Date: April 13, 2021

Mr. Vladimir Potanin
President and Chairman of the Management Board
of PJSC “MMC “Norilsk Nickel”

Cc: Board of Directors
of PJSC “MMC “Norilsk Nickel”

Re: Nornickel’s responsibility to respect human rights in accordance with the *UN Guiding Principles on Business and Human Rights*

Dear Mr. Potanin,

We are writing to you as the President of PJSC “MMC “Norilsk Nickel” (“**Nornickel**” or the “**Company**”) who is entrusted with the responsibility for the Company’s human rights compliance as indicated in the Company’s Human Rights Policy.[[1]](#footnote-1)

We are reaching out to leading Russian mining companies with inquiries regarding the implementation of their commitment to respect human rights in accordance with the *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*[[2]](#footnote-2) (the “**UN Guiding Principles**”).

Nornickel has committed to comply with the UN Guiding Principles pursuant to the Company’s Human Rights Policy. However, frequent allegations of adverse human rights impacts, including severe ones, from activities of Nornickel and Nornickel Group[[3]](#footnote-3) give rise to serious concerns about the potential lack of implementation by the Company of its commitment to respect human rights. In fact, Corporate Human Rights Benchmark’s assessment of Nornickel based on the UN Guiding Principles indicators gained the total score of 7.0 out of 26 including 4.5 out of 8.0 for Governance and policy commitments; 0 out of 12.0 for Embedding respect and human rights due diligence and 2.5 out of 6.0 for Remedies and grievance mechanisms.[[4]](#footnote-4) The information available on the Company’s website appears to be insufficient to conclude that the Company has established policies and processes necessary to meet its responsibility to respect human rights in accordance with the UN Guiding Principles.

The purpose of this letter is to give the Company an opportunity to provide feedback and information that would demonstrate that Nornickel respects human rights in accordance with the UN Guiding Principles in practice.

1. About the Business & Human Rights Resource Center

Business & Human Rights Resource Center[[5]](#footnote-5) is an independent non-profit organization that tracks the human rights impacts of over 10,000 companies (including Nornickel[[6]](#footnote-6)) in more than 180 countries. With an audience of more than 3 million users per year, our digital platform links to reports about positive initiatives by companies as well as reports about concerns that have been raised by civil society. For further details, please see the [“About us” section](https://www.business-humanrights.org/en/about-us/) of our website.

1. Invitation to respond

We would like to give Nornickel the opportunity to respond before we draw international attention to the issues set out in this letter in our Weekly Update to be released on **Wednesday, May 5, 2021**.

Our free Weekly Update is sent via email to over 20,000 opinion leaders worldwide, including people in the media, business, investment firms, the United Nations and other international organizations, governments and NGOs.

For us to add your full response, please send us your response by **12pm CET, Monday, May 3, 2021**. The response should be in the form of a PFD or Word document or an email and must clearly indicate the **date.** If the Company does not provide a response by the deadline indicated above, this will be indicated in the Weekly Update. The Company’s response or non-response will be permanently registered in all relevant sections of our website.

Past companies’ responses in our Weekly Updates can be accessed [here](https://www.business-humanrights.org/en/from-us/company-response-mechanism/). Over 73% of the companies invited to respond have done so. We indicate at the top of each company section on our website the rate of the company’s response to human rights concerns. Your company’s response or non-response to this invitation will be included in calculating this rate at the top of your company’s section on our site.

We would like to note that it is essential that the Company provides actual details and information, as far as appropriate, in response to this request as opposed to general statements of compliance with and implementation of relevant standards.

1. Issues related to the implementation of Nornickel’s responsibility to respect human rights

Respecting human rights in accordance with the UN Guiding Principles is not a passive responsibility and it is not enough for a business enterprise to declare that it respects human rights. For Nornickel’s claim that it respects human rights to be legitimate, the Company is required to act and to be able to “know and show” that it is indeed respecting human rights in practice.[[7]](#footnote-7)

Numerous reports of severe adverse human rights impacts including environmental harm caused by the activities of Nornickel and Nornickel Group[[8]](#footnote-8) evidence the potential failure or lack of implementation on the part of Nornickel to meet its responsibility to respect human rights as established by the UN Guiding Principles.

