



OLGETA MERI

IGAT RAITIS

*“All women have rights”*

A FRAMEWORK OF REMEDIATION  
INITIATIVES IN RESPONSE TO VIOLENCE  
AGAINST WOMEN IN THE PORGERA  
VALLEY

Violence against Women is a serious crime, and will not be tolerated at any workplace owned or operated by Barrick Gold Corporation. This paper outlines a framework of initiatives being developed by Barrick Gold Corporation (“Barrick”) and the Porgera Joint Venture (“PJV”) as part of their response to specific incidents involving sexual violence against women residing in the Porgera Valley, located in Enga province in the remote highlands of Papua New Guinea (“PNG”), perpetrated by men who were employed at the Porgera mine.

As part of their approach to these incidents, Barrick and the PJV recognize that there is a need to ensure that there is effective remediation for victims of these events, and have developed a framework for an independent process that will provide access to that remediation.

*“...Sexual violence against women is a pervasive problem .... Barrick and the PJV are working .... towards solutions with the community, our own workforce and others in order to address this problem...”* Barrick Gold. Public Statement, 1 February 2011

Access to remedy is recognized as a critical element of addressing human rights violations, and provides a basis for helping those whose rights have been violated. Professor John Ruggie, the UN’s Special Representative for business and human rights, has dedicated multiple foundational principles to discussing remedies for human rights violations where corporate entities and actors have some involvement.<sup>1</sup> The Universal Declaration of Human Rights also discusses the “right to an effective remedy” for acts violating fundamental rights, and those principles form the basis of Barrick’s response to the incidents that have occurred at the Porgera mine.

*“The Remediation Framework (initiated by Barrick) is a direct response to compliment the initiatives of the Government of PNG through its Law & Justice Sector Strategic Framework to address the ongoing problem on violence against women and in particular to assist victims to have access to justice and just results.”* John Numapo, former Chief Magistrate, Papua New Guinea, 29 February 2012

Barrick is committed to adopting and following the principles announced by Professor Ruggie, and to adherence to the Universal Declaration of Human Rights. Our company is firmly committed to upholding human rights and protecting human dignity.

We expect all our employees to obey the law and to conduct themselves to high ethical standards, consistent with the company’s Code

of Business Conduct and Ethics. Where those standards have not been met, we recognize that it is our responsibility to ensure that there is effective remediation.

This framework fulfills our promise to the women of the Porgera Valley – we will uphold your rights and we will protect your dignity.

<sup>1</sup> Professor Ruggie has defined a “grievance” to be a perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. See Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (“Ruggie Report”).

## **1. THE VIOLENCE AGAINST WOMEN AT PORGERA**

### **1.1 Violence against Women at the Porgera Mine**

In its report, “Gold’s Costly Dividend”, published in early 2011, the international human rights group, Human Rights Watch (“HRW”), detailed claims alleging violence against women (“VAW”) in and around the Porgera mine site by employees of the PJV Asset Protection Department (“APD”) – the unit responsible for ensuring the security of the mine and its employees.

The Porgera mine, located in the highlands of PNG, is largely owned by a subsidiary of Barrick, the result of a series of acquisitions beginning in 2006. Barrick currently owns 95% of the joint venture, with the other 5% held by Mineral Resources Enga, a company jointly owned by the Enga Provincial Government and local landowners.

In response to communications with HRW starting in May 2010, Barrick began conducting a series of internal and independent inquiries into allegations of sexual violence against women by members of the PJV’s security force.

These inquiries included the retention of Ila Geno, the respected former Ombudsman of PNG, to work with a local community member to interview potential victims and report their results directly to the Royal Papua New Guinea Constabulary (the “RPNGC”). The inquiries also included an extensive independent internal investigation, conducted by externally engaged international experts with high levels of professional experience in policing and investigative work.

That investigation led to some 700 interviews, including nearly every member of the APD and Porgera’s community affairs department. Those inquiries revealed evidence suggesting multiple instances of potential criminal conduct, including sexual assaults, by former and then-current members of the APD (who have since been terminated).

Barrick and the PJV have also urged the police to investigate that potential criminal conduct generally and sexual assault accusations specifically. To date, the RPNGC have arrested several of those people identified as suspected of having been involved in criminal behavior, and these cases are progressing through the justice system. Further criminal investigations by the RPNGC are ongoing.

The PJV has terminated all employees implicated in committing violent acts against women; it has terminated all employees who were aware of other employees committing acts of violence against women, but who did not notify a supervisor; it has terminated all employees who misled investigators making inquiries into accusations that included acts of violence against women.

Barrick condemns these crimes in the strongest possible terms and wishes to see anyone involved brought to justice under PNG law. Further terminations and other disciplinary actions may occur pending the results of ongoing police investigation of these matters.

## 1.2 Violence against Women in the Porgera Valley

The allegations against members of the APD are symptomatic of the broader issue of widespread VAW in the Porgera Valley. There have been a number of studies undertaken over the last decade, all confirming the extent of the problem in PNG<sup>2</sup>. The situation for the women of PNG is summarized in a report issued by the Australia Agency for International development (“AusAID”) which states:

“the risk of violence both at home and in the community is a constant presence in the lives of many women in large parts of PNG, especially in the Highlands and major cities”<sup>3</sup>.

Amnesty International paints a similarly bleak picture:

“ . . . all available evidence and Amnesty International's own research indicate that violence against women in the home and the community is pervasive, and in some regions affects most women's lives. The threat of gender-based violence, particularly sexual violence, impacts on women's ability to move freely in the community, to use public transport, to access health and education services, and to travel to market or to the workplace. . . . The threat and the reality of gender-based violence mean that fear permeates many women's existence -- with the home a place of risk and not refuge”<sup>4</sup>.

Citing research into domestic violence conducted in the 1980s by the PNG Law Reform Commission and research into sexual violence conducted in 1993 by the PNG Institute for Medical Research, AusAID reported that:

- “approximately two-thirds of all PNG women reported being victims of domestic violence. While the rate of domestic violence was consistent across socio-economic groups, there was evidence of provincial variation . . . [with almost] 100 per cent of women in two highland provinces (Chimbu and Western Highlands) reported being victims of domestic violence”<sup>5</sup>; and
- “55 per cent of women interviewed had been forced to have sex against their will. Many perpetrators were intimate partners: half of the married women surveyed reported that their husbands had used beatings or threats to force them into sex. The study also revealed alarming levels of gang rape (known as *lainap* in PNG). Sixty per cent of men interviewed indicated they had participated in a *lainap*”<sup>6</sup>.

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<sup>2</sup> Amnesty International, “*Papua New Guinea - Violence Against Women: Not Inevitable, Never Acceptable!*”, (2006) (the “AI 2006 Report”), AusAID Office of Development Effectiveness, “*Violence Against Women in Melanesia and East Timor: A Review of International Lessons*”, (2007) (the “AusAID 2007 Report”) and AusAID Office of Development Effectiveness, “*Violence Against Women in Melanesia and East Timor: Building on Global and Regional Promising Approaches*”, (2008) (the “AusAID 2008 Report”). See also, Médecins Sans Frontière/Doctors without Borders, “*Hidden and Neglected: The Medical and Emotional Needs of Survivors of Family and Sexual Violence in Papua New Guinea*” (2011) and Dr Christine Bradley, “*Family and Sexual Violence in Papua New Guinea: An Integrated Long-term Strategy*”, (2001) Report to the Family Violence Action Committee of the Consultative Implementation and Monitoring Council, Discussion Paper No. 84, Institute of National Affairs, Port Moresby, PNG.

<sup>3</sup> AusAID 2008 Report, page 105.

<sup>4</sup> AI 2006 Report, page 1.

