

January 19, 2016

Introduction

Barrick welcomes the release of "*Pillar III on the Ground: An Independent Assessment of the Porgera Remedy Framework*," by the CSR consultancy Enodo Rights ([available here](#)).

We commissioned the assessment in 2015 in a good-faith effort to learn and share lessons from the Olgeta Meri Remedy Framework that Barrick and the Porgera Joint Venture ("PJV") established in 2012, related to its gold mine in Papua New Guinea¹. The Framework was created to provide remedies after a 2011 report by Human Rights Watch indicated that egregious acts of sexual violence against women had been committed by PJV security employees.

Our intention in commissioning the assessment was to provide durable lessons for businesses and stakeholders with respect to operational-level grievance mechanisms ("OGMs"). To this end, the assessment's authors have critically examined the Framework's design and implementation against the benchmark of a rigorous, current application of the 2011 [United Nations Guiding Principles on Business and Human Rights](#). While Barrick commissioned this work, the assessment was otherwise entirely independent of the company.

The assessment offers numerous recommendations and lessons, not just for Barrick and not just with respect to the Framework itself, but for all interested stakeholders on how to ensure that rights-holders have access to effective remedies when their human rights are negatively impacted by business operations.

Commentary on the Assessment

While the assessment presents a mixed picture, we are gratified to see that, despite the serious obstacles that confronted it and the steep learning curve it represented, the Framework itself is described positively in many important respects. For example, the assessment concludes that:

- The Framework's "design should be lauded for its rare ambition and meticulous attention to claimants' rights" and "should be a touchstone for every company seeking to develop an adjudicative OGM."
- Moreover, under the Framework, "claimants ultimately received compensation of far higher value than [international] precedent would suggest," and remedies were "generous . . . rights-compatible and, from the perspective of compensation under human rights law, complete."

At the same time, we are troubled that the assessment found that the implementation of the Framework failed to meet some of our other important goals. In particular, we are deeply

¹ The Porgera mine is independently operated by Barrick Niugini Limited, which as of August 31, 2015, is jointly owned by Barrick and Zijin Mining Group Ltd.

disturbed by the finding that, despite the Framework's clear intentions to provide "empower[ing] and durable" remedies and protect claimants from further harms, the assessment suggests that many were re-victimized by male family members seeking access to the monetary remedies that were provided.

In the spirit of learning from experience, over the coming weeks we will continue to analyze and reflect on the assessment's many findings and recommendations carefully as they may apply to our operations, those of other companies, and indeed all stakeholders.

In the meantime, we take this opportunity to address briefly some of the issues highlighted in the assessment. First, we offer some preliminary reflections on the assessment's findings regarding the design and implementation of the Framework. We then discuss some of the lessons learned regarding impact on the claimants of OGMs like the Framework.

We hope that sharing these reflections, and our commitment to sharing the full assessment itself, will be valuable for other companies and stakeholders involved in, and interested in, improving the effectiveness of OGMs.

Some Lessons Learned with Respect to the Design and Implementation of OGMs

By way of background, as noted above, the Framework was created in response to a 2011 Human Rights Watch report that pointed to cases of gang rape committed by PJV security employees. UNGP 22 stipulates that, "where a business enterprise identifies [a situation where it has caused or contributed to an adverse human rights impact], whether through its human rights due diligence or other means, . . . its responsibility to respect human rights requires active engagement in remediation." Barrick and the PJV aimed to meet this responsibility with respect to the allegations contained in the Human Rights Watch Report by establishing the Framework.

Moreover, the Commentary to UNGP 31 (h) notes that "a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome." Accordingly, Barrick established mechanisms that administered and assessed claims independently of the company.

The Framework was one of the first OGMs established by a corporation specifically to address human rights-related grievances in a manner consistent with the UNGPs. It operated in the highly complex environment of Porgera, where, as the assessment and many others have observed, sexual violence is shockingly prevalent in an overall context of impunity. Moreover, it was designed and implemented at a time when relatively little was known about how businesses might satisfy in practice the effectiveness criteria for OGMs set forth in the UNGPs.

