



MiningWatch Canada
Mines Alertes



Rights and Accountability in Development

Privatized Remedy and Human Rights: Re-thinking Project-Level Grievance Mechanisms

Third Annual UN Forum on Business and Human Rights

Palais des Nations, Room XXII
1 December 2014
11:45-13:15



Purpose of this brief:

This brief was prepared by MiningWatch Canada and Rights and Accountability in Development (RAID) to accompany a panel organized by both organizations titled “Privatized Remedy and Human Rights: Re-thinking Project-Level Grievance Mechanisms.” The panel was organized for the Third Annual UN Forum on Business and Human Rights held in Geneva on December 1, 2014.

This brief does not cover the full range of concerns related to excessive use of force by mine security and police guarding the Porgera Joint Venture mine in Papua New Guinea and the North Mara Mine Gold Mine Ltd. in Tanzania.¹

Nor does this brief provide comprehensive coverage of all areas of concern related to the implementation of company-led project-level non-judicial grievance mechanisms at these two mine sites to deal with criminal acts and gross violations of human rights.

The purpose of this brief is to raise important concerns regarding the implementation of these non-judicial grievance mechanisms, based in part on field assessments carried out by the authors (by Catherine between 2008-2013 in Porgera and by both Catherine and Patricia in 2014 in North Mara), and to stimulate vigorous debate.

Catherine Coumans, MiningWatch Canada
Patricia Feeney, Rights and Accountability in Development.

Cover picture – Family member of a victim of excessive force by mine security at the North Mara mine, Tanzania, July 2014. Photo: Catherine Coumans.

¹ Barrick Gold Corp. (Barrick) is 95% owner of the Porgera Joint Venture mine (Porgera Mine) and the mine is operated by a Barrick subsidiary. The North Mara Gold Mine Ltd. (North Mara Mine) is the local subsidiary of African Barrick Gold (recently renamed Acacia Mining), of which Barrick owns 64%.
<http://www.mining.com/african-barrick-is-history-changes-name-to-acacia-mining-31334/>

Privatized Remedy and Human Rights: Re-thinking Project-Level Grievance Mechanisms

Brief based on independent field assessments of project-level grievance mechanisms at the Porgera mine in Papua New Guinea and the North Mara mine in Tanzania

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D) Ongoing Gross Violations of Human Rights by Mine Security and Police at the Porgera and North Mara Mines

Both the Porgera Mine in Papua New Guinea (PNG) and the North Mara Mine in Tanzania have a long history of excessive use of force by mine security and police that guard the mines.² This excessive use of force regularly results in deaths and maiming by gunshots of local men, beatings, and rape of local women and in Porgera gang rape of local women. Both mines have Memorandum of Agreements/Understanding with the state allowing PNG and Tanzanian police, to be used to help guard the mines. Both PNG mobile police and Tanzanian police have well-documented reputations for excessive and unreasonable use of force. At both mines, documented cases of excessive use of force against both men and women implicate both mine security and police forces guarding the mines.

For many years (starting in 2005 just before the 2006 takeover of the Porgera Mine by Barrick) Barrick officials, board members and shareholders were directly informed of the excessive use of force by Porgera mine security and police guarding the mine by members of a local grassroots human rights groups Akali Tange Association (ATA) and the Porgera Landowners association (PLOA), as well as by MiningWatch Canada, and members of 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.³ An OECD Complaint⁴ filed in March 2011 with the Canadian National Contact Point, and shared with Barrick, detailed the violence, which had previously also been detailed in letters to Barrick, in statements read out at Annual General Meetings (2008-2011) and in testimonies brought before Canadian Parliamentary committees (2009).

After years of denial, Barrick acknowledged the rapes and gang rapes in of local women by mine security and started to develop a project-level grievance mechanism to deal with upwards of 200 victims in 2011/2012. The grievance mechanism was only to deal with raped women, not men who had suffered from excessive use of force by mine security and police. The grievance mechanism would also only deal with offences by mine security, not rapes committed by police guarding the mine, even though these police were housed, fed, and supported financially by the Porgera Mine. And, the mechanism was to have short-term duration, rather than remain open for any new victims that may have need of remedy.

In the case of the North Mara Mine, a long standing and well-publicized history of excessive use of force by mine security and police culminated in a law suit against African Barrick Gold (now Acacia Mining) and North Mara Gold Mine Ltd. that was launched by UK-based Leigh Day on July 30, 2013 in the UK High Court. It was only after Leigh Day started to communicate with African Barrick Gold, in the lead up to filing the suit, that the North Mara Mine implemented a grievance mechanism to deal with victims of excessive force by mine security and police at the North Mara Mine.

Significantly, high levels of violence associated with excessive use of force by mine security and police persist in both Porgera and North Mara. In June mobile police units guarding the Porgera mine once again

² Burton, Bob. 2005. *Canadian Firm Admits to Killings at PNG Gold Mine*.

<http://www.ipsnews.net/news.asp?idnews=31074>; Geoffery York, Globe and Mail, *Blood and Stone* 2011.

<http://www.theglobeandmail.com/report-on-business/rob-magazine/barricks-tanzanian-project-tests-ethical-mining-policies/article559188/?page=all>

³ 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> .

⁴ http://oecdwatch.org/cases/Case_210

burned down the houses of villagers living in a traditional village just outside the mine fence. Reports of rapes associated with this police action are being investigated by local community leaders. In July another young man was shot dead by Porgera mine security in an act described by the investigating police as “murder” by “mine security guards” (see Appendix A). Levels of violence remain high in North Mara as well, as became evident during a field assessment by MiningWatch and RAID in June/July 2014, and reported on in the Globe and Mail (see Appendix B).

II) Project-level grievance mechanisms – The gap between rhetoric and reality

The project -level grievance mechanism at the North Mara Mine differs from the one in Porgera, although they were created at roughly the same time. The North Mara mechanism deals with both men and women who have been victims of excessive use of force by mine security. It differs from the remedy program in Porgera in a number of ways: it is open to victims of both mine security and police; it is not time-bound - in Porgera the remedy programme was only available to victims of past abuses - ; it is not independent but is run directly by mine personnel and African Barrick Gold’s (now Acacia Mining) legal counsel in London; and the North Mara mechanism has not provided a remedy framework that clearly sets out the steps in the process.

A final significant difference between the two mechanisms is that the Porgera grievance mechanism was forced into the public realm considerably sooner than the mechanism being implemented in North Mara. Barrick did not publicize its remedy framework until months after MiningWatch Canada made public a copy it had received from another source,⁵ along with a detailed critique in January 2013 (see Appendix C). The North Mara mechanism only became public after a confidential legal waiver signed by a victim emerged during legal proceedings in High Court in London in December 2013.

Both the Porgera and North Mara mechanisms make the provision of remedy - a human rights responsibility of corporations as set out in the UN Guiding Principles - contingent on victims signing away their right to sue Barrick and its subsidiaries in civil court. In the case of North Mara, the project-level grievance mechanism appears to have targeted claimants represented by Leigh Day in the UK law suit in an apparent effort to encourage them to drop the proceedings in favour of non-judicial remedy. A condition for acceptance onto the remedy programme requires the victims of abuse to sign away their right to sue Barrick and its subsidiaries over their claims in the future (see Appendix D). In both cases, the insistence on legal waivers in return for remedy is creating yet another barrier to access to justice for these impoverished victims. In the Porgera case, that barrier impedes future potential legal suits, while in the case of North Mara, the waivers are directly undermining an existing judicial option for the victims. Both mechanisms have made various changes in their implementation, following specific criticism by MiningWatch Canada, RAID and others. Unfortunately, some of these changes came after victims had already signed away their legal rights, necessitating in both the Porgera case and the North Mara case that these claimants be approached again to sign new papers to indicate that they agree to changes.

Public statements by Barrick and African Barrick Gold (now Acacia Mining) have consistently emphasized that the mechanisms are in full compliance with the United Nations Guiding Principles on Business and Human Rights (UN GPs), even as changes were being made to address legitimate critiques. In fact, neither mechanism can legitimately claim to have been in compliance with the UN GPs based on the reality of how these mechanisms were created and implemented. There is a rich public documentation of both critiques and responses by Barrick and African Barrick Gold (now Acacia Mining) (see Appendix E) and more detailed reports on the Porgera case and, by MiningWatch and RAID on the North Mara

⁵ Link to initial Porgera Remedy Framework - http://www.miningwatch.ca/sites/www.miningwatch.ca/files/framework_of_remediation.pdf

case, are being prepared and will be made available in 2015. The following section focuses on just a few areas of concern.

III) A Summary of Some Key Concerns – Examples from the Porgera and North Mara Mines

In summary, areas of concern include:

- **Lack of meaningful consultation** with victims on the remedy process and on the remedy itself. Prior to the completion of the Porgera remedy framework document in 2012, and the start of implementation of the remedy process in 2013, the women who were victims of rape at the Porgera mine were not consulted about the process, nor about the remedy they would receive. During a field assessment by MiningWatch and others in March 2013, interviews with female victims of violence indicated that they had very different needs and expectations regarding remedy than what was being offered through the grievance mechanism. Following an airing of these criticisms, Barrick made assurances (June 7, 2013) that women would be consulted about their remedy going forward. But complaints from women about the remedy being offered have persisted (see Appendix F). Additionally, in spite of years of very public work on the issues of violence at the Porgera mine, the local organizations Akali Tange Association and the Porgera Landowners Association were not consulted on the remedy process and framework, aside from confidential “dialogue” that took place in the context of mediation related to an OECD complaint filed by those organizations with MiningWatch Canada. This dialogue took place *after* the initial remedy framework had been completed and the remedy program was being implemented in Porgera. Barrick continues to justify this exclusion based on criticisms of these organizations without acknowledging the critical role they have played in raising public awareness of the violence associated with the Porgera Mine and continue to play in critiquing ongoing harm caused by the mine. At many mine sites there will be strong critics. Rather than to try to marginalize these voices, mining companies will need to find ways to hear them and include them in decision making. For a response to the attempt to marginalize strong crucial leaders at the Porgera mine see Appendix G.

In regard to the North Mara mine, a field assessment conducted by MiningWatch and RAID in June-July 2014⁶ indicated that although some victims of shootings and rapes by mine security or police were interviewed by mine staff, in those cases where remedy was subsequently offered, the remedies did not reflect what the victims had indicated they required.

- **Non-rights compatible remedy.** In interviewing rape victims in Porgera in 2013 we repeatedly found that they did not agree with the remedy they were offered through the program. Most women were offered what amounted to small-scale development projects: livestock to raise and sell or second-hand clothing to sell. They found this to be, among other things, incommensurate with the severity of the assault they had endured, not addressing or remediating the particular harm that resulted from the rape, and not what they would have expected to receive through the local traditional court system. Subsequent to our field assessment, Barrick publicized that it had made adjustments to the remedy it would provide (June 7, 2013), and remedy provided in 2014 was primarily cash. The remedy provided was largely uniform, not individually tailored, and still considered inadequate by many women, including women who nonetheless accepted the offer.

