

Pillar III on the Ground: An Independent Assessment of the Porgera Remedy Framework

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OVERVIEW: LEARNING FROM THE FRAMEWORK

1. Introduction to **the Framework**.

- Background.
- Results.

2. Introduction of **the Assessment**.

- Purpose.
- Methodology.

3. The **Framework's lessons** for operational-level grievance mechanisms.

4. The **Assessment's lessons** for stakeholder engagement.

INTRODUCTION TO THE FRAMEWORK: BARRICK IN PORGERA

- Barrick acquired Pongera mine as part of its **acquisition of Placer Dome in 2006**.

Papua New Guinea

Resource
rich; diverse;
extremely
poor.

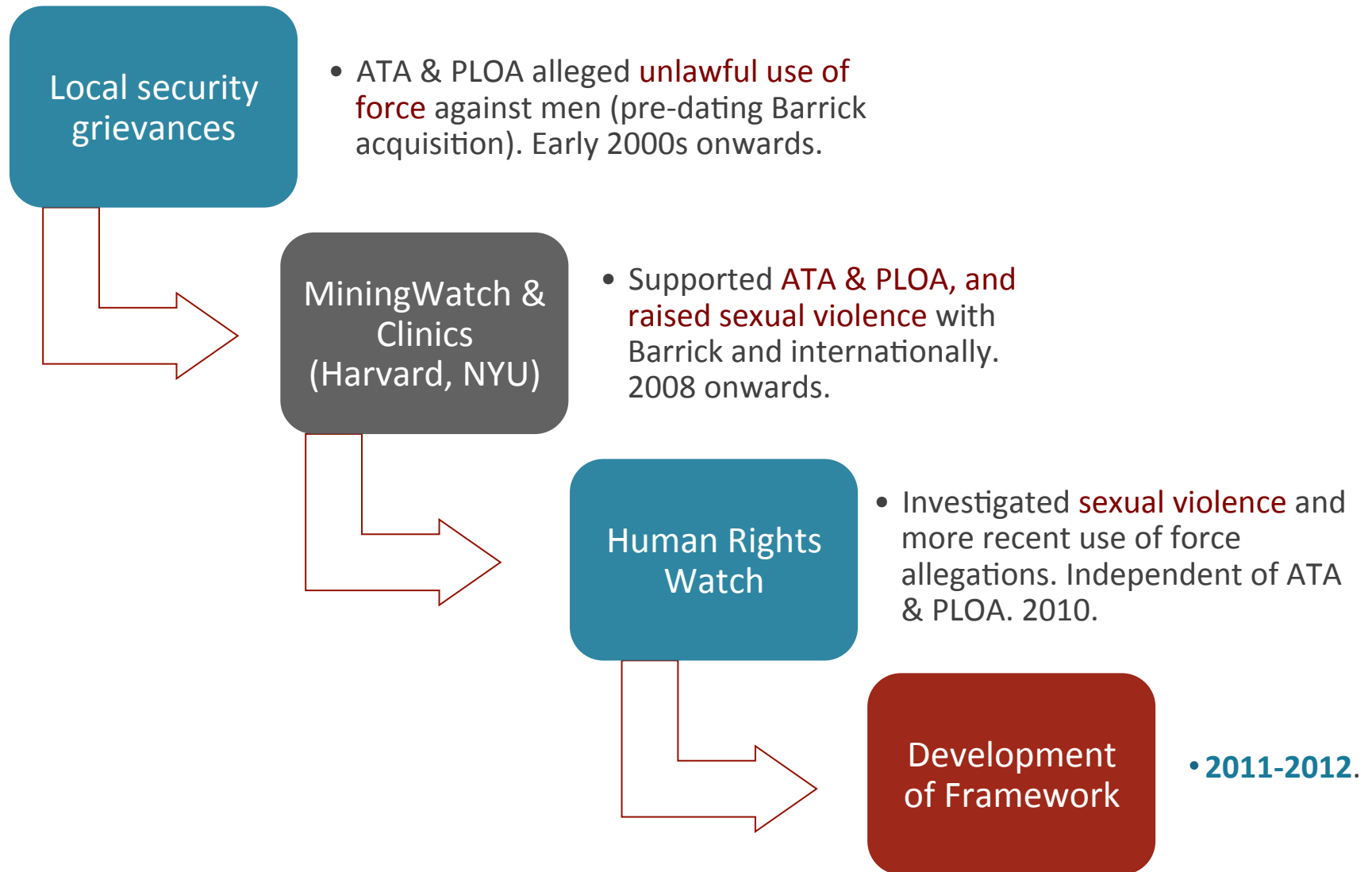
Pongera

Ethnic tension;
antagonistic
local
organizations
(ATA and PLOA).

Rights issues

Rule of law;
patriarchal;
high gender-
based violence.

