

Barrick's Porgera Joint Venture Mine – Neither Sustainable, Nor Development

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Abstract:

This case study contends that the Porgera Joint Venture Mine in Papua New Guinea is environmentally unsustainable and is severely undermining current food security, access to clean water, sustainable livelihood, and health, as well as the long-term development potential, of indigenous Ipili landowners living in the mine lease area. The mine is also eroding the sustainable development of surrounding Ipili and downstream communities. The mine is further implicated in serious human rights abuses.

Introduction:

The Porgera Joint Venture (PJV) gold mine is located in Porgera, a remote part of Enga Province in the Papua New Guinea highlands. The mine started operations in 1990 and has been, and continues to be, mined through both open pit and underground means. The mine has been controversial since it opened for its “riverine” disposal of mine waste - tailings and waste rock sediment - into the 800 km-long Strickland River system. Social conflict related to the mine has also been recorded since the 1990s.² Since 2005, serious concerns regarding alleged human rights abuses related to the mine’s security guards began to receive increasing international attention.

Barrick Gold Corporation (Barrick) acquired the mine in early 2006 when it took over Placer Dome. Barrick is a Toronto-based gold mining company. Barrick owns 95% of the Porgera Joint Venture mine through subsidiaries. The other 5% of the PJV mine is owned by Mineral Resources Enga. Barrick is the sole operator of the mine. Papua New Guinea is a multi-party democracy with constitutional protection for human rights and has ratified ICCPR, ICESCR, ICERD, CRC and CEDAW. On October 21, 2008, the two treaties that constitute the International Bill of Rights came into force for the country, obliging the government to report to UN treaty bodies on the steps taken to implement rights contained therein, initially in 2009 and every four years thereafter.

¹ The authors of this case study, Mark Ekepa, Chairman of the Ipili Porgera Landowners Association, Jethro Tulin executive director of the Porgera-based Ipili grassroots human rights organization Akali Tange Association, and Catherine Coumans of MiningWatch Canada have submitted a version of this case study to the Canadian National Contact Point on March 1, 2011 as a Request for Review. See http://www.miningwatch.ca/sites/miningwatch.ca/files/OECD_Request_for_Review_Porgera_March-1-2011.pdf

² See Coumans, Catherine. 2011. Occupying Spaces Created by Conflict: Anthropologists, Development NGOs, Responsible Investment, and Mining. In *Current Anthropology*, Vol. 52, No. S3, Corporate Lives: New Perspectives on the Social Life of the Corporate Form: Edited by Damani J. Partridge, Marina Welker, and Rebecca Hardin (Supplement to April 2011), pp. S29-S43.

The human rights, environmental and sustainable development concerns summarized in four sections below have been more extensively detailed in a Request for Review tabled with the Canadian National Contact Point for the OECD Guidelines for Multinational Enterprises.

1. Living conditions in the Special Mine Lease area are incompatible with sustainable development.

Summary: The living conditions of people within the Porgera Joint Venture mine’s Special Mine lease area, surrounding the open pit and underground mines and their extensive waste streams, are incompatible with human health and safety standards and with social, economic and cultural development standards as reflected in international best practice guidelines.

Pertinent guidelines include, among others, the 10 principles of Sustainable Development (particularly principles 1, 2 and 3)³ of the International Council on Minerals and Metals (ICMM), of which Barrick is a member, and the Global Compact (particularly principles 1 and 2)⁴, of which Barrick is also a member. Relevant international norms also include the United Nations Covenant on Economic, Social and Cultural Rights as well as elements of the Rio Declaration on Environment and Development.

The living conditions of people within the Special Mine Lease area indicate a failure by Barrick/PJV to live up to the OECD Guidelines according to which Barrick/PJV has a responsibility to “*contribute to economic, social and environmental progress with a view to achieving sustainable development*”⁵ and to “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*”⁶ In 2006 Barrick/PJV recognized, according to the URS study (2007:1-1, ES-1), that living conditions in the SML are not tenable but the company has not acted on the URS recommendations to remedy the situation. Finally, Barrick/PJV has failed to make relevant information in a report by consultants URS publicly available. This report details the untenable conditions of people living in the SML area and recommends that these people be resettled elsewhere.

Relevant Information:

Before the PJV mine started operations in 1990, a socio-economic study (1987)⁷ noted the need for relocation of families to make way for the proposed mine. A subsequent Relocation Study (1988)⁸ proposed that the people to be relocated remain on local land to which they hold traditional rights, or on the land of their local cognates. This was, at the time, also the preference of the households to be relocated, who wanted to stay together in their lineage/sub-clan groups.⁹ This meant that both relocated families, as well as other traditional landowners, continued to live within the mine lease for the PJV mine, with agreement of all parties.

However, in the twenty years since mining began, social and environmental conditions for those living in close proximity to the mine and its expanding waste flows within the Special Mine Lease (SML) area “*have deteriorated to the point where they fall below what would be commonly accepted by Papua New*

³ ICMM 10 Principles: 1. Implement and maintain ethical business practices and sound systems of corporate governance; 2. Integrate sustainable development considerations within the corporate decision-making process; 3. Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities. See also further guidance under these principles and ICMM’s publication www.icmm.com

⁴ Global Compact Ten Principles: 1. Businesses should support and respect the protection of international human rights within their sphere of influence and; 2. Make sure they are not complicit in human rights abuses.

⁵ OECD Guidelines Section II General Policies - Paragraph 1

⁶ OECD Guidelines Section II General Policies - Paragraph 2

⁷ *Socio-Economic Impact Study*. 1987. Pacific Agribusiness.

