



BARRICK

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Ms. Navanethem Pillay
UN High Commissioner for Human Rights
Office of the United Nations High Commissioner for Human Rights (OHCHR)
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Violence against women: Framework of remediation initiatives for the Porgera Joint Venture in Papua New Guinea (the *Framework*)

Dear Commissioner Pillay:

It has been drawn to the attention of Barrick Gold Corporation that Mining Watch Canada (**MWC**) has sent you a letter, dated 19 March 2013, commenting on certain aspects of a remedy framework that Barrick and the Porgera Joint Venture (**PJV**) have developed, as part of our response to incidents of sexual violence against women residing in the Porgera Valley. Barrick and the PJV have worked hard to create a Remedy Framework that is responsive to victims and the harm that has been done to them, and which is aligned with the UN Guiding Principles on Business and Human Rights (**UNGPs**), and which seeks to alleviate pervasive gender-based violence in the area. As described below, it was developed following an extensive 18 month consultation process with leading experts around the world, in Papua New Guinea, and in the Porgera region.

In their letter, MWC requests that you ask Barrick to remove the requirement that women "*sign away their rights*" to pursue future legal action if they accept a remedy package under the Framework. There is no such requirement. As we have explained to MWC, and as is clear from the Framework, Claimants are not required to waive any rights in submitting a claim under the Remedy Framework, and they are free to withdraw their claim at any time without any prejudice to their legal rights.¹

In fact, Canada's leading newspaper recently criticized MWC in an editorial for "stretching the truth" in their claims against the Framework.² That characterization again seems apt, if not understated, and it is disappointing and discouraging that MWC would continue their campaign unabated.

In this letter, we provide background on the development of the Framework, including the extensive consultations that accompanied it. We also set forth certain facts

¹ If a resolution of the claim is reached, the claimant is asked to acknowledge full resolution of the claim against Barrick and the PJV, but is free to pursue legal remedies against the perpetrator; indeed, advice is specifically provided as to how such remedies might occur.

² "Barrick has done its best to improve human rights at mine in Papua New Guinea," Globe Editorial, *Globe & Mail*, Feb. 12, 2013, at <http://www.theglobeandmail.com/commentary/editorials/barrick-has-done-its-best-to-improve-human-rights-at-mine-in-papua-new-guinea/article8515017/>. Over the past two years, Barrick has been instituting a comprehensive global human rights compliance program designed to be consistent with the UNGPs.

concerning the operation of the Framework.³ The Framework is intended to be a sensitive, expeditious and culturally-appropriate alternative to legal remedies, not simply an adjunct to an ongoing public legal process. The Framework is implemented independently of Barrick, includes leading figures in Papua New Guinea in critical roles, and contains many safeguards to protect the rights of claimants. This letter also responds directly to MWC's claims of alleged "flaws" in the Framework, including MWC's erroneous interpretation of Guiding Principle 29 of the UNGPs regarding a final resolution of claims against the PJV and Barrick after Claimants consensually agree to the remediation package.

Consultation and Development of the Framework

Violence against women is an endemic problem within the Porgera Valley, and more broadly within Papua New Guinea.⁴ The Framework was developed in response to findings in a 2011 report released by the international human rights group Human Rights Watch (*HRW*), as well as internal and independent inquiries conducted by Barrick, concerning allegations of sexual violence by PJV security personnel.⁵

The Framework was developed over an extensive 18-month review, analysis, and consultation process. This included: a comprehensive review of literature and research regarding the problem of violence against women and broader issues related to human rights in Papua New Guinea; meetings and/or consultations with international NGOs and experts, including HRW, UN Women, former U.N. Special Representative for Business and Human Rights John Ruggie, and many others; meetings and/or consultations with leading international experts on violence against women, particularly in regard to the Pacific Region; meetings and/or consultations with an extensive range of individuals and organizations with experience in addressing violence against women in Papua New Guinea, including civil society, researchers, and government agencies; extensive consultation with service providers and groups addressing sexual and domestic violence in the Porgera Valley, including the Porgera District Women's Association and its Women's Welfare Office, Paiam Hospital, the Porgera Medical Centre, local police, and PJV community affairs personnel; and an intensive consultation workshop with participants from key stakeholder groups, including the Papua New Guinea Family and

³ Information also is available at <http://www.barrick.com/operations/australia-pacific/porgera/default.aspx#topics> (Progress on Human Rights).