INTRODUCTION TO THE FRAMEWORK: ALLEGATIONS OF SEXUAL VIOLENCE



INTRODUCTION TO THE FRAMEWORK: OVERVIEW OF OPERATIONS

OGM for sexual violence + broader OGM (beyond assessment)

Independent body (PRFA),
run by prominent women's
leaders.

Dialogue; no evidence;
appeal process.

Remedies determined from
range; benchmarked against
local awards (K20-25,000).

October 2012 to March 2015

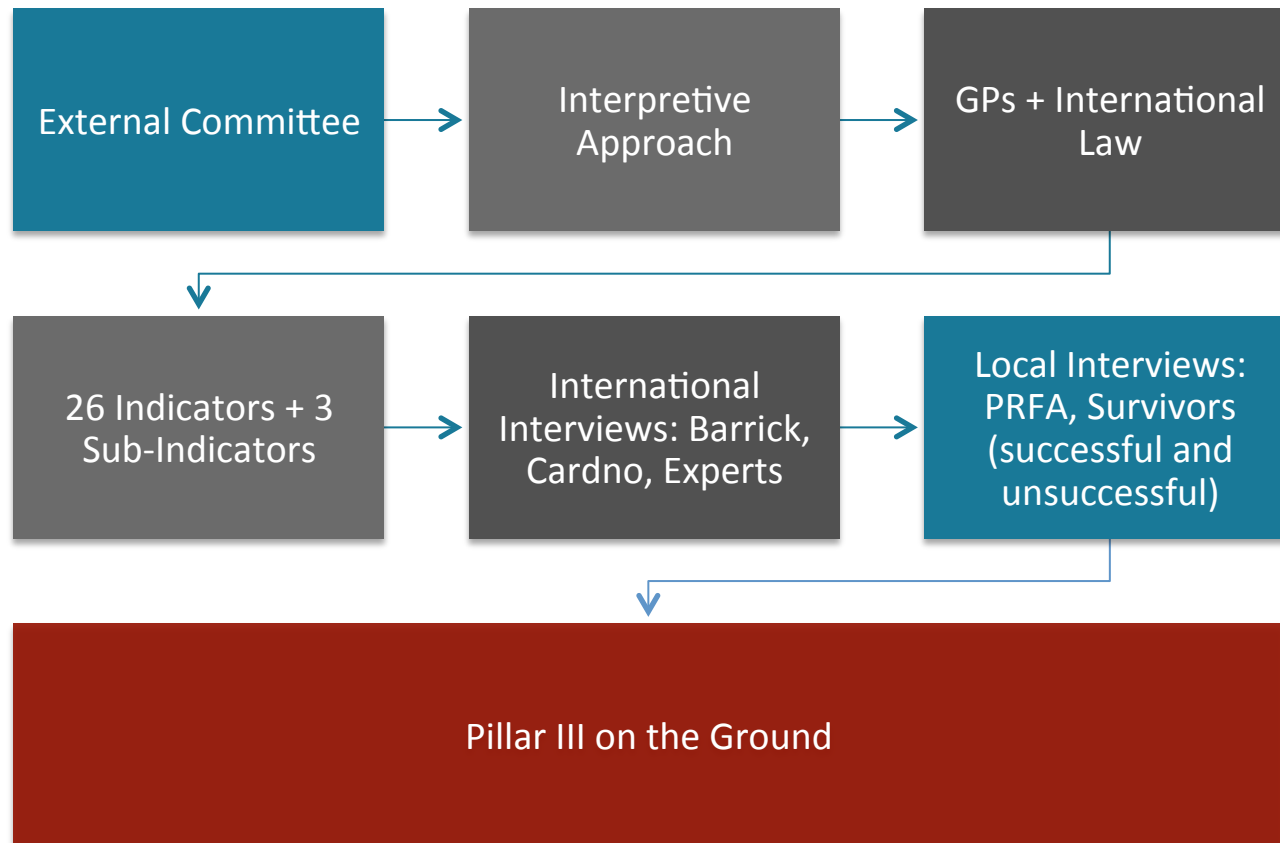
253 Claims.

137 Eligible; 119
Resolved; 11 Settled; 7
Discontinued.

Average award K23,630 +
K30,000*
(*following settlement).

INTRODUCTION TO ASSESSMENT: PURPOSE & METHOD

- Barrick sought independent, public assessment that would be **source of learning** regarding Guiding Principles-aligned OGMs.
- Structured to **minimize discretion and answer “why?”**.



SUMMARY OF ASSESSMENT FINDINGS

“The Framework was conceived with **sincere and considered commitment to the Guiding Principles**. Barrick’s design should be lauded for its rare ambition and meticulous attention to claimants’ rights. But **implementation errors compromised the Framework’s actual performance**. Claimants were thus exposed to a process which failed adequately to protect them and which they did not understand. In the end, successful claimants received **remedies that were equitable**, even generous, under international law. Nevertheless, many were left **disaffected, stigmatized and abused**. Responsibility for these results is not the Framework’s alone. It should be **shared by international stakeholders** whose errors of judgment and unwillingness to engage in good faith exacted a great toll on claimants.” (Report at 2.)

