

Working Group on the issue of human rights and transnational corporations and other business enterprises
OHCHR-UNG
Office of the High Commissioner for Human Rights
Palais Wilson
1211 Geneva 10, Switzerland
Fax: +41 22 917 90 06

December 8, 2016

Dear Members of the Working Group on the issue of human rights and transnational corporations and other business enterprises,

RE: Allegation Letter - regarding failure by Barrick Gold Corp. to provide equitable remedy for 119 victims of sexual violence by mine security at the Porgera Joint Venture gold mine in Papua New Guinea

This allegation letter is provided for your consideration by 119 female victims of sexual violence and excess use of force by mine security at the Porgera Joint Venture gold mine in Papua New Guinea. We are supported in this application by MiningWatch Canada.

We are women who participated in a project-level remedy mechanism implemented by Barrick Gold between 2012 and 2014. We 119 female victims of sexual violence have previously requested the assistance of the Working Group, and provided the Working Group with information on our case, through a letter that was hand delivered to Mr. Surya Deva by Catherine Coumans of MiningWatch Canada at the UN Forum on Business and Human Rights in Geneva on November 15, 2016. We have also mailed a copy of that hand-delivered letter to Mr. Deva. And we again attach a copy of that letter here.

As was the case with our first letter to the Working Group, the contents of this letter has been reviewed and discussed and agreed upon by the women who have signed below.¹ We are aware that if the Working Group or other UN special procedures take up our case, a letter concerning the alleged facts with the names of the alleged victims will be sent to the authorities and to the company in question.

There have been detailed reports dating back to 2005 regarding the harm caused to local men and women by years of excess use of force by mine security and by police guarding the Porgera Joint Venture through an MOU between the mine's owners and the State of Papua New Guinea. We refer you to reports by, among others, Akali Tange Association, MiningWatch Canada, the human rights clinics at New York University and Harvard University and a National Contact Point complaint under the OECD Guidelines of Multinational Enterprises.² In

¹ Not all of us can sign our name so some of us have made a cross to indicate that we agree with the contents of this letter. If you prefer a finger print please let us know and we will supply a finger print for each of us women who have signed this letter.

² Akali Tange Association. 2005. *The Shooting Fields of Porgera Jpin Venture: Now a Case to Compensate and Justice to Prevail. A Compensation Specific Submission to the Porgera Joint Venture on behalf of Placer Dome Canada Inc, Durban Roodepoot Deep of South Africa and Mineral Resources Enga Ltd. and the Independent State of Papua New Guinea: On the Unlawful Killings of Village Alluvial Gold Miners at the PJV Mine Site—Special Mining Lease (SML) and Lease for Mining Purpose (LMP) Areas.* Unpublished. http://miningwatch.ca/sites/default/files/ATA_Case_Documentation.pdf; MiningWatch Canada. 2008. Barrick Gold's Porgera mine in Papua New Guinea linked to grave human rights abuses, environmental impacts. Press release. May 12. Includes background document. <http://miningwatch.ca/news/2008/5/12/barrick-gold-s-porgera-mine-papua-new-guinea-linked-grave-human-rights-abuses>; Harvard Law School International Human Rights Clinic and New York University School of Law Center for Human Rights and Global Justice. 2009. *Legal Brief: Before The Standing Committee on the Foreign Affairs and International Development*

2007 the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions received an urgent appeal to look into the violence at the mine.³

In 2006, the Government of Papua New Guinea created an investigative committee to "inquire and report to the Government on the incidence and causes of injuries and deaths at the Porgera mine site." The results of this investigation were never made public.⁴

In 2012, after years of denial regarding the excess use of force by mine security, Barrick Gold implemented a narrowly scoped remedy mechanism, only for victims of sexual violence and only for those victims of sexual violence by mine security, not for victims of sexual violence by police guarding the mine under an MOU with the state, or for sexual violence by other contractors working for the mine.

Concerns regarding the Framework design for the remedy mechanism were raised early on, and throughout the implementation of the mechanism. These concerns included the requirement that we sign legal waivers in return for the remedy Barrick offered us and the lack of consultation with us, the victims, about the remedy Barrick would give us.⁵ After the remedy mechanism closed in 2014, 11 women who had independent legal advice from EarthRights International got an out of court settlement that many here in Porgera know was worth 4 times what Barrick ultimately gave us.