⁴ A 2011 study conducted by Dr. Margit Ganster-Breidler commissioned by Barrick regarding women's lives in Porgera found that approximately 86% of women interviewed reported being victims of physical violence and 79% reported being victims of sexual violence. Approximately "50 percent of women had experienced forced sex" with over half of all the reported victims of rape being under the age of 15. Only 11% of women respondents reported sexual assaults to police and fear of reprisal was cited as a key concern.

⁵ The Framework reflects, in significant part, Barrick's recognition that there is a need to ensure effective remediation for women who have suffered harm in these horrific incidents where a PJV employee played a role. Barrick has previously publicly expressed its sincere regret for failing to identify these egregious issues sooner, and for the role its employees may have played in them, identified the myriad steps it has taken to avoid their repeat, and publicized the efforts it has undertaken to reduce violent crime and violence against women in the Porgera Valley. See <http://www.barrick.com/files/porgera/Response-to-Human-Rights-Watch-Report.pdf>, <http://www.barrick.com/files/porgera/Progress-on-Human-Rights-at-Porgera.pdf>, <http://www.barrick.com/files/porgera/Porgera-Backgrounder-Framework-of-remediation-initiatives.pdf>, <http://www.barrick.com/files/porgera/Update-on-Addressing-Violence-Against-Women-in-the-Porgera-Valley.pdf>, <http://barrickbeyondborders.com/2011/03/barrick-responds-to-serious-criminal-allegations-in-papua-new-guinea/> <http://barrickbeyondborders.com/2012/10/progress-at-porgera/>.

Sexual Violence Action Committee, the PNG Australia Law and Justice Partnership, the Family and Sexual Violence Unit of the Royal Papua New Guinea Constabulary, the Papua New Guinea Department of Justice and Attorney General, the Papua New Guinea Chamber of Mines and Petroleum (Women in Mining Program), the Porgera District Women's Association, human rights specialists from private legal practices, the Porgera Environmental Advisory Komiti, and others. Drafts of the Framework were widely reviewed and commented upon by the above individuals and entities, and many others.

A Fair and Accessible Process

The Framework is specifically designed to be easily accessible to women residing in local communities, to be cognizant of local traditional circumstances, and to be independent of Barrick and the PJV to ensure the privacy and confidentiality of women submitting claims. This is made very clear in the primary Framework documentation.⁶

The Framework contains two components, an individual remediation program and a community level programme designed to complement other initiatives aimed at reducing the impact of violence against women, as well as preventative and support programmes that are being implemented at the Porgera mine.⁷ The Framework is independently overseen by the PRF Association Inc (**PRFA**), which has a mandate that focuses on developing community wide initiatives and the implementation of the individual reparations programme. The PRFA is overseen by a number of different stakeholders and is able draw on the advice of an Expert Advisory Group, comprised of representatives of key organizations involved in violence against women and human rights programs.

The individual remediation program, which is the focus of the MWC letter, is administered entirely independently of Barrick and the PJV by the Emerging Markets unit of Cardno, a major international development and infrastructure consultancy with some 290 offices worldwide. Cardno's Emerging Markets unit focuses on complex issues regarding sustainable development, including law and justice.⁸ It has significant experience working in Papua New Guinea, including management of the Australian/Papua New Guinea Government Law and Justice Sector Program.

In designing the Framework, claims dating back to 1990, when the mine first began operating, are eligible for assessment. This timeframe predates by more than 15 years Barrick's acquisition of the Porgera operation in 2006.

