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# In Search of Justice

## Pathways to Remedy at the Porgera Gold Mine



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## About This Report

This report explores how to provide remedy for persons harmed at or around the Porgera Gold Mine in Papua New Guinea. It describes existing remedy mechanisms, identifies barriers to access, and issues recommendations for improving access to remedy. The overall purpose of this report is to help rightsholders in Porgera receive effective remedy for harms they have endured in relation to the operations of the mine.

This paper was researched and written by Dr. Margaret Jungk, with support from Ouida Chichester and Chris Fletcher. The BSR team undertook this study from June 2017 to August 2018, using the methodology described in part 1 below.

The aim of the report is to produce recommendations that can serve as the basis for constructive dialogue among communities, the Papua New Guinean government, other interested stakeholders, and the company. The recommendations outlined here, and the issues raised for discussion, are those of BSR, based on extensive human rights analysis and interviews with stakeholders in Porgera, Port Moresby, and internationally.

To achieve its intended impact—the advancement of human rights for Porgera rightsholders—we must be clear about the origin and formulation of this report. While BSR maintained full editorial control over the contents of this report, the report does not meet the standards of full independence, because BSR was commissioned and paid by Barrick Gold Corp. (Barrick), and its partially-owned subsidiary, Barrick (Niugini) Limited (BNL) to do this research. As such, the independence element is in the process itself, meaning the report is written for the purpose of holding open discussions among the company, community, and government, with the aim of exploring recommendations and possible solutions to provide remedy to those harmed. It is envisioned that a company action plan and an open-consultation process with the community will be the immediate next steps following the publication of this report.

Please direct comments or questions to [connect@bsr.org](mailto:connect@bsr.org).

## ACKNOWLEDGEMENTS

The authors wish to thank the people of Porgera who participated in this research and who generously shared their time, experience, and stories of frustrated attempts to achieve remedy for harms. We also thank the many human rights experts and Barrick and BNL employees who shared their knowledge and ideas for possible solutions. A list of stakeholders consulted is provided in Appendix I.

## DISCLAIMER

This is not a Barrick report. It was produced using the independent process and approach of UN Special Rapporteurs, meaning the authors retained full and final editorial independence. The BSR team was at liberty to visit and interview whomever it chose and to make any recommendations to the parties to help strengthen the respect and protection of human rights in the given context. The report was shared with the company, community, and select human rights experts prior to circulation to correct any factual errors and strengthen recommendations, but full editorial discretion was maintained by the authors throughout.

The conclusions presented in this report represent BSR's best professional judgment, based upon the information available and conditions existing as of the date of the research. In undertaking its investigation, the BSR team relied upon publicly available information, information provided by community members in Porgera and Barrick, and information provided by human rights experts, non-governmental organizations (NGOs), and third parties. This report is not intended as legal advice. BSR makes no representations or warranties, express or implied, about the business or its operations.

BSR publishes occasional papers as a contribution to the understanding of responsible business practices. BSR maintains a policy of not acting as a representative of its membership, nor does it endorse specific policies or standards. The views expressed in this publication are those of its authors and do not necessarily reflect those of BSR members. Any errors that remain are those of the authors.

## **SUGGESTED CITATION**

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## Abbreviations and Acronyms

ATA	Akali Tange Association
Barrick	Barrick Gold Corporation
BNL	Barrick (Niugini) Limited
CEPA	Conservation and Environmental Protection Authority
CORE	Canadian Ombudsman for Responsible Business Enterprise
DLIR	Department of Labor and Industrial Relations
ERI	EarthRights International
HRBA	Human Rights-Based Approach
HRIPA	Human Rights Inter-Pacific Association
HRO	Human Rights Ombudsman
LMP	Lease for Mining Purposes
MRA	Mineral Resources Authority
NCP	National Contact Point
NHRI	National Human Rights Institutions
OGM	Operational Grievance Mechanism
OHCHR	Office of UN High Commissioner for Human Rights
PANEL	Participation, Accountability, Non-Discrimination, Empowerment, and Law
PDWA	Porgera District Women's Association
PRFA	Porgera Remediation Framework Association
PJV	Porgera Joint Venture
PNG	Papua New Guinea
PLOA	Porgera Land Owners Association
PRW	Porgera Rights Watch
SML	Special Mine Lease
UN Basic Principles on Remedy	United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2006)
UNICEF	United Nations Children's Fund
UNGPs	United Nations Guiding Principles on Business and Human Rights (2011)
UDHR	Universal Declaration of Human Rights (1948)

## Use of Terms

Throughout the report, the term "claimant" is used without adjudicating the truth of any claims of harm. Under the UN Guiding Principles on Business and Human Rights (UNGPR),<sup>1</sup> a grievance is understood as a perceived injustice evoking an individual's or a group's sense of entitlement. Such grievances need not amount to an alleged human rights abuse before they can be raised. Rather, they should be identified and addressed early because over time they might escalate into more major disputes and human rights abuses.<sup>2</sup> As such, claimants, whether true victims or not, deserve some urgency and weight.

We use the term "victim" in a narrower sense than "claimant." "Victim" indicates that a person has suffered physical or mental harm, economic loss, or impairment of his/her fundamental rights, as put forth in the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles on Remedy). It includes victims of direct and indirect harm, including family members and dependents, as well as victims of individual and collective harm.<sup>3</sup>

While we use the term "victim" for those who have experienced actual harms, we do not wish to imply that these persons, as individuals or collectively, should be passive in determining the path forward or that they should be seen as mere beneficiaries—they have much to contribute to the process of accessing remedy and becoming fully restored. These individuals are defined as victims only because they have been victimized and experienced human rights harms in the past. That victimhood has no bearing on their future abilities, and they should be empowered and assumed to be as proactive in the achievement of their rights as any other person in society.

We use the term "Porgerans" to refer to the original indigenous inhabitants of the mining area. The in-migrants, some having arrived decades ago (some before mining, others since mining started), come from a range of locations and will still identify and be identified by their home place. It is important to note that Porgerans and in-migrants sometimes have different customary practices and understandings about remedy and compensation. When referring to the broader population, including both Porgerans and the inward migrants, we use the term "community members" or "people in Porgera."

We refer to Barrick Gold Corp. (Barrick) in this report for matters occurring before 2015, when Barrick had operational control over the mine and to "Barrick (Niugini) Limited (BNL)" thereafter. We direct our recommendations to BNL, as that is the entity in a position to implement them. Additionally, we use the terms "the company" throughout the report in a general sense, and we use the terms "Porgera Joint Venture (PJV)" to refer to the more specific business entities. The distinctions in the ownership structure of the companies are elaborated in section 2.1. When interviewed, stakeholders always use the term "Barrick," even if the responsible legal entity is BNL or PJV, and these sections are being conveyed directly as heard.

We use the terms "local organizations," "victims' representatives," and "representative bodies" to refer to bodies and individuals that have come forth in Porgera to advance human rights claims against the company and/or to support victims' rights more generally. We use the terms "international organizations" and "international stakeholders" to refer to those who have been following the events in Porgera and reporting and writing about them, as well as to experts in international human rights principles, remedy, and mining-sector impacts.

We use the term "Operational Grievance Mechanism (OGM)" to refer to BNL's company-run mechanism to receive and resolve work-related and community grievances. The term OGM does not refer to a third-party process set up to resolve human rights allegations that the company on its own cannot resolve.

When we mention the remedy program designed for the 119 victims of sexual violence, which was operational in Porgera from 2012 to 2014, we refer both to the Olgeta Meri Igat Raits (All Women Have Rights) Program, which is the overarching program implemented by the company that includes the remedy mechanism, and the "Porgera Remedy Framework," to refer to the specific remedy efforts undertaken. The "Porgera Remedy Framework Association," or "PFRA," is the independent entity that oversaw the implementation of the remedy mechanism.



## Executive Summary

Barrick Gold Corp. (Barrick), and its partially owned subsidiary, Barrick (Niugini) Limited (BNL), have received a number of reports of human rights harms at or near the Porgera Gold Mine operations in Papua New Guinea (PNG). The claims range across many human rights, including poor working conditions, sexual violence, unlawful killings, forced evictions, environmental harms, and health impacts. Barrick and BNL seek to address these harms in line with international human rights requirements for effective remedy.

The Porgera mine in PNG operates in one of the world's most challenging environments. The mine is in close proximity to residents, often without clear delineation between company and community property. Violent tribal conflicts are endemic to the region. Poverty levels are staggering. Illegal mining is becoming increasingly common and violent. Weak governance is pervasive.

In 2017, Barrick and BNL commissioned BSR, a nonprofit organization dedicated to working with business to create a just and sustainable world, to provide recommendations to help rightsholders in Porgera receive effective remedy for harms they have endured in relation to the operations of the mine.

The human rights situation in Porgera is complex, with a backlog of more than 940 cases registered, plus other victims who have not yet made their claims known. This requires the company to make immediate fixes, address longer-term issues, and take preventative action to avoid future harms. BSR believes that addressing claims at these three levels is the only way to ensure a robust and sustainable approach to remedy.

BSR engaged directly with victims, communities, and other stakeholders to understand the needs and interests of all groups. This report presents the outcome of the year-long consultation process and BSR's resulting recommendations. The report's recommendations are designed to serve as the basis for company dialogue and to further actions with victims, communities, and other stakeholders. Such consultation and input are one of the essential requirements of the human rights approach.

The research was conducted under a human rights-based approach that places victims at the center and focuses on the needs of vulnerable and marginalized groups. As part of this approach, BSR engaged directly with victims and their representatives, using the Road to Remedy framework, which aims to understand violations from their initial impact to their ultimate remedy.

BSR discovered a number of vulnerable groups in the Porgeran population. Landowners are given preferential treatment in employment and contracts. Royalty payments from mining operations often do not find their way to women, who face more limited remedy options due to local and national power structures. Victims of sexual violence are further victimized by authorities, who reject their claims, and by

societal stigma, relatives, and other community members. Throughout Porgeran society, community members who are poor, illiterate, or uneducated do not know their rights and are not familiar with remedy mechanisms. Community members living in remote locations find it difficult to communicate with and physically access remedy pathways based in Porgera or Mount Hagen.

BSR examined a number of existing pathways to remedy for victims in Porgera. These included local village courts, district courts, the ombudsman, the company's Operational Grievance Mechanism (OGM), and international mechanisms such as the Organisation for Economic Co-operation and Development (OECD) national contact points, and the newly established Canadian Ombudsperson for Responsible Business Enterprise (CORE). Barriers to access were examined and documented for each of these pathways. BSR found that state-administered justice systems often lack capacity or are inaccessible due to cost, literacy requirements, and transportation. Most existing non-state mechanisms are non-binding. Previous efforts by Barrick to address claims of sexual violence through the Olgeta Meri Igat Raits (All Women Have Rights) Program (also referred to as the Porgera Remedy Framework) have resulted in lingering tensions with the community over compensation amounts and the process for assessing claims and delivering remedies. Underlying all of these is the challenge of distinguishing legitimate claims from false ones.

Stakeholders identified a number of elements specific to Porgera that should form the basis of approaches to remedy in the local context. The position of women in the society, the high level of poverty and illiteracy, and the strong clan and familial alliances must be taken into account when devising effective remedy. So, too, should the lessons from the Porgera Remedy Framework, which generated strong community opinion about issues such as legal waivers, statute of limitations, and evidentiary requirements for cases.

The contents of this report represent the independent judgment of BSR. The recommendations contained here should not be taken as a binding commitment from the company. The next and most important step is for the mine to engage in dialogue with the community and work toward an agreeable and viable action plan. BSR received a strong message of urgency from the local community to address current claims immediately, even as the company works on longer-term, systemic solutions. This priority of providing access to remedy for the existing claims is built into the recommendations.

It is our sincere hope that these recommendations can provide the basis for a new dynamic in Porgera, one in which the benefits of the mine are felt by all, and human rights are promoted and enhanced, not undermined.

Our recommendations are divided into three broad themes: 1) addressing current harms, 2) strengthening the remedy ecosystem, and 3) preventing future violations.

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### **Remedy Ecosystem Approach**

The three-level Remedy Ecosystem approach is based on the underlying premise that a singular solution that focuses only on the role of the company is not sustainable, nor is it ideal in human rights terms. While the company holds clear responsibilities to respect human rights and to provide for, or cooperate, in remediation under the UN Guiding Principles, victims of harms also have the right to transparent, accountable, government-led remedy mechanisms. To be fully empowered, victims should have a choice among multiple pathways to remedy.

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## 10 Key Recommendations

### Address Current Harms

1



**Reform the Company Operational Grievance Mechanism** in line with the UN Guiding Principles and with direct community consultation.

2



**Enter into a dialogue with the 119 women who underwent the Porgera Remedy Mechanism** to ascertain and address their remaining needs to achieve full restoration.

### Strengthen Existing Remedy Mechanisms

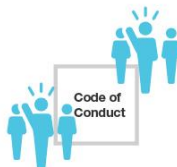
3



Porgera Victims Office

**Establish a free Victim Advocates' Office** to serve as an entry point for victims, providing information and helping them access appropriate pathways to remedy.

4



**Build the capacity of victims' representative organizations** in Porgera to raise awareness of human rights and to genuinely represent the needs of victims.

5



**Address barriers to existing remedy pathways in Porgera**, focusing on those pathways that are most vital and utilized by victims of the mine's operations.

6



**Expand the mandate for the Mine's Independent Observer** to cover all human rights harms and institutionalize the position so its formal powers will extend past the current officeholder.

7



**Support the creation of a National Human Rights Institution (NHRI) or the extension of the Human Rights Ombudsman mandate** to address private sector-related impacts on human rights.

## 10 Key Recommendations

### Prevent Future Violations

8



**Address gender-specific impacts** and make direct investments in the women affected by the mine's operations, recognizing that there is a severe gender imbalance in the costs/benefits of mining in Porgera.

9



**Redesign community engagement and investment, and strengthen the human rights capacity at the mine** by assessing current efforts, engaging with the community, and employing internationally recognized best practices.

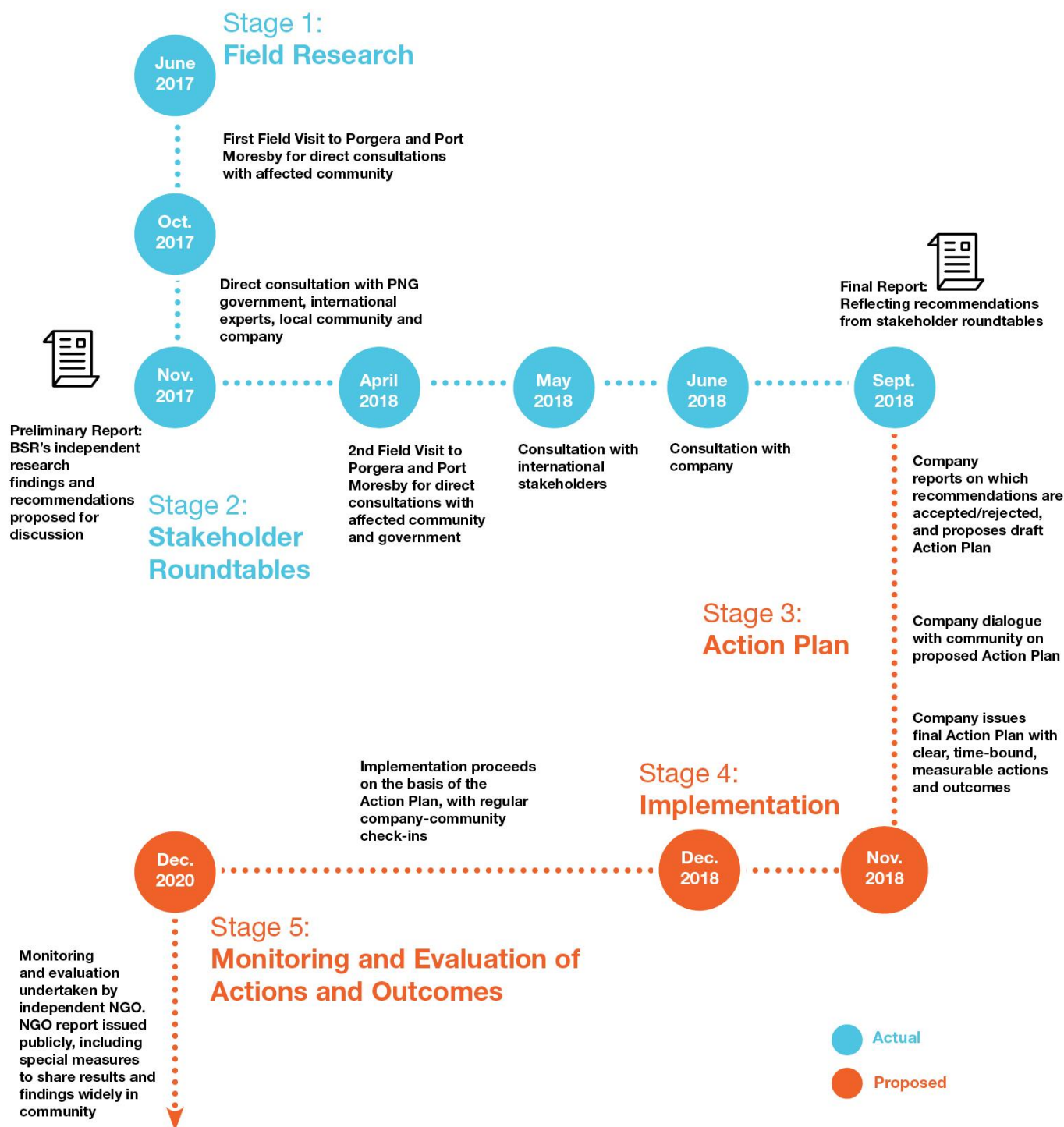
### Next Steps

10



**Create a company action plan**, in dialogue with the community, to establish immediate, intermediate, and long-term actions designed to implement the report's recommendations and secure access to remedy for victims in Porgera.

## Project Stages and Time Line







# PART I

# 1. Introduction

Barrick and BNL seek a human rights approach to providing remedy for harms arising from its Porgera mine operations in Papua New Guinea (PNG). The allegations span a wide range and include environmental pollution, damage to health, workplace injuries and disputes, sexual assaults, forced evictions, and unlawful killings. Some relate solely to the operations of the Porgera Joint Venture (PJV), while others relate to state security forces and third parties. In total, more than 940 claims have been presented to the company for consideration.

## 1.1 Objective

In addressing claims of harm, we use a human rights-based approach (HRBA), which consists of five core elements described more fully in the methodology section below. Three core aspects of this approach, however, should be flagged at the outset.

First, the approach must meet international human rights requirements for effective remedy. These are defined in the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>4</sup> and the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles on Remedy).<sup>5</sup> Taken together, these frameworks apply to states and non-state actors and cover the full range of human rights abuses, not only the most severe.<sup>6</sup>

Second, the human rights approach is victim-centered.<sup>7</sup> Victims are those who have been harmed, around whom remedies are designed. Delivering remedy requires understanding their perspective, the harms they have experienced, and the outcome they desire.

The final element, which relates directly to the second and is derived from the UNGPs, requires the approach for company operational level grievance mechanisms to be based on consultation with affected stakeholder groups. Doing so helps ensure that the remedy process meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success.<sup>8</sup>

As indicated above, the allegations against the mine include bodily harm from environmental impacts (e.g., tailings exposure); excessive use of force; employment disputes; land usage and confiscation; and sexual violence. Addressing these matters is not a theoretical problem. Solutions must be practical within the Papua New Guinea and Porgera context and involve the victims in co-creating solutions.

The overall objective of this study is to facilitate dialogue and constructive solutions among Barrick and BNL, the Porgeran community, victims, the government of PNG, and international stakeholders. An earlier draft of this report was used to gather feedback from local stakeholders in Porgera and from

international stakeholders in North America/Europe. This final report incorporates the findings from the discussions in the roundtables, consultations, and reviews.

## 1.2 Methodology: The Human Rights-Based Approach

### The Human Rights-Based Approach

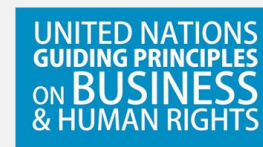
#### Participation

Everyone has a right to participate in decisions that affect their rights. This participation should be active and meaningful.



#### Accountability

For every right, there is an associated duty. The duty-bearer must be answerable and responsive to rightsholders for impacts on their rights and must provide appropriate remedy when failures occur.



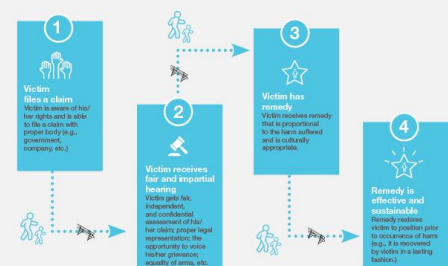
#### Non-Discrimination

Equality is central to the rights-based approach. Any discrimination in the enjoyment of rights is prohibited, including discrimination by design and by result.



#### Empowerment

Rights are not charity. They are entitlements that all people are born with. Everyone must be empowered with the knowledge of their rights and the pathway to obtain them.



#### Law

Human rights are not a nebulous concept of “what people want.” They are well-defined in more than 100 international instruments and codified as legally enforceable entitlements in national constitutions and laws.





This study was prepared using a human rights-based approach (HRBA). This methodology acknowledges the fundamental nature of human rights as entitlements that belong to all people, rather than charity for a lucky few. For these entitlements to apply in practice, people must know their rights and be empowered to claim them. They must be informed and able to participate in decisions affecting their rights, capable of holding accountable those actors and duty-bearers that affect them.

The rights-based approach is used throughout development programming, including health care, minority rights, and urban planning. While the term has no single definition, it includes a number of elements common to its myriad applications. BSR uses the PANEL approach as the preferred method of HRBA in a business context. The acronym PANEL refers to the five elements of the approach: Participation, Accountability, Non-Discrimination, Empowerment, and Law. The graphic above shows how these elements were applied in each stage of the Porgera study.

**Participation:** Everyone has the right to participate in decisions that affect them. This participation should be active and meaningful: Rightsholders must have all necessary information about their rights and how they may be affected by business operations. This information must be given in a timely manner so rightsholders can influence outcomes, not after decisions have been made. It also means engaging in a language and location that are appropriate and accessible.

In this study, we reached out to more than 200 people. We used a flower model described further in section 1.2.4 to make sure that we focused directly on the victims, as they are the primary rightsholders with regard to effective remedy. The victims are portrayed in the model at the center of the flower, where we focused the majority of our attention. The petals that surround the victims were designed to ensure that we received further input to understand the needs of and impacts on victims, including families, tribes, the surrounding community, NGOs, and government actors. BSR made two trips to Porgera and held meetings away from the mine to ensure that the process was accessible and could maximize the participation of all.

**Accountability:** The beauty and force of the human rights field lies in the element of accountability. This means that for every right, there is an associated duty and a responsible duty-bearer. (The right to vote, for example, puts a corresponding duty on the government to hold periodic free and fair elections.) Duty-bearers must be answerable and responsive to rightsholders for impacts on their rights, and they must provide effective remedy in the event that rights have been negatively affected.

Traditionally, human rights have been defined in relation to government as the main duty-bearer. More recently, the UNGPs have clarified company responsibility and accountability for human rights violations. The third pillar of this framework defines how companies should provide remedies to victims of human rights abuses. Section 3.1 explains the study's approach to accountability, based on the UNGPs.

**Non-Discrimination:** Equality is central to the rights-based approach, which means that discrimination in the enjoyment of rights is prohibited. Discrimination can occur in many forms, whether obvious and formal (as written into laws) or subtle and informal (as part of cultural practice). There can also be discrimination by design (e.g., when a job ad reads: "Women need not apply") or by result (e.g., when a court requires written responses, marginalizing those unable to read).

In this study, to meet the requirements of non-discrimination in the rights-based approach, we developed a four-part lens, explained further in sections 1.2.3 and 3.1, to detect discrimination in Porgera affecting

the groups vulnerable to marginalization or disenfranchisement. We used the results of this analysis to inform the barriers to effective remedy and to recommend how those barriers should be lifted.

**Empowerment:** Rights are not charity or donations. They are entitlements with which all people are born. As such, all persons must be empowered to obtain what is rightfully theirs.

To fulfill this important element of the rights-based approach, we aimed to empower victims to pursue the remedy pathway of their choice—the pathway that best meets their needs and interests. The focus, therefore, was on a “road to remedy” methodology (sections 1.2.1 and 6.3) that identified as many pathways to remedy as possible and then focused on lifting the barriers to these pathways. We began with the principle that at least one viable pathway must exist for every victim in Porgera to pursue the remedy pathway of their choice, then looked at groups within the population, using the vulnerability lens above, to ensure that this was the case.

**Law:** Rights are not an airy concept or a simple wish list of “what people want.” International human rights principles are defined in more than 100 international instruments and codified in constitutions and laws around the world.

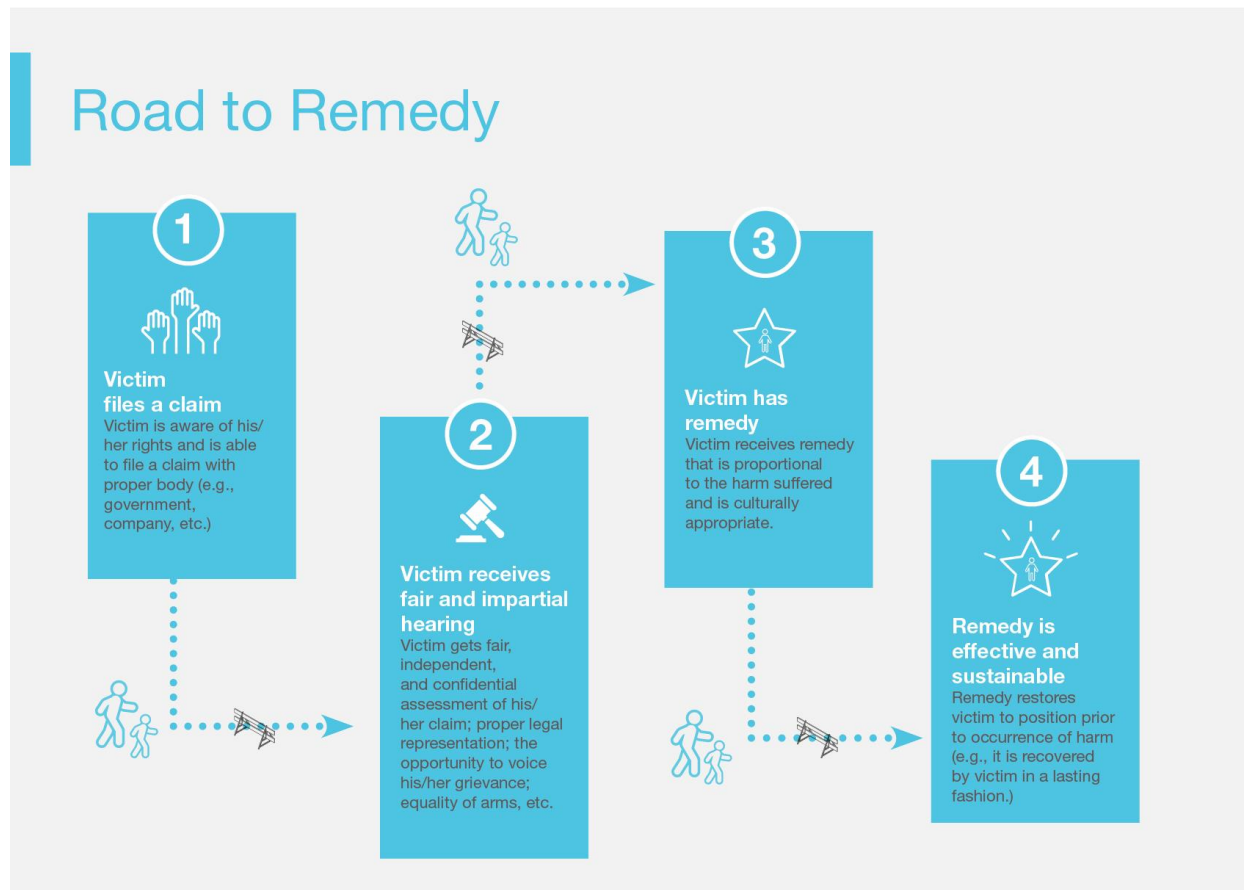
In this study, we used the international legal principles and standards addressing the right to effective remedy, drawing primarily from the UN Basic Principles on Remedy and related jurisprudence, practice, and scholarly opinion, to understand both procedural and substantive elements associated with the right to effective remedy (sections 3.2 and Appendix III)—including the right to a fair and independent hearing and the requirement that remedy be aligned with local culture. Crucially, the local cultural elements were carefully aligned with the international norms to avoid conflict on such important issues as the equal rights of women in Porgera. Section 6.5 discusses alignment of international elements of effective remedy with the local Porgeran context.

