

Complaint under the OECD Guidelines for Multinational Enterprises

submitted to the Swiss National Contact Point for the OECD Guidelines

by

Twerwaneho Listeners' Club and Clouds Fm (Complainant)

against

**Holcim AG, Switzerland and its controlled subsidiary Hima Cement, Uganda
(Respondent)**

concerning its development of Pozzolana quarries in Kabarole District – Uganda.

Submitted on 3rd August 2023

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1 Summary

An important notice: This complaint was written on the base of the OECD Guidelines for multinational enterprises of the year 2011 and not on the base of the revised Guidelines of 2023. The revised Guidelines might even bring more reasons for the coming mediation process, however time was too short to incorporate the new guidelines.

This complaint is a submission to the National Contact Point – Switzerland against Holcim AG - Switzerland and its controlled subsidiary Hima cement factory – Uganda. It sets out breaches of the OECD Guidelines for Multinational Enterprises (the OECD Guidelines) by Holcim in relation to operations of its controlled subsidiary Hima Cement. The Holcim Group, legally known as Holcim Limited respectively Holcim AG in Switzerland, is a Swiss multinational company that manufactures building materials.

The complaint is submitted by Twerwaneho Listeners' Club (TLC) – *(a Ugandan legally registered non for profit human rights organization)* and Clouds Fm *(a local human rights broadcaster) supporting communities that seek to address negative impacts associated with business and investments)* and representatives of impacted communities

The submitting parties are assisting the affected communities to submit this complaint to the Swiss National Contact Point (NCP) complaints handling process. Communities at Harugongo and Kicwamba sub-counties have been publicly opposed to operations of Holcim. For example, for more than 20 years, Holcim (**formerly LafargeHolcim**) and its suppliers benefitted from child labour among artisanal miners who supplied raw materials (specifically pozzolana, a volcanic rock) to the company in Uganda. Following a public scandal, including the publication of an article in the newspaper Le Monde in March 2016, LafargeHolcim stopped buying supplies from artisanal miners and resorted to suppliers capable of running mechanized quarries.¹

This mechanized mining is causing severe damage on the environment, affecting water tables and consequently affecting community farming yield which will cause severe hunger and famine to the affected communities. Furthermore, there are concerns over

¹ Child Labor in the supply chain of LafargeHolcim in Uganda: Unresolved issues: <https://media.business-humanrights.org/media/documents/files/documents/Report-on-child-labor-LafargeHolcim-Uganda.pdf>

manner in which minerals are declared and transparency over the amounts of minerals tonnage got from the communities.

For purposes of clarity at this point, it is important to note that Holcim's subsidiary Hima Cement factory operates her own pozzolana quarry separate from those of her suppliers. The Hima cement factory quarry at Magunga in Kicwamba Sub County initially operated by Royal Transit but currently run by Great Lake is mechanized just like all the other problematic quarries operated by the company suppliers situated at Harugongo Sub County.

Whereas the Hima cement factory mechanized quarry is separate from those of her suppliers, they all cause identical negative impacts on the environment and social wellbeing of the host communities.

For reasons stated in this complaint, the submitting parties are currently experiencing severe human rights, social, economic and environmental impacts.

Of particular concern to the submitting parties is the destruction of the environment through open excavation on big quarries which destabilizes water tables and destruction of cultivable land. When water tables are destabilized, natural water catchment areas that are vital and sole source of water for communities are destroyed depriving communities of water for domestic use and cultivable land. It is important to note that over 85% of the population in the mentioned communities predominantly depends on agriculture and farming for a livelihood.

The water tables/springs are not only crucial to the survival of the agrarian livelihoods of thousands of families across the two sub counties but also important to conserve the environment and climate

The *companies (M/S Gems International Ltd, Great Lakes (U) Ltd, Abas Balinda transporters Ltd, Royal Transit Ltd, M Capital (U) Ltd, Sea Horse (U) Ltd, Hill Max Uganda)* activities attracted extensive opposition from the host communities as a result of its non – compliance with human rights, national environmental policies, mining policies including rights enshrined in the International Covenant on Economic, Social and Cultural

Rights² (where both Uganda and Switzerland assented), United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas and lack of transparency and under declaration of supplies of raw materials which is likely to deprive communities of revenue inform of royalties among other taxes.

The companies (*M/S Gems International Ltd, Great Lakes (U) Ltd, Abas Balinda transporters Ltd, Royal Transit Ltd, M Capital (U) Ltd, Sea Horse (U) Ltd, Hill Max Uganda*) are legally registered private mining and transport companies in Uganda that were contracted by Hima Cement (Holcim's subsidiary) over the years to mine and supply pozzolana as a raw material to the Hima Cement Factory plant. The pozzolana supplied to the plant has exclusively been sourced from the communities of Harugongo and Kicwamba sub counties.

Local activists have held peaceful demonstration at various local government administration units, at the Hima cement factory plant (Holcim's subsidiary company factory plant), submitted complaints to the ministry of energy and mineral development, department of geology and surveys, held countless dialogue meetings with the company since 2016 but all yielding no positive outcome yet the situation continues to decline in the mining host communities.³

In 2018, a community member/land owner sued one of the local mining companies (Sea Horse International Ltd) that supplies Hima Cement with pozzolana mined from Harugongo. The lawsuit was about Sea Horse Ltd's failure to properly decommission and close the open quarry pits. The matter was decided in favor of the community member. While this update was shared with Hima Cement Factory (subsidiary of Holcim), the company did not act to ensure her supplier adheres to national guidelines and rule of law requirement. This conduct is in breach of the OECD guidelines. The quarry remains open and land not under any constrictive use. Details of this particular case are shared in the subsequent chapters. (*See attachments: Agreement for Pozzolana land rent between Mr. Mpakani Robert and Hima's supplier Sea Horse International limited dated 6th January 2016, Civil suit FPT-00-CV—CS-57 of 2018 plaint,*⁴ *Chief Magistrates court judgment FPT-00-CV—CS-57 of 2018 between Mr. Mpakani Robert and Hima*

²*International Covenant on Economic, Social and Cultural Rights*: 16 December 1966, United Nations. The Covenant was accented on 21st January 1987 by Uganda and 18th June 1992 by Switzerland

³ Kabarole residents want Pozzolana mining activities suspended: Sep 16, 2021: <https://www.newvision.co.ug/category/news/kabarole-residents-want-pozzolana-mining-acti-114909>

⁴ Civil suit FPT-00-CV—CS-57 of 2018 plaint

cement supplier Sea Horse International Limited) See more explanation in Annex 1" and attach an annex with all of the relevant documentation

Furthermore, it is disappointing that the supplier mentioned above deliberately boycotted court and never attended any court proceedings or filed a defense. The Magistrates court at Fort Portal issued summons FPT-0-CV-CS 0057 of 2018 seeking Sea Horse to file its defense dated on the 13th of March 2018. The defendant (Sea Horse) reviewed the summons but declined filing a defense⁵. **See attached copy of the summons to file defense, PFT - 0 – CV – CS – 0057 of 2018 summary of evidence⁶**

Hima Cement factory and its parent company, Holcim, have largely downplayed the adverse impact of the company's activities on the community, resisted any meaningful and active dialogue since 2016 with TLC, community members, government institutions like department of geology and surveys, National Environment and Management Authority (NEMA) and activists, and is proceeding with activities that continue to harm the host communities.

We submit that Holcim is in breach of chapter II, III, IV, V, VI and XI of the OECD guidelines as the majority owner with ultimate control over the activities of Hima cement. On the other hand, Holcim does not have direct control of the suppliers, a role exclusively played by Hima Cement. Holcim and its subsidiary, Hima Cement, have not taken adequate steps to ensure transparency surrounding the company mining activities at Harugongo and Kicwamba, nor have they undertaken satisfactory human rights due diligence and stakeholder engagement, including good faith meaningful consultations with local communities. In addition to human rights concerns, the company has failed to conduct and/or disclose a comprehensive environmental impact assessment of the company's activities, despite the numerous reports from TLC, communities' petitions, out cries and court judgment regarding irreparable environmental damage to the surrounding eco-system. In addition, Hima Cement has failed to conduct adequate human rights and environmental due diligence to ensure that its suppliers operate in accordance with the OECD Guidelines. This is in breach of Holcim's own responsible sourcing policies.

⁵ **Fort Portal Magistrates court summons to file defense - FPT-0-CV-CS 0057 of 2018-** dated 13th March 2018

⁶ PFT - 0 – CV – CS – 0057 of 2018 summary of evidence – in the court case against Hima Cement Factory supplier Sea Horse filed by Mr. Mpakani.

Holcim has stated her commitment to creating value for all its stakeholders. The principles of sustainable development – value creation, environmental performance, and respect for human and labour rights – are integral to its business strategy. That company approach to sustainable development includes how it works with its Suppliers.

As stated by Holcim, sustainable procurement at the company is based on the standards and principles enshrined in the UN Global Compact Ten Principles, the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. The company has further stated that it integrates sustainable development into its procurement strategy, its day-to-day operations and relationships with Suppliers.

All Holcim group companies have been required to identify, prevent and manage risks pertaining to Climate change, Health, Safety and Environment (HSE), Security and Resilience (S & R), Social responsibility, Human rights, Business ethics and Legal compliance in their supply chain.

Relevant Holcim policies and directives are available on the Holcim Website, under ESG resource page. All Holcim Suppliers are required to adhere to the standards described in this document and to apply the same principles in their supply chain.

2 Background:

The Hima Cement factory and associated mining operations are located in Kabarole District, Uganda.

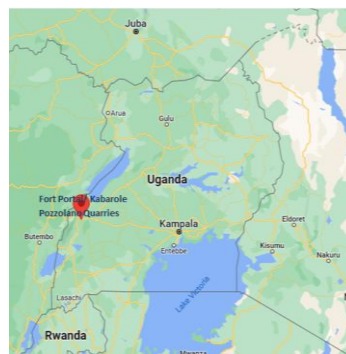
Hima Cement Factory, a subsidiary of Holcim, has for the last six (6) years or so been sourcing a mineral known as pozzolana from her leased quarries and other licensed and unlicensed mineral dealers/companies. These minerals have been mined in the sub counties of Harugongo and Kicwamba (villages of Kyakaigo, Geme, Kicwamba and Nyantaboma), located in Kabarole District.

Pozzolana is a fine variety of volcanic tuff or ash used in making cheaper cement and is found in the west, east and south western parts of Uganda. It can be used for making concrete structures or combined with other elements to fortify cement.

Between 2015 and 2022, TLC has registered complaints against Hima Cement ranging from child labor, tax avoidance, environmental degradation, and failure to comply with workers' legal obligations among others.⁷

The impacts detailed in this complaint were committed in Fort Portal and Kabarole quarries.

Below is the map of Uganda indicating communities harmed by Hima Cement Factory activities.



3 Identity and interest of the complainants:

TLC is a not for profit organization working with local communities to strengthen their capacities to monitor and engage the public /private investment projects in the extractive and non-extractive industries on issues of compliance to sector standards with an ultimate aim of ensuring communities advocate for meaningful participation and equitable benefits sharing in the natural resource governance and management processes.

