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# HEAR NO EVIL

Forced Labor and Corporate Responsibility in Eritrea's Mining Sector



# **Hear No Evil**

## Forced Labor and Corporate Responsibility in Eritrea's Mining Sector

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## Hear No Evil

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## Summary

Eritrea is a pariah state. Its government has pursued a path of crushing political repression at home and a belligerent foreign policy, earning few friends. The country has been under United Nations sanctions since 2009 because its government has supported Islamist fighters in Somalia.

Eritrea's impoverished economy has suffered greatly because of the government's political and diplomatic isolation. But in recent years the government has actively courted international investors attracted by the country's vast and largely untapped mineral reserves. Those efforts have met with some success. The country's first modern mine, a joint venture between the government and Canadian firm Nevsun Resources, declared production in 2011 and has already produced hundreds of millions of dollars' worth of gold. A handful of companies—from Canada, Australia, and China—are on the verge of developing other projects, and exploration firms are examining other potential sites throughout the country.

Nevsun's experiences show that by developing projects in Eritrea, mining firms are walking into a potential minefield of human rights problems. Most notably they risk getting entangled in the Eritrean government's uniquely abusive program of indefinite forced labor—the inaptly-named national service program. Through this program the Eritrean government keeps an enormous number of Eritreans under perpetual government control as conscripts. Originally conceived as an 18-month program, the national service scheme now requires all able-bodied men and most women to serve indefinitely, often for years and with no end in sight, under harsh and abusive conditions. Those who try to flee risk imprisonment, torture, and even reprisals directed against their families.

Some national service conscripts are assigned to state-owned construction companies who exercise a complete monopoly in the field. International mining firms operating in the country face intense government pressure to engage these contractors to develop some of their project infrastructure. If they do so, they run a pronounced risk of at least indirect involvement in the use—and harsh mistreatment—of forced laborers.

When Nevsun began building its Bisha mine in Eritrea in 2008 it failed to conduct human rights due diligence activity and had only limited human rights safeguards in place. At the government's insistence the Bisha project engaged Segen Construction Company as a local contractor. Segen is owned by the ruling People's Front for Democracy and Justice (PFDJ) and there is evidence that it regularly exploits conscript workers assigned to it by the government.

Human Rights Watch interviewed some Eritreans who worked at Nevsun's Bisha project in various capacities—including two who said they were conscripts forced by Segen to carry out construction work at the mine site during its initial development. There is also clear evidence that many of Segen's workers at Bisha during that period faced terrible conditions, from inadequate food supplies to unsafe housing. The workers we interviewed said that national service conscripts and other Eritrean workers lived in fear and were ordered not to complain about their plight. One former conscript told Human Rights Watch that he was captured and imprisoned after leaving the mine site without permission in order to attend a relative's funeral.

Human Rights Watch engaged in an extensive dialogue with Nevsun about these allegations and to learn what steps the company has taken to address them. Nevsun's response to our inquiries and to the situation on the ground portrays a situation of deep concern. The company does not appear to know for certain whether conscript laborers have been forced to work at Bisha or not. Its efforts to investigate the allegations have been obstructed by Segen itself, and Nevsun has professed itself powerless to compel its contractor to cooperate. When Nevsun sought to interview Segen workers in an effort to reassure itself that the company was not complicit in abuse Segen refused to allow it. When Nevsun repeatedly sought to investigate the living conditions of Segen workers at their camp near the mine site Segen barred them from entering. When the Bisha project attempted to carry out new construction work in early 2012 without re-engaging Segen the Eritrean government ordered it to stop. Segen was brought back on.

Incredibly, Nevsun appears to feel that it has no power to confront its own politically-connected contractor about allegations of abuse at its own mine site. Instead its response to Segen's stonewalling has been one of quiet acceptance. But Nevsun cannot simply pass on the responsibility for human rights problems at its mine site to the contractor it is

paying to work there. Any human rights abuses by Segen would implicate Nevsun, and Nevsun has a responsibility to investigate them and ensure that they stop.

The lessons here are clear. Mining firms must either find ways to ensure that their Eritrea operations do not involve them in the use and maltreatment of forced labor, or they should not invest there at all. They cannot afford to develop human rights safeguards on the fly, when project development is already underway, if they want those safeguards to be successful. And if their projects in Eritrea do become complicit in the use of forced labor they should be held accountable by their own governments and shareholders.

Nevsun should immediately work to address the shortcomings of its engagement in Eritrea and refuse to continue operating under the status quo. The company should insist on full cooperation from its partners in investigating allegations of human rights abuse connected to the Bisha project. And Nevsun's experiences so far should serve as a clear reminder to other mining and exploration firms—the evidence available in this report and elsewhere should put them on notice that they face the risk of being complicit in serious human rights abuses should they choose to invest in Eritrea's mining sector.

Unfortunately there is no indication that other mining firms developing projects in Eritrea are taking these risks seriously enough. Three firms—Australia's South Boulder Mines, Canada's Sunridge Gold, and China SFECO Group—are actively moving ahead with plans to develop new mines in Eritrea, while other firms are exploring numerous other potential assets. In a meeting with Human Rights Watch the head of South Boulder expressed no awareness of the human rights risks involved in his company's Eritrea operations and indicated that the company had not yet taken any measures to avoid the risks described in this report. Sunridge failed to reply to repeated efforts to contact them by phone and in writing. SFECO is a recent entrant into the Eritrean mining sector, having purchased its Zara gold project from Australian firm Chalice Gold in 2012.

Finally, this report serves as a strong example of why governments like those of Canada, Australia, and China need to develop mechanisms that pay close attention to the human rights records of their companies when they operate abroad.

## **Recommendations**

### **To International Mining Firms Operating in Eritrea**

- Conduct thorough human rights due diligence work prior to developing any projects in Eritrea—focused particularly on the need to avoid complicity in the use of forced labor.
- Do not engage any local Eritrean contractor that has been credibly implicated in the use of conscript labor.
- Do not proceed with project development until securing the right to freely and independently access local contractor personnel and facilities to investigate credible allegations of human rights abuse.
- Develop robust grievance and whistleblower mechanisms that allow all project employees—including those of local contractors—to report allegations of forced labor and other abuses safely and anonymously.
- Do not proceed with project development until securing the agreement of the Eritrean government to allow termination of any local contractor that is credibly implicated in human rights abuses, including the use of conscript labor.

### **To Nevsun Resources**

- Implement all of the recommendations above.
- Terminate all contracts between Bisha Mining Shareholding Company (BMSC) and Segen Construction Company.
- Explore mechanisms to provide adequate remedies to all national service conscripts who were forced to work on the development of the Bisha project.
- Ensure that any future mining projects in Eritrea are undertaken only with adequate human rights safeguards in place and without engaging any local contractor credibly implicated in the use of forced labor or other human rights abuses, including Segen Construction Company.

## To the Governments of Canada, Australia, China, and Other Home Governments of Mining Firms Operating in Eritrea

- Implement legal frameworks, such as independent ombudsmen, that allow government institutions to monitor the human rights performance of domestic companies when they operate abroad in areas that carry serious human rights risks.
- Take steps to regulate the human rights conduct of domestic companies operating abroad in complex environments, such as requiring companies to carry out human rights due diligence activity.
- Communicate an expectation to the government of Eritrea that companies investing in the mining sector there should be able to implement the recommendations to mining firms outlined above.

