

June 7, 2013

## A summary of recent changes to the Porgera Remediation Framework

Following engagement with and feedback from a number of external experts and stakeholders, several improvements and clarifying amendments have been made to the Porgera Remediation Framework and related procedural documents.

These changes are summarized below. Barrick and the Porgera Joint Venture (PJV) will continue to review the operation of the Porgera Remediation Framework, which has been implemented independently on behalf of the companies, to assess whether further enhancements are appropriate. These efforts to further strengthen the Framework reflect our continuing commitment to provide a fair, accessible and effective remedy process for women whose rights have been violated.

### **Phase One - Mid-Program Review**

Barrick commissioned a mid-program Review of Phase One of the Remediation Program, which was undertaken by BSR, an internationally recognized business and social responsibility organization. BSR submitted its review to Barrick in early June.

In general terms, the review noted the effort put into the design and implementation of the remedy program, the complicated and challenging cultural and physical environment in which it operates, the lack of precedents to call upon for guidance, and the potential for the program to inform future remedy programs.

Among the principal suggestions in BSR's review were reforms and improvements aimed at achieving the following:

- Involving victim representatives in key decisions going forward;
- Ensuring effective engagement with individual victims in determining the most appropriate individualized remedy;
- Considering published judicial cases containing civil damage awards in Papua New Guinea in determining the amount of remedy;
- Including cash or equivalent compensation as a supplement to personal welfare and development service remedies, and also considering alternatives to delivering cash in a lump sum (e.g., monthly distribution, school fees, trust fund), and;
- Ensuring that the legal settlement waiver is consistent with the UN Guiding Principles and Papua New Guinean (PNG) law, that the scope of the waiver is appropriately defined, that claimants signing any waiver do so knowingly and voluntarily, and that the waiver is tied to the provision of remedy and not participation in the program.

The Framework already has adopted some of the suggestions, and will be implementing and considering others.

## **Translation Services**

Barrick and the PJV received reports that some women who filed remediation claims (or who were considering filing remediation claims) were unsure about processes or terms being used during their interviews with claims staff. These individuals were also unsure of the content of documents being prepared as part of their involvement in the process, according to the reports received by Barrick.

Barrick and the PJV believe that effective translation of the verbal information and documentation relating to individual cases is critical to the effective operation of the remediation process.

While translation services have always been provided for claimants who speak languages other than English and Tok Pisin, amendments have been made to the Framework documents and procedures to ensure that claimants are advised of their right to have material translated into a language of their choice where requested.

The provision of translation services will now be formally recorded as part of the case documentation prepared for each claim.

Changes have also been made to ensure that independent legal advisers inform claimants of their right to have material translated, and of the availability of translators should they be required.

Case officers will be formally required to check on a continuing basis that their client understands what is being said to them during the Framework process.

## **Guidance regarding types and amounts of remedies available to claimants**

Barrick and the PJV received reports from stakeholders that remedies available under the Framework were unclear, and that there was no indication of what monetary compensation might be made available in individual cases.

Barrick and the PJV have always said that individual remedies would be determined in discussions between the Complaints Assessment Team. Any proposed settlement involving the payment of cash would need to be carefully considered, given the reportedly high risk of re-victimization in instances where cash grants are made to women who are in vulnerable situations, as is often the case in PNG.

Both of these issues are comprehensively addressed in the Framework documentation at 3.1(a) and (b).

Clarifications have been made to the Framework to underscore that the types of remedies available are not limited to the examples provided in the Framework documentation. These clarifications further emphasize that the types of remedies offered (including cash compensation) and the total value of remedy packages provided are determined based on reference to the following:

- The type of harm suffered by any individual claimant;
- Discussions between the claims team and the claimant where the claimant may express her wishes with regards to reparations;

- The appropriateness of any given type of reparations for an individual claimant and her specific circumstances;
- The effectiveness of cash compensation as a means of empowering any claimant going forward;
- The relationship of any cash compensation to other remedies considered appropriate for or sought by the claimant; and
- The upper levels of compensation that have been awarded by PNG courts in civil claims concerning rape and sexual assault.

