

Complaint against PanAust Limited

Submitted to the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises

Project Sepik and Jubilee Australia Research Centre

9 December 2021

1. Introduction

This document sets out a complaint against PanAust Limited, an Australian incorporated company, regarding breaches of the OECD Guidelines for Multinational Enterprises (**the OECD Guidelines**) via the activities of its wholly-owned subsidiary, Frieda River Limited.

Frieda River Limited is proposing to build the Sepik Development Project (**the Project**), comprising the Frieda River Copper-Gold Project (**the Frieda River Mine**) (a large-scale open-pit copper and gold mine), the Frieda River Hydroelectric Project, the Sepik Infrastructure Project, and the Sepik Power Grid Project.¹ The Project is intended to cover an area of approximately 16,000 ha across the East Sepik and Sandaun (West Sepik) Provinces of Papua New Guinea (**PNG**).² The Frieda River Hydroelectric Project would be located in the Frieda River catchment, 40km upstream from the Sepik River, and would provide power for the Frieda River Mine. It would be both a hydroelectric facility and an Integrated Storage Facility (**ISF**) to hold water and tailings from the mine operations.³ If built, the Frieda River Mine would be the largest mine in the history of PNG and one of the largest mines in the world.

This complaint is submitted by Project Sepik and Jubilee Australia Research Centre (**the Notifiers**) on behalf of 2,638 Indigenous members of 64 villages along the Sepik River (**the Complainants**). The Complainants submit that PanAust Limited has breached Chapters III (Disclosure), IV (Human Rights) and VI (Environment) of the OECD Guidelines.⁴ The Complainants assert that PanAust Limited has failed to uphold their right as affected Indigenous communities to give Free, Prior and Informed Consent to the Project. The Complainants have significant concerns that the Project's planned ISF carries the risk of massive-scale environmental destruction and loss of human life should it fail, and therefore violates the precautionary principle. The construction and operation of the Project is predicted to cause damage to natural resources that are relied upon by communities throughout the project area, including the Complainants who live downstream from the project along the Sepik River. The project's EIS does not adequately disclose project risks. The Complainants, who stand to be harmed by the mine, have called for a complete ban on the mine and have not given their Free, Prior and Informed Consent to the Project.

¹ Frieda River Limited (2018) *Sepik Development Project, Environmental Impact Statement* (henceforth "Project EIS"), Volume A – Executive Summary, p. 3. Available at: <https://friedariver.com/eis/> (accessed 15 July 2021).

² Project EIS, Volume A – Executive Summary, p. 3.

³ Project EIS, Attachment 2b – Frieda River Hydroelectric Project Environmental Management and Monitoring Plan, SDP-6-G-00-01-T-003-004 (26 October 2018) at 1.

⁴ OECD (2011) *Guidelines for Multinational Enterprises*, OECD Publishing, available at: <https://www.oecd.org/daf/inv/mne/48004323.pdf> (accessed 15 July 2021).

2. Identity and interest of the Notifiers

This complaint is submitted by Project Sepik and Jubilee Australia Research Centre (the Notifiers) on behalf of 2,638 Indigenous residents of 64 villages along the Sepik River (**the Complainants**). The residents of these villages stand to be affected by environmental damage, water contamination and the risk of tailings dam failures as a result of the Project.

Project Sepik Inc. (registration number 5-103525) is a non-governmental organisation incorporated under the Associations Incorporation Act 1966 (PNG) in 2016. It is based in Wewak, East Sepik Province, and engages in informing and empowering local landowners, advocating on issues of land acquisition and development, capacity-building and stakeholder engagement in PNG.

Jubilee Australia Research Centre (ABN: 78 669 804 328) is an Australian-based non-profit research centre that was founded in 2009. The organisation's primary functions include engaging in research and advocacy in order to deliver economic justice in the Asia-Pacific region, and accountability of Australian corporations and government agencies operating within this region. Jubilee Australia Research Centre is a charity registered with the Australian Charities and Not-for-profits Commission.⁵

Project Sepik and Jubilee Australia Research Centre jointly manage the "Save the Sepik" campaign, which aims to protect the Sepik River from the impacts of the Frieda River Mine.⁶

3. Notifiers' relationship to the Complainants

The Notifiers have consulted the Complainants and obtained their consent to bring this complaint on their behalf. A list of the Complainants is **Attachment A**.⁷

During 2019 and 2020, Project Sepik visited 25 villages along the Sepik River and participated in dialogue about the Frieda River Mine. The heads of 28 *Haus Tambarans*, representing 28 villages, signed *The Supreme Sukundimi Declaration*, articulating their village's opposition to the Frieda River Mine and, specifically, to any tailings facility that could negatively impact the Sepik River. The Declaration, and the process leading up to its signing, are detailed in the Background Paper *The Supreme Sukundimi Declaration (Attachment B)*.

From 26 April to 2 May 2021, Project Sepik organised a week-long follow up workshop in Korogu village, with an estimated 120 clan and spiritual leaders representing 49 clans along the Sepik River. At that workshop, Project Sepik discussed the option of the community bringing a complaint to the OECD National Contact Point. Following discussions, the assembled clan leaders agreed on the outline of the complaint.

Between 10 and 18 October 2021, four teams of volunteers led by Project Sepik visited villages along the Sepik River, from Iniok close to where the Frieda and Sepik Rivers join, to Kopar at the river mouth and the villages in the Sepik river delta. Before the volunteers went to the field, a letter was sent to each village informing them of the visit by Project Sepik to discuss the proposed complaint to the OECD NCP and providing a summary of the complaint. Volunteers then visited villages in person, shared information about the proposed complaint and answered questions. Volunteers invited interested villagers over 18 to sign a

⁵ Australian Charities and Not for Profits Commission, "Jubilee Australia Research Centre", <https://www.acnc.gov.au/charity/charities/0c71553b-3aaf-e811-a962-000d3ad24a0d/profile> (accessed 6 December 2021).

⁶ See www.savethesepik.org

⁷ Note: the full names of the complainants will be confidentially provided to the NCP to protect their privacy.

form if they wished to be represented in the complaint.⁸ A total of 2,638 residents from 64 villages along the river agreed to be represented by Project Sepik and Jubilee Australia in the complaint.