The ways in which the remedy mechanism failed to provide us with a fair process and fair remedy have been well documented now.⁶

(FAAE), House of Commons, Regarding Bill C-300, 16 November. <http://miningwatch.ca/sites/default/files/harvard-testimony-re-porgera.pdf> ; OECD Complaint. 2011. Request for Review Submitted to the Canadian National Contact Point of the OECD Guidelines for Multinational Enterprises by Porgera Landowners Association, Akali Tange Association, MiningWatch Canada. (March 2) http://www.miningwatch.ca/sites/www.miningwatch.ca/files/oecd_request_for_review_on_barrick_in_porgera.pdf.

³ MiningWatch Canada. 2007 Urgent Appeal to United Nations Special Rapporteur Regarding Human Rights Abuses at Porgera Mine. http://miningwatch.ca/sites/default/files/Letter_Special_Rapporteur_PNG_2007.pdf. Additional information on new cases was provided to the Special Rapporteur by e-mail in 2008.

⁴ See <http://miningwatch.ca/news/2006/7/10/papua-new-guinea-conducts-flawed-investigation-killings-barrick-mine>

⁵ MiningWatch Canada, Rights and Accountability in Development and EarthRights International. 2013a. "Rape Victims Must Sign Away Rights to Get Remedy from Barrick", Media Release, 30 January 2013, - <http://www.miningwatch.ca/news/rapevictims-must-sign-away-rights-get-remedy-barrick> with attached background brief - Concerns regarding the Remediation Framework for Women Victims of Sexual Violence by Porgera Joint Venture Security Guards. http://www.miningwatch.ca/sites/www.miningwatch.ca/files/background_brief_violence_against_women_with_january_30_press_release_2.pdf. MiningWatch Canada. 2013b. Letter to UN Commissioner for Human Rights re: Barrick Gold's "grievance" procedure for victims of rape by security guards at the Porgera Joint Venture mine in Papua New Guinea. March 23. <http://miningwatch.ca/blog/2013/3/23/letter-un-commissioner-human-rights-re-barrick-golds-grievance-procedure-victims-rape>

⁶ See for example: Knuckey, S. and E. Jenkin. 2015. "Company-created remedy mechanisms for serious human rights abuses: a promising new frontier for the right to remedy?" *The International Journal of Human Rights*, 19:6, 801-827, DOI:10.1080/13642987.2015.1048645 ; Columbia Law School Human Rights Clinic & Harvard Law School International Human Rights Clinic. 2015. *Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons Learned*. <http://hrp.law.harvard.edu/wp-content/uploads/2015/11/FINALBARRICK.pdf>; EarthRights International. 2016a. *Many valuable lessons from Barrick's Remedy Framework; "it's cheaper to rape poor women" should not be one of them*. January 22. <https://www.earthrights.org/blog/many-valuable-lessons-barricks-remedy-framework-its-cheaper-rape-poor-women-should-not-be-one> ; EarthRights International. 2016b. *International human rights law does not support giving less compensation to claimants from poorer countries*. January 29.

We have briefly described our case and of course are happy to answer any questions you may have.

We are writing to you to seek the intervention of the UN Working Group in our case. We understand that you are focussing on access to remedy. We do not believe that the process we went through with Barrick's remedy mechanism was fair, or that the remedy we received was what we need after the sexual violence we suffered to look after ourselves, our health, our education, and our families. We have made our unhappiness known to Barrick in many ways, in writing and, in a peaceful demonstration here in Porgera, and in the media. We do not feel that Barrick is listening to us.

We have discussed amongst ourselves what kind of remedy we would like to receive. We are sending you a document we made that describes the kind of remedy we need.

Please let us know how you may be able to help us. We look forward to hearing from you.

For additional information you may contact:

**Ms. Evelyn Guape
Porgera, Enga,
Papua New Guinea
WhatsApp Contact: +675 79833893
Mobile Contact: +675 79833893**

Dr. Catherine Coumans
MiningWatch Canada
Phone: 613 569 3439
e-mail: catherine@miningwatch.ca

Attached: Our letter to you from November 15, 2016; Our Remedy Document

Sincerely yours,

The 119 PFRA women.

Names and Signatures