



MiningWatch Canada

Mines Alerte

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May 14, 2013

Dr. Navanethem Pillay
UN High Commissioner for Human Rights
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland

Re: Response to Barrick's posting of April 16, 2013 and letter from concerned organizations and individuals

Dear Commissioner Pillay,

On April 16, 2013, Barrick Gold posted to its website¹ a response to MiningWatch Canada's letter to you of April 2, 2013.² Barrick's post raises further questions and concerns which I briefly address here. This case, regarding remedy for victims of rape and gang rape by mine security guards at Barrick's Porgera Joint Venture (PJV)³ mine, is raising concern more broadly among global organizations and individuals. Some of these have signed on to a letter addressed to you. While signatories are still coming in, I am attaching here the letter with the list of signatories to date.

Regarding Barrick's post of April 16:

1) **Legal Waiver** – Barrick's remedy framework⁴ requires women who elect to accept benefits from Barrick's individual remedy process to sign legal waivers creating legal immunity for Barrick and its subsidiaries:

“the claimant agrees that she will not pursue or participate in any legal action against PJV, PRFA [Porgera Remediation Framework Association Inc.] or Barrick in or outside of PNG. PRFA and Barrick will be able to rely on the agreement as a bar to any legal proceedings which may be brought by the claimant in breach of the agreement.”

¹ <http://www.barrick.com/files/porgera/Barrick-corrects-further-false-claims-concerning-Remediation-Program-at-Porgera.pdf>

² http://www.miningwatch.ca/feature_block_CSR_in_Canada

³ Barrick is 95% owner of the PJV mine and the mine is operated by a Barrick subsidiary.

⁴ Olgeti Meri Igit Raits: A Framework of remediation initiatives in response to violence against women in the Porgera Valley. Page 27. Available at http://www.miningwatch.ca/sites/www.miningwatch.ca/files/framework_of_remediation.pdf

In its April 16 post, Barrick states that the language of this waiver has changed: “Further, the language MWC [MiningWatch Canada] purports to quote from the model agreement derives from an early draft; the present version contains much narrower terms.” This statement is at best misleading as according to Barrick, at the time of posting, April 16, no new text for a legal waiver was finalized. MiningWatch Canada has repeatedly asked Barrick for the new text (MiningWatch Canada is not being consulted on any revisions that may be underway) and as recently as May 10 was told that the new waiver text was still “undergoing final revisions/review.”⁵ While MiningWatch Canada appreciates that Barrick may now be modifying the waiver that it has defended in past public statements, we remain concerned that a legal waiver is not appropriate in return for individual remedy for rape provided in the context of a project level non-judicial process.⁶ Rape is a gross violation of human rights and a criminal act. Individual remedy should be provided without requiring women to provide the company legal immunity in return.

This concern is shared by the organizations that have signed the attached letter to you.

2) **Translation** - In its April 16 post, Barrick states that “all claimants have access to translation services; enhancements have been made to verify and audit these services.” While this may be an improvement over the situation we found in our field investigation in March 2013, a letter to you by Ms. Ume Wainetti (undated) indicates that translation is being provided by “the leader of the Porgera District Womens Association.” The Porgera District Women’s Association (PDWA) is financially supported by Barrick. If PDWA is providing translation this does not meet the independence criteria set out in Barrick’s Remedy Framework document.⁷

3) **Consultation** - In its April 16 post, Barrick makes reference to a state-based non-judicial process that MiningWatch Canada and local Porgeran organizations - the Akali Tange Association (ATA) and the Porgera Landowners Association (PLOA) - initiated with the Canadian National Contact Point under the OECD Guidelines on March 1, 2011.⁸ Barrick notes that: “we are disappointed MWC has chosen to withdraw from the mediated process it initiated under the OECD Guidelines, and ignored a further request for engagement, choosing instead to pursue a public campaign substantially reliant on misinformation.”

This inaccurate statement necessitates a response. MiningWatch Canada did not choose to withdraw from the OECD process, but rather was forced to withdraw, under protest, because of unreasonable conditions for continued involvement that were imposed by Barrick. Barrick’s conditions amounted to an attempt to gag MiningWatch Canada from speaking out publicly about its concerns regarding the legal waivers. MiningWatch Canada withdrew in order to allow the mediation process to continue with the local PNG notifiers ATA and PLOA.