⁸ *Relocation Study*. 1988. Fritz Robinson.

⁹ *Special Mining Lease Landowner Resettlement: Social Impact Assessment*. 2007. URS. June 14. Pp 4-4, 4-5.

*Guinea standards.*¹⁰ In 2006, Barrick/PJV hired international consultants URS to prepare a Social Impact Assessment and a Resettlement Action Plan for the households living in the Special Mine Lease area. In the assessment conducted by URS, of 270 SML households in 2006, more than 90% said that their quality of life had changed over the past five years. Of this group of 249 households, 97.2% said their quality of life had deteriorated and 92.4 said it was “much worse” than five years previous (URS 2007:6-14-6-15). URS concludes that “*SML communities are currently living in over-crowded, unsanitary and potentially dangerous conditions, and have limited available land for family subsistence*” (URS 2007:ES-1).

URS (2007) documents key areas of concern that are also being raised by the leadership of the Porgera Landowners Association (PLOA). These include loss of land needed for food security and lack of reliable potable water supplies.¹¹ Other concerns of people living within the SML area, which are raised by PLOA and the Akali Tange Association, include violence by PJV security forces (see point 2, below), mining-derived pollution of water resources (see point 4, below) and human rights abuses associated with a military crack-down called “Operation Ipili ’09” (see point 3, below) that was supported by PJV/Barrick.

Barrick/PJV’s Failure to “contribute to economic, social and environmental progress” and to “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments” by refusing to resettle all SML area households

According to URS, Barrick/PJV engaged the consultants because it recognized the “*difficult circumstances in which many landowners currently live*” and the need to “*improve living conditions for SML landowners by removing them to a new area*” (URS 2007:1-1, ES-1). URS notes that a second reason for Barrick/PJV’s interest in moving people off the SML area was a plan for mine expansion (URS 2007:ES-1). Importantly, URS also found that “[*t*]he vast majority of SML landowners surveyed (96%) are in favour of resettlement” (URS 2007:ES-1). This is particularly pertinent as it represents a marked difference in attitude of the SML population from 1988, before mining started, when most landowners wanted to stay on their land, if possible, or as close as possible to their land if the mine made staying on their land itself impossible. This must be recognized as an indicator of the deterioration of living conditions for SML households.

As consultants working for URS spent between April and November of 2006 surveying the population of the SML area, expectations of resettlement were raised among the population. It was therefore a matter of considerable disappointment when Barrick/PJV decided against resettlement of the population, due at least in part to costs associated with resettlement (Mark Fisher, Mine Manager, personal communication with Catherine Coumans, November 11, 2008). At a news conference in Canada, Mark Ekepa, Chairman of the PLOA said, “The mine has made it impossible to live here (...) Either we need to be moved immediately, or Barrick needs to leave this place.”¹² In a letter to Ekepa, Mine Manger Mark Fisher stated, “there will be no full relocation of people off the SML, but we have begun the process of moving those eligible people who are at risk of being affected by the mining operation due to safety or geotechnical considerations.”¹³ The success of resettlement of smaller groups on a “need-to-move” basis is limited as landowners fail to comply with PJV’s relocation terms. This is understandable as both URS and Fritz Robinson have noted the importance to the Ipili people of remaining together in their lineage/sub-clan groups. PJV’s current relocation plan does not conform with the recommendations made by URS in 2007.

¹⁰ *Special Mining Lease Landowner Resettlement: Social Impact Assessment*. 2007. URS. June 14. Pp 4-6.

¹¹ Other critical issues identified as concerns by surveyed households living in the Special Mine Lease Area are: lack of firewood (93.48%), the environmental effects of the mine (81.16%), noise from the mine (79.71%), dust (78.99%), lack of building materials (72.10%), vibration or blasting by the mine (68.12%), crime and security issues (24.64%) (URS 2007:6-18).

¹² See MiningWatch Canada http://www.miningwatch.ca/index.php?Porgera/Porgera_linked_to_abuse

¹³ Letter of Mark Fisher to Mark Ekepa of July 23, 2008.

2. *Alleged violence by PJV security guards – killings, beatings, rapes of women*

Summary: In 2005, a local grass roots organization, Akali Tange Association, finalized a report alleging killings and beatings of local Ipili men by PJV security guards. Since then allegations of beatings and rapes, including gang rape, of Ipili women by PJV security guards have also been documented and a number of these cases have been made public. There is reason to believe violence by PJV security guards has a long history at the PJV mine.

Rape, extrajudicial executions, and excessive use of force against civilians by mine security forces are violations of the victims' internationally-guaranteed human rights.¹⁴ Relevant international guidelines that reference international human rights include, among others, the 10 principles of Sustainable Development (particularly principles 1 and 3)¹⁵ of the International Council on Minerals and Metals, of which Barrick is a member, and the Global Compact (particularly principles 1 and 2)¹⁶, of which Barrick is a member. Additionally, the Voluntary Principles on Security and Human Rights provide guidance to companies regarding the operations of security forces to ensure these operate in way that respects human rights. Barrick maintains that it was implementing the Voluntary Principles at the PJV mine before joining the Voluntary Principles in November 2010. Special Representative to the Secretary General of the United Nations on Business and Human Rights, John Ruggie, has defined the corporate responsibility to respect human rights as meaning “not to infringe on the rights of others – put simply, to do no harm.”¹⁷ This case study maintains that Barrick/PJV has violated the international standards set out above, with respect to the activities of its security forces at the PJV mine.

