

Court File No.

CV 24-00 714/148-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ESTER NYANGI PETRO, IN HER PERSONAL CAPACITY AND AS LITIGATION  
GUARDIAN FOR HER MINOR CHILD LUCIA; LEONIDA RUBEN JOSHUA, IN HER  
PERSONAL CAPACITY AND AS LITIGATION GUARDIAN FOR HER MINOR  
CHILDREN MACHUGU, NEEMA, AND DANIEL; ABEL SAIMA MACHUGU  
NYAMARUNGU; CLEMENSIA PROTAS MARWA; MACHERA KIMIRA WANKA;  
CHARLES IKAYA MGAYA; MAHERI MWITA NTORA; AND CHARLES MWITA  
MSETI**

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 Feb 5, 2024 Issued by   
Local Registrar

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

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 nearly 18 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 seven local citizens in just the last three 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 Bahati Kirindo Matiko and Mosoba Saima Machugu, and other 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 Bahati Kirindo Matiko and Mosoba Saima Machugu, and injuries to other named plaintiffs; and
- (b) Complicity in the violation of customary international law, in particular, complicity in the torture of Macheru Kimira Wanka, and the extrajudicial killings of Bahati Kirindo Matiko and Mosoba Saima Machugu.

## **PARTIES**

### ***Plaintiffs***

16. Bahati Kirindo Matiko was a Tanzanian national who was shot and killed by the Mine Police. This claim is brought by his widow Ester Nyangi Petro in her personal capacity and as Litigation Guardian for their minor child, Lucia Bahati Kirindo.
17. Mosoba Saima Machugu was a Tanzanian national who was shot and killed by the Mine Police. This claim is brought by his widow Leonida Ruben Joshua in her personal capacity and as Litigation Guardian for their minor children, Machugu Mosoba Saima, Neema Mosoba Saima, and Daniel Mosoba Saima, and by his parents Abel Saima Machugu Nyamarungu and Clemensia Protas Marwa.
18. Machera Kimira Wanka was beaten by the Mine Police, and suffered serious injuries as a result.
19. Charles Ikaya Mgaya was shot by the Mine Police, and suffered serious injuries as a result.
20. Maheri Mwita Ntora was shot by the Mine Police and hit with a piece of a projectile fired by the Mine Police on different occasions, and suffered serious injuries as a result.
21. Charles Mwita Mseti was shot by the Mine Police, and suffered serious injuries as a result.
22. 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***

23. 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.

24. 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.

25. 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.

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

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

**MATERIAL FACTS**

***Overview of the North Mara Mine***

28. 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.

29. 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.

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

31. 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. Mining operations restarted at another open pit, Nyabigena, in 2023. Nyabigena is located near Gokona and forms part of the same deposit.

32. The Nyabirama, Gokona, and Nyabigena facilities occupy in excess of 10 square kilometres in the middle of at least seven villages. The Nyabirama and Gokona 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.

33. Waste rock containing trace amounts of gold is deposited at various locations around Nyabirama, Nyabigena, and Gokona in close proximity to residential areas. A waste rock dump was also established near the airstrip outside the wall at Gokona. 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.

34. 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.

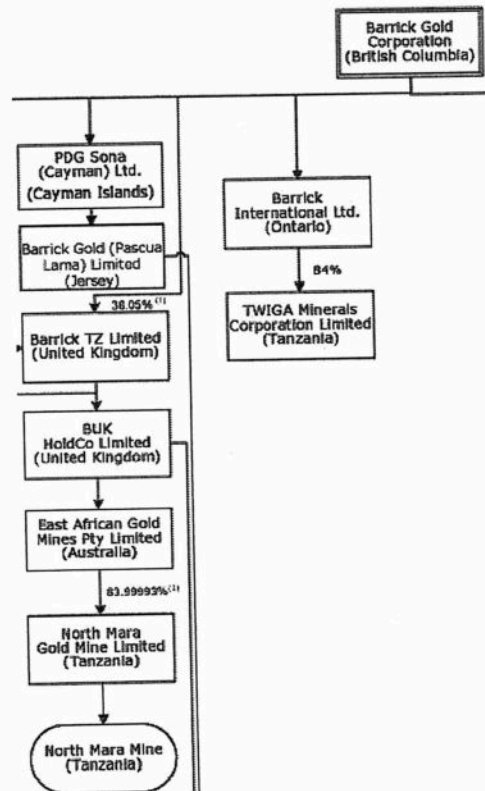
35. In particular, Barrick has caused to be created, approved and supervised security agreements with Tanzanian police which effectively convert Tanzanian police into the mine's private and heavily armed security force. Barrick has pursued this security strategy with full knowledge of a long history 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***

36. 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").

