



**ASSOCIATION Inc**

Email: akalitange\_association@yahoo.com/ mc.yapari@gmail.com

P.O. Box 100  
**PORGERA**  
Enga Province  
PAPUA NEW GUINEA

Mobile : (+675)70232023

02<sup>nd</sup> October, 2018

The Prime Minister of Papua New Guinea  
Private Mail Bag  
National Parliament Haus  
National Capital District  
Papua New Guinea

Attention: **Right Hon. Peter O'Neil**

**RE: Concerns Regarding the Porgera Gold Mine's Gross Human Rights Violation Issues**

Sir, refer to above, we write as an organization representing the survivors of human rights abuses victims, the custodians of the victims and the entire local populace of the Porgera Valley in the Enga Province.

The Porgera Gold Mine Project which started in 1989 and taken over by Barrick Gold Corp in 2006 has been a very controversial mine in terms of human rights violations. The human rights abuse includes shootings and killings, beatings of local indigenous young men and boys and raping and or gang-raping of young women and girls by the Porgera Joint Venture's Security Officers and its specially hired PNG Police Mobil Squads. The abuse also includes force evictions where local villagers' food gardens and dwelling houses have been burnt down forcefully to cater for the mine's ever expanding land acquisition. Surrounded on all sides of their lives, the villagers have no choice but to cross the dangerous dumps to reach for their agricultural lands and have access to their basic services.

After knowing this series of human rights abuses, Akali Tange Association Inc. as a local grassroots organization has fought against the Giant Barrick Gold Corp tooth for a tooth and eye for an eye. In 2006, we had alarmed the PNG National Government and the then NEC has appointed an inquiry into our allegation and established an investigative body called "Porgera Investigation Committee." We have participated meaningfully and have assisted in their investigation, however; their report and the final recommendations have never been made known, even when we requested for it.

Knowing that our then Government would not assist us, we have tried our best to use international means to hold the company account for its gross human rights abuses with the assistances from MiningWatch Canada, an international NGO specialized in protecting and promoting indigenous communities within Canada and aboard by filling a complaint with the OECD Canadian National Contact Point. Although the Canadian National Contact Point (CNCP) has made recommendations for the Barrick to enter into dialogue with the ATA, the Barrick ignored the CNCP's recommendations. This is because, although the CNCP was established by the Canadian National Government, it does not have the powers to prosecute and or hold any Canadian Multinational Companies liable for their human and environmental rights abuses.

Even though, the Barrick became immune to all our allegations, the ATA has made another attempt with the assistances from the MiningWatch Canada, New York, Colombia and Harvard Universities' International Human Rights Clinics and proposed for a new Bill to be passed at the Canadian House of Commons. This was the birth of Bill C300 however, that too became unsuccessful during the third reading where ATA, MiningWatch, and the Clinics fall short of only three Members of Parliament to pass the bill, hence; the Bill C300 became a missed opportunity for the ATA and its clients (victims) of Porgera Gold Mine Project. Should the bill has been passed, it would have had powers to prosecute and hold any Canadian mining companies operating within and aboard Canada accountable for human and environmental abuses and or violations. However, this bill became a missed opportunity.

Negligence and denial of human rights violations has been a systematic problem for Barrick. It was in 2010 during the PJV Barrick's Annual General Meeting at Toronto, when Mr. Peter Munk, the Founder and the then Chairman of Barrick Gold Corp said that raping of women is a cultural practise of Papua New Guineans. After knowing his remarks, Hon. John Thomas Pundari has announced in the floor of Parliament that Peter Munk must withdraw his speech and apologise to Papua New Guineans.

In response to the ATA's allegations and Hon. Pundari's announcement, Barrick established a non-judicial project level remedy mechanism to provide remedies for sexual assault victims after knowing that the Melanesian way of saying apology was via making compensation. However, this remedy mechanism too felt-short on basic UN Guiding Principles on Business & Human Rights. Hence, several international reports have criticised this remedy mechanism as a flawed remedy mechanism.

The ATA's spirit of servitude of the victims and eagerness to fight against gross human rights violations caused and or created by this multinational company has never been faded away despite these failures. ATA with its international partners have retried another Bill to be passed via the Canadian Parliament again and by this time, ATA successfully passed the Bill C584 under the Leadership of Rt. Hon. Justin Trudeau, the Prime Minister of Canada. The purpose of the Bill C584 is to establish an Extractive Sector Ombudsperson's office to carryout functions that are similar to that of the Canadian Government's Ombudsman Commission. Soon after the establishment of Extractive Industries Ombudsperson's office, Rt. Hon. Prime Minister, Justin Trudeau has announced that all allegations of human and environmental rights abuses issues that are laid against Canadian companies must to be addressed immediately within their country of operations as to avoid serious penalties. This was announced as the newly established office has the powers to liquidate a company should the allegations are found to be of serious in its nature.

After knowing that this office was established, Barrick has engaged a consultant firm, the Business and Social Responsibilities (BSR), an NGO specialized in providing consultative services to extractive companies on how best companies can provide remedies to victims. In the BSR report, it has identified some pathways to remedies together with its ten key recommendations and the timeframe to implement the remedy program.

As such, the timeframe proposed by the BSR to implement this remedy program is within October this year. However; ATA has known the company for the last two decades and fears that the BSR's recommendations and its proposed timeframe will not be adhered to by the company. Therefore, ATA now submits this report towards your attention for this Government under your Leadership as the Prime Minister of this Nation to:

- ✓ Press Barrick Gold Corp to provide remedies to the victims of Porgera Gold Mine Projects within this year as per recommended by the Business and Social Responsibilities (BSR) report.
- ✓ Press Barrick Gold Corp to off-load 5% Equity to the ATA from its 95% shares from the Porgera Gold Mine Project, should the Barrick opts not to provide remedies to the victims within this year 2018.

- ✓ Draft an assurance letter to support ATA's push for 5% equity from the mine should Barrick opt not to provide remedies to the victims as per proposed by the BSR report within 2018. (See Annexure )
- ✓ Recommend and recognise ATA as a stakeholder and a party to the 2019 Porgera Special Mining Lease review and renewal.
- ✓ Reimburse all costs incurred by the ATA to pursue this human rights violation issue caused by the Barrick and the PJV by the National Government of PNG. (See Annexure)
- ✓ Recommend and recognize ATA to become a delegate to the 2018 APEC Leaders Meeting as for ATA to present before the APEC Leaders, the human rights issues caused and or created by multinational companies operating in our country.
- ✓ Establish a National Human Rights Institute, where this institution can look into human rights abuses caused and or created by the multinational corporations operating in our country.
- ✓ Publicise the 2006 Porgera Investigation Report and its final recommendations.

Please find attached is our report, "Cost of Gold."

Your positive response towards our heartfelt concerns will be highly appreciated indeed.

Sincerely yours,

*Akali Tange Association Inc.*



.....  
Mr M'Diyan R Yapari  
Public Officer

.....  
Mr James J Wangia  
CEO

.....  
Mr Langan Muri  
Chairman

.....  
Mr Kenzeles Propis  
Secretary

.....  
Mr Lombala Kandaso  
Treasurer

Cc:

1. Hon. Johnson Tuki – Minister for Mining
2. Hon. Steve Davis – Minister for Justice & Attorney General
3. Hon. Richard Maru – Minister for National Planning
4. Hon. John Thomas Pundari – Environment and Conservations
5. Hon. Alfred Manase – Minister for Civil Aviation
6. Hon. Justin Tkatchenko – Minister for APEC
7. Hon. Grand Chief Sir Peter Ipatas – Governor of Enga
8. Hon. Tomait N. Kaipili – Member for Lagaip Porgera Electorate



**OFFICE OF THE SECRETARY**

PH: (675) 3276713

FAX: (675) 3233903

Email: chiefsectogov@global.net.pg

Department of Prime Minister

& National Executive Council

P. O. Box 639

WAIGANI 131, NCD

Papua New Guinea

28 December 2006

Mr. Jonah Puli

**Chairman – PSMLYGA**

P O Box 1056

**BOROKO**

National Capital District

Dear Mr. Puli

**SUBJECT: SIGNIFICANT DELAYS IN REVIEW OF MOAS AND RELEASE OF  
PORGERA INVESTIGATIONS COMMITTEE (PIC) REPORT**

We thank you for your letter of 18 December 2006, relative to the above matters. You raised two issues concerning the perceived delays in the review of MOAs and the delay in presenting the PIC Report to the appropriate authorities.

We will address the two issues specifically in that order for your purposes.

As a principal landowner, you would have been aware that the State Review Team, the landowners and the Enga Provincial Government have been engaged in discussions on a number of occasions in Port Moresby and Enga and in Lae. As we write this letter, we are aware that the Government position paper, the landowners' position paper and the Enga Provincial Government position paper have all been received and the review can proceed.

However, the Court case between Porgera Development Authority and the Enga Provincial government over the Special Support Grants have delayed any further discussions because this is one issue that has been included in the position papers, and landowners and Enga Provincial government are key parties in the Review.

This is the reason for the delay. In any case, according to the Department of Mining, 17 January 2007, is tentatively scheduled for the review to resume. This is however dependent on the Court Case.

In relation to the Porgera Investigation Report, we are pleased to inform you that the Report was finally put before the National Security Council on 21<sup>st</sup> December 2006.

The National Security Council approved the recommendations of the Report and directed the Minister for Inter-Government Relations to peruse the recommendations and come back to Council in February with options for the government to implement the recommendations.

At the bureaucratic level, the National Security Advisory Committee has established two Committees called the Social and Economic Committees. These Committees have been deliberately named as such because there are social and economic issues of the people that

have been identified by the Report. These issues need to be dealt with by the government as they form the main recommendations of the Report.

Let me assure you that, the government has recognized the issues and recommendations emanating out of the Report. That is why the Minister for Inter-Government Relations and the Bureaucratic Committees have been tasked to look at the recommendations and recommend to Government how best to implement them.

The Report will also be given to the Government Review Team and relevant Government Agencies like the Department of Mining to ensure that they are fully aware of the issues.

We request that you continue to engage in dialogue with the government Review Team so that the progress is not derailed by individual interests.

The chairmanship of the Review Team is vested in the Department of Mining and our Department has a representative in the Team. The correct chain of communication is to communicate directly with the chairman on matters relating to the review.

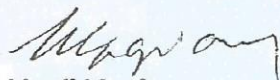
On the matter of the implementation of the Recommendations, the Secretary to the Department of Provincial and Local Government Affairs and the Minister for Inter-Government Relations have been tasked to report to Government in February 2007.

They should be allowed to review the Report and its recommendations and report to Government to ensure implementation of the Report.

In the meantime, we ask for your patience and understanding so that the government can deal with the issues in a holistic manner.

We hope this letter has clarified the issues you raised in your letter.

Yours faithfully



**Veali Vagi**  
**Acting Secretary**

Cc: Mr. Joshua Kalinoe, CSM, CBE  
Chief Secretary to Government

Mr. Gei Ilagi, MBE  
Secretary, Dept. of Provincial Affairs

Hon. Sam Abal, MP  
Minister for Inter-Government Relations

Mr. James Wanjik  
Secretary, Department of Mining



## Chief Secretary to Government

February 5, 2007

The Chairman Akali Tange Association  
PO Box 100  
**PORGERA**  
Enga Province

Dear Sir,

**SUBJECT: REQUEST FOR COPY OF FINAL PIC REPORT**

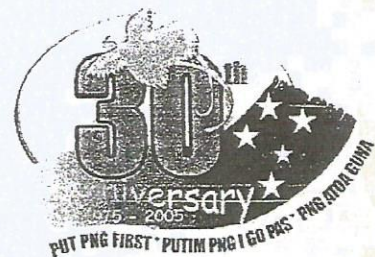
I write to advise you that your verbal request to have a copy of the final report of the Porgera Investigations Committee Report is not approved.

The basic reason for this is that the report is not a public document but one that is the property of the government.

I however wish to advise you that the Committee has made specific recommendations which the Government has approved for implementation.

The National Security Advisory Committee (NSAC), on November 24 2006, considered the Report by the Porgera Investigations Committee (PIC) into the unauthorized mining at the Porgera mine.

One of the most important Resolutions of the NSAC was the establishment of the Porgera Social and Economic Committees and the appointment of the Chairman and members. The Chairman of the Committees is Mr. Gei Ilagi the secretary for Provincial and Local Government Affairs. The other members of the Committees include, Secretaries, for Treasury, Finance, Planning, Social welfare, Police Commissioner, CIS Commissioner and the Administrator of Enga.



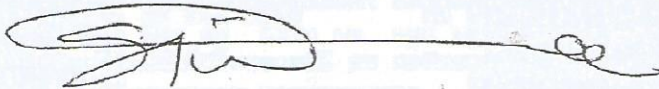
The Committees are to study the Report and the recommendations and come up with an implementation Schedule and a Plan on how best the Government can implement the recommendations of the Report. It is important that a whole of government approach is taken in the implementation of the recommendations.

The Committees are to report back to NSAC in late February 2007 on the progress of their work but they have been given three months within which to report back to the NSAC.

I would like to also advise that, on 21 December 2006, the National Security Council considered the Report and among other things approved the recommendations of the Report and directed Honourable Sam Abal, Minister for Inter-Government Relations to immediately look at the problem of resettlement of people within the Special Mining Lease area and report back to Council by February 2007. The NSAC was also directed to assist him in this respect.

I hope you understand the effort that the government is putting in to deal with the recommendations of the Report.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'J. Kalinoe', with a long horizontal line extending to the right.

**Joshua Kalinoe, CSM, CBE**  
Chief Secretary to Government



P. O. Box 100, PORGERA  
Enga Province, Papua New Guinea  
e - Mail: akalitange\_association@hotmail.com

9<sup>th</sup> Feb, 2007

The Chief Secretary to Government  
P.O.Box 639  
Waigani  
NCD

Dear Mr. Kalinoe,

**RE: Unsatisfactory Feedback on Request for PIC Report and Demand National Government consider ATA's Injuries and Death Compensation Claim.**

In reference to your letter to Akali Tange Association (ATA) on the 5<sup>th</sup> Feb, 2007 after my verbal request to have a copy of the final report of the Porgera Investigation Committee's (PIC), we now express our dissatisfaction on your Government for not approving the ATA a copy of the PIC report. Hence, we suggest you revoke your decision and consider our request for an immediate provision of the copy of this report.

The basic reason to have a PIC report is that the key organization involved in the PIC in providing credible evidence and recommendations for a fair and just established report for the government to urgently address. Further more the government did not meet the cost for ATA's officials and members to attend to interviews both in Port Moresby and Porgera. Your government should consider the effort put in for a successful report for the success and benefit of all stakeholders for this matter. Therefore ATA strongly believes that a copy be given to ATA.

We however understand that the PIC has made specific recommendations of which the government has approved for implementation; however, the National Security Advisory Committee's (NSAC) position to address the specific compensation claim pursued by the ATA has not been clarified. In addition, we have also learnt that the government has recognized it's faults which caused the liabilities like the deaths, however important resolutions to address such was not considered.

While we appreciate the NSAC's important resolution to establish Porgera and Economic Committees to implement schedules and plans on the implementation of the recommendations, we are sad to learn that ATA's only death and injury compensation claim has not been noticed.

For the long term success, we appreciate the positive move to address the problem of resettlement of people, considering social and economical issues however ATA feels that





P. O. Box 100, PORGERA  
Enga Province, Papua New Guinea  
e - Mail: akalitange\_association@hotmail.com

---

the short term compensation claim needs consideration seriously as this is the only  
ATA's common and key interest.

Therefore we demand your government to consider ATA's specific compensation claim  
for the deaths and injuries and advise ATA of your position within seven (7) days  
effective today.

Yours faithfully,

David Mandi  
Chairman of Akali Tange Association.

AKALI TANGE ASSOCIATION INC



# COST OF GOLD

## REPORT OF PORGERA GOLD MINE'S HUMAN RIGHTS ABUSE

9/24/2018

*The cost of gold; extrajudicial killings, gang rapes and other depressing human rights abuses have marked the development of the Pongera Joint Venture (PJV) gold mine in Papua New Guinea*

# Report of human rights abuse

Title:

Cost of Gold

---

For:

Prime Minister of Papua New Guinea –  
Department of Prime Minister & NEC

By:

Akali Tange Association of Porgera

---

Date: September 21, 2018



*“Respect for human rights, respect for the dignity of every person, is at the very core of the people part of sustainable development. And as if that alone were not enough, it is also the key to ensuring a socially sustainable globalization, from which business stands to be a major beneficiary.”*

— John Ruggie, November 14, 2016 to the UN Forum on Business and Human Rights in Geneva, Switzerland

*“The idea that this level of fraud could take place and involve so many people at such high levels of a major international corporation is appalling.”<sup>1</sup>*

— New York Attorney General Schneidermann speaking about the Volkswagen case

*“Our humanitarian and development efforts would be insignificant without the active involvement of Member States and the contributions of civil society, international financial institutions, private investors and even financial markets.”*

— Secretary-General of the United Nations António Guterres’ remarks to the General Assembly on taking the oath of office

---

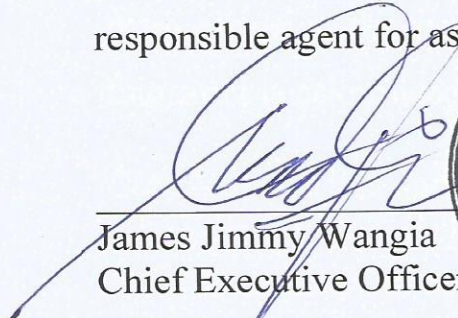
<sup>1</sup> Ewing, J and Tabuchi, H (2016): Volkswagen scandal reaches all the way to the top; lawsuits say, 19 July, The New York Times. [www.nytimes.com](http://www.nytimes.com) (Accessed 18.08.2018)

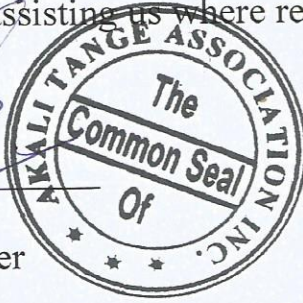




## STATEMENT OF DECLARATION

I, James Jimmy Wangia do solemnly declare that this report is the original work of Akali Tange Association. This is submitted to your noble office for immediate action and consideration. The document is presented as you are the responsible agent for assisting us where required and as a part for recognition.

  
James Jimmy Wangia  
Chief Executive Officer

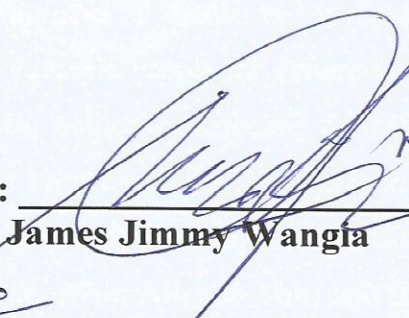


## CERTIFICATE OF AUTHORSHIP

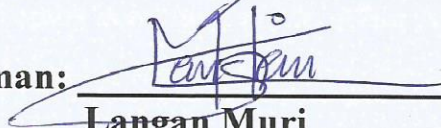
We hereby declare that the content of this report, "Cost of Gold", is the product of Akali Tange Associations' own work, except in instances where assistance from others in the reports design and conception or in style, presentation and linguistic is acknowledged.

Certificate on this date: 02/10/2018

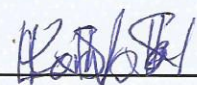
By:

Chief Executive Officer:   
**James Jimmy Wangia**



Chairman:   
**Langan Muri**

Secretary:   
**Kenzeles Propis**

Treasurer:   
**Lombala Kandaso**

Public Officer:   
**McDiyen Robert Yapari**

Women Faction Chair Lady   
**Lely Kesa**

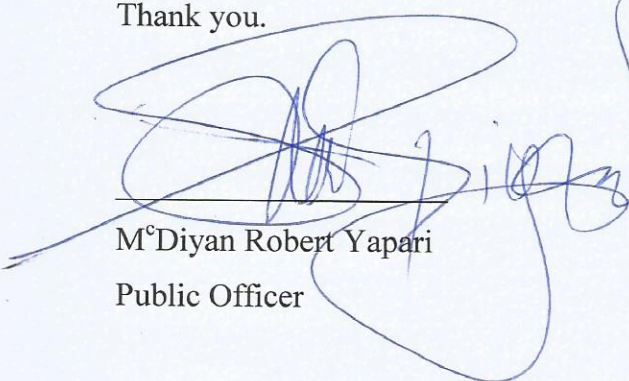


## Acknowledgement

This report is a result of the guidance and support from different individuals who made many distinct contributions in their own ways. We take this opportunity to acknowledge those contributions and express our gratitude and appreciation to CEO of ATA James Jimmy Wangia, Langan Muri, ATA Chairman and his Deputy Lote Sanda, and most importantly the chairlady of ATA, Women faction, Lely Kesa for all your contribution, insight and constant encouragement and for being instrumental in helping to shape the understanding of the human rights as well as instilling professional values that will remain. We thank our friends at Porgera for sharing ideas, help and contributions, Mr David Kep Nano for partial report writing and its final editing. One special thanks to Mr. Lombal Kandaso, the ATA treasurer and the association secretary, Kenzele Propis for generous support of cash and kind. All the other friends and relatives who helped contributed for this report and finally, our sincere gratitude and wholeheartedly appreciate the victims and their custodians of victims of Porgera mine. Their contributions helped us to produce this report. Very special thank you are also hereby conveyed to Mr. Allen Allendo Muri and the Managing Director of Porgera Finance Limited, Mr. Jacob Yopo for their heartfelt support for this report to become a reality.

Last of all are the members of ATA for the support provided to fight for the gross human rights violations in Porgera. Through our team work, we have achieved many things. With that, wish you all the best and may god bless each and every one of you.

Thank you.