## To the Government of Eritrea

- Do not require mining firms to engage local contractors with a track record of using national service workers. Do not block the decision of any mining firm to refuse to engage a local contractor if that decision is based even partly on human rights concerns.
- Do not interfere with or obstruct any efforts by mining firms to investigate allegations of forced labor or other abuses by local contractors. Support the right of mining firms to terminate relationships with local contractors where serious human rights concerns exist.

## **Methodology**

Human Rights Watch researchers interviewed or corresponded with officials from two of the mining firms operating or developing mining projects in Eritrea—Canadian firm Nevsun Resources and Australia’s South Boulder Mines—as well as SENET, a South African firm that has worked as the principal contractor at Nevsun’s Eritrea project site. We also contacted Canadian firm Sunridge Gold repeatedly in writing and by phone, but despite repeated promises company officials ultimately provided no response to our inquiries. We also interviewed four Eritreans who worked at Bisha in different capacities. Two are former conscript laborers who say they were forcibly deployed to the mine site by Nevsun’s local contractor, Segen Construction Company. Human Rights Watch has previously carried out in-depth research examining Eritrea’s abusive national service program more broadly.

Human Rights Watch was unable to visit Eritrea during the course of this research. The country does not permit independent scrutiny of its human rights record and it is not possible to carry out independent human rights work there without risk of harsh government reprisals towards interviewers and interviewees alike.

Although the sample of interviews Human Rights Watch was able to carry out was small and does not represent conclusive proof that Nevsun or any other company has been complicit in the use of forced labor in Eritrea, the individuals we interviewed provided consistent, credible, and detailed accounts of abuse. Furthermore, the information provided by Nevsun during the company’s ongoing dialogue with Human Rights Watch has heightened rather than assuaged the concerns expressed in this report.

## Background

Eritrea is one of the most closed and repressive countries in the world. Thousands of political prisoners languish in abusive conditions of detention. There is no independent civil society or media. Eritreans who try to flee the country, for whatever reason, risk imprisonment and torture—or even being shot at the border.<sup>1</sup>

By law all Eritreans are required to spend 18 months performing national service, usually though not always, in purely military duties.<sup>2</sup> In fact the government has made national service an indefinite way of life for many Eritreans, forcing them to serve as conscripts for years at a time and without limit. National service conscripts are often subjected to torture and other abusive forms of discipline. Many are forced to endure unhealthy living conditions and paltry remuneration that equates to just a few US dollars per month. Conscripts who attempt to escape their service face imprisonment, torture, and other forms of human rights abuse. Their family members also face harassment and reprisal.<sup>3</sup>

Eritrea's national service program was, according to commentators, born partly out of a desire to cultivate an ethic of nationalism and public service.<sup>4</sup> It has evolved into an instrument of militarized repression that keeps much of the population under the government's direct and perpetual control. Human Rights Watch believes that the national service scheme as implemented by the Eritrean government amounts to forced labor on such a large scale that it is a gross human rights violation.<sup>5</sup>

National service conscripts can be assigned to jobs across every sector of the economy, not just military service. They work as skilled professionals, civil servants, manual laborers,

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<sup>1</sup> Human Rights Watch, *World Report 2012* (New York: Human Rights Watch, 2012), Eritrea chapter, <http://www.hrw.org/world-report-2012/world-report-2012-eritrea>; US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices – 2011: Eritrea," May 24, 2012, <http://www.state.gov/j/drl/rls/hrpt/2011/af/186194.htm> (accessed November 8, 2012).

<sup>2</sup> Proclamation on National Service, No. 82/1995, October 23, 1995, <http://www.unhcr.org/refworld/docid/3dd8d3af4.html> (accessed November 8, 2012).

<sup>3</sup> Human Rights Watch, *Service for Life: State Repression and Indefinite Conscription in Eritrea*, April 16, 2009, <http://www.hrw.org/reports/2009/04/16/service-life-o>.

<sup>4</sup> See Gaim Kibreab, "Forced Labour in Eritrea", *The Journal of Modern African Studies*, vol. 47 no. 1, March 2009, p. 42, "The Eritrean government and ruling party introduced the NS as a means of transmitting the social capital produced during the war, and maintaining the high level of vigilance and sense of insecurity— the siege mentality— that characterized the war period."

<sup>5</sup> Human Rights Watch, *Service for Life*, p. 53.

and even as footballers. Their labor is not given freely, their term of service is often indefinite and prolonged, and in many cases they earn less than half of Eritrea's published minimum wage of 1,000 Nakfa (US\$67) per month.<sup>6</sup> Some conscripts are deployed to work for companies owned or controlled by the military, the ruling party, or influential government officials. Human Rights Watch believes that as a result, foreign investors in Eritrea's burgeoning minerals sector risk complicity in the system of coercion and abuse that the national service program has become.<sup>7</sup>

## Eritrea's Mineral Sector

Eritrea is one of the world's poorest countries and ranks 177<sup>th</sup> out of 187 countries in the 2011 Human Development Index.<sup>8</sup> The country's economy has been a shambles since the disastrous 1998-1999 border war with Ethiopia. The World Bank estimates that Eritrea's per capita GDP actually shrank between 2000 and 2008.<sup>9</sup>

In contrast to the dire state of the overall economy, Eritrea possesses significant mineral resources including deposits of gold, silver, copper, zinc, and potash.<sup>10</sup> The US State Department describes Eritrea as a "strict command economy, with government activities crowding out most private investment."<sup>11</sup> But for more than a decade the Eritrean government has actively courted foreign mining and exploration firms in hopes that developing the country's mineral resources could provide a badly-needed economic boost.

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<sup>6</sup> Human Rights Watch interviews with former conscripts, [dates withheld]. See also US Department of State, "European Commission Making Nice With Eritrea: At What Cost, To What End?" cited in WikiLeaks cable ID:07ASMARA346, April 25, 2007, <http://wikileaks.org/cable/2007/04/07ASMARA396.html> (accessed November 9, 2012).

<sup>7</sup> US Department of State, "Controlling the Market, Controlling the People: Hidri Trust Takes All," cited in WikiLeaks cable ID: o6ASMARA553, June 27, 2006, <http://wikileaks.org/cable/2006/06/o6ASMARA553.html> (accessed November 27, 2012). Human Rights Watch, *Service for Life*, p. 51.

<sup>8</sup> United Nations Development Programme (UNDP), *Human Development Report 2011* (New York: United Nations Development Programme, 2011), [http://hdr.undp.org/en/media/HDR\\_2011\\_EN\\_Table1.pdf](http://hdr.undp.org/en/media/HDR_2011_EN_Table1.pdf) (accessed November 8, 2012).

<sup>9</sup> See World Bank Group, "Eritrea Country Data, GDP growth (annual %)," <http://data.worldbank.org/country/eritrea> (accessed November 9, 2012.) In addition, 2012's global hunger index categorized Eritrea as one of only three countries with an "alarming level" of hunger in the population, with "the highest proportion of undernourished people—more than 50 percent of the population. International Food Policy Research Institute, Concern Worldwide, Welthungerhilfe and Green Scenery, "2012 Global Hunger Index – The Challenge of Hunger: Ensuring Sustainable Food Security Under Land, Water, and Energy Stresses, October 2012, <http://www.ifpri.org/sites/default/files/publications/ghi12.pdf> (accessed November 8, 2012).

