

## I. EXECUTIVE SUMMARY

This brief supplements testimony and written submissions regarding Bill C-300 provided by Mr. Tyler Giannini and Ms. Sarah Knuckey on October 20, 2009 to the Standing Committee on Foreign Affairs and International Development of Canada's House of Commons. The brief further details the need for an independent investigation into the allegations of abuse surrounding the Porgera Joint Venture (PJV) gold mine in Papua New Guinea (PNG).

The PJV gold mine is located in the Porgera Valley, a remote region in the mountainous Enga Province of PNG. Since it began operations in 1990, the PJV mine has been operated and co-owned by Canadian mining companies—first by Placer Dome, and since 2006 by Barrick. The mine is also partially owned by the PNG Government and local landowners.

Over the past two decades, there have been consistent and widespread allegations of human rights abuses committed by PJV security personnel in and around the mine site. During three fact-finding missions to PNG, researchers from the International Human Rights Clinic at Harvard Law School and the Center for Human Rights and Global Justice at New York University School of Law (collectively, the research team) conducted more than 250 interviews about mining in Porgera.<sup>2</sup> Many of the witnesses recounted their concerns about the mine, including environmental and health problems, as well as allegations of violence by PJV and government security forces. This brief focuses on the allegations of violence and physical abuse. Local residents and community members claim that mine security personnel have used excessive or abusive force while carrying out their duties, and have killed individuals both on mine property and outside the boundaries of the mine. According to reports by alleged victims and witnesses, PJV security personnel have engaged in physical abuse and rape.

In addition to these accounts of abuse, the research team has discovered and documented a close relationship between PJV security personnel and PNG police and security forces. In particular, government officials and police officers have reported that government police reservists and Mobile Police Squads act as security for the PJV mine. A 2005 Memorandum of Understanding (MOU) between the PJV and the Royal Papua New Guinea Constabulary (RPNGC) provides that state police reservists will be deployed to the mine and be "employees of the PJV." These reservists have comprised an armed branch of the PJV's security and, according to local accounts, have been responsible for many of the alleged human rights violations documented by the research team. Additionally, government officials have reported that the reservists exercise police arrest and investigative powers within the mine site. A number of other agreements between the PJV and the PNG Government provide for cooperation in law enforcement activities relating to the mine. One such agreement provides for the deployment to the mine of Mobile Police Squads, who have also allegedly committed abuses. According to police officials, the PJV has covered at least some costs related to these deployments.

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<sup>2</sup> The research team spoke with alleged victims; witnesses; family members of alleged victims; local residents; local and international civil society representatives; local health officials; government officials at the local, provincial, and national levels; police; mine staff; and current and former PJV security guards. The interviews that are referenced in this submission are personal accounts, and citations indicate the recollections of events of the given individual. The interviews are on file with the Clinic. The research team has also reviewed medical and police records and documents.

To date, the PNG Government has not adequately investigated allegations of gross human rights violations related to the mine. Local police investigations appear to be hampered by a lack of will and independence as well as insufficient resources. In addition, the police have reported that, at times, they have been obstructed by PJV officials when police have attempted to carry out investigations at alleged crime scenes on mine property. Many alleged victims stated that they do not initiate complaints with the police. This is often because they believe that investigators will not pursue their claims, or because of fear that they themselves will be prosecuted for trespassing or threatened if they bring forward allegations against PJV personnel. At the national level, the PNG Government established a Porgera Investigative Committee (the Committee) in 2005 to look into deaths in and around the PJV mine. The Committee concluded its study in 2006, but the Government has not released its findings. In addition, while the PJV appears to investigate incidents of violence occurring within the mine, there is an inherent conflict of interest in such an undertaking, as it is PJV personnel who are alleged to have committed these abuses. Furthermore, police have reported that the results of such internal investigations are not always shared with them. It remains unclear how many PJV investigations have led to prosecutions or disciplinary action.

The allegations documented in this brief raise serious concerns that grave human rights violations have been committed at the PJV mine, namely violations of the right to life and the right to be free from cruel, inhuman, or degrading treatment and torture, including rape. Some of the actions of PJV security personnel may have been justifiable on the grounds that force was lawfully used to protect property or life. However, all incidents of violence and death related to the mine merit independent investigation.

Under international law, the PNG Government has a duty to provide effective remedies and to investigate allegations of human rights abuses.<sup>3</sup> Investigations should be independent, transparent, and comprehensive. Insofar as violations have occurred, the Government has an obligation to prosecute and punish perpetrators and to take effective measures to prevent further abuses.<sup>4</sup> The Government should provide local authorities with the mandate, independence, and resources necessary to address alleged violations related to the mine. Similarly, the manager and

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<sup>3</sup> The International Covenant on Civil and Political Rights, a treaty to which PNG is a party, requires State Parties to ensure “that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,” and “that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities. . . .” International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), at art. 2(3)(a)-(b), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICCPR]. These obligations imply a duty to “make the remedy effective” by conducting prompt and impartial investigations when there have been allegations of human rights abuses. *See, e.g.*, General Comment 20, at ¶ 14, U.N. GAOR, Hum. Rts. Comm., 44th Sess., U.N. Doc. A /47/40 (1992) (concerning prohibition of torture and cruel treatment or punishment) [hereinafter General Comment 20]; Convention on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 19, at ¶ 9, U.N. Doc. A/47/8 (1992) (“Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”); Code of Conduct for Law Enforcement Officials, G.A. Res 34-169, at art. 8, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/46 (Dec. 17, 1979) [hereinafter Code of Conduct]; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, at ¶ 22, U.N. Doc. A/Conf.144/28/Rev.1, (1990) [hereinafter Basic Principles].

<sup>4</sup> *See supra* note 3.

operator of the mine, Canadian company Barrick, has committed itself to uphold human rights and corporate social responsibility standards, including those found in the Voluntary Principles on Security and Human Rights (Voluntary Principles). Such standards should be applied at the PJV mine. Barrick should respect human rights and cooperate with independent investigations to address allegations in an open and transparent manner.

Bill C-300 is intended to ensure that Canadian corporations behave in a manner consistent with international human rights standards. This legislation is particularly relevant in a case such as this, where, despite consistent allegations of abuse, independent investigations have failed to materialize. Bill C-300 establishes clear and manageable guidelines for assessing the conduct of PJV personnel and the allegations of excessive use of force. To date, alleged victims' complaints have not been adequately addressed. As the MOU illustrates, the PNG Government and the PJV have a relationship that suggests an inherent conflict of interest that reduces the likelihood of impartial investigations. In such circumstances, Bill C-300 would function to permit neutral third parties to fill the gap and conduct independent investigations, and encourage accountability and the prevention of future violence.

Legal Brief<sup>1</sup>

International Human Rights Clinic  
Harvard Law School  
&  
Center for Human Rights and Global Justice  
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before

The Standing Committee on the Foreign Affairs and International  
Development (FAAE)  
House of Commons

Regarding Bill C-300

Ottawa, Canada

November 16, 2009

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<sup>1</sup> The International Human Rights Clinic (the Clinic) and the Center for Human Rights and Global Justice (the Center) understand that this submission to the Standing Committee is covered by the Parliamentary privilege and to the extent there is a need to assert such privilege, the Clinic and the Center hereby do.

## ACRONYMS

CID	Criminal Investigation Department
ICCPR	International Covenant on Civil and Political Rights
LMP	Lease for Mining Purposes
MDC	Mining Development Contract for the Porgera Project
MOA	Memorandum of Agreement Relating to the Development of the Porgera Gold Mine Project
MOU	Memorandum of Understanding Between the Porgera Joint Venture and the Royal PNG Constabulary
MRA	Mineral Resources Authority
PJV	Porgera Joint Venture
PNG	Papua New Guinea
PSC	Police Station Commissioner
RPNGC	Royal Papua New Guinea Constabulary
SML	Special Mining Lease

## II. THE PJV MINE

### A. Background

The PJV gold mine is located in the Porgera Valley of Enga Province in the highlands of PNG.<sup>5</sup> PNG is one of the most ethnically diverse countries in the world with over 800 indigenous languages and several thousand separate communities.<sup>6</sup> PNG is also well known for its immense biodiversity and its wealth of natural resources, including gold, copper, and oil.<sup>7</sup> As a result, mining plays a prominent role in PNG's economy. According to one recent estimate, mineral resources comprise about two-thirds of the country's export earnings.<sup>8</sup>

Small-scale alluvial gold mining in the Porgera Valley dates to at least the 1930s.<sup>9</sup> In 1989, the PNG Government signed a Mining Development Contract (MDC) with the PJV, granting it a Special Mining Lease (SML) for 20 years in the Porgera area.<sup>10</sup> One of the original members of the PJV was a Canadian company, Placer Dome.<sup>11</sup> Placer Dome was the operator until 2006 when it was acquired by another Canadian company, Barrick Gold Corporation.<sup>12</sup> According to its 2008 filing with the U.S. Security Exchange Commission, Barrick's subsidiary holds a 95% stake in the PJV and is the primary operator of the Porgera mine.<sup>13</sup>

The PJV has been extracting gold through both open pit and underground mining methods.<sup>14</sup> Waste rock from the pit has been disposed of in waste dump areas around the mine (see Photo #1). Mining waste and effluents, known as tailings, have also been released into the local river system. In 2008, approximately 45.5 million tons were mined, and approximately 6.3 million tons of ore were processed.<sup>15</sup> Given the immense size of its operations, the PJV mine dominates the landscape in the area.<sup>16</sup> The SML area presently covers about 2,347 hectares and includes

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<sup>5</sup> Aletta Biersack, *Dynamics of Porgera Gold Mining: Culture, Capital, and the State*, in *MINING IN PAPUA NEW GUINEA: ANALYSIS AND POLICY IMPLICATIONS* 25 (B. Y. Imbun & P. A. McGavin eds., 2001); Barrick, Barrick Global Operations, Australia Pacific, <http://www.barrick.com/GlobalOperations/AustraliaPacific/PorgeraJV/default.aspx> (last visited Nov. 1, 2009).

<sup>6</sup> United States Department of State, Background Note: Papua New Guinea, <http://www.state.gov/r/pa/ei/bgn/2797.htm> (last visited Nov. 1, 2009).

<sup>7</sup> UNITED NATIONS, *PAPUA NEW GUINEA COMMON COUNTRY ASSESSMENT* 3 (Dec. 2001), available at [http://www.sprep.org/att/IRC/eCOPIES/Countries/Papua\\_New\\_Guinea/2.pdf](http://www.sprep.org/att/IRC/eCOPIES/Countries/Papua_New_Guinea/2.pdf).

<sup>8</sup> United States Central Intelligence Agency, *The World Factbook: Papua New Guinea*, <https://www.cia.gov/library/publications/the-world-factbook/geos/pp.html> (last visited Nov. 1, 2009).

<sup>9</sup> United States Securities and Exchange Commission, Barrick Gold Corporation, Form 40-F EX-99.1, at 59 (filed Mar. 30, 2009 for the period ending Dec. 31, 2008), available at [http://www.sec.gov/Archives/edgar/data/756894/000110465909021362/a09-7005\\_8ex99d1.htm](http://www.sec.gov/Archives/edgar/data/756894/000110465909021362/a09-7005_8ex99d1.htm) [hereinafter U.S. SEC Barrick Form 40-F].

<sup>10</sup> *Id.*; Mining Development Contract for the Porgera Project, Enga Province, Papua New Guinea (1989) [hereinafter MDC] (see Appendix B: Official Documents).

<sup>11</sup> Charles W. Ross, *Staged Development and Environmental Development of the Porgera Gold Mine*, Papua New Guinea, available at [http://www.gbrmpa.gov.au/\\_data/assets/pdf\\_file/0009/4140/ws016\\_paper\\_06.pdf](http://www.gbrmpa.gov.au/_data/assets/pdf_file/0009/4140/ws016_paper_06.pdf); see also U.S. SEC Barrick Form 40-F, *supra* note 9, at 59.

<sup>12</sup> U.S. SEC Barrick Form 40-F, *supra* note 9, at 59.

<sup>13</sup> *Id.*

<sup>14</sup> Barrick, Barrick Global Operations, *supra* note 5.

<sup>15</sup> U.S. SEC Barrick Form 40-F, *supra* note 9, at 63.

<sup>16</sup> See Appendix A: Mine Visuals.

the mine area itself as well as other areas used for project infrastructure.<sup>17</sup> The PNG Government has also granted Leases for Mining Purposes (LMPs), which permit land use for related mining operations such as “waste dumps, campsites, water supply, power generation and airstrip.”<sup>18</sup> The mountainside has been replaced by an immense open pit, massive waste dumps, and a red river of tailings.