  
M<sup>c</sup>Diyani Robert Yapari  
Public Officer



# TABLE OF CONTENTS

CONTENTS	PAGE
• Statement of declaration.....	ii
• Certificate of Authorship.....	iii
• Acknowledgement.....	iv
• Table of content.....	v
• Abbreviations and Acronyms.....	vii
<b>CHAPTER ONE: Introduction</b>	
1.1. Introduction.....	1
1.2. Background.....	1
1.3. Problem Statement.....	2
1.4. Purpose.....	2
1.5. Aims & Objectives.....	4
1.6. Hypothesis.....	5
1.7. Importance of report.....	5
1.8. Definitions.....	6
1.9. Preview.....	6
<b>CHAPTER TWO: Review</b>	
2.1. Overview.....	7
2.2. Overseas Study.....	8
a) Pascua Lama (Chile).....	9
b) Pueblo Viejo (Dominican Republic).....	11
c) North Mara Gold Mine (Africa).....	13
<b>CHAPTER THREE: Methodology</b>	
3.1. Sources of Data.....	16
a) Literature review.....	16
b) Library.....	16
c) Government & Company sources.....	17
d) Questionnaire forms.....	17
e) Interviews.....	17
f) Population sampling.....	17
g) Location of Data collection.....	18

3.2. Data analysis.....	18
3.3. Conclusion.....	18

**CHAPTER FOUR: Findings**

4.1. Barrick’s security Personnel’s & Abuse of Agreement.....	19
4.2. Security involving Gang rape	19
4.3. Barrick’s Ignorance	21
4.4. Systematic Sexual Violence and Gang Rape by Barrick Security Guards.....	23
4.5. Barrick’s Remedial Framework.....	23
4.6. Routine Beatings, Shootings and Killings by Barrick Security Guards.....	25
4.7. Force Evictions	26
4.8. Shooting of Messenger- Arresting the Whistle Blowers or human rights defenders.....	29

**CHAPTER FIVE: Discussion**

5.1. Barrick’s History of Responding to allegations of Abuse.....	32
5.2. Lessons Learned to be applied by Barrick in its Existing Operational Grievance Mechanism.....	36
5.3. Scope of Harms Remedied.....	37
5.4. Human Rights analysis by the clinics.....	38
5.5. Lessons Learned to be applied in the existing Barrick PJV Operational Grievance Mechanism.....	39
5.6. Accessibility and Security.....	40
5.7. Accessibility and Security in the Remedy Mechanism Process.....	41

**CHAPTER SIX: Conclusion**

6.1. Conclusion.....	43
6.2. Summary.....	43
6.3. Recommendation.....	44

- Appendices
- Bibliography

## Abbreviations and Acronyms

ADR	alternative dispute resolution
ATA	Akali Tange Association
BNL	Barrick Niugini Limited
BSR	Business and Social Responsibilities
CAO	The Office of the Compliance Advisor/Ombudsman
CBO	community-based organization
CLO	community liaison officer
CSR	corporate social responsibility
EITI	Extractive Industries Transparency Initiative
IFC	International Finance Corporation
MRA	Mineral Resource Authority
NGO	nongovernmental organization
OECD	Organisation for Economic Co-operation and Development
OGM	Operational Grievance Mechanism
PJV	Porgera Joint Venture
PNG	Papua New Guinea
PS	Performance Standard
UN	United Nations
UNGP	United Nations Guiding Principles
UNHCHR	United Nations High Commissioner for Human Rights

# Chapter One: Introduction

## 1.1. Introduction

*The title of this report, "cost of gold" explains extrajudicial killings, gang rapes and other depressing human rights abuses which have marked the development of the Porgera Joint Venture (PJV) gold mine in Papua New Guinea since operation. The report presented explains human right abuses, rapes, beatings and killings in the Porgera valley by Barrick Niugini Limited's hired security guards and PNG police mobile squads. This is an avenue where lives of the indigenous Ipili Speaking people of the Porgera Valley are at risk which requires immediate attention by responsible authorities and PNG government.*

## 1.2. Background

Porgera Gold Mine is located at an altitude of 2,200-2,700 meters in the Porgera Valley of Papua New Guinea's (PNG) Enga Province. The mine is of both an open pit and underground gold mine, owned and operated by Barrick Gold's subsidiary Barrick (Niugini) Ltd. The Porgera Mine was opened in 1990 and has produced over 20 million ounces of gold. At today's prices, it is worth more than \$28billion. Barrick took over the mine in 2006 from Placer Dome and production is expected to continue until 2050 and beyond. The Porgera gold mine is the second largest gold mine in Papua New Guinea and accounts for roughly 12 per cent of PNG's national export earnings. Barrick Niugini acquired a legacy of environmental damage and human rights abuses that it has failed to remedy.

Each day, Barrick dumps more than 16,000 tons of waste into the Porgera River and local creeks that villagers have long relied upon for drinking water, bathing, and washing clothes and food. The mine's ever expanding waste dumps continue to take over the land and bury the homes of the original landowners that have lived in the region for generations, long before large-scale mining came to Porgera. Surrounded on all sides, villagers have no choice but to cross the dangerous dumps to reach agricultural land, commercial areas, schools or other villages.

Many have not been compensated for the loss of their land and their homes, and Barrick has refused to relocate them. Without land to farm and sources of clean water, practically the

only means of income available to some of the local indigenous communities is to scavenge for remnants of gold in the open pit or the treacherous waste dumps.

### **1.3. Problem Statement**

In contrary, the Porgera Gold Mine is now an avenue where systematic rapes and or gang rapes of local women and girls, unlawful shootings and beatings of local men and force eviction of local indigenous landowners occur. It is an issue unaddressed for a very long period of time since its operation in 1990.

Barrick employs private security force which patrols the open pit and the waste dumps. Villagers who are caught scavenging in the dumps or pit are often shot death, beaten, raped and or gang raped. Some are detained in a holding cell at the mine site before being transferred into police custody for “illegal mining” or trespassing. The security force includes Barrick’s hired PNG police officers and others with a police or military backgrounds who are employed by Barrick to protect the mine.

Barrick has a Memorandum of Understanding with the government of Papua New Guinea to provide police reservists from its own security guards in order to augment the local police force; in practice, these reservists patrol the mine at Barrick’s direction. Barrick also provides financial and other support, such as housing on mine property and transportation, to the PNG Mobile Police squads, a branch of the national police force, to protect its facilities. The Mobil Police have a long history of serious human rights abuses, including shootings, beatings, rape, forced evictions, and burning of homes.

Akali Tange Association (ATA) as a Local human rights group began warning of the abuses committed by mine guards before Barrick formally took over the mine; the company ignored or denied the problem for years. In 2008, Barrick’s CEO wrote in a letter to Porgeran leaders that the allegations of gang rape were “most distasteful, to say the least as you know these allegations to be untrue.” Finally, after investigative reports from groups like, MiningWatch Canada, Human Rights Watch, and Amnesty International and Harvard University, the company admitted in 2011 that there was a problem.

#### **1.4. Purpose**

The purpose of this document is to provide an insight into the Porgera Gold Mine Project, the in-depth reports of human and environment rights abuses, the mine's operators and the previous company created remedy mechanism's lessons learned and how the Porgera Joint

Venture (herein referred to as BNL PJV) can do its Company Action Plan basing on the report published by the Business and Social Responsibilities (BSR), a US based NGO specialized in providing consultancy services to mining companies world-wide.

At the maximum, this document is compiled for the PNG National Government and its Agencies and or Departments to use as an idle instrument to know the status of the human rights abuses caused by the Porgera Gold Mine Project and to determine whether or not the AKALI TANGE ASSOCIATION INC's (hereinafter referred to as ATA) push for 5% Equity from the mine is of necessity and be supported. Additionally, this document is also provided as an insight for the PNG Government and its Authorities and or Departments to support the ATA to ensure that the company incorporates ATA's views in the Company's Action Plan which will be created to provide remedies to the victims. This is being said as corporations or corporate companies have power imbalance and manipulations over civil societies such as the ATA. For the Barrick's operational grievance mechanism to be predictable, transparent and legitimate, the guidance notes provided herein must be inserted in the Company Action Plan. Therefore, we believe that our Government (PNG National Government) must have a fairer and in-depth understandings and or knowledge of the human and environmental issues at Porgera, hence this report.

Supplementary, the ATA through this report affirms that it has the utmost capacity and creditability backed with its clients' [Victims'] Delegation of Authority to represent them to pursue their claims on their behalf at any negotiations, forums and or avenues for the victims' best interest and benefits. The ATA wishes to make-known its vast expertise in cultural aspects of resolving conflicts with its concreted fundamental expertise of reviewing, designing, planning, monitoring and implementing a grievance mechanism with transparency and accountability.

This document has been prepared by the ATA in collaboration with families of the victims and other parties in this pursuit. The content of this material constitutes the ATA Inc's entire understanding of the deaths and the survivors of the sexual and non-sexual victims of the Porgera Gold Mine.

Also, this document has also been compiled with the intention to demonstrate ATA's eagerness to become a party to the Porgera Gold Mine Project's Review and Renewal of the special mining lease come 2019 as the rightful and legitimate representative body of the victims of Porgera.

### **1.5. Aims and Objectives**

The aim of this report is to provide in-depth information of the current gross human and environmental rights violation issues caused and or created by the operators of the Porgera Gold Mine Project at Porgera, to the National Government of Papua New Guinea and its Departments and or Authorities. The National Government of PNG and its responsible Departments and or Authorities require to:

- ✓ Have a clear and fair understanding of human and environmental rights violations caused and or contributed by the Porgera Gold Mine Project at Porgera.
- ✓ Have a clear and fair understanding and or knowledge of how the previously company created operational grievance mechanism at Porgera failed.
- ✓ Know the devastating status of local indigenous people's livelihoods in terms of socio-economic.
- ✓ Know and have fair understandings of the status of the current operators of the Porgera Gold Mine at international perspectives
- ✓ Know why the National Government can support ATA to push for a fairer remedy program to be created by the company to provide remedies to the victims.
- ✓ Know what types of remedy program the victims of the mine chose and what they don't choose.
- ✓ Understand the motives behind ATA's push for 5% equity from the company's 95% shares come 2019.
- ✓ Identify the import role that ATA will play as a representative body of the Porgera Mine's victims once recognized as a party to the Porgera Gold Mine Project's review and renewal of the Special Mining Lease come 2019



## **Objectives**

The primary objectives of this report are for the PNG National Government and its Departments and or Authorities to:

- ✓ Press the company Barrick Niugini Limited to enter into dialogue with the ATA to create the Company Action Plan as per the BSR's Report Recommendations.
- ✓ Press the company to create a new remedy program for Porgera that will be transparent, predictable and accessible to the victims and once a claim is processed and where merit the remedies provided can be equitable, rights-compatible, fair and satisfactory and also culturally appropriate as per the UN Guiding Principles on Business and Human Rights.
- ✓ Press the company to provide remedies to the victims within this year 2018 as per the BSR Report: "*In Search for Justice at Porgera Gold Mine.*"
- ✓ To support ATA's push for 5% equity from the company's 95% shares should Barrick opts not to provide remedies this year.
- ✓ Recognize ATA as a key-stakeholder and a legitimate representative body of Porgera.
- ✓ Recognize and recommend ATA to become a party to the Porgera Gold Mine Project's Special Mining Lease review and renewal come 2019.
- ✓ Over-look and or reject the BNL's application for renewal of the Special Mining Lease for Porgera should there be other alternate applicants applying for Porgera Gold Mine Project come 2019.

## **1.6. Hypothesis**

This report is guided by the following three research questions.

- a) How can PNG government respond to the continuous violation of human rights by Barrick Niugini Limited?
- b) What are the effects of abuse, violations, rapes and killings at the mine site of Porgera?
- c) How can the victims be helped by government agents, company, NGOs and community based organizations?

## **1.7. The importance of the Report**

As stated above, this report must not be taken lightly as the issues discussed herein are facts in its nature. Many lives lost from the start of the mines operation in 1990 to these date, the

time you are reading this paper. It is an important call made to the PNG National Government and its Departments and or Authorities of the true dangers that Porgera is confronted with and for the responsible authorities to intervene and take immediate actions as recommended in this report.

This report was drafted to convey the heart breaks, tears, and the everlasting pains that the vast marginalized, underprivileged and illiterate populace of the Porgera has endured overtime since the establishment of the mine. ATA understands that there may be some other issues of national importance to be dealt with by the current Government, however; ATA urges through this report that the National Government shall adhere to all or some of this report's recommendations. This is being said as the backwaters of the Porgera are in the verge of vanishing, either through the company securities' physically hands and or through chemical poisonings.

#### **1.8. Definition**

- ✓ **“Cost of Gold”** – refers to the abusive acts employed by Barrick Niugini Limited to violate and deny the basic principles of human rights of the indigenous local landowners of Porgera, Enga Province.

#### **1.9. Preview**

This report contains the introduction part which introduces the title of the report, the review of mine related abuse and human rights violation, the methodology, how data were collected, its findings, the discussions part and finally the conclusion part of this report.

## Chapter Two: Review

### 2.1. Overview

There isn't enough report on the human rights abuse in the mining areas of Papua New Guinea. More research is required to identify all human right abuses which includes killing, raping, polluting, and so on by the giant mining companies in Papua New Guinea.

The quote by John Ruggie in 2006 indicates that “The extractive industries account for most allegations of the worst abuses, up to and including complicity in crimes against humanity. These were typically for acts committed by public and private security forces protecting company assets and property; large-scale corruption; violations of labour rights; and a broad array of abuses in relation to local communities, especially indigenous people.”

Since 2011 a global framework for human rights by UN states that highest and severe human rights violation, abuse and environmental violations is caused by the giant mining companies. This is also supported by current Sustainalytics research.<sup>i</sup> Other investigations also show that the mining and extractive sector has linked to the highest number of killings and human rights abuse (M. Misereor, 2017). Exploitation of resources by giant mining companies has also led to violence, human rights abuse, corruption, and environmental damage.

The Porgera gold mine—the subject of this report—is a potent symbol of both the perils and the financial rewards that extractive industries hold for Papua New Guinea. The mine is co-owned by the **Pitfalls**<sup>ii</sup> and solely operated by Barrick Niugini Limited. It has been a central part of Papua New Guinea's economy since it opened in 1990, but its operations have consistently been mired in controversy and tarnished by allegations of abuse. Further research also indicates that Barrick employs 450 private security personnel's only to protect its assets and properties. In 2006 Barrick Niugini took some measures to address human right abuse in line to the international law but have failed in which human rights abuse and violation has increased to this date. Also a report from human rights watch indicates that from 2008 to 2010 more than 20 women have been gang raped by Barrick's security personnel's. Barrick Niugini had also violated its agreement to protect human rights with the international Voluntary Principles on Security and Human Rights.

## 2.2. Overseas study

### i. Barrick Gold Corporations

Barrick Gold has been criticized in many reports<sup>iii</sup>, since it took-over from Placer Dome. Due to its continued poor commitment to human rights and environment, the company has been excluded by numerous investors, including PGB, KLP and AP7.<sup>iv</sup> Violations have occurred at many of its global operations, we have covered some of these in this report including **Pascua Lama (Chile), Pueblo Viejo in the Dominican Republic**, as well as **North Mara in Tanzania**.

Porgera in Papua New Guinea is discussed in details at various chapters of this report. A brief summary is also conversed in this Chapter.

In relation to the last three mines, community compensation for land has still not been adequate and there are still deep frustrations with the mine and its operations.<sup>v</sup> Despite being a signatory to the UN Global Compact, the Voluntary Principles on Security and Human Rights, the ICMM, and the Extractive Industries Transparency Initiative, Barrick has not improved on its human rights or environmental performance since first reported in 2012 by some reputable international organizations.<sup>vi</sup> Barrick Gold has not engaged with some of the world's reputable organization despite repeated attempts to contact the company. This has resulted in the categorization of Barrick Gold as "The pits: **extremely poor performer**".<sup>vii</sup>

One report by UN (2017) indicates that in 2016 one of the shareholder lawsuits against Barrick, related to withholding information from shareholders about the company's failure to comply with environmental regulations at the Pascua Lama mine, was resolved and the company had to pay \$140 million to settle. This is not the only shareholder lawsuit in relation to this and another is still pending.<sup>viii</sup> Barrick formed a partnership with Shandong to develop the mine, which has been suspended since 2013 due to serious environmental damage. In early 2018 the Chilean regulators ordered the closure of the Pascua Lama mine on the Chilean side, due to the serious environmental violations.<sup>ix</sup>

In a new case, not previously covered under some reports<sup>x</sup>, Barrick and Shandong Gold spilled more than a million liters of toxic cyanide in September 2015 at the Veladero Mine in Argentina. The spill contaminated five rivers and the company was given a US\$9.3-million

dollar fine. In 2016, only one year later, a second cyanide spill occurred at the mine. At the time of the first spill Barrick claimed it would strengthen controls and safeguards, however, the second spill indicates a lack of commitment to these claims.<sup>xi</sup> Barrick Gold's global operations have potentially violated core human rights instruments, including but not limited to, the International Covenant on Civil and Political Rights (which includes in Art. 2 the right to remedy), the International Covenant on Economic, Social and Cultural rights, the International Convention on the Elimination of all Forms of Racial Discrimination<sup>xii</sup> and the Convention of the Elimination of Discrimination Against Women.<sup>xiii</sup> The evidence also appears to show that Barrick Gold has violated environmental conventions and standards, such as the right to water and a clean environment for communities surrounding its mines. Barrick Gold is also in apparent violation of the voluntary agreements to which it is party, for example the Voluntary Principles on Security and Human Rights (including that private security should act with restraint and caution as detailed in Principle 3),<sup>xiv</sup> the ICCM (in particular Principle 3)<sup>xv</sup>, and the OECD Guidelines for Multinational Enterprises.

#### **a) Pascua Lama (Chile)**

Transnational mining corporations often cut corners in their extractive processes and exploit the institutional systems of developing nations for the sake of profitability. An epitomic case is that of Barrick Gold's Pascua Lama Mine in Chile. The Canadian mining company's efforts to extract gold from the Huasco Valley in the Andes Mountains led to environmental damage, such as glacial destruction and water pollution.<sup>xvi</sup> These damages have downstream human rights impacts, such as economically destabilizing agricultural-dependent Chileans. After two decades of environmental complaints, Chile's environmental regulator took action against Barrick Gold after it failed to address water management problems in early 2013. The Chilean Superintendency of the Environment sanctioned Barrick in April 2013 with a \$16 million fine and indefinitely suspended work at Pascua Lama, which led Barrick to halt the project on October 31, 2013. The Pascua Lama case is the first time in Chilean history in which the environmental regulator has significantly countered a multinational mining corporation, when over 20 percent of tax revenue and over 55 percent of exports come from the mining sector.<sup>xvii</sup> This poses a focal question: what was unique about the Pascua Lama case that prompted the upholding of environmental regulations despite the economic benefits of the mine? Simply, what political pressures made environmental regulatory accountability a reality in Chile?

Barrick became interested in the Pascua Lama site in 1991, as a mine there could produce 850,000 ounces of gold and 35 million ounces of silver in the first five years of a 25 year lifespan.<sup>xviii</sup> Barrick was approved to survey the mine by a COREMA office (a regional environmental regulator) in the Atacama Desert in 2001.<sup>xix</sup>

Despite the environmental impact assessments (EIAs) required for exploration, Barrick omitted data about glacial destruction as a result of lax, legacy Pinochet-era mining regulations.<sup>xx</sup> After exploration concluded in 2004, Barrick submitted revisions to its EIAs in order to start building the mine in 2009, after the resolution of the mine's tax issues between Chile and Argentina.<sup>xxi</sup> From 2009 until 2013, Barrick Gold performed seemingly rigorous actions to mitigate its ecological impact and build support among the locals. Barrick spent \$15 million and 200,000 hours creating 5,336 pages of environmental reports with the paid help of 10 ecological consultancies and Chilean and Canadian universities.<sup>xxii</sup> Barrick's report stated that there would be no impact on glaciers and it agreed to Chile's 400 environmental conditions. Barrick held 1000 meetings with community members and invested in education and health programs, as part of its culture of "trust, transparency and shared responsibility and accountability."<sup>xxiii</sup> Despite Barrick's efforts, locals remained concerned about the project's environmental impacts. Despite Barrick's claims, the project was fraught with environmental violations. Exploratory work imperilled 3 glaciers in the Huasco Valley region due to effluent and dust production, threatening snowmelt-dependent agriculture by irrevocably melting some parts of the glaciers.<sup>xxiv</sup> While COREMA requested additional information about the mine's detrimental effects on the glaciers, it received minimal information from Barrick, yet it still approved the project upon receiving water management plans.<sup>xxv</sup> Barrick took advantage of Chile's environmental regulator via a piece-mealing strategy. The company divided its mining proposal into multiple parts to ensure lighter assessments by regional COREMA offices instead of the stricter regulations imposed by the national regulator CONAMA. These reviews were also biased towards Barrick, as COREMA granted the company unfair extensions to provide documentation, prioritizing private investment over public well-being.<sup>xxvi</sup> Also, the lack of independent reviewers of its ecological reports allowed Barrick to omit key information regarding glacial destruction.<sup>xxvii</sup> The crisis came to a head in January 2013 when Barrick admitted that a water diversion channel had collapsed, leading to Barrick site managers deciding to let natural runoff water flow through the mining site, in direct abuse of Barrick's environmental permit.<sup>xxviii</sup> Barrick admitted to not building infrastructure to prevent the incident and admitted to 22 of 23

charges brought against it by the SMA in order to attempt to avoid court time and pay a lower fee than the SMA's \$16 million sanction.<sup>xxxix</sup> However, appeals by the indigenous Diaguaita people led to the SMA fining Barrick for \$16 million in May 2013, following the April 2013 appeals court ruling that halted construction work indefinitely.<sup>xxx</sup> Barrick itself decided to fully halt the project in October 2013 due to costs escalating above \$8 billion from its initial \$1.5 billion projections, mainly due to its environmental mismanagement leading to several delays.<sup>xxxi</sup>

Ramp-down activities needed for environmental protection purposes were completed during the second quarter of 2014. The Pascua Lama mining case evinces the errors of self-regulation: one cannot be held accountable for environmental degradation unless these damages are properly verified by a state entity.