SIX (BROADLY APPLICABLE) LESSONS FROM THE FRAMEWORK

1. OGM
institutional
limitations

2. Butterfly effect

3. Do not rely on
confidentiality

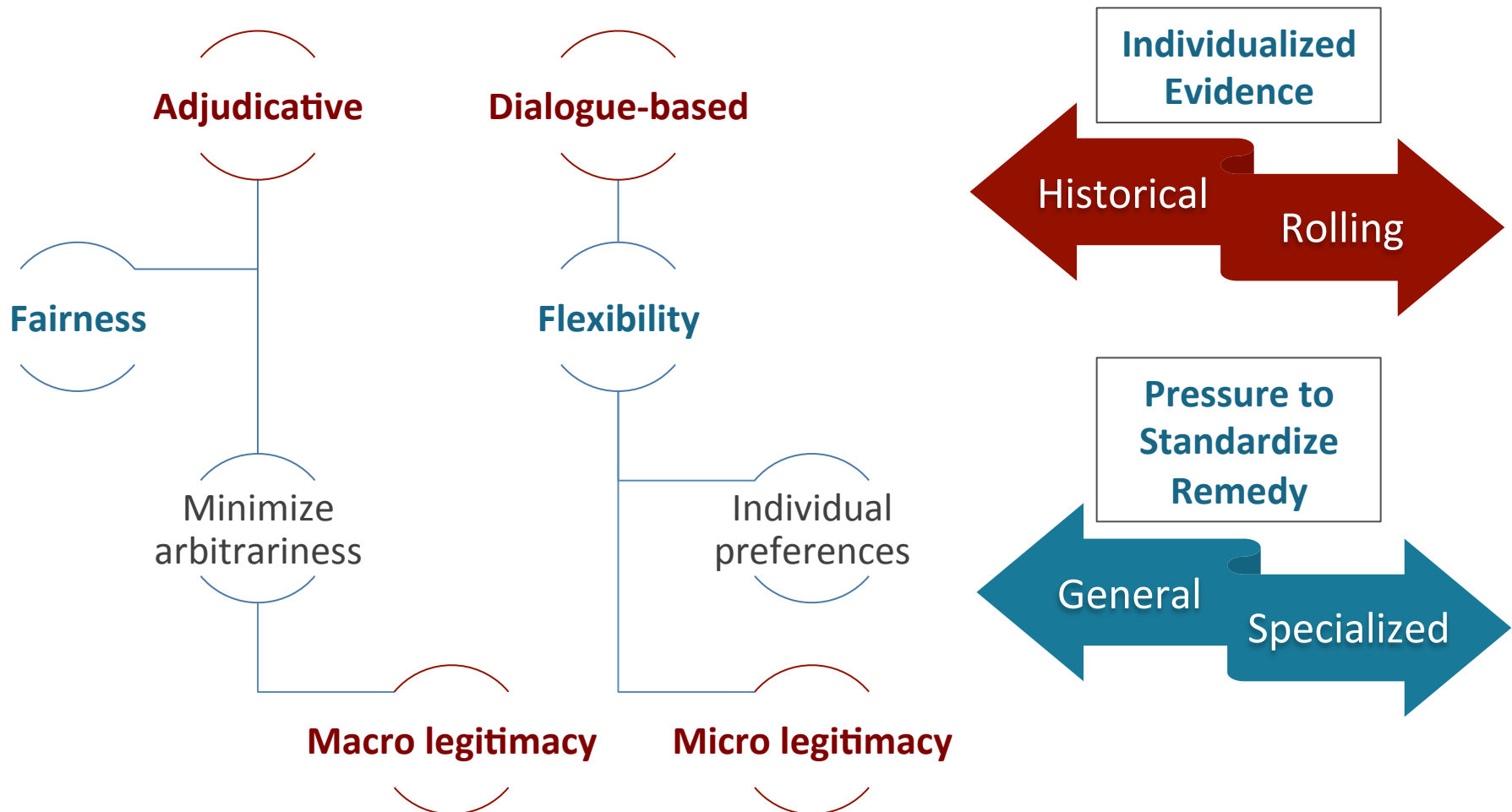
4. Be ready to
report

5. Consistently
monitor
implementation

6. Trust
stakeholder
engagement

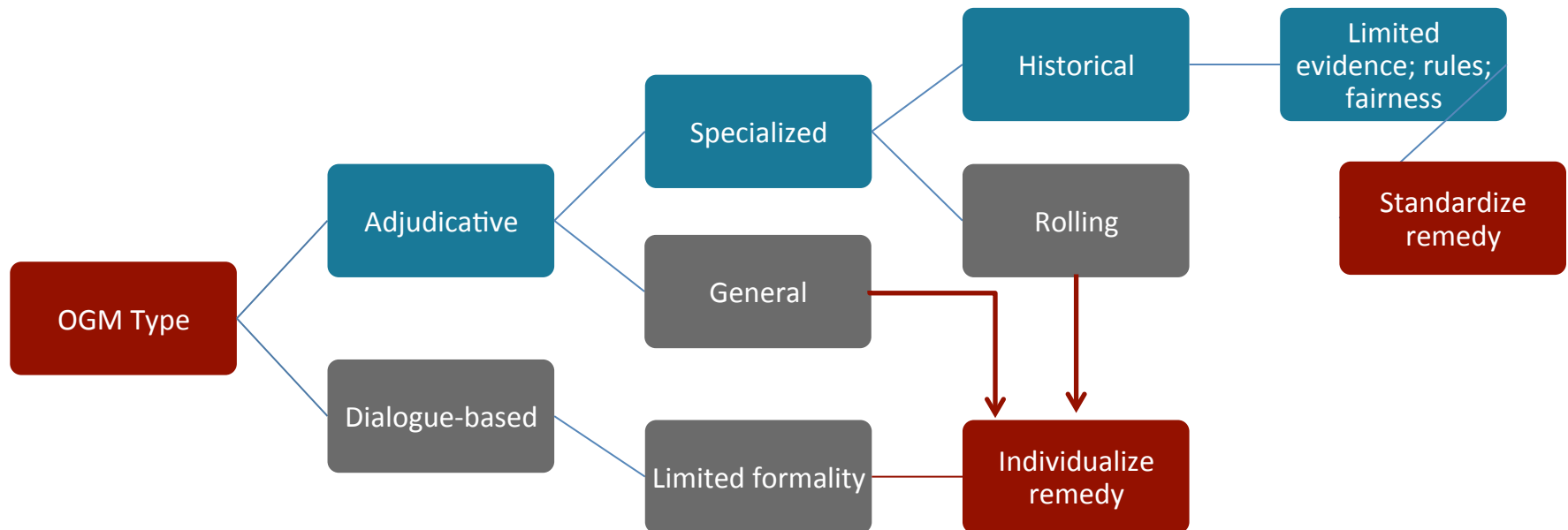
LESSON 1: RECOGNIZE INSTITUTIONAL LIMITS

- **OGMs can take many different forms.** Each has its own limitations and benefits.