The Complainants are River peoples and the Sepik River is the lifeblood and centre of their cultural, spiritual and economic lives. The River is seen as an ancestral being (though the richness of the Sepik communities and their diverse languages means that the nature and name of this ancestral being differs from clan to clan) and, thus, the ecological integrity, health and sustainability of the Sepik River is intimately connected to its spiritual and cultural (or metaphysical) integrity, health and sustainability. The River *is* the identity of the Complainants. Moreover, the Complainants are also proprietary stakeholders in the Sepik River, where any rights that the PNG State may have in relation to the Sepik River is limited by the customary rights and uses of the Sepik Communities.⁹

4. Identity and location of the company

The Project proponent is Frieda River Limited, a company incorporated in Papua New Guinea.¹⁰ It is a subsidiary of Australian-registered company PanAust Limited.

The shares of Frieda River Limited are owned by a Singaporean-registered arm of PanAust, PanAust SPV1 Pte. Ltd, which in turn are owned by Singaporean-registered PanAust Holdings Pte. Ltd. PanAust Limited owns all the shares in PanAust Holdings Pte. Ltd.¹¹

PanAust Limited is an Australian public company, limited by shares, first registered in August 1990. Its registered office is in Fortitude Valley, Queensland.¹² It is 'a copper and gold producer in Laos with pre-development opportunities in Laos, Papua New Guinea (PNG), Myanmar and Chile'.¹³

In 2015, the Hong Kong registered company Guangdong Rising H.K. (Holding) Limited acquired over 90 per cent of PanAust's ordinary shares on issue, and subsequently compulsorily acquired PanAust's remaining shares. Guangdong Rising H.K. (Holding) Limited is a wholly owned subsidiary of Guangdong Rising Assets Management Co. Ltd (GRAM), a Chinese state-owned company.¹⁴

⁸ In some cases, villagers did not sign but marked with an X or a tick, while others gave their name verbally to be noted down by the volunteer.

⁹ See s.79, *Environment Act 2000* (PNG) and s.53 which limits the ability of the State to compulsorily acquire property.

¹⁰ PNG Investment Promotion Authority (IPA), 'View Local Company – Frieda River Limited (1-58096)', www.ipa.gov.pg (accessed 13 July 2021).

¹¹ PNG Investment Promotion Authority (IPA), 'View Local Company – Frieda River Limited (1-58096); Singapore Accounting and Corporate Regulatory Authority (ACRA), 'Business Profile – PanAust SPV1 Pte Ltd (201328904R)' available at: <https://www.tis.bizfile.gov.sg/> (accessed 29 September 2020); Singapore ACRA, 'Business Profile – PanAust Holdings Pte Ltd (201001237D)', available at <https://www.tis.bizfile.gov.sg/> (accessed 29 September 2020).

¹² PanAust Limited, 'Company Profile', <https://panaust.com.au/company-profile> (accessed 6 December 2021); ASIC, 'View Details, PanAust Limited ACN 011 065 160,' available at https://connectonline.asic.gov.au/RegistrySearch/faces/landing/SearchRegisters.jspx?_adf.ctrl-state=hma981i7c_4 (accessed 23 September 2020).

¹³ PanAust Limited, 'Company Profile'.

¹⁴ Frieda River Ltd, 'Company profile,' available at <https://friedariver.com/the-project/company-profile/> (accessed 6 December 2021). Note there is a discrepancy between the Frieda River Limited and PanAust Limited profiles, with PanAust Limited stating that Guangdong Rising H.K. (Holding) Limited is owned by Guangdong Rising Holding Co Ltd: see <https://panaust.com.au/company-profile> (accessed 21 July 2021).

5. Competence of the Australian NCP to hear the complaint

The Australian National Contact Point (**AusNCP**) Complaint Procedures 2019 (**the Complaint Procedures**) state in Section 3 that Complaints can be made to the AusNCP about an Australian multinational enterprise operating overseas, even in a country that is not an adherent to the OECD Guidelines and that the AusNCP “will seek to take a broad view of the definition of an Australian multinational enterprise for the purposes of receiving complaints”.

PanAust Limited, being a public company registered in Australia, is an Australian multinational enterprise, operating in PNG through its wholly-owned subsidiary, Frieda River Limited. The Executive Director, Deputy CEO and CFO of PanAust Limited is a Director of Frieda River Limited, demonstrating a close management linkage between the two companies.¹⁵ PNG is not an adherent to the OECD Guidelines.

6. Concerns regarding the conduct of PanAust, and how those concerns relate to the Guidelines

The Notifiers state that PanAust, through its involvement in the Frieda River Project, has breached the OECD Guidelines in the following respects:

1. By failing to respect the human rights of the Affected Communities, specifically their right to give Free, Prior and Informed Consent to development that affects them;
2. By failing to adequately address the environmental risks and likely impacts of the Project on the Sepik River and its environment; and
3. By not adequately disclosing Project information to stakeholders.

6.1 Lack of Free, Prior and Informed Consent

Chapter IV Paragraph 1: “Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved”

Chapter IV Paragraph 2: “Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.”

Chapter II, Paragraph 14: “Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.”

The OECD Guidelines clearly require enterprises to respect human rights, avoid causing adverse human rights impacts and address human rights impacts with which they are involved. The Complainants assert that PanAust Limited has breached their right to give or refuse their Free, Prior and Informed Consent (**FPIC**) to development that affects them.

The right to FPIC

The United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) establishes the rights of Indigenous peoples to self-determination and control over their land, including several articles requiring FPIC:

¹⁵ See ASIC, ‘Current Company Extract - PanAust Limited ACN 011 065 160,’ , 6 December 2021; Investment Promotion Authority of PNG, ‘Company Extract – Frieda River Limited – 1-58096’, accessed 6 December 2021.

- Article 10: “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”
- Article 29: “States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.”
- Article 32: “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”¹⁶

Rights contained within the UN Declaration on the Rights of Indigenous Peoples are predominantly enforced against the State. However, the Guidelines are clear that an enterprise must respect human rights, even where the State has failed to protect these rights. Chapter IV, Paragraph 38 of the OECD Guidelines states “a ‘State’s failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights”.¹⁷ The Commentary on the OECD Guidelines also specifies that enterprises “should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them”, and makes specific mention of indigenous peoples.¹⁸

It is now accepted that Free, Prior and Informed Consent is the normative standard under international law that enterprises are expected to comply with when proposing developments which will affect Indigenous peoples.