#### **b) Pueblo Viejo in the Dominican Republic**

The Pueblo Viejo gold mine is a joint venture between Barrick Gold (60%) and Goldcorp (40%). The mine began commercial production in January, 2013.<sup>xxxii</sup>

Many Dominicans believe Barrick's contract with the government is a bad deal for the country. Voiced complaints include communities' lack of consultation regarding the mines construction and operation, water contamination (particularly since commercial production began), poor working conditions at the mine, and the preservation of local heritage.<sup>xxxiii</sup>

In April 2013, a nationwide 48-hour protest took place in various provinces across the Dominican Republic. Clashes at a student protest at the Universidad Autónoma de Santo Domingo (UASD) against Barrick Gold's Pueblo Viejo Mine in the Dominican Republic led to several injuries and the deaths of a police officer. Meanwhile, authorities in the town of San Francisco de Macoris shot one man dead. Protesters were seeking greater social benefits and the nationalization of Barrick Gold's Pueblo Viejo Mine in response to Barrick's alleged collusion with Dominican Republic government officials during contract negotiations.<sup>xxxiv</sup>

Also in April 2013, the Dominican Republic fined Barrick Gold \$23.2 million for falsifying customs declarations in their gold exports. The company reportedly circumvented customs duties on gold shipments worth an estimated \$850 million.<sup>xxxv</sup>

The conflict between the people of Cotuí, the Dominican Republic and Barrick Gold over their Pueblo Viejo mine dates back to the project's start in 2001.<sup>xxxvi</sup> Primary concerns include a lack of consultation, water contamination, working conditions and preservation of local heritage. Many local community members feel that they were not given a choice in approving the project, and that it was approved only due to the corruption of local officials.<sup>xxxvii</sup>

Barrick Gold and Goldcorp acquired the Pueblo Viejo mine in 2006, and it is currently operated by their joint venture company, Pueblo Viejo Dominicana Corporation.<sup>xxxviii</sup> The previously state-owned Rosario mine was abandoned in 1999 without proper environmental restoration. Barrick claims that it is now "re-mediating significant environmental damage left behind by previous operation at the site".<sup>xxxix</sup> According to their official reports, they have been conducting quarterly sampling events in 18 communities, and have noticed a significant improvement in water quality.<sup>xl</sup> However, community leaders say they have no knowledge of such events, and residents are suing Barrick Gold for poisoning rivers, leading to the illness and death of farm animals.<sup>xli</sup> They ask Barrick Gold and the Dominican government for compensation for more than 70 dispossessed families.<sup>xlii</sup>

Since production began, the mine has repeatedly come under attack for alleged environmental abuses, particularly water contamination. The Pueblo Viejo mine generates 6,736 million cubic meters of waste water every year, and this water is highly acidic and contains significant traces of lead, mercury, nickel and other heavy metals.<sup>xliii</sup> Studies have confirmed a significant risk to the local water supply, due to contamination from this runoff.<sup>xliv</sup> In March 2010, the Dominican Republic's Minister for the Environment, Jaime David Fernandez Mirabel, stated that Barrick's mining concession needed to be reviewed for environmental reasons. Mirabel cited the risk of acid mine drainage resulting from the oxidization of sulphides in the waste rock as a key concern.<sup>xlv</sup> The high rainfall in the region aggravates the situation, spreading contaminated water and wastes, and putting pressure on local dams. In May 2011, thousands of people had to be relocated because of fear of flooding caused by heavy rains and the possible overflowing of the ELLlagal dam.<sup>xlvi</sup> Pollution concerns have not only impacted community members, but also mine workers, with over 100 employees poisoned due to exposure to toxic chemicals in 2012.<sup>xlvii</sup>

In February of 2010 a court case declared that part of the land Barrick was occupying was occupied illegally, and the court forced Barrick to pay compensation.<sup>xlviii</sup> In August of 2010, a



new local government was elected in Cotuí whose first act was to take legal action against Barrick, forcing them to pay for their illegal land use.<sup>xlix</sup>

Labour relations have been another source of conflict at the mine. In November of 2010 workers went on strike demanding better working conditions and violence broke out between the striking workers and local security forces. The strike and its subsequent violent outbreak resulted in the death of one striker and many more injured.<sup>l</sup> In September 2012, residents of Cotuí organized a march to demand that Barrick give more jobs to local community residents instead of foreigners. The violence that ensued led to at least 25 injuries. In April 2013, people marched in the city of Santiago demanding the expulsion of Barrick Gold and the nationalization of the mine.<sup>li</sup>

Pueblo Viejo achieved commercial production in January 2013. Only weeks after, President Danilo Medina announced that the terms of the contract between PVDC and the Dominican Republic were unacceptable given the inequitable revenue-sharing scheme.<sup>lii</sup> He demanded that the contract be revised or he would raise taxes on PVDC's profits. The Special Lease Agreement (SLA) was amended in September 2013 to guarantee additional and accelerated tax revenues to the Dominican government (Barrick RFI 26).<sup>liii</sup> Health and environmental hazards have continued to be an issue since the mine achieved commercial production. In September 2014, residents of six communities located next to the mine protested against the health repercussions of soil and air contamination. Tests of residents in four communities revealed their urine and blood contained high levels of cyanide and other heavy metals.<sup>liv</sup> The population affirms that the smell of bitter almonds, which is in fact due to cyanide, causes respiratory problems and skin and eye irritation. Other long-term effects of high cyanide levels are urinary problems and cancer. Members of the communities complain that the proximity of the mine causes fever, headaches, chronic cough, sore throat and stomachaches.<sup>lv</sup> On July 1<sup>st</sup> 2014, residents protested against the side effects on people's health and on agriculture, asking the government to relocate them.<sup>lvi</sup>

**c) From Africa to Papua New Guinea: violent security forces, sexual assault, and death at Barrick's mines.**

The North Mara Gold Mine Ltd. Underground and open pit gold mine, located in the Tarime district of the Mara region of Tanzania, is operated by the African subsidiary of the Barrick Gold majority-owned, Acacia Mining.<sup>lvii</sup> This mine continues to be plagued by violence by public and private security forces against local indigenous Kuria men and women who seek

to eke out a living, primarily, on the mine's waste dumps.<sup>lviii</sup> Men and women are severely beaten, primarily men are shot, resulting in death and maiming and women have experienced rape and gang rape.<sup>lix</sup>

As a lawsuit by UK-based Leigh Day on behalf of claimants of excess use of force by mine security got underway in 2013, the company created an ad hoc and non-transparent remedy mechanism, which it used to persuade Leigh Day's clients<sup>lx</sup> to drop their suit, accept a non-equitable remedy from the company, and sign legal waivers prohibiting them from seeking judicial remedy.

Mining Watch Canada has interviewed close to a hundred victims, family members of victims, and witnesses of excess use of force by the mine's private and public security forces in yearly visits to the site since 2014. These interviews indicate that the violence is ongoing. The Tanzanian government has investigated the violence and reported on it in a 2013 report<sup>lxi</sup> and again in an investigation and report in 2016 that confirmed investigators had receiving claims that 65 people have been killed and 270 people injured by police responsible for mine security.<sup>lxii</sup> Local human rights defenders put the numbers much higher and the 2016 government report did not report on deaths and injuries resulting from altercations between villagers and private mine security. In 2017, Mining Watch Canada reported another local Kuria man was shot dead by mine security.<sup>lxiii</sup>

Victims that accepted remedy from the mine's grievance mechanism commonly report a discrepancy between what they were promised orally and what they received and that the remedy they received does not compensate for the ongoing harm caused to them and their dependents by their assault.<sup>lxiv</sup> Most of the victims interviewed by Mining Watch who launched claims with the mine since the Leigh Day suit was settled have had their claims rejected without a clear basis.<sup>lxv</sup>

While the company says it is now revising its remedy mechanism, this process remains opaque. This revision is taking place even as a new suit is being prepared on behalf of victims of violence by the mine's security.<sup>lxvi</sup>

In response to all issues in North Mara Mine, the Barrick Gold will give Tanzania a 16 per cent stake in three gold mines, a 50 per cent share in revenues from the mines and a one-off payment of US\$300 million to resolve a dispute that has hit its operations in the country.

The Canadian miner and Tanzanian government have been in talks for months after the east African country banned the export of unprocessed minerals and enacted new laws to raise state ownership of the nation's mines.

Tanzania is Africa's fourth-largest gold producer, and Barrick's Acacia Mining Plc is its largest miner, with three gold mines that also produce copper.

At 1200 GMT, Acacia's London-listed shares were up 18 per cent following news of the deal.

Barrick Chairman John Thornton told a news conference in the Tanzanian capital the deal would have to be approved by the independent shareholders and directors of Acacia Mining.

Tanzanian justice and constitutional affairs minister Palamagamba Kabudi said the agreement was in keeping with the new mining laws passed in July.

It was revealed that they have also agreed to have a 50:50 share of revenues between the government and Acacia Mining from all the mines.<sup>lxxvii</sup>

In addition to human rights concerns related to excess use of force by mine security, Mining Watch Canada has also documented four deaths in 2016 and 2017 as a result of drownings in a mined-out pit after the mine removed security walls,<sup>lxxviii</sup> and ongoing concerns regarding mine-related contamination of nearby rivers, and harm caused by excess dust along the main road that transports ore to the processing facilities.<sup>lxxix</sup>

At the Porgera Joint Venture (PJV) gold mine, in Porgera, Papua New Guinea,<sup>lxxx</sup> Barrick continues to dump its waste rock and tailings, containing mercury, arsenic, cadmium, copper, lead, zinc, as well as milling chemicals, including cyanide<sup>lxxxi</sup> directly into local river systems. This uncontained disposal of waste continues to erode away adjacent land in the steep mountain valleys putting village structures and people at risk and exacerbating an already dire and longstanding problem<sup>lxxxii</sup> of lack of land for subsistence farming and food security. In 2009 the Norwegian Pension Fund divested from Barrick over this unacceptable waste disposal practices at the PJV mine.<sup>lxxxiii</sup>

Loss of land and sources of clean water due to the open pit, the mine's infrastructure and processing facilities, and the massive waste dumps have left indigenous Ipili villagers living in overcrowded and unhealthy conditions. As they now have to buy food and water, the community largely relies on panning for gold in the mine's polluted waste flows. This puts the men, women and children who participate in this means of livelihood at continuous risk from chemical contamination. In July of 2017, ATA reported its international partners and

the PNG National Government<sup>lxxiv</sup> that more than a hundred people had been burned by waste dumped into an area where they were panning for gold. Although Barrick acknowledged the release and resulting casualties in a brief statement on July 15,<sup>lxxv</sup> and provided some further information in response to a letter from ATA and Mining Watch,<sup>lxxvi</sup> it is still unclear how many people will need long-term treatment and whether the company will provide compensation for the injuries.

Villagers who enter the waste flows to eke out a living are also vulnerable to attack by the mine's public and private security forces. There is a long history of men and women being severely beaten, and girls raped and Barrick remedy program, assault by private women who had program, in return complaint<sup>lxxviii</sup> with and Human Rights endured and the other women who unaware or mechanism. They ATA's Deputy herself a teenager

*"The company's guards raped us. The company ignored us for years. When the company finally created a remedy program, we 119 women went to it. But the remedy was not fair. We did not get everything that we were promised. We call for the support of the UN because Barrick Gold is ignoring our call to pay us equal compensation."*

Everlyn Gaupe, one of the women harmed by the company's actions and now seeking justice

men shot at and killed, and women gang raped.<sup>lxxvii</sup> After years of denial, implemented a severely flawed only accessible for victims of sexual security. In November 2016, all 119 received remedy through this for signing legal waivers, filed a the UN Working Group on Business critiquing both the process they had remedy they had received. Many allege rape by mine security were unprepared to participate in the were represented by Jocelyn Mandi, Chairlady at Barrick's AGM in 2017, when she was raped by mine security.

## ii. Zijin Mining Group Limited

### a. The Company's operation

Zijin Mining Co. Ltd. is the largest gold producer, the second largest copper producer and the fifth largest zinc in China. The company's revenue for 2018 totalled USD 4.1 billion. The company operates in 20 Chinese provinces and ten countries outside China, while its activities are organized in a number of subsidiaries.<sup>lxxix</sup> ATA does not have a full overview of the company's activities, or where it has all of its production facilities. It nevertheless clear that the company operates a large number of facilities for mineral extraction, preparation and metal refining.

The company was listed on the Hong Kong Stock Exchange in 2003 and the Shanghai Stock Exchange in 2008 up till this report is drafted. The company's largest owners are Minxi Xing STE and the Newhanlu Industry Group, which have ownership interests of 39.9 and 14.9 percent, respectively. In addition to this, there are a number of owners with smaller ownership interests.

### b. Processing waste from gold and copper production

Mining and the metal industry often generate vast amounts of waste that has to be managed. Waste that is not economically viable to recycle has to be disposed of. Where the production facility has been in operation for a long time, this may often involve large amounts of waste. Below is a brief presentation of the processing stages for the manufacture of gold and copper, which are Zijin's primary products, as well as the types of waste normally generated during production.

### c. Gold production

Gold is normally extracted from ore through hydrometallurgical<sup>lxxx</sup> processes where a cyanide solution<sup>lxxxi</sup> is added to the crushed ore. The gold binds to the cyanide solution and is then extracted from this through further processing. Cyanide can, to some extent, be recovered from the ore reused; but this is not always done. Either way, gold extraction generally generates large amounts of waste from mining operations in the form of processed ore that contains cyanide. One tonne of ore normally yields between 0.1 to 3 grams of gold.<sup>lxxxii</sup> Ore that contains gold often also contains arsenic and heavy metals that can lead to serious long-term contamination after processing, for example, through runoff from tailing ponds.

### d. Copper production

Copper is extracted from sulphide or oxide ores containing copper. The extraction method depends on the type of ore. Copper is extracted from sulphide ore through smelting processes, and hydrometallurgical processes are used for oxide ores, where sulphuric acid is added to the ore for the extraction of copper and subsequent refining. Regardless of what methods are used, copper slag will be generated from the smelting process as well as processing waste mixed with sulphuric acid. The latter will normally be refined and used for industrial purposes, and the waste is either neutralised with limestone before it is disposed of, or

disposed of without further treatment. The waste also generally contains arsenic and various heavy metals.<sup>lxxxiii</sup>

#### **e. Tailing Dams**

##### **Design and maintenance**

Waste from the mining and metal industry that cannot be recycled must be disposed of. It is normal procedure to establish tailing dams to keep the waste within a limited area and prevent the leaching of chemicals and heavy metals. Tailing dams also ensure that water can evaporate from liquid waste and particles can settle. Tailing dams can be constructed in different ways, and their design will depend on what types and what amounts of waste are to be disposed of, as well as local factors such as topography, bedrock, amount of precipitation and seismic risk. These facilities may range from relatively simple designs, with a simple dam barrier made of earth or waste from mining operations, to more advanced and extensive dams with several chambers for treating waste in several steps or manage different types of waste.

This type of installation requires continuous monitoring and maintenance to ensure that they do not collapse. There are several factors which can weaken the structural stability of such dams over time, for example, erosion and overflowing following large amounts of precipitation.<sup>lxxxiv</sup>

##### **Accidents – dam failures**

The risks associated with tailing dams are well known. Dams of this kind have been used in the mining and processing industry for over 100 years, and there have been a great number of accidents where the dams have collapsed and resulted in more or less serious damage. In addition to the seven dam failures that have occurred at Zijin's installations, the ATA is aware of 15-20 tailing dam failures with serious consequences at industrial installations throughout the world in the past decade.

In recent times, the largest accidents as a result of disposal dam failures in Europe have been in Italy (1985)<sup>lxxxv</sup>, Romania (2000)<sup>lxxxvi</sup> and Hungary (2010).<sup>lxxxvii</sup> In the US, the last major accident of this type was in 2008.<sup>lxxxviii</sup> In China (excluding Zijin), there were major accidents of this type in 2008<sup>lxxxix</sup> and 2011.<sup>xc</sup>

#### **f. Environmental damage as a result of the company's activities**

##### **Dam failures**

The ATA is aware of the following reported incidents where Zijin's dam installations for industrial and mining waste have failed:

##### **Xinyi, 21 September 2010**

A dam at the company's tin mine in Xiny Quinpai in Guangdong province burst in September 2010. Official media reported that 22 people were killed and that there was significant damage to roads, drinking-water plants and farmland, as well as extensive death of fish. The

subsequent investigation found that the company had violated a number of government orders and provisions for the construction and operation of such dams.<sup>xcv</sup>

In August 2011, six people from the plant's management were sentenced to imprisonment for violations that led to the accident.<sup>xcvi</sup>

### **Ting River, 3 and 16 July 2010**

Two separate accidents within an interval of a few days and the company's response received much attention in Chinese and international media. On 3 July 2010, a dam collapsed at one of the company's copper refineries in Fujian and 9,000 cubic metres of industrial waste and chemicals flowed into the Ting River causing extensive environmental damage. An estimated 2,000 tonnes of fish died as a result of the accident.

The company did not acknowledge that the accident had taken place until nine days later, and had not attempted to limit the discharge in the meantime.<sup>xcvii</sup> In an announcement dated 16 July 2010, the company reported on the accident that had occurred on 3 July. The company wrote that an illegally installed pipe had lead untreated waste water to the river, and that government orders from 2009 to improve the drainage system had not been followed.<sup>xcviii</sup>

On 16 July 2010 a similar, however, smaller accident occurred at the same installation, and an additional 500 cubic metres of waste were discharged when another dam at the same installation also failed. These incidents were, for example, reported in the Communist Party's English language paper People's Daily, together with allegations that the company had offered bribes to Chinese journalists to prevent media coverage.<sup>xcix</sup>

### **Dongping, 25 April 2009**

On 25 April 2009, there was a dam failure at the company's gold mine installation in Dongping in the Hebei province. It has been reported that there was an older dam that had partially failed and lead to extensive contamination of farmland.<sup>cx</sup> A similar accident allegedly also occurred in 2008 in Caikeng, but the circumstances surrounding this are unclear.

### **Shuiyindong, 27 December 2006**

In 2006 a dam collapsed at Zijin Shuiyindong Gold Mine, and 200,000 cubic metres of waste was discharged as a result.<sup>cxvi</sup> Nevertheless, the company claims that the extent of the damage was limited.<sup>cxvii</sup> According to the pollution control authorities, the accident resulted in the drinking water for 100,000 people being contaminated with arsenic and cyanide. The cause of the accident was probably that the company had overloaded the disposal dams by adding too much waste to them, combined with a long period of unusually heavy rain.<sup>cxviii</sup>

### **Tongkang, August 2000**

On 25 August 2000, a disposal dam collapsed at Zijin's wholly-owned subsidiary Jinshan Mining's gold mine at Tongkang in Fujian province. The surrounding farmland and local roads were flooded by industrial waste.<sup>cxix</sup>

### ***g. Other matters***

The company has been criticised by both the authorities and special interest organisations. In connection with the stock exchange listing of the company in 2008, the company's activities were reviewed by the environmental authorities. In accordance with the so-called Green Security Policy, the environmental systems and practices of all listed companies must be approved.<sup>ci</sup> In this connection the environmental authorities pointed out a number of faults and defects in the activities at 11 subsidiaries in the Zijin Group. To a great extent this concerned tailings dams that were not designed and maintained in accordance with regulations, in addition to previous orders to make improvements that had not been followed up. ATA understands that a letter was sent by the company to the Institute of Public and Environmental Affairs, dated 28 May 2010; the company explains that most of the faults and defects that were pointed out had been rectified or were in the process of being rectified.<sup>cii</sup>

In addition, the special interest organisation Green Law China,<sup>ciii</sup> in an open letter of July 2010, pointed out the insufficient follow-up of the government requirements and insufficient reporting of environmental matters.<sup>civ</sup>

In addition, it has been reported that the company had been investigated in 2010 by the authorities for failure to comply with orders to make improvements and insufficient environmental reporting from the company's copper production in Longyan.<sup>cv</sup>

#### **The company's position**

ATA is aware that since 2009, the Council on Ethics has approached the company three times to request information on the company's activities. The company has not responded to any of these requests. In April 2012, a draft of Council on Ethics' recommendation was submitted to the company, and the company was encouraged to provide any remarks or comments. The company did not respond to this, either.<sup>cvi</sup>

The accidents in July and September of the same year are mentioned in the company's annual report for 2010. The company states that it has learned from these incidents and will put safety at the facilities first, and that work with accident prevention and management systems will be strengthened further.<sup>cvii</sup> The company's website also states emphasis on the environment and safety in connection with all the company's activities.<sup>cviii</sup>

#### **Assessment by other Reputable Organizations**

ATA understands that a review by the Norwegian Pension Fund's Council on Ethics shows that there have been 25 cases worldwide of accidents in the past ten years where dams for the mining and processing industries have collapsed and resulted in extensive damage and environmental pollution.<sup>cix</sup>

With regard to the company Zijin, the ATA has information on seven serious incidents over the past ten years where such dams have collapsed and resulted in extensive damage. Seen in relation to the total number of accidents worldwide during the same time period, it appears as if Zijin has been particularly exposed to such accidents.

It must be regarded as general knowledge that the operation of tailings dams in mining and the metal industries entails a risk of serious environmental damage, both acute and long-term.



In the worst case scenarios, dam failures must be characterised as environmental catastrophes with regard to the extent of damage. In several of such accidents, people have drowned when populated areas have suddenly been flooded. In addition, drinking water sources have been contaminated, and there has been extensive impact on aquatic life and contamination of farmland.

The safe operation of tailings dams requires that they have been designed from the start to withstand both normal operating conditions and unusual circumstances, such as large amounts of precipitation and earthquakes, and that they are regularly maintained to compensate for the constant deterioration they are exposed to. The common factor for the accidents that have been discussed in this chapter seems primarily to be installations that have been poorly (and in some cases illegally) designed, overloaded and insufficiently maintained, resulting in failure during periods of heavy precipitation. Accidents like this must be expected if they are not prevented. The detailed consequences of the aforementioned events are not known. In general, it is also likely that disposal facilities that have not been adequately designed or are poorly maintained will have significant and continuous run-off of environmentally hazardous substances. In addition to the risk of acute, catastrophic events, it is, in other words, likely that these installations will entail significant contamination, even during day-to-day operations. In the cases where discharges into river systems stem from gold production installations, this is primarily in the form of arsenic, cyanide and heavy metal contamination.

In this case, the ATA compared Zijin's conduct with the environmental criteria in some international set ethical guidelines, with particular emphasis on the risk of *future* environmental damage:

'In assessing whether the company shall be excluded in accordance with subsection (3), the Ministry may, for example, attach importance to the probability of future norm violations; the severity and scope of such violations; the connection between the norm violations and the company in which the some financial companies has invested; whether the company is doing what can reasonably be expected to reduce the risk of future norm violations within a reasonable time frame; the company's guidelines for, and work on, safeguarding good corporate governance, the environment and social affairs; and whether the company is making a positive contribution to those affected, presently, or in the past, by the company's conduct.'<sup>cx</sup>

Previous incidents and omissions can give an indication here of future patterns of behaviour, should the Zijin is extended the Special Mining Lease for Porgera Gold Mine Project and the ATA found that several serious accidents have occurred at the company's installations over the past decade. Even though these accidents generally occur after periods of heavy precipitation, dam failures cannot be considered natural disasters. It is likely that all the accidents can be explained by a combination of factors, where the installations have not been designed in accordance with the regulations, insufficient inspections and maintenance, overloading of installations, as well as inadequate compliance with government orders. These are all factors that lie within the company's control and area of responsibility.

The company's reporting on these events is very limited, and in China the company is criticised for lack of transparency and insufficient reporting. After the accident in 2006 the company made an announcement that the scope of the damage had been very limited, even though in reality it had been a disaster where, for example, the drinking water for 100 000 persons had been seriously contaminated. Information that the company had offered bribes to

journalists in connection with the accidents in 2010 in order to avoid press coverage reinforces the impression of lack of transparency. In its 2010 annual report, the company states that it has learned from these events and that any future recurrence will be prevented. It is clear to ATA that the Council on Ethics has on several occasions contacted the company with a view to obtaining more information on its activities and risk-reducing measures to prevent future environmental damage, but it has not received any response. The ATA finds that the unwillingness by the company to disclose information, in itself, contributes to increasing the risk that the GPF's investment in the company is in violation of the fund's ethical guidelines. In this connection the ATA is aware that the Council on Ethics has made reference to the White Paper to Parliament no. 20 (2008-2009), where the Ministry of Finance states:

'The availability of information in emerging markets is often limited. Through its recommendations the Council on Ethics has developed a high standard of documentary requirements and evidence of violations of human rights or environmental damage. It can be difficult to meet the same requirements in a number of emerging markets. The result can be that a company in a developed market in a western country and a company in an emerging market that, based on the scope and degree of ethical guideline violations, should be treated equally can be treated differently because there are different degrees of opportunities to document the violations of norms. This can lead to the exclusion of the "worst" companies in developed markets while "even worse" companies in emerging markets remain in the investment universe. The Ministry finds that a lack of information about a company's conduct, and not least the willingness of the company to disclose information may itself contribute to the risk of complicity in unethical conduct being regarded as unacceptably high. In practice this could mean that the same documentary requirements for justifying exclusion cannot be made in less transparent markets, where facts can be more difficult to prove.'<sup>exi</sup>

The ATA therefore believes that the above provision should be applied to cases like this, where a company responsible for severe incidents provides limited information on how it will avoid similar, future incidents. Based on an overall assessment, the ATA finds that there is an unacceptable risk for future, serious environmental damage as a result of Zijin's activities, and recommends the exclusion of the company from the PNG's extractive sector.

Additionally, the company's 50 percent owned subsidiary company the Barrick Niugini Limited's application for review and renewal of lease holder for the Porgera Gold Mine Project must be terminated come 2019 because of an unacceptable risk that the parent company Zijin Mining Group Co. Ltd. is responsible for severe environmental damage and human rights impacts.

## **Chapter Three: Methodology**

This chapter presents the research methods and materials, the tools used in the research. It discusses how the research was conducted and data collected. The information and data collected are used and analyzed and are presented in this report. The orders of presentation are as follows: sources of data which involves literature review, library and government sources, tools for data collection involves; questionnaires, interviews, population sampling, data analysis, and conclusions.

### **3.1. Sources of data**

The secondary sources of information assisted in getting all relevant information are literature review; internet, library, company and government sources. Other primary sources include observation, questionnaires and interviews from reliable people.

#### **a) Literature Review**

The review explored the existing research related to the topic and highlighted, compared and contrasted and discussed on the information explored, written on the subject. The study also described, summarized, evaluated and clarified the content of the previous research on human rights abuse and violation. The reviews of other human rights overseas are also provided in this report.

