

SEPTEMBER 2018

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# In Search of Justice

## Pathways to Remedy at the Porgera Gold Mine

### Summary and Recommendations



# Introduction

Barrick Gold Corp. (Barrick), and its partially-owned subsidiary, Barrick (Niugini) Limited (BNL) have received reports of human rights harms in connection with the Porgera Gold Mine operations in Papua New Guinea. While some of these claims have been addressed by local, national, private, and international remedy mechanisms, many community members feel that their claims have not yet been fully addressed.

The Porgera mine 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. BSR engaged directly with victims, communities, and other stakeholders to understand the needs and interests of all groups and developed recommendations with these in mind that are aligned with international human rights requirements. The BSR report [In Search of Justice: Pathways to Justice at the Porgera Gold Mine](#) presents the outcome of the year-long consultation process and BSR's resulting recommendations.

It should be noted that, while Barrick and BNL funded the production of this report, BSR maintained full control over the research process and the final report. Neither Barrick, BNL, nor any other actor was given the power to edit or redact the findings and recommendations presented here.

BSR's first visit to Porgera and Port Moresby took place in June and July 2017. BSR then consulted international and local experts from August to December 2017 and released its first set of draft recommendations (included in the [main report](#) as Appendix IV) in April 2018. BSR carried out further consultations with victims and communities in Porgera and the government of Papua New Guinea (April-May 2018), international experts (May 2018), and Barrick representatives (June 2018). These final recommendations incorporate the findings of BSR's field visits, plus all subsequent consultations.

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. 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.

The 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 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 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. Like the human rights claims themselves, remedy systems are complex, with responsibility shared among public and private and judicial and non-judicial systems. In the past, the company has been more responsive than the government, leading to expectations among community members that Barrick/BNL, and not the government, was their port of first call for addressing harms.

While the company has a responsibility to provide remedy, victims must also be supported by a just and effective judicial system. Toward this end, BSR recommends that the company work in collaboration with the government to strengthen the wider remedy ecosystem. This includes calling for empowered independent government bodies—such as a National Human Rights Institution or an expanded National Human Rights Ombudsman—to investigate and hear claims of human rights harms.

Though they draw upon the context and background contained in other sections of the [main report](#), these recommendations are formulated to be read as a stand-alone document. Further information on the human rights harms and the Porgeran context can be found in other chapters of the [main report](#).

The final section of the recommendations suggests a timeline and measurable indicators. This aims to ensure that the recommendations are concrete and lead to genuine improvements in access to effective remedy for those harmed by the operations of the mine in Porgera.

While BSR has drawn upon international law and taken a human rights-based approach in conducting this study, this approach provides only general guidance; much will be left to further 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 involving the company and the community—and, where appropriate, the government.

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#### **A Note on Vocabulary**

We use the term "victims" throughout the report. There are many claimants, some with true claims and some with false ones. In this report, we are concerned with the true claimants—otherwise known as "victims"—with the ultimate aim of ensuring they receive effective remedy. The false claims are an additional barrier for the true claimants to receive remedy. To maintain our focus on those who have been subjected to harms and to maintain a consistent human rights approach, we use the term "victims" throughout.

However, in no way do we wish to insinuate that they are passive, weak, or lacking in agency. These victims should be empowered/assumed to be proactive in the achievement of their rights going forward; in fact, they are the central players in determining their futures.

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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

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**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.

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**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

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**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.

# Recommendations

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 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, set forth to ensure that an OGM will be 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 of the [main report](#), 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.

**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.

**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.

**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—including 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 outcomes 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 in the [main report](#).

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 of the [main report](#)), 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.

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.

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### 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.

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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.

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 in the [main report](#).) 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 in the [main report](#).)

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. 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 in the [main report](#).)

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, 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](#) and the [International Council on Mining and Metals \(ICMM\) principles](#). 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](#)" 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, 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.

## 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.

## 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.