Defining Free, Prior and Informed Consent.

Free, Prior and Informed Consent has been discussed at length and defined by the United Nations Human Rights Council.¹⁹ It is clear that consultation and discussion of issues will not be sufficient to have achieved FPIC from communities, and that the standards to be met are quite high for parties seeking to proceed with development projects on the lands or impacting indigenous communities. The relevant points are summarised below:

Free

The process of consultation, and seeking consent from indigenous people must be free from intimidation, coercion, manipulation and harassment. In order for consent eventually granted by communities to have any purpose and validity, there must be no coercion either through threat or offer of reward. While recompense can be made for impacts to indigenous communities, this must be balanced and weighed up by the community as a whole. It is essential that all members of the community have access to the decision-making process, so states and enterprises seeking consent should engage with communities through their established cultural and institutional decision-making

¹⁶ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (13 September 2007).

¹⁷ OECD Guidelines, Ch IV para 38.

¹⁸ OECD Guidelines, Ch IV para 38.

¹⁹ Human Rights Council (2018) *Free, prior and informed consent: a human rights-based approach. Study of the Expert Mechanism on the Rights of Indigenous Peoples*, 39th sess, UN Doc A/HRC/39/62, available at; <https://undocs.org/A/HRC/39/62> (accessed 15 July 2021)

bodies. This includes allowing communities to nominate traditional forms of representation and choose how they are represented.²⁰

Prior

Processes for consultation and achieving consent from indigenous communities should begin as early as possible in the formulation of the project process and well in advance of approval processes. Consultation wishing to be considered truly 'prior' must occur "before crucial details have already been decided" and at the conceptualisation stage of project planning and design.²¹ It is not considered sufficient for consultation to be occurring once plans have been drawn up and the project preparation has commenced.

Informed

Consultation processes that lead to consent must be fully informed, meaning not only that information provided is clear, objective, accurate and both qualitative and quantitative; but also that it is provided in a manner that is accessible to indigenous communities. This should include translation into local languages as needed, use of culturally appropriate procedures for consultation and must include all details for impacts or projected impacts and risks or potential harm that could result for the community, their resources and the local environment. It is important to note that participation in consultation processes does not constitute consent and can damage future attempts to inform local communities by damaging relationships with indigenous communities, so consultation must be done deliberatively and with great consideration for local traditions. Failure to engage with legitimate leadership of indigenous communities can ultimately invalidate any consent that may be achieved through other channels.²²

Consent

Consent is not merely accession to a pre-determined outcome, but rather an explicit stating of acceptance following a process that has met the above standards for free, prior and informed consent. As consent is so closely tied communities exercising their to the right to self-determination full license is given to communities to grant or withhold consent for a number of explicitly stated reasons including assessment that the proposal is not in their best interests or that of future generations and as a bargaining tool to address deficiencies in the consultation process.²³

The right to FPIC under Papua New Guinea laws

PNG is yet to operationalise and implement UNDRIP. However, it has signed and ratified other international human rights instruments that recognise the rights of indigenous peoples such as the International Conventional on Civil and Political Rights (**ICCPR**), the International Convention on Economic, Social and Cultural Rights (**ICESCR**) and the Convention on the Elimination on All Forms of Racial Discrimination (**CERD**).²⁴

Land in PNG is primarily customarily owned by the local people and various legislation dealing with the use and development of customary land requires that consent is obtained from customary landowners before any activity can be undertaken. The *Lands Act 1996* and the *Mining Act 1993*, for instance, requires obtaining 'agreement' and engaging in 'consultation' with the customary landowners prior to project development.²⁵ The PNG Constitution specifically describes what this 'consultation' should look like by stating that

²⁰ Ibid, para 20.

²¹ Ibid, para 21.

²² Ibid, para 22-23.

²³ Ibid, para 24- 26.

²⁴ ICCPR and ICESCR ratified on 21 July 2008; CERD ratified on 27 January 1982.

²⁵ Sections 10 and 3 respectively.

“where a law provides for consultation between persons or bodies, or persons and bodies, the consultation must be meaningful and allow for a genuine interchange and consideration of views.”²⁶ The particular interest of the Constitution in requiring “consultations” to be “meaningful...and genuine” reflects the two pillars of decision-making processes in PNG society – “consultation and consensus” – which the drafters of the PNG Constitution identified as fundamental and that it requires the people “to be actively and meaningfully involved in [decisions regarding] their own development”.²⁷

The PNG National Court has held that in development projects, this constitutional requirement for “meaningful consultation” cannot be satisfied with short meetings with selected individuals, but that it requires “more in-depth” and elaborated consultation with the people.²⁸ According to the Court, that involves “go[ing] to the villages...talk[ing] to the landowners, in their families clans and tribes, in the languages they could understand.”²⁹ The Court reasoned that “[i]n introducing projects such as this which would have permanent and long-term effect on their land, genuine and meaningful consultation with the landowners must be carried out among the landowners.”³⁰ The PNG Supreme Court has clearly interpreted these requirements to mean that project developers must obtain from the landowners their “free and informed consent and approval and ultimately, their social license to operate.”³¹

The Supreme Court further made it pointedly clear that:

foreign investors or developers who wish to enter any land in PNG and more so customary land [must] enter into meaningful discussions and negotiations with them [customary landowners] and get their free and informed consent or approval before entering, occupying, and using their land.³²

PanAust, through its involvement in the Frieda River Project, has not undertaken meaningful consultations and has not obtained free, prior, and informed consent from the complainant landowners and project affected communities in accordance with the standard required under the PNG Constitution.

The Complainants and FPIC

The Complainants self-identify as Indigenous peoples of the Sepik River region. The Complainants identify with and belong to Indigenous clan groups and the male Complainants belong to *Haus Tambarans* across 64 villages. *Haus Tambaran* (sometimes referred to as the “spirit house”) is a Tok Pisin phrase that describes a type of building that houses the practices of traditional ancestral reverence and honour in the East Sepik region of PNG. In the Sepik region, *Haus Tambarans* are the main centres for discussions, especially regarding land, resources and the socio-economic activities of the village.

