



Advancing women's land and resource rights.

# **PAPUA NEW GUINEA: SEEKING GENDER EQUITY IN DISTRIBUTION OF MINING BENEFITS TO COMMUNITIES**

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## Introduction

Mining is a potential driver of economic development. Even among detractors there is often a belief that benefits from mining, if done "right", can help improve the lives and livelihoods of impacted communities. Mining – done in both small-scale artisanal activities and large-scale commercial projects -- can pose challenges and opportunities for women and men. However, women often bear an unequal burden of the negative impacts from mining and go without a share of benefits if they accrue to or are made available to stakeholders.

Today, there is growing, but still limited, attention among donors, civil society, governments, and the private sector to the importance of understanding mining-related gender dynamics and how they might influence a mining project's potential to harm women or improve their well-being. There is much to be learned at both the macro and micro levels. At the higher level, what standards for best practices exist? What are the enabling conditions that can prompt gender dynamics to be taken into consideration at the start of small-scale or large-scale mining projects and continue throughout longer term operations? What are the primary challenges to embracing best practices and creating a landscape that provides for the enabling conditions? At the grassroots, given the ever-varying and complex social, economic, and political realities, what specific measures can be taken to ensure that women are seen, benefit from mining activities, and (in all cases) are not harmed by mining activities?

With support from the Ford Foundation, Resource Equity undertook three case studies done in Peru, Papua New Guinea, and Côte d'Ivoire.<sup>1</sup> The case studies represent different kinds of actors, funders, geographies, and political and cultural contexts; a range of stages in the project lifecycle; and diverse objectives and project approaches. Each study included desk and field-based research and relied upon strong collaboration with local partners. All three of the case studies are summarized in a synthesis report, which was published by Resource Equity in November 2019.<sup>2</sup> At the time of publication, case study collaborators, donors, practitioners, and civil society representatives convened to present and discuss findings.

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<sup>1</sup> The case studies addressed projects that are in the mining sector. However, much of the analysis could also be applicable to extractive resource projects more broadly.

<sup>2</sup> Elisa Scalise, *Women, Land, and Mining: Effective Strategies for Improved Global Practice: Synthesis Report Based on Findings from Three Global Case Studies from Côte d'Ivoire, Papua New Guinea, and Peru* (Resource Equity, 2019), available at <https://resourceequity.org/promising-practices-gender-extractives/>.

## 1 BACKGROUND

### a. Country Context

Papua New Guinea ("PNG") occupies the eastern half of the West Pacific island of New Guinea; together with smaller islands of New Guinea, New Ireland, the Autonomous Region of Bougainville, and around 600 smaller islands and atolls. It is rich in natural resources and is one of the most culturally and biodiverse countries in the world. Over 800 different languages are spoken among over 1000 distinct ethnic groups. It has rich and complex cultural dynamics that are deeply rooted in tribal and ethnic identity, social institutions, and land. The population of around 8 million mostly live in rural settings and are faced with significant health, education, and economic challenges.

The agricultural, forestry, and fishing sectors make up most of the labor force, mostly on an informal basis, and the mineral and energy extraction sector accounts for the majority of export earnings and GDP. There are reserves of gold, copper, rare earth elements, nickel, cobalt, platinum, and molybdenum in PNG.<sup>3</sup> While extractive revenues are considerable, they have not translated into improvements in living standards and wellbeing for the women, men, girls, and boys of Papua New Guinea.<sup>4</sup>

### b. Project

The Frieda River Copper-Gold Project (the Project) is planned for a site that is estimated to contain 13 million tons of copper and 20 million ounces of gold, representing one of the largest undeveloped copper resources in the world. The Project is held by Frieda River Limited,<sup>5</sup> and is located in the northern foothills of the Central Range of the New Guinea Highlands in West Sepik Province. It lies in a remote area approximately 200 kilometers from PNG's northern coast. Hydroelectric power will be used to support the Project mine; the hydroelectric dam project is linked to the mining project, along with other major infrastructure including roads and a port. Mine waste rock and process tailings will be stored under water within an integrated storage facility formed by the proposed hydroelectric reservoir.

## 2 METHODOLOGY

This case study looks at good practices and lessons learned from how the Project has integrated considerations of gender into its community engagement, compensation, and benefit sharing planning activities. The case study focuses on three of the seven villages that will be directly impacted by the mine operations when they go ahead: Wamemin 2 (Miyen), Ok Isai (Telefol), and Paupe (Paiyamo). While all villages are remote and sparsely populated, each represents a different language group and displays different traits with regard to relative isolation, access to outside markets, economic activity, and proximity to transportation (waterways and roads).

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<sup>3</sup> Mineral Resources Authority of Papua New Guinea, available at [mra.gov.pa](http://mra.gov.pa)

<sup>4</sup> Asian Development Bank, *Papua New Guinea, Country Gender Assessment 2011-2012*.

<sup>5</sup> Frieda River Limited, a wholly owned subsidiary of PanAust Limited (PanAust). The state of PNG has a right, prior to the grant of a Special Mining Lease (SML), to purchase up to 30% equity in the Project. See Frieda River Limited, *Sepik Development Project, Proposal for Development, Land Ownership Study, Sandaun Province and East Sepik* (November 2018) (hereinafter "*Land Ownership Study*").

Table 1. Language group, village, and population in the Project area.

Village	Language group	District	Province	Population (2017)	Of which women	% under 15 years	% over 60 year
Amaromin	Miyan	Telfomin	Sandaun	137	62	41.9	4.4
Sokamin				360	170	41.6	2.6
Wameimin 1				188	90	42	5.3
Wamemin 2				196	89	38	5.3
Ok Isai	Telefol	Telfomin	Sandaun	465	236	41.9	4.0
Wabia				858	205	38	4.7
Paupe	Paiyamo	Ambunti -Dreikikir	East Sepik	262	130	44.8	5.0
			<b>TOTAL</b>	<b>2001</b>	<b>982</b>		

In **Wamemin 2**, semi-structured focus group discussions were held with male leaders, female leaders, and young women. Though invited, young men did not attend because they said that the elders spoke for them. The males in this community were expressive and articulate in English, Tok Pisin, and the local language. By comparison, women in the groups were shy and appeared to have had little contact with outsiders; questions were asked a number of times in different ways to try to elicit a response from the women. Also, in this village, two elder males volunteered to share their opinions on the mining company.

**Paupe** neighbors the Project camp and the Frieda River airstrip. In Paupe, four focus group discussions were planned with men, women (young and old mixed), and young men. However, only one focus group of women took place. The team later learned the youth and elder men could not attend because they were involved in paid work for the Project camp (clearing land). The field team tried to encourage the men to join a focus group on a separate occasion but were unsuccessful.

In **Ok Isai**, focus group meetings were held with elders, young men, and women (young and old). Also, two elderly men and one woman volunteered to speak with the field team about the historical context of the village and the land-related conflicts in the area.

Field based meetings were facilitated by the Women in Mining Project<sup>6</sup> lead, who also provided English to Tok Pisin translation where needed. In some instances, this could have created an obstacle because the representative was also building relationships with the community to deliver on its own project, and her presence may have hindered full responses. Also, at times, there were some gaps in what was translated.

In addition to focus group discussions, key informant interviews were held with Frieda River field site staff including the Community and Government Relations management, team, and site

<sup>6</sup> This project has since changed its name to the Women in Extractives project, but for the remainder of this report it shall be referred to by its name at the time of research, which was "Women in Mining".

manager; staff at headquarters including Executive General Manager and General Manager of the PanAust corporate headquarters; staff responsible for risk management; project managers; and consultants for the Women in Mining Project. Also, to assist with information on background and context, interviews were conducted with academics and researchers at the University of Queensland Center of Socially Responsible Mining.