LESSON 1: RECOGNIZE INSTITUTIONAL LIMITS

- Framework's structure as adjudicative, historical and specialized OGM severely **limited possibility for individualized remedy**.



LESSON 2: RECOGNIZE THE BUTTERFLY EFFECT

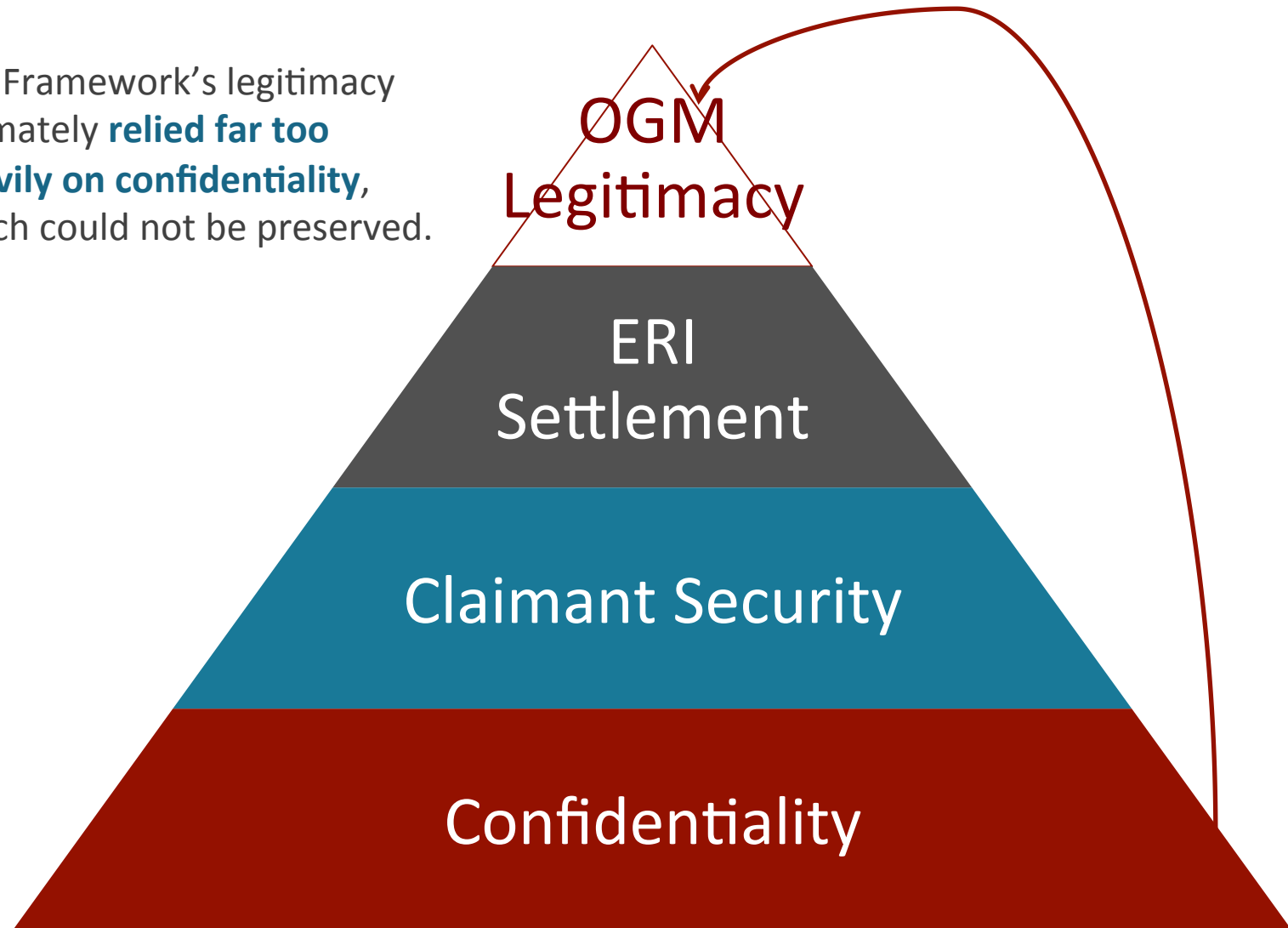
- **Discrete decisions can have diffuse effects.**
- Design and implementation decisions **should not be considered in isolation** with reference to the Guiding Principles.

