

**Request for Review Submitted to the Canadian National Contact Point
Pursuant to the OECD Guidelines for Multinational Enterprises**

Specific Instance Regarding:

**The Operations of Barrick Gold Corp. at the Porgera Joint Venture Mine
on the Land of the Indigenous Ipili
of Porgera, Enga Province, Papua New Guinea**

March 1, 2011

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**Request for Review Submitted to the Canadian National Contact Point
Regarding the Operations of Barrick Gold Corp. at the Porgera Joint Venture (PJV) Mine
on the Land of the Indigenous Ipili of Porgera, Enga Province, Papua New Guinea**

Pursuant to the Organization for Economic Co-operation and Development's Guidelines for Multinational Enterprises (OECD Guidelines), Mark Ekepa of the Porgera SML Landowners Association, Jethro Tulin of Akali Tange Association and MiningWatch Canada submit the present request for review to the National Contact Point of Canada (NCP) regarding the conduct of Barrick Gold Corp. in Papua New Guinea.

The Porgera SML Landowners Association (PLOA) is a Porgera-based organization that was established to represent the interests of traditional landowners living within the Special Mine Lease (SML) area of the Porgera Joint Venture (PJV) mine. Contact: Mark Ekepa, Chairman of the Porgera Landowners Association (emarktony@gmail.com).

Akali Tange Association (ATA) is a community-based human rights organization based in Porgera that focuses attention on alleged human rights abuses perpetrated by security forces associated with PJV. Contact: Jethro Tulin, executive officer of Akali Tange Association (jctulin@gmail.com).

MiningWatch Canada is an Ottawa-based organization that advocates for responsible mining in Canada, and by Canadian companies operating overseas. Contact: Catherine Coumans, Co-Manager and Asia-Pacific Program Coordinator at MiningWatch Canada (catherine@miningwatch.ca).

Barrick Gold Corporation (Barrick) is a Toronto-based gold mining company. Barrick owns 95% of the Porgera Joint Venture mine through subsidiaries. The other 5% of the PJV mine is owned by Mineral Resources Enga.

Papua New Guinea is a multi-party democracy with constitutional protection for human rights and has ratified ICCPR, ICESCR, ICERD, CRC and CEDAW. On October 21, 2008 the two treaties that constitute the International Bill of Rights came into force for the country, obliging the government to report to UN treaty bodies on the steps taken to implement rights contained therein, initially in 2009 and every four years thereafter. Papua New Guinea is not an OECD member country.

Stakeholder Interest:

Mark Ekepa is a Porgera landowner whose traditional lands lay inside the Special Mine Lease area of the Porgera Joint Venture mine. He is one of the recognized 'agents' who represent Porgera landowners in relations with PJV and chairman of the Porgera Landowners Association. Mr. Ekepa shares with other landowners in the Special Mine Lease area concerns raised in this request for review, in particular regarding the need for resettlement, environmental and potential health impacts of riverine disposal of tailings, losses suffered by landowners as a result of Operation Ipili '09, and alleged abuses of men and women inside the mine lease area by PJV's security forces.

Jethro Tulin is an executive officer of Akali Tange Association, an organization that was founded by family members of men who, their families allege, have been killed or wounded by PJV security guards. As such he is particularly concerned about the allegations of abuses by the mine's security forces, but as a resident of the area, he is also concerned about the other inter-related issues raised in this request for review.

Catherine Coumans is Asia-Pacific Program Coordinator with MiningWatch Canada. As such, part of her responsibilities are to monitor the activities of Canadian mining companies in this region and to respond to requests for assistance from communities who feel their interests have been harmed by the activities of a Canadian mining company. Ms. Coumans was first contacted by ATA in 2005 and has since that time engaged with both Mr. Tulin and Mr. Ekepa over the issues in this request for review, as well as with other Porgerans and with members of a number of international organizations and institutions who have also become concerned over the issues raised here, some of which are referenced in this request for review.

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I. Introduction

This request for review contends that Barrick, through its wholly-owned subsidiaries in Papua New Guinea, has violated and continues to violate the OECD Guidelines for Multinational Enterprises (OECD Guidelines) in its operations at the Porgera Joint Venture (PJV) mine. It seeks the good offices of the Canadian National Contact Point (NCP) to bring Barrick/PJV back into compliance with the guidelines and makes recommendations for how this can be achieved. This request for review asks the NCP to offer good offices to bring about a dialogue between the submitters of this request for review, together with their advisors from EarthRights International and Rights and Accountability in Development (RAID), and Barrick/PJV for the purposes of resolving the issues of concern raised in this request for review.

With respect to sustainable development, the OECD Guidelines provide that Barrick/PJV has a responsibility to “contribute to economic, social and environmental progress with a view to achieving sustainable development”¹ and should “conduct their activities in a manner contributing to the wider goal of sustainable development.”² This request for review maintains that the operations of Barrick/PJV have harmed and continue to harm the economic and social progress of indigenous Ipili communities living within Barrick/PJV’s Special Mine Lease (SML) area as a result of the untenable living conditions brought about by, among other things, requisitioning of land and water resources, environmental contamination of land and water, and the disruption of social life, cultural traditions and sacred sites.

With respect to human rights, the OECD Guidelines provide that Barrick/PJV has a responsibility to: “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.”³ This request for review maintains that the operations of Barrick/PJV have not respected the human rights of local men

¹ Section II. General Policies. Paragraph 1.

² Section V. Environment. Preamble.

³ Section II. General Policies. Paragraph 2.

and women as a result of alleged violent acts perpetrated against them by the mine's security forces. It also maintains that Barrick/PJV has not respected the human rights of villagers living in its Special Mine Lease Area with respect to forced evictions and house burnings by PNG mobile units in Operation Ipili '09.

With respect to the environment, the OECD Guidelines provide that Barrick/PJV has a responsibility to *"take due account of the need to protect the environment, public health and safety."*⁴ This request for review maintains that Barrick/PJV are not meeting OECD Guidelines under Section V on the environment in the operations of the PJV mine with serious environmental consequences, consequences for human safety and potential consequences for human health.

The OECD Guideline sections to which we make specific reference are:

- **II. General Policies** - Paragraph 1 states that enterprises should, *"contribute to economic, social and environmental progress with a view to achieving sustainable development."*
- **II. General Policies** - Paragraph 2 states that enterprises should, *"respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."*
- **II. General Policies** – Paragraph 5 states that enterprises should *"refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues."*
- **II. General Policies** - Paragraph 6 states that enterprises should *"support and uphold good governance principles and develop and apply good corporate governance practices."*
- **II. General Policies** – Paragraph 7 states that enterprises should *"develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate."*
- **II. General Policies** – Paragraph 8 states that enterprises should *"promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes."*
- **II. General Policies** – Paragraph 11 states that enterprises should *"abstain from any improper involvement in local activities."*
- **III. Disclosure** – Paragraph 1 states that enterprises should *"ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance."*
- **III. Disclosure** – Paragraph 5 states that *"enterprises are encouraged to communicate additional information that could include: (...) information on social, ethical, and environmental policies of the enterprise and other codes of conduct to which the company subscribes (...) and its performance in relation to these statements...."*
- **V. Environment** – The Preamble states that *"enterprises should...protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development...."*
- **V. Environment** – Paragraph 1.a. follows the preamble and 1. Together they state that *"enterprises should: Establish and maintain a system of environmental management appropriate*

⁴ Section V. Environment. Preamble.

to the enterprise, including; a) collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities.”

- **V. Environment** – Paragraph 2.a. states that enterprises should “*provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance....*”
- **V. Environment** – Paragraph 4 states that enterprises should “*[c]onsistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.*”

The issues raised in this request for review have been raised by one or more of the submitters of this request, in writing and/or in person, in a wide range of fora: with Barrick Gold executives in Toronto; at Barrick Gold’s Annual General meetings; with the mine manager and community affairs manager at PJV; with local and national level government officials in PNG; with civil servants in Canada from the Department of Foreign Affairs and International Trade, CIDA, Natural Resources Canada, Indian and Northern Affairs; with Canadian parliamentarians, including those from the Standing Committee of Foreign Affairs and International Development; with the Canadian ambassador for PNG; at the U.N. Permanent Forum on Indigenous Peoples; with U.N. Special Rapporteurs; with the Foreign Affairs Minister of Australia.

II. Specific concerns with reference to the OECD Guidelines

1. SUSTAINABLE DEVELOPMENT: Living conditions in the Special Mine Lease area are incompatible with OECD Guidelines on sustainable development.

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

Pertinent guidelines include, among others, the 10 principles of Sustainable Development (particularly principles 1, 2 and 3)⁵ of the International Council on Minerals and Metals (ICMM), of which Barrick is a member, and the Global Compact (particularly principles 1 and 2)⁶, of which Barrick is also a member. Relevant international norms also include the United Nations Covenant on Economic, Social and Cultural Rights as well as elements of the Rio Declaration on Environment and Development.

⁵ ICMM 10 Principles: 1. Implement and maintain ethical business practices and sound systems of corporate governance; 2. Integrate sustainable development considerations within the corporate decision-making process; 3. Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities. See also further guidance under these principles and ICMM’s publication www.icmm.com

⁶ Global Compact Ten Principles: 1. Businesses should support and respect the protection of international human rights within their sphere of influence and; 2. Make sure they are not complicit in human rights abuses.

The living conditions of people within the Special Mine Lease area indicate a failure by Barrick/PJV to live up to the OECD Guidelines according to which Barrick/PJV has a responsibility to “*contribute to economic, social and environmental progress with a view to achieving sustainable development*”⁷ and to “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*”⁸ Additionally, Barrick/PJV has failed to make relevant information in a report by consultants URS publicly available. This report details the untenable conditions of people living in the SML area and recommends that these people be resettled elsewhere. Failure to release this report constitutes a failure by Barrick/PJV to comply with OECD Guidelines on disclosure that require Barrick/PJV to “*ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance.*”⁹

Relevant Information:

Before the PJV mine started operations in 1990, a socio-economic study (1987)¹⁰ noted the need for relocation of families to make way for the proposed mine. A subsequent Relocation Study (1988)¹¹ proposed that the people to be relocated remain on local land to which they hold traditional rights, or on the land of their local cognates. This was, at the time, also the preference of the households to be relocated, who wanted to stay together in their lineage/sub-clan groups.¹² This meant that both relocated families, as well as other traditional landowners, continued to live within the mine lease for the PJV mine, with agreement of all parties.

However, in the twenty years since mining began, social and environmental conditions for those living in close proximity to the mine and its expanding waste flows within the Special Mine Lease (SML) area “*have deteriorated to the point where they fall below what would be commonly accepted by Papua New Guinea standards.*”¹³ In 2006, Barrick/PJV hired international consultants URS to prepare a Social Impact Assessment and a Resettlement Action Plan for the households living in the Special Mine Lease area. In the assessment conducted by URS, of 270 SML households in 2006, more than 90% said that their quality of life had changed over the past five years. Of this group of 249 households, 97.2% said their quality of life had deteriorated and 92.4 said it was “*much worse*” than five years previous (URS 2007:6-14-6-15). URS concludes that “*SML communities are currently living in over-crowded, unsanitary and potentially dangerous conditions, and have limited available land for family subsistence*” (URS 2007:ES-1).