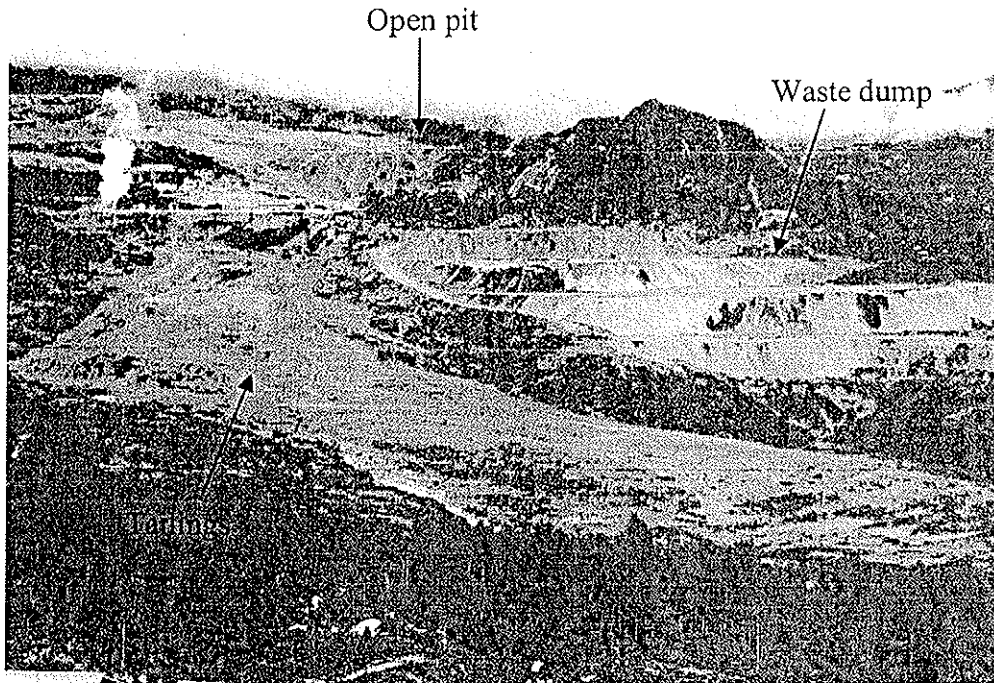


Photo #1: View of the PJV mine’s open pit, a waste dump, and tailings stream. (Source: Taken by research team on March 22, 2009)

The presence of the PJV mine has dramatically changed the landscape and significantly altered the local way of life. The population in the area has vastly expanded since the 1990s, in large part because of the gold economy. Before the mine was established, approximately 5,000 lived near the mine site; by 2010, projections estimate that number to increase to 50,000.<sup>19</sup> The population growth has resulted in overcrowding and unemployment as there have been a limited number of jobs and no other industry to sustain the local economy.<sup>20</sup>

Before the mine began operations, Porgera residents relied primarily on subsistence farming, animal husbandry, and small-scale mining for their livelihoods. As the mine has expanded, local inhabitants, including landowners, have had to relocate, and farming has been increasingly disrupted. Families have been forced to move to land that they believe is less fertile and yields

<sup>17</sup> U.S. SEC Barrick Form 40-F, *supra* note 9, at 59.

<sup>18</sup> *Id.*

<sup>19</sup> Information Paper – Reconnaissance Report: Laiagap/Porgera State of Emergency (Mar. 8, 2009) (on file with Clinic).

<sup>20</sup> Opis J. Papo, A Long Term Strategy to Address Law & Order Problems in Porgera (Mar. 2009) (on file with Clinic).

fewer crops.<sup>21</sup> They have also expressed concern that pollution from the mine may be affecting their crops.<sup>22</sup> Indeed, the research team observed that the mine site, waste dumps, and polluted streams are in close proximity to some homes and gardens. Landowners have further complained that the mine expansion has resulted in a shortage of land.<sup>23</sup> Adding to these challenges, the research team observed that the relocation areas are severely overcrowded, a problem exacerbated by the need to accommodate extended family members who have moved to the area. As subsistence farming has become increasingly difficult, individuals have been seeking alternative sources of income.

The rivers where individuals previously panned for gold have been filled with sediment from the mine, making it more difficult to find gold. Rather than panning for gold, as was the practice for many years before the establishment of the mine, individuals have been exposing themselves to the dangers inherent in obtaining gold from rock debris gathered from the open pit, waste dumps, and tailings. Interviews by the research team suggest that, on certain days, hundreds have been trespassing onto the mine site in search of gold.<sup>24</sup>

This trespassing has led the mine operators to adopt a range of security measures, including the employment of armed security personnel to patrol the perimeter and waste dump, stockpile, and open pit areas of the mine site. According to local residents, the security personnel have often used violence in the course of their duties.

## **B. Security at the Mine**

For many years, residents near the PJV mine have expressed concerns about the relationship between PNG police and PJV security personnel. Neither the PJV nor the Government has publicly disclosed the precise role of state security officers in the protection of the mine. However, the research team obtained a number of relevant documents and interviewed police officials, and has been able to clarify the relationship between PNG state security forces and the PJV mine.

Several agreements relating to the mine, including the 1989 MDC and a 1998 Fly-In/Fly-Out Agreement, demonstrate a cooperative relationship between the PJV and the PNG Government. These agreements provide for an increased police presence in the Porgera Valley, partially funded by the PJV. Additionally, a 2005 MOU between the PJV and the RPNGC formalizes the relationship between the joint venture and the Government by integrating police reservists into

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<sup>21</sup> See, e.g., Interviews PNG #5 (2006) (garden destroyed by mine); PNG #40 (2006) (polluted garden); PNG #61 (2006) (dump spoiled gardens); PNG #62 (2006) (mine's dumping spoiled land); PNG #97 (2006) (loss of agricultural fertility; "[y]ield is less and its of less quality."); PNG #105 (2006) ("[L]and is slowly losing its fertility."); PNG #106 (2006) ("[L]and is losing its fertility."); PNG #116 ("Before the company, we had a large [fertile] area."); PNG #230 (2009) (garden spoiled by presence of mine).

<sup>22</sup> See, e.g., Interviews PNG #40 (2006) (garden polluted); PNG #114 (2007) (soil no longer good); PNG #131 (2007) (believes pollution is killing plants); PNG #146 (2007) ("Vegetables don't grow well. I think it's because of pollution.").

<sup>23</sup> See, e.g., Interviews PNG # 113 (2006) ("We can't grow a garden to live off as there is no land to do it."); PNG #144 (2007) ("Now I am short of land. . . . There isn't enough space."); PNG #156 (2007) (reported that local residents complain of a shortage of land); PNG #171 (2007) ("I said we wanted land . . . because of a shortage of land.").

<sup>24</sup> See Interviews PNG #202 (2009); PNG #226 (2009); PNG #260 (2009).



the PJV security force. The MOU calls for “the deployment of an agreed number of Reserve Police (who are employees of the PJV).”<sup>25</sup> Under the MOU, the PJV provides monetary support for these reservists.<sup>26</sup>

An Annexure to the MDC, signed in May 1989, establishes that the Government would expand the police force in Porgera and that the PJV and the Government would jointly fund the construction of a new police station and associated housing.<sup>27</sup> The Annexure also provides for the “permanent” deployment of a Mobile Police Squad to Porgera, for which the PJV would provide at least some funding assistance.<sup>28</sup> According to a senior RPNGC officer interviewed in 2009, Mobile Police Squads of 35 to 40 police “regulars” can be called in “if the situation at the mine gets out of hand and beyond the control of the security guards.”<sup>29</sup> The same officer further stated that the PJV has been paying for transportation, accommodation, meals, and a quarter of the daily allowance for Mobile Police Squad personnel in Porgera.<sup>30</sup> The officer also indicated that Mobile Police Squads, at times, have been assigned directly to the mine and report to the PJV Security Manager, who in turn reports to the mine’s General Manager.<sup>31</sup>

Additionally, in 1989 the PNG Government and Porgera landowners signed a Memorandum of Agreement Relating to the Development of the Porgera Gold Mine Project (MOA), which provides that the Government should “increase reserve police to numbers sufficient to provide effective support to full-time police officers stationed at Porgera.”<sup>32</sup> In 1998, the PJV, the PNG Government, local government bodies, and local landowners signed a Fly-In/Fly-Out Agreement, with the purpose of developing the area around the mine and promoting local employment at the PJV mine site.<sup>33</sup> The agreement also includes provisions regarding security that requires the Government to promote law and order in the area surrounding the mine by:

- Increasing “the number of regular policeman stationed at Porgera to a minimum of thirty” and maintaining “at least that number for the remainder of the life of the Porgera Mine”;

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<sup>25</sup> Memorandum of Understanding Between the Porgera Joint Venture and the Royal PNG Constabulary, § 1 (2005) [hereinafter MOU].

<sup>26</sup> *Id.* at § 2.1.

<sup>27</sup> See Letter from Placer (PNG) Pty Limited to the Secretary, Department of Minerals and Energy (Porgera Project – Proposal for Development, Annexure “A,” Clause E to the Mining Development Contract of 3 April 1989) (May 12, 1989) [hereinafter Annexure A] (*see* Appendix B: Official Documents) (“This letter confirms the following additional obligations and undertakings agreed to between the Joint Venturers and the Minister: . . . E. Law and Order: 1. The State will increase the police staffing level at Porgera to 18 officers once the new police station and associated housing now being constructed with funds provided jointly by the Joint Venturers and the State is completed. 2. The Joint Venturers will assist, to an extent to be agreed, in funding the stationing of a Mobile Squad at Porgera on a permanent basis.”).

<sup>28</sup> The precise parameters of the funding assistance are not detailed in the Annexure, which states the support is “to an extent to be agreed.” *Id.*

<sup>29</sup> Interview PNG #260 (2009).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Independent State of Papua New Guinea and Porgera Landowners, Memorandum of Agreement Relating to the Development of the Porgera Gold Mine Project, (May 1989) at 11 (*see* Appendix B: Official Documents) [hereinafter MOA].

<sup>33</sup> Fly-In/Fly-Out Agreement (Paiani Town Development) Between the Independent State of Papua New Guinea, The Enga Provincial Government, The Porgera District Landowners, The Porgera Local-Level Government Special Purposes Authority, and the Porgera Joint Venturers, 1998 (*see* Appendix B: Official Documents).

- Establishing a Reserve Constabulary “of a minimum of 40 personnel”;
- Providing a “Police Public Relations Officer to carry out Liaison with the Village courts, Community and District Administrator”; and
- Building and maintaining a “Corrective Institution . . . to hold prisoners for a period of up to six months.”<sup>34</sup>

In March of 2009, a senior police official shared with the research team a 2005 MOU between the PJV and the RPNGC. The senior official stated that a signed copy of the MOU was on file with the PNG Police Commissioner. The research team was able to transcribe the MOU in its entirety. Under the MOU:

- “The Commissioner of the Police of the RPNGC authorizes the deployment of an agreed number of Reserve Police (who are employees of the PJV)”;<sup>35</sup>
- “[T]he approved manpower ceiling shall not exceed 100 members without the express permission of the Commissioner or his authorized designate”;<sup>36</sup>
- “The PJV shall be responsible for all costs and expenses associated with the Reserve Police, made up of authorized PJV employees, including remuneration, training and the provisions of uniforms and equipment”;<sup>37</sup>
- The PJV “undertakes” to indemnify the reservists employed by the PJV<sup>38</sup> and to provide the Government with monthly “Reserve Police reports,” including “giving manpower details and movements, arrest particulars”;<sup>39</sup>
- The reservists are employees of the PJV and are assigned primarily to protect the mine, but they are trained by the RPNGC<sup>40</sup> and fall under the command of the Commissioner of the RPNGC;<sup>41</sup> and
- When necessary, the reservists may be deployed to assist with police operations outside the mine.<sup>42</sup>

Police officers and others interviewed by the research team have provided further details about the role of police reservists within the PJV security forces. The PJV security personnel have been divided into two classes: (1) unarmed guards who man the gates and the perimeter of the mine, wear company uniforms, and are often hired from the local population, and (2) Reserve Police who carry firearms, often wear RPNGC uniforms, and receive training and discipline from the PNG police force.<sup>43</sup> According to local, provincial, and national-level police officers, reservists have been subject to overlapping command structures, taking day-to-day orders from the PJV’s Security Manager but falling under the formal authority of the Commissioner of the

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<sup>34</sup> *Id.* at 11-12.

<sup>35</sup> MOU, *supra* note 25, at § 1.

<sup>36</sup> *Id.* at § 1.7.

<sup>37</sup> *Id.* at § 2.1.

<sup>38</sup> *See id.* at § 2.3.

<sup>39</sup> *Id.* at § 2.4.

<sup>40</sup> *Id.* at § 1.4.

<sup>41</sup> *Id.* at § 1.1.

<sup>42</sup> *Id.* at § 1.8.

<sup>43</sup> Interviews PNG #199 (2009); PNG #214 (2009); PNG #216 (2009); PNG #228 (2009); PNG #255 (2009); PNG #260 (2009).