This case study further maintains that Barrick/PJV has failed to fulfill its responsibility with respect to the OECD Guidelines, in particular to “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*”¹⁸ As a result of the impact on local citizens resulting from the alleged abuses by its security forces, Barrick/PJV has also failed to fulfill other OECD Guidelines, that state that enterprises should: “*contribute to economic, social and environmental progress with a view to achieving sustainable development*”¹⁹; “*support and uphold good governance principles and develop and apply good corporate governance practices*”²⁰; “*develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate*”²¹; “*promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.*”²²

¹⁴ Alleged violence by PJV security guards violates the Right to Freedom from Arbitrary or Unlawful Deprivation of Life; Right to Life, Liberty and Security of the Person; Right to Freedom from Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; Right to Physical and Mental Health; Right to Freedom from Arbitrary Arrest or Detention; Right to Freedom of Movement; Right to Equal Recognition and Protection under the Law. The alleged violence against women further violates the Convention on the Elimination of All Forms of Discrimination Against Women.

¹⁵ ICMM 10 Principles: 1. Implement and maintain ethical business practices and sound systems of corporate governance; 3. Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities. See also further guidance under these principles, in particular ICMM’s guide *Human Rights in the Mining & Metals Industry Overview, Management Approach and Issues*. May 2009. <http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues>

¹⁶ Global Compact Ten Principles: 1. Businesses should support and respect the protection of international human rights within their sphere of influence and; 2. Make sure they are not complicit in human rights abuses.

¹⁷ Ruggie, John. 2008. *Protect, Respect and Remedy: A Framework for Business and Human Rights*. P. 9.

¹⁸ OECD Guidelines Section II General Policies - Paragraph 2

¹⁹ OECD Guidelines Section II General Policies - Paragraph 1

²⁰ OECD Guidelines Section II General Policies - Paragraph 6

²¹ OECD Guidelines II General Policies - Paragraph 7

²² OECD Guidelines II General Policies - Paragraph 8

Relevant Information:

Alleged Killings and Beatings by PJV Security Forces

According to ATA violent deaths and brutal beatings have been taking place at the mine since at least 1993.²³ ATA documented 11 cases of alleged extra-judicial killings by shooting by PJV security guards or police.²⁴ ATA and others have commented on the fact that there is a “close relationship between PJV security personnel and PNG police and security forces” in particular as at times “government police reservists and Mobile Police Squads act as security for the PJV mine.”²⁵ Additionally, as PJV hires security who have a police or military background, some of which “are police reservists, and at least a few are regular police officers who have taken extended leave from their jobs to accept better-paid positions with PJV”²⁶ local people told Catherine Coumans that the security forces who abused them sometimes looked like regular police. ATA documented an additional 3 alleged deaths at the hands of security forces through means other than shooting.²⁷ Others put the total number of deaths at Porgera by security forces and police higher.²⁸ In particular, Prime Minister Sir Michael Somare told parliament he would seek answers for 29 killings at the mine noting the allegations that the mine’s security forces were involved: “We want to know why they are killing those people, and whether the law allows them to do that.’ He said there appears to be foreign tactics, because 29 deaths was [sic] too many for one mine area.”²⁹ Canadian mining company Placer Dome (former 75% owner of the mine) admitted in 2005 to eight killings by police and PJV security guards (seven since 2000) but maintained that all were in self-defence.³⁰

Most alleged killings, through shooting or otherwise, by Porgera Joint Venture security guards, police or Mobile Unit Police, have, to date, not been independently investigated.³¹ Following calls from ATA and others for a government investigation of the unusually high number of killings at the Porgera Joint Venture Mine, an investigation by a Commission of Inquiry was initiated by the government of Papua New Guinea in 2006 to “inquire and report to the Government on the incidence and causes of injuries and deaths at the Porgera mine site.” However, the report of the Commission that was finalized in 2006 has not been made public. In December 2007, MiningWatch Canada wrote to the U.N. Special Rapporteur for Extrajudicial, Summary, or Arbitrary Executions calling for an investigation of the alleged killings in the

²³ Akali Tange Association Inc. 2005. *The Shooting Fields of Porgera Joint 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 Roodepoort 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.* p. 70

²⁴ Akali Tange Association Inc. 2005. *The Shooting Fields of Porgera Joint Venture...* The names of the eleven cases of deaths by shooting recorded by Akali Tange Association are: Henry Tendeke; Taitia Maliapa; Paul Pindi; John Wangla; Pyakani Tombe; Yandari Pyari; Jerry Yope; Jackson Yalo; Joe Opotaro; Aglio Wija; Mina Mulako.

²⁵ Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. P. 1. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf>.

²⁶ Human Rights Watch. 2011. *Gold’s Costly Dividend: Human Rights Impacts of Papua New Guinea’s Porgera Gold Mine.* February 1. P.44. <http://www.hrw.org/node/95776>

²⁷ The names of the three cases of deaths at the hands of security guards (other than by shooting) recorded by Akali Tange Association are: Alonge Laswi; Minata Pita; Pyakane Eremi.

²⁸ The PLOA claimed 21 people had been killed at the mine site by security personnel by 2005. Huafolo, Anton. 2005. Landowners call for mine closure. In *The National, Papua New Guinea.* March 30.

²⁹ Probe looms for mine deaths. 2005. *The National, Papua New Guinea.* May 6. Governor Luther Wenge also pegged the deaths by killing at 29 (Porgera Mine Deaths Prompt Call for Independent Probe. 2005. In *PNG Post-Courier.* May 11.

