Court of Appeal File No. COA-25-CV-0229
Court File No. CV-22-00-690649-0000
Court File No. CV-24-00-714148-0000

COURT OF APPEAL OF ONTARIO

B E T W E E N :

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
(Appellants)

and

BARRICK GOLD CORPORATION

Defendant
(Respondent)

and

AMNESTY INTERNATIONAL CANADA

Intervener

And 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 W ANKA; CHARLES IKAYA MGAYA; MAHERI MWITA NTORA; AND CHARLES MWITA MSETI

ORAL HEARING COMPENDIUM OF THE PLAINTIFFS/ APPELLANTS
VOLUME 1 OF 2

Plaintiffs
(Appellants)

and

BARRICK GOLD CORPORATION

Defendant
(Respondent)

and

AMNESTY INTERNATIONAL CANADA

Intervener

ORAL COMPENDIUM OF THE PLAINTIFFS/ APPELLANTS

November 20, 2025

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

Joe Fiorante, K.C.
(LSBC #9197/LSO # 86342O)
jfiorante@cfmlawyers.ca
Jen Winstanley (LSBC #508967)
jwinstanley@cfmlawyers.ca
Briana Leibel (LSBC #519404)
bleibel@cfmlawyers.ca

PHILLIPS BARRISTERS
PROFESSIONAL CORPORATION
36 Toronto Street, Suite 1120
Toronto, ON M5C 2C5

W. Cory Wanless (LSO No.: 57288M)
cory@phillipsbarristers.ca
Patti Shedden (LSO No.: 46210W)
patti@phillipsbarristers.ca

Tel: 647-261-4486

Lawyers for the Plaintiffs/Appellants

TO: **DAVIES WARD PHILLIPS & VINEBERG LLP**
155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO# 24264J)
Tel: 416.863.5566
Email: kentthomson@dwpv.com

Steven G. Frankel (LSO# 58892E)
Tel: 416.367.7441
Email: sfrankel@dwpv.com

Anisha Visvanatha (LSO# 74421O)
Tel: 416.367.7480
Email: avisvanatha@dwpv.com

Alexander Barnes (LSO# 89981N)
Tel: 416.863.4131
Email: abarnes@dwpv.com

Lawyers for the Defendant (Respondent)

AND TO: **CHAMP & ASSOCIATES**
43 Florence Street
Ottawa, ON K2P 0W6

Paul Champ (LSO# 45305K)
Tel: 613.237.2441
Email: pchamp@champlaw.con

ASTARA LEGAL BARRISTERS AND SOLICITORS
2 Bloor Street West, Suite 700
Toronto, ON M4W 3E2

Vibhu Sharma (LSO# 70130V)
Tel: 416.800.2922
Email: vibhu@astara.legal

Lawyers for the Intervener

TABLE OF CONTENTS

Tab	Description	Location in ABC
VOLUME 1 OF 2		
1.	Outline of Oral Argument	
2.	Justice Morgan's Reasons for Decision dated November 26, 2024	ABC Vol 1 Tab 3
3.	Statement of Claim issued November 23, 2022	ABC Vol 1 Tab 4
Evidence regarding Barrick Gold Inc.		
4.	Barrick's 2022 Annual Information Form dated March 17, 2023	ABC Vol 1 Tab 18
5.	Barrick's 2022 Annual Report	ABC Vol 1 Tab 16
6.	Barrick's "Information Circular - Notice of Annual Meeting of Shareholders" dated May 2, 2023	ABC Vol 1 Tab 21
7.	Barrick's Human Rights Policy	ABC Vol 2 Tab 41
8.	Barrick's Human Rights Report	ABC Vol 2 Tab 42
9.	Press release from Barrick dated December 10, 2021, titled "Barrick Publishes Human Rights Report"	ABC Vol 1 Tab 22
10.	Barrick's "Sustainability Report" for 2021	ABC Vol 1 Tab 23
11.	Barrick's "2021 Annual Report to The Voluntary Principles on Security and Human Rights"	ABC Vol 1 Tab 27
12.	Barrick's "2020 Annual Report to The Voluntary Principles on Security and Human Rights"	ABC Vol 1 Tab 28
13.	Barrick's Conflict-Free Gold Report dated September 2023	ABC Vol 1 Tab 25
14.	Affidavit of Grant Beringer, sworn October 1, 2023	ABC Vol 1 Tab 39
15.	Transcript of Cross-Examination of Grant Beringer, dated May 29, 2024	ABC Vol 2 Tab 56
16.	Transcript of Cross-Examination of Sebastiaan Bock, dated May 28, 2024	ABC Vol 2 Tab 55
17.	Memorandum of Understanding between Tanzania Police Force and North Mara Gold Mine Limited, dated May 24, 2022	ABC Vol 2 Tab 46

Evidence regarding access to justice in Tanzania		
18.	Mohamed Chande Othman Expert Report dated October 2, 2023	ABC Vol 2 Tab 47
19.	Mohamed Chande Othman's Reply Expert Report dated April 5, 2024	ABC Vol 2 Tab 48
20.	Transcript of Cross-Examination of Mohamed Chande Othman, dated May 14, 2024	ABC Vol 2 Tab 64
21.	Leonard Paulo Shaidi Expert Report dated October 2, 2023	ABC Vol 2 Tab 49
22.	Leonard Paulo Shaidi Reply Expert Report dated April 5, 2024	ABC Vol 2 Tab 50
23.	Transcript of Cross-Examination of Leonard Paulo Shaidi, dated May 16, 2024	ABC Vol 2 Tab 65
24.	Joseph Oleshangay Expert Report dated February 1, 2024	ABC Vol 1 Tab 36
25.	Ulimboka Mwasomola's Expert Report dated April 12, 2024	ABC Vol 2 Tab 52
26.	Transcript of Cross-Examination of Ulimboka Mwasomola, dated May 13, 2024	ABC Vol 2 Tab 62
27.	Audax Vedasto Expert Report dated April 5, 2024	ABC Vol 2 Tab 53
28.	Transcript of Cross-Examination of Audax Vedasto, dated May 13, 2024	ABC Vol 2 Tab 66
29.	Jebra Kambole Expert Report dated February 1, 2024	ABC Vol 1 Tab 38
30.	Canadian Bar Association: "Statement from the CBA President John Stefaniuk on the Silencing of Lawyers in Tanzania" dated September 7, 2023	ABC Vol 1 Tab 34
31.	Human Rights Watch statement, "Tanzania: Critics of Port Deal Arrested" dated August 7, 2023	ABC Vol 1 Tab 35
32.	Supplementary affidavit of Joseph Oleshangay, sworn May 6, 2024	ABC Vol 1 Tab 13
33.	Legal and Human Rights Centre's public statement, dated March 28, 2024	ABC Vol 1 Tab 15
34.	Affidavit of Boniface Mwabukusi, sworn January 30, 2024	ABC Vol 1 Tab 11
35.	Public statement by Amnesty International, dated August 14, 2023	ABC Vol 1 Tab 12
36.	Affidavit of Fatma Amani Karume, sworn January 27, 2024	ABC Vol 1 Tab 9

37.	Affidavit of Elizabeth Matiko Irondo, sworn January 19, 2024	ABC Vol 1 Tab 8
38.	Affidavit of Charles Daniel Nyakina a.k.a. Charles Hagale Malo, sworn January 19, 2024	ABC Vol 1 Tab 7
VOLUME 2 OF 2		
Canadian Case Law		
39.	*Black & McDonald Limited v Eiffage Innovative Canada Inc.*, 2023 ONCA 91	AOA Tab 10
40.	*Chevron Corp. v Yaiguaje*, 2015 SCC 42	AOA Tab 7
41.	*Club Resorts Ltd. v Van Breda*, 2012 SCC 17	AOA Tab 5
42.	*Haaretz.com v Goldhar*, 2018 SCC 28	AOA Tab 13
43.	*Hearn v. McLeod Estate*, 2019 ONCA 682	
44.	*H.M.B. Holdings Ltd. v Antigua v Barbuda*, 2021 SCC 44	AOA Tab 6
45.	*Nevsun Resources Ltd. v Araya*, 2020 SCC 5	AOA Tab 1
46.	*Young v Tyco International of Canada Ltd.*, 2008 ONCA 709	AOA Tab 11
47.	*Garcia v Tahoe Resources Inc.*, 2017 BCCA 39	AOA Tab 3
UK Case Law		
48.	*Limbu and others (Respondents) v Dyson Technology Limited and others*, [2024] EWCA Civ 1564	AOA Tab 16
49.	*Vedanta Resources PLC v Lungowe and others*, 2019 UKSC 20	AOA Tab 15

TAB 1

Appellant's Oral Argument Outline

PART 1: Motion judge's reasons are replete with factual and legal errors, and not entitled to deference.

