

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

CV-22-00690649-0000

SOPHIA MATIKO JOHN, IN HER PERSONAL CAPACITY AND AS LITIGATION GUARDIAN FOR HER MINOR CHILD, KELVIN; ANACRETUS MARINGO GIMANWA; ESTA GEORGE RANGE, IN HER PERSONAL CAPACITY AND AS LITIGATION GUARDIAN FOR HER MINOR CHILDREN JOSEPH, GODFREY, FILEMON AND REBEKA; ELIZABETH MATIKO IRONDO; NEEMA STEPHEN JOHN, IN HER PERSONAL CAPACITY AND AS LITIGATION GUARDIAN FOR HER MINOR CHILDREN JOHN, MIRIAM, ESTA AND TIMOTHY; MASWI MARWA MOHABE; DOTTO WILLIAM ITAMA, IN HER PERSONAL CAPACITY AND AS LITIGATION GUARDIAN FOR HER MINOR CHILD CHRISTINA; LYIMO ITAMA MACHELA; ITAMA MACHELA MAX; CHARLES DANIEL NYAKINA; BHOKE HAGALE MARO; DANIEL NYAKINA GHATI; DICKSON JULIUS SISE; SIBORA MARWA MWITA; EMMANUEL NYAKORENGA MBURI; RYOBA ELIAS KEBWE; PASCO MAREMBELA MWITA; NYAHELI MARWA NYAKORENGA; CHRISTOPHER JHOMU MAKENDE; RANGE MWITA RANGE; AND FREDY CHACHA WAMBURA LEMA

Plaintiffs

- and -

BARRICK GOLD CORPORATION

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date 11/23/2022 Issued by A. Martyn
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto, Ontario
M5G 1R7

3rd floor
MAA

TO: BARRICK GOLD CORPORATION
161 Bay Street, Suite 3700
Toronto, Ontario
M5J 2S1

CLAIM

1. The Plaintiffs claim:
 - (a) General, aggravated, and special damages in an amount to be determined at trial;
 - (b) Punitive and exemplary damages in an amount to be determined at trial;
 - (c) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - (d) The costs of this action, including HST; and
 - (e) Such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. Barrick Gold Corporation (“Barrick”) is the second largest gold mining company in the world and is headquartered in Toronto, Ontario. Since 2006, Barrick has, through subsidiaries, owned the North Mara Mine, a large open pit and underground gold mine, situated in the middle of seven villages in one of the poorest regions of Tanzania (“the “North Mara Mine”, “North Mara”, or the “Mine”).
3. The region is inhabited primarily by the indigenous Kurya people who historically relied on small-scale non-industrial mining for their livelihood. Since the beginning of commercial exploitation of the North Mara Mine, many of them have lost their principal source of income.
4. Members of the local communities have resorted to entering onto the waste rock areas of the North Mara Mine to search for and retrieve rocks containing trace amounts of gold. Despite

the fact that the rocks are waste product and have little or no commercial value to Barrick, security at the North Mara Mine has a history of responding with violence against community members who attempt to secure a subsistence livelihood from the mine's waste rock. The violence has extended to bystanders in the local community as well as people outside the mine site who are merely suspected of having entered the waste rock areas.

5. The matter of locals entering onto the waste rock areas has been a constant, long-standing and well-known issue throughout Barrick's history of ownership of the mine. Since Barrick acquired the mine in 2006, the corporate response to the issue has been consistently disproportionate and violent, and has led to the deaths of at least 77 people.

6. Throughout its 16 year ownership of the mine, Barrick's senior management and board of directors have directed the corporate response to the waste rock issue.

7. In September 2019, Barrick's senior management in Toronto took direct control over the operation of the North Mara Mine including responsibility for security and human rights matters and in particular, the corporate response to the issue of local citizens entering the waste rock dumps.

8. Barrick's board of directors and senior management have made numerous public commitments regarding security and human rights throughout its global operations and specifically at North Mara. Through these commitments, Barrick has retained for itself the ultimate responsibility for ensuring human rights are respected at North Mara, and for ensuring that the security practices and arrangements at North Mara do not lead to human rights violations.

9. Barrick's stated corporate policy is that it adheres to numerous international standards on human rights and security and that it has zero tolerance for human rights abuses at any of its worldwide operations, including North Mara. Despite these commitments, Barrick's security strategy at North Mara, particularly since it took over operational control in September 2019, has led directly to extensive human rights abuses including the deaths of at least five local citizens in just the last two years as well as the shooting and beating of many more.

10. Barrick's security strategy for the North Mara mine effectively converts the Tanzanian police assigned to operate in and around the mine (the "Mine Police") into a private and heavily armed security force for the mine and involves:

- (a) Maintaining agreements with the notoriously corrupt and violent Tanzanian police which, include:
 - (i) Direct payments to individual officers of the Mine Police;
 - (ii) Provision of accommodation and meals for the Mine Police; and
 - (iii) Provision of vehicles and fuel;
- (b) Directing or permitting Barrick private security personnel to work in close coordination with the Mine Police, including by:
 - (i) Providing the Mine Police direct access to the mine's extensive network of CCTV monitors and footage, or in the alternative, communicating to the Mine Police the contents of the mine's CCTV coverage;
 - (ii) Operating a joint command centre on the mine site;

- (iii) Joint planning at regular operational meetings;
 - (iv) Using a shared radio channel for communication;
 - (v) Allowing the Mine Police virtually unfettered access to operate on the mine site and on mine-owned roads; and
 - (vi) Maintaining close communication during regular policing operations and regarding specific incidents as they occur;
- (c) Exercising a high degree of influence and de facto control over the Mine Police and their actions.

11. Despite the fact that agreements with the Mine Police require adherence to international human rights standards and policing standards, including rules on the use of force, the Mine Police have a well-documented history of using excessive force and committing human rights abuses. The propensity of the Mine Police to commit abuses is notorious within Barrick and has been publicly reported by media and civil society organizations for many years. In addition, Barrick senior management have received frequent internal reports on incidents of violence committed by the Mine Police.

12. Notwithstanding this knowledge, since Barrick assumed direct control over the North Mara Mine in September 2019, it has increased reliance on the use of the heavily armed Mine Police to deal with members of the local community who enter or are suspected of entering the waste rock areas, thereby increasing the risk of harm to members of the local community including those who did not go to the waste rock dumps.

13. These claims arise from acts of extreme violence committed by the Mine Police in the service of Barrick in and around the North Mara Mine. Barrick is directly involved and responsible for these acts because Barrick developed and implemented a corporate security strategy which violates international human rights and security standards, and because Barrick failed to properly oversee the operation of that security strategy.

14. The acts of violence which are the subject of this claim include the killings of five local residents, Matiko John Mwita Gairigi, Irondo Matiko Irondo, Isack Maswi Marwa, William Itama Machera Max, and Emmanuel Daniel Nyakina, and numerous beatings and shootings. Barrick is liable for these harms.

15. The Plaintiffs bring this action for damages against Barrick under the laws of Ontario and under customary international law as incorporated into the law of Canada. In particular, the Plaintiffs plead the following causes of action against Barrick:

- (a) Negligence for Barrick's reckless and negligent creation, direction, implementation and supervision of the security strategy and human rights policy at the North Mara mine that has led to the killings of five local residents, and injuries to nine others; and
- (b) Complicity in the violation of customary international law, in particular, complicity in the torture of five local residents, and the extrajudicial killings of five others.

PARTIES

Plaintiffs

16. Matiko John Mwita Gairigi was a Tanzanian national who was shot and killed by the Mine Police. This claim is brought by his widow Sophia Matiko John in her personal capacity and as Litigation Guardian for their minor child, Kelvin, and by Anacretus Maringo Gimanza as a guardian parent of Matiko who during Matiko's childhood demonstrated a settled intention to treat Matiko as a child of his family.