#### **b) Library**

Information collected from the library were outdated, however few of the information collected were compared and contrasted with the current literature on the topic. It was analyzed, evaluated and compiled in this paper. Several books were reviewed but there was an inadequacy of the required information in certain instances. Hence information were selectively obtained and evaluated for the purpose of logical discussion. The information were contrasted and expounded in the findings and discussion sections of this paper.

### **c) Government and Company sources**

Other information collected from the government sources are also analyzed, evaluated and compiled in the report. The government sources included for the purpose of this study were responses especially from the professional employees in various government agents and company (PJV) employees.

### **d) Questionnaire forms**

The questionnaire forms were distributed amongst various local landowners, government and company employees, other stakeholders and State agencies for data collection. The following are the agencies where data were collected:

The Office of Barrick Limited was open through prior appointment for accessing the information. Little information were obtained from its library and also the directives were provided by a female employee who was employed with PJV. She provided some of the required documents. Most of the findings are discussed in chapter four and five.

### **e) Interviews**

Data from informal interviews helped contributed to compile this report.

In the study, an informal research interview method was employed to gather more information on the research topic. Interviews on one on one were conducted in the areas where it required confirming some of the issues that were in question for clarity in the study.

### **f) Population Sampling**

Accidental sampling was used for choosing the nearest and available respondents at the mine site. The respondents were employees and locals who were convenient and readily available for the study. The easy access to the participants was the basis of Accidental sampling method.

## LOCATION OF DATA COLLECTION

Date	Location
21/06/2018 – 25/07/2018	Mine site
28/06/2018	Barrick office, Porgera
02/07/2018	Surrounding Porgera communities
20/06/2018	Enga Provincial government office
Daily since July 2018	Internet

**Table 1**

### 3.2. Data Analysis

Data collected are guided by the three research questions stated in chapter 1 and are analyzed in Chapter 4, (Findings).

### 3.3. Conclusion

This chapter provides the basic information of how data's of this paper were collected and analyzed. It can be seen that research conducted has ended smoothly from the beginning to the end with the application of some selected research methods. However, it is encouraging for other researchers of the same topic to use other qualitative research methods and population samples to further confirm and adjust or argue the findings and discussions of this paper.

## Chapter Four: Findings

The following pages describe a pattern of violent abuses, including horrifying acts of gang rape, carried out by security personnel's of the Barrick Limited since 1990 in the Enga Province. They also recount Barrick's history of angrily dismissing human rights and environmental concerns that the company should have treated more seriously and dealt with more transparently. On the other hand the report also describes how more recently, Barrick has taken some meaningful steps—and promised others—to address some of the mine's most serious human rights problems to no avail.

### 4.1 Barrick's security personnel's and abuse of agreement

Further investigation indicates that Barrick employs nearly 450 private security personnel under PJV's Asset Protection Department only for security purposes. It is also a reason why, in 2009, Barrick agreed to bear most of the cost of a government deployment of mobile police squads to Porgera. Both courses of action have led to serious accusations of abuse against the company.

After acquiring the mine in 2006 Barrick took a number of steps intended to make the security force it inherited from Placer Dome more disciplined and in line with international norms like the Voluntary Principles on Security and Human Rights, which Barrick joined in October 2010. But as this report shows, those steps were inadequate and failed to prevent serious abuses including abuse of people in custody, excessive use of force, and even gang rape.

Also, Human Rights Watch's Report further states on this abuse allegations by the security officers.<sup>cxii</sup> "But when operating further afield—and under less rigorous supervision by superiors—some security personnel have committed violent abuses against men and women, many of them illegal miners engaged in nonviolent scavenging for scraps of rock."<sup>cxiii</sup> This report's documents all occurred on or near the sprawling waste dumps around the mine.

## 4.2. Security involving Gang Rape

Human Rights Watch documented five alleged incidents of gang rape by mine security personnel in 2009 and 2010, and a sixth in 2008.<sup>cxiv</sup> We believe these incidents represent a broader pattern of abuse by some PJV security personnel. Subsequent investigations carried out by Barrick and by the Papua New Guinea police in response to our continuous reports allegations have discovered other alleged incidents of rape by PJV security personnel, separate from those documented by ATA, Mining Watch Canada, Harvard and New York International Human Rights Clinics and Human Rights Watch. In January 2011 PJV announced that it was firing 6 employees for involvement in, or failure to report, alleged incidents of sexual violence. Some of those individuals were subsequently arrested by the police.

“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.

Several women said that after arresting them for illegal mining on the waste dumps, guards gave them a “choice” of submitting to gang rape or going to prison to face fines and possible jail time. But in some of those cases the women said that guards raped them even after they pleaded with their assailants to take them to jail.

In Porgera, rape survivors have few options for assistance or redress. The women that Human Rights Watch spoke to said they feared reporting abuses to the authorities given the fear of retribution, the threat of punishment for illegal mining, and the social stigma that affects rape victims around Porgera. These fears are heightened in a country where abuses by the police are endemic and complaints of sexual harassment and violence by police officers is common. Furthermore, Barrick did not establish safe or accessible channels for community members to report abuses by Barrick employees directly to company authorities.

Human Rights Watch also interviewed people who said that mine security guards beat them up or threatened them after they were already in custody, or that guards used excessive force to apprehend them. Some people alleged that they were kicked or punched while lying handcuffed on the ground or on the floor of security personnel’s cars. Others said that they

were tear-gassed or shot with less lethal projectile weapons without any warning or chance to surrender. One 15-year-old boy told us that security guards threatened to unleash an attack dog on him after he had already been detained and handcuffed.”<sup>CXV</sup>

In addition to all of this, Barrick has come under considerable fire for abuses carried out by mobile police squads that have been deployed to Porgera since 2009 to improve the overall law and order situation in the area. The company houses and feeds the mobile squads and provides other material support to them. ATA argues that Barrick should withdraw this support. Overall, the mobile deployment has contributed to a sharp reduction in violent crime and insecurity around Porgera that is welcomed by most local residents. But its members have also been implicated in serious abuses, most notably the 2009 and 2017 destruction of a community called Wingima and the forced eviction of its residents.

Too often, Barrick has responded with dismissive hostility to concerns about its human rights record at Porgera. But more recently the company appears to be making substantial efforts to engage more constructively and transparently with these issues.

#### **4.3. Barrick’s Ignorance**

The PJV which started in 1989 and was majority operated from 2006-2015 by Canadian Mining Company Barrick Gold Corporation was slow to respond to abuse allegations. ATA and international actors who called attention to these serious human rights violations have spent the greater part of the last decade seeking investigations, acknowledgement, and appropriate preventative measures and remedies.

The fact that such extra-judicial killings and assaults occurred is no longer in dispute, however. Starting in 2010, Barrick began to take long sought-after action. The company commission own internal investigation recognized publicly the serious problem of sexual violence at the mine site, introduced new systems to monitor mine personnel, and enhanced human rights trainings for security guards.

In 2012, Barrick launched a company-created remedy mechanism to offer reparations to women sexually assaulted by its security guards and other company employees. During the two years of operation of Barrick’s “Olgeta Meri IgatRaits (All Women Have Rights)” remedy mechanism, approximately 120 sexual assault victims signed remedy package



agreements, in exchange for waiving their right to sue Barrick. Separately, eleven women who refused to accept the packages and who secured legal representation by a U.S.-based human rights nongovernmental organization were offered confidential settlement packages believed to be about ten times the amount of the remedy mechanism packages. In July 2015, Barrick offered each of the 120 women an additional payment, but taken together, the initial packages and additional payment remain significantly less than the international settlement. This remedy mechanism was created supplementary to the existing operational level grievance mechanism at the PJV Mine Site.

Several reports including the independent assessment report, the Righting + Wrongs, Mining Watch Canada, Earth Rights International and ATA's responds to the assessment report found that although the remedy mechanism had a number of positive features, however; it contained serious design and implementation flaws.

This gave rise to the claimants who underwent the mechanism lodging complains of remedy being provided as not satisfactory and that of the international standards with UN Office of High Commissioner for Human Rights' Special Working Group.

ATA has lodged complaints of other abuses with the BNL's OGM located at the PJV Mine Site on the May 2015. In reorganizing, the ATA was issued the BNL Grievance ID No: 3936. However, nothing was done by the BNL to process and evaluate these allegations.

On the contrary, the ATA set up a peaceful protest demanding BNL to process those claims where Barrick assured that it will process these allegations. In walking their talks, Barrick has engaged a US based NGO, Business and Social Responsibilities (BSR) to draft reports of how best the company can process the claims.

BSR has been truly independent on its Draft Report and its Recommendations despite being funded by the company. Although, the report is not a destination but a pathway to achieving the destination – Remedy-the onus is now before the company on how best the company can have a meaningful and a workable dialogue to create Company Action Plan to provide remedy to the victims.

The Barrick's supplementary mechanism is novel, but as the existing Barrick's OGM seeks to fulfill its responsibilities to provide remedies for human rights abuses while operating in a country that has weak governance zones and judicial systems, similar mechanism is likely to be implemented in Porgera. In theory, this non-judicial project level operational grievance mechanism, if designed and implemented well as per the BSR's Report, will have the potential to provide access to remedies. Because Barrick frequently has structural power advantages relative to ATA, individual claimants and impacted communities, the new remedy mechanism which will be designed and created by the company will carry the risk of being inadequately providing survivors and custodians of human rights abuses with effective, fair, and proportionate remedies.

This is the primary motive behind drafting of this report and being submitted to the PNG National Government and its Authorities and or Agents by ATA as for PNG Government to support ATA's push for 5% Free Carried Equity from the company's 95% Shares in Porgera Gold Mine Project. This call can only be supported should Barrick and Zijin opts not to process these allegations within this year 2018.

Moving on with, Barrick has never committed to providing copies of its most current environmental reports when they are finalized, along with other documents. In not doing so, the National Government of PNG blindly issued riverine permits, despite local communities and international campaigners alike have criticized the direct disposal of mine's waste into the riverine system.

There is one essential component of adequate management of the situation at Porgera that is still completely lacking: responsible government regulation. The Papua New Guinea government exercises no meaningful day-to-day oversight over the Porgera mine's private security force, and it is not clear that it has the capacity to do so. In fact, the government has often appeared more interested in quashing community objections to lucrative extractive projects than regulating those projects effectively. Since most of the world's international mining and exploration companies—including Barrick—are Canadian, one might expect the Canadian government to exercise some oversight over its corporate citizens abroad. In line to this, the Canadian Government has been instrumental in setting up an Ombudsperson's Office for the Extractive Companies operating within and aboard Canada where ATA has

joined the global campaign.<sup>cxvi</sup> This will have particular impact in poorly regulated environments like Papua New Guinea.

#### **4.4. Systematic Sexual Violence and Gang Rape by Barrick Security Guards**

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

#### **4.5. Barrick's Remedial Framework**

In 2012, Barrick set up a "Remedial Framework" to enable rape survivors to apply for limited benefits. This was designed to be an "Operational Grievance Mechanism," as envisioned by the U.N.'s 2011 Guiding Principles on Business and Human Rights, but from the outset the Remedial Framework failed the U.N. criteria. For example, the Guiding Principles state that such mechanisms should be "Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance . . . ." Barrick did not consult the women or the ATA in designing the Framework. More than two hundred women lodged complaints of rape and gang rape; ATA believes that the actual number of victims is even higher. Barrick claimed that it would assess each woman's needs and offer a flexible benefits package that might include financial reparations or even relocation where appropriate. Earth Rights International (ERI) a not for profit NGO law firm based in the US had represented several dozen women who lodged claims with the Remedial Framework, but soon discovered that they were not being offered appropriate financial compensation commensurate with the gravity of the abuses. Nearly all of ERI's clients or the ATA members were offered benefits packages that were calculated to amount to exactly the same value – 21,320 kina, and 30,000 kina respectively at two different intervals. When many of ERI's clients objected and asked for appropriate compensation, the Remedial Framework rejected their request. In a statement, the Framework's Advisory Panel accepted that the claimants had suffered horrific abuses – "physical assault and imprisonment as well as aggravated rape."

But they rejected the notion that compensation for "aggravated rape" should rise above \$8500 per woman, regardless of the details of her experience, for several reasons:

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

Two of the benefits packages, with names redacted, demonstrate that the women were offered almost identical benefits regardless of their desires and circumstances.

The largest component of the packages is a business training program; after attending Barrick’s mandatory training, women could get a “business grant” of 15,000 kina – which they were expected to use to start a small business raising chickens or selling second-hand clothing. No exceptions were made to the mandatory business training program – not even for an 87-year old woman. The rest of the value of the package was made up small components, such as school fees (in a country where such fees have been abolished) and vouchers for counseling services. Then the packages included a “financial supplement” of up to 5,000 kina, in order to make up the difference to 21,320 kina. In order to accept these packages, women were required to sign an agreement, promising never to sue Barrick for their injuries. The women that ERI represented were apparently the only women in the process with any representation by legal counsel. All of the women who were not represented by ERI accepted the agreements.

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

The “Concerns regarding the Non-Judicial Grievance Mechanism for Women Victims of Sexual Violence by Barrick Porgera Joint Venture Security Personnel” further stated below.

#### **4.6. Routine Beatings, Shootings and Killings by Barrick Security Guards**

In addition to the systemic violence against women, over the course of the mine’s existence, local men and boys have been routinely beaten, shot, and killed for entering the open pit, the dumps, or simply being near the mine’s property. ATA has documented numerous incidents of violence and killings by mine security guards and Mobil Police squads working for the mine over the past 20 years. In 2005, just before Barrick took over the mine, its predecessor, Placer Dome, acknowledged some of those deaths, but alleged they were all in self-defence. Most killings have not been independently investigated, however, and Barrick generally continues to deny any responsibility. In 2006, the PNG government initiated an investigation into the unusually high number of deaths near the mine; no report was publicly released. One victim was only 15 years old when he was shot and killed. He was staying with a relative in Porgera, and one night, he followed a group of locals to a gap in the mine fence. The group attempted to gain entrance to the open pit to look for gold. Guards stationed at the entrance, behind a fence, began shooting into the crowd. The boy was killed by a shot to the head. His relatives and the ATA had reported the shooting to the police but no one was ever prosecuted for his death. Barrick’s Remedial Framework was limited to claims of sexual violence. Relatives of men killed by security guards have tried to lodge complaints with Barrick’s local community relations grievance office; none have apparently resulted in reparations.

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

#### **4.7. Force Evictions**

In addition to the killings, beatings, torturing, illegal detentions and rapes or gang rapes, the force evictions and burning down of villages near the mine has been a systematic problem for

Barrick and its hired security and police officers. Barrick and its security officers have continuously burnt down houses and destroyed food gardens for almost two decades. Both local and international authorities described its actions as violation of human rights laws and policies, however, Barrick always denies and states that its officers have only removed makeshift houses and passes the bucks to PNG Police Mobil Squads. In reality the Barrick purposely orders its security officers to burn down the houses and destroy the food gardens to extend its mine's operations.

A good example was in May 2009, ATA's Executive was interviewed on the CBC's As it Happens, reporting about the fact that over 300 houses were burnt down by police next to Barrick's Porgera Mine in Papua New Guinea (PNG). The news hit the front page of newspapers in PNG, citing ATA's Executive interviews from North America. Even the Sydney Morning Herald – the largest newspaper in Australia – ran an entire series of feature articles on the Porgera situation, while Amnesty International and the Coalition on Housing Rights and Evictions both made public statements condemning the house burnings. Surprisingly, Barrick admitted that “It [was their] understanding that the police tore down approximately 50 temporary shacks,” never apologizing for this gross human rights abuse or their role in provoking it. According to a follow-up report by Amnesty International, during the evictions three women were reportedly raped, people were beaten, and there was no prior warning or resettlement plan in place. However, the most shocking story that never made the headlines was the fact that the PNG police force burnt down the village four times following the April burnings – once on June 23 and again in July 2 and 25 March 2018 – after the villagers rebuilt houses in the same area.

This is the true tragedy with Porgera. Here, abuses can't be confined to a few isolated incidents, but a structure of impunity that terrorizes residents who resist it. Here, the crisis does not exist only in moments, but is tied to an environment that is overrun with waste, toxic dust, landslides and tailings, creating hazards that take lives on a regular basis.

The landowner's main plight asks for resettlements out-side of the Special Mining Lease area, to a location where they can live a subsistence lifestyle while having basic infrastructure (roads, schools, and a hospital) provided for them. It seems a small price to pay in exchange for a land rich with gold.

The ATA at every stage of the mines operation demanded through PJV Barrick and the PNG government for resettlements of over 10,000 plus indigenous landowners out of the SML area. However, the calls for resettlement have fallen into deaf ears over times and the landowners have been forced to live inside the SML like squatters on our own land on manmade islands in the highlands of PNG.

PJV Barrick purports to claim that the company is “committed to protecting human rights and operating in alignment with the voluntary Principles on Security and Human Rights.” The ATA unequivocally dismisses the proclamation. Previous case records of PJV Barrick tells a totally different story that in 2008, the Norway Government Global Pension Fund, one of the largest global pension funds in Europe divested 230 million Canadian Dollars from Barrick Gold International and delisted from its investment portfolio as a result of discharging life tailings into Porgera-Lagaip Strickland river system harming the environment.

To put it into context, the whole hidden motive behind the police deployment was to systematically force evict all the villages within the SML area to make way to extend the mines operation. In fact PJV Barrick has announced in late 2009 that the mine life has been extended by another 20 years. Therein that the pretext of deteriorating law and order is just a smoked screen.

Re-calling back, the news about force eviction at the Porgera mine site was first broke at the Barrick Shareholders meeting in Toronto on 29th April, 2009 and AI took the news and made a bold move to conduct an independent investigation.

Whereas, the report just tells what went wrong and it's not motivated by political and financial reasons for local benefits. It's about force destruction of humanity in one of the least developed corners of PNG under PJV Barrick and police, and globally it's an international concern and issue.

Therefore, ATA at that time did called on the Government of Papua New Guinea, Government of Canada and PJV Barrick to urgently take ownership and responsibility to adequately address the recommendations outlined in the AI report but to no avail.

Similarly, this Wingima Village was once again burnt down the fourth time in the early mornings of March 25th, 2017. During the forced eviction there were 52 houses being burning down by the Barrick hired PNG Police Mobil Squads and these rogue police officers have raped/gang raped 8 women and physically assaulted six men.

Upon receiving the news of the incident, a ATA Executives physically went to the scene and took photos and interviewed the victims. After returning from the scene, he wrote to the Barrick's President Kelvin Dushnisky and Senior Vice President Peter Sinclair to take immediate actions to stop the abuses and investigate them and report what had happened.

In their respond letter dated March 27th and April 17th, the Barrick claimed that its management at the PJV Mine site neither had a knowledge nor were they involved in the planning and implementation of the eviction. They had only seen the houses' burning after the execution by Barrick hired PNG Police Officers.

Also the Barrick responded and said that, the eviction carried out was legal as the hired police officers had acted upon a warrant issued by the Porgera District Court. After noting their respond, ATA then wrote to the Porgera District Court to verify whether or not the said warrant was issued by this honourable court. However, ATA found that the claimed warrant was never issued by the said court via its respond letter dated April 21<sup>st</sup>, 2017 addressed to ATA's Public & Executive Officer.

Upon receiving the letter from the Porgera District Court, the ATA wrote a letter to the Porgera Police Station Commander enquiring for Police Investigation into the matter. And also ATA published press statements and published reports accusing Barrick and its hired PNG Mobil Squads of forcefully evicting Wingima Villagers, burning down of houses, raping or gang raping of women and physically assaulting men.

Barrick stated that there was an investigation going on however; to date no arrests have been made.



#### **4.8. Shooting of Messenger- Arresting the Whistle Blowers or human rights defenders**

After noting that the Barrick and its hired rogue police officers were at fault and that ATA was doing intensive investigation to hold them accountable, the Barrick hired Police Officers arrested and charged one of the ATA Executives. The arrest was purposely to pervert the investigation and the course of justice.

He was arrested and charged for publishing the forceful eviction on Medias under the newly introduced law, Cyber Crimes Acts of the Independent State of PNG.

#### **4.9. Lessons Learned to be applied by Barrick in its Existing Operational Grievance Mechanism**

To meet minimum standards, rights-holders who have experienced harms should be consulted at the design stage for any remedy mechanism. Consulting with international and national organizations and experts on human rights will often be an essential part of the process of creating an effective mechanism, but it should not replace or be a proxy for the perspectives of survivors and impacted communities. Companies would also benefit by considering and spending time finding organizations that understand the local context, as well as those who are trusted by those who will ultimately use the mechanism. Even such organizations, however, should not be proxies for direct consultation with survivors.

Effective consultation does not simply involve collecting information or providing stakeholders an opportunity to provide feedback after key decisions have already been made; it entails early, proactive, ongoing, and comprehensive dialogue and engagement with all stakeholders and other relevant experts. Organizations that have been particularly vocal about human rights abuse allegations should be at the table; they should not be automatically excluded because a company has low trust in those actors. Remedy mechanisms will benefit from structured consultations with a level of transparency to promote the integrity of such efforts. Such effective consultation with the local community and particularly victims is a necessary step towards establishing a remedy mechanism that is accessible, trusted, legitimate, and effective, and that advances human rights. However, a “consultation” model of engagement with survivors and others impacted by corporate activity is the bare minimum required. Typical consultation models can maintain the unequal power relationship between

rights-holders and companies; even where rights-holder views are taken into account, the company fundamentally retains control over the design and implementation of the mechanism.

While often difficult given the fact that harms have taken place, a co-creation model is far more likely to create space for meaningful reconciliation between the corporation and the community, and to best ensure that survivor perspectives are central and thus rights are better promoted. Co-creation models could involve direct and joint efforts by the company and rights-holders, or the design of an independent mechanism by a third party jointly appointed by the company and rights-holders.

#### **a) Porgera Area - Promptness**

Barrick failed to provide a prompt remedy, and many women suffered for years, waiting to have their sexual assaults investigated, acknowledged, and addressed. This failure was largely due to the company's grossly inadequate responses over a number of years to numerous allegations of human rights abuse. When the company did decide to take allegations of sexual violence seriously, it largely acted swiftly to investigate and take other steps to address abuse, including through the operation of the remedy mechanism and distribution of remedies. In contrast to the improved response to the sexual violence allegations, concerns continue to exist about inadequate company response to allegations of other forms of violence at the mine site.

The right to remedy includes a right to “prompt” reparations—promptness is a key component of the right to remedy in human rights law.<sup>cxvii</sup>

Prompt reparations includes promptly ceasing continuing violations, providing full and public disclosure of the truth, accepting responsibility, and undertaking preventative measures such as human rights training and adopting codes of conduct.<sup>cxviii</sup>

Prompt reparations are closely connected to and enabled by a company's fulfilment of its human rights due diligence responsibilities. The adoption of the UN Guiding Principles on

Business and Human Rights confirmed that companies have a responsibility to respect human rights, which should include a “human rights due diligence process to identify, prevent, mitigate, and account for how they address their impacts.”<sup>cxix</sup> With respect to security personnel, companies should take proactive steps to prevent abuse, including, at a minimum, taking preventative measures where harms are foreseeable. *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, prepared by the UN Office of the High Commissioner for Human Rights, notes that policies and processes need to be in place to respect human rights:

Respecting human rights is not a passive responsibility: it requires action on the part of businesses . . . an enterprise needs to know and be able to show that it is indeed respecting human rights in practice. That, in turn, requires it to have certain policies and processes in place.<sup>cxix</sup>

The Voluntary Principles on Security and Human Rights, which Barrick has joined, also provide that risk assessments should “consider the available human rights records” of security forces.<sup>cxxi</sup>

A failure to implement effective human rights due diligence process can delay a company’s awareness of human rights abuses, and thus delay provision of remedies to survivors. Preventative and responsive steps can also help deter further abuses, thus keeping harms from continuing or escalating.