Clouds Fm is a local grassroots human rights broadcaster that supports community human rights movements' voice out their human rights and environmental concerns.

Clouds fm has been working with the affected community members, broadcasted programs in support of community human rights agenda.

⁷ Harugongo Sub-county petition to the commissioner Geology and mines Kampala – Petition against the use of excavators in pozzolana mines at Harugongo dated 3rd August 2021 (Copy of the petition received by Hima Cement, Department of Geology – Ministry of energy, resources and mineral development, Resident District Commissioner – Kabarole District, Chairperson LC V, Kabarole District, LIII Harugongo, Twerwaneho Listeners' Club, District Police Commander – Kabarole District, Chief Executive officer Hima Cement factory)

Since 2020, Clouds fm has been working in close partnership affected communities by documenting abuses and violations committed in the communities affected. On this complaint, Clouds fm represents a broader audience of community members who subscribe to the radio programs specifically addressing concerns from the mining communities.

TLC and Clouds fm are in receipt of complaints from communities of Harugongo and Kicwamba (whose land has been degraded, water table levels dropped, lost employment, environment and noise pollution, destruction of public infrastructure, unrestored quarry pits among other forms of harm caused by the operations of Hima cement factory and her suppliers) against Hima Cement factory (Holcim's Subsidiary) and suppliers whose operations are responsible for the damage mentioned above.

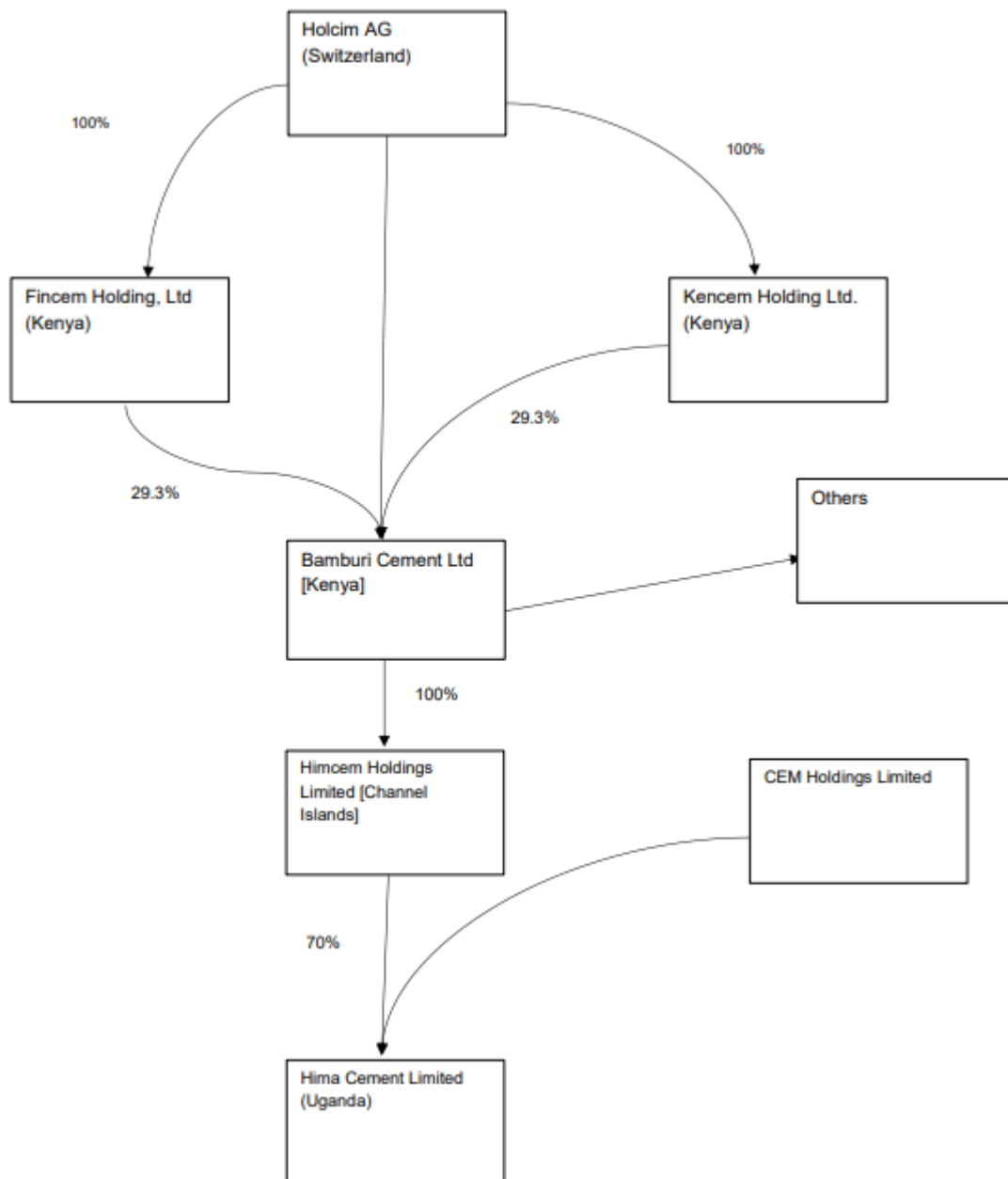
This complaint is brought to your attention having reviewed all the necessary requirements to file a complaint to this mechanism.

4 Identity of the respondent and relationship to the project:

On December 14, 1994, Uganda Cement Industries was privatized by the Ugandan government and divided into two companies; Tororo Cement and Hima Cement Limited. The new owners of Hima incorporated a company, Hima Cement (1994) Uganda Ltd, to take over the assets of the company.

In April 1999, Bamburi Cement Limited, a subsidiary of Lafarge together with Lafarge itself acquired 100 percent shares from the previous owners. In July 1999, the name of the company was changed from Hima (1994) Uganda Ltd to Hima Cement Ltd. Hima Cement Ltd. is a subsidiary of Bamburi Cement Ltd. which is a member of the Holcim Group.

Hima Cement Corporate structure (relationship between Hima Cement Factory and Holcim)



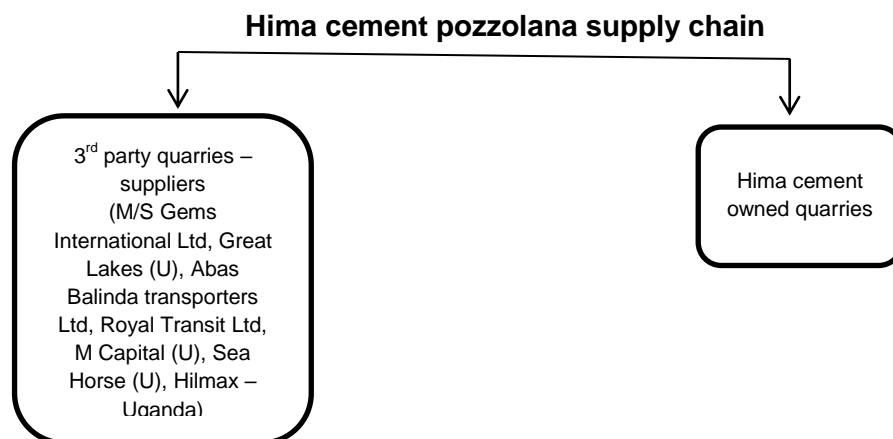
Holcim AG is a Swiss-based global building materials and aggregates flagship division of the Holcim Group. The original company was merged on 10 July 2015 with Lafarge to form LafargeHolcim as the new company and renamed to Holcim Group in 2021. When the merger was completed, the Holcim brand was retained within the group.

Holcim holds interests in more than 70 countries worldwide and employs close to 71,000 people.⁸

Holcim’s activities in Uganda relate to operations Hima Cement Ltd. The activities include excavation of pozzolana ash rock, mining of limestone and cement production, among other products

In addition to extracting its own pozzolana and limestone, Hima Cement Ltd also purchases these raw materials from privately-owned suppliers. Since 2015, Hima Cement Ltd has been issuing Local Purchase Orders to unlicensed Uganda owned companies, including **M/s Gems International Ltd, Great Lakes (U) Ltd, Abas Balinda Transporters Ltd, Royal Transit Ltd, M Capital U Ltd, Sea Horse U Ltd, Hill Max U Ltd and Rwenzori Afro Ltd among others**, for the supply of pozzolanic materials from Harugongo and Kicwamba Sub Counties, Kabarole District. This is in disregard of the Constitution of the Republic of Uganda as amended, the Mining Act, 2003 Uganda and other laws and regulations made thereunder. This is also in breach of the OECD guidelines for Multinational Enterprises.

Hima Cement factory Pozzolana supply chain over the year (2016-2022)



⁸ Holcim Directory: <https://www.holcim.com/directory>

Both Hima Cement owned quarries and its suppliers owned quarries use heavy equipment and machinery to conduct their illegal operations which make a lot of noise, destroy and deplete the environment. While they are obliged to restore the degraded environment and regulate noise and air pollution, the company's supply chain is exempted from such largely due to government's reluctance to enforce set standards and the ability to remain discreet by operating through unlicensed suppliers.

5 Competence of Switzerland NCP to handle the complaint:

The procedural Guidelines of the Switzerland NCP state that, "if the country where the complaint is raised does not have an NCP, the issue should be raised with the country where the multinational company has its headquarters." The Swiss NCP is therefore responsible for cases in which the multinational company is accused of breaching OECD Guidelines.⁹

This complaint lies within the jurisdiction of the Switzerland NCP office based in this criterion. The harms associated with Holcim operations have arisen in Uganda, a non-adhering country to OECD, leaving the Swiss NCP as the only competent authority to facilitate an assessment of the Swiss parent company adherence to OECD Guidelines.¹⁰

6 Breaches of the OECD Guidelines on Multinational Enterprises by Holcim

6.1 Lack of disclosure and transparency (Chapter III)

Chapter III Disclosure (1): Enterprises should ensure that timely and accurate information disclosed of all material matters regarding their activities

⁹ Procedural Guidelines of the Switzerland National Contact Point for the OECD Guidelines for Multinational Enterprises at the Federal Department of Economic Affairs FDEA, State Secretariat for Economic Affairs SECO, Foreign Economic Affairs Directorate, International Investment and Multinational Enterprises Unit

¹⁰ Ibid

Chapter III Disclosure (2) (F-G): *Disclosure policies of enterprises should include, but not limited to material information, [inter alia,] foreseeable factor; [.....] issues regarding workers and other stakeholders.*

The above provisions and associated commentary in chapter III and VI make it clear that enterprises have a responsibility to report transparently about their operations, including associated impacts, as a means to improve general public understanding and confidence.¹¹

Chapter VI, Environment: Commentary 65, related to disclosure and transparency:

Information about the activities of enterprises and about their relationships with sub-contractors and their suppliers, and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as employees, customers, suppliers, contractors, local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest. Reporting and communication are particularly appropriate where scarce or at risk environmental assets are at stake either in a regional, national or international context; reporting standards such as the Global Reporting Initiative provide useful references.