RPNGC.<sup>44</sup> One local officer who had not seen the MOU said that he thought the reservists were “supposed to report” to the Police Station Commissioner (PSC) in Porgera, but in fact the officer knew that they had not been doing so.<sup>45</sup> The MOU indeed requires the reservists to report to the PSC.<sup>46</sup> Moreover, according to police officials, the reservists have been exercising the same powers as regular police officers, including the power to arrest, detain, question, and charge individuals with offenses.<sup>47</sup> Police reservists have been carrying the same firearms as regular police officers and frequently have been escorting PJV vehicles through the region.<sup>48</sup> Locals have reported that some PJV vehicles have used official government license plates. The research team observed police reservists, one of whom stated that he worked at the mine, using police vehicles (see Photos #2, #3, and #4).<sup>49</sup>

These cooperative arrangements between the PJV and state security forces raise serious concerns regarding the Government’s duty, under international law, to respect and protect human rights. Since the PJV and the Government are collaborating and jointly undertaking a *state* function, allegations against PJV security personnel should be measured against international human rights obligations as they apply to states. The close relationship between the PJV and the Government also casts doubt upon the impartiality of the parties and the Government’s ability to independently investigate persistent allegations of human rights violations related to the mine.

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<sup>44</sup> Interviews PNG #214 (2009); PNG #216 (2009); PNG #255 (2009); PNG #257 (2009); PNG #260 (2009). *See also* Interviews PNG #199 (2009); PNG #222 (2009); PNG #228 (2009); PNG #258 (2009).

<sup>45</sup> Interview PNG #228 (2009).

<sup>46</sup> MOU, *supra* note 25, at § 1.3 (“The Police Station Commissioner (PSC), Porgera, shall be responsible for the daily supervision and discipline of the Reserve Police whilst they are performing their duties.”).

<sup>47</sup> Interviews PNG #200 (2009); PNG #216 (2009); PNG #258 (2009); PNG #260 (2009); *see also* MOU, *supra* note 25, at § 1.6 (“Reserve Police may be vested with such powers of the regular Constabulary as is considered necessary by the Commissioner.”).

<sup>48</sup> Interviews PNG #214 (2009); PNG #216 (2009); PNG #222 (2009); PNG #255 (2009).

<sup>49</sup> Letter from the Porgera SML Landowner’s Association to the Hon. Arthur Somare, Minister for Planning and Rural Development, at 3 (May 16, 2005) (re: Submission to Have the National Government Investigate and Disarm PJV’s Security Force) (on file with Clinic); *see also* Interviews PNG #199 (2009); PNG #200 (2009); PNG #228 (2009).

## Police Reservists



Photo #2: Armed reservist entering vehicle with government license plates. (Source: Taken by research team on March 25, 2009)



Photo #3: Same vehicle as in Photo #2, with the Royal PNG Constabulary logo, entered by armed reservist. (Source: Taken by research team on March 25, 2009)



Photos #4: Police reservist with "police" badge who identified himself as working at the mine site. (Source: Taken by research team on March 25, 2009)

### III. VIOLENCE RELATED TO THE MINE

There have been allegations of violence and of excessive force in or near the mine site, including rapes, killings, and physical abuse. The research team collected information on alleged abuses during three field missions in August 2006, March and April 2007, and March 2009. Specific incidents of reported abuse are outlined below, as well as the patterns of abuse drawn from accounts of alleged victims and witnesses, which span years of operations at the mine site. The large number and consistency of accounts creates a *prima facie* case for further investigation.

#### A. Sexual Violence

Allegations of sexual violence, most notably gang rape, indicate a potential pattern of abuse by PJV security personnel against women apprehended inside the mine site that may constitute torture and cruel, inhuman, or degrading treatment. Assessing the total number of rapes and other incidents of sexual violence is difficult because of victim fear and underreporting. Nevertheless, the research team gathered multiple accounts from women who reported being raped by PJV security personnel between the mid-1990s and 2008.<sup>50</sup> Other witnesses, including PJV security personnel, corroborated such incidents. The research team conducted interviews documenting ten alleged incidents of sexual violence, including eight rapes. The accounts generally share the following characteristics:

- *Gang rapes.* Women stated that they were raped by PJV security personnel acting in groups that generally ranged from three to nine men.<sup>51</sup>
- *Beatings and ill-treatment.* Alleged victims were also subjected to beatings, usually with fists and boots or with the butts of guns.<sup>52</sup> Some of the women reported that the

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<sup>50</sup> See, e.g., Interviews PNG #2 (2006) (woman raped by security personnel in 2003); PNG #3 (2006) (woman raped by security personnel between 2001 and 2006); PNG #7 (2006) (twelve-year-old female raped by security personnel in approximately 1994); PNG #9 (2006) (security personnel attempted to rape woman in October 2003); PNG #10 (2006) (woman raped by security personnel in 2004); PNG #75 (2006) (fifteen-year-old female sexually harassed by security personnel in June 2004); PNG #212 (2009) (woman raped by security personnel in 2003); PNG #221 (2009) (25-year-old woman raped by security personnel in September 2008); PNG #237 (2009) (woman raped by security personnel in 2008); PNG #247 (2009) (woman raped by security personnel in mid-2006). Several interviewees also reported knowledge of other rapes. See, e.g., Interviews PNG #11 (2006) (security guard witnessed one rape and other guards told him about raping women); PNG #94 (2006) (former security guard witnessed rapes); PNG #185 (2007) (woman witnessed a lady being raped around 2003); PNG #211 (2009) (woman's cousin raped by security personnel); PNG #212 (2009) (woman raped with a female companion in 2003); PNG #213 (2009) (man's daughter raped).

<sup>51</sup> See, e.g., Interviews PNG #2 (2006) (raped by three security personnel); PNG #3 (2006) (raped by five security personnel); PNG #7 (2006) (raped by nine security personnel); PNG #9 (2006) (attempted rape by nine security personnel); PNG #10 (2006) (raped by five security personnel); PNG #11 (2006) (witnessed a rape committed by two security personnel while two other security personnel stood by); PNG #212 (2009) (raped by three security personnel); PNG #221 (2009) (raped by five security personnel); PNG #237 (2009) (raped by two security personnel while three other security personnel stood by); PNG #247 (2009) (raped by four security personnel).

<sup>52</sup> See, e.g., Interviews PNG #3 (2006) (female victim kicked and hit with butt of gun by security personnel); PNG #9 (2006) (female victim beaten with a wooden stick, hit with butt of gun, and kicked by security personnel); PNG #10 (2006) (female victim slapped by security personnel); PNG #221 (2009) (female victim punched by security personnel); PNG #237 (2009) (female victim punched and hit with butt of gun by security personnel); PNG #247 (2009) (female victim hit with butt of gun and had barrel of gun put in mouth by security personnel).

PJV security tore off their clothing, leaving them naked.<sup>53</sup> A few women also reported that PJV security ordered them to chew or swallow the condoms used during the rapes.<sup>54</sup> In the majority of accounts, at least one of the security personnel was armed during the rape.<sup>55</sup>

- *Threats of imprisonment.* Some of the women reported that PJV security threatened to jail them if they did not “let” the security personnel rape them.<sup>56</sup>
- *Rapes on mine property.* Women and witnesses stated that rapes usually occurred on mine property, after security personnel apprehended women who were searching for gold.<sup>57</sup>
- *Underreporting to officials.* Women reported that they generally had not filed complaints about these incidents.<sup>58</sup> They generally believed that police officials would not investigate their complaints, or that the police would imprison them for trespassing on mine property.<sup>59</sup> In addition, victims of rape are often stigmatized, with rapes reportedly leading some husbands to leave or divorce their wives.<sup>60</sup>

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<sup>53</sup> See, e.g., Interviews PNG #7 (2006) (security personnel removed all of her clothes); PNG #212 (2009) (security personnel broke her shirt, skirt, and trousers so that she was naked when they raped her); PNG #221 (2009) (security personnel removed her trousers, shirt, underwear, and bra so she was naked); PNG #247 (2009) (security personnel broke her trousers and cut off her shirt, underwear, and bra).

<sup>54</sup> See, e.g., Interviews PNG #2 (2006) (security personnel ordered woman to eat all the used condoms and chew them); PNG #7 (2006) (security personnel put condoms in woman’s mouth and ordered her to eat and swallow them).

<sup>55</sup> See, e.g., Interviews: PNG #2 (2006) (security personnel carried one gun) PNG #3 (2006) (security personnel carried five guns); PNG #7 (2006) (security personnel carried three guns); PNG #9 (2006) (security personnel carried one gun); PNG #10 (2006) (security personnel carried three guns); PNG #238 (2009) (security personnel carried two guns); PNG #237 (2009) (security personnel carried three guns); PNG #247 (2009) (security personnel carried more than one gun).

<sup>56</sup> See, e.g., Interviews PNG #2 (2006) (rape victim told by security personnel that if she did not want to go to the cell then he would rape her); PNG #9 (2006) (attempted rape victim told by security personnel that if she did not want to go to the cell then they would rape her); PNG #10 (2006) (rape victim told by security personnel that they would rape her instead of taking her to the cell); PNG #11 (2006) (security guard reported that personnel make a “deal” with women when they catch them and say, “If you don’t want to go to jail, we’ll rape you.”); PNG #221 (2009) (rape victim told by security personnel that if she did not want to go to jail then they would rape her); PNG #247 (2009) (rape victim offered the “choice” by security personnel between jail or rape).

<sup>57</sup> See, e.g., Interviews PNG #2 (2006) (dump); PNG #3 (2006) (dump); PNG #7 (2006) (dump); PNG #10 (2006) (dump); PNG #212 (2009) (inside mine site); PNG #221 (inside mine site); PNG #237 (2009) (stockpile); PNG #247 (2009) (dump). For reports of alleged attempted rapes, see Interviews PNG #9 (2006) (dump); PNG #75 (2006) (dump).

<sup>58</sup> See, e.g., Interviews PNG #2 (2006) (no report because victim believed that the police would take no action); PNG #3 (2006) (not reported to police); PNG #7 (2006) (not reported to police, as she was a child of age twelve); PNG #9 (not reported to police because victim was convinced that she would not receive any help); PNG #10 (2006) (not officially reported because she was scared); PNG #75 (2006) (reported to PJV security personnel but has not heard of any resolutions); PNG #212 (2009) (reported to police but no action taken); PNG #221 (2009) (recounted to family but did not officially report); PNG #237 (2009) (reported only to family); PNG #247 (2009) (reported only to the doctor and family, but not to the police).

<sup>59</sup> See e.g., Interviews PNG #2 (2006) (believed she would not get any help from the police, so she did not report the rape); PNG #3 (2006) (said the police are close to security personnel so nothing would happen if she reported the rape); PNG #247 (2009) (said that she was afraid to go to the police because the security personnel are police too).

<sup>60</sup> See, e.g., Interviews PNG #2 (2006) (husband told her that she would never give birth to his child); PNG #3 (2006) (husband left her).

The following are three accounts of gang rape reported to the research team:

#### Incident #1

One woman reported that three PJV security personnel raped her in 2003 while she was searching for gold in a waste dump.<sup>61</sup> The 25-year-old woman explained that the dump had ruined her farming land, so she went to the mine site to get gold to survive.<sup>62</sup> She recounted that while there, three security personnel caught her and told her that if she did not want to go to jail, they would rape her.<sup>63</sup> She recalled that they had a gun and she did not try to run because she was scared.<sup>64</sup> She explained that each of the three men raped her using a condom while the other two stood by and watched.<sup>65</sup> After the rapes, the young woman described further degrading treatment and humiliation inflicted by the security personnel:

They said, “If you don’t want to go to the [jail] cell, you swallow all these condoms.” . . . They told me to eat the condom and swallow it. They told me to eat all three condoms at the same time. They told me not to spit out anything. They told me to chew them. . . . After chewing, they told me to walk home.<sup>66</sup>

The woman stated that she had not reported the rapes.<sup>67</sup> She noted that the memory of the rapes still haunted her, and that she thought of the three men often, asking herself: “Why did those three security guards rape me?”<sup>68</sup> She noted that relations with her husband were also strained by the incident, and she concluded by stating that she hoped to see the security personnel “locked up in prison.”<sup>69</sup>

#### Incident #2

Another woman reported that three security personnel raped her in March 2005.<sup>70</sup> The 30-year-old woman recounted that she was on her way to a mine dump area when three security guards caught her and told her that she could not go free unless she had sex with them.<sup>71</sup> She explained that she struggled hard to get away, but that the guards punched her, slapped her, and held her down.<sup>72</sup> She recalled that they tore off her shirt and trousers and that each of the three guards

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<sup>61</sup> Interview PNG #2 (2006).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* Additional sources reveal that PNG policemen have ordered women, mostly sex workers, to chew and swallow condoms. See, e.g., Human Rights Watch, *Making Their Own Rules* (Aug. 30, 2005), available at [http://www.hrw.org/en/node/11626/section/7#\\_ftnref274](http://www.hrw.org/en/node/11626/section/7#_ftnref274) (“More than twenty girls and women arrested in the raid [on prostitutes] reported that police ordered them to chew, and in many cases, to swallow, between one and four condoms”); *Sex Workers and Police in Port Moresby (1994-1998): Research and Intervention* (forthcoming paper to appear in *LAW, ORDER AND HIV/AIDS IN PAPUA NEW GUINEA*, at 12 (V. Luker, S. Dinnen & A. Patience eds., Canberra: Australian National University Press) (citing a report that women, arrested for prostitution, were forced to blow up condoms and swallow them).