<sup>5</sup> AusAID 2007 Report, page 5.

<sup>6</sup> AusAID 2007 Report, page 6.

In 2011, Barrick commissioned Dr Margit Ganster-Breidler<sup>7</sup> to undertake a study:

“to collect current data on the extent of gender-based violence and document its traumatic impacts on women’s lives in Porgera . . . in order to increase understanding of the dimensions and characteristics of abuse among the population in Porgera district and explore relevant remedies and programs to tackle this very serious and complex issue.”<sup>8</sup>

In the study, 138 women between 14 and 54 years of age were interviewed<sup>9</sup> with 86% reporting being victims of physical violence and 79% reporting being victims of sexual violence. 70% of women reporting a past occurrence of physical abuse reported associated injuries. 73% of the women who have experienced violence reported that their children were present when they were hit by their husbands/partners which perpetuates an ongoing cycle of violence.

Among the factors identified by Dr Ganster-Breidler are the strong patriarchal structures in Porgeran society and the payment of a bride price; these factors place women in a position of inferiority. The study also indicated that a high percentage of women believe that, if they contravene social norms, their husbands have the right to hit them<sup>10</sup>. This reflects not only strong traditional patriarchal structures but also implies that existing awareness programs need to be revised.

In the Porgera district, women - and often their children - have no means of protection from a violent home. The study noted the lack of adequate counselling and trauma services in the Porgera Valley and the urgent need for the development and implementation of awareness programs and campaigns on human rights, gender issues, women’s rights and violence against women. The study recommended a survey on men in the Porgera Valley to gather data from the men’s point of view and to learn more about men’s role in today’s society in the Porgera district and also recommended the development and implementation of counselling services for men.

Dr Ganster-Breidler concluded that:

“The current climate in Porgera district is a climate of aggression, violence and trauma. Women, children and men are victims of various types of emotional, physical and sexual violence and sometimes very brutal and cruel forms of violence and torture. Tribal fights cost lives of men, women and children and create a climate of terror. . . .

. . . . The acceptance of violence as a “normal” behaviour, lack of government support for counselling and welfare services, poorly trained counsellors, lack of trauma counsellors and lack

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<sup>7</sup> Institute for Innovative Trauma-Therapies, Conrad von Hötzendorfstraße 24, 8010 Graz, Austria.

<sup>8</sup> Dr. Margit Ganster-Breidler, *“Gender-based violence in Porgera district and the traumatic impact on women’s lives”* (2011), page 4.

<sup>9</sup> The women participating in the study were self-selected among the female population of 17 villages in the Porgera district. Women enrolled in the study were volunteers who were presented to the interviewers after being informed of the study through advertisements and notices distributed by the Porgera District Woman’s Association.

<sup>10</sup> For example, 60% of respondents believed that their partner had a right to hit them if they were unfaithful, 51% for disobeying their husband, 31% for not completing housework and 17% for refusing to have sex (Ganster-Breidler, page 10).

of appropriate services for victims of violence and poor networking consolidates an ongoing cycle of violence.”<sup>11</sup>

These findings are similar to those of World Vision who, when reporting on their Ol Meri Igat Namba Project in 2011, noted that ...”sexual violence is endemic in the home and in the community in Papua New Guinea.”

The report authors found that approximately 67% of women involved in their study reported experiencing gender-based violence, and that “50 percent of women had experienced forced sex”, with over half of all the reported victims of rape being under the age of 15.

They concluded that “Papua New Guinean women and girls are faced...with the threat of physical, verbal, sexual psychological and financial violence throughout their lives.”<sup>12</sup>

The studies referred to above, including, most recently, the work of Dr Ganster-Breidler, give an indication of the breadth of the VAW problem in PNG. Fortunately, these studies also make a number of recommendations and proposals for trying to alleviate the problem. No one underestimates how much work needs to be done but, on a more positive note, Barrick’s consultation process has allowed it to connect with a number of individuals and groups, in PNG and elsewhere, committed to bettering the lives of the women of PNG.

While the scale of the broader problem of violence against women in Porgera is significant, Barrick hopes that this framework will contribute in some way towards diminishing that threat for the women of the Porgera Valley.

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<sup>11</sup> Ganster-Breidler, 2011, page 41.

<sup>12</sup> World Vision Australia, “Case Study: Ol Meri Igat Namba Project, Papua New Guinea” (2011), page 1.

## 2. KEY COMPONENTS OF THE FRAMEWORK

The framework for providing a remedy for victims of VAW focuses on providing access to two types of remediation – (1) an individual reparations program, which seeks to provide individualized support and services to women who have been the subject of sexual violence or abuse attributable to former PJV employees<sup>13</sup>, and (2) community-wide programs, designed to provide community-level services, infrastructure and/or facilities that develop the capacity of the local community to address issue of violence against women. In addition, a number of important preventative and supervisory initiatives have been, or are being, implemented at the mine, together with programs that are being developed within the surrounding community.

Individual reparations program	Community-wide projects
<ul style="list-style-type: none"> <li>• Program designed to meet the needs of women in the Porgera Valley who have been the subject of sexual violence or abuse by current or former employees of the PJV.</li> <li>• Claims will be processed by a team of project officers with experience and training in dealing with the issues surrounding gender-based violence.</li> <li>• Claims will be determined by senior PNG citizens who are familiar with VAW and the determination of responses to allegations of human rights violations.</li> <li>• The project officers processing the claims and experts determining them will be independent of Barrick and the PJV.</li> <li>• Remedies will be developed on a case-by-case basis with regard to the circumstances of the individual claimant and will be developed in consultation with the claimant.</li> </ul>	<ul style="list-style-type: none"> <li>• Projects designed to complement and enhance existing VAW programs, to provide services to women who have experienced VAW, and to increase awareness of human rights and help prevent VAW generally.</li> <li>• Directly relate to gender/sexual violence issues in the Porgera Valley but will be designed with the possibility of the programs being applied elsewhere in PNG.</li> <li>• These projects will be designed, planned and implemented by an experienced team with the advice of a panel of experts in the area of VAW and human rights programs.</li> </ul>

### 2.1 Individual reparations program

The individual reparations program will consist principally of the provision of individualized services and support to individuals who have been the victims of sexual assault by employees of the PJV<sup>14</sup> to ensure the welfare and safety of those individuals, and will include remedies including, but not limited to:

<sup>13</sup> The Remedies Framework will utilize the definition of “Sexual Violence” as applied by the UN World Health Organization – being “Sexual Violence is any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting.” (UN. Fact Sheet N239, September 2011).

<sup>14</sup> The individual reparations program is confined to allegations of sexual assault by employees of the PJV during the performance of their work for the Porgera mine, regardless of where the assault occurred and where the alleged sexual assault took place after 1 January 1990, when mine operations effectively began, or on or before

- a) facilitation of effective access to justice mechanisms where requested;
- b) access to medical and/or psychosocial support services;
- c) provision of fair and appropriate financial reparations for personal harm or economic damages suffered; and
- d) to the extent practicable, rehabilitation of rights and circumstances experienced prior to the alleged offence(s).

These remedies are consistent with international human rights law, and considered to be practical, sustainable and appropriate to the local socio-economic circumstances.

The process for making individual claims within the reparations framework will be easily accessible for those residing within local communities, will be cognizant of local traditional circumstances, and will be independent of Barrick and the PJV to ensure the privacy and confidentiality of those submitting claims.

## **2.2 Community level program**

The community oriented program will consist of a suite of community-level initiatives designed to complement or strengthen existing VAW programs and facilities that provide a benefit or service to women in the local community, that assist in improving the treatment of and support for women who have been the victims of violence in the community generally, or that increase awareness of human rights and help prevent violence against women within the Porgera District.