Two GP-justifiable decisions with adverse effects



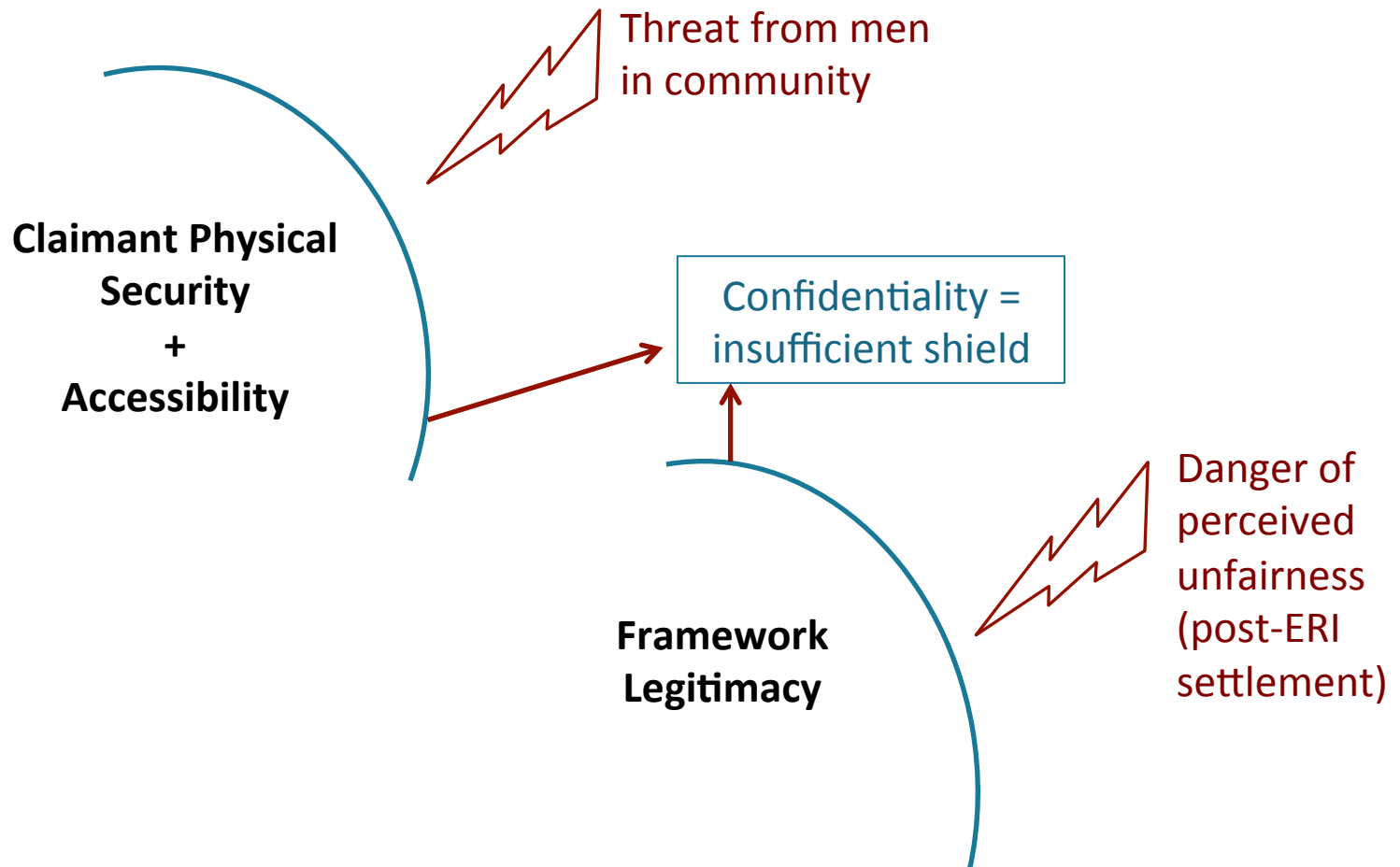
LESSON 3: DO NOT COUNT ON CONFIDENTIALITY