⁶ <http://www.miningwatch.ca/news/violence-ongoing-barrick-mine-tanzania-miningwatch-canada-and-raid-uk-complete-human-rights-ass> Full report forthcoming.

In the case of North Mara, victims of violence who were receiving remedy and who were interviewed by MiningWatch and RAID, all indicated that they were dissatisfied with key aspects of their remedy, for example its substance and/or its duration.

- **Ad hoc process.** In both the Porgera and North Mara cases, changes were continuously made to the mechanisms, often in response to concerns raised by MiningWatch and other international observers, even as victims were/are being processed through the programs. For example, after we had been assured that all rape victims would receive required medical treatment, whether or not they signed the legal waiver, we found out that this was not what the women themselves understood to be the case when they met with staff for the mechanism. When this was raised with Barrick, the company said it would correct the mistake by revisiting the waiver with all the women (over 100) who had already signed it, to ascertain if they would still have done so if they had realized that medical care could be had without a waiver. Barrick subsequently issued a communication regarding this issue (December 3, 2013).

In the case of North Mara, MiningWatch and RAID we were told that the waiver we had critiqued⁷ was later changed, but these changes were made *after* victims had already signed it. While conducting a field assessment in 2014, victims showed us forms they had received and were asked to sign to indicate they were informed of the changes to the waiver. But our interviews indicated that victims did not understand the implications of the changes to the waiver. Furthermore, we found application of the remedy program is both selective and less than impartial. While the company has provided compensation and obtained legal waivers from claimants who had been clients in a law suit brought by London-based law firm, Leigh Day, other victims and their families that were interviewed have not been offered any compensation. Additionally, in the course of communications with Barrick/ABG, MiningWatch and RAID were informed (March 11, 2014) that victims could receive “a voucher” that would allow them to seek independent legal support in regard to the remedy program. But in an interview on July 8, 2014, mine staff said they had seen the communication regarding the provision of a voucher but they could not tell us how the voucher system would work nor what the value of the voucher may be.

The ad hoc and unpredictable nature of these remedy programs disadvantages the victims.

- **Lack of transparency.** In both the Porgera and North Mara cases, lack of transparency has been the default mode, with piecemeal information provided only when the programs have come under public scrutiny, and often too late to improve the programs in a meaningful and rights-compatible manner.

For example, Barrick did not initially make public a copy of its remedy framework for Porgera. The company also did not provide a copy to MiningWatch when asked to do so. It was only after MiningWatch received a copy of the Porgera remedy framework from a third party, critiqued it in detail and published it on the MiningWatch Canada website, that Barrick, after changing some aspects of the framework, published a newer version on its own website. By the time MiningWatch was able to review the remedy framework, the remedy process was already underway.

Furthermore, although the remedy framework has undergone continuous changes in response to criticism and Barrick has provided communications regarding these changes, assurances by Barrick that an updated remedy framework would be made publicly available (December 3, 2013) were not

⁷ http://www.miningwatch.ca/sites/www.miningwatch.ca/files/letter_to_barrick_regarding_north_mara_2014-02-21.pdf

followed up so that the program was implemented in 2014 without a publicly available updated remedy framework.

In the case of North Mara, there has been considerably less independent scrutiny of the program as it was being implemented. The entire program was shrouded in secrecy until a waiver, labeled “Strictly Confidential,” surfaced in December 2013, and MiningWatch issued a press release. In response, ABG issued a one-page statement concluding that **“it should not be anticipated that additional details about the program will be forthcoming from ABG or the mine.”** Following a subsequent letter from MiningWatch and RAID, raising detailed questions, ABG provided some additional information about the program, but again concluded this letter by stating **“we reiterate that it should not be anticipated that additional details about the remedies they [victims] have received will be forthcoming.”**

There is no publicly available remedy framework.

ABG (now Acacia Mining) in part justifies its lack of transparency by expressing concern for the safety of the victims. But answers to the questions we posed about the program itself, most of which remained unanswered, would not compromise the victims.

Another justification for lack of transparency lies in a narrow reading by ABG (now Acacia Mining) of the transparency requirement in UN GP 31 (e). The following text is drawn from ABG’s response to MiningWatch and RAID:⁸ “transparency in the context of a grievance mechanism means providing information to complainants about how their complaints are being handled, providing information to affected stakeholders, and in certain circumstances to other stakeholders, about how well the mechanism is working. We do not believe that transparency in that context means providing information about specific grievances to the public at large, as you seem to suggest.”

By interpreting the transparency requirement in UN GP 31 (e) narrowly, ABG justifies not providing information to relevant organizations, such as MiningWatch, hindering their ability to provide an independent assessment of the program.

In personal communications about project-level non-judicial grievance mechanisms with John Ruggie (August 23, 2013), Ruggie noted, “Our preference was to broaden access to remedy, in line with fully rights-compatible process requirements. And we counted on civil society to help ensure that those requirements are met in practice.” Leaving aside the question of whether independent “civil society” has the resources and access necessary to fulfill this “ensuring” role, it is clear that civil society cannot play this role without a high level of transparency from companies that create project-level mechanisms.

IV The Case Against Legal Waivers

Independent field-based data from the Porgera and North Mara grievance mechanisms in part informs our opposition to legal waivers that grant corporations, which have harmed people through their operations, immunity from civil action by those victims, as a condition for the provision of remedy. Turning human rights into a transaction of value is particularly concerning in cases of gross violations of human rights and criminal acts, such as those discussed in this brief.

⁸ <http://www.africanbarrickgold.com/corporate-responsibility/community-relations.aspx>

- Legal waivers obtained through a non-judicial mechanism unnecessarily create barriers to judicial remedy for claimants who may decide to take civil action against a company for the harm covered by the waiver. It is the express purpose of these waivers to create a barrier to access to judicial remedy against the company or companies in question.
- The UN Guiding Principles clarify that corporations should provide remedy for harm they have caused. The UN GPs do not condition that responsibility on victims of human rights abuses giving up their right to judicial redress against the company in question. Remedy is described as a right in the UN GPs, not as a transaction of value in which a company will only provide remedy if it receives something of value to it – in this case legal immunity– in return.
- Both the Porgera and North Mara mechanisms demonstrate that these ad hoc company mechanisms, set up in remote locations, in conditions of extreme power imbalance, with insufficient transparency and insufficient critical and independent scrutiny, have been characterized by processes, remedies and conditions on receiving remedy that are not transparent, unpredictable and not rights compatible. It is critical to ensure that victims of human rights abuses are not expected to give up a right to civil judicial redress against the company in return for benefits given these precarious circumstances.
- Both Barrick and ABG (now Acacia Mining) make a point of arguing that legal waivers are necessary and of value to both the company and the complainants to achieve “predictability and finality.” While predictability and finality are undoubtedly of great value to the corporations in these cases, these are not of value to the victims of violence in the Porgera and North Mara cases, for whom greater value is obtained in maintaining the option to take civil action against the company for the harm covered by the waiver. While Barrick and ABG (now Acacia Mining) continue to argue that without a waiver, a claimant might receive remedy from the company twice for the same harm, we have pointed out proven ways to avoid this occurrence without the use of a legal waiver.
- Both Barrick and ABG refer extensively to the consultants they have employed or engaged to ensure rights compatibility of the Porgera and North Mara mechanisms, retired justices, international consulting companies such as Search for Common Ground, etc. But the fact remains that these experts – generally paid– either did not notice that the waivers complainants were asked to sign were flawed, or, if they did, were not able to persuade the company to make the necessary changes. Hired consultants, who commonly operate under confidentiality clauses, are an insufficient guarantee that complainants’ rights will be protected.
- Both Barrick and ABG maintain that the remedy they provided in Porgera and North Mara was comparable to what these victims of rape and violence by security guards and police would have received in court. This argument is made in order to justify waivers. It is impossible to assess this claim, as much related to the actual remedies is not transparent. As noted above, ABG responded to our requests for more detailed information on the remedies provided to claimants in the North Mara case by stating “we reiterate that it should not be anticipated that additional details about the remedies they [victims] have received will be forthcoming.”

Finally, in September 2013, the OHCHR weighed in on the issue of the use of waivers in project-level non-judicial grievance mechanisms.⁹ The OHCHR noted that “[t]he Guiding Principles do not explicitly address the question of whether finality of a civil claim against a company which has identified its involvement with an adverse human rights impact can be achieved through operational-level grievance mechanisms.” This is a gap that urgently needs to be addressed.

The OHCHR further noted that “the presumption should be that as far as possible, no waiver should be imposed on any claims settled through a non-judicial grievance mechanism. Nonetheless, and as there is no prohibition per se on legal waivers in current international standards and practice, situations may arise where business enterprises wish to ensure that, for reasons of predictability and finality, a legal waiver be

⁹ http://www.miningwatch.ca/sites/www.miningwatch.ca/files/22_08_lw_rh_porgera_opinion.pdf

required from claimants at the end of a remediation process.” This opinion is not helpful. While it does set out a presumption against waivers based on the *OHCHR Rule of Law Tools for Post-Conflict States: Reparations Programmes*, it qualifies that rights-based presumption by referring to the wishes of corporations for finality.

EarthRights International, in the context of the Porgera case, responded to the OHCHR by stating: “We fundamentally believe that given the general lack of judicial oversight in countries where grievance mechanisms are most critical, legal waivers are *never* appropriate as a precondition for receiving benefits through a grievance mechanism for gross human rights abuses. Rather, they are yet another avenue through which victims of human rights abuse can be taken advantage of. At most, the value of benefits received through a grievance mechanism could be applied as an offset against any civil damage award that might be obtained through the courts.”¹⁰ We believe this position is a good starting point for addressing an issue, the resolution of which is urgently required (see Appendix G).

¹⁰ <http://www.business-humanrights.org/Search/SearchResults?SearchableText=porgera>

Appendix A: Ongoing violence in Porgera – house burnings, rapes, another killing



MiningWatch Canada
Mines Alerte

Increased Violence at Barrick’s Porgera Mine: Indigenous Ipili Send Envoy from Papua New Guinea to Canada

(Ottawa, September 11, 2014) Barrick Gold’s Porgera Joint Venture Mine in Papua New Guinea (PNG) has long been associated with extreme violence against local men and women by mine security and state police associated with the mine. The level of human rights abuses at the mine has spiked again this year.

In April, combined state police and army units were once again “called out” to Porgera by the PNG government to deal with Barrick’s ongoing inability to stop local people displaced by the mine from entering the pit and the mine’s massive uncontained waste flows in a desperate attempt to eke out a living from residual gold.