These services and facilities will be available to all women that reside or work within the Porgera District.

## **2.3 Other elements of the Remediation Framework**

Together with the individual reparations program, a number of other important elements, designed to complement and support the program, comprise the remediation framework. These include important preventative and supervisory initiatives that are being implemented at the mine, together with programs that are being developed within the surrounding community. These include:

### ***Porgera mine internal reforms***

- Enhanced human rights training of all PJV security personnel, including specific new VAW training modules;

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the date on which the RPNGC completed their investigations into these matters, being the 31st December 2010. Incidents that occurred on or after January 1<sup>st</sup> 2011, will be dealt with on a case by case basis. Allegations of assault by PJV employees unconnected to their work for the mine (for example cases of domestic violence in the home) are meant to be covered by existing programs and courses of legal action, as enhanced by the community-wide initiatives being undertaken under this framework. If claims are lodged involving allegations of sexual assaults perpetrated at the Porgera mine site by employees of PJV contractors (as opposed to the PJV's employees), the association overseeing the program will, with the consent of the claimant, bring the allegation to the attention of the contracting company in a way that aims to protect (but cannot guarantee) the confidentiality of the claimant.



- Employing a new mine site grievance mechanism that has strengthened procedures for registering and reacting to claims of human rights violations (including violence against women) and other community complaints related to the PJV or its operations;
- Instituting additional lighting in strategic locations across the mine, and examining potential expansion of the site fence-line; and
- Instituting a variety of new measures regarding the security function at the PJV, such as:
  - the development of a new senior supervisory position within the company management structure (Security Operations Manager);
  - commissioning the creation of forward and backwards facing cameras for use in every mine site security vehicle – because no existing cameras exist that can withstand use in a mine security vehicle, the company is having the cameras custom-made;
  - installing thermal cameras to track vehicle and personnel movements on the mine property at night;
  - installing GPS tracking devices in each security vehicle; and
  - hiring additional female security personnel.

#### ***External capacity development***

- Funding an independent Women’s Welfare Liaison Officer who operates within the local community, in affiliation with the Porgera District Women’s Association (“PDWA”), to support survivors of sexual and domestic violence;
- Retaining external researchers with expertise in PNG/cultural issues to examine sexual assault and violence against women, to focus on understanding these problems and to identify potential causes and solutions with the work of these researchers to be made available to Barrick and other interested parties and stakeholders in the Porgera Valley and PNG;
- Facilitating ongoing VAW counseling and Human Rights advocacy training for community representatives and people employed in key local positions relevant to the issue of preventing violence against women, including police, local nurses, women’s advocates and members of NGOs working in the area of women’s welfare;
- Developing an Expert Advisory Group consisting of international experts in the fields of VAW and Human Rights to provide guidance and to inform the debate;
- Engaging with the police, external experts, and local stakeholders to assess additional means of building law enforcement and justice sector capacity at Porgera through the *Restoring Justice* framework; and
- The development and implementation of awareness training and counseling services for men and boys.

### 3. GUIDING PRINCIPLES USED TO DEVELOP ELEMENTS OF THE FRAMEWORK<sup>15</sup>

Barrick recognizes the complex challenges that arise as a consequence of local traditional norms regarding redress for perceived offences against the rights of individuals. Nonetheless, it acknowledges the appropriateness of a scheme designed to remedy wrongs its employees may have caused. It also acknowledges that, given the impact on the community of these allegations, as well on individual victims, community-related and individual remedies are appropriate<sup>16</sup>.

In the course of developing this remediation framework, Barrick undertook a review, investigation and consultation process including:

- a comprehensive review of literature and research relating to the problem of VAW and broader issues relating to human rights in Papua New Guinea;
- a series of meetings and/or consultations with representatives of leading NGOs, including Human Rights Watch, the Harvard International Human Rights Clinic and the leading United Nations agency, UN Women<sup>17</sup>;
- consulting with leading independent experts in the area of VAW, particularly experts on the issue as it occurs in the Pacific region;
- an intensive consultation workshop with participants from a number of key stakeholder groups<sup>18</sup>; and
- consultation with service providers and groups dealing with sexual and domestic violence in Papua New Guinea and the Porgera Valley<sup>19</sup>.

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<sup>15</sup> These guidelines derive from the principles announced by U.N. Special Representative John Ruggie, the principles in the U.N.'s Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, and elsewhere. See Michelle Maiese, "Compensation and Reparations," *Beyond Intractability* (Guy Burgess & Heidi Burgess eds.) (September 2003). They also consider the remedy approaches taken by other corporate actors, and as set forth in the Report of the Panel on Remedies and Reparations for DRC (March 2011).

<sup>16</sup> As Professor Ruggie states: "Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition." Ruggie Report, Foundational Principle 25, Commentary.

<sup>17</sup> In addition to HRW and UN Women, Barrick consulted an extensive range of individuals and organisations with experience in dealing with the issue of violence against women in Papua New Guinea, including community based organisations, researchers and government agencies.

<sup>18</sup> The participants in the consultation workshop included the Family and Sexual Violence Action Committee, the PNG Australia Law and Justice Partnership, the Family and Sexual Violence Unit of the RPNGC, the PNG Department of Justice and Attorney General, UN Women, the PNG Chamber of Mines and Petroleum (Women in Mining program), the Porgera Women's Development Association, Allens Arthur Robinson, and the Porgera Environmental Advisory Komiti ("PEAK"). The workshop was held in Port Moresby, PNG, on 21 November 2011. Participants were provided with a draft version of this document prior to the workshop and received a summary of the workshop's suggestions and recommendations.

<sup>19</sup> Barrick met with representatives of the PDWA (including the Women's Welfare Office of the PDWA), Paiam Hospital, the Porgera Medical Centre, the Porgera Police Station of the RPNGC as well as the PJV's Community Affairs department and the APD.

During the course of this consultative process, Barrick developed and refined a number of guiding principles to help shape the design and implementation of both the individualised and community-level components of the framework.

### 3.1 Individualized framework

The primary guiding principle in respect of individual claims will be to ensure that the needs of the women who have experienced sexual violence are met. Therefore, the individual reparation program aims to provide individualized reparations, support and services to claimants who have been the subject of sexual violence or abuse by current or former employees of the PJV where the assault took place in the course of the employee performing his duties with the PJV at the Porgera mine site.

#### (a) *Overview of the program*

A complaints assessment team (“CAT”) will be responsible for administering the individual reparations program with guidance from an expert advisory group on establishing the parameters of the program<sup>20</sup>.

Another primary guiding principle will be that the program is to be easily accessible within local communities and, further, that the program, to the extent possible, will seek to ensure the privacy and respect the confidentiality of those submitting claims. Critically, it will also be crucial to the success of the program that Barrick is not involved in the determination of any application made by claimants.

Where appropriate, once the program commences, access to the program can be provided immediately to women who have already reported their cases during the investigation undertaken by the independent investigator, Ila Geno, or who have been credibly identified by civil sector agencies and/or NGOs investigating these issues. Prior reporting of incidents (for example, to the RPNGC) will not be mandatory in order for a claim to be lodged, however it will be encouraged, and, where possible or appropriate, facilitated by the CAT working in conjunction with local women’s welfare personnel such as the PDWA’s Women’s Welfare Officer<sup>21</sup>.

The program is expected to consist principally of services and support to ensure the welfare and safety of claimants, or to provide the claimant with sustainable economic assistance:

- a. the forms of welfare support may include:
  - trauma response services;
  - psychosocial counseling;
  - repatriation to home province/village; or
  - facilitating access to legal advice and support to lodge incident reports with the RPNGC; and
- b. the types of economic support may include:
  - livelihood assistance (which may include material goods such as household and kitchen equipment or food or other consumables);

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<sup>20</sup> The steps in the process for the individual reparations program are set out in section 5 of this document.