<sup>67</sup> Interview PNG #2 (2009).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Interview PNG #212 (2009).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

raped her “one after the other.”<sup>73</sup> In recounting the attack, the mother of two children explained, “Whenever the security guards catch the ladies, that’s what happens.”<sup>74</sup> The woman said that after the incident, the guards took her to the police station where she was jailed for two months.<sup>75</sup> She explained that she was eventually taken to court for trespassing, and that she told the magistrate that she had been raped.<sup>76</sup> She told the research team that the magistrate said, “[L]adies normally come here and give this excuse, so you will go directly to [prison].”<sup>77</sup> She stated that she was ultimately sentenced to an additional five months in prison for trespassing.<sup>78</sup>

### Incident #3

Another woman reported that five PJV security personnel raped her in September 2008 while she was searching for gold near a stockpile area of the mine site.<sup>79</sup> The 25-year-old woman explained that she resided just a few minutes walk from the mine and often went there to look for gold.<sup>80</sup> She said that she used the money she made from selling the gold to purchase basic necessities for her family.<sup>81</sup> She recounted that she was on mine property searching for gold when five security personnel came up behind her and grabbed her.<sup>82</sup> She said that they asked her if she wanted to go home, or if she wanted to be sent to jail.<sup>83</sup> She recalled that when she replied that she wanted to go home, they said they would rape her first.<sup>84</sup> She explained that she tried to run away, but that the security personnel pointed a gun at her and threatened to shoot if she tried to escape.<sup>85</sup> She noted that they also beat her legs and hit her with stones.<sup>86</sup>

The woman explained that the security personnel threw her down on the rocks and tore off her shorts, shirt, and underwear. She recounted that each of the five security personnel took turns raping her while one of them pointed a gun at her and the others guarded the road.<sup>87</sup> She recalled that they held her head down and punched her with the butt of a gun.<sup>88</sup> During the interview with the research team, the woman pointed out scars on her shoulder and hand that she explained were the result of struggling during the rapes, and that she had needed hospital treatment for her injuries.<sup>89</sup> The mother of two remembered feeling “destroyed” after the rapes.<sup>90</sup> She recalled: “After the fifth one finished, my body was weak.”<sup>91</sup>

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Interview PNG #221 (2009).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*



A male relative corroborated the 25-year-old woman's account.<sup>92</sup> He recounted that he witnessed five security guards grab the woman, throw her down, and tear off her clothes.<sup>93</sup> He explained that two of the security personnel had guns, so he hid in a bush nearby.<sup>94</sup> He noted that after the attacks, he took the woman to the hospital for her injuries.<sup>95</sup> He also noted that he reported the attack to the local police, but that they appeared to take no action.<sup>96</sup>

Interviews with current and former security guards corroborate the rape allegations. One local PJV security guard, employed at the time of his interview, claimed that he had seen numerous women raped by men in his security unit during his several years of employment.<sup>97</sup> A former PJV security guard, who had worked at the mine for two years, noted that, "Security . . . take girls to the bushes. Security deliberately goes looking for girls to rape. There are lots of condoms in the [security] cars."<sup>98</sup> During a 2006 mission to PNG, one member of the research team witnessed a guard yelling at a local woman that he had raped many women, and calling for her to come near him so that he could rape her too. Despite numerous allegations of rape, some police officers stated that they have not heard of any rapes, suggesting issues of underreporting.<sup>99</sup> In 2009, one local police source reported that he had heard of rapes, but that such complaints are generally not thoroughly investigated.<sup>100</sup> He explained that when there is a complaint of rape perpetrated by PJV security personnel, the police "do nothing" because the mine conducts its own investigation of the employees and sends the files to the local police, who accept the statements as true.<sup>101</sup>

These incidents, and the police statements about investigations, raise serious concerns about whether the PNG Government and the PJV are meeting their respective obligations and commitments. The allegations of sexual violence, and specifically gang rapes, if true, amount to acts of torture or cruel, inhuman, or degrading treatment, which are clearly prohibited under international law.<sup>102</sup> Torture involves the intentional infliction of severe pain or suffering by state officials or with their acquiescence for specified purposes, including punishing or intimidating individuals.<sup>103</sup> The above accounts of rape involve severe pain and suffering.<sup>104</sup> In

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<sup>92</sup> Interview PNG #238 (2009).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Interview PNG #24 (2006) ("I have seen seven different women be raped, with my own eyes").

<sup>98</sup> Interview PNG #94 (2006).

<sup>99</sup> See Interviews PNG #228 (2009); PNG #255 (2009).

<sup>100</sup> Interview PNG #200 (2009).

<sup>101</sup> *Id.*

<sup>102</sup> PNG is a party to the ICCPR, which prohibits torture and cruel, inhuman, or degrading treatment. ICCPR, *supra* note 3, art. 7. Under international law, torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him . . . when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, art. 1(1) (Dec. 10, 1984) [hereinafter "Convention against Torture"]; see also Code of Conduct, *supra* note 3, art. 5, cmt. (b) (same elements).

<sup>103</sup> *Id.*

<sup>104</sup> Rape has been accepted as a form of torture. See, e.g., *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T (1998), available at <http://www.ictr.org/ENGLISH/cases/Akayesu/judgment/akay001.htm>.

addition, because the PJV has assumed a state function of policing under the 2005 MOU and because many of the security personnel are government police (state officials), alleged rapes of women by PJV police reservists would meet the state action requirement for torture. Finally, interviewees reported that security personnel have raped women to punish them for trespassing or to intimidate them to not trespass in the future.

## B. Killings and Deaths

Local residents have described a number of deaths and killings involving alleged excessive use of force in and around the mine since the PJV commenced its operations. Although the exact number of deaths has not been definitively chronicled, there is widespread agreement from a variety of sources that many killings have occurred. According to Prime Minister Sir Michael Somare, as of 2005, 29 individuals reportedly had been killed at the mine.<sup>105</sup> In November 2005, Placer Dome acknowledged that eight killings had occurred since 1996, including seven since February 2000.<sup>106</sup>

The research team conducted 32 interviews of community members, police officers, PJV personnel, and government officials regarding killings.<sup>107</sup> Though there appeared to be a lull in alleged killings in 2006 and part of 2007,<sup>108</sup> the research team has gathered information about multiple instances of killings between 1992 and late 2008.<sup>109</sup> The interviews reveal commonalities among the killings and deaths, including:

- *Cause of death.*
  - *Shootings.* PJV security personnel have shot and killed individuals, allegedly

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<sup>105</sup> *Probe Looms for Mine Deaths*, THE NATIONAL (PNG), May 6, 2005.

<sup>106</sup> Bob Burton, *Canadian Firm Admits to Killings at PNG Gold Mine*, IPS, Nov. 18, 2005, available at <http://www.ipsnews.net/news.asp?idnews=31074>. A local human rights organization, Akali Tange Association (ATA), reported that at least 21 individuals were killed from 1990 until 2005. Akali Tange Association, *The Shooting Fields of Porgera Joint Venture: Now a Case to Compensate and Justice to Prevail*, 59 (2005).

<sup>107</sup> See, e.g., Interviews PNG #86 (2006) (male shot dead in 1992); PNG #89 (2006) (victim was shot); PNG #92 (2006) (male taken by security and later found dead); PNG #198 (2009) (male shot dead in dump in 2002; witness estimates three to four deaths between 2007 and 2009); PNG #199 (2009) (two shooting deaths in 2002; witness estimates three to five killings between 2000-2005); PNG #200 (2009) (two shooting deaths in 2006-2007; witness estimates four to five killings since 2006 including one in October 2008); PNG #209 (2009) (boy shot on July 22, 2008); PNG #216 (2009) (boy shot dead on July 22, 2008); PNG #219 (male shot to death on December 27, 2007); PNG #226 (2009) (boy shot dead on July 22, 2008); PNG #228 (2009) (male shot dead in 2008); PNG #229 (2009) (witness has generally heard of deaths); PNG #231 (2009) (male shot dead on November 28, 2007); PNG #233 (2009) (male in 30s shot dead on December 28, 2007); PNG #235 (2009) (male shot dead in 2000-2001); PNG #240 (2009) (male shot dead on November 28, 2007); PNG #251 (2009) (male shot dead on November 27, 2007); PNG #252 (male shot dead on November 28); PNG #255 (2009) (miner shot dead in 2001-2002; miner shot dead in 2001; miner shot dead in 2005; male shot dead in 2008); PNG #262 (2009) (former mine employee claims that a "black list" of deaths was kept by security personnel).

<sup>108</sup> In 2007, there was a reported decline in the number of violent incidents and deaths, which has been attributed to several factors, including the initiation of the Porgera Investigation Committee, an increase of international attention, the construction by Barrick of a fence surrounding the mine, changes to security operations, and increased criminal penalties for trespassing. See, e.g., Interview PNG #200 (2009).

<sup>109</sup> See, e.g., Interviews PNG #200 (2009) (two shooting deaths in 2006 and 2007; witness estimates four to five killings since 2006 including one in October 2008); PNG #209 (2009) (boy shot dead on July 22, 2008); PNG #219 (2009) (male shot dead on December 27, 2007); PNG #233 (2009) (male in 30s shot dead on December 28, 2007); PNG #251 (2009) (male shot dead on November 27, 2007); see also Interviews, *supra* note 107.

using excessive force, in and around the mine on multiple occasions.<sup>110</sup> Those interviewed also recounted several incidents of non-lethal shooting.<sup>111</sup> Police officers interviewed by the research team verified that the only PJV security personnel allowed to carry guns are the reservists or members of Mobile Police Squads assigned to the mine.<sup>112</sup>

- *Rocks.* Several documented deaths occurred when individuals were crushed by falling rocks.<sup>113</sup> Some of these deaths were the result of open-pit blasts<sup>114</sup> or loose rocks.<sup>115</sup> In other incidents, individuals recounted seeing PJV security personnel push rocks onto trespassers in the pit below.<sup>116</sup>
- *Location.* Most victims were killed after entering the mine site in search of gold, but some were killed outside the mine area.<sup>117</sup>

The following accounts are three examples of killings documented by the research team, which demonstrate a need for independent investigations:

#### Incident #1

One incident which should be investigated is the alleged killing of a fifteen-year-old male by mobile police; the PJV has reportedly impeded investigations of his death by local police.<sup>118</sup> On

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<sup>110</sup> See Interviews, *supra* note 109.

<sup>111</sup> See, e.g., Interviews PNG #6 (2006) (miner shot in leg in 1998); PNG #8 (2006) (male shot in leg); PNG #16 (2006) (individual shot in leg with rubber bullet in 2004); PNG #23 (2006) (male shot three times in the back with rubber bullets in April 2006); PNG #29 (2006) (male shot in 2002); PNG #30 (2006) (individual shot in May 2005); PNG #42 (2006) (male shot in leg with rubber bullet in 2005); PNG #43 (2006) (male hit with shrapnel in May 2006 after being shot at); PNG #46 (2006) (victim shot); PNG #67 (2006) (man shot in leg on May 26, 2005); PNG #70 (2006) (man shot five times in the leg on February 2, 2002); PNG #74 (2006) (man shot in chest in 2002); PNG #81 (2006) (male shot with a rubber bullet in December 1999; shot in leg in April 2005); PNG #88 (2006) (man shot in the leg on November 17, 2001); PNG #200 (2009) (recalled two shooting incidents); PNG #201 (2009) (male cousin shot in 2006); PNG #202 (2009) (male shot in leg in 2008; had heard of other shootings in capacity as medical practitioner); PNG #205 (2009) (male shot in leg in 2004 outside of the mine site); PNG #218 (2009) (male shot with rubber bullet in June-July 2008 while playing volleyball outside mine site); PNG #222 (2009) (male shot in 2004); PNG #223 (2009) (male shot in eye in September 2008); PNG #228 (2009) (miner shot in January 2009); PNG #230 (2009) (male shot in the mouth in 2007); PNG #236 (2009) (male shot, possibly with rubber bullet, in March 2008); PNG #240 (2009) (male shot in November 2007 while outside of mine site); PNG #241 (2009) (male shot in leg in 2004); PNG #246 (2009) (male shot in back with rubber bullets in June 2008); PNG #248 (2009) (male shot with rubber bullet in shoulder in February 2009); PNG #251 (2009) (witnessed male shot on November 27, 2007).

<sup>112</sup> Interviews PNG #216 (2009); PNG #228 (2009); PNG #229 (2009); PNG #239 (2009); PNG #260 (2009).

<sup>113</sup> See, e.g., Interviews PNG #73 (2006) (leg smashed in 2004); PNG #200 (2009) (male died in October 2008); PNG #206 (2009) (male died in August 2008); PNG #210 (2009) (male died in November 2007); PNG #232 (2009) (male died in August 2008).

<sup>114</sup> The mine regularly blasts areas of the open pit to expose ore. Individuals enter the mine to get such high-value ore after explosions.

<sup>115</sup> Interview PNG #108 (2009).