³⁰ Burton, Bob. 2005. *Canadian Firm Admits to Killings at PNG Gold Mine.*

<http://www.ipsnews.net/news.asp?idnews=31074>

³¹ Akali Tange Association Inc. 2005. *The Shooting Fields of Porgera Joint Venture...* Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009.P. 2. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf>.

Special Mine Lease area.³² Shortly before MiningWatch sent its letter, on November 27, 2007, Mack Ipom was allegedly shot and killed by PJV security forces outside the mining area, but inside the Special Mine Lease area where he lived. Shortly after MiningWatch Canada sent its letter another civilian, Amos Wakali, was killed by gunfire on December 27, 2007, allegedly at the hands of PJV security guards outside of the mining area and MiningWatch Canada followed up with an e-mail to the U.N.'s human rights officer in Port Moresby on January 7, 2008. Additional alleged killings and beating of civilians by PJV security guards, police or Mobile Unit Police have ensued, including that of 15-year-old Gibson Umi, who was allegedly shot and killed by PJV security guards in the Special Mine Lease area where he lived, but outside the mining area, on July 22, 2008.

On October 8, 2009, Catherine Coumans of MiningWatch Canada testified before the parliamentary committee on Foreign Affairs and International Trade regarding proposed Bill C-300. She referred to "allegations of killings of civilians by the Porgera mine security guards."³³ Barrick responded that "Barrick and PJV do not tolerate human rights violations. We also reject the characterization of the company's security personnel as violent and unlawful. (...) Since Barrick acquired its interest in the PJV in 2006, there have been no fatal shootings by Porgera security personnel."³⁴

Between August 2006 and March 2009, research teams from the International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University (NYU) School of Law gathered data on alleged killings and beatings of civilians by security guards at the PJV mine in three trips to the Porgera site. They presented this material to the Canadian Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT) on October 20, 2009, and subsequently tabled a legal brief based on their research in Porgera.³⁵ The Harvard/NYU legal brief provides further information about extra-judicial killings and beatings at the PJV mine that is relevant to this case study including, among other things: a Memorandum of Understanding between PJV and the government of Papua New Guinea with respect to security arrangements at the PJV mine; impediments to police investigations of killings that occur in the Special Mine lease area; and locals' use of the extensive waste dumps and waste streams around the PJV mine, as well as the open pit area, to search for ore, a use that is generally non-violent, regular and foreseeable, if technically illegal.

Alleged Rapes and Gang Rapes by PJV security guards

During their investigations between August 2006 and March 2009, research teams from the International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law gathered data on alleged rapes and gang rapes of local women by

³² Letter from MiningWatch Canada to the U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions. Allegation Letter concerning: extrajudicial killings of citizens in Papua New Guinea by private security guards (tolerated by the government), PNG Police and Mobile Unit Police at the Porgera Mine; breach of the obligation to investigate alleged violations of right to life and to bring those responsible to justice; breach of the obligation to provide compensation to victims of violations to the right to life. December 2, 2007.

http://www.miningwatch.ca/sites/miningwatch.ca/files/Letter_Special_Rapporteur_PNG_2007.pdf

³³ For a full copy of Coumans' testimony see: <http://www.business-humanrights.org/Search/SearchResults?SearchableText=porgera&x=15&y=12>

³⁴ This text, in response to the testimony by Catherine Coumans, was accessed on Barrick's web site on 07/07/2010 but has apparently since been removed.

³⁵ Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf>. Barrick responded to the October 20, 2009 testimony before the parliamentary committee on the company web site (accessed 7/7/2010) but has apparently since removed that information. Barrick also responded to the legal brief of November 16, 2009. See <http://www.reports-and-materials.org/Barrick-response-re-Canadian-Parliament-testimony-Porgera-23-Jul-2010.pdf>

PJV security guards. Their findings were presented before the Standing Committee on Foreign Affairs and International Trade on October 20, 2009, and in a legal brief they subsequently filed.³⁶

Human Rights Watch (HRW) also conducted a recent investigation and “documented five alleged incidents of gang rape by mine security personnel in 2009 and 2010, and a sixth in 2008”³⁷ some involving more than one woman. HRW concluded that “these incidents represent a broader pattern of abuse by some PJV security personnel.” Both the Harvard and NYU teams and HRW investigator were struck by the brutality of the sexual attacks: “Some of the women interviewed by Human Rights Watch described scenes of true brutality. One woman told how she was gang raped by six guards after one of them kicked her in the face and shattered her teeth. Another said she and three other women were raped by ten security personnel, one of whom forced her to swallow a used condom that he had used while raping two other victims.”³⁸

MiningWatch Canada conducted four interviews with alleged victims of rape by PJV security guards in November 2008.³⁹ Each of these cases involved one woman being raped by one security guard. One woman was raped twice by the same security guard. There were always other guards present and actively involved in constraining the women or standing guard. In two of the cases the women were near the waste dumps or mine fence, searching for a lost pig and gathering firewood, but not panning for gold. In two cases the women were panning for gold in the waste dumps. Two of the women reported being viciously beaten. One of the women was subsequently arrested and spent three months in prison in Mt. Hagen. Two of the women’s family members reported the assault to PJV by reporting it to the guard station or PJV security gate. One woman’s relatives reported the rape to the police. The interviews showed differing opinions among the women about where an incident should be reported and whose “business” it is. One alleged rapist was known to the woman’s relatives who tried to charge him. He was fired by the company and left the area (this was in 2005). The other alleged rapists have apparently not faced any repercussions as a result of these rapes.