To begin with, the Framework operates under an "opt-in" model. No individual is or has been required or coerced by Barrick or the PJV into pursuing a remedy under the Framework. No rights are waived by a claimant upon registering a claim, and a claimant may withdraw a claim at any time without any prejudice.

Claims that are lodged are assessed by a complaints assessment team (**CAT**), comprised of individuals independent of PJV and Barrick who have experience in dealing with

⁶ See p8, Section 2.1 – "Olgeta Meri Iगत Raits" Framework Document.

⁷ Barrick and the PJV both recognize that the need for a remediation framework of this nature derives in part from endemic area violence, from a lack of confidence some area women have in formal local justice mechanisms, and from concerns about confidentiality. Barrick and the PJV are engaged in substantial efforts to curb local violence against women with programmes and resources, as well as to facilitate the strengthening of the local magisterial and investigative services, particularly regarding family and sexual violence, as part of the PJV's Restoring Justice Initiative.

⁸ See <http://www.cardno.com/en-au/MarketsandServices/Pages/Emerging-Markets.aspx>.

gender-based violence. It is an obligation of the CAT to ensure that full and free consent is given to enable a claim to be pursued. Once the CAT assesses whether the claim is eligible for consideration under the Framework -- an objective assessment that examines whether the claim meets certain basic threshold requirements⁹ -- an eligible claim then goes to an independent expert for determinations as to legitimacy and, in conjunction with the Claimant, an appropriate remediation package. The individual serving as the independent expert is the former Chief Magistrate of Papua New Guinea, John Numapo.¹⁰ Determinations of legitimacy by the independent expert, and the remediation packages themselves, may be appealed by a Claimant to a review panel. The review panel consists of Mr Numapo, as well as national leaders in women's rights and gender violence, specifically, the prominent former parliamentarian, Dame Carol Kidu,¹¹ and the head of Papua New Guinea's leading NGO regarding violence against women, Ume Wainetti.¹² The identity of those involved in the CAT, the independent expert and the review panel are explained to each individual claimant. While not limited solely to the following, remediation may be in the form of financial compensation, and/or access to support programmes such as counselling, health care, livelihood assistance, household goods, micro-credit or economic development grants.¹³

Throughout this process:

1. Translation services are formally offered to every claimant who participates.¹⁴
2. The CAT project officer fully explains to the claimant and her representative the steps involved in pursuing a claim, both orally and in writing, and that the Claimant may opt out at any time and take other action, such as pursuing the regular mine grievance mechanism or formal legal processes against the PJV and Barrick;
3. The claimant has access to independent legal advice, either through her own legal representative, funded by the programme if necessary, or appointment of an independent legal adviser if the Claimant has no legal representative;
4. An independent legal adviser is required to certify to the CAT that a claimant has been provided with legal advice regarding the claim, including the legal consequences of accepting any offer made under the Framework'

⁹ These include whether the claim is against a PJV employee, whether it involves a sexual assault, whether the claimant or a representative are coming forward personally, and whether it occurred between 1 January 1990 and 31 December 2010. Claims after 31 December 2010 are considered on a case by case basis.

¹⁰ See Guiding Principle 31, Commentary (h).

¹¹ Dame Carol also was the former Minister for Community Development of Papua New Guinea, and the first female Opposition Leader in Papua New Guinea. She has long been a leading voice for the rights of women in Papua New Guinea, and her honours include being made a Dame Commander of the Order of the British Empire, being made a knight of the Legion d'Honneur by France, and receiving the PNG International Woman of Courage Award from the United States.

¹² Ms. Wainetti is head of the Family and Sexual Violence Action Committee (FSVAC). See <http://www.inapng.com/cimc/FSVAC.html>.

¹³ See Guiding Principle 25, Commentary. The remediation package is individually tailored to reflect the desire of the Claimant and the harm suffered. See Guiding Principles 29, Commentary & 31(h) and Commentary. A recent enhancement is to make clear that, while each remediation package will be distinct, the CAT, independent expert, and review panel will bear in mind the range of awards that have been rendered in the Papua New Guinea civil justice system for rape and sexual assault. While such awards have always been considered in developing and implementing the Framework, it had not been explicitly stated in the relevant Framework documentation that such awards should be considered in creating a remedy package.