<sup>21</sup> Barrick’s consultation process revealed that, for multiple reasons, the community tends not to report VAW issues to the RPNGC. The issue of reporting allegations to the RPNGC is dealt with in section 3.1(c).

- access to micro-credit facilities provided through a program to be administered by the PDWA, and consideration for inclusion in economic development grant schemes; or
- access to education and training programs.

Remedies will be considered on a case-by-case basis with regard to the circumstances of the individual case and will be developed in consultation with the claimant<sup>22</sup>.

**(b) *The question of cash compensation***

One issue that was regularly raised during both the consultation workshop and the visit to the Porgera Valley was whether the individual remedies should include a cash component. There was widespread acknowledgment that there would be an expectation on the part of residents of the Porgera Valley that any remedy would include a cash component (or a cash equivalent, such as pigs). This is consistent with the both traditional practices and with the practice in the Village Court system where victims of assault are regularly awarded cash. However, there was robust debate at the consultation workshop on whether the inclusion of a cash component was appropriate with a range of opinions being presented. Some participants recommended against there being any cash component as it would create a real risk that the claimant would not get the benefit of any cash award; instead family members may appropriate the cash, often by using violence against the claimant. There was also a concern expressed that the potential for a cash award would induce false claims, often with the claimant being coerced through intimidation or violence into making the claim.

Barrick has determined that there are compelling reasons for including awards of cash among the potential remedies available under the program where this is the stated preference of the claimant. A primary guiding principle is that remedies should be designed based on principles of individual agency and empowerment of women to determine their own destiny. Another guiding principle is that awards should be culturally appropriate; as noted above, the granting of a cash award is consistent with cultural practice at Porgera<sup>23</sup>. As a practical measure, it may be necessary to include a cash component as a means of facilitating another type of remedy. For example, if a remedy contemplates repatriating the claimant to her home village or province outside the Porgera Valley, a cash component may be necessary to enable the claimant to restart her life in her home community. As a way of mitigating the risks identified above, the CAT will consider the feasibility of granting vouchers for items such as school fees or fees for medical treatment as an alternative to cash.

**(c) *The question of whether to report allegations to the RPNGC***

Another issue that was regularly raised during both the consultation workshop and the visit to the Porgera Valley was whether, when informed of allegations of assault during the individual reparations program, Barrick should report those allegations to the RPNGC. A number of participants were of the

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<sup>22</sup> In developing the individual reparations program, Barrick has adopted the approach recommended by Professor Ruggie that any remedy process should be based on engagement and dialogue and focus “on dialogue as the means to address and resolve grievances” (see Guiding Principles, paragraph 29 – Commentary and paragraph 31(h) and Commentary).

<sup>23</sup> In its discussion of non-State-based grievance mechanisms, the Guiding Principles suggest that grievance mechanisms should adopt “culturally appropriate and rights-compatible processes” (paragraph 28 - Commentary).

opinion that, while there may not be a legal obligation to report those allegations of criminal activity<sup>24</sup>, Barrick should report them to the police.

Barrick's consultation revealed that the level of reporting of VAW incidents to the RPNGC in the Porgera Valley is very low. This was confirmed by the study conducted by Dr Ganster-Breidler which found that only 11% of the respondents who had been sexually assaulted had reported the assault to the RPNGC<sup>25</sup>. There appear to be two major reasons for this low level of reporting. First, there is a widespread perception in the community that VAW is a "domestic matter" and that outsiders – including the RPNGC and government agencies – should not intervene. Unfortunately, there is evidence that some members of the RPNGC share that perception. Community members consulted by Barrick reported a number of incidents of assault where the RPNGC had been contacted but failed to investigate or take any action on the basis that the incident was best dealt with within the family. This is supported by the work of Dr Ganster-Breidler who reported that a number of the respondents interviewed for her study had approached the police only to be told:

"Sort it out at home, it's a family matter"<sup>26</sup>.

Second, community members informed Barrick that victims often have a justifiable fear that reporting an assault to the RPNGC will only aggravate the situation and lead to reprisals. Once again, this was supported by the Ganster-Breidler study:

"In settings where mandatory notification laws are enforced, women are afraid of telling a services provider about violence because they think this will lead to police involvement and possible reprisals on the part of the abuser."<sup>27</sup>

These problems of non-reporting, a lack of confidence in the ability of public institutions to deal with domestic violence and a fear of reprisals are acknowledged by RPNGC personnel serving in the Porgera Valley. The police reported that a very low percentage of assaults are reported to the RPNGC and, of those that are reported, a significant number are subsequently withdrawn by the claimant, often after threats from the perpetrator or under pressure from family members either to protect the perpetrator or to pursue cash compensation through the Village Court system.

Barrick acknowledges the efforts currently being made by the RPNGC to develop its capacity to deal with VAW in the Porgera Valley, such as the stationing of specialist officers at the Porgera Police Station from the RPNGC's Family and Sexual Violence Unit ("FSVU"). However, at this time, there are compelling reasons why mandatory reporting should not be part of the process. Barrick is concerned that, if the individual reparations process requires the CAT to provide reports of incidents to the RPNGC, then many victims will refuse to participate. As with the question of cash compensation, the reporting of assaults to the RPNGC should be a matter for the claimant. Ideally, claimants should report the allegation to the RPNGC as part of the process and the CAT will encourage victims to lodge reports and will support them, but will not compel them to do so.

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<sup>24</sup> The common law offence of misprision of felony (concealment of a crime) is adopted in the PNG *Criminal Code* but only in relation to murder or attempted murder.

<sup>25</sup> Ganster-Breidler, 2011, page 25.

<sup>26</sup> Ganster-Breidler, 2011, page 21.

<sup>27</sup> Ganster-Breidler, 2011, page 11.

(d) ***Consistency with the PNG public policy and programs***

Another significant guiding principle is that the program should be designed in such a way as to conform with or complement relevant elements of PNG public policy and programs dealing with the issues of VAW and human rights more broadly.

Therefore, the individual remediation framework is designed so that it is consistent with the legislative and policy framework being developed in PNG. The PNG Magistrates Manual makes the point that:

“It is generally preferable for parties (other than those lacking legal capacity) to voluntarily enter into a settlement that they consider to be fair, rather than to bring their dispute to court for a Magistrate to decide.

Out-of-court settlements are not only in the interests of the parties, but are also in the interests of the justice system and society generally. As long as they do not conflict with other duties or with a sense of fairness in the particular circumstances, out-of-court settlements should be encouraged. However, out-of-court settlements should never be imposed against the will of any party”<sup>28</sup>.

Further, the program is consistent with a number of policy initiatives in the areas of FSV and VAW being developed by the PNG Department of Health, the Department of Community Development & Welfare Services and the Law and Justice Sector initiative<sup>29</sup>.

(e) ***Appropriate socio-cultural experience among key personnel***

Once a claim has been processed by the CAT, it will go to an independent expert for determination and, if there is an appeal, to a review panel for final consideration. The independent expert and the individuals on the review panel will be senior Papua New Guinean citizens who are familiar with VAW and the determination of responses to allegations of human rights violations. The process will be overseen by an association with membership and a management committee drawn from stakeholders with an interest in VAW and human rights programs<sup>30</sup>.

Another guiding principle was that, to the maximum extent practical, the individual reparations framework is independent of Barrick. In the commentary on the effectiveness criteria for non-judicial grievance mechanisms, Professor Ruggie stated:

“Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism”<sup>31</sup>.

It is considered crucial to the success of the program that Barrick and the PJV should not be involved in the determination of any application made by claimants. Therefore, neither project personnel, the

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<sup>28</sup> Chapter 24.2, *Magistrates Manual*.

