



## **Barrick Response to Business & Human Rights Resource Centre**

**July 23, 2010**

Barrick Gold Corporation and the Porgera Joint Venture (PJV) are committed to protecting the human rights and dignity of women, men and children living near the Porgera mine in Papua New Guinea (PNG). As responsible mining companies, we operate aligned with the Voluntary Principles on Security and Human Rights and do not tolerate criminal conduct by any person in our employment.

Earlier this month, the Business and Human Rights Resource Centre forwarded to Barrick a report prepared by Mr. Tyler Giannini from Harvard Law School and Ms. Sarah Knuckey from New York University School of Law. This report was originally submitted to members of the Canadian Parliament's Standing Committee on Foreign Affairs and International Development in connection with their October 2009 testimony. This marks the first time Barrick or PJV have been provided with a copy of this document.

The report contains a number of very serious allegations, including alleged criminal offences involving security personnel at the Porgera mine. These allegations are of great concern to us and should be pursued by the proper legal authorities in Papua New Guinea. For this reason, we have submitted the report to the Police Commissioner and Ombudsman of Papua New Guinea. We also wish to outline recent company actions taken by PJV and Barrick concerning these allegations.

We strongly urge Mr. Giannini and Ms. Knuckey, who may be in receipt of information dating back as early as 2006, to provide all supporting documentation immediately to PNG authorities to enable them to conduct a complete investigation.

We also note that the Giannini/Knuckey report contains a number of material errors of fact which lead to false conclusions. Barrick attempted to engage in a constructive dialogue with Mr. Giannini and communicated our concerns in writing. For the purposes of this limited response, we have selected some representative errors, which we wish to correct for the record. (*See link: Response to allegations regarding the relationship between PJV and the Royal Papua New Guinea Constabulary*).

### **Response to Allegations of Sexual Assault by Porgera Security Personnel**

Sexual assault is a repugnant criminal act which Barrick and the Porgera Joint Venture condemn in the strongest possible terms.

Before receiving the Giannini/Knuckey report, Barrick and the Porgera Joint Venture had commenced an investigation into alarming allegations that Porgera security personnel may have been involved in sexual assaults of women on mine property. A representative of PJV was advised verbally of these allegations, in general terms, during a meeting with a representative of Human Rights Watch in May 2010.

Following a further request from PJV, Human Rights Watch provided more detailed written information to the company. This marked the first time that specific and detailed allegations of sexual assault by PJV employees have been shared with Barrick and PJV.

Upon receipt of this additional information from Human Rights Watch, PJV immediately contacted the police and provided the written information received from Human Rights Watch, and requested that the police conduct a formal criminal investigation into this extremely serious matter. We appreciate Human Rights Watch's willingness to share this information, as it will greatly assist authorities as they act on this matter.



We are also aware that allegations concerning police conduct have been raised. Since this concerns the police, we have reported it to Commissioner of Police and the Ombudsman of PNG. The Ombudsman's role includes providing independent oversight of police activities.

It is our understanding that PNG authorities have established a police task force which is taking a three-pronged approach to investigating the relevant allegations that have been made to date: the criminal investigations branch of the police will investigate the allegations raised with respect to PJV security personnel; the internal affairs branch of the police will investigate allegations made against the police; and the Ombudsman will monitor the investigation of the allegations relating to the police. PJV has committed to police authorities that it will do all it can to support and co-operate with the police investigation including any criminal proceedings that result against any persons found to be involved.

Following PJV's referral of the Human Rights Watch allegations to the police, PJV engaged Papua New Guinea's highly respected former Chief Ombudsman and statesperson Mr. Ila Geno to make independent inquiries within the community into the sexual assault allegations. PJV and Barrick are committed to doing all that we can to ensure these matters are fully and properly investigated and that any person involved in committing these offenses is brought to justice. The expectation is that Mr. Geno will refer the results of these inquiries to the police task force once it has arrived in the region, in order to assist task force members in conducting a thorough and comprehensive investigation.