While the human rights regime is well-developed from over 70 years of practice in the realm of states and international relations, it is still new in its application to businesses. We hope that by clarifying how this study approached and adapted each of the core elements of the human rights-based approach, we contribute not only to satisfactory remedy for the victims in Porgera, but also to the advancement of the understanding and application of human rights in a business context.

### 1.2.1 ROAD TO REMEDY ANALYSIS

Because this study is meant to be accessible to all users, particularly those without specialized human rights knowledge, it follows a Road to Remedy analysis. This means that human rights harms are presented from the victims' perspective and examined from the time the violation occurs to the completion of the remedy. It incorporates the UNGPs, UN Basic Principles on Remedy, and relevant aspects of the rights contained in Article 14 of the International Covenant on Civil and Political Rights.<sup>9</sup>

(The Road to Remedy Analysis is mapped against the relevant international instruments in Appendix 3, Table 3.)



From this, we seek to identify existing pathways to remedy (e.g., courts, the company's OGM) and any barriers that should be addressed to make them fully viable.

(Section 6.3 includes preliminary findings regarding the barriers to remedy.)

### 1.2.2 SCENARIOS

In our interviews, we tracked four scenarios (either real or hypothetical) through the Road to Remedy framework. Each scenario was designed to explore the range of possible harms and the various barriers victims might encounter when seeking remedy. The four scenarios, which were illustrative but not exhaustive, were:

- » Rape by a PJV employee or contractor.
- » Shooting or excessive use of force by a PJV security guard.
- » A landslide or sinkhole caused by the PJV.
- » Health harms from environmental or chemical exposure related to mine tailings or waste.

In each case, we examined the range of possible pathways via which a victim might find remedy, including government, judicial, and nonjudicial mechanisms; company mechanisms; and international mechanisms. We also examined barriers to accessing those mechanisms and considered how they might be overcome.

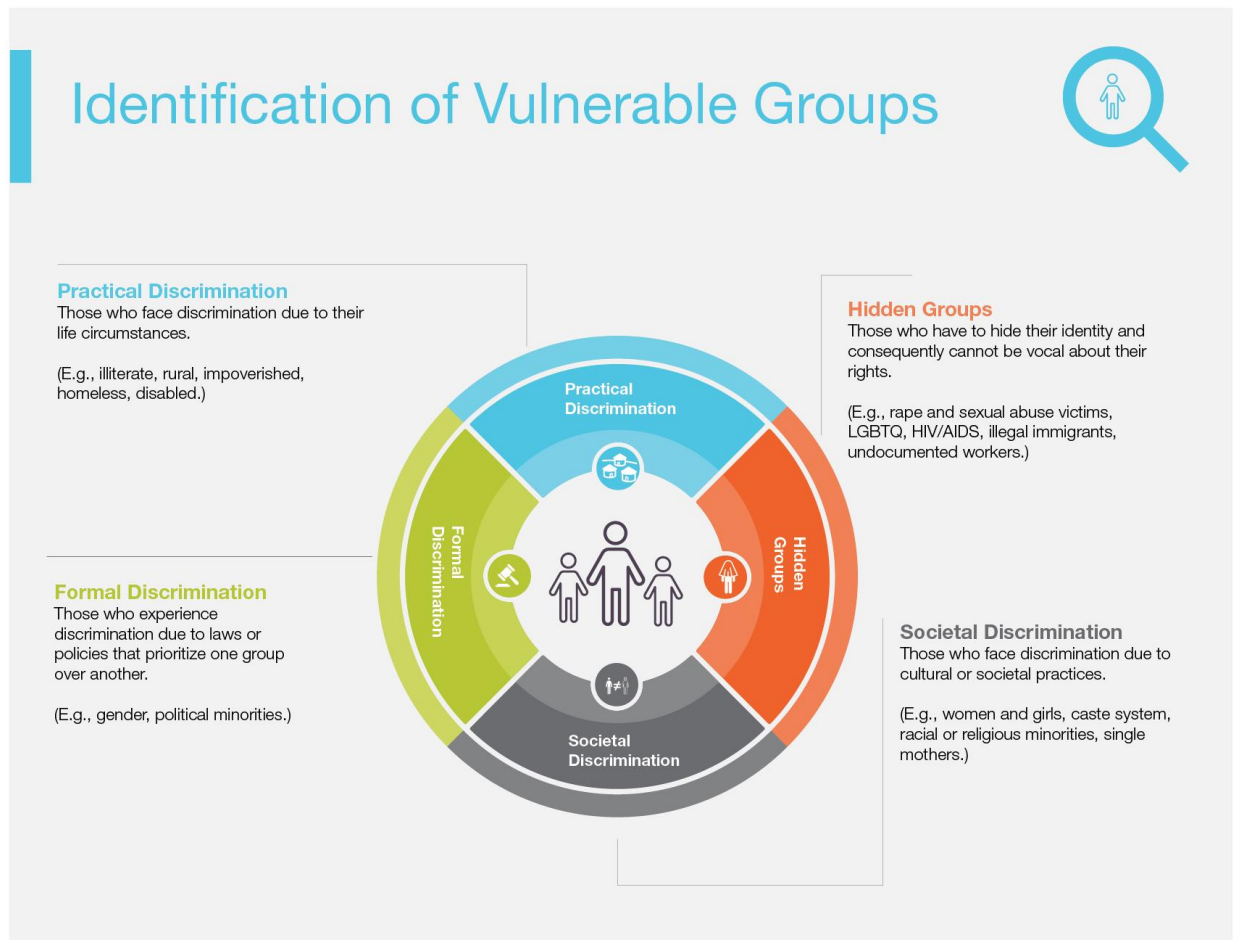
Overcoming barriers to remedy will require action from a range of actors. In some cases, BNL can address barriers on its own. In others, actors such as the PNG government and international or local civil

society organizations should be engaged. These considerations are described throughout the report and included in our recommendations.

Where we discovered cases that remain outside the existing pathways (such as those for which the statute of limitations has expired and no extension is available, or those with limited evidence), we considered the creation of new, tailored pathways. For this purpose, we included lessons that could be adapted from the Olgeta Meri Igat Raits Program (2012-2014) established for victims of sexual violence.

### 1.2.3 CONSIDERATION OF VULNERABLE GROUPS

In accordance with a human rights-based approach and the UNGPs, our analysis is carried out through a “vulnerable group” lens to ensure that such populations are not overlooked. Vulnerable groups are identified through four dimensions: formal discrimination, societal discrimination, hidden groups, and practical discrimination.



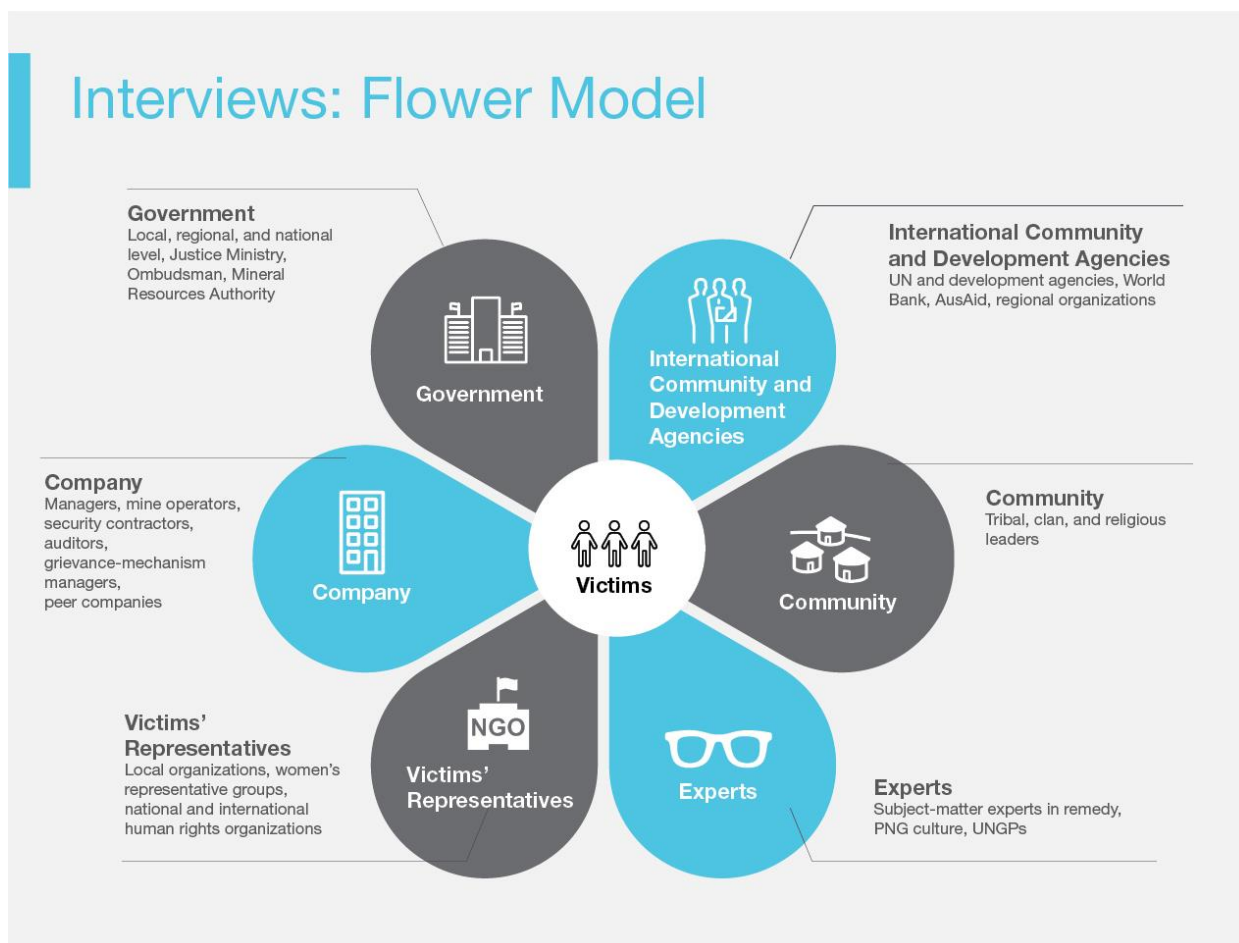
In thinking about such groups, we were guided by questions that would mitigate against their vulnerable status: How do we identify such persons? Do representatives of these groups help or harm their rights? How do we amplify their voices in the process? How do we create a structure that empowers them?

(Section 3.1 gives the preliminary findings of this analysis.)

## 1.2.4 STAKEHOLDERS

We sought to consult stakeholders at every stage to gain a well-rounded understanding of the challenges in the Porgeran context. Interviews were grouped into seven categories, as defined below.

(Appendix I lists all interview subjects; Appendix II describes the interview methodology.)



Note that victims are placed at the center of this analysis. We interviewed people in each of the categories while keeping the focus on the victims. More than half of the interviewees fell within the category of victims and victims' representatives.

## 2. Background and Context

Papua New Guinea boasts a diverse population of 7 million people spread across the country's rugged and tropical landscape. The people of PNG speak more than 800 languages—about 12 percent of the world's total—and predominantly live in rural areas.<sup>10</sup> The country's mountainous terrain has contributed to the development of more than 800 distinct cultural groups, many isolated in remote locations. This diversity is apparent in the wide range of belief systems, cultural practices, and forms of social organization.<sup>11</sup>

The country struggles with the tension between natural resource wealth and limited social development. Although Papua New Guinea (PNG) is rich in minerals, timber, and oil and gas, widespread poverty and low levels of education persist. The country ranks 154<sup>th</sup> (of 188) on the United Nations Human Development Index, and 40 percent of the population lives on less than US\$1 per day.<sup>12</sup> Geographic fragmentation means economic growth spreads slowly, and it hampers the development of health services and education systems.<sup>13</sup> Increasing dependence on resource extraction may reinforce inequality and structural poverty, as is typical of countries struck by the "resource curse."<sup>14</sup> While PNG's economy has grown 6.5 percent annually since 1996, poverty levels remain stagnant.<sup>15</sup> In addition to slow economic development, PNG struggles with widespread violence, low government effectiveness, and limited rule of law.<sup>16</sup> This environment is riskiest for women, an estimated two-thirds of whom have been victims of gender-based family or sexual violence.<sup>17</sup>

### 2.1 The Porgera Mine

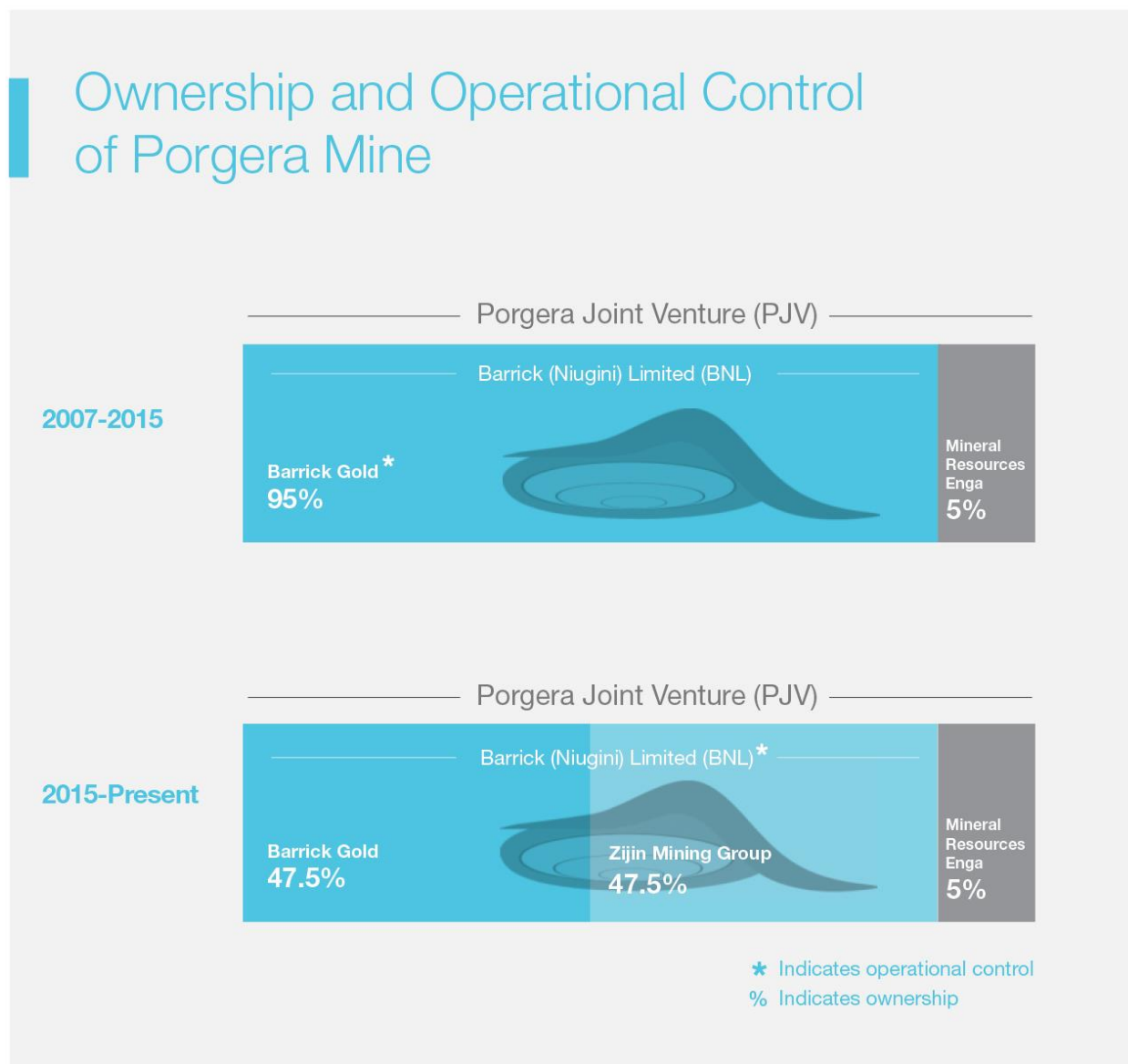
The Porgera Mine is located in the highlands of PNG and began operations in 1989. The mine is owned and operated by the Porgera Joint Venture (PJV), a joint venture between Barrick (Niugini) Ltd. (BNL), which holds a 95 percent interest, and the Enga provincial government and local landowners, which evenly divide the remaining 5 percent.<sup>18</sup>

BNL is jointly owned by Barrick Gold Corp. (Barrick) and the Zijin Mining Group (Zijin), a Chinese mining company.

The mine operated for more than 15 years before coming under operational control of Barrick. During that time, the mine passed through the hands of many different parties, with varying degrees of equity; at one point the government of PNG itself had a 25 percent equity share in the mine. In 2006, Barrick acquired Placer Dome, which at the time had a 75 percent equity in the mine, and in 2007 purchased an additional 20 percent equity in the mine from Emperor Mines. By 2007, Barrick fully owned BNL and maintained operational control over the Porgera mine. In 2015, Barrick sold half of BNL to Zijin and ceased to have majority ownership and operational control.<sup>19</sup> Barrick continues to own 50 percent of BNL (without



operational and ownership control), while BNL is an independent entity that is majority owner and operator of the PJV and the mine itself.



When the mine was founded, Porgera was considered one of the most isolated, marginalized areas in PNG. Since it began operations in 1989, the mine has produced more than 20 million ounces of gold, accounting for approximately 10 percent of PNG's annual exports.<sup>20</sup> While the mine brings significant economic value in the form of royalties to the government and local landowners, communities have experienced both benefits and harms due to its operations.

Access to services (e.g., schools and health care) and infrastructure (e.g., roads) has improved. Similarly, the mine has provided social benefits in the form of employment, commercial opportunities, school scholarships, and government tax revenue. Revenue streams have been provided to local communities through royalty payments for access to mineral resources and compensation payments for mining

impacts. Civil society groups have also received funds.<sup>21</sup> As a result of such benefits, locals often refer to the mine as their “garden” and view it as a resource to improve their lives and the community.

There are also negative references to the “garden.” Some locals explain that they used to be self-sufficient prior to mining operations, drinking local surface water without cost and gardening to fulfill daily food needs. Now, they say, they depend on the mine to provide the money they need to buy water and food. Many in Porgera feel that the landscape has been irrevocably altered by the mine. A number of stakeholders tell us that they lost access to land on which they used to engage in subsistence farming, while external groups note that many Porgerans presently live in slum-like conditions, struggling to keep their families safe while meeting their basic needs. In this context, the term “garden” can also refer to the mine’s tailings and waste dump, at which community members engage in small-scale mining (which is deemed illegal by the PNG government). Locals search for gold to satisfy their need for basic sustenance, exposing themselves—and often their children and families—to dangers.

Additional challenges strain the relationship between the mine and members of the local community. As Porgera developed, so did new social problems. These include the introduction of guns and higher levels of violence, new diseases (particularly HIV/AIDS), a devaluation of women and their work, a loss of culturally significant spaces and traditions, and alcohol abuse. To make matters worse, stakeholders say they believe that much of the land leased for mining purposes has become polluted, and that contaminated waterways and limitations on access to firewood further exacerbate the economic challenges local communities face.<sup>22</sup> These conditions, along with unresolved human rights claims, have contributed to a very challenging relationship between the mine and the community.

Community tensions also exist between those who benefit more from the mine and those who benefit less—or not at all. According to BNL, the mine site is divided into the Special Mine Lease (SML) area, which hosts mining operations, and the Lease for Mining Purposes (LMP) areas, which, for example, allow access to the mine and receive tailings and other waste. Those who are connected to the SML are considered “landowners” and receive royalties. Those who are connected to the LMP areas receive no royalties from the operation of the principal Special Mining Lease but do receive land use compensation. Residents of the surrounding areas (outside the SML and LMP) consist of both local natives and in-migrants from other places in PNG; while they receive no direct benefit from the mine in the form of royalties or payments, they experience many of the negative consequences of the mining operations.

Similarly, under the terms of the development contracts associated with the mine, employment preference is first given to individuals and landowners from the SML area of active mining and to people from the LMP mining-support areas, then to other PNG nationals, and lastly, to foreigners.

Adding to tensions is an employment shortage that is compounded by an education gap. The mine brought a surge of in-migrants seeking opportunity, with the population increasing from an estimated 9,253 in 1990 to 50,000 in 2010.<sup>23</sup> In addition, many of those from the Porgera area decided to opt for work over school, but demand for jobs far outpaced supply. Some stakeholders believe that the mine did not undertake adequate action to address this challenge; however, BNL notes that it has no control over the movement of people into the District and can employ only a certain number of people in line with its labor requirements. Consequently, most of those who live in Porgera are unemployed or underemployed, and many engage in risky, small-scale mining practices on or near the mine.<sup>24</sup>

## 2.2 Historical Human Rights Allegations

Prior to Barrick's acquisition of the mine in 2005, human rights allegations had already arisen in relation to mining activity. From 2006-2007 onward—soon after it acquired the mine from Placer Dome and Emperor Mines—Barrick began to receive new allegations of human rights abuses around the Porgera mine site. These were documented and reported by local organizations, including the Akali Tange Association (ATA) and the Porgera Landowners Association (PLOA), as well as by international human rights and advocacy organizations, including Amnesty International, Human Rights Watch, and MiningWatch Canada.<sup>25</sup>

Allegations included that PJV's security personnel were carrying out physical assaults against men and women, and that women in and around the mine site were being sexually assaulted, even gang-raped.<sup>26</sup> Many of the women said that they had not reported their rapes to the police for fear of retribution; a number of those who did report such crimes stated that no action was taken on their behalf. Additionally, many of the women conveyed that they were afraid to report the crimes to their families and communities (especially to men) for fear of further violence, stigma, and rejection. Both men and women reported that mine security personnel had committed acts of violence, from assaults and beatings to killings.

After conducting internal reviews, the company denied the claims of human rights abuses. Local representative organizations and community members continued to draw attention to the abuses, and local organization ATA published a report in 2006 outlining claims and demanding action in "The Shooting Fields of Porgera." In response, the government established an inquiry into the high number of deaths near the mine; its conclusions were never released publicly. In 2007 and 2009, Barrick conducted its own internal investigations into the human rights and security-related allegations but again released no findings.

In 2010, Human Rights Watch notified the company that its own investigative work was indicating that the allegations had merit, as detailed later in the NGO's report, "Gold's Costly Dividend."<sup>27</sup> Upon renewing its own efforts, Barrick found that conditions warranted more extensive internal investigations pertaining to the sexual assault allegations, which uncovered and ultimately recognized serious failures on the company's part. Barrick then undertook a number of responsive actions, including the dismissal of employees and contractors found responsible, the introduction of systems to monitor security personnel, the reporting of suspected criminal conduct to police and regulatory authorities, enhanced human rights training for security personnel, and creation of a Porgera Remedy Framework for female victims of sexual assault.

Throughout this period, the company undertook a range of efforts to ensure responsible security practices under the Voluntary Principles on Security and Human Rights, and started a detailed plan of action in relation to the violence against women. While the company took some significant, groundbreaking steps to address the human rights issues at the Porgera Mine, most notably with the creation of a remedy framework detailed below, its efforts have fallen short of providing lasting remedy to the affected women.

## 2.3 Sexual Assault Claims and the Porgera Remedy Framework

In 2011, Barrick established the Olgeta Meri Igat Raits Program (“All Women Have Rights”) and the Porgera Remedy Framework to address the sexual assault of women in the community by the mine’s private security forces.<sup>28</sup> The remedy mechanism was limited to female victims of sexual violence and excluded cases of non-sexual violence, abuse, arbitrary detentions, and killings of men and women.

The company designed the Olgeta Meri Igat Raits Program to align with the UN Guiding Principles.<sup>29</sup> It included two core remedy components: a remediation program for individual victims, which included packages of support and reparations (referred to as the Porgera Remedy Framework), and a suite of community-oriented initiatives designed to improve the treatment of, and support for, female victims of violence. Additional elements were designed to support the initiative, including preventative and supervisory initiatives at the mine and the development of external capacities for counseling and training.

As described in the original Framework document, individual remedies were designed to “provide individualized support and services to women who have been the subject of sexual violence or abuse by current or former employees of the PJV.”<sup>30</sup> Individual remedies would be applied to victims whose complaints were deemed eligible and legitimate, and could include: (a) access to justice mechanisms; (b) access to medical and/or psychosocial support services; (c) “fair and appropriate” financial reparations for personal harm or economic damages; and (d) rehabilitation of rights and circumstances experienced prior to the alleged offenses.<sup>31</sup> Remediation packages could be in the form of financial compensation but could also include access to counseling, health care, livelihood assistance, household goods, microcredit, or economic development grants.<sup>32</sup>

The community-oriented aspect of the Framework was to include community-level initiatives designed to “complement and enhance” existing programs for women who had suffered sexual violence. These services and facilities were to be available to women residing or working in Porgera.<sup>33</sup>

The Olgeta Meri Igat Raits Program also included other initiatives, including internal reforms at the Porgera mine and external capacity development to facilitate counseling about violence against women and training for community representatives and personnel employed in key local positions, including police.

Other initiatives separate from the Framework—including those falling under the Restoring Justice Initiative (RJI)—were aimed at building capacity in the law enforcement and justice sector.<sup>34</sup> Funding was provided to hire a women’s welfare liaison officer in order to provide support and assistance to victims of sexual and domestic violence. As part of this initiative, the mine partnered with the Fiji Women’s Crisis Centre to provide training so PNG-based practitioners could assist women affected by violence.

The remedy mechanism was overseen by the Porgera Remedy Framework Association (PRFA), a not-for-profit entity created by Barrick, incorporated in PNG, and comprising “key stakeholders” that included company representatives.<sup>35</sup> In doing so, Barrick’s intent was to keep “independent of Barrick” the individual reparations framework “to the maximum extent practical.”<sup>36</sup> Toward that end, Barrick hired Cardno, an Australian development contractor, to administer the operation of the Framework under the control of the Framework Association and to implement the Framework’s remedy mechanism.<sup>37</sup>

The remedy mechanism established a number of procedures. Individuals were required to file claims voluntarily. A Complaints Assessment Team would administer individual reparations, and claimants could file their claims with an officer whose role was to explain the process, help claimants prepare their statements, and assess the eligibility of those claims. The Claims Manual for the remedy mechanism initially instructed complaints officers to accept claims for assaults that took place from January 1, 1990, to December 31, 2010. Claims relating to assaults outside this period, if any, would be considered on a case-by-case basis.<sup>38</sup>

The Complaints Assessment Team officer would then provide an assessment of a given claim to the Independent Expert, who would prepare a decision as to its eligibility and legitimacy. Claimants could appeal adverse decisions. During the claim-submission and -assessment process, claimants could meet with an Independent Legal Advisor, a PNG lawyer tasked with providing free legal advice to make sure claimants understood their rights, including what rights they might be giving up by accepting the remedy package. BNL also offered funding for any claimant who wished to secure her own lawyer, though no claimants utilized this option. It is unclear whether the claimants were fully aware of this option.

