

## **PNG and Human Rights**

**Universal Periodic Review – 3<sup>rd</sup> Cycle – 2021**



**A Submission on “Corporate Negligence Issues Amounting to Basic Human Rights Abuse”  
(A case Study of Porgera Gold Mine, Enga Province, PNG.)**

by;

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About the Author:

The author is a freelance consultant writer and investigator and he is the principal of DJK Environmental Consultancy and Services, a locally owned small company and registered under Investment Promotion Authority - PNG. He has recently completed his Master’s Degree in Remote Sensing & Geographic Information Systems from Surveying and Lands Studies Department at PNG University of Technology. Prior to taking up courses, he was a career public servant for 8 years with PNG Forest Authority. He also had volunteer jobs to assist community developments in NGO’s, Church, Landowner Issues, and Local Women’s Group for the entire part of his life. He is a strong advocate of Children & Young people, Environment, Human Right Defender, Indigenous Rights and Women’s Rights.

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## **Summary.**

Despite all the huge investment and mining activities in the past 30 years of mining in the Porgera valley in Enga Province of Papua New Guinea, and the value of the riches extracted over this time, the local landowners still suffer from Poverty, Human Rights Abuse, Environmental degradation, deprivation of landowners' property rights and other similar unsolved issues. The consequences of corporate bullying techniques being executed using a few handful of landowners. The companies have used tactics and approaches that have divided local communities and resulted in community conflict and violence that has been well documented over many years. A few have benefited at the expense of many.

The basic reason and fundamental driving force behind the documentation of this submission is to highlight one of the cases as a study and to seek redress and if possible making recommendations to this forum (UPR) so it can be addressed or further deliberate on at local and international levels.

This submission identifies the need for reform of regulation of the extractives sector in PNG. It calls for justice for the victims of decades of corporate abuse and an end to impunity. It proposes changes to enable communities to exercise Free Prior and Informed Consent and for victims to seek redress and to access justice. The UN Guiding Principles on Business and Human Rights provide a framework for the recommendations in this submission.

### **1. Background.**

Porgera Gold Mine commenced initial construction since July 1986 after legally binding Memorandum of Understanding (MOA) was signed with Placer Dome (Investor) and the State of PNG and Mineral Resources Enga (MRE) as parties to the agreement. It is the largest gold and silver mining operation in Enga province, Papua New Guinea (PNG), located at the head of Porgera valley. The mine is situated in the rainforest covered highlands at an altitude of 2,200 to 2,700 meters, in a region of high rainfall, landslides and frequent earthquakes.

### **2. Introduction.**

This submission is compelling due to the fact that human lives have been lost and affected so much to a great extent. Over the years of the mine operation, one single family that has been deliberately denied their rights to life, rights of equal participation on business & wealth sharing and benefits, was the Kuala family of Maipangi Clan, Porgera, Enga Province, Papua New Guinea.

This is the first time this case is to be presented to the Universal Periodic Review (UPR). The fundamental reason behind presenting this submission is to seek redress and justice for

grave company corporate negligence leading to deprivation of land and land use rights and benefits amounting to breaches of the Constitution of independent State of PNG and Human Rights abuse to Kuala family for the past 30 years of Porgera Mine operation since July 1989.

The family head and Paramount Chief Bill Kuala, had attempted numerous court challenges, and served successful court prescribed settlements which each time the Porgera Joint Venture/Barrick and clan land agents defiantly ignored.

### **3. The Kuala Family.**

The current Government of PNG's "Take Back PNG" now ideals and enables the conflicting parties to dismantle the structural instruments of deprivation administered against the Kuala family within Maipangi clan that owns land since Porgera Gold discovery by John Black in April 1939.

This corporate negligence climaxed to the family's plights as follows;

- 1) Anawe dumps submerged 137ha SML land and 100ha of LMP land portions owned by Kuala family.
- 2) Waile Creek Dam, 4ha (50% Maipangi clan owned and Landopa clan owns the other 50%).
- 3) Road Access ,10ha (collectively Maipangi clan owned)
- 4) Water Pipeline 5ha, 10 km of pipeline with relief-valves at regular intervals.
- 5) Water Reservoir 2ha.
- 6) Power Pylons at regular interval along 10 km to Porgera mine site.
- 7) Limestone Quarry 12.14ha.g
- 8) Limestone Plant 4.95ha.
- 9) Tailings Discharge - Maeapam-Pongema riverine pollution (81 ha tailings lake)
- 10) Sedimentation - Submerged natural landmarks signifying clan land boundaries.
- 11) Maipangi SML - Substantial Maipangi clan land absorbed by Porgera SML.

