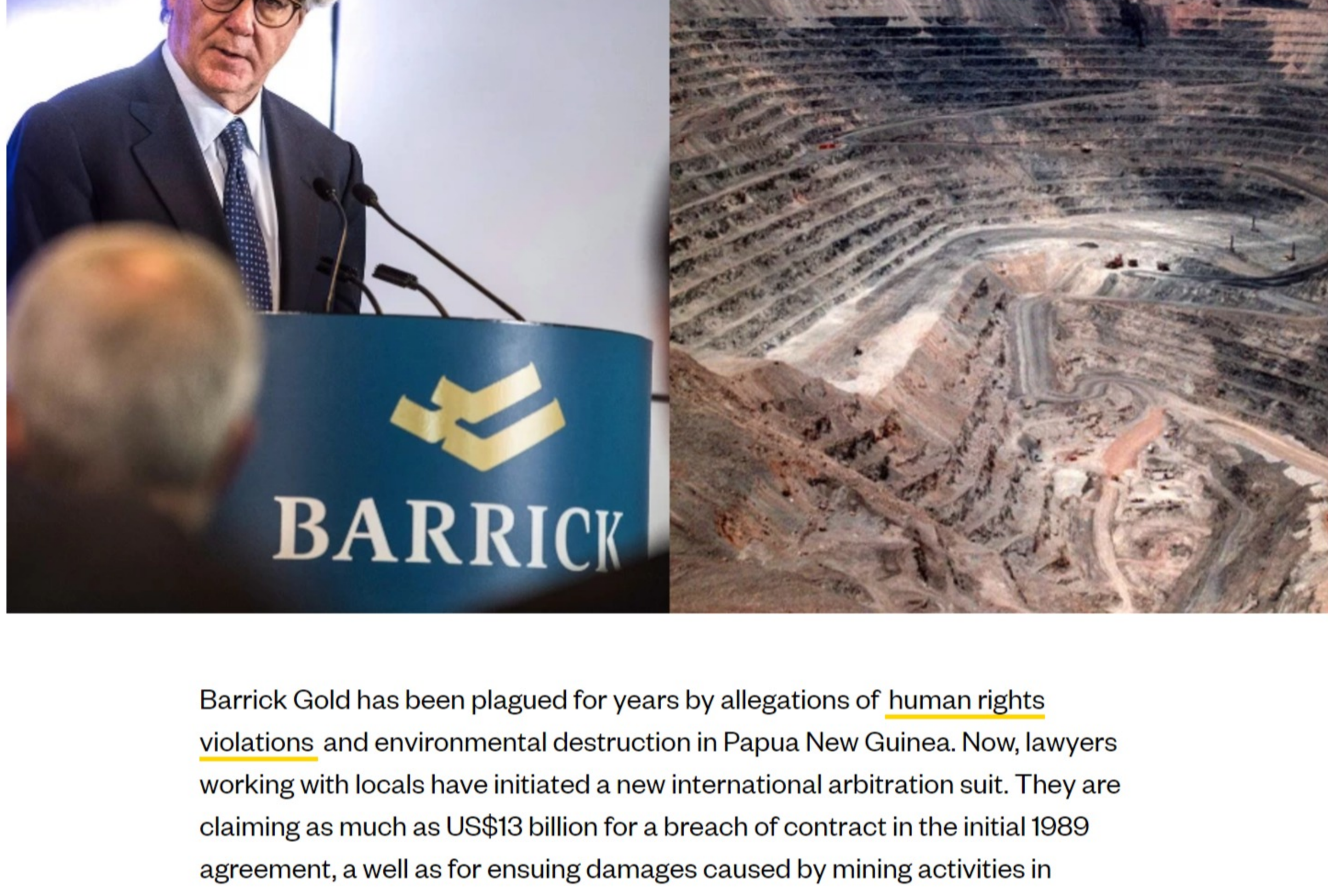


# Barrick Gold has been hit with a multi-billion dollar lawsuit

By **Jax Jacobsen** Mar 15, 2019



Barrick Gold has been plagued for years by allegations of [human rights violations](#) and environmental destruction in Papua New Guinea. Now, lawyers working with locals have initiated a new international arbitration suit. They are claiming as much as US\$13 billion for a breach of contract in the initial 1989 agreement, as well as for ensuing damages caused by mining activities in Porgera.