1) **Fundamental errors of fact that are plainly incorrect, and not supported by the record:**

    a. Erred by finding that "Barrick's head office is in Vancouver"; in fact it is in Toronto.

    b. Erred by finding that "other cases have already been brought against Barrick in Tanzanian courts"; "there have been previous cases against Barrick in Tanzania that were funded by legal aid"; and "Chief Justice Othman also cites… a number of past claims arising out of events at the North Mara mine" in which "individuals have successfully sued the TPF [Tanzanian Police Force]". In fact, there are no such cases in the record.

2) **Fundamental errors of law.**

    a. Applied wrong test for jurisdiction *simpliciter*.

    b. Failed to consider key evidence, particularly regarding limitations on legal aid in Tanzania.

    c. Improperly imported test for summary judgment into FNC analysis.

    d. Applied impossibly high standard for "real risk of an unfair trial" test.

    e. Fundamentally mischaracterized the claim:

        i. failed to apply SCC law that the statement of claim frames the action for the purposes of FNC;

        ii. rejected "human rights" nature of claim;

        iii. made merits decision through blanket rejection of parent corporate liability; and

        iv. failed to consider key evidence regarding Barrick's oversight and control of security and human rights at the mine.

PART 2: Correct FNC analysis

3) **Pleadings define the claim for purposes of FNC**

    a. Lawsuit is a claim in negligence against Barrick Gold (not its Tanzanian subsidiary) for what Barrick itself did as parent company:

        i. Barrick had ultimate authority over human rights and security through mandatory group-wide policies, not mere "platitudes" or "marketing".

ii. Barrick executives' had a direct role in security at North Mara.

b. Claim for breach of customary international law based on SCC decision in *Nevsun*.

c. These allegations place Barrick's control, implementation and oversight of human rights and security at the centre of the case.

4) Ultimate FNC question is whether Tanzania is a clearly more appropriate forum than Ontario; burden is on Respondent.

5) Tanzania is not a clearly more appropriate forum:

a. No realistic possibility of a lawsuit in Tanzania for practical reasons implicating access to justice:

i. No economic model in Tanzania to realistically allow a claim:

1. Plaintiffs' extremely limited financial means;

2. Contingency fees prohibited;

3. No realistic possibility of obtaining lawyer through legal aid;

4. No funding for necessary case expenses;

ii. Repressive climate for lawyers challenging key state interests;

iii. Limited access to sources of proof, including discovery.

b. Despite long history of police violence at North Mara, no lawsuits in Tanzania; only other lawsuits about North Mara proceeded in UK; Barrick litigated and successfully resolved UK claims.

c. Other considerations:

i. Availability of documentary evidence in Ontario: Barrick has full access to North Mara evidence including CCTV footage, police reports and records.

ii. Tanzanian courts cannot compel witnesses outside Tanzania.

TAB 2

CITATION: Matiko John v. Barrick Gold Corporation, 2024 ONSC 6240
COURT FILE NOs.: CV-22-00-690649-0000
CV-24-00-714148-000
DATE: 20241126

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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

AND RE: 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 MSE, Plaintiffs

– and –

BARRICK GOLD CORPORATION, Defendant

BEFORE: Justice E.M. Morgan

COUNSEL: *Joe Fiorante, K.C., Cory Wanless, and Jen Winstanley*, for the Plaintiffs

Kent Thomson, Steven Frankel, and Maura O'Sullivan, for the Defendant

HEARD: October 15-17, 2024

REASONS FOR DECISION

I. The motion

[1] The Defendant, Barrick Gold Corporation ("Barrick"), seeks to have these companion actions dismissed or permanently stayed on the basis that this Court lacks jurisdiction or, alternatively, on the basis of the doctrine of *forum non conveniens*. Both actions raise the same claims and are based on similar incidents. I will treat them as one.

[2] The Plaintiffs plead that they or their family members were injured or killed at a mining site located in the United Republic of Tanzania. The mine is owned by a company whose majority shareholder is Barrick, and for which the Plaintiffs say Barrick is ultimately responsible. Barrick submits that it is an owner but not manager and operator of the mining operation, and that in any case all of the violent incidents alleged by the Plaintiffs were perpetrated not by Barrick or its subsidiary but by the independent, sovereign Tanzanian police.

[3] It is the Plaintiffs' view that by seeking to escape Ontario jurisdiction, Barrick is attempting to have the actions tried in a foreign court that is not adequate to the task of conducting a trial of these claims, and to thereby avoid responsibility for harmful corporate conduct. It is Barrick's view that it will answer all allegations made against it, but that the only forum with any connection to the issues and where all of the evidence and witnesses are located is Tanzania, and that the English common law-based Tanzanian legal system is well up to the task of adjudicating these claims.

II. Overview

[4] Barrick began its life as an Ontario company, but some years ago was continued a British Columbia corporation whose corporate head office is in Vancouver. It is an international gold mining giant, with some 23,000 employees engaged in mining projects located around the world. Among many other things, it is 84% shareholder, along with the government of Tanzania as 16% shareholder, of North Mara Gold Mine Limited ("NMGML"), a Tanzanian company that owns and operates the North Mara Gold Mine (the "Mine"). Barrick and the Tanzanian government are also the shareholders, in the same proportion, of Twiga Minerals Corporation ("Twiga"), a Tanzanian company that provides various management services to the Mine.

[5] The Mine is located in a remote location in northern Tanzania, near the country's borders with Kenya and Uganda. The parties agree that the Mine site is regularly accessed by local residents not employed by NMGML and not authorized to access the site. These incidents have led to violence, as those entering the Mine have clashed with the local police and, reportedly, with each other.

[6] It is fair to say that although the parties agree that confrontational and violent incidents have occurred at the Mine, they describe the activity leading to these incidents in starkly different terms. According to Plaintiffs, those entering the Minde site are local craftsmen eking out a living at no one else's expense; while according to Barrick, they are looters forcefully invading the Mine

property to steal what is not theirs. Thus, in their factum counsel for the Plaintiffs state that, "Artisanal miners seek to earn a subsistence living by entering waste rock dumps in an effort to secure trace amounts of gold." By contrast, counsel for Barrick state in their factum that, "Unfortunately, the Mine is invaded regularly by trespassers who attempt to steal gold-bearing rock and other property."

[7] Security at the Mine is provided by a combination of unarmed private security guards contracted by NMGML and/or Twiga, together with armed members of the Tanzanian Police Force ("TPF"), an agency of the national government of Tanzania. All of the injuries and deaths referenced in the Statements of Claim are alleged to have been perpetrated by the TPF.

[8] The TPF operate at the Mine site under contract with NMGML. The arrangement is documented in two Memorandums of Understanding ("MOUs") dated April 2019 and May 2022, both between NMGML and the TPF.

[9] Under the MOUs, NMGML provides certain funding and equipment for the police operation at the Mine. The MOUs confirm that the TPF is, nevertheless, an independent police force of the sovereign government of Tanzania, operating pursuant to Tanzanian law and under the same chain of command as it does throughout that country. Barrick's counsel point out that the TPF would be responsible for policing and security in the North Mara region with or without the MOUs.

[10] The Plaintiffs do not suggest that any NMGML employee, and certainly no Barrick employee or officer, is engaged in security activity themselves or commands and directs the actions of the TPF on the ground. The Statements of Claim allege that the Plaintiffs or their family members were injured or killed by acts of violence perpetrated by TPF members at (or near) the Mine between April 2021 and July 2023. The pleading does not allege that any of those acts of violence were committed by NMGML or Barrick personnel.

[11] Rather, the Plaintiffs' allegation is that Barrick is responsible for management and oversight, and is thus legally answerable for injuries that occur on the Mine property. The Plaintiffs also submit that Barrick has undertaken to be responsible for human rights at its mine sites worldwide, including in North Mara, and that Barrick arranged for certain training in that respect for the Tanzanian police. The Plaintiffs also argue that the MOUs were signed by NMGML directors and officers appointed by Barrick as majority shareholder, making Barrick responsible for the conduct of the TPF thereunder.

[12] The Statements of Claim were both issued in Ontario. No claim has been issued by the Plaintiffs in Tanzania, and no claim has been brought against the TPL. Likewise, no claim has been issued against NMGML or any other Barrick-related individual or entity; that said, the pleadings do not claim that NMGML – a corporation in which, as indicated above, the Tanzanian government is a minority shareholder – is a sham or a façade for Barrick. Rather, Plaintiffs allege that Barrick is directly responsible for oversight of NMGML and the Mine. Their counsel characterize the claims as aiming directly at the powerful parent company and ultimate source of the wrongdoing in its home jurisdiction.