17. Irondo Matiko Irondo was a Tanzanian national who was shot and killed by the Mine Police. This claim is brought by his widow Esta George Range in her personal capacity and as Litigation Guardian for their minor children Joseph, Godfrey, Filemon and Rebeka, and by his mother Elizabeth Matiko Irondo.

18. Isack Maswi Marwa was a Tanzanian national who was killed by the Mine Police. This claim is brought by his widow Neema Stephen John in her personal capacity and as Litigation Guardian for their minor children John, Miriam, Esta and Timothy, and by his father, Maswi Marwa Mohabe.

19. William Itama Machera Max was a Tanzanian national who was shot and killed by the Mine Police. This claim is brought by his widow Dotto William Itama in her personal capacity and as Litigation Guardian for their minor child Christina, and by his parents, Lyimo Itama Machelo and Itama Machera Max.

20. Emmanuel Daniel Nyakina was a Tanzanian national who was shot and killed by the Mine Police. This claim is brought by his parents Bhoke Hagale Maro and Daniel Nyakina Ghati, and his brother Charles Daniel Nyakina.

21. Dickson Julius Sise was beaten and shot on different occasions by the Mine Police, and suffered serious injuries as a result.
22. Sibora Marwa Mwita was beaten by the Mine Police, and suffered serious injuries as a result.
23. Emmanuel Nyakorenga Mburi was beaten under the direction of the Mine Police, and suffered serious injuries as a result.
24. Ryoba Elias Kebwe was beaten by the Mine Police, and suffered serious injuries as a result.
25. Pasco Marembela Mwita was beaten by the Mine Police, and suffered serious injuries as a result.
26. Nyaheli Marwa Nyakorenga was shot by the Mine Police, and suffered serious injuries as a result.
27. Christopher Jhomu Makende was shot by the Mine Police, and suffered serious injuries as a result.
28. Range Mwita Range was shot by the Mine Police, and suffered serious injuries as a result.
29. Fredy Chacha Wambura Lema was shot by the Mine Police, and suffered serious injuries as a result.
30. Each of the plaintiffs above is a Tanzanian national and resident and has an address for service care of Waddell Phillips PC, 36 Toronto Street, Suite 1120, Toronto, ON, M5C 2C5.

Defendant

31. The Defendant Barrick Gold Corporation is a publicly traded company whose global headquarters are in Toronto, and whose corporate head office is located in Toronto. Barrick is incorporated under the laws of British Columbia and is listed on the Toronto Stock Exchange.

32. As detailed below, senior management and the board of directors of Barrick exercise a high degree of control and authority over Barrick's global operations including specifically on matters of human rights and security.

33. Barrick's global corporate human rights and security policies are described as fundamental to the company's operations in filings issued under Canadian securities laws.

34. Unless stated otherwise, all references to "Barrick" in this Statement of Claim are to the parent company, Barrick Gold Corporation.

35. The Plaintiffs propose that this action be tried at the City of Toronto.

MATERIAL FACTS

Overview of the North Mara Mine

36. The North Mara Mine is located in northern Tanzania approximately 100 kilometres east of Lake Victoria and 20 kilometres south of the border with Kenya in a region inhabited by the Kurya indigenous people.

37. Historically, the area had been mined by local residents for generations before any commercial production began, and many small-scale pits continue to operate in the community.

38. Commercial exploitation of the mine began in 2002. In 2006, Barrick acquired the mine as a result of its acquisition of Placer Dome Inc.

39. The North Mara Mine consists of two main deposits: Nyabirama, an open pit mine, and Gokona, an underground mine. The two facilities are separated by approximately 5 to 7 kilometres and linked by a mine-owned road that runs by and through the neighbouring communities.

40. The two facilities occupy in excess of 10 square kilometres in the middle of at least seven villages. Both sites are mostly surrounded by walls. The Nyabirama site is encircled outside the wall by a road which is the property of the North Mara Mine. Members of the local community are only permitted to use the road for limited hours during the day. Signs posted on the wall indicate that “trespassers” using the road outside those hours will be arrested. Hundreds of houses, as well as schools and other facilities, are situated in very close proximity to the mine, including some homes that abut mine-owned roads and are mere metres away from mine walls. Over 10,000 homes have been displaced as a result of the development of the mine.

41. Waste rock containing trace amounts of gold is deposited at various locations around Nyabirama and Gokona in close proximity to residential areas. Members of the community routinely enter into the waste rock areas to search for and retrieve rocks with trace amounts of gold. The rocks are later processed and the small amount of gold recovered is sold to provide a modest means of income as there are limited work opportunities in the area for residents.

42. At all material times, Barrick has responded to the issue of local residents on the mine’s waste rock dumps by pursuing and overseeing a strategy that has led to violence and killings of local people.

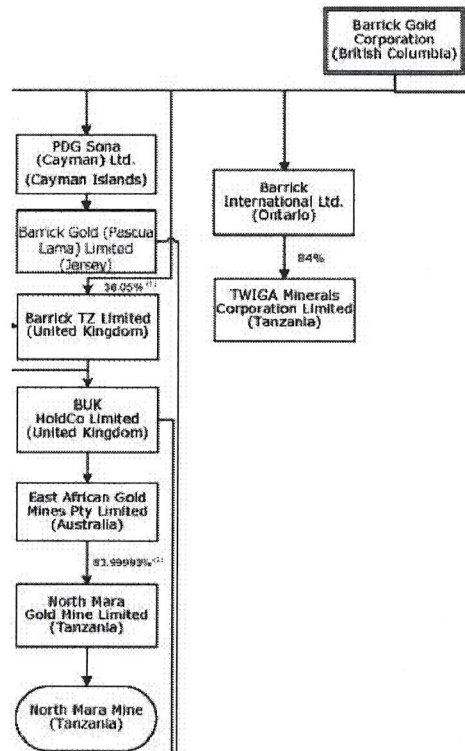
43. In particular, Barrick has caused to be created, approved and supervised security agreements with Tanzanian police which effectively convert Tanzanian police into the mine's private and heavily armed security force. Barrick has pursued this security strategy with full knowledge of a long history of the Mine Police using excessive force against local members of the community including those who enter the waste rock areas, as described below.

Barrick's Operational Control of the North Mara Mine

44. At all material times, Barrick owned a controlling interest in the North Mara Mine through a series of wholly or majority owned subsidiaries including North Mara Gold Mine Limited ("NMGML").

45. In September 2019, Barrick removed a publicly traded subsidiary, Acacia, from the chain of ownership and assumed direct control over the operation of the North Mara Mine including the responsibility for security and human rights matters and in particular, the corporate response to the issue of local citizens entering the waste rock dumps.

46. The current ownership structure of the North Mara mine is as set out in the following chart:



47. Since September 2019, Barrick has made repeated statements to investors and the public that it exercises operational control over the North Mara Mine, including statements that:

- (a) The Board of Barrick supervises the management of “legacy” issues in Tanzania;
- (b) As of 2021, Barrick continued to make significant progress in dealing with “legacy” social and environmental issues;
- (c) By March 2022, Barrick had “fixed” its Tanzanian mines which had been a “mess” when Barrick took them over;

- (d) Since assuming operational control over the North Mara Mine, Barrick has been engaging with local communities to restore the mine's social license to operate; and
- (e) Barrick has "regained" the social license to operate that was lost by the previous managers of the Tanzanian mines.

48. Barrick CEO Mark Bristow has been directly involved in matters relating to the operation of the North Mara Mine. In July 2021, he met with the President of Tanzania to discuss Barrick's operations in Tanzania.