37. 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.

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



39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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***

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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***

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. 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.

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

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

72. 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.

73. 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.

74. 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.

75. 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.

76. 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***

#### *Bahati Kirindo Matiko*

- 77. On or about November 30 or December 1, 2022, the deceased Bahati Kirindo Matiko and others were inside the mine wall on a waste rock dump at Nyabirama. The Mine Police arrived and fired projectiles and live ammunition at Bahati and others. Bahati was struck with a bullet fired by the Mine Police.
- 78. The bullet entered the left side of his neck and exited through the right side of his face near the jawbone.
- 79. Still inside the mine wall and alive, Bahati was taken into custody by the Mine Police.
- 80. The Mine Police transported him to a hospital. Bahati's family was eventually able to locate him at the hospital where he was still in police custody. For a time, police prevented the family from transferring Bahati to another hospital for necessary medical treatment.

81. By the time Bahati was transferred to the other hospital, he was suffering from extensive internal bleeding and blood clots in his chest. He died at that hospital as a result of his injuries.

82. On December 3, 2022, Barrick issued a press release about the incident and posted the release to its corporate website barrick.com. Barrick stated, "The nature of the deceased's injury and the cause of his death have not yet been established, however an investigation of the incident will be requested from the authorities by North Mara."

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

*Mosoba Saima Machugu*

84. On or about July 13, 2023, the deceased Mosoba Saima Machugu and others were searching waste rock in or around an area called Nyeheho that is in proximity to the Nyabigena pit. The Mine Police arrived and started firing projectiles and live ammunition at Mosoba and others. Mosoba was struck with a bullet fired by Mine Police.

85. The bullet passed through Mosoba's neck.

86. The Mine Police took Mosoba into custody. As a result of his injuries, Mosoba died either immediately or in the custody of the Mine Police. Mosoba remained in the custody of the Mine Police until his corpse was taken to the morgue.

87. On July 15, 2023, Barrick issued a press release about the incident and posted the release to its corporate website barrick.com. Barrick stated, "At this time, it is unclear how the intruder

was fatally injured. An investigation of the incident has been requested from the authorities by North Mara.”

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

### ***Beatings***

#### *Machera Kimira Wanka*

89. In or about March 2022, Machera Kimira Wanka was driving a motorcycle with Sibora Marwa Mwita riding as a passenger on the back. They were driving 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.

90. Mine Police dressed in civilian clothes got out of the Succeed and began beating Sibora. The Mine Police also captured Machera. Sibora and Machera were taken in the Succeed to a police station.

91. At the police station, Mine Police interrogated Machera about going into the mine and told him to admit he had been inside the mine. They beat Machera during the interrogation, hitting him on the knees, feet, and hands, causing Machera severe physical pain. Machera was also beaten while a stick was placed behind his knees.

92. Machera and Sibora were later transferred to and held in another police station.

93. The Mine Police intentionally carried out the beating for the purposes of obtaining information and/or a confession from Machera, and/or punishing him for an act he was suspected

of having committed (namely going inside the mine wall) and/or intimidating or coercing Machera or others in the community.

94. Machera suffered injury and severe pain to his knees, feet, and hands as a result of his beating. He continues to suffer pain and have swelling in his left hand.

### ***Shootings***

#### *Charles Ikaya Mgaya*

95. In or about February 2022, the plaintiff Charles Ikaya Mgaya and others went inside the mine wall to a waste rock dump at Nyabirama. After some time, Mine Police arrived and fired live ammunition and projectiles at Charles and others.

96. A bullet fired by Mine Police hit Charles in his left leg below the knee, causing him injury. Some of the others with Charles were able to carry him and assist him in exiting over the mine wall.

97. The shooting caused nerve damage to Charles' leg. Charles still suffers from loss of sensation, numbness, and tingling in the leg.

98. The use of potentially lethal force by the Mine Police against Charles was arbitrary and not proportionate or necessary or unavoidable to protect life.

#### *Maheri Mwita Ntora*

99. In or about February 2023, the plaintiff Maheri Mwita Ntora and others went inside the mine wall to a waste rock dump at Nyabirama. Mine Police arrived at the waste rock dump and

began firing projectiles and live ammunition. Maheri and others ran toward the mine wall and were able to exit over the mine wall. After they had moved a short distance away from the mine wall, Mine Police on a slope outside the mine wall began firing projectiles and live ammunition at Maheri and others. A bullet fired by Mine Police struck Maheri near his right wrist, causing him injury.

100. In or about April or May 2023, the plaintiff Maheri Mwita Ntora and others went inside the mine wall to a waste rock dump at Nyabirama. Mine Police arrived at the waste rock dump and began firing projectiles at Maheri and others. Maheri suffered an injury to his right hand.