[13] On the other hand, Barrick characterizes the claims as targeting the wrong defendant in the wrong court, all in an effort to avoid having to prove any actual wrongdoing at the Mine. Its counsel submit that by suing the geographically distant majority shareholder of NMGML in a jurisdiction detached from the events giving rise to the claim, the Plaintiffs will be able to emphasize generic pronouncements about corporate responsibility rather than focus on rights and wrongs on the ground during the violent incidents at issue.

III. Barrick's structure and the Mine's management

[14] In support of the view that Barrick is ultimately the source of the wrongdoing alleged in the claim, the Plaintiffs cite notices of annual meetings, website postings, reports, regulatory forms, and other public statements by Barrick with respect to the "sustainability" policies that guide its investments. They reference, for example, Barrick's 2023 Notice of Annual Meeting, where it is stated that, "Our sustainability strategy is our business plan. Sustainability is the foundation for how we conduct our business." They likewise offer as evidence of top-down management Barrick's securities filings, where the company states, *inter alia*:

> [S]ustainability has long been an integral part of the way we do business. In fact, its principles are deeply embedded in our organizational DNA.
>
> Deeply embedded in [long-term business plans] is our long-standing commitment to the principles of environmental, social, and governance ('ESG'), which informs all our business decisions.

[15] Plaintiffs' counsel go to some lengths to demonstrate that these statements are not just platitudes, but are part of the company's structure of "bottom-up reporting" and "top-down leadership." They point out that Barrick has a number of committees at the board of directors level engaged in sustainability efforts, including the Audit & Risk Committee, the ESG and Nominating Committee, and the Compensation Committee. They likewise point out that key responsibility for sustainability, including human rights policies, "resides with Barrick's Sustainability Executive, a position held by Barrick affiant Grant Beringer." In support of this claim, they adduce evidence that Mr. Beringer's compensation "is tied in part to attainment of the company's sustainability targets, including on human rights", and that he reports to Barrick's CEO, Mark Bristow.

[16] Barrick's counsel respond that none of this points to management of NMGML, or of the Mine, being located in Ontario. The evidence shows that Barrick has a decentralized structure, with regional teams responsible for key functions and activities. Of its 23,000 employees, only 55 are at the company's office in Toronto, and are engaged in finance, communications, investor relations, legal and corporate secretary matters, and human resources.

[17] No board member of Barrick is located in Ontario. Mr. Beringer, the Sustainability Executive, resides in South Africa. The regional sustainability lead for Africa is Thomas Wilson, who also lives in and works out of South Africa, while his immediate predecessor in that position, Hilaire Diarra, lived in and worked out of Dar Es Salaam, Tanzania. In addition, the Chief

Operating Officer for Africa, Sebastiaan Bock, lives and works in South Africa, as did his predecessor in that position, Willem Jacobus Jacobs.

[18] The General Manager of Operations for Central and East Africa is Tahirou Ballo, who lives in Tanzania. Most importantly, the Mine's General Manager, Apolinary Lyambiko, who is responsible for day-to-day management of the Mine, lives in Tanzania and reports to NMGML's board, not to Barrick's. As for Barrick CEO Bristow, he is a South African who is reported to have homes and to alternately reside in a number of countries, including South Africa, the UK, the US, and Mauritius, but has no residence in Ontario or Canada.

[19] Turning to NMGML, it employs upward of 1,350 people, approximately 96% of whom are Tanzanian nationals and none of whom is resident in Ontario. These workers engage in all mine-related functions, with Mr. Lyambiko having final say on ongoing operational matters. He is a Tanzanian national, as are 13 of his 17 department heads, the other 4 being nationals of other African countries. Furthermore, all NMGML staff involved in security and community relations are Tanzanians.

[20] COO Bock has deposed that the business and management of NMGML are overseen by a five-member Board of Directors, none of whom resides in or works out of Ontario. The Board meets on a quarterly basis, with all meetings taking place in person in Tanzania. In giving evidence in this motion, Mr. Lyambiko has stated categorically that "the Mine is not operated on a day-to-day basis by employees of Barrick… [and that] NMGML has its own board of directors, management, employees, business premises, bank accounts, finance team and payroll. It makes its own personnel decisions."

[21] In addition, while the sustainability concept applies Barrick-wide, Mr. Lyambiko deposes that all applicable sustainability initiatives are implemented on the ground in North Mara, Tanzania. They are not devised in or delivered from a corporate office in Ontario or anywhere else. The initiatives are comprised of a number of localized projects and goals, including NMGML's procuring of goods and services locally and its funding of various community projects.

[22] Mr. Lyambiko also describes that he chairs NMGML's Community Development Committee, which oversees investment by NMGML in community projects identified by local stakeholders in the North Mara region. He further explains that as part of NMGML's sustainability initiatives, local residents with concerns about the Mine's operations and impacts can access and seek a remedy in a grievance process established by NMGML.

[23] As indicated in the previous section, NMGML and Twiga hired a private Tanzanian contractor to provide unarmed security services at the Mine. There is nothing in the record to indicated that Barrick is a party to this contract or that it oversees it. These security arrangements are between Tanzanian parties on both sides – i.e. NMGML/Twiga on one side and the security company, Nguvu Moja, on the other. The contracts were negotiated and concluded in Tanzania. The services thereunder have been performed in Tanzania by Tanzanian personnel governed by Tanzanian law. The compensation to Nguvu Moja is deposited by NMGML and/or Twiga directly into Nguvu Moja's Tanzanian bank account.

[24] As also indicated above, NMGML has contracted with the TPF to provide additional security at the Mine. Tanzanian law professor, Leonard Paulo Shaidi, has deposed that numerous mining companies, financial institutions and other businesses and civil society groups in Tanzania have entered into similar agreements with the TPF.

[25] This type of security contract with local police appears to be a standard arrangement in the resource industry. In *Kalma v. African Minerals Ltd.*, [2018] EWJC 3506, at para. 196, aff'd [2020] EWCA Civ 144, a case arising out of events in Sierra Leone, an English court has indicated that it "would be surprised if such payments [to Sierra Leone police] had not been made [by the mine]… the fact finding exercise must not be performed without regard to the prevailing social and political context in which it falls to be carried out."

[26] A contract with the TPF appears to have been a necessary arrangement in North Mara because of the remote location and the continuous entrance of local people, often armed, onto the Mine property. Mr. Lyambiko has testified that the trespassers detonate live explosives and engage in other hazardous conduct to access gold ore that they seek on the Mine's property, all of which requires a substantial security presence.

[27] The Plaintiffs seek to link Barack to the MOUs between NMGML and the TPF by showing that they are in keeping with general corporate policy with respect to sustainability, human rights, and security. There is, however, no evidence that Barrick, as opposed to NMGML, directed the negotiation of the MOUs or dictated their content. And although two of NMGML's directors signing the MOUs are Barrick appointees to the NMGML board, there is nothing in the record to suggest that NMGML's directors do not operate independently or exercise independent judgment. Moreover, Barrick's counsel point out that there is no connection alleged to exist between the MOUs and Barrack's Ontario office.

[28] The MOUs are local Tanzanian agreements that govern the involvement of the TPF and payment of Tanzanian police officers in Tanzanian currency by deposit into Tanzanian banks. By their terms, they require the TPF to abide by national and international human rights law and anti-corruption standards, together with Tanzanian and international policing standards. But there is nothing about that content that implicates Barick in Ontario – unless the Plaintiffs mean to say that human rights standards are foreign to the contracting Tanzanian entities, and so must have been added or insisted upon by the Canadian shareholder. But there is no evidentiary basis to even suggest such a prejudicial conclusion.

[29] According to Mr. Lyambiko's evidence, the Nguvu Moja personnel for the most part monitor the Mine property via CCTV surveillance, and call the TPF on an 'as needed' basis when trespassers enter or other illegal activity erupts. According to the Plaintiffs, the TPF typically responds with disproportionate and unnecessary force, injuring or even killing non-threatening people.

[30] It is not the role of the court on this motion to determine which side's version is right or wrong about who uses force against whom or whether the use of force is justified in any given

circumstance. But there is nothing in the record that runs contrary to the provisions of the MOUs confirming that neither NMGML nor Barrick directs, controls, or has the ability to command the TPF. To the contrary, the TPF is a national police force that operates under its own independent chain of command in all of Tanzania. This independence is expressly recognized in the MOUs.