The Project has the potential to significantly impact the lands and waterways over which the Complainants hold customary ownership rights, as well as sacred sites that form part of their cultural heritage. The Project carries the risk of catastrophic damage to the environment and human life downstream of the mine from a tailings dam failure (see section 6.2 below). The

²⁶ Section 255.

²⁷ *Constitutional Planning Committee Report* 1974, Chapter 1 [16-19], Chapter 2 [106-112].

<http://www.paclii.org/pg/CPCReport/Cap1.htm>.

²⁸ *Maniwa v Malijiwi* [2014] PGNC 25, [22, 23].

²⁹ *Maniwa v Malijiwi* [2014] PGNC 25, [23].

³⁰ *Maniwa v Malijiwi* [2014] PGNC 25, [22, 23].

³¹ *Rimbunan Hijau (PNG) Ltd v Enei* [2017] PGSC 36, [30].

³² *Rimbunan Hijau (PNG) Ltd v Enei* [2017] PGSC 36, [27, 57].

construction and operation of the mine is also likely to cause ongoing pollution and environmental damage for the Complainants.

The mine's construction phase (which is expected to take 6-7 years) would see freight being barged up and downstream along the Sepik River, prior to roads being completed between Vanimo, Green River, and the Frieda River hydroelectric project.³³ Based on the plans outlined in the EIS, during construction of the mine, washoff from the construction waste heap will pass into the Frieda and Sepik Rivers, depositing sediment and raising riverbed levels by as much as three metres in parts of the Frieda River. This would lead to overbank flow and deposit sediment on the floodplain, rendering villages on the Frieda River floodplain uninhabitable and their gardens unproductive for some time.³⁴

Toxic minerals released into the Frieda River during the operation of the mine are also likely to impact on the Complainants' water resources, to varying degrees depending on their location in the Frieda River basin and along the Sepik River. Expert reviews of the Project EIS raised concerns about:

- The likelihood that water with very high concentrations of toxic metals will be discharged into the Frieda River with toxic particles settling on the bed of the Frieda and Sepik Rivers, with a risk of those particles being mobilised into the river if disturbed.³⁵
- High concentrations of aluminium, copper, zinc, cadmium and chromium (exceeding Australian and New Zealand guidelines) entering water in the Frieda River floodplain, exposing communities living on the floodplain to toxins for 30+ years.³⁶
- The fact that risks to water quality will exist for up to 2000 years; posing an ongoing hazard for downstream communities and the environment. It is unclear how these risks will be managed post mine closure.³⁷

The Complainants are resident on the Sepik River and some are also resident on the Frieda River Floodplain, and stand to be affected by the above environmental impacts to varying degrees.

PanAust failure to obtain FPIC of the Complainants

The Complainants submit that PanAust and its subsidiary, Frieda River Limited, have failed to obtain the FPIC of affected indigenous communities, as required under the UN Declaration on the Rights of Indigenous Peoples and underlying international law conventions.

PanAust's FPIC engagement has focused on communities at the mine site. According to material in the public domain, Pan Aust has held a number of awareness campaigns with Sepik river communities. These campaigns occurred in July 2015 (41 villages), September

³³ Project EIS, Attachment 2b – Frieda River Hydroelectric Project Environmental Management and Monitoring Plan, SDP-6-G-00-01-T-003-004 at 5.

³⁴ Dr Ian Cordery (2020) *Review of Part of the EIS of the Sepik Development Project*, available at: <https://savethesepik.org/social-impacts/> (accessed 15 July 2021).

³⁵ Dr Ian Cordery (2020) *Review of Part of the EIS of the Sepik Development Project*, p. 8.

³⁶ Dr Ian Cordery (2020) *Review of Part of the EIS of the Sepik Development Project*, p. 8.

³⁷ Assoc. Prof. Matthew Currell (2020) *Review of Sepik Development Project Environmental Impact Statement (EIS)*, available at: <https://savethesepik.org/social-impacts/> (accessed 15 July 2021).

2016 (29 villages), September–October 2018 (103 villages) and October–November 2019 (39 villages).³⁸ The company called the 2018 visits ‘Statutory Engagement Campaigns’.³⁹

Pan Aust also held a number of consultations in November 2018 and September 2019 with Ward Counsellors and LLG Managers in Wewak.

These awareness campaigns were not genuinely consultative, and were not conducted to an international standard of good faith consultations with the object of obtaining FPIC or with respect to the requirements of domestic law set out above. Their aim was to *make communities aware of the project*, not to *seek permission of communities* for the project.

Indeed, many Sepik communities feel that, given their longstanding opposition to the project, that even participating in such awareness campaigns could be construed as giving consent for something that they strongly oppose. Feeling that their previous concerns had not been heard and that awareness campaigns were therefore tokenistic, several communities refused to participate in the more recent ones. In some cases, communities blocked the company and its party from entry.⁴⁰

In October 2019, PanAust announced that it would commence another ‘statutory engagement campaign’, which would include consultation with communities along the Sepik River from February to March 2020. However, Project Sepik received no information about this consultation, and the Complainants are not aware that this consultation ever took place in the Sepik River area.⁴¹

In any event, none of the above consultations represented good faith consultations with the object of obtaining FPIC free, prior and informed consent, but were more awareness tours which did not address the concerns of the communities or provide the critical information relevant to them, including the dam break analysis. As former Special Rapporteur on the Rights of Indigenous Peoples, Jame Anaya has underscored:

[T]he Declaration suggests a heightened emphasis on the need for consultations that are in the nature of negotiations towards mutually acceptable arrangements, prior to the decisions on proposed measures, rather than consultations that are more in the nature of mechanisms for providing indigenous peoples with information about decisions already made or in the making, without allowing them genuinely to influence the decision-making process.⁴²

³⁸ PanAust, ‘Frieda River Project: A Response to the United Nations Communication’, July 2020, p. 27.

³⁹ PanAust, Company Announcement, ‘Sepik Development Project statutory engagement campaign’, 23 October 2019, available at https://panaust.com.au/sites/default/files/231019_Sepik%20Development%20Project%20statutory%20engagement%20campaign.pdf (accessed 29 July 2020).