In June, MiningWatch Canada reported on the burning down of houses of the Tiene clan of the village of Wingima, adjacent to the mine, and associated human rights abuses such as the reported rape of local women by state police. This was a repeat of a similar mass burning of houses of the Tiene and other clans living near the mine by state police in 2009, reported on by MiningWatch and documented by Amnesty International.

In July, 26-year old Wasato Kaipas was the victim of “murder” by “mine security guards” according to the Royal Papua New Guinea Constabulary Crime Report. The report says he was “shot in the head to die instantly while he tried to run away from inside Barrick PNG’s mine site.”

“How many more of our women will be raped, and our men shot dead, and our houses burned down, before Barrick finally does what we have been asking for, for years now?” asks Jethro Tulin of the Porgera grassroots human rights organization Porgera Alliance. “Barrick needs to resettle the people out of the Special Mine Lease area so that they no longer have to live around the pit and amidst the mine’s hazardous waste.”

“Barrick’s response to years of reported gross violations of human rights by its mine security in Porgera has been to pay consultants such as **Business for Social Responsibility** and **Fund for Peace** for proprietary reports and advice, and to bring in **Avanzar LLP** to conduct internal risk-based human rights assessments,” says Catherine Coumans of MiningWatch Canada. “While these human rights assessments extract information from local people, they are not available to the very people who are suffering human rights abuses by the mine, and the human rights abuses continue unabated.”

While in Canada, Mr. Tulin will be meeting with the Canadian Government’s National Contact Point for the **OECD Guidelines for Multinational Enterprises**, with Canadian human rights experts and NGOs, and with the Canadian public in Ottawa, Montreal, and Toronto.

In New York, Mr. Tulin will be attending the **World Conference on Indigenous Peoples**, a high level plenary meeting of the United Nations General Assembly.

For more information contact:

Jethro Tulin, Porgera Alliance, (675) 728-17336, [jctulin\(at\)gmail.com](mailto:jctulin@gmail.com)

Catherine Coumans, MiningWatch Canada, (613) 569-3439, [catherine\(at\)miningwatch.ca](mailto:catherine@miningwatch.ca)

Related Documents:

The following documents were provided by the family of Wasato Kaipas to raise public awareness of his killing and of violence by mine security at the Porgera mine. They seek compensation for his death.

- 1) Royal Papua New Guinea Constabulary Crime Report**
- 2) Autopsy report**
- 3) Picture of the deceased**

ROYAL PAPUA NEW GUINEA CONSTABULARY

CRIME REPORT

HIGHLANDS AREA

POLEGGA

CRN 849/14

(1) Crime Report Number 49, 14

Command

(3) Province

(4) Station

(2) Charge Book Number

INFORMATION GIVEN BY

Name IWINI-KAIKAS Time 2300 Date 25, 07, 14
Living at KANDEP, ENGA Phone number 71160752

FOR PHQ USE ONLY

CRN	1		
3		4	
5			
6			
7			
8			
9			
10			
11			12

VICTIM OR COMPLAINANT'S DETAILS

Name LAIK WASATE-KAIKAS
Living at TITIP VILL, KANDEP, ENGA
P.O. Box / Phone number /
Male/female M Age 26 yrs Occupation VILLAGER
Business address /
P.O. Box / Phone number /

DETAILS OF OFFENCE

(1) Type of Offence MURDER
(2) Committed at (location) MINE-SITE BARRIER PNG
Between Time Day Date
and Time 8:05pm Day MONDAY Date 14, 07, 14

(3) Type of Premises (if applicable)
(4) How entered/wrapost used (as applicable)

STOLEN PROPERTY, if applicable

Full description of stolen property (brand, make, model and serial numbers)

(5) Total value of property stolen K (6) Total value of property recovered K

PERSONS ARRESTED if applicable

(12)
 Name used _____ from _____ Province _____
 Name used _____ from _____ Province _____
 Name used _____ from _____ Province _____
 Name used _____ from _____ Province _____

BRIEF REPORT OF CRIME AND RESULT OF INITIAL INQUIRIES

The deceased was shot in the head to die instantly while he tried to run away from inside Barrick Pass Mine-site looking for gold as an illegal miner.

Member Reporting: Number 11081 Rank S/SC Name Patrick Ananwa

Note: The ORIGINAL is the investigator's copy, the DUPLICATE will be forwarded to the OIC/NCRD Police Headquarters as directed by C.S.O. 3494

To be investigated by (11) Number 11081 Rank S/SC Name Patrick Ananwa

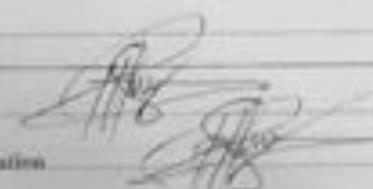
Date 25, 07, 14 Initials of OIC/CID (Station) PORUGHA

INVESTIGATION REPORT

(13)
 (include full details of any person suspected)

The Mine Security Guards.

Signature of Investigator



Date 25, 07, 14

Signature of OIC/CID/Station



Date 25, 07, 14

POGGERA HOSPITAL
P.O. BOX 484,
MT HAGEN, WHP
PAPUA NEW GUINEA
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TEL: (675) 5476004
(675) 5476611
FAX: (675) 5476003
B. Mobile: 76511200

Autopsy Report

Name: Wasato Kaipas
Age: 26 years old
Sex: Male
Address: Titip, Kandep

Identified by relatives:

Present at Autopsy:

Deceased relatives:

Iminj Kaipas - brother
Param Kaipas - brother
Amos Mathew - cousin
Win Niyata - cousin

Police Representative:

Chief Sgt
Pian Nukendi

Hospital Representative:

Dr. Alan Nadal
Philip Luke

Place of Autopsy: Poger Hospital
Date of Autopsy: 15/07/14
Time of Autopsy: 11:39 AM

Post Mortem Summary Report:

The deceased died at PTV Barrick mine site due to gunshot wound to the head. The incident happened on the 14th of July 2014 at around 8:00 PM. The post mortem showed a gunshot wound entrance 1 cm in size at the right frontal - parietal area of the head just above the hair line. A gunshot wound exit was found at the right occipital area, measuring 5 cm x 5 cm with open comminuted skull fracture.

Brain tissue and blood was seen coming out of the wound. The cause of death is intracranial haemorrhage and massive brain tissue destruction secondary to gunshot wound to the head.


Dr. Alan Nadal
Physician - Surgeon
Acting CEO



Note: Not valid without hospital embossed seal



Appendix B: Ongoing violence in North Mara – excessive use of force leading to deaths



MiningWatch Canada
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Rights and Accountability in Development

Violence Ongoing at Barrick Mine in Tanzania: MiningWatch Canada and RAID (UK) Complete Human Rights Assessment

(Ottawa/ Oxford - 5 August 2014) A human rights assessment conducted between late June and mid- July 2014 at UK-listed African Barrick Gold's (ABG) North Mara Gold Mine Ltd. (North Mara mine) in Tanzania by MiningWatch Canada (MiningWatch) and the British NGO, Rights and Accountability in Development (RAID), confirms reports of ongoing excessive use of force by police guarding the mine, resulting in deaths and serious injuries of villagers from the surrounding area.

Desperately poor villagers commonly pay mine security and police to gain access to waste rock dumps and the pits hoping to collect rocks containing gold. Police are paid by the company to protect the mine, in addition to the mine's own security guards, despite a reputation for corruption and the use of excessive force, including shootings causing deaths and injuries at the mine over many years.

"We interviewed more than 30 victims and their family members" says Catherine Coumans of MiningWatch Canada, "most of them had been shot by police or assaulted by the mine's own security guards within the last five years." During the visit Mining Watch Canada and RAID also had meetings with ABG staff at the mine and with its NGO partner, Search for Common Ground.

"We are deeply concerned not only about the clear patterns we discern in the excessive use of force at the mine" says Patricia Feeny of RAID, "but also about the intimidation, persecution, and the invasion of privacy suffered by victims and their families in the aftermath of violence by mine security."

RAID and MiningWatch are preparing a detailed report of their findings for the UN Working Group on Business and Human Rights and for the Board of the Voluntary Principles on Security and Human Rights. ABG's parent company, Toronto-listed Barrick Gold Corporation, is a member and the UK and Canadian governments are participants of the initiative.¹¹

Findings include:

In regard to the Tanzanian authorities and police

- Incidents of use of lethal force by police securing the mine site are high. Based on data collected from health staff in local medical facilities, over the two month period immediately preceding the NGOs' visit, at least ten victims allegedly died from fatal gunshot wounds at the mine;
- Three of the men interviewed had been subjected to arbitrary arrest by police on allegedly trumped-up charges related to incidents at the mine. Too poor to pay a bribe to secure their release, two of them

¹¹ Established in 2000, the Voluntary Principles on Security and Human Rights are a set of principles designed to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights.

spent years in pre-trial detention (a common occurrence in Tanzania). The charges against them were dismissed when their cases eventually came to trial;

- A Committee of Inquiry report, prepared for the District Commissioner of Tarime, regarding the fatal shootings by police on 16 May 2011 of five prospectors (known locally as ‘intruders’), is deeply flawed. The Committee was given just seven days to complete its investigation and submit its findings. The report does not contain any interviews with the victims of violence, their families or eye witnesses. Seven of the 24 people interviewed were police or mine security and four were community relations officers paid by the mine (others were customary elders and local officials). None of the report’s recommendations relate to use of force by mine security or by police that guard the mine.

In regard to African Barrick Gold

- ABG’s investigations into security incidents at the mine - which are regulated by Barrick’s Mine Investigations policy - are another cause of concern and appear to constitute a gross invasion of privacy. Instances reported to us suggest that ABG investigators are given regular access to the medical records of victims of violence by mine police and they routinely question and photograph seriously injured people awaiting treatment in nearby hospitals and clinics, as well as their family members;
- Barrick’s Mine Investigations policy also appears to seek to exercise and retain control over information to protect the interests (legal and otherwise) of the company: staff involved are told that they should ‘where documents are involved, always obtain the original and not a copy’ [paragraph 6.7]; investigations into deaths on the mine site ‘MUST be conducted in accordance with the directions of the Office of the General Counsel (OCG)’ [paragraph 5.1.2]; all ‘Category A’ investigations (those concerning, for example, injuries or deaths to illegal miners), ‘will be undertaken for the dominant purposes of obtaining legal advice and/or preparing for legal proceedings for prosecutions for and on behalf of ABG’. The resulting reports will be labelled ‘Confidential and Privileged’ [paragraph 5.1.2];
- ABG’s grievance mechanism for victims of violence by police or mine security is not rights-compatible. Compensation is dependent on the victims signing away their rights to pursue civil legal action against the company. Participants in the program interviewed by MiningWatch and RAID not only expressed dissatisfaction with the remedy they had been offered, but also confirmed that they had not understood when they signed the compensation agreements that they had lost the right to pursue their claims in legal proceedings against the North Mara mine and Barrick/ABG.
- Contrary to Barrick’s claim in its letter to Mining Watch Canada and RAID (of 11 March 2014) the remedy program is not widely publicized. Furthermore, instead of the programme being implemented by a separate, arms’ length organisation, it is directly under ABG’s control, and involves ABG’s legal counsel in London. Application of the remedy program is both selective and less than impartial. Interviewees, many of whom are illiterate, confirmed that they were encouraged to sign documents in English (a Swahili version was only given to them a month later), which a Barrick employee and a retired judge paid by Barrick, advised them on. While the company has provided compensation and obtained legal waivers from claimants who had been clients in a law suit brought by London-based law firm, Leigh Day, other victims and their families that were interviewed have not been offered any compensation;
- Human rights defenders interviewed, who have tried to investigate and report on human rights abuses at the North Mara mine, allege that they have suffered violence and threats of violence to themselves and their families.