Between the filing of the OECD complaint in March 2011, which included the issue of rapes by mine security guards in Porgera, and a first face-to-face mediated meeting at the end of November, 2012, Barrick engaged in consultations on its remedy framework in regard to the victims of rape by the company’s security guards at the Porgera mine. However, Barrick did not consult with the notifiers or the notifiers’ advisors on the OECD complaint, Rights and Accountability in Development (RAID) and EarthRights International (ERI). The OECD mediation started just as the finalized remedy program was

⁵ Personal Communication from Barrick Gold May 10, 2013.

⁶ Research conducted by MiningWatch Canada and others, and reported on in our previous letters to you of March 19 and April 2 (http://www.miningwatch.ca/feature_block_CSR_in_Canada), indicates that the remedy women were being offered at the time of our investigation in March 2013, could best be characterized as income generation projects, not compensation for harm caused by rape.

⁷ Olgeti Meri Ikat Raits: A Framework of remediation initiatives in response to violence against women in the Porgera Valley. Available at http://www.miningwatch.ca/sites/www.miningwatch.ca/files/framework_of_remediation.pdf

⁸ See: http://oecdwatch.org/cases/Case_210

rolled out in Porgera. Mindful of the Mediation Agreement that had been signed, and following consultation with the mediator, MiningWatch Canada, RAID, and ERI issued a press release in January 2013 identifying concerns about the remedy program and the required legal waivers. This release explicitly did not contain information confidential to the mediation. Only MiningWatch Canada posted the press release and related documents to its web site. Nonetheless, Barrick made it a condition of continuation in the mediation process that MiningWatch Canada remove the press release and related documents.⁹ Furthermore, even though ERI and RAID had not posted any materials to their web site, and even though they were advisors to all the notifiers, not just MiningWatch Canada, Barrick also made their removal from the process a condition for continuation of the process.¹⁰

This history raises concerns about voluntary state-based non-judicial grievance mechanisms, such as provided by the OECD Guidelines, as corporations can have inordinate control over these processes by virtue of the fact that their participation is voluntary.

In spite of this history, MiningWatch Canada has remained open to engagement with Barrick, but has not been consulted on the modifications to the legal waiver that Barrick says are currently underway.

Appeal for Justice

MiningWatch Canada once again appeals to you, the UN High Commissioner for Human Rights, to: support our request that Barrick remove the requirement that women sign away their rights to pursue future legal action if they accept an individual remedy package for the harm they have endured; investigate the case of Barrick's remedy process in Porgera; and provide an official statement of principles for project level non-judicial remedy programs.

Sincerely,



Catherine Coumans, Ph.D.
Asia Pacific Program Coordinator, MiningWatch Canada

Attached – Organizational Sign on Letter

Electronic copy furnished to:

Mr. James Anaya, Special Rapporteur on the rights of Indigenous Peoples

Mr. Pablo De Greiff, Special Rapporteur on the promotion of truth, justice, reparation & guarantees of non-recurrence

Ms. Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences

Ms. Rita Izsak, Independent Expert on minority issues

Working Group on the issue of discrimination against women in law and in practice

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

Lee Waldorf, Human Rights Advisor, UN Women

ESCR-Net – Corporate Accountability Working Group

Canadian Network on Corporate Accountability

European Coalition for Corporate Justice

⁹ This information was communicated to MiningWatch Canada by the mediator to the OECD process.

¹⁰ Idem.

Corporate Responsibility Coalition
International Corporate Accountability Roundtable
OECD-Watch
Amnesty International
Human Rights Watch
Department of Foreign Affairs Canada
Canadian International Development Agency
Natural Resources Canada
Department of International Trade Canada

Dr. Navanethem Pillay
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Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland

April 14, 2013

RE: Non-judicial remedy should not be contingent on legal immunity for corporations

Dear Commissioner Pillay,

We, the undersigned, are writing to express our concern that Barrick Gold is setting a precedent in Papua New Guinea that makes the provision of individual non-judicial remedy for victims of human rights abuses by a corporation contingent on the victims providing legal immunity for the corporation.

