RAID
Rights and Accountability in Development

MiningWatch Canada
Mines Alerte
Suite 508, 250 City Centre Avenue, Ottawa, Ontario, Canada K1R 6K7
tel. (613) 569-3439 — fax: (613) 569-5138 — info@miningwatch.ca — www.miningwatch.ca

NGOs Warn: 'Companies Duck Responsibility for Abuse Because of Flawed Human Rights Guidance, Lack of Independent Oversight'

(Ottawa/Oxford, March 9, 2016) In April 2016 the Government of Canada takes over as chair of the Voluntary Principles on Security and Human Rights (the "VPs"). NGOs are calling on the Canadian government to seize the opportunity to correct practices that undermine the prospects of impoverished communities overseas to seek remedy for corporate abuse.

Canada and other governments (Switzerland, the US, and the UK) often champion business and human rights standards – the most prominent being the UN Guiding Principles on Business and Human Rights (GPs) and the Voluntary Principles on Security and Human Rights (VPs). The VPs claim to offer practical guidance to extractive sector companies about maintaining the safety and security of their operations while ensuring respect for human rights. A key objective for governments has been to harmonise the two instruments, in particular around the issue of companies' own mechanisms to resolve the grievances of local people harmed as a result of their operations.

Both MiningWatch Canada and the British NGO Rights and Accountability in Development (RAID) warn that the GPs and the VPs allow companies to privatise and control the implementation of human rights, and that this is most apparent in the implementation of "operational level" grievance mechanisms.

"One stated purpose of the GPs is to use company-based grievance mechanisms as a means to nip problems in the bud and to prevent them from escalating into human rights violations. Despite this, they have been used in the most serious cases of abuse – including fatal shootings and sexual assaults by mine security officers or police," said Patricia Feeney, RAID's Executive Director.

John Ruggie, the former UN mandate holder on business and human rights and now an adviser to Barrick Gold Corporation, is sanguine, saying, "Companies are finding that grievance mechanisms can provide immediate remedy for certain kinds of human rights harms."[1] But for the victims of corporate abuse, company-controlled mechanisms offer few procedural safeguards and result in take-it-or-leave-payments or remedy packages, which, as a general rule, are not even remotely commensurate with the alleged harm that the victims have suffered.

"From our experience of company grievance mechanisms in Papua New Guinea and Tanzania, run by Barrick Gold and Acacia Mining (formerly African Barrick Gold), they seem to be more about protecting

[1] Interview with John Ruggie, Barrick without Borders, 10 December 2015. Available at: http://barrickbeyondborders.com/people/2015/12/an-interview-with-john-ruggie/

corporations from legal liability through the legal waivers they demand in return for remedy, and about refurbishing a company's reputation, than providing an effective remedy for the victims of corporate-related human rights abuse," says MiningWatch spokesperson Catherine Coumans.

Problems with the Voluntary Principles which the NGOs are calling on the Government of Canada to address during its chairmanship are:

- **The VPs' open door policy**: companies with poor human rights record are admitted on the basis of an action plan, nothing more.
- **Lack of transparency**: there is general disregard for the need for public reporting or accountability. Proceedings are confidential; it is not compulsory for companies to report on their human rights record; and those that do so produce only generalised accounts stripped of instances where violations have been alleged.
- **Problematic MOUs**: participants in the VPs are encouraged to draw up memoranda of understanding (MOUs) between companies and state security forces on which they depend to protect their facilities. But MOUs appear to justify continued reliance on public forces even when these are known to violate human rights. The VPs do not require companies to disclose the content of these MOUs.
- **A deeply-flawed complaints mechanism**: alleged abuses can only be raised by participants in the VPs and not by victims or local communities; examination of the complaint occurs behind closed doors; and peer review of the outcome makes it highly unlikely that a company would ever be found to have violated the VPs.

Five years since they were adopted by the Human Rights Council, deficiencies in the UN Guiding Principles highlighted by RAID and MiningWatch include:

- **No clear requirement** that corporate human rights due diligence – whereby companies or consultants in their pay 'self-report' on their human rights impacts – be accompanied by independent monitoring systems.
- **No explicit recognition of imbalances in power** between companies and victims when seeking justice. The UNGPs recognise that "business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome," but this is in essence how large mining companies are operating grievance mechanisms.
- **No acknowledgement that company-led out-of-court settlements** can be an obstacle to justice for victims, in particular when crimes are alleged to have been perpetrated. Companies investigating complaints 'in-house' often exonerate themselves or their subcontractors and this can influence how cases are subsequently handled by public authorities.
- **No strong mechanism** to assess whether companies and governments have put the human rights principles into operation.

Recommendations for strengthening the GP and the VPs

- All fatalities and serious injuries at company facilities and mine sites, from whatever cause, should be immediately and publicly reported.
- There needs to be much greater transparency and independent scrutiny of human rights impact assessments.
- To avoid an obvious conflict of interest, consultants and organisations that advise a company on human rights or provide training under the GPs or VPs should not also be involved in the monitoring or investigation of incidents.
- MOUs and contractual arrangements with public and private security providers should be disclosed.
- The use of legal waivers should be excluded as part of any settlement reached in a non-judicial grievance process.

- Governments should make clear that operational-level grievance mechanisms are not an appropriate mechanism for dealing with cases of gross human rights violations and serious crimes such as torture, rape, and killing.

A new report by RAID, released in advance of next month's plenary meeting of the Voluntary Principles in Colombia, *Principles without justice: the corporate takeover of human rights*, (here) examines the deficiencies in the VPs and the UN Guiding Principles and further details recommendations for reform.[2]

ENDS

For information please contact:

- Catherine Coumans, MiningWatch Canada, tel. +1 (613) 569-3439; e-mail catherine@miningwatch.ca
- Tricia Feeney, RAID, tel: + 44 1865 436245; mobile + 44 7796 178 447; e-mail tricia.feeney@raid-uk.org

[2] *Principles without justice: the corporate takeover of human rights* available on RAID's website at: http://www.raid-uk.org/documents/principleswithoutjustice-pdf