Shortly after MiningWatch and RAID completed the human rights assessment of the North Mara mine, inspector General of Police (IGP) Ernest Mangu and Home Affairs Minister Mathias Chikawe toured the

mine for the first time.¹² Mangu assured that “strong disciplinary measures would be taken against any police officers engaging in unethical practices when assigned to guard the mine” and Chikawe “declared zero tolerance against unethical police officers.”

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Related Documents (available at www.miningwatch.canada and www.raid-uk.org):

- 1) Memorandum of Understanding between RPC (Tarime-Rorya Special Zone) and successors, Tanzania Police Force, Community Policing Unit (PHQ) and North Mara gold Mine Limited concerning Provision of Assistance in Providing Community Policing Services and Maintaining Law and Order in and around the North Mara Gold Mine (8 July 2010)
- 2) African Barrick Gold (ABG) Mine Investigations Group, Investigations Policy, May 2010
- 3) The Report of the Inquiry into the Death of Five People on 16 May 2011 shot by the police at the North Mara mine, District Commissioner of Tarime, 13 June 2013

¹² <http://allafrica.com/stories/201407160933.html>

<http://www.theglobeandmail.com/report-on-business/international-business/deadly-clashes-continue-at-african-barrick-gold-mine/article20216197/>

Deadly clashes continue at African Barrick gold mine

Geoffrey York

JOHANNESBURG — The Globe and Mail -

Published Tuesday, Aug. 26 2014, 7:22 PM EDT

Police have killed more villagers in clashes at a controversial Tanzanian gold mine owned by a Barrick Gold Corp. subsidiary, despite the company's pledges to reduce the violence, researchers say.

The researchers, including a law firm and two civil society groups, say they've received reports that as many as 10 people have been killed this year as a result of "excessive force" by police and security guards at the North Mara mine, owned by African Barrick Gold, a subsidiary of Toronto-based Barrick.

A spokesman for African Barrick confirmed to The Globe and Mail that "fatalities" have occurred in clashes at the mine site this year, but declined to estimate how many. It is up to the Tanzanian police to release the information, he said.

Tanzanian police have repeatedly refused to give any details on fatalities at the site. Dozens of villagers have been killed by police at the mine in the past several years, according to frequent reports from civil society groups. The company occasionally confirms some of the deaths, including a clash in which police killed five people in 2011.

The deadly clashes occur when villagers walk into the mine site in search of waste rock, from which small bits of gold can be extracted. Hundreds or even thousands of "intruders," as they are known locally, can be involved.

Barrick has signed agreements with the Tanzanian police to help provide security at the site. But villagers say the police routinely accept bribes in exchange for access to the site – and then sometimes shoot villagers in disputes over access. Police, too, have been injured by villagers throwing stones or wielding crude tools.

In 2011, African Barrick announced a series of steps to reduce the violence. It allocated \$14-million for the construction of a three-metre-high concrete wall for 14 kilometres around the mine site. It hired a consulting company to instruct the Tanzanian police on "international standards" of human rights. And it announced a series of community projects to improve relations with the seven villages surrounding the gold mine, with more than \$15-million in company funding.

African Barrick says it managed to reduce the number of "intruders" at the site by 35 per cent in 2013, after five consecutive years of increasing numbers. But it declined to say whether fatalities have increased or decreased this year, or even whether it is able to keep track of those deaths.

The company also acknowledged that it had provided compensation "packages" to more than 60 villagers who have complained of violence by police or security guards at the North Mara site.

Leigh Day, a London-based law firm that represents many villagers who allege that they or their family members were victims of police shootings at North Mara, says at least 10 villagers were killed at the mine site this year, many of them as a result of police shootings. It provided the dates of each of the alleged fatalities, and the names of several of the victims.

African Barrick said “a number” of these deaths “correspond with incidents reported to the mine.” But it said some of the deaths may have resulted from fights among the intruders, or accidental falls in the mining pit.

Two civil society groups, Ottawa-based MiningWatch Canada and a British group known as Rights and Accountability in Development (RAID), visited the mine site and surrounding villages in June and July, including hospitals and clinics around the site. They said they interviewed a doctor who had counted 10 deaths as a result of police gunshots at the site in a two-month period.

The groups also alleged that African Barrick’s staff have obtained the medical records of victims of police shootings and routinely question and photograph injured people as they await treatment. Asked about this allegation, the company did not comment.

“We are deeply concerned not only about the clear patterns we discern in the excessive use of force at the mine, but also about the intimidation, persecution, and invasion of privacy suffered by victims and their families in the aftermath of violence by mine security,” said Patricia Feeney of RAID.

African Barrick disputes the fatality toll cited by the two groups. But in many cases, victims are taken to clinics far from the mine, to avoid the police, so their deaths might be unknown to the company, the groups say.

A British all-party parliamentary group is also investigating the police shootings at North Mara, since African Barrick is headquartered in London.

The company acknowledged that one villager was killed by police in a clash in January, but did not give details of other deaths. It said the clashes were caused by “illegal, armed and violent intruders” who “systematically” steal gold-bearing rocks and other property.

The Tanzanian police are required to receive human rights training before they are assigned to any of African Barrick’s mine sites, the company said.

“It is only in very rare cases and extreme circumstances and when all alternatives have been exhausted that the police intervene in confrontation with intruders,” a company statement said. “We regret any loss of life at the mine and continually strive to improve relations with local community members to reduce instances of trespass.”

In addition to the shootings, the police have also been accused of sexual assault. Last December, African Barrick revealed that it gave cash payments and other compensation to 14 women who were sexually assaulted by police and security guards at the mine site.

Appendix C: First thorough critique of the Porgera Remedy Framework, January 28, 2013



MiningWatch Canada
Mines Alertes



Rape Victims Must Sign Away Rights to Get Remedy from Barrick

FOR IMMEDIATE RELEASE

(Ottawa-Washington, D.C.-Oxford, January 30, 2013) Following years of denial, Barrick Gold is implementing a remedy program for victims of rape by employees of its Porgera Joint Venture (PJV) mine in Papua New Guinea (PNG).

In order to receive a remedy package, women must enter into an agreement in which “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.”

Included in the remedy options offered to women are “access to psychosocial/trauma counseling” and “access to health care.” “We do not believe women should have to sign away rights to possible future legal action in order to access the types of remedy Barrick is offering these victims of rape and gang rape,” says Catherine Coumans of MiningWatch Canada, “this requirement is not best practice in cases of non-judicial remedy.”

“We are also concerned that Barrick is not offering remedy to those women who have been raped and gang raped by members of police Mobile Squads who are being housed, fed and supported by PJV on PJV property” says Tricia Feeney, Executive Director of Rights & Accountability in Development.

“Barrick appears to be rushing women through the claims process,” says Rick Herz, Litigation Coordinator for EarthRights International, which has brought several transnational lawsuits in U.S. courts against extractive companies for similar abuses. “Women should not be coerced into giving up their legal rights and, at a minimum, Barrick should allow women to keep the remedial offers made to them open long enough for them to seek legal counsel and evaluate their options.”

MiningWatch Canada, Rights & Accountability in Development and EarthRights International are currently engaged in mediated discussions with Barrick Gold as a result of a complaint filed with the Canadian National Contact Point for the OECD Guidelines. The information and related documents provided in this release were obtained outside of that process.

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Related documents available here:

<http://www.miningwatch.ca/news/rape-victims-must-sign-away-rights-get-remedy-barrick>

- Background Brief - Concerns regarding the Remediation Framework for women victims of sexual violence by Porgera Joint Venture security guards. January 29, 2013.
- A Framework of Remediation Initiatives in Response to Violence Against Women in the Porgera Valley
- OECD Complaint Against Barrick's Porgera Operations, March 1, 2011
- Legal Brief before the Standing Committee on the Foreign Affairs and International Development (FAAE) of the House of Commons by the International Human Rights Clinic at Harvard Law School and the Center for Human Rights and Global Justice at New York University School of Law. November 16, 2009.

Background Brief:

Concerns regarding the Remediation Framework for Women Victims of Sexual Violence by Porgera Joint Venture Security Guards¹³

January 28, 2013

Introduction

The following comments on Barrick's remedial framework [The Framework] for victims of human rights abuses committed by Barrick personnel at the Porgera Joint Venture (PJV) mine in Papua New Guinea (PNG) raise concern that the framework does not reflect best practice and is not sufficiently protective of the rights of the women who have been harmed by sexual violence at the hands of Barrick personnel. The comments that follow are based on the framework text "*Olgeta Meri Igat Raitis: A Framework of Remediation Initiatives in Response to Violence Against Women in the Porgera Valley*" [The Framework].

Two specific comments merit expansion here:

I) On consultation and trust building

Barrick's public release regarding the remediation framework, dated 23 October 2012, maintains that Barrick has adopted an approach that is consistent with the UN Guiding Principles on Business and Human Rights. The UN Guiding Principles require that non-judicial grievance mechanisms involve consultation with the stakeholder groups for whose use they are intended on their design and performance (Principle 31(h)). It is unclear whether Barrick consulted with women who have been victims of violence by Barrick's security guards.¹⁴ It is clear that Barrick chose **not** to consult the Akali Tange Association, a grassroots and local human rights organization that has documented the claims of victims of violence by PJV security guards and has been publicly raising the issues of violence and sexual assault by JPV security for many years. Similarly the Porgera Landowners' Association, as a representative body of the Porgera community and as an organization that has been publicly raising the issue of violence by PJV security guards for many years through its chairman Mr. Mark Ekepa, should have been consulted.

The lack of consultation and inclusion of these local organizations in the development of the Framework has consequences in terms of lack of trust in the remedy process.