The above evidence of corporate negligence culminated to devastating damages the Kuala family suffered during construction to expiry of mining license on August 2019. The Kuala family head and Maipangi Clan Chief, (Bill Kuala ) seeks further assistance from the State Government, NGOs and International Treaty Bodies (UN, UNDP,) to step-in to assist in any means and protocols for redress once and for all.

### **4. Breach of Universal Declaration of Human Rights & Constitution of PNG.**

In this particular case study, the particular areas of Human Rights Abuse and breach of specific constitution shall be highlight and discussed.

The constitution of Papua New Guinea is very bold clear and contains what is generally called the National Goals and Directive Principles. These are the guiding principles for governance. The Five (5) National Goals which form the basis of PNG constitution are:

#### **4.1 Integral human development.**

We declare our first goal to be for every person to be dynamically involved in the process of freeing himself or herself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others.

#### **4.2 Equality and participation.**

We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country.

#### **4.3 National sovereignty and self-reliance.**

We declare our third goal to be for Papua New Guinea to be politically and economically independent and our economy basically self-reliant.

#### **4.4 Natural resources and environment.**

We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.

#### **4.5 Papua New Guinean ways.**

We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization.

#### **Specific Section of the Constitution of PNG.**

The specific section of PNG Constitution been breached in this case scenario is;

#### **Section 53. "Protection from Unjust Deprivation of Property".**

**We believe that the following human rights and human rights standards are relevant to this case:**

#### **I. Article 2 of Universal Declaration of Human Rights.**

It States, “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty “.

## **II. Article 8 of Universal Declaration of Human Rights.**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

## **III. Article 17 of Universal Declaration of Human Rights.**

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

## **IV. Article 22 of Universal Declaration of Human Rights.**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

## **5. Recommendations.**

The following recommendations are made regarding this case study and it can also apply to other similar cases.

1. Establish a National Human Rights Institution in accordance with the Paris Principles relating to the independent status of national institutions for the promotion and protection of human rights (the Paris Principles) within the next 12 months.
2. Include the current “Whistle Blowers Act” passed by the Government of PNG within the mandate of the National Human Rights Institution (if formed) and ensure the effective implementation of “Whistle Blowers Act.
3. We recommend PNG Government for a National Action Plan on Business and Human Rights to be developed and adopted to fulfil the 4<sup>th</sup> goal of the PNG constitution.
4. PNG should review its Mining Act and corporate regulations to ensure mining companies respect FPIC, exercise due diligence to prevent negative human rights impact and ensure access to justice to victims.
5. PNG’s Law Reform Commission should report within 24 months on the steps necessary to improve corporate accountability in line with the UN Guiding Principles on Business and

## Human Rights?

6. We recommend that PNG Government should “Provide free legal aid to victims seeking redress for human rights harms and abuses by mining and other companies.

7. We recommend PNG government ratifying Human Rights Court Track National Court Human Rights Track 29. The National Court Human Rights Track was established in 2011 to enforce constitutional human rights and provide remedies for violations and abuses. 30. The recent inclusion of Order 23 under the National Court Rules provides the court procedure for human rights breaches. The purpose of Order 23 is to facilitate a quick and just resolution of court proceedings instituted under Sections 57 and 58 of the Constitution for enforcement of the Basic Rights (human rights) and for the enforcement under Section 23 of the Constitution of prohibitions, restrictions or duties imposed by the Constitutional Laws and of related matters. The court procedure has been simplified and deals with human rights proceedings exclusively. This allows for the expeditious facilitation of human rights cases and remedies.

## Reference:

- Fiji CSO Joint Submission (2019)
  - Joint Submission by Fiji Women’s Rights Movement (FWRM)
  - Submission by CIVICUS: World Alliance for Citizen Participation, NGO in General

Consultative Status with ECOSOC and Pacific Island Non-Governmental Organizations (PIANGO) (ECOSOC Status), Fiji Citizens' Constitutional Forum (CCF).  
Citizens' Constitutional Forum (CCF).