The remedy mechanism opened in October 2012 and accepted claims until May 25, 2013, with any subsequent claims assessed on a case-by-case basis. Ultimately, 253 were filed. Of those, 137 were deemed eligible, and 130 were judged entitled to a remedy package. Of the seven remaining, five claimants died and two stopped participating in the process.<sup>39</sup> In the end, 119 cases were settled within the Porgera Remedy Framework; 11 women pursued a separate legal settlement. (See below in section 2.5.)

The 119 women who took part in the Porgera Remedy Framework each received a package consisting of cash compensation and services, depending on their specific situations. The original cash compensation was approximately 20,000 kina apiece (approximately US\$8,000 at the prevailing exchange rate in 2013), which was determined by benchmarking against Papua New Guinea's highest court awards for rape and sexual violence cases.<sup>40</sup> This was followed by an additional, subsequent payment of 30,000 kina (about US\$12,000 at the time) per woman, although today the women interviewed tell BSR that they were never given an explanation for it. That brought the financial total to 50,000 kina (US\$20,000 at the time) for each of the 119 claimants. While some services, including medical care, counseling, school fees, and business training, were meant to provide longer-term assistance, many women tell BSR that they did not receive the full services promised and express a desire for these services to be fulfilled.

Together, the Olgeta Meri Igat Raits Program and the Porgera Remedy Framework were the first such initiative by a company and amounted to an innovative effort to provide remedy to victims of sexual assault. For taking a cutting-edge approach to access to remedy, Barrick should be recognized and applauded. Its spin-off effects, particularly among women in Porgera, included awareness-raising of their rights, as well as a greater willingness to talk about sexual violence and the demand for justice. However, the remedy mechanism and its implementation were not without flaws and challenges; these are taken up in the next section. Perhaps in part because of such problems, the Olgeta Meri Igat Raits Program and the Porgera Remedy Framework can provide many useful lessons.

## 2.4 Porgera Remedy Framework Challenges

The Porgera Remedy Framework has been the focus of detailed investigations and international attention due to its innovativeness, as well as flaws and challenges in its implementation.

One report, commissioned and funded by Barrick, is Enodo Rights' "Pillar III on the Ground," which was conducted under the oversight of Human Rights Watch, Partners for Democratic Change, and a legal academic and former UN official in order to help ensure its independence. The assessment found that the remedy mechanism, while aligning to the UN Guiding Principles in concept and design, did not align with the Guiding Principles in execution.<sup>41</sup>

The Columbia Law School Human Rights Clinic and the Harvard Law School International Human Rights Clinic, conducted a field study with direct interviews of victims and noted "numerous serious deficiencies in its design and implementation." These include that the company did not promptly investigate and remedy human rights abuses; consultation and engagement with survivors and other stakeholders was inadequate; the remedy mechanism was limited in scope, without proper explanation or justification; the remedy mechanism was not sufficiently accessible and safe for survivors; full and effective reparations have not been provided, and many survivors consider the remedies unfair and insulting; the company improperly required individuals to waive their legal right to sue, and many women did not have adequate independent legal representation; and the company's process was not as transparent and predictable as it could have been, so it could not achieve full independence.<sup>42</sup>

International NGO MiningWatch Canada also undertook field work to directly engage the victims and community, and reached the conclusion that the mechanism had serious deficiencies, focusing particularly on its lack of transparency, the conditioning of remedy on the signing of legal waivers, and the group's conviction that a number of women missed out on receiving remedy through the Porgera Remedy Framework.<sup>43</sup>

A few of the Framework issues that are particularly relevant for our study are explored in greater detail below. As it is beyond the scope of this study to fully explore the strengths and challenges of the Porgera Remedy Framework, BSR recommends that readers read the aforementioned reports for further understanding of implementation problems.

### **The Missed-Out Women**

International stakeholders and community members have expressed concern that some female victims of sexual assault missed out on receiving remedy through the Porgera Remedy Framework. The reasons are several. First, information about the remedy mechanism was not heavily publicized because of the sexual nature of the complaints. The remedy framework was purposefully kept discreet to protect the women; however, some criticize this approach as they stress that it limited some women's awareness, particularly that of victims who were outside Porgera when the remedy mechanism became available. Second, some women claim that their cases were wrongfully dismissed in the early stages of the remedy framework because the claims assessment team mistakenly thought that only rape cases were admissible—when in fact, any cases of sexual violence by company security guards were to be considered. It is not known how many women failed to access the Porgera Remedy Framework, but the estimate is dozens.



## Challenges with Cash Payments

Originally, the Porgera Remedy Framework was intended to avoid cash payments. The designers had received extensive warnings from both national and international women's rights experts that the social dynamic in Porgera posed inherent dangers to women receiving cash payments.<sup>44</sup> Critics of the notion argued that women would be pressured, sometimes through violence, to "share" such payments with male relatives. When a woman is sexually assaulted, Porgeran culture attributes harm as extending to her family and tribe; remedy is expected to be given to the wider tribal unit as well—often with no payment remaining in the hands of the original victim.

Nonetheless, the Porgera Remedy Framework soon came under pressure from both local and international stakeholders to offer cash payments, so it changed its approach to offer a mix of cash, plus services. The logic for adding a cash component included: giving agency to the victim to decide for herself what type of remedy is most appropriate; delivering remedy in a manner consistent with tradition; and facilitating noncash remedies through the provision of cash.<sup>45</sup>

To the frustration of experts who had originally warned about the complexities of providing monetary remedy, the anticipated negatives came to pass. Through interviews BSR conducted in Porgera, we learned that much of the cash the claimants received was immediately taken, sometimes forcefully, by male relatives. Some of those who were able to withhold the cash from relatives lacked the financial skills to manage a large sum of money, and many report that they wasted much of it. Victims and locals interviewed inform BSR that those whose money ended up in the hands of male relatives were worse off than before and that those who could not manage money were unable to enjoy the long-term solutions the Porgera Remedy Framework had envisioned.

Some international experts say cash payments were not the key problem. They cite flaws in the Framework's design, which made confidentiality impossible, and the company's failure to work with individual claimants to design safe means of remedy disbursement.<sup>46</sup> The program, however, did seek to mitigate the risks of cash payments by depositing the funds only into bank accounts set up in conjunction with the claimants and only after discussions with the claimants on the risks.

## Legal Waivers

To receive the remedy package, each complainant was required to sign a waiver giving up her right to bring any claim for civil damages related to settling the claim in any jurisdiction against Barrick, though her rights to pursue criminal claims against individual perpetrators were preserved. (For additional information on legal waivers, see Section 6.5.4.) The women maintain, however, that they did not understand what they were signing and felt they had no choice.

The question of the legitimacy of the legal waivers was submitted to the Office of the UN High Commissioner for Human Rights (OHCHR) by MiningWatch Canada. The OHCHR responded that "the presumption should be that as far as possible, no waiver should be imposed on any claims settled through a non-judicial grievance mechanism. Nonetheless, and as there is no prohibition per se on legal waivers in current international standards and practice, situations may arise where business enterprises wish to ensure that, for reasons of predictability and finality, a legal waiver be required from claimants at the end of a remediation process."<sup>47</sup>

The OHCHR recommended that an independent assessment of the remedy mechanism be conducted, which led Barrick to commission the Enodo Rights report. This report found that with respect to the waiver, there were serious errors in the provision of independent legal advice to claimants. Based on the compensation that claimants ultimately received, however, “the waiver did not adversely impact claimants’ right to remedy.”<sup>48</sup>

Setting the legal question to one side: The women themselves express frustration over the waivers and have asked for them to be rescinded.

## 2.5 Out-of-Court Settlement and Differences in Compensation for Victims of Sexual Assault

Due to dissatisfaction with the Porgera Remedy Framework, 11 eligible cases were formally withdrawn. These 11 women were represented by EarthRights International (ERI), together with claims relating to alleged deaths from such causes as unlawful shootings and drownings in mine waste piles or tailings flows. In April 2015, ERI eventually reached a settlement with Barrick whose terms were not fully disclosed. The joint statement released by Barrick and ERI states: “Pursuant to the terms of the settlement, the women will receive compensation under the Porgera Remedy Framework, and a payment in connection with their participation in the mediation process which led to the resolution of their claims.”<sup>49</sup> Locals in Porgera widely report that as a result of the ERI settlement, the 11 women claimants each received a total of 200,000 kina (approximately US\$75,000 at the time).

Upon finalizing the ERI settlement, the company came under renewed pressure from the 119 women who had participated in the Porgera Remedy Framework. They organized to publicly protest the vast difference between the amounts they received and what the ERI claimants were getting. Locals report that the company subsequently paid the 119 women an additional 30,000 kina (about US\$12,000 at the time), for a total compensation of 50,000 kina (about US\$20,000 at the time). BSR understands that the amount of 30,000 kina was chosen by Barrick in order to match the payments given to the 11 women from the Porgera Remedy Framework, which they received without having participated in the full program. This matter may not have been explained directly to the women and constitutes speculation on our part.

The discrepancy in payments between what the 11 women allegedly received, vs. what the 119 received, is a highly contentious issue, both in Porgera and among international stakeholders. Some believe it calls into question the cash remedy the 119 women received. While many women who participated in the Porgera Remedy Framework reportedly were initially satisfied with their compensation packages, they grew dissatisfied on discovering the huge difference between their compensation and that of the 11 ERI women, given their view that all the women were harmed in the same way by the same company.

The Enodo Rights report found that the cash component of the remedy ultimately received by the 119 claimants was “in line with—and ultimately exceeded—what an international human rights tribunal would order in similar circumstances,”<sup>50</sup> with reference to rulings of the Inter-American Court of Human Rights. Some stakeholders, however, have called into question the methodology Enodo Rights used to determine equitable damages for survivors of sexual violence,<sup>51</sup> and others have questioned whether the remedy agreements were proportional to the gravity of the violations and the harm suffered.

The 119 claimants have requested an additional 150,000 kina (about US\$46,000) from the company to gain parity with the higher total amount received by the women who participated in the ERI settlement. To this end, the 119 women filed a claim with the UN Human Rights Working Group in November 2016, which remains under active consideration.<sup>52</sup> Barrick and BNL have stated that they have no intention of

providing cash compensation beyond what was already provided as part of the Porgera Remedy Framework. The women and their representative bodies continue to push for “top up” payments and remain hopeful that they will receive additional cash compensation.

## Current Human Rights Allegations

Given that the focus of the Porgera Remedy Framework was limited to sexual crimes, other harms experienced by the community were left unaddressed. In 2015 and 2016, the company received two sets of claims. At present, these number approximately 940 cases and include allegations of unlawful killings and assault, environmental and health-related damage, land disputes, workplace grievances, and sexual violence. (The rough figure of 940 includes the cases of the 119 women who participated in the Porgera Remedy Framework.)

Some of the 940 or so claims date back more than 20 years and contain allegations of criminal conduct previously unreported to Barrick and BNL or the authorities. Others have already passed through PNG courts, the Porgera Remedy Framework, the company’s operational grievance mechanism (OGM), or were previously investigated or addressed in some other manner. A portion of cases has been rejected at least once, but claimants refiled because they believe their cases were not properly addressed. Moreover, many claims overlap: In some instances, the same claim has been presented to Barrick and BNL by diverse victims’ organizations; in other instances, a claimant has filed multiple claims. Many of the claims provide very few details (i.e., some present a list of names with the type of alleged harm, offering no additional information). Finally, BSR learned through our engagements in Porgera that there are additional claimants who have yet to file their cases and formalize their claims.

The remedies offered via the Porgera Remedy Framework and the ERI settlement have raised claimants’ expectations of large cash payments from Barrick for harms endured. These expectations have created what several Porgerans interviewed call a “business of victimhood,” wherein some, though not all, local human rights organizations charge claimants to take up their cases, and some organizations are demanding a portion of any potential settlement or remedy payment. While acknowledging that representative organizations need revenue to function, some question their motives. Consequently, there has been widespread fragmentation among the local organizations in Porgera; some assert that they are the sole legitimate victims’ representatives. However, in recent months, certain representative organizations—the Akali Tange Association (ATA), the Human Rights Inter-Pacific Association (HRIPA), the Porgera Red Wara Women’s Association (PRWA), and the Porgera 119 Indigenous Women’s Association—are said to be working together to “take a united front to advocate for the Human Rights Issues of Porgera.”<sup>53</sup>

The most active local organizations demand that the bulk of the remedy should come in the form of cash compensation. In contrast, some of the victims—including some who went through the Porgera Remedy Framework—worry that any cash compensation will be taken from them or will be misspent, with no lasting benefits. When asked about the “ideal” formula in one group interview with BSR, the locals suggest an overall remedy package predominantly consisting of services (about 90 percent), with cash making up only a small portion (about 10 percent).

A further challenge is determining which cases are legitimate. Several stakeholders, including victims and victims’ advocates, report that some of the claims are, in fact, false and have been lodged in keeping with the local Porgera *traim tasol* culture (a Tok Pisin term that loosely translates as “trying it on, that’s all”), or a belief that Barrick and BNL will ultimately offer payouts to all claimants.

Local community members express frustration at having to endure a long wait, perhaps decades, for cases to be resolved. It is not clear whether certain cases remain unresolved because of inaction by the company or the PNG government or were previously addressed with outcomes that claimants decline to accept. This is further clouded by the fact that most of the current claims contain little or no detail that would allow further investigation or assessment of individual cases.

Beyond specific claims of harm and the company's payment of royalties and land use and environmental compensation, some community members contend that Barrick and BNL owes a "historical debt" to the community in exchange for being able to mine in Porgera.

The reference to "historical debt" transcends vague notions of reciprocity. The phrase is sometimes mentioned in the context that the benefits from the mine have not been fully realized, in terms of what the community was led to believe during the original negotiations to allow mining activities on their land. Some community members and international stakeholders maintain that the only solution is to resettle community members away from the impacted mine area.<sup>54</sup>

In sum, the social license to operate appears to have support among those who benefit directly from the mine—and much less support from the many who do not. Some stakeholders report that they wish the mine had never opened and say they were better off before it began operating. On the other hand, even those frustrated about their claims recognize that the mine plays an important role in the community. As one stakeholder observes with regard to the loss of agricultural land: "Barrick is our garden now; we don't want to chase the company away. We want to help it work through these issues." In this light, both supporters and opponents of the mine's operations are concerned about what will happen to the community when the mine eventually closes. Its current lease is set to expire in 2019, though the company is negotiating with the government to extend the lease for another 20 years, and lease extensions are a common practice. The mine's productive life is estimated to run for many more years.

Clearly, resolving these cases within this complex environment will be challenging. Still, the process might be eased by utilizing the lessons of the Porgera Remedy Framework and by building a new approach to remedy that includes the government, the company, victims' representatives, the international community, and other actors in the surrounding human rights ecosystem.

## 3. Human Rights Principles

International human rights principles derive from longstanding ideas on the ethical treatment of human beings in cultures around the world. These principles culminated in the Universal Declaration of Human Rights (UDHR) following World War II and were then further codified in more than 80 additional international instruments. These instruments, together with the international systems designed to undertake human rights monitoring, reporting, and adjudication, form the international human rights regime.

### 3.1 Human Rights Obligations

The international human rights regime is designed to elaborate the components necessary to preserve the dignity, meet the needs, and entrench the freedoms of each individual on the planet. This includes protections of bodily integrity, such as the right to freedom from torture and the right not to be held in slavery. It also includes categories relating to the provision of basic needs, such as the right to housing and the right to food. Finally, it includes categories related to protection of people from harms by other actors, such as the right to privacy and the right to decent working conditions. All rights are underpinned by a right to remedy.

Originally, this human rights framework was designed for governments, which were seen as the sole duty-bearers. But in the past two decades, as private sector-related human rights harms became impossible to ignore, the framework has been expanded to define the roles and responsibilities of companies.

These demands came to fruition in 2011 with the United Nations endorsement of the Guiding Principles on Business and Human Rights (UNGPs).<sup>55</sup> The UNGPs serve as the global authoritative framework for defining the corporate responsibility to respect human rights and for carrying out due diligence to prevent and address abuses. The UNGPs state that governments have the duty to protect human rights, including from harms committed by private-sector actors. Companies, for their part, have the responsibility to respect human rights, no matter where or how they operate. When violations occur, government and corporate actors have a joint responsibility to ensure that victims have access to effective judicial and nonjudicial remedies.

The UNGPs emphasize that effective judicial remedy is part of the foundation of the international human rights framework and is an essential part of the state's duty to protect human rights.<sup>56</sup> The Principles affirm the obligation of states to take appropriate steps to ensure—through judicial, administrative, legislative, or other appropriate means—that those affected by business-related human rights abuse have access to effective remedy.<sup>57</sup>

State-based judicial and nonjudicial grievance mechanisms, however, should be supplemented and enhanced by a broader system of remedy. Within this system, operational grievance mechanisms can provide for early stage resolution,<sup>58</sup> especially in situations where victims of business-related human

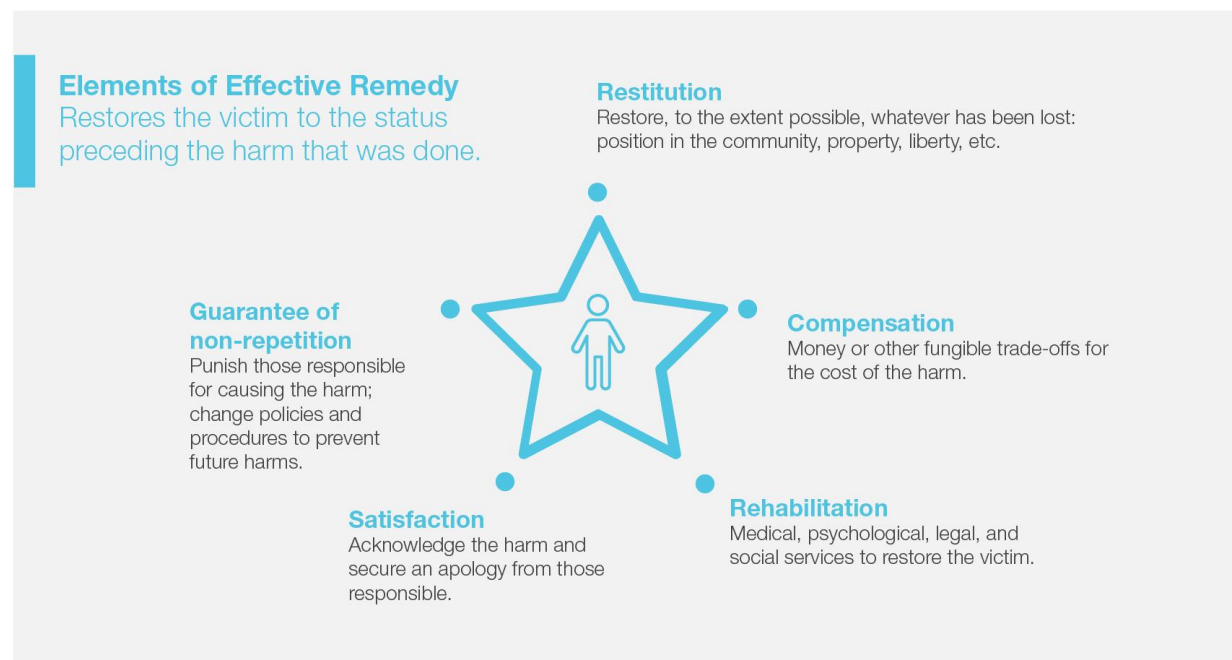


rights abuses may not have access to effective remedy through the court system. The UNGPs recognize that grievance mechanisms established by companies may fulfill an important role in enabling victims to have their grievances heard and in obtaining remedy for harms.<sup>59</sup>

When a business enterprise has caused or contributed to adverse human rights impacts, the UNGPs state that **“the company should provide for, or cooperate in, the remediation of such abuses through legitimate processes.”**<sup>60</sup> This is an indispensable part of the corporate responsibility to respect human rights.

## 3.2 The Essentials of Remedy

Remedy is setting right a wrong or harm that has been committed. It is achieved by making amends, paying money to, or otherwise helping those who have been harmed. Effective remedy restores the victim to the state preceding the harm that was done. A key component of remedy is reparations, arranged with the objective of re-establishing the situation that would likely have existed if the harm had not been committed.<sup>61</sup> Effective remedy can be served through judicial and nonjudicial, state-based and company-based, adjudicative, and dialogue-focused processes.



### Process Elements:

- Access to information
- Legal representation
- Evidence requirements
- Transparent/confidential
- Victim protection
- Fair hearing
- Prompt
- Equality of arms

### Substance Elements:

- Proportional to harm
- Culturally appropriate
- Fullness of restoration
- Collective/individual

The right to effective remedy is established in international human rights law, which stipulates that all victims of human rights violations or abuses have the right to an effective remedy. Effective remedy includes five recognized forms of reparation, which include a broad range of measures aimed at repairing the harm caused to survivors and victims: **restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.**

1. **Restitution** is intended to restore, to the extent possible, whatever has been lost (position in the community, property, liberty, and so forth) and restore the victim to the state preceding the harm that took place.<sup>62</sup>
2. **Compensation** is appropriate in those cases where damage can be economically assessed. These cases include: “(a) Physical or mental harm; (b) Lost opportunities, including employment, education, and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; and (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”<sup>63</sup> Compensation can take the form of money or other fungible trade-offs.
3. **Rehabilitation** covers medical or psychological care and social or legal services needed to restore the victim.<sup>64</sup>
4. **Satisfaction** includes such measures as a cessation of the violations; an acknowledgment of the harm done, including verification of the facts and public disclosure of the truth; public apologies from those responsible, including acceptance of responsibility; and sanctions against those responsible for the harm.<sup>65</sup>
5. **Guarantees of non-repetition** include a number of measures to prevent further abuses. These include investigation into crimes that result in human rights violations, and prosecution for those responsible for causing harm, while respecting the right to a fair trial. Changes in policies, procedures, laws, and oversight may also be necessary to ensure non-repetition.<sup>66</sup>

There is no single way to achieve effective remedy and repair the harm from human rights violations. Reparations can come through the courts, through OGMs, and through mediation and other pathways that are explored in this report. (See section 6.3.) All these pathways, together, compose what we refer to as the “remedy ecosystem.” A functioning remedy ecosystem will have at least one pathway open to victims in which claims of harm can be considered by a trusted independent authority; if they are deemed to have merit, fair remedy can be provided. However, in a functioning remedy ecosystem, not all claims made will receive remedy. Remedy will be provided only in cases for which claims are deemed legitimate and valid in an independent and fair process activated through the pursuit of one of the available pathways to remedy.

A viable pathway to remedy is one in which a victim is able to go through all four steps along the Road to Remedy. These include: 1) filing a claim; 2) receiving a fair and impartial hearing; 3) receiving remedy that is appropriate and proportional to the harm suffered; and 4) receiving remedy that effectively and sustainably restores the victim. Unfortunately, in PNG there are many barriers to achieving effective remedy (see section 6.3), which must be addressed to ensure that victims have at least one viable mechanism open to them.

### 3.3 Basic Principles Underpinning the Recommendations

When BSR formulated its recommendations, the following principles underpinned our thinking. These principles are derived from the international human rights field, general norms, and applied concepts of remedy.

These basic principles should be front and center in the approach of all actors—company, government, and community—in carrying out the recommendations and any other solutions they settle on.

**Principle 1: Under international human rights law, remedy contains two dimensions—procedural and substantive—plus five important elements: rehabilitation, non-repetition, satisfaction, reparation, and compensation. All of these should be considered when meeting the final aim of effective remedy, which is "to restore, to the extent possible, the victim to his/her prior situation before the harm was done."** Some elements will be more important and more feasible than others, depending upon the case, but the aim of restoring the victim is paramount.

**Principle 2: There is a remedy ecosystem in every country. It consists of a variety of pathways designed to reach effective remedy. These include judicial and nonjudicial, state-based and company-based, adjudicative, and dialogue-focused. For a fully sustainable and rights-oriented solution, it is important that the entire remedy ecosystem be considered, so that victims are empowered with choice.** Some remedy pathways, such as the courts, may be viewed less favorably by some victims for a range of reasons, including time, cost, and bureaucratic burden. Victims are fully empowered when they can choose among several different pathways to remedy; at a minimum, it is important that every victim have at least one pathway available.

**Principle 3: Both the company accused of committing the harms and the state, as the legitimate representative of the population, have an important role to play in remedy. Both have the responsibility to ensure that every victim has a viable pathway, and they should work together to harmonize with, and strengthen, the remedy ecosystem around the victims.** The responsibilities of the company and government are independent of each other, meaning that if the government does not play its role, the company still retains the responsibility to identify or provide at least one viable pathway to remedy. The company should avoid, to the extent possible, designing stand-alone remedy mechanisms without the involvement of the state. Rather, bringing the state to the table and securing its involvement should be a high priority in company efforts, particularly in cases involving criminal matters. Nonetheless, company operational grievance mechanisms have a role to play when they can facilitate speedier resolution of cases that have not reached criminal level.

**Principle 4: A victim needs a fair process from an impartial and competent authority before his/her case can be considered closed.** In accordance with the procedural requirements of effective remedy, all claims must be heard by a fair and competent authority in a timely manner. This does not mean, however, that all claimants must be happy with the outcome. Some may not have grounds for a case, while others may have higher expectations of compensation than what is provided. After claims have undergone a fair hearing by a competent authority (including the right of appeal), they should be recognized as closed, rather than prolonged with further ambiguity for the victim and the company.

**Principle 5: Prevention of future harms is a fundamental part of remedy.** For this reason, learnings from past harms and the building of stronger preventative systems should go hand in hand with efforts to restore victims. Prevention may also include prosecution of those responsible for the harm.

**Principle 6: The mine and the people are part of the same community. With that in mind, solutions that are less adjudicative and more restorative should be prioritized.** The social fabric of the community has frayed, and the position of some victims in the community is under stress from the longstanding, unaddressed claims of harm. In some cases, adjudicative approaches could create further harm and social discord, rather than lead to full restoration for the victim. This is particularly true of sub-communities that feel victimized by collective harms, such as more general damage to livelihoods and social breakdown. For such cases, dialogue aimed at community remedy is important.

## 4. Recommendations

These recommendations should not be taken as a binding commitment from the company. The next and most important step is for the company to engage in dialogue with the community and work toward a solid and agreeable action plan. It is our sincere hope that these recommendations can provide the basis for a new dynamic in Porgera, one in which the benefits of the mine are experienced by all, and rights are promoted and enhanced, not undermined.

The recommendations are divided into three broad themes: 1) addressing current harms, 2) strengthening the remedy ecosystem, and 3) preventing future violations.

The results of our recommendations will be stronger and longer-lasting with the involvement of the community in the creation and implementation of solutions, as well as from the company and, where appropriate, the government. Additionally, many of the human rights impacts have collective implications that go beyond one individual's claim. Involving the community in the development of solutions is one way to address the collective nature of the mine's negative impacts.

### I. Address Current Harms

More than 940 claims of human rights abuses have been filed with the company. This includes those filed through local representative bodies and NGOs and those filed directly by claimants with the company's operational grievance mechanism (OGM). Many of the claims include few details beyond a name and type of complaint; in some cases, single claims have been registered multiple times with different representative bodies, creating duplicates that are not easily identified and accounted for. Some cases have been addressed previously in courts, or through other mechanisms, but have been registered anew because the claimant is not satisfied with the outcome. Other abuses took place years ago but have not been formally addressed. Finally, many people have yet to file and formalize claims. This has resulted in a complicated dynamic for the company to address and has made identifying and addressing new cases particularly challenging. BSR's report seeks to provide a path for addressing the harms caused by the Porgera mine and to recommend a process to deal with the many different types of existing claims.