49. In March 2022 and July 2022, Bristow visited the North Mara Mine and met with numerous politicians and community leaders in areas around the mine site. During the latter trip, Bristow was involved in decisions on local issues, including promises to make repairs to a road near the mine.

50. Notwithstanding that Barrick holds its interest in NMGML through a series of subsidiaries, at all material times, Barrick in practice bypassed the formal corporate structure and issued directions to and exercised direct control over NMGML and its managers.

51. At all material times, Barrick set and/or approved all important policies for the development and operation of the North Mara Mine, including financial, technical, human rights, sustainability, and security policies.

52. At all material times, Barrick was involved in all aspects of the mine's operations and exercised control over day-to-day operations of the mine and NMGML including:

- (a) Directing and supervising NMGML management;

- (b) Hiring, promotion and termination of NMGML management;
- (c) Selection and hiring of contractors, including security personnel;
- (d) Implementation and monitoring of security policies;
- (e) Implementation of the terms of an MOU or MOUs with the Tanzanian police; and
- (f) Development of the mine.

53. At all material times, Barrick possessed superior knowledge to its subsidiaries on matters of security, human rights, risk management, and corporate social responsibility and brought this knowledge to bear at the North Mara Mine.

54. At all material times, Barrick retained control over human rights and security policies applicable at North Mara, as described below.

Barrick's Control over Human Rights and Security

55. Barrick's stated corporate policy is that respect for human rights is one of the key pillars of Barrick's sustainability vision and strategy. Barrick states that it has zero tolerance for human rights violations wherever it operates. The bedrock of Barrick's sustainability strategy is strong governance by the Board of Directors and senior management of the parent company over all operations.

56. Barrick implements its sustainability strategy by "blending top-down accountability with bottom-up responsibility". A Group Sustainability Executive of the parent company provides

oversight and direction to ensure alignment by all subsidiaries, including NMGML, with the strategic priorities of Barrick's overall business.

57. At all material times, Barrick had in place a system of corporate governance, internal controls, and disclosure procedures that applied to its subsidiaries and joint ventures including the North Mara Mine. These systems are coordinated by the parent company's senior management and overseen by its board of directors, and are designed to monitor the activities at, and receive timely reports from, all subsidiaries and joint ventures including the North Mara Mine.

58. Barrick also maintains specific corporate structures and policies to implement and manage human rights, security, and corporate social responsibility policies at all its mines including the North Mara Mine. Specifically:

- (a) Barrick's CEO's responsibilities include directing and leading all aspects of Barrick's social license to operate across its asset portfolio, including stakeholder engagement on community needs;
- (b) Barrick has an Environmental & Social Oversight Committee ("E&S Committee") to connect site-level ownership for sustainability with the Group leadership of the parent company;
- (c) Barrick's CEO reviews the reports of the E&S Committee with the Board's Environmental, Social, Governance & Nominating Committee ("ESG & Nominating Committee") to oversee the policies and Barrick's performance against key environmental, health and safety, and community development metrics;

- (d) The ESG & Nominating Committee assists the Board in overseeing the Company's policies and performance for its environmental, health and safety, corporate social responsibility and human rights programs;
- (e) The ESG & Nominating Committee monitors the management of significant matters affecting Barrick's license to operate mines, including environmental, workplace, and social issues;
- (f) Barrick ties incentive compensation for senior leaders of the parent company to the achievement of company-wide sustainability targets including community relations and human rights, with performance accounting for 25% of the long-term incentive awards for senior leaders;
- (g) Overarching responsibility for implementation of the Voluntary Principles on Security and Human Rights falls to Barrick's Group Sustainability Executive and Barrick's Senior Vice President of Business Assurance, Risk and Business Integrity;
- (h) Updates to standards and procedures regarding the Voluntary Principles are discussed with the Barrick Executive Committee, including the Regional Chief Operating Officers.

59. At all material times, Barrick implemented a detailed human rights policy across its global operations, including the North Mara Mine. The Human Rights Policy includes the following:

- (a) Barrick will respect the human rights of all individuals impacted by Barrick's operations, including employees, contractors and external stakeholders;

- (b) Barrick will seek to avoid causing or contributing to human rights violations wherever Barrick operates and to facilitate access to remedy;
- (c) Barrick accepts its responsibility to respect human rights;
- (d) Barrick considers human rights to be all internationally recognized human rights in the International Bill of Human Rights;
- (e) Barrick is committed to and will always strive to act in accordance with the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the Voluntary Principles on Security and Human Rights;
- (f) Barrick does not tolerate violations of human rights committed by its employees, affiliates, or any third parties acting on Barrick's behalf or related to any aspect of one of Barrick's operations;
- (g) In Barrick's relationships with host governments, contractors, and third-party service providers, Barrick will do its utmost to avoid being complicit in adverse human rights impacts, including benefitting from the human rights violations caused by others;
- (h) Barrick monitors and tries to continuously improve its human rights performance;
- (i) Barrick has a Conflict-Free Gold Policy that commits to implement the World Gold Council's Conflict-Free Gold Standard;

- (j) Barrick has a Sustainable Development Policy and Social Performance Policy that pledges reporting on performance against the GRI Standards and supplemented by other relevant frameworks where appropriate;
- (k) Barrick utilizes the principles of the UN Global Compact, and the principles are aligned with and integrated into Barrick's strategies, policies and procedures, as well as Barrick's annual Sustainability Scorecard;
- (l) Barrick follows the Voluntary Principles on Security and Human Rights in its dealings with public and private security providers, local communities and potential victims of human rights violations. Such human rights violations include murder, extrajudicial killing, and physical abuse such as torture, beatings, rape, assault, kidnapping, or attacking peaceful lawful protestors;
- (m) Employees complicit in violations will be terminated; and
- (n) Barrick will provide training, carry out human rights due diligence for significant modifications to existing operations, require third party providers to perform reasonable due diligence, maintain a grievance mechanism, and respect indigenous peoples.

60. Pursuant to the UN Guiding Principles on Business and Human Rights, Barrick assumed an organizational responsibility to:

- (a) Comply with all applicable laws and respect internationally recognized human rights, regardless of where it operates;

- (b) Implement a human rights policy that is approved at the most senior level of the business enterprise and is reflected in operational policies and procedures necessary to embed it throughout the business enterprise;
- (c) Identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships;
- (d) Integrate the findings from these assessments across relevant internal functions and processes, and take appropriate action;
- (e) Provide for or cooperate in the remediation of any adverse impacts through legitimate processes; and
- (f) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements.

61. Pursuant to the Voluntary Principles on Security and Human Rights, Barrick assumed an organizational responsibility to:

- (a) Review the background of security providers engaged at its mines, particularly with regard to the use of excessive force;
- (b) Consider the available human rights records of public security forces, paramilitaries, and local and national law enforcement, as well as the reputation of private security;

- (c) Consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses;
- (d) Ensure that individuals credibly implicated in human rights abuses do not provide security services for the company;
- (e) Ensure that no security provider violates the rights of individuals while exercising the right to freedom of association and peaceful assembly, or other related rights as recognized by the Universal Declaration of Human Rights;
- (f) Ensure that security providers act in a lawful manner and observe the policies of the company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; and emerging best practices developed by industry, civil society, and governments;
- (g) Ensure that in providing equipment to public security forces, the company has taken all appropriate and lawful measures to mitigate any foreseeable negative consequences, including human rights abuses and violations of international humanitarian law;
- (h) Ensure that security providers provide only preventative and defensive services and do not engage in activities exclusively the responsibility of state military or law enforcement authorities; and
- (i) Terminate the relationship where there is credible evidence of unlawful or abusive behaviour by security personnel.