We set out below specific issues and questions based on the requirements of the UN Guiding Principles and suggest that Nornickel provide feedback and clarifications in that respect.

It is necessary to emphasize that given the systematic and grave nature of human rights impacts from the activities of Nornickel and Nornickel Group, these impacts may qualify as gross human rights abuses.[[9]](#footnote-9)

1. *Whether Nornickel meets its responsibility to seek to prevent or mitigate adverse human rights impacts within Nornickel Group*

UN Guiding Principles require that business enterprises seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.[[10]](#footnote-10) Business relationship are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.[[11]](#footnote-11) Based on the business relationship principle, Nornickel is expected to seek to prevent or mitigate adverse human rights impacts caused or contributed to by the entities in the Nornickel Group. Nornickel should use its leverage as a parent company to encourage its subsidiaries to prevent or mitigate recurrence of relevant impacts.[[12]](#footnote-12)

In this respect, we would welcome Nornickel’s detailed response clarifying the following:

* Has Nornickel established any policies and processes that enable the Company to seek prevention and mitigation of adverse human rights impacts caused or contributed to by Nornickel Group companies?

In particular, it would be crucial to receive Nornickel’s feedback and clarifications in the context of the diesel fuel spill happened in May 2020 at a power plant operated by Norilsk-Taymyr Energy Company (NTEC); wasterwater dumping into nearby tundra by Talnakh enrichment plant in June 2020; and the most recent partial collapse of a processing plant in Norilsk in February 2021. These disasters involve salient human rights[[13]](#footnote-13) in terms of Nornickel’s sector and operational context and apprehensible human rights risks that could have been most likely identified and mitigated had the proper policies and processes been in place.

1. *Whether Nornickel meets its responsibility to embed respect for human rights throughout Nornickel Group*

In addition to the responsibility to seek to prevent or mitigate adverse human rights impacts within Nornickel Group, the Company is responsible for embedding respect for human rights by all entities within the group. This is based on the principle that the responsibility of business enterprises to respect human rights applies regardless of their structure.[[14]](#footnote-14) The corporate group structure does not make any difference as to whether entities within the group have to respect human rights.[[15]](#footnote-15) Therefore Nornickel is expected to ensure that all entities within Nornickel Group meet their responsibility to respect human rights. This means that all those entities should have policies and processes in place implementing the three elements of the responsibility to respect human rights: a policy commitment, a due diligence process and processes to enable the remediation of any adverse human rights impacts that they cause or to which they contribute.[[16]](#footnote-16)

Therefore, we would welcome Nornickel’s response clarifying the following:

1. How the Company goes about ensuring that companies within Nornickel Group respect human rights in practice?
2. Do all Nornickel’s subsidiaries have policies and processes required under principle 15 of the UN Guiding Principles in place? Which of the subsidiaries do not have relevant policies and processes? When does Nornickel expect to have those subsidiaries establish the required policies and processes?
3. In particular, in the context of the fuel spill, the wastewater dumping, and the partial collapse of a processing plant referred to in subsection (i) above, were the required policies and processes in place at the time of the occurrence of the relevant incidents?
4. *Whether Nornickel has operational policies and processes in place necessary to embed its commitment to meet the responsibility to respect human rights*

Nornickel’s Human Rights Policy indicates a general commitment to meet its responsibility to respect human rights. This commitment needs to be translated into operational terms through relevant operational policies and procedures that should ensure embedding the respect for human rights throughout all aspects of Nornickel’s activities in practice.[[17]](#footnote-17) Since internal operational policies and procedures are not typically publicly available, we would welcome the Company’s response as to whether the Company has implemented such policies and procedures.