<sup>29</sup> See, for example, the 2007 White Paper on Law and Justice issued by the Minister for Justice.

<sup>30</sup> The governance structure of the remediation framework is set out in the next section of this document (section 4).

<sup>31</sup> Guiding Principles, paragraph 31.

independent expert nor the individuals on the review panel will be current or former employees or officers of Barrick or the PJV nor will Barrick's representative on the management committee participate in any discussion of individual claims. The project entity will operate strict conflict of interest procedures to ensure that independence from Barrick is maintained.

(f) ***Accessibility of remedy***

Another important guiding principle is that the program must have a high level of accessibility for individual claimants. This program is intended to operate in addition to, and not as a substitute for, available remedies in PNG. For individuals, this program offers a simpler, quicker, and inexpensive means of seeking a remedy as compared with normal judicial processes<sup>32</sup>.

The program has been designed to recognize important cultural practices such as Ipili traditions of communication<sup>33</sup> and the role of compensation as a means of remedying a problem in a relationship (rather than as an admission of guilt). This can often involve the gifting of farmed pigs, food and other consumables as a sign of empathy towards someone who has suffered damage or loss.

Another important feature is that the program offers a broader range of remedies than those offered by normal court processes.

### 3.2 **Community-level framework**

The community-level framework aims to provide community-level services, infrastructure and/or facilities that develop the capacity of the local community to deal with the issue of violence against women.

(a) ***Initiatives***

Barrick is conscious of the leading role the Porgera mine plays in the life of the Porgera Valley. Therefore, it is appropriate for Barrick to exercise its influence to support human rights in the local community as contemplated under the "Protect, Respect and Remedy" Framework<sup>34</sup>.

Precedents in this area suggest that the framework should consist of a suite of community-level initiatives designed to complement and enhance existing VAW programs that provide a benefit or service to women in the local community, that assist in providing services to women who have

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<sup>32</sup> This approach is consistent with the Ruggie Report which recognised the importance of non-judicial mechanisms where they provide "a more immediate, accessible, affordable, and adaptable point of initial recourse" (paragraph 84). See also the Guiding Principles which acknowledged the benefits of "speed of access and remediation" and "reduced costs" (Guiding Principles, paragraph 28) and the commentary that such mechanisms should not "preclude access to judicial or other non-judicial grievance mechanisms" (Guiding Principles, paragraph 29). Barrick is conscious of Professor Ruggie's warning that the program must not undermine the strengthening of State institutions and has developed the individual reparations framework with the intention of offering "additional opportunities for recourse and redress" (Ruggie Report, paragraph 86).

<sup>33</sup> In Ipili tradition, verbal communication is less important than the subsequent behaviours and actions that confirm it. See RT Jackson and G Banks, *"In Search of the Serpent's Skin: the story of the Porgera Gold Project"*, 2002, pages 22 – 26.

<sup>34</sup> Ruggie Report, paragraphs 65 to 72.

experienced violence in the community, or that increase awareness of human rights and help prevent violence against women generally.

The program elements will directly relate to gender/sexual violence issues in the Porgera Valley but will be designed with the possibility of the programs being applied to other areas of PNG.

(b) ***Implementation***

Barrick considers that an experienced team will be critical to the success of the community-level framework. Therefore a team comprised of individuals with relevant experience in the development of community projects will be responsible for initiating, designing and planning and implementing the community remediation initiatives, under the guidance of a group of expert advisors.

Barrick and the PJV will provide the funding and resources required for the initiation of the development of the community remedy suite but the association overseeing these programs will be free to investigate additional funding sources, such as domestic and international aid programs and government funding, in circumstances where such co-funding is appropriate.



## **4. GOVERNANCE STRUCTURE**

### **4.1 PRF Association Inc.**

The remediation framework will be independently overseen by PRF Association Inc. (“PRFA”), an association incorporated under the *Associations Incorporation Act* of PNG. The focus of PRFA will be on initiating the development of the community-wide initiatives and the implementation of the individual reparations program. PRFA’s membership is expected to comprise key stakeholders, including Barrick. The activities of PRFA will be overseen by a management committee comprising representatives appointed by its members with an independent chairperson appointed by the committee members. PRFA will be guided by the advice of an Expert Advisory Group (“EAG”) comprised of representatives of key organisations involved in, or with an interest in, VAW and human rights programs.

### **4.2 Independence and autonomy**

To the maximum extent practical, PRFA will operate autonomously and the management and operation of PRFA will be under the control of, and will be the responsibility of, the management committee. Barrick’s representative will not have a controlling position on the management committee and, to ensure independence of the process, Barrick’s representative will abstain from participating on the management committee’s deliberations on any matters involving individual claims under the individual reparations program. However, to ensure that the remediation framework is effectively and accountably run and that it meets proper standards of governance, a number of checks and balances will be built into the establishment of PRFA. To avoid any actual or perceived conflicted interests, Barrick’s nominee will not take their position on the management committee until the individual remedy framework is finalized.

PRFA will be subject to a constitution adopted by its members at the time of incorporation. The constitution will adopt, by reference, the terms of a detailed operations manual which will prescribe the way PRFA is to operate. PRFA will be required to enter into a deed poll requiring PRFA to comply with its constitution and the program documented in the operations manual (which may include requirements dealing with reporting, audit and external review).

PRFA will recruit an administrator with accountability for the activities of PRFA and the performance of the association’s staff. The administrator will report to the management committee, but will not be a member of the management committee.

The PRFA will be required to develop and implement reporting and accounting procedures appropriate to the activities that it will undertake. This will include financial acquittals and progress reports.

Initially, PRFA’s staff will be divided into two teams with one focused on the development and implementation of the individual reparations program (the Complaints Assessment Team or “CAT”) and the second focused on the initiation of the longer-term community-wide programs (the Community Programs Team or “CPT”). It is expected that, on completion of the individual reparations program, some of members of the CAT will migrate across to the CPT to work on the community projects.

Claims made under the individual reparations program will be processed and administered by PRFA’s CAT. The determination of the claims will be made by an independent expert (or, on appeal, a Panel) external to the association; it is crucial to the overall scheme that, while the individual reparations

program will be administered by staff of the association, the final decision on the granting of any reparations to a claimant must be made by individuals who are independent of PRFA, Barrick and the PJV and who have relevant experience as senior jurists or as experts in the area of VAW. The individuals appointed to make the determinations on individual claims will be contracted by PRFA on an arm's-length basis.

The EAG will be available to provide advice to the independent expert, the Panel and to PRFA although this aspect of the work of the EAG is expected to be limited and to focus on the broad parameters of the program; the EAG will not be involved in determining individual claims.