Recommendations:

- The Framework should, minimally, provide a more comprehensive historical account of the efforts to alert Barrick to these abuses made by organizations, such as those named above, as well as the International Human Rights Clinic at Harvard and the Center for Human Rights and Global Justice at New York University School of Law.
- In light of the lack of consultation with key stakeholders, such as Akali Tange Association, PLOA, and possibly victims of violence themselves, Barrick should commit to an immediate

¹³ This background text is modified from a brief prepared by claimants and their advisors involved in a complaint filed with the Canadian National Contact Point for the OECD Guidelines. See - http://oecdwatch.org/cases/Case_210

¹⁴ The Framework notes that Barrick consulted with unspecified "community based organizations" (footnote p. 10) and with the Porgera Women's Development Association" (footnote p, 10).

review of the remediation process by an independent panel, which should include local stakeholder groups.

II) Women should not be asked to sign away rights

The Framework is promoted by Barrick to female victims of violence as “upholding your rights and protecting your dignity”. However, The Framework is more protective of Barrick’s interests than of the rights of the women the process should serve. It does not conform to best practice. Nor does it conform to the United Nations Guiding Principles on Business and Human Rights (GPs) which Barrick references.

Women should not be required to sign away their rights to future legal action. This is in line with the GPs which, in the Commentary to Article 29 (dealing with the need for adverse impacts to be remediated promptly and directly), states:

‘Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms.’ (emphasis added).

No release of potential future claims by the victims should be required under the remediation process. It is not best practice for a remediation scheme to require a release of potential claims. At most, a remediation scheme might contain a mechanism to prevent a victim from “doubling up.” For example, if there was a subsequent claim by the victim it might be a condition of the remediation scheme that any compensation for damages provided by the non-judicial remediation scheme would be deducted from any subsequent award of damages through a legal process. Examples of reparation schemes that do not require a release are provided in **Appendix A** below.

Barrick maintains that remedies are independently determined by the Complaints Assessment Team (CAT) and an independent expert. This, of course, is necessary to the legitimacy of the process; it protects not only the victims, but Barrick. If fair remedies are provided, there will be little need or incentive for victims to pursue additional remedies.

Additionally, women in the claims process who progress to the remedy stage are accepted by the process as being the victims of gross violations involving sexual assault, in some cases gang rapes, by Barrick’s employees. These women have been subjected to traumatic experiences at the hands of Barrick’s employees. Given that premise, it is problematic to say the least that the individual reparations process (which Barrick states is to ensure the welfare and safety of the individuals who have been the victim of sexual assault by the PJV) provides: a) trauma response services; b) psychological counselling; or c) health care; only if the victim first signs a release of potential claims against Barrick.

Recommendations:

- Barrick should remove the requirement for women to sign away rights to future legal action against Barrick or PJV.
- Barrick should allow women to keep the remedial offers made to them in the remedy process open for a period of time that is long enough for them to seek legal counsel and evaluate their options.
- Barrick should offer female victims the opportunity to meet with advisors from the Harvard and NYU human rights clinics who have a long-standing involvement with the women victims of Porgera.

Summary of Concerns¹⁵

- The Framework should consistently refer to “sexual violence,” as defined in footnote 13, (as opposed to the narrower term “sexual assault”) so that it is clear which offences will be included in the remedy mechanism.
- The Framework maintains too narrow a definition of “employee.” The Framework should cover sexual violence by all employees of PJV including contractors.
- The Framework and remediation mechanism should cover sexual violence by members of the Mobile Units in cases where these Mobile Units are housed, fed and financially supported by Barrick/PJV.
- The Framework should not limit the locality of offenses to the “Porgera mine site” a term that is not well defined and may not capture all offences that should be eligible for remedy.
- Given the significant hurdles that limit access to justice for women how have been subjected to sexual violence the remedial mechanism should not set an arbitrary deadline for the occurrence of incidents of December 31, 2010, after which cases may or may not be considered eligible on a ‘case by case’ basis, but should remain in place to handle any meritorious claims that may arise.
- Having failed to consult the local organizations Akali Tange Association and the Porgera Landowners Association, both of which have intimate knowledge of and long-standing public concern for the issues addressed in The Framework, with regard to the appointment of key individuals such as the Independent Expert and the Review Panel, Barrick should assure that these organizations are consulted about and have a meaningful role to play in the remediation mechanism, for example by representation in the governance structure.
- Barrick should put a system in place to improve consultation with Akali Tange Association and the Porgera Landowners Association about all aspects of violence related to Barrick’s personnel at the PJV mine.
- Women who participate in the remediation mechanism should either be provided a guarantee of confidentiality or should be informed that the process does not provide confidentiality. Given the very real dangers women face that come forward on such claims, more detail needs to be provided on measures that will be taken to ensure confidentiality.
- With regard to the independence of the PRFA management and assessors of the women’s claims we do not think the current language excluding employees and officers of Barrick/PJV is sufficient to ensure avoidance of conflict of interest. A more extensive conflict of interest policy needs to be adopted for all persons involved in the assessment process.
- The remediation process is overly complex and involves an unnecessary number of newly established bodies to administer the process.
- There are inconsistencies on the eligibility criteria as to whether the assault has to have occurred at the mine site or not. The wording in section 3.1 on page 11 stated that the assault must have taken place “at the Porgera mine site”. However, page 22 (under the heading “Eligibility”) stated that the assault was eligible “regardless of where the assault had occurred”.
- There should be a method to shortcut the process for victims where Barrick has already taken disciplinary action against security personnel for assaults. As Barrick already accepts that there is credible evidence of an assault (in order to have taken disciplinary measures), it should not require those victims to tell their story to a new interviewer, with the associated trauma which that involves.
- There is insufficient information regarding “claimant representation” as discussed on page 20 of The Framework. May legal representatives present claims for victims, or a community or NGP representative?

¹⁵ This list is not comprehensive but rather highlights key concerns.

- There is a lack of information on the selection process for persons involved in the assessment of claims process. In particular there is no information on the role of community involvement.
- There is lack of information on the structure and composition of the PRFA management committee. Does this include representatives of all key stakeholder groups? Are stakeholder groups able to choose their own representatives? Best practice indicates the importance of having persons selected by all stakeholder groups involved in such processes.
- There is a lack of information about how the management committee will operate.
- There is a lack of information on the nature of the contract with the Independent Expert and of the Review Panel members and under what circumstances their tenure may be ended.
- The Expert Advisory Group should include a spectrum of organizations that have shown a concern for the issues of violence against women in Porgera, including those with which Barrick has failed engage in the past.
- There is a lack of information regarding the funding available for this process and guarantees (irrevocable funds etc.) that will ensure that the funding will be available to victims even in the case of non-compliance of PRFA.
- There is lack of information on how the process will ensure that the remedy victims receive is fair, proportionate to harm, and based on fully informed participation of the victims. How will CATs and key decision-makers be guided in awarding remedies (both the nature and quantum of compensation)? How will consistency be ensured for like claims? What sorts of payouts can claimants expect (eg is there a minimum or maximum cap)?
- There is a lack of information about whether Barrick consulted with victims about remedy options in developing The Framework.
- The preferencing (in terms of legitimacy criteria) of claims based on prior reporting to civil society group or investigation by Ila Geno disadvantages women who may have felt a legitimate need to keep silent but whose claim has merit.
- ACT officers appear to have conflicting responsibilities of assisting women in preparing and lodging a claim (page 20) and then making an assessment of the merit of the claim.

Appendix A

1. Ahafo South Mining Project Grievance Mechanism, Ghana

Local residents who file complaints with Ahafo South's Grievance Mechanism retain the right to pursue other forms of legal action at any time during the course of the complaint process.¹⁶

2. The Hokie Spirit Memorial Fund at Virginia Tech

Following the 2007 Virginia Tech shooting spree in which a mentally ill student killed thirty-two classmates and faculty members, Virginia Governor Tim Kaine set up the Hokie Spirit Memorial Fund to compensate physically wounded victims and family members of the deceased.¹⁷ Victims and relatives were given three options for redress: compensation programs, restitution, and litigation. Families received \$100,000 compensation packages for a deceased family member, and injured victims were eligible to receive up to \$100,000 (this is Virginia state law's cap on personal injury claims). Furthermore, families of the deceased were able to seek extra money from a \$1.9 million fund created for restitution purposes. These forms of redress did not preclude litigation, as claimants in this compensation scheme "retain[ed] the right to sue in court."¹⁸ As Kenneth Feinberg's book *Who Gets What* explains, "[A]ll two hundred claimants who received compensation had every right to use the money to hire a lawyer and file a lawsuit against Virginia Tech, [though] only two chose to do so."

3. Hewlett-Packard, Mexico

Hewlett-Packard has established a grievance mechanism for HP Mexican factory workers to file complaints.¹⁹ The complaint process has a number of steps, and both the employee and the company retain the right to pursue litigation at any point throughout the process.

4. Gap, Inc.

Gap's Lesotho branch has grievance mechanisms in place for complaints of varying levels of seriousness and substance.²⁰ Some of the complaints processes may be accompanied by lawsuits, whereas other sorts of complaints filed may not be. During the appeals process, "All parties can at any time take the dispute to the DDP or the Labor courts if unhappy with outcomes from factory level processes or Gap Inc's engagement. An agreement under DDP conciliation is written and becomes binding.... It has the same force and effect as an order of a court of law. It can be taken for review by the Labour Appeal Court." The Labour Appeal Court is an institution of the government of Lesotho.

5. Harvard Kennedy School of Government Corporate Social Responsibility Initiative

¹⁶ Newmont Ghana Gold Ltd., "Public Consultation and Disclosure Plan: Ahafo South," at 38, (2005), available at http://www.newmont.com/sites/default/files/PCDP%20final%20082905_0.pdf.

¹⁷ Brenda Waugh, *Who Will Choose the End Words? Structuring Justice Amid Tragedy*, Washington University Law Journal of Law and Pol'y, 141-177, 141 (2011).

¹⁸ See Kenneth R. Feinberg, *Who Gets What, The Hokie Spirit Memorial Fund*, at 81.

¹⁹ Human Rights and Business Dilemmas Forum, "Freedom of Association: Addressing Grievances in the Workplace," http://human-rights.unglobalcompact.org/case_studies/freedom-of-association/freedom_of_association/addressing_grievances_in_the_workplace.html

²⁰ See generally Caroline Rees and David Vermijs, "Mapping Grievance Mechanisms in the Business and Human Rights Arena" at 15, John F. Kennedy School of Government (2008) available at http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Report_28_Mapping.pdf.