[31] Plaintiffs' counsel point out that although the MOUs might assert the TPF's independence, Barrack's deponents, including COO Bock, have stated on the record that Mr. Bristow is a very hands-on CEO, and that he makes it his business to ensure that the Mine applies Barrick's policies. The Plaintiffs point to evidence that Mr. Bristow, who, as previously indicated, resides in South Africa, the UK, and elsewhere, typically visits North Mara at least 4 times per year, and that Mr. Bock, who resides in South Africa, visited North Mara about half a dozen times last year.

[32] While those visits do take place, they do not appear to have anything to do with the workings of the TPF or its involvement at the Mine. The record shows that in the years since the MOUs have been in place, there has been one visit – a courtesy call rather than a working meeting – to the TPF by Messrs. Berringer and Bock when they were visiting the Mine from South Africa. There is no evidence in the record that Mr. Bristow has ever met with the TPF on his visits.

[33] The record also contains no evidence ant anyone from Barrick's Ontario office has ever spoken with a Tanzanian police officer or in any way sought to direct the TPF. The sporadic visits by Barrick management to the Mine are all by Barrick's Africa-based regional executives. In fact, it is unclear from the record whether anyone from the Ontario office, which has no particular involvement in the North Mara project, has ever visited the Mine at all.

IV. The incidents

[34] To illustrate the nature of their claims, the Plaintiffs have included in the evidentiary record affidavits sworn by 2 of the 29 Plaintiffs: Elizabeth Matiko Irondo and Charles Daniel Nyakina. This sworn testimony relates the facts giving rise to the claims by these two Plaintiffs. Given that the Plaintiffs' record is submitted in response to a motion to stay or dismiss where the moving party is out to demonstrate that another jurisdiction is "clearly more appropriate" than the present one, one can surmise that this record contains the Plaintiffs' best evidence: *Club Resorts Ltd. v. Van Breda*, [2012] 1 SCR 572, at para. 108.

[35] In other words, Plaintiffs' counsel presumably canvassed their 29 clients and adduced the most cogent evidence available in order to demonstrate the type of forum that their case demands. In this way, the Court can properly assess whether the Plaintiff's chosen jurisdiction or Barrick's proposed jurisdiction is better situated "for disposing of the litigation and thus ensuring fairness to the parties and a more efficient process for resolving their dispute": *Ibid*., at para. 109. As in a summary judgment proceeding, the Court is "entitled to proceed on the basis that the parties have put into the record all [or at least *some*] of the evidence that would be forthcoming at trial": *Switzer v. Petrie*, 2024 ONCA 474, at para. 8.

[36] Accordingly, if the moving party – i.e. Barrick – puts its "best foot forward" with evidence demonstrating the frailties of the present forum, then the responding party – i.e. the Plaintiffs –

must have also put forward their best evidence and their best affiants. Otherwise, one or the other risks losing the forum challenge: *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764, at para. 15. The court has nothing to rely on but the record that the parties place before it; the parties will not have a second chance to make their choice of forum case. While I do understand that the evidence in the record is of two Plaintiffs who serve as examples for the rest, I have to assume that the evidence before me is the best evidence that the parties have at this time.

[37] With that in mind, the specific evidence put forward by the Plaintiffs is instructive. Although articulated in the language of human rights law, the claim against Barrick is essentially a negligence claim. As Plaintiffs' counsel put it, "The claim of direct negligence is informed by the UK Supreme Court ruling in *Vedanta Resources PLC v Lungowe and others*, 2019 UKSC 20 ("*Vedanta*"). In that case, the court examined whether the role of the parent company in the management of its mine in Zambia was sufficient to give rise to a duty of care in tort to local residents." Plaintiffs' counsel go on to contend that "Barrick created, directs, implements, and supervises the security strategy and human rights policy at the North Mara mine, and Barrick's negligence led to the deaths and injuries to community members."

[38] For its part, Barrick rejects the Plaintiffs' allegations. More to the point, it contends that any oversight involvement that it did have had nothing to do with hands-on security matters, and that in any case all security at the Mine is directed and implemented in Africa, not in Ontario. Plaintiffs' counsel responds to this by emphasizing the duty of care, which they submit is based on Barrick's overall policy formulation and coordination role. The Plaintiffs therefore focus on Barrick's own policy statements, publicly accessible regulatory filings, and website and other publications.

[39] Without determining for now the merits of the duty of care argument, one element of the negligence claim that cannot be established by Barrick's publications alone, and that requires local, on-the-spot testimony, is causation. In a negligence claim, it is not enough for a Plaintiff to allege that a duty of care exists and that he or she has suffered an injury. The breach must be shown to have actually caused or contributed to the injury; there must be a causal relationship "between the tortious act of the wrongdoer and the injury to the victim in order to justify compensation of the latter out of the pocket of the former": *Snell v. Farrell*, [1990] 2 SCR 311, at para. 26.

[40] In her affidavit, Plaintiff Elizabeth Matiko Irondo describes the death of her son at the Mine. In an introductory paragraph, she states:

> I have brought a lawsuit against Barrick Gold Corporation ('Barrick') regarding the killing of my son, Irondo Matiko Irondo, who was shot in July 2021. My lawsuit alleges that Barrick as owner of the mine is responsible for the killing of my son because of its negligent security strategy and human rights policy that led to his death.

[41] She then describes how her son would search for gold in what she calls the Mine's "waste rock", and explains that this was easier before the Mine built a wall around the perimeter of its property. Once the wall went up, individuals seeking access to the property had to breach the wall.

She deposes that, "[s]ince the mine built the wall around 2018, the violence by the police has gotten worse."

[42] Ms. Irondo goes on to describe being informed that on the night her son was killed there had been some incident at the Mine, and that the TPF was conducting a search and there was blood on the ground. She then forthrightly states that she does not know the circumstances surrounding her son's death, but says that his body that she saw later in a morgue showed signs of a gunshot wound. As she puts it, "I have never been told how and why Irondo died. Ms. Irondo further laments that no one was ever charged criminally for the shooting death of her son. She fears that, in her words, "The mine and government are partners. I do not have faith in them to hold anyone responsible for Irondo's death."

[43] In his affidavit, Plaintiff Charles Daniel Nyakina describes the June 2022 death of his brother, Emmanuel Daniel Nyakina, at the Mine. Using the identical phrasing as Ms. Irondo, Mr. Nyakina states:

> My lawsuit alleges that Barrick as owner of the mine is responsible for the killing of my brother because of its negligent security strategy and human rights policy at the North Mara mine that led to his death.

[44] Mr. Nyakina's family lives adjacent to the mine; he is a subsistence farmer who grew up near the Mine but now lives some distance away. Mr. Nyakina relates that his brother would search for gold in pits outside the Mine's property as well as in remnant gold piles on the Mine's property inside the perimeter wall. Mr. Nyakina was not present during his brother's shooting and has no firsthand knowledge of the incident. He says that on the day of his death he first saw his brother in a nearby hospital where he was taken after being shot. Mr. Nyakina then deposes that he managed to speak with his brother in the hospital, and gives an unverifiable account of what he says his brother relayed to him at that time.

[45] In addition, Mr. Nyakina speculates that "Barrick may have information about the shooting of Emmanuel since he was killed inside the mine and there are lots of cameras in the area." Much like Ms. Irondo, Mr. Nyakina also laments that, as far as he knows, the TPF has not conducted an investigation into the shooting. He states that, "The police have not interviewed me or my family, or given us any information about Emmanuel's death." It is unknown whether the TPF has, in fact, investigated the incident.

[46] It is perhaps not surprising that the police have not interviewed Mr. Nyakin and his family. Mr. Nyakina deposes that none of them were present when Emmanuel was shot, and that neither he nor anyone else in his family knows what transpired. Mr. Nyakina only knows what he was told as hearsay. If the TPF did an investigation into an alleged police shooting, they, much like a court reviewing the matter, would likely be interested in hearing from actual witnesses to the event.

[47] From the statements by these two affiants, one can reach a number of significant conclusions with respect to the future trial of the claims. In the first place, the Plaintiffs' best evidence is not useful in determining the cause of any of the injuries or deaths. No amount of references to Barrick's sustainability policies, its securities filings and other publications, its

website statements about community commitment, NGO statements about corporate responsibility in resource extraction, international resolutions on human rights and foreign investment, etc. will help to determine responsibility for the two deaths. The trials will evolve around the question of factual causation, and the evidence of the two Plaintiffs chosen for this motion is indeterminate on that issue.

[48] Both of the Plaintiffs' affiants concede that they do not know what transpired during the incidents in which their family members died. Both deceased were on the Mine property, presumably as trespassers since they were not employees and had no legal reason to be there; and both appear to have died of gunshot wounds.