#### **4.3 Barrick to provide funding and resources**

Funding and resources for the program will be provided by Barrick, through a funds administration system operated by the Port Moresby office of a top-tier international accounting firm. The funds administrator will be authorized to release funds on an as-required basis to the various arms of the initiatives provided that the proper authorization processes have been observed<sup>35</sup> and the funds administrator is satisfied that PRFA is in compliance with other prescribed requirements (for example, it has provided periodic reports to its members). The funds administrator will prepare and submit a periodic financial report that includes:

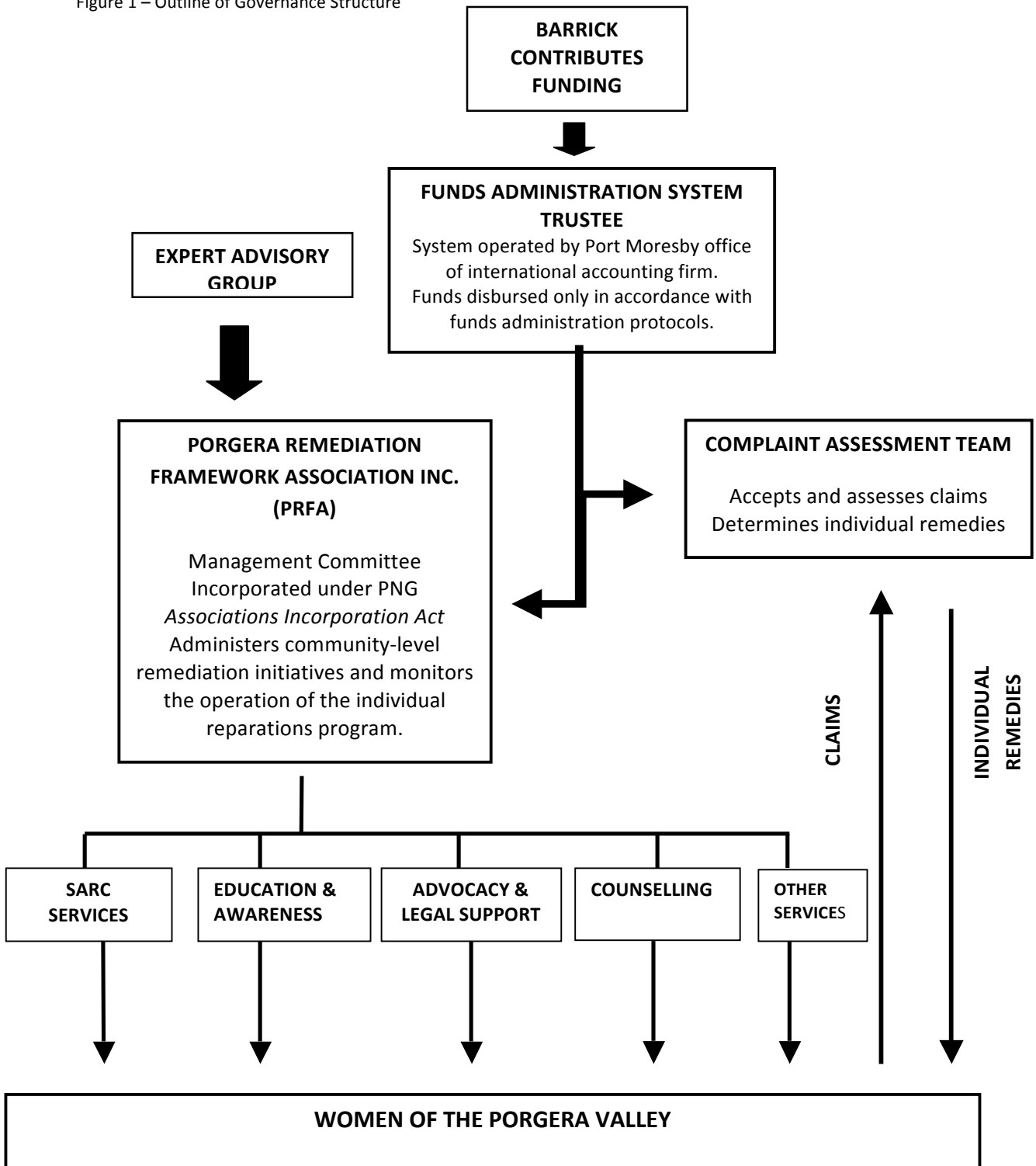
- an expenditure/acquittal summary;
- a reconciliation of movements in project funds;
- a register of project assets; and
- an explanation of any significant variances between actual and budgeted income and expenditure.

It is anticipated that PRFA will be established as a not-for-profit entity which meets the criteria of a "charitable institution" resulting in it being tax exempt in PNG.

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<sup>35</sup> For example, a standard requirement would be that any withdrawal request must bear the signatures of two authorised officers (with the funds administrator having a list and specimen signatures of the association's authorised officers).

Figure 1 – Outline of Governance Structure



## 5. IMPLEMENTATION OF THE INDIVIDUAL REPARATIONS PROGRAM

### Step 1 – Claim lodged with Complaints Assessment Team

The individual reparation program is predicated on individuals (or their legitimate representatives – such as a senior family member<sup>36</sup>) coming forward to lodge a claim for reparations with the CAT. For practical reasons relating to the administration of the program, anonymous claims cannot be considered, however appropriate procedures will be put in place to protect the privacy and confidentiality of claimants.

Individual cases that have already been identified during the recent investigation process, together with cases that relevant civil sector organizations may choose to register with the program will be registered with PRFA's CAT and provided with immediate access to the program.

#### *Establishment of the CAT*

Ensuring that women will be able to lodge claims means that the CAT will require a physical location and appropriate office infrastructure. Barrick and its advisors consider that the best method to achieve this will be via an office located within the local community (either in Porgera Station or in nearby Paiam – both settlements are located within walking distance from the mine site), situated in such a way as to afford privacy and confidentiality for those submitting a claim. This may be best located adjacent or close to the Paiam General Hospital.

The CAT would be staffed by project officers who have some experience in dealing with the issues surrounding gender-based violence and training in the area and in this process, and who are able to assist claimants objectively in preparing and lodging their claim<sup>37</sup>. To ensure independence, the CAT's staff will not include any employee, officer or agent of the PJV or Barrick<sup>38</sup>.

The existence of the CAT (and the framework more broadly) will be communicated locally through an awareness program - potentially operated by the PDWA. The awareness program is described later in this document<sup>39</sup>.

#### *Initial meeting*

On a claimant lodging a complaint with the CAT, the following steps must be taken:

- a project officer with the CAT must meet with the claimant<sup>40</sup> and inform the claimant of the process and provide the claimant with a written explanation;

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<sup>36</sup> Where a claim is brought forward by a claimant's representative, the CAT must ensure that the claimant has given her full and free consent to the claim being made on her behalf.

<sup>37</sup> Efforts will be undertaken to help ensure that potential victims are not coerced into presenting claims against their will.

<sup>38</sup> See section 3.1(e).

<sup>39</sup> See section 6.

<sup>40</sup> Although a claim can be lodged initially by an authorised representative, the CAT project officer must meet with the claimant personally at an early stage. The claimant will need to participate personally in significant steps of the procedure, although the claimant may have a support person in attendance to assist her.

- if the claimant does not have a support person, the claimant must be given the option of having a community support person made available;
- independent legal advice can be facilitated on behalf of the claimant<sup>41</sup>;
- the project officer must inform the claimant of the following matters:
  - an outline of the criteria for determining eligibility and legitimacy;
  - the steps available to maintain the confidentiality and the privacy of the claimant and the limitations on those steps<sup>42</sup>;
  - the claimant’s rights under the framework, including the right to opt out at any time and take other action, such as accessing the site grievance mechanism or formal legal processes;
  - the claimant’s entitlement to report any criminal conduct to the RPNGC with the claimant being encouraged (but not required<sup>43</sup>) to do so;
  - the fact that any claims involving PJV employees will be referred to the PJV, in a manner that aims to protect but cannot guarantee the confidentiality of the claimant, so that the PJV can investigate and, if warranted, take action against the employee; and
  - if the Independent Expert assesses a claim as eligible and legitimate and makes an assessment that the claimant should be provided with a program response, then an agreement on those recommendations will be signed by the claimant, Barrick and PRFA. This agreement will mean that Barrick and PRFA are bound to provide the recommended program response and the claimant is bound not to take any further legal action against Barrick and PRFA (although the claimant is always entitled to pursue legal action against the individual perpetrator).

Once the above steps have been taken, the claimant will be asked to confirm if they would like to continue and have their claim assessed under the individual reparations program.