See also a research paper written by Harvard Kennedy School of Government's Corporate Social Responsibility Initiative, titled "Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned," for the Special Representative of the UN Secretary-General for Business and Human Rights John Ruggie.²¹ The Kennedy School carried out five pilot tests with various companies that were interested in creating grievance mechanisms, and pulled lessons from the experiences.²² The report recommends that entry into grievance mechanisms not preclude litigation. It states, "It is also important to note that while operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, they cannot, and should not, be used to substitute for either. Equally important, they should not be used to undermine the role of legitimate trade unions in addressing labor-related disputes, or to preclude access to judicial or non-judicial grievance mechanisms."²³

Additional Australian examples:

6. Aboriginal Trust Fund Repayment Scheme

The Aboriginal Trust Fund Repayment Scheme in New South Wales, Australia provides for a payment to indigenous persons or their descendants concerning wages and other money that was held in trust for them by the Aborigines Protection Board or Aborigines Welfare Board but never repaid to them. The scheme does not require claimants who receive a payment to sign away any legal rights. All claimants who receive a payment are still entitled to pursue legal action. This applies to both the initial 2006 scheme (which individually assessed the amount owed to an individual claimant) and the subsequent 2009 scheme which provided for a fixed ex-gratia payment to each accepted claimant.

See: http://www.atfrs.nsw.gov.au/frequently_asked_questions
http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0016/15541/Guidelines_for_the_Administration_of_the_NSW_Aboriginal_Trust_Fund_Repayment_Scheme_-_30_June_09.pdf

7. Victim's Compensation Schemes

Victim's compensation's schemes in Australia generally provide for the payment of compensation to victims of serious crime, assessed by an independent tribunal and paid by the government. The payment of compensation does not affect the victim's right to bring legal proceedings (whether against the government or an individual): *Victims Support and Rehabilitation Act* 1996 (NSW) section 43(2). However, the compensation may be subject to a condition that the compensation be repaid from any subsequent award of damages in subsequent legal proceedings: s34(1)(c) and the government has a right to receive the compensation for any subsequent award of damages: *Victims Support and Rehabilitation Act* 1996 (NSW) section 43(3). Similar provisions apply in Victoria: *Victims of Crimes Assistance Act* 1996 (Vic) section 51 and South Australia: *Victims of Crime Act* 2001 (SA) sections 17 and 28.

²¹ Caroline Rees, *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned*. CSR Initiative, Harvard Kennedy School, 5 (2011) available at <http://www.business-humanrights.org/media/documents/ruggie/grievance-mechanism-pilots-report-harvard-csri-jun-2011.pdf>.

²² *Id.* at 32–92.

²³ *Id.* at 9 (underlines added).

Appendix D: Leigh Day says North Mara grievance mechanism targets its clients



Barrick faces court in London

Ottawa – November 6, 2014

London-based African Barrick Gold is being sued in the United Kingdom by Tanzanian villagers for deaths and injuries allegedly caused by security and police guarding the company's North Mara mine.

Leigh Day partner, Shanta Martin, who is representing the Tanzanian claimants, is in Ottawa, calling on the company and its majority shareholder, Barrick Gold Corporation, to live up to their corporate responsibility and human rights commitments.

"Impoverished people from remote rural villages who sue multinational companies often face incredible obstacles to having their claims heard by an independent arbiter", says Shanta Martin.

Barrick Gold Corporation says it respects human rights wherever it does business and recognises the dignity of the people they interact with every day.

At the North Mara operations of Barrick's majority-owned subsidiary, African Barrick Gold, impoverished villagers tempted onto the mine to scratch out rocks for tiny amounts of gold are regularly being shot at with live ammunition.

"Our clients naturally expect companies that say they are transparent and supportive of human rights to live up to those claims," said Shanta Martin.

Nine local villagers are pursuing claims against African Barrick Gold and its Tanzanian subsidiary in the High Court of England and Wales for deaths and injuries they claim were a result of the excessive use of force by mine security and police, including the frequent use of live ammunition.

Six of the claims relate to deaths by gunshot, while three claims are brought by injured young men, including one man made paraplegic by a gunshot wound through his spine. His health is precarious.

On 19 November 2014, the Claimants in the proceedings against African Barrick Gold will seek orders from the English court requiring the company to hand over its internal documents and take other steps to get the case to trial.

"We know African Barrick Gold have these documents and have reviewed them; they have referred to the documents in correspondence since at least 2012," said Leigh Day partner, Shanta Martin. "We will be asking the court to require the company to hand them over promptly, as we say they should have two years ago".

It is not the first time the Tanzanian villagers have challenged African Barrick Gold's approach to the litigation. In August 2013, the Claimants successfully obtained an injunction to stop African Barrick Gold's subsidiary from suing them in Tanzania, where they had no legal representation. African Barrick Gold's subsidiary applied to have a local Tanzanian court declare that they could not be responsible for the conduct of police who provide security at the mine under an agreement with the companies. The English courts blocked the tactic after Leigh Day obtained an injunction to stop African Barrick Gold and its subsidiary from proceeding.

Catherine Coumans of MiningWatch Canada emphasises that access to information is essential for those trying to assert their rights against multinational corporations, as is the opportunity to bring their claims before a competent court.

Catherine Coumans recently returned from a human rights assessment at the North Mara mine during which MiningWatch and UK-based Rights and Accountability in Development (RAID) documented continuing incidents of lethal force used by police securing the mine. Health staff in local medical facilities told MiningWatch and RAID that at least ten victims had allegedly died from gunshot wounds received at the mine in a two month period in 2014. In the past week, Leigh Day informed African Barrick Gold of a further nine legal claims against the company relating to incidents in 2013 and 2014.

MiningWatch and RAID also found that a grievance mechanism put in place by Barrick's North Mara subsidiary was "seriously flawed". Catherine Coumans stated, "It is not transparent, it is administered by mine staff in a seemingly ad hoc fashion, the compensation being offered is neither appropriate nor reflective of the deaths and serious harm that victims have suffered and is not what the victims themselves told us they need to overcome the harm."

Additionally, Barrick's grievance mechanism is making provision of these inadequate remedies conditional on the victims signing away their right to sue Barrick in court for the violence they have endured. In this way the company's mechanism is directly posing a barrier to access to justice. "This flawed mechanism should not be used by the company to prevent people from accessing the courts and having their claims independently assessed, but that is what African Barrick Gold is trying to do", says Coumans.

Leigh Day confirms that many of their clients stated they had been specifically targeted to forgo their legal claims and sign up to the Mine's grievance mechanism.

Background

African Barrick's North Mara gold mine in Tanzania has long experienced violence allegedly involving both mine security and local police who are paid under an agreement to provide security at the Mine.

For more information contact:

Catherine Coumans, MiningWatch Canada, tel: 613-569-3439, Email: catherine@miningwatch.ca
Shanta Martin, Leigh Day, Email: smartin@leighday.co.uk tel: +44 20 7650 1200

Appendix E: Links to some key documents regarding the Porgera and North Mara cases

Regarding the Porgera Joint Venture non-judicial grievance mechanism:

First Press release MiningWatch with RAID and Earthworks International - January 30, 2013 -- Rape Victims Must Sign Away Rights to Get Remedy from Barrick - <http://www.miningwatch.ca/news/rape-victims-must-sign-away-rights-get-remedy-barrick>

- 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
- Remedy framework to which press release and background refer - http://www.miningwatch.ca/sites/www.miningwatch.ca/files/framework_of_remediation.pdf

MiningWatch letter to the OHCHR – March 19, 2013:

http://www.miningwatch.ca/sites/www.miningwatch.ca/files/letter_to_unhchr_on_porgera_2013-03-19.pdf ;

MiningWatch Letter to OHCHR April 2, 2013:

http://www.miningwatch.ca/sites/www.miningwatch.ca/files/letter_to_un_high_commissioner_april_2_2013.pdf ;

MiningWatch letter to OHCHR (with 77 other organizations) May 14, 2013:

http://www.miningwatch.ca/sites/www.miningwatch.ca/files/ltr_to_unhchr_may_14_2013_re_porgera_sign-on.pdf

OHCHR Response to MiningWatch – July 2013

http://www.miningwatch.ca/sites/www.miningwatch.ca/files/22_08_lw_rh_porgera_opinion.pdf

MiningWatch Response to OHCHR – September 4, 2013

http://www.miningwatch.ca/sites/www.miningwatch.ca/files/letter_to_unhchr_re_porgera_opinion_2013-09-04.pdf

EarthRights International Response to OHCHR – October, 2013 <http://www.business-humanrights.org/Search/SearchResults?SearchableText=porgera>

Regarding the North Mara non-judicial grievance mechanism:

MiningWatch first press release and background document - December 17, 2013- African Barrick's Confidential Compensation Agreements Questioned at Troubled Tanzania Mine -

<http://www.miningwatch.ca/news/african-barrick-s-confidential-compensation-agreements-questioned-troubled-tanzania-mine>

- Attached copy of the waiver discussed in the press release http://www.miningwatch.ca/sites/www.miningwatch.ca/files/abg_grievance_agreement.pdf

MiningWatch-RAID letter to Barrick/ABG - February 21 2014 - RE: African Barrick Gold's non-judicial "remedy programs" at North Mara, Tanzania.

http://www.miningwatch.ca/sites/www.miningwatch.ca/files/letter_to_barrick_regarding_north_mara_2014-02-21.pdf

MiningWatch brief prepared for ACCESS Facility meeting April 2014 - Brief on Concerns Related to Project-Level Non-Judicial Grievance Mechanisms. Data derived from work by MiningWatch Canada and partners on the Porgera Joint Venture mine in Papua New Guinea and the North Mara Gold Mine in Tanzania- <http://www.miningwatch.ca/article/miningwatchs-concerns-related-project-level-non-judicial-grievance-mechanisms>

MiningWatch-RAID letter to Barrick/ABG – April 22, 2014 - RE: African Barrick Gold’s non-judicial grievance mechanisms at North Mara, Tanzania - http://www.miningwatch.ca/sites/www.miningwatch.ca/files/letter_on_north_mara_2014-04-22.pdf

CORE Press release – January 30, 2014 - Corporate abuse victims sign away rights under UK company complaint process - http://corporate-responsibility.org/wp-content/uploads/2014/01/ABG-greivance-mech-PR_140127_final.pdf

MiningWatch, RAID, London Mining Network and CORE send analysts brief to brokers March 2014 - http://www.miningwatch.ca/sites/www.miningwatch.ca/files/abg-a_pattern_of_abuse.pdf

MiningWatch/RAID Press release Ottawa/ Oxford - 5 August 2014 - Following Field work in North Mara - Violence Ongoing at Barrick Mine in Tanzania: MiningWatch Canada and RAID (UK) Complete Human Rights Assessment. <http://www.miningwatch.ca/news/violence-ongoing-barrick-mine-tanzania-miningwatch-canada-and-raid-uk-complete-human-rights-ass>

Appendix F: EarthRights International speaks out about the remedy program in Porgera



FOR IMMEDIATE RELEASE

CONTACT:

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SURVIVORS OF RAPE BY BARRICK GOLD SECURITY GUARDS OFFERED “BUSINESS GRANTS” AND “TRAINING” IN EXCHANGE FOR WAIVING LEGAL RIGHTS *Human rights advocates denounce Barrick’s reparations process in Papua New Guinea as inconsistent with international law and inadequate to remedy brutal rapes*

NOVEMBER 21, 2014, WASHINGTON DC AND PORGERA, PAPUA NEW GUINEA — Approximately 200 women who survived brutal rapes by Barrick Gold’s security guards in Papua New Guinea were asked to waive their legal rights in exchange for small “business grants” and “business training,” a reparations process that human rights and women’s rights advocates are criticizing as inadequate and designed to protect the Canadian gold company rather than remedy the abuses.