URS (2007) documents key areas of concern that are also being raised by the leadership of the Porgera Landowners Association (PLOA). These include loss of land needed for food security and lack of reliable potable water supplies.¹⁴ Other concerns of people living within the SML

⁷ Section II General Policies - Paragraph 1

⁸ *Ibid.* - Paragraph 2

⁹ Section III Disclosure – Paragraph 1

¹⁰ *Socio-Economic Impact Study*. 1987. Pacific Agribusiness.

¹¹ *Relocation Study*. 1988. Fritz Robinson.

¹² *Special Mining Lease Landowner Resettlement: Social Impact Assessment*. 2007. URS. June 14. Pp 4-4, 4-5.

¹³ *Ibid.*, p 4-6.

¹⁴ Other critical issues identified as concerns by surveyed households living in the Special Mine Lease Area are: lack of firewood (93.48%), the environmental effects of the mine (81.16%), noise from the mine (79.71%), dust

area, which are raised by PLOA and the Akali Tange Association, include violence by PJV security forces (see III 2. below), mining-derived pollution of water resources (see III 4. below) and human rights abuses associated with a military crack-down called “Operation Ipili ’09” (see III 3. below) that was supported by PJV/Barrick.

Loss of land needed for food security

Of households surveyed by URS, 97.83% raised loss of agricultural land as a concern related to living in the SML area (URS 2007:6-18). Increased population¹⁵ and increased size of the mine has led to a serious deterioration of the population’s ability to provide for food security. This was an issue raised most commonly by women (URS 2007:4-3) who have the least opportunities to secure alternative sources of income with which to buy food. Between 1993-2004 the proportion of the land area of the SML affected by mining rose from 37% to 59% and much of the rest of the available land is above the limits of cultivation (URS 2007:4-3). The agricultural system has been so severely affected that “areas of cultivation are effectively in permanently use rather than part of the 15 year swidden cycle that was employed prior to the mine” and this has led to complaints of soil infertility (URS 2007:4-3; 6-18). Swidden cultivation, common in tropical areas, entails a cycle in which land is used for agriculture and then allowed to lay fallow for a number of years to restore fertility.

Loss of access to potable water

Of the households surveyed by URS, 96.38% raised lack of water as a major issue of concern (URS 2007:6-18). URS notes that access to clean water “has been an ongoing issue” in spite of the fact that tanks were installed in the original relocation and attempts have been made by the company to provide larger tanks. Most natural water flows running through the SML area are contaminated with pollutants from the mine - “chemicals being dumped into streams” was noted as another area of concern in URS’s survey (URS 2007:6-18).

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

According to URS, Barrick/PJV engaged the consultants because it recognized the “*difficult circumstances in which many landowners currently live*” and the need to “*improve living conditions for SML landowners by removing them to a new area*” (URS 2007:1-1, ES-1). URS notes that a second reason for Barrick/PJV’s interest in moving people off the SML area was a plan for mine expansion (URS 2007:ES-1). Importantly, URS also found that “[t]he vast

(78.99%), lack of building materials (72.10%), vibration or blasting by the mine (68.12%), crime and security issues (24.64%) (URS 2007:6-18).

¹⁵ It is important to note here that URS recognize that of the 72.10% of respondents to their survey who complained of overcrowding, only 31% identified outsiders moving in as a disadvantage. URS recognize that overcrowding is in part due to natural increase in the size of the population of the SML landowners, and, as has been pointed out by anthropologists as well, that influx of people from outside the URS primarily consist of people recognized by SML landowners as relatives (URS 2007: 6-18). Anthropologist Burton (1999: 284) notes that the immigration of “genealogically connected people from Laiagam, Kandep and Tari” started as soon as the mine started in 1990. He also indicates that immigration was entirely predictable owing to the “land rights which Porgerans hold in various parts of the valley, by pursuing cognatic links of kinship, and to the flexible manner of reckoning relatedness to other people” (Burton 1999:284).

majority of SML landowners surveyed (96%) are in favour of resettlement” (URS 2007: ES-1). This is particularly pertinent as it represents a marked difference in attitude of the SML population from 1988, before mining started, when most landowners wanted to stay on their land, if possible, or as close as possible to their land if the mine made staying on their land itself impossible. This must be recognized as an indicator of the deterioration of living conditions for SML households.

As consultants working for URS spent between April and November of 2006 surveying the population of the SML area, expectations of resettlement were raised among the population. It was therefore a matter of considerable disappointment when Barrick/PJV decided against resettlement of the population, due at least in part to costs associated with resettlement (Mark Fisher, Mine Manager, personal communication with Catherine Coumans, November 11, 2008). At a news conference in Canada, Mark Ekepa, Chairman of the PLOA said, “The mine has made it impossible to live here (...) Either we need to be moved immediately, or Barrick needs to leave this place.”¹⁶ In a letter to Ekepa, Mine Manger Mark Fisher stated, “there will be no full relocation of people off the SML, but we have begun the process of moving those eligible people who are at risk of being affected by the mining operation due to safety or geotechnical considerations.”¹⁷ The success of resettlement of smaller groups on a “need-to-move” basis is limited as landowners fail to comply with PJV’s relocation terms. This is understandable as both URS and Fritz Robinson have noted the importance to the Ipili people of remaining together in their lineage/sub-clan groups. PJV’s current relocation plan does not conform with the recommendations made by URS in 2007.

Barrick/ PJV’s failure to “ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance.”

The data that the URS report is based upon was extracted from residents of the SML area. The conclusions reached in the URS report are highly relevant to concerns of the people living in this area. Nonetheless, the URS report was never released by Barrick/PJV to the leadership of the SML landowners. Nor has it been made available through the Porgera Environmental Advisory *Komiti* (PEAK), a nominally independent oversight body, whose mandate is “to enhance the understanding of Porgera's environmental (physical and social) issues with external stakeholders, and to assist in improving PJV's environmental performance and public accountability in these areas” and whose constitution states that PEAK shall “[a]ct as a conduit for communication of relevant information: i) to the target communities in Porgera, and from these communities to other stakeholders; and ii) to external national and international constituencies.” The URS report is not available on the PEAK site (www.peakpng.org.pg).¹⁸

In 2006 Barrick/PJV recognized, according to the URS study (2007:1-1, ES-1), that living conditions in the SML are not tenable. We encourage the NCP to act on this study and work with key stakeholders to obtain a durable solution.

¹⁶ See MiningWatch Canada http://www.miningwatch.ca/index.php?/Porgera/Porgera_linked_to_abuse

¹⁷ Letter of Mark Fisher to Mark Ekepa of July 23, 2008.

¹⁸ The URS Report was also not provided to Catherine Coumans when she requested it in a meeting with PJV Mine Manager Mark Fisher on November 11, 2008.

Remedies sought:

- In accordance with the wishes of the majority of residents of the Special Mine Lease area, in line with recommendations set out in the URS report of 2007, in line with international standards and norms, and in order to bring Barrick/PJV into compliance with OECD Guidelines, we recommend that Barrick/PJV resettle all SML landowners and their family members and relatives living in the SML area according to international best practice guidelines¹⁹ and taking into consideration recommendations in the URS report of June 14, 2007.
- In accordance with PEAK's constitution and with OECD guidance on disclosure we recommend that Barrick/PJV post the URS report to the PEAK web site. Barrick/PJV should also make the report available to Special Mine Lease area residents through the Porgera Landowners Association and other relevant local community organizations.

Main source: *Special Mining Lease Landowner Resettlement: Social Impact Assessment*. 2007. URS. June 14. (Copy provided).

2. HUMAN RIGHTS: A. Alleged violence by PJV security guards – killings, beatings, rapes of women

Summary: In 2005, a local grass roots organization, Akali Tange Association, finalized a report alleging killings and beatings of local Ipili men by PJV security guards. Since then allegations of beatings and rapes, including gang rape, of Ipili women by PJV security guards have also been documented and a number of these cases have been made public. There is reason to believe violence by PJV security guards has a long history at the PJV mine. This request for review details some of these alleged cases, focusing on cases since 2006, when Barrick acquired the PJV mine.

Rape, extrajudicial executions, and excessive use of force against civilians by mine security forces are violations of the victims' internationally-guaranteed human rights.²⁰ Relevant international guidelines that reference international human rights include, among others, the 10 principles of Sustainable Development (particularly principles 1 and 3)²¹ of the International

¹⁹ In considering relocation for all people living within the Special Mine Lease Area Barrick/PJV should be guided by international standards for resettlement. International Finance Corporation Performance Standard 5, on resettlement, is currently under review. The new guideline, expected to be completed in 2011, should be considered a minimal standard for resettlement of all people living within the Special Mine Lease area. If resettlement is to take place prior to completion of the IFC PS the most recent version of the standard should be considered a minimal standard.

²⁰ Alleged violence by PJV security guards violates the Right to Freedom from Arbitrary or Unlawful Deprivation of Life; Right to Life, Liberty and Security of the Person; Right to Freedom from Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; Right to Physical and Mental Health; Right to Freedom from Arbitrary Arrest or Detention; Right to Freedom of Movement; Right to Equal Recognition and Protection under the Law. The alleged violence against women further violates the Convention on the Elimination of All Forms of Discrimination Against Women.

²¹ ICMM 10 Principles: 1. Implement and maintain ethical business practices and sound systems of corporate governance; 3. Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities. See also further guidance under these principles, in particular ICMM's guide *Human Rights in the Mining & Metals Industry Overview, Management Approach and*

Council on Minerals and Metals, of which Barrick is a member, and the Global Compact (particularly principles 1 and 2)²², of which Barrick is a member. Additionally, the Voluntary Principles on Security and Human Rights provide guidance to companies regarding the operations of security forces to ensure these operate in way that respects human rights. Barrick maintains that it was implementing the Voluntary Principles at the PJV mine before joining the Voluntary Principles in November 2010. Special Representative to the Secretary General of the United Nations on Business and Human Rights, John Ruggie, has defined the corporate responsibility to respect human rights as meaning “not to infringe on the rights of others – put simply, to do no harm.”²³ This request for review maintains that Barrick/PJV has violated the international standards set out above, with respect to the activities of its security forces at the PJV mine.