⁴⁰ For a more detailed description of the 2018 consultation, see Jubilee Australia Research Centre and Project Sepik (2019) *The River Is Not Ours*, Sydney: Jubilee Australia Research Centre at 18-19, available at <https://www.jubileeaustralia.org/latest-news/SaveTheSepik> (accessed 14 July 2021).

⁴¹ PanAust, ‘Sepik Development Project statutory engagement campaign’, Company Announcement, 23 October 2019, available at: https://panaust.com.au/sites/default/files/231019_Sepik%20Development%20Project%20statutory%20engagement%20campaign.pdf (accessed 28 July 2021).

⁴² A/HRC/12/34, 15 July 2009.

Further, the Complainants have repeatedly expressed their opposition to the Project:

- In October 2018, a team (including representatives from Project Sepik) undertook an awareness tour in 23 villages in the Upper Sepik to discuss the Project. During the awareness tour, village leaders each of the 23 villages expressed their opposition to the Frieda River Mine going ahead.⁴³
- In October 2019, Emmanuel Peni of Project Sepik, along with representatives of Jubilee Australia Research Centre and Aid/Watch Australia, met with executives of PanAust in Brisbane, Australia. Speaking as a representative of the communities living on the Sepik River, Mr Peni explained that the proposed Frieda River mine project did not have the consent of the river communities.
- In May 2020, the traditional clan leaders of 28 Haus Tambarans along the Sepik River issued the *Supreme Sukundimi Declaration (Attachment B)* clearly stating their opposition to the Frieda River Mine. The Supreme Sukundimi represent approximately 78,000 people across 25 villages from Swagap in Upper Sepik near the Frieda River to Kopar at the Sepik River's mouth.

As discussed above, an important part of the right to self-determination for Indigenous communities is the ability to nominate representative governance structures that States and organisations must seek consent from. The Indigenous people of the Sepik River regions cannot be considered to have provided any form of consent while the *Haus Tambarans* have explicitly withheld their consent. Where a development threatens to significantly impact the culture and environment of Indigenous peoples, their affirmative consent is required.⁴⁴

Moreover, In July 2020, ten UN Special Rapporteurs, along with the UN Working Group on Human Rights and Transnational Corporations, wrote to Frieda River Limited, Highlands Frieda Limited (a former Joint Venture partner involved in the project), and the governments of PNG, China, Australia and Canada to raise their concerns about the proposed Frieda River mine and the risk of failure of its proposed tailings dam.⁴⁵ The letters from the Special Rapporteurs, and responses from the governments of Australia, Canada and the People's Republic of China are at **Attachment C**.

6.2 Failure to adequately assess and mitigate environmental risks

Chapter VI. Chapeau: Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development

Chapter VI, Paragraph 3: Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them.

⁴³ See Jubilee Australia Research Centre and Project Sepik, *The River Is Not Ours* at 14.

⁴⁴ "Accordingly, indigenous consent is presumptively a requirement for those aspects of any extractive operation that takes place within the officially recognized or customary land use areas of indigenous peoples, or that has a direct bearing on areas of cultural significance, in particular sacred places, or on natural resources that are traditionally used by indigenous peoples in ways that are important to their survival" (SR on the Rights of Indigenous Peoples at A/HRC/21/47, 6 July 2012, para 65)

⁴⁵ For copies of all letters, see: <https://savethesepik.org/letter-from-ten-un-special-rapporteurs/>

Chapter VI, Paragraph 4: Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

Chapter VI, Paragraph 5: Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

The Sepik is the largest unpolluted freshwater system in New Guinea and among the largest and most intact freshwater basins in the Asia Pacific.⁴⁶ The Sepik contains two eco-regions that featured on the World Wildlife Fund's (**WWF's**) Global 200 List – regions noted by scientists to be the Earth's most biologically outstanding habitats, that harbour 'exceptional biodiversity and are representative of the world's ecosystems'.⁴⁷ The Upper Sepik River Basin also includes the Hunstein Range Wildlife Management Area (**WMA**), an area of more than 2,200 km², which was declared by local landowners in 1998 to protect the area's wildlife and environment from logging.⁴⁸ The Upper Sepik River Basin was Tentatively Listed for World Heritage Status by the PNG Government in 2006 due to its environmental and cultural heritage. Yet, the Frieda River mine, and its associated infrastructure – roads, pipelines, airstrip and dam infrastructure – are almost all located within the area Tentatively Listed for World Heritage Status.⁴⁹ The Project poses a significant threat to this globally important ecosystem.

Failure to adequately assess the environmental impacts of the operation

In November 2018, Frieda River Limited provided an Environmental Impact Statement (**EIS**) for assessment by PNG's Conservation and Environment Protection Authority (**CEPA**). In 2020, the Centre for Environmental Law and Community Rights Inc. (**CELCOR**), on behalf of Project Sepik, commissioned ten independent experts to review the EIS, and provided the resulting expert reports to CEPA. These reports identified that the project EIS is missing critical information including:

- crucial underlying reports relating to the tailings dam and seismic reports;
- basic information about the operation and closure of the mine;
- a resettlement plan for four villages that would need to be relocated to make way for the project, or whether these villagers had consented to the project and their relocation;
- assessment of the proposed airport;
- a cost-benefit analysis; and
- a dam break analysis – which is one of the most critical reports necessary for understanding the EIS.⁵⁰

⁴⁶ UNESCO, 'Upper Sepik River Basin', available at: <https://whc.unesco.org/en/tentativelists/5065/> (accessed 17 August 2021);

⁴⁷ WWF, 'Global 200,' available at <https://www.worldwildlife.org/publications/global-200> (accessed 14 October 2020).

⁴⁸ UNESCO, 'Upper Sepik River Basin'; WWF, 'Making maps for people who can't read', 5 August 2004, available at <https://www.wwf.org/?14591/Making-maps-for-people-who-cant-read#:~:text=The%20Hunstein%20Range%20WMA%20is,hills%2C%20and%20the%20Hunstein%20Range> (accessed 14 October 2020).

⁴⁹ Peter Hitchcock and Jennifer Gabriel, *World Heritage Tentative Listed Sites In Papua New Guinea: Report On A Review Of The Sites*, UNESCO, January 2015, at 184. Available at <https://www.sprep.org/attachments/VirLib/PNG/world-heritage-sites-png.pdf> (17 August 2021).