1. *Whether Nornickel has human rights due diligence process in place as required by the UN Guiding Principles*

Human rights due diligence is an essential part of the responsibility to respect human rights under the UN Guiding Principles.[[18]](#footnote-18) If done properly, it should enable the Company to eradicate or minimize human rights risks that are typical given the nature and context of Nornickel’s and Nornickel Group’s operations.

UN Guiding Principles require Nornickel to carry out a human rights due diligence with respect to actual and potential human rights impacts that the Company may cause or contribute to through its own activities or which may be directly linked to the Company’s operations, products or services through its business relationship.[[19]](#footnote-19) The “directly linked” principle means that Nornickel is expected to be able to identify, prevent, mitigate and account for human right risks stemming from the activities of entities within the Nornickel Group.

Importantly, human rights due diligence should be an ongoing process and involve meaningful consultations with potentially affected groups and other relevant stakeholders.[[20]](#footnote-20)

In this respect, we would appreciate the Company’s clarification and feedback as to the following:

1. Has the Company had a human rights due diligence process in place that covered assessing the human rights risks corresponding to the actual human rights impacts caused by the fuel spill, the wastewater dumping, and the partial collapse of a processing plant referred to in subsection (i) above?
2. Has the Company defined in any of its operational policies and procedures what are the most salient human rights for Nornickel and Nornickel Group given the sector and operational context of the whole enterprise?
3. Has the “meaningful consultation with potentially affected groups and other relevant stakeholders” been part of the human rights due diligence process at Nornickel and Nornickel Group? If so, please provide information on the outcome(s) of relevant consultation(s).

We would like to note that we are familiar with the information available on Nornickel’s website with respect to various social infrastructure and human capital investments and other social initiatives undertaken by Nornickel, including those that involve indigenous communities. The focus of this question is the potential lack of the Company’s engagement with relevant stakeholders, including indigenous peoples, for the purpose of identifying, assessing, mitigating and accounting for the actual and potential adverse human rights impacts. As one example, this lack of engagement with stakeholders is demonstrated by a campaign on behalf of indigenous peoples involving Tesla and BASF and directed at drawing attention to Nornickel’s failure to address persistent and severe human rights impacts that these communities have been enduring.[[21]](#footnote-21)

1. *Whether Nornickel is undertaking remediation of the adverse human rights impacts that have taken place*

We are familiar with the information available on Nornickel’s website announcing a launch of industrial safety improvements, enhanced monitoring of industrial structures and putting in place rigorous environmental restoration programs in connection with the fuel spill happened in May 2020.[[22]](#footnote-22) We note that this information is presented in the form of general statements without any details regarding specific timeline, actions and the expected outcomes. In addition, it does not indicate if any of the proposed measures have been developed with the engagement of affected indigenous communities and other affected stakeholders. In this respect, we note that the Aborigen-Forum Letter sent out to Elon Musk[[23]](#footnote-23) on behalf of indigenous peoples sets out a number of remediation requests including a compensation of indigenous communities for damages to their traditional way of life, recultivation of contaminated land and revision of the Company’s policies related to the engagement with indigenous peoples.

We would welcome the Company’s response regarding the following:

1. Has the Company engaged with the Aborigen-Forum and the relevant indigenous peoples on the adverse human rights impacts and remediation issues raised in the Aborigen-Forum Letter? If so, please provide specific information on how the Company is addressing the relevant issues.
2. Has the Company received any other communication from the affected stakeholders with respect to any allegations of adverse human rights impacts caused by the fuel spill, the wastewater dumping, and the partial collapse of a processing plant referred to in subsection (i) above, and if so, has the Company engaged with the relevant stakeholders?
3. Would the Company provide details of the environmental restoration programs announced on the Company’s website?

Please do not hesitate to get in touch if you require any further information – we can be reached as per the contact details below.