This request for review further maintains that Barrick/PJV has failed to fulfill its responsibility with respect to the OECD Guidelines, in particular to “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*”²⁴ As a result of the impact on local citizens resulting from the alleged abuses by its security forces, Barrick/PJV has also failed to fulfill other OECD Guidelines, that state that enterprises should: “*contribute to economic, social and environmental progress with a view to achieving sustainable development*”²⁵; “*support and uphold good governance principles and develop and apply good corporate governance practices*”²⁶; “*develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate*”²⁷; “*promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.*”²⁸

Relevant Information:

Alleged Killings and Beatings by PJV Security Forces

In 2005, a local grass roots organization called Akali Tange Association finalized a report (The Shooting Fields of Porgera Joint Venture) alleging killings and beatings of local men by PJV security guards. According to ATA violent deaths and brutal beatings have been taking place at the mine since at least 1993.²⁹ ATA documented 11 cases of alleged extra-judicial killings by

Issues. May 2009. <http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues>

²² Global Compact Ten Principles: 1. Businesses should support and respect the protection of international human rights within their sphere of influence and; 2. Make sure they are not complicit in human rights abuses.

²³ Ruggie, John. 2008. Protect, Respect and Remedy: A Framework for Business and Human Rights. P. 9.

²⁴ Section II General Policies - Paragraph 2

²⁵ *Ibid.* - Paragraph 1

²⁶ *Ibid.* - Paragraph 6

²⁷ *Ibid.* - Paragraph 7

²⁸ *Ibid.* - Paragraph 8

²⁹ Akali Tange Association Inc. 2005. *The Shooting Fields of Porgera Joint Venture; Now a case to compensate and justice to prevail. A Compensation Specific Submission to the Porgera Joint Venture on behalf of Placer Dome Canada Inc, Durban Roodepoot Deep of South Africa and Mineral Resources Enga ltd. and the Independent State of Papua New Guinea: On the Unlawful Killings of Village Alluvial Gold Miners at the PJV Mine Site – Special Mining Lease (SML) and Lease for Mining Purpose (LMP) Areas.* p. 70

shooting by PJV security guards or police.³⁰ ATA and others have commented on the fact that there is a “close relationship between PJV security personnel and PNG police and security forces” in particular as at times “government police reservists and Mobile Police Squads act as security for the PJV mine.”³¹ Additionally, as PJV hires security who have a police or military background, some of which “are police reservists, and at least a few are regular police officers who have taken extended leave from their jobs to accept better-paid positions with PJV”³² local people told Catherine Coumans that the security forces who abused them sometimes looked like regular police. ATA documented an additional 3 alleged deaths at the hands of security forces through means other than shooting.³³ Others put the total number of deaths at Porgera by security forces and police higher.³⁴ In particular, Prime Minister Sir Michael Somare told parliament he would seek answers for 29 killings at the mine noting the allegations that the mine’s security forces were involved: “We want to know why they are killing those people, and whether the law allows them to do that.” He said there appears to be foreign tactics, because 29 deaths was [sic] too many for one mine area.”³⁵ Canadian mining company Placer Dome (former 75% owner of the mine) admitted in 2005 to eight killings by police and PJV security guards (seven since 2000) but maintained that all were in self-defence.³⁶

Most alleged killings, through shooting or otherwise, by Porgera Joint Venture security guards, police or Mobile Unit Police, have, to date, not been independently investigated.³⁷ Following calls from ATA and others for a government investigation of the unusually high number of killings at the Porgera Joint Venture Mine, an investigation by a Commission of Inquiry was initiated by the government of Papua New Guinea in 2006 to “inquire and report to the Government on the incidence and causes of injuries and deaths at the Porgera mine site.” However, the report of the Commission that was finalized in 2006 has not been made public. In December 2007, MiningWatch Canada wrote to the U.N. Special Rapporteur for Extrajudicial, Summary, or Arbitrary Executions calling for an investigation of the alleged killings in the

³⁰ Akali Tange Association Inc. 2005. *The Shooting Fields of Porgera Joint Venture*.... The names of the eleven cases of deaths by shooting recorded by Akali Tange Association are: Henry Tendeke; Taitia Maliapa; Paul Pindi; John Wangla; Pyakani Tombe; Yandari Pyari; Jerry Yope; Jackson Yalo; Joe Opotaro; Aglio Wija; Mina Mulako.

³¹ 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>.

³² Human Rights Watch. 2011. *Gold’s Costly Dividend: Human Rights Impacts of Papua New Guinea’s Porgera Gold Mine*. February 1. P.44. <http://www.hrw.org/node/95776>

³³ The names of the three cases of deaths at the hands of security guards (other than by shooting) recorded by Akali Tange Association are: Alonge Laswi; Minata Pita; Pyakane Eremi.

³⁴ The PLOA claimed 21 people had been killed at the mine site by security personnel by 2005. Huafolo, Anton. 2005. Landowners call for mine closure. In *The National, Papua New Guinea*. March 30.

³⁵ Probe looms for mine deaths. 2005. *The National, Papua New Guinea*. May 6. Governor Luther Wenge also pegged the deaths by killing at 29 (Porgera Mine Deaths Prompt Call for Independent Probe. 2005. In *PNG Post-Courier*. May 11.

³⁶ Burton, Bob. 2005. *Canadian Firm Admits to Killings at PNG Gold Mine*. <http://www.ipsnews.net/news.asp?idnews=31074>

³⁷ Akali Tange Association Inc. 2005. *The Shooting Fields of Porgera Joint Venture*.... Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. P. 2. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf>.

Special Mine Lease area.³⁸ Shortly before MiningWatch sent its letter, on November 27, 2007, Mack Ipom was allegedly shot and killed by PJV security forces outside the mining area, but inside the Special Mine Lease area where he lived. Shortly after MiningWatch Canada sent its letter another civilian, Amos Wakali, was killed by gunfire on December 27, 2007, allegedly at the hands of PJV security guards outside of the mining area and MiningWatch Canada followed up with an e-mail to the U.N.'s human rights officer in Port Moresby on January 7, 2008. Additional alleged killings and beating of civilians by PJV security guards, police or Mobile Unit Police have ensued, including that of 15 year old Gibson Umi, who was allegedly shot and killed by PJV security guards in the Special Mine Lease area where he lived, but outside the mining area, on July 22, 2008.

On October 8, 2009, Catherine Coumans of MiningWatch Canada testified before the parliamentary committee on Foreign Affairs and International Trade regarding proposed Bill C-300. She referred to "allegations of killings of civilians by the Porgera mine security guards."³⁹ Barrick responded that "Barrick and PJV do not tolerate human rights violations. We also reject the characterization of the company's security personnel as violent and unlawful. (...) Since Barrick acquired its interest in the PJV in 2006, there have been no fatal shootings by Porgera security personnel."⁴⁰

Between August 2006 and March 2009, research teams from the International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University (NYU) School of Law gathered data on alleged killings and beatings of civilians by security guards at the PJV mine in three trips to the Porgera site. They presented this material to the Canadian Parliamentary Standing Committee on Foreign Affairs and International Trade (SCFAIT) on October 20, 2009, and subsequently tabled a legal brief based on their research in Porgera.⁴¹ The Harvard/NYU legal brief provides further information about extra-judicial killings and beatings at the PJV mine that is relevant to this request for review including, among other things: a Memorandum of Understanding between PJV and the government of Papua New Guinea with respect to security arrangements at the PJV mine; impediments to police investigations of killings that occur in the Special Mine lease area; and locals' use of the extensive waste dumps and waste streams around the PJV mine, as well as the open pit area, to search for ore, a use that is generally non-violent, regular and foreseeable, if technically illegal.

³⁸ Letter from MiningWatch Canada to the U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions. Allegation Letter concerning: extrajudicial killings of citizens in Papua New Guinea by private security guards (tolerated by the government), PNG Police and Mobile Unit Police at the Porgera Mine; breach of the obligation to investigate alleged violations of right to life and to bring those responsible to justice; breach of the obligation to provide compensation to victims of violations to the right to life. December 2, 2007. http://www.miningwatch.ca/sites/miningwatch.ca/files/Letter_Special_Rapporteur_PNG_2007.pdf

³⁹ For a full copy of Coumans' testimony see: <http://www.business-humanrights.org/Search/SearchResults?SearchableText=porgera&x=15&y=12>

⁴⁰ This text, in response to the testimony by Catherine Coumans, was accessed on Barrick's web site on 07/07/2010 but has apparently since been removed.

⁴¹ Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf>. Barrick responded to the October 20, 2009 testimony before the parliamentary committee on the company web site (accessed 7/7/2010) but has apparently since removed that information. Barrick also responded to the legal brief of November 16, 2009. See <http://www.reports-and-materials.org/Barrick-response-re-Canadian-Parliament-testimony-Porgera-23-Jul-2010.pdf>

In November 2008, MiningWatch Canada interviewed three men regarding alleged killings by PJV security guards. One man spoke about an alleged shooting death in 2007. The other two men were witnesses to an alleged killing by stoning by PJV security guards inside the mine pit in September 2008. In the latter case the two witnesses MiningWatch interviewed and the man who was killed were related and were inside the pit to access gold bearing ore. The following account is similar to other allegations of alleged killings inside the pit area that have been reported.⁴²

We were three from [redacted] who went to the pit that day. There were also many others in the pit. We went to the pit at 2 in the afternoon. We went around the fence at the side of the pit and walked across the pit wall. We were looking for gold. Before 5 pm we were looking for a place to hide because there is always a blast at 5 pm and we were afraid. We went down to a lower bench in the pit wall and about mid-way across that bench we found a tunnel and hid there. After the blast we came out and continued to look for gold. We didn't go to the blast site. We just worked until it got dark. At about 2 am we decided to go down to the blast site. But then the security noticed us. There are big spot lights to light up the place for 24 hour operations. They saw us. The security men were at the top of the mine pit. They shot at us with rubber bullets and with tear gas. We were hit with the tear gas and had to go down from the pit wall to look for water for our eyes. But we couldn't find any water. Then the security started to roll down big stones on us. They rolled down 4 big stones. [Redacted] was hit by one big stone on the upper part of his back. It knocked him down and he hurt himself, his sides, badly on jagged stones and he died. The security called a safety car to come get the body and chased us away. By 3 pm we made it by another vehicle to Paiam to look for the body in the hospital morgue. The security in the pit called for witnesses to interview but there were no witnesses, only us. They interviewed other people who were not witnesses. I went to the Paiam police station to make a full report. I filled in a form for a criminal investigation. The police told me to get a post mortem but I haven't done that yet. I am still thinking of how to go against the company. I know the security guards threw those stones after they hit us with the tear gas. I want that security guard to be arrested but it will be hard to recognize him. I want compensation.⁴³

Alleged Rapes and Gang Rapes by PJV security guards

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

⁴² Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf> . p. 17.

⁴³ Information between brackets is redacted to protect the identity of the witness. Interview conducted by Catherine Coumans on November 11, 2008.

