



Mining Ombudsman Case Report: Vatukoula Gold Mine



Contents

The production of this report has utilised the skills, knowledge and hard work of many dedicated people. The primary group of people who deserve our thanks and utmost respect are the many women and men from communities who suffer the impacts of irresponsible mining activities on their daily lives. The information, knowledge and learning contained within this document can be largely attributed to their assistance and support for the Oxfam Community Aid Abroad Mining Campaign. Additionally there have been many Non-Government Organisations and researchers who have supplied first-hand case information that has been invaluable to our work. The cases could not have been written without their help.

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We appreciate any feedback, comments or input you wish to make about the issues discussed in this publication. Comments can be emailed to us at: miningombudsman@caa.org.au

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Oxfam Community Aid Abroad is affiliated with the following organisations:

The Australian Council for International Development (ACFID), whose code of ethics we are bound by (for a copy of the code contact the national office); Oxfam International, whose constitution and code of conduct we are bound by; and the Refugee Council of Australia.

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*Cover: Josefa Salau, the President of the Fiji Mine Workers Union who has been on strike for 13 years standing in front of one of Vatukoula Gold Mine's tailings dam.
Photo: Ingrid Macdonald/Oxfam CAA*

*Left: Young boy points to holes in the water tanks that are supposed to be supplying company families with clean water.
Photo: Anne Lockley/Oxfam CAA*

The Mining Ombudsman project

Over the last few decades, the Australian mining industry has increased its activity in economically developing countries in the Asia-Pacific, Africa and Latin America. Australian mining operations are therefore increasingly impacting on economically poor and vulnerable communities.

Many communities have complained of human rights abuses and environmental degradation perpetrated by, or on behalf of, Australian mining companies. Often these communities have no institution that they can access to seek fair and equitable redress and mining companies have been able to disregard their concerns. Such situations have sometimes led to costly legal actions and violent confrontations. This *Vatukoula Case Report* illustrates some of the negative impacts that mining activities can have on communities.

In February 2000, Oxfam Community Aid Abroad set up a Mining Industry Ombudsman to:

- Assist men and women from local and indigenous communities affected by mining whose basic human rights are being threatened by the operations of Australian-based mining companies.
- Assist men and women from local and indigenous communities that are, or might be, affected by a mining operation to understand their rights under international law.
- Help ensure that the Australian mining industry operates in such a way that the basic rights of men and women from communities affected by mining are better protected.
- Demonstrate the need for an official complaints mechanism within Australia. (A detailed discussion of the need for a complaints mechanism and a framework for it is available in the *Mining Ombudsman Annual Report 2003*.)

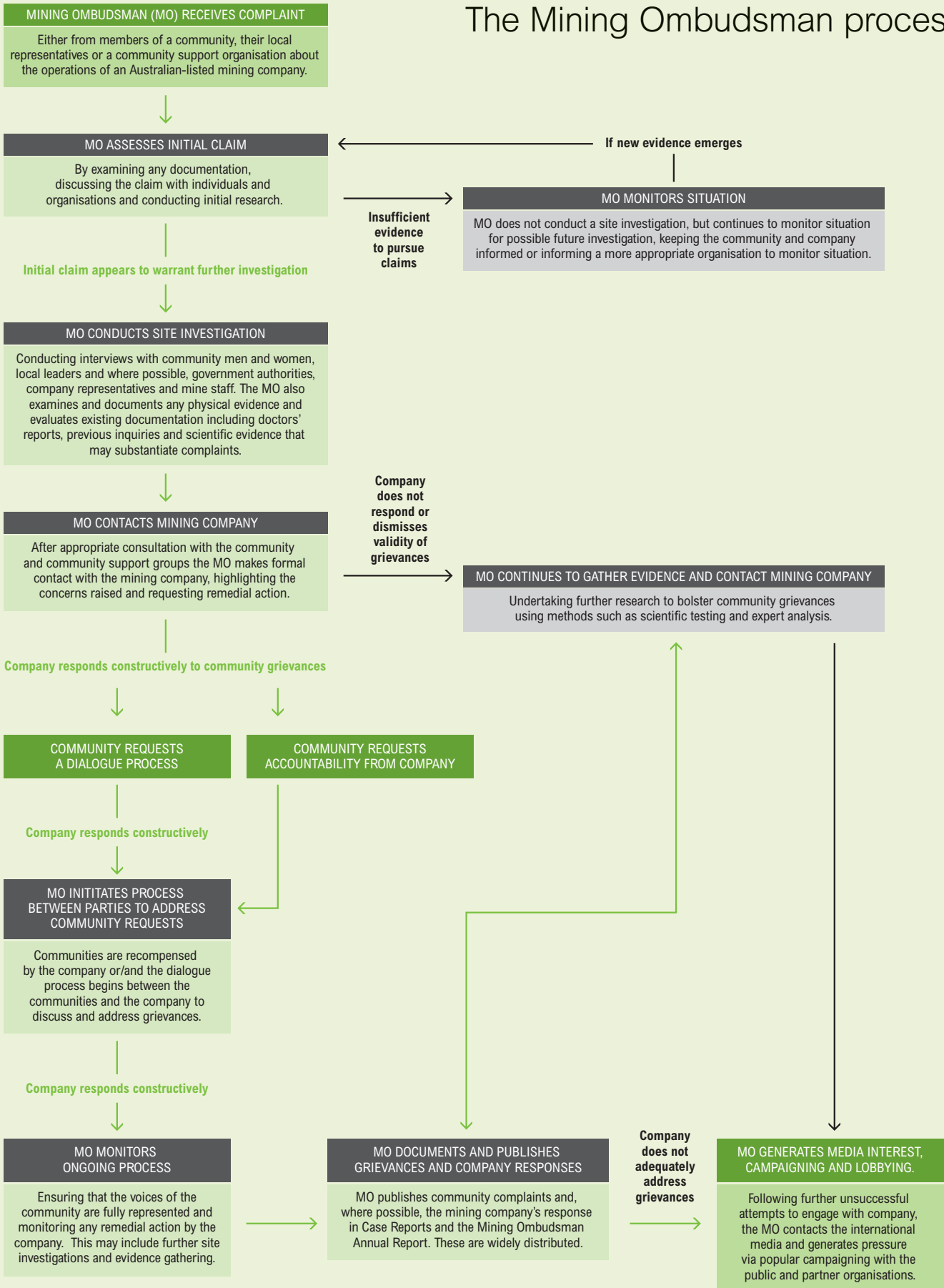
- Demonstrate the need for developing enforceable, transparent and binding extra-territorial controls, which would require Australian mining companies to adhere to the universal human rights standards, no matter where these companies operate.

The Mining Ombudsman receives complaints through Oxfam Community Aid Abroad networks in Asia, the Pacific, Africa and Latin America. The Mining Ombudsman checks all claims through site investigations. Any action taken by the Mining Ombudsman is done in consultation with the community. It is not the role of the Mining Ombudsman to judge individual mining projects, but to ensure companies deal with communities in a fair and equitable manner, which respects the fundamental rights of men and women in affected communities.

Mining Ombudsman Ingrid Macdonald (right) interviews Josefa Salau, President of the Fiji Mine Workers Union, who has been on strike for 13 years. Photo: Anne Lockley/Oxfam CAA



The Mining Ombudsman process





A woman from the community.
Photo: Ingrid Macdonald/Oxfam CAA

The rights-based approach

Oxfam Community Aid Abroad takes a rights based approach to its work. This approach reflects the view that poverty results from the denial and violation of the human rights of women and men by entities that have more access to power, or through systems that are based on injustice, inequality and discrimination. An explanation of the application of this approach to the mining industry is contained in the *Mining Ombudsman Annual Report 2003* available on the website at

www.oxfam.org.au/campaigns/mining

Human rights and transnational mining corporations

Over the last few decades, there have been considerable changes in the structure of international society. Transnational corporations, including mining companies, have gained unprecedented influence over patterns of economic development – particularly in developing countries which are competing for foreign direct investment.

As stated in a recent Oxfam America briefing paper:¹

*“Foreign direct investment (FDI) ... has become such an important part of global development strategies that it has replaced foreign aid as the main source of external capital for many developing countries. Today, FDI amounts to about 60 per cent of the international capital flowing into developing countries each year and is nearly ten times larger than official development assistance. In contrast, in the late 1980s, the amounts of annual aid and FDI in developing countries were roughly the same.”*²

Recent figures also show that the revenues of five of the largest transnational corporations are more than double the combined Gross Domestic Profit of the poorest 100 countries.³

Given the increasing power of the private sector throughout the world, including the mining and minerals sector, it is essential that companies contribute positively to poverty alleviation and development by upholding and promoting the human rights of people affected by their activities. This is especially important when mining companies operate in countries where

the national laws are inconsistent with international human rights standards, or in the majority of cases, where human rights standards are integrated into national law yet the relevant governments fail to uphold these standards. For further information see the *Mining Ombudsman Annual Report 2003* available on the website at www.oxfam.org.au/campaigns/mining

The need for accountable management of mining revenues

The full public disclosure of payments made by mining companies and governments and other entities is fundamental if mining is to generate benefits for local communities and not undermine human rights. The details of how disclosure of government payments by mining companies should work are set out in the Publish What You Pay campaign (<http://www.publishwhatyoupay.org>). The *Mining Ombudsman Annual Report 2003* also highlights gaps in existing disclosure laws about the funders and insurers of mining companies and projects. This report is available on the website at www.oxfam.org.au/campaigns/mining

Oxfam Community Aid Abroad's approach to mining

Oxfam Community Aid Abroad is an Australian, independent, non-government aid and development agency that is the Australian member of the Oxfam International confederation. Over the past 50 years, Oxfam Community Aid Abroad has been a vehicle for Australians to help communities build a fairer and more sustainable world by fighting global poverty and injustice. The agency undertakes local, regional, and national long-term development projects, provides humanitarian relief during disaster and conflict, and advocates for policy and practice changes that promote human rights and justice.

While Oxfam Community Aid Abroad speaks in its own voice, it does not assume a mandate to speak on behalf of others, and prioritises the facilitation of people to speak for themselves. Oxfam Community Aid Abroad is not opposed to mining, but believes that this activity must be undertaken in accordance with the rights established by the international human rights system, particularly the right of men and women from communities to prior, free and informed consent to both exploration and mining activities.

Oxfam Community Aid Abroad believes that private sector investment can be an important driver of economic growth and poverty reduction, provided that appropriate regulations and controls exist. Such controls must include adherence by

mining companies to the universal human rights standards laid down under the international legal system. Without adherence to these standards, mining can bring significant negative impacts, including loss of land and livelihoods, the degradation of land and waterways, and an increased incidence of violence and conflict. It can also not be assumed that local communities – especially women, children and indigenous peoples – will automatically benefit from mine development. The forum *Tunnel Vision: Women, Mining and Communities* convened by Oxfam Community Aid Abroad in 2002, illustrated how women, in particular, have tended to be excluded from the economic benefits of mining yet bear the burden of many of the negative social and environmental impacts.^{iv}

A Summary – The Benchmarks for the Mining Industry

Oxfam Community Aid Abroad believes all company operations should apply the same set of universal standards no matter where a company operates. Oxfam believes mining companies should:

- respect the rights of local and indigenous communities to free, prior and informed consent;
- avoid, minimise and remediate mining's impact on the environment and maximise the benefits to communities;
- not forcibly remove or resettle local and indigenous communities to facilitate mining;
- fairly compensate individuals or groups suffering loss of assets, income or amenities;
- never perpetuate systems of oppression, exploitation and marginalisation;
- not initiate, encourage or become involved in actions by police or armed forces of a host country that are likely to lead to human rights abuses;
- not partake in corrupt activities and avoid activities in conflict zones;
- recognise and respect the special relationship that indigenous peoples have to their land and ensure women have the right to be free of discrimination and harassment;
- recognise the right of indigenous peoples and women to participate in all negotiations and decision-making concerning their natural resources, land and rights to development;
- apply the same social and environmental standards of operation that they would be required to adhere to in their home country.