62. Pursuant to the Conflict-Free Gold Policy of the World Gold Council, Barrick committed to producing gold in a manner that does not cause, support or benefit unlawful armed conflict or contribute to serious human rights abuses or breaches of international law. Barrick also committed to:

- (a) Aligning implementation of the Conflict-Free Gold policy with full implementation of the company's Human Rights Policy;
- (b) Reporting on conformance with the Conflict-Free Gold standard annually;
- (c) Respecting human rights at its operations and in dealings with stakeholders in accordance with the company's Human Rights Policy;
- (d) Establishing appropriate site management systems, in line with the requirements of the Voluntary Principles on Security and Human Rights, to ensure that those engaged to provide security services to the mine and its employees do not take part in, or support, serious abuses of human rights or breaches of international humanitarian law;
- (e) Establishing appropriate channels for employees, contractors, local communities and other affected stakeholders to engage with the mine and raise concerns, complaints, or grievances; and
- (f) Applying the Conflict-Free Gold Policy to the entire workforce of Barrick and its subsidiaries, including senior executive, financial officers, contractors and members of the Barrick Board of Directors and at all operational mines including North Mara.

63. Barrick has also created supplementary procedures on security matters, including:
- (a) An Arrest and Detention Procedure setting out how to carry out an arrest in a manner that complies with international human rights law and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials;
 - (b) A Procedure for Managing Relationships and Agreements with Public Security (Police/Military) detailing how to best engage with public security to comply with the Voluntary Principles, the US Foreign Corrupt Practices Act and Barrick's Anti-Bribery and Anti-Corruption policies;
 - (c) A Security Code of Conduct setting out the minimum standards for the treatment of others by private security personnel and setting standards for ethical and lawful behaviours by all employees; and
 - (d) A Use of Force Procedure establishing the way force can be used by security personnel to comply with international standards and law.
64. Pursuant to the UN Code of Conduct for Law Enforcement Officials, Barrick committed to ensuring that security personnel at its mines would use force proportionally as necessary to prevent a crime or assist in arresting suspected offenders. Further, Barrick acknowledged that:
- (a) Any use of firearms is considered an extreme measure;

- (b) Firearms can only be used if the suspect is armed and resists or otherwise jeopardizes the lives of others, and other, less extreme measures have not successfully restrained them;
- (c) Every instance of firearm use should be reported; and
- (d) Torture and other cruel, inhuman or degrading punishment is prohibited in all circumstances, even public emergencies or a state of war.

65. Pursuant to the UN Basic Principles on the Use of Force and Firearms, Barrick committed to the following rules of engagement at its mines:

- (a) Security personnel should have a broad range of weapons and ammunition that allow for a differentiated use of force and firearms. This should include use of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons;
- (b) The deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled;
- (c) Security personnel should use non-violent means before resorting to the use of force and firearms;
- (d) Where the lawful use of force and firearms is unavoidable, security personnel shall:

- (i) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (ii) Minimize damage and injury, and respect and preserve human life;
- (iii) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; and
- (iv) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment;
- (e) The intentional use of lethal force is only allowed when unavoidable and to protect life;
- (f) Police must identify themselves as such and give a clear warning of their intent to use firearms with time for the person to respond prior to using the firearm unless very specific circumstances are present; and
- (g) There must be in place an independent process for persons affected by the use of force and firearms and their families in the event of death.

66. The United Nations has published additional Guidance on Less Lethal Weapons in Law Enforcement including the following:

- (a) Irritant projectiles should generally not be fired at an individual. In any event, projectiles should not be fired at the head or face, owing to the risk of death or serious injury from impact trauma; and

- (b) Disorientation or distraction devices, such as pyrotechnic flash-bang grenades, are designed to give a warning or to help facilitate a safe arrest, especially in the course of high-risk operations. The use of pyrotechnic flash-bang grenades directly against a person would be unlawful as it could cause serious burn or blast injuries and, in certain cases, there could even be a risk of fragmentation.

Policing at the North Mara Mine

67. After taking over operational control of the mine in September 2019, Barrick implemented a security strategy that involves agreements with the Tanzanian police through which heavily armed Mine Police are regularly deployed to deal with members of the local community including those who enter into the waste rock areas.

68. In or about September 2020, at the direction of Barrick, senior security managers at North Mara were dismissed and Nguvu Moja Security Services Limited (“Nguvu Moja”), a Tanzanian owned company, was engaged to provide private security management and private security personnel at the mine.

69. The change to Nguvu Moja resulted in significant costs savings to Barrick. At the same time, Barrick introduced a policy which required that the Nguvu Moja security guards be unarmed. As a result, Barrick eliminated the ability of private security guards to use less lethal force and effectively adopted a security system heavily dependent on the Mine Police.

70. Barrick adopted this strategy in spite of the fact that Barrick knew or should have known of a long history of the Mine Police using excessive force in and around the mine.

71. The propensity of the Mine Police to violate international standards of policing and human rights through the use of excessive force has been known to Barrick since at least 2010. In particular, Barrick was aware of:

- (a) A report published by Bloomberg in December 2010 which reported that between 2008 and 2010, seven people had been killed at the mine site and 15 seriously wounded;
- (b) A May 2011 report by the Legal and Human Rights Centre Tanzania describing numerous killings and incidents of excessive use of force by the Mine Police including:
 - (i) 21 members of the local community were killed by the Mine Police and security guards between January 2009 and June 2010; and
 - (ii) On May 16, 2011, five people were shot dead and more than 10 people were injured by the Mine Police;
- (c) A September 2016 report by civil society organizations RAID and MiningWatch Canada documenting 22 killings and 69 severe injuries by security forces at or near the mine between 2014 and 2016;
- (d) A September 22, 2016 article by the Globe and Mail reporting that a Tanzanian government commission had received complaints about 335 cases of abuse by the Mine Police, including 65 deaths and 270 injuries;

- (e) Acacia's 2016 Annual Report that reported that the mine's grievance mechanism had received 30 allegations of excessive force by the Mine Police;
- (f) A 2017 report by the United States Department of State which describes the excessive use of force by Tanzanian police as one of the most significant human rights issues in the country and that "impunity in the police and other security forces... was widespread";
- (g) An article by The Guardian on June 18, 2019, reporting that Acacia acknowledged 32 fatalities between 2014 and 2017 and that 6 involved the Mine Police, and that RAID put the number higher;
- (h) Lawsuits in the courts of England and Wales against Acacia and NMGML which alleged abuses against local civilians through 2018 by, *inter alia*, the Mine Police;
- (i) A 2020 report by the United States Department of State stating that "impunity in police and other security forces ... was widespread";
- (j) A 2021 report by the United States Department of State which describes impunity as a problem in the security forces and refers to public accusations of abuse by police and prison guards using excessive force against detainees; and
- (k) Barrick's own April 2021 presentation reporting "legacy" allegations of human rights violations linked to police and private security forces.

72. Further, Barrick was aware or should have been aware of all incidents of Mine Police violence against members of the local community through internal company reports.

73. Since at least as early as 2010, Barrick has been aware or should have been aware that the local prosecuting authority and judiciary lacked the capacity to hold the Mine Police responsible for human rights abuses.

74. Since at least 2010, Barrick subsidiaries operating the mine prior to Barrick's takeover of operational control in September 2019 had in place a series of Memoranda of Understanding (MOUs) with the Tanzania Police Force relating to the provision of policing services in and around the mine site. The MOUs were approved by Barrick and/or Barrick directed its subsidiaries to enter into the MOUs.

75. Since Barrick assumed operational control of the mine in September 2019, an MOU or MOUs continue to be in place on terms identical to or substantially similar to the previous MOUs.

76. Since assuming operational control of the mine in September 2019, Barrick has directed and controlled the implementation of the terms of all MOUs as well as the mine's relationship with the police.