101. He continues to suffer from numbness and inflammation in his hand as a result of his injuries.

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

*Charles Mwita Mseti*

103. In or about April 2023, the plaintiff Charles Mwita Mseti and others went inside the mine wall to a waste rock dump at Nyabirama. After some time, the Mine Police arrived and began firing projectiles and live ammunition. A bullet fired by Mine Police struck Charles in his left thigh, fracturing his femur.

104. As a result of the bone fracture, Charles was unable to move and remained on the waste rock dump. He was bleeding significantly.

105. The Mine Police approached him and told him to get up. Charles was unable to do so, and the Mine Police carried him to their vehicle. In the vehicle, one of the Mine Police applied pressure to his injured leg with a baton causing Charles significant pain. The Mine Police threatened Charles and ordered him not to tell anyone he had been shot at the mine.

106. The Mine Police took Charles to a hospital and told the attending doctors that they had found Charles on the road and did not know how he had been injured. The attending doctors were not equipped to treat Charles and indicated that Charles should be taken to another hospital. The Mine Police then took him to the second hospital, where they repeated the lie that they had found Charles on the road and did not know how he had been injured.

107. At the second hospital, the doctors indicated the injury was serious and that he would need surgery at a third hospital. For a time, Mine Police impeded Charles' transfer to the third hospital.

108. Charles eventually underwent surgery at the third hospital, including the insertion of a metal rod into his leg.

109. Charles suffered what is likely to be a permanent impairment of his left leg. For a time, he needed a crutch in order to walk. He continues to walk with a limp.

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

## LAW

### *Barrick's Conduct is Tortious*

111. 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.

112. 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.

113. 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.

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

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

116. 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***

117. 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***

118. 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.

119. 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.

120. 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*

121. 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.

122. 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.

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

124. The extrajudicial killings committed against the deceased and the acts of torture 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.

125. Barrick was complicit in the extrajudicial killings of Bahati Kirindo Matiko and Mosoba Saima Machugu, and in the acts of torture against the plaintiff Machera Kimira Wanka, 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***

126. The plaintiffs Machera Kimira Wanka, Charles Ikaya Mgaya, Maheri Mwita Ntora, and Charles Mwita Mseti 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.

127. The plaintiffs Ester Nyangi Petro, Leonida Ruben Joshua, Abel Saima Machugu Nyamarungu, and Clemensia Protas Marwa 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.

128. 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.

February 5, 2024

**WADDELL PHILLIPS PC**  
36 Toronto Street, Suite 1120  
Toronto, ON M5C 2C5  
Tel: 647-261-4486

**John Phillips, K.C. (LSO# 46206E)**  
john@waddellphillips.ca  
**W. Cory Wanless (LSO# 57288M)**  
cory@waddellphillips.ca  
**Patti Shedden (LSO# 46210W)**  
patti@waddellphillips.ca  
**Flora Yu (LSO# 84025W)**  
flora@waddellphillips.ca

**CFM LAWYERS LLP**  
400-856 Homer Street  
Vancouver, BC V6B 2W5  
Tel: (604) 689-7555

**Joe Fiorante, K.C. (LSO # 86342O)**  
jfiorante@cfmlawyers.ca  
**Jen Winstanley (LSBC #508967)**  
jwinstanley@cfmlawyers.ca  
**Sophie Maraldo (LSBC #518394)**  
smaraldo@cfmlawyers.ca

Lawyers for the Plaintiffs

ESTER NYANGI PETRO et al.  
Plaintiffs

-and- BARRICK GOLD CORPORATION  
Defendant

Court File No.:

Cv-24-0071448-0000

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF CLAIM**

**WADELLE PHILLIPS PC**  
36 Toronto Street, Suite 1120  
Toronto, ON M5C 2C5  
Tel: 647-261-4486

**John Phillips, K.C. (LSO# 46206E)**  
john@waddellphillips.ca  
**W. Cory Wanless (LSO# 57288M)**  
cory@waddellphillips.ca  
**Patti Shedden (LSO# 46210W)**  
patti@waddellphillips.ca  
**Flora Yu (LSO# 84025W)**  
flora@waddellphillips.ca

**CFM LAWYERS LLP**  
400-856 Homer Street  
Vancouver, BC V6B 2W5  
Tel: (604) 689-7555

**Joe Fiorante, K.C. (LSO # 863420)**  
jfiorante@cfmlawyers.ca  
**Jen Winstanley (LSBC #508967)**  
jwinstanley@cfmlawyers.ca  
**Sophie Maraldo (LSBC #518394)**  
smaraldo@cfmlawyers.ca

Lawyers for the Plaintiffs