These benchmarks represent a summary of the Benchmarks for the Mining Industry which are available in Appendix 1 of the *Mining Ombudsman Annual Report 2003* and on the website at www.oxfam.org.au/campaigns/mining

i Langman, J. (2003) *Investing in Destruction: The impacts of a WTO investment agreement on extractive industries in developing countries*, Oxfam America and Make Trade Fair, June 2003, p 6.

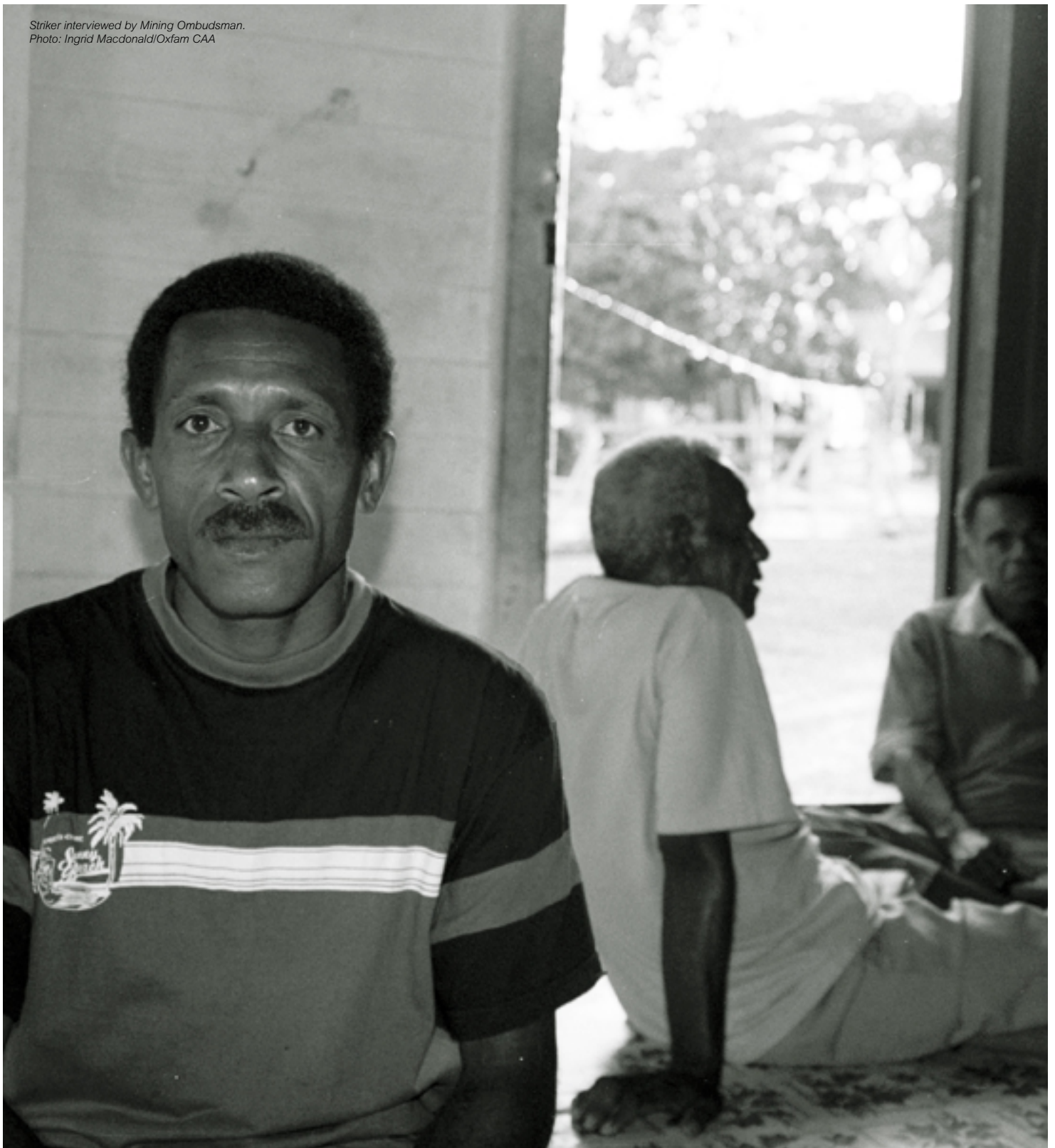
ii UNCTAD (2002) *Least developed countries report 2002 – escaping the poverty trap*, United Nations, New York, p. 12.

iii Utting, P. (2002) *Regulating Business via Multi-stakeholder Initiatives: A Preliminary Assessment*. United Nations Research Institute for Sustainable Development: Available at: <http://www.unrisd.org>.

iv See Macdonald, I, & Rowland, C., (eds), (2002), *Tunnel Vision: Women, Mining and Communities*, Oxfam Community Aid Abroad, p 3.

Vatukoula Gold Mine

*Striker interviewed by Mining Ombudsman.
Photo: Ingrid Macdonald/Oxfam CAA*



Resource: Gold

Mine location:

Viti Levu, Fiji
380 km by road from
the capital, Suva.

Mining method:

Underground mine
(largely longwall-stopping, but also
sub-level stopping, cut-and-fill)

Affected communities:

Vatukoula; Nasomo; Tavua Basin;
Sacked mine workers.

Community Support Groups:

Citizens Constitutional Forum
Fiji Mine Workers Union.

Mine operator:

Emperor Mines Limited (Emperor).

Mine owner/s (As at May 2004):

Durban Roodepoort Deep (24.69%)
ANZ Nominees (14.65%)
National Nominees Limited (10.69%)



Introduction

*"I dream that I would have clean water to bath, to drink, to cook with. I dream that I would have decent wages to care for myself, my family, to cook my children a hearty meal and to give them a future. I dream of a secure job with a signed contract and good promotional prospects. I dream of electricity so that my children could study and I can stay up late at night sewing for my family. I dream of adequate housing that will give me the privacy to bathe, to organise my family, to love my husband."*¹

Participant in a Fiji Women's Rights Movement employment and literacy workshop, Vatukoula, May 2003.

The Mining Ombudsman received a formal request from the Fiji Mine Workers Union (FMWU) and Citizens Constitutional Forum (CCF) to become involved in the Vatukoula Gold Mine case in May 2003. As a result, the Mining Ombudsman conducted an investigation at Vatukoula in November 2003.

The Mining Ombudsman attended numerous public meetings with ex-workers/strikers from an unresolved 1991 industrial dispute and individually interviewed over 50 representatives during the investigation. All alleged that the reason they decided to strike in 1991 was because of the low wages, unsafe working conditions, health concerns, poor housing and environmental standards. This differs greatly from the perception of the current Emperor management who advised the Mining Ombudsman that the sole objective of the 1991 strike was to force the company to formally recognise the FMWU. The strikers' perception also differs greatly from the 1991 Fiji High Court and 1992 Court of Appeal rulings, which declared the withdrawal of labour by the workers to be illegal. The basis of the strike, previous inquiries into the economics of the Fiji gold mining industry and later inquiries into industrial disputes at Vatukoula, including the GP Lala Commission of Inquiry, are more fully discussed later in this report. While the Mining Ombudsman has seen a copy of the GP Lala Commission of Inquiry

report and some of the issues it raised are discussed in this report in the context of the grievances raised by men and women of Vatukoula, the Mining Ombudsman report and investigation at Vatukoula do not rely on the GP Lala report or its recommendations, which were found to be invalid and unlawful by the High Court of Fiji on 11 June 2004.

It is important to note, however, that all of the men and women who remain on 'strike' believe that there is an ongoing labour dispute with the company based on the complaints outlined below. This difference of perceptions between the parties and a refusal to acknowledge this difference have led to an unhealthy situation, which still remains unresolved after 13 years. As a result over 300 people still periodically sit on a picket line outside the mine and complain of hardships endured by their families because they refuse to return to work until their grievances are addressed.

The Mining Ombudsman also interviewed currently employed mine workers, some of whom went on strike in 1991 but returned to work, some who did not go on strike, some who are children of strikers and some who have been employed after the strike. The current employees alleged that low pay and poor working conditions persist at Vatukoula and that they still consider health, safety and environmental standards to be inadequate even though the situation has improved since 1991.

The Mining Ombudsman also had meetings and interviews with local education officials and three different landowner claimant groups. Many of those interviewed complained about unacceptable company housing conditions, poor sanitation, water pollution and health problems from the sulphur clouds which are emitted from the Vatukoula Gold Mine roaster stack which are all detailed below.

The Mining Ombudsman also met with the Minister of Labour and Labour Department officials; Mining Department officials including the Director of Mining; various Fijian non-government organisations (NGOs); Senator Atu Emberson-Bain and other Senators; a solicitor from the Solicitor General's Office; and the Deputy Secretary of the Fiji Trade Union Congress. On 5 November 2003, the Mining Ombudsman met with Emperor Mines Limited (Emperor) representatives including the Mine Manager.

The Mining Ombudsman case investigation report from the November investigation was sent to Emperor for comment on 22 April 2004, with a reminder letter sent on 12 May 2004.² In response, on 17 May 2004 Emperor sent the Mining Ombudsman a copy of an Emperor letter to shareholders released to the Australian Stock Exchange on 11 May 2004.³ Where possible, and in the interests of full transparency, the company's viewpoint from this letter have been incorporated verbatim throughout this report.

"I earn \$2.64 an hour for underground work. My father is a striker since 1991 and so I could not go to school because we had no money. I think the pay should be increased as the pay stays the same but the price of school fees and food rises every year. I have to look after my wife, father, mother and sister and brother who are at school on a wage of \$82 a week. Sometimes you eat properly and sometimes not. I work in the water underground, which the men urinate in. It is very dirty with urine, grease and oil and I have to go into it for 20 minutes sometimes to fix things. The heat is terrible and I have no safety gear. If we try to complain then we are told we will get the sack."