Barrick Gold is implementing a non-judicial remedy procedure at the company's Porgera Joint Venture (PJV) mine in Papua New Guinea (95% owned and operated by a subsidiary of Barrick Gold). Barrick's procedure is designed to provide benefits to a large number of indigenous women in Porgera who allege that they have been raped and gang raped by security guards at the PJV mine over many years. The benefits offered to rape victims to date include livelihood projects, training, and medical treatment¹¹ but do not reflect remedy that victims of rape may receive in traditional courts or through the Papua New Guinea civil justice system.¹² Barrick's initiative does not provide benefits that are commensurate with international standards on remedies for human rights abuses, nor does it provide the procedural protections of judicial processes that would ensure victims the opportunity to make a free and informed choice about their rights. Nonetheless, women who elect to accept benefits from Barrick's procedure will be required to sign legal waivers:

*"the claimant agrees that she will not pursue or participate in any legal action against PJV, PRFA [Porgera Remediation Framework Association Inc.] or Barrick in or outside of PNG. PRFA and Barrick will be able to rely on the agreement as a bar to any legal proceedings which may be brought by the claimant in breach of the agreement."*¹³

We believe this case sets a harmful precedent. Mining company's project level non-judicial remedy mechanisms should provide complete remedy for victims who have endured human rights abuses consistent with national and international standards, and not be designed to provide value for the company in the form of legal immunity.

Our concern is rooted in our observations that project-level non-judicial remedy mechanisms are not mandated by any law and so they are not legally required to:

¹¹ The extent to which financial compensation may be offered is as yet unclear. The Remedy Framework discourages cash compensation. Olgeti Meri Iगत Raits: A Framework of remediation initiatives in response to violence against women in the Porgera Valley. Page 12. Available at http://www.miningwatch.ca/sites/www.miningwatch.ca/files/framework_of_remediation.pdf

¹² Nor does the compensation reflect what victims themselves have said they should receive in interviews conducted in March 2013. See <http://www.miningwatch.ca/article/letter-un-commissioner-human-rights-re-barrick-golds-grievance-procedure-victims-rape>

¹³ Olgeti Meri Iगत Raits: A Framework of remediation initiatives in response to violence against women in the Porgera Valley. Page 27. Available at http://www.miningwatch.ca/sites/www.miningwatch.ca/files/framework_of_remediation.pdf

- follow any nationally or internationally mandated procedures for non-judicial remedy mechanisms;
- afford victims the kinds of safeguards and protections victims would normally be afforded in a court of law;
- provide remedy that is commensurate to remedy that may be provided through a legal procedure;
- provide remedy that is consistent with international standards on the right to a remedy as set out in the UN Basic Principles and Guidelines on the Right to a Remedy for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Despite considerable scrutiny by local and international civil society groups, Barrick's remedy mechanism for victims of rape in Porgera still disadvantages these women and still requires legal waivers. If this model is followed widely by other mining companies it is unreasonable to assume that civil society will be able to provide the scrutiny and accountability necessary to hold global mining companies to account.

We therefore appeal to you to: call for a halt to Barrick's requirement for legal waivers in the case of rape victims in Porgera; investigate the case of Barrick's remedy process in Porgera; and provide an official statement of principles for project level non-judicial remedy programs.

Sincerely,

Organizations signed on as of May 14, 2013:

- Acción Ecológica, Ecuador
- ActNow!, Papua New Guinea
- AidWatch, Australia
- Alianza Internacional de Habitantes, Mexico
- Alianza Mexicana la Autodeterminación de los Pueblos (AMAP), Mexico
- Alyansa Tigil Mina, Philippines
- Amigos de la Tierra América Latina y El Caribe, Latin America and the Caribbean
- Asamblea Ciudadanos por la vida de Chilecito, La Rioja, Argentina
- Asamblea de Pueblos de Huehutenango (ADH), Guatemala
- Asamblea Unidos por el Agua de Conay, Valle del Huasco, Chile
- Asamblea Veracruzana de Iniciativas y Defensa Ambiental, Laxiapa, Mexico
- Asociación Ceiba, Guatemala
- Bismark Ramu Group, Papua New Guinea
- Central de Organizaciones Campesinas y Populares (COCYP-Chiapas), Mexico
- Centro de Documentación e Información Bolivia (CEDIB), Bolivia
- Centro para el Desarrollo de la Mujer, Panama
- ChildFund Australia
- Center for International Policy (CIP) Americas Program, USA
- COECOCEIBA – Amigos de la Tierra Costa Rica, Costa Rica
- Colectivo de Coordinación de Acciones Socio Ambientales (COLECTIVO CASA), Bolivia
- Colectivo Voces Ecológicas COVEC, Panama
- Comité Ambientalista Valle de Siria, Honduras
- Comité de Apoyo para el Desarrollo Social en El Salvador (CODESES), Canada
- Comité de Derechos Humanos de Base de Chiapas Digna Ochoa, Chiapas, Mexico