The mine is one of Barrick's 11 gold mines worldwide, producing 204,000 ounces of gold in 2018, with production expected to grow to between 240,000 and 260,000 ounces in 2019. As surface-level mineral deposits become rare, retaining ownership of producing mines is critical for maintaining overall production levels and profits.

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The arbitration marks a new direction in a long-simmering dispute between the local community and one of the world's largest gold miners, and may inspire other anti-mining groups to take a similar action. A variety of claims are being brought in light of alleged abuses committed by the Canadian gold mining company, including a US\$2 billion claim to address the environmental destruction caused by the Porgera gold-silver mine.

When asked to respond to the arbitration and the claims brought by the Porgera community, Barrick spokesperson Kathy du Plessis told VICE News over the phone "we are not commenting at this stage."

Another Barrick spokesman, Andy Lloyd, earlier told VICE News that the Porgera mine is a joint venture shared with China's Zijin Mining, as China's Zijin Mining bought 47.5 percent of Barrick (Niugini) Ltd, which owns the mine, and implied that Barrick was not the only party responsible for failing to address the community's concerns.

When faced with previous complaints about living conditions around the mine, Barrick hired a consulting firm in 2006 to investigate and even considered moving the Porgera population away from the mine, according to [MiningWatch's](#) Catherine Coumans. The consulting group's report was released in 2007, but Barrick changed its mind, opting to leave the population where it was, and only assisting with moves on a "need to move" basis.



## The Killing Continues at a Canadian-Owned Mine In Tanzania

In the past three years, 69 people have been killed by police at the North Mara Gold Mine.

**VICE News** / Apr 19, 2014

The suit also alleges a breach in the initial 1989 contract with the state—first reached by mining company Placer Dome, the first company looking to develop Porgera's mineral resources, which would be acquired by Barrick in 2005. The government agreed to use proceeds from the investment to provide development, schooling, and hospitals to the region, as well as relocating inhabitants if their land was disturbed by mining. Local inhabitants say these conditions were never met by the mining company.

Other claims include damages for the lack of a functioning hospital, incidents of violation of human rights—including the alleged [gang rape of 19 women](#) at the hands of mine security employed by Barrick—and failing to pay occupancy fees to local villagers from the start of mining activities in 1989. Combined, these claims are likely to add up to more than US\$13 billion, said Andrew Kostopoulos, the lead lawyer in the arbitration suit.

The destruction to the region has been immense, one community leader said.

"There's been massive catastrophic environmental damages that have impacted on people's lives," said Jonathan Paraia, chairman of the Justice Foundation for Porgera. He pointed to how the entire local water has been contaminated by mine waste, making it impossible for locals to drink, fish, or do their washing.

All of the valleys in the area have also been filled with waste, [MiningWatch](#) Canada's Catherine Coumans said, making it impossible to subsistence farm. With no way to develop crops, villagers have taken to panning for residual gold in the waste streams, where they are met by mine security officers, who in the past have shot and killed several men for being near the mine site.

"It's such a hellish place," Coumans said. "I don't know of another mine site that is quite as awful in terms of people's living conditions."

Kostopolous was taken aback by the "horrendous mountain" of mine waste as he descended into Porgera, as well as the huge amount of smoke coming out of the smelter and mining areas. He said he'll never forget this nonstop "reddish copper fluid" of mine waste running down the mountain.

"If this were in Canada or Australia, this site would have been shut down 10 years ago," Kostopoulos said.