Barrick/PJV’s Responsibility for Killings and Rapes

Barrick/PJV bears responsibility for abuses carried out by its own security personnel when acting on behalf of the PJV, particularly when it continues to employ such personnel with inadequate training and oversight, and without effective remedial mechanisms. Barrick/PJV has shown a lack of due diligence with regard to years’ worth of allegations of violence by the PJV security guards, of which Barrick/PJV was made aware. The following provides a brief overview of some of the ways in which Barrick/PJV was made aware of the allegations of violence by its security guards.

In anticipation of Barrick’s take-over of Placer Dome early in 2006, ATA wrote on November 4, 2005, to “The President & Chief Executive Officer, Barrick Gold Corporation” to warn Barrick of the “serial killings” of local individuals at the mine site, ATA’s efforts to secure compensation for the families, and ATA’s involvement with a government probe being organized to investigate the killings. ATA also deposited a copy of its report “The Shooting Fields of Porgera Joint Venture...” at PJV’s main office in Port Moresby. In 2006, the government of Papua New Guinea conducted an inquiry into the killings. This inquiry will have involved Barrick/PJV (the report was never released by the government of PNG).

³⁶ Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf>.

³⁷ Human Rights Watch. 2011. *Gold’s Costly Dividend: Human Rights Impacts of Papua New Guinea’s Porgera Gold Mine*. February 1. P. 9. <http://www.hrw.org/node/95776>

³⁸ Ibid. PP. 9-10

³⁹ The dates of the alleged rapes documented by MiningWatch Canada were 2003, 2004, 2005, 2006.

From 2008 to 2010 members of ATA and members of the PLOA attended and spoke at Barrick's Annual General Meeting, where they raised the issue of violence by PJV security guards. Barrick/PJV has also received letters from ATA and PLOA about the violence. In response to a letter in May 2008 from Mr. Ekepa to then-President and CEO Greg Wilkins in Toronto, Porgera's mine manager responded to Mr. Ekepa: "...we found your public allegations of our employees "gang raping" Porgera Land Owners' women to be most distasteful, to say the least as you know these allegations to be untrue." ATA and the PLOA also issued press releases that are in the public realm and held press conferences in Canada to raise the issue of violence by the mine's security forces. And members of ATA and PLOA met with Barrick executives in Toronto in 2008 and in 2010 to raise the issue of violence by the PJV security guards directly with these Barrick officials.

As detailed above, following three years of field trips, researchers from Harvard and NYU reported on their findings to the parliamentary SCFAIT committee in October of 2009. Barrick was aware of the investigation by Harvard and NYU into alleged violence by PJV security guards, having received three letters from the Harvard/NYU team in the course of 2008-2009 "requesting...information regarding specific instances of violence..."⁴⁰ While Barrick only provided the Harvard/NYU team information on one instance of violence,⁴¹ these letters from the Harvard/NYU team should have been sufficient cause for Barrick/PJV to exercise due diligence and take proactive steps to investigate its security forces. Barrick responded to the testimony by Harvard and NYU in 2009 via a statement on its web site: "To our knowledge there have been no cases of sexual assault reported to the mine management involving PJV security personnel while on duty, since Barrick acquired its interest in the mine in 2006. It is not possible for the PJV to investigate an allegation it has never received..."⁴²

In its report of February 1, 2011, Human Rights Watch found that "*too often in the past, Barrick has responded to legitimate human rights and environmental criticisms of the Porgera mine with a "shoot the messenger" approach, attacking the company's critics while failing to address important substantive concerns.*"⁴³ Barrick/PJV's failure to act sooner to assure itself that the allegations of its critics were indeed fallacious, and Barrick/PJV's failure to have systems in place to prevent the abuses in the first place, are failures of due diligence. ICMM, of which Barrick is a member, provides guidance on due diligence, stating that "Due diligence ought to be commensurate with the risks, which in turn are a function of the magnitude of potential adverse impacts, with the likelihood of these impacts occurring."⁴⁴ ICMM notes that in considering the likelihood and the potential of human rights impacts occurring one of the things companies should consider is the "country context" and the potential human rights impacts of a company's own activities in that context, as well as those of its security forces.⁴⁵ Human Rights Watch found that:

PJV has failed to establish a complaints channel that community members perceived as safe, and failed to adequately inform community members about the channels that did exist. In the past Barrick has blithely stated that if incidents of sexual violence involving APD [Asset Protection Department] personnel did occur, either the victims or international organizations compiling their accounts should refer the matter

⁴⁰ Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. P. 29. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf>.

⁴¹ Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. P. 30.. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf>.

⁴² This text, in response to testimony before SCFAIT on October 20, 2009 by Tyler Giannini and Sarah Knuckey, was accessed on Barrick's web site on 07/07/2010 but has apparently since been removed.

⁴³ Human Rights Watch. 2011. *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*. February 1. P. 62. <http://www.hrw.org/node/95776>

⁴⁴ ICMM. May 2009. *Human Rights in the Mining & Metals Industry: Overview, Management Approach and Issues*. P.9.

⁴⁵ Ibid. P.9

to the police. This was not only a deplorable abdication of responsibility on the part of the company, but also unrealistic. The police enjoy little public confidence to begin with due to their reputation for violent abuse and incompetence, and many victims fear retaliation since they suffered abuse after being arrested for criminal activity.⁴⁶

Barrick/PJV's failure to exercise due diligence, enabling the alleged human rights abuses by its security forces to continue, constitutes failure under OECD Guidelines to "support and uphold good governance principles and develop and apply good corporate governance practices"⁴⁷; to "develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate"⁴⁸ and to "promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes."⁴⁹

Barrick/PJV maintains that it is undertaking a range of actions in response to allegations from Human Rights Watch.⁵⁰ It is too soon to tell if these actions on the part of Barrick/PJV, which include investigating and firing PJV security guards, will halt human rights abuses by PJV security forces in the future.⁵¹ Nonetheless, even if Barrick/PJV does take effective steps to prevent future abuses, the company must also provide remedy for those men and women whose human rights have been abused by PJV security guards, or for their surviving family members. To date Barrick/PJV has given no indication that it intends to provide such a remedy.