Standing Committee on Foreign Affairs and International Trade on October 20, 2009, and in a legal brief they subsequently filed.⁴⁴

Human Rights Watch (HRW) also conducted a recent investigation and “documented five alleged incidents of gang rape by mine security personnel in 2009 and 2010, and a sixth in 2008”⁴⁵ some involving more than one woman. HRW concluded that “these incidents represent a broader pattern of abuse by some PJV security personnel.” Both the Harvard and NYU teams and HRW investigator were struck by the brutality of the sexual attacks: “Some of the women interviewed by Human Rights Watch described scenes of true brutality. One woman told how she was gang raped by six guards after one of them kicked her in the face and shattered her teeth. Another said she and three other women were raped by ten security personnel, one of whom forced her to swallow a used condom that he had used while raping two other victims.”⁴⁶

MiningWatch Canada conducted four interviews with alleged victims of rape by PJV security guards in November 2008.⁴⁷ Each of these cases involved one woman being raped by one security guard. One woman was raped twice by the same security guard. There were always other guards present and actively involved in constraining the women or standing guard. In two of the cases the women were near the waste dumps or mine fence, searching for a lost pig and gathering firewood, but not panning for gold. In two cases the women were panning for gold in the waste dumps. Two of the women reported being viciously beaten. One of the women was subsequently arrested and spent three months in prison in Mt. Hagen. Two of the women’s family members reported the assault to PJV by reporting it to the guard station or PJV security gate. One woman’s relatives reported the rape to the police. The interviews showed differing opinions among the women about where an incident should be reported and whose “business” it is. One alleged rapist was known to the woman’s relatives who tried to charge him. He was fired by the company and left the area (this was in 2005). The other alleged rapists have apparently not faced any repercussions as a result of these rapes.

The following account is from an alleged rape that occurred in 2006⁴⁸:

It was at the red tailings that I was panning for gold. Two security guards arrested me and took me to the security lock up. It was a container there near the tailings where they took me. This container is a place the security guards use to shelter from the rain. They took me there as a lock up. They told me a car would come to get me for an interview at the security station. The container was at the dump site, not at the security station. One security man stood guard outside. He said he would watch for the car that would come to get me. The other one came in and raped me. Some of my relations saw me get arrested. They ran to the village

⁴⁴ Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf> .

⁴⁵ Human Rights Watch. 2011. *Gold’s Costly Dividend: Human Rights Impacts of Papua New Guinea’s Porgera Gold Mine*. February 1. P. 9. <http://www.hrw.org/node/95776>

⁴⁶ Ibid. PP. 9-10

⁴⁷ The dates of the alleged rapes documented by MiningWatch Canada were 2003, 2004, 2005, 2006.

⁴⁸ None of the cases of alleged rape reported on here by MiningWatch Canada overlap with cases reported on by the Harvard/NYU team or by Human Rights Watch.

to warn others. They came and attacked the rapist. The two men ran away to the security camp near Anawe dump. Then a van came and took the two security men away inside the gate. The villagers reported it to the PJV security at the gate and they said they will handle it. We did not report it anymore to the police because the person got away. I did not know the man who raped me. I don't know if he is still there. It happened before Christmas in 2006. Nothing has happened since that time. No recognition or offers of compensation by the company. The company did not admit guilt, even at the gate when the villagers were telling the story right after it happened.⁴⁹

Of the four women interviewed by MiningWatch Canada, two of the women said they wanted the alleged rapists brought to justice, and three of the four women said they wanted compensation for the alleged rape.

Barrick/PJV's Responsibility for Killings and Rapes

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

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

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

⁴⁹ Interview conducted by Catherine Coumans on November 11, 2008.

As detailed above, following three years of field trips, researchers from Harvard and NYU reported on their findings to the parliamentary SCFAIT committee in October of 2009. Barrick was aware of the investigation by Harvard and NYU into alleged violence by PJV security guards, having received three letters from the Harvard/NYU team in the course of 2008-2009 “requesting...information regarding specific instances of violence....”⁵⁰ While Barrick only provided the Harvard/NYU team information on one instance of violence,⁵¹ these letters from the Harvard/NYU team should have been sufficient cause for Barrick/PJV to exercise due diligence and take proactive steps to investigate its security forces. Barrick responded to the testimony by Harvard and NYU in 2009 via a statement on its web site: “To our knowledge there have been no cases of sexual assault reported to the mine management involving PJV security personnel while on duty, since Barrick acquired its interest in the mine in 2006. It is not possible for the PJV to investigate an allegation it has never received....”⁵²

In its report of February 1, 2011, Human Rights Watch found that “*too often in the past, Barrick has responded to legitimate human rights and environmental criticisms of the Porgera mine with a “shoot the messenger” approach, attacking the company’s critics while failing to address important substantive concerns.*”⁵³ Barrick/PJV’s failure to act sooner to assure itself that the allegations of its critics were indeed fallacious, and Barrick/PJV’s failure to have systems in place to prevent the abuses in the first place, are failures of due diligence. ICMM, of which Barrick is a member, provides guidance on due diligence, stating that “Due diligence ought to be commensurate with the risks, which in turn are a function of the magnitude of potential adverse impacts, with the likelihood of these impacts occurring.”⁵⁴ ICMM notes that in considering the likelihood and the potential of human rights impacts occurring one of the things companies should consider is the “country context” and the potential human rights impacts of a company’s own activities in that context, as well as those of its security forces.⁵⁵ Human Rights Watch found that:

PJV has failed to establish a complaints channel that community members perceived as safe, and failed to adequately inform community members about the channels that did exist. In the past Barrick has blithely stated that if incidents of sexual violence involving APD [Asset Protection Department] personnel did occur, either the victims or international organizations compiling their accounts should refer the matter to the police. This was not only a deplorable abdication of responsibility on the part of the company, but also unrealistic. The police enjoy little public

⁵⁰ Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. P. 29. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf> .

⁵¹ Legal Brief. International Human Rights Clinic of the Harvard Law School and the Center for Human Rights and Global Justice of New York University School of Law. November 16, 2009. P. 30.. <http://www.reports-and-materials.org/Harvard-testimony-re-Porgera-Main.pdf> .

⁵² This text, in response to testimony before SCFAIT on October 20, 2009 by Tyler Giannini and Sarah Knuckey, was accessed on Barrick’s web site on 07/07/2010 but has apparently since been removed.

⁵³ Human Rights Watch. 2011. *Gold’s Costly Dividend: Human Rights Impacts of Papua New Guinea’s Porgera Gold Mine*. February 1. P. 62. <http://www.hrw.org/node/95776>

⁵⁴ ICMM. May 2009. *Human Rights in the Mining & Metals Industry: Overview, Management Approach and Issues*. P.9.

⁵⁵ *Ibid*. P.9

*confidence to begin with due to their reputation for violent abuse and incompetence, and many victims fear retaliation since they suffered abuse after being arrested for criminal activity.*⁵⁶

Barrick/PJV's failure to exercise due diligence, enabling the alleged human rights abuses by its security forces to continue, constitutes failure under OECD Guidelines to “*support and uphold good governance principles and develop and apply good corporate governance practices*”⁵⁷; to “*develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate*”⁵⁸ and to “*promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes.*”⁵⁹

Remedy

As this request for review was being finalized, Human Rights Watch was finalizing a report on its findings regarding alleged violence of PJV's security forces, focused on rapes and gang rapes (released February 1, 2011) and Barrick/PJV was engaged in a range of actions in response to allegations from Human Rights Watch.⁶⁰ It is too soon to tell if these actions on the part of Barrick/PJV, which include investigating and firing PJV security guards, will halt human rights abuses by PJV security forces in the future.⁶¹ Nonetheless, even if Barrick/PJV does take effective steps to prevent future abuses, this request for review is also concerned about remedy for those men and women, whose human rights have been abused by PJV security guards, or for their surviving family members. To date Barrick has given no indication that they intend to provide such a remedy.

As mentioned above, Special Representative Ruggie has defined the corporate responsibility to respect human rights as meaning “not to infringe on the rights of others – put simply, to do no harm.”⁶² It appears that Barrick/PJV's investigations of PJV's security forces have already identified cases of security personnel who have harmed local women. The responsibility of an actor to remedy harms attributable to them is a generally accepted principle of law.⁶³ Ruggie has identified “Access to Remedy” as the third principle in his Framework for Business and Human Rights. In his draft guidelines for the implementation of his framework, Ruggie advises that corporations should provide remediation for harms that have been done. Ruggie recommends that individuals or communities “who may have been adversely impacted by a business enterprise” be able to “engage the company directly in assessing the issues and seeking

⁵⁶ Human Rights Watch. 2011. *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*. February 1. PP. 66-67. <http://www.hrw.org/node/95776>

⁵⁷ Section II. General Policies – Paragraph 6

⁵⁸ *Ibid.* – Paragraph 7

⁵⁹ *Ibid.* – Paragraph 8

⁶⁰ See Barrick Gold letter of December 23, 2010. Annex in Human Rights Watch. 2011. *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*. February 1. PP. 87-94. <http://www.hrw.org/node/95776>

⁶¹ Human Rights Watch. 2011. *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*. February 1. PP. 67-68. <http://www.hrw.org/node/95776>

⁶² Ruggie, John. 2008. *Protect, Respect and Remedy: A Framework for Business and Human Rights*. P. 9.

⁶³ See for example *See, e.g., John Ruggie, Business and human rights: Towards operationalizing the “protect, respect and remedy” framework*. Paragraph 86. (Apr. 22, 2009). <http://www.businesshumanrights.org/Links/Repository/715771>

remediation of any harm” and that harms be “remediated early and directly by the business enterprises, whether alone or in collaboration with others involved, thereby preventing harms from compounding and grievances from escalating.”⁶⁴

Remedies sought:

- Provide compensation to past and present victims (or their surviving family members) of abuse by PJV security forces. As Placer Dome’s successor in liability, Barrick/PJV should provide fair compensation for all human rights abuses committed by PJV personnel since the commencement of mining operations in 1989.
- Investigate all allegations of abuse and fire and report to the proper authorities those responsible.
- Disclose publicly any and all agreements PJV has with the Government of Papua New Guinea or local authorities with respect to security arrangements at the Porgera Joint Venture mine.
- Publicly encourage the government of Papua New Guinea to release the findings of its 2006 Commission of Inquiry into violence at the PJV mine site.
- Make public the report on rape in Porgera “by a prominent anthropologist” that Barrick/PJV has recently commissioned.⁶⁵
- Make public the recently commissioned report by a consultant on “improving the channels available to community members to complain about alleged abuses.”⁶⁶

The following recommendations are made in the Human Rights Watch report. We support these recommendations and hope to follow up on progress made in regard to these recommendations.⁶⁷

- Create safe and easily accessible channels that community members, including women, can use to complain about abuse by Porgera Joint Venture (PJV) employees according to best international practice;
- Improve public outreach to explain complaints mechanisms and acceptable conduct by PJV personnel;
- Implement more rigorous monitoring of PJV security personnel;
- Install a new tracking mechanism and control center to allow for closer monitoring of all active APD personnel in the field;
- Expand a network of infrared security cameras to allow visual monitoring of APD personnel on remote parts of the mine’s waste dumps;
- Install cameras on all APD vehicles to help prevent abuses from taking place in or near the cars;
- Improve channels that whistleblowers can use to safely and anonymously report any abuses by their colleagues at the Porgera mine;
- Make public the results of Barrick’s ongoing investigation into allegations of rape and other abuses by PJV security personnel including any disciplinary action that results. This

⁶⁴ Draft Guiding Principles for the Implementation of the United Nations ‘Protect, respect and Remedy’ Framework. P. 24, 25.