For years, security guards at Barrick’s Porgera mine have brutally raped and gang-raped hundreds of local women and girls. The mine’s ever-expanding waste dumps surround communities and bury farms, leaving girls with no option but to cross through the dumps to reach school, and leaving many women with few livelihood options than to scavenge for gold. As documented by local human rights group Akali Tange Association (ATA), as well as a 2011 Human Rights Watch report, Barrick’s security guards patrolling the dumps have repeatedly preyed upon these women and girls.

In 2012 Barrick set up its Remedial Framework to provide reparations to the victims. That process is now finished, and those familiar with the process are speaking out.

“Barrick’s so-called ‘remedial framework’ in fact failed to remedy anything,” said Kerry Kennedy, noted women’s rights advocate and President of the Robert F. Kennedy Center for Justice and Human Rights. “Rather, the framework put the company’s interests before justice, in no way fulfilling Barrick’s responsibility to the hundreds of women who were raped by its employees.”

Barrick claimed that it would make individual assessments of each woman’s needs and offer a flexible benefits package that might include appropriate financial reparations or even relocation where appropriate. But the Framework was not run as promised. As documents released today show, the benefits packages were largely made up of a “business training” program set up by Barrick, after which the women could get a “business grant” of 15,000 kina – about \$6000. With other small elements, such as fees for children’s education and a “financial supplement” of up to 5,000 kina (\$2000), the value of almost every package came to the same figure – 21,320 kina (about \$8500). No exceptions were made to the mandatory business training program – not even for an 87-year-old woman.

In exchange, documents show, the women – mostly highly impoverished, traumatized, and often illiterate – had to promise never to sue Barrick.

“Some of the women felt they had no choice but to accept the benefits offered,” said Marco Simons, Legal Director of EarthRights International (ERI), which represented dozens of women in the process. “One of our clients told us how she was brutally beaten, cut with a knife and raped by more than 10

Barrick guards, left unable to have children, and then abandoned by her husband and ostracized by her community. She was angered by what the Remedial Framework offered. But she felt she could not reject the benefits because she needed medical treatment; her injuries still made it painful for her to walk.”

“Some of our clients did, however, refuse the benefits,” added Simons. “As far as we know, the only women who refused to sign Barrick’s legal waiver were those represented by ERI – in other words, those who thought they might have other options.”

Tricia Feeney, Executive Director of UK-based Rights & Accountability in Development (RAID), noted that the Framework’s approach “abandoned fundamental human rights principles. The Porgera program offered women a standardized reparation package that did not reflect the severity of the harm they had suffered. In return, at minimal cost to itself, the company sought to avoid legal liabilities and refurbish its reputation.”

Many women demanded reparations according to their culture, in which disputes are settled with valuable compensation. In a surprising statement, the Remedial Framework’s Advisory Panel specifically rejected this, suggesting that providing compensation according to Porgeran culture and international human rights norms would not “respect the dignity” of the women.

ATA spokesperson Jethro Tulin denounced the Remedial Framework’s approach. “Barrick did not consult with local women or the ATA in designing the Framework. They did not recognize that compensation is culturally appropriate in Porgera. And they have made no effort to remedy other abuses, including killings by Barrick’s security guards.”

“When Barrick acquired the Porgera mine, it had a chance to do the right thing,” said Catherine Coumans of Mining Watch Canada, which has monitored the Porgera mine for years and raised concerns about the Remedial Framework from the beginning. “Instead, Barrick allowed the rampant sexual violence to continue and refused to relocate local people to less degraded land.”

###

Factsheet: Abuse by Barrick Gold Corporation (copied below)

Documents:

1. Is provided below. The other three documents can be found at <http://www.earthrights.org/media/survivors-rape-barrick-gold-security-guards-offered-business-grants-and-training-exchange>

1. [Statement from Remedial Framework Advisory Panel rejecting compensation demands](#)
2. [Remedial Framework benefits package \(name redacted\)](#)
3. [Remedial Framework benefits package \(name redacted\)](#)
4. [Remedial Framework final contract including agreement not to sue Barrick \(name redacted\)](#)



FACTSHEET: Abuse by Barrick Gold Corporation

Representing survivors of gang rape and those killed by Barrick Gold Corporation's security guards at the Porgera gold mine in Papua New Guinea

Canadian mining company Barrick Gold Corporation, the largest gold mining company in the world, operates the Porgera mine in Papua New Guinea (PNG), where security guards have raped and gang-raped hundreds of local women and girls and killed several local men.

EarthRights International (ERI) represents a number of survivors of rape and family members whose relatives were killed by Barrick security guards.

Barrick's Porgera Gold Mine

Barrick has owned and operated the Porgera gold mine since 2006, when it acquired the previous owner, Placer Dome. Barrick also acquired a legacy of environmental damage and human rights abuses that it has failed to remedy.

Each day, Barrick dumps more than 16,000 tons of waste into the Porgera River and local creeks that villagers have long relied upon for drinking water, bathing, and washing clothes and food. The mine's ever-expanding waste dumps continue to take over the land and bury the homes of the original landowners that have lived in the region for generations, long before large-scale mining came to Porgera. Surrounded on all sides, villagers have no choice but to cross the dangerous dumps to reach agricultural land, commercial areas, schools or other villages. Many have not been compensated for the loss of their land and their homes, and Barrick has refused to relocate them. Without land to farm and sources of clean water, practically the only means of income available to some of the local indigenous communities is to scavenge for remnants of gold in the open pit or the treacherous waste dumps.

Barrick's Security Guards

Barrick employs a private security force to patrol the open pit and the waste dumps. Villagers who are caught scavenging in the dumps or pit are often detained in a holding cell at the mine site before being transferred into police custody for "illegal mining" or trespassing.

The security force includes local PNG police officers and others with a police or military background who are employed by Barrick to protect the mine. Barrick has a Memorandum of Understanding with the government of Papua New Guinea to provide police reservists from its own security guards in order to augment the local police force; in practice, these reservists patrol the mine at Barrick's direction.

Barrick also provides financial and other support, such as housing on mine property and transportation, to the PNG Mobile Police squads, a branch of the national police force, to protect its facilities. The Mobile Police have a long history of serious human rights abuses, including shootings, beatings, rape, forced evictions, and burning of homes.

Systematic Sexual Violence and Gang Rape by Barrick Security Guards

For two decades, women and girls living near the mine have been brutally raped by the mine's security guards patrolling in or near the dumps. Many suffer from lasting physical and emotional injuries, as well as marginalization and social isolation in their community.

One of ERI's clients, a young girl at the time, was panning for gold with her older sister when they were surrounded by ten armed Barrick security guards. The guards handcuffed her behind her back, beat her and gang-raped her. They then locked her in a holding cell at the mine site until she was transferred to police custody and jailed for "illegal mining." It took her family a week to gather bail money, during which time she received no medical treatment for her injuries, which included broken bones and swelling from a blood clot. She still has trouble walking today.

Another ERI client was caught by guards in the dump after they fired teargas at her group. She was beaten, cut with a knife, and brutally raped by ten guards. She had to be carried home by relatives and could not walk for weeks; walking still causes her pain. After her newlywed husband found out about the rape, he abandoned her, and she is no longer able to have children. She was ostracized by the community and had to move to live with relatives in another town.

Dozens of women have suffered similar sexual assault by mine security guards. Local human rights group Akali Tange Association (ATA) began warning of abuses committed by mine guards before Barrick formally took over the mine; the company ignored or denied the problem for years. In 2008, Barrick's CEO wrote in a letter to Porgeran leaders that the allegations of gang rape were "most distasteful, to say the least as you know these allegations to be untrue."

Finally, after investigative reports from groups like ATA, MiningWatch Canada, Human Rights Watch, and Amnesty International, the company admitted in 2011 that there was a problem.

Barrick's Remedial Framework

In 2012, Barrick set up a "Remedial Framework" to enable rape survivors to apply for limited benefits. This was designed to be an "Operational Grievance Mechanism," as envisioned by the U.N.'s 2011 Guiding Principles on Business and Human Rights, but from the outset the Remedial Framework failed the U.N. criteria. For example, the Guiding Principles state that such mechanisms should be "Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance..." Barrick did not consult the women or their local advocates in designing the Framework.

More than two hundred women lodged complaints of rape and gang rape; local advocates believe that the actual number of victims may be even higher. Barrick claimed that it would assess each woman's needs and offer a flexible benefits package that might include financial reparations or even relocation where appropriate.

ERI represented several dozen women who lodged claims with the Remedial Framework, but soon discovered that they were not being offered appropriate financial compensation commensurate with the gravity of the abuses. Nearly all of ERI's clients were offered benefits packages that were calculated to amount to exactly the same value – 21,320 kina, about \$8500.

When many of ERI's clients objected and asked for appropriate compensation, the Remedial Framework rejected their request. In a statement (see below), the Framework's Advisory Panel accepted that the claimants had suffered horrific abuses – "physical assault and imprisonment as well as aggravated rape." But they rejected the notion that compensation for "aggravated rape" should rise above \$8500 per woman, regardless of the details of her experience, for several reasons:

- The Panel suggested that, since other women had already accepted their standard packages, it would be “unjust” to them to give these claimants anything more.
- Although the Panel recognized that “compensation is a traditional form of redress,” it suggested that this culturally appropriate remedy – well-enshrined in international human rights law – was inconsistent with the “dignity” of the women, as protected by Papua New Guinea’s Constitution.
- The Panel believed that – despite the fact that the women themselves were asking for compensation – it was better to treat these rape survivors as an economic development project, by giving them “income-generation skills training” and “start-up” grants.