⁵⁰ See Save the Sepik, 'EIS Expert Review – High Level Summary,' available at <https://savethesepik.org/expert-review-eis-high-level-summary/> (accessed 12 April 2021).

Other weaknesses in the EIS were identified, including that it significantly underestimates contamination of groundwaters, surface waters and the surrounding environment; the increased risk of malaria from stagnant reservoir water; impacts on agricultural lands for downstream communities; and loss of biodiversity.⁵¹ In particular, the EIS does not adequately assess impacts on the water catchment, which have the potential to directly impact resources of the Complainants. It provides that water from open pits will be treated at a treatment plant prior to discharge, but does not describe the level of treatment or provide for a safeguard system to test water for toxicity prior to discharge. There is insufficient information on how spoil dumps will be managed to avoid sediment loading onto aquatic environments.⁵² One expert review noted that washoff from the construction waste heap will be likely to flow into the Frieda and Sepik Rivers, in turn increasing overbank flow and sediment deposition on the Frieda River floodplain. The review noted that “[a]ny villages on the floodplain of the Frieda River will be uninhabitable and their gardens will cease production for a considerable time.”⁵³ These risks are not adequately assessed in the EIS, and thus the EIS fails to propose adequate mitigation strategies.

Chapter VI, Paragraph 3 of the OECD Guidelines requires that enterprises “[a]ssess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle”. As outlined above, a number of important potential environmental impacts from the project are not adequately assessed in the EIS. As a result, PanAust has neither assessed these impacts nor taken them into account in decision making, as required by the Guidelines.

Failure to adhere to the precautionary principle – Tailings dam proposal

A key threat arises from storage and disposal of the Project’s waste rock and tailings. The Frieda River Mine EIS states that over the mine’s estimated lifespan of 33 years, approximately 2.9 billion tonnes (Bt) of mine waste will be produced (half tailings and half waste rock).⁵⁴ The proponents propose to manage the tailings through a **12,400-hectare reservoir** within the Frieda River catchment, which would act as an integrated storage facility (**ISF**), functioning as a tailings dam as well as a reservoir for hydroelectric power.⁵⁵ To prevent Acid and Metalliferous Drainage (**AMD**) from exposure of tailings to oxygen, the mine’s waste rock and tailings will need to be stored underwater in the ISF.⁵⁶ The project’s Selection Phase Study acknowledges that the requirement to maintain a permanent water cover over the mine waste and tailings means the dam embankment must exist “in perpetuity”.⁵⁷ This means the tailings dam will need to be maintained for generations, long after the mine and attached hydroelectric facility have closed.

The Project EIS acknowledges that a tailings dam failure presents “a catastrophic environmental and social risk” that could directly affect up to 30 villages and cause loss of

⁵¹ See summary of expert report findings in Jubilee Australia Research Centre and Project Sepik (2021) *The Sukundimi Walks Before Me*, Sydney: Jubilee Australia Research Centre, pp. 16-17, available at: <https://www.jubileeaustralia.org/resources/publications/sukundimi-walks-before-me>.

⁵² Professor Amanda Reichelt-Brushett (2020) Expert advice in relation to the Environmental Impact Statement on matters relevant to aquatic ecotoxicology, available at: <https://savethesepik.org/social-impacts/> (accessed 28 July 2021)

⁵³ Dr Ian Cordery (2020) *Review of Part of the EIS of the Sepik Development Project*; both available at <https://savethesepik.org/social-impacts/> (accessed 15 July 2021).

⁵⁴ Project EIS, Attachment 2b – Frieda River Hydroelectric Project Environmental Management and Monitoring Plan, SDP-6-G-00-01-T-003-004 at 1.

⁵⁵ *Ibid.*

⁵⁶ Michael Main (2020) *Independent Expert Review for the Sepik Development Project Environmental Impact Statement* (available at <https://savethesepik.org/social-impacts/> (accessed 13 October 2020), at p. 7.

⁵⁷ Project EIS, Appendix 2a – Frieda River Hydroelectric Project Selection Phase Study, p. 12

life and substantial environmental degradation.⁵⁸ However, it states that the likelihood of dam failure occurring is “very unlikely” due to having “appropriate controls in place, primarily relating to the application of conservative design standards and criteria and a specific ISF stewardship program incorporating a dam safety program, management oversight and an independent external review”.⁵⁹ The Project’s Selection Phase Study refers to a dam break analysis on the consequences of dam failure, however this study was not made publicly available with the EIS and its other supporting documents.⁶⁰ It has also not been provided to the Complainants despite requests on their behalf for a copy of the dam break analysis. Further, in a PanAust document attached to The People’s Republic of China’s response to queries from ten UN Special Rapporteurs regarding the project (see below) PanAust conceded that “a dam break analysis has been completed, but the science around this is preliminary”.⁶¹

Contrary to the company’s assertions, independent expert reports have identified several factors that raise concerning risks of tailings dam failure, including: the large amount of mine waste and tailings that will be produced; the rugged terrain with high annual rainfall; the fact that the mine is in a seismically active area and the decision to combine a tailings storage facility with a hydroelectric reservoir.⁶² Tailings dam failures occur every year, and between 2011 and 2020 alone, there have been five ‘very serious’ tailings-dam failures – which are defined as releasing ‘at least 1 million cubic metres of tailings, travelling more than 20 kilometres or causing multiple deaths’.⁶³ This Project’s proposal for a vast and novel tailings dam that will exist ‘in perpetuity’⁶⁴ and is located in one of the most earthquake-prone regions in the world poses an unacceptable risk to the Complainants downstream of the mine. A dam break will pose unacceptable risk of loss of life and will have a devastating effect on the Sepik River communities right to culture (including the immense importance of the River to spiritual and cultural traditions along the Sepik River) and right to a safe, healthy and sustainable environment.