<sup>116</sup> Interviews PNG #206 (2009); PNG #210 (2009).

<sup>117</sup> See, e.g., Interviews PNG #209 (2009) (boy shot outside mining area on July 22, 2008); PNG #219 (2009) (young man shot outside mining area on December 27, 2007); PNG #240 (2009) (male shot outside mining area on November 28, 2007).

<sup>118</sup> Interviews PNG #209 (2009); PNG #216 (2009); PNG #226 (2009). See also Crime Report, Royal Papua New Guinea Constabulary (July 27, 2008) (see Appendix C: Medical and Police Reports); Major Incident Brief, Royal Papua New Guinea Constabulary (undated) (see Appendix C: Medical and Police Reports); Autopsy Report, Porgera Hospital in Paiam (July 2008) (see Appendix C: Medical and Police Reports).

July 22, 2008 between 8pm and 11pm, the youth was reportedly shot and killed outside the mine site.<sup>119</sup> A witness, who was with the eighth grader, recalled that the victim was among hundreds who were planning to enter the pit that evening.<sup>120</sup> The witness explained that the miners could not get through the fence because PJV security was there, so the group started throwing stones at the fence to get the guards to leave.<sup>121</sup> The witness surmised that the security guards must have called for armed reinforcements because the Mobile Police Squad arrived and opened fire on the group from behind the mine fence.<sup>122</sup> The witness described the incident:

[There] was a stream of shooting. . . . [The victim] fell down. I saw him fall down. . . . [H]e was shot. . . . [H]is body was shaking all over when he was on the ground.<sup>123</sup>

A relative, who arrived at the scene after the shooting began, also noted that Mobile Police were present in the mine site.<sup>124</sup> One witness reported that after the shooting, he retrieved the body and brought it to the security gate of the mine the next morning for an ambulance to take it for a post-mortem.<sup>125</sup> The autopsy report revealed that the fifteen-year-old male died from a gunshot wound to the head and that he had received a second gunshot wound to his abdomen.<sup>126</sup> The witnesses recounted that after the body was taken away from the mine, they were interviewed for hours by expatriate PJV officials.<sup>127</sup> The crime report identified the incident as a “police sho[o]ting resulting [in] death.”<sup>128</sup> A local law enforcement official looking into the matter wrote in his Major Incident Brief:

The deceased was outside the perimeter fence line known as 36 Level at the PJV mine site about 150 metres above the high ground. The MS14 [Mobile Squad-14] members of Goroka, who were on low ground fired upwards that had [sic] resulted in his death. The policemen were there on hire [sic] basis by PJV when the incident occurred.<sup>129</sup>

In an interview in 2009 with the local law enforcement official, he explained that the death was the result of shooting by two members of the Mobile Police Squad who had started firing on suspected illegal miners outside the mine site.<sup>130</sup> He went on to state that he had tried to investigate the incident and had requested a timesheet from the PJV to identify the shooters, but that the PJV had not supplied the information.<sup>131</sup> As such, the incident report noted: “Crime scene unvisited, post mortem done and investigations are still continuing due to obstructive

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<sup>119</sup> See *supra* note 118.

<sup>120</sup> Interview PNG #226 (2009).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> Interview PNG #209 (2009).

<sup>125</sup> *Id.*

<sup>126</sup> Autopsy Report, *supra* note 118.

<sup>127</sup> Interviews PNG #209 (2009); PNG #226 (2009).

<sup>128</sup> Crime Report, *supra* note 118.

<sup>129</sup> Major Incident Brief, *supra* note 118.

<sup>130</sup> Interview PNG #216 (2009).

<sup>131</sup> *Id.*

manners [sic] by mine site police.”<sup>132</sup>

### Incident #2

A second incident that demonstrates the need for independent investigations is the alleged killing of a 23-year-old male by PJV security.<sup>133</sup> On December 27, 2007 at 9am near the Alipis and Wangima villages, a witness said the man was shot and killed while outside the fence around the mine pit.<sup>134</sup> The witness, who was present during the entire incident, explained that the deceased was going to look for firewood while a group of people, including women and children, were panning for gold in a nearby creek.<sup>135</sup> The witness recounted that the PJV security personnel had parked their vehicle on the ridge above the creek when three armed security personnel exited the vehicle and opened fire on the group.<sup>136</sup> A newspaper account of the incident states that a gun battle occurred between PJV security and the group.<sup>137</sup> According to the news account, the young man was shot in the back and fell.<sup>138</sup> After the PJV left, the witness and other people in the group retrieved the victim’s body and took it to the hospital at Paiam.<sup>139</sup> The subsequent autopsy revealed that the man died as a result of gunshot wounds to the back.<sup>140</sup> The autopsy report also noted that the “deceased was among a group of illegal miners at PJV site, 36 levels, when the company security men open fired [sic] and shot him dead.”<sup>141</sup> There appears to be agreement among witness accounts and documents that the male was shot and killed by PJV security personnel. As such, an investigation is essential to determine whether the shooting was unjustified and illegal or whether it was a necessary and proportionate response in the circumstances.

### Incident #3

Another incident that demonstrates the need for unbiased investigations is the alleged killing of a male in his early twenties by PJV security, where the cause of the shooting was unclear.<sup>142</sup> On November 28, 2007 around 1am or 2am, the young man was reportedly shot and killed outside of the mine gate near the PJV community relations office.<sup>143</sup> A witness, who was with the young man at the time of the incident, reported that they were walking back from a disco in a group of about ten men, some of whom had been drinking, when they passed a mine gate.<sup>144</sup> Several witnesses recalled that the victim stopped at the gate when he recognized a security guard who owed him money and began demanding repayment.<sup>145</sup> The witnesses stated that the security

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<sup>132</sup> Major Incident Brief, *supra* note 118.

<sup>133</sup> Interview PNG #219 (2009).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> James Apa Gumuno, *Miner killed in cross-fire*, THE NATIONAL (PNG), Jan. 2, 2008 (on file with Clinic). The article was sent to Barrick for comment, but the Clinic received no response regarding this incident.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Autopsy Report, Porgera Hospital at Paiam (2007) (*see* Appendix C: Medical and Police Reports).

<sup>141</sup> *Id.*

<sup>142</sup> Interviews PNG #231 (2009); PNG #240 (2009); PNG #251 (2009); PNG #252 (2009). *See also* Autopsy Report, Porgera Hospital in Paiam (Nov. 30, 2007) (*see* Appendix C: Medical and Police Records).

<sup>143</sup> Interview PNG #240 (2009).

<sup>144</sup> Interview PNG #251 (2009) (“group of about ten”); *see also* Interviews PNG #240 (2009) (“[W]e were nine or ten men in the group”); PNG #252 (2009) (“around ten of us”).

<sup>145</sup> Interviews PNG #231(2009); PNG #240 (2009); PNG #251 (2009); PNG #252 (2009).

guard eventually called for additional security.<sup>146</sup> Vehicles soon appeared on the road outside the mine's gate.<sup>147</sup> Though the witness accounts differ slightly on the number of vehicles and gunmen, they consistently report that men from the vehicles opened fire on the group and killed the young man.<sup>148</sup> One witness stated, "I saw him get shot and fall to the ground. They hit him right above his nose, in his forehead. He yelled 'I'm hit' and fell to the ground."<sup>149</sup> The subsequent autopsy report revealed that the victim had died of a gunshot wound to the head.<sup>150</sup>

The witnesses noted that after the incident, the police had conducted some interviews, but it did not appear that they had done a thorough investigation.<sup>151</sup> One witness stated, "[T]he police came to mediate the peace. They promised to help investigate, but they did not. The company police and state police have done no investigation."<sup>152</sup> A second witness recalled that after the incident, he was interviewed by the police but to his knowledge, no further investigation occurred.<sup>153</sup> He explained: "We also complained to the [PJV] Community Affairs Department. We made a verbal complaint. . . . They said they would refer the issue to the mine administration, but nothing happened after that."<sup>154</sup> A third witness remembered that after the shooting, "The police asked how the incident happened. . . . No one from the company ever came to ask what happened."<sup>155</sup> A fourth witness said that he was never interviewed at all.<sup>156</sup>

Interviewing all available witnesses is critical in assessing whether or not an incident involved necessary and proportionate use of force by security personnel. This incident in particular highlights the need for investigations to sort through witnesses' varying reports and ascertain the security guards' recollections. Determining the reliability of witnesses is also an important part of such assessments. A few witnesses to this incident stated that men in their group were intoxicated<sup>157</sup> and that some of them were carrying bush-knives.<sup>158</sup> There were also conflicting reports about whether the young man had thrown a rock at the guard<sup>159</sup> or fought with the guard,<sup>160</sup> and whether the group threw rocks at the security vehicles.<sup>161</sup>

In addition to the above three shootings, as well as others, the research team has documented numerous accounts of deaths in which individuals were crushed by falling rocks inside the mine pit.<sup>162</sup> A local law enforcement officer recalled a post-mortem report from 2007 regarding the

<sup>146</sup> Interviews PNG #231 (2009); PNG #240 (2009).

<sup>147</sup> Interviews PNG #231 (2009); PNG #240 (2009).

<sup>148</sup> Interviews PNG #231 (2009); PNG #240 (2009); PNG #251 (2009); PNG #252 (2009).

<sup>149</sup> Interview PNG #252 (2009).

<sup>150</sup> Autopsy Report, *supra* note 142.

<sup>151</sup> Interviews PNG #240 (2009); PNG #251 (2009); PNG #252 (2009).

<sup>152</sup> Interview PNG #251 (2009).

<sup>153</sup> Interview PNG #252 (2009).

<sup>154</sup> *Id.*

<sup>155</sup> Interview PNG #240 (2009).

<sup>156</sup> Interview PNG #231 (2009).

<sup>157</sup> Interviews PNG #240 (2009); PNG #251 (2009); PNG #252 (2009).

<sup>158</sup> Interview PNG #240 (2009) (three men in the group had bush-knives, but not the deceased). It is very common for people in Porgera to carry bush-knives.

<sup>159</sup> Interview PNG #240 (2009) (victim threw stones at the guards prior to the reservists showing up and shooting).

<sup>160</sup> Interview PNG #231 (2009).

<sup>161</sup> Interviews PNG #251 (2009); PNG #252 (2009).

<sup>162</sup> *See, e.g.*, Interviews PNG #73 (2006) (leg smashed in 2004); PNG #200 (2009) (male died in October 2008); PNG #206 (2009) (male died in August 2008); PNG #210 (2009) (male died in November 2007); PNG #232 (2009)

death of a male in his 30s whose bones were smashed by a falling rock.<sup>163</sup> Another post-mortem report obtained from the Porgera Hospital revealed that a 24-year-old male was crushed to death by a rock inside the mine site in October 2008.<sup>164</sup> In addition, a witness reports that a 30-year-old miner was crushed by a rock in the mine pit sometime around November of 2007.<sup>165</sup>

Furthermore, the research team documented additional accounts where individuals reported witnessing PJV security personnel intentionally pushing rocks onto individuals. Two witnesses stated that a 25-year-old small-scale miner was crushed to death by falling rocks in the mine pit on August 25, 2008.<sup>166</sup> One witness recalled that he and the victim were in the mine pit and three PJV personnel were above them.<sup>167</sup> He explained:

I saw the three security guards above us push an enormous stone over onto us. They gave us no signal as to what they were doing. [The victim] tried to run for cover, but was overtaken by the rocks. He was crushed by a large rock. I ran for cover, but was injured by the stones. My other companion [not the victim] was also hurt badly—his limb was smashed.<sup>168</sup>

While these deaths may be accidental, all deaths in the mine site warrant a thorough and impartial investigation.

International law protects the “inherent right to life.”<sup>169</sup> It prohibits arbitrary killings by state security forces.<sup>170</sup> State security agents must use force “only when strictly necessary and to the extent required for the performance of their duty.”<sup>171</sup> There is an exceptionally high standard for the use of lethal force by state actors.<sup>172</sup> Where excessive force is used, as some of the facts above may indicate, there is a violation of the right to life. Insofar as PJV security personnel have become state actors by taking on the policing functions of the state, and because many of them are government police reservists, they may have violated international law.

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(male died in August 2008). *See also* Post Mortem Report, Porgera Hospital in Paiam (Oct. 7, 2008) (*see* Appendix C: Medical and Police Reports).

<sup>163</sup> Interview PNG #200 (2009).

<sup>164</sup> Post Mortem Report, *supra* note 162.

<sup>165</sup> Interview PNG #210 (2009).

<sup>166</sup> Interviews PNG #206 (2009); PNG #232 (2009).

<sup>167</sup> Interview PNG #206 (2009).

<sup>168</sup> *Id.*

<sup>169</sup> PNG is a party to the ICCPR, which includes the “inherent right to life.” ICCPR, *supra* note 3, at art. 6(1).

<sup>170</sup> General Comment 6, at ¶ 3, U.N. GAOR, Hum. Rts. Comm., 16th Sess., U.N. Doc. HRI/GEN/1/Rev.6 at 127 (2003) (1982).

<sup>171</sup> Code of Conduct, *supra* note 3, at art. 3.

