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September 21, 2015

Mr. Zeid Ra'ad Al Hussein  
UN High Commissioner for Human Rights  
Office of the United Nations High Commissioner for Human Rights (OHCHR)  
Palais Wilson  
52 rue des Paquis  
CH-1201 Geneva  
Switzerland

Dear High Commissioner,

We wish to respond to a letter that MiningWatch Canada (MWC) has sent to you, dated July 13, 2015, concerning a third-party review of the Porgera Remedy Framework<sup>1</sup> (the Framework) in Papua New Guinea that is currently underway. MWC's letter appears to question whether Barrick is sufficiently following the recommendation of the Office of the High Commissioner for Human Rights (OHCHR), as contained in its opinion on the Framework (issued in July 2013), on how a final review of the Framework might be structured.

As we have stated publicly, we appreciate that there may be different interpretations of the recommendation in the OHCHR opinion. However, with all respect, we believe that the letter from MWC does not accurately represent the third-party review process or Barrick's intent. In keeping with the spirit of the OHCHR's recommendations, in a very difficult context, our primary goal for the Framework review has been to establish an independent structure involving a range of expert perspectives that will lead to a credible assessment of the Framework. The structure that has been established for the independent review reflects that sincere effort. It captures key learnings and offers recommendations to us and others seeking to institute remedy programs.

### **The Porgera Remedy Framework**

By way of background and as has been previously shared with the OHCHR (see [here](#)), the Framework was established in 2012 following an extensive 18-month engagement with leading local and international human rights and sexual violence experts, as an additional means of seeking remedy outside of the formal justice system (see [here](#)). The Framework was distinct from and supplementary to the existing operational grievance mechanism that exists at the Porgera Joint Venture (PJV). As we have publicly explained (see [here](#)), Barrick felt that a supplementary

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<sup>1</sup> The Framework was established as an independent supplementary claims process to address historical claims of sexual assault and is distinct from the operational grievance mechanism that is already in place at the Porgera Joint Venture.

independent mechanism, overseen and run by third-party subject matter experts and designed specifically to address historical claims of sexual assault, would better serve claimants than the existing site mechanism.

The key aspects of the program design were made public, including the claims process, the types of remedy packages that might be made available, the approximate amount of remedy that would be referenced or considered in formulating remedy packages, and the experts who would oversee the process (see [here](#) and [here](#)). As Barrick also has described, the program design was adjusted in response to external stakeholder recommendations and the advice of claimants themselves (see [here](#)). Although Barrick oversaw the design of the program, it was implemented independently of the company by leading in-country experts. In particular, it was overseen by Dame Carol Kidu, the first female Parliamentarian in Papua New Guinea and a leading regional advocate for women's rights, and Ume Wainetti, the head of the leading family and sexual violence civil society organization in Papua New Guinea. That independent implementation included receiving and assessing claims, meeting with the claimants and discussing their rights and their experiences, and formulating remedy packages with claimants.

To help provide a measure of confidence in the implementation of the Framework and identify areas for improvement, Barrick commissioned a mid-way review. That review was conducted by the respected group BSR, and took place after implementation began but before any remedy packages were determined. Key recommendations from BSR were posted on Barrick's website (see [here](#)).

Barrick also provided regular updates about the progress of the Framework (see [here](#)). These included a relatively lengthy treatment in December 2014 (see [here](#)), which included opinions from leading international experts on the consistency of the design as measured against the UN Guiding Principles for Business and Human Rights, and from Dame Carol and Ms. Wainetti about the effectiveness of the approach from a local perspective.

### **A Good Faith and Inclusive Effort**

Barrick also pledged to provide publicly an independent final report assessing the Framework (see [here](#)). Consistent with a recommendation from the OHCHR, the assessment focuses on the effectiveness criteria for non-judicial remedy mechanisms in UN Guiding Principle 31 and other relevant norms, as well as the impact that the program has had on claimants who have received remedies, and it captures and shares the many lessons we have learned during this multi-year effort.

Critical to that endeavor, and contrary to the implication from MWC's letter, the purpose of the final assessment is not to declare that the Framework was or was not "successful." To the best of our knowledge, ours was the first corporate effort to create a grievance mechanism of this type aligned with the Guiding Principles. We thus faced unique challenges in interpreting and implementing the Guiding Principles. Based on our own perspective, we believe that there were aspects of the Framework that, despite the extensive efforts outlined above, were not as effective as they could have been. Indeed, as we have advised the assessment team, there are areas that we would adjust if we were to undertake a similar program.

Further, while we had greater control of the Framework's development, by design we had far less direct input into the program's implementation. Moreover, given the deep complexities and

challenges that exist in the Porgera Valley in implementing a program such as this one, it would not surprise us if the assessment team identifies key aspects of implementation that were less than fully effectual. But the foremost goal of the assessment is to capture precisely those learnings in a forthright and credible manner, and provide us and other companies with their benefit in considering and designing future programs.

### **An Independent Process, Overseen by Experts**

In its letter, MWC criticizes the review process, questioning its independence and transparency, and calls into question the credibility of the highly experienced assessment team and External Review Committee. We believe their criticism mischaracterizes the actual process and the spirit of the review.

While Barrick initiated the review and selected the entity to conduct the assessment following consultation with external experts, Barrick plays no substantive role in conducting the assessment itself. Instead, an External Review Committee was established to provide advice and guidance to the assessment team.