The Framework's legitimacy ultimately **relied far too heavily on confidentiality**, which could not be preserved.



LESSON 3: DO NOT COUNT ON CONFIDENTIALITY

- If no confidentiality, would have had to find **another way to protect claimant security and Framework legitimacy**.



LESSON 4: DOCUMENT ALL CRITICAL STEPS

This type of assessment will become increasingly expected

Pre-Framework
Stakeholder Engagement

- Need to be able to determine whether it was **conducted in good faith**, with comments and concerns incorporated.

Decisions on Eligibility

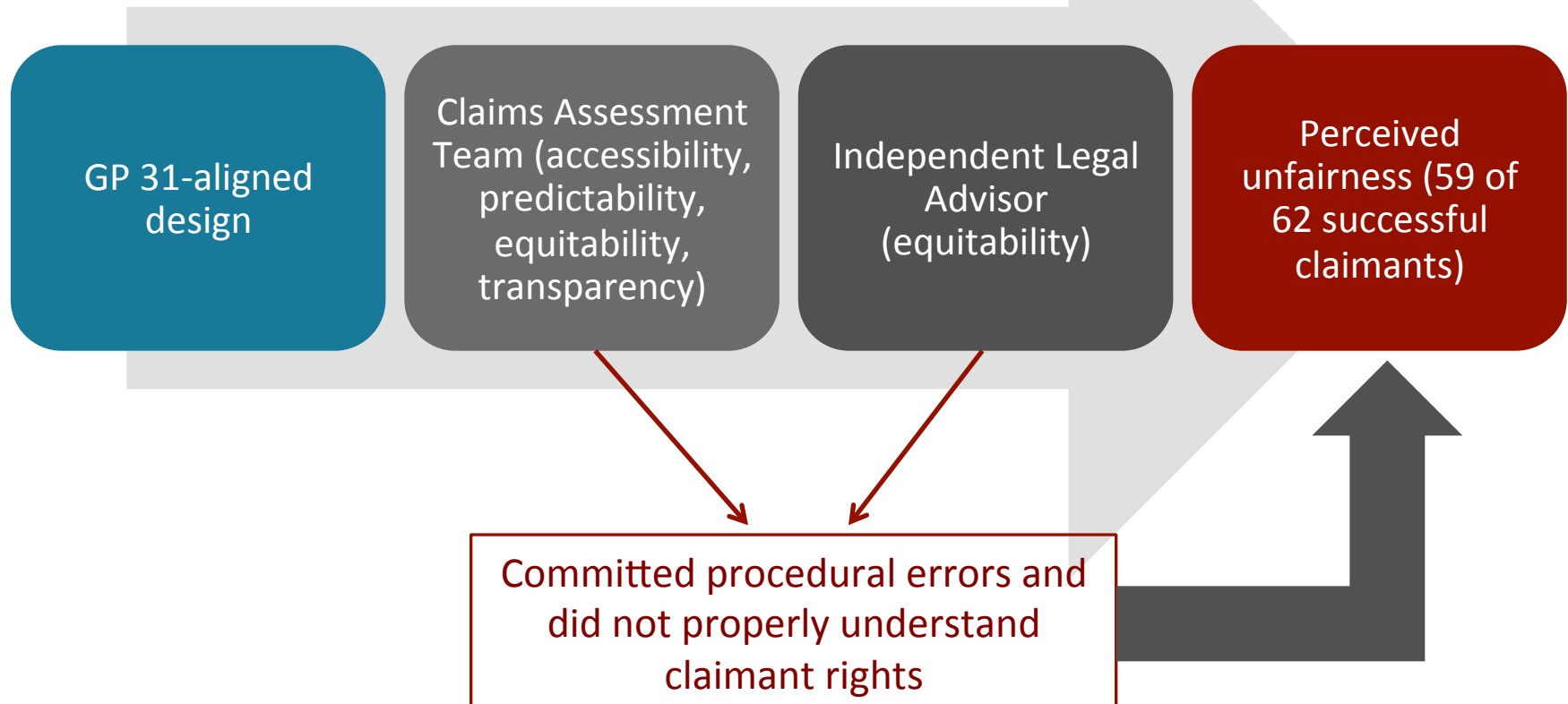
- Independent observers need to be able to determine why certain claims were **not awarded remedies**.