## Chapter Five: Discussion

### 5.1. Barrick's History of Responding to allegations of Abuse

Since 2004, the Akali Tange Association (ATA) publicly raised concerns about security force abuse at the PJV mine. In mid-March 2005, the ATA wrote to the PNG Prime Minister and called for a national commission of inquiry into the alleged deaths of approximately 20 people at the mine. In the same year, Human Rights Watch stated that mobile police squads, which had been deployed to the mine, “include some of the worst human rights abusers in PNG,” and warned about using police to provide security at the mine site.<sup>cxxii</sup>

Through 2005-2006, numerous news articles were published that reported on alleged security force abuses at the mine.<sup>cxxiii</sup> Akali Tange Association (ATA) also published a report in 2005 that alleged security forces at the mine had engaged in unlawful killings, and in 2006, the ATA publicly stated that they had “evidence of rapes by security guards.”<sup>cxxiv</sup>

In November 2005, before Barrick acquired Placer Dome and took over the mine, the ATA sent a letter to Barrick informing the company that Placer Dome was under investigation for a series of killings at the mine. The letter stated ATA's belief that, should Barrick proceed with their take-over of the mine, they would inherit liability for these acts.<sup>cxxv</sup>

In 2006, the government of PNG created a commission of inquiry to investigate the allegations of killings by security personnel at the mine; however, the ATA and international NGOs have yet to be able to obtain the results of the inquiry.<sup>cxxvi</sup>

In the following years, ATA continued to document and report allegations of violence by mine security personnel. The organizations presented their allegations in public reporting, in communications with the Organization for Economic Co-operation and Development (OECD) National Contact Point in Canada, and through direct communications with Barrick.<sup>cxxvii</sup> In 2008, 2009, and 2010, local representatives addressed Barrick's Annual General Meetings and specifically mentioned allegations of security guard abuses, including killings and sexual assaults. In 2009, Mr. Jethro Tulin of the ATA presented a statement to the UN Permanent Forum on Indigenous Issues: Last year, Dr. Sarah Knuckey, PhD explained that mine guards and police were killing locals and raping our women; there have been five more killings and many more rapes since...The increasing global power and

influence of trans-national companies like the Canadian Barrick Gold, managers of the Porgera mine[,] means that they, alongside the PNG government, must be responsible for upholding human rights within their spheres of influence.<sup>cxxviii</sup> In a letter addressed to the PLOA in 2008, the then General Manager of the mine stated that: “we found your public allegation 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.”<sup>cxxix</sup>

The media continued to report on the issue throughout 2009, including on allegations of rape and other violence.<sup>cxxx</sup> In one 2009 article, Barrick is reported as having refuted its responsibility for unlawful killings, and as calling into question the credibility of the organizations making the claims; no specific response from Barrick to the allegations of sexual abuse was reported.<sup>cxxxi</sup>

International groups, including Mining Watch Canada and Clinics, have been involved in monitoring the PJV mine since at least 2002.<sup>cxxxii</sup> After Barrick’s acquisition of Placer Dome, Mining Watch Canada undertook field assessments and a range of advocacy efforts related to security guard abuse, including lodging an official complaint with the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on behalf of the ATA in 2007.<sup>cxxxiii</sup>

The clinics conducted numerous fact-finding investigations in PNG starting in 2006, interviewing hundreds of individuals and focusing primarily on alleged mine-related security abuses.

In 2009 and 2010, the clinics presented their findings to the Standing Committee on Foreign Affairs and International Development of Canada’s House of Commons.<sup>cxxxiv</sup> The testimony reported on alleged killings, violence, and rape that raised serious concerns that gross human rights violations had occurred at the mine.

The clinics’ testimony was in response to the introduction of Bill C-300 into the Canadian Parliament, a bill designed to establish corporate accountability standards for Canadian companies in the mining, oil, and gas industry. Barrick responded generally to the proposed Bill C-300 with a statement on November 6, 2009:

[S]ome individuals have not been made to substantiate even their wildest allegations about the Canadian mining industry and Barrick Gold—much of which has been thoroughly

disproved well before today. They have not provided the Committee with facts or evidence to support their claims as they conduct these hit-and-run company character assassinations.<sup>cxxxv</sup>

Barrick also responded in February 2010 by specifically calling into question the credibility of the allegations made by the clinics.<sup>cxxxvi</sup> Press at the time reported that Barrick “flatly denied” the allegations referred to in the testimony before the Standing Committee.<sup>cxxxvii</sup>

Barrick made the following statement:

*We are alarmed by the extraordinary and extremely serious accusation that security personnel working in the Porgera mine may have sexually assaulted local Porgeran women. This claim is further compounded by the outrageous and damaging accusation that the PJV or Barrick would fail to conduct an investigation should such an incident be reported.....*

To our knowledge there have been no cases of sexual assault reported to mine management involving PJV security personnel while on duty, since Barrick acquired an interest in the mine in 2006 . . . .

It is not possible for the PJV to investigate an allegation it has never received . . . . [T]he [Barrick-funded NGO] PDWA has been a vocal advocate for women’s rights and law and order in the Porgera region. If incidents of rape and violence were being perpetrated by PJV personnel, this organization could be expected to draw attention to the issue and advocate on the behalf of the victims. To our knowledge, the PDWA has never raised such an allegation.<sup>cxxxviii</sup>

In February 2011, Human Rights Watch released a report in which they documented violent abuses by security forces, including but not limited to sexual assault. Human Rights Watch also reported that

Barrick’s early responses to abuse allegations were inadequate:

*In the past Barrick has blithely stated that if incidents of sexual violence involving APD [security] 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.<sup>cxxxix</sup>*

In 2010-2011, Barrick's response to the allegations of harm changed, and the company took significant actions to begin to address the harms around the mine site. Barrick conducted an internal investigation, involving a 15-member investigative team, which spent several months at the mine interviewing over 650 employees and conducting an investigation of personnel and procedures.<sup>cxl</sup>

The investigation indicated a dramatic shift for the company and ended a period of inaction or refusal to take seriously allegations of security force abuse. It also paved the way for the creation of the remedy framework.<sup>cxli</sup> By 2014, the company had established a strong and public response of "zero tolerance" for human rights violations.

Barrick's initial public acknowledgement of human rights abuses at the PJV mine, however, heavily emphasized the allegations of violence against women.<sup>cxlii</sup> Despite referencing the advocacy by Human Rights Watch, which included concerns other than sexual violence, Barrick did not directly respond to allegations of other forms of violence.

First, it is likely that numerous assaults could have been prevented if more prompt action had been taken.<sup>cxliii</sup> Second, earlier action could also have led to an earlier remedy, and women could have received necessary psychological and medical assistance. Third, the delay undermined trust in the remedy mechanism that Barrick eventually created.

Abuse by security forces in Papua New Guinea is common, well-known, and foreseeable.<sup>cxliv</sup> Due diligence should have revealed to a business seeking to use or cooperate with security forces in the country the serious risk of abuse. The high rates of sexual abuse in the country are also very well known.<sup>cxlv</sup>

In such an environment, Barrick was under a particular responsibility to put in place stringent policies to protect vulnerable people from harm, to actively monitor for potential abuse, and to take seriously all allegations of abuse.<sup>cxlvi</sup> Barrick, however, failed to take reports seriously for years, and did not launch necessary internal investigations despite repeated allegations of abuse from multiple sources.

Until 2010-2011, Barrick's response was instead to generally attack the credibility of messengers, and to argue that it had no responsibility to act on general or anonymized allegations of harm. Barrick also deferred to the police force, and referred complainants to the PNG police. This displayed a serious misunderstanding of the reality on the ground for many

Porgerans, who had reasonable and significant concerns about approaching police with these kinds of complaints, due to well-founded fears of retaliation, imprisonment, and police inaction.<sup>cxlvii</sup> It also demonstrated a failure to meet the company's own corporate responsibilities to prevent and address harms: effective human rights due diligence, proactive monitoring, and complaints processes would have alerted the company to security force abuses. The allegations should have triggered immediate internal investigations. Indeed, the standard of response to allegations voiced by Barrick in 2014 should have been its initial response:

We have zero tolerance for human rights violations and investigate all reports, suspicions or rumours of human rights abuses and take strong and appropriate action. Any employee implicated in serious human rights violations or other serious crimes, or who has direct knowledge of but fails to report such incidents, will be terminated, and where we create negative human rights impacts, we will provide an appropriate remedy.<sup>cxlviii</sup>

Barrick's changed public posture to the assault allegations starting in 2010-2011 was a commendable shift. Once it decided to take the sexual assault allegations seriously, it took swift and significant steps to investigate and put in place prevention and mitigation policies, and these steps appear to have helped reduce security force violence.<sup>cxlix</sup> Further, the establishment of the remedy mechanism, and the processing of individual claims, was generally also timely.

However, despite the change of posture, promptness concerns remain. First, Barrick still has not yet adequately responded to the other non-sexual violence allegedly committed by security forces. The people who were subject to this kind of violence are still waiting for investigation, acknowledgement, and remedy. Second, with the formal closure of the remedy mechanism for sexual assaults, promptness concerns may arise again as there is uncertainty about how the company's general on-site grievance mechanism will respond to any newly reported incidents of human rights abuse. It is important that an effective, trusted, predictable, and transparent remedy mechanism be permanently in place.



## **5.2. Lessons Learned to be applied by Barrick in its Existing Operational Grievance Mechanism**

Allegations of human rights violations should be investigated as soon as possible after they have been raised. Barrick should not wait until such complaints meet a certain threshold. Whether allegations are relatively minor or more serious, and whatever their source, the investigation should be prompt to establish a practice of zero tolerance for human rights violations. Barrick should have robust policies in place to ensure that this happens.

If harms are in fact occurring, acting swiftly to address them can help stop additional violations from taking place. Having an established, trusted, and effective company grievance mechanism in place from the outset can also prevent violations from becoming widespread or escalating.

## **5.3. Scope of Harms Remedied**

The Barrick mechanism provided access to remedy for a significant number of women who experienced sexual violence, including individuals whose rights were violated before Barrick took over majority ownership of the mine. However, the remedy mechanism was narrow in the scope of violations remedied, applying only to one category of abuse: sexual assault. Its exclusion of the numerous other forms of abuses also allegedly committed by security guards at the mine—including non-sexual physical assaults and killings—sidelined other alleged victims. The exclusion was arbitrary and undermined perceptions of the remedy mechanism’s legitimacy and fairness. Time limitations on accepted claims built into the design of the mechanism were also unjustified.

The right to remedy includes a right to “prompt” reparations—promptness is a key component of the right to remedy in human rights law.<sup>cl</sup> Prompt reparations includes promptly ceasing continuing violations, providing full and public disclosure of the truth, accepting responsibility, and undertaking preventative measures such as human rights training and adopting codes of conduct.<sup>cli</sup>

Prompt reparations are closely connected to and enabled by a company's fulfillment of its human rights due diligence responsibilities. The adoption of the UN Guiding Principles on Business and Human Rights confirmed that companies have a responsibility to respect human rights, which should include a "human rights due diligence process to identify, prevent, mitigate, and account for how they address their impacts."<sup>clii</sup> With respect to security personnel, companies should take proactive steps to prevent abuse, including, at a minimum, taking preventative measures where harms are foreseeable. *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, prepared by the UN Office of the High Commissioner for Human Rights, notes that policies and processes need to be in place to respect human rights:

**"Respecting human rights is not a passive responsibility: it requires action on the part of businesses . . . an enterprise needs to know and be able to show that it is indeed respecting human rights in practice. That, in turn, requires it to have certain policies and processes in place".<sup>cliii</sup>**

The Voluntary Principles on Security and Human Rights, which Barrick has joined, also provide that risk assessments should "consider the available human rights records" of security forces.<sup>cliv</sup> A failure to implement effective human rights due diligence process can delay a company's awareness of human rights abuses, and thus delay provision of remedies to survivors. Preventative and responsive steps can also help deter further abuses, thus keeping harms from continuing or escalating.

#### **5.4. Human Rights analysis by the clinics**

Human rights norms establish that remedies should be prompt to be effective. For too long, Barrick failed to adequately respond to serious allegations of violence. This delay had several consequences. First, it is likely that numerous assaults could have been prevented if more prompt action had been taken.<sup>clv</sup> Second, earlier action could also have led to an earlier remedy, and women could have received necessary psychological and medical assistance. Third, the delay undermined trust in the remedy mechanism that Barrick eventually created.

Abuse by security forces in Papua New Guinea is common, well-known, and foreseeable.<sup>clvi</sup> Due diligence should have revealed to a business seeking to use or cooperate with security

forces in the country the serious risk of abuse. The high rates of sexual abuse in the country are also very well known.<sup>clvii</sup> In such an environment, Barrick was under a particular responsibility to put in place stringent policies to protect vulnerable people from harm, to actively monitor for potential abuse, and to take seriously all allegations of abuse.<sup>clviii</sup> Barrick, however, failed to take reports seriously for years, and did not launch necessary internal investigations despite repeated allegations of abuse from multiple sources. Until 2010-2011, Barrick's response was instead to generally attack the credibility of messengers, and to argue that it had no responsibility to act on general or anonymized allegations of harm. Barrick also deferred to the police force, and referred complainants to the PNG police.

This displayed a serious misunderstanding of the reality on the ground for many Porgeran, who had reasonable and significant concerns about approaching police with these kinds of complaints, due to well-founded fears of retaliation, imprisonment, and police inaction.<sup>clix</sup> It also demonstrated a failure to meet the company's own corporate responsibilities to prevent and address harms: effective human rights due diligence, proactive monitoring, and complaints processes would have alerted the company to security force abuses. The allegations should have triggered immediate internal investigations. Indeed, the standard of response to allegations voiced by Barrick in 2014 should have been its initial response:

*"We have zero tolerance for human rights violations and investigate all reports, suspicions or rumors of human rights abuses and take strong and appropriate action. Any employee implicated in serious human rights violations or other serious crimes, or who has direct knowledge of but fails to report such incidents, will be terminated, and where we create negative human rights impacts, we will provide an appropriate remedy."<sup>clx</sup>*

Barrick's changed public posture to the assault allegations starting in 2010-2011 was a commendable shift. Once it decided to take the sexual assault allegations seriously, it took swift and significant steps to investigate and put in place prevention and mitigation policies, and these steps appear to have helped reduce security force violence.<sup>clxi</sup> Further, the establishment of the remedy mechanism, and the processing of individual claims, was generally also timely.

However, despite the change of posture, promptness concerns remain. First, Barrick still has not yet adequately responded to the other non-sexual violence allegedly committed by security forces. The people who were subject to this kind of violence are still waiting for investigation, acknowledgement, and remedy. Second, with the formal closure of the remedy mechanism for sexual assaults, promptness concerns may arise again as there is uncertainty about how the company's general on-site grievance mechanism will respond to any newly reported incidents of human rights abuse. It is important that an effective, trusted, predictable, and transparent remedy mechanism be permanently in place.

#### **5.5. Lessons Learned to be applied in the existing Barrick PJV Operational Grievance Mechanism**

Allegations of human rights violations should be investigated as soon as possible after they have been raised. Businesses should not wait until such complaints meet a certain threshold. Whether allegations are relatively minor or more serious, and whatever their source, the investigation should be prompt to establish a practice of zero tolerance for human rights violations. Businesses should have robust policies in place to ensure that this happens.

If harms are in fact occurring, acting swiftly to address them can help stop additional violations from taking place. Having an established, trusted, and effective company grievance mechanism in place from the outset can also prevent violations from becoming widespread or escalating.

Specialized remedy mechanisms should at minimum be open to violations occurring during the operational life of the mechanism. PJV BNL should consider carefully the implications of setting a cut-off date prior to the closing of the mechanism, and tolling principles should be considered as part of any grievance processes. Any limitation in this respect should be the subject of a clear justification and all possible steps should be taken to ensure that this does not prevent potential claimants from accessing a remedy.

## 5.6. Accessibility and Security

“Inadequate steps were taken to ensure that the remedy mechanism was accessible and safe for as many potential claimants as possible. “Word of mouth” and targeted outreach strategies were adopted to inform women about the remedy mechanism, rather than a widely and openly publicized awareness campaign. The decision to rely on the narrower approach was reportedly adopted in response to legitimate concerns about the safety and privacy of sexual assault victims. However, once the decision was made to use “word of mouth,” insufficient steps were taken to mitigate the foreseeable problems that arose from this approach. For example, accurate information about the existence and nature of the mechanism did not reach as many potential claimants as it could have. This lack of information, along with the single and public location and limited time frame in which claims could be presented to the mechanism, undermined the accessibility and equitability of the remedy mechanism. Despite warnings about potential security impacts on women, inadequate steps were taken to mitigate harm and to ensure that necessary proactive measures were taken to protect women. For example, the single entry point intake process appears to have put women at risk of being identified. In general, there could have been a more consultative, comprehensive, and tailored approach that would have better mitigated risk for each individual woman entering the mechanism, moving through it, and receiving remedy packages”.<sup>clxii</sup>

An effective remedy mechanism should be accessible to rights-holders. This means that it should be “known to all stakeholder groups for whose use [it is] intended” and that victims who “may face particular barriers to access” are provided “adequate assistance.”<sup>clxiii</sup> To ensure that the right to a remedy is effective, individuals should have access to information regarding any possible remedies or services that might be available, and must be provided with proper assistance and resources in seeking access to justice.<sup>clxiv</sup>

In addition, the design and implementation of a remedy mechanism should take into account potential security or other adverse impacts on mechanism users, and, where a security risk is present, proactive steps should be taken to mitigate risk, so that individuals feel more secure in accessing the mechanism. Attention to security is necessary to ensure a mechanism’s effectiveness and rights-compatibility, to ensure that a company does not cause further adverse impacts through its remedy mechanism, and to advance remedy mechanism goals of

preventing “harms from compounding and grievances from escalating.”<sup>clxv</sup> This is part of the general human rights principle of “do no harm,”<sup>clxvi</sup> which is also a corporate responsibility.<sup>clxvii</sup>

### **5.7. Accessibility and Security in the Remedy Mechanism Process**

*Outreach:* Initially, a public awareness campaign about the mechanism was planned, using, for example, public radio announcements.<sup>clxviii</sup> However, Barrick has stated that some PNG experts advised that such a public campaign entailed risks in Porgera.<sup>clxix</sup> First, there was concern that if everyone in the community knew about the mechanism and its purpose, women who accessed it would face difficulties in keeping their sexual assault confidential, and publicity might lead to stigma, retribution, and physical violence against some women. Second, the fear of such effects could deter legitimate claimants from coming forward.<sup>clxx</sup>

In response to these concerns, more discreet “word of mouth” and individually targeted outreach approaches were adopted. The awareness strategy relied on sharing information about the mechanism with certain actors in the community, who would then share information with other women who might be potential claimants, or who could further relay information. During implementation, groups such as the PLOA, ATA, and the clinics, who were in possession of specific knowledge as to the identities of women who had previously made sexual assault allegations, also sought to individually notify women of the remedy mechanism, and to assist them in accessing it.<sup>clxxi</sup> Cardno was amenable to the clinics sharing with them the names of additional women (at the women’s request) who sought to make claims.

*Point of entry:* There was generally only one apparent physical entry point into the mechanism, which was an office located in Porgera Station, at the time in the same building as the Women’s Welfare Office. The building is behind a number of stores, off a street that is often busy with foot traffic and roadside vendors. The clinics were informed that the co-location with the Welfare Office was to provide women a safer pretext for necessary in-person visits when accessing the mechanism.<sup>clxxii</sup>

During later phases of the mechanism, women could receive further information or seek follow-up information at an additional office in the center of Porgera Station, next to the town’s main market areas.

*Time frames:* Sexual assault victims could lodge complaints when the remedy mechanism staff members were on “rotation” in Porgera, starting in October 2012. The Claims Manual for the remedy mechanism states that claims must be lodged by the end of April 2013, but notes that claims lodged after that date may still be considered in certain circumstances, such as when referred by the clinics.<sup>clxxiii</sup> In separate communications with Barrick, the company stated that the “nominal end date” for new claims was shifted to May 25, 2013, with any subsequent claims assessed on a case-by-case basis.<sup>clxxiv</sup> Claims presented by some Earth Rights International clients were lodged during an extra rotation that took place in November 2013.<sup>clxxv</sup>

## **Chapter Six: Conclusion**

### **6.1. Conclusion**

It is noted that giant mining companies play important role in a country’s development. However, a government with weak policy strategy suffers the most when the miner enjoys the most. Government with better and effective policy strategy enjoys its wealth distribution and benefits socially and economically by its people.

We have also identified that human right abuse in Porgera by Barrick Niugini is due to PNG government’s weakness in implementing human rights law against the giant mining company. Barrick Niugini LTD is also a giant worldwide mining company with the highest record in human rights violation, abuse, shooting, killing, beating, gang raping and pollution in all its mining areas. We have identified three mining areas as; a) Pascua Lama in Chile, b) Pueblo Viejo in Dominican Republic, c) North Mara gold mine of Tanzania, where human rights abuse and violation is high as in Porgera mine by the same company, Barrick Niugini LTD. Therefore, Barrick requires compensating the victims as agreed to in the 2006 Voluntary Principles on Security and Human Rights.

### **6.2. Summary**

The extractive industries account for most allegations of the worst abuses, up to and including complicity in crimes against humanity. These are typically for acts committed by

public and private security forces protecting company assets and property; large-scale corruption; violations of labor rights; and a broad array of abuses in relation to local communities, especially indigenous people. Global framework for human rights has been implemented in the form of the UN Guiding Principles based on the three pillars of 'Protect, Respect and Remedy, however, the mining, metals and extractive sector has continued over the years to have one of the highest rates of severe human rights and environmental violations. The mining and extractive sector is linked to the highest number of killings .

Barrick Niugini's Porgera Gold mine has led to violence, human rights abuse, corruption, gang rapes, shootings and killings in the mine site of Porgera, Enga Province. Barrick has also violated the UN sanctions of the international human rights Laws which requires government attention as soon as possible.

### 6.3. Recommendation

#### a) Recommendations to Barrick Niugini (BNL) Limited

- **Barrick urgently needs to provide remedies to the 940 backlogged cases from its existing operational grievance mechanism at the PJV Mine site within this year, 2018.** Approximately, 940 claims of human rights abuses have been filed with the company. This includes those filed through ATA (Grievance Acknowledgement ID No: 3936) and those filed directly by the claimants with the company grievance mechanism (OGM). The company should prioritize the 940 current claims. These claims constitute an ongoing point of conflict with the community and many have not been adequately redressed. No future remedy effort can be successful – and no mutually beneficial relationship between the company and the community can be built – until these cases are addressed and the harms are remedied within 2018.
- **Barrick needs to Off-load 5% Equity from its 95% Shares to ATA should the company opts not to provide remedies to the ATA's clients (Victims) within this year, 2018.** The company has denied the allegations of human rights abuse for more than two decades. Even though, this allegation was confirmed by both national and international investigation reports, the Barrick was unresponsive, too negligent and



the calls have fallen on deaf ears. Hence, should Barrick suggest that to provide remedy to the 940 backlogged cases within this year is too much, the company can voluntarily off-load its 5% of the mine's shares as remedy to the victim's representative body.