The assessment recognizes that the aspiration in designing the Framework was exacting. Indeed, Barrick and the PJV expended great effort in ensuring that the Framework encompassed detailed rules to ensure fair procedures and results, and that it aligned with our contemporaneous understanding of the UNGP's effectiveness criteria for OGMs. The Framework's design, the assessment observes, was built on the advice of experts from Papua New Guinea, including women's organizations in Porgera, and leading international experts on

human rights and violence against women. The assessment approves of the wide array of "credible, independent experts" who were consulted and agrees with the positive conclusions regarding stakeholder engagement contained in a 2013 opinion of the UN Office of the High Commissioner for Human Rights ([available here](#)).

The assessment also notes the careful consideration that went into empowering "a legitimate, independent institution to hear and resolve sexual violence claims against the company," as opposed to a "company-led, dialogue-based grievance process." Indeed, implementation of the Framework was independent from the PJV and Barrick. It was overseen by the Porgera Remedy Framework Association ("PRFA"), whose members were leading national experts in sexual violence and women's rights. This included Dame Carol Kidu, the first female Parliamentarian in Papua New Guinea and a prominent regional advocate for women's rights, and Ms. Ume Wainetti, the head of the leading civil society organization addressing family and sexual violence in Papua New Guinea, who also personally reviewed claimant appeals. Mr. John Numapo - former Chief Magistrate of Papua New Guinea - was engaged as an independent expert involved in considering claims under the Framework. These experts were supported by Cardno Emerging Markets, an environmental, social and infrastructure consultancy with substantial experience in Papua New Guinea, to help provide day to day project management.

The assessment finds that the Framework adopted a considered approach and, as conceived, met the key criteria of legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility and stakeholder engagement required of effective OGMs. It notes that the use of legal waivers in the settlement agreements reached under the Framework does not detract from this conclusion². Here the assessment agrees with the OHCHR's 2013 opinion, which found that the use of the type of legal waiver used is not incompatible with the UNGPs. Overall, the assessment concludes that the Framework's design "demonstrate[d] assiduous care for claimants' rights and each of the Guiding Principles effectiveness criteria for OGMs," and "should be a touchstone for future" OGMs.

The assessment also critiques several features of the Framework, however, including its design, but more emphatically with respect to its independent implementation. According to the assessment, the "design flaws did not affect the Framework's formal alignment with the" UNGPs, and the implementation challenges "did not result in substantial unfairness to successful claimants" or affect the completeness or "rights-compatibility" of Framework remedies. Nevertheless, and deeply troubling, the assessment finds that the Framework did not "have the empowering effect for which it was designed," as a "confluence of powerful external forces," particularly pervasive violence in the area, may have led claimants to threats and abuse by "avaricious" male relatives.

Below we reflect on three of the more significant shortcomings identified by the assessment: the scope of OGMs, the role of legal advisors, and the appropriate metric for awarding compensation, with a view to sharing some lessons for the future.

² The waiver was crafted narrowly, to cover only civil claims for damages against Barrick and the PJV for the specific grievance presented, excluding criminal cases and cases against individual perpetrators.

a. Scope of OGMs

One message that the assessment conveys is that an OGM must carefully consider its scope, both its design and implementation, as well as potentially unintended consequences.

The Framework's scope was limited to allegations of sexual violence by design. It was further limited to rape in its implementation by the independent Claims Assessment Team ("CAT"). While this narrowing did not follow the Framework's design, it did encompass the types of violations identified in the Human Rights Watch report, and which the Framework was expressly created to remedy. The assessment notes that limiting the scope of the Framework to claims of sexual violence was consistent with its primary objectives, and that it did not preclude claimants from seeking remedies outside the scope of the Framework before the general site OGM. However, its narrowness may have had the unintended consequence of exposing claimants to a heightened risk of stigmatization and reprisal when others learned (inevitably as it turned out) that they had accessed the remedy Framework.