[49] It seems likely that Ms. Irondo's son and Mr. Nyakina's brother were shot by a TPF member since the police are armed on the site of the Mine. But even this is not certain. Contemporaneous press releases contained in the motion record describe several of the incidents in issue as armed intrusions by masses of local people onto the Mine's property, with some of the injuries and deaths of the Plaintiffs being a result of those participating in these intrusions fighting among themselves.

[50] The evidence in the record cannot not establish with any certainty how or why the relatives of the Plaintiffs' two deponents were shot. Ms. Irondo and Mr. Nyakina have no first-hand knowledge of what their respective family members were doing when they died. The record does not give any insight into whether Ms. Irondo's son and Mr. Nyakina's brother – or any of the other Plaintiffs and their family members – were innocent victims of the police, were shot in self-defense by the police, or were attacked by others invading the Mine at the same time and competing for the gold ore found there.

[51] The record likewise does not reveal whether the deceased Plaintiffs were themselves armed or carrying implements that could be used as weapons, whether the police opened fire unnecessarily on isolated individuals or were overwhelmed by a large number of people invading the Mine property, etc. If one takes as an example the kind of evidence marshalled to determine causation and fault in an alleged police shooting in Canada, a conclusive finding as to whether the shooting was justified or not will involve a thorough exploration of the event on the ground, from multiple angles. Although any number of the Plaintiffs themselves may testify at trial, the record here suggests that their testimony alone will not suffice for their claim.

[52] The Plaintiffs assume that there is video surveillance footage available of the incidents at issue. That may be the case, although it is uncertain at this early stage what was captured on camera. At the same time, the record indicates that a number of the incidents in issue occurred outside of the Mine's CCTV range. The accounts in the record for the most part suggest that the violent occurrences were in the course of mass invasions of the Mine property, presenting a complex and potentially confusing scenario where multiple viewpoints will have to be explored. It is more than likely that most of the relevant evidence will have to come from eyewitnesses at the time of the event.

[53] The witnesses with evidence about the shooting incidents will likely be other individuals who entered the Mine with the injured and deceased. This will likely be accompanied by evidence

presented by members of the Nguvu Moja security team, as well as NMGML staff who may have been present, and, perhaps, medical personnel at hospitals where the injured were treated. Most importantly, eye-witness testimony will have to come from the TPF members on site at the time of the various incidents, along with the TPF officers in command of those members.

[54] What is certain is that no one from Barrick's finance or communications or legal department in its Ontario office will be called as a witness to the events in issue. To the extent that the trial will turn on determining factual causation – who caused the injury and under what circumstances – every witness will have been in North Mara, Tanzania on the relevant date. Barrick's limited personnel and corporate presence in Ontario is beside the point. In fact, attempts to focus the analysis on corporate pronouncements instead of events on the ground will inevitably distract from, rather than aid, the court in its task.

[55] If the circumstances of the deaths can be established as a wrongful police shooting, there may then be a subsequent question as to whether any of Barrick's corporate policies or actions are causally connected to the deaths. But if the evidence turns out to reveal a justified police shooting, or, depending on the circumstances, perhaps even an accidental one or a wound inflicted by someone other than a TPF member, then Barrick's policies may become a non-issue; after all, Barrick and its policies will not be relevant to any inquiry if it is determined that the death or injury of a Plaintiff was not wrongfully inflicted.

[56] The primary determination of how the deaths were caused will be based on possible video footage from the Mine and on witness accounts in Tanzania alone. If the crucial witnesses cannot or do not come to Ontario to testify, a court in Ontario will not be in a position to make a proper decision.

[57] In fact, even any subsequent analysis of Barrick's policies and their impact will be based on the evidence of witnesses in Tanzania or Barrick's regional personnel in South Africa. While documentary records can be digitally produced anywhere, it is fair to say that no one has identified a single, truly relevant witness from Ontario.

V. The Tanzanian legal system

[58] As moving party in a *forum non conveniens* motion, it is incumbent on Barrick to demonstrate that the forum selected by the Plaintiffs is more than inconvenient. Barrick "must show that the alternative forum is clearly more appropriate": *Van Breda*, at para. 108.

[59] This, then, sets up a contest between Ontario and Tanzania as competing forums for the action. As explained above, counsel for Barrick have had little problem establishing that the vast majority of the evidence and witnesses necessary for the trial will come from Tanzania; and that the one or two witnesses who are Barrick representatives (as opposed to NMGML personnel and others) will come from Tanzania or its regional team in South Africa, not from Ontario.

[60] That said, Tanzania is not a jurisdiction that is particularly familiar to Ontario lawyers and courts. That foreignness has created an occasion for a full-scale exploration of its appropriateness as a forum for litigation. As the Supreme Court of Canada noted in *Van Breda*, at para. 63, this

exercise can create some tension between the need to consider the effectiveness of the foreign jurisdiction's litigation environment with the need for comity and respect for a foreign jurisdiction's legal system and policy choices:

> In Sharpe J.A.'s view [in the court below], evidence on how foreign courts would treat such cases might be helpful (para. 107). I note in passing, however, that undue emphasis on juridical disadvantage as a factor in the jurisdictional analysis appears to be hardly consonant with the principle of comity that should govern legal relationships between modern democratic states…

[61] The parties have, accordingly, invested considerable effort into exploring the pros and cons of the competing systems. And while the merits of Ontario litigation need no special consideration or expert evidence, the Tanzanian system has come in for intense examination in this motion. The Plaintiffs have produced a number of expert reports in an attempt to demonstrate that the Tanzanian legal system does not provide an appropriate forum to host their claim, and Barrick has produced a number of expert reports in an attempt to demonstrate that the Plaintiffs' attacks on the Tanzanian system are unwarranted and that its justice system is up to the task of trying this case.

a) The alternative jurisdiction

[62] Relying heavily on *Nevsun Resources Ltd. v. Araya*, [2020] SCR 156 ("*Nevsun* SCC"), at para. 50, counsel for the Plaintiffs submit that, "the deference accorded by comity to foreign legal systems 'ends where clear violations of international law and fundamental human rights begin.'" They go on to argue that Canadian courts may consider "the nature of the justice system" in another jurisdiction in light of "the Canadian sense of what is fair, right and just": *Ibid.*, at para 51.

[63] This approach is a springboard for the Plaintiffs to launch an attack at large on the Tanzanian justice system, comparing it to what the British Columbia courts and the Supreme Court of Canada found in *Nevsun*:

> But faced with a stark choice between one jurisdiction, albeit not the most appropriate in which there could in fact be a trial, and another jurisdiction, the most appropriate in which there never could, in my judgment, the interests of justice would tend to weigh, and weigh strongly in favour of that forum in which the plaintiff could assert his rights.
>
> *Nevsun Resources Ltd. v. Araya*, 2017 BCCA 401 ("*Nevsun* BCCA"), at para. 120, quoting *Connelly v. RTZ Corp. plc (No. 2)* [1997] ILPr 643 (CA) aff'd [1997] UKHL 30, at para. 8.

[64] Thus, for example, citing *Nevsun* (BCCA), at paras. 188-190, the Plaintiffs submit that if a moving party is unable to show that the foreign jurisdiction in issue has a system for proper documentary disclosure, that jurisdiction will not be an appropriate one to which to remove the action. They further contend, again citing *Nevsun* SCC, at paras. 129-132, that unlike in Ontario and Canada, Tanzanian law does not provide a basis for pursuing tort claims based directly on

customary international law. As Plaintiffs' counsel put it in their factum, since their clients "advance claims based on both negligence and on the violation of customary international law as recognized by the Supreme Court of Canada in *Nevsun v. Araya*…if this lawsuit is not heard in Ontario, it will not be heard at all."

[65] There was, of course, good reason for characterizing the alternative jurisdiction in *Nevsun* as one in which there "never could" be a trial: the jurisdiction in question was a country lying north of Tanzania along Africa's eastern coast, Eritrea. That country was described as a "dictatorial, one-party state which has never held elections or implemented a constitution" and that is "one of the most oppressive regimes in the world": *Nevsun* BCCA, at paras. 5, 8.

[66] Eritrea is described by the Supreme Court as being on a "continuous war footing" where, in 2002, "the period of military conscription in Eritrea was extended indefinitely and conscripts were forced to provide labour…for various companies owned by senior Eritrean military or party officials": *Nevsun* SCC, at para 10. Masses of conscripts were placed into this National Service Program and were "forced to provide labour in harsh and dangerous conditions for years"… They were otherwise "confined to camps" for a period whose "tenure was indefinite": *Ibid.*, at paras. 10-12.