<sup>10</sup> US Department of the Interior, US Geological Survey, "Minerals Yearbook – 2011, Eritrea," October 2011, <http://minerals.usgs.gov/minerals/pubs/country/2010/myb3-2010-er.pdf> (accessed November 8, 2012).

<sup>11</sup> US Department of State, Bureau of Economic and Business Affairs, "Investment Climate Statement – 2012, Eritrea", June 2012, <http://www.state.gov/e/eb/rls/othr/ics/2012/191144.htm> (accessed November 8, 2012).

The government's efforts have borne fruit. Major international mining firms have stayed away, but a number of smaller firms have acquired mining and exploration licenses in Eritrea. The Bisha gold and copper mine is the country's first and, as of October 2012, its only operational mine; it began commercial production in February 2011.<sup>12</sup> That project, which is operated and majority-owned by a small Canadian firm called Nevsun, is the subject of a detailed case study presented below.<sup>13</sup> As of August 2012 three other international firms—private firms from Canada and Australia and a state-owned Chinese conglomerate—were developing mining projects in Eritrea that were nearing production. Like the Bisha mine, some and perhaps all of these companies may operate through joint ventures with the state-owned Eritrean National Mining Company (ENAMCO).<sup>14</sup> As of this writing, as many as 18 other international firms were actively engaged in exploration activities, in search of new deposits.

#### Chart: Notable Mining Projects in Eritrea

COMPANY	HOME COUNTRY	PROJECT	MINERAL(S)	PROJECT STAGE	NOTES
Nevsun Resources Ltd.	Canada	Bisha	Gold, silver, copper, zinc	Commercial production at Bisha began in February 2011. <sup>15</sup>	First operating modern mine in Eritrea. Bisha produced 379,000 ounces of gold in 2011 and was expected to produce up to 300,000 ounces in 2012. The mine's 2011 production was worth \$614 million. <sup>16</sup> In July 2012, Nevsun estimated that Bisha held total copper reserves of over 1 billion pounds and zinc reserves of roughly 2.7 billion pounds. <sup>17</sup>

<sup>12</sup> Nevsun Resources Ltd., "Bisha Main: Project Overview", October 2012, <http://nevsun.com/projects/bisha-main/> (accessed November 8, 2012).

<sup>13</sup> See below, Case Study: Nevsun Resources Ltd. in Eritrea, p. 16.

<sup>14</sup> See, for example, "South Boulder Mines provides update on Eritrean Government negotiations," *Proactive Investors*, November 05, 2012, <http://www.proactiveinvestors.com.au/companies/news/35417/south-boulder-mines-provides-update-on-eritrean-government-negotiations-35417.html> (accessed November 27, 2012).

<sup>15</sup> Nevsun Resources Ltd., "Bisha Main: Project Overview."

<sup>16</sup> "Nevsun 2011 Annual Financial Results," Nevsun Resources Ltd., press release, March 21, 2012, <http://nevsun.com/news/2012/march21/> (accessed November 8, 2012). In 2011 the mine realized an average sale price of \$1,620 per ounce of gold produced.

<sup>17</sup> "Nevsun Reports Strong Second Quarter 2012 Results, Further Raises 2012 Production Outlook," Nevsun Resources Ltd., press release, August 8, 2012, <http://nevsun.com/news/2012/augusto8/> (accessed November 8, 2012).

COMPANY	HOME COUNTRY	PROJECT	MINERAL(S)	PROJECT STAGE	NOTES
Sunridge Gold Corp.	Canada	Asmara	Gold, silver, copper, zinc	Feasibility study to be completed in 2013. <sup>18</sup>	A May 2011 prefeasibility study projected that the mine will produce over 365,000 tonnes of copper, 812,000 tonnes of zinc and significant amounts of gold and silver over a 15 year mine life. <sup>19</sup>
South Boulder Mines Ltd.	Australia	Colluli	Potash	Production anticipated to begin in or around 2016. <sup>20</sup>	Potential to be world's first and largest modern open-cast potash mine. Estimated +1 billion tonne resource could support the project for over 20 years. <sup>21</sup>
China Shanghai (Group) Corporation for Foreign Economic & Technological Cooperation (China SFECO Group)	China	Zara	Gold	Production schedule to be determined <sup>22</sup>	Purchased from Australia's Chalice Gold Mines Ltd., September 2012. <sup>23</sup>

<sup>18</sup> Sunridge Gold Corp., “Sunridge Reports Feasibility Study for Asmara Project, Eritrea on Schedule for Completion Q2 2013; Focus on Early Cash Flow and Lower Initial Capital Costs,” November 1, 2012, <http://www.sunridgegold.com/s/PressReleases.asp?ReportID=555799> (accessed November 7, 2012).

<sup>19</sup> “An Interview with Michael Hopley, Sunridge Gold President & CEO,” *The Grandich Letter*, November 12, 2012, <http://www.grandich.com/2012/11/grandich-client-sunridge-gold-54/> (accessed November 27, 2012).

<sup>20</sup> South Boulder Mines Ltd., “Colluli Potash Project,” undated, <http://www.southbouldermines.com.au/projects/colluli-potash-project/> (accessed November 7, 2012).

<sup>21</sup> South Boulder Mines Ltd., “A world class potash mine in development, AFRICA DOWN UNDER 2012,” August 2012, <http://www.southbouldermines.com.au/files/120830-A-World-Class-Potash-Mine-in-Development-Presentation-for-Africa-Down-Under-2012.pdf> (accessed November 27, 2012). “Current +1 billion tonne JORC/43-101 resource supports +20 year project – significant potential to expand mine life (ESS-2 Update in September) ... Potential to increase mine life to over 50 years, producing both MOP and Sulphate of Potash (SOP).”

<sup>22</sup> China SFECO Group, “SFECO Carried Out Special Training for Eritrea Gold Mining Project Team,” November 16, 2012, <http://www.sfeco.net.cn/English/NewDetail.aspx?ID=119> (accessed November 26, 2012).

<sup>23</sup> Chalice Gold Mines, “Chalice completes sale of Zara Gold Project in Eritrea to China SFECO Group and ENAMCO for combined US\$114M,” September 4, 2012, <http://chalicegold.com/upload/documents/InvestorRelations/releases/20120905ASXAnnouncementChalicecompletessaleofZaraGoldProjecttoSFECO-FINAL.pdf> (accessed November 7, 2012); “Mining Digest Eritrea, Q3, 2012,” 2012, <http://www.southbouldermines.com.au/files/121023-Mining-Digest-Eritrea-2012-Q3.pdf> (accessed November 27, 2012).

## Security Council Scrutiny

In 2009 the United Nations Security Council imposed sanctions on Eritrea over its alleged support for the Islamist group al-Shabaab in neighboring Somalia.<sup>24</sup> Al-Shabaab has fought a bloody and brutal campaign against the weak African Union and UN-backed Transitional Federal Government (TFG) in Somalia.<sup>25</sup>

In a December 2011 resolution the council expressed concern at the “potential use of the Eritrean mining sector as a financial source to destabilize the Horn of Africa region.” It called on Eritrea to display transparency in its public finances, and mandated governments to ensure that any firms under their jurisdiction with investments in the Eritrean mining sector “exercise vigilance” in this regard.<sup>26</sup>

As of August 2012 it was still unclear how serious an impact this would have on Eritrea’s continued ability to attract investor interest in its mining sector. In April 2012 Australia-based Chalice gold announced plans to sell its stake in Eritrea’s Zara gold mining project to Shanghai-based China SFECO Group. Chalice CEO Doug Jones stated at the time that “the main reason for the sale is the difficulty in raising development funds in the current market ... a problem exacerbated by the UN sanctions against Eritrea.”<sup>27</sup>

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<sup>24</sup> United Nations Security Council, Resolution 1907 (2009), S/RES/1907 (2009), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/665/58/PDF/N0966558.pdf?OpenElement> (accessed November 8, 2012).