The company should prioritize the more than 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 any harms remedied.



## RECOMMENDATION 1: REFORM THE OPERATIONAL GRIEVANCE MECHANISM

Under the UN Guiding Principles, companies should establish grievance mechanisms to receive complaints of human rights abuses from employees, community members, and others affected by their operations. A grievance mechanism may cover issues beyond human rights, such as complaints relating to company products and property damage from company vehicles. In the following recommendations, our focus is on human rights-related complaints.

The company's OGM was established in 2010. Community members whom BSR interviewed report that it was unresponsive, slow, and not transparent. They describe it as a "black hole" in which complaints were neither addressed nor resolved and were never followed by adequate explanation. Although the company has made a series of improvements to the grievance mechanism in recent years, it is clear that a number of shortcomings persist. Most critical, the company's OGM has lost the community's trust.

The OGM should be reformed in accordance with the effectiveness criteria, outlined in the UN Guiding Principles, that are set forth to ensure that the OGM is fair, reliable, and user-friendly.

It is important to emphasize that reform of the OGM should be done in concert with the community. This could take place within an alternative dispute resolution process, which may allow for creative and restorative resolutions. Some community groups have already invested considerable time and resources in envisioning an improved OGM and are prepared to engage in dialogue with the company. Various representative bodies submitted written ideas to BSR, summarizing their discussions and wishes. While the company should engage with these bodies, it should also extend its consultations with the community to ensure a fully inclusive process that includes all community voices, not only those engaged with representative bodies.

In making this recommendation, it is important to distinguish between two forms of consultation. While the mine's grievance mechanism should be designed in partnership with the community, the outcome of its decisions should be independent of both actors: company and community. This distinction derives from the international norms specifying that mechanisms determining rights outcomes should be independent of the parties involved. Additionally, any community representative bearing authority over a decision concerning remedy could be subjected to pressure, harassment, or retaliation for a given decision. It is crucial that the mine's grievance mechanism does not exacerbate existing tensions or inequalities in Porgeran society.

Consideration of the local context and culture is also critical when considering forms of remediation. Porgera has a strong culture of remedy and compensation. This culture, formed over many years of practice among competing tribes and clans, grew into a robust system that serves as a critical pillar in enabling disputes to be settled. This culture considers a number of elements when deciding appropriate compensation: the status of victim and perpetrator, the location, whether the incident was intentional or accidental, and so on. Communities also have their own ritual processes designed to rebuild relationships after harm has been done, including public apologies, tribal collection of *belkol* ("sorry money"), and the sharing of food, pigs, and songs. These remedy traditions are established and sophisticated, and the company should draw upon them in devising its remedy strategies, balancing this with considerations of fairness and predictability.

Taking into account the local culture also poses challenges. First, Porgera's population consists of a mix of seven local tribes, plus roughly 10 times as many in-migrants. As with all human societies, it contains internal disagreements and dynamism that must be dealt with. Second, the local culture contains inequalities that the company must be careful not to further entrench. Women, for example, are typically awarded less remedy compensation than men for the same harms.

BSR recommends further attention and dialogue to address these issues. A number of victims' representative organizations have already started to examine and document the cultural practices in Porgera, including the creation of a draft "culturally appropriate compensation matrix" based on informal jurisprudence that underpins known cases of tribal resolution of conflicts. These efforts should be developed further via a robust cultural dialogue—one that includes input from the wider community. PNG's Manus Province underwent a similar exercise to establish a set range for culturally appropriate compensation several years ago. BNL's aim should be similar: Devise standard guidance for compensation and remedy.

While the overall reform of the OGM should be done in consultation with the community, suggestions for specific reforms, as detailed in section 6.4.3, include sharing indicators on the grievance mechanism's performance with the community each year; establishing regular 60-day cycles to report back to claimants regarding their complaints; and establishing an independent oversight committee to periodically review decisions and the performance of the OGM.

### Challenges with Consultation

Adequately consulting and involving the community is not without challenges. Many of our recommendations involve consulting with, or co-creating with, the community. While on the surface the concept of consultation with the community is simple, in practice it is extremely complex and raises a number of questions. What is the community to be engaged—the established residents or the newcomers, too? Who represents the community; can the leadership voice truly represent the interests of all? Who chooses the representatives? How does one ensure that the voices of the most vulnerable are heard? These questions must be considered if the wider community and those impacted by the mine are to be adequately consulted.

### Suggested timeline and deliverable:

- » Consultations with community on OGM reform, by March 2019.
- » Draft of OGM, by April 2019, followed by second round of community consultations, by July 2019.
- » Reform of OGM completed, by November 2019.

## RECOMMENDATION 2: ENTER INTO A DIALOGUE WITH THE 119 WOMEN WHO UNDERWENT THE PORGERA REMEDY FRAMEWORK

The complexities surrounding the 119 female victims of sexual assault who participated in the Porgera Remediation Framework should not distract from the central issue that must be addressed: There are women in Porgera who feel their rights have not been effectively restored. Given the prominence of these 119 claims—included in the aforementioned pool of 940 current human rights claims—and the ongoing sense of injustice over how they were addressed, any successful remedy effort must directly engage these women.

A major source of tension is the sense of inequity between the outcome of the Porgera Remedy Framework and the result obtained in another case. According to community members, the Porgera Remedy Framework compensated 119 sexual assault victims with 50,000 kina (US\$15,000). Eleven other victims went through a separate, out-of-court settlement process as part of a lawsuit organized by

EarthRights International (ERI) and received an estimated 200,000 kina (US\$60,000). For more information on these cases, see Section 2.

The 119 Porgera Remedy Framework claimants have requested an additional 150,000 kina (US\$45,000) cash payment from Barrick so their compensation would equal the higher payment received by the ERI claimants. They point out that the company already increased their compensation from 20,000 kina (US\$6,000) to 50,000 kina (US\$15,000) after the ERI settlement came to light and claimants pressed for equal compensation.

The claimants are currently represented by the 119 Porgera Indigenous Women's Association as their focused representative body; their claims are also included among cases represented by the Akali Tange Association (ATA), Human Rights Inter-Pacific Association (HRIPA), Porgera Women's Rights Watch, and Red Wara River Women's Association. All of these groups are requesting equalization or "top-up" payments. The position of each representative body is slightly different. Some also demand further remedy actions. Others are open to discussing a combination of cash and the provision of such services as access to reliable medical and education programs for the victims and their children and preferential contracts with the company and other income-generating projects. The company has consistently said it will not pay further compensation because the women have already received higher payments than PNG courts would have awarded for their claims.

The entrenched positions of the company and the representative groups have left little common ground. Victims feel caught in the middle, which they regard as a further harm imposed by the time, money, effort, and sense of injustice stemming from cases that have continued for so many years. BSR recommends strongly that something be done.

Turning first to the human rights aspects of this issue: Under international human rights law, discrepancies in outcomes are acceptable, even when the harms are largely similar. In Porgera, one group of women pursued the high-risk strategy of joining ERI in an international lawsuit in the U.S., which ended in an out-of-court settlement. The other group pursued a lower-risk, more direct strategy of participating in a local remedy process. While it would be misleading to portray the women as having been given equal and fully informed access to both paths, the point nonetheless stands: Different remedy pathways that give rise to different compensation structures are permissible under human rights principles, so BSR cannot justify a straightforward recommendation requiring the equalization of payments on human rights grounds.

Still, while differential outcomes are allowed under human rights law, this does not mean that every remedy is equally legitimate. The ERI process was settled out of court and because that process was confidential in nature, it is not known to what degree the settlement was determined on the basis of a consideration of restoring the victims, rather than Barrick's calculation of the expected costs of litigation and negative publicity.

Given this context, BSR cannot determine that this outcome is worthy of being used as a benchmark for a compensation standard. Nor can we determine that the outcome was effective: Many of the ERI claimants report that they lost their payments to theft, abuse, or pressure from male members of their tribe, leaving little for their restoration.

The Olgeta Meri Igat Raits Program and its Porgera Remedy Framework also suffered from deficiencies. Community members have raised questions as to whether victims received effective representation.

Claimants were asked to sign a document waiving their rights to file further claims, a procedure that some may not have understood fully before signing. Community members claim that the compensation amount was insufficient and that the provision of promised medical, psychological, and other services halted after a short time. Many of the Porgera Remedy Framework claimants also report that their payouts were stolen or mismanaged, or that they were coerced into giving them away. The Olgeta Meri Igat Raits Program has been extensively studied, including by Columbia/Harvard, Enodo Rights, and MiningWatch Canada; while lauded as an innovative effort by a company to provide remedy in a difficult operating environment, it was also found to be deficient in many crucial respects.

Adding a layer of complexity is the question of whether the feelings of unfairness that arose from the discrepancy between the outcomes of the Porgera Remedy Framework and the ERI settlement created further harms. Many of the Porgera Remedy Framework claimants express frustration that they experienced the same crime at the hands of the same perpetrators but received different compensation. Given the discrepancy in outcomes, some women were encouraged to pursue their cases further and went into debt paying representative bodies in the expectation that additional payments would come when their cases were won.

The complexities should not distract from the central issue that there are women in Porgera who went through a remedy mechanism yet feel their rights have not been effectively restored. The four essential steps in the "road to remedy" (see section 1.2.1), include the requirement that the victim be fully restored to his/her previous position and that remedy has been effective and sustainable. This means, among other things, that victims are able to use their compensation payouts as they see fit and that the services provided to them are effective. The 119 women, among more recent efforts to obtain effective remedy, filed a claim with the UN Human Rights Working Group in November 2016, which remains under active consideration.<sup>67</sup>

### Consideration of the 119

BSR considered this issue in depth, with more time/attention devoted to it than to the remaining cases, because it is such a hotly contested issue in Porgera and will set the tone of future company-community relations. We tested no fewer than 15 different types of draft recommendations with the victims, community, government, and company. The draft recommendations included a range of recommendations, from lifting the legal waivers and allowing the women to pursue the cases in PNG court to putting the question to an independent authority such as the Human Rights Ombudsman. Ultimately, however, we have focused our recommendations on actions we believe are possible and likely to lead to the most beneficial outcome.

It is important to acknowledge that the harms and resultant remedy failures arose from a number of circumstances and were not all the company's fault. Some harm arose from the feelings of unfairness stirred by the discrepancy between the Porgera Remedy Framework and ERI settlements. Some arose because remedy payments were wasted or stolen. Some arose from expectations of continued benefits and community programs that were then cut short. And some arose because the women went into debt to pursue further claims. But these women are originally victims of the company, and the chain of harms started with the company, so BSR recommends that the company be the actor responsible for entering into a dialogue with the 119 women to determine what is further required to help them achieve full restoration. Moreover, some of the women have passed away. Their cases should not be overlooked: Remedy considerations are still required for their children and other affected family members.

There are a few important points to make about this dialogue so that it is genuine, meaningful, and effective.

First, victims are owed a complete explanation of what has occurred. It was clear in BSR's consultations that claimants have not been presented with a full accounting of the difference in outcomes between the ERI and Olgeta Meri Igat Raits Program settlements. The company should provide full transparency about its decision-making and the reasons for the difference in compensation.<sup>68</sup>

Second, dialogue should be conducted directly with victims and not conducted solely through representative bodies. While representatives play a critical role, they should not act as middlemen between the company and victims. The company and the women must understand one another's perspectives and must engage directly toward that goal.

Third, dialogue should be independently facilitated by professional post-conflict mediators to ensure that the women feel empowered. The dialogue could take place within an alternative dispute resolution process as a means to address individual as well as community harms. The dialogue, whatever form it ultimately takes, should be followed with measurable, concrete indicators to track progress and determine the level of restoration.

Finally, the dialogue should conclude with collective or individual solutions tailored to victims' needs. Priority should be placed on services or direct benefits, rather than cash payments, given the history of harms arising from cash compensation. If cash payments are given, it is imperative that they be managed in a way that protects the recipient from further harm. The focus should be on restoration and empowerment of victims, with an eye to ending the ongoing tensions and feelings of injustice that have lingered in the community for years.

A few other factors must be noted in this important case. The mediated conflict dialogue should not preclude any woman from challenging the legal waiver, should she decide to pursue a legal course of action. Victims should have the support of the free victim advocates' office (outlined below in Recommendation 3) and, if they did not understand the waiver before signing, their claim should move forward. However, BSR recommends that the dialogue-mediation path be prioritized over recourse to courts, as it is most likely to prove the fairest, most constructive, and most sensitive for the vast majority of the 119 victims.

**Suggested timeline and deliverable:**

- » Public meeting and explanation to the Porgera Remedy Framework women, by November 2018.
- » Conflict dialogue mediation started, by January 2019.
- » Program established to help with the further restoration of women, by May 2019.



## II. Strengthen Existing Remedy Mechanisms

Formal remedy mechanisms in Porgera are weak, with many barriers preventing access to effective remedy.

The "remedy ecosystem" refers to every possible pathway for victims of human rights abuses to have their claims heard and addressed. These range from formal courts and company grievance mechanisms to village tribunals and UN treaty bodies. (For additional details on the remedy ecosystem in Porgera, see Section 6.) A satisfactory remedy ecosystem means that every victim has at least one viable pathway to effective remedy; but a strong remedy ecosystem allows victims a choice of more than one path.

In the case of private-sector human rights abuses, the company and the government are responsible for ensuring that at least one remedy pathway exists. In the case of Porgera, BSR identified 16 potential pathways to remedy. However, a number of barriers must be addressed to make these pathways truly viable. (See section 6.5.)

The five recommendations in this section relate to the company's role in ensuring that a strong remedy ecosystem is accessible to victims. To be clear, the company is not responsible for the entire ecosystem; it is responsible for supporting those mechanisms that can assist victims of its own operations within the ecosystem, as preferred over short-term, one-off fixes of the company's own design. The aim is to ensure that remedies are available and sustainable while reinforcing the role of the government as the key remedial actor.

### RECOMMENDATION 3: ESTABLISH A FREE VICTIM ADVOCATES' OFFICE

One of the main challenges in Porgera is that community members often do not know their rights or whether their claims of harm are legitimate. A free victim advocates' office could be the first port of call. It should help victims understand whether they have a claim and then guide them to the appropriate pathway, whether through the courts, the company's grievance mechanism, or any other pathway.

An additional challenge in Porgera is the culture of *traim tasol*, which means "just have a go and try your luck." Even victims' representatives acknowledge that there are a number of false claims among the case load. A local appreciation of the *traim tasol* culture is required in order to identify genuine victims. An office based in Porgera would help serve the purpose of discouraging *traim tasol*, as well as to encourage genuine claims.

The victim advocates' office should be offered as a free resource and should be staffed by a qualified, independent lawyer from the Public Solicitor's Office. It could also include such entities as a representative of the Human Rights Ombudsman Office, a representative from the human rights track of the national court, someone from the Mineral Resource Authority (MRA), someone from the Conservation and Environmental Protection Authority (CEPA), independent lawyers, or others. Indeed, it might even include representatives of international NGOs or legal aid clinics from universities to assist in raising rights awareness. The greater the diversity of representatives in the office, the better equipped the office will be to handle a range of complaints and operate independently from the influence and internal politics of any single agency or organization.

After guiding each claimant to the appropriate pathway, the victim advocates' office should also monitor the progress of claims and report any delays or barriers to the National Ombudsman's office and, in the case of complaints filed with the OGM, to the company. When harms do not rise to the level at which they can be filed with any remedy mechanism, the office should provide transparent explanations to community members.

The first priority for the victim advocates' office should be to help support, process, and monitor the current cases with the goal of rapidly addressing the backlog of approximately 940 claims and helping to ensure that the harms are remedied. This office should also provide human rights awareness-raising and training aimed at the long-term prevention of future violations and the empowerment of local communities. BSR has identified a number of human rights courses at the local level, including one created by the United Nations Children's Fund (UNICEF) to train local magistrates in village courts on international human rights and another offered by the Human Rights Ombudsman Office. The victim advocates' office could offer one or more of these training processes to victims' representatives and other NGOs.

While the government should be encouraged to provide independent public legal officers to staff this office, it will nonetheless require dedicated funding and support. A funding mechanism, potentially similar to what exists today for the Restoring Justice Initiative (RJI), should be established to ensure that the victims advocates' office is well-resourced and sustainable, with clear safeguards for independence from the company.

**Suggested timeline and deliverables:**

- » Office set up, by December 2018.
- » Office staffed by a minimum of two people able to provide legal aid advice, by January 2019.

## **RECOMMENDATION 4: BUILD THE CAPACITY OF VICTIMS' REPRESENTATIVE ORGANIZATIONS**

Victims' representatives play an important role in the remedy ecosystem. They help raise awareness of rights violations and help victims to reach the appropriate remedy pathways. Porgeran culture has a natural representation structure in which most community members are represented by relatives, tribal leaders, or others with whom they have close relationships. In Porgera, representative bodies, as well as family members, often liaise with remedy mechanisms on behalf of claimants.

A number of community interviewees express doubt as to whether these representatives always act in the best interests of victims, as some charge high fees for taking cases or require victims to sign over a portion of their compensation. Others, however, note that representing victims requires time, resources, and expertise, and they regard payment for these services as justified and no different from legal fees in Western countries.

The representative bodies are likely to continue to play an important role in the resolution of the existing 940 or so claims; given this critical role, they should be strengthened. BSR recommends that an international NGO be engaged, with the participation of the representative organizations themselves, to assist in the development of a code of conduct to ensure that the genuine interests of victims stand at the center of representative activities.<sup>69</sup> This should include training to help organizations advise victims and steer them to the most appropriate remedy pathway, and should include skills training focused on a wide range of issues of importance to local human rights activists, including fact-finding, media advocacy, the use of UN systems, how to conduct effective advocacy, and so forth. The international NGO should

have a regional presence and be independent, with no vested interest in the outcome or any history of involvement with the cases or the company. It should be either an accredited training institution or one with an established track record for training human rights defenders. The resulting code of conduct should be publicly available.

BSR recommends that the company provide logistical support for this process, as the local victims' representative organizations are under-resourced and cannot be expected to fund the development of a code of conduct on their own.

An important component of this process is linking victims' representative organizations to the victim advocates' office. The success of the victim advocates' office depends, in large part, on cooperation and buy-in from victims' representative organizations. The office should not dampen or replace existing grassroots efforts but should enhance and strengthen them.

Opportunities to integrate the victim advocates' office and representative organizations must be explored with the community but could include offering jobs (after adequate training) to victims' representatives on a rotating basis, or for the victims' representative organizations to serve as outreach in the community. Regardless of the form this integration takes, all representative bodies should aid in the creation of the code of conduct and comply with its contents as a requisite for participating in the victim advocates' office.

**Suggested timeline and deliverable:**

- » International NGO is jointly identified by the victims' representative bodies to assist in the development of a code of conduct, by November 2018.
- » code of conduct completed and signed by all acting victims' representative organizations, by August 2019.
- » Position for local accredited NGOs to be evaluated and reserved for the victim advocates' office in Porgera, by December 2019.

## **RECOMMENDATION 5: ADDRESS BARRIERS TO EXISTING REMEDY PATHWAYS**

The remedy ecosystem in Porgera is weak and does not fulfill the right of victims to have their claims addressed. BSR has identified approximately 50 barriers to accessing existing remedy pathways, including illiteracy, cost, and distance. (See section 6.3.)

Despite the tremendous need, not all barriers can be tackled right away. It takes significant time, resources, and political will to strengthen a remedy ecosystem. While this job primarily belongs to the government, Papua New Guinea is under-resourced and faces numerous competing development priorities.

Companies, too, have a role to play in ensuring that those harmed by their operations have access to remedy. Ideally, this should be achieved in large part through a legal system supported by the payment of taxes and royalties to government. In reality, however, this company support is not sufficient. To fulfill the company's responsibility to provide access to remedy in Porgera, we recommend that the company take a targeted approach in its contribution toward addressing barriers in the remedy ecosystem by focusing on those pathways that are most vital and already utilized by direct victims of the mine's operations. For example, cases relating to environmental harms are typically addressed by PNG's Conservation and

Environmental Protection Authority (CEPA), so the authority's capacity should be enhanced to facilitate the timely processing of those claims against the mine relating to environmental matters.

In building the capacity of the remedy ecosystem, clear lines of separation must be put in place between the company and government institutions in order to protect and maintain the crucial independence of these institutions. This can be done by creating a separate trust fund. A model of this already exists in the Restoring Justice Initiative (RJI), an independent fund established by the company to assist with law-and-order issues. The RJI builds programs related to criminal justice, including the construction of offices for regional police and court systems and the provision of support for the investigation of offenses. The company could replicate this model to cover capacity-building for much-needed remedy pathways in Porgera and for its support of victims.

The company should also be proactive in encouraging and partnering with the government to tackle the known barriers to remedy. For example, a tax credit scheme allowed the company to build roads and police barracks in the Porgera region in exchange for tax breaks. While this function has been frozen under the new government, there are plans to reopen it soon; the company could strike a similar arrangement with the government to build district courts, a local office for the public solicitor, and a victim advocates' office. The recent doubling of the Mineral Resources Authority (MRA) budget also offers opportunities to address mining's negative impacts on the community in Porgera. The agency should be encouraged to fill the open mines-inspectorate position in Porgera and to investigate mining impacts on people and the environment. It should be sufficiently resourced to handle the claims likely to come its way from the residents of Porgera.

**Suggested timeline and deliverables:**

- » Company should conduct an analysis as to which remedy pathways are most likely to be used, based on existing claims of harm, by November 2018.
- » Company should have a plan for contributing to the strengthening of these most-used pathways, by February 2019.
- » Company should engage with government on co-design of the plan, by March 2019.

## **RECOMMENDATION 6: EXPAND THE MANDATE FOR THE MINE'S INDEPENDENT OBSERVER**

While the independent observer (IO) is not formally part of the remedy ecosystem, this function provides an important support role. The IO position is currently tasked with identifying cases of bodily integrity rights (e.g., shootings, beatings, or sexual assault) by security and police around the Porgera mine and with investigating and bringing them to the attention of the police commissioner and the company.

BSR recommends expanding the mandate of the IO in two respects:

First, enable the IO to look beyond violations committed by security and police forces. The mandate should be expanded to cover all human rights and ensure structural guarantees of independence in reporting. The current IO could partner with, or receive support from, a reputable international institution to extend the capacity. (For example, the University of Queensland currently observes relocation and resettlement issues around the mine and could potentially offer support in this area.) The IO mandate should also include mandatory reporting to the Ombudsman Commission, which in its watchdog role could provide oversight needed regarding government institutions.

Second, the IO position should be formalized. The current IO is Ila Geno, formerly PNG's commissioner of police, chairman of the Public Services Commission, and chief ombudsman. He is nationally respected and considered to have integrity. The IO position was crafted with his skills and credibility in mind.

BSR recommends that the role be institutionalized so that its formal powers extend past the current officeholder. The successor should be nominated by a triad of company, community, and government representatives so that their recommendations will be respected by all parties in a manner similar to that engendered by the personal integrity of the current IO.

**Suggested timeline and deliverable:**

- » Expanded independent observer mandate to be created and publicly released, by July 2019.
- » International partner NGO/university identified jointly by BNL and the community, by July 2019.

## **RECOMMENDATION 7: SUPPORT THE CREATION OF A NATIONAL HUMAN RIGHTS INSTITUTION (NHRI) OR THE EXTENSION OF THE HUMAN RIGHTS OMBUDSMAN MANDATE TO ADDRESS PRIVATE SECTOR-RELATED IMPACTS ON HUMAN RIGHTS**

The extractive sector is a large source of Papua New Guinea's gross domestic product and the source of much of its external investment. While this sector has had a positive impact in terms of job creation and tax revenue, it has also had negative impacts on human rights. Given this context, BSR recommends that the company encourage PNG to increase its capacity to address extractive-related human rights abuses. This could be done through one of two avenues.

First, the nation could extend the mandate of the existing Human Rights Ombudsman to cover private sector-related impacts and include a specific extractive-sector seat in the ombudsman's office to investigate problems and issue recommendations related to extractives-sector impacts. Such an office could help facilitate dialogue between companies and communities, act as an early warning system, and issue sanctions when needed. Currently the Human Rights Ombudsman has only the power to consider private-sector impacts when they pertain to discrimination.

A second option is to create a National Human Rights Institution (NHRI) with a mandate to address the private sector. Accredited under the UN Paris Principles of 1993, NHRIs are established under the national constitution or by an act of parliament and have independent watchdog powers over a government. More than 100 countries have NHRIs, and these institutions constitute an important bridge between national and international human rights structures.

Roughly half of the world's NHRIs have mandates that allow them to investigate private-sector human rights abuses. The UN High Commissioner for Human Rights recently recommended that Papua New Guinea establish an NHRI. BSR has been informed in stakeholder interviews that the creation of an NHRI was recently discussed by PNG's government and has been included in a bill awaiting the next parliament. If an NHRI is established, its links to the International Coordination Committee of NHRIs in Geneva will help build its capacity in addressing private-sector human rights impacts.

BSR recommends that BNL advocate for the creation of the NHRI, the expansion of the mandate of the Human Rights Ombudsman, or both. Opportunities for advocacy could include awareness-raising in regional bodies such as the upcoming Asia-Pacific Economic Cooperation (APEC) conference in PNG in November, mobilizing peer companies or working through such business representatives as the Papua



New Guinea Chamber of Mines and Petroleum and through the PNG Extractive Industries Transparency Initiative (EITI) Multi-Stakeholder Group.

The influence of companies can be powerful, and a joint call for the creation of oversight bodies from the extractives industry or the private sector as a whole would send a powerful message to the government. A call could be further reinforced if done in concert with the Porgera community or larger PNG civil society, demonstrating the joint interest of both business and community for enhanced independent human rights oversight.

**Suggested timeline and deliverable:**

- » Use influence with peer extractives companies and membership in the Papua New Guinea Chamber of Mines and Petroleum to advocate for the creation of the NHRI and/or expansion of the mandate of the Human Rights Ombudsman, by December 2018 and ongoing, as needed.

### III. Prevent Future Violations

This third category of recommendations relates to the future of the Porgera mine. While addressing current claims is critical—both to rightsholders and for a sustainable relationship with the community—this relationship is ultimately based on the prevention of violations in the future. This requires looking beyond specific abuses to their root causes.

#### RECOMMENDATION 8: ADDRESS GENDER-SPECIFIC IMPACTS

The human rights impacts of mining are not shared equally. In Porgera, women are systematically disadvantaged and vulnerable to a wider range and greater severity of violations. Royalties are generally distributed to male clan leaders, pushing women into illegal mining to earn income and, in many cases, toward sexual exploitation by mine security guards and police. Women's lower position in society, greater exposure to violence, and exclusion from traditional remedy mechanisms further exacerbate their vulnerable position.

These issues are complicated, with implications far beyond one company or one mine. It is clear, however, that the company must make a deliberate effort to acknowledge and mitigate the disparate impacts of its operations.

BNL is currently renegotiating its memorandum of agreement with the PNG government. The company should use this opportunity to advocate for a more equitable distribution of benefits from its operations, especially regarding women. A first step in this process is ensuring that royalties are not given only to male leaders but are distributed directly to landowners, including women. Another step toward this goal is to direct royalties to the Enga provincial government for the creation of a women's center, special education funds for girls, or other gender-sensitive investments.