<sup>172</sup> Code of Conduct, *supra* note 3, at art. 3, cmt. (a) (“This provision emphasizes that the use of force by law enforcement officials should be exceptional.”). *See also* Basic Principles, *supra* note 3, at art. 4 (“Law enforcement officials, in carrying out their duty, shall, as far possible, apply non-violent means before resorting to the use of force. . . . [T]hey may use force . . . only if other means remain ineffective or without any promise of achieving the intended results.”); *id.* at art. 5(a) (law enforcement shall “act in proportion to the seriousness of the offence.”).

### C. Other Physical Abuses

Although the research team spoke with many individuals about incidents of sexual violence and killings, the majority of the events described by interviewees were related to other forms of physical abuse, which, if proved, would often amount to cruel, inhuman, or degrading treatment or, occasionally, to torture. The team recorded many instances of alleged abuse from 1996 to 2009. Individuals recounted that security personnel often beat individuals with wooden sticks and butts of guns; kicked individuals with safety boots; and punched, slapped, and hosed individuals caught in the mine site.<sup>173</sup> Security officers have also allegedly inflicted harm on individuals in their custody by spraying them with cold water from high-powered water hoses.<sup>174</sup> The majority of the alleged abused victims were male.<sup>175</sup>

One 32-year-old man, who was caught by PJV security personnel in February 2002, shared his experience:

Once security caught me they started hitting me, slapping me in the face, punching me in the face, kicking me in the sides of my stomach, and hitting me with their gun barrels in the top of the back. After being hit several times I passed out. They would keep on telling me to wake up only to hit me again. This happened several times. . . . They also put me in handcuffs. Two men grabbed me and threw me in the car. In the car, they sat in the seats, and I lay on the floor. They kept punching me, they didn't have the room to kick me or hit me with their gun barrels. . . . When I got [to the PJV lock-up] one person grabbed the hose and sprayed me with cold water. The hose was very powerful. It was very painful.<sup>176</sup>

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<sup>173</sup> See, e.g., Interviews PNG #5 (2006) (male victim kicked; chained to hospital bed); PNG #6 (2006) (victim beaten with wooden stick in 1996); PNG #16 (2006) (male victim beaten with belt in 2004); PNG #22 (2006) (nineteen-year-old male was kicked, punched, hit with the butt of a gun, shocked with a "power stick," and hosed in April 2004; kicked and hosed while naked with seven others in December 2005); PNG #23 (2006) (victim caught, beaten, and hosed by PJV security personnel on six occasions); PNG #26 (2006) (victim kicked in February 2003); PNG #29 (2006) (32-year-old male was beaten or hosed six separate times); PNG #34 (2006) (female repeatedly kicked with boots, punched in the eye, and hosed with a high-powered water hose in 2005); PNG #48 (2006) (female beaten in 2006); PNG #50 (2006) (four male victims beaten several times beginning in 1999); PNG #65 (2006) (approximately eighteen-year-old male hit on the head and kicked by PJV security on August 27, 2006); PNG #71 (2006) (male victim kicked and beaten with butt of gun on February 2, 2002 by security at dump); PNG #72 (2006) (ex-guard kicked and punched in security office in February 1999); PNG #97 (2006) (female victim beaten by security in 2005 while in Warakari); PNG #214 (2009) (34-year-old male beaten in February 2009); PNG #227 (2009) (approximately eight-year-old boy beaten with butt of gun in January 2009); PNG #229 (2009) (former security guard attested to beatings); PNG #242 (2009) (witness to January 2009 incident where boy was beaten in dump). See *supra* note 52 for incidents where alleged rape victims were beaten.

<sup>174</sup> Interviews PNG #6 (2006) (victim hosed); PNG #22 (2006) (nineteen-year-old male hosed while naked with seven others in December 2005); PNG #29 (2006) (male victim hosed twice); PNG #71 (2006) (male victim hosed in February 2002); PNG #93 (2006) (male victim hosed in 2003); PNG #97 (2006) (female victim hosed in 2005); PNG #101 (2006) (guard attested to hosings); PNG #229 (2009) (security guard attested to hosings); PNG #227 (2009) (approximately eight-year-old boy hosed in January 2009).

<sup>175</sup> See *supra* Part III.A for a discussion of beatings that accompanied the gang rape of women.

<sup>176</sup> Interview PNG #71 (2006).



One nurse stated in an August 2006 interview that many of her patients had privately told her that their injuries were from beatings by security guards.<sup>177</sup> Medical reports also reveal injuries occurring inside the mine site.<sup>178</sup>

Interviews with security personnel revealed that this type of abuse has usually been committed in response to trespassing and illegal mining at the PJV, when individuals entered the mine to search for debris for gold extraction. One former security guard explained that, when he worked there in the 1990s, guards caught trespassers and would often beat them with belts and spray them with water hoses.<sup>179</sup> Another former security guard noted during an August 2006 interview, “When we hold illegal miners we will badly beat them, make them carry heavy rocks and make them stand on one leg. We will hit them, punch them, kick them, [and] hit them with our guns.”<sup>180</sup> Finally, an active security guard added in a 2006 interview that they would use their boots to “kick whoever comes to the waste dump—man, woman, [or] child.”<sup>181</sup>

Interviews with security personnel suggest that the PJV has at times encouraged this type of response. Several security guards explained that they received direct instructions to use such force.<sup>182</sup> One guard stated during an August 2006 interview that he was verbally instructed by his supervisor to beat miners if he caught them.<sup>183</sup> Another explained in August 2006 that his supervisors specifically encouraged high powered hoses of detained miners, saying, “[The supervisors] tell us that if we spray [illegal miners], they will feel scared and maybe next time won’t do illegal activities.”<sup>184</sup> Some of the security personnel interviewed felt that these abuses were justified by the trespassing of the small-scale miners.<sup>185</sup> Other mine security personnel said that they have received instructions that they should not beat people that they capture, potentially indicating a shift in supervisor practice or company policy from 2005 or 2006.<sup>186</sup> However, as previously described, local residents continue to allege that PJV security personnel often employ violence.

In interviews with the research team, local police officers reported that trespassers brought to the police station by PJV security personnel had been injured, some badly. An officer at a police station near the mine stated in 2009, “Sometimes [the trespassers] are beaten up. . . . I can see

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<sup>177</sup> Interview PNG #58 (2006).

<sup>178</sup> Porgera Hospital Outpatient Record Card (Feb. 2, 2005) (on file with Clinic) (man admitted with bruising all over his back, shins, lacerations around both eyes, and tender shoulder elbow); Porgera Hospital Outpatient Record Card (Nov. 22, 2006) (on file with Clinic) (man found unconscious in the pit); Porgera Hospital Outpatient Record Card (May 2007) (on file with Clinic) (male injured when security guards threw rocks at him); Porgera Hospital Outpatient Record Card (June 18, 2007) (on file with Clinic) (male admitted after stating that he was hit in the head by a security guard).

<sup>179</sup> Interview PNG #229 (2009).

<sup>180</sup> Interview PNG #94 (2006).

<sup>181</sup> Interview PNG #47 (2006).

<sup>182</sup> Interviews PNG #74 (2006); PNG #94 (2006); PNG #101 (2006) (“Supervisors tell us to hose the illegal miners as punishment for being criminals.”); PNG #24 (2006) (supervisors instructed guards to beat people and kick with their boots).

<sup>183</sup> Interview PNG #74 (2006).

<sup>184</sup> Interview PNG #94 (2006).

<sup>185</sup> Interview PNG #258 (2009).

<sup>186</sup> Interviews PNG #11(2006); PNG #101 (2006).

their wounds, blood running down their faces, or swollen legs and hands, scratches.”<sup>187</sup> He estimated that about two of the approximately 20 individuals who were arrested every month had been beaten.<sup>188</sup> Another police officer reported that every month, five or six individuals who were brought into the police station, showed signs of having been beaten, but only two or three of them would make complaints.<sup>189</sup> He added that, every month, two or three of these individuals have to be taken to the hospital for medical treatment.<sup>190</sup> According to these police officers, some individuals made complaints about the way they had been treated by PJV security guards, but most of the injured persons have not done so.<sup>191</sup> One of the officers also noted that there may have been many with injuries that he never noticed.<sup>192</sup>

Despite the widespread awareness that individuals being handed over to the police frequently exhibited signs of physical abuse, local police officials admitted that they had rarely, if ever, acted upon complaints by individuals in their custody.<sup>193</sup> One police officer reported, “Sometimes the victims themselves say they were assaulted. We never take any action. The reservists have the authority and their own investigative unit, and they cover what they have done to the illegal miners. They say they haven’t done anything.”<sup>194</sup>

The widespread allegations of the use of violence by PJV security personnel, especially the beating and hosing of individuals while in custody, may, if proven, constitute violations of the right to be free from torture and cruel, inhuman, or degrading treatment.<sup>195</sup> Further, alleged victims have reported severe pain and suffering caused by PJV mine security. Cruel, inhuman, or degrading treatment “should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.”<sup>196</sup> As state actors, PJV security officers are prohibited from inflicting such abuse, which according to their own admissions was, at times, undertaken to punish and deter trespassers. It should be noted that international law provides special guarantees for individuals who have been deprived of their liberty, requiring that they be treated humanely and with respect for the inherent dignity of the human person.<sup>197</sup> Many of the descriptions of actions which may constitute torture or cruel, inhuman, or degrading treatment occurred while individuals were in the custody of PJV security personnel, thereby also implicating this special protection for detainees.

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<sup>187</sup> Interview PNG #216 (2009).

<sup>188</sup> *Id.*

<sup>189</sup> Interview PNG #200 (2009).

<sup>190</sup> *Id.*

<sup>191</sup> Interviews PNG #200 (2009); PNG #216 (2009).

<sup>192</sup> Interview PNG #200 (2009).

<sup>193</sup> Interviews PNG #200 (2009); PNG #216 (2009).

<sup>194</sup> Interview PNG #200 (2009).

<sup>195</sup> PNG is a party to the ICCPR, which prohibits torture and cruel, inhuman, or degrading treatment. ICCPR, *supra* note 3, at art. 7. *See also* Convention against Torture, *supra* note 102, at art. 1(1). The prohibition against cruel, inhuman and degrading treatment extends to acts that might not meet the specific requirements of torture but still involve state action. *Id.* at art. 10(1).

<sup>196</sup> Code of Conduct, *supra* note 3, at art. 5, cmt. (c).

<sup>197</sup> ICCPR, *supra* note 3, at art. 10(1) (“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”).

#### IV. INSUFFICIENT INVESTIGATIONS, PROSECUTIONS, AND PREVENTION

The uncertainty surrounding deaths at the mine was highlighted in 2005, when Prime Minister Michael Somare told Parliament that he wanted information about 29 deaths that had occurred at the mine.<sup>198</sup> He stated that he believed that was too many for one site.<sup>199</sup> “We want to know why they are killing those people, and whether the law allows them to do that,” he said.<sup>200</sup> Despite the widespread acknowledgement of violence at the PJV mine over the past two decades, neither the PJV nor the PNG Government have made sufficient efforts to investigate accounts of abuse related to the mine, to bring alleged perpetrators of human rights violations to account, or to ensure that such violence does not occur in the future. Although there are some cases of investigations by the PJV or the PNG police, they have generally not resulted in transparent and public reports, accountability for perpetrators, or a sufficient reduction of allegations of violence at the mine. Moreover, efforts at the national level to reform police conduct and inquire into allegations of human rights abuses at the mine have yielded minimal benefits.

International human rights law recognizes the right to life and the right to be free from torture and cruel, inhuman, or degrading treatment.<sup>201</sup> As a party to the ICCPR, the PNG Government has a duty to ensure that the allegations of human rights violations at the PJV mine are adequately investigated and prosecuted.<sup>202</sup> This requires the Government to address potential problems with investigation and prosecution, including lack of resources, obstruction by PJV security personnel, and lack of will by local authorities. The ICCPR further demands that State Parties “adopt such laws or other measures as may be necessary to give effect to the rights recognized in the [ICCPR.]”<sup>203</sup> This requirement also confers on the PNG Government a positive duty to take action to prevent future human rights abuses at the PJV mine.

Investigations, perpetrator accountability, and prevention of future abuses have been inhibited by various factors, including:

- *Unwillingness to investigate.* The PNG police have exhibited a reluctance to thoroughly investigate allegations of abuse at the PJV mine. The close relationship between the two parties raises concerns about an inherent conflict of interest.
- *Obstruction of investigations.* Police officers have claimed that the PJV has impeded investigations by, among other things, denying access to crime scenes, limiting access to witnesses, and tampering with evidence.
- *Alleged victims' fears.* Local residents who have allegedly been the victims of violent acts perpetrated by PJV security personnel have often been reluctant to report these incidents to the police because they feared being prosecuted, intimidated, or otherwise targeted for making such claims. This has been especially true of female rape victims.

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<sup>198</sup> *Probe looms for mine deaths, supra* note 105.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> ICCPR, *supra* note 3, at arts. 6 - 7.