Name withheld – Current mine worker of five years

Chronology of events

- 1908**
Mining ordinance provides Fiji landowners with the right to compensation for exploitation of mineral wealth beneath their land.⁴
- 1932**
Payable gold deposits discovered at Vatukoula (Lololevu creek), 14 km inland from Tavua.⁵
- 1933**
Production begins at Vatukoula gold mine, under various operators.⁶
- 1934**
New mining ordinance introduced which removes the right of landowners to the subterranean value of their land.⁷
- 1935/6**
Emperor Gold Mining Company Limited (EGMC) is incorporated in Victoria and gains control over most of Vatukoula gold fields.⁸
- 1956**
EGMC gains complete control of mining operations at Vatukoula.⁹
- 1966**
Confidential Report produced on EGMC – Request for Assistance from the Government of Fiji. (The report has not been publicly released).¹⁰
- 1973**
EGMC acquires Colonial Sugar Refinery, becoming the largest company in Fiji.¹¹
- 1974**
Fiji Board of Inquiry Report released on a dispute between the Fiji Mine Workers Union (FMWU) and EGMC.¹²
- 18/04/1977**
Siwatibau Inquiry begins into the economics of the gold mining industry at Vatukoula following an industrial dispute between the FMWU and EGMC.¹³
- 1981**
United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) produces *Report on the Environmental Impact of Gold Mining at Vatukoula* (The report has not been released publicly).¹⁴
- 1983**
EGMC and Western Mining Corporation (WMC) form the 80/20 Tavua Basin Mining Joint Venture partnership at Vatukoula and are granted a 21-year lease over 1000 acres of Nasomo land, despite reported objections from local people.¹⁵
- 1986**
The Tavua Basin Mining Joint Venture opens a new ore-body south of Vatukoula.¹⁶
- 30/07/1986**
Emperor Gold Mine (EGM) is formed taking up assets and holdings of EGMC. The new company is domiciled on Isle of Man for tax purposes but listed on the Australian Stock Exchange.¹⁷
- 03/09/1987**
ESCAP review of the gold policy and development options in Fiji is handed to the Fiji Ministry of Energy and Mineral Resources.¹⁸
- 1991**
Tavua Health Inspectorate carries out a survey of the housing situation at Vatukoula.¹⁹
- 01/1991**
WMC divests from the joint venture with EGM.²⁰
- 27/02/1991**
Miners from the Phillip Shaft at Vatukoula withdraw their labour, alleging low pay, negligent health and safety conditions and sub-standard company housing. EGM records \$20 million loss as a result of the strike in 1991-1992.²¹
- 1991**
EGM gains a Fiji High Court ruling declaring the strike to be illegal.²²
- 04/03/1991**
Fiji police enforce an eviction notice on strikers, resulting in violent confrontation in which a court sheriff (bailiff) is killed.²³
- 11/09/1992**
The Permanent Secretary for Labour and Industrial Relations issues a Compulsory Recognition Order on behalf of the FMWU.²⁴
- 02/04/1993**
EGM successfully challenges the FMWU Compulsory Recognition Order in the Fiji High Court.²⁵
- 10/1994**
EGM commissions an environmental audit of operations at Vatukoula.²⁶
- 31/07/1995**
GP Lala Commission of Inquiry into the Vatukoula Trade Dispute Report 1995 is handed to Minister for Labour and Industrial Relations. The Report is not debated in the Fiji Parliament due to the institution of judicial review proceedings by EGM.²⁷
- 1996**
The *Health and Safety at Work Act 1996* is enacted, but excludes the Fiji mining sector. Occupational health and safety in the mining industry remains under the *Mining Act 1966*, which is enforced by the Mines Inspectors in the Ministry of Lands and Mineral Resources.
- 2000**
EGM begins exploration at Tuvatu, 50 km south of Vatukoula.²⁸
- 14/9/2000**
The Fiji Government announces the provision of F\$4.4 million concession package for EGM on condition that Vatukoula Tax Agreement is re-negotiated and current employment levels are maintained.
- 5/1/2001**
EGM repays a \$286,000 debt to Macquarie Bank (Australia), leaving the company debt free.²⁹
- 2001**
The Fiji Office of the Solicitor General applies for EGM's Judicial Review action against the GP Lala Commission of Inquiry to be struck out.³⁰
- 2002**
EGM completes the transfer of its domicile from the Isle of Man to Australia.³¹
- 15/06/2002**
Emperor Mines Limited (EML) is listed on the Australian Stock Exchange.³²
- 19/06/2002**
EML announces \$27.6 million expansion of mining activities at Vatukoula (Phase 2 Long Term Operating Strategy) which is expected to increase output by 40 per cent over 3 years to 800,000 tonnes and gold production by 35 per cent to 180,000 ounces.³³
- 2002**
A court judgement on the Nasomo case grants the Nasomo people \$1 million compensation for the 1000 acres of land lost to EGM/WMC in 1983.³⁴
- 2003**
The Fiji Office of the Solicitor General's application to have EGM's Judicial Review struck out fails.³⁵
- 15/1/2003**
Durban Roodepoort Deep (DRD) Limited acquires 14 per cent of EGM/EML.³⁶
- 03/2003**
The Fiji Parliament defeats a motion brought by Senator Atu Emberson-Bain to establish a Senate select committee to investigate the mining industry, particularly operations in Vatukoula.³⁷
- 05/2003**
The Oxfam Community Aid Abroad Mining Ombudsman receives a formal request to investigate grievances at Vatukoula from the FMWU.
- 5/2003**
The Fiji Cabinet announces that they will decide whether to incorporate the Vatukoula Mine, which is currently under the *Mining Act 1966*, under the *Health and Safety at Work Act 1996*.³⁸
- 10/2003**
Oxfam Community Aid Abroad Mining Ombudsman conducts investigation at Vatukoula.
- 18/12/2003**
Fiji Senate passes a motion to establish an Ad-Hoc Senate Select Committee to Review the Mining Industry in Fiji.³⁹
- 03/2004**
DRD launches a takeover bid for Emperor of 1 DRD share for every 5 Emperor shares. The bid is rejected by Emperor's independent directors.⁴⁰
- 04/2004**
EGM/EML's 21-year mining lease over 1000 acres of Nasomo land near Vatukoula is renewed for a further 21 years.⁴¹
- 22/04/2004**
The Oxfam Community Aid Abroad Mining Ombudsman Case Investigation Report is sent to EGM/EML, DRD and the FMWU.
- 05/2004**
EGM/EML's Judicial Review action concerning the GP Lala Inquiry is heard in the Lautoka High Court.
- 12/05/2004**
Oxfam Community Aid Abroad sends second letter to EGM/EML inviting response to the case investigation.
- 10/06/2004**
DRD revises takeover bid to five DRD shares for every 22 Emperor shares. Emperor's independent directors recommend the revised offer to shareholders.⁴²
- 11/06/04**
The Latouka High Court ruled the GP Lala Commission of Inquiry report and its recommendations were null and void, as the inquiry had breached its terms of reference and had continued to take evidence and submissions after its time period had expired.
- 06/04**
The Ad Hoc Senate Select Committee reviewing the Fiji mining industry is due to return its findings to Parliament.



Tailings being dumped into the tailings dam at Vatukoula Gold Mine.
Photo: Anne Lockley/Oxfam CAA



Striker interviewed by Mining Ombudsman.
Photo: Ingrid Macdonald/Oxfam CAA

The Fiji mining industry and Vatukoula Gold Mine

“The mining industry has been running for close to 70 years in Fiji so it is not an industry that is still cutting its teeth. It’s already made its mark and its impact on many levels, social, environmental, political, economic. The industry has had a chequered and controversial history. It has resulted in fatalities, hundreds of injuries, caused all kinds of health problems, polluted and dried up domestic water supplies, killed or contaminated the subsistence fishery and being generally obstructive to the idea of an effective and independent union.”⁴³

Australian-listed mining company, Emperor Mines Ltd and its predecessor Emperor Gold Mines Ltd (Emperor) has dominated the Fiji mining sector since 1936 with continuous ownership and operation of the Vatukoula Gold Mine. The company claims to be Fiji’s second largest private sector employer – employing some 2250 workers and contractors, and accounts for around 7.5 per cent of Fiji’s national income.⁴⁴

The original Vatukoula Gold Mine was situated on the western flank of a volcanic caldera (the Tavua Caldera), about 14 km from the north-west coast of Vitu Levu island, Fiji. Vatukoula is now a multi-shaft gold mine, with four main shafts, producing around 130,000 ounces of gold per year.⁴⁵ According to Emperor it has produced 6.9 million ounces of gold between 1933 and April 2004.⁴⁶ Given the current price of gold is \$US391.70 (or \$A562.71)⁴⁷ per ounce, the value of Vatukoula’s production since the mine was opened would be worth approximately

\$US2.7 billion or \$A3.9 billion at today’s prices, with the mine’s annual production of 130,000 ounces worth \$US50 million (\$A73 million) a year.

In 1986, Emperor discovered further gold deposits in the Tavua Basin just south of Vatukoula and began exploration and mining activities in that region. In 2000, Emperor began exploration at Tuvatu, 50 km south of Vatukoula, however this project was suspended later in the year.⁴⁸ In November 2003, Emperor announced it had completed the first full year of the Phase 2 Long Term Operating Strategy, a ten-year plan to increase gold production at the company’s mine at Vatukoula in Fiji.⁴⁹ This is expected to increase output by 40 per cent over three years to 800,000 tonnes and gold production by 35 per cent to 180,000 ounces.⁵⁰ At today’s gold price, the value of Emperor’s increased production to 180,000 ounces would be worth approximately \$US70 million (\$A101 million) a year.

Critics of Emperor

“To put it bluntly, Sir, our country has been stripped of millions of dollars in development revenue as a result of excessive and distorted tax and concession regimes, benefiting from this a single expatriate group of companies. Financial assistance to EGM/EML began during the colonial period and continued after independence. For most of its life, it has enjoyed exemptions or reductions in income tax, waivers of export tax and royalty, million-dollar grants, subsidies and soft or interest-free loans.”⁵¹

Critics of Emperor, such as Fiji Senator Emberson-Bain have warned that Emperor’s corporate structure and accounting practices mask the “true picture of its [Vatukoula’s] profitability.”⁵² The Senator argues that mining in Fiji remains a low wage industry, rooted in a racially discriminatory colonial system that once offered indigenous workers just two shillings a day. She alleges that average mine wages in Fiji have lagged behind wage increases in other sectors such as the construction, transportation and services sectors.⁵³

In 1987 the United Nations Economic and Social Committee for the Asia Pacific (ESCAP) estimated that royalty concessions for the Vatukoula gold mine had resulted in lost revenue for the Government of Fiji of around F\$5.52 million between 1983 and 1987.⁵⁴

“A careful accounting of Fiji’s major gold-mining venture – the Emperor Mine – would probably show that for short periods this project may have had a negative economic impact on the country.”

Senator Emberson-Bain estimates that during the first 16 years of independence (1970 to 1986) Emperor paid just F\$1 million in tax, or around 0.5 per cent of its export turnover during the period.⁵⁵ The Senator also estimates that Fiji lost around F\$45 million in royalty revenue, beginning in the 1980s and continuing for 14 years due to the generous royalty regime struck under the Vatukoula Tax Agreement (VTA).⁵⁶ The VTA reduced the royalty formula paid by Emperor to

2.5 per cent of net profit from the five per cent of value of production stipulated in the *Mining and Safety Act 1966*.⁵⁷

Similarly, the richest and most valuable mineshaft at the Vatakoula mine, the Philip Shaft, is alleged to be tax free under the VTA.⁵⁸ Signed in 1993 by Emperor and the government of Fiji, it has been suggested that the VTA will mean that the company is unlikely to pay any corporate tax or royalties until after 2011.⁵⁹ Economists have dubbed the VTA a “generous and expensive subsidy, probably far greater than necessary to induce investment in relatively high-grade deposits.”⁶⁰ Grynberg, Fulcher and Dryden state:

*“What is unique about the VTA is that among developing countries it is the only taxation regime that has effectively exempted the developer from any income tax for a period of some 27 years.”*⁶¹

According to these economists, in 1987 Emperor paid \$A3,000 tax on a turnover of almost \$A72 million and an operating profit of \$A22.4 million.⁶² While the cost of subsidising Vatakoula gold mine through lower than usual royalty payments amounted to between 42 per cent and 62 per cent of the gross salaries of every employee.⁶³ Grynberg, Fulcher and Dryden argue that the VTA sets a dangerous precedent for other mining activities in Fiji.

The special tax agreement between Emperor and the Fiji government expired this year. Emperor has stated it will not seek to renew the arrangement.⁶⁴ A Fiji Government online news brief on 14 September 2000 announced that the government was to provide F\$4.4 million of further assistance to Emperor.

In a statement to shareholders dated 11 May 2004, the company states:⁶⁵

“The VTA was entered into between the Government of Fiji and Emperor in 1984 and provided some incentive for the development of Emperor’s Philip Shaft. There continues to be much misinformation and misrepresentation about the VTA, even though Emperor announced a year ago it would not seek to renew this agreement which expired in March of this year. With the exception of provision for a capital expenditure write-off, the VTA did not offer Emperor any concessions not otherwise available under the current Income Tax Act, or other relevant legislation. Capital expenditure concessions are not uncommon in Fiji. Substantial investment allowances, such as accelerated depreciation on buildings, the Hotel Aid Investment Act allowance and tax-free factory legislation are at least as beneficial to other sections of the economy.”

A woman washing her dishes in untreated water.
Photo: Ingrid Macdonald/Oxfam CAA



Grievances

Strikers picketing in front of Vatukoula Gold Mine for their 13th year.
Photo: Ingrid Macdonald/Oxfam CAA

1. Low wage rates

The strikers

On 27 February 1991, hundreds of mine workers at Vatukoula withdrew their labour in protest against alleged unsafe working conditions and low wages at the mine. The dispute is now into its 13th year, with at least 370 dismissed workers still taking turns on the picket line outside the main gate of the mine. In response to the withdrawal of labour, the company gained a High Court ruling declaring the strike illegal, with Emperor confirming that the company subsequently dismissed 436 workers.⁶⁶ Many of these ex-workers were also served with eviction orders from their company-owned housing.