Two of the benefits packages, with names redacted (see below), demonstrate that the women were offered almost identical benefits regardless of their desires and circumstances. The largest component of the packages is a business training program; after attending Barrick’s mandatory training, women could get a “business grant” of 15,000 kina – about \$6000 – which they were expected to use to start a small business raising chickens or selling second-hand clothing. No exceptions were made to the mandatory business training program – not even for an 87-year-old woman. The rest of the value of the package was made up small components, such as school fees (in a country where such fees have been abolished) and vouchers for counseling services. Then the packages included a “financial supplement” of up to 5,000 kina (about \$2000), in order to make up the difference to 21,320 kina.

In order to accept these packages, women were required to sign an agreement (see below), promising never to sue Barrick for their injuries. The women that ERI represented were apparently the only women in the process with any representation by legal counsel. All of the women who were not represented by ERI accepted the agreements.

The outcomes of the Remedial Framework fail the fundamental test that, under the U.N. Guiding Principles, such a process should be “[r]ights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights.” Providing manifestly inadequate benefits in exchange for waivers of legal rights – especially for unrepresented women, most of whom are extremely impoverished, with little formal education – is inconsistent with international human rights standards, which require remedies that are proportional to the gravity of the abuses.

Eleven women represented by EarthRights International rejected the agreements offered through the Remedial Framework.

Routine beatings, shootings and killings by Barrick security guards

In addition to the systemic violence against women, over the course of the mine’s existence, local men and boys have been routinely beaten, shot, and killed for entering the open pit, the dumps, or simply being near the mine’s property. ATA has documented numerous incidents of violence and killings by mine security guards and Mobile Police squads working for the mine over the past 20 years. In 2005, just before Barrick took over the mine, its predecessor, Placer Dome, acknowledged some of those deaths, but alleged they were all in self-defense. Most killings have not been independently investigated, however, and Barrick generally continues to deny any responsibility. In 2006, the PNG government initiated an investigation into the unusually high number of deaths near the mine; no report was publicly released.

One victim was only 15 years old when he was shot and killed. He was staying with a relative in Porgera, and one night, he followed a group of locals to a gap in the mine fence. The group attempted to gain entrance to the open pit to look for gold. Guards stationed at the entrance, behind a fence, began shooting into the crowd. The boy was killed by a shot to the head. His relatives reported the shooting to the police but no one was ever prosecuted for his death.

Barrick's Remedial Framework was limited to claims of sexual violence. Relatives of men killed by security guards have tried to lodge complaints with Barrick's local community relations grievance office; none have apparently resulted in reparations.

Not an isolated case

Unfortunately, the abuses at Porgera are not unique among Barrick's mines. Violence by police affiliated with the company and the company's own security guards at the North Mara mine in Tanzania is eerily similar to the violence committed near the Porgera mine. Tanzanian villagers filed suit in the United Kingdom against Barrick in 2013 after their relatives were killed at the gold mine and others were injured by police officers working under contract with the company to provide security to the mine.

Statement from Remedial Framework Advisory Panel rejecting compensation demands

ADVISORY PANEL GENERAL STATEMENT RELEVANT TO ROTATION 10 ATA CLAIMANTS

The Advisory Panel accepts all claimants of Rotation 10 as genuine claimants, some of whom faced multiple traumatic situations including physical assault and imprisonment as well as aggravated rape. It is noted also that not all of the rapes reported in Rotation 10 were in the context of illegal mining.

The Advisory Panel is however concerned that all claimants have rejected the Reparation Package as discussed with their CAT officers and lodged alternate requests, primarily for one-off compensation payments in the form of cash lump sums, pigs, and assets such as vehicles and houses. These alternative packages cannot be endorsed by the Advisory Panel but we hope that these claimants will accept the recommendations made by their CAT officers and the final determinations. If they wish to pursue compensation claims outside the reparation framework that has been accepted by other claimants, then they will have to pursue it themselves. It would be detrimental to the total process and unjust to the other claimants, who are the majority, to vary the nature of the determinations at this stage.

The Advisory Panel has based their decision on several grounds, including:

- Payment of "compensation" in the traditional way has consistently been rejected as a possible component of the reparation package because it is inconsistent with Papua New Guinea's evolving legal and policy approach to the crime of rape.
- "Compensation" payments to "buy back the woman's status" in the community and to address shame within the family, do not directly address the suffering of the individual victim nor do they address the urgent need to fundamentally change community attitudes to and acceptance of different types of violence against women. Although compensation is a traditional form of redress, it should be remembered that the National Constitution explicitly rejects customs that do not respect the dignity of all human beings. After much deliberation by many people, the decision was made that the PRFA package would not include traditional types of compensation payments.
- The Reparation Package has been designed to establish an on-going relationship with the claimants and between them and the Women's Welfare Office rather than a "one-off payment" to appease critics. It involves a package including income-generation skills training, financial literacy with a "cash" component start-up fund deposited directly into the claimants' individual accounts, counselling and medical assistance, school fee assistance and other identified needs.
- It is hoped that all claimants will become active participants in the process which aims to empower the claimants personally and develop their skills and knowledge to enable them to become more self-sustaining for themselves and their families.
- The Advisory Panel sincerely wants to see long-term benefit for the claimants and their families and believe that by treating the claimants with dignity and providing on-going and incremental educational and development programs for them, it will not only benefit them but will influence their families and communities to change their attitude to and acceptance of rape and the traditional group compensation mentality that does not address the individual needs of the victim.
- The ATA claimants are encouraged to become part of the process

Appendix G: EarthRights responds to OHCHR

(See also response by MiningWatch Canada²⁴)



Ms. Navanethem Pillay
United Nations High Commissioner for Human Rights
Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10, Switzerland

Dear Ms. Pillay,

We write in reference to OHCHR's July 15 response to allegations regarding the Porgera Joint Venture (PJV) remedy framework.

EarthRights International (ERI) is legal counsel for a number of Porgeran women who are either current or potential participants in the remedy framework. ERI also works closely with the Akali Tange Association (ATA) and the Porgera Landowners Association (PLOA), both of which are discussed in the OHCHR response letter. We, our clients, and our partners in Papua New Guinea have a number of fundamental critiques of the framework and are concerned with some of the approaches and conclusions set forth in OHCHR's letter. OHCHR's conclusions are directly relevant to our clients' legal claims and rights vis-à-vis the remedy framework, and we anticipate that Barrick will rely on those conclusions when our clients raise their concerns. **We therefore write to ask for clarification on two matters:**

1. Status of ATA and PLOA. OHCHR's response refers to disparaging comments made both by Barrick and Human Rights Watch about the legitimacy of our partners, ATA and PLOA, and suggests that these unfounded beliefs justified Barrick's decision to exclude them from the consultations about the remedy framework. The response also credits Barrick's assertion that ATA and PLOA did have an opportunity to review and "raise awareness" about the process, which is untrue; the two organizations did eventually receive information about the process, but only after the remedy framework was finalized and was being implemented. Even then, the information came from a third party and not Barrick. Moreover, Barrick does not appear to have consulted with *any* affected women; the only local stakeholders that were involved in consultation were two groups in Porgera that Barrick substantially funds and supports.

We wish to emphasize that ATA and PLOA are the only representative, community-based organizations that are independent from Barrick and work directly with the victims of sexual violence in Porgera; they have been acting on the victims' behalf since before Barrick bought the Porgera mine. They have consistently been the subject of public attacks and attempts at delegitimization by Barrick and its predecessors. Whether or not these organizations experience internal administrative problems, they have played a critical function in bringing the women's suffering to light and providing a public platform for their grievances, as you yourself have noted.

²⁴ MiningWatch Response to OHCHR – September 4, 2013
http://www.miningwatch.ca/sites/www.miningwatch.ca/files/letter_to_unhchr_re_porgera_opinion_2013-09-04.pdf

If your letter is read to lend credence to the attacks on ATA or PLOA's credibility and legitimacy -- and Barrick's related decision to exclude them and the women they represent from the development of the remedy framework -- it could have very serious consequences for their ability to work on victims' behalf both within Papua New Guinea and internationally. It would also provide a roadmap for any company that wishes to exclude its most vocal critics from the universe of "legitimate" stakeholders, in favor of its handpicked supporters and dependents. **We therefore request that OHCHR clarify its intention with respect to ATA and PLOA. OHCHR should state that it does not make any determination as to the credibility or legitimacy of ATA or PLOA,** and its intention in referring to them was merely to opine that the failure to consult one particular stakeholder does not necessarily undermine the legitimacy of a grievance mechanism consultation, so long as local voices, concerns, and expectations are effectively represented and incorporated.

2. Waivers and Rights-Compatible Outcomes

In response to complaints that a grievance mechanism that comports with international standards should not incorporate any waiver of legal claims, OHCHR concludes that while companies should presumptively not require waivers, waivers may be appropriate as long as they are narrow and do not cover criminal liability. We disagree; moreover, we believe that this response misses the point, at least with respect to this particular grievance mechanism.

Specifically, we believe Barrick's framework will not create rights-compatible outcomes, based on our clients' experiences to date with the framework's personnel in Porgera. Claimants have not been involved in the formulation of the remedies offered to them, and the character and scope of the remedies offered are neither compensatory in nature, nor proportionate to the magnitude of the injuries the women have suffered. A mechanism that is geared toward community development outcomes may be valuable and worthwhile, but it should not be considered an adequate remedy for human rights abuses. For this reason, we strongly support OHCHR's call for an independent, public assessment of the framework's structure and implementation, as OHCHR is not in a position to verify how the framework is being implemented on the ground.

We therefore request that OHCHR clarify the import of its conclusions with respect to whether a waiver can be justified, particularly if the mechanism does not in practice meet basic international standards. We fundamentally believe that given the general lack of judicial oversight in countries where grievance mechanisms are most critical, legal waivers are *never* appropriate as a precondition for receiving benefits through a grievance mechanism for gross human rights abuses. Rather, they are yet another avenue through which victims of human rights abuse can be taken advantage of. At most, the value of benefits received through a grievance mechanism could be applied as an offset against any civil damage award that might be obtained through the courts.

To be clear, we are not asking OHCHR to reassess the Porgera framework in particular, either in theory or in practice. But given that OHCHR agrees at least in the idea of a presumption against waivers -- if not in their general impropriety -- we believe it should be common cause that if the remedies on offer are not consistent with international standards on the right to a remedy, or the procedures are not consistent with basic due process and participation rights, the company may not require a waiver of civil claims as a condition of accepting benefits through its grievance mechanism. **We ask OHCHR to clarify that under such general circumstances, the grievance mechanism would be defective, and thus could not legitimately give rise to the requirement of a waiver of claims.** Of course, this should not be the only circumstance in which the presumption against waivers would be applied, but it is the most obvious and relevant in this case.

We thank you for your attention to these matters and look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Jonathan G. Kaufman". The signature is written in a cursive style with a large, stylized initial 'J' and a long horizontal stroke extending to the right.

Jonathan G. Kaufman
Legal Advocacy Coordinator