⁶⁵ Human Rights Watch. 2011. *Gold’s Costly Dividend: Human Rights Impacts of Papua New Guinea’s Porgera Gold Mine*. February 1. PP. 69. <http://www.hrw.org/node/95776>

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

investigation should include complaints going back to before Barrick took over the PJV mine;

- Ensure that trainings for APD personnel and mobile police squads on human rights principles and the Voluntary Principles include specific sections on prevention and response to sexual harassment and violence;
- Increase recruitment, training, and support of female security personnel, particularly in supervisory roles, among the security staff patrolling the waste dumps and among those staffing the mine's on-site detention facility;
- Monitor and make public the number and nature of complaints received through grievance mechanisms at Porgera, the time required to resolve each case, and their outcomes;
- Ensure that newly established "women's liaison" office is provided with adequate training, staff, financial resources, and institutional support.

Main sources:

Akali Tange Association Inc. 2005. *The Shooting Fields of Porgera Joint Venture; Now a case to compensate and justice to prevail. A Compensation Specific Submission to the Porgera Joint Venture on behalf of Placer Dome Canada Inc, Durban Roodepoot Deep of South Africa and Mineral Resources Enga ltd. and the Independent State of Papua New Guinea: On the Unlawful Killings of Village Alluvial Gold Miners at the PJV Mine Site – Special Mining Lease (SML) and Lease for Mining Purpose (LMP) Areas.* (Copy provided).

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

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

2. HUMAN RIGHTS: B. Operation Ipili '09 – Forced evictions and destruction of homes at the Porgera Joint Venture mine

Summary: On April 18, 2009, more than 200 troops including 4 Police Mobile Units⁶⁸, an air tactical unit and intelligence officials from the PNG Defense Force were deployed in Porgera in "Operation Ipili '09."⁶⁹ Starting on April 27, 2009 the troops began to burn down houses in Waungima village. News reports on April 30th indicated that, "houses belonging to local landowners near the Porgera gold mine in Enga Province have been torched allegedly by the policemen called out to restore law and order in the district."⁷⁰ Mark Ekepa, Chairman of the PLOA is quoted as saying, "these houses belong to the second and third generation landowners (...) many of those left homeless were three of the seven landowner clans – Tieni Wuape, Tieni

⁶⁸ Police Mobile Units have a long standing reputation of brutality and violence against PNG citizens.

⁶⁹ Muri, David. 2009. Porgera 'empty' on eve of call-out. *National*. April 20. Port Moresby, Papua New Guinea.

⁷⁰ Eroro, S. 2009. Porgera up in Flames. *Postcourier*. April 30. Port Moresby, Papua New Guinea; *Radio New Zealand International*. 2009. Homes burnt at PNG's Porgera Mine. April 30.

Wiagolo and Tieni Lakima – in Porgera.”⁷¹ Not only were 130 buildings burnt down in Wuangima alone, but also agricultural plots around houses that are used for subsistence were burnt.⁷² In the ensuing months it became clear that people had been forcibly and in some cases violently evicted from their homes. As home owners rebuilt their houses, many were burnt down again.⁷³ Most of the houses that were burnt down were in two villages, Wuangima and Kulapi.⁷⁴ All the homes that were burnt down, and the families evicted, were within the Special Mine Lease area of the PJV mine.⁷⁵ In accordance with an agreement signed between PJV and the police in April 2009, the mobile units were housed and fed on PJV property and provided with fuel by PJV.⁷⁶ This arrangement remains in force as of the writing of this request for review.

The house burnings and forcible evictions by the PNG police of villagers living inside PJV’s mine lease area constitute gross violations of human rights,⁷⁷ and may constitute crimes against humanity.⁷⁸ Barrick/PJV claims to have been implementing the Voluntary Principles on Security and Human Rights at the PJV mine at the time of Operation Ipili ’09, and Barrick formally joined the Voluntary Principles in November of 2010. However, Barrick/PJV’s response to the violations of human rights, which PJV personnel witnessed,⁷⁹ was not in accordance with the Voluntary Principles at that time. By December 10, 2009, Barrick had still not urged an investigation by the Papua New Guinea government.⁸⁰ Although Barrick/PJV now agree that troops being housed, fed and provided fuel by PJV burned down houses and forcibly evicted villagers within PJV’s Special Mine Lease area,⁸¹ Barrick has done nothing to remedy the harm and has declined to publicly urge the government of Papua New Guinea to conduct an investigation of these gross violations of human rights.

⁷¹ See urgent appeal to UN Special Rapporteurs by MiningWatch Canada <http://www.miningwatch.ca/en/urgent-appeals-united-nations-special-rapporteurs-regarding-human-rights-abuses-porgera-mine>
See also Amnesty International’s public statement; <http://www.amnestyusa.org/document.php?id=ENGASA340012009&lang=e> Center on Housing Rights and Evictions http://www.cohre.org/store/attachments/AP_IE_PNG_EngaProvince_26May09.pdf. Barrick Gold put out a public response on its web site the first week of June 2009 -

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

⁷² Figures for how many houses were burnt down range from potentially 130 in Wuangima alone, Amnesty International (January 2010:4) counted “at least 130 buildings” that were burnt down in the village of Wuangima, to over 300 reported by local community based organizations.

⁷³ Amnesty International. 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P. 10.

⁷⁴ Figures for how many houses were burnt down range from 130 in Wuangima alone, counted by Amnesty International (January 2010:4) to over 300 reported by local community based organizations.

⁷⁵ Wuangima village is next to the opening of the underground workings of the mine and close to the open pit.

⁷⁶ Barrick Gold Corporation – Statement on Amnesty International Report.

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

⁷⁷ Human rights that were abused in Operation Ipili ’09 include: the right to housing; the right to equal recognition and protection under the law; the right to life, liberty and security of the person; the right to freedom of movement and residence; the right to freedom from arbitrary interference with privacy and home life.

⁷⁸ Article 7(d)(2) of the Rome Statute of the International Criminal Court includes among crimes against humanity “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”

⁷⁹ Amnesty International. 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P. 15.

⁸⁰ *Ibid.* P. 17.

⁸¹ *Ibid.* P. 17.

Barrick/PJV's lack of compliance with the Voluntary Principles in this regard constitutes a failure to "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."⁸² By not following the guidance set out in the Voluntary Principles, Barrick/PJV are further in breach of the following OECD Guidelines: "support and uphold good governance principles and develop and apply good corporate governance practices"⁸³; "develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate"⁸⁴; "promote employee awareness of, and compliance with, company policies through appropriate dissemination of these policies, including through training programmes."⁸⁵ Furthermore, as Barrick/PJV requested deployment of and provided assistance to police⁸⁶ this constitutes a failure to "abstain from any improper involvement in local political activities."⁸⁷ Its assistance also constitutes complicity in violations of international human rights law.⁸⁸

Finally, as Barrick/PJV has done nothing to remedy the harm caused to victims of the house burnings and forcible evictions, Barrick/PJV has also failed to fulfill responsibilities under the OECD Guideline that states that enterprises should: "contribute to economic, social and environmental progress with a view to achieving sustainable development."⁸⁹

Relevant Information:

Barrick/PJV's Support for Operation Ipili '09

In the lead up to the police and military action called Operation Ipili '09 news reports indicated a link between PJV and the request for police intervention by Member of Parliament for Lagaip-Porgera, Philip Kikala. Kikala reportedly said "the plea for help had come from situation reports presented to him by Barrick (PNG) Limited, the operator of the rich Porgera mine...."⁹⁰ Police Commissioner Gari Baki reportedly said "the call-out was for the good of the innocent people and gold mine that had been affected by the attitudes of some people and also clamp down tribal fighting in the area."⁹¹ Internal Security Minister Sani Rambli is reported to have said: "It's not a political matter as some prominent leaders from the province claimed but it is for the good of the people and the Porgera gold mine...."⁹² Reports also indicated a connection between the arrival

⁸² Section II General Policies - Paragraph 2

⁸³ *Ibid.* - Paragraph 6

⁸⁴ *Ibid.* - Paragraph 7

⁸⁵ *Ibid.* - Paragraph 8

⁸⁶ See Amnesty International 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P.13.

⁸⁷ Section II General Policies – Paragraph 11

⁸⁸ See draft commentary to Ruggie's principle 15: "In relation to complicity in international crimes, the weight of international legal opinion indicates that the relevant standard for aiding and abetting such crimes is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime." Draft Guiding Principles for the implementation of the United Nations 'Protect, Respect and Remedy' Framework. P. 16.

⁸⁹ Section II General Policies - Paragraph 1

⁹⁰ Joku, Harlyne. MP call for SoE in Porgera. *Postcourier*. February 22, 2009. Kikala also reportedly mentioned other groups who had supported a call-out.

⁹¹ Timb, Sent. Police move into Porgera. *Postcourier*. April 21, 2009.

⁹² *Ibid.*

of Barrick's President and CEO in Papua New Guinea and the arrival of troops in Porgera two weeks later: "Mr. Rambli and Deputy Prime Minister and Mining Minister Dr. Puka Temu also met with the global president of the Barrick Group, Aaron Regent, in Port Moresby over the weekend and assured him of the Government's commitment to deal with the illegal miners in the world class mine. He said the security operation would start sometime this week, after approved funds were released by the Treasury Department."⁹³

The mine manager of the Porgera Joint Venture is reported to have expressed strong support for the operation: "Porgera mine general manager Mark Fisher thanked the Government for the call-out operation. Mr Fisher said the mine faced problems with illegal miners. 'I'll support in whatever way I would [sic] to help call-out operation for the next six weeks.' Mr. Fisher said."⁹⁴ Another article noted: "Porgera mine general manager Mark Fisher welcomed the call-out, saying he would support the operation in its entirety with accommodation, meals and providing other logistics."⁹⁵ Mining Minister Puku Temu's brother, Ila Temu, is Barrick's Director of Corporate Affairs for Australia and the Pacific based in Perth, Australia. He is also reported by Radio Australia as welcoming Operation Ipili '09.⁹⁶

Amnesty International investigated the house burnings and found that:

*Both the Chief of Police operations and acting Deputy Commissioner of police (who oversees all Mobile Squad operations), and the Deputy Director of Police Special Services (the Mobile Squad commander in Porgera from 16 July 2009) advised Amnesty International that the deployment of the Mobile Squad to Porgera has occurred on several occasions at the request of PJV. Both stated that the April 2009 deployment occurred at the request of PJV and the national government.*⁹⁷

Barrick/PJV's support for abusive police operations, which violates the requirement of the VPs that Barrick should "use its influence to promote" the "principle[] with public security" that "force should be used only when strictly necessary and to an extent proportional to the threat,"⁹⁸ also constitutes a violation of the OECD Guidelines' requirement to "respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."⁹⁹ Barrick/PJV's involvement in "requesting deployment of and providing assistance to police"¹⁰⁰ also constitutes a failure to "abstain from any improper involvement in local political activities."¹⁰¹

⁹³ Muri, David. Porgera security ops set to kick off. *National*. April 6, 2009.

