

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL OTH 21/2017

22 September 2017

Dear Mr. John Lawson Thornton,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on violence against women, its causes and consequences and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 35/7, 32/19 and 15/23.

In this connection, we would like to bring to the attention of Barrick Gold Corporation (Barrick) the **information we have received concerning alleged sexual violence and excessive use of force against 119 women by mine security and police guarding the Porgera Joint Venture (PJV) gold mine and alleged failure to provide effective remedy for the victims.**

A communication was also sent to the Governments of Papua New Guinea and Canada to request further information in relation to the information contained in this communication.

According to the information received:

The PJV was established in 1989. It was majority-owned and operated from 2006-2015 by Canadian mining company Barrick Gold Corporation, which since then owns 47.5% stake of PJV. Accounts of sexual violence committed by security guards to indigenous women, living or working near the PJV gold mine were widely documented. The security guards hired to patrol and guard the mining site and its surroundings, including waste dumps allegedly sexually abused many women since at least 2006 until at least 2011. In 2006, the Government of Papua New Guinea created an investigative committee to “inquire and report to the Government on the incidence and causes of injuries and deaths at the Porgera mine site”. It is alleged that the results of this investigation were never made public.

Reportedly, a number of women were subjected to sexual violence and excessive use of force by mine security and police at the PJV gold mine from at least 2006 until 2011. One of the victims alleged that she was gang raped by five security personnel who caught her on the Kogai waste dump, while she was selling betel nut to informal miners. The perpetrators of these violations have not been brought to justice to this date.

During 2012-2014, several women victims participated in the operational-level grievance mechanism, Olgeta Meri Framework (“Framework”), established by Barrick and PJV to adjudicate sexual violence claims and determine individual remedies. Between 2012 and 2014, the Framework was implemented by two organizations independent of Barrick and awarded remedies to 119 victims - including cash compensation, medical care, counseling, school fees and business training. These victims allege that commitments made by the company to provide for three years school fees for their children, business grants and medical supports, has not been fulfilled. Moreover, it is alleged that 11 other victims received financial compensation through a separate out-of-court settlement four times higher than the amount received by other women victims through the Framework, thus placing victims in an unequal footing situation.

The scope of the Framework was allegedly limited to victims of sexual violence perpetrated by mine security and did not include victims of other human rights abuses committed in this particular context, nor victims of sexual violence perpetrated by police guarding the mine under an MOU with the State or by other contractors working for the mine.

While we do not wish to prejudge the accuracy of these allegations, we would like to express concerns regarding the Framework’s design and implementation, including its conformity with the Guiding Principles on business and human rights. These concerns include, among others, lack of consultation with the women victims in the design of the Framework and the nature of the remedies provided. We are also concerned that the women victims had to sign a legal waiver to receive compensation from Barrick, without any independent legal advice and transparent and complete information on the consequences.

We are fully aware of the different reports, exchanges of information and assessments concerning human rights impacts linked to the PJV gold mine that have been published to date. However, in view of the information received, we would like to ask for your response on the items addressed in this letter.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information or observations that you may have in relation to the above-mentioned allegations and concerns.
2. Please provide information concerning the situation of the 119 women victims who participated in the Framework and indicate whether the

compensation they received is equitable vis-à-vis the 11 women victims of sexual violence to whom Barrick allegedly paid a higher amount of compensation in an out-of-court settlement.

3. Please provide information as to the steps taken or considered by Barrick to track the effectiveness of their remedial response in light of Guiding Principles 20 and 31, and to address the concerns raised by the women victims about the overall consistency of the Framework with the Guiding Principles.
4. We understand that a new operational-level grievance mechanism has been launched within PJV to deal with a broader array of grievances. Please provide information on the functioning of this new mechanism and the extent to which it satisfies the effectiveness criteria of Principle 31 of the Guiding Principles to redress adverse human rights impacts.
5. Please provide information on whether victims who have not been involved in the earlier Framework could have access to this new operational level grievance mechanism.
6. Regarding the concern that perpetrators of sexual violence with links to PJV reportedly have not yet been brought to justice, please explain how the company has cooperated, or will cooperate, with relevant criminal investigations, related prosecutions and judicial mechanisms.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary measures be taken to halt the alleged violations and prevent their re-occurrence and, in the event that the company identifies that it has caused or contributed to adverse impacts, to provide for or cooperate in their remediation through legitimate processes.

Your response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, the assurances of our highest consideration.

Surya Deva
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Kamala Chandrakirana

Chair-Rapporteur of the Working Group on the issue of discrimination against women in
law and in practice

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your attention to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In particular, we would like to refer to the Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/4) in 2011. The Guiding Principles have been established as the authoritative global standard for all States and businesses with regard to preventing and addressing adverse business-related human rights impact. The Guiding Principles clearly outline that private actors and business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate.

In this connection, we recall that Guiding Principle 22 states that “[w]here business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”. The Guiding Principle 20 states that business should track the effectiveness of their response. Tracking should: a) be based in appropriate qualitative and quantitative indicators; and b) draw on feedback from both internal and external sources, including affected stakeholders.

The Guiding Principles 25 to 31 provide guidance to business enterprises and States on steps to be taken to ensure that victims of business-related human rights abuse have access to effective remedy.

Guiding Principle 29 states that “[t]o make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted”. Moreover, as underlined in the commentary to Guiding Principle 29, operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice (as set out in Guiding Principle 31) and they should not be used to preclude access to judicial or other non-judicial grievance mechanisms.

Guiding Principle 31 clarifies that in order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;

(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

(c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

(d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

(e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

(f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;

(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms; Operational-level mechanisms should also be:

(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

We would also like to recall the opinion of the Office of the High Commissioner for Human Rights (OHCHR) in a letter of 13 July 2013, which extensively examined the Framework established by Barrick and PJV to adjudicate claims of women survivors of alleged sexual violence committed by the security personnel. In particular, OHCHR drew some conclusions and recommendations, based on the Guiding Principles, regarding allegations concerning legal waiver, the nature of remedies, the process, and the engagement of stakeholder.

Moreover, we would like to refer to the provisions of the Convention on the elimination of all forms of discrimination against women, by which States undertook: (d) to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; [and] (e) to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise" (Article 2).

In article 4 of the Declaration on the Elimination of violence against women, States committed to pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. The same

article also provides for States to develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered.

We would like to recall that the Committee on the elimination of all forms of discrimination against women, in its General Recommendation 19 (1992) states that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women,

General Recommendation 35 on Gender based violence, recalls that under general international law, as well as under international treaties, a private actor's acts or omissions may engage the international responsibility of the State. It also recalls that Article 2 (e) of the Convention explicitly provides that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. This obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole and accordingly States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women. Under the obligation of due diligence, States parties have to adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors. They are required to have laws, institutions and a system in place to address such violence. Also, States parties are obliged to ensure that these function effectively in practice, and are supported and diligently enforced by all State agents and bodies. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women when its authorities know or should know of the danger of violence, or a failure to investigate, prosecute and punish, and to provide reparation to victims/survivors of such acts, provides tacit permission or encouragement to acts of gender-based violence against women. These failures or omissions constitute human rights violations.

In one of its reports to the Human Rights Council (A/HRC/26/39), the Working Group on discrimination against women in law and in practice highlighted that mismanagement of extractive projects can also lead to severe violations of human rights that are manifested in unique ways for women, including murder, torture, rape and sexual violence at the hands of security forces brought in to impose order. The Working Group recommended to gender-mainstream the principles of corporate responsibility, identifying, preventing and remedying the harm caused by corporate activities to women, as workers, consumers and community members, especially with regard to land dispossession by extractive projects.