On 4 March 1991, Fiji Police – including riot police, were sent in to remove the strikers and to enforce eviction orders gained by Emperor. Violent confrontations resulted in the death of a court bailiff, with several strikers being charged with obstructing the police and assault. At least six strikers were later convicted, receiving up to two-and-a-half years in prison for offences related to the strike. The documentary film, *Na Ma'e! Na Ma'e!* [We Stand Until We Die], which was about the strike, included allegations by those interviewed of the police being housed and fed by Emperor at the mine-site.

Former underground mineworker, Misake Tahaka told the Mining Ombudsman that he was paid F\$1.50 an hour/seven days a week (or F\$84 a week before tax) for working in the mine before the 1991 strike. Of this, he alleged that he only received F\$40 a week after tax because Emperor deducted the cost of his helmet, gloves and boots from his salary. Mr Tahaka's testimony reflected the views of many other strikers who claimed that they were paid between F\$1.13 and just over F\$2 an hour. Many of the strikers also stated that they were given no choice over when they could work, as this decision was taken solely by the mine management. After salary deductions, which included rent for sub-standard company housing, strikers complained that they had barely enough to feed their families. This would often mean they had to borrow money at high interest rates, leading to a cycle of debt and poverty.



“The loader broke down often so I would be sent to work as a machinist. I wasn't trained for this. I also had to plant explosives with no training and no licence. Management ignored my complaints about this and I am now deaf in one ear from the explosives. There was no compensations for this. The mine provided a helmet, gloves, boots – all deducted from our salary or we bought them outright. They only provided ear plugs for the drilling and these didn't work. I now have hearing problems. The protective masks were paper and I think they didn't work, as when you took them off it was still black underneath, including in your nose.”

Sailosi Naituva, striker and former Toro driver.

Emperor company officials interviewed by the Mining Ombudsman refused to enter into a discussion about the substance of the complaints of the strikers. It is therefore unclear whether the company confirms or rejects that the conditions described by the strikers did exist in 1991.

Gender discrimination was also one of the reasons some women alleged that they went on strike in 1991, with reports that Emperor refused to grant housing arrangements to women.⁶⁷ For example, Timaima Dilele worked at the mine as a hand-picker since 1984. She claimed that just before the 1991 strike she was paid F\$1.15 per hour and worked eight hours of shift-work a day, five days a week. She complained that the men were paid F\$1.30 an hour for the same job. She also said that the mine did not provide transportation for her when she was working night shifts, which meant that she sometimes had to

walk home or to the mine at midnight. She was frightened about doing this because of people consuming too much alcohol in the streets and feared the risk of being attacked.

In a statement to shareholders dated 11 May 2004 Emperor states:⁶⁸

“An industrial controversy in 1991 at the Emperor Gold Mine at Vatukoula had led to the dismissal of 436 employees (out of a total workforce at the time of 1,200) as a result of those employees walking off the job. The majority of employees who were dismissed were subsequently offered re-employment. Many of them accepted and a number of those have subsequently been promoted to senior management positions at the mine. The Fiji High Court and Court of Appeal ruled at the time that the workers had been on an illegal strike and their employment was legally terminated by the Company.”

Current employees

The rate of pay for the current employees of the mine has improved since 1991. The minimum pay of an underground worker is reportedly F\$3.14 an hour, whilst for an aboveground worker it is F\$2.41.⁶⁹ However, employees who were interviewed and the Fiji Trade Union Congress argue that these increases are still inadequate and solely reflect CPI increases. Many of the employees complained that their wages were insufficient to cover the cost of living of their families; they struggle with school fees and rising food costs. The employees said that credit from the local company-owned supermarket was commonplace until 1989 when Emperor started running it. They also claimed that they were too frightened to speak out against the company fearing retribution and potential loss of their jobs, and they did not believe that the VMWU was adequately representing their interests and concerns against the company.

A machine miner who received F\$1.18/hour before the strike in 1991, now receives \$3.61/hour. Below is a reproduction of this machine miner's payslip, given to the Mining Ombudsman during the investigation, illustrating one week's typical work:

Hourly rate	3.61
Total wage	187.72
Allowances	
U/G	5.60
PRS	5.78
PRS on t/h	1.15
Total allowances	12.53
Gross	200.25
FNPF	16.02
Tax	4.29
Deductions	
Elec	20.61
Services	2.50
Land rent	2.00
MWUF	11.00
Credit Union	50.00
Kad Prov	5.00
Total deductions	91.11
Take home	88.83

Hours worked = 40 at F\$3.61 + F\$8 at time & a half (the public holiday was a Saturday)

"The management says that they don't want to hear about pay increase and the mine doesn't have the money. They say that if you start talking about pay increases then they will have to sack people so no one wants to complain because they will lose their jobs...my brother died in the mine when a cage smashed into him. The company only gave his family F\$24,000 even though he has six children. So now the family has no food or clothing."

Name withheld – current mine worker who has worked in the mine for 20 years.

In relation to the example of the payslip (left), the worker confirmed that he borrows money from the credit union at the end of the week when he runs out of money (from the F\$88.83 that he takes home). He alleges that he is required to pay this money back at an interest rate of approximately 30 per cent through an automatic salary deduction scheme. This was evident from his payslip above. This situation leads to spiralling debt, where he constantly needs to borrow more to cover both the interest and the cost of living. When Emperor was asked about any association with the credit union they would only comment that it has nothing to do with the company, yet the pay slips of the workers show that Emperor allows for deductions from their wages on behalf of the credit union.

Some of the women workers at Vatukoula have also reported unequal pay arrangements between men and women at the mine.

Emperor argues that the rates of pay of workers at Vatukoula are comparable to other industry sectors in Fiji and that they have a very long waiting list of people wanting jobs at the mine. The company contends that this alone demonstrates that wage rates are competitive. However, the employees interviewed argued that they had no choice but to work for the low wages because they need the money and employment opportunities are limited. They also contend that this does not mean what they are being paid is fair and equitable or that it covers their basic cost of living. Other non-workers interviewed by the Mining Ombudsman described how the pay was so bad that they resigned from Emperor, left Vatukoula and went to work in Papua New Guinea at Porgera and other mines. They told of how Fiji loses some of the best miners once they

are trained because the rate of pay at Vatukoula is not competitive with what they can earn in other countries.

Mr Rajeshwar Singh, the Deputy Secretary of the Fiji Trade Union Congress described the current state of industrial relations at Vatukoula as 'unhealthy'. He advised that the Congress considered Emperor management to have a record of bad-faith bargaining – by behaving unfairly and frustrating the current VMWU and workers through delay tactics. It was claimed that this situation leads to the Union being seen as undermined and weakened by its members. Some of the current employees interviewed expressed their frustration at the inability of their Union representatives to stand up to Emperor and negotiate better conditions. They also confirmed that some victimisation of Union officials occurs, often from the lower levels of management in the mine.

Emperor argues that the Fiji Mining and Quarrying Wage Council sets the minimum wage for the mining industry in Fiji.⁷¹ This council has six representatives, made up of two representatives each from the government, Union and Emperor. However, Mr Singh argues that this tripartite system has had limited effectiveness – alleging that the wage increases it has secured for mine employees have been minimal, only in line with CPI increases, and even then the company had raised objections. Mr Singh compared these minimum wage increases for the majority of the Fijian Vatukoula workforce, with the salaries of expatriate workers with special work permits from Australian and New Zealand at the mine.

He alleged that these expatriate workers are paid a salary comparable to what they would receive in their home country, also receiving additional special allowances and high-quality housing.



Women attending a meeting with the Mining Ombudsman to express their grievances with the Vatukoula mine. Photo: Anne Lockley/Oxfam CAA

In a statement to shareholders dated 11 May 2004, Emperor advised in respect of conditions of employment:⁷²

“Emperor is an equal opportunity employer. The Labour Department regulates conditions of employment. Furthermore wages and conditions of employment for the industry are set by the Mining and Quarrying Wages Council on a regular basis. Currently Emperor average wage rates are in excess of 90% greater than the minimum wage rates set by the Mining and Quarrying Wages Council. Unskilled Workers are recruited according to standard recruitment screening procedures subject to vacancies and suitability of individual candidates. These relate to age, police clearance, medical examination and previous employment records. All new employees are subject to an initial three month probation period during which their suitability and capabilities are assessed. Subject to the foregoing, employment is independent of race, gender, creed or ethnic origin. Pay rates for females are the same as for males. There is no discrimination.”

The impact of mining on women in Fiji

Currently, women who work at the mine are engaged in tasks such as administration, cleaning and supervising. A good majority of women are also engaged as hand-pickers – a task which requires them to sort by hand the good from the bad ore before it is taken through the gold processing machinery. Women are placed in a production line, sorting out ores for long hours on their feet, with only one lunch break.

Having toiled long hours in excruciating conditions, most of these women earn a mere F\$1.99 per hour, a wage which is controlled and determined by Government through the Wages Council, which is a tripartite body consisting of the employer, a union representative and an independent member. This is the basic wage that these women receive: there are no social security or health benefits attached.

Where a private contractor employs women as hand-pickers, their situation is even more vulnerable. Although contrary to the employment legislations in Fiji, women claim to work for a period of three to four years as casual workers without a written contract. Should they fall pregnant, they are automatically dismissed from their work.

Extracts from Fiji Women’s Rights Movement Speech.⁷⁰

2. Unsafe occupational health and safety

The strikers

The strikers complained that they received no sickness benefits from the company and alleged that they were pressured to work when injured and unwell. Some claimed to have been injured while working at the mine. These injuries included damaged or lost eyes, fingers and hands; back injuries; and partial or full deafness. They argued that Emperor would try to avoid paying compensation by always refuting the seriousness of their injury or claim that it had not occurred at the mine. Those who did receive compensation complained that it was inadequate, with some still incurring on-going medical costs. Some of those interviewed described how company doctors would advise that there was nothing wrong and send them back to work, while at the same time external doctors would give different advice confirming that they had a work injury. Some provided examples of conflicting medical records from Emperor and external doctors to substantiate their claims.

Many described the working conditions as 'inhuman.' Some of the ex-drillers described how they would be forced to work alone when they should have been working in teams of three, sometimes leading to both injuries and deaths. Most spoke of the lack of underground ventilation – they stated that the air would be extremely hot and that poisonous gases from the trucks would choke them. It has been documented that workers were sometimes overwhelmed by these fumes and forced to vacate the mine.⁷³

"I worked with no mask and breathed fumes – including fumes from dynamiting. In 1981, I blacked out from the fumes and ended up in hospital. I didn't regain consciousness until I was in the hospital. The doctor said I could no longer go underground. The company sent me back underground – I told them that the doctor said I shouldn't go but the company didn't care. I worked for ten more years underground."

Misake Tahaka, former underground mine worker, now cutting cane.

"There was no safety – costs of gloves and boots were deducted from the F\$1.15 we were paid. When digging there was no harness used until one man fell and died – now they have harnesses."

Name withheld

Some alleged that they were injured when they were made to carry out tasks for which they were inadequately trained. The company was also known to deduct worker salaries for the payment of uniforms and damaged machine parts.⁷⁴ This was confirmed by many of those interviewed.

Current employees

"My brother died in the mine when a cage smashed into him. The company only gave his family F\$24,000 even though he has six children. So now the family has no food or clothing."
Name withheld – current mine worker who has worked in the mine for 20 years.

There was some divergence in the testimonies of the current workers regarding the safety standards and working conditions at the mine. Some alleged that after the strike in 1991, the conditions at the mine improved slightly but within a year they were back to about the same as before. Others advised that the safety and working conditions had improved more significantly over the 13 years and that the new management was taking accident prevention more seriously. They confirmed that workers no longer worked alone when drilling and there was always at least one other person and normally a team of three. However, they still complained that they were forced to work long hours in extremely hot conditions with poor ventilation. A week after the visit of the Mining Ombudsman, Emperor opened a new ventilation system for one of the shafts and claimed that other such ventilation systems are planned for other shafts in order to address the toxic gas issue.