BSR also encourages the company to make direct investments in the women affected by its operations. Hiring additional female employees, training and promoting women, and seeking out female-owned suppliers would contribute to rebalancing the historical gender-based economic disparities that have been exacerbated by mining. The company can also directly engage with female community members to determine how they have been affected by the mine and how the company can ensure that its impacts are positive. Women hold a wide range of viewpoints regarding the company and its role in the community, and previous efforts at addressing gender-specific impacts have been controversial, giving rise to some organizations being disparagingly labeled as "Barrick's women." The company should

consider appointing an independent body, or an outside NGO, to distribute resources to ensure that its efforts do not lead to further community divisions.

The Ok Tedi Mine, also in Papua New Guinea, reserves 10 percent of compensation and 50 percent of its scholarships for women. It makes cash payments directly to family bank accounts (of which many women are co-signatories), and reserves seats for women on its governing bodies. BNL should look to this example when designing its outreach strategy and success indicators, or benchmarks.

The company should also produce a gender report that transparently describes gender disparities in its impacts and the company's efforts to address them.

**Suggested timeline and deliverable:**

- » Company use its influence in the MOA lease extension to advocate that more benefits of the mine reach women and clearly lay out the steps it has taken in a report, by March 2019.
- » Company produce its first gender report, by December 2020.

## **RECOMMENDATION 9: REDESIGN COMMUNITY ENGAGEMENT AND INVESTMENT AND STRENGTHEN THE HUMAN RIGHTS CAPACITY AT THE MINE**

The Porgera mine operates in a challenging environment, with extensive in-migration straining already limited resources, high rates of conflict, poverty, social inequality, and weak governance. Notwithstanding the intensity of these operating challenges, the company has devoted insufficient resources to engage the local community. Outreach efforts have been focused on landowners, although the population of non-landholding residents has expanded exponentially in recent years and continues to grow. BSR was unable to identify a company strategy to inform the wider community, collaborate to solve problems, or listen to residents' concerns. It is unclear whether the company's investment strategy accounts for, or addresses, the mine's negative impacts. While Barrick's 2017 sustainability report notes that a human rights assessment was completed during the last year,<sup>70</sup> this assessment does not appear to have influenced the company's community investments or engagements.

While the scope of this project did not include a systematic assessment of the company's internal processes, BSR was struck by the deficiencies of BNL's outreach efforts. Failing to update these processes will lead to further tensions with the community and unaddressed human rights violations. The mutually beneficial and open dialogue necessary for sustainable operations is impossible without updating the company's approach to community engagement and investment.

To upgrade these processes, BSR recommends consulting recognized guidance for carrying out community relations, including the International Finance Corporation (IFC) Performance Standards on Environmental and Social Sustainability<sup>71</sup> and the International Council on Mining and Metals (ICMM) principles.<sup>72</sup> Given the local operating conditions, drawing upon international best practice is paramount.

BSR recommends benchmarking the company's current community engagement activities against the IFC performance standards and practices outlined in the relevant good practice handbooks. Once gaps are identified, the company should devote sufficient resources to improving its outreach efforts, offering special consideration to women and other marginalized groups. The IFC's recently published "Unlocking Opportunities for Women and Business: A Toolkit of Actions and Strategies for Oil, Gas, and Mining Companies"<sup>73</sup> is an additional resource that should be consulted in carrying out this process.

BSR has heard repeated calls for resettlement of community members within the areas most affected by the mining operations. BSR is aware of current efforts on the part of the company to pilot two community resettlements, with the University of Queensland serving as an independent observer in the process. Resettlement can be a long-term solution to address severe, ongoing, negative impacts of the mine, but it can also give rise to other harms that will require robust grievance mechanisms and solid approaches to effective remedy on an ongoing basis. The lessons and infrastructure for addressing past harms—including, but not limited to, the strengthened OGM and victim advocacy office, should be made widely known and available to all communities undergoing resettlement.

BSR also recommends that BNL conduct a transparent, participatory, community-based human rights-impact assessment to map negative impacts, identify vulnerable groups, and determine which rights are most at risk. This will serve as the basis for improving community relations, mitigating negative impacts, and maximizing the company's development potential. The community should be directly and deliberately involved in the assessment, helping drive the process. BSR recommends a Human Rights Impact Assessment (HRIA) methodology such as Oxfam's community-based HRIA—which could be done alone or in conjunction with an internally conducted HRIA—with at least the results from the community-based HRIA made public.

**Suggested timeline and deliverable:**

- » Conduct benchmark of current community engagement and investment against international best practices to identify gaps, by December 2018.
- » Develop plan to close known gaps in practice, by March 2019.
- » Overhaul community-investment and community-engagement practices in consultation with the community, by August 2019.
- » Community-based HRIA completed, by July 2019.
- » Findings of HRIA shared widely with the community, by October 2019.

## Next Steps—Action Plan

### RECOMMENDATION 10: CREATE A COMPANY ACTION PLAN

The purpose of these recommendations is to improve access to remedy for victims of human rights violations in Porgera. The first step toward implementing these recommendations is for the company to commit to a plan of immediate, medium-term, and long-term action.

This should begin with internal deliberations to ensure that every level and function of the company supports the human rights values and objectives under which this report has been carried out. It should then be shared with victims, the local community, and government actors for further dialogue and input. This engagement, especially with vulnerable groups, should form the backbone of the company's response.

The action plan, as well as the incorporation of feedback from community, international stakeholders, and government, should contain specific, measurable, and time-bound commitments. The plan should outline priority actions (beginning immediately and stretching at least five years into the future) and set clear goals and key performance indicators (KPIs).

The company should expressly commit to pursuing the proposals in the action plan, regardless of any changes in ownership, structure, and financial performance of the mine. The current mining license is up

for renewal in 2019. Notwithstanding the outcome of the licensing decision or any subsequent business changes,<sup>74</sup> the victims should have the company's assurance that the action plan will be carried out in full. If necessary, an escrow or trust fund should be established to ensure sufficient resourcing for implementation.

BSR also recommends that an independent NGO be engaged to assess and report on the plan's progress. This NGO should be empowered to carry out its role effectively, and its findings and recommendations should be made public.

It should be noted again that BSR has received a strong message of urgency from the local community to address current harms immediately, even as the company works on longer-term, systemic solutions. BSR shares the concern of the victims and their representative bodies about the potential for prolonging this process and postponing access to justice. However, BSR also understands that good, long-term solutions take time to implement. The company must work to balance the need for time-sensitive solutions with the goal of achieving lasting impact.

**Suggested timeline and deliverable:**

- » Company draft action plan, by October 2018.
- » Consultation with community and government, by November 2018.
- » Company Action Plan finalized, by December 2018.
- » Implementation of Action Plan through December 2020 to be assessed by an independent NGO, by June 2021.

## 5. Balancing Tensions

Implementing human rights is a process of trade-offs. Neither companies nor governments have unlimited resources, and many rights issues (such as the right to privacy and the right to freedom of expression) must be balanced against each other. Additionally, the investment that brings development also brings the challenges of rapid population growth and negative environmental impacts. Company operations, as well as company human rights efforts, exist within these tensions.

The recommendations in this report contain tensions, challenges, and compromises, too. BSR always seeks to improve conditions in the real world. Toward this end, this section highlights areas in which tensions exist and where the company must strike a balance.

**Defining “do no harm.”** This means thinking through the consequences and risks of each decision, asking hard questions, and involving those who will be impacted. Fixes that sound simple often reveal themselves, in implementation, to be anything but that. For example, simply giving cash compensation to victims who request it sounds like a common-sense way to ensure full and satisfactory restoration of the victim. But we also must consider the lessons learned from past experiences in which many victims were further victimized by the cash payouts they received.

**Prescribing vs. allowing space for collaboration.** In this report, BSR proposes broad goals and methods. This is done to allow space for collaboration toward specific, locally owned solutions. This report aims to steer the conversation without determining its ultimate outcome, which should be based on dialogue and co-creation between the company and the community—and in some cases, the government and external international stakeholders.

**“Perfect” solutions vs. good solutions.** Porgera is a complex environment with high rates of poverty and inequality. While some incremental improvements will be ready for implementation immediately, others will take more time. “Rolls-Royce solutions” are less likely to be implemented than quick fixes. For example, in principle, free legal aid for victims should be funded and run by the government in order to be fully independent and aligned with the wider remedy ecosystem. In the absence of government, however, the company should provide an office at which victims can receive free and independent advice.

**Government vs. company solutions.** While Barrick and BNL have looked to BSR for guidance on how to address community concerns, societies cannot rely solely on private remedy mechanisms. The government must be included in the solution. However, governance in PNG is weak and under-resourced, and the government may not be able to participate and fulfill the traditional role of government to the extent desired. The company must therefore take on a larger role to fill the vacuum—without going too far. As the democratically elected representative of the people, the government has an important and central role to play, and the company must not usurp it.

**Long-term vs. short-term fixes.** Political leadership and company ownership are subject to change in the short term. While long-term systemic changes are clearly needed, short-term demands and pressures on both government and company will inexorably steer problem-solving efforts toward quick fixes instead of root causes. In this report, BSR has tried to address some much-needed, systemic solutions—particularly with respect to women—as well as short-term recommendations.

**Accepting vs. investigating claims.** Due to lapses in law-enforcement, medical, and government procedures, many victims in Porgera cannot provide documentation of their violations. Others consented to their violations at the time they took place due to fear of repercussions. In the absence of perfect information on each case, the pathway to remedy will always have to balance investigating, accepting at face value, or disregarding claims of harm.

**Navigating false vs. true claims.** It is important to deal fairly with each claim that is filed in order to encourage all victims to come forward. It is also important to recognize that it is widely understood—even by the representative bodies filing the claims—that a number of false claims have been filed. And it is no less important to avoid creating a system that incentivizes people to put forth false claims for money, which can serve as an additional barrier to remedy for actual victims.

**Individualized vs. collective remedy.** In the close-knit tribal society of Porgera, residents have a complex relationship to resources, family, and the broader community. No victim lives in isolation, and each person's harm reverberates in the community. The rape of a woman, for example, affects her family's standing in Porgeran society. Compensation for victims is often considered collectively, meaning that some victims may not receive full access to the payouts they receive. How much should remedy be focused on the individual, as opposed to the wider community? Similarly, some harms are not clear and tangible but are nonetheless present. For example, it is well-documented that the benefits of mining activity are largely focused on men, while its negative impacts often fall disproportionately on women. The disparate impacts of extractive operations are particularly difficult to identify and remedy.

**Addressing victims' needs vs. reinforcing existing power structures.** While many of the victims are female, most leadership voices in the community are those of men. Some victims' representatives (both male and female) ask for compensation in the form of cash, which may not directly benefit the victim as much as would medical and psychological services and livelihood support. Payouts to female victims are at higher risk of being confiscated by family members than payouts to male victims. While the company must be sensitive about the local power structures, the inequalities in this context may inadvertently be reinforced by the company's actions.

**Investment vs. negative impact.** While many effects of the Porgera mine on the local community are negative, closing the mine would itself harm the community. At the same time, significant investment in Porgera to address negative impacts of the mine and other challenges relating to poverty, lack of governance, and so forth is likely to attract further in-migration, leading to additional negative impacts on the community. The balance to strike is to move forward with the mine with a specific purpose to provide better livelihoods for those affected by it, while mitigating the direct and indirect negative impacts as much as possible. This approach lies at the heart of the human rights-based approach to development and should inform the company's decision-making.



**Respecting local culture and human rights.** While it is fundamental to a human rights approach to respect local culture, community practices are sometimes at odds with human rights, especially in relation to the treatment of women. For example, in Porgera, women are viewed more as the property of the clan than men are; traditionally, compensation for a harm against a woman is paid directly to her male relatives in the clan. While recognizing that human culture is fluid, it is important to encourage cultural fit within the frame of respect for human rights.



## PART II



## 6. Research Findings


The following section includes a summary of BSR’s research findings and outlines our understanding of the operating context in Porgera. This information was used to inform our thinking and shape the final recommendations found in Chapter 4.

### 6.1 Community Perceptions of Corporate Responsibility

The human rights responsibilities of companies are well-defined under the international human rights regime, including the responsibility to provide remedy for harms. However, one of our first observations on the ground in Porgera was that there were competing, often simultaneously held, views of what BNL’s human rights responsibilities entailed. After a number of interviews, we were able to identify five distinct concepts that reflected the statements local community members were making.

Popular Concepts of  
‘Corporate Responsibility’ in Porgera

The bigger and more powerful a company is, the greater its responsibilities to human rights.	Power Principle
The type of activity a company undertakes determines its human rights obligations.	Activity Principle
The more a company derives from an area, the more it should be expected to put back in.	Reciprocity Principle
The higher the level of oppression or poverty in a country, the greater the responsibility for a company to play a positive role.	Need Principle
The company is responsible for any violations that it has caused, or contributed to, in the course of its operations.	Casualty Principle



**The Power Principle:** The bigger and more powerful the company, the greater its human rights responsibilities. A number of community members note how large and powerful BNL is in comparison to local, independent "mom-and-pop" shops, and say its size and power has created the expectation that it has greater responsibilities for human rights.

**The Activity Principle:** The type of activity a company undertakes determines its human rights obligations. Under this concept, a pharmaceutical company would have greater responsibility for the right to health, while an internet technology company would have greater responsibility for freedom of expression. BNL, as a mining company, is perceived as extracting the natural wealth of the land, which should be used for the benefit of local people. As such, under this principle, BNL has greater responsibilities in relation to the right to development.

**The Reciprocity Principle:** The more the company gets out of the area, the more it is expected to put back. In interviews, several Porgerans point out that BNL extracts huge amounts of wealth from their land, expressing the perception that this is much more than Barrick extracts in Canada. Under this principle, then, the company has greater obligations to people in PNG than it does to people in Canada.

**The Need Principle:** The company has greater responsibilities toward populations with greater needs. This concept was reflected in statements by Porgerans that they are poorer than the people of Canada, so the company has greater responsibilities in Porgera.

**The Causality Principle:** The company is responsible for any violations it has caused or contributed to. Porgerans argue that when BNL caused a sinkhole that destroyed homes, the company had a direct responsibility to provide the inhabitants with new housing.

It is noteworthy that of the five basic concepts of business responsibility, only the fifth (marked in dark blue) is in line with the international consensus under the UNGPs. The causality principle is the basis of the UNGPs, and companies are clearly responsible for any harm they have caused or contributed to. This concept was expressed more frequently in Porgera than the other four. Nonetheless, the other views of company responsibility are also prevalent in the area. They constitute a gap between community expectations and the company and should be taken into account in dialogues regarding the company's social license to operate.

In the context of BSR's research, the gap is narrower. When addressing direct harm to individuals (such as a company security guard opening fire on community members), the company and community agree that BNL is responsible for providing remedy. The gap, however, emerges in situations where the company's connection with violations is less direct, such as when a child drowns in a river that contains mining effluents or when government police forces shoot community members near the mine site. In these cases, the community and BNL may have conflicting notions as to the company's responsibility to provide remedy. Neither is right or wrong, and both have ethical foundations in assigning responsibility. The only way to resolve such cases is through dialogue to establish clarity and agreement.

## 6.2 Vulnerable Groups



As indicated above, vulnerable groups were identified in four categories: 1) formal discrimination, 2) societal discrimination, 3) hidden groups, and 4) practical discrimination. In the Porgera context, individuals were reported as falling into these groupings as follows:

### **1. Formal discrimination (those who experience discrimination due to laws or policies that prioritize one group over another)**

- » Landowners are given preferential treatment in employment and contracts. They benefit more directly from the mine than non-landowners. Tension and conflict between these groups exacerbates the marginalization.
- » Benefit agreements (including royalty payments) are given to men and tribal leaders and are not distributed equally to women.

### **2. Societal discrimination (those who face discrimination due to cultural or societal practices)**

- » As many local communities are patriarchal, women are systematically accorded lower status.

**3. Hidden groups (those who have to hide their identity and consequently cannot be vocal about their rights)**

- » Victims of sexual violence experience rejection by male relatives and tribal and community members.

**4. Practical discrimination (those who face discrimination due to their life circumstances)**

- » Community members who are illiterate or uneducated do not know how to access various forms of remedy.
- » Impoverished community members cannot afford legal services or transportation fees.
- » Community members living in remote or inaccessible locations find it difficult to communicate with, and physically access, remedy pathways based in Porgera or Mount Hagen.

**5. Societal groups not subject to marginalization**

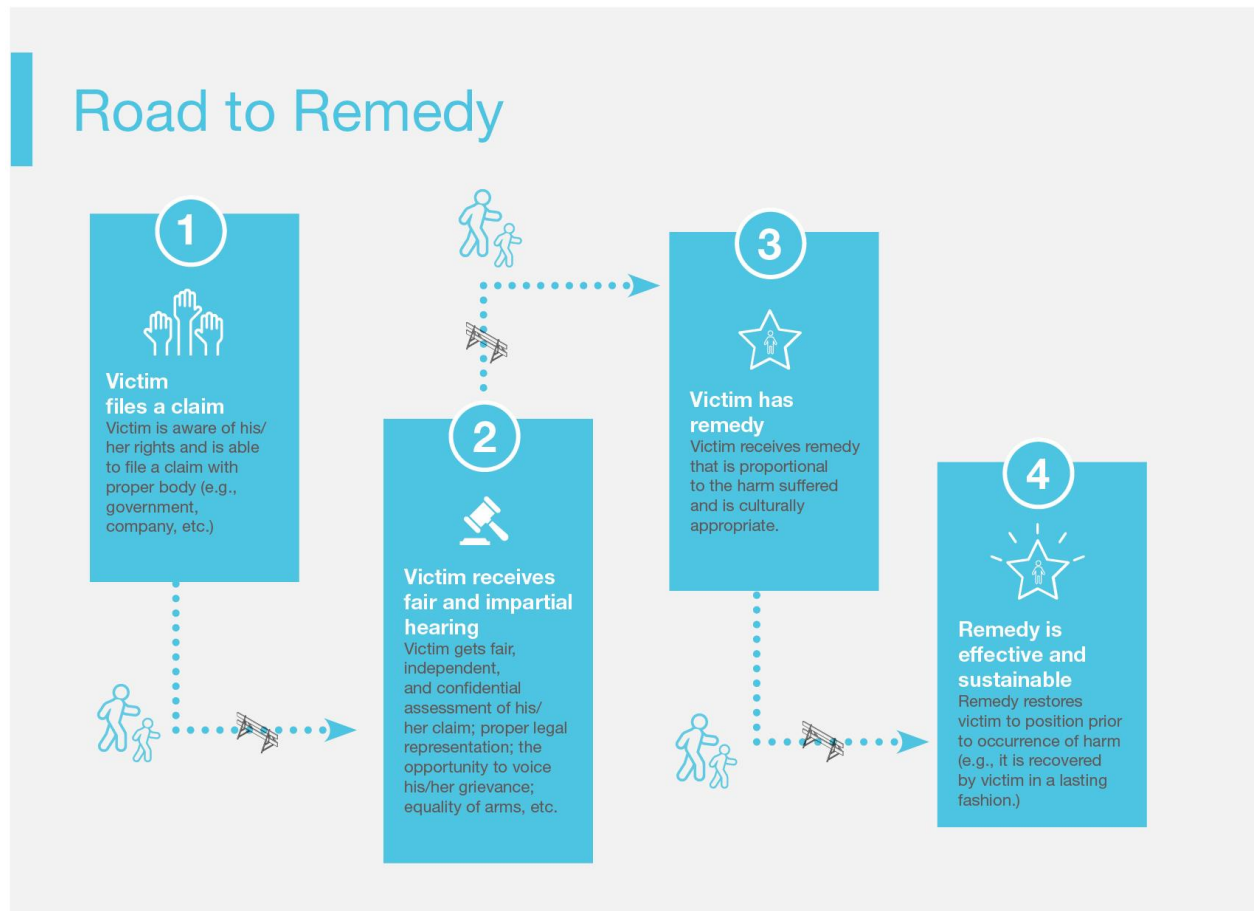
- » Stakeholders report that in Enga province, everyone speaks Engan, including those whose mother tongue is Ipili or Tok Pisin. Language is therefore not a barrier resulting in marginalization.
- » While there can be tribal tension, stakeholders report that membership in certain clans would not result in people being marginalized.
- » Stakeholders also do not report religious differences that would result in stigma.



## 6.3 Barriers to Remedy

Below is a summary of actual, practical, or perceived barriers to remedy. While some of these barriers were present in the Porgera Remedy Framework, this is an analysis of the current pathways to remedy and is not intended as an evaluation of the remedy mechanism.

The barriers are listed according to the four stages of remedy along the Road to Remedy. These will be explained further in relation to specific remedy pathways in the following section.



### STAGE 1: VICTIM FILES A CLAIM

- » Although rights awareness is increasing, many community members in Porgera just five years ago were not aware of their rights when a violation occurred.
- » The majority of the population is illiterate and unable to file a written claim without assistance.
- » Most community members are unaware of where or how to file a claim.
- » Fearing shame in the community or social repercussions, many community members are reluctant to report violations, particularly if they involve rape or sexual violence.
- » There is a widespread perception that police turn people away and blame the victims. When alluvial miners reported violations, for example, they were told that they should not have been on the mining site in the first place.
- » Community members also expect that even when police accept a report, they will not properly investigate it.
- » Most community members cannot afford to hire lawyers or pay for transportation to file a claim.

- » Some organizations claiming to represent victims are charging them high fees.
- » The court procedure is overwhelming because of the long process and complicated bureaucracy. Some interviewees report having dropped out at this stage, while others say they were discouraged simply by the idea of dealing with the bureaucracy in the formal justice system.

Conclusion: The greatest number and diversity of barriers exist at this stage. All future remedy options should help ensure rights awareness and remove disincentives to filing claims. Creation of a free victim advocates' office would go a long way toward addressing the barriers at Stage 1.

## **STAGE 2: VICTIM RECEIVES FAIR AND IMPARTIAL HEARING**

- » Claims may be dismissed due to statute of limitations.
- » Claims may be defeated for lack of evidence. This can be due to lack of investigative capacity by the police, victims not being aware of the requirements for evidence, or medical clinics not being open to document evidence of physical harms.
- » Some claimants report they did not adequately understand the legal waivers under the remedy mechanism and, as a result, believe the waivers have unfairly narrowed their legal options.
- » Negative attitudes leak into the system. People filing claims for sexual assault may be blamed for their choices or accused of consenting to rape.
- » Lawyers do not adequately explain the process or outcomes. For example, many community members report that they did not understand the explanation of the Porgera Remedy Framework or probable remedies given by the legal advisor that was provided by the Porgera Remediation Framework Association.
- » Claimants who filed a claim with BNL's Operational Grievance Mechanism (OGM) complain that it was a "black box" and did not provide information or updates.

Conclusion: Statutes of limitations that are not extended, along with a lack of evidence, could defeat claimants from proceeding past this stage, and negative biases are pervasive and widespread. All remedy options should ensure that claimants fully understand the process, their options, and what they can expect when their claims are addressed. A free legal aid center in Porgera could help victims understand their various options for remedy and then pursue the best path. The OGM should be strengthened, in accordance with the UNGP requirements, because it is most likely to be used as the first port of call for victims. The investigation capacity of police in Porgera needs strengthening.

## **STAGE 3: VICTIM'S CASE IS RESOLVED**

- » When providing culturally appropriate remedy, a tension exists between respecting traditional practices and not wanting to promote societal structures that further disadvantage victims.
- » Traditional cultural values compensate women less than men, resulting in an unfair determination of remedy.
- » Using past lessons from the Porgera Remedy Framework, the services portion of the remedy package did not always contain traditional features of remedy in Porgera, making it difficult to determine the services' value.
- » Perpetrators are often not punished, undermining an important element for the victim to achieve satisfactory resolution.
- » Cases can take years to resolve. Some have reportedly been stalled for decades and—in a place where lives are often cut short by violence and negative health impacts—this means that some victims die before receiving remedy.

Conclusion: Future remedies should be delivered expeditiously and should ensure that the victim's needs are met in a way that respects culture but does not further undermine the victim. This is best achieved with local-level remedy pathways that are sensitive to the culture and needs of the individual. Perpetrators need to be held accountable, which requires stronger policing.

## **STAGE 4: REMEDY IS EFFECTIVE AT RESTORING THE VICTIM**

- » Although the Porgera Remedy Framework kept remedy packages confidential, claimants may have chosen to disclose the information. As a result, some victims experienced further harms.
- » Cultural understandings of “collective remedy” hinder victims' ability to keep compensation. When an individual is harmed in Porgeran society, the family—and in some senses, the entire community—is perceived as experiencing its own harm and may demand compensation from the victim. This reduces what the victim receives.
- » Compensation under the Porgera Remedy Framework was sometimes taken by male relatives or misspent.
- » The services portion of the Porgera Remedy Framework remedy packages is criticized as terminating earlier than was promised and, in some cases, having never been fully delivered.
- » Victims' representatives may take a portion of the settlement.
- » Widespread dissatisfaction that ERI claimants are perceived to have received a significantly larger settlement than the Porgera Remedy Framework afforded.

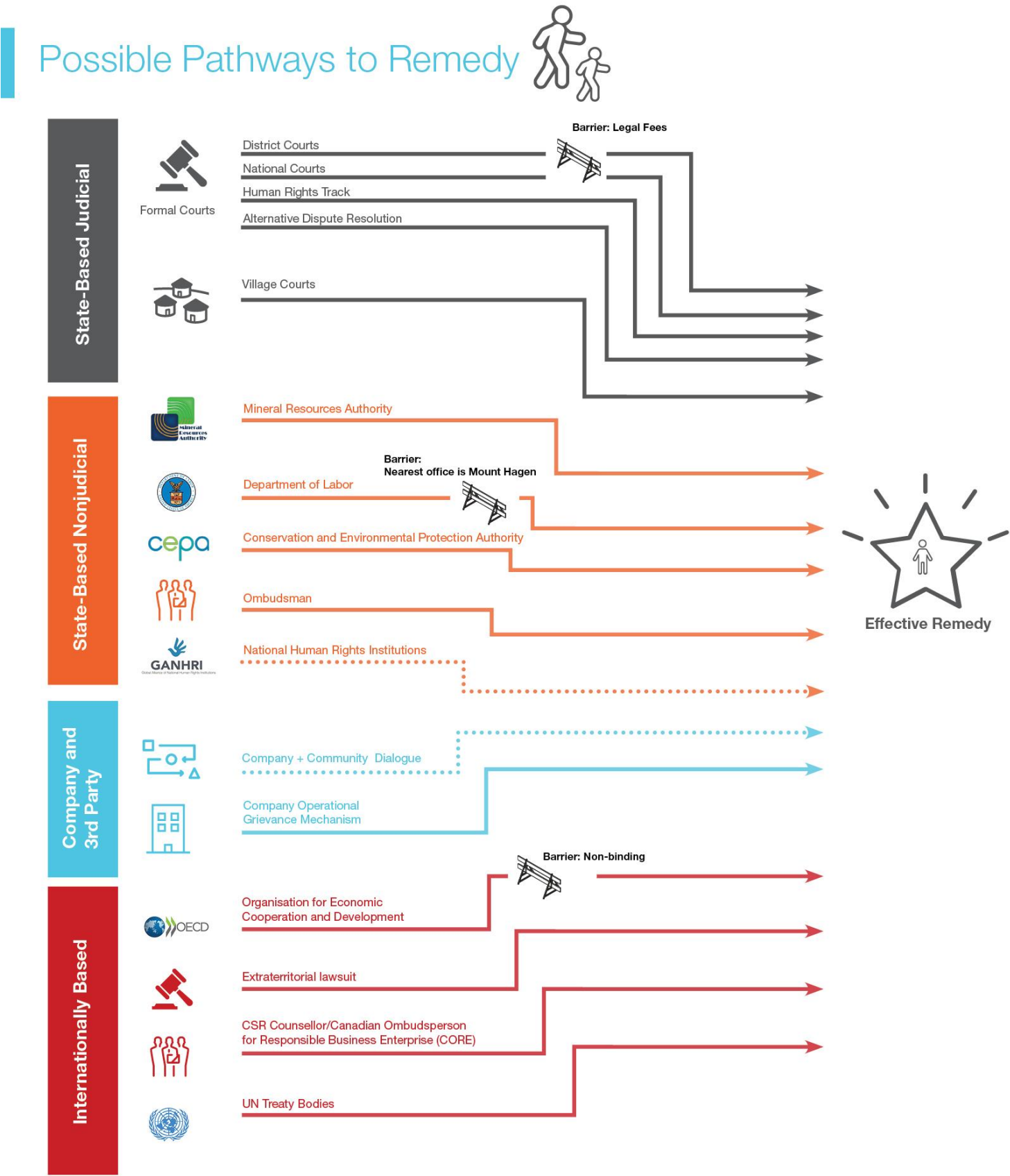
Conclusion: Remedies should be tailored to the Porgeran context and should meet the long-term needs of victims. It is crucial to learn from the Porgera Remedy Framework. Whether it ultimately provided effective remedy is a crucial question that must be addressed before further efforts of this nature are undertaken.