¹⁴ A recent enhancement is to have the CAT or a translator certify in writing that translation services in the language of the Claimant's choosing have been offered or provided, to allow for verification and auditability.

5. A Claimant may consult with others of their choosing for advice as to whether or not to participate in, or accept any offer under, the Framework;
6. Consistent with efforts to implement a Framework that is locally and culturally accessible, remedy packages are developed with the participation of the Claimant and tailored to individual needs and circumstances; and
7. The claimant may opt out of the process at any time, without prejudice to any legal rights, prior to finalizing the acceptance of an offer under the Framework.

The Framework also has significant safeguards built into it to protect the interests of eligible claimants, and strengthen protections for women from reprisals or third-parties who may be seeking to profit monetarily from these or other incidents.¹⁵

To date, we are advised that approximately 170 women have been interviewed after filing potential claims under the Framework. We further are advised that some 93 of those women have been assessed as having claims that meet the initial threshold eligibility criteria for consideration under the Framework. No claim has yet proceeded to finalisation under the Framework.

Alleged flaws

MWC in its letter refers to alleged flaws in the Framework. First, it criticizes Barrick and the PJV for not consulting with two specific local organizations. Second, it criticizes the execution of the Framework, apparently based on interviews with 2 women who have been participating in the process. Finally, it contends that the Framework fails to comport with Guiding Principle 29, and does not represent best practice, by requiring claimants who have consensually resolved their claims with Barrick and the PJV to acknowledge that fact with a waiver of future claims related to the incidents that have been settled. Each of these criticisms is misplaced.

1. The ATA and the PLOA

Despite an extensive consultation process, in its letter of 13 March, MWC makes the criticism that two local organisations were not consulted during the process - the Akali Tange Association (**ATA**) and the Porgera Land Owners' Association (**PLOA**) - which MWC states may have contributed to a perceived lack of full awareness of the program among area claimants. A number of observations can be made in relation to that criticism.

First, there are concerns about the good faith and integrity of the ATA and PLOA regarding the advancement of human rights claims and their remediation, which were also reflected in comments by HRW in its 2011 report, news articles, the comments of local stakeholders, and elsewhere. Second, the MWC criticism of exclusion is in any case one of process rather than outcome. It does not speak to the content of the Framework that has now been implemented, nor does it refute the extensive nature of the consultation and review process with other local organizations, national organizations and experts, as well as international organizations and experts. Third, neither the PLOA

¹⁵Excerpt from Human Rights Watch Report regarding the Akali Tange Association: "The ATA report was controversial in part because its authors negotiated agreements with the families of deceased individuals that empowered the organization to seek monetary compensation for the alleged killings, and then gave ATA officials the right to divide any eventual payments between the families and the organization however they saw fit."

nor ATA has demonstrable expertise in issues related to violence against women or women's rights.

Fourth, both ATA and PLOA (along with MWC) have lodged a request for review against Barrick with Canada's National Contact Point under the OECD Guidelines for Multinational Enterprises, in relation to a range of matters involving the Porgera mine. Last year, the ATA and PLOA both had an opportunity to review the Framework and provide whatever feedback and thoughts they may have. They have long been aware of the Framework, and now have had many months to create awareness related to it.

Finally, local specialists who have provided advice specifically counselled against the inclusion of such groups as the ATA and PLOA in the development and/or implementation of the Framework, stating that the involvement of such local patriarchal groups would potentially discourage women from coming forward to make use of the program. For all of these reasons, it was determined that formal consultations would occur with other local organizations during the process of developing the Framework, and it is difficult to accept that, since the ATA and PLOA have become familiar with the Framework quite some time ago, their lack of consultation during the process has now contributed to any lack of local awareness about it.

