

May 14, 2013

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

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

Dear Commissioner Pillay,

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

Barrick Gold is implementing a non-judicial remedy procedure at the company's Porgera Joint Venture (PJV) mine in Papua New Guinea (95% owned and operated by a subsidiary of Barrick Gold). Barrick's procedure is designed to provide benefits to a large number of indigenous women in Porgera who allege that they have been raped and gang raped by security guards at the PJV mine over many years. The benefits offered to rape victims to date include livelihood projects, training, and medical treatment¹ but do not reflect remedy that victims of rape may receive in traditional courts or through the Papua New Guinea civil justice system.² Barrick's initiative does not provide benefits that are commensurate with international standards on remedies for human rights abuses, nor does it provide the procedural protections of judicial processes that would ensure victims the opportunity to make a free and informed choice about their rights. Nonetheless, women who elect to accept benefits from Barrick's procedure will be required to sign legal waivers:

*"the claimant agrees that she will not pursue or participate in any legal action against PJV, PRFA [Porgera Remediation Framework Association Inc.] or Barrick in or outside of PNG. PRFA and Barrick will be able to rely on the agreement as a bar to any legal proceedings which may be brought by the claimant in breach of the agreement."*³

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

¹ The extent to which financial compensation may be offered is as yet unclear. The Remedy Framework discourages cash compensation. Olgeti Meri Igat Raits: A Framework of remediation initiatives in response to violence against women in the Porgera Valley. Page 12. Available at

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

² Nor does the compensation reflect what victims themselves have said they should receive in interviews conducted in March 2013. See <http://www.miningwatch.ca/article/letter-un-commissioner-human-rights-re-barrick-golds-grievance-procedure-victims-rape>

³ Olgeti Meri Igat Raits: A Framework of remediation initiatives in response to violence against women in the Porgera Valley. Page 27. Available at

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

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

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

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

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

Sincerely,

Organizations signed on as of May 14, 2013:

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

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

- Red Mexicana de Afectados por la Minería (REMA), Mexico
- REMA Jalisco, Mexico
- Rights & Accountability in Development (RAID), United Kingdom
- Rettet den Regenwald, Germany
- Salva la Selva, Spain
- Synod of Sydney and Tasmania, Uniting Church Australia
- The Australian Council for International Development (ACFID), Australia
- Unión Latinoamericana de Mujeres (ULAM), Latin America
- United Church of Canada - Church in Mission, Canada

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

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