Yours sincerely,

Ella Skybenko (Eastern Europe/Central Asia Senior Researcher & Representative based in Kyiv) & Mauricio Lazala (Deputy Director & Head of Europe Office)

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Business & Human Rights Resource Centre
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1. Pursuant to the Company’s Human Rights Policy approved by the resolution of the Board of Directors of PJSC “MMC “Norilsk Nickel” No. GMK/31-pr-sd of September 18, 2017, accessed on February 12, 2021 at: <https://www.nornickel.ru/upload/iblock/ff2/Human_Rights_Policy_rus_271117.pdf>. [↑](#footnote-ref-1)
2. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework,* United Nations Human Rights Office of the High Commissioner(2011), available at: <https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf>. [↑](#footnote-ref-2)
3. As presented on page 12 of Nornickel’s Sustainability Report 2019 available at: <https://www.nornickel.ru/upload/iblock/eb9/NN2019_Digital.pdf>. [↑](#footnote-ref-3)
4. According to the information available at: <https://www.worldbenchmarkingalliance.org/publication/chrb/companies/norilsk-nickel/> and <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/Nornickel-CHRB-scorecard-2020.pdf>. [↑](#footnote-ref-4)
5. <https://www.business-humanrights.org/en/>. [↑](#footnote-ref-5)
6. <https://www.business-humanrights.org/en/companies/norilsk-nickel/?companies=3917336>. [↑](#footnote-ref-6)
7. Commentary to principle 15 of the UN Guiding Principles. Also, see UN Office of the High Commissioner of Human Rights, Interpretive Guide to the Corporate Responsibility to Respect Human Rights, 2012 (“**Interpretive Guide**”), available at: [www.ohchr.org/Documents/Publications/HR.PUB.12.2\_En.pdf](http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf), Q18. [↑](#footnote-ref-7)
8. Relevant public sources are summarized in the footnotes of the Open response letter to BASF dated March 2, 2021 from representatives of indigenous peoples, environmental and human rights organizations available at: <https://www.kritischeaktionaere.de/en/basf-se/basf-must-take-action-to-address-nornickels-violations-open-response-letter-to-basf/>. [↑](#footnote-ref-8)
9. See the definition of the “gross human rights abuses” in the Interpretive Guide. [↑](#footnote-ref-9)
10. Principle 13 of the UN Guiding Principles. [↑](#footnote-ref-10)
11. Commentary to principle 13 of the UN Guiding Principles. [↑](#footnote-ref-11)
12. For more information, see Q11 of the Interpretive Guide. [↑](#footnote-ref-12)
13. Human rights that are at greatest risk from particular business operations. See key concepts and Q23 in the Interpretive Guide. [↑](#footnote-ref-13)
14. Principle 14 of the UN Guiding Principles. [↑](#footnote-ref-14)
15. See Q 17 in the Interpretive Guide for more guidance on how an enterprise’s corporate structure is relevant to its responsibility to respect human rights. [↑](#footnote-ref-15)
16. Principle 15 of the UN Guiding Principles. [↑](#footnote-ref-16)
17. Principle 16 (e) and commentary to principle 16 of the UN Guiding Principles and Q25 of the Interpretive Guide. [↑](#footnote-ref-17)
18. Q26 of the Interpretive Guide. [↑](#footnote-ref-18)
19. Principle 17 of the UN Guiding Principles. [↑](#footnote-ref-19)
20. Principles 17 and 18 of the UN Guiding Principle. [↑](#footnote-ref-20)
21. #  According to an appeal of Aborigen-Forum network to Elon Musk, the head of the Tesla company, posted on August 6, 2020 and available at: <https://indigenous-russia.com/archives/5785>; and Letters to BASF dated November 11, 2020 and March 2, 2021 from environmental and human rights organizations available at: <https://www.kritischeaktionaere.de/en/basf-se/basf-must-take-action-to-address-nornickels-violations-open-response-letter-to-basf/>.

 [↑](#footnote-ref-21)
22. <https://www.nornickel.com/sustainability/cleanup/>. [↑](#footnote-ref-22)
23. *Supra* note 22. [↑](#footnote-ref-23)