## **6.4 Current Pathways to Remedy and Barriers**

This section presents existing pathways to remedy that were identified through direct interviews with rightsholders in Porgera. Sixteen different pathways were mentioned when individuals were asked about possible avenues for their cases. (Individuals expressing discomfort about describing the details of their personal cases were offered four hypothetical case scenarios to choose among, so they could discuss ideal remedy avenues.)

The section also notes barriers to vulnerable individuals along each of the pathways and proposes recommendations to overcome those barriers or create new, tailored pathways. It should be stressed that these recommendations are not exclusively for the company, but rather are also appropriate for the government, international donors, or any other group with an interest in strengthening access to remedy for victims in Porgera. To the extent that the company chooses to act upon some of the recommendations, it is encouraged to focus its efforts on building capacity in those remedy pathways that are most needed and used by victims of the mining operations in Porgera. The company is encouraged to undertake capacity-building of remedy pathways in a transparent manner and in close partnership with the government, so as not to undermine the independence of public institutions.

Pathways are organized in the section below according to their type: state-based judicial; state-based nonjudicial; company-run and third-party; and international. Pathways that do not yet exist, but that could be viable in the near future, are represented with dotted lines.



## 6.4.1 STATE-BASED JUDICIAL REMEDY MECHANISMS

### Village Courts

Village courts are designed to formalize a traditional form of justice by applying customary practice. Their mandate and operations are regulated by PNG law, which grants village courts limited jurisdiction, though they often hear cases that exceed jurisdiction. Village courts are limited to giving awards up to and not exceeding 2,000 kina (US\$600);<sup>75</sup> in practice, BSR has been informed that village courts are known to give settlements of 100,000 kina (US\$30,000), or a transfer of 30 to 50 pigs. While these courts also have limited jurisdiction with respect to criminal matters,<sup>76</sup> it is reported that they sometimes hear criminal cases that fall outside their legal mandate.

The strength of the village courts stems from their greater accessibility, which makes them easy for uneducated and rural populations to use. They are often the first port of call for victims precisely because they are local and not process-heavy. Village courts also set fees that are based on a claimant's ability to pay, removing financial status as a barrier. An additional strength is that village courts focus on mediation; they aim to restore the social fabric of society in resolving disputes, rather than adding to friction.

Village courts have weaknesses, too. They are primarily made up of men who receive little or no training in human rights and justice matters, which can result in judgments that conflict with human rights standards. The village courts occasionally take cases that fall outside their jurisdiction (e.g., criminal complaints). Village courts are unable to hear matters involving the company directly but can, and regularly do, address issues relating to mine employees. Some stakeholders say they perceive that companies ignore the village courts, while others note that mine employees and contractors are sent to the village courts to resolve disputes.

Village courts face no statutes of limitations that prevent them from hearing older claims; in situations wherein old cases might lead to violence, they are heard and resolved at the village court level. Moreover, village courts do not have the luxury of turning cases away if overburdened: Inaction can lead to tribal fighting and killing.

#### Recommendations:

1. Build the capacity of magistrates in village courts so outcomes are more human rights-appropriate and do not perpetuate gender discrimination. This could include expanding to the Porgera district the recently piloted UNICEF training program for village courts on child protection and human rights.
2. Appoint and train more female magistrates to achieve gender balance in village courts. This will help ensure that gender-based violence and discrimination are heard in more appropriate channels.
3. Ensure that village courts have sufficient resources to hear all the cases brought before them, and protect the safety of magistrates by providing adequate space for village court hearings.
4. Train village courts as "reception points" that can serve as the first port of call for victims, and help connect them with the most appropriate remedy pathway (e.g., formal courts for criminal matters, Mining Resources Authority for land issue, labor tribunals for labor issues).

## Formal Courts

In addition to village courts, PNG has a national court system that begins at the **district level** and extends to the **national level**. This system is based on English common law principles and has jurisdiction over both civil and criminal matters.

The strength of the formal courts is the faith with which they are regarded locally. As a general matter, courts are viewed by stakeholders as impartial and authoritative. When courts issue rulings, they are seen as final, and stakeholders respect the outcome. National courts have started to promote the use of **alternative dispute resolution**, which resolves matters quickly and uses restorative justice concepts. There is also a separate **human rights track** that can accept class actions and hear complaints that allege violations of human rights.

The formal courts have weaknesses as well. The primary obstacle is their accessibility. Most people view the expense of hiring a lawyer and traveling to court as prohibitive. There is also a perception that BNL will win the cases because it can outspend claimants. Even if claimants can afford to go, the process is intimidating because it is paper-heavy and the proceedings are conducted in English. Stakeholders give judges mixed reviews according to their backgrounds: Judges with criminal law backgrounds are considered good at overseeing criminal cases, while those more accustomed to practicing commercial law may find this challenging. Some courts might blame victims for their specific harm (e.g., those harmed while engaging in illegal mining). Other reported challenges are corruption and keeping sensitive cases (especially rape and sexual assault) secret to protect victims; some stakeholders believe secrecy is not possible in the court system.

At the district level, stakeholders report that some courts lack capacity, which results in cases being heard by village courts ill-equipped to hear or address them (e.g., certain criminal matters). Some stakeholders in Porgera believe that BNL does not pay attention to district courts, only to national courts. Using alternative dispute resolution requires the costly hiring of a mediator. Even cases addressed in the human rights track are limited to a single judge. Courts also dismiss (on the arguments of parties) claims that do not meet evidentiary requirements and those that fall outside the statute of limitations and are not subject to extension.

### Recommendations:

1. Raise community awareness that courts are an option for pursuing remedy, including via an alternative dispute resolution track and a separate human rights track.
2. Create a legal aid center, blind trust, or voucher system to provide free legal aid for filing and bringing claims.
3. Designate a judge that specializes in addressing business-related cases.
4. BNL should commit to a code of conduct that pledges not to “out-gun” claimants through the use of excessive legal force and postponement tactics.
5. Promote the use of the court's alternative dispute resolution to expedite remedies for harms.
6. Designate additional judges to serve in the human rights track to increase the capacity of national courts to hear and resolve human rights cases.
7. Consider specialized arbitration in Porgera to expedite resolution of cases.



## 6.4.2 STATE-BASED NONJUDICIAL REMEDY MECHANISMS

### Mineral Resources Authority

The Mineral Resources Authority (MRA) is a national government agency designed to make sure that the Mining Act and Mining Safety Act are followed. Individuals may file grievances with the MRA that relate to land disputes, environmental degradation, or community health impacts. The MRA sometimes serves as the de facto coordination point for government agencies in relation to the mining sector.

The MRA has several strengths. First, it is generally viewed as impartial and is trusted by stakeholders. When claimants disagree with the MRA's rulings, they can appeal to the court system and can further appeal to the Chief Mining Warden. The MRA has direct involvement with the community, including with women, through its Mining Review Committee and a local representative based in Porgera. This allows it to understand community needs and viewpoints and, when necessary, get involved to settle matters (e.g., ensuring that royalty payments are paid to the intended beneficiaries). The MRA has investigative expertise through its various regulatory compliance functions.

The MRA has weaknesses, too. It is permitted only to take on cases relating to the Mining Act, which limits its ability to resolve some matters. It does not assist claimants in filing cases. The MRA has records on file that might be helpful for claimants, but few are aware of how to request them. Some cases appear to reflect a breakdown in resolution: The MRA cannot issue a ruling in the absence of a company response. One stakeholder reports that he has been awaiting resolution of his case since 2004 because BNL must respond to it before the MRA can issue its ruling. Finally, although the MRA has a presence in Porgera, its resources there are limited, and support must be flown in from Mount Hagen.

#### Recommendations:

1. Widen the scope beyond land cases to permit the MRA to address a wider range of mining-related matters. An alternative would be to amend the Mining Act so that impacts on human rights are explicitly included in the MRA's mandate.
2. Expedite the resolution process so that if companies do not respond within a specified time frame, the MRA can still issue a ruling.
3. Enhance resources at the MRA's office in Port Moresby to enable it to facilitate victims' access to remedy. Help claimants understand how to file and learn what resources are available (including raising awareness that MRA records may be used to substantiate claims).

### Department of Labour and Industrial Relations

The PNG Department of Labour and Industrial Relations (DLIR) maintains a labor-dispute mechanism in the industrial relations department, to which claimants can bring labor rights issues to be resolved.

This mechanism reportedly works well. Its chief weakness is that in Porgera, few community members are aware of the DLIR's dispute mechanism, so it is underutilized. An additional weakness is that the physical point of contact is located nearly 200 kilometers (125 miles) away, in Mount Hagen.

#### Recommendations:

1. Increase local awareness of the DLIR option in Porgera to promote its utilization by aggrieved present and former BNL employees.
2. For illiterate employees or former employees, the DLIR should provide help in filing claims.

### Conservation and Environment Protection Authority

The Conservation and Environment Protection Authority (CEPA) is a national government agency tasked with environmental protection.

In the context of mining, its strength is that it has oversight in addressing matters relating to mine tailings. It is the authority responsible for determining standard compensation amounts. Its weakness is that the Porgera community lacks awareness of CEPA's role and authority. A second weakness is that the physical point of contact is located in distant Mount Hagen.

#### Recommendations:

1. Increase local awareness of this option in Porgera.
2. For illiterate and rural populations outside Porgera who are affected by environmental impacts from the mine, CEPA should provide help in filing claims.

### Human Rights Ombudsman

The PNG government has an Ombudsman Commission that contains the Human Rights Ombudsman (HRO). The HRO's purpose is to receive and investigate complaints related to the government and to make recommendations. In addition, the HRO spends roughly 50 percent of its time raising awareness of human rights.

The HRO has several strengths. It is presently carrying out countrywide human rights training for police officers, though the process has yet to commence in Porgera. It has the ability to tell district courts to act, though only in an advisory capacity. The HRO also has an intake and screening unit that could serve as a model for other organizations that need to understand how to undergo this process.

The HRO also has weaknesses. First, 100 percent of its funding is set annually by Parliament, limiting its ability to operate over the long term. Second, its mandate is limited to investigating complaints related to government activity; it can investigate private-sector action only if the allegations relate to racial discrimination. Third, its recommendations have no binding authority, though they are usually followed. Finally, it has limited staff and resources: The human rights section has only two people to serve the whole country, and the field offices are not fully staffed.

#### Recommendations:

1. Widen the HRO's mandate to include investigation of actions by the private sector, beyond racial discrimination.
2. Provide additional resources to increase the HRO's capacity to carry out its work.
3. Support the HRO in carrying out training to generate more awareness of the responsibilities of the private sector in respecting human rights and providing remedy.

### National Human Rights Commission

National Human Rights Institutions (NHRIs) are bodies that are independent of government but have a mandate in constitutional or primary law to serve a watchdog function. Around the world, there are more than 100 NHRIs, and some have a mandate and capacity to address private-sector human rights harms. In PNG, the NHRI does not yet exist, despite having been proposed more than 20 years ago and winning PNG government acceptance after being recommended in the UN Universal Periodic Review process.

**Recommendations:**

1. As recently indicated by the PNG minister for justice,<sup>77</sup> ensure that legislation is passed in accordance with the UN Paris Principles to create a PNG NHRI with a mandate to cover private-sector human rights impacts.
2. Reach out to the International Coordination Committee of National Human Rights Institutions or the Business and Human Rights Working Group of NHRIs to help build the capacity of a PNG NHRI to address private-sector human rights impacts.

After further analysis of the barriers, an NHRI was identified as a potential key enabler of victims' access of effective remedy in PNG. This is reflected in the final recommendations (see Recommendation 7: Support the Creation of a National Human Rights Institution (NHRI) or the Extension of the Human Rights Ombudsman Mandate to Address Private Sector-Related Impacts on Human Rights).

### 6.4.3 COMPANY-RUN AND THIRD-PARTY REMEDY MECHANISMS

#### Porgera Mine Operational Grievance Mechanism

At the mine site in Porgera, the company has established an OGM to learn about and resolve grievances.

The chief strengths of the OGM are that it is located locally and is often viewed as an extension of the informal conversations that community members bring to the company's door. It has the ability to take immediate action in response to incidents, including changing policy to prevent future negative impacts and firing or punishing employees who are found to have perpetrated violations.

Still, the OGM has weaknesses. Because it is company-run, it lacks independence. It was not created with input from the community and does not have the community's trust. It sits behind the company fence.

Stakeholders report little transparency or communication after claims have been filed, leaving them frustrated. Because the OGM is not equipped to handle criminal cases, it requires that a report be made to the police if a matter concerns criminal activity, which can deter victims from pursuing claims. Finally, the OGM may not be impartial; one stakeholder reports that a claim that alluvial miners had been raped was met with the response: "You were trespassing and should not have been there in the first place."

**Recommendations:**

1. Establish an oversight committee—including independent persons not associated with the mine—to periodically review the decisions and performance of the OGM to ensure consistency in its approach and resolution of claims.
2. Implement the measures recommended in 2014 by the Triple R Alliance on reforming the OGM, including such measures as 1) the appointment of female employees to receive grievances from women in the community, 2) increased accessibility, and 3) periodic mandatory reporting back to the claimant on the progress of his/her case.
3. Make the OGM more transparent, and report annually and publicly on the number and types of claims received, timelines for resolution, and disposition of successful and unsuccessful cases.

After further analysis, reform of the OGM was identified as a main factor in ensuring the community greater access to effective remedy, so it becomes the subject of a final recommendation advising the overhaul of the OGM, in consultation with the community.

### Company + Community Dialogue Mechanism

A dialogue mechanism does not exist at the moment to invite the Porgera community and the company to discuss and agree on matters in a constructive and neutral setting. BSR's research has shown several areas in which dialogue is particularly needed in order to reach clarity and understanding as to who is responsible in such cases as drownings in the river or shootings by government police located around the mine site. In such matters, the company might be recommended to help the population obtain remedy (e.g., by helping to prosecute the perpetrator of a shooting), even if, strictly speaking, the company was not responsible.

#### Recommendations:

1. Explore whether the community would welcome a dialogue mechanism; if so, consider what the basic structure and features of such a mechanism would entail.
2. Explore whether the community wants a dialogue mechanism as part of the company OGM.

## 6.4.4 INTERNATIONAL REMEDY MECHANISMS

### OECD National Contact Points

Governments adhering to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP), whose role includes receiving complaints. NCPs provide a mediation and conciliation platform for resolving practical issues that arise in the implementation of the Guidelines.

In this specific case, Barrick's home country is Canada, an OECD member and signatory to the OECD Guidelines. A case related to Porgera has already been brought in this venue.<sup>78</sup>

The NCP process has a number of strengths. It provides an international access point at which parties can engage directly to come to a mutually agreed, mediated resolution. It provides a process outside the adjudicative court system and can resolve macro-level issues.

The weakness of the NCP process is that it can be costly and time-consuming for both parties. The mediation process cannot impose outcomes and may not be as rigorous as it would be in a court setting. It is not suited for individual cases of harm. Above all, it is voluntary, and parties cannot be compelled to take part in it or abide by its decisions.

#### Recommendations:

1. Raise awareness in PNG that NCP can serve as an option when local mechanisms are unavailable or not working.
2. Create a trust fund to allow claimants to access the NCP process.

### Extraterritorial Lawsuits

As described above, 11 women chose not to participate in the 2012-2014 Olgeta Meri Igat Raits Program and opted instead to pursue litigation against Barrick with the help of the NGO EarthRights International (ERI).

Extraterritorial jurisdiction cases require a link to a foreign country where jurisdiction can be obtained in courts that can adjudicate the alleged violations. In this case, Barrick is registered as a Canadian company, and the lawsuit was threatened in the U.S., where some of the company's main operations are located.

The strength of this approach was that it allowed claimants to pursue a remedy option outside PNG. The weakness was that it was not a remedy but a settlement. Given that the ERI process was settled out of court and because that process was confidential in nature, it is not known to what degree the settlement was determined on the basis of a consideration of restoring the victims, rather than Barrick's calculation of the expected costs of litigation and negative publicity.

The contrast with the outcome of the ERI settlement is a focus of dissatisfaction with the Porgera Remedy Framework. The women who went through the latter process believe they received less money (reportedly by a factor of five) than those who filed their claims with ERI, and consequently feel unfairly treated. All have come back to demand that the company pay all current and future victims an amount equal to what the 11 women received as part of the ERI settlement.<sup>79</sup> Additional victims alleging harms by the company that are unrelated to sexual violence also view the ERI settlement as the benchmark amount for compensation.

#### Recommendations:

1. Research and challenge PNG legislation that seeks to prevent claims connected to mining projects from being pursued in foreign courts.
2. Identify experienced international NGOs that could assist victims in mapping possible jurisdictions and then filing claims.
3. Align remedies with international human rights legal requirements on proportionality, appropriateness, restitution, and so forth.

### Canadian Independent Ombudsperson Office for the Extractive Industries

Canada, where Barrick is located, has mechanisms in place to resolve conflicts: the courts, the OECD National Contact Point (NCP) (described above), and the Canadian Ombudsperson for Responsible Business Enterprise (CORE), which was announced in January 2018 by the Minister of International Trade Diversification.

The NCP neither conducts investigations nor does it have the power to sanction companies directly or to compensate victims, and participation is voluntary. No sanctions are issued if wrongdoing is determined. The NCP's sole power (relevant only in some cases) is to recommend the withdrawal of Canadian government financial and political support (e.g., from trade commissioners). For these reasons, CORE will be investigating allegations of human rights abuses by Canadian extractives companies and their subsidiaries. CORE will be an independent officer with the power to look into such allegations linked to Canadian corporations operating abroad. It will not require a company's permission to investigate; nor will it need a complaint to launch an investigation and report any findings. CORE will not have the power to impose sanctions or penalties, but its probes and recommendations will be made public.

If implemented as currently envisioned, the ombudsperson will be independent, transparent, and credible. CORE will have the power to undertake investigations into allegations of human rights abuse or

environmental damage, using a joint fact-finding investigatory process. It will assess whether harm has been caused and identify cases of noncompliance with human rights and environmental standards. The ombudsperson will make public recommendations of actions that could be taken by companies or the Canadian government (including sanctions and withdrawal of support) in order to stop abuses, provide remedy to victims, or prevent future harm. The ombudsperson would provide a mechanism to resolve cases before they escalate to the courts. Such a mechanism has support from Canadian NGOs and some stakeholders in Porgera, who feel that it would offer a way to add traction to the UNGPs while bringing both transparency and an outside party to provide objectivity.

CORE is not widely supported by the extractives industry, which questions whether the office is necessary and will carry out its mandate in a practical manner consistent with fundamental legal norms, process, and fairness. In addition, there are concerns that such an office will impinge upon the sovereignty of host governments and ignore the need to help build up their capacity. Once fully functioning, the ombudsperson will face the challenge of building credibility with, and awareness among, all stakeholders.

#### **Recommendations:**

1. Build awareness among the local population as to how to use the ombudsperson office.

### **International Human Rights Treaty Bodies**

Individuals can raise complaints about violations of their rights in a variety of ways through the UN system, including treaty bodies.<sup>80</sup> Each of nine core international human rights treaties has a “treaty body” (committee) of experts to monitor implementation of the treaty by countries that are party to the treaty. Currently, only eight of the human rights treaty bodies may, under certain conditions, receive and consider individual complaints or communications from individuals. In order for this to occur, a country must ratify optional protocols or make declarations for each treaty.

In PNG’s case, the government has not ratified any of the optional protocols to the relevant treaty bodies or made the relevant declarations, which means that PNG nationals are unable to utilize these mechanisms at present.

In any event, these are of limited use in terms of providing individuals with effective remedy. Treaty bodies are designed to make recommendations to the government, which in turn would need to carry them out in order to provide remedy.

#### **Recommendations:**

1. PNG’s government should ratify nine core human rights treaties and their related optional protocols.
2. The Office of the High Commissioner for Human Rights should raise awareness among the local population about using the treaty body complaint mechanisms.



## 6.5 Remedy Considerations: Tailoring Remedy to the Porgeran Context

The right to effective remedy is defined in the human rights regime, but the regime is also clear that remedy needs to be “culturally appropriate,” both in relation to process and substantive elements. What aspects of Porgeran culture are important to consider when determining remedy? This section explores some of those elements, based in part on what was learned from application of the Porgera Remedy Framework, as well as what BSR’s team has heard in interviews with victims and the community.

Culture is fluid and is perceived differently by various people, so it is natural that some stakeholder views expressed in interviews conflict with others. When stakeholder recommendations vary according to distinguishing characteristics, such as local vs. international stakeholder, human rights expert vs. community member, and male vs. female respondent, we have tried to reflect the general characteristics of the source. For example, in relation to women interviewed in Porgera, the recommendations for noncash remedy (particularly in the form of school fees for children) differ from the recommendations made by men, which primarily focus on cash remedy.

For all the elements below, flexibility is important when they are applied to implement effective remedy. A village court, for instance, may differ as a remedy pathway from how the human rights ombudsman would address a particular case. Ultimately, differences in approach should reflect not only the *modus operandi* of the mechanisms but also the needs of the victim and the basic human right principles. For this purpose, we indicate in Appendix III the human rights principles that are relevant and would need to be taken into account when determining the best way forward in the local context.

Continued dialogue and engagement with the victims and representative stakeholder groups will be important when determining the design and effectiveness of any and all remedy pathways. The ideas below should contribute only as general indications of where to start the discussions when shaping remedy to the cultural context of Porgera. Final Recommendation 1 in this report recommends that the company’s OGM be reformed and that the reform take place in consultation with the community and with reference to the deep and rich Porgeran culture around remedy.

### 6.5.1 ADMISSIBILITY OF CASES: THE EVIDENCE THRESHOLD

A central challenge of any remedy mechanism is separating legitimate claims from false claims. All community, company, and international experts recognize that some percentage of the approximately 940 cases facing BNL are likely to be false. In this respect, all stakeholders acknowledge that it is important to err on the side of caution and grant the benefit of the doubt to claimants when determining the admissibility of cases.

Several important factors help determine the legitimacy of cases. One is the evidence threshold (i.e., the level of evidence that is required to bring a claim). In Porgera, the hospital was closed for a number of years, so the possibility of gaining medical evidence of bodily harm is slim. Moreover, in cases that carry stigma in Porgera, such as rape, some victims were reluctant to seek medical or police help and therefore lack evidence.

One mitigating factor is that the community is small. In several interviews, stakeholders indicate, “We know who the real victims are.” In addition, a number of victims say, “Everyone in the community knows

my case and that it really happened.” Indeed, even victims' representative groups claim, “We know which the real cases are, and can help BNL weed out the false from the true.”

Therefore, BSR recommends that when determining the eligibility of cases for which there is a lack of evidence, some local decision-making should be used. For example, a trusted local could be paired with the judge who determines admissibility in order to tap into the local knowledge of the legitimacy of some claims. However, we note an inherent danger in this approach, which should be used with caution: An individual who is marginalized or in low standing with the community might suffer rejection of a legitimate claim. There is also risk that community members who participate in the vetting process could be subjected to retaliation—or share in remediation. Finally, there is danger that someone being represented by one victims' group could be denied as a “real” victim by someone from an opposing victims' group.

### 6.5.2 STATUTE OF LIMITATIONS

A related yet distinct challenge is the statute of limitations, which allows a court or other remedy pathway to exclude claims based on the fact that they occurred too long ago. According to a number of interviewees, even the village courts apply a statute of limitations for certain types of claims. In the case of harms in Porgera, most stakeholders suggested that the statute of limitations in these cases should not be enforced. Why? First, because at the start of mining operations, community members were not aware of their rights and did not come forward when violations occurred. Second, with regard to sex crimes, many victims were afraid to come forward for fear of being ostracized by the community. In more recent years, as the case of Porgera has gained international attention and the community has become more rights-aware, this issue has abated somewhat. Harms tend to be reported faster.

An additional factor identified by international stakeholders is that no statute of limitations should exist in relation to gross human rights violations, in accordance with principles of international human rights law.<sup>81</sup>

What we have heard from the majority of stakeholders is that at least one remedy pathway should be available to victims who are barred from bringing claims that fall outside a statute of limitations.<sup>82</sup>

### 6.5.3 UNDERSTANDING LIABILITY

An added dimension to the cultural issue, which must be addressed in dialogue with the community, is the difference in clarifying an understanding of liability in cases wherein the company is somehow connected to the harm in question. Take the example of an artisanal miner fatally shot by the police on company property. The company would say it is not liable, because the local police shot him and the person was illegally trespassing. In contrast, when presented with the same scenario, most community members interviewed say the company is liable, because the person died on company property at the hands of police forces called in to protect that property. There are a number of such cases, as well as comparable disputes over liability stemming from drownings in waste piles or tailing flows on or near company property.

For a revised OGM or other remedy pathway to be successful, the company and community need to reach an understanding as to how these issues are to be dealt with. It must take into account the local culture and also present a fair and predictable way to determine liability.

## 6.5.4 LEGAL WAIVERS

The issue of legal waivers arose in a number of interviews because it relates to many of the claims currently pending. The Porgera Remedy Framework required the claimant to sign a legal waiver. This proved controversial.

The company maintains that the waiver was needed for reasons of predictability, finality, and to ease concerns about potential admissions of guilt. It strove to limit the waivers as much as possible, while still meeting these objectives. For example, waivers were never required to participate in the remedy mechanism itself, but were required only as a condition before payments for remedy were given. Similarly, the company was responsive to critiques on the scope of the waiver, and amended the waiver to preserve the right of claimants to seek judicial recourse for such criminal claims as rape and sexual violence.<sup>83</sup>

Some women who went through the remedy process report that the waiver presented them with a “take it or leave it” choice, reflecting a severe power imbalance. They argue that the legal waiver should be revoked on two grounds. First, because most claimants are illiterate and the waivers were in English, victims were not in a position to understand the consequences of signing the waiver; many maintain they didn’t understand the independent legal advisor’s explanations of its full meaning. Second, regardless of whether they understood the waiver, most claimants state that they had no choice but to sign it because they believed there was no other avenue of remedy open to them.<sup>84</sup>

It is beyond the scope of this report to resolve whether or not the waiver was proper under the Porgera Remedy Framework. However, it is important to apply all potential lessons from it, particularly in redesigning the company OGM or other remedy pathways. The use of waivers should be avoided if at all possible.<sup>85</sup> If waivers are necessary under certain circumstances, they should be limited in scope and used only if victims have informed consent and the ability to pursue alternative avenues of remedy.

## 6.5.5 PREVIOUSLY ADDRESSED CLAIMS

Many of the previously addressed claims in the current load of approximately 940 cases relate to the claims of the 119 women who received a smaller remedy package via the Porgera Remedy Framework, compared to the 11 women who received a larger payout from the ERI settlement. BSR has been told of a few additional claims involving cases that are before other forums in which, because of bureaucratic inefficiencies or other issues, no remedy decision has been made. For example, one case is reported to have been stalled since 2004 because the Mineral Resources Authority awaits a letter from BNL in order to proceed.