- **Resettle all SML and LMP inhabitants away from the mine site.** Although the landowners have a legal binding in place with the Barrick to live close to the mine, the mine's ever-expanding land usage now doesn't guarantee this agreement. As discussed further below, the Ipili Speaking people of Porgera are subsistence farmers. Subsistence farming and alluvial mining have been their livelihood throughout generations. However; all viable lands that were once used for farming, have been used as dumps by the PJV leaving the populace landless. Further, the company's direct disposal of the toxic chemical is placing these local landowners in danger.
- **Create a waste treatment dam to treat all active chemicals before discharging into the riverine system.** As stated in most of the reports about Porgera, the mine's discharging of its waste directly to the Porgera's only riverine system is alarming. Although Barrick thru its Environment Reports states that it monitors the wastes before discharging, the burns suffered by the locals along the riverine system confirms that the mine discharges untreated toxic wastes directly into the riverine system.
- **Barrick needs to ensure the Porgera mine has an ongoing and effective independent project-level grievance mechanism to process claims from both men and women who have suffered human rights abuses of all kinds by mine security, mine contractors and police guarding the mine.** The effectiveness and rights compatibility of the mechanism should be monitored and reported on publicly at least once a year by an independent organization. The mechanism explicitly should be informed by, and not repeat, failures of the remedy mechanism discussed in this brief. Also, this is in reference to Barrick funded Assessment Report by Enodo Rights: Pillar III on the Ground, Report of the Porgera Remedy Framework's recommendation stating "A number of the women the Framework was designed to

benefit may not have been able to access it. Those who did may have been improperly denied remedies. And those who received remedies ultimately did not enjoy the lasting benefits to which the Framework aspired, often suffering further harm at the hands of their families. If Barrick remains committed to its initial aims, these failures demand a response”.

- **Offer an additional remedy to the 119 women who have already received a remedy through the Barrick remedy mechanism.** The additional amount should bring the total amount in line with the remedy received by the 11 women who received a settlement outside the remedy mechanism. Each of the 119 women should be consulted as to how she would like to receive her additional remedy, whether in cash, the form of direct purchasing for her of goods or services (such as education, funds to start a business), or some other form. Barrick should take significant additional steps to protect security and privacy when offering and disbursing further remedies. These steps should include: one-on-one individual counselling and security assessments for each woman, comprehensive relocation assistance for women at risk if appropriate, and ongoing one-on-one monitoring.
- **ATA to become a party to future remedy mechanism,** having failed to consult the local organization Akali Tange Association which has intimate knowledge of and long-standing public concern for the issues addressed in The Framework, with regard to the appointment of key individuals such as the Independent Expert and the Review Panel, Barrick should ensure that the ATA is consulted about and have a meaningful role to play in the remediation mechanism, for example by representation in the governance structure.
- **Fund individualized, case-by-case security advice and assessment** for all women who accessed the remedy mechanism, and **fund protection measures** to any women in need.
- **Void all legal waivers** signed by rights-holders through the remedy mechanism, and ensure that all complainants are informed of the voiding and its implications.

- **Address allegations not remedied by the mechanism.** Barrick should initiate an open dialogue with rights-holders as well as local, national, and international stakeholders and experts about how to effectively remedy alleged security guard abuses not remedied through the existing Barrick remedy mechanism process. Concrete steps should be taken to create a permanent remedy mechanism developed jointly by the company and rights-holders and the community. Such a mechanism should replace any other process for handling complaints from the community. It should be designed for alleged sexual assault survivors who did not submit complaints to the existing remedy mechanism, as well as individuals who allege other security guard abuses, such as physical assaults and killings.
- **Offer community-level direct public apologies** at the village level. Senior management from Barrick Gold and the PJV, following consultations with rights-holders and village and clan leaders, should personally visit each village in Porgera, and offer a public apology and explanation for past security guard abuses.
- **Make public further information** regarding the Barrick remedy mechanism, including:
  - ✓ The type and nature of harms suffered by individuals awarded remedies, and about the conduct and nature of the accused;
  - ✓ The specific reasons any claims were refused by the remedy mechanism;
  - ✓ The number of individuals who have been: (a) dismissed from Barrick employment or disciplined because of any direct involvement in alleged sexual assaults, and for non-sexual assaults; (b) dismissed from Barrick employment or disciplined because of any role in not preventing or not adequately responding to allegations of abuse; (c) referred to the PNG police for criminal investigation and prosecution because of alleged sexual or other abuse; (d) subject to criminal investigation, prosecution, and conviction for any involvement in abuse; and (e) the factual basis for dismissal, discipline, or referral to the police;
  - ✓ A timeline of changes to the remedy mechanism and to remedy packages and why those changes were made;
  - ✓ The values and content of each and every remedy package, and the basis for any variation between the packages. Such information should be made available while also maintaining the anonymity of those receiving the package;

- ✓ The Barrick-commissioned assessment of the mechanism carried out by Business for Social Responsibility (BSR); and Financial information regarding the remedy mechanism, including: (a) total amounts provided for remedy packages to date; (b) any amounts reserved for future remedies; (c) costs to design and implement the mechanism; (d) costs associated with disseminating information about the mechanism to survivors; (e) costs associated with disseminating information about the mechanism in national and international forums, and in the media; and (f) costs associated with assessing or reviewing the mechanism.
  
- **Report on the progress and outcomes of steps taken to prevent violence** in and around the mine site. Reported outcome data should include the rate of complaints about abuses over time, changes in security guard behaviour, and data on the processes and impacts of Barrick-funded sexual and non-sexual assault prevention programs.
  
- **Future remedies provided, be culturally-appropriate and rights compatible** as Barrick as an international investor citizen in the Enga/Ipili shall provide remedies that are culturally-appropriate inline to that of Enga/Ipili's indigenous compensation customs.
  
- Reduce the possibility for violent abuses by security personnel at the Porgera mine by following through on stated commitments to:
  - a. Create safe and easily accessible channels that community members can use to complain about allegations of abuse by Porgera Joint Venture (PJV) employees, including through the means described in this report:
    - i. Improving existing complaints channels based at least in part on independent expert advice;
    - ii. Improving public outreach to explain complaints mechanisms and acceptable conduct by PJV personnel;
    - iii. Consulting and responding to independent expert advice on obstacles that prevent women from reporting incidents of sexual violence.
  - b. Implement more rigorous monitoring of PJV security personnel, including through the means described in this report:

- i. Installing a new tracking mechanism and control centre to allow for closer monitoring of all active APD personnel in the field;
  - ii. Expanding a network of infrared security cameras to allow visual monitoring of APD personnel on remote parts of the mine's waste dumps;
  - iii. Installing cameras on all APD vehicles to help prevent abuses from taking place in or near the cars.
- c. Improve channels that whistle-blowers 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 extra-judicial killings and other abuses by PJV security personnel including any disciplinary action that results.
  - 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.
  - Make public the study commissioned by Barrick in 2007 to examine alternatives to riverine tailings disposal at Porgera.
  - Follow through on stated commitments to release the company's 2016 and 2017 environmental reports, and make those reports publicly available moving forward as a matter of routine company practice.
  - Press the government of Papua New Guinea to thoroughly investigate abuses by mobile police officers during their eviction of residents of Wingima.

**b. Recommendations to the National Government of PNG**

- **The Government of Papua New Guinea is urged to set-up a separate non-judicial grievance mechanism to provide remedies to the victims of Porgera** for failing to adhere to the UN Guiding Principles on Business and Human Rights, in particular the "States Duty to Protect against human rights violation within their jurisdiction". This

is being stated as the Government of PNG is a member of the United Nations and that it is the policies of the UN that all member countries are to adhere to its policies, either it be Political, Economical, Social and or Human Rights as endorsed by the UN Councils.

- **The Government of PNG and its Agencies and or Departments can press Barrick to urgently provide remedies to the 940 backlogged cases from the company's existing operational grievance mechanism at the PJV Mine site within this year, 2018.** Approximately, 940 claims of human rights abuses have been filed with the company. This includes those filed through ATA (Grievance Acknowledgement ID No: 3936) and those filed directly by the claimants with the company grievance mechanism (OGM). The company should prioritize the 940 current claims. These claims constitute an ongoing point of conflict with the community and many have not been adequately redressed. No future remedy effort can be successful – and no mutually beneficial relationship between the company and the community can be built – until these cases are addressed and the harms are remedied within 2018.
- **Support ATA's call for 5% equity from the BNL's 95% shares should Barrick opts not to provide remedies to the victims within 2018.** The primary reason being that the company has been too negligent and unresponsive and or very slow to respond to allegations. Even though this allegation was confirmed by both national and international investigative reports, the Barrick was unresponsive, too negligent and the calls have fallen on deaf ears. Hence, should Barrick opts not to provide remedy to the 940 backlogged cases within this year, the National Government of Papua New Guinea and its Agencies and or Department can press the company to offload its 5% of the mine's shares as remedy to the victim's representative body, (ATA) in 2019 Porgera's special mining lease review and renewal.
- Authorise ATA to become a party to the Porgera Mine's Special Mining Lease expiry and Renewal come 2019.
- Revoke the riverine tailing permit issued to Porgera Gold Mine and demand BNL to build a dam to monitor and treat active the chemicals before discharging into the riverine system.

- Press the company to resettle all SML and LMP populace away from the mine site.
- Establish a separate non-judicial project level grievance mechanism to provide remedy to the victims of Porgera for failing to adhere to the UN Guiding Principles on Business and Human Rights in particular principles I A(1)“*States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.*”
- **Establish a viable institutional mechanism** to oversee the conduct of all private security actors in Papua New Guinea, including the security force at the Porgera mine. This institutional mechanism shall Investigate and, where appropriate, prosecute individuals who committed abuses in and around the PJV mine. Investigations should consider whether senior management and the company itself bear legal responsibility for violations. There should be publicly available reporting on the investigations, arrests, and any prosecutions for violations committed on or around mine property by PJV employees and/or police or other state security sector personnel.
- **Conduct an assessment** of the implications of corporate-created remedy mechanisms for human rights as well as the PNG justice system, and **consider the adoption of government guidelines** or regulations that may be required for such mechanisms. Any guidelines should strive to ensure that any mechanism centers the rights-holders and addresses power inequalities between the parties involved.
- **Set up Extractive Sector Ombudsperson**, to investigate and where appropriate liquidate multinational extractive companies who abuses human and environmental rights in PNG.
- Make public the results of the police investigation into allegations of rape and extra-judicial killings as well as force evictions by PJV security personnel. Ensure that any perpetrators are fully prosecuted for their crimes.
- Permanently increase the regular police presence at Paiam town to a number and capacity adequate to deal with the area’s many security challenges. Until this is done,

commit resources adequate to sustain the mobile police deployment at Porgera without material support from Barrick.

- Improve access for victims of violence to medical, legal, counselling, and other support services. Health services should include access to post-exposure prophylaxis for HIV and emergency contraception.
- Launch an independent inquiry into allegations of abuse by mobile police squads deployed around Porgera, focusing especially on the forced evictions at Wingima in 2009 and 2017. Make public the results of that inquiry.
- Make public the final report of the government-sponsored 2005 inquiry into killings at the Porgera mine, the Porgera Investigation Committee Report.
- Identify an independent group qualified to carry out a rigorous epidemiological study to assess the likely current and long-term health effects of mercury use by small-scale and illegal miners around Porgera. Seek assistance from international donors to move this process forward.
  - a. Release all past environmental reports submitted to the government by PJV since 1990.
  - b. Carry out a sustained effort to educate the population around Porgera on the health effects of mercury, as well as safer methods of mercury use than those currently employed by most small-scale and illegal miners in the area.
- Provide the hospital in Paiam town with the equipment it needs to screen patients for possible mercury poisoning.

**c. Enga Provincial Government**

- Press the Barrick Niugini Limited to provide remedies to the 940 backlogged cases within this year 2018.
- Support ATA's call for 5% free carried equity from the BNL's 95% shares should Barrick opt not to provide remedies to the victims within 2018.
- Authorise ATA to become a party to the Porgera Mine Development Contracts expiry and Renewal come 2019.



- Revoke the 50 years Tailing License (Riverine Permit) issued to Porgera Gold Mine and demand BNL to build a dam to monitor and treat active chemicals before discharging into the riverine system.
- Press the company to resettle all SML and LMP populace away from the mine site
- Establish a viable institutional mechanism to oversee the conduct of all private security actors in Enga, including the security force at the Porgera mine. This institutional mechanism shall **Investigate and, where appropriate, prosecute** individuals who committed abuses in and around the PJV mine. Investigations should consider whether senior management and the company itself bear legal responsibility for violations. There should be publicly available reporting on the investigations, arrests, and any prosecutions for violations committed on or around mine property by PJV employees and/or police or other state security sector personnel.
- Press the National Government to make public the results of the police investigation into allegations of rape and extra-judicial killings as well as force evictions by PJV security personnel. Ensure that any perpetrators are fully prosecuted for their crimes.
- Permanently increase the regular police presence at Paiam town to a number and capacity adequate to deal with the area's many security challenges. Until this is done, commit resources adequate to sustain the mobile police deployment at Porgera without material support from Barrick.
- Launch an independent inquiry into allegations of abuse by mobile police squads deployed around Porgera, focusing especially on the forced evictions at Wingima in 2009 and 2017. Make public the results of that inquiry.
- Press the Government of PNG to make public the final report of the government-sponsored 2005 inquiry into killings at the Porgera mine, the Porgera Investigation Report.
- Identify an independent group qualified to carry out a rigorous epidemiological study to assess the likely current and long-term health effects of mercury use by small-scale and illegal miners around Porgera. Seek assistance from international donors to move this process forward.
  - a. Release all past environmental reports submitted to the government by PJV since 1990.

- b. Carry out a sustained effort to educate the population around Porgera on the health effects of mercury, as well as safer methods of mercury use than those currently employed by most small-scale and illegal miners in the area.
- Provide the hospital in Paiam town with the equipment it needs to screen patients for possible mercury poisoning.

**d. Recommendations to the Government of Canada**

- Fully investigate Barrick Gold Corps Porgera Gold Mine Project and others throughout the globe under the newly established “Extractive Industries Ombudsperson Office” and where possible press Barrick Gold Corp to provide remedy to the victims.
- Offer to fund an independent group to carry out a rigorous epidemiological study to assess the likely current and long-term health effects of mercury use by small-scale and illegal miners around Porgera.
- Provide financial support for the long-term development of local groups in Papua New Guinea with the capacity for independent monitoring of violence by the police or private security squads, for women’s rights and health organizations providing support services such as emergency care and legal aid, and for helping victims to navigate the public complaint process.

## Appendices

## A. PROFILE OF AKALI TANGE ASSOCIATION INC

### *Formation of Akali Tange Association Inc; A General Perspective*

*"The ATA Inc. has been conceived after constant failure to come to an agreement with the PJV in terms of undertaking compensation specific claims for the families of the victims who have been wrongfully killed by PJV's security personnel before the establishment of the United Nations Guiding Principles on Business and Human Rights in 2004."*

#### *i. Introduction: Persecution of Communities by Multinational Business Organizations.*

The persecution of communities and its local people is as much a characteristic of the history of some underdeveloped countries as it is of the present in Porgera in Papua New Guinea. The end of several protracted conflicts, deaths and unsubstantiated commitment models have not always produced expected dividends in the exercise of fundamental developments for the community and its local people.

#### *ii. Democracy and Individual Rights*

Nothing has been achieved from the wrongful deaths and the exercise of fundamental democratic rights is still fragile in many countries and Papua New Guinea is not insulated from this fact. We have witnessed past practices designed to silence critics, and this has frequently guided and shaped the behaviour and actions of government entities and organizations. In a few cases, notably in other developed countries and South Africa and in the Americas, serious regressions are becoming an issue of worldwide concern.

Against this backdrop, representatives from civil society working for the promotion, protection and defense of human rights have emerged as crucial actors in the struggle to ensure that governments and multinational business organizations account for their actions and strive to uphold the principles of the Rule Of Law.

#### *iii. Human Rights Defender*

In the world today, human rights defenders have fought, often against the odds, to establish fairer, more equitable societies. In doing so they have enhanced human dignity and helped alleviate the hardships of many of the most impoverished, marginalised and deprived sectors of the population. The establishment of the AKALI TANGE ASSOCIATION INC has set the precedent. And will further serve the sole purpose of being the human rights defender of the local people namely the Alluvial Gold Miners of the Porgera / Paiela Valley who have been wrongfully killed and/or have become victims of injustice act by the Porgera Joint Venture's security personnel and PNG Police Mobil Squads.

iv. *Circumstances surrounding the formation of ATA Inc.*

In the process of extracting gold the Barrick Niugini Limited [Company] has caused a large numbers of unlawful deaths and fatal injuries at the mine site on the trespassers from the neighbouring communities who share the same land, which are without proper boundaries. It is an everyday occurrence at the waste dumpsite and stockpile areas of unrest and shoot to kill by the armoured mine securities against the harmless neighbouring community individuals who pan for gold dust as the only source of every day income and food security.

There has been no mining inspection, no safety and environmental awareness interrelation to the killing inflicted on the community populous by Porgera Joint Venture Company. Even after the matter or concerns were raised with relevant government authority in the likes of the Police Department, the Enga Provincial Government, the Mineral Resource Authority etc. Further still, there has been no (CID) Criminal Investigation Division Investigation, no Coroner's inquest neither government input nor direction for the injustice suffered. Thus our concerns and grievance have fallen on deaf ears.

Consequently the Akali Tange Association Inc. has been formed by the community members surrounding the SML Special Mining Lease and the general public of like-minded and relatives of the deceased and injured and membership being extended to provincial and nationwide. The main purpose being to unveil the mining policies, legal requirements and civil suits to bringing about peace and justice to protect the rights of people within the vicinity of mining areas, Enga and the country at large. The Porgera Valley is home of the Ipili people. They are distinct from their neighbours, the Engans in the Enga Province and the Hulis in the Hela Province.

Before mining operations began in 1989, Porgera station was only a small out-station with a sub-district administrative office together with several trade stores. The people were involved mainly in subsistence farming and small-scale alluvial mining.

The soils of Porgera Valley have generally low fertility and high altitude is close to the limit for cultivation of traditional food garden produce. The pre-mining Porgera economy was divided between subsistence gardening, pig raising and alluvial gold mining being the main source of cash income and **main stay** in the economy. Subsistence food production remains a vital part of the economy and should not be weakened. Despite unfavourable geographical and climatic factors the Porgera/Paiela subsistence agriculture remains dynamic and productive within those limits.

The Enga Provincial Government's development strategy recognizes the importance of subsistence agriculture and its role is one of the two basic ways in which the volume of goods and services available to the Enga people can be increased. The inhabitants of Porgera share Huli and Enga highland cultural traits. Contacts with colonial influence began in the 1930s. Adaptation to Western influences has been rapid and the blending of cultures is widely in evidence. The Ipili follow a cognatic kinship system which allows extensive social network formation and results in families generally having claim to several land parcel.

Formal education has not thrived amongst the Ipili people. Primary school enrolments has been low, attrition has been high by PNG standards and compared unfavourably with the Enga average of 90-95 percentage of 7-12 year old population attending primary school. Until this basic educational foundation is improved, all other further programs are limited. Health services for Porgera are reasonable by provincial standards and suffer the same general problem of Enga health care.

v. *AKALI TANGE ASSOCIATION INCORPORATED (ATA INC)*

***Incorporated Under the Association Incorporation Act (Chapters 142)  
Papua New Guinea.***

Name, address and situation of registered office:

**Akali Tange Association Inc**  
**Lower Yanz Kona**  
**Porgera Station**  
**P. O. Box 100,**  
**Porgera,**  
**Enga Province**  
**Papua New Guinea**  
**E-mail: [mc.yapari@gmail.com](mailto:mc.yapari@gmail.com)**  
**Ph: +675 70232023**  
**Fax: +675**

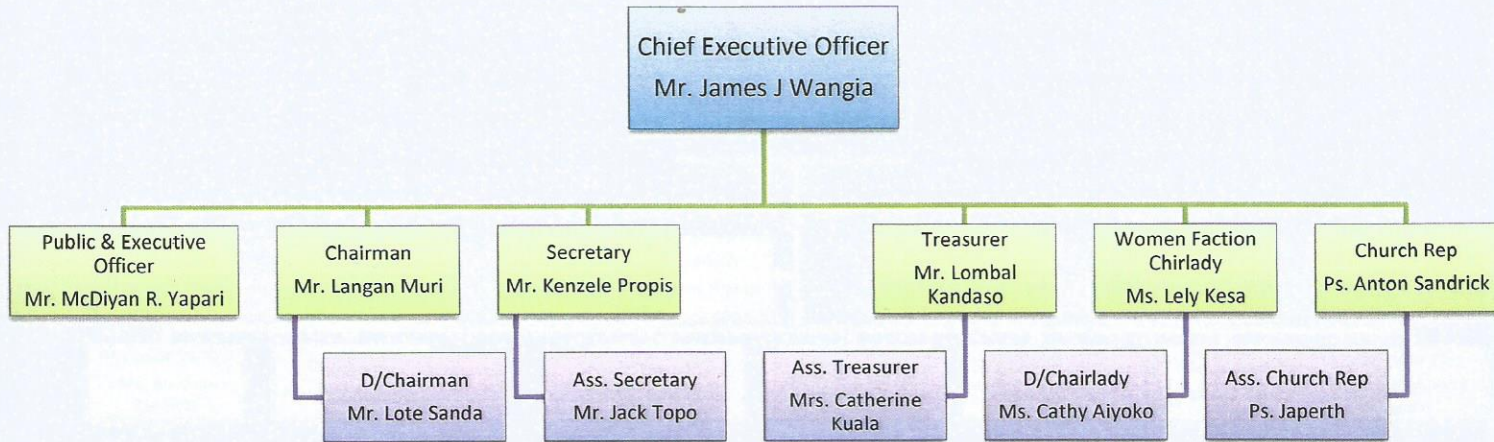
**Executive Board Members**

<b>Chief Executive Officer:</b>	James Jimmy Wangia
<b>Chairman:</b>	Langan Muri
<b>Deputy Chairman:</b>	Lote Sanda
<b>Serectary:</b>	Kenzele Propis
<b>Treasurer:</b>	Lombal Kandaso
<b>Public Officer:</b>	M <sup>c</sup> Diyan Robert Yapari

vi. ATA Structure

a. ATA EXECUTIVE STRUCTURE -2018

Figure 1: Executive Structure



b. ATA WOMEN FACTION STRUCTURE

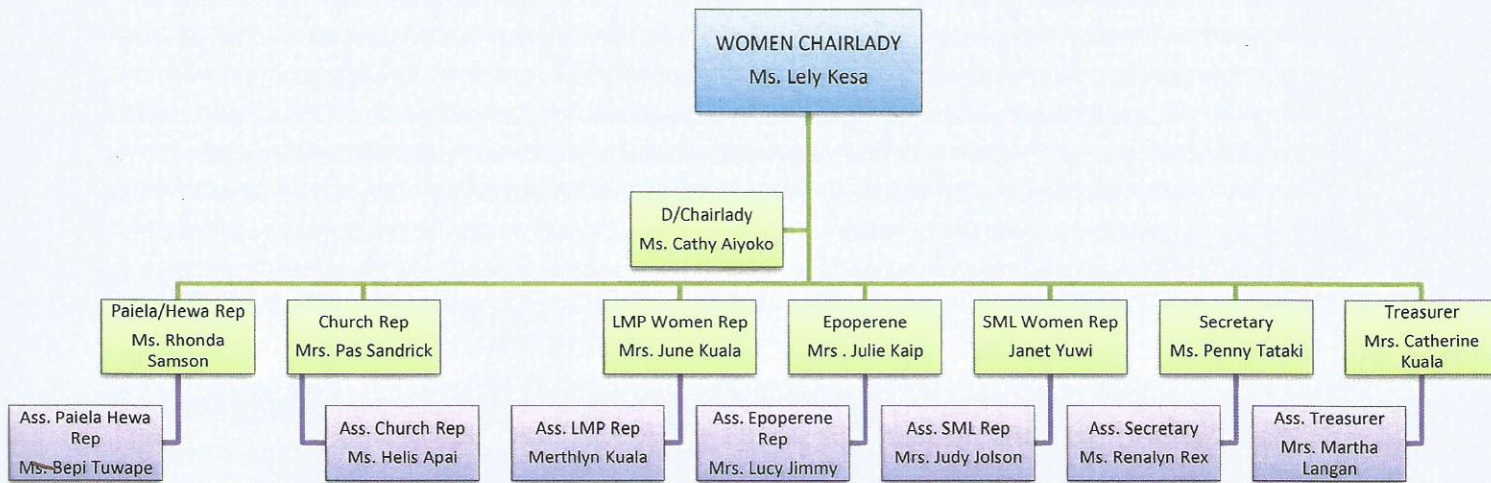


Figure 2: Women Executive Structure



The ATA Inc. has been conceived after constant failure to come to an agreement with the Porgera Joint Venture in terms of undertaking compensation specific claims for the families of more than 21 killed and more than 30 sustain injures on account of unlawful acts by Porgera Joint Venture security personnel. The anonymous numbers can only hint at the appalling magnitude of death and injury toll and the grief of families and communities in the Enga and Hela Provinces of Papua New Guinea.