Several miners and former miners reported that safety equipment was either not provided, or was inadequate when provided or was only provided when the cost was deducted from their pay. However, others stated that they were only required to pay for their uniforms and all of the safety equipment was provided free of charge. All of those interviewed complained about the quality of some of the equipment, especially the masks which they stated often did not fit or did not stop the gas and fumes from the trucks, leaving their mouths and noses black.

Work-related deductions: exemption for Emperor

Since 1975 Emperor has had the benefit of two exemptions to the basic employment standards of Fiji under the *Employment Act 1965*,⁷⁵ which allows Emperor to deduct up to 25 per cent of employee wages for the cost of renting company housing, and for any work-related costs.⁷⁶ Emperor is the only company in Fiji which can make 'work-related' deductions from employee wages.⁷⁷

The *Occupational Safety and Health Convention 1981* requires employers to provide safety equipment and clothing where there are hazards, risks of accidents or adverse effects on health.⁷⁸ The General Conference of the International Labour Organisation clarified this obligation stating that employers must provide this safety equipment without any cost to the worker.⁷⁹ This requirement is confirmed in the *Safety and Health in Mines Convention 1995* and the recommendation supplementing this Convention.⁸⁰

Any deductions by Emperor, as claimed by previous and current workers, would therefore be contrary to international workplace health and safety labour standards, despite Fiji not being a party to the relevant conventions.

Sanmogen and son. After he lost his finger in the mine, Sanmogen went on strike in 1991. He now complains he has no money after his wife left him with his two sons. Photo: Ingrid Macdonald/Oxfam CAA



3. Social impacts on the families of strikers

Some described how they had developed respiratory and sinus problems since working at the mine, with a number describing skin problems, eye itchiness and deafness. Some interviewed also alleged that the medical service provided by Emperor still forces miners to return to work when they are still injured/unwell or refuses to help them gain adequate compensation.

Senator Emberson-Bain estimates that at least 18 fatalities have occurred in the mine since 1986.⁸¹ Senator Anthony suggested in an address to the Senate that in the eight months to March 2003, there had been 101 injury reports at Vatukoula.⁸² When asked, Emperor management vigorously defended their occupational health and safety record, which they said is transparently reflected in the company's annual reports. They described a new safety education campaign for the workers which was being implemented at the mine and an attitude of zero tolerance to breaches of their occupational, health and safety standards.

On 11 May 2004, Emperor advised:⁸³

"Emperor is committed to the highest standards of work place health and safety. Occupational Health and Safety for mining is comprehensively regulated by the Mining Act which is administered by the MRD. Emperor meets all regulatory requirements in terms of occupational health and safety and maintains a world-class safety record. Emperor also has a dedicated fully trained Emergency Response Team trained in first aid, fire fighting and underground rescue work."

The Mining Ombudsman was repeatedly told by those strikers capable of returning to work that they wanted to be re-employed at the mine. Some expressed concern that they will be discriminated against if they tried to apply for a job. However, Emperor strongly contended that employment avenues at the mine have always been open to the strikers, provided a job exists and they were still able to work. Emperor states that it has many ex-strikers working at the mine, some of whom now hold junior-management or middle-management positions. Yet many of those who consider themselves to be still on strike argue that as the strike has been running for 13 years they are too old to return to work. Other strikers are unable to work because of the injuries they sustained whilst previously working at the mine.

All of the strikers want compensation for their lost wages and the losses that they have suffered since 1991. The strikers have lost their livelihoods, and complain that over the last 13 years they have struggled to feed themselves and their families. Many described how they have had to seek alternative seasonal work such as planting

cassava or working in the cane fields, while still sitting on the picket line when they are able. This has been hard on them individually and hard on their families, with school fees often going unpaid and their children not being adequately fed or clothed. This was confirmed in interviews with the workers from some of the local schools – they described how they could distinguish the children of strikers from other children due to their poor health, lack of food, and lack of shoes and proper uniforms.

Some of the strikers described how the stress of being on strike for so long has led to family breakdown, alcohol and substance abuse, and in some cases domestic violence. The strikers described how they feel that they have been forgotten by the government and Emperor. They feel that they have been cast aside and that their families and children have suffered, missing out on a proper education and having no opportunities for the future. Many of those interviewed appeared to be depressed and demoralised about their situation and desperate for some form of resolution to the dispute.

"I was a sampler in the mill for eight years before the 1991 strike. In 1988 I lost my finger but only received a small amount of money for the injury. I only received F\$1.65 an hour and I would work all night with only one biscuit and a coke. I am from Vatukoula and I own my own house. My wife left me with two sons because I went on strike and we ran out of money. There were a lot of problems at home like hitting the kids because of the stress. I am struggling – I have been struggling for 12 years now – I am cutting cane but I still have to pay my sons' school fees."

Sanmogen – Fiji Mine Workers Union.

4. Sub-standard housing

Community members complain of poor housing and facilities provided by Emperor at Vatukoula. The main problems identified by the Tavua Health Inspectors in 1995 were overcrowding and the unhealthy state of living.⁸⁴ The health inspectors revealed that there were about 360 houses owned and looked after by Emperor.⁸⁵ Emperor advised that this figure is now only 140 houses. Some of the housing in Vatukoula is nearly 70 years old and of a sub-standard condition. Whole families are now using the Narau barracks, initially built in the 1930s to house single male workers. The rooms are approximately 18 ft by 12 ft in dimension.

The Mining Ombudsman visited the Narau barracks and different areas of the housing estate while undertaking the investigation in November 2003. Some of the houses visited were owned by Emperor and rented by workers, some had been purchased while others were illegally occupied by strikers. The condition of the housing is very poor – families often have only one or two rooms and there is obviously little maintenance or upkeep of the facilities. They are mainly constructed from corrugated iron or have corrugated iron roofs and wooden structures. As a result, the inhabitants complain that the houses become very hot during the day and that the families cannot stay inside. The houses do not have cooking or bathroom facilities. These are all outside, with generally three to five houses (families) sharing one tap and a block of toilets/showers. The Mining Ombudsman observed the children bathing in the sinks, which are also used for washing clothes and dirty dishes. The taps are used for water collection and washing food. None of this water was treated. The Mining Ombudsman did not observe any expatriate workers or non-Fijians living in these housing areas.

The poor condition of the housing was a major reason cited by the strikers during interviews with the Mining Ombudsman for why they originally went on strike in 1995. It was also a central component of the GP Lala report of the Fiji Government Commission of Inquiry, which said that the housing and facilities provided by Emperor were sub-standard.⁸⁶ The report, which has been declared null and void by the Fiji High Court, made extensive recommendations for improvements, which would have involved contributions from, and placed obligations on Emperor, the Fiji Government, the workers and the Fiji public at large.

“My family still lives in the barracks. There are five people in one room. There is no privacy. The electricity has now been cut off.”

Vereti Tikodramai, former contract machine operator, on strike since 1991.

Women who live in Vatukoula are housed in single-barracks built for single men that were once company-owned and subsequently bought by miners. These barracks are built on company property. On average, a barrack consists of five to six rooms, with two to three families per room. All barracks share one bathroom, and one toilet. There is no electricity.

Women cook in tin lean-tos to feed their families. There is no privacy for a woman or her family because everything is communally-owned and shared. Water is obtained by two sources: tank water collected from an already polluted environment into a rusty water tank or river water which is contaminated by chemicals. Plagued with poverty, women feel disempowered by their social environment. This breeds other social problems such as discontentment, infidelity, alcoholism, domestic violence and youth problems.

Extracts from *Fiji Women's Rights Movement Speech*.⁸⁹

When questioned about the condition of the housing, Emperor advised that the housing was perfectly adequate and focused instead on the illegal occupation of some houses by the strikers from 1991. The Mine Manager alleged that the company had been warned that if they tried to enforce the eviction notices or cut off the electricity in accommodation occupied by the strikers then they would be ‘killed’. The company therefore resents paying for the electricity used by the strikers and wants them to vacate the houses. In terms of the sub-standard condition of the houses rented by the current mine workers of Emperor, the company advised that they have a long waiting list for the houses and if the people do not like living there, then they are free to find accommodation elsewhere.

In a statement to shareholders dated 11 May 2004 Emperor advised:⁸⁷

“Emperor works closely with the Government Housing Authority (‘HA’) to address the shortage of housing in the Tavua/Vatukoula area. The Company would prefer to see housing developed away from the mine site area, however there is a shortage of housing in the surrounding Tavua/Vatukoula region, where the majority of the Company’s workforce live. The HA has identified land which it proposes to purchase, subdivide and develop. It intends to offer employees the option to buy vacant lots and build, or to purchase ready-built homes. Emperor provides rental housing to certain employees whose job description requires them to be housed on site. Where possible, housing is allocated according to family circumstances.”

In respect to the occupation of company housing by the 1991 ex-workers, the company’s statement advises:

“The presence of large numbers of squatters in Emperor housing has created difficulties in administration and control of the villages within the town boundary. Twenty-one per cent of Emperor’s housing units are occupied by squatters, mostly as a result of the 1991 industrial action, and against whom eviction orders have been issued. No maintenance or repairs have been carried out by the Company on these units. The vast majority of squatters still receive free water and power and use community facilities, which are provided by the Company.”

*Mine worker housing occupied by strikers on company land.
Photo: Ingrid Macdonald/Oxfam CAA*



5. Drinking water

The drinking water at the Vatukoula settlement is drawn by Emperor from the Nasivi River and is not treated or chlorinated. A major environmental audit undertaken by Emperor in 1994 confirmed that there were unsafe levels of mercury and cadmium in water samples taken from the Nasivi River.⁸⁹ A University of the South Pacific water specimen test on 15 May 1995 found e-coli in Vatukoula's drinking water.⁹⁰ Tavua Health Inspectors also raised concerns in 1984 with Emperor over high coliform bacilli in the water supply. This was followed up by eight further requests by Inspectors to have the water supply treated.⁹¹ The Tavua Health Inspectors also accused Emperor of killing a number of fish in the Nasivi River as a result of waste water/overflow from the Emperor mine on the morning of 19 April 1995.⁹² The letter stated that this was not an isolated event but a 'chronic problem'. The letter stated that '[a]ccording to the records kept in the office each time [Emperor] gave a lame excuse and got away'.⁹³

The water quality problem is not new to the Vatukoula mine. A 1981 United Nations ESCAP report recommended that Emperor's 1983 lease not be renewed until they had developed a satisfactory program for monitoring their environmental impact.⁹⁴ The legally discredited GP Lala report recommended that river water be filtered and chlorinated and said that "Vatukoula might be one of the last mining towns in the world where untreated water is drawn from taps that is freely available to children." The report also recommended that Emperor adopt 25 recommendations from the 1994 environmental audit of the company,⁹⁵ including the provision of clean drinking water to the company houses in the Vatukoula settlement.⁹⁶

Emperor stated in a newsletter dated May 2003 that it has been investigating the possible provision of treated water to the community for many years, but cannot afford to do so without government funding.⁹⁷ When interviewed by the Mining Ombudsman the company reiterated the position that it is a government responsibility to supply clean water for the inhabitants of the Vatukoula mine settlement and that Emperor cannot afford to treat the water. The company advised that it has been speaking to the government for the last decade in an effort to get it to connect the houses to the treated water supply without success.

The company also claims that villages have been warned not to drink the untreated water from the taps. The Mining Ombudsman did not see any warning signs about the water when she visited the settlement. However, the Mining Ombudsman witnessed young children bathing and drinking the water and women washing their food in it when she visited the settlement. Emperor also advised that they have provided water tanks which they fill with drinking water at the company's own expense for the people living in the settlement.⁹⁸ The Mining Ombudsman did see a number of these water tanks, but also observed that some had large holes in them and some were rusted. Some of the locals also complained that the provision of water by the company was often sporadic and infrequent.