2. Concerns with the Execution of the Framework

MWC also refers to alleged flaws in the Framework, including lack of transparency, language difficulties, issues with remedy, lack of understanding by claimants of the process, and lack of access to independent legal advice. Substantial efforts have been made to address these important matters under the Framework, including having translators offered and available to every claimant, making independent legal counsel available to every claimant, having each step of the process explained by the CAT team to every claimant, and through the inclusion of the former Chief Magistrate of Papua New Guinea and two national leaders in women's rights and gender violence who are empowered to determine and review remediation packages.

Even though MWC states that it interviewed only two women who have entered the remediation process, Barrick and the PJV greatly value constructive feedback from participating stakeholders. We take that feedback seriously, and will continue to work with Cardno to make clarifications and enhancements to the Framework, where appropriate. Indeed, a number of enhancements have already been made to the Framework during its implementation. We therefore invite MWC to provide details of the concerns expressed by participating stakeholders, either to Barrick or directly to Cardno, perhaps through redacted interview statements. We would appreciate such materials fairly soon, in particular before any claims are finalised.¹⁶

3. Finalisation of claims

¹⁶ In addition, MWC contends that it interviewed women who were unaware of the Framework. MWC has, indeed, referred approximately 10 women to the program. Of those, we are advised that a number already had been registered as claimants. In addition, outreach and publicity on the program was overseen exclusively by Cardno, upon the advice of local and national experts on violence against women. If MWC would like to pursue additional outreach, we certainly would encourage that. If MWC has specific suggestions for how further outreach might take place by the Framework, we are glad to refer those suggestions to Cardno for consultation with the relevant local and national experts on the merits of such an approach, and encourage that it be pursued depending on their views.

The fundamental complaint of MWC in its letter concerns the process for finalising claims under the Framework, including the potential release of claims by the Claimant against Barrick, PJV and the PRFA. MWC alleges that such a requirement is contrary to the UNGPs and contrary to best practice. MWC is demonstrably wrong on both counts.

The Framework documentation makes it explicitly clear that one objective of the process is to facilitate access to effective justice mechanisms where requested by a particular claimant.¹⁷ In addition, as stated at the outset of this letter, under the Framework a Claimant is not required to release any right, at any time, to make a claim against the perpetrator of the violent act. To the contrary, the Framework provides support for the Claimant to pursue legal claims, and to report events to the Papua New Guinea police, where they choose to do so. In this critical respect, the Framework is fully aligned with Principle 29 of the UNGPs.

In addition, the Commentary to Principle 29 provides that operational-level grievance mechanisms “should not... preclude access to judicial or other non-judicial grievance mechanisms.” Under the Framework, a claimant preserves the option of pursuing separate legal channels at all times during the claims consideration process. If a Claimant is not satisfied with an offer, the Claimant is able to opt-out of the remediation programme and pursue separate legal proceedings. Indeed, the CAT and independent legal advisor both expressly advise Claimants of their right to pursue a legal action against Barrick and the PJV as an alternative recourse before any claim is finalised.

Conversely, if a Claimant is satisfied with an offer to resolve a grievance under the Framework, it is appropriate that claims against Barrick, PJV and PRFA should be released in order to bring finality to the process. In that circumstance, the independent legal advisor expressly explains the consequences of such a release before it is signed.

Such an approach is wholly consistent with the Commentary to Principle 29, which is concerned with a waiver of rights for seeking access to a grievance mechanism, not the consensual resolution of a grievance. Further, it reflects a key objective of the Framework to provide an alternative means to achieve finality of a claim on a fair and equitable basis, in a manner which does not involve resorting to court process and which minimises delay and distress to a claimant.

As the issue of how the Commentary to Principle 29 should be interpreted has been raised by MWC in the past, Barrick has taken the liberty of consulting with Professor Ruggie regarding its operation and effect. Professor Ruggie, the primary author of the UNGPs during his tenure as UN Special Representative for Business and Human Rights, has expressly confirmed that Barrick’s understanding of Principle 29 as set out above accords with its intended operation, and that Barrick’s approach as stated is consistent with the Commentary to Principle 29. Quite simply, MWC’s criticism that the Framework does not accord with the UNGPs in this regard is inaccurate, and is not shared by other key observers.

