

16 June 2015

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**Re: Concerns regarding Porgera Remedy Framework Assessment**

Dear Mr. Giannini and Ms. Knuckey,

I write on behalf of the Assessment Team in response to your letter of 27 May 2015 to Barrick Gold and the External Committee. In the interests of preserving complete independence, Barrick has given discretion to the External Committee and the Assessment Team over whether and how the assessment should continue. After reviewing and discussing each of your concerns with the External Committee, we have jointly concluded that it is in the best interests of all stakeholders for us to proceed. The Assessment Team, with the guidance of the External Committee, therefore thought it best that we respond to you directly, in the sincere hope that you might be willing to share your insight to help us conduct as thorough an assessment as possible.

We appreciate the time you have taken to share your concerns. We are also very conscious of the importance, and sensitive to the complexities, of conducting this assessment in a manner that inspires the “confidence of relevant stakeholders, and according to transparent, rigorous processes.”<sup>1</sup> As I sought to clarify in my previous correspondence with Ms. Knuckey, we well understand that the value of the assessment “will lie in its legitimacy in the eyes of stakeholders.”<sup>2</sup> To meet the novel challenges posed by this assessment, and to ensure its legitimacy, we welcome the input of stakeholders who can help us shape the scope and process. Your sustained engagement in Porgera and expertise in human rights research are the very reasons we are so interested in obtaining your insight regarding the assessment’s substance and process.

We write this letter to alleviate your concerns about the assessment’s credibility and rigor. We sincerely hope that, upon reviewing it, you will find that we are committed

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<sup>1</sup> Tyler Giannini and Sarah Knuckey, 27 May 2015 Letter at 1.

<sup>2</sup> Yousuf Aftab, 13 May 2015 E-mail to Sarah Knuckey.

to a shared objective: to produce a credible and thorough review of the Remedy Framework “that can serve as a valuable learning tool for businesses ... seeking to directly provide remedies for adverse impacts associated with their operations.”<sup>3</sup>

## 1. Independence of the Assessment

We completely agree that the assessment should be conducted by a group that is “considered credible by Barrick, the claimants and other key stakeholders”.<sup>4</sup> While we are not in a position to speak to the process by which we were chosen, we can attest to the deliberative process undertaken by Barrick and informed by diverse stakeholders to select the External Committee, which is comprised of leading experts in human rights and violence against women. Credibility in the eyes of stakeholders is a paramount concern for this assessment. To that end, we are relying on the experience and expertise of the External Committee to inform the rigor of our approach and ensure the credibility of the final report. The Assessment Team itself is comprised of experts in business and human rights and sexual violence who have been trusted by the UN Global Compact, UNICEF, and UN Women, among others.

In terms of the assessment’s mandate, the scope was ultimately determined by the Assessment Team in consultation with the External Committee. I share with you the view that the touchstone for the assessment should be the OHCHR Opinion of 2013, which recommended that the assessment “should be focused on the perspectives of the victims of sexual abuse, and the implementation of the programme should be assessed against the effectiveness criteria for non-judicial remedy mechanisms as set out in Guiding Principle 31.”<sup>5</sup> As detailed in the terms of reference we have previously shared, and based on the OHCHR’s recommendation, the scope of the assessment therefore explicitly incorporates the impact on victims, Guiding Principles 29 and 31, and relevant international human rights norms.

## 2. Investigation Methodologies

The Assessment Team is also mindful of the importance of rigorous investigation methodologies tailored to the specific context of sexual violence and the dynamics in Porgera. We could not agree more emphatically that informed consent and confidentiality are absolutely critical, particularly when engaging with victims of sexual violence. We are relying on our own experience with such engagement, as well as the advice of the External Committee and experts in researching sexual violence in Papua New Guinea, to ensure that our protocols are appropriate and effective in Porgera.

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<sup>3</sup> Tyler Giannini and Sarah Knuckey, 27 May 2015 Letter at 2.

<sup>4</sup> Office of the High Commissioner for Human Rights (OHCHR), “Re: Allegations regarding the Porgera Joint Venture remedy Framework” (July 2013), at 10 (*OHCHR Opinion*).

<sup>5</sup> *Id.*

In each of our engagements with international experts, we have also followed a consistent protocol to ensure that interviewees are: (i) informed about the nature and scope of our research; (ii) aware of the information that we are hoping to obtain from them; (iii) aware that the final assessment will be public; and (iv) able to determine how, if at all, they would like their views to be attributed. All of this occurs before any questions are posed.