The guidelines further emphasize the need for enterprises to take steps to ensure access to information by communities affected by their operations, with the aim of promoting a climate of long term trust and understanding,” on issues of mutual interest¹²

Holcim (Hima Cement) has failed to ensure adequate disclosure and transparency regarding its operations and those of her suppliers at Harugongo and Kicwamba sub counties in Kabarole District. The company has failed to disclose to the communities its project designs and the likely environment, human rights and economic risks that are associated with the project.

¹¹ Chapter III Disclosure, commentary para 28; Chapter VI Environment, commentary para 65

¹² Chapter VI Environment, commentary para 65

While the company has on several occasions stated that it does conduct regular social and environmental audit, none of the local NGOs, media nor local communities has ever seen any of that information further casting doubt if indeed the audits were made.

Despite continued community outcry regarding the negative impacts of the company activities and its damage on the environment, the company has not provided any meaningful platforms through which community concerns can be listened to nor provided any information in respect to community concerns.

For example, in 2016, TLC wrote a complaint addressed to Holcim's Subsidiary (Hima cement factory) CEO raising similar concerns from communities and seeking the company's action and any other information that would be useful for communities, no reply was provided.

On 15 December 2016, TLC sent another email¹³ with the research results and recommendations to both Hima Cement Limited and LafargeHolcim. **These documents are contained in Annex 1, submitted with this complaint.**

On 23 January 2017, Daniel Patterson, Country CEO of Hima Cement Limited, sent a letter¹⁴ to TLC in response to the report and recommendations sent to the company. In the letter, Hima Cement denied any wrongdoing and dismissed allegations of negative impacts as a result of its operations within its supply chain.

The CEO stated that "Following the allegations that came to the attention of Hima Cement management in March 2016, LafargeHolcim Group commissioned an investigation by an international independent qualified auditor. According to the CEO, the investigation found that although children work routinely alongside their parents in agriculture, **there was no material evidence that Hima Cement or its suppliers used, or were aware of the use of child labour within the supply chain.** The company further stated that its investigation attempted to establish if there was any other social or environmental harm as a result of its operation. The results of the investigation found no

¹³ Email correspondence from TLC and BFA to Hima Cement and LafargeHolcim, 15 December 2016. See Annex 1.

¹⁴ Correspondence (letter sent by email) from Hima Cement Limited to TLC and BFA, 23 January 2017. See Annex 1.

harm of any likely harm in future.” Again, this report was never made public nor accessible to community members, NGOs, local leaders or any other relevant stakeholder.

Around the same time, Hima Cement informed TLC for the first time that it had decided to completely phase out purchasing pozzolana from artisanal miners and to work only with quarries with machines.

While taking this position, neither local communities, leaders, NGOs were involved or consulted.

Most concerning to the communities, is the company failure to at least conduct an Environmental Impact Assessment to establish the likely harm caused by mechanized mining in the complaining communities.

To justify the lack of an Environmental Impact Assessment, the CEO further stated that the company implemented regular random visits to the quarries for inspection purposes. This was conducted by the Hima Cement team and includes night visits.” The CEO noted that the company recognized the impact mechanization of its operations might have on the community in Harugongo.

Neither community member nor their representatives were involved during these processes. Again, findings of these regular site inspections were not shared with anyone and remain solely in the control of Hima Cement Factory.

Finally during continuous engagements between TLC/BFA and Hima on matters of social and environmental harm, the CEO noted that “they had put in place an action plan to engage the communities in Harugongo.

It is now 7 years without any form of involvement of communities in the operations of the company and her suppliers. The action plan was never shared with communities and no one apart from Hima cement knows that plan.

TLC continued to seek for information regarding the various investigations made and nothing came to yield. Another meeting with the company was held on the request of TLC and community members

On 4 February 2017, TLC had a conference call with two Lafarge-Holcim managers. LafargeHolcim re-affirmed that its operations had no negative impact. When asked to provide more information on the “investigation by an international independent qualified auditor,” the company stated only that “investigations carried out intended to verify the authenticity of TLC’s interview with Le Monde and Radio France International which had been published in the Le Monde newspaper back in France¹⁵”. The company declined to provide a copy of the investigation report and even declined to name the auditor who conducted it.

On the 20th of October 2017, community members¹⁶ organized another meeting to be attended by Hima cement representatives to clarify on emerging concerns. Hima Cement Factory did not attend nor did it send any representative to the meeting further complicating involvement of community members.

Communities wanted to establish if Hima cement indeed conducts Human Rights Due diligence in the course of her operations. Furthermore, the meeting was intended to raise concerns related to reprisals against vocal community activists resisting company activities. For example, at the time of the meeting several community members were either on the run or in prison for their role played during the questioning of company operations.

Regardless the various forms of retaliation, communities continued to complain against open quarries, destroyed water tables because rocks are excavated on hills affecting water flows in the valleys and swamps, damaged public infrastructure among other concerns, failure to update communities on the amount of tonnage supplied from communities to the company. All the above questions remain unanswered.

¹⁵ Le Monde (website), «En Ouganda, LafargeHolcim accusé de produire du ciment avec du minerai extrait par des enfants» (In Uganda, LafargeHolcimis accused of producing cement with minerals mined by children), 22 March 2016, http://www.lemonde.fr/planete/article/2016/03/22/en-ouganda-lafargeholcim-accuse-de-faire-son-ciment-du-minerai-creuse-par-des-enfants_4887414_3244.html?xtmc=uganda_lafarge&xtcr=1

¹⁶ Meeting minutes of monitoring and documentation of Hima Cement factory suppliers’ compliance to human rights and environmental standards held at 3:00 pm, 20th October 2017, at Bishop Magambo Nursery and Primary School at Bwanika, Kicwamba Sub county

Lack of disclosure, transparency and stakeholder engagement forced communities to seeking alternative avenues through which to seek remedy.

In 2018, the Ministry of Energy acting on the community petition stopped use of earth movers in mining areas. This did not take long before the companies suppliers defied the order and continued supplies.¹⁷

Following sustained and coordinated community voice, the Ministry of Energy and Mineral Resources Development listened to communities concerns by suspending the use of excavator by Hima Cement major supplier - Royal Transit Company in the pozzolana mining in the sub counties of Harugongo and Kichwamba with immediate effect.¹⁸

This time round, over 500 pozzolana artisanal miners from the two sub counties petitioned the Department of Geology and mines over Royal Transit Company illegal operations and failure to involved host communities in their operations. Involvement in this situation implied communities participating in key processes where resources are being exploited, environmental and waste management planning meetings, and lack of a local grievance redress mechanism through which community concerns can be addressed.

According to Isa Lugayizi, a geologist from the Ministry of Energy and Mineral Development, Royal Transit Company (Hima Cement main supplier) has been illegally operating using excavators in the pozzolana mining sites in the two sub counties.

He stated that according to the law, any person or company intending to invest a capital of more than 10 Million Uganda shilling (2700 USA Dollars) in machinery does not qualify to operate in this mining sector (pozzolana mining sector).

It is against this backdrop that the department of Geology and mines took a decision to suspend the use of excavators.

¹⁷ New Vision News Paper: Kabarole residents want Pozzolana mining activities suspended

<https://www.newvision.co.ug/category/news/kabarole-residents-want-pozzolana-mining-acti-114909>

¹⁸ Energy ministry suspends use of excavators in pozzolana mining in Kabarole: Posted on 15 Nov 2018
<https://mknewslink.com/energy-ministry-suspends-use-of-excavators-in-pozzolana-mining-in-kabarole/>

According to Section 54 sub section (2) of the Mining Act 2003, location license means for prospecting and mining operations by the methods which do not involve substantial expenditures and use of specialized technology and for the purposes of this section, substantial expenditure in excess of five hundred currency points necessary to bring mine into production or such other amount as may be prescribed.

In the spirit of emphasis and commitment to continued mechanized mining at the disputed locations, Kezabu Caroline (Public relations specialist) from Hima cement disclosed that Hima Cement was not ready to allow manual labor because of the risks associated with artisanal mining and slow production of raw materials, a factor that the company will not accommodate in its supply chain. She noted that such delays paralyses the company' production targets.¹⁹ This is the second time the company commits to defying existing regulations on Pozzolana quarrying in the region.

The affected communities have countless times petitioned²⁰ the Kabarole District local government about the challenges they face. While no information has been provided to that effect, the local government body continues to support actions of the company with no emphasis on adherence to national mining guidelines, and legislations nor putting in place measure to safe guard communities and the environment from harm.

Local communities negatively impacted by operations of the company continue to resist the suppliers' irresponsible actions with minimal or limited information about the exact impact these operations will have on their communities in the medium and long term future.

¹⁹ Energy ministry suspends use of excavators in pozzolana mining in Kabarole: Posted on 15 Nov 2018 <https://mknewslink.com/energy-ministry-suspends-use-of-excavators-in-pozzolana-mining-in-kabarole/>

²⁰ Petition to duty bearers dated 6th June 2016, 6th October 2018, 28th July 2021, 3rd August 2021, 19th August 2021, 18th May 2022 among other petitioning dates

6.2 No public environmental impact assessment and risk management system (Chapter VI)

Chapter VI (1): *Enterprises should establish and maintain a system of environmental management appropriate to the enterprise.*

Chapter VI (3): *assess, and address in decision making, foreseeable environmental, health and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view of avoiding or, when unavoidable, mitigating them. Where these proposed activities may have significant environmental, health or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.*

Chapter VI: Environment: *Enterprises should [.....] take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.*

Chapter VI Commentary, 69: *the basic premise of the guidelines is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities*

Section 114 of the National Environment Act: *An environment impact assessment is a study conducted to determine the possible negative and positive impacts which a project may have on the environment and community*

Section 111 of the National Environment Act: *A developer is responsible for the quality of the environment on social impact assessment*

In view of the submitting parties, the company has failed to adequately assess the serious environmental risks posed by the operations pozzolana suppliers in the communities of Harugongo and Kicwamba.

The submitting parties are unaware of any Environmental and Social Impact Assessment (ESIA) conducted by Hima Cement to assess the risks posed by its own operations or

those of its mineral suppliers. If an ESIA has been conducted, the submitting parties would be grateful looking at the report.

If the assessment was indeed made, then the assessment and mitigation plans are clearly deficient, as evidenced by the impacts on the ground.

In response to the raised concerns dated 23 January 2017, Holcim (LafargeHolcim) through Daniel Petterson, Country CEO of Hima Cement Limited, categorically stated that the company operations had no adverse impact on the environment. He also stated that the company “commissioned an investigation by an international independent qualified auditor.” He stated that the investigation found no evidence of child labor in the company’s supply chain, and no material evidence to support community allegations that the suppliers’ operations also had negative impacts on the environment. However, this investigation report has not been disclosed to the communities or their civil society advocates.

On 8th February 2018, TLC wrote another letter to **Mr. Jimmy Onen environment officer** at Hima Cement Factory seeking the intervention of the company to compel its suppliers to restore open quarries excavated during the process of supplying the company with raw materials. One of the companies on spot at the time was Sea Horse.²¹ *(See copy of the letter attached and pre-excavation agreement committing to reconstruct the land to host mining activities).*

No response was received from the company. A community member directly impacted by the company operations was supported to file a civil suit in court against the company supplier. The case was determined in favor of the community member. Court judgment²² was shared with Hima Cement, Hima Cement factory public relations officer and legal officer. No response was given again.