Special Representative Ruggie has defined the corporate responsibility to respect human rights as meaning "not to infringe on the rights of others – put simply, to do no harm."⁵² It appears that Barrick/PJV's investigations of PJV's security forces have already identified cases of security personnel who have harmed local women. The responsibility of an actor to remedy harms attributable to them is a generally accepted principle of law.⁵³ Ruggie has identified "Access to Remedy" as the third principle in his Framework for Business and Human Rights. In his draft guidelines for the implementation of his framework, Ruggie advises that corporations should provide remediation for harms that have been done. Ruggie recommends that individuals or communities "who may have been adversely impacted by a business enterprise" be able to "engage the company directly in assessing the issues and seeking remediation of any harm" and that harms be "remediated early and directly by the business enterprises, whether alone or in collaboration with others involved, thereby preventing harms from compounding and grievances from escalating."⁵⁴

3. Operation Ipili '09 – Forced evictions and destruction of homes at the Porgera Joint Venture mine

⁴⁶ Human Rights Watch. 2011. *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*. February 1. PP. 66-67. <http://www.hrw.org/node/95776>

⁴⁷ OECD Guidelines Section II. General Policies – Paragraph 6

⁴⁸ OECD Guidelines Section II. General Policies – Paragraph 7

⁴⁹ OECD Guidelines Section II. General Policies – Paragraph 8

⁵⁰ See Barrick Gold letter of December 23, 2010. Annex in Human Rights Watch. 2011. *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*. February 1. PP. 87-94. <http://www.hrw.org/node/95776>

⁵¹ Human Rights Watch. 2011. *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*. February 1. PP. 67-68. <http://www.hrw.org/node/95776>

⁵² Ruggie, John. 2008. *Protect, Respect and Remedy: A Framework for Business and Human Rights*. P. 9.

⁵³ See for example *See, e.g., John Ruggie, Business and human rights: Towards operationalizing the "protect, respect and remedy" framework*. Paragraph 86. (Apr. 22, 2009). <http://www.businesshumanrights.org/Links/Repository/715771>

⁵⁴ Draft Guiding Principles for the Implementation of the United Nations 'Protect, respect and Remedy' Framework. P. 24, 25.

Summary: On April 18, 2009, more than 200 troops including 4 Police Mobile Units⁵⁵, an air tactical unit and intelligence officials from the PNG Defense Force were deployed in Porgera in “Operation Ipili ’09.”⁵⁶ Starting on April 27, 2009 the troops began to burn down houses in Waungima village. News reports on April 30th indicated that, “houses belonging to local landowners near the Porgera gold mine in Enga Province have been torched allegedly by the policemen called out to restore law and order in the district.”⁵⁷ Mark Ekepa, Chairman of the PLOA is quoted as saying, “these houses belong to the second and third generation landowners (...) many of those left homeless were three of the seven landowner clans – Tieni Wuape, Tieni Wiagolo and Tieni Lakima – in Porgera.”⁵⁸ Not only were 130 buildings burnt down in Wuangima alone, but also agricultural plots around houses that are used for subsistence were burnt.⁵⁹ In the ensuing months it became clear that people had been forcibly and in some cases violently evicted from their homes. As home owners rebuilt their houses, many were burnt down again.⁶⁰ Most of the houses that were burnt down were in two villages, Wuangima and Kulapi.⁶¹ All the homes that were burnt down, and the families evicted, were within the Special Mine Lease area of the PJV mine.⁶² In accordance with an agreement signed between PJV and the police in April 2009, the mobile units were housed and fed on PJV property and provided with fuel by PJV.⁶³ This arrangement remains in force as of the writing of this case study.

The house burnings and forcible evictions by the PNG police of villagers living inside PJV’s mine lease area constitute gross violations of human rights,⁶⁴ and may constitute crimes against humanity.⁶⁵ Barrick/PJV claims to have been implementing the Voluntary Principles on Security and Human Rights at the PJV mine at the time of Operation Ipili ’09, and Barrick formally joined the Voluntary Principles in November of 2010. However, Barrick/PJV’s response to the violations of human rights, which PJV personnel witnessed,⁶⁶ was not in accordance with the Voluntary Principles at that time. By December 10, 2009, Barrick had still not urged an investigation by the Papua New Guinea government.⁶⁷ Although

⁵⁵ Police Mobile Units have a long standing reputation of brutality and violence against PNG citizens.

⁵⁶ Muri, David. 2009. Porgera ‘empty’ on eve of call-out. *National*. April 20. Port Moresby, Papua New Guinea.

⁵⁷ Eroro, S. 2009. Porgera up in Flames. *Postcourier*. April 30. Port Moresby, Papua New Guinea; *Radio New Zealand International*. 2009. Homes burnt at PNG’s Porgera Mine. April 30.

⁵⁸ See urgent appeal to UN Special Rapporteurs by MiningWatch Canada <http://www.miningwatch.ca/en/urgent-appeals-untied-nations-special-rapporteurs-regarding-human-rights-abuses-porgera-mine>

See also Amnesty International’s public statement; <http://www.amnestyusa.org/document.php?id=ENGASA340012009&lang=e> Center on Housing Rights and Evictions [http://www.cohre.org/store/attachments/AP IE PNG EngaProvince 26May09.pdf](http://www.cohre.org/store/attachments/AP_IE_PNG_EngaProvince_26May09.pdf).