<sup>202</sup> *Id.* at arts. 2(3)(a)-(b).

<sup>203</sup> *Id.* at art. 2(2).

- *Insufficient action by the PNG Government.* Although the Porgera Investigative Committee concluded its investigation into incidents of violence related to the PJV mine in 2006, the PNG Government has not released the Committee’s findings, and insufficient action appears to have been taken to deter future incidents.

### Unwillingness to Investigate

Many local residents believe that police are unwilling or unable to investigate incidents of violence relating to the mine.<sup>204</sup> Numerous local residents told the research team that the police did nothing after they made a report about violence.<sup>205</sup> The family member of a man shot and killed by PJV security personnel expressed a common sentiment shared by locals, “We didn’t pursue the case with the police because we were afraid the police wouldn’t do anything.”<sup>206</sup> Some local residents assert that the PNG state police cooperate with, and protect, the PJV.<sup>207</sup> Indeed, the close relationship between the two parties, as evidenced by the MOU between the PJV and the RPNGC, raises concerns about a conflict of interest that limits the independence of the parties and their ability to carry out thorough and impartial investigations.

Police officials claim that their investigative efforts have been constrained by limited resources, including a lack of modern vehicles and basic office equipment.<sup>208</sup> The central government has recognized the need to better equip its police force in the Porgera Valley—with vehicles, firearms, computers, and other supplies—to address the security issues presented by the mine and the massive population influx, but as of March 2009, had not yet provided local police with resources they considered to be adequate.<sup>209</sup>

### Obstruction of Investigations

Other sources within the police force suggested that criminal investigations into reported killings, rapes, and physical abuse at the mine site have been inhibited by a lack of cooperation or even active obstruction by the PJV. Police have complained that PJV security personnel have required them to ask permission before entering the mine site and that PJV security have often impeded access to witnesses, evidence, and crime scenes within the mine site.<sup>210</sup> For example, one police officer claimed that he could have identified the security officers who were involved in a shooting if he was provided with relevant timesheets, but the PJV refused to provide these

<sup>204</sup> Interviews PNG #205 (2009); PNG #231 (2009); PNG #250 (2009).

<sup>205</sup> See, e.g., Interviews PNG #206 (2009); PNG #240 (2009); PNG #251 (2009); PNG #252 (2009).

<sup>206</sup> Interview PNG #231 (2009).

<sup>207</sup> Interviews PNG #197 (2009) (“Government is supporting the company and not the local community.”); PNG #205 (2009) (“Government and PJV as one team. . . ignoring the concerns of landowners”) (2009); PNG #218 (2009) (“The company and the police are one and the same.”); PNG #250 (2009) (the local police and the PJV police “are part and parcel of each other.”).

<sup>208</sup> Interviews PNG #66 (2006) (stated that no vehicles have been received from the Government for eleven years; all photocopying must be done at the PJV); PNG #84 (2006) (photocopying must be done at the PJV).

<sup>209</sup> Opis J. Papo, Consultant/Porgera Project Coordinator, A Long Term Strategy to Address Law & Order Problems in Porgera: To Be Introduced During the State of Emergency (SOE) Operation in Porgera, Enga Province (March 2009) (unpublished strategy paper) (on file with Clinic).

<sup>210</sup> See, e.g., Interviews PNG #66 (2006) (the PJV does not allow police to investigate in the mine site); PNG #84 (2006) (police have to get permission to enter mine site); PNG #200 (2009) (police not allowed to enter mine site, the PJV obstructs access to witnesses and evidence); PNG #216 (2009) (police not allowed to visit crime scene, take pictures, and collect evidence); PNG #255 (2009) (access to mine site delayed); PNG #257 (2009) (denied access to mine site).

documents.<sup>211</sup> Another police officer also alleged that PJV security has not always allowed police vehicles on PJV property, further hampering investigations.<sup>212</sup> A third police officer stated that the mine has not always stopped operations when a death occurs, limiting police access to crime scenes.<sup>213</sup> Members of the police have also stated that they believe that PJV security officers have disturbed crime scenes at the mine site by, for example, removing bodies before police have a chance to investigate.<sup>214</sup> One officer stated, “We are the national police, we can enter any place, but their securities they do not allow us to go in. Only after all of the evidence is destroyed. We are called in late.”<sup>215</sup>

In a crime report obtained by the research team, a local police investigator stated that he was unable to complete the investigation of the shooting death of a fifteen-year-old boy<sup>216</sup> due to a lack of cooperation by PJV officials:

I as being the investigator was trying to carry out the investigation when an expatriate company investigator namely John Merphy [sic] denied assisting me with the photos and any other foreign elements picked up from the scene. To make it worse on my side of the investigation, he also denied providing me the company’s time sheet or duty rooster [sic] of the MS14 [Mobile Squad 14] members concerned on that night. Therefore, the case has been sitting pending till [sic] now.<sup>217</sup>

In a letter to his supervisors, another local police officer expressed concern about his access to crime scenes, witnesses, and evidence related to incidents occurring at the mine:

There are so many deaths at the mine site but we the local police CIDs [investigators in the Criminal Investigation Department] here at Porgera are not called to the crime scenes at the mine site, especially at the open pit. Deaths[that] occurred at the open pit were only brought to the hospital and we local police CIDs only witnessed the post-mortems at the hospital. . . . Some times we are called to the crime scene at the open pit but not . . . to the exact locations of the crime scenes.<sup>218</sup>

Law enforcement personnel interviewed by the research team confirmed that the mine has conducted its own investigations and has sometimes sent its findings directly to the prosecutor without appropriately consulting local police investigators.<sup>219</sup> According to police officers, some PJV investigations have not been carried out in a transparent manner, and in some instances

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<sup>211</sup> Interview PNG #216 (2009).

<sup>212</sup> Interview PNG #84 (2006).

<sup>213</sup> Interview PNG #200 (2009).

<sup>214</sup> Interviews PNG #84 (2006); PNG #216 (2009).

<sup>215</sup> Interview PNG #216 (2009).

<sup>216</sup> *See supra* Part III.B. (Killings and Deaths).

<sup>217</sup> Letter (re: Hindrance In To Police Investigations) (*see* Appendix C: Medical and Police Reports).

<sup>218</sup> Letter (re: Police Report on Deaths at Mine Site Porgera-Enga) (Jan. 12, 2008) (*see* Appendix C: Medical and Police Reports).

<sup>219</sup> Interview PNG #216 (2009).

police investigators have been unaware whether prosecutions have taken place.<sup>220</sup> Although there have been isolated instances where PJV security personnel have been prosecuted for a killing, according to local police officers many deaths have either not been independently investigated or prosecutions have not yet been pursued.<sup>221</sup>

### Alleged Victims' Fears

The fear of retribution for reporting crimes also appears to have inhibited the investigation of incidents of violence related to the PJV mine.<sup>222</sup> Several individuals said that they believed the police would fail to act against the perpetrators, and would instead take actions against the victims, such as charging them with trespassing.<sup>223</sup> One resident complained, "Police were no help. We were scared so we didn't complain to the police."<sup>224</sup>

Rape victims are particularly unlikely to report incidents to the police. As mentioned above, the stigma attached to rape and the possibility of being charged with trespassing means that some women do not report alleged rapes to the police.<sup>225</sup> Furthermore, past experience has convinced some women that the police will simply do nothing. One woman described:

I did not go to hospital. I was scared that I might go to a [jail] cell. I stayed home. If I went to the police station, I know that I was going to get nothing. I know that I wouldn't be getting any help. I've seen this happen to others, and I knew nothing would happen.<sup>226</sup>

Indeed, a local police officer confirmed that they have rarely pursued claims of rape by PJV security personnel.<sup>227</sup> According to one police officer interviewed in 2009, the Porgera police did not have any female investigators, a factor likely contributing to the reluctance of women to report rapes.<sup>228</sup> In fact, some local police criminal investigators claimed that they were unaware of rapes occurring in or near the mine.<sup>229</sup> "There is nothing reported like rape at the mine site to us. If there was a rape, we would go and investigate."<sup>230</sup>

### Insufficient Action by the PNG Government

The widespread, consistent, and longstanding allegations of severe violations of human rights related to the PJV mine demand attention at the national level, yet the PNG Government has not adequately addressed the alleged patterns of abuse committed by PJV security personnel. In 2005, as the result of significant local pressure, the PNG Government instituted a Porgera Investigative Committee. Based on interviews with individuals with knowledge of the

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<sup>220</sup> Interviews PNG #199 (2009); PNG #216 (2009).

<sup>221</sup> Interviews PNG #199 (2009); PNG #200 (2009). *See also supra* notes 204, 205.

<sup>222</sup> Interviews PNG #86 (2006); PNG #218 (2009).

<sup>223</sup> Interviews PNG #210 (2009); PNG #227 (2009).

<sup>224</sup> Interview PNG #86 (2006).

<sup>225</sup> *See* Interviews PNG #2 (2006); PNG #247 (2009). *See also* Interview PNG #212 (2009) (rape victim imprisoned for seven months for trespassing after reporting rape.)

<sup>226</sup> Interview PNG #2 (2006).

<sup>227</sup> Interview PNG #200 (2009).

<sup>228</sup> *Id.*

<sup>229</sup> Interviews PNG #228 (2009); PNG #255 (2009). *See also* PNG #216 (2009).

<sup>230</sup> Interview PNG #228 (2009).

Committee's work, the investigations appear to have been limited, narrow, and undertaken over a short time period. The results of the investigations have not been released by the Government, despite the fact that the research was completed by late 2006.

It should be noted that the Government has taken a number of steps to reform the police force. According to a high ranking police official, since 2007, the RPNGC has undertaken an initiative to train law enforcement personnel, including the reservists serving at the PJV mine, on human rights principles and "how to deal with the general public."<sup>231</sup> The police have also initiated programs to increase cooperation with local community members in law enforcement efforts and to educate the public about the dangers of trespassing and illegal mining.<sup>232</sup> However, these efforts have not addressed the fundamental concerns of local residents relating to the use of violence by PJV security personnel and have not overcome the inadequacy of investigations into alleged human rights abuses.

#### Lack of Response to Research Team's Inquiries

The research team has made significant efforts to engage with the PNG Government and Barrick, PJV's owner and operator, in order to obtain important information about the mine. In 2008 and 2009, the research team sent three letters to the PNG Government, requesting to speak with government officials about the PJV mine and asking for access to relevant documents relating to the mine, including the report of the 2006 Porgera Investigative Committee.<sup>233</sup> These letters have not been answered.<sup>234</sup> In March 2009, the research team was able to arrange meetings with government officials in the Mineral Resources Authority (MRA) and the Office of the Prime Minister.<sup>235</sup> However, these meetings did not result in the production of information relating to incidents of violence at the mine. In fact, an official at the MRA declined to allow his comments during the meeting to be incorporated into the record for the purposes of this report. In addition, a secretary to an official in the Prime Minister's office indicated that he would not be willing to speak with the team about the Porgera Investigative Committee. Thus, to date, there has been no official response regarding inquiries about the mine.

Over the same time period, the research team sent three letters to Barrick requesting a meeting or phone call, information regarding specific instances of violence, and specific documents relating to the mine.<sup>236</sup> The letters included specific requests for reports on the human and environmental

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<sup>231</sup> Interview PNG #260 (2009).

<sup>232</sup> Interview PNG #260 (2009); Alexander Rheeneey, *Govt Warns the Public to Stay Away from Barrick Gold's Porgera Mine*, THE PACIFIC MAGAZINE, Dec. 18, 2007.

<sup>233</sup> Letter from Harvard Law School Human Rights Program to Malcolm Balbuni, Department of Mining (Apr. 15, 2008) (on file with Clinic); Letter from Harvard Law School Human Rights Program to Steven Rafael, Office of the Prime Minister (Nov. 4, 2008) (on file with Clinic); Letter from Harvard Law School Human Rights Program to Philip Samar, Mineral Resources Authority (Nov. 4, 2008) (on file with Clinic).

<sup>234</sup> In 2008, the research team called a senior official in the Office of the Prime Minister. The official's secretary first informed the team that the official was unavailable, and later that he was unwilling to speak with the team about the status of the Porgera Investigative Committee. A subsequent letter to the official did not receive an answer.

<sup>235</sup> Interviews PNG #259 (2009); PNG #261 (2009).

<sup>236</sup> Letter from Harvard Law School Human Rights Program to Peter Munk, Chairman, Barrick Gold Corporation (Apr. 15, 2008) (on file with Clinic); Letter from Harvard Law School Human Rights Program to Katrina White, Regional Legal Counsel, Barrick Australia Pacific (Nov. 3, 2008) (on file with Clinic); Letter from Harvard Law School to Patrick J. Garver, Executive Vice President and General Counsel (Feb. 28, 2009) (on file with Clinic).

impact of the mine as well as the report of the Porgera Investigative Committee.<sup>237</sup> Barrick has responded to the letters, but save for information on one incident of violence, has not provided a response about specific killings at or near the mine. Similarly, Barrick has not provided documents relating to security arrangements at the PJV mine.<sup>238</sup>

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<sup>237</sup> *Supra* note 236.