The supplier in question vanished in thin air. Hima Cement factory continued hiring other companies to provide the same services with less attention on the damage caused on the environment.

Neither TLC nor communities have ever received any form of feedback.

²¹ **Letter dated 4th June 2018 address to Mr. Jimmy Onen, environment officer** at Hima Cement Factory and *pre-excavation agreement committing to reconstruct the land to host mining activities*

²² Chief Magistrates court judgment FPT-00-CV—CS-57 of 2018 between Mr. Mpakani Robert and Hima cement supplier Sea Horse International Limited

While the company is legally bound to honor/respect such court decisions, in this particular case a court decision was never honored. No further action was taken, the quarry remains open, the court order is not honored, the land in question not under any form of use, partly a contributing factor to drying wells, rivers and swamps.

Inappropriately decommissioned / left open quarries in the area are perceived to have negative impacts on the livelihood of people and the environment. Some of the most serious environmental problems are land degradation, vegetation loss. Whereas, negative socioeconomic impacts are; injuries, ill health, destabilization of water tables and crop effects.

6.2.1 Impacts of stone quarrying activities on the local geography

According to WHO (2009), the expected positive effects of stone quarrying are; improved house hold incomes, improved infrastructure and availability of cheap materials on one part, while the negative impacts on the other part included; Impact on the local landscape, archaeological destruction, disruption to local lifestyles, economic fragility, Transport; volume of traffic congestion at peak times, road damage by heavily loaded trucks and pollution.

Social costs associated with stone quarrying are huge hence becoming an impediment to the

lives of the local community close to the quarry sites. The communities around the quarry sites are forced to spend a lot of money to purchase portable drinking water and foot health. Lack of peace, comfort, and constant fear of falling stones are common because most quarries occur close to people's homes.

Safety is never assured. Rock blasting causes ground vibration affecting the comfort and stability of homes of people living close to the quarrying sites. Cracks on the floors and walls of homes and other infrastructural facilities often occur.

While visiting the impacted communities, both privately operated and owned quarries of Hima Cement suppliers and those owned by Hima Cement factory and run by private companies cause identical damage to the communities. The impacts such as vegetation destruction, river and stream sedimentation, soil erosion and poor sanitation and waste disposal are clearly evident.

The National Environment Management Authority - Uganda (NEMA) (2011) highlighted that some quarrying activities had left visibly irreversible damage in form of impacts on the local landscape, flora and fauna destruction, social and economic antagonism and many forms of pollution. For example, deep pits often left behind are filled with rainwater that remains stagnant and harbor breeding grounds for disease causing to both animals and humans²³.

According to studies, in broad terms there are three situations where quarries can be located: On flat ground, along or into the side of a valley, and on the side of a hill (Gunn and Bailey, 1993)²⁴.

Harugongo and Kicwamba sub counties form part of the remaining old Kabarole District Administration unit. Located on a Western arm of the East African Rift Valley plateau, Kabarole District is located at an elevation of 1,470 meters above sea level making it one of the two highest points.

The mentioned communities lie in between hills, valleys and fewer flat lands isolated from each other explaining why there is varied impact across the complaining communities.

In most situations, quarries excavated into flat ground have a relatively small impact on geomorphology, which is limited to the removal of sinkholes and cave passageways but for the case of Harugongo and Kicwamba sub counties, the situation is different as most quarrying on hills and less on flat terrains leaving visibly irreversible damage in form of deep uncovered pits.

Furthermore, according to Durvasula (2010)²⁵, whilst a quarry is in use the effects on the local environment are more than just the loss of wildlife habitats and the obvious visual impact. A working quarry needs methods of transportation and this means that large amounts of machinery and heavy traffic will be brought into the area, causing an increase in local noise, pollution and erosion. Mechanized quarries at Harugongo and Kicwamba

²³ NEMA (2011); State of the Environment Report .for Uganda, Kampala: Uganda.

²⁴ Gunn and Bailey (2003); Geomorphologic Impacts of stone quarrying.

²⁵ Durvasula, It (2010); Occupational health Information systems In developing countries - India: A case study presented at the IV Takemi Symposium.

are good examples to demonstrate the severe impact transportation and earth movers have on the environment during excavation activities.

Pozzolana quarries on hills generally have a large geomorphic impact where crushed Pozzolana quarrying removes an entire hill leaving devastating irreparable damage.

Unlike other stone quarries that come with different shapes, pozzolana quarries are most suitable for larger pieces of rocks. For example other stone quarries come in different shapes and sizes. Some, like the gravel pits making them relatively easy to reclaim. Here, many disused quarries, once they have been made safe, are used for leisure areas such as camp sites or motor vehicle racing tracks but the reclamation of others is more difficult.

Removal of vast quantities of rock can change the very shape of our environment, whole hillsides can be destroyed and layers of valuable soil removed (*Durvasula, 2010*²⁶).

6.2.2 Noise and dust pollution caused by stone quarries

The complaining communities are concerned by the ever increasing noise and dust pollution caused by activities of the suppliers of Hima Cement.

Noise from quarries remains one of the major challenges with severe consequences on the physical and mental wellbeing of human and animal life.

National Academy of Sciences (2011)²⁷, noted that one of the most frequent complaints the public makes to the crushed stone industry situated near population centers is about blasting noise. The primary source of noise from extraction of stones is from earth-moving equipment, processing equipment, and blasting.

The truck traffic that often accompanies pozzolana mining can be a significant noise source. The impacts of noise are highly dependent on the sound source, the topography, land use, ground cover of the surrounding site, and climatic conditions.

²⁶ *ibid*

²⁷ National Academy of Sciences (2011); Millennium: Causes, Complexities and Challenges. USA: Reconstruction and development/World Bank.

According to **Langer (2001)²⁸**, the beat, rhythm, pitch of noise, and distance from the noise source affect the impact of the noise on the receiver. Topographic barriers or vegetated areas can shield or absorb noise. An important factor in determining a person's tolerance to a new noise is the ambient (background) noise to which one has adjusted. In general, the more a new noise exceeds the existing background noise level, the less acceptable the new noise will be. In an urban or industrial environment, background noise may mask noise from a quarry operation, whereas the same level of noise in a rural area or quiet, residential neighborhood may be more noticeable to people. According to **National Academy of Sciences, 2011²⁹**, Noise can cause deafness, psychological disorientation, stress, restlessness and lack of concentration to humans and other animals as well

At Harugongo and Kicwamba, dust is also one of the most visible, invasive, and potentially irritating impacts associated with pozzolana quarrying,. Dust occurs as fugitive dust from excavation, from haul roads, and from blasting in the plant. In some situations, dust on quarry floors and nearby areas can clog pores in the ground, thus altering water recharge rates. In other situations it is transported and deposited into rivers and swamps consequently contaminate water sources, crop leaves and people's houses causing respiratory diseases and skin irritations.

While a carefully prepared and implemented, dust control plan can reduce the impacts from dust, Hima Cement and her suppliers from the two sub counties do not have such a mitigation plan in place for any near or long term use as a strategy of coping with dust related impact.

Most impacts can be controlled, mitigated, kept at tolerable levels and restricted to immediate vicinity of the aggregate operation by empowering responsible operational practices that use available engineering techniques. However, these mitigation measures are not currently being used by Hima and its suppliers.

²⁸ Langer (2001); The Impact of the noise on the receiver: New York Press Inc.

²⁹ National Academy of Sciences (2011); Millennium: Causes, Complexities and Challenges. USA: Reconstruction and development/World Bank.

6.2.3 Damage of the environment and eco-system:

Veni & Duchene (2004³⁰) discovered that many rocky hills have caves and develop one of the most peculiar terrestrial ecosystems. Many species of bats, including nectar-feeding bats and insectivorous bats, roost in the twilight zone or transition zone of caves. Insectivorous bats make up the largest known colonies of mammals in the world. Birds, other animals, and plants also inhabit these zones. The excavated hills are home to over 50 species of birds and bats. While some migrate to new places others cope with the ever changing the environment. To cope with the permanent darkness, extreme scarcity of food, and relatively constant climate of the underground voids in the deep and stagnant zones, animals have developed physiological, behavioral, and morphological adaptations.

6.2.4 Failure to conduct an Environmental and Social Impact Assessment

In line with the OECD Guidelines, Ugandan law requires companies and project developers to conduct environmental and social impact assessments. The purpose of environmental and social assessments is to evaluate environmental and social impacts, risks or other concerns of a given project or activity. The Ugandan government may also require a developer to undertake an environmental risk assessment as part of the process of environmental and social impact assessment.

“See section 114 of the National Environment Act - environment impact assessment is a study conducted to determine the possible negative and positive impacts which a project may have on the environment and community”.

It is the responsibility of a developer to ensure that a person or firm carrying out an environmental and social assessment for him or her complies with all applicable laws. The developer is responsible for the quality of the environment on social impact assessment as per section 111 of the National Environment Act.

³⁰ **Veni & Duchene (2004:** The impacts of stone quarrying to the local community and the surrounding environment. A case study of Nakisunga sub-county, mukono district:
<https://ir.kiu.ac.ug/bitstream/20.500.12306/7304/1/TAMALE%20STEPHEN.pdf>

The law also sets out projects whose environmental and social impact assessment is to be by way of project brief. Thus, a developer of a project set out in schedule 4 to the Act which also include extraction of non-mineral products that entails extraction of sand, marram, clay, Pozzolana and stone extraction quarrying must take an environmental and social impact assessment by way of project brief. The project is only approved where the authority in consultations with the lead agency is satisfied that project is likely not to have significant adverse impacts on human health or the environment or that the project brief contains sufficient mitigation measures to cope with the anticipated impacts. Hima Cement factory and her suppliers had to conduct an ESIA in order to get approval from the Ugandan government.

As mentioned above, the complainants are aware Hima Cement and its suppliers have never completed any ESIA in accordance with the law and OECD Guidelines. Given the extent of environmental impacts occurring on the ground, the complainants are concerned that any delay conducting ESIA will continue lead to irreparable environmental damage.

6.2.5 Failure to decommission used up quarrying plants

The developer (Hima cement and her suppliers) must take quarry decommissioning plans into consideration before and throughout the quarry operation time for the purposes of reducing or avoiding negative environment impact of the quarry operation. As a good practice, the Ugandan National Environmental Authority may be regularly informed by the operators of any project and submit to the authority a preliminary decommissioning plan as part of project brief or environmental impact and social impact statement.

The authority requires a developer or operator of a project (pozzolana quarrying) to undertake decommissioning in accordance with the approved decommissioning plan and international best practices, at his or her own cost, before final closure of the project or completion of activities. A person required to decommission must submit a detailed decommissioned plan to the authority at least 12 months or such shorter period as the authority may determine, before the intended project closure. The authority may also require the operator of a project or activity to deposit a financial security.

In the case of Pozzolana mining, Hima Cement factory ought to have demonstrated its commitment to environmental restoration by ensuring that an environmental restoration plan is a requirement for any company to be contracted to supply Pozzolana to the plant.