A concept in law aims to prevent claimants from getting the same case heard and awarded in different courts or from “forum shopping” their cases to specific courts that are deemed likelier to provide favorable judgments. However, there is also a concept in law that justice should not be unnecessarily delayed, and that timeliness is an element of effective remedy. These principles would apply to cases of previously addressed claims that are pending before different forums. In such cases as the aforementioned one reportedly stalled since 2004, claimants should be able to choose a new remedy pathway to pursue timelier resolution of their cases.

## 6.5.6 ACCESS TO INFORMATION

Access to information is important at all stages of remedy, from victims knowing their rights to awareness of remedy options. When asked about access to information in the Porgeran context, interviewees raise three issues. One relates to BNL's current OGM, for which claimants are not given sufficient information on potential outcomes or the process and its timelines. Frustrated claimants argue that they filed complaints and heard nothing for months or years as to how their cases were being addressed.

The second issue refers to the Porgera Remedy Framework for rape and sexual violence. The location of the office was known only through word of mouth. This was so that victims would feel comfortable filing complaints, but the downside is that some women claim to have missed out on the mechanism altogether. Other interviewees maintain that the lack of information became an issue later in the process, when they desired a clear explanation as to how their cases would proceed or how remedy determinations were being made.<sup>86</sup>

The third issue relates to the challenges of access to information in a context of high illiteracy and poverty, with limited access to communication technology and transportation. Victims in Porgera are highly dependent upon word of mouth and on representation by better-educated relatives and friends.

These lessons from the OGM and the Porgera Remedy Framework are clearly important for strengthening the OGM as a viable remedy pathway, as well as for determining the basic viability of any remedy pathway. It will be crucial to enhance efforts to raise awareness on rights and remedy options, and to deliver clear and consistent information that helps claimants understand the process, timeline, and potential outcomes of any remedy pathway subsequently pursued.

## 6.5.7 PROCESS ISSUES FOR ALL REMEDY PATHS

Regardless of which pathway is chosen, local stakeholders want to make sure that remedy will be accessible for victims. They want them to be able to pursue a wide range of grievances—not just those related to the narrow scope of sexual violence<sup>87</sup>—and to be able to do so through a wide range of entry points. Finally, they believe that such grievances should be pursued individually or collectively, and that the entire process should be done in a victim-centered, culturally appropriate way.<sup>88</sup> Below, we've gathered a number of points made by stakeholders, both local and international, that relate to general process requirements for remedy pathways in Porgera. These observations are sorted in relation to the process stages of remedy.

**Reporting of claims:** Stakeholders believe there must be broader outreach than occurred under the Porgera Remedy Framework, in part because the word-of-mouth approach did not reach some victims. Equally important, many victims are illiterate and need assistance with filing a claim.<sup>89</sup>

In addition, stakeholders are unanimous in believing that rape and sexual violence victims would not feel comfortable reporting their cases to the police or to BNL's OGM. In part, this is due to there not being enough female employees on BNL's community liaison team, which receives grievances, or in the Porgera government police Family and Sexual Violence Unit, which has several female officers. In addition, some victims report that some police personnel are themselves perpetrators.

Another barrier to the reporting of claims is a feeling that the police are not always effective. Stakeholders report that the police sometimes fear repercussions from the community if they investigate a case. At the same time and in sharp contrast, several stakeholders argue that reports should be made to the police

when the matters are criminal in nature, because only police have the formal authority to handle such cases.

**Investigation of claims:** Local organizations feel that neither BNL nor the police are properly investigating claims. There is a perception that BNL deliberately prevents the police from investigating claims. For its part, BNL maintains that victims' representatives sometimes have purposely withheld information needed for investigation and that on a number of occasions, the company has had to press the police to investigate. Some stakeholders call for the creation of an independent body with the power and means to investigate human rights violations in relation to the mine. Some believe this body could be modeled on or attached to the Mines Inspectorate, which is led by a chief inspector of mines. Other stakeholders believe such a body should be completely independent of the company and government and should be made up of human rights experts with training in investigating human rights claims.

Rather than see an independent government investigation group, some local organizations say they would prefer to take part in a multistakeholder local-investigations team. Others say law enforcement capacity should be augmented so the police can properly investigate in fulfillment of their existing mandate.

**Pursuing a claim:** Most people in Porgera are poor and lack access to resources or the ability to hire legal assistance. Stakeholders feel that the independent legal adviser appointed under the Porgera Remedy Framework was good in design but fell short in practice because the staff member's presence was intermittent, and claimants were not fully aware of their legal options, even after meeting with her.

Claimants should have access to independent legal counsel throughout their claim process to ensure they have the ability to stand on equal footing.

**During the hearing process:** A number of stakeholders raise concerns about how women were treated under the Porgera Remedy Framework and emphasize the need to ensure that such mistakes are not repeated. For example, it is reported that the women were required to swear on a Bible in order to participate. Stakeholders say this was culturally inappropriate because doing so is considered an insult to God, particularly for rape victims. Stakeholders consistently say that cases sensitive to women (especially regarding sexual violence) should be heard and assessed only by women. Toward this end, some local organizations that represent the victims feel that they should take part in such assessment teams in some capacity, though it is unclear to what extent they would have the ability to properly assess sensitive claims.

**Confidentiality:** Because of the harms some women endured going through the Porgera Remedy Framework, it is paramount to maintain confidentiality for all future claimants with sensitive cases in order to ensure their safety and security. This problem might partially be solved by not focusing a future remedy mechanism on sexual violence cases, as occurred previously. (An outside observer would then not know whether a claim relates to rape or some other harm.) Confidentiality will also need to be ensured for sexual violence and other sensitive cases going through the court system or any other remedy pathway. For all such cases, it will be important that the identities of victims and their claims not be shared publicly by organizations/lawyers representing the victims or parties to the case, unless the victims give explicit and informed consent for this disclosure.

**Delivering remedy:** If services, such as therapy or medical care, were offered as part of a remedy package, women's rights supporters believe it would be better to pay the fees directly to the service providers, such as hospitals, to avoid the potential that the fee money will be taken from the women by male relatives or misspent by the women. Under the Porgera Remedy Framework, fees were paid directly to services providers. In addition, women's advocates feel that the remedy offered should be private, so as to protect the women's safety and privacy; community members and victims should be consulted as to how the remedy should be delivered in order to ensure the victims' safety, as well as the longevity of the remedy. Moreover, advocates indicate that no money should flow through local organizations but should go directly to the victims. The victims should also be consulted privately about monetary remedy and its delivery, without representatives present, to avert potential strong-arming from families, local communities, and organizations. Significantly, these observations are not being made with regard to male victims, probably because the Porgera Remedy Framework that gave rise to these observations and lessons was directed at women.

**Reporting back from any company remedy mechanisms:** Some stakeholders believe that any overhaul of BNL's Operational Grievance mechanism, if undertaken, should include a strong reporting requirement on results, with the reports verified through audits. Such reporting should include the nature of the cases that have been accepted or refused; the actions the company has taken against the responsible parties; and the actions it has taken to coordinate with the police for investigation and prosecution.<sup>90</sup> There is clearly a lack of trust in any company-run mechanism, so transparency will be crucial.

## 6.5.8 DIALOGUE VS. ADJUDICATIVE APPROACHES

If a new remedy mechanism is created to handle a subset of claims, community members seem to assume automatically that it will follow an adjudicative path. When discussed further, however, community members say, "We have to live as neighbors with this mine" and offer that maintaining open communications and an ongoing dialogue is important. At the same time, there is division among stakeholders: Some believe that dialogue does not work at the case level and prefer that any new mechanism make authoritative decisions, as a court would. Others oppose this, favoring an approach underpinned by dialogue and reconciliation efforts. Still others believe it might be possible to have both.

## 6.5.9 ROLE OF GOVERNMENT

Most community members seem to trust the government while recognizing its limited capacity. Many stakeholders indicate that even with the government's shortcomings, it holds the primary duty for delivering remedy and holding perpetrators accountable. This demonstrates the need to build the government's capacity to achieve longer-term solutions so as to embed the delivery of remedy into a public institutional approach, rather than having to rely on the company to fill this void.<sup>91</sup>

Toward this end, most community members mention a desire for all levels of government (local, provincial, and national) to be involved. In particular, several stakeholders suggest that the government help fund a new/reformed OGM, as well as be a partner in it so that government is built into the solution. As with the Porgera Remedy Framework, government staff could be seconded to help determine local remedy options.



### **6.5.10 ROLE OF LOCAL ACTORS**

Stakeholders express the need for highly respected PNG individuals and Porgera community members to be included in remedy pathways. Such individuals, they say, should be highly educated, fluent in the local languages, and have expertise on the wide range of remedy options. Other stakeholders report a desire to involve women and church groups. Others suggest using respected elders who have a track record in the community. Aside from direct involvement in claims intake and assessment, local and international stakeholders indicate that they should be involved in the design process of any new OGM, which they believe did not adequately occur under the Porgera Remedy Framework—a claim the company disputes.

### **6.5.12 ROLE OF INTERNATIONAL ACTORS**

Stakeholders also express a desire that any new or reformed OGM include international representation. Doing so would bring expertise that would, in turn, build capacity and lend greater trust and legitimacy to the process. Stakeholders are clear, though, that this must be a joint effort: The involvement of locals is crucial in helping international personnel understand the context and realities on the ground. Any role for international actors should therefore be only via partnership; the intention is to build the capacity of locals to take the lead.

### **6.5.13 APPEALS SYSTEM**

When speaking directly about a new or reformed OGM, community members and victims mention that having the option to appeal decisions to court would be important. It would help overcome the power imbalance between the company and community members and would replace the “take it or leave it” approach that they feel occurred under the Olgeta Meri Igat Raits Program. While the Porgera Remedy Framework did have an appeals body, it was internal and cases could not be appealed to an outside court.

### **6.5.13 PROMPTNESS**

All stakeholders express deep frustration regarding the long wait victims have endured in their attempts to receive remedy. Some cases are said to be decades old, although a number of them may have been tried and rejected by previous bodies, with the claimants refusing to accept the rulings. It will be vital in the future for victims to be kept informed about the time frame for resolution and the finality thereof, with efforts to provide remedy progressing as fast as possible.

### **6.5.14 CASH VS. SERVICES**

In discussing types of remedies, we observed a difference between women and men: Men strongly favor cash payments, while many women want only a small part in cash and the majority in services. Some stakeholders mention that cash and pigs are expected because they align with local culture and tradition. Others cite the risk that cash will be gambled away or taken from the victims.

For longer-term remedies, female victims and their representatives express a desire to receive benefits that fall into three broad categories: education support (lifetime school fees for victims and their children); health care (lifetime support for checkups and counseling for victims and their children); and some type of business development (a lifetime cash-generating contract, a dividend-yielding account, business-skills classes, and so forth).<sup>92</sup> While the noncash remedies offered under the remedy mechanism are appreciated, stakeholders express concern that they did not last long enough, with the women continuing to experience negative physical, psychological, and social impacts.<sup>93</sup>

There are strong calls by many for relocation and resettlement. Many feel that their land and opportunities were taken and thus want the PJV to provide them with an equivalent amount of land farther away from the mine, even if in another region.<sup>94</sup>

Stakeholders also emphasize that claimants must have a role in deciding the appropriate remedy in a way that takes into account each individual's unique needs and circumstances, while also considering safety risks: Claimants must be consulted directly.<sup>95</sup> At a minimum, victims need to understand the amount of goods and services being offered, as well as their purpose. This did not occur for women under the Porgera Remedy Framework, according to some international stakeholders.<sup>96</sup> Local stakeholders also report that whatever remedy is given must connect to services (particularly for women), so victims are not isolated from the community.

Another challenge around which we note a division in opinion is how to value remedy packages—and whether local or international law should be the reference point. Some international stakeholders argue that because international tribunals refer to international law, so should the Porgera Remedy Framework have done.<sup>97</sup> However, even international law speaks to the need to consider local context and “not to make the beneficiaries richer or poorer.”<sup>98</sup> Others argue that remedies must be tied to the domestic legal process and must make sense within the local Porgeran context.

While the ERI settlement is being used as a benchmark by most stakeholders in Porgera, some argue that it was an international settlement and therefore did not attempt to correlate to any kind of rational damages of harm. One stakeholder notes a need to align with PNG remedy, on the grounds of fairness, vis-à-vis rape cases that did not involve a perpetrator connected to the company. “What about women who experienced rape in PNG and are awarded damages from PNG courts?” is the stakeholder's question. “Should they all get the same as the EarthRights settlement? Is that fair?”

While it is beyond our scope to resolve this tension, BSR wishes to highlight the need to do additional research regarding cases that ultimately must be resolved outside PNG courts, MRA, or other pathways with an established range of appropriate remedy awards.

### **6.5.15 COLLECTIVE OR INDIVIDUAL APOLOGIES**

Some local stakeholders and victims seek individual or collective apology. International stakeholders express similar sentiments, hoping for something stronger than the expressions of regret that Barrick offered under the Porgera Remedy Framework.<sup>99</sup> Other stakeholders consider a larger effort to disclose the truth about the negative impacts of mining important, so long as it does not jeopardize the security interests of victims.<sup>100</sup>

While this was not mentioned in local interviews, it might prove beneficial to draw on examples from other contexts in other countries. In some cases, for instance, courts have ordered that symbolic forms of contrition be offered, such as monuments to honor persons who were killed.<sup>101</sup> Such measures might be appropriate in Porgera if the community desires them.

### **6.5.16 TERMINATION AND OTHER PROMISES OF NON-REPETITION**

We noticed a common perception that, even if remedies are given to victims, the perpetrators—be they BNL employees or third parties such as police officers—are often not prosecuted and remain at large, free to offend again. While stakeholders are pleased that BNL has terminated employees it found responsible,<sup>102</sup> they want the company to work with the government to encourage the prosecution of guilty parties.

### **6.5.17 COLLECTIVE REMEDY**

Stakeholders report several important aspects when considering collective remedy. First, collective remedy needs to be grounded in cultural understanding. This is because there is already a “collective” aspect built into individual remedies in Porgera’s culture, in that the victim can be expected to give away some of the remedy on the grounds that everyone is affected by the crime. This pressure appears to apply much more to women in Porgera than to men.

Second, some women seek collective remedy because they have suffered greater ongoing and long-term harms than men have. Many indicate a desire for a women’s house in Porgera that could offer safety from domestic violence, as well as education, training, and so forth. And they caution against any form of fungible collective remedy, which they warn can be taken away by corrupt leaders.

## 7. Conclusion

The right to effective remedy is one of the most important aspects of the international human rights regime. Without remedy mechanisms, human rights exist only in theory and fail to be secured in practice. Companies should ensure full and effective remedy for victims harmed by their operations. In locations with weak governance systems, a heavier burden for providing access to fair and independent pathways to remedy falls upon the company.

From 2012 to 2014, Barrick addressed more than 300 claims through its dedicated remedy framework and the Olgeta Meri Igat Raits Program. The company now faces approximately 940 claims. It is clear that a longer-term, institutionally embedded solution is needed to ensure that current and future cases will be handled fairly and quickly.

BSR has suggested a constellation of measures to repair, build, and utilize remedy pathways for hearing claims of harm in and around the Porgera mine. These pathways range from formal judicial bodies to the company's own grievance mechanism.

It is paramount that the backlog of registered cases be addressed urgently, even as the company works on longer-term, systemic solutions. It is also important for the company to ensure that remedy mechanisms, no matter their form, follow the effectiveness principles as defined under the international human rights regime.

While the company has a responsibility to provide remedy, victims must also be supported by a just and effective remedy ecosystem. Toward this end, BSR recommends that the company work in collaboration with the government of Papua New Guinea to strengthen the wider remedy ecosystem.

While BSR has drawn upon international law and taken a human rights-based approach in conducting this study, we intentionally provide only general guidance and leave much to further local collaboration. The objective of this document is to provide a road map, not a destination, for the difficult and necessary work to come. The path forward should be a collaborative process driven by the company, community, and government—all working together for the victims.





APPENDIX

# Appendix I: Consulted Stakeholders

## International Stakeholders

Name	Title	Affiliation
<b>Aletta Biersack</b>	Professor of Anthropology	University of Oregon
<b>Amol Mehra</b>	Managing Director for North America	The Freedom Fund
<b>Anita Ramasastry</b>	Member	UN Working Group on Business and Human Rights
<b>Benjamin Hoffman</b>	Deputy Director, Human Rights Clinic	Columbia Law School
<b>Bennett Freeman</b>	Senior Advisor	BSR
<b>Bruce Harvey</b>	Director	Resolution 88
<b>Callahan Miller</b>	J.D. candidate, '19	Harvard Law School
<b>Caroline Rees</b>	President and Co-Founder	Shift
<b>Catherine Coumans</b>	Research Coordinator and Asia-Pacific Program Coordinator	MiningWatch Canada
<b>Chris Albin-Lackey</b>	Senior Legal Advisor	Human Rights Watch
<b>Craig Phillips</b>	Legal Consultant and Advisor to Barrick Gold Corp.	Grindal & Patrick
<b>Jennifer Zerk</b>	Lead Researcher on the OHCHR Remedy Project	Cambridge University
<b>Eugene Nam</b>	J.D. candidate, '19	Harvard Law School
<b>Fanie Thibeault</b>	Policy Analyst, Natural Resources Policy	Global Affairs Canada
<b>Faris Natour</b>	Co-Founder and Principal	Article One
<b>Georgina Galloway</b>	Deputy Director, Responsible Business Practice	Global Affairs Canada
<b>Ida Hyllested</b>	Child Rights and Business Manager	UNICEF



<b>John Ruggie</b>	Professor, Kennedy School of Government	Harvard University
<b>Jonathan Drimmer</b>	Vice President and Deputy General Counsel	Barrick Gold Corp.
<b>Larry Cata Backer</b>	W. Richard and Mary Eshelman Faculty Scholar Professor of Law and International Affairs	Pennsylvania State University
<b>Lene Wendland</b>	Business and Human Rights Expert	Office of the United Nations High Commissioner for Human Rights
<b>Madelyn Petersen</b>	J.D. candidate, '19	Harvard Law School
<b>Marco Simons</b>	Americas Regional Program Director and General Counsel	EarthRights International
<b>Nasheen Kalkat</b>	J.D. candidate, '18	Harvard Law School
<b>Nicky Black</b>	Director—Environmental Stewardship and Social Progress	International Council on Mining and Metals
<b>Patrick Matthey</b>	Political Officer for Human Rights	Human Rights Policy Office— Human Security Division— Federal Department of Foreign Affairs of Switzerland
<b>Roper Cleland</b>	Manager—Environmental Stewardship and Social Progress	International Council on Mining and Metals
<b>Sarah Knuckey</b>	Faculty Co-Director of the Human Rights Institute, Director of the Human Rights Clinic, and the Lieff Cabraser Associate Clinical Professor of Law	Columbia Law School
<b>Tracy Diehl</b>	Senior Advisor	Global Affairs Canada
<b>Tyler Giannini</b>	Clinical Professor of Law and Co-Director of the International Human Rights Clinic	Harvard Law School
<b>Vanessa Zimmerman</b>	Group Human Rights Advisor	Rio Tinto Group
<b>Yousuf Aftab</b>	Principal	Enodo Rights

## Local Stakeholders

The names listed below do not represent the entirety of people consulted by the BSR team. Some gatherings consisted of 80 or more people, at which events no attempt was made to collect the names of everyone in attendance. Only people who took part in meetings of fewer than 10 participants, and who expressly gave permission to use their names, are included below. Many participants chose not to be listed in the report.

Name	Title	Affiliation
<b>Aaron Zampogna</b>	Manager, Governance and Risk	Barrick (Niugini) Ltd. (BNL)
<b>Anna Yapakain</b>		Claimant
<b>Anonymous Claimants</b>		Claimants
<b>Anthony Smare</b>	Country General Counsel	Barrick (Niugini) Ltd. (BNL)
<b>Betty Karipe</b>		Porgera Women's Rights Watch
<b>Bruce Didimas</b>		Village Court Secretariat, Department of Justice and Attorney General
<b>Cathy Kapmol</b>		Porgera Women's Rights Watch
<b>Dame Carol Kidu</b>	Review Panel Member, PRFA Board Member	Olgeta Meri Igat Raits Program and Former M.P.
<b>Daniel Waim</b>		Porgera Women's Rights Watch
<b>Dorothy Wass</b>		Claimant
<b>Elizabeth Iarume</b>		(PWIB) Porgera Women in Business
<b>Epoarane Lawaipa</b>		Village Court Magistrate
<b>Essi Pokeran</b>		Human Rights Inter-Pacific Association (HRIPA)
<b>Esther Lau</b>		Claimant
<b>Everlyn Gaupe</b>	President	Porgera Women's Rights Watch (PWRW)
<b>Graeme Nielson</b>	Manager, CSR - Operations and Governance	Barrick (Niugini) Ltd. (BNL)
<b>Ila Geno</b>	Principal	Ila Geno and Associates
<b>Ila Temu</b>	Country Executive Director	Barrick (Niugini) Ltd. (BNL)
<b>James Aule</b>		Paiken Resettlement Chairperson
<b>James J Wangia</b>		Akali Tange Association (ATA)

<b>Janet Talu</b>		Claimant
<b>Jenny Amo</b>		Claimant
<b>Jim Yope</b>		Porgera Allied Workers Union
<b>Joe Kak Ryangao</b>		Mineral Resource Authority
<b>Joyce Kutato</b>		Claimant
<b>Joyce Pangale</b>		Claimant
<b>Judy Takili</b>		Porgera Women's Rights Watch
<b>Julian Whayman</b>		Independent Consultant
<b>Julie Jack</b>		Claimant
<b>Kane Middleton</b>	Senior Manager, Asset Protection Department	Barrick (Niugini) Ltd. (BNL)
<b>Karapus Yuwi</b>		Porgera Women's Rights Watch
<b>Karath Mal Waka</b>	Chairman	Human Rights Inter-Pacific Association (HRIPA)
<b>Kelep Yako</b>		Human Rights Inter-Pacific Association (HRIPA)
<b>Ken Propis</b>		Akali Tange Association (ATA) and Porgera United Human Rights Coalition
<b>Kepas Paon</b>		Freelance Development Consultant
<b>Langan Muri</b>		Akali Tange Association (ATA)
<b>Lely Kesa</b>		Akali Tange Association (ATA). ATA Women's Faction
<b>Leo Philip</b>		Human Rights Inter-Pacific Association (HRIPA)
<b>Lombal Kandaso</b>		ATA Claimant
<b>Mark Kuipi</b>		ATA Claimant
<b>Martin Brash</b>		Tanorama Consultancy
<b>Martin Sapala</b>		Human Rights Inter-Pacific Association (HRIPA)
<b>Martyn Namorong</b>		PNG Resource Governance Coalition, CIMC Secretariat Institute of National Affairs

<b>McDiyan Robert Yapari (and four colleagues)</b>	Public and Executive Officer	Akali Tange Association (ATA)
<b>Meck Minnala</b>	Community Relations	Barrick (Niugini) Ltd. (BNL)
<b>Nancy Jack Angaleya</b>		Claimant
<b>Naomi Wass</b>		Claimant
<b>Nathan Mosusu</b>		Mineral Resource Authority
<b>Nickson Pakea</b>		Porgera Chamber of Commerce and Industry
<b>Office of the Public Solicitor</b>		
<b>Office of the UN High Commissioner for Human Rights (OHCHR)</b>		
<b>Pat Niuni</b>		Restoring Justice Initiative Association
<b>Patrick Bindon</b>	Manager, Corporate Affairs	Barrick (Niugini) Ltd. (BNL)
<b>Patrick Neibo</b>	Team Leader, Human Rights Complaints and Administrative Investigations Divisions	Ombudsman Commission
<b>Penny Tarakali</b>		Akali Tange Association (ATA), ATA Women's Faction
<b>Perpetua Hau</b>		Village Court Secretariat, Department of Justice and Attorney General
<b>Philip Samar</b>	Managing Director	Mineral Resources Authority (MRA)
<b>Rex Kundaka</b> and others from the Porgera 119 Indigenous Women's Association	Victims' Representative and Claimants	119 Indigenous Women's Association
<b>Richmond Fenn</b>	Executive Managing Director	Barrick (Niugini) Ltd. (BNL)
<b>Roger Gunson</b>		Mineral Resource Authority
<b>Rosa Lokilyo Yapakain</b>		Claimant
<b>Rose Waine</b>		Claimant
<b>Ruth Kissam</b>	Director of Operations	PNG Tribal Foundation
<b>Sandra Nosa</b>		Claimant

<b>Sarah Erasi</b>	Interim President	Porgera District Women Association – Ipili Wanda Investment Limited (PDWA-IWI)
<b>Stella Brere</b>		Mineral Resource Authority
<b>Taiande Nalepa</b>		Human Rights Inter-Pacific Association (HRIPA)
<b>Tepend Lape</b>		Claimant
<b>Timothy Andambo</b>	Senior Manager, Community and Social Responsibility	Barrick (Niugini) Ltd. (BNL)
<b>Tony Esplin</b>	Executive Managing Director	Barrick (Niugini) Ltd. (BNL)
<b>Ume Wainetti</b>	Review Panel Member, PRFA Board Member	Olgeta Meri Igat Raits Program and National Coordinator of the Family and Sexual Violence Action Committee
<b>William Gaupe</b>		Claimant

## Appendix II: Interview Methodology

**Victim-Centered Stakeholder Selection:** As indicated previously, we followed a flower model of interviews, gaining input from a wide range of stakeholders while keeping victims at the center. In selecting interviewees, we aimed to balance gender, landowners and non-landowners, and victims' representatives and the victims themselves.

**Confidentiality:** We offered all those interviewed the option to remain anonymous. Throughout this report, we have not attributed quotes to named individuals. Citations in the report refer only to documents that are in the public domain or otherwise on file with the authors.

**Openness:** When possible, we held one-to-one meetings, so individuals could speak freely, without fear of judgment. When group meetings were held, we offered participants the option to meet individually afterward.

**Neutral Location:** In Porgera, we met in a community location offsite from the PJV camp. For security reasons, it was gated, with PJV personnel providing security around the site. In Port Moresby, all sensitive interviews were held at the Crowne Plaza Hotel.

**Translation:** Most interviewees spoke English. Some interviews were conducted with translation, and victims and their representatives used their own interpreters.

**Duration:** Each interview took place for a minimum of one hour.

**Open Discussion:** We had a list of prepared questions but allowed each interviewee to steer the interview so that their priorities and concerns could emerge first. When necessary, we supplemented with fixed questions.

**Research Limitations:** Despite our best efforts, the report should be viewed in the context of its limitations:

- » **Potential for Self-Censorship:** BSR is grateful to have received introductions to all national and local stakeholders engaged in PNG through Barrick and BNL, MiningWatch Canada, and Columbia University's Human Rights Clinic. This selection process may have led respondents to self-censor their views or focus solely on one perspective to the exclusion of others.
- » **Limited and Potentially Biased Claimant Pool:** To minimize negative impacts on claimants' confidentiality, BSR engaged only claimants who agreed to participate in the study. However, due to time restrictions, BSR could not engage with the entire claimant pool, which numbers approximately 940. We covered claimants representing a full range of scenarios, including sexual violence, shooting/excessive use of force, health effects of mining, and land disputes. But because we did not engage the full pool of at least 940 current cases, it is possible that we did not gather some relevant perspectives.



