

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:
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Excellency,

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 your Excellency's Government **information we have received concerning alleged sexual violence and excessive use of force against 119 women by security and police guarding the Porgera Joint Venture (PJV) of Canadian gold mine company, Barrick Gold, and alleged failure to provide an effective remedy for the victims.**

While we welcome your Excellency's Government's extensive implementation of the Enhanced Corporate Social Responsibility Policy, we remain concerned at the information received.

Please note that a communication on this matter was also sent to the management of the company, as well as to the Government of Papua New Guinea.

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 during that period (See letter from the OHCHR dated 13 July 2013, referenced below).

The women victims suffered sexual violence and excessive use of force by mine security and police at the PJV gold mine since at least from 2005 until 2011. One of these 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 working there in September 2009. The perpetrators of these violations have not been brought to justice to this date.

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.

During 2012-2014, the 119 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 commitment made by the company, to provide for three years school fees for their children, business grants and medical supports, have not been fulfilled. Moreover, it is alleged that 11 other victims received financial compensation through a separate out-of-court settlement which was four times the amount that other women victims received in the Framework, thus placing victims in an unequal 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 on the measures taken by your Excellency's Government to ensure that Barrick Gold implements its responsibilities under the international human rights laws, including Guiding Principles on Business and Human Rights in its overseas operations.
3. Please provide information on the measures taken by your Excellency's Government to address allegations in this case within the framework of Canada's Enhanced Corporate Social Responsibility Policy" and the Policy on Gender Equality.

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 from the women victims, we would like to ask for your response on the items addressed in this letter.

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

Please accept, Excellency, the assurances of our highest consideration.

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transnational corporations and other business enterprises

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

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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 the attention of your Excellency's Government 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 impacts.

The Guiding Principles clarify that under international human rights obligations "States must protect against human rights violations committed in their territory and / or their jurisdiction by third parties, including companies" (Principle 1). This requires States to "state clearly that all companies domiciled within their territory and / or jurisdiction are expected to respect human rights in all their activities" (Principle 2). In particular, this includes companies undertaking a due diligence process in the field of human rights to identify, prevent, mitigate and respond to the negative human rights consequences in which they may be involved, either through their own activities or as a result of their commercial relations (Principles 17-21). This process of identifying and assessing actual or potential negative human rights consequences should include substantive consultations with potentially affected groups and other stakeholders (principle 18).

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

In this connection, we recall that Guiding Principle 25 states that as part of their duty to protect against business-related human rights abuse, "States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy". As underlined in the commentary to Guiding Principle 25, "State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution."

Guiding Principle 26 further notes that States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

Guiding Principle 28 highlights that, "States should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms." The Commentary to Guiding Principle 29 further provides that

operational-level grievance mechanisms should not be used to preclude access to judicial or 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.

According to the Convention on the elimination of all forms of discrimination against women, ratified by Canada on 10 December 1981, States Parties condemn

discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: : (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,

In its General Recommendation 30 (2013) on women in conflict prevention, conflict and post-conflict situations, the Committee reiterated general recommendation No. 28 to the effect that the obligations of States parties also apply extraterritorially to persons within their effective control, even if not situated within their territory, and that States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory. The Committee affirmed that the CEDAW Convention also “requires States parties to regulate the activities of domestic non-State actors within their effective control who operate extraterritorially”. Further, the Committee recommended that State parties “regulate the activities of all domestic non-State actors within their effective control who operate extraterritorially, and ensure full respect of the Convention by them”.

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.