⁹⁴ Crackdown on Porgera Violence Underway in PNG. *Postcourier*. April 22, 2009.

⁹⁵ Muri, David. Porgera 'empty' on eve of call out. *National*. April 20, 2009.

⁹⁶ PNG Troops deployed to curb Highlands lawlessness. *Radio Australia*. March 17, 2009.

⁹⁷ Amnesty International 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P.14.

⁹⁸ Voluntary Principles on Security and Human Rights.

http://www.voluntaryprinciples.org/principles/public_security

⁹⁹ Section II General Policies - Paragraph 2

¹⁰⁰ See Amnesty International 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P.13.

¹⁰¹ Section II General Policies – Paragraph 11

Barrick/PJV's Failure to call for an Investigation of Human Rights Abuses Associated with Operation Ipili '09

Barrick is reported by Amnesty as saying that “PJV did exactly what the Voluntary Principles [on Security and Human Rights] recommend.”¹⁰² However, the Voluntary Principles call for a company to record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities and to urge investigation and that action be taken to prevent reoccurrence. After first denying that gross violations of human rights had taken place, or that anyone had been made homeless as a result of the raids, Barrick apparently told Amnesty in December 2009 that it would work with PJV and would promptly ask the authorities, in writing, to investigate and that it would make the existence of such a letter public.¹⁰³ This has not happened to date. Nor has the PNG government investigated the gross violations of human rights in the Special Mine Lease area associated with Operation Ipili '09.

Barrick/PJV's Continued Accommodation of Mobile Squads at the Porgera Mine

Barrick/PJV continues to house, feed and provide fuel for Mobile Squad¹⁰⁴ members at the PJV mine site in spite of the uninvestigated human rights abuses perpetrated by Mobile Squad members during Operation Ipili '09. Barrick asserts that, as was the case during Operation Ipili '09, PJV has sought and received assurances that the Mobile Squads housed at the mine site will abide by: “PNG laws and international legal principles, including the Voluntary Principles on Security and Human Rights, the UN Code of Conduct for Law Enforcement Officials, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.”¹⁰⁵ Nonetheless, on July 5, 2010, PLOA Chairman Mark Ekepa wrote to PJV mine manager Mark Fisher to inform him that three teenage girls and their parents had reported to Mr. Ekepa that the girls had been forcibly confined at the mine site and repeatedly raped over two days and one night by members of the Mobile Squads.¹⁰⁶

On August 17, 2009, a court order was issued by the National Court of Justice requesting the government of Papua New Guinea and the Police Commissioner to withdraw troops from the Special Mine Lease area and from the accommodations provided by PJV. This was followed up on September 14 with a further court order setting a date for withdrawal of October 5, 2009. The state of Papua New Guinea is apparently contesting these court orders.

Remedy

By requesting and supporting Operation Ipili '09 despite the risk of human rights abuses, failing to prevent human rights abuses in connection with that operation, failing to provide remedies to the victims, and failing to call publicly on the Papua New Guinea government to investigate the

¹⁰² Amnesty International. 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P. 11

¹⁰³ *Ibid.* P. 11, 17.

¹⁰⁴ Terminology to refer to these units includes Mobile Police Units, Mobile Police Squads, and Mobile Squads.

¹⁰⁵ Barrick Gold Corporation – Porgera Police Deployment.

<http://www.barrick.com/CorporateResponsibility/KeyTopics/PorgeraJV/PoliceDeployment/default.aspx> (Accessed February 10, 2011).

¹⁰⁶ Letter from Mark Tony Ekepa to Mark Fisher. July 5, 2010. Subject: Call for an urgent investigation on three girls being detained in the PJV camp and pack raped by PJV engaged members of mobile squads.

house burnings and forced evictions of Operation Ipili '09, Barrick/PJV fails to demonstrate that it has followed the guidance of the Voluntary Principles, and thereby also the OECD Guideline on human rights, “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments,*”¹⁰⁷ Barrick is in violation of the VPs for failing to “use its influence to promote the following principles with public security. . . force should be used only when strictly necessary and to an extent proportional to the threat....” Barrick/PJV also fails to adequately support the victims’ right to remedy and thereby contributes to their harm. There is no indication that Barrick/PJV has itself taken action to compensate the families who were evicted and lost their homes. As a result, Barrick/PJV has also failed to fulfill responsibilities under the OECD Guideline that states that enterprises should: “*contribute to economic, social and environmental progress with a view to achieving sustainable development.*”¹⁰⁸

Remedies sought:¹⁰⁹

- In order to come into compliance with the OECD Guidelines, prevent future harm, and provide remedy for harm that has been caused by Operation Ipili '09, Barrick/PJV should:
 - Acknowledge its responsibility for the abuses committed as part of Operation Ipili '09;
 - Withdraw accommodation and other support by PJV to the Mobile Squad in light of evidence of human rights abuses by police and the existence of court orders requiring the police to be housed outside the Porgera mine site;
 - To the extent that support for the Mobile Squad or other security forces continues, ensure that Barrick/PJV has the authority to provide training to these forces, to review the conduct of security personnel, and to terminate any officers with a history of abuse, and exercise that authority;
 - Ensure that the prohibition on forced evictions under international law and the human rights consequences of forced evictions are part of human rights training for PJV and Barrick personnel;
 - Implement the Voluntary Principles on Security and Human Rights by:
 - recording all information already gathered by PJV and Barrick relating to the forced evictions and any other use of force by the police, and immediately reporting it to the state authorities;
 - calling for a full investigation into the forced evictions and police violence in the SML, the prosecution of those responsible, and the provision of remedies to those affected;
 - actively monitoring the status of an investigation and pressing for its proper resolution.

¹⁰⁷Section II General Policies - Paragraph 2

¹⁰⁸Section II General Policies - Paragraph 1

¹⁰⁹Some of these recommendations enforce those made by Amnesty International. 2010. *Undermining Rights: Forced Evictions and Police Brutality around the Porgera Gold Mine, Papua New Guinea*. January. P. 20.

- Ensure that in the future, where company personnel observe police activities that appear to violate human rights, these are promptly recorded and reported to the state authorities, and where appropriate an investigation urged;
- Investigate allegations of rape by the Mobile Squad and push for investigation by the PNG government.
- While awaiting a full investigation of the forced evictions and house burnings by the PNG government, and until such time as a relocation of all people living within the special mine lease area is undertaken, Barrick/PJV should provide new housing, clothing, resources to build new gardens, and basic provisions such as cookware to those families who were evicted and whose houses were burned down.
- Provide compensation for those injured by Operation Ipili '09, including for emotional distress resulting from these human rights abuses.
- In accordance with OECD Guideline under section III Disclosure, paragraph 5. a), Barrick/PJV should make public reports on its performance with regard to the Voluntary Principles at the PJV mine, including during and following Operation Ipili '09.

Main source: Amnesty International. 2010. *Undermining Rights: Forced Evictions and Police Brutality Around the Porgera Gold Mine, Papua New Guinea*. January.
<http://www.amnesty.org/en/library/info/ASA34/001/2010/en>

3. ENVIRONMENT: Riverine Tailings Disposal and Impacts on Air Quality

Summary: In 2008, the Porgera Joint Venture mine disposed of 6.05 million tons of tailings and 12.5 million tons of suspended sediment from the Anawe and Anjolek erodible waste dumps¹¹⁰ into the downstream Porgera, Lagaip and Strickland rivers systems which flow some 800 kilometres from the Papua New Guinea highlands to the Gulf of Papua. This waste contains dissolved and sediment bound metals.¹¹¹ PJV has disposed of its mine waste in this fashion since the mine started operations in 1990. In order to meet Papua New Guinea water quality criteria, PJV requires a 165 kilometre-long “mixing zone” in the river system starting at the mine site. In this mixing zone water quality standards do not have to be met. Barrick/PJV has not made monitoring data regarding river impacts publicly available. Nor has Barrick/PJV made available a 2007 consultants study that considers alternatives to riverine disposal of waste. In addition to environmental impacts, potential human health impacts associated with the contamination of the river systems have long been a concern, most acutely so in the reaches of the river near the mine.¹¹² Barrick/PJV has not made a closure plan, or a rehabilitation plan for the impacted river system, available. In addition to concerns flowing from tailings and waste rock disposal,

¹¹⁰ Strickland River 2009 Report Card. <http://www.peakpng.org.pg/docs/Report%20Card%20Oct%2009-Final.pdf> (accessed February 6, 2011)

¹¹¹ Metals include Arsenic (As), Cadmium (Cd), Copper (Cu), Lead (Pb), Mercury (Hg), Nickel (Ni), Silver (Ag), Zinc (Zn) and Cyanide (CN). Strickland River 2009 Report Card.
<http://www.peakpng.org.pg/docs/Report%20Card%20Oct%2009-Final.pdf>

¹¹² On health risks see for example, Shearman, Philip. 2001. Giving away another river: an analysis of the impacts of the Porgera mine on the Strickland River system. In *Mining in Papua New Guinea: Analysis and Policy Implications*. B.Y. Imbun and P.A. McGavin, eds. Pp. 181-183.

Porgerans also regularly express concern about air pollution impacts of emissions from the mine's processing facilities and lack of information about the content of these emissions.¹¹³

Barrick/PJV's riverine disposal of mine waste is not in accordance with international best practice. The final report of the World Bank's Extractive Industry Review notes that "[a]ll disposal options should be rigorously evaluated, with an emphasis on the need for ongoing monitoring of waste and tailings dumps, but no WBG-supported mining project should use riverine tailings disposal."¹¹⁴ The Government of Canada promotes the International Finance Corporation's (IFC) standards as guidelines for Canadian companies operating overseas. The IFC maintains that "[r]iverine (e.g., rivers, lakes, and lagoons) or shallow marine tailings disposal is not considered good international industry practice."¹¹⁵ Riverine tailings disposal is effectively banned in Canada through legislation limiting suspended solids in mine effluent deposited into the environment.¹¹⁶ Furthermore, best practice requires that mines prepare and make public closure plans and regularly update these, carry out progressive rehabilitation, and provide bonds that will assure the proper rehabilitation and closure of a mine. Barrick/PJV either does not have a closure plan for the PJV mine or is not making one available.