None of the suppliers or Hima Cement has put in place measures that ensure sustainable land use through decommissioning of used up quarry sites. This is in violation of the national mining laws in place to safeguard the environment from mining related damage. For example, over 95% of the used up quarries remain open, not decommissioned, and not restored. **See some of the attached photos.**

The uncovered quarries have had devastating implications on the environment including shortage of water in mining communities.

The open quarries have posed a great danger of accidents to community members and their animals like cows that may fall in the pits. The pits also remain a major breeding place for malaria spreading mosquitoes. This has severe consequences on the people who have foot regular hospital bills because of mosquito infections.

Furthermore, the open pits deprive land owners the opportunity to productively utilize their land for cultivation. This in part contributes to the food shortage for families.

As a legal requirement, any exploration or mining lease can be granted for areas that are likely to be damaged or adversely affected by operations under section 110 of the mining Act upon submission of a clear environmental restoration plan. The plan may include; an identification of the exploration or mining area concerned, its current uses and productivity prior to exploration or mining operations and, a detailed timetable for the accomplishment of each major step to be carried out under the restoration plan which may include; reinstatement, levelling, re-vegetation, re-forestation and contouring of the affected land, filling in, sealing or fencing off excavations, shafts and tunnels, or any other method appropriate.

The (*government agent – National Environmental Management Authority*) commissioner before accepting the plan takes into consideration a number of factors like the steps taken to comply with applicable environmental protection standards, existing land use policies and any applicable health and safety standards as seen above. Location license holders are required to carry out effective restoration, rehabilitation and reclamation of mined areas as per section 59 of the mining Act.

In some instances, the commissioner may require guarantees for compliance with the mining Act, hence the developer may be asked to deposit security for compliance (for instance under a decommissioning fund) for which failure may be constructed as a contravention of the Act.

Whereas the stated requirement demonstrates government's position on safeguarding the environment from destruction, Holcim and its suppliers continue to exploit natural resources in the above mentioned communities without fulfilling their ultimate obligations of environment reconstruction. Over 95% of the quarries where pozzolana was mined and supplied to Hima Cement remain uncovered leading to many questions including questions about quarry restoration plans.

6.2.6 Impact of pozzolana quarrying on access to water

Veni & Duchene (2004³¹) explains that quarrying may intersect active ground-water conduits, or cause their blockage, with adverse consequences for aquatic communities. Ground-water withdrawal and diversion of surface water may cause aboveground and underground hydrologic systems to dry up and water bodies which may be inhabited by some site-endemic species which will disappear with them, the species environment may lead to the extinction of the whole communities.

Also, lowering the water table increases the thickness of the unsaturated zone, which can change the pH of the water in the unsaturated zone, which will change the biotic environment in small voids in the rock, which subsequently kills species that live there. This has severe implication on land productivity in the mid and long term.

Because water tables have been destabilized, a lot of land remains unutilized, water sources are dwindling causing long spells of drought which is occasionally deteriorating into intermittent spells of famine in communities once regarded the food basket of Uganda. Because the livelihoods of these communities are predominantly agricultural based, the dwindling agricultural production levels have a significant impact of standards of living, access to education and basic needs at house hold level.

³¹ *Veni & Duchene (2004)*: The impacts of stone quarrying to the local community and the surrounding environment. A case study of Nakisunga sub-county, mukono district:
<https://ir.kiu.ac.ug/bitstream/20.500.12306/7304/1/TAMALE%20STEPHEN.pdf>

Indeed this is correct. Some of the environmental disturbance created by quarrying is caused directly by engineering activities during aggregate extraction and processing.

The most obvious engineering impact of quarrying is a change in geomorphology and conversion of land use, with the associated change in visual scene. This major impact could be accompanied by loss of habitat, noise, dust, vibrations, chemical spills, erosion, sedimentation, and dereliction of the mined site. Between 2020 and 2022, the department of Geology, under the Ministry of Energy and Mineral development in partnership with the National Environment Management Authority halted the activities of quarrying plants at Harugongo and Kicwamba over pollution, environmental damage and property destruction by the explosives used to break rocks into aggregates which was being done by Hima Cement Factory suppliers³².

In the court case brought against Sea Horse – one of the old suppliers of Hima (***Not a supplier any more following a civil suit against the company***), and reports to other public offices and for the benefit of this complaint, residents continue to complain that the blasts from the quarrying plants are as noisy as a bomb blast; create huge clouds of dust that cover all water sources, pastures and crack their houses due to the tremor they cause and also state that flu hit most of them as a result of dust coming from the stone quarry and that their water sources and streams had started drying up. They noted that the noise is traumatizing people with high blood pressure, cows no longer produce milk neither do the hens lay eggs, all in the name of the terrorizing noise, and that feeder roads and paths in their area had been covered by rock particles hampering free movement.

Routinely, communities at Harugongo sub country petition the local leadership seeking remedy. The communities' cultivable land is reducing due to large scale irreparable damage caused by mining activities³³. While land owners earn a living through leasing

³² **Energy Ministry Suspends Use of Excavators in Kabarole Pozzolana Mines**
<https://ugandaradionetwork.net/story/energy-ministry-suspends-use-of-excavators-in-kabarole-pozzolana-mines?districtId=0>

³³ Residents of Harugongo sub-county in Kabarole District want Pozzolana activities suspended following noise from excavators and destruction of their houses and the death of animals.
<https://www.newvision.co.ug/articledetails/114909>

out a portion of their farm lands, the neighboring and nearby communities pay the heavy price of the damaged environment including significant impact on farm yields, access to water among other basic things.

The communities are concerned that their sources of water had dried up because most quarrying activities destabilized water tables; some quarries destroyed swamps that are a major water catchment area. (*See photos of damaged environment attached*)

6.3 Holcim's relations with its pozzolana suppliers (General Policies II)

Like Hima cement factory owned quarries, quarries operated by the suppliers are also causing severe impacts on host communities of Harugongo and Kicwamba sub counties in Kabarole District.

Therefore, Hima Cement has failed to demonstrate that it integrates responsible sourcing practices in its supply chain. For example, the company suppliers continue to violate most of the guideline set forth in the OECD guidelines. Most of the above listed suppliers are either partially paying taxes or not, the companies have contributed to devastating negative impacts on the environment and community members' livelihood through irresponsible mining methods. The Pozzolana suppliers to Hima Cement Factory are squarely responsible for the damage on the environment and problems faced by communities; however, Hima Cement also has a responsibility under the OECD Guidelines to ensure it is not contributing to harmful impacts throughout its supply chain.

While the OECD guidelines and the company's code of business conduct for suppliers 2021 require companies to regularly conduct regular human rights due diligence as a means of detecting, preventing or mitigating risk/harm that may be a result of the company activities. For over 2 decades of mining in the mentioned communities, Hima cement cannot provide information of material to prove any human rights due diligence was conducted in communities where the company suppliers source raw materials. While the destruction of the environment continues, little attention is paid to the regulating the operations of suppliers.

General policy (12-A) of the OECD Guidelines: Enterprises should seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

General policy (13-A) of the OECD Guidelines: In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

Commentary on General Policies: 17 – for enterprises to avoid causing or contributing to adverse impacts on matters covered by the Guidelines through their own activities includes their activities in the supply chain. Relationships in the supply chain take a variety of forms including, for example, franchising, licensing or subcontracting. Entities in the supply chain are often multinational enterprises themselves and, by virtue of this fact, those operating in or from the countries adhering to the Declaration are covered by the Guidelines.

Commentary on General Policies: 18 - In the context of its supply chain, if the enterprise identifies a risk of causing an adverse impact, then it should take the necessary steps to cease or prevent that impact.

Commentary on General Policies: 19 - If the enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of the entity that causes the harm.

Commentary on General Policies: 20 - Meeting the expectation in paragraph A.12 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse impact to prevent or mitigate that impact.

Furthermore, Holcim has demonstrated it's committed to create value for all its stakeholders. According to the company, the principles of sustainable development –

value creation, environmental performance, and respect for human and labour rights – are integral to their business strategy. The reality on the ground however is completely different. The nice wording and publicly declared company commitments are the exact opposite of the local situation.

The company states that its approach to sustainable development includes how it works with its Suppliers.

According to Holcim, Sustainable procurement is based on the standards and principles enshrined in the UN Global Compact Ten Principles, the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

The company further states that it integrates sustainable development into its procurement strategy, during its day-to-day operations and relationships with Suppliers³⁴.

All Holcim group companies are required to identify, prevent and manage risks pertaining to Climate change, Health, Safety and Environment (HSE), Security and Resilience (S & R), Social responsibility, Human rights, Business ethics and Legal compliance in their supply chain.

According to the Code of business conduct for suppliers – 2021 - responsible sourcing in its supply chain, all suppliers are bonded by Contractual Terms & Conditions included in Contracts and Purchase Orders. Compliance to the requirements listed in the Code of business conduct for suppliers is bonded through the implementation of contractual terms & conditions aligned to sA8000 (standard of social Accountability).³⁵

The code of conduct compels suppliers to respect and comply with environmental regulatory requirements on all levels (local, national and international). In all their

³⁴ **Responsible sourcing in our supply chain: Code of business conduct for suppliers – 2021 -** https://www.holcim.com/sites/holcim/files/documents/2021_coc_a5_english-final.pdf pg.

³⁵ **Responsible sourcing in our supply chain: Code of business conduct for suppliers – 2021 -** https://www.holcim.com/sites/holcim/files/documents/2021_coc_a5_english-final.pdf pg. 06.

activities, they shall be covered by required environmental permits, licenses, land rights, and support a precautionary approach to environmental challenges.

The code of conduct also requires suppliers to systematically manage their environmental impacts with respect, but not limited to: climate and energy, water, waste, chemicals, air pollution and biodiversity and set objectives and targets to reduce such impacts. Suppliers identified as having a high environmental impact shall take action and demonstrate proof of continuous improvement towards having a recognized environmental Management system in place.

According to the company, the code of business conduct for suppliers is a strong statement of commitment for Holcim to regulate suppliers as a means of addressing climate change, drive a circular economy, push the boundaries of digitalization and improve living standards for all.³⁶

Unfortunately, while Holcim's suppliers continue to cause devastating damage on the communities and the environment with less concern on community out cries. The suppliers continue to open quarries on hills, fail to safely decommission and rehabilitate open quarries, enact poor working conditions of workers, cause environmental and social impacts such as noise and dust pollution to communities, and fail to adhere to environmental compliance regulations. The attached photos are a good example to demonstrate how the mentioned suppliers have no regard for the negative impacts on the environment and communities' livelihoods.

Suppliers of Hima Cement have systematically failed to manage their environmental impacts with respect to but not limited to, environment, climate, water, air pollution and bio-diversity and set objectives and targets to reduce such impacts. Suppliers identified as having high environmental impacts have failed to take action and demonstrate proof of continuous improvement towards having a recognized environmental management system. And Hima, for its part, has failed to use its leverage over its local suppliers to avoid contributing or being directly linked to adverse impacts, as is required under the OECD Guidelines.