***Required information***

If the claimant decides to continue, the claimant must provide the CAT with the following information relating to the incident:

- when it occurred;
- where it occurred;

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<sup>41</sup> In his report, Professor Ruggie stated that, to be credible and effective, any non-judicial grievance mechanism must be equitable and must ensure that claimants have “reasonable access to sources of information, advice and expertise necessary to engage in the grievance process on fair and equitable terms” (Ruggie Report, paragraph 92(d) and Guiding Principles, paragraph 31(d) and commentary). To ensure that this is achieved, claimants will have access to independent legal advice (funded through PRFA).

<sup>42</sup> PRFA will inform the claimant that confidentiality will be considered to have been waived in certain circumstances such as the claimant making her claim public by commencing legal proceedings against PRFA.

<sup>43</sup> See section 3.1(c).

- who was involved (either directly or indirectly);
- any witnesses to the incident;
- whether any reports were made to the RPNGC or other authorities;
- whether the claimant undertook a medical examination in response to the incident and, if so, whether the claimant has a copy of the medical report or could obtain a copy; and
- any persons to whom the claimant told their story.

The information must be provided in the form of a statutory declaration. If, during the initial review<sup>44</sup>, the project officer considers that further information is required from the claimant, the project officer can contact the claimant and seek the requested information. To the extent practical, the additional information should be provided by way of, or under cover of, a statutory declaration.

The project officer will complete a file note confirming that the above steps have been taken with the note being included in the file in the framework database.

## **Step 2 – Initial assessment of Claim by the CAT**

The CAT project officer will record the details of claims and claimants in a database, and conduct an initial review of each individual claim, to assess, firstly, eligibility and, secondly, legitimacy.

### ***Eligibility***

For any claim to be eligible, it must involve:

- an allegation of a sexual assault on the claimant by a PJV employee in the course of performing his duties for the Porgera mine, regardless of where the assault had occurred<sup>45</sup>;
- the claimant or her duly authorized Representative coming forward personally<sup>46</sup>; and
- an incident that occurred after 1 January 1990 or on or before 31 December 2010<sup>47</sup>.

If the CAT assesses the claim as ineligible, the claim will not be assessed for legitimacy.

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<sup>44</sup> See step 2.

<sup>45</sup> Individuals victimized by third parties (e.g., non-PJV employees) or by PJV employees in a context unrelated to their work for the mine (for example instances of domestic violence in the home) would not be eligible under the individual reparations program, nor would anonymous claims. However, the CAT would refer the claimant to other centres and programs providing relevant assistance. If claims are lodged with the CAT involving allegations of sexual assaults perpetrated at the Porgera mine site, or during work undertaken for the mine by employees of PJV contractors (as opposed to the PJV's employees), PRFA will, with the consent of the claimant, bring the allegation to the attention of the contracting company in a way that aims to protect (but cannot guarantee) the confidentiality of the claimant.

<sup>46</sup> See footnote 35.

<sup>47</sup> While any incidents that occurred after 31 December 2010 would preferably be dealt with through normal criminal and legal processes, such claims will be dealt with on a case by case basis by the CAT. (This recognizes the need to develop and enhance community-level services available to all claimants through the development of infrastructure and facilities through the community-level framework).

### ***Legitimacy***

If the CAT assesses the claim as eligible, the project officer will then assess the claim for legitimacy.

Eligible claims that have previously been properly investigated and documented by the independent investigator, former PNG chief ombudsman Ila Geno, credible civil sector or non government agencies, or that have been referred to the RPNGC will automatically be treated as being legitimate for the purposes of the individual reparations program and, with permission from the claimant, will proceed for consideration by the Independent Expert<sup>48</sup>.

This mechanism is provided in order to avoid potential trauma or discomfort for victims that might arise should they otherwise be required to re-describe their assaults.

To be perfectly clear claimants who have not previously provided such information will not suffer prejudice in any way, however they must, as a matter of course, move through each step of the remedies framework as part of the process of identifying the circumstances of their assault so that remedy can be provided.

All other claims will be assessed by the CAT with the project officer to consider:

- If and how the claim was first reported;
- the veracity of the story told, drawing on the project officer's experience in gender-based violence;
- any incident reports that have been filed with any relevant authority;
- the consistency of the information provided; and
- available supporting information, such as statements by witnesses or by persons to whom the claimant relayed their story and medical or incident reports.

The CAT will then make its assessment of legitimacy based on the information available to the project officers, their expertise and on an objective basis. The CAT will not make the assessment by reference to civil or criminal law or standards of evidence.

### ***Preliminary report***

Once the CAT has assessed the eligibility and legitimacy of the claim, the CAT will prepare a preliminary report of its assessment. This preliminary report, along with any supporting documentation will be maintained in the framework database.

### **Step 3 – Claim either accepted or rejected**

As outlined in Step 2, the CAT will make an initial assessment of the claim, to consider whether the claim meets the scheme's criteria for eligibility and legitimacy.

#### ***Step 3(a) – Claim accepted***

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<sup>48</sup> See step 4(a).

If the CAT assesses claim as eligible and legitimate, the CAT will prepare a full report of the incident, which will include recommendations of the programs that should be made available to the claimant. These programs will be decided upon in consultation with the claimant. The programs will be selected from a standard set available to claimants, which may include:

- access to psychosocial/trauma counseling;
- access to health care for the claimant;
- education and training for the claimant;
- livelihood assistance (such as cooking utensils, clothing);
- access to micro-credit or economic development grants;
- assistance with the payment of school fees for the claimant's children;
- assistance with repatriation to the claimant's home village or province; and
- support for pursuing their complaint with the RPNGC.

For the reasons discussed earlier in this paper, any awards of cash need to be carefully considered in order to mitigate any risk to the claimant<sup>49</sup>.

The CAT will forward the report, together with the claim and any relevant supporting documents, to the Independent Expert for their consideration (Step 5).

A copy of the report is to be transcribed in a language/manner that can be understood by the claimant and provided to her. A second version of the report (redacted and edited to preserve the confidentiality and privacy of the claimant) is to be provided to the PJV to enable the PJV to consider what, if any, action should be taken in relation to any PJV employees implicated in the claim<sup>50</sup>.

### ***Step 3(b) – Claim assessed to be ineligible or illegitimate (Claim rejected)***

Where the CAT considers that a claim is ineligible or illegitimate, it will:

1. formally advise the claimant of that assessment, and the reasons for that assessment; and
2. formally advise the claimant of the appeal process, and how to lodge an appeal<sup>51</sup>.

Where the claimant accepts the assessment of the CAT, the case file will be considered closed.

### **Step 4 – Claim submitted to the Independent Expert for consideration**

The Independent Expert will be a person with suitable qualifications in issues of gender based violence, hearing complaints and determining appropriate responses. To maintain independence, and avoid any

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<sup>49</sup> See the discussion in section 3.1(b). Risk mitigation measures may include providing cash compensation in the form of vouchers for items such as school fees.

<sup>50</sup> As noted above (footnote 46), if claims are lodged with the CAT involving allegations of sexual assaults perpetrated at the Porgera mine site by employees of PJV contractors, the PRFA will, with the consent of the claimant, bring the allegation to the attention of the contracting company in a way that aims to protect (but cannot guarantee) the confidentiality of the claimant. Any report provided to the PJV contractor would be redacted and edited to preserve the confidentiality and privacy of the claimant.

<sup>51</sup> See step 4(b).



appearance of a conflict of interest - including complaints against any perceived company influence - the Independent Expert cannot be an employee or officer of Barrick or the PJV.

The Independent Expert will consider and assess:

- claims assessed by the CAT as eligible and legitimate (step 4(a)); and
- appeals by claimants on claims assessed by the CAT as ineligible or illegitimate (step 4(b)).