<sup>25</sup> Ibid. The council also demanded that Eritrea withdraw from Djibouti territory it had invaded and to release Djibouti prisoners of war.

<sup>26</sup> United Nations Security Council, Resolution 2023 (2011), S/RES/2023 (2011), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/622/78/PDF/N1162278.pdf?OpenElement> (accessed November 8, 2012), paras. 12 and 13.

<sup>27</sup> William Davison, “Chalice Gold Sees Sale of Eritrea Stake to China SFECO by August,” *Bloomberg*, April 27, 2012, <http://www.bloomberg.com/news/2012-04-27/chalice-gold-sees-sale-of-eritrea-stake-to-china-sfeco-by-august.html> (accessed November 8, 2012).

## **Foreign Investment in Eritrea's Mining Sector: Human Rights Concerns**

Human Rights Watch believes that investors in Eritrea's mining sector risk complicity in gross human rights abuses unless they take effective steps to ensure that no national service conscript labor is used in connection with their operations. In addition, international mining firms must take care to ensure that any local contractors they employ do not subject workers to abusive working conditions, whether they are conscript laborers or not. Evidence gathered by Human Rights Watch suggests that the Eritrean government may be reluctant or even unwilling to permit international mining firms to take such steps. And there is certainly no indication that any of the firms developing new mining projects in Eritrea have done so with sufficient rigor.

All over the world many international mining firms turn to local contractors to build basic infrastructure and provide other services. In many contexts this not only makes economic sense, but helps maximize the economic benefits that flow to the local economy. But in Eritrea mining firms that take on local contractors are at great risk of complicity in forced labor and other abuses.

Mining companies carry out significant construction activity during their project development phase. In Eritrea state-affiliated firms have a monopoly in construction.<sup>28</sup> There is considerable evidence that these firms use conscript labor across their operations.<sup>29</sup> This means that if international mining firms engage them to carry out construction or other work, their projects may be built by Eritreans who are forced to work there against their will, at paltry wages, and under abusive conditions unless the mining firms use utmost diligence in preventing those abuses. It also means that these mining projects would be making use of laborers who face severe punishment and abuse should they try to leave the service of their “employer.”

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<sup>28</sup> Eritrea has banned private firms from competing in the construction sector. One 2009 article noted that “the major beneficiaries of the ban are the ruling party’s more than forty enterprises, which dominate every aspect of the country’s economy, the enterprises of the PFDJ’s mass organizations and the construction firms belonging to the Ministry of Defense.” Kibreab, “Forced Labor in Eritrea,” *The Journal of Modern African Studies* p. 63.

<sup>29</sup> Kibreab, “Forced Labour in Eritrea,” *The Journal of Modern African Studies*; Human Rights Watch, *World Report 2012*, Eritrea chapter, <http://www.hrw.org/world-report-2012/world-report-2012-eritrea>; Human Rights Watch, *Service for Life*, p. 54; US Department of State, “Eritrea’s Dysfunctional Construction Industry,” cited in WikiLeaks cable ID: o8ASMARA364, July 22, 2008, <http://wikileaks.org/cable/2008/07/o8ASMARA364.html> (accessed November 11, 2012).

Regrettably, there is no evidence that any of the international mining firms currently developing projects in Eritrea have taken effective steps to address these risks when designing their projects. Human Rights Watch contacted each of the three companies that are currently operating or developing mines in Eritrea with a summary of the concerns expressed in this report. We also requested detailed information about any measures the companies were taking to avoid complicity in human rights abuse. Their responses were disheartening.

Human Rights Watch met with David Hughes, the Chief Executive Officer (CEO) of Australian firm South Boulder Mines, in October 2012. The company's potentially enormous Coulili Potash project is still at a very early stage of development—production is hoped to begin in 2016.<sup>30</sup> No construction has taken place and no local contractors have been engaged. The project's infrastructural needs will be substantial, including at least 70 kilometers of new roads and the construction of a captive port. Yet Hughes admitted that South Boulder Mines had so far given no consideration to—let alone carried out any due diligence activity around—the human rights risks involved with developing the project or its infrastructure. It is not too late by any means for the company to take these steps, but Hughes acknowledged that there were not yet any concrete plans to do so.

Hughes expressed serious concern about the potential human rights problems revealed by our research, but outlined no concrete steps to address them. He suggested that the company might prefer to avoid the use of Eritrean contractors altogether for reasons of quality, safety and cost—but was caught entirely off guard by the suggestion that the Eritrean authorities would be unlikely to permit this. There is considerable speculation that South Boulder is more likely to sell its stake in the Coulili project than to raise the \$1 billion in financing it requires and operate the mine itself. But Hughes insisted to Human Rights Watch that the company's intention is to continue with the project on its own, and has been courting investors in the Middle East and Asia.<sup>31</sup>

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<sup>30</sup> South Boulder Mines Ltd., "Colluli Potash Project."

<sup>31</sup> Human Rights Watch interview with David Hughes, Chief Executive Officer, South Boulder Mines Ltd., New York, October 18, 2012. In November 2012 South Boulder Mines announced that the Eritrean government had demanded a deal that would give it a 50 percent share of all profits generated by the project while leaving South Boulder Mines to shoulder all development-related costs. "South Boulder Mines provides update on Eritrean Government negotiations," *Proactiveinvestors.com*, November 5, 2012, <http://www.proactiveinvestors.com.au/companies/news/35417/south-boulder-mines-provides-update-on-eritrean-government-negotiations-35417.html> (accessed November 8, 2012).

Human Rights Watch also contacted Canadian firm Sunridge Gold repeatedly in writing and by phone. The company never provided any sort of response.

Canadian firm Nevsun—the only company with an operational mining project in Eritrea as of October 2012—engaged in an extended and open dialogue with Human Rights Watch in writing and in person. Their project—and their dialogue with us—is the subject of the case study below.

## Case Study: Nevsun Resources in Eritrea

The Bisha mine, which as of this writing was the only operating mine in Eritrea, is located about 150 kilometers west of Asmara, Eritrea's capital. The Bisha Share Mining Company (BMSC) is majority owned and wholly operated by Nevsun Resources, a junior Canadian mining firm. Bisha is (as of October 2012) Nevsun's only operating mine anywhere in the world.<sup>32</sup> The Eritrean government holds a 40 percent stake in the project through its mining company, ENAMCO.<sup>33</sup>

After years of exploration construction began in 2008 and production was declared in February 2011. In its first two years of operation, 2011 and 2012, the mine's principal product has been gold. Bisha produced 379,000 ounces of gold in 2011 and was expected to produce up to 300,000 ounces in 2012. The mine's 2011 production was worth \$614 million—a tremendously important sum in a country whose total GDP is estimated at just \$2.6 billion.<sup>34</sup> As anticipated, the mine will transition from gold to copper and zinc production in early 2013. In July 2012 Nevsun estimated that Bisha held total copper reserves of over 1 billion pounds and zinc reserves of roughly 2.7 billion pounds.<sup>35</sup>

### Going in Blind

Nevsun selected a South African construction and engineering company, SENET, as its principal contractor for the Bisha project.<sup>36</sup> Nevsun and SENET then contracted Segen Construction Company, an Eritrean firm, to build roads, staff housing, and other secondary infrastructure at Bisha. Nevsun maintains that it had no choice in the matter:

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<sup>32</sup> Nevsun does have other assets in Eritrea that it may end up developing.