³⁶ **Responsible sourcing in our supply chain: Code of business conduct for suppliers – 2021 -** https://www.holcim.com/sites/holcim/files/documents/2021_coc_a5_english-final.pdf

Hima has on several occasions publicly distanced itself from the negative impacts of its suppliers' activities. For example, at meeting held on 12th August 2022 at Gardens restaurant Fort Portal between representatives of Hima cement limited and community members of Harugongo and Kichwamba sub counties, Kabarole district, and in attendance of TLC noted the following:

One Lucky B Ivan from Harugongo sub country stated that during the previous meeting with Hima Cement, the company officials stated that Hima Cement does not have the resources or the mandate to monitor suppliers and enforce compliance to sector standards. He further stated that they were informed at the meeting that it was the suppliers' responsibility to conduct human rights due diligence. It is the suppliers' obligation and not the cement factory to ensure respect for human rights and environment.

Carol Kezaabu the public relations officer reaffirmed that position in her presentation to concerned artisanal miners. Carol Kezaabu however noted that the company is engaged in social corporate responsibility programs which could act as a form of reparation.

These statements from the company staffs demonstrate a true and honest position and understanding of the company staff regarding the OECD guidelines and other responsible business codes of conduct guideline.

Reasoning from this point of view, Hima Cement Ltd has failed to demonstrate her commitment to adhering to the stated guidelines within her supply chain, nor taken serious consideration for her actions including those of her suppliers and their impacts on human rights, environment, health and safety of the local people, and their livelihood sources.

The Code of Business conduct for suppliers 2021 (Responsible sourcing in our supply chain) states that just like Holcim and its subsidiaries, suppliers are also expected demonstrate commitment to high social, human rights, environmental, health, safety standards. However, this is clearly not being followed.

Holcim's (Hima Cement Factory) is failing to detect, prevent and mitigate negative impacts in its supply chain, leading to contravening OECD Guidelines for Multinational Enterprises.

Commentary on General Policies regarding parent companies relations with suppliers who may fail to be compliant:

Commentary on General Policies 21: *The Guidelines recognize that there are practical limitations on the ability of enterprises to effect change in the behavior of their suppliers. These are related to product characteristics, the number of suppliers, the structure and complexity of the supply chain, the market position of the enterprise vis-à-vis its suppliers or other entities in the supply chain. However, enterprises can also influence suppliers through contractual arrangements such as management contracts, pre-qualification requirements for potential suppliers, voting trusts, and license or franchise agreements. Other factors relevant to determining the appropriate response to the identified risks include the severity and probability of adverse impacts and how crucial that supplier is to the enterprise.*

Commentary on General Policies 22: *Appropriate responses with regard to the business relationship may include continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. The enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage.*

Hima Cement has acted in many ways that demonstrate a high degree of inconsistency and lack of commitment to respect and promote responsible business conduct.

In 2017, when TLC approached Hima cement parent company Holcim regarding child labor among other concerns in her supply chain, the company reacted positively by suspending all forms of supplies from artisanal miners rendering thousands unemployed for over 4 years. The logic to suspend supplies from the artisanal miners was to ensure

no further gaps exist to enable child labor in the supply chain. In real sense, this action was intended to address the risk of child labor.

The same however cannot be said of other complaints such environmental destruction, depletion of water sources, noise and air pollution.

In the case of child labor, Holcim acted with precision on a record time by taking all necessary measures to ensure child labor is eliminated from its supply chain. The same cannot be said of other concerns such as human rights environmental destruction among others because they appear not have high reputational risks and bearing on the company. The company has managed to enjoy the shield provided by suppliers who are motivated to make more profit at the expense of the environment, livelihood and fundamental rights of impacted community members.

The OECD guidelines encourage enterprises to take action in such circumstances and action may include continuation of the relationship with a supplier throughout the course of risk mitigation efforts; temporary suspension of the relationship while pursuing ongoing risk mitigation; or, as a last resort, disengagement with the supplier either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. The enterprise should also take into account potential social and economic adverse impacts related to the decision to disengage.

Instead, this role has been stayed for those feeling the impact of the damage. From time to time, it is the voice and cries of local communities that draw the attention of courts of law and the Department of Geology and mines. As noted above, the department of Geology and mines has on several occasions enforced adherence by closing some mines that later maneuver their way back to operations shortly.

While the stated negative impacts of the suppliers activities continue to cause devastating damage on communities, there is increasing concern about Holcim's silence and lack of commitment to ensure its suppliers adhere to the OECD guidelines and all the other guidelines the promote responsible business conduct.

6.4 Absence of meaningful engagement and consultations (Chapter IV)

Chapter IV Human Rights (1-2): Enterprises should [...] respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

The core human rights requirements of the OECD Guidelines are reflected in Chapter IV, which calls upon businesses to avoid infringing on the rights of others. This provision of the guidelines reflects international standards governing the human rights responsibilities of business entities as established in the UN Guiding principles on Business and Human Rights. Within this framework, the business responsibility to respect is akin to the minimum social expectation that businesses “do no harm” throughout their operations.³⁷

Regarding the expectations, commentary on chapter IV of the Guiding principles clarifies that: addressing actual and potential human rights impacts consists of taking adequate measures for the identification, prevention, where possible, and mitigation of potential human rights impacts [...] Where an enterprise causes or may cause adverse human rights impact, it should take necessary steps to cease or prevent the impacts.³⁸

With over 25 year of operations amidst overwhelming evidence related to the negative impacts of the company suppliers activities, Hima Cement Ltd has neither conducted consultations with the impacted communities nor engaged them in any meaningful participation in processes that are intended to prevent or mitigate against the negative impacts such as environmental and air pollution, depriving communities of cultivable land for agriculture due to destabilized land terrains and water table, child labor among other human rights related abuses.

³⁷ Nadia Bernaz, *Business and Human Rights: History, law and policy – Bridging the Accountability Gap* (Routledge 2016).

³⁸ OECD Guidelines Chapter IV, Commentary 41-42

6.5 Failure to conduct independent and transparent human rights due diligence (Chapter II and IV)

According to LafargeHolcim, the company has developed a group-wide human rights management system in line with the UN Guiding Principles on Business and Human Rights (UNGPs) that includes comprehensive issue monitoring.³⁹

The company declares the following: “The business risk level of each country we operate in is assessed using global indices related to human rights and we use this to determine the type of assessment to implement for each country, namely an Impact assessment or Self-assessment. Impact Assessments are conducted in Group companies that operate in high-risk business environments or in medium-risk countries where human rights-related claims occurred in the past. The assessment identifies local impacts, risks and opportunities through consultations with internal and external stakeholders [...]”⁴⁰

It notes further: “Based on the results of the assessments, action plans addressing priority areas are developed to ensure that all identified business-related human rights risks are properly mitigated. Results of human rights assessments are reviewed by the country executive management and corresponding actions and responsibilities are defined [...] Progress is monitored and reported at local and corporate levels. Impact or Self-Assessments are programmed to be repeated after 3 years.”⁴¹

Whereas, LafargeHolcim has adopted a Code of Business Conduct for Suppliers⁴² that states: “Suppliers shall not employ children at an age where education is still compulsory. Children under the age of 18 or below the legal minimum age shall not be employed”, the company is on record denying and distancing itself from child labor amidst overwhelming evidence in a report shared with the company.⁴³

³⁹ LafargeHolcim, “UN Global Compact - Communication on Progress (COP) 2016,” January 2017, http://www.lafargeholcim.com/sites/lafargeholcim.com/files/atoms/files/lafargeholcim_communication_of_progress_270117.pdf

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² LafargeHolcim website, “Code of Business Conduct for Suppliers,” p. 6, http://www.lafargeholcim.com/sites/lafargeholcim.com/files/atoms/files/lh_supplier_code_of_conduct.pdf

⁴³ Child Labor in the supply chain of LafargeHolcim in Uganda: Unresolved issues: <https://media.business-humanrights.org/media/documents/files/documents/Report-on-child-labor-LafargeHolcim-Uganda.pdf>

Neither the company nor the suppliers in its supply chain provided remediation for the children whose future was wasted during child labor related activities, nor conducted human rights due diligence to determine the extent of the damage.

No wonder the impact associated to company activities is downplayed to the extent that Hima cement factory continues sourcing materials from the affected communities as if situation was normal and acceptable and complaint with company policies, national laws and OECD guidelines.

Chapter II General Policy (A) (10) of the OECD Guidelines: Enterprises should carry out risk-based due diligence by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse [...], and account for how these impacts are addressed.

Chapter IV Human Rights (5): Enterprises should carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

Chapter IV Human Rights (6): encourages enterprises to provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

Commentary on General policies (14):

For the purposes of the Guidelines, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. Due diligence can be included within broader enterprise risk management systems, provided that it goes beyond simply identifying and managing material risks to the enterprise itself, to include the risks of adverse impacts related to matters covered by the Guidelines. Potential impacts are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation.

Guidelines concern those adverse impacts that are either caused or contributed to by the enterprise, or are directly linked to their operations, products or services by a business

relationship, as described in paragraphs A.11 and A.12. Due diligence can help enterprises avoid the risk of such adverse impacts. For the purposes of this recommendation, ‘contributing to’ an adverse impact should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivizes another entity to cause an adverse impact and does not include minor or trivial contributions. The term ‘business relationship’ includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services. The recommendation in paragraph A.10 applies to those matters covered by the Guidelines that are related to adverse impacts.

Commentary on General policies (15):

The nature and extent of due diligence, such as the specific steps to be taken, appropriate to a particular situation will be affected by factors such as the size of the enterprise, context of its operations, the specific recommendations in the Guidelines, and the severity of its adverse impacts. Specific recommendations for human rights due diligence are provided in Chapter IV.

Most concerning for the affected communities is the company’s inability to conduct periodic human rights due diligence to establish if their operations or those of her suppliers are having any negative impact. The continued destruction of the environment, pollution, declining water tables, workers health and safety among others are an indication that this company does not conduct periodic human rights due diligence.

On 23 January 2017, Daniel Petterson, Country CEO of Hima Cement Limited, sent a letter to TLC to the child report and recommendations sent to the company.⁴⁴

He stated that “Following the child labour allegations that came to the attention of Hima Cement management in March 2016, LafargeHolcim Group commissioned an investigation by an international independent qualified auditor. Finding of the auditor

⁴⁴ **Child Labour in the Supply Chain of LafargeHolcim in Uganda: Unresolved Issues:** <https://media.business-humanrights.org/media/documents/files/documents/Report-on-child-labor-LafargeHolcim-Uganda.pdf>

report have never been made public nor shared with TLC, local community members nor their leadership at all level.

It is a bit confusing yet raising many questions to justify the intentions of keeping such an informative report away from the public (affected communities, CSOs, local government authorities).

Amidst growing concerns over the visible negative impacts of the mining operations in the two sub counties, in 2016 Hima cement ltd scaled-up its operations increasing the number of supplies to the cement factory in the absence of a human rights due diligence, or any form of social economic impact assessment.