77. At all material times, Barrick has had effective and practical control over the Mine Police through its control of payments to the Mine Police and other terms of the MOUs.

78. The MOUs include terms which specify the in-kind and financial support paid to the Mine Police, namely:

- (a) Fuel for vehicles solely for use in connection with police activities at or in the immediate area of the mine site;

- (b) Supplemental pay in the form of monetary per diems to specific individual Mine Police officers listed in a roster who have been introduced to the mine's Security Manager;
- (c) Accommodation and meals for the Mine Police on an ad hoc basis with the approval of the mine's Security Manager;
- (d) Extra duty allowances for certain listed officers for overtime, when approved by the company and through payment to the individual officer;
- (e) Medical treatment on site; and
- (f) Funeral expenses for deaths while on duty at the mine site.

79. At times, the Mine Police have requested and received additional payments and benefits which go beyond the terms of the MOUs.

80. The MOUs require the Mine Police to comply with Tanzanian law, the Voluntary Principles on Security and Human Rights, and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and to use only the minimum force necessary to control any violent situation. The Mine Police are permitted to use force only where strictly necessary, and are required to always use the least force necessary to address a security threat, and to use force in a manner proportionate to the threat.

81. The MOUs also prohibit any police officer who has at any time and in any capacity ever been credibly accused, investigated, disciplined or prosecuted for breach of the law or any

regulation governing policing, including any law or regulation related to the use of force, human rights or bribery and corruption from serving at the North Mara Mine.

82. The MOUs also:

- (a) Require the mine Security Manager to conduct regular meetings with the Regional Police Commissioner(s);
- (b) Require that all Mine Police complete mandatory human rights training prior to beginning work;
- (c) Require the Mine Police to notify the General Counsel and Regional Security Manager of Barrick subsidiaries regarding any complaints and investigations into the Mine Police;
- (d) Require the assignment of individual Mine Police officers to the mine to be carried out in coordination with the mine's Security Manager;
- (e) Accord the mine the right to request the removal of specific Mine Police officers from the mine site;
- (f) Require Mine Police and the mine to assist in providing medical care for anyone injured during a confrontation with the Mine Police.

83. At all material times, Barrick was aware or should have been aware of the following:

- (a) The Mine Police include members of the Field Force Unit ("FFU") and Crisis Response Team ("CRT"). The FFU are specialized riot police. The CRT was

trained by the United States government to carry out counterterrorism operations and has been described by the U.S. State Department as an elite S.W.A.T.-style unit. The CRT has a well known reputation within Tanzania for engaging in human rights abuses.

- (b) The Mine Police are made up of over 100 police officers who are rotated out regularly. They reside in nearby barracks provided by the mine. Most of the Mine Police officers are from other parts of Tanzania. The Mine Police are heavily armed with lethal weapons including automatic weapons known locally as “SMG” as well as less lethal weapons including tasers, tear gas and “sound bomb” projectiles and/or flash-bang grenades.
- (c) The Mine Police regularly drive vehicles – primarily Land Cruisers and Defenders – provided by or belonging to the mine (“Mine Vehicles”). These Mine Vehicles are regularly used in operations that result in shootings and beatings. Land Cruisers often bear the letters “LV” followed by a number. Daily vehicle assignments are made by designating which LV numbers are to be used by Mine Police units each day.
- (d) Although Barrick has publicly claimed that police only enter the mine site when requested by senior management to deal with criminal matters, in practice the Mine Police are habitually present on the mine site, inside the mine walls and/or on mine-owned roads.

- (e) The Mine Police are deployed to specific areas in and around the mine site each day. The Mine Police carry out operations in conjunction with the mine's private security personnel on a daily basis and use the same radio frequency as the mine's private security team.
- (f) The mine's security program is coordinated through operations in the security Control Room. The Control Room operates under the control of a Security Manager and through a team of camera operators who deploy and monitor an extensive network of CCTV cameras throughout the mine site. The CCTV cameras have the capability of monitoring areas outside the mine walls including in the local communities.
- (g) Mine personnel in the Control Room coordinate security operations with the Mine Police through, among other means, the role of the Police Liaison Officer. The Police Liaison Officers are members of the Mine Police. At all material times, a Police Liaison Officer was present in the Control Room and had access to live feeds from the CCTV cameras, or the Police Liaison Officer was provided with information from the CCTV cameras.
- (h) The conduct of the Mine Police in and around the North Mara mine is monitored through the network of CCTV cameras.
- (i) The Security Manager and/or other mine security personnel communicate regularly with top local and regional police officials, including about specific incidents of use of force by the Mine Police.

- (j) At all material times, the Mine Police were effectively performing the private security function of protecting the waste rock areas in service of Barrick rather than performing public policing duties.
- (k) At all material times, less violent and harmful measures were available to Barrick to regulate and restrict access to the waste rock areas and/or to deal with members of the local community present on or suspected of going to the waste rock dumps.
- (l) Contrary to international standards of policing and Barrick's corporate standards, the Mine Police routinely fail to follow rules of engagement and rules on the use of force and instead resort to extensive use of live ammunition against members of the local community.
- (m) In addition, the Mine Police frequently fire less lethal munitions like teargas canisters and "sound bomb" projectiles directly at civilians in violation of international standards, resulting in serious injury and in some cases, death.

84. Barrick was also aware or should have been aware of reports of continuing human rights abuses by the Mine Police, including killings and beatings, since Barrick took over operational control of the mine. In particular, Barrick was aware or should have been aware of:

- (a) A March 2022 report by RAID reporting that killings and excessive force by the Mine Police have continued since Barrick took over operational control of the mine;
- (b) An article by the Globe and Mail on March 14, 2022, reporting on the RAID March 2022 publication;

- (c) The fact that in or about April 2022, a senior police official told community members at a public meeting that anyone who went into the mine could expect to be shot. Mine personnel were present at the meeting including the mine Security Manager who advised the audience that if people were injured at the mine, it was not the responsibility of the mine; and
- (d) A November 2022 report by RAID reporting that killings and excessive force by the Mine Police are continuing.

Killings

Matiko John Mwita Gairigi

85. In or about April 2021, the deceased Matiko John Mwita Gairigi was outside the mine wall of Nyabirama when the Mine Police fired at him using live ammunition. He was struck by a bullet in his abdomen. Members of the local community could not provide aid due to the presence of the Mine Police.

86. The Mine Police took Matiko into custody. Matiko died either immediately or in the custody of the Mine Police. Matiko remained in the custody of the Mine Police until his corpse was taken to the morgue.

87. The use of lethal force by the Mine Police against Matiko was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

Irondo Matiko Irondo

88. In or about July 2021, the deceased Irondo Matiko Irondo was outside the mine wall of Nyabirama when the Mine Police fired at him using live ammunition. Irondo was struck by at least one bullet. The Mine Police took him into custody. Irondo died either immediately or in the custody of the Mine Police. Irondo remained in the custody of the Mine Police until his corpse was taken to the morgue. Irondo's family later found his corpse at the morgue.

89. The use of lethal force by the Mine Police against Irondo was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

Isack Maswi Marwa

90. In or about December 2021, the deceased Isack Maswi Marwa and others were inside the mine wall on a waste rock dump at Gokona. They had gained access to the waste rock area with the assistance of a member of the Mine Police. After Isack and the others were working on the waste rock dump for some time, other members of the Mine Police arrived and began firing large projectiles aimed directly at Isack and the others. As Isack was trying to escape over the mine wall, he was struck by a projectile. The projectile caused catastrophic injury to the back of his head. In the alternative, the projectile caused him to fall and suffer a catastrophic injury to the back of his head. While still inside the mine wall, the Mine Police took Isack into custody.

91. Isack remained in the custody of the Mine Police until the Mine Police left him at the local health clinic. Isack was in critical condition with a large wound to the back of his head.