Corporate documents and academic literature were also reviewed as part of the background research for this case study. These are on file with author and are listed in the footnotes. Interviews and focus group discussions were held between September 2018 and February 2019.

### **3 LAND AND MINING RIGHTS CONTEXT: LAW AND CUSTOM**

The Papua New Guinean Constitution<sup>7</sup> declares in its Preamble that natural resources and the environment are to be considered and used for collective benefit, and calls for “wise use to be made of our nature resources...in and on the land or seabed, under the land...in the interests of our development in trust for future generations” (Art. 4.1). It also protects against unjust deprivation of property (Basic Rights, part f). Under Article 53.1, possession may not be compulsorily taken of any property, and no interest in or right over property may be compulsorily acquired, except if in accordance with law and unless the property is required for a public purpose.

#### **a. Mining Laws and Policy**

In Papua New Guinea, under the Mining Act, minerals<sup>8</sup> are the property of the State and all land is available for exploration and mining (Art. 5(1)).<sup>9</sup> The State retains the exclusive right to regulate how mining licenses and permits are issued, the grounds for issuance, the procedures to be followed, and how mining revenues will be distributed. This case study is focused on activities in preparation for a Special Mining Lease, which can endure for up to 40 years (Art. 34), authorizes the holder to enter and exclusively occupy land over which the mining lease applies (Art. 41, 42), and gives the lessee ownership over all minerals mined from that land (Art. 41(2)(b)).

Those who have surface rights to land (landholders) can benefit from a mining lease in ways prescribed by the Mining Act. Under the Mining Act, a landholder is defined as “a person who is recognized as an owner of customary land”, a person occupying government land by permission, or a person who is the owner or lawful occupant of land other than customary or government land (Art. 2).

Under the Mining Act, compensation agreements are negotiated directly between miners and landholders (Art. 156). Compensation is due to landholders if their land is entered, occupied, or demarcated for exploration, mining, or operations ancillary to mining (Art. 154(1)). Landholders are entitled to compensation for: losing possession, damage, severance, loss of earnings, loss of improvements, disruption to agricultural activities, and social disruption (Art. 154(2)).

Beyond compensation covered under Article 154, the Mining Act also permits landholders to benefit from mining through royalties, community development programs, infrastructure

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<sup>7</sup> Constitution of the Independent Republic of Papua New Guinea (1975).

<sup>8</sup> Article 2 defines minerals as “all valuable non-living substances excluding petroleum obtained or obtainable from land”.

<sup>9</sup> Independent State of Papua New Guinea, Mining Act 1992.

development, and vocational training, among other things. These benefits are negotiated in a "development forum" mandated by law before a Special Mining Lease can be granted (Art. 3). The development forum must be conducted in a way that will "afford a fair hearing to all participants" (Art 3.1) and the Minister must invite the applicant for the lease, the landholders of the land subject to the lease, and various levels of government (Art. 3(2)). Once an agreement is made in the development forum, the applicant company and the Government enter a Memorandum of Agreement (which is a contract between the Government and the Mining Company/lessee). The practice today is that all parties, including Local Level Governments, State, Landowners, and the company all sign the Memorandum of Agreement.

The current Mining Act defines a minimum of 20 percent paid in royalties (Art. 173(5)). However, there is a draft new Mining Act, as well as six new policies related to mining that are due for consideration by parliament. These include set royalties for landholders and other significant changes such as the government's right to compulsorily acquire a project on renewal of a mining lease and reduction in term from 40 to 25 years of special mining leases.<sup>10</sup> The law is set to go before parliament in late 2019.<sup>11</sup>

#### b. Land Laws and Policy

There are a number of laws which govern land tenure in Papua New Guinea; the most relevant for this case study is the Land Act.<sup>12</sup> Under the Land Act, all land in Papua New Guinea, other than customary land, is the property of the state (Art. 4)(1)).

The Land Act defines customary land as land that is owned or possessed by a citizen or community that are regulated by custom (Art. 2). Even though customary land rights are recognized in formal law, the state retains the right to govern how those rights are managed and disposed of; and the state may still compulsorily acquire customary lands. Moreover, a customary landowner has no power to sell, lease, or otherwise dispose of customary land other than to PNG citizens and only in accordance with custom (Art. 132).

The Land Act by presumes that customary land owners are known; this is shown in its definition of customary land owners that states "customary land owners means the customary landowners or the alleged or purported customary landowners" (Art. 135). A customary landowning group may, but need not, incorporate under the Land Groups Incorporation Act.<sup>13</sup> Customary land rights can also be registered under the Land Registration Act;<sup>14</sup> the purpose of which is to allow for voluntary registration of customary land to make it available for development by outsiders.<sup>15</sup>

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<sup>10</sup> See Jewel Topsfield, Australian miners in firing line of PNG law shake-up, Sydney Morning Herald, Jul. 16, 2018.

<sup>11</sup> *Id.*

<sup>12</sup> Independent State of Papua New Guinea, Land Act, 1996

<sup>13</sup> Independent State of Papua New Guinea, Land Groups Incorporation (Amendment) Act, 2009.

<sup>14</sup> Independent State of Papua New Guinea, Land Registration (Customary Land) (Amendment) Act, 2007.

<sup>15</sup> There is some controversy among academics and local land experts about how and whether depictions of customary land tenure are distorted by the way land rights are conceptualized in formal law in PNG, especially with the pressure to prove customary land ownership for the potential share of mining benefits. See e.g., Dan Jorgensen *Clan-Finding, Clan-Making and the Politics of Identity in Papua New Guinea Mining Project* (2007), in James F. Weiner and Katie Glaskin (eds) *Customary Land Tenure and Registration in Australia and Papua New Guinea: Anthropological Perspectives* (2007). See also Colin Filer (2006) *Custom, Law and Ideology in Papua New Guinea*, 7 *The Asia Pacific Journal of Anthropology* No. 1, 65-84 (April 2006).

### c. Women and Land in the Law

In general, the Papua New Guinean legal framework has protections for women and against sexual discrimination. Under the Constitution,<sup>16</sup> all citizens have the same rights, privileges, obligations, and duties, regardless of sex (Art. 55.1). Further, affirmative action to address past wrongs is permitted (Art. 552). Despite these provisions, to the extent that there are laws beyond the Constitution governing family matters that have a bearing on women's rights, the constitutional laws devolve family matters to provincial and local level governments because of the cultural diversity in Papua New Guinea. Provincial governments have law-making powers with regards to family law, marriage, adoption, and maintenance; and local-level governments have law-making powers with regards to customary marriage transactions (including bride price and forced marriage) and dispute settlement.<sup>17</sup> These provincial and local level laws are rarely, if ever, subject to constitutional review, possibly leaving room for provisions that discriminate against women.

The legal framework also has protections for women's property rights in the Married Women's Property Act.<sup>18</sup> However, that Act does not appear to apply to the majority of land in the country; which is held under customary tenure (including land that is subject to the mining investments covered in this case study). Nowhere in the Married Women's Property Act is customary land mentioned. Nevertheless, it could be interpreted as not applying to customary lands because of the terminology used (for example, many of the articles pertaining to land in the Married Women's Property Act refer to land being alienated, which is impermissible for customary lands under the Land Act and would suggest that customary land is not covered by the Act).

The Mining Act and Land Act are both silent on gender and women. Presumably, the law should conform to the constitutional requirements with regard to equality on the basis of sex; however, the Mining and Land Acts make no affirmative statements to address inequality between women and men.