Finally, MWC asserts that the PJV Framework does not represent “best practice,” as there are other non-judicial grievance mechanisms which do not require claimants to give up rights to future legal action. The Hokie Spirit Memorial Fund at Virginia Tech and

¹⁷ See p8 Section 2.1 (a) “Olgeta Meri Igat Raits” Framework Document.

various Australian statutory compensation schemes are cited as examples of "best practice." These examples only serve to reinforce the level of MWC's misunderstanding of the issue.

The Virginia Tech programme was a private initiative consisting of funds in the form of charitable contributions from individuals, corporations and other entities from all over the United States. See <http://www.vt.edu/fund/index.html>. The Fund was administered by Mr Kenneth Feinberg. Given that the Fund was made up of charitable contributions, there was, of course, no basis for Virginia Tech to use those funds in connection with any release of liability. The Fund, in effect, was a conduit for distributing charitable contributions received from third parties, rather than a remediation scheme. That is made clear in an article written in 2012 by Mr Feinberg himself. See "Is the Class Half Empty or Half Full," 44 Loyola Univ. Chi. L.J. 349, 352-53 & n.14-15 (2012).

However, in that same article, Mr Feinberg makes reference to the oil spill fund established by BP, which he also administered. This was a private scheme funded by BP, established as an alternative to litigation. If claimants settled under that facility, BP required release of future claims against it. It is not suggested that this scheme established by BP (which is more apposite to the Framework) did not constitute best practice.

Similarly, statutory compensation schemes as found in Australian victims of crime legislation that are administered by State agencies serve a quite different purpose to private non-judicial grievance mechanisms as envisaged under the UNGPs.

In the circumstances Barrick is confident that the Framework adheres to the requirements of the UNGPs and that it is consistent with best practice for corporate grievance mechanisms. It respectfully submits that the MWC letter discloses no proper basis for the involvement of your Office in relation to the operation of the Framework.

Conclusion

Barrick acknowledges its responsibility to work to eliminate and remediate gender-based violence and human rights violations that it may cause or contribute to, or which occur in the regions in which it operates. Barrick and the PJV fully expect that the Papua New Guinea Remedy Framework will continue to evolve in order to respond to legitimate issues and expectations that might arise during the course of its operation. Changes and clarifications already have been, and continue to be, implemented in response to engagement with stakeholders who have raised good faith concerns and comments. Barrick and the PJV remain open to consideration of additional ways to further strengthen the Framework based on continuing stakeholder engagement and independent review. Balanced and reasoned discussion of significant issues will contribute to that evolution. But we do take strong exception to repeated allegations that are known to be false, and very much hope that other companies are not deterred by such conduct from aligning their own policies and practices with the UNGPs. Barrick itself will continue to strive to steadfastly adhere to the UNGPs, both in the Framework and in all of its operations.

Please do not hesitate to contact me should you require any further information regarding the Framework generally, or the matters specifically addressed in this letter.

Yours sincerely



Peter Sinclair
Vice President, Corporate Social Responsibility

Electronic copy furnished to:

Mr. James Anaya, Special Rapporteur on the rights of Indigenous Peoples

Mr. Pablo De Greiff, Special Rapporteur on the promotion of truth, justice, reparation & guarantees of non-recurrence

Ms. Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences

Ms. Rita Izsak, Independent Expert on minority issues

Working Group on the issue of discrimination against women in law and in practice

Working Group on the issue of human rights and transnational corporations and other business enterprises

Lee Waldorf, Human Rights Advisor, UN Women

ESCR-Net – Corporate Accountability Working Group

Canadian Network on Corporate Accountability

European Coalition for Corporate Justice

Corporate Responsibility Coalition

International Corporate Accountability Roundtable

OECD-Watch

Amnesty International

Human Rights Watch

Department of Foreign Affairs Canada

Canadian International Development Agency

Natural Resources Canada

Department of International Trade Canada