92. Isack's family was able to locate him at the local health clinic. The family attempted to take Isack by ambulance to a large regional hospital for treatment but, in the presence of family, Isack died in the ambulance en route to the hospital.

93. The use of lethal force by the Mine Police against Isack was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

William Itama Machera Max

94. In or about March 2022, the deceased William Itama Machera Max was visiting a relative's house in a residential area near the mine site when a number of Mine Police entered the area chasing after people and firing live ammunition. William was struck by a bullet fired by the Mine Police. The bullet pierced his lower back. He died shortly afterwards.

95. Members of the local community took William to the local health clinic but he was dead on arrival.

96. The use of lethal force by the Mine Police against William was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

Emmanuel Daniel Nyakina

97. In or about June 2022, the deceased Emmanuel Daniel Nyakina and others were inside the mine wall on a waste rock dump at Nyabirama. The Mine Police arrived and fired teargas canisters and live ammunition at them. Emmanuel was struck by a bullet.

98. The bullet entered Emmanuel's body through his shoulder and lodged near his rib cage. Others with Emmanuel were unable to reach him and provide assistance as the Mine Police continued to fire live ammunition in their direction.

99. Emmanuel lost consciousness and was taken into custody by the Mine Police. Emmanuel awoke inside a vehicle surrounded by the Mine Police. The Mine Police transported him to a hospital but prevented Emmanuel from receiving timely and necessary medical treatment.

100. Emmanuel's family was eventually able to transfer him to a regional hospital where he was diagnosed with fractures of the T6 vertebrae and multiple ribs as a result of a gunshot. Emmanuel eventually died as a result of the shooting.

101. The use of lethal force by the Mine Police against Emmanuel was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

Beatings

Dickson Julius Sise

102. In or about July 2021, the plaintiff Dickson Julius Sise and others were inside the mine wall on a waste rock dump at Nyabirama when Nguvu Moja private security guards and the Mine Police arrived. The Mine Police fired teargas canisters and live ammunition. Dickson hid on the waste rock dump for several hours trying to avoid capture. Eventually, the Mine Police captured Dickson. They beat him and then put him inside a Mine Vehicle.

103. The Mine Police drove Dickson around in the Mine Vehicle while continuing to beat him. The Mine Police hit him repeatedly on the shin with an object, causing a gaping wound and causing severe physical pain. The Mine Police interrogated Dickson about who he sold rocks to and who helped him get inside the mine wall.

104. The Mine Police intentionally carried out the beating for the purposes of obtaining information and/or a confession from Dickson, and/or punishing him for coming inside the mine wall, and/or intimidating or coercing Dickson or other people in the community.

105. While driving, the Mine Police were communicating with a person on the radio who was giving them directions on where to go. The Mine Police eventually transported Dickson to a police station. He was detained in a series of local police stations for at least one week. During this time, police interrogated Dickson, filmed him, and forced him to sign statements he was not allowed to read. While in police custody, Dickson was denied necessary medical treatment and medicine.

106. Dickson continues to have a loss of sensation around the area of the wound on his leg.

107. Dickson was shot by the Mine Police on a subsequent occasion as described below.

Sibora Marwa Mwita

108. In or about March 2022, the plaintiff Sibora Marwa Mwita was riding as a passenger on a motorcycle on a public road a short distance from where that road intersects with a mine-owned road. An unmarked Toyota Succeed vehicle passed them and blocked their motorcycle on or near a bridge.

109. Mine Police dressed in civilian clothes got out of the Succeed and began beating Sibora. The Mine Police also captured the motorcycle driver. Sibora and the motorcycle driver were taken in the Succeed to a police station. They were later held for a time in another station.

110. During the next few weeks, a Mine Police officer interrogated Sibora about allegedly taking rocks from the mine and cutting electric wires at the mine. The Mine Police officer

repeatedly beat Sibora during these interrogations, hitting him on the knees, ankles, and elbows, causing Sibora severe physical pain. Sibora was also beaten while a stick was placed behind his knees and he was balanced between two tables. During the beatings, a Mine Police officer told Sibora that he would break Sibora so he would not come back to the mine. He was detained for a number of weeks.

111. The Mine Police intentionally carried out the beatings for the purposes of obtaining information and/or a confession from Sibora, and/or punishing him for an act he was suspected of having committed (namely going inside the mine wall and/or cutting electric wire and/or stealing copper wire from the mine) and/or intimidating or coercing Sibora or others in the community.

112. Sibora suffered numerous injuries and medical problems as a result of the beatings. He had difficulty breathing, coughed up blood, had fevers, had pain swallowing food, endured pain in his knees and legs, had trouble walking, suffered blurry vision, and felt dizziness. He continues to suffer from severe headaches, dizziness, and blurry vision.

Emmanuel Nyakorenga Mhuri

113. In or about March 2022, the plaintiff Emmanuel Nyakorenga Mhuri was in a village centre near the mine having a meal when police arrived and arrested him. The police who arrested him communicated by phone to others that they had captured “the beard”. The police tied Emmanuel’s hands behind his back, threw him in the back of a vehicle and put a tire on his back. One of the officers stepped on Emmanuel’s back while they were driving. They hit him with a stick. The vehicle returned to the village centre and stopped, and a police official came and hit Emmanuel

multiple times with a stick on the buttocks and waist while saying words to the effect of “this is the beard who disturbs us”.

114. The police took Emmanuel to a police station. There, a member of the Mine Police directed Emmanuel’s interrogation during which he was beaten with an iron rod on his knees multiple times causing swelling and severe physical pain. Emmanuel was also hit on the bottoms of his feet with a stick. Emmanuel was interrogated about allegedly stealing electric wire from the mine and about who Emmanuel’s companions were that allegedly went into the mine.

115. Emmanuel’s beating was intentionally carried out for the purposes of obtaining information and/or a confession from Emmanuel, and/or punishing him for an act he was suspected of having committed (namely cutting the mine’s electric wire or going inside the mine wall) and/or intimidating or coercing Emmanuel or others in the community.

116. Emmanuel was detained for more than one week at the same police stations as the plaintiff Sibora Marwa Mwita and the motorcycle driver who had been arrested with Sibora.

117. Emmanuel suffered severe pain to his back and knees as a result of his beating. He continues to suffer pain particularly when it rains.

Ryoba Elias Kebwe

118. In or about June 2022, the plaintiff Ryoba Elias Kebwe was at a barber shop in a village centre near the mine when police in plainclothes entered and told Ryoba he was under arrest. The police made a call, and shortly thereafter, a white Land Cruiser belonging to the mine arrived with uniformed Mine Police. The Mine Police put Ryoba in the Mine Vehicle, and tasered him multiple

times, causing Ryoba severe physical pain and weakening him. The Mine Vehicle proceeded into the mine site at Nyabirama.

119. While inside the mine site, the back door of the Mine Vehicle was opened and Ryoba was told to sit up. Several individuals in mine uniforms and others in regular clothes looked at Ryoba. After someone said words to the effect of “we’re done, you can take him away”, the Mine Vehicle began driving again, and the Mine Police began beating Ryoba with wooden sticks on the ankles, knees, back, and buttocks, causing severe physical pain.

120. The Mine Police took off Ryoba’s shoes and beat him repeatedly on the bottom of his feet, breaking the skin. One of the Mine Police also put a foot on Ryoba’s head to keep him from moving. The beating continued for an extended period of time while the Mine Vehicle drove around the mine site and eventually went to a police station.

121. The Mine Police intentionally carried out the tasing and beating for the purposes of obtaining information or a confession from Ryoba, and/or punishing him for an act he was suspected of having committed (namely cutting the mine’s electric wire or going inside the mine wall), and/or intimidating or coercing Ryoba or others in the community.