Barrick Gold put out a public response on its web site the first week of June 2009 -

<http://www.barrick.com/CorporateResponsibility/KeyTopics/PorgeraJV/default.aspx>

⁵⁹ Figures for how many houses were burnt down range from potentially 130 in Wuangima alone, Amnesty International (January 2010:4) counted “at least 130 buildings” that were burnt down in the village of Wuangima, to over 300 reported by local community based organizations.

⁶⁰ Amnesty International. 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P. 10.

⁶¹ Figures for how many houses were burnt down range from 130 in Wuangima alone, counted by Amnesty International (January 2010:4) to over 300 reported by local community based organizations.

⁶² Wuangima village is next to the opening of the underground workings of the mine and close to the open pit.

⁶³ Barrick Gold Corporation – Statement on Amnesty International Report.

<http://www.barrick.com/default.aspx?SectionId=e991778a-6a8d-4fac-9457-baf97dbe9014&LanguageId=1> (accessed February 10, 2011).

⁶⁴ Human rights that were abused in Operation Ipili ’09 include: the right to housing; the right to equal recognition and protection under the law; the right to life, liberty and security of the person; the right to freedom of movement and residence; the right to freedom from arbitrary interference with privacy and home life.

⁶⁵ Article 7(d)(2) of the Rome Statute of the International Criminal Court includes among crimes against humanity “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”

⁶⁶ Amnesty International. 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P. 15.

⁶⁷ Amnesty International. 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P. 17.

Barrick/PJV now agree that troops being housed, fed and provided fuel by PJV burned down houses and forcibly evicted villagers within PJV's Special Mine Lease area,⁶⁸ Barrick has done nothing to remedy the harm and has declined to publicly urge the government of Papua New Guinea to conduct an investigation of these gross violations of human rights.

Barrick/PJV's lack of compliance with the Voluntary Principles in this regard constitutes a failure to "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."⁶⁹ By not following the guidance set out in the Voluntary Principles, Barrick/PJV are further in breach of the following OECD Guidelines: "support and uphold good governance principles and develop and apply good corporate governance practices"⁷⁰; "develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate"⁷¹; "promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes."⁷² Furthermore, as Barrick/PJV requested deployment of and provided assistance to police,⁷³ this constitutes a failure to "abstain from any improper involvement in local political activities."⁷⁴ Its assistance also constitutes complicity in violations of international human rights law.⁷⁵ Finally, as Barrick/PJV has done nothing to remedy the harm caused to victims of the house burnings and forcible evictions, Barrick/PJV has also failed to fulfill responsibilities under the OECD Guideline that states that enterprises should: "contribute to economic, social and environmental progress with a view to achieving sustainable development."⁷⁶

By requesting and supporting Operation Ipili '09 despite the risk of human rights abuses, failing to prevent human rights abuses in connection with that operation, failing to provide remedies to the victims, and failing to call publicly on the Papua New Guinea government to investigate the house burnings and forced evictions of Operation Ipili '09, Barrick/PJV fails to demonstrate that it has followed the guidance of the Voluntary Principles, and thereby also the OECD Guideline on human rights, "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments,"⁷⁷ Barrick is in violation of the Voluntary Principles for failing to "use its influence to promote the following principles with public security. . . force should be used only when strictly necessary and to an extent proportional to the threat..." Barrick/PJV also fails to adequately support the victims' right to remedy and thereby contributes to their harm. There is no indication that Barrick/PJV has itself taken action to compensate the families who were evicted and lost their homes. As a result, Barrick/PJV has also failed to fulfill responsibilities under the OECD Guideline that states that enterprises should "contribute to economic, social and environmental progress with a view to achieving sustainable development."⁷⁸

⁶⁸ Amnesty International. 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P. 17.

⁶⁹ OECD Guidelines Section II General Policies - Paragraph 2

⁷⁰ OECD Guidelines Section II General Policies - Paragraph 6

⁷¹ OECD Guidelines Section II General Policies - Paragraph 7

⁷² OECD Guidelines Section II General Policies - Paragraph 8

⁷³ See Amnesty International 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P.13.

⁷⁴ OECD Guidelines Section II General Policies – Paragraph 11

⁷⁵ See draft commentary to Ruggie's principle 15: "In relation to complicity in international crimes, the weight of international legal opinion indicates that the relevant standard for aiding and abetting such crimes is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime." Draft Guiding Principles for the implementation of the United Nations 'Protect, Respect and Remedy' Framework. P. 16.

⁷⁶ OECD Guidelines Section II General Policies - Paragraph 1

⁷⁷ OECD Guidelines Section II General Policies - Paragraph 2

⁷⁸ OECD Guidelines Section II General Policies - Paragraph 1

4. Riverine Tailings Disposal and Impacts on Air Quality

In 2008, the Porgera Joint Venture mine disposed of 6.05 million tons of tailings and 12.5 million tons of suspended sediment from the Anawe and Anjolek erodible waste dumps⁷⁹ into the downstream Porgera, Lagaip and Strickland rivers systems which flow some 800 kilometres from the Papua New Guinea highlands to the Gulf of Papua. This waste contains dissolved and sediment bound metals.⁸⁰ PJV has disposed of its mine waste in this fashion since the mine started operations in 1990. In order to meet Papua New Guinea water quality criteria, PJV requires a 165 kilometre-long “mixing zone” in the river system starting at the mine site. In this mixing zone water quality standards do not have to be met. Barrick/PJV has not made monitoring data regarding river impacts publicly available. Nor has Barrick/PJV made available a 2007 consultants study that considers alternatives to riverine disposal of waste. In addition to environmental impacts, potential human health impacts associated with the contamination of the river systems have long been a concern, most acutely so in the reaches of the river near the mine.⁸¹ Barrick/PJV has not made a closure plan, or a rehabilitation plan for the impacted river system, available. In addition to concerns flowing from tailings and waste rock disposal, Porgerans also regularly express concern about air pollution impacts of emissions from the mine’s processing facilities and lack of information about the content of these emissions.⁸²