Barrick/PJV's waste disposal practises at the PJV mine violate a number of OECD Guidelines with respect to the environment, as well as the international instruments these are based upon, such as the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration), the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters and standards contained in such instruments as the ISO Standard on Environmental Management Systems. OECD guidelines with respect to the Environment, section V, expect companies to "*protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.*"¹¹⁷ Riverine tailings disposal contaminates an 800-kilometre long river system and it endangers the public health and safety of communities along the river.¹¹⁸ The erodible dumps have been designed to continue depositing metal laden sediments into the river system for decades after the mine has stopped operating. As there is no closure or rehabilitation plan for the river system Barrick/PJV are not assuring long term sustainability for the excessively large footprint of the mine and the ecosystems associated with the river system.

Furthermore, the OECD Guidelines, under section V, set out the types of data companies should be gathering and providing to stakeholders. Here also Barrick/PJV falls short. In particular, the OECD Guidelines require that companies collect data on "*the environmental, health and safety*

¹¹³ Personal communications of Catherine Coumans during two trips to Porgera, November 2008 and March 2009.

¹¹⁴ Striking a Better Balance: Extractive Industry Review. 2003. Executive Summary p. 4.

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

¹¹⁵ IFC/World Bank (December 2007) "Environmental, Health and Safety Guidelines for Mining."

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

¹¹⁶ See the Metal Mining Effluent Regulations, which limit suspended solids in mine effluent to be released to the environment to 15 mg/liter on average per month.

¹¹⁷ Section V. Environment. Preamble.

¹¹⁸ See note 99.

impacts of their activities”¹¹⁹ and “*provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise.*”¹²⁰ Barrick/PJV has withheld environmental monitoring data on the river even after being asked to provide these. It is unclear whether air emissions data is being collected at all; it is not being made public. As the consequences of environmental degradation for communities in Porgera and along the river are substantial (see section I above) PJV’s environmental impacts have consequences for sustainable development - enterprises should, “*contribute to economic, social and environmental progress with a view to achieving sustainable development*”¹²¹ – and for human rights - enterprises should, “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*”¹²² Other violations of the OECD Guidelines are detailed below.

Relevant Information:

“Mixing Zone:” Exemptions on Environmental Standards

In the decade before mining began in Porgera a number of engineering studies determined possibilities for mine waste storage near the mine, as well as options to greatly reduce the production of waste (Shearman 2001).¹²³ Underground mining started in 1990 and was supplemented by a large-scale open pit in 1992. The mine’s 1991 permit to use the river as a dumping ground is based on variances the government of Papua New Guinea permitted to its own water quality criteria. While PNG water quality criteria specify maximum allowable total metal concentrations (dissolved and particulate concentrations), the Porgera Joint Venture was granted a permit to consider only the dissolved metal loading to the river system. Additionally, the “compliance point” was set at about 165 km downstream from the mine. In this so-called 165 km “mixing zone” any level of pollutants is allowed. “The need for a mixing zone is a statement of a project’s inability to meet environmental regulations”¹²⁴ and means environmental damage is being done and costs are being incurred that will one day have to be addressed. The “mixing zone” constitutes an exemption from PNG environmental standards meant to protect the receiving aquatic environment and so constitutes a breach of OECD Guidelines prohibiting companies from accepting such exemptions - enterprises should “*refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour taxation, financial incentives, or other issues.*”¹²⁵

Failure to Act on Independent Scientific Advice Regarding Serious Environmental and Health Risks

¹¹⁹ Section V. Environment – Paragraph 1a.

¹²⁰ *Ibid.* – paragraph 2a

¹²¹ Section II General Policies - Paragraph 1. Rights that are threatened as a result of environmental degradation are, among others: right to health; right to life, liberty and security of the person; right to an adequate standard of living (including food, clothing and housing).

¹²² *Ibid.* - Paragraph 2.

¹²³ Shearman, Philip. 2001. Giving away another river: an analysis of the impacts of the Porgera mine on the Strickland River system. In *Mining in Papua New Guinea: Analysis and Policy Implications*. B.Y. Imbun and P.A. McGavin, eds. Pp. 173-191. Waigani: University of Papua New Guinea Press.

¹²⁴ *Ibid.* Pp. 177.

¹²⁵ Section II General Policies – Paragraph 5.

Independent scientific findings detailing serious downstream impacts were first published in 1995.¹²⁶ In response to considerable public pressure following these reports, PJV employed the Australian Commonwealth Scientific and Industrial Research Organization (CSIRO) to review its operations (CSIRO 1996).¹²⁷ CSIRO concluded that the impact of PJV's waste disposal constituted both chemical and physical risks to the river and that PJV should "vigorously pursue the possibility of containing all or part of the tailings solids and waste rock on-site" (CSIRO 1996:7-2).

In 2001, another CSIRO study was published.¹²⁸ This study, aimed at finding "tracer metals" to track the deposition of tailings in the river, makes it abundantly clear that heavy metal laced tailings are being deposited in the lower reaches of the river, in overbank depositions and off-river water bodies (CSIRO 2001:13). The study found that silver, arsenic, cadmium, zinc, lead were all present in the tailings in far higher concentrations than in natural river sediments. For example, levels of silver were 140 times higher in tailings than in natural river sediments, arsenic levels were 52 times higher, and lead levels were 45 times higher (CSIRO 2001:7). Furthermore, the study notes that metals such as arsenic, cadmium and zinc are known to be easily mobilized (dissolved) in aquatic environments, making these metals easily bio-available. The river system has a range of human uses which could lead to exposure to these metals, and lead, cadmium, and arsenic in particular are known to have potential for serious human health impacts. In spite of these reports, PJV did not stop using the river as a waste dump. This constitutes a failure to comply with OECD Guidelines in particular – "[c]onsistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage."¹²⁹

Failure to Provide Adequate and Timely Environmental, Health and Safety Information¹³⁰

In 1996, then-mine operator Placer Dome created what it called an "independent" oversight body, the Porgera Environmental Advisory *Komiti* (PEAK) with a mandate to oversee the implementation of the recommendations in the 1996 CSIRO report.¹³¹ PEAK has never achieved financial or decision-making independence from PJV and Placer, now Barrick, nor has it achieved its core mandate. PEAK has always suffered from lack of information supplied by PJV management. Even the 1996 CSIRO report is still not available on the PEAK web site.

In 2008, following a three-year-long investigation, the Norwegian Government Pension Fund announced that it had divested from roughly CAN\$230 million worth of shares in Barrick as a result of the riverine tailings disposal at the Porgera Mine. The report noted that:

¹²⁶ Shearman, Philip. 1995. The Environment and Social Impact of the Porgera mine on the Strickland River System. B.Sc. thesis, University of Tasmania, Australia.

¹²⁷ CSIRO. 1996. *Review of Riverine Impacts, Porgera Joint Venture*. Australia: Commonwealth Scientific and Industrial Research Organization.

¹²⁸ CSIRO 2001. *Tracing Mine-Derived Sediments and Assessing Their Impact Downstream of the Porgera Gold Mine*. By S.C. Apte. Australia: Commonwealth Scientific and Industrial Research Organization.

¹²⁹ Section V. Environment - Paragraph 4.

¹³⁰ *Ibid.* – Paragraph 2a

¹³¹ *Komiti* is *Tok Pisin* for "committee." <http://www.peakpng.org.pg/> (Accessed August 10, 2007). In 2003 PEAK's mandate was expanded to include economic and social issues affecting local communities.

Barrick's operation of the Porgera mine entails an unacceptable risk of extensive and irreversible damage to the natural environment (...) the company's riverine disposal practice is in breach of international norms (...) the company's assertions that its operations do not cause long-term and irreversible environmental damage carry little credibility. This is reinforced by the lack of openness and transparency in the company's environmental reporting (...) the council finds reason to believe that the company's unacceptable practice will continue in the future. (Council on Ethics 2008:97-98)

In addition to environmental data Barrick/PJV has collected health data that has also not been released. In 2007, a report commissioned by Barrick/PJV reviewing alternative options to riverine disposal was completed but has also not been released.

As this request for review was being finalized, Human Rights Watch released its report on the PJV mine.¹³² According to Human Rights Watch, Barrick has promised to release the 2009 and 2010 environmental monitoring reports on the river, as well as a health risk assessment PJV commissioned. These documents have not yet been released. Barrick/PJV has refused to release the 2007 report on alternatives to riverine disposal.¹³³

Remedy

The open waste streams cause health and safety concerns as they must be traversed as people go about their normal lives. There have been reports of children as well as adults being swept away in the waste flows.

Importantly, CSIRO's review of PJV's operations, and critique of "riverine disposal" of tailings, was the outcome of years of struggle by downstream communities seeking recognition and compensation for the damages they suffer as a result of PJV's waste disposal into the Strickland River system.

The Porgera River Alluvial Miners Association (PRAMA) was formed in 1994 as part of the Porgera Landowners Association. PRAMA includes landowners in the Special Mine Lease area but also downstream landowners who directly suffer the mine's contamination of the river (Nita 2001:161-162).¹³⁴ In 1996, the downstream people around Yuyan and Politika were successful in pursuing their claims for compensation for pollution of the river and for loss of alluvial mining beds under the waste from the mine (Jacka 2001:49).¹³⁵ However PRAMA and other Lower Porgera landowners groups have continued to struggle for recognition and compensation for the impacts their members face.

¹³² Human Rights Watch. 2011. *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*. February 1. <http://www.hrw.org/node/95776>

¹³³ *Ibid.*, pp. 76-78.

¹³⁴ Nita, A. 2001. New power structures and environmental management: evidence from the Porgera gold mine. In *Mining in Papua New Guinea: analysis & policy implications*. B.Y. Imbun and P. A. McGavin, eds. Pp. 157-173. Waigani: University of Papua New Guinea Press.

¹³⁵ Jacka, J. 2001. On the outside looking in: attitudes and responses of non-landowners towards mining in Porgera. In *Mining in Papua New Guinea: analysis & policy implications*. B.Y. Imbun and P.A. McGavin, eds. Pp. 45-63. Waigani: University of Papua New Guinea Press.

As noted in previous sections of the request for review, the responsibility of an actor to remedy harms attributable to them is a generally accepted principle of law.¹³⁶ Ruggie has identified “Access to Remedy” as the third principle in his Framework for Business and Human Rights. In his draft guidelines for the implementation of his framework, Ruggie advises that corporations should provide remediation for harms that have been done. Ruggie recommends that individuals or communities “who may have been adversely impacted by a business enterprise” be able to “engage the company directly in assessing the issues and seeking remediation of any harm” and that harms be “remediated early and directly by the business enterprises, whether alone or in collaboration with others involved, thereby preventing harms from compounding and grievances from escalating.”¹³⁷

Barrick/PJV should enter consultations with communities who have been and are affected by the mine’s riverine tailings disposal to assure they are provided fair compensation for the impacts they suffer.