### d. Customary Land

Customary lands make up an estimated 97 percent of the Papua New Guinean land mass.<sup>19</sup> In PNG, social, economic, and gender relations are dependent on customary rules and norms, which can vary greatly between cultures. Kinship and lineage are important, though not the only, factors that influence rights to land. Sex, marriage, birth order, generation, political alliances, spirituality, land uses, historic conflict and expansion of customary groups, and other factors also influence customary land rights. Rules of customary tenure have also adapted to local needs, changing circumstances, and other pressures on land from development.<sup>20</sup> These same factors can influence whether women and men are members of a customary group. While rights could be bestowed to outsiders, land held under customary tenure traditionally cannot be bought or sold. Despite variations across cultures, the general understanding of both women and men across the

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<sup>16</sup> Constitution, *supra* n. 9.

<sup>17</sup> Asian Development Bank, Papua New Guinea, Country Gender Assessment 2011-2012.

<sup>18</sup> Independent State of Papua New Guinea, Married Women's Property Act, 1953.

<sup>19</sup> Land Ownership Study, *supra* n. 7.

<sup>20</sup> See, e.g., Jorgensen, *supra* n. 18.

customary landscape is that men wield more power and status than women and men dominate rights and governance of customary land.

All land in areas that will be impacted by the Project are customary lands. Telefol, Miyan, and Paiyamo (the subject language groups of this case study) are distinct cultural groups and speak different languages. Customs in the Project area with regard to subsistence practices, structure of the groups, resource tenure, and marriage practices are varied.<sup>21</sup> Despite the cultural differences and, at times, contested historical claims to the land,<sup>22</sup> the basic elements of customary land tenure with regard to gender are similar across the groups, and the tenure systems can be generalized.<sup>23</sup>

Under customary rules in the Project area, landownership and landownership benefits typically pass through the male lineage (blood line). Households can be multigenerational, and may consist of one or more nuclear family. A very simplified table is provided explaining customary land rights within families in the mining areas.

*Table 2. Customary land rights within families<sup>24</sup>*

Person	Customary Land Rights
Adult male household heads or unmarried male adults	A member of the blood line. He is considered a customary landowner; can use land; has a separate household; can bequeath land to the next patrilineal descended generation, in conjunction with other adult males; and qualifies for being involved in community level decision making. When he dies, the same opportunities and obligations apply to his male offspring.
Unmarried male and female children of the adult male head of household	Day-to-day welfare of this group and how this groups can exercise their birth right to land is under the immediate care of their parents. Use of land is governed by parents.
Married females of the present household head	Female children typically marry out and cannot inherit land ownership.
Married males of present household head	Male children continue the descent line (eventually being the male head of household).
Genuinely adopted children	Same rights as those of natural descent

In the Project area, women are neither customary owners nor custodians of customary land. Men are the custodians of the customary group's property (and could be considered customary

<sup>21</sup> Land Ownership Study, supra n. 7.

<sup>22</sup> For more on land use and how the history of settlement and expansion has impacted claims to customary ownership of Ok Isai and Wamemin, see Jorgensen, supra n. 18.

<sup>23</sup> Peter Nawara Frieda River - Papua New Guinea, Guideline on Membership Qualification Criteria, Frieda River Project Communities (Feb. 2, 2018), on file with author.

<sup>24</sup> Id. Note that each of the cultural groups also have other customary methods for obtaining land rights. See also, Jorgensen, supra n. 18.

owners), and are responsible for any political decisions concerning the land. When benefits attached to customary land rights are negotiated (for example, between a mining company and the community affected by the investment), women seldom take part. Traditionally, women are not considered to have the right to claim a direct share of leases, royalties, or compensation payments. Women typically have use rights to cultivate land, gather forest products, and to fish from or collect from water resources. Options regarding land use may be debated amongst men, by men and women together, or by women alone, depending on the practical purpose under consideration. However, when a plot of land is allocated to a woman to plant food crops, she may manage it without interference by men.

Polygamy is not widely practiced in the three villages (though it is practiced in other parts of PNG). Married men are more likely than women to leave their villages to look for work or new experiences. Gender-based violence, and violence within families is considered to be widespread.<sup>25</sup>

## 4 DESCRIPTION OF INVESTMENT

### a. The Project


Frieda River Copper-Gold Project's mineral deposits are estimated to contain 12 million tons of copper and 19 million ounces of gold metal. The Frieda River project is 70kms south of the Sepik River on the border of the West Sepik and East Sepik Provinces of Papua New Guinea, around 500kms upriver from the coast. The Project mine area is located in remote area of northwest Papua New Guinea, characterized by steep terrain, very high rainfall, low population density, and the near absence of infrastructure such as road, power, and communications networks. The total population of all seven villages within the area of concern for the Special Mining Lease was approximately 2000 people in 2017.

Copper and gold deposits were first identified at the site in the 1960s. The topographical traits of the area include mountains, foothills, inter-fluvial plains, and swampy alluvial flats, each supporting distinct patterns of subsistence use. The area is very remote, and the closest road is 150km distant. Most travel is done by small plane or helicopter, or for local communities via boats if they live near an accessible waterway or by foot.

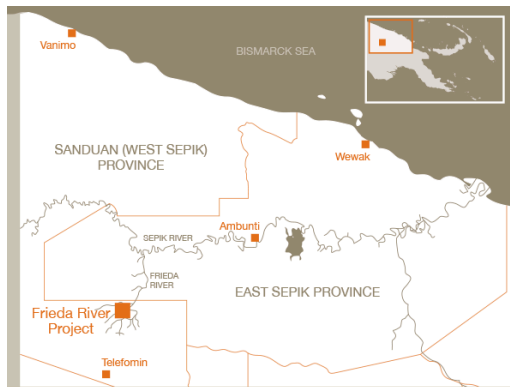
Since copper mineral resources were identified, several companies have held some permit or license to operate in the area.<sup>26</sup> Mining has not begun in the area, but over the decades various mining companies have been engaged with the communities within the project area. The companies have all operated from a camp near the village of Paupe, which today includes a helipad and small airstrip. For more than 50 years, the mining companies pursuing a mining

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<sup>25</sup> According to the Georgetown Institute for Women, Peace and Security Studies, 68% of women in Papua New Guinea have experienced intimate partner violence. GIWPS, Papua New Guinea's Performance on the Woman, Peace, & Security Index, <https://giwps.georgetown.edu/country/papua-new-guinea/>.

<sup>26</sup> In 1967, Carpentaria Exploration Company (the exploration arm of Mount Isa Mines Limited) held the first Prospecting Authority (now known as an Exploration License) over the Project area. Since that time, a number of companies have been operators of FRCGP: Highlands Gold Properties Pty Limited (now Highlands Pacific Limited) from 1986 to 1997, Cyprus AMAX and Noranda from 1998 to 2006, Xstrata-Glencore Plc from 2006 to 2014, and PanAust Limited (PanAust) from August 2014 to present. 

license/lease have provided services and support that the communities needs, including education, income (through compensation), health care, transport, and supplies, often filling significant gaps the government would otherwise fill.



Source: Highlands Pacific

The Project is in the pre-development and exploration stage. PanAust (the company) first submitted an application for a Special Mining Lease for the project to the Papua New Guinean Mineral Resources Authority in 2016. Changes were made to the application in 2018 to incorporate it into the government initiative known as the Sepik Development Project for Transformative Nation-building. The initiative contemplates four interdependent projects across the West Sepik and East Sepik Provinces, including an international maritime port, public roads, a regional airport, and telecommunications services, which would be developed by third parties.