This crime against local people is a case for grave concern and the indigenous people have become victims under the pretext of development or social-wages. That during the entire cycle of the Porgera Gold Mine Project, these crimes have been committed systematically so, to escape undetected and held accountable. This kind of continue gross violation of human rights and crime against humanity has prompted concerned minded citizens and relatives of victims to conceived ATA Inc. with the sole purpose of being a human rights defender. The ATA Inc. intends to work tirelessly to seek justice and redress for the wrongful killings and the fatal injuries as well as force evictions sustained from Porgera Joint Venture.

*vii. Objectives and purposes of the Akali Tange Association Inc*

The Objectives and Purposes of the Akali Tange Association Inc. are briefly stated Forthwith:

1. To protect and foster the best interest of all Alluvial Miners by any means consistent with the provision of the laws of the country.
2. To ensure monetary compensation and redress for injustice suffered by Alluvial Miners and their defendants' pursuant intentional or unintentional removal of lives and injuries sustained in the hands of the mining companies and associates.
  - a. To make claims and enter into negotiations to obtain equitable rates of compensation for victims.
  - b. To provide assistance for humanitarian relief in time of need in the local alluvial mining communities.
  - c. To ensure that no middleman to negotiate or act on behalf of the victims and defendants.
  - d. To formulate and pursue schemes for social, political, educational, and cultural or health benefits for all alluvial miners and their defendants.
  - e. To enter into contracts and agreements for the purpose of furthering directly or indirectly any or more of the objectives.
  - f. To raise money by contributions and levies or fines for the purpose of carrying out the objectives.
  - g. Trustees for all compensation payments due to the victims and their dependants generally or such trustees shall have power to control and invest same subject to the direction of the Executives.
  - h. To arrange for and procure for the associations or alluvial miners on such terms as the association shall deem fit, all such legal advice, expert opinion, assistance and help in connection with the matters or in defending or prosecution of the rights of Alluvial miners.
  - i. To generally purchase, take or lease or otherwise acquire any real or personal property and any rights and privileges which the association may think is necessary

- or convenient for the purpose of the Associations benefit or convenience of the alluvial miners and its dependents.
- j. To print, publish and distribute any newspaper, periodical books, documentaries, and leaflets that the association may think desirable for the promotion of the objectives of the association.
  3. That the association will apply its profits (if any) or other income in promoting its objectives and;
  4. That, the association will prohibit the payment of any dividend or payment in the nature of a dividend to its members.

*viii. Association and Membership*

The Akali Tange Association Inc. was formed and incorporated under the Papua New Guinea Association Incorporation Act on the 9<sup>th</sup> of November 2004.

In record we have 21 people who have lost their lives, 45 sustained injuries and 15 forcefully evicted victims through the poor operating patterns of the Porgera Joint Venture. Knowing the criminal aspect of this situation the serial killing activity is likely to continue unattended by responsible agencies. This initiative taken by the association is specifically to help the poor illiterate people who have been left helplessly by our government and the giant PJV.

Any person is qualified to be a member of the association upon payment of the membership fees and that includes alluvial gold miners, community members particularly within the vicinity of the Porgera, Mt Kare, and the Enga Province and like-minded people throughout the country of Papua New Guinea.

According to the Universal Declaration of Human Rights the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

The disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear of reprisal and want has been proclaimed as the highest aspiration of common people.

Porgera Joint Venture and its own employees of the Asset Protection Department are part and puzzle of a guest clan invited to live and work in our local area. The continued uses of excessive forces with intend is a case of crime against humanity by economic actors and therefore the situation cannot be attended by law enforcement agencies of our country. The deaths are deliberate and cold blood murder acted with intends linked to a **mercenary type security operation by PJV.**

Porgera Joint Venture acted unlawfully to eliminate and remove lives of armless innocent citizen, (local alluvial miners). The death or those who sustain injury are victims of a cowardice and unlawful shootings by PJV and at the same time the state has neglected to protect its own citizens per the UN Guiding Principles. These people

are shot death at the Special Mining Lease (SML) area and are left to die like pigs and dogs. "That the continued removal of lives by Porgera Joint Venture on whatever account is a planned cover-up operation connected with higher authorities with little or no knowledge of the local Porgera Police," as stated by Sgt. Vincent Kala, Rank # 8009 the, outgoing Porgera Police CID. The police have done little or nothing at all to establish the criminality of these deaths.

Without reasonable doubt, Barrick Gold Corp and its Joint Venture partners were granted special mining lease to dig for gold and not otherwise, the license shot to kill. The company is to bear in mind that they do operate a mine in the Enga Province, which conditions the element of community obligation to compensate the deaths as the saying goes... 'When you are in Rome, do what the Romans do'. Compensation payments in Enga and most of Papua New Guinea is a customary practice which resolves the thoughts and minds to avenge. However the request for compensation has all fallen on deaf ears of the mining company.

*ix. The ATA Inc. Executives*

The Executives was specifically tasked to research and document Barrick Niugini Limited's conducts and features the concept of negligence at International Human Rights Principals, and other human rights laws. And from unprocessed materials gathered so far by the executives, it appears that certain level of direct correlation between the actions of the Porgera Joint Venture and the PNG Government and the crimes suffered by the victims exist.

One other point not to be forgotten about is that the anonymous number of victims and the conduct in which a multi transnational company committed those crimes, including willful killing, torture and detention for **just trespassing** on traditional land that has been not isolated from mining areas desires in-depth explanation at a proper jurisdiction or grievance mechanism and or otherwise crimes have already been committed to account for. The list of deceased and injury toll at the mine site holds sufficient evidence to prove the shareholding joint venture partners of the Porgera Joint Venture accountable for their role in human rights violation based on the doctrine of complicity.

Whereas, the Executives' task is only confine to gather materials to support a compensation specific claim and that could inevitably be in a form of a project level operational grievance mechanism or at a jurisdiction that can permit to hold the joint venture partners accountable to pay compensation, others interested can take on to prosecute criminally.

**B. New Improved Remedy Mechanism &  
Ipili Cultural Compensation Matrix  
Proposed by Victims & All Advocating  
Groups in Porgera for use by the Barrick  
Niugini Limited.**

## OPERATIONAL – LEVEL GRIEVANCE MECHANISM – SUSTAINABLE REMEDY PROGRAM

### PORGERA UNITED HUMAN RIGHTS ADVOCATES & VICTIMS APPROVED OPERATIONAL LEVEL GRIEVANCE MECHANISM & SUSTAINABLE REMEDY DRAFT

#### STAKEHOLDERS

1. Akali Tange Association (ATA) Inc...
  2. Human Rights Inter-Pacific Association (HRIPA) Inc...
  3. Porgera Red Wara Women's Association (PRWA)
  4. Porgera 119 Indigenous Women's Association Inc...
  5. Victims
- 

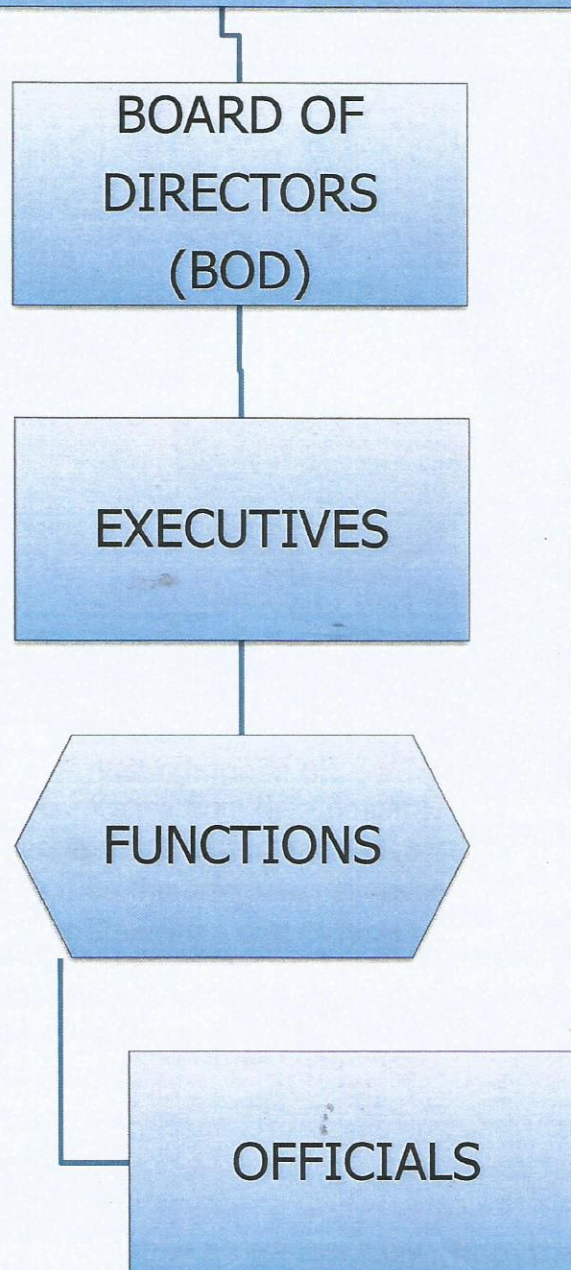
#### **1. A Improved Operational-Level Grievance Mechanism for Porgera?**

All Human Rights Advocating Organizations and the Victims have unanimously agreed to have an Improved remedy mechanism for Porgera.

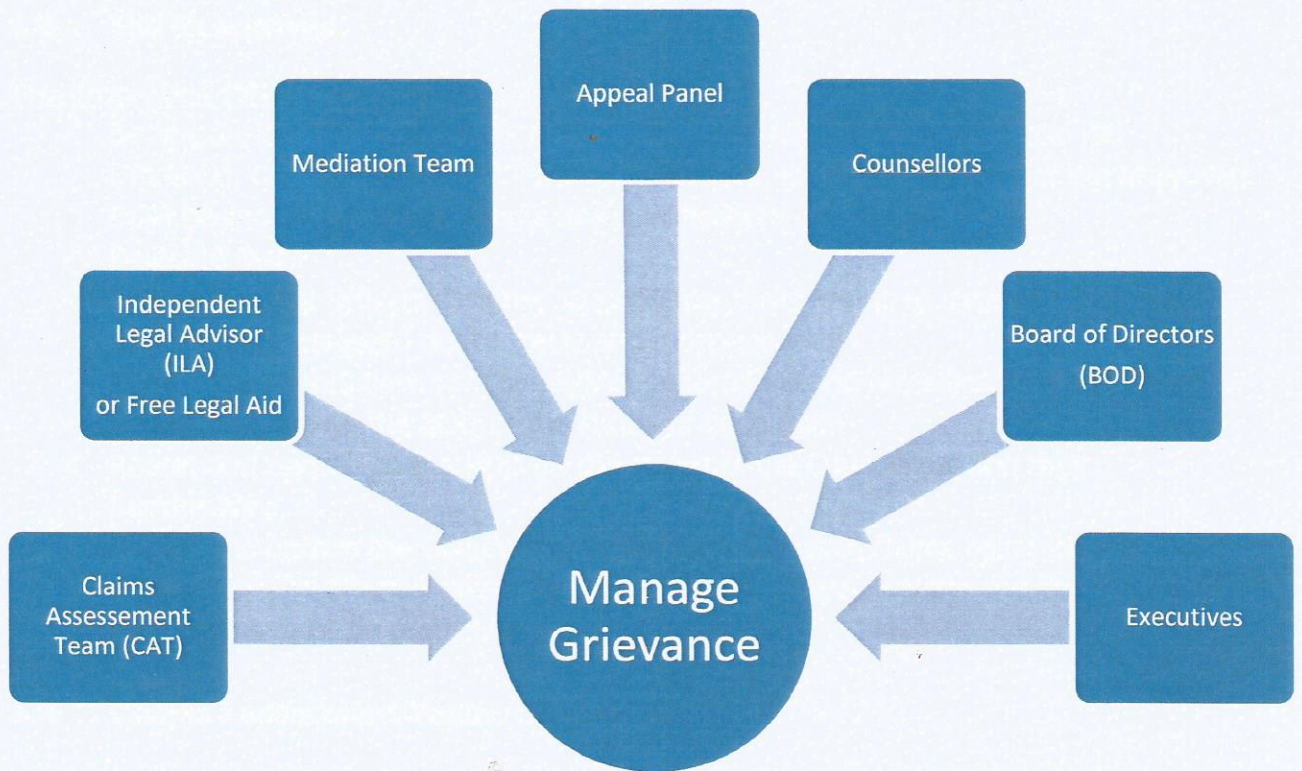
However, the components of the Improved OGM can expand from the PRFA Model provided that we have the expertise to strengthen the mechanism where the PRFA has failed. From this perspective, the group has also resolved to design the Improved Operational-Level Grievance Mechanism in a sense that would incorporate stakeholder engagement.

# IMPROVED OGM FOR PORGERA

(COMMUNITY-DRIVEN OPERATIONAL-LEVEL GRIEVANCE MECHANISM  
- SUSTAINABLE REMEDY PROGRAM)



## Scope of Works (Functions of the Improved OGM)



### **1.2 Board of Directors**

The Improved OGM's BOD must comprise of:

- ✓ A delegate/representative from the Company, the Barrick PJV
- ✓ Advocates, a representative from each advocating groups
- ✓ A representative from the International Advocating group
- ✓ A reputable Senior Statesman or a Political Leader
- ✓ A Senior District Court Magistrate or a retired National and Supreme Court Judge
- ✓ Reputable Community Leader
- ✓ Provincial/District Law and Order Committee
- ✓ Church Pastor/Rep and
- ✓ Women Leader

BOD members must be selected by a representative from the Company Barrick PJV, International Advocacy and the local advocating groups' representatives as to maintain the truly independent program.

The BOD will elect the Executives, Appeal and Mediation Panels and the Executives, Appeal and Mediation Panel Members will be none other than BOD Members

The BOD will have unlimited powers to control, manage and discuss affairs of the new program. This does not mean that an individual BOD has the powers to influence the officials of the program. However, the Executives and officials of the new program shall execute their delegated tasks which are only endorsed via the BOD Meetings.

### **1.3 The Executives**

The Improved OGM's Executives will:

- ✓ Be responsible for recruitment of the Free Legal Aid/Independent Legal Aid Officer(s), Claims Assessment Team, Counsellors, and other Officers of the Improved OGM basing on applicants merits and qualifications
- ✓ Delegate tasks
- ✓ Ensure that the Officers assigned to particular tasks are up to date and that they perform their assigned duties freely and independently
- ✓ Make recommendations for counselling, reparations and remedies for each claimant
- ✓ Report and update the BOD of the status of each claim
- ✓ Report and update on the BOD on the status of the Counsellors and their performance
- ✓ Report and update the Community of the Status of each claims being lodged, assessed and evaluated except for sexual abuse victims, identity and the nature of their claims must be protected.

### **1.4 Claims Assessment Team (CAT)**

It is the prerogative of the Executives of the Improved OGM which will be overseeing and delegating tasks, the CAT will be responsible for:

- ✓ Assessing, evaluating and processing claims freely, fairly and independently in a transparent and accountable manner
- ✓ Assess, evaluate and process claims according to the set procedures and protocols
- ✓ Report every claim, its progress and the outcome to the Executives

### **1.5 Independent Legal Advisor or Free Legal Aid**

Unlike the previous ILA involved in the PRFA program, this Improved OGM's ILA or the Free Legal Aid Officer(s) must:

- ✓ Provide free legal advice to the claimants through the entire process of the new program
- ✓ Be a member of the Appeal and Mediation Panels
- ✓ Represent claimant in the Courts should the claimant opt not to take remedies provided by the program (Improved OGM's Remedy Program) or even after taking remedies provided by the program should the claimant wishes to seek litigation.



- ✓ *Work independently to ensure that the CAT follows set protocols and procedures when assessing, processing and evaluating claims.*

#### 1.6 **Mediation Panel**

The advocates and the victims have unanimously agreed that the Mediation Panel must be separated from the Appeal Panel, the CAT Members and other officers of the program. The new program's Mediation Panel must comprise of:

- ✓ ILA or the free legal aid officer,
- ✓ Senior District Court Magistrate or the retired National and Supreme Court Judge and
- ✓ the Executives

It is also compulsory that the Mediation Panel must be required to report all the Mediation Panels undertakings to the Executives.

#### 1.7 **Appeal Panel**

It is resolved that there must be separate Appeal Panel Members. The Appeal Panel Members shall comprise of:

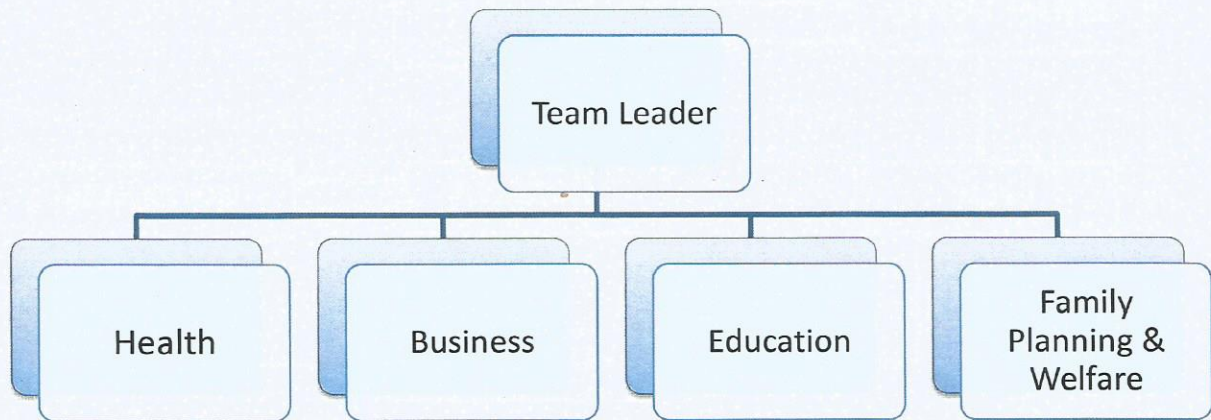
- ✓ ILA or the free legal aid officer
- ✓ Senior District Court Magistrate or the retired National and Supreme Court Judge
- ✓ Some members of the BOD, to be specific, the Community Leader, a representative from the advocates, and the Church Rep.

#### 1.8 **Counsellors**

The role of the counsellors shall vary depending on the nature of the claims and the claimants. This may mean that, when the program recruits/engage Counsellor's, these counsellors must vary and have different backgrounds qualifications like that of the PRFA's engagement. However, some changes must be incorporated into the new program which includes:

- ✓ *Reparation* – Long-term and ensure that the claimants or the victims must be resituated back to normalcy prior to the incident sustained
- ✓ *School fees* – the program must provide school fee assistance to all the claimants/victims' children starting from 5 to 18 years of age or until such a time when the kid completes his/her school
- ✓ *Business Training* – Provide basic business training to the victims and ensure that the program counsellors inspects, audits and provide ongoing consultations and training
- ✓ *Trauma/Psychological Counselling* – Ongoing counselling until such a time when the claimants/victims totally recover from the trauma suffered

## 1.9 Structure of the Counsellors



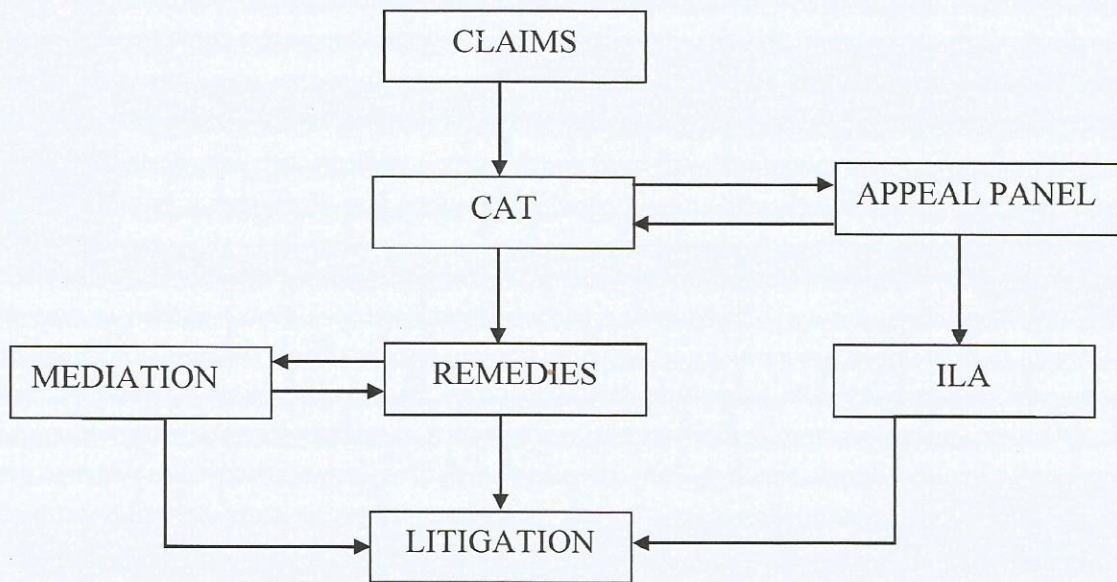
Since the primary goal of the Improved OGM is to Manage Grievance in a transparent, predictable, rights-compatible and equitable manner, after the recommendations from the CAT and the Executives, the role of the Counsellors is to ensure that each victimized claimants are:

- ✓ Resituated to normalcy prior to the incident
- ✓ Provided with sustainable healthcare, education and remedies.