- The Constitution of Independent State of Papua New Guinea  
[www.paclii.org](http://www.paclii.org)
- Universal Declaration of Human Rights.  
<http://www.un.org>

Human Rights Impacts of Papua New Guinea's Porgera Gold ...  
[www.hrw.org](http://www.hrw.org) › [2011/02/01](#) › [golds-costly-dividend](#)

01.02.2011 — *Papua New Guinea: Serious Abuses at Barrick Gold Mine ...* In spite of all the wealth it generates, *Porgera* still suffers from poverty and a dearth of *basic* government ... But in some of those *cases* the women said that guards raped them ... Guinea's highland *Enga province*, the *mine* is owned by a *company* ...  
Missing: ~~Negligence~~ || Must include: Negligence

In Search of Justice Porgera Gold Mine - BSR  
[www.bsr.org](http://www.bsr.org) › [reports](#) › [BSR In Search of Justi...](#)

The recommendations outlined here, and the *issues* raised for *discussion*, are those of ... thank the many *human rights* experts and Barrick and BNL employees who ... harms at or near the *Porgera Gold Mine* operations in *Papua New Guinea* ... which holds a 95 percent interest, and the *Enga provincial* government and ...  
Missing: ~~Negligence~~ || Must include: Negligence

Porgera Gold Mine - Wikipedia  
[en.wikipedia.org](http://en.wikipedia.org) › [wiki](#) › [Porgera Gold Mine](#)

The *Porgera Gold Mine* is a large *gold* and silver *mining* operation in *Enga province*, *Papua New Guinea (PNG)* ... Barrick *Gold Corporation* and Zijin *Mining Group* each own 50% of Barrick (Niugini) Ltd. *Porgera Gold Mine* is the ... It has consistently been criticised for environmental and *human rights issues*. Its own internal ...  
Missing: ~~Submission~~ | Negligence

Barrick Gold Corporation - Operations - Porgera  
[www.barrick.com](http://www.barrick.com) › [English](#) › [operations](#) › [porgera](#)

Skip to *main* content ... The *Porgera Joint Venture* is an open pit and underground *gold mine* located at an altitude of 2,200-2,600 meters in the *Enga Province of Papua New Guinea*, about 600 kilometres north-west of Port Moresby. ... Community &

Human Rights Faqs ... Refer to our Q4 2020 Report for further information.

Missing: Negligence Amounting Abuse" (case

[Narrative at the Porgera gold mine, Papua New Guinea - PNG ...  
png-data.sprep.org › system › files › Agency and ...](#)

tal damage and *human rights abuses*. ... The story of the *Porgera gold mine* in the *Enga Province* of the *Papua New Guinea* highlands ... between *mining companies* and *mine area com-* ... *cases* I have mentioned have the scholars been ... they employ to pursue their goals – *amounting* to the intense scrutiny of just one ...

Missing: Submission | Must include: [Submission](#)

[COUNTRY REPORT - Transparency International PNG  
www.transparencypng.org.pg › uploads › 2017/11](#)

A form of administrative laxity *amounting* to collusive corruption is found in the way ... *human rights abuses*, and poor *human development* outcomes (UNDP 2014: ... *Papua New Guinea* is taken as a *case study* in Jason Sharman's 2017 book ... The *Porgera gold mine* in the *Enga Province*, also initially operated by Placer ...

[The Porgera mine in PNG: some background - Devpolicy Blog ...  
devpolicy.org › Analysis](#)

07.05.2020 — *Porgera Gold Mine* (Wikimedia Commons: Richard Farbellini) ... (47.5%), the *Enga Provincial Government* (2.5%) and the *Porgera* landowners (2.5%). ... In what the *Business Review Weekly* called the *Porgera Coup*, the winner ... many long-running sagas concerning *human rights*, resettlement planning, ...

Missing: Negligence | Must include: [Negligence](#)

[Disproportionate Impacts of Business Activities on ... - OHCHR  
www.ohchr.org › Issues › Gender › PNG Columbia](#)

05.11.2018 — United Nations Working Group on the *issue of human rights* and ... women living in *Porgera, Papua New Guinea (PNG)*. ... Our *core ask* is that the gender guidance should recognize women as ... *rights abuses* that we have suffered. ... *Case Study: Porgera Joint Venture (PJV) gold mining operation* 17 ...

Missing: Negligence | Must include: [Negligence](#)

[Submission United Nations Working Group on the Use of ...  
www.ohchr.org › Issues › MiningWatchCanada](#)

Alleged *human rights abuses* of the *mines'* security forces p. 14 ... This *submission* is made in support of an investigation and forthcoming *report* by the ... and public *mine* security in the *cases* of well-over a hundred local community members. ... Joint

Venture (*Porgera*) gold mine located in *Porgera*, in *Enga Province* in the ...  
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