<sup>33</sup> Technically, the project is licensed to an Eritrean corporation called the Bisha Mining Share Company (BMSC). Nevsun owns 60 percent of BMSC while ENAMCO owns the remaining 40 percent. Both Nevsun and BMSC are represented on BMSC's board of directors.

<sup>34</sup> "Nevsun 2011 Annual Financial Results," Nevsun Resources Ltd., press release, March 21, 2012, <http://nevsun.com/news/2012/march21/> (accessed November 8, 2012). In 2011 the mine realized an average sale price of \$1,620 per ounce of gold produced.

<sup>35</sup> "Nevsun Reports Strong Second Quarter 2012 Results, Further Raises 2012 Production Outlook," Nevsun Resources Ltd., press release, August 8, 2012, <http://nevsun.com/news/2012/augusto8/> (accessed November 8, 2012).

<sup>36</sup> Letter from Cliff Davis, Chief Executive Officer, Nevsun Resources Ltd., to Human Rights Watch, April 18, 2012; letter from Pieter Theron, Project Director, and Neil Senior, Joint Managing Director, SENET, to Human Rights Watch, November 22, 2012.

It is important to note with regard to Segen that there was no selection process. The government of Eritrea required the engagement of Segen.... Segen's prices were significantly higher relative to BMSC performing the work using its own directly employed staff and equipment and relative to international price norms for the services provided. However, the Eritrean government did not permit BMSC to perform the work itself or to engage any other civil engineering contractor.<sup>37</sup>

Similarly, SENET told Human Rights Watch that, "the government of Eritrea established a requirement that the Bisha mine employ Segen Construction as subcontractor for all civil and earthworks contracts."<sup>38</sup> Asked by Human Rights Watch whether Nevsun had any misgivings about this arrangement, company CEO Cliff Davis replied, "I would say no. We have our shareholder [the Eritrean government] that is insisting on it and to ensure you have a strong relationship with that shareholder—it's not like we were doing this voluntarily, but it's more of a commercial arrangement."<sup>39</sup>

Nevsun later acknowledged to Human Rights Watch that, "No due diligence was performed at the time of initially contracting with Segen Construction with respect to its human rights practices."<sup>40</sup> Nevsun CFO Peter Hardie told Human Rights Watch that, "Initially we were told that Segen was a large civil works contractor in country and should be able to provide the services we required. We wouldn't have known a lot of other details."<sup>41</sup>

This was a critical oversight. Segen is not an independent firm; it is owned by Eritrea's ruling party, the PFDJ.<sup>42</sup> As discussed above, it is not uncommon for national service conscripts to be assigned to work—voluntarily, indefinitely, and under harsh conditions—for state- and party-affiliated firms in Eritrea.

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<sup>37</sup> Letter from Davis, April 18, 2012.

<sup>38</sup> Letter from Theron and Senior.

<sup>39</sup> Human Rights Watch interview with Cliff Davis and Peter Hardie, Chief Financial Officer, Nevsun Resources Ltd., Vancouver, British Columbia, Canada, July 12, 2012.

<sup>40</sup> Letter from Cliff Davis, Chief Executive Officer, Nevsun Resources Ltd., to Human Rights Watch, September 18, 2012.

<sup>41</sup> Human Rights Watch interview with Davis and Hardie, July 12, 2012.

<sup>42</sup> According to a leaked 2008 US State Department cable, the PFDJ owns Segen and other firms through a holding company called the Hidri trust. US Department of State, "Eritrea's Dysfunctional Construction Industry," cited in WikiLeaks cable ID: o8ASMARA364, July 22, 2008, <http://wikileaks.org/cable/2008/07/o8ASMARA364.html> (accessed November 11, 2012); US Department of State, "Controlling the Market, Controlling the People: Hidri Trust Takes All," cited in WikiLeaks cable ID: o6ASMARA553, June 27, 2006, <http://wikileaks.org/cable/2006/06/o6ASMARA553.html> (accessed November 27, 2012).

There are numerous allegations of Segen’s extensive use of forced conscript labor on many of its projects.<sup>43</sup> Moreover, according to Nevsun itself, the company was aware of the broader risk that Eritrean contractors might deploy conscript laborers and explicitly prohibited Segen from doing so at its project site. SENET acknowledged to Human Rights Watch that, “the concern was always there.”<sup>44</sup> Further, in a letter, Nevsun said that “senior government officials” supported Nevsun’s position “that Segen was not to use conscripted labor at the Bisha Mine.”<sup>45</sup> But Nevsun did not put adequate safeguards in place to ensure that this agreement was honored.

## Allegations of Forced Labor at Bisha

During the initial construction phase of Bisha’s infrastructure, between 2008 and 2011, hundreds of Segen employees worked at Bisha.<sup>46</sup> This peaked in 2010 when Nevsun says that some 440 Segen workers were active at the site—roughly a third of the entire project work force at the time.<sup>47</sup>

While Nevsun had failed to carry out any due diligence on Segen’s use of forced labor, it says that it has generally “been sensitive to the issue of the potential use of conscripted labor by contractors or subcontractors since 2008” and that at an early stage it took action “to notify Segen that it was not to use conscripts at the Bisha site.”<sup>48</sup> But the company’s policies and procedures to enforce that rule were still a work in progress as construction got under way.

Human Rights Watch interviewed four Eritreans who attest that they worked on the Bisha project at various points during this period—two former national service conscripts, one former non-conscript employee of Segen, and one former employee of BMSC (the Nevsun-

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<sup>43</sup> See Kibreab, “Forced Labour in Eritrea”, *The Journal of Modern African Studies*, p. 61: “The party’s firms, such as Segen, Bidho and Horn Construction, are the main property developers throughout the country, and the large majority of the manual workers, engineers, consultants, guards, cleaners, etc. are *agel/glot* [national service conscripts].” Also, US Department of State, “Controlling the Market, Controlling the People: Hidri Trust Takes All,” cited in WikiLeaks cable ID: o6ASMARA553, June 27, 2006, <http://wikileaks.org/cable/2006/06/o6ASMARA553.html> (accessed November 27, 2012).

<sup>44</sup> Letter from Theron and Senior, November 22, 2012.

<sup>45</sup> Letter from Davis, April 18, 2012.

<sup>46</sup> Letter from Cliff Davis, Chief Executive Officer, Nevsun Resources Ltd., to Human Rights Watch, February 17, 2010.

<sup>47</sup> Letter from Davis, September 18, 2012.

One interviewee estimated that the Segen contingent was far larger than 440. HRW interview with former Segen employee, [location withheld], Jan. 24, 2012.

<sup>48</sup> Letter from Davis, April 18, 2012.

run joint venture that operates the mine). Each provided detailed and credible accounts of their time at Bisha. The former workers uniformly said that a large proportion of Segen's personnel at Bisha at the times they worked there were national service conscripts—and that many had served well over the 18-month statutory limit.<sup>49</sup> One of the two former conscript laborers said he had personally been kept as a conscript for 13 years—from 1998 to early 2011—when he fled Eritrea shortly after the end of his assignment at Bisha. The other former conscript said he was inducted in 2006 and was forced to remain in national service until he fled the country in 2010.