The Project footprint will cover approximately 16,000 hectares. A large-scale open-pit mine will feed ore for processing into a copper-gold concentrate. The concentrate slurry will be piped to Vanimo where it will be processed for export. In its feasibility study, PanAust identified that resettlement of communities in the Project area would be required because of the mine, dam, impoundments, or other facilities that make up the hydro-electric dam built as part of accompanying projects.<sup>27</sup>

Following issuance of the SML, mine construction is expected to take approximately six years. Once underway, it is estimated the mine will generate post-tax net present value from US \$1.8

to \$2.4 billion over its lifetime,<sup>28</sup> of which there is a predicted tax, royalty, and production levy revenue to PNG governments and landowners of PGK 29billion (around US \$8.5billion).<sup>29</sup>

<sup>27</sup> See Frieda River Ltd., Environmental Impact Statement (Nov. 2018), available at <https://friedariver.com/eis/>

<sup>28</sup> At 8% real discount rate at long term metal prices of US\$3.30/lb. copper and US\$1,390/oz gold. PanAust, A Nation-Building Development Pathway for the Frieda River Project (Company Announcement, Dec. 11, 2018), available at [https://panaust.com.au/sites/default/files/201812\\_A%20nation-building%20development%20pathway%20for%20the%20Frieda%20River%20Project\\_0.pdf](https://panaust.com.au/sites/default/files/201812_A%20nation-building%20development%20pathway%20for%20the%20Frieda%20River%20Project_0.pdf)

<sup>29</sup> Id.

## b. Background of the Communities

The Telefol settlement of Ok Isai covered in this field research is different from the other area in a number of ways. The inhabitants are relative recent migrants to the area (after a long campaign of warfare that apparently lasted from the 1800s to the 1960s)<sup>30</sup>, and the settlement is in a relatively new location, having moved to its present site in 1983.

To reach the nearest major town centers of Vanimo or Wewak, people of Ok Isai must travel by river to the nearest road link then travel a significant distance by road. Ok Isai has an airstrip and a trading center. Artisanal alluvial mining is an important activity in the area, and people from other villages travel here to mine with permission from the landowners or provide labor to the landowners. Most income in the village comes from alluvial mining. Ok Isai's main water sources are from the river and mountain springs and some households also collect rainwater in tanks (it is in an area with high rainfall). Households either have private pit toilets or engage in open dumping of untreated human waste, and rubbish is buried or burned.

The current village will be inundated as part of the hydroelectric dam, and the entire village will be resettled. The company has spoken to the entire community about the resettlement, though respondents from the community report that they have not yet learned specific information important to them (such as timing, location, etc.).

Three people from this village currently work on the mining site, even though it is still in limited operations. The company has begun rebuilding a primary school, and has provided a water tank, high frequency radio, and medi-evac service to the village. It also brings upper-level students to school by chopper, and has provided fee assistance to primary, secondary, and tertiary students.<sup>31</sup> Ok Isai has access to a mobile network, though this is often intermittent depending on the condition of the tower. Respondents reported receiving "compo" from the mine, which is a compensation payment made for "disturbances" created by the Project camp (these payments are required under Article 154 the Mining Act).

Young men in Ok Isai see the mining as bringing positive changes, such as employment, training, and education. They also, however, see there will be social impacts from new people coming, that mining may change the usual culture, and that there will be environmental impacts such as destroying sago palm plantations, sacred sites, cemeteries, and hunting places.

As with the men, women see that the mine will bring both positive and negative changes, though they mention more social issues. For instance, women say that men may take to drinking more and violence may increase. Additionally, with money, there may come a higher rate of gambling

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<sup>30</sup> Land Ownership Study, *supra* n. 7.

<sup>31</sup> For all communities in this study, Frieda River Ltd. provides support for health and education. For health: medi-evac or medical referrals to the nearest health centers, provision of drugs for community clinics, transport (beginning and end-of-year) for community health workers, ad hoc support of community health workers with rations, periodic 'patrols' in conjunction with the District Health, and ongoing infrastructure improvement. For education: 'project fees' for all primary age students (paid direct to three local primary schools), 'project fees' for all secondary students (paid direct to two High Schools), school fees up to K 5,000 for all tertiary students, a set number of special scholarships for exceptional tertiary students, travel support (end / beginning of year) for local primary and elementary students, and ongoing educational infrastructure improvements.

and divorce or taking new wives (an outside concept that is a status symbol associated with wealth) and abandoning the existing wife.

The Miyan settlement of Wamemin 2 moved from their ancestral home (much farther east than their current location) having been dispersed in the 1950s after raids from outsider ethnic groups. Though the village is on a fast-moving river, it is rocky and dangerous and, therefore, is not used for travel. Water sources for Wamemin 2 are the river, rainwater collection tanks, and springs. Untreated human waste is disposed of by pit toilets and open dumping, and rubbish is disposed of in the bush, by burning; the river; or a small designated landfill.

The people of Wamemin 2 practice shifting cultivation, fishing, hunting, and production of sago (palm). They used to sell their products to the former mining company site, but do not do so currently. The village can only be accessed by helicopter (provided by the Project, kept at the base camp) or a two-day walk through bush to the nearest village that has river access to other towns. The company has established a health post/clinic in the area and has provided a health care worker. It also provides the same educational (school fee assistance) and health services (med-evac) as received by the other villages. Wamemin 2 will be resettled as part of the Project.

The villagers engage in some alluvial mining, though it is not as successful as the other two villages visited. When farming, whole households will leave the settlement for weeks at a time and stay near their gardens in the forested areas, with the whole family engaging in cultivation activities. The only outside communications is a two-way radio that is used daily between the health center and the mining site.

Men in this community were exceptionally articulate and expressed some dissatisfaction that vocational training and opportunities for employment by the mine had not yet materialized. They shared that they did not know much about the Women in Mining project (WiM, see below for more detail) but that it seemed like a good idea to actively try engaging women. In this community, men expressed strong concern with the way that compensation was paid to other villages in the area (this is in relation to a long standing dispute resolved legally in 2015, though some still disagree with the resolution of the dispute).

The women in the Wamemin 2 village, on the other hand, were shy and unforthcoming with responses and perspectives on the Project. They appeared to have had much less exposure to education and outsiders than their male counterparts, did not express the same level of knowledge about the potential impacts of the mine, or display the same experience in dealing with the mining companies. Women shared that they had attended meetings with men held by the company in relation to resettlement but, otherwise, most of their contact with the mining company was through the WiM program.

Young and old women see the mine as positive development because they are so remote and have no transport and resources. They reported that the company had provided teacher transport so their children between five and seven years old could be educated. They understand the mine may be negative for their environment and that women may lose their gardens. One woman reported that the mine may be a lure for outsiders and that this would cause some violence and unrest. The overall impression from women was that the mine will bring much needed services for their children and that the town will be developed.

The Paiyamo people of Paupe have been exposed to mining companies since the 1960s. They know the company's community engagement team members by name because the mining field site is close by. Women report that the Frieda River project pays for transporting students, health services, school materials, maintaining school buildings, compensation for disturbances, purchasing vegetables from their local market, medical supplies, and some trainings such as WiM. They say the company has promised houses for landowners under resettlement plans, business contracts, and shares with the company will be available for purchase when mining begins. The company currently provides transport to staff (like teachers and medics) and provides food rations when needed.

The villagers' livelihoods are based on seasonal shifting cultivation in the bush, fishing, cultivation of sago palm, and alluvial mining, which they report is not as lucrative as it is in other villages such as Ok Isai. Some people generate income by providing canoes for hire to the company (the base camp is on Paupe land), alluvial panning, selling specialized wood to outsider buyers, and selling vegetables, tobacco, and meat at the market. They get water from the river and tanks, dispose of untreated human waste in the river or the bush, and dispose of rubbish in the river or a designated landfill.

Women in Paupe know that they will be resettled. They have been told that with resettlement they will get new houses, water and power supplies, health and sports clubs, and better education facilities.

## **5 ENABLING CONDITIONS FOR INTEGRATING GENDER CONSIDERATIONS**

### **a. Company Level**

According to the PanAust team, a number of things converged to result in specific attention to gender. From a governance perspective, the original Board of PanAust from when the company was publicly listed<sup>32</sup> had a strong interest in sustainability. This Board had experience in other major mining companies as executives or directors and understood the importance of sustainable business practices as a path to establishing social license to operate in difficult settings where mining was heavily scrutinized or potentially nationalized. Also, the Board would make annual visits to the communities where the investment was underway. The Board also imposed annual compliance audits with the International Finance Corporation's Performance Standards,<sup>33</sup> (even though they were not seeking finance from the IFC) and set up a governance committee for sustainability (instead of a committee for risk management), which was intended to take a progressive view of gaining social license and ensuring environmental sustainability.