Those inhabitants of the area interviewed by the Mining Ombudsman feared for the health of their children. They described how their children often get dysentery and bloated stomachs, which they blame on the untreated water. They also fear that the water is contaminated with mine waste and chemicals. Emperor claim this is impossible, as the water is drawn upstream from where any mine waste enters the river system. The company felt that the people in the village who expressed these fears must not have taken the opportunity to attend the community meetings held around the site,

which involved an environmental officer and a doctor, because these concerns have never been raised in these forums previously. However, the quality of the untreated water was one of the top concerns expressed by those interviewed in the settlement, especially women.

Communities living outside the Vatukoula settlement also expressed concerns about the waste being discharged by the company into the river system. The Nakoroboya landowners showed the Mining Ombudsman copies of letters that they had sent to the Fiji Government describing how the river sometimes turns a milky colour downstream from the mine. They also described occasional dead fish and alleged that there are now generally less fish in the river. They sent the letter to the Ministry of Environment and Fisheries Department on 20 September 2000 requesting that sampling should be undertaken on the river but they received no response. They also advised that they had made complaints directly to the company about the alleged environmental pollution.

A woman and her children washing food in untreated water from a tap that she shares with four other mining company families. Photo: Ingrid Macdonald/Oxfam CAA



6. Air pollution

Concerns that the sulphur clouds being emitted from the roaster stack at the Vatukoula mine are causing air pollution and health problems have been repeatedly raised with Emperor. In 1995, Emperor claimed that they did not have any records of the amount of sulphur being emitted from the roaster stack, even though it had the potential of being a major health hazard, which could potentially lead to bronchial respiratory illness in the local population.⁹⁹

The 1995 GP Lala Report recommended that Emperor install a gas chromatograph in the roaster stack, which would give readings of the volumes and types of gases being discharged into the atmosphere.¹⁰⁰ Residents in 1995 also reported that vegetables such as cabbages are unable to be grown within the Emperor property.¹⁰¹

Emperor advised the Mining Ombudsman that there are inversion layers that are particular to the Vatukoula atmosphere which sometimes makes the sulphur plume from the roaster come down to the ground. However, Emperor advised that it has control mechanisms in place so that when these inversion layers occur, the roaster can be turned off. Emperor said that it did not monitor the sulphur emissions, but claimed that it was about to start a short program of monitoring. Emperor was also aware that the community had concerns about the sulphur plumes and the impacts on their health and vegetables.

Many of the people interviewed – strikers, current workers and other non-workers residing close to the mine – complained about the sulphur emissions. They described how at least once every fortnight to a month, the wind changes and large white sulphur clouds blow across their area which cause the people to cough and run inside. They allege that the sulphur emissions have caused their children to have respiratory problems such as asthma, as well as bad headaches, bleeding noses and itchy eyes, while one six-year-old allegedly collapsed when overcome by the sulphur. The sulphur plumes were also reported to regularly affect the local primary school causing the children to run inside and close the windows to avoid the white clouds. Many of the people interviewed also complained that the vegetables, especially the cassava and the pawpaw, do not grow like they used to –

“The sulphur is very inhumane. The company thinks we are not human. If you are young it is okay but once you are 25 or 26 you start to cough a lot and get asthma. There is a lot of asthma in my community. The leaves turn brown when the sulphur comes down, the cassava, paw paw and fruit trees die and the bananas are no longer sweet. They dump the waste into the rivers – we have photos of all the dead fish and the river turns a milky colour.”

Name withheld – landowner representative.

“The sulphur effects us all – every week or so when the wind changes the sulphur clouds come down. You can see it – it comes down as white clouds. We see the cassava leaves burn and start to die off from the sulphur. It gives the children headaches and one 6 year old collapsed a couple of times from the sulphur. The sulphur collects on the roof and goes into the water tanks when it rains.”

Name withheld – landowner and ex-worker (not a striker).

the leaves look burnt with brown spots and they get covered in a white/brown dust whenever the sulphur clouds come down to the ground. They also worry that the dust from the sulphur collects on the roof of their houses and when it rains flows into their water tanks collecting the rainwater for drinking.

Senator Emberson-Bain advised the Mining Ombudsman that Emperor had increased the height of the sulphur stack, which had assisted to reduce the impact of the sulphur emissions on the local people. However, there were still concerns that needed to be addressed.

In a statement to shareholders that was also sent to the Mining Ombudsman, Emperor advised the following on 11 May 2004 in respect of air pollution:¹⁰²

“Emperor ensures that emissions from the roaster stack meet all regulatory guidelines. Further, in accordance with the Environmental Management Plans, there has been a 50 per cent decrease in the addition of elemental sulphur into the roaster over the past three years through the utilisation of new technology. The Company is monitoring discharges from the stack and investigating options to achieve a dryer atmospheric discharge at the highest possible exhaust temperature.



A local woman shows discolouration of food crops which she claims is from the sulphur emissions from the Vatukoula mine. Photo: Anne Lockley/Oxfam CAA

7. Landowner claims

Mataqali Landowner spokesman, Iosefo Javacami shows Ponipate Ravula from CCF documents concerning the disputed land where Vatikoula Gold Mine is now located. Photo: Ingrid Macdonald/Oxfam CAA

The Mining Ombudsman spoke to three different landowner groups with claims against Emperor.

The Nasomo people

The Nasomo people came from Nadrau, Nabobuco, Nasoqo, Ra, Seqaqqa Vanua Levu and Lau three generations ago and settled on land given to them by a missionary. The Nasomo people claimed to have been dispossessed of 1,062 acres of their land as part of an Emperor joint venture with WMC in 1983.¹⁰³ This area was mostly farming land, but included a water catchment area, several streams and a burial ground. An estimated 70 per cent of the land in dispute is covered by lease SML 55, granted to Emperor in 1983. The Nasomo people alleged that this lease was granted without prior consultation and despite written objections.

A 2002 court judgement granted the Nasomo people F\$1 million compensation for the land lost to Emperor/WMC in 1983. This is substantially less than the amount sought by the Nasomo people. Their case argued for the 1983 mining lease SML 55 to be declared 'null and void' and for the mining companies to reimburse the landowners for all revenue derived from their resources or pay compensation worth F\$10 million.

When interviewed by the Mining Ombudsman, the Nasomo landowner group advised the lease on the land would be up for renewal in 2004. They wanted to negotiate a better lease with Emperor with higher royalty payments. They wanted the mine to guarantee that this water supply would not be contaminated by any future mine developments as they were aware Emperor has been undertaking exploration where the water is being sourced.

Natolevu Landowning Unit

Representatives of the Natolevu Landowning Unit allege that in 1948, part of their land was taken by servitude to the Colonial Sugar Refinery. The land was then transferred to Emperor in 1996 and is now used by the company for gold mining and the removal of gravel from the river. The land comprises 7,549 acres and the land claimants allege that they received no payment or compensation for the land. In support of their claim, the representatives presented the Mining Ombudsman with NLC Record Number 183, which is a background paper for the Native Lands Title that records the community's ownership over the land.



In 1996 the claimants stated that the Native Trust Board assured them that they would work to return the land to the Natolevu Landowning Unit but since then, they have received no news. They advised that they tried to take a court case in Suva in 2001, but the court dismissed the case because their lawyer did not tell them the time and place of the hearing. They had not spoken to Emperor about their claim, as they do not believe that the company will give them any response. They stated that they want the company to give them up-front compensation for the land. They said they generally have a good relationship with Emperor, which they want to maintain.

Nakoroboya Landowners

"The company is aware of our claim. The company has told us officially to direct our claims to the government departments. They say that they pay their lease to the government and so we should talk to the government and not to them."
Name withheld – landowner representative.

In 1895 the first Inquiry into land claims in Fiji was undertaken. The claimants described how the Inquiry involved a Land Commission where all the people and communities with claims in the area came together to discuss their land boundaries and claims. At this Commission the Nakoroboya people claimed the ownership of the land that the Vatikoula mine is located on and the surrounding area. Their ownership claims were mapped after the meeting in 1895. The claimants produced the maps and documents to substantiate their claims.

However, in the 1900s the Colonial Sugar Refinery was given ownership over their land and the claimants allege that they received no compensation. They allege that the Ratu Sukuna-led Land Commission in the 1940s accepted that the map of 1895 showed that the Nakoroboya people had ownership over the land. In 1989 the claimants advised that the Native Land Trust Board took up their claim and they were told that the land should be returned to them, because the land had been taken from them illegally by the state.

The Nakoroboya representative argued that the map of 1895 shows that the ownership of the land Vatikoula mine is located on belongs to them and therefore any other claimants are merely squatters who came to work in the cane fields and at the mine. They allege that the company has been paying other people in the area money for using the land, which rightfully belongs to them and that this has been causing tensions between the groups. They advised that the company was aware of their claim over the land and advised them to direct their claim to the government. The Nakoroboya representative advised that they want the government and/or company to give them back the land ownership. They want Emperor to remain on the lease and keep mining and pay them royalties.

When questioned about the land ownership claims, Emperor advised that they own the land that the mine is located on outright and that they were not aware of any claims.

Inquiries into Vatukoula

Women wash their clothes, food and children in communal company facilities shared by several families.
Photo: Ingrid Macdonald/Oxfam CAA

The Siwatibau Report

The Siwatibau Report of 1977 detailed an examination of the economics of the gold mining industry in Fiji. It followed an industrial dispute at Vatukoula that occurred two weeks after Emperor was granted further government assistance to continue operations. The dispute began on 13 February 1977, after the FMWU withdrew from pay negotiations. Emperor responded by threatening to close the mine and the government ordered compulsory arbitration between the parties. The dispute involved worker demands for increased meal allowances and contributions to the Vatukoula Benefit Fund.¹⁰⁴ The Siwatibau Report emphasised the high level of distrust and breakdown in communication between workers and management as the cause of the industrial dispute.

*"The items under dispute we consider relatively easy to amicably iron out. The failure of the parties to solve them illustrate very well the deep trough in personal relations and communication gulf which exist between the Secretary of the Union and his counterparts in the upper echelon of Management. Although difficult economic conditions were and are still being experienced in the Gold Mine, the events leading up to the closure were triggered off through clashes in personality."*¹⁰⁵

The Report suggested that the poor communication reflected the fact that senior management did not include representatives from a non-European background who could have interpreted the dissatisfactions of labour and junior staff from a different cultural viewpoint.¹⁰⁶ It criticised Emperor's management for adopting an aloof attitude towards its workers and not spending sufficient time managing its labour force, finding that the management hierarchy was 'structured for control rather than communication'.¹⁰⁷ It was particularly critical of the behaviour of Emperor's Chairman towards the FMWU:

*"If the Chairman were to canalise some of the fervour with which he crusades against what he sees as Union militancy into building a team from what other managers have acknowledged to be a set of good individual performers, Emperor Gold Mining Company's production would be increased."*¹⁰⁸

The basis of the on-going industrial dispute of 1991

In 1991 a system of labour reforms was introduced within Fiji in order to prevent multiple trade unions forming for each



industry. The rationale was to prevent the fragmenting of the Fiji trade union movement into pressure groups (including along racial or political lines). This resulted in compulsory employer recognition of only those unions representing over 50 percent of the total number of workers.¹⁰⁹

In an interview with the Mining Ombudsman on 5 November 2003, Emperor maintained that the only reason for the 1991 strike was that the FMWU wanted to force the company to officially recognise the Union. They contend that the Fiji High Court and the Court of Appeal ruled that the strikers withdrew their labour illegally. They claimed that the onus was on the FMWU to demonstrate that they represented 50 per cent or more of the workforce, and that the Union was unwilling or not able to do so. As a result, in 1992 Emperor successfully challenged the Permanent Secretary for Labour and Industrial Relation's Compulsory Recognition Order of the FMWU, which would have forced compulsory recognition of the FMWU by Emperor.¹¹⁰

However, the reasons of the ex-workers for the dispute, which were raised in the GP Lala Commission of Inquiry in 1995 and communicated to the Mining Ombudsman in numerous interviews, included: poor housing; an unsafe work environment without adequate support or safety gear; poor medical facilities; polluted drinking water; lack of transportation for shift workers; mandatory night work for women; contract work procedures; pay methods that were not understood by workers; and toxic gas emissions. The workers also complained that the company had failed to recognise the FMWU as their designated trade union.