Our interviewees said that Segen's conscripts worked long, 12-hour days. Each morning they would be ferried in flat-bed trucks to the work site from their encampment, and each evening they would be transported back. Respite was limited to an hour mid-day break and Sundays off.

The interviewees said that Segen's conscript laborers were forbidden to leave the Bisha area except during authorized leave. Those who tried to leave at other times were severely punished. One of our two conscript interviewees said he left Bisha without authorization to attend a grandparent's funeral. He had been denied permission to attend the event but decided to go anyway. He and the friend traveling with him were captured en route and imprisoned for four months. After his release he rejoined the rest of his contingent, which had by then deployed away from Bisha to work on another Segen project.

Conscript pay is inadequate to support a family. Our interviewees stated that conscripts received 450 nakfa per month, equivalent to \$30 at the official exchange rate or less than half that at the black-market rate. They also said that conscripts were poorly fed and housed; one of the conscripts we interviewed said that food was consistently inadequate and that meat was “out of the question.”<sup>50</sup> The former non-conscript Segen employee we interviewed described conscripts as plainly emaciated. Another said that they had no access to latrines of any kind. Overall, in the words of one former Bisha worker, the conscript laborers “live[d] a dehumanized, neglected and diminished way of life.”<sup>51</sup> As discussed below, Nevsun ultimately learned through its own investigations that Segen’s

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<sup>49</sup> Human Rights Watch interviews with former Bisha and Segen workers, [location withheld], January 2012.

<sup>50</sup> HRW interview with former Segen employee, [location withheld], Jan. 24, 2012.

<sup>51</sup> Transcript of interview with former Bisha mine worker, on file with Human Rights Watch.

workforce endured “substandard” living conditions characterized by inadequate food supplies, overcrowded housing, and other problems.<sup>52</sup>

The interviewees claimed that, to disguise its use of conscripts, Segen forbade national service members from speaking to foreigners working at the project site. One former worker said that conscript laborers at Bisha were regularly reminded by their superiors “not to tell any information to the white man.”<sup>53</sup>

Each of those former workers we interviewed, conscript or not, said that they had feared complaining about the conscripts’ working conditions. The climate of fear was intense because of suspected retaliation for challenging practices the government undoubtedly was aware of. One conscript told Human Rights Watch “we were afraid for our lives.”<sup>54</sup>

Nevsun did not acknowledge that Segen had used conscript laborers at Bisha, but neither did it rule out the possibility.<sup>55</sup> SENET, the South African contractor employed by BMSC at Bisha, did not explicitly confirm to Human Rights Watch that Segen had deployed conscript laborers at Bisha. But it strongly implied as much, stating that “SENET was made aware of the possibility that Segen was employing military conscripts in early 2009” and that “other than at Bisha, SENET has never encountered a situation where a subcontractor made use of military conscripts.”<sup>56</sup>

### **Nevsun’s Response: Too Little, Too Late**

Nevsun has struggled to respond effectively to the human rights concerns thrown up by the Bisha project. It has made real—albeit belated and uneven—progress in improving policies that are meant to prevent the use of forced labor at the site. But the company’s efforts to investigate whether those policies have actually worked have been met with failure and frustration.

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<sup>52</sup> Letter from Davis, September 18, 2012.

<sup>53</sup> Human Rights Watch interview with former national service conscript, [location withheld], January 26, 2012.

<sup>54</sup> Ibid.

<sup>55</sup> Human Rights Watch meeting with Davis and Hardie, July 2012; Letters from Davis to Human Rights Watch, 2012.

<sup>56</sup> Ibid.

### *Improving Policies: A Mixed Record*

Nevsun and BMSC have adopted formal policies that explicitly preclude the use of conscripts by anyone at Bisha, including local contractors. BMSC's *Social Management Plans* explicitly acknowledge that active national service beyond the statutory 18 months "is involuntary and use of National Service Personnel for commercial project work constitutes 'forced labor' under both the Mining Agreement between the GoE [government of Eritrea] and BMSC and the principal International Labour Organization definition of and conventions on forced labor."<sup>57</sup> Yet until early 2009 Segen's contracts with the Bisha project did not reportedly include any explicit prohibition of conscript labor. SENET maintains that in response to indications that Segen might be using conscripts at Bisha, in April 2009 all contracts with Segen were altered to include an explicit guarantee that no conscript labor would be used in connection with the Bisha project.<sup>58</sup>

In an attempt to enforce this prohibition Nevsun developed policies requiring that all personnel employed at Bisha, including Segen's, "must ... demonstrate, with acceptable physical documentation that they have been demobilized from the Eritrean national service."<sup>59</sup> The implementation of this policy has been improved and strengthened over time.<sup>60</sup> The initial screening process was initially delegated to SENET employees, but in 2012 this task was taken over by Nevsun's own BMSC staff.<sup>61</sup>

Whether these policies have succeeded in preventing Segen from using conscripts at Bisha is an open question; it is clear, though, that they were in dire need of improvement. Human Rights Watch asked SENET whether it felt that the screening process it was tasked with implementing between 2009 and 2011 was adequate to the task of preventing the use of conscript laborers on site. The company replied that, "The screening program that we

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<sup>57</sup> Bisha Mine, "Eritrea: Social Management Plans," 2/17/10, p. 51, sec. 3.7.8, on file with Human Rights Watch. The "Social Management Plans" state that BMSC would comply with all international treaties to which Eritrea is a party, including the Convention on Forced Labour and the Convention on the Abolition of Forced Labour. The plans also pledged to conform to the International Finance Corporation's Performance Standards for Social and Environmental Sustainability (2006), performance standard 2.

<sup>58</sup> Letter from Theron and Senior.

<sup>59</sup> Letter from Davis, February 17, 2010. All contracts with Segen Construction Company were also amended to include a commitment by the company to comply with this screening program. Letter from Theron and Senior, November 22, 2012.

<sup>60</sup> For instance, in 2012, a requirement was added that all workers should carry photo ID when working at the mine site "to ensure that there can be no switch of personnel after the presentation of demobilization documentation."

<sup>61</sup> Letter from Davis, April 18, 2012; Human Rights Watch interview with Davis and Hardie, July 2012. SENET says that responsibility for the screening program was taken out of its hands because, "second phase construction activities took place on a brownfields site with extensive security systems...since these were under the control of [BMSC] it made sense for [BMSC] to control access to the site." Letter from Theron and Senior.

established in 2009 was the best program available to us and we believed that the system was workable and verifiable although at times it was very difficult to obtain relevant documents.”<sup>62</sup> SENET said that it believed the improved controls in place as of November 2012 were “effective” and “most likely the best possible solution that BMSC and SENET can implement.”<sup>63</sup>

Nevsun also says that it has been working to institute an effective grievance mechanism accessible to all personnel at Bisha, but here the company’s efforts have been inadequate. Credible, effective employee grievance mechanisms are key components of good human rights practice because they often represent the best way for company officials to learn of alleged abuses that need to be addressed.<sup>64</sup> BMSC’s *Social Management Plans* commit the company to providing “a grievance mechanism for workers (and their organizations, where they exist), to raise reasonable workplace concerns and inform the workers of the grievance mechanism at the time of hire, and make it easily accessible to them.”<sup>65</sup>

In an April 2012 letter Nevsun said that by June 2012 it would implement a “Bisha-specific site-wide confidential grievance mechanism that will be accessible to all employees, contractors and subcontractors. BMSC will ensure that the new mechanism is communicated to all those who work at the Bisha mine, so they can in turn communicate their fears without fear of retribution.”<sup>66</sup> But by July 2012 this had not been done and in a meeting with Human Rights Watch company officials seemed to back away from their commitment. “We’re confident that for our own employees the [existing grievance and whistleblower] programs work. For those that are outside our immediate control it’s a little more difficult,” Nevsun CFO Peter Hardie said.<sup>67</sup>

But the most serious concerns lie precisely with Bisha workers outside of Nevsun’s “immediate control.” Hardie began to explain that the company’s “intent” was to make the

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<sup>62</sup> Letter from Theron and Senior.