We urge any person or organization that may have credible information or evidence that could assist with this criminal investigation to provide it immediately to PNG authorities. All parties have a responsibility to support these police investigations, working within existing legal and judicial institutions in Papua New Guinea.

#### **Porgera Women's Welfare Liaison Officer**

Violence against women and sexual assault are widespread and pervasive problems within Papua New Guinean society. Women who are victims of violence may be reluctant to report this crime to police, judicial authorities and community leaders for a variety of reasons.

In June 2010, Barrick and PJV announced the creation of a Women's Welfare Liaison Office, a new position which will be affiliated with the Porgera District Women's Association (PDWA), at arm's length from PJV. The Women's Welfare Liaison Officer will serve women living in the communities near the Porgera mine by providing an additional support mechanism for victims of sexual and physical assault to enable them to come forward, receive counseling and support and seek redress under the law.

PJV is currently working with the PDWA to advance this initiative and has been a primary funder of this non-governmental organization that has a membership of more than 2,000 women. We anticipate that this new officer position will increase the capacity of the PDWA. We welcome the input of civil society and other interested parties to ensure this position empowers women to uphold their rights under PNG law.

#### **Understanding Violence against Women in PNG**

As part of ongoing efforts to better understand the complex social and cultural factors associated with violence against women, we will be engaging external researchers with expertise in this area to examine this issue in a culturally- and gender-sensitive manner, working with local community leaders and others. A key objective will be to identify key factors and barriers to the reporting of these offences and the prosecution of offenders.



### **Other Actions Underway**

In light of the concerns that have been raised, Barrick and PJV will also assess ways to further improve the security environment and the safety and security of women and men on mine property.

PJV is an active partner in the Restoring Justice Initiative, a government-community initiative in the Porgera region to strengthen law and order and improve the safety and security of the community, addressing such issues as violence against women and recourse to justice. We are continuing to engage in this important community-based justice initiative.

Barrick is committed to responsible mining, which is central to our way of doing business around the world. We will not tolerate violence against women at any of our operations and will provide any necessary assistance to police and government agencies as they investigate these matters.

### **Response to allegations regarding the relationship between PJV and the Royal Papua New Guinea Constabulary**

Although we dispute many of the matters raised in the Giannini/Knuckey report, we take particular issue with the section concerning the relationship between PJV, police reservists, and the Royal Papua New Guinea Constabulary (RPNGC). The report mischaracterizes this relationship and draws conclusions based on several factual errors.

There is simply no basis for asserting that PJV is undertaking “a state function” by providing internal security. Maintaining law and order in Papua New Guinea society is the responsibility of the Government of Papua New Guinea, in particular the police, under the National Constitution of Papua New Guinea.

PJV has taken action in the past to ensure that the State fulfill its obligation to maintain law and order. In late 2005, PJV obtained a court order requiring the Government of PNG to adequately respond to the deteriorating law and order situation in the Porgera region, particularly relating to illegal mining. The court order required the State to meet its responsibilities under the PNG Mining Act and maintain law and order by providing police services to address illegal mining on the Special Mining Lease. This clearly was not the action of a company “jointly undertaking a state function.”

Illegal mining and related illegal activities have had a profoundly detrimental affect on law-abiding residents in the Porgera valley. The report reflects only the most elementary understanding of unique police structures and law and order challenges within PNG and misconstrues the role of the Reserve Constabulary.

The RPNGC has a Regular Constabulary which comprises rank and file police. The Police Act also establishes the Reserve Constabulary, which acts to support the operations of the Regular Constabulary when required. Members of the Reserve Constabulary act as reservists when called up by the local Police Commander, as a delegate of the Police Commissioner.

Within PNG, many Papua New Guineans are members of the Reserve Constabulary and serve as reservists. Many do so out of a sense of duty to help maintain law and order in their community, recognizing that the RPNGC is constrained by limited resources. Several private companies make their personnel available to serve as reserve police, just as PJV does. Overall, police reservists play a crucial role in supporting police personnel in their efforts to maintain law and order, enforce PNG law and protect the people of Papua New Guinea.