Remedies Sought:

- Barrick/PJV should make available all past and future environmental monitoring reports and environmental and health studies that PJV has commissioned on the state of the river system that is affected by tailings from the PJV mine and the on the health of nearby communities.
- Barrick/PJV should make public the 2007 study commissioned by Barrick/PJV to examine alternatives to riverine disposal of mine waste.
- Barrick/PJV should take concrete steps to move away from riverine disposal of mine waste by building engineered impoundments to contain all waste rock and tailings from the PJV mine, according to international best practice guidelines for tailings and waste rock impoundments and to assure no future contamination of surface or ground water. Alternatively PJV/Barrick should consider shipping ore off-site for processing.
- Barrick/PJV should prepare and make public a closure plan for the PJV mine that includes a progressive rehabilitation program for the entire length of the river system that is affected by mine waste from the PJV mine. Remediation of the river system should begin immediately.
- Barrick/PJV should provide regular health assessments for populations living in proximity to the waste flows from the PJV mine and provide health care for any health impacts that may reasonably be linked to contact with waste flows from the mine.
- Barrick/PJV should ensure the provision of clean water for all inhabitants of the Special Mine Lease Area and the nearby towns of Porgera, and Paiam.

¹³⁶ See for example *See, e.g., John Ruggie, Business and human rights: Towards operationalizing the “protect, respect and remedy” framework*. Paragraph 86. (Apr. 22, 2009). <http://www.businesshumanrights.org/Links/Repository/715771>

¹³⁷ Draft Guiding Principles for the Implementation of the United Nations ‘Protect, respect and Remedy’ Framework. P. 24, 25.

- Barrick/PJV should make public any monitoring data regarding air emissions from its processing plants. If these emissions are not being monitored, Barrick/PJV should start a monitoring program.

Main sources –

CSIRO. 1996. *Review of Riverine Impacts, Porgera Joint Venture*. Australia: Commonwealth Scientific and Industrial Research Organization. (Copy Provided)

CSIRO 2001. *Tracing Mine-Derived Sediments and Assessing Their Impact Downstream of the Porgera Gold Mine*. By S.C. Apte. Australia: Commonwealth Scientific and Industrial Research Organization. <http://www.peakpng.org.pg/docs/Sigreport%20final.pdf>

Norwegian Council on Ethics. 2008. *The Porgera Mine – Papua New Guinea*. www.regjeringen.no/upload/FIN/etik/recommendation_barrick.pdf.

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III. Conclusion and Summary of Remedies Sought

Based on the information provided in this request for review, and pursuant to the OECD Guidelines, this request for review maintains that Barrick, through its wholly-owned subsidiaries in Papua New Guinea, has violated and continues to violate the OECD Guidelines in its operations at the Porgera Joint Venture (PJV) mine. It seeks the good offices of the Canadian National Contact Point to bring Barrick/PJV back into compliance with the guidelines and asks the NCP to offer good offices to bring about a dialogue between the submitters of this request along with advisors of their choosing, and Barrick/PJV for the purposes of resolving the issues of concern raised in this request for review.

Below we offer a summary of the recommendations that were made in this request for review. Some require immediate action, some require agreement among the parties with regard to their resolution and concrete steps to be taken by Barrick/PJV to move towards their resolution over the next year in constructive and transparent dialogue with the affected communities in the Special Mine Lease area, as well as downstream communities where relevant, and with the assistance of international experts agreed upon by Barrick/PJV and the affected communities. Issues concerning transparency and disclosure of information that concerns the health, safety, human rights and welfare of communities affected by the PJV mine should be addressed expeditiously.

Summary of Remedies:

1. SUSTAINABLE DEVELOPMENT: Living conditions in the Special Mine Lease area are incompatible with OECD Guidelines on sustainable development.

- In accordance with the wishes of the majority of residents of the Special Mine Lease area, in line with recommendations set out in the URS report of 2007, in line with international standards and norms, and in order to bring Barrick/PJV into compliance with OECD Guidelines, we recommend that Barrick/PJV resettle all SML landowners and their family members and relatives living in the SML area according to international best practice guidelines¹³⁸ and taking into consideration recommendations in the URS report of June 14, 2007.
- In accordance with PEAK's constitution and with OECD guidance on disclosure we recommend that Barrick/PJV post the URS report to the PEAK web site. Barrick/PJV should also make the report available to Special Mine Lease area residents through the Porgera Landowners Association and other relevant local community organizations.

2. HUMAN RIGHTS: A. Alleged violence by PJV security guards - killings, beatings, rapes of women

- Provide compensation to past and present victims (or their surviving family members) of abuse by PJV security forces. As Placer Dome's successor in liability, Barrick/PJV should provide fair compensation for all human rights abuses committed by PJV personnel since the commencement of mining operations in 1989.
- Investigate all allegations of abuse and fire and report to the proper authorities those responsible.
- Disclose publicly any and all agreements PJV has with the Government of Papua New Guinea or local authorities with respect to security arrangements at the Porgera Joint Venture mine.
- Publicly encourage the government of Papua New Guinea to release the findings of its 2006 Commission of Inquiry into violence at the PJV mine site.
- Make public the report on rape in Porgera "by a prominent anthropologist" that Barrick/PJV has recently commissioned.¹³⁹
- Make public the recently commissioned report by a consultant on "improving the channels available to community members to complain about alleged abuses."¹⁴⁰

The following recommendations are made in the Human Rights Watch report. We support these recommendations and hope to follow up on progress made in regard to these recommendations.¹⁴¹

¹³⁸ In considering relocation for all people living within the Special Mine Lease Area Barrick/PJV should be guided by international standards for resettlement. International Finance Corporation Performance Standard 5, on resettlement, is currently under review. The new guideline, expected to be completed in 2011, should be considered a minimal standard for resettlement of all people living within the Special Mine Lease area. If resettlement is to take place prior to completion of the IFC PS the most recent version of the standard should be considered a minimal standard.

¹³⁹ Human Rights Watch. 2011. *Gold's Costly Dividend: Human Rights Impacts of Papua New Guinea's Porgera Gold Mine*. February 1. PP. 69. <http://www.hrw.org/node/95776>

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.* P. 24

- Create safe and easily accessible channels that community members, including women, can use to complain about abuse by Porgera Joint Venture (PJV) employees according to best international practice;
- Improve public outreach to explain complaints mechanisms and acceptable conduct by PJV personnel;
- Implement more rigorous monitoring of PJV security personnel;
- Install a new tracking mechanism and control center to allow for closer monitoring of all active APD personnel in the field;
- Expand a network of infrared security cameras to allow visual monitoring of APD personnel on remote parts of the mine's waste dumps;
- Install cameras on all APD vehicles to help prevent abuses from taking place in or near the cars;
- Improve channels that whistleblowers can use to safely and anonymously report any abuses by their colleagues at the Porgera mine;
- Make public the results of Barrick's ongoing investigation into allegations of rape and other abuses by PJV security personnel including any disciplinary action that results. This investigation should include complaints going back to before Barrick took over the PJV mine;
- Ensure that trainings for APD personnel and mobile police squads on human rights principles and the Voluntary Principles include specific sections on prevention and response to sexual harassment and violence;
- Increase recruitment, training, and support of female security personnel, particularly in supervisory roles, among the security staff patrolling the waste dumps and among those staffing the mine's on-site detention facility;
- Monitor and make public the number and nature of complaints received through grievance mechanisms at Porgera, the time required to resolve each case, and their outcomes;
- Ensure that newly established "women's liaison" office is provided with adequate training, staff, financial resources, and institutional support.

2. HUMAN RIGHTS: B. Operation Ipili '09 – Forced evictions and destruction of homes at the Porgera Joint Venture mine

- In order to come into compliance with the OECD Guidelines, prevent future harm, and provide remedy for harm that has been caused by Operation Ipili '09, Barrick/PJV should:
 - Withdraw accommodation and other support by PJV to the Mobile Squad in light of evidence of human rights abuses by police and the existence of court orders requiring the police to be housed outside the Porgera mine site;

- Ensure that the prohibition on forced evictions under international law and the human rights consequences of forced evictions are part of human rights training for PJV and Barrick personnel;
- Implement the Voluntary Principles on Security and Human Rights by:
 - recording all information already gathered by PJV and Barrick relating to the forced evictions and any other use of force by the police, and immediately reporting it to the state authorities;
 - calling for a full investigation into the forced evictions and police violence in the SML, the prosecution of those responsible, and the provision of remedies to those affected;
 - actively monitoring the status of an investigation and pressing for its proper resolution.
- Ensure that in future, where company personnel observe police activities that appear to violate human rights, these are promptly recorded and reported to the state authorities, and where appropriate an investigation urged;
- While awaiting a full investigation of the forced evictions and house burnings by the PNG government, and until such time as a relocation of all people living within the special mine lease area is undertaken, Barrick/PJV should provide new housing, clothing, resources to build new gardens, and basic provisions such as cookware to those families who were evicted and whose houses were burned down.
- Barrick/PJV should acknowledge its responsibility for the abuses committed as part of Operation Ipili '09;
- To the extent that support for the Mobile Squad or other security forces continues, ensure that Barrick/PJV has the authority to provide training to these forces, to review the conduct of security personnel, and to terminate any officers with a history of abuse, and exercise that authority;
- Investigate allegations of rape by the Mobile Squad and push for investigation by the PNG government.
- Provide compensation for those injured by Operation Ipili '09, including for emotional distress resulting from these human rights abuses.
- In accordance with OECD Guideline under section III Disclosure, paragraph 5. a), Barrick/PJV should make public reports on its performance with regard to the Voluntary Principles at the PJV mine, including during and following Operation Ipili '09.

3. ENVIRONMENT: Riverine Tailings Disposal and Impacts on Air Quality

- Barrick/PJV should make available all past and future environmental monitoring reports and environmental and health studies that PJV has commissioned on the state of the river system that is affected by tailings from the PJV mine and the on the health of nearby communities.

- Barrick/PJV should make public the 2007 study commissioned by Barrick/PJV to examine alternatives to riverine disposal of mine waste.
- Barrick/PJV should take concrete steps to move away from riverine disposal of mine waste by building engineered impoundments to contain all waste rock and tailing from the PJV mine, according to international best practice guidelines for tailings and waste rock impoundments and to assure no future contamination of surface or ground water. Alternatively PJV/Barrick should consider shipping ore off-site for processing.
- Barrick/PJV should prepare and make public a closure plan for the PJV mine that includes a progressive rehabilitation program for the entire length of the river system that is affected by mine waste from the PJV mine. Remediation of the river system should begin immediately.
- Barrick/PJV should provide regular health assessments for populations living in proximity to the waste flows from the PJV mine and provide health care for any health impacts that may reasonably be linked to contact with waste flows from the mine.
- Barrick/PJV should ensure the provision of clean water for all inhabitants of the Special Mine Lease Area and the nearby towns of Porgera, and Paiam.
- Barrick/PJV should make public any monitoring data regarding air emissions from its processing plants. If these emissions are not being monitored, Barrick/PJV should start a monitoring program.