Barrick/PJV’s riverine disposal of mine waste is not in accordance with international best practice. The final report of the World Bank’s Extractive Industry Review notes that “[a]ll disposal options should be rigorously evaluated, with an emphasis on the need for ongoing monitoring of waste and tailings dumps, but no WBG-supported mining project should use riverine tailings disposal.”⁸³ The Government of Canada promotes the International Finance Corporation’s (IFC) standards as guidelines for Canadian companies operating overseas. The IFC maintains that “[r]iverine (e.g., rivers, lakes, and lagoons) or shallow marine tailings disposal is not considered good international industry practice.”⁸⁴ Riverine tailings disposal is effectively banned in Canada through legislation limiting suspended solids in mine effluent deposited into the environment.⁸⁵ Furthermore, best practice requires that mines prepare and make public closure plans and regularly update these, carry out progressive rehabilitation, and provide bonds that will assure the proper rehabilitation and closure of a mine. Barrick/PJV either does not have a closure plan for the PJV mine or is not making one available.

Barrick/PJV’s waste disposal practises at the PJV mine violate a number of OECD Guidelines with respect to the environment, as well as the international instruments these are based upon, such as the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration), the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters and standards contained in such instruments as the ISO Standard on

⁷⁹ Strickland River 2009 Report Card. <http://www.peakpng.org.pg/docs/Report%20Card%20Oct%2009-Final.pdf> (accessed February 6, 2011)

⁸⁰ Metals include Arsenic (As), Cadmium (Cd), Copper (Cu), Lead (Pb), Mercury (Hg), Nickel (Ni), Silver (Ag), Zinc (Zn) and Cyanide (CN). Strickland River 2009 Report Card. <http://www.peakpng.org.pg/docs/Report%20Card%20Oct%2009-Final.pdf>

⁸¹ On health risks see for example, Shearman, Philip. 2001. Giving away another river: an analysis of the impacts of the Porgera mine on the Strickland River system. In *Mining in Papua New Guinea: Analysis and Policy Implications*. B.Y. Imbun and P.A. McGavin, eds. Pp. 181-183.

⁸² Personal communications of Catherine Coumans during two trips to Porgera, November 2008 and March 2009.

⁸³ Striking a Better Balance: Extractive Industry Review. 2003. Executive Summary p. 4.

[http://irispublic.worldbank.org/85257559006C22E9/All+Documents/85257559006C22E985256FF6006820D2/\\$File/execsummaryenglish.pdf](http://irispublic.worldbank.org/85257559006C22E9/All+Documents/85257559006C22E985256FF6006820D2/$File/execsummaryenglish.pdf) (accessed January 23, 2011).

⁸⁴ IFC/World Bank (December 2007) “Environmental, Health and Safety Guidelines for Mining.”

[http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_Mining/\\$FILE/Final+-+Mining.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_Mining/$FILE/Final+-+Mining.pdf) (accessed January 23, 2011).

⁸⁵ See the Metal Mining Effluent Regulations, which limit suspended solids in mine effluent to be released to the environment to 15 mg/litre on average per month.

Environmental Management Systems. OECD guidelines with respect to the Environment, section V, expect companies 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.*”⁸⁶ Riverine tailings disposal contaminates an 800-kilometre long river system and it endangers the public health and safety of communities along the river.⁸⁷ The erodible dumps have been designed to continue depositing metal laden sediments into the river system for decades after the mine has stopped operating. As there is no closure or rehabilitation plan for the river system Barrick/PJV are not assuring long term sustainability for the excessively large footprint of the mine and the ecosystems associated with the river system.

Furthermore, the OECD Guidelines, under section V, set out the types of data companies should be gathering and providing to stakeholders. Here also Barrick/PJV falls short. In particular, the OECD Guidelines require that companies collect data on “*the environmental, health and safety impacts of their activities*”⁸⁸ and “*provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise.*”⁸⁹ Barrick/PJV has withheld environmental monitoring data on the river even after being asked to provide these. It is unclear whether air emissions data is being collected at all; it is not being made public. As the consequences of environmental degradation for communities in Porgera and along the river are substantial PJV’s environmental impacts have negative consequences for sustainable development – enterprises should “*contribute to economic, social and environmental progress with a view to achieving sustainable development*”⁹⁰ – and for human rights – enterprises should “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*”⁹¹

⁸⁶ OECD Guidelines Section V. Environment. Preamble.

⁸⁷ See note 99.

⁸⁸ OECD Guidelines Section V. Environment – Paragraph 1a.

⁸⁹ OECD Guidelines Section V. Environment – paragraph 2a

⁹⁰ OECD Guidelines Section II General Policies - Paragraph 1. Rights that are threatened as a result of environmental degradation are, among others: right to health; right to life, liberty and security of the person; right to an adequate standard of living (including food, clothing and housing).

⁹¹ OECD Guidelines Section II General Policies - Paragraph 2.