Members of the Regular Constabulary report to a local police station commander and operate within a particular area. Local members of the Reserve Constabulary support the work of the local police constabulary in the area, as directed by the local police station commander.

Mobile police squads form part of the Special Services Division, a distinct branch of the national police. Mobile police squads are rapid deployment units for dispatch to a particular region for a finite period of time only, as was the case during the “Operation Ipili” deployment of Port Moresby-based mobile police units to the Porgera region in 2009. The command structure for mobile police squads is based in Port

Moresby. Members of the mobile police squads are drawn from the Regular Constabulary. Thus, a reservist cannot be a member of the mobile police squad.

Reservist duties range from routine tasks such as prisoner or vehicle escorts to assisting police to attend more serious tribal disputes and other serious confrontations, where no other options exist and police resources are inadequate.

In 2005, Placer Dome (PNG) Limited (now Barrick (Niugini) Limited) entered into a Memorandum of Understanding with the RPNGC to record the arrangements between these two parties. The 2005 MOU clearly acknowledges that the RPNGC is the established police force for Papua New Guinea as provided in the National Constitution and is responsible for maintaining and enforcing the law in Papua New Guinea. The MOU details the relationship between the parties and conditions associated with support to be provided by PJV to the RPNGC in Porgera.

The 2005 MOU is consistent with global best practice and the Voluntary Principles on Security and Human Rights and expressly makes reference to the Voluntary Principles. The MOU sets out the terms and conditions for PJV employees in PJV’s security department who wish to become or are members of the Reserve Constabulary of the PNG police to be released from active PJV duties to serve as police reservists under the command and control of the police station commander. The number of PJV security personnel who are members of the Reserve Constabulary comprise less than 15 per cent of total department numbers.

The Giannini/Knuckey report states that a copy of the 2005 MOU was shared by an “official of the police force”, however the document appended to their report is different in material respects from the signed 2005 MOU. The report’s authors then quote from and draw conclusions based on this inaccurate and improperly verified document.

Under the PNG Police Act of 1998, and the 2005 MOU, police reservists are answerable to and act under the command of the local police station commander, under the delegated authority of the Police Commissioner. When called up by the local police station commander or other RPNGC personnel, as stipulated in the MOU, PJV employees who are reservists are released from company duty to act as reservists under the control of the police station commander. In acting as reservists, they do not take orders from mine officials or simultaneously act as an “employee of the PJV”, as claimed.

A few further examples of errors or false allegations contained in this section of the report include the following:

- The report says that “state police reservists will be deployed to the mine and be ‘employees of PJV,’” which implies the State sends or appoints officers to the mine. This is not the case. As noted, reserve police personnel at Porgera are existing employees who, through training and qualification, are eligible to apply to become members of the RPNGC reserve police. Applications are managed by RPNGC personnel in Port Moresby and all appointments are made according to RPNGC regulations and policies. PJV has no control or authority over these appointments.



- The report alleges that a PJV employee obstructed an unnamed local police officer in conducting an investigation by refusing to provide time sheets relating to mobile police squad deployments. Page 18 of the report reads "...he tried to investigate the incident and had requested a time sheet from PJV to identify the shooters." This allegation dates back to 2008 and, as per normal police protocol and the 2005 MOU, PJV does not maintain or have access to time sheets of mobile police squad officers. PJV has no operational control over RPNGC mobile squads. In conducting this investigation, the officer should have known that such information is exclusively the preserve of the RPNGC and should have made his query to the mobile squad commander of the squad in question.
- The report includes photographs of a reservist taken on March 25, 2009 (see pg. 10). We have confirmed that on this date a police reservist was on duty and acting under the direction of the local police commander, as is appropriate and consistent with the provisions of the MOU and PNG law.

In conclusion, we wish to thank Business and Human Rights Resource Centre for providing a copy of this report and for permitting Barrick to provide our perspective and raise our concerns.