*The Improved OGM must train local advocates to actively participate in all aspects of Counselling. Train the trainers' program must be established in Porgera or either sponsor local advocates to attend such course at reputable organizations.*

### **Emphasis Added:**

It is further resolved that the Improved OGM must be planned, designed and implemented in a legitimate, accessible, transparent, predictable and rights-compatible manner as for the output of the Improved OGM must be equitable, culturally-appropriate and satisfactory to all claimants. Hence, the design and the layout of the claims process must be as follows:



**Notes:**

- ✓ We have further resolved through the four consecutive meetings that should a claim be unsuccessful and does not meet the set procedures and protocols of processing and evaluating claims, the claimants must have another avenue to lodge his/her claims again and this is at the Appeal Panel. The Appeal Panel shall carefully consider the claimants' appeal and should the Appeal Panel sees that the claimants' claims are legitimate; however, being dropped by the CAT, then the Appeal Panel will write recommendations for the CAT to reprocess the claims. However, should the Appeal Panel is still not convinced by the Claimant and decides not to process his/her claims then the Claimant can still approach the ILA or the free legal advisor for legal assistance and eventually end up in litigation. The burden of proof must be with the Improved OGM.
- ✓ As resolved, the Improved OGM for Porgera must be community driven operational-level grievance mechanism. Therefore, ad hoc, power imbalance, leave it or take manners in providing remedies, and to sign off legal rights in exchange for remedies will not be altered. The victims' rights must be respected all throughout the process. For instance, should a claimant opts not to accept the remedies provided after evaluating his/her claims, then the claimant can appeal his/her claims through the Mediation Panel. Should the Mediation Panel is convinced of his/her claims, the Mediation Panel can decide on the next optional remedy package and make recommendations to the Executives for approval and payment.
- ✓ Additionally, should the claimant is still not satisfied with the remedy package being offered by the Mediation Panel, he/she can get the remedy package

offered via mediation and can still seek litigation with the assistance of the ILA or the free legal aid officer(s).

- ✓ Should the claims lodged via Mediation Panel is unsuccessful, the claimant(s) can still get the remedy package provided through the CAT process and with the assistance of the free legal aid officer can freely seek litigation.

"These processes will do away with the Legal Waiver system and the claimants/victims' rights will be respected, protected, supported and promoted all throughout the entire process. Hence, the Improved OGM once planned designed, drafted and implemented using this principle will be legitimate, accessible, rights-compatible, and transparent and the outcome of the program's process will be satisfactory to all claimants, stakeholders and the right-holders".

### **BASIC UN GUIDING PRINCIPLES TO BE INSERTED IN THE IMPROVED OGM STRUCTURE**

The advocates and victims after lengthy discussion resolved that the utmost key components of the UN Guiding Principle on Business and Human Rights [The Guiding Principles] must be inserted into the Improved OGM as outlined below:

- Legitimate
- Accessible
- Predictable
- Equitable/Fair
- Transparent
- Rights-Compatible
- Culturally Appropriate

#### **Legitimate**

The Improved OGM must have clear, transparent, and sufficiently independent governance structures to ensure that no party of the Improved OGM will have the influence to a particular grievance process nor can interfere with the fair conduct of that process.

#### **Accessible**

The Improved OGM must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers of access, including language, literacy, awareness, finance, distance, or fear of reprisal.

Further, we are fighting for the underprivileged and the marginalized. Therefore, our Improved OGM must be accessible to all of the Porgera Human Rights Violation Victims. In order for our Improved OGM to be Accessible, we must incorporate the

following in our structure. Our Improved OGM must be announced in all forms of media prior to inception. The Location of the OGM must be central and accessible to all victims. Office and Administration must follow due diligence and information must be accessible to all stakeholders.

### **Predictable**

The Improved OGM must provide a clear and known procedure, with time frames for each stage; clarity on the types of process and the outcome it can (and cannot) offer; and means of monitoring the implementation of any outcome.

### **Equitable /Fair**

The new mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair and equitable terms.

### **Rights - Compatible**

The new mechanism must ensure that its outcomes and remedies accord with internationally recognized human rights standards.

Additionally, we want our OGM to be aligned to the United Nations Guiding Principles and other Operational-Level Grievance Mechanisms which are universally accepted and recommended by the Office of the UN High Commissioner for Human Rights. Therefore, we incorporate the following into our structure;

### ***Fair Remedy***

The remedy provided must be internationally acceptable and culturally appropriate. We must devise a fair remedy **matrix** in the OGM.

### **Transparent**

The new Community Driven Operational- Level Grievance mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake and should presume transparency wherever possible. This non-state mechanism must be transparent about the receipt of complaints and the key elements of its outcomes.

Since we are trying to uphold individual rights for the victims of Porgera Human Rights Violation. Therefore, all our conducts and ethics must be transparent and accepted by all stakeholders.

The following will be added to our structure;

- ✓ All Official Business must be undertaken in due diligence.
- ✓ There must be no room for nepotism, favouritism and wantok system.
- ✓ Claims Assessment Team must be structure to identify, evaluate, and process claims in compliance to set procedure. A procedure will be set to process claims in the OGM.

## **Culturally Appropriate**

The Improved operational-level grievance mechanism must be responsive, respectful, and predictable—clearly laying out an expected timetable for key process milestones. The new Community Driven Operational-Level Grievance Mechanism must be capable of bridging the deep divides, including cultural divides. The design and operation of the new grievance mechanism must consider the Enga/Ipili's cultures, such as compensation; attitudes towards compensation, cooperation, and conflict; the desire to preserve relationships among complainants; authority, social rank, and status; ways of understanding and interpreting the world; concepts of time management; attitudes toward third parties; and the broader social and institutional environment.

## **2.0 REMEDY MATRIX - CULTURALLY APPROPRIATE CONTEXT**

### **2.1 Introduction:**

Unlike any other regions in the world, the Enga/Ipili speaking people have a very unique cultural and traditional norms or values. The cultures or the traditions include; marriage, initiations, tribal fights, making of gardens and houses, compensation (tee), greeting and looking after foreigners and traditional dancing and others to name a few. These cultural or the traditional norms have been passed on from generations to generations and are being heavily practised today despite foreign or western influences. Therefore, the Ipili/Enga's culture or the traditions has long been part of one's life and when breached a penalty was imposed via mediation or conscience of the perpetrator. This may mean that a perpetrator is obliged by the culture or the tradition of the Ipili society to at least pay a penalty either by one's own life or by valuable assets according to the severity of the breach of the culture or the tradition. This is also evident in PNG's constitutions where most of its laws are cultural or traditional based laws.

Compensation, as discussed, is one utmost part of the many cultural or traditional norms or values that the Ipili speaking people have in their part of life. The compensation or the TEE in Ipili or Enga language comes in many forms. The Ipili people practise this compensation culture when: (refer ENGA CULTURAL & COMMUNITY WISDOM FROM THE PAST: *by Polly Wiessner the Professor of Anthropology at the University of Utah in the US.*

- ✓ A person(s) is intentionally or unintentionally killed
- ✓ A person(s) is beaten
- ✓ There is a breach of a verbal agreement
- ✓ A person(s) is wrongfully accused of a murder, beating, rapes and others
- ✓ When someone's dwelling houses and areas are burnt or destroyed
- ✓ And others

Further, before the perpetrator pays compensation demand is given by the custodians of the victim or the victim to the perpetrator. The demand is calculated using some of the key aspects or compensation principals which are also part of the traditional or cultural norms.

## 2.2. ASPECTS OF CULTURAL DEMAND FOR COMPENSATION ANALYSIS

As highlighted above, the demand calculations are based on the past and current social settings. This may mean that during the prehistory or before the Westerners set foot on the Ipili/Engan's land, the demand calculation was based on those days' social situations. Currently, the Engan and the Ipili people use both the past and current social and economic settings as well as the future social and economic sceneries after careful esteems.

The **key elements or the principals** of cultural based compensation or the compensation demand include:

- a. *Status of the perpetrator*
- b. *Status of the victim*
- c. *Location of perpetrator*
- d. *Location of victim*
- e. *Fear of Retaliation*
- f. *The relationship between the perpetrator & the Victims' Family*
- g. *Victim's and Family's Consequences afterwards; e.g. Family & children*
- h. *Nature of the incident; eg intentional/unintentional*

### ***Status of the Perpetrator***

Before a demand is given, the custodians of the victim and the victims themselves discuss the status of the person whom they would like to give demand for compensation. Should the person being wealthy in terms of pigs and money, the demand would be higher and should the person be poor, the demand given would be moderate or sufficiently enough for the perpetrator to afford.

### ***Status of the Victim***

It is the prerogative of the victim's custodians to value the status of the victim. These include; age, number of dependants, participation in the community by the victim, background qualifications, social and economic standings or assets, to name a few of the victim.

### ***Location of perpetrator***

It is also a Cultural Analysis to take into consideration the location of the perpetrator. Should the perpetrator's location is closet or near to that of the victim, the demand for compensation given by the perpetrator is much higher as to avoid retaliation which would result in tribal warfare.

### ***Location of Victims***

Additionally, the location of the perpetrator and its relatives do take into account of the victims' location when accepting or rejecting demand given by the relatives of the victims or the victim themselves. As stated in clause 1.5 below, the perpetrator's tribesmen and relatives to do take into consideration the victims' relatives association with themselves. Should the perpetrators' connotation is closer, the compensation demand is given by the victims' relatives and the victims themselves

are met without rejections. This is purely done to maintain the relationships built over time and to avoid retaliation.

### ***Fear of Retaliation***

As stated above, Engan/Ipili people have very sturdy cultural and traditional norms. Of the many norms, retaliation is the toughest. The Engans/Ipili people practise TOOTH FOR A TOOTH AND EYE AN EYE traditions. This norm has been practised by this society for ages. Though PNG is influenced by westerners, this traditional practice is still being practised to date.

### ***The relationship between the perpetrator and the victim***

Moving on with, the perpetrator and the victims' relatives taken into consideration of their relationship. Should there be a sturdy relationship between the victim and the perpetrators' relatives, the perpetrators' relative and the perpetrator him/herself take into account of this relationship and they do everything and anything to maintain the relationship that they have had established. Thus; when a demand is given by the victim or the victim's relatives, they also take into account this relationship as well as the perpetrator's relatives. Therefore, the perpetrator and their relatives meet the victim and the victim's demand without hesitation and delay as to avoid retaliation and to upset the victim's relatives regarding the incident or the saga. This is done to maintain the cohesive relationship that they have now and to respect the years of a relationship that they had built.

### ***Victim's and the family's consequences afterwards***

Furthermore, the victim and his/her relatives take into account the nature of the sufferings the victim's family is or will be going through. This may mean that the victim's relatives value the sufferings that his/her family will possibly go thru prior to the incident. The perpetrator and his/her relatives value the same sufferings. Therefore; when compensation is made by the perpetrator and his/her relatives, they give priority to the victim's immediate relatives including the victim's wife, children and biological parents and brothers or sister. This is done by secretly putting pigs and money for the victim's biological relatives. These pigs and money which are secretly being kept or withheld by the perpetrator and his/her relatives are used by the victim's family uses, specifically to sustain their livelihoods.

### ***Nature of the incident (Intentional or unintentional)***

Moreover, before a demand is given or taken, the victim and his/her relatives, as well as the perpetrator and his/her relatives, take into consideration the nature of the incident. Should it be intentional, the demand given is higher and vice versa. Also, the perpetrator and his/her relatives accept the demand without complaints and rejection.

On the same token, those incidents that caused death or injuries unintentionally can also be given and accepted demands in the same way as intentional. This means that a death is a death and injury is an injury, no matter how it is caused.



### **3. COMPARATIVE ANALYSIS – CULTURAL & CORPORATE ALIGNMENT**

To have a clear understanding of the United Porgera Human Rights Advocacy's insertion of the Remedy Matrix, we hereby wish to clarify on the juncture of the Engan/Ipili's complex traditional norms or aspects in calculating the demand for compensation. This is done in the following manner by inserting the key cultural principles:

- ✓ *Status of the perpetrator*
- ✓ *Status of the victim*
- ✓ *Location of perpetrator*
- ✓ *Location of victim*
- ✓ *Fear of Retaliation*
- ✓ *The relationship between the perpetrator & the Victims' Family*
- ✓ *Victims' Family Consequences; e.g. Family & children*
- ✓ *Nature of the incident; e.g. intentional/unintentional*

#### ***Status of the perpetrator***

The perpetrator of all claims is PJV Barrick while comparing with other indigenous businessmen and politicians having its corporate status within the community.

#### ***Status of victim***

The status of the victims varies depending on their:

- *Educational background*
- *Social Standings in the community*
- *Health status, etc...*

#### ***Location of the perpetrator***

The perpetrator is PJV Barrick and is a corporate citizen of the community.

#### ***Location of victim***

The victims are the indigenous people living adjacent to the corporate company within the community.

#### ***Fear of retaliation***

Corporate and cultural principals clash here, therefore, victims resort to human rights advocates. Human rights organizations address issues and manage victims' grievances for redress.

#### ***The relationship between the perpetrator & the Victims' Family***

*The community including victims and PJV Barrick live together within the same community.*

#### ***Victims' Family Consequences; e.g. Family & children***

*The consequences faced by the victim's family are heavily reflected in the compensation package by the perpetrator.*

***Nature of the incident; e.g. intentional/unintentional***  
*Intentional or unintentional, compensation is paid.*

## 4. STATISTICAL ANALYSIS

### 4.1 Corporate Context

Under the non-judicial grievance level mechanism, corporate companies use various methods for remediation depending on the nature of the victim.

### 4.2 CULTURAL CONTEXT/PRECEDENCE - COMPENSATION

The statistics of every compensation is drawn while using the key elements or principals derived from the societal norms or values. The statistical value of every compensation claim is heavily depended upon the social standing and the magnitude of social status and wealth a particular person may possess in a certain community. For instance, Nixon Mangape founding chairman of Porgera Landowner, Kupian Company and also a common key figure of Porgera community has compensated a man from Western Highlands (Hagen) while using these cultural or societal norms as guiding principles. And also compensation made in Western Highlands to a man from Enga allegedly killed at Mt. Hagen.

### PJV Newsletter Ipili Wai Pii May/June 2004 issue Number 131

## Porgera Clan Pays Huge Compo

A clan in Porgera, Enga Province has paid what is believed to be the biggest compensation ever to be paid by anyone in the country.

The Muape clan of the Tieni tribe recently gave 407 live pigs, one cassowary and K2,000 in cash to the Ulga clan of Nebilyer, Western Highlands for the death of one of their clansmen.

Earlier, it had paid another K12,000 in cash as sorry money for the death of the late Paulus Wak, a father of four young children who was murdered at a Porgera market in January this year while selling vegetables.

It is understood the accused had taken out his anger and frustration on the late Paulus Wak because he was a Western Highlander, an easy target for retaliation over the adulterous affairs of his wife who comes from Minj but was going around with someone from Bantz.

The accused who is now in police custody awaiting trial is the younger brother of prominent Porgera leader and businessman, Nixon Mangape who personally handed him over to



the amount of cash that was paid, saying it was not enough to help his people hire trucks to take the pigs back to Nebilyer. He said the number of pigs should have been reduced to half and the value of the other half given in cash.

However, after much debate, the Nebilyer people finally accepted the pigs and money but sold some of the pigs later to help hire trucks to take the rest home.



The Ipili Cultural Compensation comes in two forms:

#### 4.3 Bel-Kol (Sympathy) Payment

The *Bel-kol* or the sympathy compensation payment is given by the perpetrator(s) and relatives in advance prior to the incident. (*Refer to Nixon Koeka Mangape's Compensation payment as stated above*)

#### 4.4 The Initial Compensation

The initial compensation is given after the demand given by the relatives of the deceased or the victims

An illustration is inserted below to further explain the break-up of the pigs and its value:

Cultural Compensation Values & Break-ups

No	Sizes of Pigs	Total Pigs	Price/Pig	Total in Monetary Values
1	Large/Head Pigs	70	PGK 8,000.00	PGK 560,000.00
2	Intermediate Pigs	200	PGK 5,000.00	PGK 1,000,000.00
3	Mediate	100	PGK 1,500.00	PGK 150,000.00
4	Small Pigs	37	PGK 800.00	PGK 29,600.00
	<b>Total</b>	<b>407</b>	<b>PGK 15,300.00</b>	<b>PGK 1,739,600.00</b>

*Note: The above Compensation break-up is based on the Nixon Managape's Compensation precedence which was published by the PJV-Barrick's Ipili Wai-Pii dated. Also, note that the pigs are arranged in sequence ranging from the biggest to the smallest. The illustration above does not include the bel-kols and the total monetary figures paid during the initial compensation period.*

#### 5. Issues to be dealt with under this matrix

- A. Deaths – negatives impacts on the immediate family members' socioeconomic situation**
- B. Injuries – negative impacts/socioeconomic situation**
- C. Force Eviction = negative impacts/displacement**
- D. Rapes – stigma and degradation of health status**
- E. Chemical poisoning – extended degradation of the health status of victims**

#### 6. Continuous Learning

*Identifying key lessons and improvements* – Upon Consultation and Rights-Holder Engagement, the new mechanism must evolve in some important and positive ways for the claimants in light of feedback that will be received. Continuous learning must be improved through additional formalized and regular processes of feedback from stakeholders to complement the informal mechanisms and assessments to be used

## **7. Independent? - Independence of the new Remedy Mechanism**

### ***Resolution:***

We want to make this Improved OGM a very independent body that will cater for all forms of Porgera victimization.

For the OGM to be Independent the BOD will comprise of:

- i. PJV-Barrick Rep,
  - ii. Local Advocate Reps,
  - iii. International Advocates
  - iv. National Govt Rep,
  - v. A Senior District Court Magistrate/retired National & Supreme Court Judge
  - vi. Church Pastor/Rep
  - vii. District Law & Order
  - viii. Community Leader and
  - ix. Provincial Legal Officer.
- ✓ The BOD will elect the OGM Executives. (Note that the Executive Team will be BOD members)
  - ✓ In order for the above BOD Members to be truly independent, the selection of the BOD must be done in consultation and or with the Barrick PJV, the Porgera Advocating Groups and the International Stakeholders in the likes of the MiningWatch Canada, Harvard & New York International Human Rights Clinic

## **8. How funded?**

After lengthy discussions, all members of the session have unanimously resolved that, since this Improved OGM is an initiative of the Barrick PJV to process and evaluate allegations against the Company, Barrick PJV must wholly initiate the establishment of the Improved OGM.

## **9. Available under what circumstances? The permanent or Short term?**

It is resolved after lengthy discussions that the new Community Driven Operational-Level Grievance Mechanism must be established in such a way that it must operate permanently. The reason being that, as long as the mine exists, there will still be grievances, either caused directly or indirectly by the mine and its operations.

## **10. Issues to be dealt with?**

The issues to be dealt including:

- ✓ Extrajudicial killings/shootings or deaths
- ✓ Injuries
- ✓ Rapes/gang rapes
- ✓ Chemical poisoning
- ✓ Force Eviction/property destruction

## **11. Location?**

Three locations

1. Porgera
2. Hagen
3. Port Moresby

A case can be filed in Hagen or Port Moresby, but all activities of the OGM are in Porgera. The locality of the Improved OGM must not be within the vicinity of the PJV Mine Site. It must be situated near or within Porgera Government Station which can be Porgera Station or Paiam Town where it can be easily accessed.

## **12. Filing Claims? Free Legal Aid?**

Resolved to have a free legal office incorporated within the OGM's structure and to be fully funded by the OGM as explained above.

Also resolved that victims will have a legal representative in the OGM that works only for them and that they trust. If they do not trust the legal representative in the OGM, they must be given enough funds to get their own legal support by the program.

## **13. Investigations? How? Who?**

All parties to be involved both within and abroad, including:

- a) Local human rights advocating organizations
- b) Villager counsellors for women and for men
- c) Church Pastors
- d) Community Leaders
- e) Relevant government organizations (Police Dept, Health Dept, etc,
- f) International Partners

All to be funded by the Improved OGM during an investigation.

Barrick and any other extractive industry in the future to provide relevant evidence (CCTV footage, documents or information)

### **How?**

Local advocates and advocating organizations report on the nature of an occurrence of human rights and environmental issues. Some may be small-scale and existing and others may be catastrophic in nature that will demand a critical investigation. Barrick will also give evidence to the grievances office (OGM) where OGM will have measures to assess the situation and call for an investigation.

## **14. What is fair remedy?**

### **14.1 Direct Remedy from the Improved OGM**

As discussed, the remedy provided by the Improved OGM must be fair, satisfactory, rights-compatible and culturally appropriate and also that of internationally recognized and approved standard price. The remedy must come in three forms and these are as follows:

- ✓ Reparation
- ✓ Restitution
- ✓ Redress Compensation

### **14.2 Sustainability Options:**

*Set up business arm for the victims:*

- ✓ *Treasury Bills with central bank*
- ✓ *Term deposits with commercial banks*
- ✓ *Victims Micro Finance*
- ✓ *Business contracts with PJV Barrick*
- ✓ *Real Estates*

Certain percentages of a particular victim's remedy can be diverted to the company where the victim automatically becomes a shareholder. A permanent contractual relationship can be established with Barrick in which the victims' company will have attached to Barrick which should be *legally bound in the Improved OGM, Barrick and PNG Government*. However, this shall be done according to the victim's conscience and wills.

## **15. Waivers?**

All have unanimously resolved to do away with the waivers as it has permanently deprived our rights as human beings in all aspects of our lives.

## **16. Last Resort.**

- 16.1 Lodge all Porgera human rights grievances with the new Canadian Extractive Sector Ombudsperson's office.
- 16.2 File International lawsuit
- 16.3 Claim five percent (5%) equity share in 2019 during the Porgera mine agreement

**17. PRFA (119)**

We all agree to respect and support the complaint made by “the 119” to the UN Working Group on Business and Human Rights on January 8, 2017. This complaint sets out their concerns and their remedy requirements.



Photo showing pigs being lined up using Ipili Cultural Compensation Matrix.

## **C. Examples of Community Driven-Grievance Mechanism**

### **1. Ahafo South Mining Project Grievance Mechanism, Ghana**

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

### **2. The Hokie Spirit Memorial Fund at Virginia Tech**

Following the 2007 Virginia Tech shooting spree in which a mentally ill student killed thirty-two classmates and faculty members, Virginia Governor Tim Kaine set up the Hokie Spirit Memorial Fund to compensate physically wounded victims and family members of the deceased.<sup>5</sup> Victims and relatives were given three options for redress: compensation programs, restitution, and litigation. Families received \$100,000 compensation packages for a deceased family member, and injured victims were eligible to receive up to \$100,000 (this is Virginia state law's cap on personal injury claims). Furthermore, families of the deceased were able to seek extra money from a \$1.9 million fund created for restitution purposes. These forms of redress did not preclude litigation, as claimants in this compensation scheme "retain[ed] the right to sue in court."<sup>6</sup> As Kenneth Feinberg's book *Who Gets What* explains, "[A]ll two hundred claimants who received compensation had every right to use the money to hire a lawyer and file a lawsuit against Virginia Tech, [though] only two chose to do so."

### **3. Hewlett-Packard, Mexico**

The complaint process has a number of steps, and both the employee and the company retain the right to pursue litigation at any point throughout the process.

### **4. Gap, Inc.**

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



## **5. Harvard Kennedy School of Government Corporate Social Responsibility Initiative**

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

Additional Australian examples:

## **6. Aboriginal Trust Fund Repayment Scheme**

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

## **7. Victim's Compensation Schemes**

- Victim's compensation's schemes in Australia generally provide for the payment of compensation to victims of serious crime, assessed by an independent tribunal and paid by the government. The payment of compensation does not affect the victim's right to bring legal proceedings (whether against the government or an individual): *Victims Support and Rehabilitation Act* 1996 (NSW) section 43(2). However, the compensation may be subject to a condition that the compensation be repaid from any subsequent award of damages in subsequent legal proceedings: 34(1) (c) and the government has a right to receive the compensation for any subsequent award of damages: *Victims Support and Rehabilitation Act* 1996 (NSW) section 43(3). Similar provisions apply in Victoria: *Victims of Crimes Assistance Act* 1996 (Vic) section 51 and South Australia: *Victims of Crime Act* 2001 (SA) sections 17 and 28.