The initial Board's commitment to sustainability laid the groundwork for a corporate culture and practice that fostered commitment to sustainability values. The company developed a five-year

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<sup>32</sup> PanAust was a publicly traded company until 2015 when it was purchased. It is now an incorporated company owned by Guangdong Rising H.K. (Holding) Limited, which is a wholly owned subsidiary of Guangdong Rising Assets Management Co. Ltd. (GRAM).

<sup>33</sup> International Finance Corporation's Environmental and Social Performance Standards, [https://www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards/](https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards/)

strategy and a vision and values statement that guided standards, leadership, performance monitoring, and culture. With regard to sustainability, PanAust's Sustainability Policy, developed in 2006 and still in place, covers such things as respect for:

*the environment, through best practice...that reflects the expectations*

*of the communities in which we operate, and promotes an internal culture of environmental and social awareness...and for the people and cultures of our host countries and acknowledge the unique characteristics in the way that we manage our activities in these countries.<sup>34</sup>*

PanAust pursued its commitment to its values through a number of measures. First, sustainability outcomes are part of every executives' and managers' performance measures and directly related to their compensation package. Next, PanAust releases an annual sustainability report, and, in the past, would convene a forum for independent input into their sustainability reports from academia, NGOs, and other mining companies. Further, PanAust also measures its sustainability against international standards, such as IFC Performance Standards, the Global Reporting Initiative's sustainability reporting framework and guidelines, and the Voluntary Principles of Security and Human Rights, among others.

PanAust used their risk assessment processes to put a business value on the social and environmental costs of decisions. According to company executives consulted, it considered the prospect of costs and crises that could be incurred as a result of failing to conduct meaningful community and stakeholder engagement from the beginning as a potential risk factor. This link between community engagement risk was reflected in the corporate structure, where the General Manager (at the time of researching this report) was responsible for human resources, risk management, sustainability, and corporate communications. In addition, risk management was led by social scientists rather than engineers, and annual risk assessment processes were multi-sectored (within the organization) and purposively developed to enable real discussion among various sectors of the company. Risk management was handled by a multi-disciplinary team, bringing in experts when needed.

These values translated into a company approach to community engagement that began to consider gender and discrimination. The company first pursued gender-responsive engagement in Laos, where it had a large mine operating for a number of years. The results of their work in Laos to proactively include and work with women had very positive results from a both business perspective<sup>35</sup> and a social perspective, so they were keen to do the same in Papua New Guinea, even though the context was very different.

In Laos, the company conducted a diversity audit and learned that women do not see themselves in roles that are culturally or socially dominated by men. The company devised a training and mentoring program so that women's perceptions of themselves and their abilities would change and enable greater access to the more lucrative, traditionally male-dominated, roles on the site. According to company executives, in Laos, PanAust learned that diversity means different things in different contexts and stages of the mining life cycle. They also learned that pursuing the value of gender diversity in its business activities would sometimes require additional effort but that it

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<sup>34</sup> PanAust, Sustainability Report 2006, available at [https://panaust.com.au/sites/default/files/reports/Sustainability%20Report2006\\_Final.pdf](https://panaust.com.au/sites/default/files/reports/Sustainability%20Report2006_Final.pdf)

<sup>35</sup> See Adrian Bell, PanAust, Ltd., Women in Leadership (2017), presentation on file with author.

made good business sense. They focused on convincing both women and men of the benefit of that value and laid groundwork so women could make the decision to engage with the company in a different way that would lead to direct personal benefit.

Lessons learned in the field in Laos helped to solidify a conviction to responding to gender issues in PNG even if they the community itself did not raise gender concerns. For example, in early meetings with the community, the company worked with a Community Leaders Forum (see below), but there were no women present. In that meeting, a PanAust Executive General Manager shared PanAust's values with the Community Leaders Forum and stated that they could not continue the meeting if women did not have a seat at the table, because women's interests and needs might be different from those of men and would be impacted by the decisions being made. They shared videos from their work in Laos to help make the case of the value of having women involved and, reportedly, in one case did not take their seats until women were present.

Another potential enabling condition—important, though difficult to measure and replicate—is the personal commitment of certain people with influence and authority in the company. A number of respondents referred to the passion and commitment of key individuals in the PanAust executive team and community relations team in holding true to their corporate values of sustainability and gender, even when it would have been easier to relax their efforts.

#### b. Local Context

The legal context in Papua New Guinea also plays an important enabling role. Under the existing practice, there are three main instruments that are negotiated before mining operations can begin in Papua New Guinea. First, the Memorandum of Understanding, signed by all stakeholders and produced as an outcome of the "development forum" required in the Mining Act. This covers allocation of accountabilities and distribution of benefits, special projects, business development, and local employment. Second, the Mining Development Contract, which is strictly between the state and the applicant company. This deals with fiscal terms, equity options, and taxation matters. Finally, the Compensation Agreement, which also includes the resettlement and alluvial mining agreements. This agreement is strictly between the applicant company and the landowners, through it is ratified by the Mineral Resources Authority (MRA); it deals with all issues of loss of land, damage, livelihoods, and the like.

The Mining Act, while not perfect, has some protections for customary landowners as a starting place; especially through its mandated "development forum" but also in imposing the MRA's oversight into the compensation agreement. However, the extent these features are helpful to those affected by the mining operations depends customary landholders' negotiation capacity. Nevertheless, according to some respondents, the government in Papua New Guinea wants to ensure that mining affected communities are treated equitably and the potential negative social and environmental outcomes of mining are well known to government administrators.

Another factor that allowed for certain decisions favorable to women to be made relates to the specific geographic characteristics of the area. The area covered by the intended mining operations and other activities (including the hydroelectric development) is large but sparsely populated. This has made it easier for the community relations team to engage with individuals in the communities, to develop personal relationships, and to build trust. It has also made it easier to make decisions on things like distribution of cash to individual nuclear households because

there are few households to interact with. Also, the leaders in the area are reasonable and keen to learn lessons from other places in PNG where mining has taken place.

Furthermore, the timescale for mining companies' involvement in these particular communities is an anomaly and has had an impact on community relations. Anyone under the age of fifty in the community has lived their entire life with the imminent prospect of the mine, though to date, a mine is yet to be built. In many ways, the companies have, over time, taken on the role of government and provided significant social, health, and education services to the community. This has led to a dependency between the communities and the company. It has also allowed for long-term relationships between staff (some of whom have worked with successive mining companies) and the leadership of the communities.

### c. Women in Mining Program

Another enabling factor for integrating gender in the Project is the collaboration with a development partner. The Women in Mining program is a public-private partnership between PanAust and the Australian Department of Foreign Affairs and Trade. The overall goal of the program is to ensure that benefits flowing from mining are shared with women and that women have a seat at the table on decisions that impact them. The vehicle for this program is the Family Farm teams approach, which is a locally driven approach for enabling family focused decision making, and using this approach as an entry point into women's issues.<sup>36</sup> It is largely being implemented by a field project manager, who spends time with each community working on the Family Farms approach, as well as facilitating other training such as literacy and health.