<sup>238</sup> Letter from Katrina White, Regional Legal Counsel, Barrick Australia Pacific to Harvard Law School Human Rights Program (May 14, 2008) (on file with Clinic); Letter from Patrick J. Garver, Executive Vice President and General Counsel to Harvard Law School Human Rights Program (Nov. 19, 2009) (on file with Clinic); Letter from Patrick J. Garver, Executive Vice President and General Counsel to Harvard Law School Human Rights Program (Mar. 18, 2009) (on file with Clinic).



## V. BILL C-300 AND ITS IMPORTANCE TO CASES LIKE THE PJV MINE

Bill C-300's stated purpose is "to ensure that corporations engaged in mining, oil or gas activities and receiving support from the Government of Canada act in a manner consistent with . . . Canada's commitments to international human rights standards."<sup>239</sup> The allegations of abuses by PJV security personnel around the mine as well as the lack of independent investigations of incidents and effective remedies for victims demonstrate the importance of a bill like C-300.

### Need for Further Review by Home Country

First, the allegations and information outlined above demonstrate three key areas requiring further review by the Canadian Government: (1) the relationship between the PJV and the PNG Government in order to examine the likely conflict of interest that may be inhibiting investigations,<sup>240</sup> (2) consistent allegations of human rights abuses, including sexual violence,<sup>241</sup> killings,<sup>242</sup> and other physical abuses<sup>243</sup> that warrant independent investigations and appropriate mechanisms for effective remedies, and (3) the lack of sufficient investigation, prosecution, and remedy by the PNG Government of alleged abuses by the PJV and state security forces.<sup>244</sup>

The PNG Government has not met its international obligations to investigate serious allegations of human rights abuses and provide adequate remedies for aggrieved individuals. The failure to investigate is exemplified by the PNG Government's refusal to release the findings of the 2006 Porgera Investigative Committee. When violations are allegedly committed by a foreign corporation and when the host country fails to meet its investigation obligations, there is a clear need for other actors, such as home countries, to fill the void. Canada has an interest in monitoring the activities of its corporate citizens and, especially, ensuring that corporations

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<sup>239</sup> Corporate Accountability for the Activities of Mining, Oil or Gas Corporations in Developing Countries Act, Bill C-300, at § 3 [hereinafter Bill C-300].

<sup>240</sup> See MOU, *supra* note 25, at § 1 (establishing "the deployment of an agreed number of Reserve Police (who are employees of the PJV)" where the PJV "shall be responsible for all costs and expenses associated with the Reserve Police, made up of authorized PJV employees, including remuneration, training and the provisions of uniforms and equipment."). See also Fly-in/Fly-Out Agreement, *supra* note 33, Part C.9 (requiring the Government to "increase the number of policemen stationed at Porgera to a minimum of thirty . . . for the remainder of the life of the Porgera Mine"); MOA, *supra* note 32, at 11 (providing that the government "increase reserve police to numbers sufficient to provide effective support to full-time police officers stationed at Porgera."); Annexure A, *supra* note 27, at E (providing that the Government "increase the police staffing level at Porgera . . . once the new police station and associated housing now being constructed with funds provided jointly by [the PJV] and the State is completed" and stating that "[the PJV] will assist, to an extent to be agreed, in funding the stationing of a Mobile [Police] Squad at Porgera on a permanent basis.").

<sup>241</sup> The research team has documented several incidents of sexual violence, including rape, by PJV security personnel against women inside the mine site. In interviews with current and former PJV security guards, several confirmed that numerous women were raped. See Interviews, *supra* note 50.

<sup>242</sup> PJV security personnel have allegedly killed individuals in and around the mine on multiple occasions by means of shootings or pushing rocks onto individuals. See Interviews *supra* notes 107, 113.

<sup>243</sup> The research team documented numerous instances of alleged abuse, where PJV security personnel allegedly regularly beat individuals with wooden sticks, butts of guns, punches, slaps, and kicks with safety boots. See Interviews *supra* note 173.

<sup>244</sup> The results of the investigation by the Porgera Investigative Committee have not yet been released by the Government, despite the fact that the research was completed by late 2006. Many local residents believe that police are unwilling or unable to investigate incidents of violence relating to the mine. See Interviews *supra* notes 204, 205. Police officials cite limited resources and the PJV's lack of cooperation in investigation as reasons investigations have been inhibited. See Interviews *supra* notes 208, 210.

receiving Canadian Government support are not violating international human rights law. Bill C-300 would provide a mechanism for reviewing serious allegations such as those raised in this submission.

#### International Human Rights Law Provides Clear Standards

Second, Bill C-300 and international human rights law provide clear and manageable guidance regarding an inquiry into a situation like the one at the PJV mine.<sup>245</sup> As discussed above, the allegations of violence at the mine, if proven, implicate the right to life and prohibitions on cruel, inhuman, or degrading treatment and torture, including rape.<sup>246</sup> As outlined in sections III.A-C, international human rights law clearly prohibits gang rape, torture, and the arbitrary deprivation of life. These rights are absolute and may never be abrogated.

The important factual and legal question that arises with respect to some of the accounts described above, however, is whether the use of force by a particular security guard constituted torture or a violation of the right to life, or, rather, whether force was lawfully used in defense of property or life. In such cases, international law also provides clear legal guidance on the type and degree of force that may be used.

Bill C-300 specifically identifies the Voluntary Principles on Security and Human Rights as a source of guidance.<sup>247</sup> The Voluntary Principles in turn reference two important documents: the U.N. Code of Conduct for Law Enforcement Officials (Code of Conduct) and the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles).<sup>248</sup> Together, these documents provide clear standards by which a monitoring body may examine allegations like those outlined in this brief.

The U.N. documents offer precise standards for assessing the conduct of PJV security personnel. Both the Code of Conduct and Basic Principles apply to law enforcement officials, defined as “all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.”<sup>249</sup> The Police Reservists and Mobile Police Squads, as government police officials exercising state policing functions of arrest and investigation, are law enforcement officials as defined by the Code of Conduct and Basic Principles. Further, by

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<sup>245</sup> In § 5(2), Bill C-300 offers that the relevant evaluative guidelines, which are to be promulgated, will be: “(b) the *Voluntary Principles on Security and Human Rights*; (c) human rights provisions that ensure corporations operate in a manner that is consistent with international human rights standards; and (d) any other standard consistent with international human rights standards.” Bill C-300, *supra* note 239, at §§ 5(2)(b)-(d).

<sup>246</sup> See *supra* Parts III.A. (Sexual Violence), III.B. (Killings and Deaths) and III.C. (Other Physical Abuses).

<sup>247</sup> Bill C-300, *supra* note 239, at § 5(2)(b) (“The guidelines shall incorporate: . . . the *Voluntary Principles on Security and Human Rights*”).

<sup>248</sup> First, the Voluntary Principles state: “In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and Firearms.” Second, the Voluntary Principles state: “Private security should act in a lawful manner. They should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the U.N. Principles on the Use of Force and Firearms by Law Enforcement Officials and the U.N. Code of Conduct for Law Enforcement Officials. . . .” The Voluntary Principles on Security and Human Rights 4-5, [http:// www.voluntaryprinciples.org/files/voluntary\\_principles.pdf](http://www.voluntaryprinciples.org/files/voluntary_principles.pdf) (last visited Nov. 13, 2009).

<sup>249</sup> Code of Conduct, *supra* note 3, at art. 1, cmt. (a).

paying and supervising these officials, the PJV has assumed a *state* function, namely policing.<sup>250</sup> Under both UN documents, the Police Reservists and Mobile Police Squads are required to respect and protect human rights.<sup>251</sup> Finally, even those PJV security personnel who may not be state actors should be held to Barrick's internal security standards, which are based on the Voluntary Principles.<sup>252</sup>

The Code of Conduct stipulates that law enforcement officials may use force "only when strictly necessary and to the extent required for the performance of their duty."<sup>253</sup> Thus, the Code of Conduct allows for the use of force only in "exceptional" cases<sup>254</sup> and as a last resort.<sup>255</sup> In numerous documented incidents, PJV security personnel have allegedly resorted to the use of force against unarmed trespassers, including women. Allegations of shootings of trespassers, as well as beatings and hosings of those already in custody, raise serious concerns about whether the force being employed by PJV security personnel was both "necessary" and "proportionate" as required by international law.<sup>256</sup> Moreover, when the use of force is "unavoidable," the Basic Principles provide that law enforcement must "exercise restraint" and act in a manner so as "to minimize damage and injury, and to preserve human life."<sup>257</sup> Even when locals threw rocks or were present in large numbers, incidents where firearms were used must still be measured against these standards.<sup>258</sup> In those cases, for example, where an individual was shot in the back, or shot from a significant distance, serious doubts are raised about whether force was lawfully used. In addition, law enforcement officials, including PJV security personnel, have a duty to give a clear and advanced warning of the intent to use firearms.<sup>259</sup> Moreover, whenever security personnel use firearms, a report should be promptly made to appropriate supervisors and state authorities.<sup>260</sup> Based on the information available to the research team, it appears that PJV

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<sup>250</sup> See MOU, *supra* note 25, at § 1 (establishing "the deployment of an agreed number of Reserve Police (who are employees of the PJV)" where the PJV "shall be responsible for all costs and expenses associated with the Reserve Police, made up of authorized PJV employees, including remuneration, training and the provisions of uniforms and equipment.").

<sup>251</sup> Code of Conduct, *supra* note 3, at art. 2 ("In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.").

<sup>252</sup> Barrick Gold Corporation, Corporate Social Responsibility - Ethics, <http://www.barrick.com/CorporateResponsibility/Ethics/default.aspx> (last visited Nov. 13, 2009).

<sup>253</sup> Code of Conduct, *supra* note 3, at art. 3, cmt. (a) ("This provision emphasizes that the use of force by law enforcement officials should be exceptional"). See also Basic Principles, *supra* note 3, at art. 4 ("Law enforcement officials, in carrying out their duty, shall, as far possible, apply non-violent means before resorting to the use of force . . . . They may use force . . . only if other means remain ineffective or without any promise of achieving the intended result."); *id.* at art. 5(a) (law enforcement shall "act in proportion to the seriousness of the offence.").

<sup>254</sup> Code of Conduct, *supra* note 3, at art. 3, cmt. (a).

<sup>255</sup> Basic Principles, *supra* note 3, at art. 4.

<sup>256</sup> *Id.* at art. 3; Basic Principles, *supra* note 3, at art. 5(a).

<sup>257</sup> Basic Principles, *supra* note 3, at arts. 5(a)-(d); *id.* at art. 9 ("[I]ntentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.").

<sup>258</sup> *Id.* at art. 8 ("Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles."). See also Code of Conduct, *supra* note 3, at art. 5.

<sup>259</sup> Basic Principles, *supra* note 3, at art. 10 ("[L]aw enforcement officials shall . . . give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so will unduly place [them] at risk or would create a risk of death or serious harm to other persons."). See also *id.* at art. 11(e).

<sup>260</sup> *Id.* at art. 6 ("Where injury or death is caused by the use of force and firearms by law enforcement officials they shall report the incident promptly to their superiors."); Code of Conduct, *supra* note 3, at art. 3(c) ("In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.").

security personnel have failed in their duty to submit such prompt reports to the Police Station Commissioner.

Furthermore, Bill C-300's incorporation of the Voluntary Principles provides guidance for evaluating a company's conduct with regard to investigations of alleged abuses.<sup>261</sup> The Voluntary Principles state that companies should "record and report any credible allegations of human rights abuses," "urge investigation", and cooperate with local investigations into uses of force.<sup>262</sup> In addition, the Voluntary Principles urge that matters involving the use of force by private security be referred to local authorities, and that disciplinary action be taken where appropriate.<sup>263</sup> The existence of the MOU and the allegations described in this report raise concerns about Barrick's independence from the PNG Government, and therefore its ability to comply with these commitments. The PJV has not demonstrated a commitment to facilitate, assist, or promote good faith investigations by neutral parties into allegations of grave human rights abuses related to the operation of the PJV mine. For example, reports indicate that PJV personnel have obstructed the access of state investigators to crime scenes and witnesses.<sup>264</sup> While the PJV has claimed that it has conducted its own investigations, the findings of these investigations have not been publicly released and it remains unclear whether alleged perpetrators are appropriately disciplined or prosecuted in all cases.<sup>265</sup>

Bill C-300 would help provide for independent review of credible complaints when host countries such as PNG have failed to investigate. Years of consistent allegations at the PJV mine demonstrate the need for the creation of monitoring mechanisms that utilize impartial third parties to assess compliance with international standards. Bill C-300 creates such a mechanism, and is an important step toward ensuring that Canadian corporate citizens comply with fundamental human rights obligations.

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<sup>261</sup> Bill C-300, *supra* note 239, at § 5(2)(b).

<sup>262</sup> Voluntary Principles, *supra* note 248, at 5-6.

<sup>263</sup> *Id.* at 6.

<sup>264</sup> See *supra* note 210 and accompanying text.

<sup>265</sup> See *supra* notes 219-21 and accompanying text.