Chapter VI, Point 4 of the OECD Guidelines states “[c]onsistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, [enterprises should] not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage”. The commentary to this chapter clarifies that it broadly reflects the principles and objectives of the *Rio Declaration on Environment and Development*, which also spells out that States should apply a “precautionary approach”.⁶⁵ The OECD’s detailed guidance document on environment and the OECD Guidelines discusses how enterprises should implement the precautionary approach, noting that:

⁵⁸ Project EIS, Chapter 11 – Extreme Natural Hazards and Incidental Events, Page 11-5.

⁵⁹ Project EIS, Chapter 11 – Extreme Natural Hazards and Incidental Events, Page 11-5.

⁶⁰ Project EIS, Appendix 2a – Frieda River Hydroelectric Project Selection Phase Study, pp 26-27.

⁶¹ PanAust, “Frieda River Project – Response to the United Nations’ Communication”, July 2020, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35656> (accessed 17 August 2021).

⁶² See Mark Cherniak (2020) *Evaluation of the Environmental Impact Statement (EIS) for the Proposed Sepik Development Project* available at <https://savethesepik.org/social-impacts/> (accessed 14 July 2021); Michael Main (2020) *Independent Expert Review for the Sepik Development Project Environmental Impact Statement* (available at <https://savethesepik.org/social-impacts/> (accessed 13 October 2020).

⁶³ Identified by the Center for Science in Public Participation in Montana, USA; see Kiernan, ‘Mining Dams Grow to Colossal Heights, But So Do the Risks.’ A further list of incidents from tailings dams can be accessed at: <https://www.wise-uranium.org/mdaf.html?fbclid=IwAR3UjeyuYxGbnhL2tGrXlyTUMPj1kvxbsQPDeLGvIUUN-4JQpPSYAitMRFI> (accessed 15 July 2021).

⁶⁴ Project EIS, Appendix 2a – Frieda River Hydroelectric Project Selection Phase Study, p. 12

⁶⁵ OECD Guidelines, Chapter VI, Paragraph 60; United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development*, 1992, Principle 15 available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.15_1_26_Vol.I_Declaration.pdf (accessed 15 July 2021).

Enterprises need to exercise precaution in situations when a risk exists (i.e., where potentially hazardous effects deriving from an action, product or process have been identified) and there is lack of scientific certainty about the effects of such action, product or process on human health and the environment, or on the extent of the potential damage.⁶⁶

Given the catastrophic implications of a dam break, and the presence of factors that increase the likelihood of such an event in this Project, PanAust and its subsidiary, Frieda River Limited, have failed to exercise adequate precaution to protect the Complainants from the potential for massive destruction of the environment and loss of human life.

Failure to adhere to the precautionary principle – Marine Tailings Placement

The Complainants have also received information that PanAust is considering Marine Tailings Placement (**MTP**) as an alternative to building a tailings dam. The complainants currently have little information about the proposed pipeline location, what disposal method will be used for waste products that are not disposed of through the pipeline and whether a smaller dam would still be built in combination with MTP. (This lack of disclosure by PanAust is addressed in Section 6.3 below).

Should MTP be used as the primary method of tailings disposal, this carries risks for the Complainants from risk of a pipeline rupture or disposal failure at the mine site. The pipeline would need to run for 300km from the mine site to the coast, over seismically active and mountainous terrain. Based on information shared with Project Sepik, part of the tailings disposal pipeline is likely to cross the Sepik River and run close to waterways within the Frieda River Basin. Should the tailings pipeline rupture, this could result in the release of toxic compounds into the Sepik River or other water sources that the Complainants rely upon. MTP pipeline failures have occurred in other Projects in PNG: the Ramu Nickel mine in Madang has seen two significant pipe leaks in the last five years, the more significant of which led to the release of an estimated 200,000 litres of mine tailings intended for DSTP into Basamuk Bay.⁶⁷ Moreover, the Sepik region is a seismically active area. In light of this, the alternative proposal to dispose of tailings using MTP continues to pose an unacceptable environmental risk to the Complainants.

Failure to maintain adequate contingency plans or ongoing responsibility for Project infrastructure

Frieda River Limited has indicated that the tailings dam will have an operating life of 'greater than 100 years'.⁶⁸ However, one expert analyst has stated that the current design of the ISF would require inspection and maintenance not just for the life of the mine, but for the rest of human history.⁶⁹ The EIS does not adequately detail who is responsible for the ongoing management and maintenance of the tailings dam, or how this will be funded post mine closure. Experts have also questioned whether the emergency response plan post-closure

⁶⁶ OECD (2005) *Environment and the OECD Guidelines for Multinational Enterprises: Corporate Tools and Approaches*, at p. 68, available at: https://www.oecd-ilibrary.org/environment/environment-and-the-oecd-guidelines-for-multinational-enterprises_9789264009394-en;jsessionid=qOOUQ3AVqQfwoy_I0kTVNlB1.ip-10-240-5-28 (accessed 15 July 2021).

⁶⁷ Liam Fox, "Chinese-owned Ramu Nickel plant spills 200,000 litres of 'toxic' slurry into the sea", *ABC Pacific Beat*, 30 August 2019, available at: <https://www.abc.net.au/news/2019-08-30/chinese-owned-mine-in-png-spills-200000-litres-of-toxic-slurry/11464108> (accessed 28 July 2021).

⁶⁸ Project EIS, Attachment 2b - Frieda River Hydroelectric Project Environmental Management and Monitoring Plan, at p. 1.

⁶⁹ Michael Main, *Independent Expert Review for the Sepik Development Project Environmental Impact Statement* at p. 12.

could be realistically implemented and effective.⁷⁰ This fails to meet the standard set out in Chapter VI, Paragraph 5 of the OECD Guidelines, which specifies that enterprises must “[m]aintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations.”

Moreover, the Guidelines also “recognise that multinational enterprises have certain responsibilities in other parts of the product lifecycle”.⁷¹ In this case, that responsibility would extend to ensuring the safety of the ISF throughout its lifecycle.

6.3 Inadequate disclosure to communities and stakeholders

Chapter III Disclosure (2)(f-g): Disclosure policies of enterprises should include but not limited to, material information on... (f) foreseeable risk factors; (g) issues regarding workers and other stakeholders

Chapter III Disclosure (4): Enterprises should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist.

Chapter VI Environment (2): Provide the public...with adequate, measurable and verifiable and timely information on the potential environment, health and safety impacts of the activities of the enterprise.

