegetation.
- 7.5.** The dust is smelly and if one continuously inhales it, results in coughing.
- 7.6.** Several houses in the vicinity of the mine and close to the blasting site have developed cracks (including the houses that were built by the mine for some affected people).
- 7.7.** From the interviews conducted with Chief Mazvihwa, Councillor Mvuto, some complainants and witnesses, it emerged that the community members were not consulted when the respondent and the local Member of Parliament hired consultants to carry out assessments of the levels of dust and the cracking of houses which resulted in the complainants discrediting the findings of the consultants' reports.
- 7.8.** There is lack of evidence to the allegation that in 2012, a number of children from Baradzanwa Primary School were taken sick as a result of dust pollution and were taken to Murowa Hospital. A report from an investigation carried out by the Ministry of Health and Child Welfare

in 2014 revealed that no children were directly affected by dust from the mine blasting and there are no records to that effect.

- 7.9. The majority of complainants are willing to be relocated to some other areas that are fit for human habitation and with more favourable conditions, far away from the negative effects of mine blasts.

8. Recommendations

Environmental Management Agency

- 8.1. EMA should conduct regular monitoring exercises to monitor the actual levels of dust emitted during blasting and ascertain if it is within the normally stipulated levels.
- 8.2. EMA should ensure that the mine comes up with blasting methods with minimum dust emissions.
- 8.3. EMA should ensure that the mine puts more dust measuring devices at various places to monitor dust levels at all times and display the results to the affected parties with full interpretation.

Murowa Diamond Mine

- 8.4. The Mine should facilitate the relocation of affected community members to areas that are fit for human habitation far away from the mine blasts. The relocated people should be provided with safe accommodation. This is important because even though the technical reports suggest that the blasting and dust levels have no impact on the health of the community members, the effects of both clearly have an impact on the *wellbeing* of the community members as they are constantly exposed to the dust and noise pollution. The effects may not have an immediate impact but in the long term impact can be considered.

Ministry of Environment, Water and Climate

- 8.5. The Ministry of Environment, Water and Climate in collaboration with EMA should engage with Murowa Diamond Mine to prevent and mitigate the risk of dust pollution caused by the mining activities at the mine.

Ministry of Mines and Mining Development

- 8.6.** The Ministry should ensure that the United Nations Guiding Principles on Businesses and Human Rights are incorporated in local legislation and policies to ensure effective application of the UNGP's.
- 8.7.** The Ministry should ensure that enforcement mechanisms are effective to minimise the risk of human rights violations caused by mining activities at Murowa Diamond Mine and other mines in Zimbabwe.
- 8.8.** The Ministry should carry out an assessment of Murowa Diamond Mine's activities and the impact it has on the Mazvihwa community.

9. Conclusion

In the Mazvihwa investigation, the ZHRC found out that the allegations of cracking of houses and dust emissions can be substantiated. However, there is need to engage Independent Consultants to assess, monitor and verify claims by the complainants on the effect of blasting and dust emissions to the houses. The Independent Consultants should further assess and monitor the health effects in relation to the immediate, medium and long term implications of the blasting and dust emission it has to the affected community. This is mainly because there are two competing views and at most times during the investigative process, the residents of Mazvihwa were always sceptical of the results of the consultants who carried out the assessments. Their main argument being that the consultants were biased. Furthermore the reports and findings of the consultants hired by respondent are too technical such that there is need for experts to clearly decipher the findings in the reports.