Protections for Equitability

- Will need to be particularly vigilant about **efforts to ensure equitability**, particularly with a waiver.

LESSON 5: CONSISTENTLY MONITOR IMPLEMENTATION

- Even the perfect design is **not self-executing**.
- The more **complex the procedure**, the more **severe the rights impacts**, the more important it is to **ensure effective implementation**.



LESSON 6: TRUST THE STAKEHOLDER ENGAGEMENT

Pre-Framework Engagement



Post-Framework Pressure



LESSON 6: TRUST THE STAKEHOLDER ENGAGEMENT

- Contrary to its better judgment, **PRFA bowed to stakeholder pressure**. Ultimately, bulk of all awards in cash (bank transfer).

Cash adopted

Standardized remedy

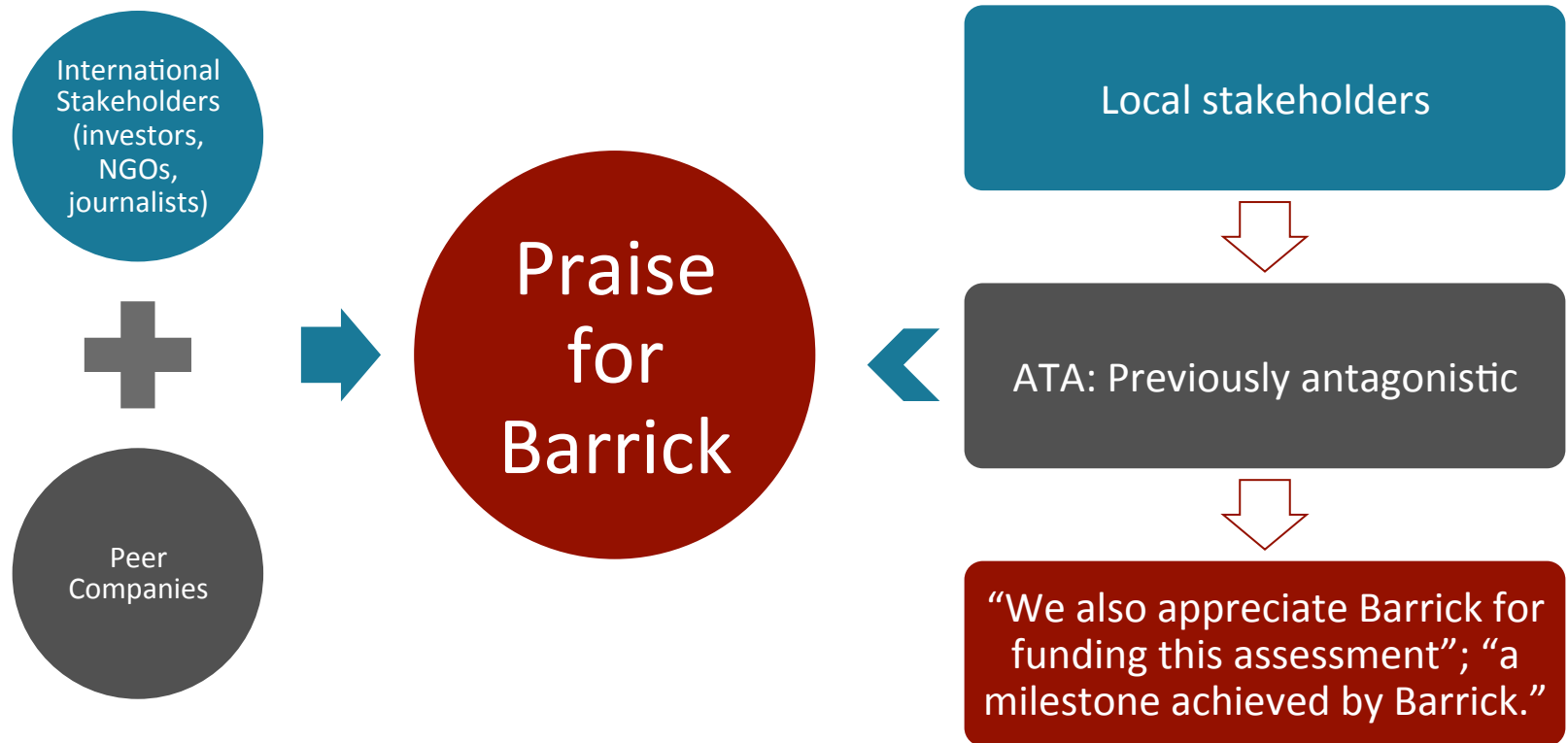
No empowerment

Claimants abused;
cash taken by
families

**Successful claimants often in worse position
—financially and socially—than before
approaching Framework**

ASSESSMENT LESSONS FOR STAKEHOLDER ENGAGEMENT

- Two lessons from post-Assessment stakeholder response:
 1. Transparent **self-criticism can disarm.**
 2. Rigorous commitment to Guiding Principles can provide **powerful framework for productive dialogue.**