- Comité para la Promoción y Defensa de la Vida "Samuel Ruiz García" Chicomuselo, Chiapas, Mexico
- Coalition québécoise sure les impacts socio-environnementaux des transnationales en Amérique latine (QUISETAL), Canada
- Comité pour les droits humains en Amérique latine (CDHAL), Quebec, Canada
- Consejo Técnico del Frente Regional Pro-Mananatlán y Cuenca del Marabasco, A.C., (FREMMAR), Mexico
- Convergencia de Movimientos de los Pueblos d las Américas (COMPA), Latin America
- Cooperación, Peru
- European Center for Constitutional and Human Rights, Europe
- Fredericton Peace Coalition, Canada
- Frente Amplio Opositor, Mexico
- Friends of the Earth, Australia
- Fundación EcuMénica para el Desarrollo y la Paz (FEDEPAZ), Peru
- GRUFIDES, Grupo de Formación e Intervención para el Desarrollo Sostenible, Peru
- Instituto Mexicano Para el Desarrollo Comunitario, A.C. (IMDEC), Guadalajara, Jalisco, Mexico
- Inter Pares, Canada
- International Indian Treaty Council, USA
- La Red Muqui, Peru
- Laklumlal Ixim-Norte Selva (Nuestro Pueblo de Maíz), Chiapas, Mexico
- Latin American Mining Monitoring Programme (LAMMP), Latin America
- Maderas del Pueblo del Sureste, AC, Chiapas, Mexico
- Medio Ambiente y Sociedad, A.C., Mexico
- M 4 Guatemala, Guatemala
- Mineral Policy Institute, Australia
- MiningWatch Canada
- Movimiento por un Uruguay Sustentable (MOVUS), Uruguay
- No a la Mina de Esquel, Argentina
- Observatorio Latinoamericano de Conflictos Ambientales (OLCA), Chile
- Observatorio sobre los Conflictos Mineros de América Latina (OCMAL), Latin America
- Organización Campesina Emiliano Zapata-Región Carranza (OCEZ-RC), Chiapas, Mexico
- Organización Ciudadana Ambienta de Salamanca (OCAS), Chile
- Organización Proletaria Emiliano Zapata-MLN (OPEZ-MLN), Chiapas, Mexico
- Otros Mundos AC/Chiapas, Mexico
- Oxfam Australia
- Pacific Peoples' Partnership, Canada
- Philippine Alliance of Human Rights Advocates (PAHRA), Philippines
- Plataforma Social Salvemos Cabana, Galicia, Spain
- PIPLinks (Indigenous Peoples Links), United Kingdom
- Pobladores A.C., Mexico
- Procesos Integrales para la Autogestión de los Pueblos (PIAP), Mexico
- Pro San Luis ecológico A.C., Mexico
- Proyecto de Derechos Económicos, Sociales y Culturales, A.C. (PRODESC), Mexico

- Red Ambiental Norte, Chile
- Red de Mujeres Latinoamericana Defensoras de Derechos Sociales y Ambientales, Latin America
- Red Jalisciense de Derechos Humanos, A.C., Mexico
- Red Mexicana de Acción frente al Libre Comercio (RMALC), Mexico
- Red Mexicana de Afectados por la Minería (REMA), Mexico
- REMA Jalisco, Mexico
- Rights & Accountability in Development (RAID), United Kingdom
- Rettet den Regenwald, Germany
- Salva la Selva, Spain
- Synod of Sydney and Tasmania, Uniting Church Australia
- The Australian Council for International Development (ACFID), Australia
- Unión Latinoamericana de Mujeres (ULAM), Latin America
- United Church of Canada - Church in Mission, Canada

Since May 14, 2013 the following organizations have joined the sign-on letter:

- Earthworks, USA
- JATAM, Indonesia
- Rights Action, USA and Canada