## Appendix III: International Law Requirements for Remedy

**Table 1: UNGP Effectiveness Criteria for Nonjudicial Grievance Mechanism**

Effectiveness Criteria	Description (from UN Guiding Principles)
Legitimate	Enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes
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
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
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
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
Rights-Compatible <sup>103</sup>	Ensuring that outcomes and remedies accord with internationally recognized human rights
Source of Continuous Learning	Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harm
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

**Table 2: Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law**

Remedy Requirement	Description (from Right to Remedy Principles)
Statute of Limitations	Statutes of limitations shall not apply to gross violations of international human rights law
Treatment of Victims	Provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation
Access to Justice	A victim of a gross violation of international human rights ... shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Toward that end, States should:
Information Dissemination	Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law
Victim Protection	Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims
Victim Assistance	Provide proper assistance to victims seeking access to justice
	Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights ...
Group Reparation	In addition to individual access to justice, States should endeavor to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate
<b>Reparation</b>	
Prompt Remedy	Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law

<b>Proportional</b>	Reparation should be proportional to the gravity of the violations and the harm suffered
<b>Restitution</b>	Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law ... occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property
<b>Compensation</b>	Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services
<b>Rehabilitation</b>	Rehabilitation should include medical and psychological care as well as legal and social services
<b>Satisfaction</b>	Satisfaction should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law ... training and in educational material at all levels
<b>Guarantees of non-repetition</b>	Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to

	<p>prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights ... law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law</p>
<b>Access to information</b>	<p>States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law ... of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights ... and to learn the truth in regard to these violations</p>

<b>Table 3: Road to Remedy Elements Mapped Against International Human Rights Law Requirements</b>				
<b>Road to Remedy Elements</b>				
	<b>Step 1: Filing claim</b>	<b>Step 2: Fair and impartial hearing</b>	<b>Step 3: Victim has remedy</b>	<b>Step 4: Remedy is effective and sustainable</b>
<b>UNGPs</b>				
Legitimate	√	√	√	√
Accessible	√	√		
Predictable	√	√	√	√
Equitable	√	√	√	
Transparent	√	√	√	√
Rights- Compatible	√	√	√	√
Source of Continuous Learning	√	√	√	√
Based on Engagement and Dialogue	√	√	√	√
<b>Right to Remedy Principles</b>				
Statute of Limitations		√		
Treatment of Victims	√	√	√	√
Access to Justice	√	√		
Information Dissemination	√			
Victim Protection	√	√	√	√
Victim Assistance	√	√	√	
Group Reparation	√	√	√	√
Prompt Remedy	√	√	√	
Proportional			√	
Restitution			√	√
Compensation		√	√	√
Rehabilitation			√	√
Satisfaction			√	√
Guarantees of non-repetition		√	√	√
Access to information	√	√	√	√

## Appendix IV: Draft Recommendations Shared with Community and Stakeholders

The following first-draft recommendations were proposed by BSR in early consultations with the community, the government, the company, and other stakeholders. BSR discussed these recommendations with local and national stakeholders during an in-person trip to Papua New Guinea in April-May 2018, with international stakeholders in a consultation in May 2018, and with the company in June 2018. The purpose of including these rough recommendations is to allow interested readers to note the report's evolution following broad stakeholder feedback. The final recommendations appear in chapter 4.

### Draft Recommendations on Strengthening the Remedy Ecosystem Around Victims

#### 4.1 Establish a Legal Aid & Remedy Access Office in Porgera

A central challenge in the access to remedy in Porgera is the lack of a body to facilitate the filing of human rights claims, particularly in an area with low levels of education and high levels of illiteracy. A free legal aid and remedy access office has the potential to alleviate much of this problem. This office would provide advice beyond the services provided in PNG public solicitors offices, as it would help victims understand and access the wider remedy ecosystem, not just the PNG court system. Given this broad focus, the makeup of the office would likely require a collaboration of government entities, from the public solicitor, to the Mining Resources Authority (MRA) and the Conservation and Environmental Protection Authority (CEPA), with support from international NGOs.

The role of the office would be to:

1. Act as an intake center, helping claimants know whether they have a claim;
2. Advise claimants on the various possible pathways to remedy, and the pros and cons of each;
3. Guide claimants to the best remedy pathway for their claim;
4. Monitor the progress of claims and report any delays or barriers experienced along the way to the Independent Remedy Oversight Body (in recommendation 4.7);
5. Inform the Independent Remedy Oversight Body if they believe no viable pathways exist for one or more claimants.

The services should be free to the claimant and resourced by Barrick/BNL and the government—ideally through an amendment to the Memorandum of Agreement (MOA), which guides how royalties and benefits are distributed to Porgeran landowners, so that revenues from the mine are used directly to address the negative impacts of the mine. It could take many forms, from providing legal aid attorneys from the State Solicitor's Office in Mount Hagen to expanding the local branch of the MRA office. It could



also include an international component, bringing in international NGOs or expertise from the National Human Rights Institutions of New Zealand or Australia to assist victims with claims. Another possible formula might be to follow the model of the Tribal Foundation Assistance Programme, which addresses issues of sorcery in PNG and has good local presence.

The precise makeup and mandate of this office should be defined through discussion between the company, the government, and the community, but such a local liaison could go a long way toward addressing a number of the barriers to remedy identified in this study.

## 4.2 Build the Capacity of Victims' Representative Bodies in Porgera

Victims' representatives have a critical role to play in any healthy remedy ecosystem. Representatives should be able to engage in the remedy process, and measures should be taken to help ensure that they are truly representative of, and accountable to, the victims.

Porgeran culture has a natural representation structure in which most community members prefer to be represented by relatives, tribal leaders, or others with whom they have close relationships. In Porgera there are a number of representative bodies, as well as family members acting on behalf of claimants. A number of interviewees expressed doubt, however, as to whether these organizations were acting in the best interests of victims, given the high rates charged for taking cases and the practice of some organizations to require victims to hand over any monetary compensation to the representatives, to distribute at their discretion.

Despite potential conflicts of interest, representative bodies are important enablers in the system. Building their capacity to truly represent the interest of the victims, while safeguarding against any political agendas and personal interests, is crucial. Therefore, any remedy solution should include an aspect of capacity-building for representative organizations and the local community. In Porgera, we recommend this takes two forms. First, international NGOs should be invited in to train representatives on human rights and how to gather information from victims and file claims. Second, international NGOs should work with the representative organizations to help them develop and take ownership of a code of conduct for victims' representatives to ensure transparency about fees, funding, mission, and expected outcomes.

## 4.3 Devote Sufficient Resources to Tackling the Barriers to Remedy

Any efforts to ensure access to remedy require resources. In the particular context of Porgera, resources should be directed at tackling some significant barriers to the existing remedy pathways. These barriers were part of the BSR study, with much of the first round of interviews in Porgera devoted to understanding the particular barriers to remedy that victims in Porgera were experiencing in relation to the current 940 cases. These barriers are outlined in detail among the research findings in Chapter 6, section 6.4., *Current Pathways to Remedy and Barriers*. We offer recommendations on steps that can be taken to remove barriers; while not all barriers can be removed, the objective is that victims should be empowered with choice between multiple remedy pathways.

The company contributed to the harms in Porgera, so it should partner with the government to tackle the barriers, specifically as they relate to Porgera. With this in mind, we have two specific points:

- » The Restoring Justice Initiative (RJI), which was set up by BNL in 2008 to help plug gaps in the justice system, should be expanded and redirected to help remove barriers to access to justice in Porgera. Historically, RJI directed its attention at providing infrastructure for the justice system,

including building police barracks and providing office equipment for local magistrates. It is currently reassessing its strategy and could be a valuable force in tackling the existing challenges if redirected specifically at the barriers in the current remedy ecosystem.

- » Another avenue for increased resources for tackling the barriers to remedy in Porgera is through the tax credit scheme. The government had a program in which a portion of revenues from extractive projects were paid in the form of tax credits. This program is currently suspended. In Porgera, prior to its suspension, funds from this Tax Credit Scheme were primarily used to build physical infrastructure like roads. We recommend that this scheme be revived and expanded to address barriers and capacity-building for the remedy ecosystem in Porgera. This would allow a close tie between the revenue generated from mining and the remediation of some of the harms from mining.

## 4.4 Reform the Company Operational Grievance Mechanism

BNL's Operational Grievance Mechanism (OGM) is designed to handle complaints against the mine. It's often the first port of call for victims because it is locally based and non-bureaucratic. While human rights complaints and criminal matters may be lodged through the OGM, they will not be addressed through the regular OGM process, as they are escalated from there to another mechanism that was put in place to advance those claims.

Many weaknesses in this mechanism persist. Porgerans have a low trust-level in the current mechanism, maintaining that it is unresponsive, takes too long, and is a "black hole." Community members complain that: the office is not always accessible because it is behind the mine's walls; they receive no information regarding their complaints; some grievances are sent to the police against claimants' wishes; and resolutions are not handled with transparency.

To address these challenges and rebuild community trust in the company OGM, it should be strengthened and the process for addressing human rights claims should be clarified, with the aim of making the mechanism more transparent and responsive to community complaints. The findings and recommendations from the independent assessment of the OGM from 2014 should be revisited, and those recommendations that have not yet been implemented should be.

At a minimum and as a first step, claimants, regardless of the type of claim they lodge, should be updated every 30 days about their cases, and claims should not be reported automatically to the police without claimant consent. Any strengthening of this mechanism should include transparent performance indicators related to the number and type of grievances filed; analysis of repeated claims and trends over time; victim satisfaction with the process and outcome; and the length of time necessary to resolve grievances.

The company should engage the community when strengthening its OGM, hear the opinions and suggestions of the community, and ensure that the resulting OGM is victim- and user-oriented.

## Draft Recommendations for Oversight Mechanisms

### 4.5 Oversight at Country Level: Create an Independent Oversight Body—in the form of an Extractive Ombudsman or an NHRI—to Address Extractives-Related Human Rights Impacts

The extractives sector is a large source of PNG's GDP and the source of much of the country's external investment. While this sector has a positive impact in terms of job creation and tax revenue, it often has a negative impact in terms of human rights. Given this fact, BSR recommends starting at the national level, with PNG increasing its capacity for addressing extractives-related human rights issues. This could be done through one of two avenues:

First, PNG could extend the mandate of the existing Human Rights Ombudsman to cover private sector-related impacts and include a specific extractive sector seat in the ombudsman's office to investigate and issue recommendations related to extractive sector impacts. Such an office could help facilitate dialogue between companies and communities, act as an early warning system, and issue sanctions when needed.

A second option would be to create a National Human Rights Institution (NHRI) with a mandate covering the private sector. In PNG's case, no government body currently monitors company impacts on human rights. An NHRI could serve this role. This has also been recommended by the UN High Commissioner for Human Rights,<sup>104</sup> and it has been discussed and accepted by the PNG government in the past. NHRIs are important institutions in bridging the national with the international human rights architecture. If a NHRI is established in PNG, it gives the opportunity of reaching out to the International Coordination Committee of NHRIs, to get international help in building the capacity and role of the institution in relation to private-sector human rights impacts.

The creation of an extractive ombudsman or an NHRI is in the hands of the government. But Barrick/BNL, for its part, should help mobilize support for this office among its industry peers in the country (e.g., Exxon, Total, etc.) and help facilitate a dialogue with the government, community, and industry to ensure that whatever office is created meets the needs of the rightsholders.

### 4.6 Oversight at Company Level: Expand Mandate of BNL's Independent Observer

BNL has an independent observer to provide opinions over security-related incidents at the mine. The current position is held by a former police officer, a man who is respected and viewed as having high integrity by the community. Expanding this office's mandate to look at a broader range of human rights issues is recommended. The position would need to be further refined, with a clearly defined mandate covering all human rights and structural guarantees for independence in reporting. The current independent observer should be partnered with and supported by a reputable international NGO to extend his capacity on issues beyond security-related bodily integrity rights. In expanding and refining the position, it is recommended that the next position-holder be nominated by a triad of company, community and government representatives, so that his/her observations and recommendations are trusted and respected by all parties.

## 4.7 Oversight at Project Level: Create an Independent Oversight Body to Monitor the Remedy Ecosystem in Porgera

While the Porgera Legal Aid & Remedy Access Office (LARA), in recommendation 4.1, would be tasked with the day-to-day operations of assisting claimants with choosing a remedy pathway, filing their claim, monitoring their claim etc., this proposed Independent Oversight Body would help ensure access to remedy for all valid claims. This level of oversight is recommended, given the complexity of the claims, existing barriers in the remedy ecosystem, and the need for closure for claimants.

BSR recommends an oversight mechanism consisting of representatives from four groups: the company, the government, the community, and an independent international organization like UN Women, United Nations Development Programme, or similar. This office would be tasked with monitoring the remedy ecosystem in Porgera and ensuring that all 940 cases have been heard within the next two years.

This Independent Remedy Oversight Body would oversee the claims process at the LARA office. The Body would monitor closely any delays or barriers to accessing remedy experienced by claimants, helping to direct resources to unblock barriers and helping to determine if a pathway is not viable. They would also be charged with deciding the next steps for claims with no viable paths forward. The Oversight Body would also have the authority to consider cases closed for lack of evidence.

The funding to support this body should consist of a blind trust set up by the company and administered independently, with sufficient funding for the body to exist for two years, or until the settlement of all 940 cases in the current caseload.

## Draft Overarching Recommendations

### 4.8 Address the Perception of a Discrepancy Between the Outcomes of the ERI Settlement and the Porgera Remedy Framework

A major remaining point of contention is the 119 women who went through the Porgera Remedy Framework and were compensated with a total of 50,000 kina, far short of the estimated 200,000 kina given to the 11 women in the Earth Rights International settlement (See Chapter 2: Background for additional context). These 119 women signed a legal waiver that they would not pursue the cases again. They maintain, however, that they didn't understand what they were signing and that they had no choice. A number of them have raised the issue again in new claims against BNL, requesting 150,000 Kina more for equalization with the higher payment.

The hard feelings arising from the perceived discrepancy will hamper any future remedy efforts as well as good relations between the company and community. BSR recommends two potential paths forward for addressing the issue:

First, the question could be submitted to the Human Rights Ombudsman, Judge, or another independent and respected local authority in PNG. S/he should be asked for an opinion on whether the remedy awarded under the PRFA met international human rights requirements on effective remedy, and is the effectiveness undermined by the discrepancy with the outcome of the ERI Settlement. All parties should commit to having the opinion made public discussions in good faith on the outcome of the opinion.

Alternatively, the discrepancy in the outcomes between the Porgera Remedy Framework and ERI processes be addressed through a dialogue with a trusted third-party facilitator and could address an ongoing approach for future community-level benefits for the 119 women and their families. This would be similar and potentially linked to the open dialogue on forms of collective remedy in the following recommendation.

For whatever outcome is determined through the legal opinion or facilitated dialogue, all parties—the community, company, and government—should engage in good faith to support the 119 women with the ultimate goal of finding an effective remedy “to restore the victims to their positions in the community prior to the harm being done.”

## 4.9 Open Dialogue on Forms of Collective Remedy and Ongoing Benefits Allocation with Local Women

The impact of mining on human rights is both negative and positive. It brings economic development and infrastructure to the area, but at the same time, introduces environmental degradation, heightened conflict, and marginalization. The challenge is the negatives are often borne by one part of the population, while a different part experiences the benefits. In the case of Porgera, we consistently heard that the clash of local culture with the mining enterprise left women exposed to far more harms than men and, compounding those harms, women had less voice, resources, and access to remedy in traditional Porgeran society. For this reason, this recommendation is to open a dialogue with local women, for the purpose of empowering them to identify and negotiate on their particular collective remedy needs. In this respect, many women voiced the need for a women's center in Porgera, designed to provide shelter from family and gender-related violence, train on new forms of economic activity given the loss of women's traditional livelihoods to the mine), and empower women more generally.

Related to this, we recommend tackling some of the root causes of this harm. BNL and the government are advised to renegotiate the MOA agreement. The current system of paying royalties directly to tribal leaders often results in the money not reaching women. Hence, the benefits of the mining activity are largely focused on men, while the negative impacts often fall on women. Redirecting the way that royalties are paid out, to ensure that a certain portion of the royalties go directly to the benefit of women, is a needed step to addressing the gender imbalance of the societal cost/benefits of mining in Porgera. The collective agreements made with women at the Ok Tedi mine,<sup>105,106</sup> also in PNG, could be used as an example of a process to follow.

### OK Tedi mine

Prior to 2007, women were not involved in any consultations regarding the Ok Tedi community mine continuation agreement, which defines the cash compensation, investment, and development payments villages affected by the operations receive. Ok Tedi and independent facilitators helped persuade the state and male beneficiaries to include women in negotiations. Several strategies were employed to help women negotiate effectively. Women held side meetings to strategize and approach the negotiations tactfully, and independent facilitators worked with the mine's gender desk to consult women in affected villages. They also brought in experience from the Women in Mining project.

This helped women secure an agreement giving them 10 percent of all compensation, 50 percent of scholarships, cash payments into family bank accounts (to which many women are co-signatories), and mandated seats on the governing bodies implementing the agreement (including future reviews of the agreement). Women's entitlements became legally enforceable rights in agreements signed by the state and the developer. This arrangement was, and remains, unprecedented globally.



## 4.10 Create a Company Action Plan and Engage in Dialogue with Community

This report is not designed to sit on a shelf. Rather it should serve as a catalyst for action to ensure access to remedy for the victims in Porgera. The first step in putting these recommendations into motion is for the company to create an action plan, detailing recommendations accepted and rejected, and what steps will be taken to implement.

The company action plan should be shared with the local community and government for dialogue and input no later than two months after the official release of the BSR report in order to engage with international stakeholders, local community, and government; obtain feedback; and incorporate this feedback into the action plan. BSR recommends releasing an updated finalized action plan reflecting these inputs.

The final action plan should contain specific, measurable, and time-bound commitments. The plan should outline priority actions (next-year actions), long-term actions (two-to-four-year time horizon), and set clear goals and key performance indicators (KPIs). The company should work with an independent NGO (not BSR, but rather a group wholly disengaged from the process thus far) to independently assess and report on its successes, failures, and any corrective actions undertaken at regular intervals (for example, one year from finalizing the action plan and again two or three years later).

# Appendix V: Final Recommendations in Tok Pisin

## Ol Tok Skul

### Mekim Sampela Samting Long Ol Hevi i Wok Long Kamap Long Dispela Taim

1



**Mekim Sampela Senis long Wei Bilong Kisim ol Toktok bilong ol Hevi** long wei UN i soim long en na tu kisim tingting bilong ol komuniti.

2



**Stat toktok wantaim ol 119 meri husait bin stap insait long Porgera Remedi Mekanisim long bipo** na steretim wanem samting i stap yet long lukim pinis bilong dispela wok.

### Strongim Wanem Sistem Yumi Gat Pinis Long Kisim Toktok Bilong Ol Hevi

3



**Kamapim wampela nogat sas Opis bilong ol lain husait bungim hevi** we em hap we ol dispela lain ken igo, givim infomesen na halivim ol long kisim halivim long steretim hevi bilong ol.

4



**Halivim kamap strong ol grup o opis we i save halivim ol lain husait bungim hevi** insait long Porgera long mekim moa save ol rait bilong ol wanwan manmeri na tu makim maus bilong dispela lain.

5



**Lukluk long wanem ol samting i pasim rot bilong steretim ol hevi insait long Porgera**, na lukluk moa long ol wei we em impoten na we ol lain husait bungim hevi long operesen bilong main i save yusim.

6



**Mekim moa bikpela wok bilong Indipenden Wasman bilong Main** long lukluk long ol hasua we i kamap long ol rait bilong wanwan manmeri na tu mekim dispela kamap opis we bae lukim ol pawa bilong dispela opis i go winim pawa bilong man husait i holim dispela opis long dispela taim.

7



**Sapotim wok bilong kamapim Nesinol Humen Rait Institusen (NHRI) o wok bilong mekim go bikpela pawa bilong Humen Rait Ombudsman** long lukluk long ol hevi we i bagarapim rait bilong wanwan manmeri insait long Praivet Sekta.

## Ol Tok Skul

### Stopim Ol Hevi We i Ken Kamap Long Bihain Taim

8



**Lukluk long ol hevi we i kamap long ol pipol** na putim risos go insait long ol meri we main operesen i kamapim hevi long ol, luksave olsem wanwan hevi na bekim bilong ol ino wankain long kamapim main operesen insait long Porgera.

9



**Mekim senis long komuniti engesmen na ol risos igo insait, na tu strongim rait bilong wanwan manmeri long main** we bae lukluk long wanem samting i wok long kamap long dispela taim, engesmen wantaim komuniti, na yusim ol intanesinol raitpela na gutpela prektis bilong mekim samting.

### Ol Narapela Step

10



**Kamapim wampela kampani eksen plen** bihain long toktok wantaim ol komuniti, long kamap hariap long dispela taim, na tu ino long taim bihain, na tu ol eksen plen bilong bihain taim we i ken mekim wok long ol tok skul bilong ripot na strongim ol wei we ol lain husait bungim hevi i ken go kisim halivim insait long Porgera.

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## Endnotes

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- <sup>6</sup> Van Boven, 2010.
- <sup>7</sup> United Nations, 2006. In Preamble (“Convinced that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large ...”).
- <sup>8</sup> Office of the UN High Commissioner for Human Rights, 2011. In Guiding Principle 31(h); Commentary to Guiding Principle 31.
- <sup>9</sup> Namely the concept of *equality of arms*, which is the notion that both parties (especially the weaker litigant) has the opportunity to present their case under conditions of equality. UN General Assembly, 1966 and UN Human Rights Committee 2007.
- <sup>10</sup> The World Factbook, 2017.
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- <sup>40</sup> Aftab, 2016. (Noting “The benchmark for the total value of remedy packages was set against the range of Papua New Guinea’s civil ‘damage awards for proven instances of rape’ ... [based] ... on advice from Allens Linklaters, that range was identified as 20,000 to 25,000 Kina (K) ... [ ] ... This amount was to serve as the referent for the lowest value of Framework awards; no upper limit was set”).
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- <sup>47</sup> OHCHR, 2013.
- <sup>48</sup> Aftab, 2016.
- <sup>49</sup> EarthRights International, “Survivors Who Alleged Rape and Killing at Papua New Guinea Mine Pleased With Barrick Gold Settlement.”
- <sup>50</sup> Aftab, 2016.
- <sup>51</sup> Enodo Rights provided further explanation and justification of its methodology in a public exchange with ERI following the publication of its report. See <http://www.enodorights.com/assets/pdf/a-response-eri.pdf>
- <sup>52</sup> 119 PRFA Rape Victims, 2016.
- <sup>53</sup> Email correspondence dated January 28, 2018, and ATA’s Acknowledgement of BSR’s Draft Report.
- <sup>54</sup> MiningWatch, 2011.
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- <sup>62</sup> United Nations, 2006. Principle 19.
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- <sup>67</sup> 119 PFRA Women. 2016.
- <sup>68</sup> A recent request from the ATA also notes that “we recommend that ERI also has a duty to explain to the 119 and the Porgera Community as well as the representative bodies of how and why the 11 women were offered K200,000.00.” ATA, “Response to the BSR’s Report Summary; In Search of Justice: DRAFT Final Recommendations” 2018.
- <sup>69</sup> International stakeholders have noted that in the human rights field, there is a history of codes of conduct being imposed on human rights actors as a way for perpetrators and duty-bearers to marginalize, attack, and weaken them. This is not the intention with this code of conduct, rather it is seen as a way to strengthen the local actors.
- <sup>70</sup> Barrick, 2018.
- <sup>71</sup> IFC, 2012.
- <sup>72</sup> ICMM, 2015.
- <sup>73</sup> IFC, 2018.
- <sup>74</sup> Barrick Gold’s Executive Chairman John Thornton is quoted in Bloomberg News as saying that for non-tier 1 assets, “the likelihood of us continuing to own those over time is zero. We may own them for a period of time, for a variety of different reasons.” The Porgera mine is a non-tier 1 asset. Bochove, 2018.
- <sup>75</sup> Village Courts (Amendment) Act of 2014.
- <sup>76</sup> Village Courts Act 1989.
- <sup>77</sup> Papua New Guinea Today, 2017.
- <sup>78</sup> Global Affairs Canada, 2011.
- <sup>79</sup> 119 Porgera Remediation Framework Association (PRFA) Rape Victims, 2016
- <sup>80</sup> See OHCHR, Human Rights Bodies—Complaints Procedures.
- <sup>81</sup> United Nations, 2006. (“... statutes of limitations shall not apply to gross violations of international human rights law ...”).
- <sup>82</sup> Akali Tange Association, 2017.
- <sup>83</sup> OHCHR, July 2013.
- <sup>84</sup> Human Rights Clinic (Columbia Law School) and International Human Rights Clinic (Harvard Law School), 2015.
- <sup>85</sup> Office of UN High Commissioner for Human Rights (OHCHR) report states that: “the presumption should be that as far as possible, no waiver should be imposed on any claims settled through a non-judicial grievance mechanism. Nonetheless, and as there is no prohibition per se on legal waivers in current international standards and practice, situations may arise where business enterprises wish to ensure that, for reasons of predictability and finality, a legal waiver be required from claimants at the end of a remediation process.” OHCHR 2013.
- <sup>86</sup> Akali Tange Association, 2017.
- <sup>87</sup> Yousuf Aftab, 2016. Human Rights Clinic (Columbia Law School) and International Human Rights Clinic (Harvard Law School), 2015.
- <sup>88</sup> Akali Tange Association, 2017.
- <sup>89</sup> The most recent UNDP data indicates that PNG’s countrywide literacy rate is around 50 percent. Literacy data by sub-geography is not available, but presumably the rate in Porgera is much lower, given the remote location and lack of educational facilities as compared to the rest of the country. See UNDP: About Papua New Guinea.
- <sup>90</sup> Akali Tange Association, 2017. Human Rights Clinic (Columbia Law School) and International Human Rights Clinic (Harvard Law School), 2015.
- <sup>91</sup> Human Rights Clinic (Columbia Law School) and International Human Rights Clinic (Harvard Law School), 2015.
- <sup>92</sup> Porgera 119 Indigenous Women’s Association. “Letter to Consultants.” 2017.
- <sup>93</sup> Akali Tange Association, 2017.
- <sup>94</sup> Porgera 119 Indigenous Women’s Association, 2017.
- <sup>95</sup> Human Rights Clinic (Columbia Law School) and International Human Rights Clinic (Harvard Law School), 2015.
- <sup>96</sup> Human Rights Clinic (Columbia Law School) and International Human Rights Clinic (Harvard Law School), 2015.
- <sup>97</sup> Aftab, 2016. Pages 102-103.
- <sup>98</sup> Corre, 2017. Page 7 (referring to a decision by the Inter-American Commission of Human Rights).
- <sup>99</sup> Human Rights Clinic (Columbia Law School) and International Human Rights Clinic (Harvard Law School), 2015.
- <sup>100</sup> Akali Tange Association, 2017.
- <sup>101</sup> Corre, 2017.
- <sup>102</sup> Akali Tange Association, 2017.
- <sup>103</sup> According to the OHCHR, this means that “outcomes and remedies accord with internationally recognized human rights. The UN Basic Principles and Guidelines on the Right to Remedy and Reparation are instructive in offering a broad categorization.” See Allegations regarding the Porgera Joint Venture remedy framework.
- <sup>104</sup> OHCHR, 2018.
- <sup>105</sup> Ok Tedi Mining. Accessed March 9, 2018.
- <sup>106</sup> Popoitai and Ofosu-Amaah. 2013.

## About BSR

BSR is a global nonprofit organization that works with its network of more than 250 member companies and other partners to build a just and sustainable world. From its offices in Asia, Europe, and North America, BSR develops sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. Visit [www.bsr.org](http://www.bsr.org) for more information about BSR's 25 years of leadership in sustainability.