It is important to note that Emperor and the Fiji Government had been engaging with the FMWU as the recognised representative body of the Vatukoula mine workers for decades preceding the 1991 industrial dispute, including the compulsory arbitration in 1977. The changes to Fiji's industrial legislation in 1991 may have provided Emperor with an opportunity to sideline a Union that it had a history of conflict with. In 1996, the International Labour Organisation's Expert Committee on the Application of Conventions and Recommendations criticised practices that Emperor had engaged in as forms of employer interference in trade union activities, including:

*"...[R]efusing to recognise independent trade unions, resorting to legal procedures to delay recognition of trade unions, and misusing an amendment to the Trade Union (Recognition) Act, originally requested by the Committee of Experts, to encourage the fragmentation of workers' organisations in order to render them ineffectual."*¹¹¹

FMWU representatives also asserted that they were too busy on the picket lines and protecting their homes from eviction to appropriately engage in the 1991/1992 Emperor court cases. As a result, some of those interviewed believe that Emperor used the court cases to avoid discussion of the real reasons for the strike and the on-going problems.

Emperor management advised the Mining Ombudsman that ex-workers calling themselves 'strikers' demonstrated their naivety. In a statement to shareholders

There have been numerous inquiries and parliamentary debates concerning the mining industry in Fiji, with most of them focusing on the operations at Vatukoula. These have included:

- 1966 inquiry/report into whether or not Vatukoula should be given assistance by the Fiji Government;
- 1969 debate in the Fijian Legislative Council about the nationalisation of the gold mining industry;
- 1974 Report of the Board of Inquiry into a trade dispute between the FMWU and Emperor;
- 1977 Siwatibau Report of the Committee Appointed to Examine the Economics of the Gold Mining Industry at Vatukoula, this was produced following the threatened closure of the mine;
- 1981 United Nations ESCAP Report on the Environmental Impact of Gold Mining at Vatukoula;
- 1987 ESCAP study on the economics of gold mining in Fiji;
- 1990 World Health Organisation (WHO) Report on community water supply and sanitation;

- 1994 environmental audit of Vatukoula commissioned by EGM/EML; and
- 1995 GP Lala Report of the Fiji Government Commission of Inquiry, which was declared null and void by the High Court on June 11, 2004.

Some of these investigations concerned the economics of the Fiji gold mining industry, whilst others investigated the environmental impact of the mine; workplace health and safety concerns; and industrial relations. A number of these inquiries have not been released publicly.

Emperor stated that:

“The Fiji High Court and Court of Appeal ruled at the time that the workers had been on an illegal strike and their employment was legally terminated by the Company. Claims that the strike continues are, therefore, inaccurate and misconceived.”¹¹²

Whilst the 1991 strike was declared illegal, every other person interviewed by the Mining Ombudsman in Fiji, including government ministers, senators and bureaucrats, continue to refer to the protesting ex-workers from the 1991 industrial dispute as ‘strikers.’ This suggests that there is popular acceptance within Fiji that the ex-workers are still engaged in an industrial dispute with Emperor. Mr Rajeshwar Singh, the Deputy Secretary of the Fiji Trade Union Congress also confirmed that the Congress supports the strikers’ claims for compensation despite the FMWU not being a registered trade union on the Congress’s legal book of registration.

The GP Lala Commission of Inquiry

The GP Lala Commission of Inquiry Report into the events surrounding the Vatukoula Trade Dispute C36/H/20 was completed in July 1995. Emperor filed for a judicial review of the Inquiry in September 1995. As a result of the judicial review ruling of Justice John Connors on 11 June 2004, the GP Lala Commission of Inquiry report and its recommendations currently have no legal status. Hence the issues raised in the report will not be debated in the Fiji Parliament or be made public. However, the substance of the report is public

knowledge. The report itself has been widely leaked and the issues it has raised have been published by Fijian and Australian media since 1995. Justice Connors’ judgement itself includes the GP Lala recommendations in an annexure and also quotes from the report. At the time of printing this report, the Fiji government or the ‘strikers’ could still elect to appeal against the High Court decision.

Prior to the 11 June judgement, Emperor advised the Mining Ombudsman that it pursued this action because the Commission of Inquiry was too focused on the 1991 industrial dispute; the company was given insufficient opportunity to present its viewpoint; and the Commissioner deviated from its terms of reference. The company’s position was essentially upheld by the Fiji High Court, with Justice Connors ruling that Commissioner GP Lala’s inquiry had deviated from its terms of reference, that he had continued to take submissions and evidence after the Inquiry’s time period had expired and, that in the case of some of the report recommendations, Emperor had

been denied the opportunity to respond or make submissions. Justice Connors said the GP Lala report was “so fatally flawed as not to be a report of the Commissioner’s findings, opinions and recommendations with respect to the events surrounding and issues in connection with the Vatukoula Trade Dispute.”¹¹³

In its 11 May 2004 statement to shareholders, the company stated:¹¹⁴

“Emperor initiated the Judicial Review because it believes there were fundamental flaws in the legal processes associated with the Commission of Inquiry. Emperor has always maintained such a review should be conducted at the earliest possible opportunity. The current proceedings deal only with the Company’s application for such Judicial Review due to these flaws. They are not related to claims or allegations by the Fiji Mine Workers Union which was deregistered in 1992. Because legal proceedings have commenced, Emperor cannot comment on the specifics of the Judicial Review

“The reasons for the strike were poor wages and the poor working conditions. I had no proper safety gear and sometimes lose rocks would fall and you needed to make sure that they did not fall on your head. I used to operate the water and the pressure of the soil and the water was bad and I used to get very dirty and wet and I would have to have lunch while I was all wet. Since I went on strike in 1991 I am planting cassava and taro but I do not get very much money. There is now a lot of tension in the family and I am sick.”

Usaia Seniu – Fiji Mine Workers Union



A discharge pipe in the Vatukoula Gold Mine tailing pond.
Photo: Ingrid Macdonald/Oxfam CAA

or the Commission of Inquiry itself. However, it is public knowledge that the Commission of Inquiry related to various issues surrounding conditions of employment, industrial relations, occupational health and safety, housing, and environmental impact at Vatukoula at the time of the Commission of Inquiry in 1995.”

The company declined to make further comment after the judgement was handed down.

Before the court ruling on 11 June 2004, Fiji Government representatives advised the Mining Ombudsman that they would like the judicial review action resolved, as they would like to use the recommendations contained within the report to instigate policy reforms to improve the working conditions at Vatukoula and the Fiji mining industry generally. They indicated their disappointment in the judicial challenge by Emperor in the light of the significant resources and time invested by the Fiji Government and other stakeholders in the inquiry.

This report examines some of the issues raised in the report which were also raised by the men and women of Vatukoula who were interviewed by the Mining Ombudsman, even though the GP Lala report and recommendations themselves have been declared null and void.

While accepting the Fiji High Court and Court of Appeal rulings that the strike was illegal, Commissioner Lala found that both the company and the FMWU contributed to the circumstances surrounding the strike. Commissioner Lala supported many of the complaints of the workers regarding conditions and wages, but was also critical of the FMWU’s conduct in failing to obtain a compulsory recognition order. Commissioner Lala stated with respect to Emperor’s successful challenge of the legality of the 1991 strike:

*“The present situation of miners ... is not something that Emperor Gold Mining Company or Western Mining Corporation can feel proud of or claim victory in their favour. In terms of human suffering, it can only be termed a ‘bloody victory’.”*¹¹⁵

The recommendations of the GP Lala Report (1995) included:¹¹⁶

• Recommendations with respect to housing

Recommendations 1-20:
A social justice fund (SJF) should be established to address housing issues in the mining town. Contributions to the SJF would be made on an annual basis from government, Emperor, the mine workers and all Fiji employers. The SJF would be spent on building 1,000 two bedroom low-income houses in Vatukoula. These houses should be free of rent for five years and transport between mine and the houses should be provided. People who have already purchased housing structures from the company should have their money refunded because the conditions of the houses are such that they cannot be made a proper habitation.¹¹⁷ Justice Connors, in his 11 June 2004 judgement, said the social justice fund recommendation was “not within the scope of the terms of reference of the Commission of inquiry. Those affected, including Emperor, did not have the opportunity to be heard with respect to these recommendations.”¹¹⁸

• Recommendations with respect to the 1991 strike and dismissals

Recommendations 21-25:
Commissioner Lala identified that although the new management had taken steps to improve working conditions and relations between management and workers, this “only confirms that conditions earlier at the mines were harsh and poor.”¹¹⁹ Commissioner Lala recommended that the dismissed employees should be given priority for future employment, in their former occupations, at the mine. He also recommended that their should be a payment of a significant ‘humanitarian lump sum’ of four years’ basic salary plus cost of living for those years since the ex-workers had been dismissed and left the company houses.¹²⁰ During the Inquiry Emperor indicated that they would re-employ people who were not charged for any crimes during the strike action and provided they had the required skills when a job became available.

The GP Lala Report (1995) also recommended:¹²¹

- The government should impose stricter environmental controls, while the company should perform monitoring and follow the recommendations of their own environmental audit. Sulphur dioxide emissions should be monitored, the roaster stack should be increased in size and consultants who specialise in tailings dam walls should evaluate Vatukoula dams.
- River water piped into the Vatukoula town should be filtered and chlorinated. The report also questioned the safety of rainwater given the unknown impact of sulphur dioxide discharge.¹²²
- There should be improvements to the conditions of employees working in wet conditions, as well as other wage and health, safety and environment recommendations.¹²³
- *The Mining Act 1966* should be amended in respect of environmental protection and management,¹²⁴ with the appointment of a resident safety inspector, and capacity building of mining inspectorate staff.¹²⁵

Mining Ombudsman recommendations

- That Emperor acknowledges its responsibility to address the environmental and social issues that are a legacy of the Vatukoula mine in Fiji.
- That a process of dialogue be set up between the FMWU and Emperor to discuss their differences of opinion and possible solutions to the current situation. Appropriate compensation should be paid to the FMWU representatives who still consider themselves to be engaged in a labour dispute. Where applicable, strikers should be provided with re-training and re-employment at the mine site.
- That an independent assessment be undertaken into the tax benefit of the mine to the Fiji community as a whole.
- That a full and independent environmental impact assessment funded by Emperor and involving all stakeholders – government, workers, civil society groups, local community representatives and the FMWU – be undertaken of the Vatukoula mine site and the Vatukoula mine workers' settlement. Appropriately qualified and independent groups who are not chosen by the company and who are familiar with the communities and the environment should undertake the assessment. Local stakeholders, who are not appointed by the company, including independent organisations and local civil society should verify the study's findings in order to ensure rigour and accuracy. This assessment should:
 - (a) identify any risks to people and the environment associated with the sulphur emissions;
 - (b) assess the disposal of waste into the river system from the mine;
 - (c) test the untreated water being supplied to the communities by the company; and
 - (d) evaluate the state of the houses being rented/already purchased from the company.