Because of the nature of the mining contracts as they were set up in 1989, Porgerans are unable to sue Barrick directly, and must instead sue their national government.

Porgera representatives had no other choice than to go through international arbitration. In 1995, the government of Papua New Guinea prohibited PNG citizens for filing suits against mining or petroleum projects in foreign courts.



## Indigenous People in Chile Are Worried About Canadian Mining Sparking a Genocide

The Diaguita say that the mine threatens the mountain glaciers that provide water for them and their agricultural land.

**VICE News** / Jun 14, 2014

Kostopolous was confounded by the structure of the agreement, which saw Barrick Gold enter into a contract not with the local community living around the mine, but with the government. In this contract, Barrick agreed to indemnify the PNG government, and be liable for all damages for which the government might be sued, should the Porgera community ever sue their national government.

The local community of Porgera signed a separate contract with the PNG government, which then allowed mining to take place in their community in exchange for development of roads and the provision of schools and a hospital.

This structure is known as 'privity of contract', which means a third party—in this case, the Porgera community—could not directly sue Barrick Gold.

Kostopolous, who points out he has 30 years experience practicing commercial law, said he was stymied by the arrangement. "It took me a long time to understand it," he said. "You look at this as a lawyer, and you think, why wouldn't you have all the parties in [one] contract? Why would you separate parties in an agreement about one issue?"

He has his own guess as to why Barrick structured the agreement this way; he believes Barrick never expected the PNG government to be sued by its own people.

In general, these types of agreements are not made in Canada. However, they're not uncommon in less developed parts of the world, particularly when one of the joint venture partners is a Chinese mining company. Chinese firms are under less pressure to observe international human rights and environmental practices.

Perrine Toledano, who heads the [Columbia Center on Sustainable Investment](#) (CCSI)'s extractive department said, "Most companies have an indemnity clause in their contracts related to claims and damage liabilities." But what varies is how broad the clause is, she said.



## Violence escalating at notorious mine co-owned by Canadian company, locals say

Canadian company Barrick Gold says it is investigating new allegations of violence near its Papua New Guinea mine