The WiM manager is Telefomin and is from the area, though she resides in the capital. She acts as a mentor to women in the Project area to prepare them for participation in the development forum and helps organize their governance and representative structures. The WiM is also building literacy skills and promoting cooperative approaches to decision-making, workloads and budgeting, leadership, and coalition building.<sup>37</sup>

The WiM program began in 2017 and appears to be a promising approach to very real concerns about social impacts. However, insufficient time has passed to assess its effectiveness. Nevertheless, women respondents in the communities unilaterally reported that the program was positive and helpful, especially regarding literacy training and assisting to develop a market for their produce. Women in all communities visited reported they believed the program was going to be valuable in helping them when they relocate, and in helping them learn of other ways they can sustain their livelihoods when they can no longer pan for gold. Some women were taken to see another mine in Bougainville to talk about women's leadership. Male respondents appeared

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<sup>36</sup> Deanna Kemp and Dr. John Owen, Pacific Women, Papua New Guinea "Women in Mining:" Design Brief (April 2016) (Center for Socially Responsibility in Mining, University of Queensland, and Institute Development Consulting), on file with author.

<sup>37</sup> PanAust and Australian Government, PanAust and the Australian Government Empowering Women at Frieda River (media release, Nov. 9, 2017), available at [https://panaust.com.au/sites/default/files/171108\\_PNA-DFAT%20announcement\\_women%20in%20mining\\_FINAL.pdf](https://panaust.com.au/sites/default/files/171108_PNA-DFAT%20announcement_women%20in%20mining_FINAL.pdf).

to know very little about the program in Paupe and Wamemin 2. In Ok Isai, the young men requested to also be involved in the program.

## 6 INTEGRATION OF GENDER CONSIDERATIONS

This section of the case study looks specifically at the Project's good or promising practices related to gender regarding community engagement, compensation, and benefit sharing.

### a. Community Engagement

The Project engages with the community in two main ways: through a Community Leaders Forum (CLF),<sup>38</sup> and through village visits and overnight stays by its community relations team.

#### *Community Leaders Forum*

The CLF is intended to be a conduit between the company and the community. It was set up as an interim measure to engage the community in the lead up to creating the landowners' association, which represents the interests of the landowners for the entire life of the mine, including at the development forum (see below). However, the CLF will continue to operate as a means to engage the broader community and avoid some of the known pitfalls of working through a landowners' association (for example, when the landowners' association is monopolized by the interests of its executive team).

The company uses the CLF to share information and consults with them on important matters. The CLF meets quarterly with the company. The CLFs pre-date PanAust's involvement in the area. When PanAust first visited the communities, the CLF had been suspended for a number of years and, but all members had been men. Based on its experience in other mines and support for sustainability, representatives of the company realized that the CLF could not fully serve its function if women were not also represented. This issue was raised with the CLF male membership on more than one occasion. After some initial reluctance from the male CLF members, they eventually agreed that including women would be worthwhile because women had unique perspective to bring to the discussions.

At the time of writing, there were seven women, one representing each of the seven villages, and 14 men on the CLF. The women were nominated by the male elected members of the CLF. The company did not have control over or insight into how these nominations were made and did not have a say in which women were nominated. However, the company did challenge some decisions if it appeared certain women were nominated for the "wrong reasons" (typically nepotism) and that other women community could do a better job. The company could do this because it had established trust with the communities, and because the community relations team were well acquainted with all the families in the small communities.

Even with these positive steps there remain a number of challenges in ensuring that women's interests are represented in community engagement activities as done through the CLF. First,

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<sup>38</sup> The CLF is a temporary body that will eventually transition to landowners' associations (one per community), which are intended to represent the interests of the landowners through the entire life of the mine. They were developed before PanAust had purchased the mine, and PanAust has continued to work with them.

women and men in the communities have a very different starting place. Men in the communities, especially in Wamemin 2, showed greater experience and skills in talking with outsiders with confidence and certainty. Conversely, women in that village appeared shy and lacked confidence to speak, even when men were not part of the meeting. Thus, for women to be able to contribute meaningfully to the CLF they need increased information, training, and confidence-building.

Another challenge, while acknowledging having women representatives is an important first step, is linked to ensuring that the interests of women in the community are represented in the CLF. Women and men on the CLF have a responsibility to bring information to others in the community and to provide feedback to the CLF from the community. This role takes a level of skill in consultation, recording, and then dissemination that might still be lacking among CLF representatives. For instance, in Paupe, women interviewed were unaware of all the CLF's functions and were also unaware of the meaning of certain terms and processes the CLF is responsible for regarding protecting and promoting women's interests. The operation, timing, and purpose of the Development Forum mandated by the Mining Act is one example. Given that the Development Forum is a critical opportunity for women (and men) to negotiate for a share of the benefits of the mining activities, this lack of awareness and negotiation skills could have significant negative impacts for the women if not addressed.

Likewise, even though there are women on the CLF now, young women in Wamemin 2 reported they do not know anything about the mine itself, though they know it is coming. They do not appear to get much information from their CLF representatives, though they do know about potential royalties for landowners, but did not show an understanding of who will benefit directly from the royalties or whether they will benefit individually.

This is not limited only to women; male CLF members probably need more training on how to be "good" representative for their community. For example, young men in Ok Isai reported that they have not yet received information on the forthcoming Development Forum from the company or the CLF. They also believed that the CLF needed additional support and assistance to be able to play its expected role in sharing information and consulting the community.

In part, this is being dealt with by the public-private partnership WiM program (described in more detail above) as it deals with skills and confidence-building in the family farming model. However, the WiM program began only recently and women's relative lack of experience, skill, and confidence in the villages is a significant hurdle to overcome.

### *Community Relations Team*

The community relations teams are responsible for building trusting relationships between the company and the affected communities, as well as organizing provisions of basic community services and support. The team realized men in the community had to buy-in to including women if the measures were to be sustainable, and thus they took small steps to help facilitate that buy in. They made a visible display of giving information booklets to women as well as men in the community. They also would not begin public meetings until women were present, and made a point of speaking to women in the community who did not attend meetings while men were watching to convey that the company valued women's perspectives.

Despite these steps, there are areas where the approaches of the community relations team could be improved to better ensure gender equity. For instance, women in Ok Isai reported differences in the way that different companies have engaged community members over time. While there may have been women-only meetings as part of the social and environmental impact assessments, women are not engaged separately when sharing information or seeking to consult with the community. Women reported that women will not speak up when men are nearby or in attendance, and that messaging during the meetings is often shaped such that men will understand but women will not. Women in Paupe reported that when the community engagement team speaks with community, they do not hold separate meetings for women and that women rarely speak up or ask questions.

Also, the community relations team does not have a baseline against which it can measure how successful their engagement strategies are for women. This makes it harder to distinguish between effective (or essential) or non-effective (non-essential) outreach and activities. These kinds of benchmarks and assessments matter because, as has been the case, the mining companies may change. The community relations team could better advocate for continuing practices that have been good for women if they can show data on their effectiveness.

#### b. Compensation

Compensation has been paid for destruction and disturbance to communities by different mining companies for many years. PanAust currently pays a small amount to the head of nuclear families (the communities refer to these payments as “compo” for short). The frameworks for determining how these payments are made are important because they lay the groundwork for more significant compensation payments that will be made for the anticipated losses caused by mine construction, inundation of the area due to the corollary hydro-electric dam project, and the loss of, in some cases, considerable income from alluvial mining.

Current compo payments are 50 Kina (about \$15 USD) per year per nuclear family, though they have varied each year depending on the activities conducted and the related disturbance footprint. However, subsequent compensation payments could be in the range of tens or even hundreds of millions of Kina for the 2000-3000 members of all communities combined. Compensation agreements, unlike benefit agreements, are negotiated directly between the mining company and landowners, with guidance from existing laws and regulations on the matter and government oversight.