<sup>63</sup> Ibid.

<sup>64</sup> UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” A/HRC/17/31, March 21, 2011,<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> (accessed November 9, 2012), p. 25.

<sup>65</sup> Letter from Davis, April 18, 2012.

<sup>66</sup> Ibid.

<sup>67</sup> Human Rights Watch interview with Davis and Hardie, July 10, 2012.

mechanism accessible to Segen employees once a feasible way to do this was discovered, but company CEO Cliff Davis voiced his opinion that unspecified “informal mechanisms” were “much more effective” than formal, confidential grievance mechanisms.<sup>68</sup> This obviously calls into question whether Nevsun is serious about putting in place a viable grievance mechanism at all.

In the end no one has provided Segen’s workers with access to a confidential grievance mechanism. On the contrary, Segen seems to have created an atmosphere of fear that discouraged questioning authority or voicing complaints.

### *Policy versus Reality*

Nevsun has requested permission to interview Segen employees independently to verify that none of them are involuntary conscript laborers. Segen has flatly refused to allow this. In an April 2012 letter Nevsun told Human Rights Watch that, “BMSC has proposed to Segen that BMSC interview Segen employees independently of Segen’s management. Segen has refused to permit such interviews. This refusal is a source of considerable friction between BMSC and Segen.”<sup>69</sup> Similarly, SENET told Human Rights Watch that:

Ideally, we would also have had the right to private interviews with individual Segen employees in the absence of Segen managers, and we did ask for this, but Segen did not allow it. Our sense was the Segen took offense at this request, given that it had provided a signed guarantee [not to use conscript laborers].<sup>70</sup>

Human Rights Watch suggested to Nevsun that, under the circumstances, the company should seek to interview Segen employees whether Segen approves of the idea or not. Nevsun later responded that “we have determined that it would not be appropriate, and might indeed be counterproductive, for us to conduct such interviews with Segen Constructions’ Eritrean employees against the will of Segen Construction’s management.”<sup>71</sup>

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<sup>68</sup> Ibid.

<sup>69</sup> Letter from Davis, April 18, 2012.

<sup>70</sup> Letter from Theron and Senior.

<sup>71</sup> Letter from Davis, September 18, 2012.

In 2010 BMSC also sought to investigate the living conditions of Segen employees working at Bisha. Segen responded with similar truculence, and to this day neither Nevsun nor BMSC staff have ever managed to visit the camp. Instead, during the course of its 2010 investigations, BMSC resorted to interviewing “several expatriates from India who had contracted their services to Segen construction.” In spite of its limitations the investigation yielded disturbing results: “substandard residential conditions” characterized by overcrowding and unsafe construction, as well as a finding that “food inventories were low and messing conditions were substandard.”<sup>72</sup>

BMSC says that it responded to these disturbing findings by filing a complaint with Segen and demanding improvements. BMSC also began providing foodstuffs to the Segen camp at no cost, “to ensure that adequate food supplies were on hand at all times.” It is Nevsun’s “understanding” that the situation has improved considerably since 2010. However there are limits to Nevsun’s ability to gauge this because Segen still refuses to permit any Nevsun or BMSC staff to visit the site to see conditions for themselves. BMSC requested permission to inspect the current housing site for Segen employees following a July 2012 meeting between Human Rights Watch and Nevsun, but was again denied entry.<sup>73</sup> Nevsun also says that it has no information about the salaries paid to Segen workers.<sup>74</sup>

## **Nevsun’s Overall Record: Flying Blind and Falling Short**

Rather than find effective ways to head off predictable human rights problems in advance, Nevsun chose to develop its human rights policies only while the Bisha project moved ahead. The company’s experience in Eritrea shows why current standards of responsible business practice demand more—Nevsun’s approach has failed. Even if everything the company says is taken at face value, the picture is a damning one: Nevsun does not know whether Segen has made use of forced labor at Bisha, and it has no way of finding out. The company takes the incredible position that it is unable to gain adequate firsthand information about allegations of forced labor and poor living conditions at its own project site.

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<sup>72</sup> Ibid.

<sup>73</sup> Letter from Davis, September 18, 2012.

<sup>74</sup> Human Rights Watch interview with Davis and Hardie, July 10, 2012.

Having agreed to enter into business with Segen, Nevsun now appears to be shackled to its local contractor by unwritten government decree. Nevsun did try to avoid re-engaging Segen when new civil engineering work needed to be done in 2012 to prepare Bisha for transition into its copper-producing phase. Nevsun says this was for reasons of cost and efficiency, not due to any human rights concerns. Instead of bringing Segen back on BMSC began carrying out the necessary work by itself, using its own personnel. But the government of Eritrea soon intervened and ordered this to stop. Segen was re-engaged to carry out the work with an estimated peak of 130 Segen workers on site as of September 2012.<sup>75</sup>

While Nevsun's written correspondence conveys considerable frustration with Segen's refusal to cooperate with its inquiries, company CEO Cliff Davis expressed empathy for Segen's position:

It's all about the paradigm you come from. Would I welcome someone into this office saying, "I want to check what you're paying your staff to see if it's OK?" That could certainly make you feel threatened or upset. If you get yourself into their shoes ... you could be quite offended if someone is suggesting that you're not doing something the way you're supposed to, or are treating your people poorly.<sup>76</sup>

This seems to imply that Davis believes it might be somehow improper or impolite for Nevsun to credibly investigate allegations of serious human rights abuse by one of its own contractors. Such statements call into question the seriousness with which Nevsun has sought to confront Segen and push the contractor to cooperate with its inquiries. It was also not clear from Human Rights Watch's dialogue with Nevsun whether the company has approached the Eritrean authorities directly with human rights concerns about Segen—and if so, how forcefully. If it did, the discussions have as yet yielded no noticeable results.

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<sup>75</sup> Letter from Davis, September 18, 2012; Human Rights Watch interview with Davis and Hardie, Vancouver, July 10, 2012.

<sup>76</sup> Human Rights Watch interview with Davis and Hardie, July 10, 2012.

## **Lessons for Other Mining Firms**

Nevsun's experiences in Eritrea underscore how serious the human rights risks facing investors in Eritrea's mining sector are—especially if they are not addressed prior to project development through effective due diligence. It also shows that it may not even be possible for international mining firms to influence the behavior of their powerful state-controlled local contractors once they have been engaged—let alone cease doing business with them—without jeopardizing their projects and their very presence in the country. If that is the case, it may be impossible to develop mining projects in Eritrea without becoming complicit in serious human rights abuses.