The committee is comprised of three independent experts from civil society with deep backgrounds in human rights, the Guiding Principles, the rule of law, preventing gender-based violence, and the extractive sector. The External Review Committee is comprised of the following individuals:

- Chris Albin-Lackey, a senior researcher at Human Rights Watch (HRW). Chris led HRW's investigation of human rights impacts at the Porgera Gold Mine, which led to a highly critical report on PJV's human rights impact in 2011. The report, '*Gold's Costly Dividend*,' was a key reason for Barrick's decision to design and implement the Framework in the first place.
- Dahlia Saibil, a visiting professor at Osgoode Hall Law School in Canada, whose research focuses on the prevention of sexual exploitation in mining communities. She previously served in various capacities at the United Nations focusing on gender violence and relevant legal matters, including at UN Women as a Programme Specialist, as a Programme Coordinator on the Gender Team of the UN Development Programme, and in the UN Office of Legal Affairs. In addition, she has served as a policy analyst and Crown prosecutor for sexual violence for the Ministry of the Attorney General of Ontario.
- Lelia Mooney, Director for Latin America and the Caribbean for Partners for Democratic Change. She has over twenty years of experience designing, managing and evaluating complex governance, rule of law, gender and social inclusion, conflict management and transformation, resource governance and multi-stakeholder engagement projects across the globe. She is the editor of the American Bar Association's (ABA) "Promoting the Rule of Law: A Practitioner's Guide to Key Issues and Development," is Co-Chair of the ABA's Working Group on Business and Human Rights, and plays a leadership role in the ABA's Section of International Law. She also represented Partners on the Board of Directors of the Voluntary Principles on Security and Human Rights, and has worked extensively with the UN Global Compact, including on its Business for the Rule of Law project.

This external committee provides guidance to an assessment team that consists of Enodo Rights' Yousuf Aftab and Pauline Kenna Dee.<sup>2</sup> Among his recent activities, Yousuf has developed human rights guidance for the UN Global Compact's Human Rights and Labour Working Group, advised UNICEF on practical implementation of the Children's Rights and Business Principles, and developed human rights training for Canadian Business for Social Responsibility. He has previously served as counsel to UN Global Compact, the American Civil Liberties Union, and the government of Southern Sudan in constitutional negotiations. Yousuf also has experience assessing human rights and the rule of law as a law clerk at the Supreme Court of Canada.

Pauline, from Simbu province in Papua New Guinea, is a lawyer and trained counselor with extensive engagement experience with victims of sexual violence. Among her many accomplishments in Papua New Guinea are ensuring that survivors of gender-based violence have legal advice; working with local communities and vulnerable groups to identify and mitigate the sources of gender-based violence; and establishing the first women and children's desk at the Kundiawa police station to assist survivors of family and sexual violence. She came recommended by UNDP Papua New Guinea, which had previously engaged her to provide sexual violence prevention training to Papua New Guinean human rights defenders.

Through this structure – an external committee of experts providing advice and guidance to an external assessment team with deep experience in the Guiding Principles and in the local culture – we sought to create a credible and good faith approach to assessing the Framework and capturing its key learnings. To ensure the independence of the process, clear protocols have been established, as described in detail by Enodo.<sup>3</sup> Under these protocols, Barrick's role is primarily to respond to requests for interviews and provide logistical support as needed. Barrick does not participate in stakeholder interviews (though all Barrick staff are available to be interviewed by the assessment team), or receive reports of interviews. Indeed, Barrick does not even know who has participated in the assessment process. However, as we have stated, if at any point the external committee of experts believes the assessment team is not fulfilling its mandate, or develops a view that the assessment team is unable to provide a credible independent assessment, we then will work to help address that concern.

Although Enodo's letter discusses in more detail the nature of the review, it makes clear that, as we had hoped, the review has been highly inclusive, actively seeking the opinion of a broad range of stakeholders on the Framework's design, implementation, and perceived impacts. This includes discussions with experts in human rights and gender-based violence, women who received remedy via the Framework, and reaching out to some of the Framework's most vocal critics, including MWC itself, along with other local grass-roots organizations that MWC mentions in its letter (e.g., the Akali Tange Association). Regrettably, we understand that to date, MWC has chosen not to participate.

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<sup>2</sup> Pauline was engaged by the assessment team, with the input and approval of the External Review Committee, following extensive consultation with national and international experts in sexual violence in Papua New Guinea. She was selected to replace Stephanie Garrett to accommodate international stakeholder concerns about the length of the onsite assessment and the assessment team's sensitivity to power dynamics in Porgera.

<sup>3</sup> This description is available in Enodo's letter to the OHCHR, dated September 21, 2015, and published on the Business and Human Rights Resource Centre website.

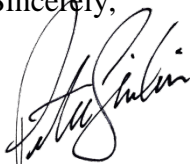
## Conclusion

The Framework was designed to be a sensitive, expeditious, and culturally appropriate non-judicial mechanism to seek remedy. More than 90 percent of eligible claimants (120 women in total) resolved their claims under the Framework. At the heart of this work was our desire to be responsive to the victims and the terrible harms they have suffered.

With that in mind, our intent with the final review has not been to validate the Framework, or necessarily have it deemed “consistent” with the OHCHR’s recommendation for creating an independent review. Instead, the intent has been to create a credible and independent approach that captures learnings from the Framework – including, and perhaps in particular, those aspects where the implementation did not match the intended design, or where the Framework’s design was not truly fit for purpose despite the extensive consultations in its creation.

We hope that this explanation helps clarify the nature of the review and its intent. Should you wish to receive any additional information, we will gladly provide it.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Sinclair". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Sinclair".

Peter Sinclair  
Senior Vice President, Corporate Affairs