For my part, I reiterate again my sincere apologies for our earlier miscommunication. I did not realize that you did not wish Barrick to know of the process-related concerns you sought addressed before you would be willing to engage in the assessment. Barrick was at the time preparing an introductory message explaining the scope and purpose of the assessment in response to stakeholder questions posed directly to the company. Your questions were clearly important and relevant to other stakeholders. I therefore thought it best that they be addressed as well. Please know that, as with all experts who have agreed to participate, we would certainly preserve confidentiality were you willing to share your concerns about the Remedy Framework itself.

We are also sensitive to your concerns about timelines. The overriding objective of this process is to develop a thorough and credible assessment that will be of value to stakeholders and companies alike. The timelines in the Terms of Reference were designed to be flexible, and for us to adapt as needed to meet that overriding objective. That has already occurred and will continue to occur. Thus, the planning and contextual research phase is now in its eighth week. In addition, based on concerns the Assessment Team and the External Committee share with you about time for the in-country assessment, we are working to find practical alternatives to ensure that we speak to as many stakeholders as possible in Porgera. Were you willing to engage, we would certainly welcome your insight on this front as well.

### **3. Scope of the Review Mandate**

We also appreciate your concerns about the assessment mandate. The Assessment Team consulted with the External Committee before deciding what the appropriate parameters of the assessment should be. We believe that any assessment needs a framework to gauge success or failure. Otherwise we would simply have research absent context. Selecting the appropriate assessment framework, particularly for a “novel mechanism”<sup>6</sup>, inevitably requires the exercise of discretion. For this assessment, we selected the Guiding Principles as they provide the most widely accepted framework to understand what private actors should do to respect human rights, including specific guidance on the design of grievance mechanisms. The OHCHR also expressly suggested that the assessment focus on the effectiveness criteria in Guiding Principle 31.

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<sup>6</sup> Tyler Giannini and Sarah Knuckey, 27 May 2015 Letter at 4.

To be clear, though, we are not limiting our focus to Guiding Principles 29 and 31. Rather, as noted in your letter, our assessment will focus on the experience of claimants and potential claimants, “relevant provisions of the Guiding Principles” and “relevant norms of international law”.<sup>7</sup> We have not developed a limited and closed list of what these provisions and norms are, for that is a core part of our engagement process with international experts. Moreover, as you note, operating context is a relevant factor in the Guiding Principles: thus, while we will not be “assessing” public authorities’ governance, we are certainly researching it to understand the operating context in Porgera.

As we trust you understand, developing an appropriate assessment framework for the Guiding Principles is complex. The Assessment Team is therefore engaging with international experts to help us determine how to interpret the Guiding Principles, which Guiding Principles they believe are relevant to this assessment, and which norms of international law are relevant to this assessment. Given the novelty of the Remedy Framework and this assessment, we believe that engagement on these issues with leading experts on the Guiding Principles and international human rights is critical to the credibility of the final assessment.

### 3. Transparency about Review Methods and Processes

We also completely agree that “[t]ransparency is a critical part of any research methodology, as well as of any assessment process.”<sup>8</sup> We were therefore more than happy to accede to Ms. Knuckey’s pre-engagement request that:

“A commitment is made that *in the public report*, the specific research methods employed will be clearly explained, including information about such issues as: how many people were interviewed, what steps were taken to interview Porgerans critical of the mechanism, what steps were taken to interview Porgerans in remote areas of the SML villages, where interviews were conducted, how interviewees were found, the informed consent and privacy and security protocols, and so on.”<sup>9</sup>

Our intention has always been to be transparent about the assessment framework and methodology, as we agree that it is essential to the final assessment’s credibility. But we believe the right place to do that is in the final assessment itself, which will provide sufficient detail and context for informed evaluation by all stakeholders. We therefore reiterate the commitment made to Ms. Knuckey last month: the final assessment will explain in detail the methodology we used for all stages of the assessment.

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<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 7.

<sup>9</sup> Sarah Knuckey, 26 April 2015 E-mail to Yousuf Aftab (emphasis added). I responded to this request unequivocally: “I can make this commitment. The public report will explain in detail the methodology I used.” (Yousuf Aftab, 13 May 2015 E-mail to Sarah Knuckey).

We would also like to clarify that, based on the protections put in place to ensure the independence of this assessment, the Assessment Team's intention is for the final report to be a consensus product incorporating all of the External Committee's views and addressing all of its concerns.

### **Conclusion**

We hope that this letter goes some way towards addressing your concerns about the good faith and credibility of the assessment. We recognize that the assessment could have taken myriad other forms, and that we have had to make certain choices with which you may disagree. And we certainly expect that, once the final assessment is published, these choices will be scrutinized by international stakeholders. We ask only for your trust that we are undertaking this research and engaging with stakeholders with an earnest desire to develop a thorough and credible assessment. In that context, we would greatly value your participation to help us make this as valuable a contribution to the literature on business and human rights as possible.

Sincerely,



Yousuf Aftab  
Principal  
Enodo Rights