Typically, in other mining areas in PNG, compensation payments are made to an “agent”, often the clan or sub clan leader, on behalf of the whole community. The payments are made to the accounts of those agents, and the obligation of the company is considered filled when that payment is made. The company does not need to involve itself in the question of how and whether those funds are distributed to the community members who are impacted by the loss. Such a process is understandable, especially when there are tens of thousands of landowners to be compensated, as is the case in other mining areas. However, this approach can also allow for elite capture or self-dealing and can lead to serious divisions in the community as some landowners may benefit at the expense of others. This is also an area where women may lose out. Women are often neither considered landowners nor clan leaders and are among the least powerful in the community and within households, which severely limits their ability to negotiate to directly receive a share of cash payments from men, who are much more powerful in the community and

households. These issues will be even more pertinent in the future when royalty payments are made. Unlike compensation, which are one-time payments, royalties are ongoing and represent significant cash value over the life of the mine. Thus, the success of establishing an equitable compensation distribution regime can lay the groundwork for more equity in the future distribution of royalty payments.

The company immediately preceding PanAust established a positive precedent by getting benefits to the household, rather than to agents, by making “compo” payments to the household head. Two years ago, PanAust took this a step further, and paid “compo” to the head of the nuclear family. This was largely because the community engagement team realized that the household concept was arbitrary, and resulted in unfairness because some households comprised only one nuclear family of a few people, and other households comprised multiple generations with many people who were all getting the same amount but were still considered represented by one household head.

Through this process, the community relations team and the community had to begin to define who within the community should be paid compensation and should not, which ultimately laid the basis for the Membership Qualification Criteria discussed below. This decision of changing the unit for the compo payment to the nuclear household had a positive effect on women because it allowed women who met criteria for membership to receive payments directly, which they were not otherwise getting when payments were made to the household head. Community members (women and men) expressed satisfaction with this mode and believed it was a fair way of handling compensation.

### *c. Benefit Sharing*

The possible benefits available from the Project include cash compensation payments, mining royalty cash benefits, mining royalty benefits other than cash, business development, spin-off contracts and local procurement, education and training benefits, and employment benefits. The Development Forum (mandated under the Mining Act), is the forum where “landowners”, the company, and the state negotiate how the compensation, royalties, and other benefits listed will be distributed; it thus presents the main opportunity for women’s interests to be incorporated into the distribution of benefits from the mine.

#### *Including Women Representatives in the Development Forum*

The company has recognized the potential of the Development Forum for promoting women's interests in benefit sharing agreements. As a starting place, because of inclusive nature of the CLF (and eventually the landowners association), women will likely have a seat at the table for the Development Forum, which they would not otherwise have under the customary definition of “landowners”. In addition, the WiM program is working to build the capacity of the women who will be representatives at the development forum; they have also brought in another specialist who has worked with women groups in another large mine in Papua New Guinea (Ok-Tedi) where women were able to effectively negotiate for a share of mining royalties. The WiM program has also begun to establish a “Women's Association” whose president will be a member of the landowner association.

Including women in the development forum is a necessary first step but more may be needed to ensure that women's interests are effectively incorporated into the benefit sharing agreement. In effect, the women who would be on the development forum have had very little time to build their knowledge and capacity to a point where they can effectively negotiate for their interests with the same influence as their male counterparts. This is partly because of their lack of experience in engaging on matters that affect them in public forums and also in part because of the power differential between women from isolated rural communities, men, the company, and the government representatives who will be there. As well, both women and men may lack experience in defining and articulating the livelihoods losses that accrue when they relinquish assets (land, trees, etc.) and livelihoods pursuits (alluvial mining, etc.). In addition, and as mentioned above, there is no guarantee that simply because a participant at the Development Forum is a woman that she will be representing women's interests; she may just as easily be more narrowly representing the interests of her family or her cultural group as against others who stand to gain rather than the broader constituency.

### *Membership Qualification Criteria*

The impacted communities did not go through the option of incorporating the land group, which is the legal mechanism for formalizing a customary land-owning group under the Land Act (see legal analysis section above). This is because, unlike the Petroleum Act, the Mining Act does not prescribe incorporation of the landowning group for mining activities to be initiated. Instead, each of the communities engaged in an extensive exercise to establish Membership Qualification Criteria. The MQCs help to identify the criteria to be considered a "landowner" for the purposes of the Mining Act; which is a different question from whether that person would be considered a landowner under the Land Act or in customary law. Classification matters because the Mining Act requires benefits of the mine to be shared with "landowners". The MQCs are not legally binding, but they will be included in the Memorandum of Agreement from the Development Forum and establish what is agreed between the company, state, and community regarding benefit sharing. The MQCs may also be ratified by the local level government who have jurisdiction over family matters. The MQCs define who gets which of the mining benefits (membership in landowner association, possibility of being a shareholder, compensation payments, royalties, access to mining related jobs and training) and on what basis.

While there are still some questions unanswered by the MQCs, such as how to treat subsequent generations over the life of the mine and how to treat a death of a landowner, they are more inclusive for women than the customary or traditional rules of land ownership. They do, however, reflect an agreement from the community that benefits should accrue to "sisters" and two generations after them (that is, to the sisters' grandchildren). Promoting criteria that were more inclusive of women was a deliberate strategy employed by the community relations team and was the basis for many tense meetings with the men in the communities. Regarding women and mining benefits, the MQCs go beyond what would have been available to women had customary land ownership rules been applied. A summary of their provisions regarding women is provided in the below table.

Table 2. Membership qualification criteria in relation to women (note that households are often multi-generational)<sup>39</sup>

Category of status	Qualification in the MQC
Unmarried female child (natural, adopted) of present household head (resident of village)	Under custom does not qualify for ownership, succession, or decision-making on land, but does qualify for the right to use land. Under the MQC, this group qualifies for all mining related benefits because of direct descent from customary landowning father.
Unmarried female children of married male child of present household head (resident of village)	As above.
Married (in- or -out) female child of present household head (including current female family head, married and living with husband, divorced, and widowed)	Under custom does not qualify for ownership, succession or decision-making on land, but does qualify for the right to use land. Under MQC, qualifies for membership in landowner association, shareholding in landowner companies, and all mining benefits. Land compensation and mining royalty benefits continue with her children, both male and female.
Children of married female daughters (male and female) who have married out to persons outside the project area (still living with husbands, divorced, widowed, or deceased)	Under custom, does not qualify for any land rights. Under the MQC, can enjoy all benefits from land compensation and cash royalty payments, but these rights terminate at death.
Female children of a non-resident male member of the customary group (i.e. a male in the patrilineal line who has taken outside residency for job or other opportunities for prolonged periods)	Qualifies for all benefits and rights available to a resident member's female children (above).
Female residents who are not related to a male member of the customary group (e.g. guests of the host community), and their female and male children.	Under custom, this group is considered permissive users of land and have no rights to land or mining benefits such as land compensation and royalty payments. Under the MQC, subject to approval, they can become members of the landowner association and be shareholders in landowner companies and other mining benefits such as jobs and education, but not royalty and cash benefits.

The MQCs have been adopted and accepted by the communities. Respondents from the company

<sup>39</sup> Adapted from Nawara, *supra* n. 26.

and the community reported they understand the importance of including women among beneficiaries (e.g. sisters of male members are being considered heads of household for the purpose of resettlement and royalty payments) even though they are not customary landowners. At the same time, the company and community both recognize that the MQCs and a more inclusive approach to compensation and benefits sharing may pose some risks. For instance, the MQCs do not change existing intra-household dynamics, and there may be some pressure for women to hand over any benefits to their husbands and brothers, exacerbating existing inequities and uneven power dynamics in the household.

Another potential risk is that the additional cash in women's hands could be a trigger for violence from husbands or partners, who might seek to obtain the women's share of proceeds or feel the need to assert their authority. Also, as has been seen in other mining contexts in Papua New Guinea, there is the potential that polygamy (informal or formal) will increase at the expense of women because of the increased cash in circulation. Polygamy is not common today in the seven impacted communities, but it is in other communities, especially because it is seen as a marker of masculinity and wealth. While this is not an outcome directly related to the inclusiveness of the MQCs, it is a perception that holds some currency in the communities covered in this case study. The community relations team acknowledged this perception but believe the likelihood of polygamy may be decreased with wider cash distributions—affording multiple wives is associated with being an elite who can capture wealth; which this payment structure seeks to avoid.