It should also identify any possible changes to policy and practice to be undertaken by Emperor in order to mitigate, remediate and avoid any contamination or health risks associated with the mine sites current operations. All findings should be released publicly in a transparent and accountable manner.
- That Emperor treat all of the water being supplied to the company houses within the Vatukoula mineworker settlement.
- That a full and independent social impact assessment funded by Emperor and involving all stakeholders be undertaken of the Vatukoula mine site and the surrounding communities. This assessment should focus on identifying any social impacts from the Vatukoula mine, using a gender analysis with a particular focus on housing conditions and the rights of vulnerable groups. It should recommend possible changes to policy and practices, to be undertaken by Emperor in order to mitigate, remediate and avoid any negative social impacts associated with the mine. All findings should be released publicly in a transparent and accountable manner.
- That an independent audit of the occupational health and safety practices at the Vatukoula mine site be undertaken. Particular consideration should be given to work injury identification, assessment and compensation practices and to the avoidance, remediation and mitigation practices being used in relation to underground carbon monoxide, sulphur and other gas emissions.
- That training and employment focus on the acquisition of long-term skills by community members and not just those associated with the mining activities, so that upon mine closure people have opportunities in non-mining related industries.
- That, in consultation with local women, Emperor adopt a policy of maximising training and employment opportunities for women and actively counter discrimination, harassment, and male backlash in the work place.
- That Emperor policies, internal monitoring and verification systems should be implemented to ensure that all employees and management are committed to and are required to protect women's rights and pursue gender equality and women's empowerment. These policies and systems would include accountability and incentive mechanisms.
- That Emperor provide equal remuneration for work of equal value, regardless of local labour markets that may value labour according to caste, gender or ethnicity.
- That an independent assessment be undertaken into the wage rates currently paid to the mine workers at Vatukoula and that Emperor should commit to paying its employees a 'living wage'. A living wage guarantees employees sufficient money to not only provide themselves and their families with adequate shelter, food, clothing, education, healthcare and transport but also for a small amount of discretionary income.
- That there be a full independent investigation into the relationship between the credit union and the Vatukoula mine site, specifically looking at the ownership and operation of the credit union and the pay-deduction arrangement.
- That all Emperor employees should be entitled to the protections guaranteed under the eight core International Labour Organisation Conventions, including the right to freedom of association and collective bargaining.
- That Emperor establish independent verification procedures to ensure that the rights of employees are protected. These procedures should include a panel of representatives from employee associations and independent organisations that are not selected by the company.
- That Emperor employees should be provided with education as to their rights and entitlements.
- That in the case of disputes arising in the workplace, Emperor employees should be able to appeal to an independent complaints mechanism. This mechanism should investigate and report on complaints and suggest means of rectifying the problem if one is to be found. It should be accessible, affordable and be able to be accessed confidentially.
- That a process of dialogue be entered into with all land claimants in a transparent and inclusive manner in order to determine land ownership.
- That compensation is paid to land claimants who have lost their land.

Notes

- 1 Laisa Bale-Tuinamoala, 2003.
 - 2 At the time of printing, a takeover bid for Emperor by South Africa-based Durban Roodepoort Deep (DRD), had been endorsed by Emperor's independent directors. The takeover bid was due to be completed by 14 July 2004. The case investigation was also sent to DRD.
 - 3 On 16 June 2004, Emperor sent the Mining Ombudsman a copy of the High Court of Fiji judgement of 11 June 2004, which declared the GP Lala Commission of Inquiry report and recommendations null and void
 - 4 Hansard, *Fiji Senate*, 20 March 2003.
 - 5 See Emberson-Bain 1994, Emperor 2002 & Lyday 2001.
 - 6 Lyday 2001.
 - 7 Hansard, *Fiji Senate*, 20 March 2003.
 - 8 Emberson-Bain 1994 and Lyday 2001.
 - 9 See Emberson-Bain (1994), www.fiji.gov.fj and Emperor website at www.emperor.com.au
 - 10 Hansard, *Fiji Senate*, 20 March 2003.
 - 11 See Emberson-Bain 1994 and Grynberg, Fulcher and Dryden 1997.
 - 12 Hansard, *Fiji Senate*, 20 March 2003.
 - 13 Hansard, *Fiji Senate*, 20 March 2003 and Siwatibau 1977.
 - 14 Hansard, *Fiji Senate*, 20 March 2003.
 - 15 Hansard, *Fiji Senate*, 20 March 2003.
 - 16 ASX announcement, see www.asx.com.au
 - 17 Grynberg, Fulcher and Dryden 1997, page 13.
 - 18 Pintz (1987), p iii.
 - 19 GP Lala Report, 1995.
 - 20 ASX announcement.
 - 21 Emberson-Bain 1994 and 1992.
 - 22 Emberson-Bain 1994 and 1992.
 - 23 Emberson-Bain 1992.
 - 24 CEACR: Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Fiji (ratification: 1974) Published: 1994.
 - 25 CEACR: Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Fiji (ratification: 1974) Published: 1993.
 - 26 GP Lala Report 1995.
 - 27 See Hansard, *Fiji Senate*, 20 March 2003 & GP Lala Report (1995).
 - 28 Lyday, 2001.
 - 29 Lyday, 2001.
 - 30 Mining Ombudsman interview with Solicitor Generals Office, 2003.
 - 31 ASX announcement 'Incorporation in Australia', 30 July 2002, see www.emperor.com
 - 32 ASX announcement see www.asx.com.au
 - 33 ASX announcement, see Emperor website www.emperor.com.au
 - 34 Hansard, *Fiji Senate*, 20 March 2003.
 - 35 Mining Ombudsman interview with Solicitor General Office, 2003
 - 36 Emperor letter to the ASX, 15 January 2003.
 - 37 Hansard, *Fiji Senate*, 20 March 2003.
 - 38 Hansard, *Fiji House of Representatives*, 8 May 2003.
 - 39 Hansard, *Fiji Senate*, 18 December 2003.
 - 40 "DRD takeover offer" 8 March 2004 and "Independent Directors of Emperor recommend rejection of the DRD Offer" April 22, 2004, Emperor website, http://www.emperor.com.au/abouteml/news_centre.html
 - 41 Cabinet Releases – Fiji Government Online, March 24, 2004 http://www.fiji.gov.fj/publish/page_2142.shtml Last Accessed 7 June 2004.
 - 42 "Majority of Independent Directors Recommend Acceptance of Increased DRD Offer" June 10, 2004, Emperor Website, http://www.emperor.com.au/news/EMP_Increased_DRD_Offer_100604.pdf
 - 43 Emberson-Bain, Hansard, *Fiji Senate*, 20 March 2003.
 - 44 www.emperor.com.au, "About Emperor" section and 11 May 2004 Shareholder update.
 - 45 *Emperor Mines Limited Annual Report, 2002*.
 - 46 Emperor Mines *Quarterly Annual Report* April 2004.
 - 47 Current price of gold www.kitco.com at 20:57 NY Time 6 June 2004, US to AUS dollar conversion based on the Foreign Exchange rate as stated by www.oanda.com Accessed 11:22 AEST 7 June 2004.
 - 48 Emperor Mines Limited *Annual Report, 2001* and Lyday 2001.
 - 49 Chairman's address to the Annual General Meeting 2003, November 2003.
 - 50 ASX announcement, according to the Emperor website www.emperor.com.au
 - 51 Senator Emberson-Bain, Hansard, *Fiji Senate*, 20 March 2003.
 - 52 Hansard, *Fiji Senate*, 20 March 2003.
 - 53 Hansard, *Fiji Senate*, 20 March 2003.
 - 54 UN ESCAP, 1997, see table 1, p 6.
 - 55 Hansard, *Fiji Senate*, 20 March 2003.
 - 56 Hansard, *Fiji Senate*, 20 March 2003.
 - 57 Net profit allows all expenditure, capital depreciation, tax and other costs to be deducted from the value of revenue, assets and other profit which differs from value of production.
 - 58 Confidential Interview with the Mining Ombudsman – 11 November 2003.
 - 59 Grynberg, Fulcher and Dryden, 1997.
 - 60 Grynberg, Fulcher and Dryden, 1997, p 12.
 - 61 Grynberg, Fulcher and Dryden, 1997, p 20.
 - 62 Grynberg, Fulcher and Dryden, 1997, p 24.
 - 63 Grynberg, Fulcher and Dryden, 1997, p 25.
 - 64 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
 - 65 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
 - 66 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
 - 67 Emberson-Bain, 1992.
 - 68 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
 - 69 Hansard, *Fiji Senate*, 20 March 2003.
 - 70 Laisa Bale-Tuinamoala, 2003.
 - 71 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
 - 72 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
 - 73 Emberson-Bain, *Na Mae! Na Mae!* (Film), 1992.
 - 74 Emberson-Bain, *Na Mae! Na Mae!* (Film), 1992.
 - 75 By agreement with the employee and with approval of the Housing Authority or the Home Finance Company Limited under para 3 of the *Employment (Application) Order 1976*.
 - 76 *Employment (Application) Order 1976*, para 3.
 - 77 *Employment (Application) Order 1976*, para (b) of the Second Schedule.
 - 78 *Occupational Safety and Health Convention 1981*, art 16.
 - 79 *Recommendation 164 (Occupational Safety and Health 1981)*, art 10 (e) supplementing the Occupational Safety and Health Convention 1981.
 - 80 *Safety and Health in Mines Convention 1995*, art 9(c) and *Recommendation R183 (Safety and Health in Mines 1995)*, art 21.
 - 81 Hansard, *Fiji Senate*, 20 March 2003.
 - 82 Hansard, *Fiji Senate*, 20 March 2003.
 - 83 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
- 26 Mining Ombudsman Case Report: Vatukoula Gold Mine

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- 85 GP Lala Report, 1995, at p 32
- 86 See later discussion of the GP Lala Commission of Inquiry.
- 87 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
- 88 Laisa Bale-Tuinamoala, 2003.
- 89 GP Lala Report, 1995, p 121.
- 90 GP Lala Report, 1995, p 104.
- 91 Letters from Tavua Rural Local Authority health inspectors to Emperor between 13 March 1984 and 5 May 1995, contained in GP Lala Report, 1995, pp 112-123.
- 92 Letter from J Singh to Emperor dated 5 May 1995.
- 93 GP Lala Report, 1995.
- 94 'Report on the Environmental Impact of Gold Mining at Vatukoula, Fiji' ESCAP, 1981
- 95 'Environmental Audit of Emperor Gold Mines', Sinclair Knight Merz, October 1994, see GP Lala Report p 47.
- 96 GP Lala Report, 1995, p 55.
- 97 <<http://www.emperor.com.au>>, accessed 20 May 2004.
- 98 In its May 11, 2004 statement, Emperor advised: "Drinking water in local communities is supplied from rainfall water tanks, which are chlorinated and topped up by the Company during dry season via Public Works Department supplies."
- 99 GP Lala Report, 1995, p 42.
- 100 GP Lala Report, 1995, p 57.
- 101 GP Lala Report, 1995, p 57.
- 102 Letter from Jim Wall 'Shareholder Update', 11 May 2004
- 103 Hansard, *Fiji Senate*, 20 March 2003.
- 104 Siwatibau Report, p 2.
- 105 Siwatibau Report, pp 2 & 18.
- 106 Siwatibau Report.p 2.
- 107 Siwatibau Report, p 18.
- 108 Siwatibau Report, p 19.
- 109 ILCCR (1996) *Examination of individual case concerning Convention No. 98, Right to Organise and Collective Bargaining*, 1949 Fiji (ratification: 1974)
- 110 CEACR: Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Fiji (ratification: 1974) Published: 1994
- 111 ILCCR: Examination of individual case concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Fiji (ratification: 1974) Published: 1996.
- 112 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
- 113 High Court of Fiji 11 June 2004, p24
- 114 Letter from Jim Wall 'Shareholder Update', 11 May 2004.
- 115 GP Lala Report, p 5.
- 116 GP Lala Report, p 50.
- 117 GP Lala Report, p 38.
- 118 High Court of Fiji, 11 June 2004, p 22
- 119 GP Lala Report, p 5.
- 120 GP Lala Report, pp 21-25.
- 121 GP Lala Report, p 154.
- 122 GP Lala Report, p 125.
- 123 GP Lala Report, p 125.
- 124 GP Lala Report, p 94.
- 125 GP Lala Report, p 101.
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- In relation to all references to the GP Lala Report, please note, the report has been legally discredited and declared null and void.*
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- "I have been on strike since 1991. I was a miner for 16 years and I only earned a little over F\$1 an hour. I went on strike because I didn't like the systems and the way the management talked to me was not good. I only got a poor wage and the working conditions were poor. I was forced to do things and if I said no – they would send me home without pay for three days. My family is now struggling as I have three children in school and we don't have much to eat. I want to work at the mine again after this strike finishes. I have been struggling for years and I want help. I have no money and a very hard life."*
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- Sikelei Talaveu – Fiji Mine Workers Union
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