We agree with the observation that despite the substantial efforts by the Framework "to account for these risks," potential consequences should be considered and addressed when defining the scope of an OGM.

b. Role of Legal Advisors

The assessment emphasizes the importance of designing OGMs to ensure that claimants receive the benefit of legal advice.

The assessment notes that the Framework was designed "with assiduous care to ensure procedural equitability." In keeping with that intent, every claimant met with an independent legal advisor ("ILA"), whose role, according to the assessment, was "conceived as claimant-focused and substantively comprehensive." The assessment finds that the ILA, an experienced attorney in Papua New Guinea, was qualified for her role. Nevertheless, it expresses doubts about whether she always respected the Framework design in implementation. That conclusion is based largely on recent interviews with claimants and conversations with the attorney herself³.

The assessment emphasizes that there is a "critical methodological limitation" in the assessors' interview results regarding claimants' understanding of the advice they were given by the ILA. The assessment indicates that "claimant memory on this point is particularly unreliable," given the intervention of "local actors ... agitating to get further compensation in the wake of" a settlement by Barrick of claims with 11 former claimants in the context of a larger threatened overseas lawsuit that included additional types of claims (see below for additional information about this).

The assessment further notes its suspicion that "claimants may be getting specific advice" in support of that effort which "may have colored interview responses." To that point, before

³ As noted in the assessment, Enodo, with the guidance of an External Committee, "determined the assessment's scope and methodology, including the assessment metrics, documents to review, stakeholders and company personnel to interview, and the length and structure of the onsite research." We do not express an opinion on Enodo's methodology in general, although we do question the approach in several respects. An example is the decision not to review contemporaneous Framework documentation with respect to some of the assertions made by claimants in recent interviews with the assessors, particularly given the expressed skepticism about their present recollections.

the settlement of that legal case, it is our understanding that during extensive consultations by the implementing team with claimants no concerns were raised about the attorney. The attorney also has provided a statement that she maintained her independence and materially followed her tasks as contemplated by the Framework. Others who were involved in the implementation of the Framework confirm her statement.

We nonetheless agree with the overarching suggestion that legal advice is of critical importance for OGMs generally.

c. Metric for Determining Compensation

The assessment states that compensation awarded under an adjudicative OGM should be determined by reference to international law and cases involving analogous wrongs under international human rights law in particular.

In this regard, the assessment commends the Framework for providing remedies that were "rights-compatible and, from the perspective of compensation under international human rights law, complete." Specifically, the assessment notes that the remedies were "more generous on a [localized] basis, than those awarded by the Inter-American Court of Human Rights in 2010 for a range of human rights violations, including brutal sexual assault by the Mexican military."

The assessment observes that such a comparator is more appropriate than the standard of Papua New Guinea civil damages awards for rape and sexual assaults that the Framework used as an initial benchmark. It should be noted that the use of this domestic benchmark was endorsed as being equitable by an independent expert in 2014 ([available here](#)). Similarly, BSR, which conducted an extensive mid-term review for Barrick, also concluded that the remedy packages contemplated by the Framework, including the use of Papua New Guinea civil damages awards as a floor, were appropriate and equitable ([available here](#)). Other experts, who were informed of the amounts contemplated before any claims were resolved, likewise raised no concern at the time about the measure of compensation.

That said, notwithstanding the use of this domestic standard, the assessment concludes "claimants ultimately received compensation of far higher value than [international] precedents would suggest." Indeed, the assessment finds that the "financial reparations successful claimants received aligned with principles of equity under international human rights law." Successful claimants each ultimately received benefit packages valued at more than 50,000 Kina –8 times the national per capita income in Papua New Guinea.