## **7 EFFECTIVE STRATEGIES**

The following strategies for advancing gender equity in mining projects are relevant for private sector actors, civil society actors engaged in community-related activities, and government.

### Define qualifying criteria broadly so that benefits can be shared equitably

In Papua New Guinea, as in many other national contexts, sub-surface rights are held by the state. Even so, holders of surface rights—landowners or landholders—in mining impacted areas are often the "community" that must be engaged, and from whom social license to operate is earned (or not). Land ownership in places where extractive investments take place is typically governed by customary rules that give males rights and decision-making power. Therefore, if a community relations approach aligns too closely to customarily defined land ownership, it will exclude a large portion of the population who are not customary land owners but who still use the land, rely on it to survive, and will be impacted by the mining investment.

In this case study, the company took a number of steps to encourage the community to use the MQCs to define its membership (for the purpose of the mining investment) in a way that was more inclusive than a strict adherence to customary rules around land ownership. In so doing, it laid a foundation for women to both be compensated for loss because of the mine and have a direct share of the royalties and other benefits from the mine when it is operational. While it might be argued the substance of the MQC goes against the cultural norms of the community, cultural norms and rules are not static and can adapt to changing needs and come into conformance with constitutional and statutory requirements. This may be an instance where custom can adapt by ensuring gender-equitable distribution of benefits from the investment in a way that has positive potential for women.

### Connect with development partners

Due to remoteness and lack of infrastructure, the company in this case study has come to play a role beyond the usual scope of a private actor. It provides transport, funds some social services, and provides other support that might otherwise be provided by the state or civil society actors. However, a company may not always be best equipped in terms of personnel and expertise to play these roles, and a community's priorities may not always be aligned with a company's profit motive. Moreover, when it no longer makes business sense to continue with an investment, a corporate actor may be bought or sold or leave an investment, and thereby leave the community without critical services.

A promising practice illustrated in this case study is the WiM program. This program provides support to women and the community the company is not equipped to provide. The program seems to embrace best practices from the aid sector and the kinds of skills that development actors have brought to social and economic development to help support women playing a meaningful role in representative groups (CLF and Development Forum). These skills and practices also seem to be helping women and communities develop alternative livelihood skills so they can survive and thrive the inevitable ups and downs of mining investments.

### Learn from experience in other mining contexts

Almost all respondents for this case study referenced the experiences (both positive and negative) of other people in Papua New Guinea related to mining as a driver for making certain decisions that impacted women. That is because in Papua New Guinea, outside of the more recent experience of women at Ok-Tedi mine,<sup>40</sup> women have not typically shared in the benefits and have borne a disproportionate burden from the mining operations. Yet, by witnessing the impacts of mining operations on people elsewhere, women and men in target communities are better able to grasp the importance of the decisions made before the mine is operational.

Likewise, the company took stock and applied what it had learned about integrating gender from another project in Laos and promoted inclusion of women early on and agreed to work with the WiM project. Thus, sharing the knowledge and experience of the company among and between stakeholder groups in Papua New Guinea can prove an effective strategy for ensuring that mining practice progresses across PanAust's operations and across the industry.

### Operationalize commitments to gender-responsiveness through corporate culture, structure, and metrics.

Corporate commitments to sustainability enabled consideration of gender in the community engagement, benefit sharing, and compensation decisions made by the mining company. This commitment was operationalized by including gender in its corporate risk management function. Risk management is one of the more critical corporate functions for mining companies because mining investments are considered high-risk. Thus, placing responsibility for addressing gender

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<sup>40</sup> Nicholas Menzies and Georgia Harley, We Want What Ok Tedi Women Have!: Guidance from New Guinea on Women's Engagement in Mining, 7 J4P 2 (World Bank Briefing Note, 2012).

equity within the risk management function helped ensure that gender issues were given appropriate weight internally.

The company's voluntary commitments to international standards, such as the IFC Performance Standards, were operationalized by linking those commitments to the performance indicators of staff and executives; in short, those who had the authority to ensure gender commitments were realized had matching incentives. This approach has the effect of elevating gender concerns within the culture of the organization and allowed for creative problem solving when difficult gender issues arose (such as when the local men on the CLF did not initially want to include women).

The impact of these commitments can have a multiplier effect as well. In the case of the Frieda River area, mining companies are very influential because they have historically provided much needed services and support to otherwise remote communities not well served by state services. Such influence can be wielded to make progress towards equitable outcomes in circumstances where local power dynamics might not be favorable—such as in the Project area where women were not defined as landowners by custom but where the MQCs were developed to include certain women even if they are not customary landowners.

Ensure that mining laws mandate meaningful incorporation of women's and men's perspectives from affected communities.

The legal framework for mining and customary land in Papua New Guinea has some positive aspects regarding recognizing the cost to surface rights holders of mining activities, even where the state possesses the sub-surface rights. It is also positive for recognizing the legitimacy of customary land rights. However, both the Mining Law and the Land Laws make no mention of gender concerns. The result is that there is no obligation under these statutes (as opposed to the applicable constitutional guarantees) to consider gender in the process of defining those who will share the benefits of the mining endeavor—even when it is known that customs around land and wealth are highly gendered in Papua New Guinea. Indeed, it is left to private sector actors (and good corporate policies) to determine whether an investment will meet international best practices by treating women's interests equally to men's. The envisioned policy and legal framework reforms for mining in Papua New Guinea present an opportunity to ensure women always have a meaningful seat at the table each time communities are engaged, and to ensure that women benefit from and do not bear a disproportionate cost of the mining activities. For example, the new policy should expand the definition of landholders in the current Mining Law to specifically include women and prohibit locally defined practices that are brought into the Development Forum that do not represent women's, as well as men's, interests.

Invest resources in engaging the whole community and track how well information is being received.

For this Project, the company made a strong effort to ensure that both women and men were consulted when making decisions and were aware of key information. The company made an effort to ensure women were represented on the Community Leaders Forums, even when the suggestion was met with a negative response from male members. This was an important step because the CLF's can play a significant role in determining the landowners' association that would subsequently be involved in the Development Forum. Even though these steps were positive, more is probably needed to ensure women's interests are meaningfully integrated into

community engagement processes: women in remote communities who have historically been excluded from interacting with outsiders (mining companies) must overcome significant confidence, skill, and knowledge barriers to be able to effectively represent the interests of other women in the community. Also, men in the CLFs must be amenable to giving space and time to women in the CLF and the input of women must be treated equally to that from men.

To get to a point where women's interests are meaningfully included requires investing time, capacity building, and other resources and support. These may not be part of the typical budget and expertise of a mining company. Though, the potential gain in terms of equitable outcomes for women and gaining social license are significant. Other measures that can help achieve meaningful inclusion of women's interests along with those of men include holding separate meetings for women when seeking key input from communities and when informing the community of key dates or processes that they should participate in; making use of different forms of awareness raising that might be better suited to an illiterate audience, such as skits, comics, and movies; developing complementary skills that will allow women to represent their own interests, such as an ability to define those interests, negotiation, active listening, letter writing, and public speaking. In addition, it is helpful to measure and evaluate whether activities are making a difference for women by establishing a baseline and then monitor progress against defined gender-equity objectives. This would help mining projects assess how decisions are impacting women over time and be able to quantify and qualify what works and what does not. Finally, tracking the effectiveness of any communication technique will help ensure that messages are being shared with the target populations, and that techniques employed are having their desired impact. Companies can draw from extensive experience in the NGO and development sectors to plan this kind of engagement.