Chapter III of the OECD Guidelines requires enterprises to disclose material information and apply high quality standards for environmental and social reporting. Chapter VI further draws on the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters with respect to disclosure to the public of timely information on the potential environment, health and safety impacts of the activities of the enterprise.

Commentary to Chapter III stipulates that disclosure goes beyond financial and corporate disclosure requirements, and includes “a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting”, specifically mentioning biodiversity as an area of attention.⁷² The commentary also encourages enterprises to take special steps to make information accessible to communities that do not have access to printed media, “for example, poorer communities that are directly affected by the enterprise’s activities”.⁷³

Commentary to Chapter VI stipulates that information about the activities of enterprises and associated environmental impacts is an important vehicle for building confidence with the Public. The commentary notes that this vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders, such as local communities and the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest.⁷⁴

PanAust and Frieda River Limited have failed to ensure adequate disclosure of environmental, social and human rights risks of the Project, particularly the tailings dam, to the Complainants. As detailed in 6.1, above, consultation with the Complainants has fallen

⁷⁰ See Paul Harvey (2020) *Frieda River Limited - Sepik Development Project: EIS Expert Review Summary*; Ian Cordery (2020) *Review of Part of the EIS of the Sepik Development Project*, both available at <https://savethesepik.org/social-impacts/> (accessed 15 July 2021).

⁷¹ OECD Guidelines, Chapter VI, Paragraph 67.

⁷² OECD Guidelines, Chapter III, Paragraph 33.

⁷³ OECD Guidelines, Chapter III, Paragraph 35.

⁷⁴ OECD Guidelines, Chapter VI, Paragraph 65.

well short of international standards and has failed to secure their consent to the project, despite the fact that the Complainants and other communities along the Sepik River are key stakeholders. As detailed in 6.2 above, the Project's EIS fails to assess, and/or to provide information on, key environmental risks that could affect the Complainants. In particular, the failure to release the dam break analysis for the Project represents a significant failure in environmental risk disclosure.

It appears from information that PanAust provided to the government of the People's Republic of China that failure to provide this dam break analysis may have been because "the science around this is preliminary". This raises serious concerns for the Complainants that PanAust is not respecting their human rights nor conducting proper environmental and human rights due diligence founded on established science. It undermines the promotion of "a climate of long-term trust and understanding on environmental issues of mutual interest".⁷⁵

Moreover, PanAust has failed to adequately disclose information about its reported proposals to consider MTP as an alternative to building a tailings dam.⁷⁶ Project Sepik has received information that PanAust has been conducting consultations on MTP with coastal communities in West Sepik whose resources would be affected by the discharge of tailings. However, PanAust has not released information about this publicly, and has not withdrawn the current EIS or developed a new EIS to address the impacts of MTP. The Complainants have been kept in the dark about whether the tailings dam will remain part of the Project and whether a pipeline will cross the Sepik River, which is a cause of concern to them and other communities along the River. Thus, they not been able to assess the potential impacts of this method of tailings disposal on their environment, livelihoods and cultural resources. As discussed under 6.2 above, the impacts from the proposed MTP pipeline could be significant for the complainants, and thus it is imperative that foreseeable risk factors associated with this pipeline be disclosed to them.

7. Remedy sought by the Complainants

The Complainants seek the following remedies, requesting that PanAust and its subsidiaries:

1. pause all further Project development as there is currently no free, prior and informed consent from all affected communities;
2. engage in good faith consultations at an international standard with all potentially affected communities, including the Complainants, with participation of an independent third party
 - this must include provision of detailed information about potential project risks, including provision of the dam break analysis;
3. commit to discontinuing its current plans for the mine if FPIC is not forthcoming from all affected communities; and
4. take all possible measures to ensure that the affected communities do not face reprisals, including from company employees, contractors or government officials, for filing this complaint.

⁷⁵ OECD Guidelines, Chapter VI, Paragraph 65.

⁷⁶ The possibility that the Project was considering MTP was raised by the West Sepik Provincial Administrator in an article in the PNG media. See: 'Tailings proposal rejected,' *The National*, 11 November 2020: <https://www.thenational.com.pg/tailings-proposal-rejected/> (accessed 15 July 2021).

Project Sepik and Jubilee Australia have worked with others (including CELCOR and Aid/Watch Australia) to attempt to bring the Complainants' concerns to PanAust and seek a remedy. In October 2019, a member from Project Sepik, along with representatives of Jubilee Australia Research Centre and Aid/Watch Australia, met with executives of PanAust and the company's office in Brisbane, Australia. A representative of the communities living on the Sepik River explained that the proposed Frieda River mine project did not have the consent of the River communities, and therefore, PanAust should discontinue its efforts to pursue the project. However, the meeting resulted in no action from the company.

Project Sepik and Jubilee Australia have also shared their concerns and the views of the community through publication of two reports (*The River is Not Ours* (2019) and *The Sukundimi Walks Before Me* (2021)) and have spoken to media outlets to share their concerns.

In July 2020, ten UN Special Rapporteurs, along with the UN Working Group on Human Rights and Transnational Corporations, wrote to Frieda River Limited, Highlands Frieda Limited (a former Joint Venture partner involved in the project), and the governments of PNG, China, Australia and Canada to raise their concerns about the proposed Frieda River mine and the risk of failure of its proposed tailings dam on the human rights of the Sepik River communities, including their right to practice and develop their spiritual and cultural beliefs, which are dependent on the right to a healthy environment and the lack of transparency around the tailings dam and failure to make the dam break analysis publicly available.⁷⁷ PanAust is aware of these communications, as it has drafted a document in response to the concerns raised by the Special Rapporteurs, which was attached to the response from the People's Republic of China.⁷⁸

The Complainants therefore respectfully request the Australian NCP to accept the complaint and offer its good offices to try to facilitate resolution of these issues. If this process is not able to resolve the complaint, the Complainants ask the Australian NCP to undertake a thorough investigation of the issues and make a determination with respect to the breaches of the Guidelines by PanAust.

⁷⁷ See: <https://savethesepik.org/letter-from-ten-un-special-rapporteurs/>

⁷⁸ PanAust, "Frieda River Project – Response to the United Nations' Communication", July 2020, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35656> (accessed 17 August 2021).