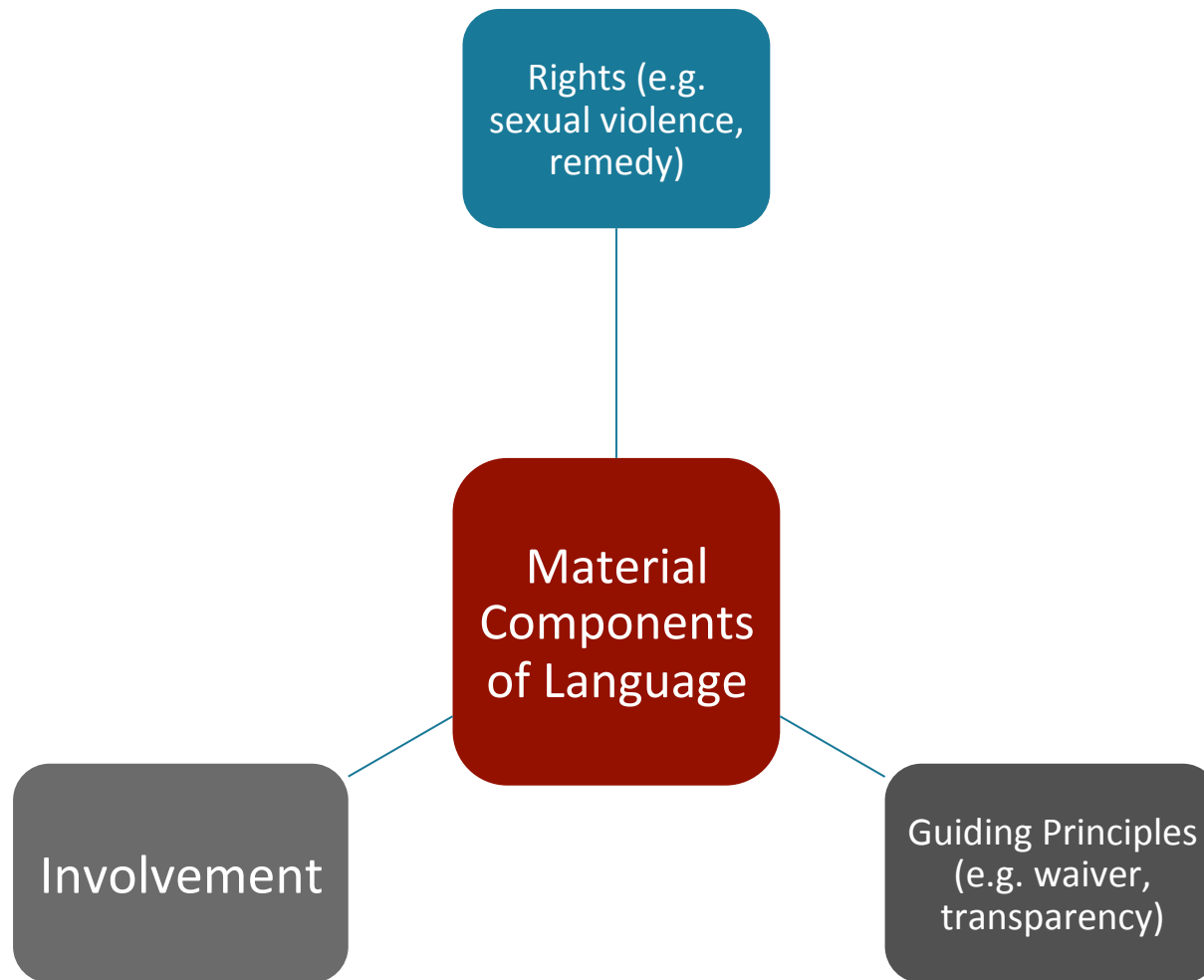
ASSESSMENT LESSONS FOR STAKEHOLDER ENGAGEMENT

- The Guiding Principles, properly interpreted, provide a **framework for constructive dialogue with critical stakeholders** (enodorights.com/blog).



ASSESSMENT LESSONS FOR STAKEHOLDER ENGAGEMENT

- Critical to **master the language of business and human rights** for effective engagement.



CONTACT INFORMATION AND FURTHER READING

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