There is present claimant dissatisfaction with the amount of compensation because of perceived inequities with a subsequent legal settlement between Barrick and 11 former claimants⁴. Nevertheless, the assessment gives us assurance that the Framework achieved its primary objectives with respect to these claimants — to provide them remedies that were, in

⁴ As the assessment indicates, the two categories of claimants - those who chose to resolve their grievances through the Framework and those who chose not to - are not in comparable situations. The object of the Framework was to create a non-judicial process, in which claims could be considered on an expedited, confidential manner. No proof was required. Claims were considered on an individual basis. Considerations of statutes of limitations and other defenses were not applied. The claims were not, and could not be, investigated. None of that is true for such a threatened legal action; the claims are not evaluated individually but as a group, they are not confidential, they involved broader and different allegations than those dealt with under the Framework and are subject to a process in which evidence is required, investigation is the norm, potential legal defenses are evaluated, and the total settlement typically include plaintiffs' legal costs.

the words of the assessment, "rights-compatible" and "complete." More broadly, it enabled us to meet our responsibility to actively engage in remediation with respect to the appalling rights violations that Human Rights Watch alleged had occurred at the PJV in the past.

Lessons Learned with Respect to the Potential Impact of OGMs on Claimants

We are troubled by the assessment's finding that, notwithstanding these positive results, the Framework failed to meet at least one of its core goals. The assessment finds that, despite efforts to protect claimants from further harms, many advised the assessment team that they were re-victimized by male family members after they had received a remedy under the Framework. The assessment attributes that in part to the inclusion of cash in the remedy packages.

Whether or not to do so was the subject of considerable debate in the Framework's design stages. But once implementation began, local and international stakeholders, as well as the claimants themselves, strongly and vocally expressed that monetary compensation should be included. The independent assessment team included cash, deposited into bank accounts that were established for each claimant in the hope of mitigating some of the risks reportedly inherent in the provision of cash compensation.

According to the assessment, "notwithstanding its popularity," cash provided "no durable benefit" and "undermined the Framework's ability to empower socio-economically disadvantaged and vulnerable women in Porgera." Two years later, when the claimants were interviewed by the assessors, they reported widespread further abuse, stigmatization and appropriation of the monetary compensation by male relatives. That outcome, the assessment concludes, is attributable to a "confluence of powerful external forces." The most powerful of those forces is the endemic violence, including gender-based violence, which pervades the Porgera Valley. It is distressing and unacceptable that, because of that widespread violence, women were put further at risk when they received financial compensation, which they had desired and were glad to receive, as a remedy for just such violence.

The endemic violence against women in Papua New Guinea is a challenge that, as the assessment suggests, all interested stakeholders must work together to overcome. Barrick will consult with the PJV and other key stakeholders about how that might be further pursued, and expresses its sincere regret for any harms vulnerable rights holders may have suffered.

Concluding Thoughts and Acknowledgements

We appreciate the significant effort of Enodo Rights in conducting the independent assessment and offering its detailed report. We also appreciate the guidance provided by the expert External Committee that advised Enodo on its work.

We are grateful to the many individuals who took the time to participate in the assessment process, including international human rights experts, local experts, and others working in Papua New Guinea and in Porgera; members of the team that implemented the Framework; and especially, the women who agreed to share their experience in participating in the Framework.

We are also grateful to all of the experts consulted during the design and implementation of the Framework, and to the team that implemented it. We are particularly grateful to Dame Carol Kidu and Ms. Ume Wainetti — the co-convenors of the Porgera Remedy Framework Association — for their tireless efforts and fearless advice throughout the development and implementation of the Framework. Their genuine commitment to dealing with the challenges faced by many women in Papua New Guinea, coupled with their dedication to driving this project forward, has been an inspiration to our company, and to all those who have been involved with it.

And most importantly, we recognize the horrible hardship faced by the women of Porgera who have been victims of sexual violence and express our profound regret of any connection between their suffering and Barrick and the PJV's operations.

Barrick wishes to reiterate its strong commitment to respecting the human rights of the individuals and communities affected by its operations, and to combating violence against women in particular. We are continually striving to improve our grievance mechanisms to ensure that they are able to provide remedies in a fair, transparent and expeditious manner in response to acts of violence. We hope that those grievance mechanisms, as well the mechanisms of other companies, will be improved through the experience of the Olgeta Meri Remedy Framework.