***Step 4(a) – Claims assessed by the CAT and report and recommendations provided to the Independent Expert***

Reports on any claims that have been assessed by the CAT as eligible and legitimate are to be provided to the Independent Expert along with the claim and any supporting documents. The Independent Expert will consider the CAT's assessment and recommendations and will make their own assessment as to (1) whether the claim is eligible and legitimate and (2) whether the recommended remediation program is appropriate. In doing so, the Independent Expert may have regard to:

- any initial reports of the incident;
- the information provided in the report by the CAT as well as any supporting information to the report;
- further information they consider necessary to make their determination<sup>52</sup>; and
- any information provided by Barrick in response to its receipt of the report of the CAT.

The Independent Expert will make their assessment based on their expertise, what they consider to be fair and reasonable and based on common sense. In making their assessment, the Independent Expert may have regard to factors such as the following:

- corroborating physical or testimonial evidence,
- permanent physical manifestations,
- evidence that women are being threatened, victimized or coerced in making (or not making) claims,
- whether the matter was previously reported to the RPNGC,
- whether the victim sought or received medical or psychological treatment,
- how many years have passed since the incident, and
- any other relevant factors or criteria as determined by the Independent Expert.

They will not make their assessment by reference to civil or criminal law or standards of evidence.

The Independent Expert will then prepare a report that outlines their assessment and provide the report to the CAT for inclusion in the program database. A copy (transcribed in a language/manner that can be understood by the claimant) will be provided by the CAT to the claimant.

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<sup>52</sup> This may include information requested to be provided by the claimant, Barrick, the PJV, the RPNGC and other authorities.

If the claimant agrees with the assessment of the Independent Expert, an agreement is to be entered into between Barrick, PRFA and the claimant setting out the agreed program<sup>53</sup>.

If the claimant does not agree with the assessment of the Independent Expert, the claimant can either opt out of further participation in the program or can appeal to the Review Panel (in which case, the claimant must provide written reasons why the claimant does not agree with the assessment).

***Step 4(b) – Appeal to the Independent Expert of CAT assessment that a claim is ineligible or illegitimate***

If the CAT has assessed a claim as ineligible or illegitimate and the claimant appeals the decision, the Independent Expert will review the assessment of the CAT. The review will consider the information provided to the CAT along with the claimant’s written reasons why the claimant does not agree with the CAT’s assessment, together with any other material information that the independent expert considers appropriate.

If the Independent Expert upholds the assessment of the CAT, the claimant is taken to have opted out of the program.

If the Independent Expert disagrees with the decision of the CAT, the Independent Expert will assess the claim by reference to the procedures, information and standards outlined in step 4(a) including preparing a report and making recommendations in consultation with the claimant. A copy of the report is to be transcribed in a language/manner that can be understood by the claimant and provided to her by the CAT. A second version of the report (redacted and edited to preserve the confidentiality and privacy of the claimant) is to be provided to the PJV to enable the PJV to consider what, if any, action should be taken in relation to any PJV employees implicated in the claim.

If the claimant agrees with the assessment of the Independent Expert, an agreement is to be entered into between Barrick, PRFA and the claimant setting out the agreed program<sup>54</sup>.

If the claimant does not agree with the assessment of the Independent Expert (with regard to the Independent Expert’s assessment of the claim), the claimant can either opt out of further participation in the program or can appeal to the Review Panel<sup>55</sup> (in which case, the claimant must provide written reasons why the claimant does not agree with the Independent Expert’s assessment).

**Step 5 – Claim submitted to the Review Panel for consideration**

The Review Panel will be composed of senior Papua New Guinean individuals with diverse backgrounds who are familiar with issues of gender based violence, hearing complaints and determining appropriate responses. To maintain independence, and avoid any appearance of a conflict of interest - including complaints against any perceived company influence – members of the Review Panel cannot be employees or officers of Barrick or the PJV.

The Review Panel will consider and determine appeals from assessments of the Independent Expert as to the assessment of a claim (under step 4).

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<sup>53</sup> See step 6.

<sup>54</sup> See step 6.

<sup>55</sup> See step 5.

On any appeal of an assessment of the Independent Expert, the Panel will review the decision based on:

- the report of the Independent Expert;
- any information that was made available to the Independent Expert (including the report and supporting information provided by the CAT);
- the claimant's written reasons for disagreeing with the Independent Expert's assessment; and
- any further information the Panel considers necessary to make its assessment.

The Panel's assessment will be made on the basis of the Panel members' expertise and what the members consider to be fair, reasonable and in accordance with common sense. They will not make their assessment by reference to civil or criminal law or standards of evidence.

The Panel will then prepare a report that outlines their assessment and provide the report to the CAT for inclusion in the program database. A copy (transcribed in a language/manner that can be understood by the claimant) will be provided by the CAT to the claimant. If the Panel determines in favour of a claimant in circumstances where the Independent Expert had made an assessment against the claimant, then, where necessary, a second version of the report (redacted and edited to preserve the confidentiality and privacy of the claimant) is to be provided to the PJV to enable the PJV to consider what, if any, action should be taken in relation to any PJV employees implicated in the claim.

If the claimant agrees with the assessment of the Panel, an agreement is to be entered into between Barrick, PRFA and the claimant setting out the agreed program<sup>56</sup>.

If the claimant does not agree with the assessment of the Panel, then the claimant is taken to have opted out of the program<sup>57</sup>.

### **Step 6 – Agreement between Barrick, PRFA and the Claimant**

To facilitate implementation of any agreed program, Barrick, PRFA and the claimant will enter into an agreement which provides for the following:

- the claimant agrees to the general content of the report and recommendations of the Independent Expert (of the agreement is signed following step 4) or of the Review Panel (if the agreement is signed following step 5);
- Barrick and PRFA agree to provide all programs that have been recommended by the Independent Expert and/or the Review Panel;
- Barrick acknowledges its regret for the harm suffered by the claimant and encourages the claimant to pursue criminal and any other civil legal action against the alleged perpetrator; and
- the claimant agrees that she will not pursue or participate in any legal action against the PJV, PRFA or Barrick in or outside of PNG. PRFA and Barrick will be able to rely on the agreement as a bar to any legal proceedings which may be brought by the claimant in breach of the agreement.

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<sup>56</sup> See step 6.

<sup>57</sup> It should be noted that claimants are, at all times, entitled to pursue legal avenues available to them.

The agreement is to be signed by representatives of Barrick and PRFA, the claimant and the claimant's community support person or legal advisor.

## **7. AWARENESS PROGRAM**

PRFA will be provided with resources and materials that will enable it to conduct a community-wide awareness program in order to inform affected individuals of the operation of the individual reparations framework.

The awareness program will also seek to increase local understanding the general rights of women within local communities and will address the prevalence of physical and sexual abuse of women in some parts of PNG society.

The awareness campaign may include:

1. radio advertisements in local dialect to be broadcast on the local Ipili FM radio station;
2. printed notices in *Tok Pisin* that will be placed in prominent public locations throughout the Porgera District and distributed by groups such as the PDWA;
3. the Independent Expert visiting the Porgera Valley and promoting the program by making presentations to key local authorities, civil sector organizations and local women's groups;
4. distributing briefing and fact sheets for PJV staff (particularly community engagement officers); and
5. direct contact with international NGOs and stakeholders who have indicated they have material or information relating to specific incidents involving assaults upon local women.

All materials and messages employed as part of the awareness campaign will seek to inform local women of:

- the existence of the framework;
- the location(s) where claims can be lodged; and
- the kinds of services and support that will be made available to successful claimants under the scheme.

The awareness campaign will commence at an appropriate time prior to the implementation of the remedy scheme.

Figure 2 - Outline of Claim and Appeal Processes