[67] Most significantly, Eritrea was characterized as a jurisdiction in which "[t]he rule of law does not exist…It has no constitution, functioning legislature or civil justice system, independent judiciary, elections…": *Nevsun* BCCA., at para. 8. It is against this background of an undemocratic regime and the "absence of a 'functioning system of justice' in Eritrea", *ibid.*, at para. 5, that the Plaintiffs embark on an analysis of the Tanzanian legal system. It is likewise against this background that Plaintiffs' counsel conclude in their factum that, "The courts of Tanzania do not provide an adequate alternative forum for the litigation of these complex claims…"

[68] As described by Professor Shaidi in his expert report, Tanganyika (as it was then known) became a British colony at the end of the First World War. In 1920, the colonial government adopted, as it had in India and elsewhere in the British empire, an English common law-based legal system. This legal system remained in place with independence in 1961, and was continued in the 1964 Constitution enacted upon the union of Tanganyika and Zanzibar for the formation of the United Republic of Tanzania.

[69] Professor Shaidi relates that, "Throughout its history as an independent state…this inherited legal system and the body of laws imported and developed by the colonial legislature have shaped Tanzanian law and the Tanzanian legal system, which in turn has been developed and refined by the National Assembly (the Legislature of Tanzania) and the jurisprudence of the Tanzania Courts." The political and legal system in Tanzania was designed a century ago based on the English model, and, as in the common law provinces of Canada, has remained so until today.

[70] As the Professor Shaidi and other experts describe it, the Tanzanian legal system is structured around principles familiar to all common law-based systems:

> The legal system of Tanzania is organized around three basic principles that I expect will be familiar in any Commonwealth country: (i) the Rule of Law; (ii) the Separation of Powers; and (iii) the Independence of the Judiciary. In accordance with these principles, the Judiciary considers the cases before it, including claims against the State and all its institutions (such as the Tanzania Police Force), freely and independently.

[71] This characterization of the justice system as impartial and independent is echoed in the expert report of the former Chief Justice of Tanzania, Mohamed Chande Othman:

> The Judiciary is therefore constitutionally entitled to freedom from interference in deciding matters that come before it, and its rulings are the final word. The Judiciary is required to dispense justice fairly and impartially, without fear, favour or influence from other organs of the State and without regard to the socioeconomic status of the litigants.
>
> In my experience, these constitutional guarantees and mandates are not just theoretical principles. They are abided by in practice.
>
> In my opinion, informed by my lengthy career as an experienced jurist and judge in Tanzania, as well as by the diverse international experiences I have gained, the Tanzanian judiciary is transparent, well organized, and of high quality and renders impartial justice in a fair and proper manner.

[72] Chief Justice Othman was cross-examined by Plaintiffs' counsel, but it is safe to say that this description of the Tanzanian justice system was, if anything, strengthened by the evidence brought out in cross-examination. Plaintiffs' counsel questioned him on a number of speeches he has given at conferences and other forums, in which he expounded on challenges faced by the legal system, the courts, and the bar. These challenges included improving access to justice and the timeliness of justice, reducing the expense of justice, improving funding for legal representation for indigent litigants, and a concentration of lawyers in urban settings with too few lawyers in rural areas.

[73] Chief Justice Othman's extra-judicial remarks may on one hand be seen as critical of Tanzanian justice. That is certainly what Plaintiffs' counsel tried to being out in cross-examination. However, Chief Justice Othman's points are at the same time rather familiar. In fact, they are virtually identical to extra-judicial speeches and remarks on access to justice and the expense of civil litigation made by Canada's own former Chief Justice Beverly McLachlin: "Access to Justice: A Fond Farewell", Action Committee on Access to Justice in Civil and Family Matters", December 13, 2021, <https://www.justicedevelopmentgoals.ca/blog/access-to-justice-a-fond-farewell-beverley. mclachlin >.

[74] The views of Tanzania's former chief justice likewise parallel remarks about expense and delay in Canadian justice expressed by former Supreme Court Justice Michael Moldaver: "Moldaver: Major Overhaul needed in criminal justice", *National*, Canadian Bar Association,

April 17, 2023, < https://nationalmagazine.ca/en-ca/articles/people /profiles/2023/major-overhaul-needed>. They also reflect the very themes that were the subject of former Ontario Court of Appeal Justice Coulter Osborne's report on court funding and legal aid reform: "The Osbourne Report", Ministry of the Attorney General, November 2007, < https://wayback.archiveit.org/16312/20210402061409 /http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp/>

[75] In other words, what the cross-examination of Chief Justice Othman brought out was the receptiveness of Tanzanian justice to thoughtful commentary by a well-informed jurist, in exactly the way one would expect of a transparent legal system open to critique and reform. The legal policy challenges outlined in Chief Justice Othman's comments about Tanzania apply equally to Canada and Ontario; and they are all legitimate critique in an open and properly functioning legal system.

[76] On the other hand, no one would, or could, say that this kind of critique would be permitted in, or that it even applies to, Eritrea. Court delay and the expense of civil litigation represent issues that are so far from what ails Eritrean society that they are not worth even mentioning. Eritrea was described in *Nevsun* BCCA, at para. 12, as "a 'rogue state' with no functioning legal system." The comparison of that legal vacuum with Tanzania's common law system simply is not apt.

[77] This is not a case where Canada is needed to ensure that the law "percolates down from the international to the domestic sphere", as Justice Abella put it in *Nevsun* SCC, at para. 71. It is a negligence case about allegedly wrongful corporate and/or police conduct, for which the domestic Tanzanian legal system appears as well equipped as Canada's legal system.

[78] It is noteworthy that Chief Justice Othman, besides having a wealth of experience and being a well-qualified expert in his country's legal system, is acknowledged even by Plaintiffs' experts as being more knowledgeable about the Tanzanian system than they are. His report, together with that of Professor Shaidi, establishes that Tanzania's courts are fair, independent, and competent. They administer a system, and approach adjudication, in a way that is, warts and all, quite similar to Canadian and Ontario legal process.

[79] On a final note regarding the Tanzanian system at large, the Plaintiffs allege that the Tanzanian judiciary lacks independence because the Tanzanian constitution gives too much latitude to the country's executive branch of government in appointing judges and setting their remuneration. This line of argument is premised on an expert affidavit submitted by Kenyan lawyer Donald Deya, who has spent time doing a study of five east African countries – Burundi, Kenya, Rwanda, Tanzania, and Uganda – and finds that Tanzania comes up short on judicial independence because of these appointment and remuneration issues.

[80] Counsel for Barrick point out that whatever Mr. Deya's talents might be as an east African comparativist, he is not a Tanzanian lawyer, has never practiced in that country or appeared in its courts, and is at best a superficial observer of the Tanzanian legal system. His evidence is directly addressed by Chief Justice Othman, whose expertise in the Tanzanian judiciary and legal system is beyond question.

[81] In particular, Chief Justice Othman explains that Tanzanian judges are appointed with security of tenure. They cannot be removed capriciously, and their remuneration is fixed not by the president's office or any other political actor but by an independent tribunal or commission. He also points out that while the Tanzanian constitution gives the president of the country the power to appoint judges, that power is exercised only after consultation with an independent judicial commission composed of members of the bar and current sitting judges. He states that, "This consultation is constitutionally mandated, and in practice, no candidate has ever been selected from outside a short list provided by the Commission to the President."

[82] While Mr. Deya may have an interesting comparative perspective in comparing Tanzania to several of its east African neighbours, he has no expertise when it comes to comparing Tanzania to Ontario or Canada. And yet, that is the only relevant comparison, since under the circumstances those are the forums actually in issue.

[83] I need no expert report to know that in Canada, the appointment of judges of the superior courts of the province (where the within action has been commenced) is constitutionally the responsibility of the federal government under section 96 of the *Constitution Act, 1867*, and that the appointment process is a matter of prime ministerial prerogative in which no consultation of any kind is required: P.W. Hogg and W.K. Wright, *Constitutional Law of Canada*, 5th ed. (Toronto: Thomson Reuters, 2023), Vol. 1, §8.4. Under the Tanzanian constitution, the president, as described in the expert evidence before me, plays virtually the identical role in judicial appointments as does the Canadian prime minister. If anything, the Tanzanian constitution places more checks and balances on the executive branch of government in appointing judges than does the Canadian constitution.

[84] In practice, of course, the Prime Minister of Canada typically fills vacancies by selecting from a shortlist of candidates submitted by advisory boards composed of members of the bar and sitting judges in the various provinces. But, as indicated above, that is also the case in Tanzania's equivalent process. There is no sense in which the independence of the appointment process in Tanzania is any less robust than that of the appointment process in Canada. The same is true with judicial remuneration, which in both Tanzania and Canada is fixed by an independent commission and not by the executive branch – i.e. cabinet – or by any other political arm of government.