Barrick and PJV are aware that different levels of damages may be awarded in civil cases in different geographic regions of PNG. To ensure that the remedies offered are proportional to the harm suffered, the Framework does not differentiate between geographic region, but contemplates as a reference point the highest levels of compensation in past civil cases anywhere in the country (as provided by external counsel). Based on engagement with local stakeholders and international experts, that reference point is appropriate to ensure proportionality and to meet the UN Guiding Principles on Business and Human Rights.

#### **Clarification of role and scope of independent legal advisers**

Barrick and PJV received reports that some women involved in the remediation claims process were unsure of the role of the independent legal advisor to whom they had been referred in the absence of their own legal advisor.

Barrick and PJV consider it crucial that all claimants be provided with the means to obtain independent legal advice regarding their claim, the Framework process, and any other relevant legal aspect of their claim.

Amendments have been made to further clarify the role of the independent legal adviser provided through the Framework process, the minimum content of the legal advice that must be provided to ensure that claimants understand their rights, and to reiterate the necessity of the independence of that advice.

The independent legal advisor attached to the Claims Assessment Team is retained by the PRF Association Inc., which operates autonomously from Barrick and PJV, and is made available to each claimant. The independent legal advisor's contractual arrangements include an express requirement that she act in the interests of the Claimant only.

If a Claimant opts to retain a separate legal advisor, they may access reasonable funds from the Complaints Assessment Team to pay for that legal advice.

#### **Development of formal protocols governing other advisors and claimant representatives**

Barrick and PJV were asked by external stakeholders about the provisions under the Framework for the involvement of external advisors and support persons in assisting claimants in their interactions with the claims assessment team.

Barrick and PJV note that the Framework has always had provision for such advisors and support persons to accompany claimants to their meetings with the claims staff.

To clarify this, specific protocols governing the involvement of external advisers and claimant representatives have now been developed and included in the Framework documentation, together with a guidance note for those representatives, outlining the scope of their involvement in any given claim, and a description of how the claims process functions.

In order to ensure the safe and rights-sensitive functioning of the claims process, the protocols also include behavioral protocols that must be followed by those accompanying claimants to meetings with the claims assessment staff, and processes that are followed in case those protocols are breached.

### **Amendments to Settlement Agreement / Legal Waiver**

The Porgera Remediation Framework contemplates that claimants sign a settlement agreement with respect to their claim if they choose to accept the remediation package developed during the claims process. It has been suggested that such a requirement is not consistent with the UN Guiding Principles on Business and Human Rights. Following extensive consultations on this matter, Barrick and the PJV remain confident that the Framework meets the guidelines for operational grievance mechanisms as set out in the UN Guiding Principles. In this regard:

- The UN Guiding Principles do not state that a non-judicial grievance mechanism cannot be used to resolve a dispute fully and finally through formal settlements;
- No claimant is required to give up any legal right, including any right to pursue legal action, as a condition of having their claim assessed under the Framework;
- At all times after entering the Framework the Claimant retains the choice to pursue a remedy by way of the Framework (including for those that would or could not pursue formal legal processes), or to exercise their rights to remedy by other means;
- The legal waiver does not preclude legal action or the pursuit of other remedies or criminal proceedings against the alleged perpetrator of the conduct complained of;
- The legal waiver is narrowly framed to exclude criminal matters, exclude participation in claims of others, and cover only instances where a claimant may seek a double recovery from the company for the same injury; and
- In the interests of certainty and closure, it is important for the claimant and the company to be able to reach a full and final conclusion of the matter by whichever remedial process the claimant opts to pursue, including the Framework.

For the purposes of clarity, amendments have been made to the settlement agreement to more clearly state the operation and effect of the legal waiver, premised on the above considerations.