122. As a result of the beating, Ryoba suffered severe pain in his feet and had trouble standing or walking.

Pasco Marembela Mwita

123. In or about August 2022, the plaintiff Pasco Marembela Mwita was passing time with others in a village centre near the mine when they saw a vehicle approaching slowly in the distance. They recognized the vehicle was being driven by Mine Police, so Pasco and the others started to

leave the area. The Mine Police approached them on foot and fired teargas canisters. Pasco was hit by two canisters, one in each leg, causing him to bleed and be captured. The Mine Police slapped Pasco when they captured him. The Mine Police took Pasco to a spot just outside the Gokona mine, and faced him toward one of the mine's CCTV camera towers.

124. While Pasco was facing the CCTV camera tower, the Mine Police spoke into a radio words to the effect of "Is he the one?" The answer over the radio was to the effect of "No, but ask him if he knows."

125. The Mine Police bound Pasco's hands behind his back with rope and passed a wooden handle through the rope. They put him face down in the back of the vehicle with the handle suspended on the seats on either side. In the back of the vehicle, the Mine Police beat Pasco with a baton while interrogating him, including asking questions about the plaintiff Sibora Marwa Mwita.

126. The Mine Police beat him on the ankles and thighs, causing him severe physical pain. They accused Pasco of withholding information from them. There were further radio communications during the beating to the effect of "has he told you yet" and with an answer to the effect of "no but he will". The Mine Police also poured water over Pasco. The Mine Police released Pasco with a warning to tell his friends about his beating.

127. The Mine Police instructed Pasco to run away but he was too weakened and when he tried to run, he collapsed. The Mine Police repeatedly instructed him to run away and made him try to run despite his injuries in order to humiliate him.

128. As a result of the beating, Pasco suffered severe pain as well as swelling and bruising on his legs and around his ankles.

129. The Mine Police intentionally carried out the beating for the purposes of obtaining information or a confession from Pasco, and/or punishing Pasco for an act Pasco or Sibora or others were suspected of having committed (namely going inside the mine wall), and/or intimidating or coercing Pasco and others in the community.

Shootings

Nyaheli Marwa Nyakorenga

130. In or about September 2021, the plaintiff Nyaheli Marwa Nyakorenga was driving his motorcycle on a public path toward his home near the mine. Some distance ahead of Nyaheli, several Mine Police were standing outside a Land Cruiser Mine Vehicle on a mine-owned road. The Mine Police open fired with live ammunition. Nyaheli was struck by a bullet which entered through his pelvis and damaged an area near Nyaheli's bladder. Nyaheli lost consciousness for a time.

131. Nyaheli spent approximately 1 week in hospitals. He needed a catheter for several months, and at first he needed crutches to walk and had numbness in both legs. Nyaheli still has pain, numbness, and muscle loss in his right leg and cannot flex his right foot. He cannot walk normally. He has been unable to operate as a motorcycle taxi driver since the shooting.

132. The use of potentially lethal force by the Mine Police against Nyaheli was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

Christopher Jhomu Makende

133. In or about December 2021, the plaintiff Christopher Jhomu Makende and others saw several Mine Police drinking alcohol in and around a Land Cruiser Mine Vehicle parked outside of the mine wall. They decided to go inside the mine wall to a waste rock dump at Gokona. At one point, Nguvu Moja private security guards arrived in a Land Cruiser Mine Vehicle and told Christopher's group to leave the waste rock dump because they had been seen on CCTV cameras.

134. When Christopher and the others went to leave the waste rock dump, they encountered Mine Police in a Land Cruiser Mine Vehicle outside the wall. An Nguvu Moja guard yelled at Christopher words to the effect of "you stupid people, we told you we would kill you some day, see if you can get out without being killed."

135. When Christopher and the others got over the mine wall, Mine Police started chasing them on foot. A member of the Mine Police fired multiple shots of live ammunition at Christopher, hitting him in the lower leg with a bullet, partially fracturing the fibula.

136. Christopher continues to suffer from pain and numbness in his leg, and has trouble running and standing up from a seated position. He has scars from the entry and exit wounds of the bullet.

137. The use of potentially lethal force by the Mine Police against Christopher was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

Dickson Julius Sise

138. In or about March 2022, the plaintiff Dickson Julius Sise and others were near the exterior of the mine wall at Nyabirama close to a residential area. Mine Police chased Dickson and the

others and opened fire with live ammunition. A bullet pierced Dickson's right knee and exited through his leg, while another grazed his left knee.

139. Dickson continues to have pain when he walks, and the wound has not fully healed. He can now only run short distances.

140. The use of potentially lethal force by the Mine Police against Dickson was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

Range Mwita Range

141. In or about July 2022, the plaintiff Range Mwita Range and others went inside the mine wall to a waste rock dump at Nyabirama. After some time, Nguvu Moja private security guards and the Mine Police arrived. Some of the Mine Police fired live ammunition while blocking Range and the others from getting out. The Mine Police hit Range with a bullet that passed through Range's left leg below the knee.

142. Range continues to suffer pain and swelling in his leg.

143. The use of potentially lethal force by the Mine Police against Range was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

Fredy Chacha Wambura Lema

144. The plaintiff Fredy Chacha Wambura Lema and others carried out small-scale mining in a private pit close to the mine at Nyabirama. In or about August 2022, while Fredy was working at the private pit, Mine Police were chasing a group of people on a mine-owned road and firing live ammunition. Fredy and his co-workers tried to move away from the confrontation but the Mine

Police hit Fredy with a bullet in the upper back. The bullet passed through his armpit and arm, causing a large wound and serious bleeding. Fredy lost consciousness for a time.

145. Fredy's co-workers took him to the local health clinic but Mine Police came to look for him at the clinic so he went home. The Mine Police then began coming to Fredy's home looking for him so he left his home and lived in hiding for a time. The Mine Police visited his house multiple times while he was in hiding.

146. Fredy suffered numbness in his fingers and trouble moving his hand as a result of the shooting. He still has numbness, and he suffers pain around the area of the gunshot wound. He cannot lift heavy objects. He has not returned to work in the private pit.

147. The use of potentially lethal force by the Mine Police against Fredy was arbitrary and was not proportionate or necessary or unavoidable in order to protect life.

LAW

Barrick's Conduct is Tortious

148. Barrick owed a duty of care to the plaintiffs. The duty of care is founded on the facts pleaded above regarding Barrick's control over the North Mara Mine, and in particular, regarding responsibility for corporate human rights, security and sustainability policies described above. In particular:

- (a) The Board of Directors and senior management of Barrick are responsible for the development and implementation of Barrick's human rights and security policies globally, including at the North Mara Mine;

- (b) Barrick's human rights and security policies are fundamental to the company's global operations;
- (c) Senior management of Barrick is responsible for monitoring and enforcing Barrick's human rights and security policies globally, including at the North Mara Mine;
- (d) Barrick possessed superior knowledge on matters of security, human rights, risk management, and corporate social responsibility than its subsidiaries, and brought that knowledge to bear at the North Mara Mine;
- (e) Barrick has made repeated statements to investors and the public regarding its lack of tolerance for human rights abuses at its global operations including the North Mara Mine;
- (f) Since September 2019, Barrick has exercised operational control over the North Mara Mine including on matters of human rights and security;
- (g) Barrick knew that by failing to enforce the terms of the MOU or MOUs, including the requirement to abide by international policing standards, there was a high risk that the Mine Police would engage in excessive use of force and human rights abuses against members of the local community;
- (h) Barrick directed that financial, logistical and materiel support be provided to the Mine Police in circumstances where it knew the Mine Police had a propensity to use excessive force and torture in violation of international law and policing standards.