6.6 Failure to comply with local, national and international taxation policies and OECD guidelines (Chapter XI)

Chapter XI on taxation

- 1. States that It is important that enterprises contribute to the public finances of host countries by making timely payment of their tax liabilities. In particular, enterprises should comply with both the letter and spirit of the tax laws and regulations of the countries in which they operate. Complying with the spirit of the law means discerning and following the intention of the legislature. It does not require an enterprise to make payment in excess the amount legally required pursuant to such an interpretation. Tax compliance includes such measures as providing to the relevant authorities timely information that is relevant or required by law for purposes of the correct determination of taxes to be assessed in connection with their operations and conforming transfer pricing practices to the arm's length principle.*
- 2. Enterprises should treat tax governance and tax compliance as important elements of their oversight and broader risk management systems. In particular, corporate boards should adopt tax risk management strategies to ensure that the financial, regulatory and reputational risks associated with taxation are fully identified and evaluated in a way that gives a tax result for the enterprise which is not contrary to the intentions of the legislature.*

Commentary on Taxation:

Commentary Taxation 100: *Corporate citizenship in the area of taxation implies that enterprises should comply with both the letter and the spirit of the tax laws and regulations in all countries in which they operate, co-operate with authorities and make information that is relevant or required by law available to them. An enterprise complies with the spirit of the tax laws and regulations if it takes reasonable steps to determine the intention of the legislature and interprets those tax rules consistent with that intention in light of the statutory language and relevant, contemporaneous legislative history. Transactions should not be structured in a way that will have tax results that are inconsistent with the underlying economic consequences of the transaction unless there exists specific legislation designed to give that result. In this case, the enterprise should reasonably believe that the transaction is structured in the intentions of the legislature.*

Commentary Taxation 101, *compliance also entails co-operation with tax authorities and provision of the information they require to ensure an effective and equitable application of the tax laws. Such co-operation should include responding in a timely and complete manner to requests for information made by a competent authority pursuant to the provisions of a tax treaty or exchange of information agreement.*

However, this commitment to provide information is not without limitation. In particular, the

Guidelines make a link between the information that should be provided and its relevance to the enforcement of applicable tax laws. This recognizes the need to balance the burden on business in complying with applicable tax laws and the need for tax authorities to have the complete, timely and accurate information to enable them to enforce their tax laws.

Commentary Taxation 102: *Enterprises' commitments to co-operation, transparency and tax compliance should be reflected in risk management systems, structures and policies. In the case of enterprises having a corporate legal form, corporate boards are in a position to oversee tax risk in a number of ways. For example, corporate boards should proactively develop appropriate tax policy principles, as well as establish internal tax control systems so that the actions of management are consistent with the views of the*

board with regard to tax risk. The board should be informed about all potentially material tax risks and responsibility should be assigned for performing internal tax control functions and reporting to the board.

A comprehensive risk management strategy that includes tax will allow the enterprise to not only act as a good corporate citizen but also to effectively manage tax risk, which can serve to avoid major financial, regulatory and reputation risk for an enterprise.

Commentary Taxation 103: *A member of a multinational enterprise group in one country may have extensive economic relationships with members of the same multinational enterprise group in other countries. Such relationships may affect the tax liability of each of the parties. Accordingly, tax authorities may need information from outside their jurisdiction in order to be able to evaluate those relationships and determine the tax liability of the member of the MNE group in their jurisdiction. Again, the information to be provided is limited to that which is relevant to or required by law for the proposed evaluation of those economic relationships for the purpose of determining the correct tax liability of the member of the MNE group. MNEs should co-operate in providing that information.*

7 Retaliations and reprisals against HRDs and other community members

Worse more, the company and its suppliers have been found responsible acts of retaliation targeting community members who speak out against the company operations or those linked to the company supply chain.

As mining companies are causing negative impacts yet communities' don't have adequate information on the risks of the mining operations and how these risks/impacts are being adequately managed.

Communities insisted and wanted to establish if Hima cement indeed conducts Human Rights Due diligence in the course of her operations. This persistence led to retaliation as the suppliers like Royal Transit got extremely irritated by continued community outcries.

At this point, community –Hima relations were characterized by reprisals against community members and HRDs.

For example between 2017 and 2019, TLC registered 21 incidents involving 21 community members and HRDs.

In October 2016, Hima Cement factory and her suppliers caused the arrest of 7 HRDs from Harugongo Sub County. The 7 HRDs were Musiime Arafat, Ahebwa Majidu, Kato Joseph, Sunday Abubakar, Atuhaire Daniel, Malik Friday Kasaija, Sam John Tinkasimire. All the 7 were arrested from their communities with the support of police commanded by the then District Police Commander Godfrey Kahebwa, arraigned in court and charged of unlawful assembly. They were remanded to Katojo Government prison. The 7 were charged under case file numbers **FPT-00-CR-CO-801/2016** and file number **CRB-1237/2016**.

They were later released and charged dropped for wanting evidence.

The mentioned Police commander has a bad human rights record in the police force and is known for his lack of respect for dissenting views. The same police officer is still under investigation by the Uganda Human Rights Commission for attacking human rights defenders.

The company's position on community demonstrations further undermined any form of stakeholder engagement and dialogue. Shortly after the arrests and imprisonment of the 7 HRDs, another 14 were pushed out of their communities for fear of retaliation. The 14 included, Kadoma Eria, Mwebembezi Patrick, Bonabana Sarah, Nyakahuma Robert, Murungi Tomas, Magezi Bashir, Amanyire Godwin, Otieno John, Happy Arajab, Friday Sharif, Muhumuza Eunice, Akugizibwe and Sunday Julius. Some of the above individual activists and their families left the community for fear of retaliation.

These kinds of acts further fragmented community solidarity structure rendering communities powerless to fight back against harmful mining activities.

8 Community concerns:

8.1.1 Tax avoidance:

In order to access cheaper tax free raw materials, Hima Cement Ltd has continually engaged in unlawful trade despite the fact that this lawlessness has been brought to its officials' attention by different stakeholders. Hima's continued purchase of unlawful minerals is a perpetration of this illegality and deprives communities of important revenue

that would facilitate better health services, education, and enough clean water among other services.

It is disappointing to note that Hima cement factory is complicit in this state of lawlessness.

In a Petition to the Commissioner Geological Surveys and Mines signed by members of the community; a copy of which was received by Hima Cement Ltd on 13th August, 2021, the community brought to Hima's attention the illegalities and human rights abuses and how the company's supply chain was deeply depleting the environment by polluting the air, destabilizing water table sources, destroying wetlands and vegetation cover without any restoration plan as provided for under the National Environment Act of 2019 and the Mining Act 2003-Laws of Uganda.

The Petition enjoined Holcim to immediately stop purchasing minerals unlawfully thereby encouraging and perpetrating the illegality⁴⁵. ***[Attached is a copy of the said petition]***

In another separate petition seeking remedy, communities consulted a law firm to formally bring their concerns to the company. As a result, a legal firm in Kampala M/s Lawgic Advocates petitioned Hima Cement Ltd over the same in a petition dated 14th January, 2021 and received by Hima Cement Ltd on 20th January 2021.

The petition detailed the companies which Hima Cement was dealing with and the fact that they did not have the appropriate mining rights. The Petition further cited the provisions of the law that criminalize, on the part of Hima Cement Ltd, purchase of mineral from unlicensed dealers.

This effort was futile as Hima Cement Ltd in reply to the petition, denied knowing or dealing with the above-mentioned companies.

Unsatisfied with company's response, communities are taking it upon themselves to bring to light the dealings between Hima Cement Ltd and unlicensed suppliers to the National Contact Point of Switzerland where Holcim is registered.

⁴⁵ Petition to duty bearers dated 6th June 2016, 6th October 2018, 28th July 2021, 3rd August 2021, 19th August 2021, 18th May 2022 among other petitioning dates

Indeed, most of the illegal mining companies mentioned above are known to Hima Cement Ltd and Holcim as they have done business with Hima Cement Ltd supplying Pozzolanic materials, caoline, clay, stones, murrum and gypsum as stated by Hima Cement Ltd in its periodic Value Added Tax Returns for the period from 2018 to 2021.

Take for instance in the month of July 2020, Holcim listed Abas Balinda Transporters Ltd as its supplier of Pozzolana and charged Valued Added Tax vide Invoice No. 3842 dated 18th July 2020.

Still in the month of July 2020, Lafarge listed **Gems International Ltd** as one of its suppliers of Pozzolano and raised a tax invoice number INV/GEMS/017 on 2nd July 2020.

This information was obtained by a cursory glance at the tax returns filed by Hima Cement Ltd and there are still several returns that list most if not all the above-mentioned companies therefore one wonders why Hima Cement continue such dealings in the presence of over whelming evidence that the mentioned companies are not licensed suppliers.

In addition to the foregoing, **M/S Gems International** is on the record referencing its contractual obligations with Hima Cement in which they are required to supply a minimum of 35 trips of pozzolano a day. *[Attached is copy of Gems letter].*

In the absence of a highly skilled enforcement personnel and lack of investment in technology, tax collections are very poor in this sector, yet the damage is grave.

Data analytics is increasingly difficult component of tax enforcement due to a high degree of secrecy on the part of suppliers. Government entirely relies on information provided by Hima Cement. Yet local communities' approaches/proposals of ensuring transparent declaration of minerals source from communities continue being deliberately undermined.

8.1.2 Defaulting road toll fees:

In 2016, the host sub counties of Harugongo and Kicwamba passed by laws to ensure roads damaged during Pozzolana mining activities and supplies to Hima are maintained

through payment of road toll fees. Each truck driver was supposed to pay a certain amount of money to that effect.

The suppliers defied this by law and have not been paying.

For example, in 2017, Mr. Charles Businge, the Local Council III chairperson of Kichwamba Sub County publicly complained to Hima that for more than five years, truck drivers had failed to remit money to the Sub County. Businge stated that it was agreed that the truck drivers pay money to the Sub County depending on the tonnage of Pozzolana carried by the truck to Hima Cement Factory⁴⁶ⁱ.

8.1.3 Lost royalties:

While royalties could have bridged the revenue collection gap, the two sub counties rarely receive them. Because of the existing gaps, collection of royalties has also become a major obstacle because none of the listed suppliers declares to the local authorities or tax collectors the amount of tonnage prior to delivery to Hima Cement rendering mineral declaration at the mercy of Hima Cement. No one can independently verify the exact amount of supplied minerals to Hima Cement apart from information provided by Hima Cement.

According to the Mining Act, royalties shall be shared by Government, Local Governments and lawful occupiers of the land on which the mining is taking place. The act states that government is entitled to 80 percent of the royalties, the Local Government is entitled to 17 percent and the owner of the land gets 3% of the royalties.

None of the communities represented here are able to satisfactorily describe how the royalties' amounts were derived at because at the time of tonnage declaration no local leaders or authority, no tax assessor or any community member was present.

Uganda is the 90th jurisdiction of OECD whose multilateral instrument against offshore tax evasion and avoidance led to the adoption of a convention on mutual administrative assistance in tax matters.