## **Human Rights Obligations of Mining Firms in Eritrea**

Although governments have the primary responsibility for promoting and ensuring respect for human rights, corporations also have a number of responsibilities, as increasingly recognized by international law and other norms. These norms reflect an expectation that corporations should have policies and procedures in place that ensure human rights abuses do not occur and that they undertake adequate due diligence to identify and effectively mitigate any human rights problems.<sup>77</sup>

This approach has been elaborated by John Ruggie, former UN special representative of the secretary general on the issue of human rights and transnational corporations and other business enterprises. Ruggie's "Guiding Principles on Business and Human Rights"—subsequently adopted by the UN Human Rights Council—offer practical guidance to companies on how they should implement the UN's "protect, respect, and remedy" approach to business-related human rights issues.<sup>78</sup>

The Guiding Principles have been controversial and were criticized by Human Rights Watch and others for falling short of existing standards in some areas and for their lack of any kind of enforcement mechanism.<sup>79</sup> Nonetheless, they outline many of the basic steps that companies should take to respect human rights, avoid complicity in abuses, and adequately remedy them if they occur. They focus in particular on the need for human rights due diligence—the idea that firms should identify and plan against any human rights risks posed by their operations, adequately and well in advance. They also reflect an understanding that firms, especially in high-risk environments like Eritrea, need to develop effective policies to prevent, detect and respond to human rights abuses—not just deal with problems if they happen to come up.<sup>80</sup>

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<sup>77</sup> There is, however, as yet no shared understanding of the full scope of businesses' human rights responsibilities, whether these are or should be binding under international law, and if so, how they can best be enforced. These issues have consistently proven highly contentious.

<sup>78</sup> UN Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," A/HRC/17/31, March 21, 2011,<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> (accessed November 9, 2012).

<sup>79</sup> "UN Human Rights Council: Weak Stance on Business Standards," Human Rights Watch news release, June 16, 2011, <http://www.hrw.org/news/2011/06/16/un-human-rights-council-weak-stance-business-standards>.

<sup>80</sup> Guiding Principles on Business and Human Rights, pp. 13-25.

## The Role of Governments

The government of Eritrea and the home governments of mining firms working in Eritrea have all failed to live up to their human rights responsibilities.

Direct responsibility for the profound human rights concerns described in this report lies with the Eritrean government as the author and overseer of the country's brutal forced labor program. Eritrea's government has shown no willingness to scale back or eliminate that abusive scheme, or to respect the human rights of Eritreans in general. But the authorities in Eritrea ought to consider whether they will be able to attract competent, responsible investors who are truly capable of helping to develop the country's minerals sector if they directly entangle those investors in serious human rights abuses.

The Eritrean government should allow mining firms investing in the country to avoid any relationship with local contractors who make use of conscript labor, and support all other measures companies might implement to avoid complicity in the government's own patterns of repression and abuse.

Responsibility also lies with the governments of Canada, Australia, and China—and the governments of any other country whose companies eventually develop mines in Eritrea. Canadian and Australian firms operate or are in the process of developing mines in Eritrea, and as of October 2012 China SFECO Group was poised to enter Eritrea by acquiring an undeveloped mining project from Australia's Chalice Minerals. None of these governments do anything to monitor the human rights conduct of their companies when they operate overseas, let alone regulate it.<sup>81</sup> In November 2012 the human rights subcommittee in Canada's House of Commons held a hearing on Nevsun's Eritrea operations—a welcome move, but one that highlights the lack of systematic scrutiny applied by the government itself.<sup>82</sup>

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<sup>81</sup> For more on Canada's failure to oversee or regulate the human rights practices of its mining firms when they operate abroad, see Human Rights Watch, *Papua New Guinea—Gold's Costly Dividend*, February 2011, <http://www.hrw.org/node/95776>; Chris Albin-Lackey (Human Rights Watch), "Responsible Mining: Companies Can't Go it Alone," commentary, *Forbes*, February 10, 2011, [http://www.forbes.com/fdc/welcome\\_mjx.shtml](http://www.forbes.com/fdc/welcome_mjx.shtml); Chris Albin-Lackey (Human Rights Watch) and James Ron, "Canada: Ignatieff Has Some Explaining to Do," commentary, *The Ottawa Citizen*, November 4, 2010, <http://www.hrw.org/news/2010/11/04/canada-ignatieff-has-some-explaining-do>.

<sup>82</sup> Michelle Zilio, "Canadian mining firm questioned for activities in 'North Korea of Africa,'" *iPolitics*, November 1, 2012, [http://www.ipolitics.ca/2012/11/01\(canadian-mining-firm-questioned-for-activities-in-north-korea-of-africa/](http://www.ipolitics.ca/2012/11/01(canadian-mining-firm-questioned-for-activities-in-north-korea-of-africa/) (accessed November 9, 2012).

The home governments of multinational corporations should adopt legal frameworks that allow them to verify whether their companies respect human rights when they operate overseas. This could include the establishment of independent ombudsman's offices with robust investigatory mandates. Governments should also regulate the extraterritorial human rights conduct of companies, including by requiring them to carry out human rights due diligence activity.<sup>83</sup> Doing this could actually help companies implement robust human rights safeguards in their Eritrea operations, because it would allow them to argue to the Eritrean government that they are legally required to do so. That's an argument they certainly cannot make now.

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<sup>83</sup> There is no consensus view on whether or to what extent international law requires governments to regulate the extraterritorial human rights practices of companies. However, some emerging norms of international law support the idea that governments have affirmative obligations in this area. For example, in 2011 an international group of legal scholars and human rights experts endorsed the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights. Among other things, the Maastricht Principles state that governments should regulate the extraterritorial practices of locally-based companies where they impact on economic, social and cultural rights. "Maastricht Principles on Extraterritorial Obligations in the area of Economic, Social and Cultural Rights," September 2011, [http://www.ciel.org/Publications/Maastricht\\_ETO\\_Principles\\_21Oct11.pdf](http://www.ciel.org/Publications/Maastricht_ETO_Principles_21Oct11.pdf) (accessed November 26, 2012).

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# HEAR NO EVIL

## Forced Labor and Corporate Responsibility in Eritrea's Mining Sector

Eritrea is one of the world's poorest and most repressive countries. New international interest in the country's untapped mineral wealth could mean good news on the economic front—but potential investors in the mining sector need to be aware of the risk of forced labor and other serious abuses.

The Eritrean government keeps a large proportion of its population in a program of indefinite and prolonged forced labor, under terrible conditions. *Hear No Evil* documents allegations that state-owned Segeñ construction was involved in the use of forced labor during the construction of Eritrea's first mine. Canadian firm Nevsun Resources had contracted Segeñ.

Nevsun failed to identify human rights risks going in, and hired Segeñ despite allegations that the company regularly exploited forced labor. Nevsun has taken steps to try and prevent abuses since allegations of abuse first surfaced, but it has not challenged the contractor's refusal to allow an investigation of its practices.

All of this carries lessons for other firms that are now moving ahead with new mining projects in Eritrea. Human rights risks need to be addressed proactively before project development gets under way. Companies should refuse to work with contractors credibly implicated in the use of forced labor, and should insist on the right to investigate alleged abuses by the firms they hire. Just as important, the home governments of international mining firms need to accept responsibility for monitoring and regulating the human rights practices of their companies when they go abroad.



Map of Eritrea with location of Bisha Mine.

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