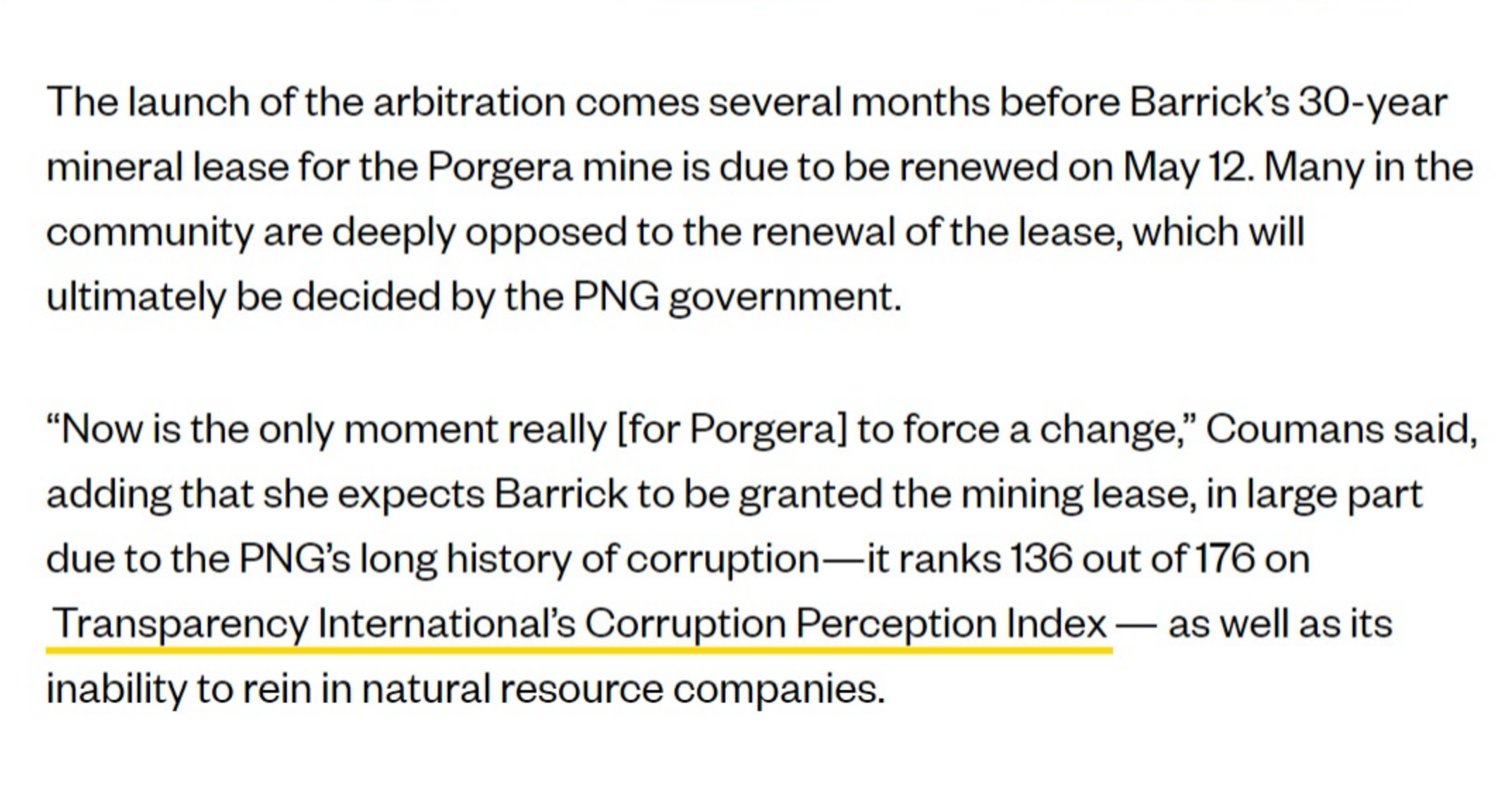
**VICE News** / Mar 30, 2017

Years of allegations of unfair mining contracts have led to a global push for greater transparency, resulting in organizations like Publish What You Pay (PWYP) and increased calls for more nations to sign up to the Extractives Industry Transparency Initiative.

These kinds of agreements only underlines the need for more openness in resource contracts, according to the Natural Resources Governance Institute, an organization focused on helping governments ensure that mineral wealth is returned to their countries.

The Porgera community initially tried to reach out to Barrick to avoid arbitration, Kostopoulos said, preferring an alternative dispute resolution that would allow both parties to walk away satisfied. Kostopoulos and his team have been preparing the case since 2015.

"What actually happened—it's bizarre," Kostopoulos said. "Instead of Barrick saying 'let's get their [the community's] consent, they're attacking the people of Porgera,'" by attacking them and threatening to meet with them with a "team of 500 lawyers."



The launch of the arbitration comes several months before Barrick's 30-year mineral lease for the Porgera mine is due to be renewed on May 12. Many in the community are deeply opposed to the renewal of the lease, which will ultimately be decided by the PNG government.

"Now is the only moment really [for Porgera] to force a change," Coumans said, adding that she expects Barrick to be granted the mining lease, in large part due to the PNG's long history of corruption—it ranks 136 out of 176 on [Transparency International's Corruption Perception Index](#)—as well as its inability to rein in natural resource companies.

If international arbitration—which could take several years—is successful and an award is rendered, Paraia has big plans for how that money will be spent.

"Build the town, build the roads," he said. "Then provide the necessary services like hospitals, schools, and also develop the area that the company and the government failed to do."

*Cover image of Barrick Chairman in 2018 via Adella Harding/Elko Daily Free Press, and Barrick's Betze-Post open pit near Carlin, Nev. via CP/Aaron Vincent Elkaim.*