149. It was foreseeable that if Barrick failed to adequately implement and ensure adherence to its corporate human rights, sustainability and security policies that harm would result to members of the local communities surrounding the North Mara Mine.

150. Barrick breached the standard of care required of it. Particulars of Barrick's negligence include:

- (a) Implementing a corporate response to the issue of local community members entering or suspected of entering the waste rock which was disproportionate and relied on the use of excessive force and violence;
- (b) Implementing a security strategy at the mine that is heavily dependent on the use of the Mine Police to deal with members of the local community including those who enter into or are suspected of entering into the waste rock areas;
- (c) Directing that MOUs with the Mine Police be entered into, renewed and maintained despite the repeated failure of the Mine Police to abide by the required standards on human rights, policing and rules of engagement;
- (d) Adopting a security strategy of disarming private security guards and increasing reliance on the Mine Police;
- (e) Allowing the Mine Police to be habitually present on the mine site, inside the mine walls and/or on mine-owned roads;
- (f) Directing that the Mine Police be provided with vehicles that were then used in the abuse of the plaintiffs and deceased persons;

- (g) Allowing the mine's private security personnel to maintain a policy of coordinating daily assignments of Mine Police units in and around the mine;
- (h) Allowing the mine's private security personnel to carry out operations in conjunction with the Mine Police;
- (i) Allowing Police Liaison Officers in the Control Room with access to information from live feeds from the CCTV cameras;
- (j) Continuing to direct that funding and logistical and materiel support be provided to the Mine Police despite the repeated failure of the Mine Police to abide by the MOUs and international standards of policing and human rights;
- (k) Failing to adhere to the company's human rights, security and sustainability policies;
- (l) Failing to adhere to international standards on human rights and security including the UN Guiding Principles and the Voluntary Principles on Security and Human Rights;
- (m) Failing to monitor reports of excessive use of force and human rights abuses by the Mine Police;
- (n) Failing to investigate reports of excessive use of force and human rights abuses by the Mine Police;
- (o) Failing to monitor and enforce the terms of the MOUs which required compliance with international standards on human rights and policing;

- (p) Failing to terminate the involvement of Mine Police members credibly implicated in human rights abuses; and
- (q) Failing to take all necessary and reasonable measures within its power to protect the plaintiffs and/or their deceased family members from harm.

151. As a result of Barrick's negligence, the plaintiffs have suffered harm and injury as described above.

152. The plaintiffs' injuries were caused solely by Barrick's negligence.

153. Barrick's actions and inactions constitute high-handed, malicious, arbitrary and highly reprehensible misconduct that departed to a marked degree from ordinary standards of decent behaviour.

Barrick's Conduct Violates Customary International Law

154. Extrajudicial killing and torture are prohibited under customary international law. These prohibitions are incorporated into and form a part of the law of Canada. Breach of these prohibitions is directly actionable or in the alternative, breach of these prohibitions constitute nominate torts.

Extrajudicial Killings

155. The right to life is universally protected by all civilized states and under numerous international instruments including:

- (a) The Universal Declaration of Human Rights;

- (b) The International Covenant on Civil and Political Rights, acceded to by both Canada and Tanzania; and
- (c) The African Charter on Human and Peoples' Rights.

156. The right to life is a norm of customary international law as defined in Article 38(1) of the Statute of the International Court of Justice, as well as a jus cogens peremptory norm of international law as defined in Article 53 of the Vienna Convention of the Law of Treaties.

157. The deprivation of the right to life contrary to international law constitutes an extrajudicial killing. It is a breach of customary international law and jus cogens and is actionable at common law.

Torture

158. The use of torture is universally prohibited by all civilized states and specifically banned under numerous international instruments including:

- (a) The Universal Declaration of Human Rights;
- (b) The International Covenant on Civil and Political Rights, acceded to by both Canada and Tanzania;
- (c) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- (d) The African Charter on Human and Peoples' Rights.

159. The prohibition against torture is a norm of customary international law as defined in Article 38(1) of the Statute of the International Court of Justice, as well as a jus cogens peremptory norm of international law as defined in Article 53 of the Vienna Convention of the Law of Treaties.

160. Violation of the prohibition against torture is a breach of customary international law and jus cogens and is actionable at common law.

161. The extrajudicial killings committed against the deceased and the acts of torture committed against the plaintiffs described above were inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. They did not arise from and were not inherent in or incidental to lawful sanctions.

162. Barrick was complicit in the extrajudicial killings of Matiko John Mwita Gairigi, Irondo Matiko Irondo, Isack Maswi Marwa, William Itama Machera Max, and Emmanuel Daniel Nyakina, and in the acts of torture against the plaintiffs Dickson Julius Sise, Sibora Marwa Mwita, Emmanuel Nyakorenga Mburi, Ryoba Elias Kebwe and Pasco Marembela Mwita on the basis that:

- (a) Barrick directed that ongoing financial, logistical and materiel support be provided to the Mine Police despite the fact that Barrick was aware that the Mine Police had committed and would continue to commit extrajudicial killings and torture;
- (b) Barrick had effective authority and control over the Mine Police and any private security personnel who cooperated with or assisted the Mine Police in the acts of extrajudicial killing and torture;
- (c) Barrick failed to properly exercise control over the Mine Police and private security personnel in and around the North Mara Mine;

- (d) Barrick either knew or consciously disregarded information which indicated that the Mine Police and private security personnel who cooperated with or assisted the Mine Police were committing or about to commit acts in violation of customary international law and jus cogens;
- (e) Barrick aided and abetted extrajudicial killings and torture by among other means directing that ongoing financial, logistical and materiel support be provided to the Mine Police;
- (f) Barrick induced extrajudicial killings and torture by among other means directing that ongoing financial, logistical and materiel support be provided to the Mine Police;
- (g) Barrick, expressly or implicitly, approved of extrajudicial killings and torture by among other means directing that ongoing financial, logistical and materiel support be provided to the Mine Police;
- (h) Barrick acquiesced in extrajudicial killings and torture by among other means directing that ongoing financial, logistical and materiel support be provided to the Mine Police;
- (i) Barrick failed to prevent or stop extrajudicial killings and torture;
- (j) Barrick failed to take all necessary and reasonable measures within its power to prevent or repress their commission.

Damages

163. The plaintiffs Dickson Julius Sise, Sibora Marwa Mwita, Emmanuel Nyakorenga Mburi, Ryoba Elias Kebwe, Pasco Marembela Mwita, Nyaheli Marwa Nyakorenga, Christopher Jhomu Makende, Range Mwita Range and Fredy Chacha Wambura Lema seek damages for personal injury including:

- (a) Pain, suffering and loss of enjoyment of life;
- (b) Loss of income;
- (c) Loss of earning capacity;
- (d) Loss of capacity to provide valuable services;
- (e) Cost of care; and
- (f) Punitive damages.

164. The plaintiffs Sophia Matiko John, Anacretus Maringo Gimana, Esta George Range, Elizabeth Matiko Irondo, Neema Stephen John, Maswi Marwa Mohabe, Dotto William Itama, Lyimo Itama Machela, Itama Machela Max, Charles Daniel Nyakina, Bhoke Hagale Maro, and Daniel Nyakina Ghati seek damages for wrongful death pursuant to s.61 of the *Family Law Act* including:

- (a) Loss of care, guidance and companionship;
- (b) Loss of financial support and valuable services

- (c) Income loss;
- (d) Nervous shock and emotional distress; and
- (e) Funeral expenses.

165. The plaintiffs plead and rely on the following statutes and authorities:

- (a) *Family Law Act*, RSO 1990 c. F.3;
- (b) *Courts of Justice Act*, RSO 1990, c C.43;
- (c) *Negligence Act*, RSO 1990, c N.1.

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Defendants

Court File No.:

CN-99-02690649-0006

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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