⁴⁶ Letter dated 2017, Mr. Charles Businge, the Local Council III chairperson of Kichwamba Sub County publicly complained to Hima

Switzerland being a signatory to this convention and a jurisdiction under OECD is under obligation to cooperate for a better operation of the national tax laws, which respects the fundamental rights of tax payers and provides all possible forms of administrative cooperation between states in the assessment and collection of taxes. This ranges from exchange of information including automatic exchanges to the recovery of foreign tax claims.

Through unlicensed companies Hima has evaded paying taxes for over 6 years from the time TLC begun documenting practices associated with tax avoidance. Below are the unlicensed companies within Hima Cement Factory Pozzolano supply chain that have facilitated illicit discreet transactions:

1. M/S Gems International Ltd.
2. Great Lakes (U) Ltd.
3. Abas Balinda transporters Ltd.
4. Royal Transit Ltd.
5. M Capital (U) Ltd
6. Sea Horse (U) Ltd
7. Hill Max Uganda

The above companies do not have mineral mining rights. This implies they have not been paying taxes as required under the mining act of 2003 hence tax evasion. It is Hima Cement Factory's sole obligation to contract companies that are dully registered and comply to national laws.

The operations of unlicensed companies have deprived communities' access to basic services like clean water, health, education and other benefits from local resources through stolen minerals and avoidance of taxes.

9 Summary of alleged illegalities and human rights abuses caused by Hima Cement Ltd a subsidiary of Lafarge-Holcim in Uganda.

- Hima Cement factory is sourcing supplies from companies unlawfully mining and extracting pozzolana without mining rights in Harugongo and Kicwamba Sub Counties, Kabarole District and Bunyaruguru Sub County, Rubirizi District.
- Purchasing pozzolana from unlicensed miners and suppliers contrary to the provisions of the Mining Act of 2003 [as amended]. Hima Cement Ltd is involved in acts that amount to tax avoidance by using unlicensed miners and suppliers in its supply chain. These companies tax returns cannot be ascertained under the provisions of the Uganda Revenue Authority Act of 1991 [as amended]. This has deprived the land owners who have the surface rights, the central government and the local governments from earning royalties as provided under the Mining Act of 2003 [as amended].
- Hima cement Ltd quarries use heavy duty machinery such as earth movers or excavators in its unlawful mining activities in areas where the company does not have mining leases as provided under the law disguising in the back of suppliers. This puts artisanal miners in a disadvantaged position that the law intended to prohibit under the mining Act 2003 laws of Uganda.
- Unlawful mining activities has endangered the community members lives by causing damage to their houses, animals and plants, air, land and noise pollution forcing them to flee their homes during times of blasting rocks. Hima cement Ltd and other companies in the supply chain of pozollano are depleting the environment by polluting the air, destabilizing water sources, destroying wetlands and vegetation cover involved without any restoration plan as provided for under the National Environment Act of 2019 and the Mining Act Of 2003-Laws of Uganda. To be specific, in Harugongo and Kicwamba Sub Counties, Kabarole District, the company Hima Cement itself and other unlicensed miners in its supply chain have failed to restore environment in decommissioned quarries.

- Non-compliance with National Social Security Fund (NSSF) provisions as provided under the NSSF Act 1985 [as amended]. Hima cement Ltd knowingly purchases pozollano from supplier and miners who are not remitting the 15% monthly contributions to NSSF in Uganda.
- Hima cement Ltd has always avoided involvement of community members where it is mining and extracting minerals as raw materials for cement manufacturing in Rwenzori region. There is no trace of any form of consultations by either Hima Cement ltd or its suppliers.
- Non-compliance with safety precautions at the mines and quarries with glaring evidence in the mines and quarries of the company and its contractors and sub-contractors. This includes but not limited to absence of protective gears in the quarries in Kicwamba and Harugoongo Sub Counties, Kabarole District, reckless driving by the pozollano transporters, failure to implement and place precaution marks and prints in the mines and quarries, failure to implement grievance mechanisms in the mines, quarries and transport chain supply.
- Failure to provide marks and signs in the local languages in the mines and quarries where the company has operations.

Hima Cement and each of its suppliers should establish grievance mechanisms at all levels of their operations to enable community members easily access remedy. This will also enable the involved companies to easily detect any likely harm as a result of their activities.

- Non-involvement of the project affected persons in design and implementation of the grievance mechanisms and sector safety compliance in mines and quarries.

9.1 Summary of Evidence;

- a. Unrestored mines and quarries by Hima Cement Ltd and Great Lakes in Kicwamba Sub County under the license of Hima Cement Ltd.
- b. Unrestored mines and quarries operated by Royal Transit in Harugongo Sub County- without a mining lease as of then.
- c. Unrestored mines and quarries excavated by Great Lakes (U) Ltd in Kicwamba Sub County, Kabarole District.
- d. Unrestored quarry at Harugongo by GEMS International Ltd in Harugongo Sub County-without any mineral right as of then and later on under a Location Permit but using machinery and capital above 10 million Uganda shillings contrary to the Mining Act, 2003- Laws of Uganda.
- e. Unrestored quarry at Geme operated Royal Transit in Kicwamba Sub County, Kabarole District-without a mineral right as of then (land owned by Luca)
- f. Unrestored quarry at Harugongo operated by Sea Horse Uganda Ltd-without any mineral right.
- g. Unrestored quarry operated by Hill Max at Harugongo in Harugongo Sub County, Kabarole District- without any mineral right. Land owned by church of Uganda.
- h. Unrestored quarry at Kyakaigo operated by Abas Balinda Transporters Ltd-without any mineral right. Land owned by Rwahoima family.
- i. Various unrestored quarries operated by Rwenzori Afro Ltd-without a license.
- j. Interference with wetland undercover of papyrus plant and permanent water at Bwanika Zone, Kicwamba Sub County by Hima Cement Ltd and Great Lakes (U) Ltd.

- k. Destroyed gentle hills of Kyakaigo and Kyaninga by Abas Balinda Transporters Ltd without any mineral right and Environmental and Social Impact Assessments.
- l. Noise pollution during night time caused by hammers operated by GEMS International Ltd at Kyakaigo and Kyaninga zones in Harugongo Sub County, Kabarole District.
- m. Uncontrolled speed of trucks operated by **M/s Gems International Ltd, Great Lakes (U) Ltd, Abas Balinda Transporters Ltd, Royal Transit Ltd, M Capital U Ltd, Sea Horse U Ltd and Hill Max U Ltd** both were and are suppliers of pozzolanic materials from Harugongo and Kicwamba Sub Counties to Hima Cement Ltd plant site.
- n. Unprotected quarry workers including machine operators, guards, casual laborers and lorry drivers working in Hima quarry site at Bwanika, Kicwamba Sub County.
- o. Unprotected workers in all the above quarries operated by **M/s Gems International Ltd, Great Lakes (U) Ltd, Abas Balinda Transporters Ltd, Royal Transit Ltd, M Capital U Ltd, Sea Horse U Ltd and Hill Max U Ltd and Rwenzori Afro Ltd.**
- p. The month of July 2020, Lafarge listed ABAS MBALINDA TRANSPORTERS LTD as its supplier of pozzolana and charged Valued Added Tax vide Invoice No. 3842 dated 18th July 2020.
- q. Still in the month of July 2020, Lafarge listed GEMS INTERNATIONAL LTD as one of its suppliers of Pozzolano and raised a tax invoice number INV/GEMS/017 on 2nd July 2020.

In the circumstances, we believe the above concerns can be mitigated through the following actions:

- Immediately suspend purchase of mineral supplies from unlicensed suppliers and miners which amounts to stealing of minerals in the Mining Act of 2003-Laws of Uganda.

- Ensure transparent declaration of minerals got from the communities for correct tax assessment and payment
- Restore the environment in decommissioned mines and quarries.
- Compensate the damages caused by Hima Cement Ltd and its suppliers in the supply chain of raw materials to the communities where the minerals are being mined/quarried.
- Comply with industrial safety standards both at the plant, mines and quarries and transportation.
- Comply with the provisions of National Social Security Fund Act-Laws of Uganda regarding remittance of the 15% compulsory savings of all employees in the supply chain of raw materials to Hima Cement Ltd.
- Engage the communities in its areas of operations in formulation of Environmental and Social Impact Assessments for every project in the project affected communities
- Disclose all relevant project-related documentation, including any Environmental and Social Impact Assessments (ESIAs) that have been conducted, as well as the two documents referenced in the letter from Hima cement CEO to TLC and that mentioned in the response to Report on Child Labour in the Supply Chain of Lafarge Holcim in Uganda Received on May 1st, 2017. See letter as annexed.
- Hima Cement and her suppliers should establish grievance mechanisms in line with the OECD Guidelines

9.2 Summary of law applicable in Uganda

- a. The Constitution of Uganda of 1995 [as amended]
- b. The Mining Act of 2003 [as amended] and the regulations made thereunder.
- c. The Water Act Cap 152- Laws of Uganda.
- d. The Uganda Revenue Authority Act of 1991 [as amended] and the regulations made thereunder.
- e. The National Environment Act of 2019 and the regulations made thereunder.

- f. The NSSF Act 1985 [as amended] and the regulations made thereunder.
- g. The National Safety and Health Act, 2006 [as amended] and the regulations made thereunder.

9.3 Summary of law applicable in Switzerland

- a. Environmental Protection Act
- b. Carbon dioxide Act
- c. Forest Inspectorate Act
- d. Hydraulic Engineering Inspectorate Act
- e. Water Protection Act
- f. Nature and Cultural Heritage Act

9.4 Summary of witnesses in Uganda

- 1. Atwiine Godwin
- 2. Mpakani
- 3. Luca
- 4. Magezi Jack
- 5. Bernard Kabiito Mujaju
- 6. Mwesige Christopher
- 7. Nyemera Sam
- 8. Adam Saudi
- 9. Muhammad Coole
- 10. Sunday Julius
- 11. Akugizibwe Stephen
- 12. Kaboyo Ibrahim
- 13. Aliganyira Simon
- 14. Mwebembezi Patrick
- 15. Kyaligonza
- 16. Byaruhanga Jack
- 17. Mani Mary
- 18. Musiime Arafaut
- 19. Kadoma Eria

9.5 Summary of human rights violated by Hima Cement Ltd in Uganda

- a. Right to a clean and healthy environment.
- b. Economic rights.

10 Expectations of the Submitting Party regarding the Swiss NCP Proceedings

The submitting party requests the Swiss NCP to offer its good offices for mediation between Holcim Holding and Hima Cement Ltd and the submitting parties. The purpose of the mediation would be:

- 1) To be able to engage directly with Holcim managers in a decision-making position
- 2) To get Holcim to respect the OECD Guidelines and the due diligence towards its subsidiary Hima Cement Ltd
- 2) To facilitate communication between the parties in order to negotiate meaningful solutions for the problems raised in this submission.
- 3) To undertake a mediation process between Hima Cement Ltd in Uganda and the local population
- 4) We request NCP – Switzerland to encourage Holcim to disclose this audit report, any environmental and social impact assessments they've conducted, and the "action plan to engage the communities in Harugongo.

ⁱ **Pozzolana Mining Destroys Kabarole Roads**
<https://ugandaradionetwork.com/story/pozzolana-mining-leaves-roads-in-a-poor-state>