[85] With respect, the Plaintiffs' entire line of argument relating to judicial independence leads nowhere.

b) Juridical advantage

[86] Counsel for the Plaintiffs submit that there are juridical advantages to the selection of Ontario as a forum that will be lost if the case were to be litigated in Tanzania. Counsel for Barrick responds that, as a matter of logic, juridical advantage is a zero-sum game: one party's advantage is the other party's disadvantage. For this reason alone, the notion of juridical advantage is not particularly helpful in sizing up two competing jurisdictions.

[87] Furthermore, arguments about juridical advantage often gives way to little more than a subjective preference for the lawyers' or the court's home rules. The Supreme Court of Canada has therefore warned that these types of arguments are to be treaded upon with care.

[88] In *Breeden v. Black*, [2012] 1 SCR 666, at para. 26, Justice LeBel wrote that "a focus on juridical advantage may put too strong an emphasis on issues that may reflect only differences in legal tradition which are deserving of respect, or courts may be drawn too instinctively to view disadvantage as a sign of inferiority and favour their home jurisdiction." Moreover, in *Amchem Products Incorporated v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 897, the Supreme Court warned that, "If a party seeks out a jurisdiction simply to gain a juridical advantage rather than by reason of a real and substantial connection of the case to the jurisdiction, that is ordinarily condemned as 'forum shopping'."

[89] The advantages which the Plaintiffs identify for Ontario include: a) the more expansive discovery process available in Ontario, b) the availability of contingency fees in Ontario, and c) the ability in Ontario to claim breach of obligations owed under international human rights law. The latter two reflect relatively recent developments in Ontario, while the first one is a more longstanding difference between the Tanzanian and Ontario civil litigation rules.

[90] Turning first to contingency fees, these arrangements are a relatively recent phenomenon in Ontario law. Legal fees based on a share of awards were prohibited first in England, and then in Canada, for centuries: *McIntyre Estate v. Ontario (AG)*, 2002 CanLII 45046, at paras. 18-21 (ON CA). It has only been authorized for Ontario lawyers to charge on a percentage of recovery basis for the past two decades – i.e. since amendments to the *Solicitors Act* were introduced by means of Bill 25, *Solicitors Amendment Act (Contingency Fee Agreements), 2002*.

[91] While no longer prohibited in Ontario, contingency fees are closely regulated by the courts. They will not be approved if they are not within what the court considers to be a "fair and reasonable" range: *Raphael Partners v. Lam* (2002), 61 OR (3d) 417 (CA). The fee cannot be out of proportion to the amount of work done by the lawyer or firm, making contingency fees closer than they might otherwise be to fees charged on an hourly basis: *Halimi v. Certas Home and Auto Insurance Company*, 2023 ONSC 432, at paras. 6-7.

[92] Moreover, it is fair to say that the availability of contingency fees is far from universal. Many democratic countries with sophisticated legal systems and well entrenched rule of law values prohibit the kind of contingency fees permitted in Ontario. In *forum non conveniens* motions, this Court has not hesitated to find that, for example, the courts of Ireland are an appropriate forum despite that country having rules prohibiting lawyers from charging contingency fees: see *Shirodkar v Coinbase Global, Inc*., 2024 ONSC 1399. Indeed, almost all members of the European Union have such a prohibition. And yet, Canadian courts have routinely deferred to the policy choices of those jurisdictions in finding those forums to be appropriate alternatives for civil claims: see *Leon v. Volkswagen AG*, 2018 ONSC 426, at para. 44.

[93] Simply put, the absence of contingency fee arrangements does not disqualify a foreign jurisdiction or make it an inappropriate alternative for *forum non conveniens* purposes. Different

jurisdictions make different policy choices at different times on issues of this nature. Tanzania's policy choice is neither aberrant nor unjust in any objective sense.

[94] As for the limited pre-trial discovery rights available in the Tanzanian civil litigation system, that too is not unusual. The record contains an affidavit of Professor Scott Dodson of UC Law-San Francisco, an expert in comparative civil procedure, that demonstrates that, if anything, Ontario's system of bountiful pre-trial discovery is the outlier in terms of global litigation rules. Professor Dodson notes that in Tanzania, documentary discovery and written interrogatories are done as a matter of right. Oral examinations for discovery are available if a court, on application, determines that they are appropriate in the circumstances.

[95] According to the uncontradicted evidence of Professor Dodson, the Tanzanian system is similar to, and at times more generous than, that prevailing in the courts of Belgium, Germany, South Africa, and in commercial arbitration under the most prevalent international rules. Although oral depositions are more widely available in the United States and Canada than in virtually all other jurisdictions, that does not disqualify or render objectively "unfair" all jurisdictions but those two. As Professor Dodson points out, discovery is a trade-off; increased discovery equates to increased information available to the parties, but also equates to increased cost and delay.

[96] I agree with Professor Dodson's conclusion that, "Different jurisdictions can justifiably adopt justice systems with more limited opportunity for discovery in exchange for other litigation virtues – such as low cost and minimal delay – without degrading the overall quality of civil justice." The expert reports of Professor Shaidi and Chief Justice Othman demonstrate that the Tanzanian system has achieved a level of efficiency and fairness in its operation with more limited discovery rules than in Ontario, and that it remains an effective choice for civil litigation purposes.

[97] An alternative forum proposed in a *forum non conveniens* motion does not have to mimic the Ontario system in every detail in order to be a viable alternative. For example, in *Lan Associates XVIII L.P. v. Bank of Nova Scotia*, 2000 CanLII 16943 (ON CA), the Court of Appeal granted a stay of Ontario proceedings in favour of proceedings in the Turks and Caicos Islands. In doing so, the Court noted that the law of that jurisdiction "is based on English common law and English procedure with some insignificant variations": *Ibid*., at para. 4. The variations in detail were considered insignificant in view of the proper functionality of the alternative forum's legal system overall. "Differences between legal systems…are not *prima facie* signs of inferiority of one jurisdiction to another": *Currie v. Farr's Coach Lines Ltd*., 2015 ONSC 2352, at para. 55.

[98] In addition to these process concerns, Plaintiffs' counsel submit that Tanzanian law lacks a substantive ground that is central to the present claim – i.e. a cause of action based on violation of international law. As Plaintiffs' counsel put it in their factum, "This case, as framed, focuses on the failure of Barrick's senior management to exercise proper oversight over its subsidiaries to ensure compliance with the human rights and security standards which Barrick itself applies and considers mandatory at the North Mara mine. The plaintiffs advance claims based on both negligence and on the violation of customary international law as recognized by the Supreme Court of Canada in *Nevsun v. Arya*."

[99] If contingency fee arrangements are relatively new introductions to the Ontario civil litigation system, claims based on international law are even more recent. *Nevsun*, the Plaintiff's source for the claim, was only decided by the Supreme Court in 2020. The *forum non conveniens* analysis does not size up the substantive law in the competing jurisdictions in order to measure whether the foreign law is keeping up with every new nuance announced by the Canadian courts. The pre-2020 law of Ontario was perfectly capable of trying a case alleging wrongful death by the police, and the post-2020 law of Tanzania is equally capable.

[100] In fact, Chief Justice Othman demonstrates that the Tanzanian law reflects the same principles and values as Anglo-Canadian law when he responds to this argument by pointing out that the claim is, in its essence, a version of a police negligence claim. In his report, he sets out and elaborates on a list of claims in which Tanzanians have successfully brought wrongful death actions in the country's courts.

[101] Chief Justice Othman also cites multiple cases in the Tanzanian courts in which individuals have successfully sued the TPF, including a number of past claims arising out of events at the North Mara mine. He also references a number of cases in which the Tanzanian courts have taken jurisdiction and proved themselves capable of handling claims against foreign corporations just like Barrick, with trade and investments in Tanzania.

[102] In doing so, Chief Justice Othman makes the point that not only are the courts in his country independent of government and objective in their assessment of the police and foreign corporations with investments in the country, but they are open and flexible in their application of the law. As he puts it, in the field of tort law, plaintiffs in civil actions in Tanzania can, and do, raise novel claims that have not to date been recognized by Tanzanian law. In Chief Justice Othman's words:

> Tanzanian law accepts the common law principle that the categories of torts are not closed, and that in appropriate cases novel torts can be established. In the case of *Francis Ngaire v. National Insurance Corporation of Tanzania*, [1972] HCD No. 134, the High Court of Tanzania adopted the common law doctrine established in the decision of the House of Lords in *Donohue v. Stevenson*, [1932] AC 562, that 'the categories of negligence are never closed'.

[103] In so elucidating on Tanzania's approach to new legal developments, Chief Justice Othman shows that the courts and substantive law in that country are not only open to the Plaintiffs' claim, but are open in just the same way that Canadian courts are open. Just like *Nevsun* opened new gates for Canadian litigation, so the Tanzanian judiciary is open to new and innovative causes of action.

[104] Again, there is no sense in which the law of Tanzania, either procedurally or substantively, comes up short in comparison with Ontario and Canada. The Court of Appeal's view that, generally, "comity… will often prevail over any perceived loss of juridical advantage", is entirely understandable in the context of the Tanzanian legal system: *Kaynes v. BP plc* (2014), 22 OR (3d) 162, at para. 52 (CA). In my view, it is applicable to the case at bar.

c) Tanzanian legal services and legal profession

[105] Finally, the Plaintiffs claim that they are unable to find a lawyer to take their case in Tanzania for a number of reasons: the Plaintiffs are poor and cannot afford a lawyer, Tanzanian lawyers are concentrated in urban areas whereas the Plaintiffs are in remote village areas, and, finally, lawyers are alleged to be fearful of themselves becoming the victim of discipline proceedings by the Tanzanian bar.

[106] Interestingly, there is no evidence that any of the Plaintiffs have approached other lawyers or the country's legal aid clinics to see what payment arrangements, or subsidized or even *pro bono* service, might be available. No one has come forward to say that the case was turned down by a Tanzanian lawyer or legal aid clinic. That seems to be a critical omission from the record, and its absence makes it difficult to assess the veracity of the Plaintiffs' claim that local legal representation is unavailable to them.

[107] Evidence on this point is, however, provided by Chief Justice Othman. He explains that there are dozens of legal aid centres and clinics in Tanzania whose function it is to bring cases to court on behalf of indigent persons. Another of Barrick's witnesses, legal aid expert Ulimboka Lugano Mwasomola, follows up on this information. He deposes that there is a significant possibility that the Plaintiffs can obtain legal aid funded representation in Tanzania all the way through trial. In fact, the record establishes that there have been previous cases against Barrick in Tanzania that were funded by legal aid.

[108] I will add that, in any case, the courts in Ontario have been clear that in assessing competing forums, a Plaintiff's access to litigation funding is not in and of itself a relevant factor. As Strathy JA explained in *Tamminga v. Tamminga* (2014), (2014), 120 O.R. (3d) 671, at paras. 25 (CA), that is a consideration that "only arises in the aftermath of the tort". It cannot serve to "bootstrap" the domestic forum over a more connected foreign one: *Ibid*., at para. 27, citing *Gajraj v. DeBernardo* (2002), 60 OR (3d) 68, at para. 20 (CA). The domestic forum being less costly than a better connected foreign forum does not make the case more appropriately litigated in the domestic forum: *Currie*, *supra*, at para. 58.

[109] Secondly, the fact that Tanzanian lawyers are more numerous in urban centres than in rural areas is equally true of Ontario and, likely, every other jurisdiction in the world. Law is a profession with certain barriers to entry, including years of higher education, which, for better or worse, makes the services rather expensive and limits the social origins of those gaining entry and the location of professional services.

[110] As a comparison, I note that even in Saskatchewan, Canada's most agrarian province, there is a dearth of rural lawyers, with 80% of the profession concentrated in the two urban centres of Regina and Saskatoon: Law Society of Saskatchewan, *2016 Annual Report* (2016), at 5. Law is simply not an inherently rural profession. If this kind of urbanization of the legal profession were to be applied as a negative in assessing forums for litigation, it is hard to imagine that there would be an adequate forum anywhere; every jurisdiction would fail the test.

[111] Finally, the Plaintiffs have adduced evidence from several Tanzanian lawyers who claim to have been disciplined by that country's Advocates Committee – its equivalent to the Law Society – because they brought suits against the government. Barrick's counsel point out that while each of these lawyers did engage in litigation against the Tanzanian government or police, and each of them was indeed disciplined by the Advocates Committee, in none of the cases is there a causal link between the litigation and the professional discipline.

[112] As in Ontario, a lawyer may be an activist advocate and be free to litigate against and harshly criticize the police or government: see *R. v. Kopyto* (1987), 24 OAC 81 (CA). And that same lawyer may be subjected to discipline proceedings and even disbarred for violating one or more rules of professional ethics: see *Kopyto v. Law Society of Upper Canada* (1999), 107 DLR (4th) 259 (Div Ct). Those two legal actions are not mutually exclusive as a matter of logic, and they are not treated as such in either Tanzania or Ontario.

[113] Plaintiff's witness Fatma Karune has testified that she brought a constitutional challenge against government action, and was charged with professional misconduct for doing so. The record shows, however, that she was disciplined for being rude and insulting in her submissions – an act of incivility for which one can face professional discipline charges in Ontario as well: see *Groia v. Law Society of Upper Canada*, [2018] 1 S.C.R. 772. In her misconduct hearing, Ms. Karune apparently failed to call any evidence in defense; moreover, she apparently abused court staff, all of which led to her disbarment. The fact that she had previously brought a constitutional challenge was not the source of her professional troubles.

[114] Similarly, Plaintiff's witness, Tanzanian lawyer Boniface Mwabukusi, brought a court challenge to a government transaction dealing with management of the country's ports, and claims to have faced professional discipline proceedings as a result. The record establishes, however that he conducted a media briefing while the case was pending and while wearing his court gown, acts which are specifically prohibited under the Tanzanian rules of conduct.

[115] In Ontario, as a matter of professionalism it is also frowned upon to wear a barrister's gown during a press conference or otherwise outside of court. New lawyers are advised that "Court apparel is to be worn in the courthouse. Not on the street. When you leave the court, you should remove your gown and tabs": M. Waddell, "Some mid-winter musings on barrister basics", *Canadian Lawyer*, 14 February 2011, https://www.canadianlawyermag.com/news/general/some-mid-winter-musings-on-barrister-basics/268119.

[116] Expounding on an civl claim to the press while wearing a barrister's gown, as Mr. Mwabukusi apparently did, can lend an unwarranted suggestion of authority to the unproven allegations. In Ontario, reading an untried pleading to the press while wearing a barrister's gown may be the grounds of a punishingly high damages award in a libel suit against the lawyer: see *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130. Given that Mr. Mwabukusi's punishment was a minor admonishment, the punitive effect of the Tanzanian approach is a mild and reasonable one. It is not out of line with the same principles of respect for the court and profession as those that prevail in Ontario.

[117] Two other Tanzanian lawyers, Jebra Kambole and Tito Magoti, deposed that they were disciplined because of their anti-government stances. But it seems that Mr. Kambole was charged with having engaged in inflammatory social media postings, while Mr. Magoti was charged with economic crimes. Neither of them, however, has ever been disbarred or dissuaded from acting against the government; in fact, the evidence indicates that they continue to do so.

[118] There is no cogent evidence to show that the Tanzanian government or the Tanzanian bar intimidates lawyers or that there are any negative consequences in Tanzania for lawyers using their legal skills to litigate against the government, its officials, the police, or large resource corporations – including Barrick. The courts appear to conduct themselves, and the bar appears to regulate lawyers' conduct, in much the same way as in Ontario.

[119] Barrick's expert witness on legal professionalism, Professor Adam Dodek of the University of Ottawa, observes in his report that the system of professional regulation in Tanzania appears to be in step with jurisdictions he has examined elsewhere. He opines that nothing about it undermines the independence of the bar. The Plaintiffs have produced no expert opinion, and have no evidence anyone other than from patently self-interested witnesses – i.e. other than lawyers who have themselves been subjected to professional discipline in Tanzania – to counter Professor Dodek's view.

[120] In all, there is nothing in the record that, for the purposes of a *forum non conveniens* analysis, establishes that Tanzania must be excluded from consideration due to some weakness in its justice system or legal profession. To the contrary, the record establishes the Tanzanian system and profession to be up to the task.

d) Letters rogatory

[121] Chief Justice Othman indicates in his evidence that there is no provision in Tanzania's civil procedure for enforcing letters of request issued by a foreign court. He states that he knows of no Tanzanian court that has taken the step of enforcing a foreign request to compel a witness to testify, and he thinks it unlikely that a Tanzanian court would do so at the request of an Ontario court.

[122] The former Chief Justice's expert opinion in this respect is uncontroverted. Accordingly, I take it as a fact that there will be no means of compelling police officers and other necessary witnesses to testify if this action were to remain in Ontario for trial.

[123] In *Haaretz.com v. Goldhar*, [2018] 2 SCR 3, the Supreme Court considered a forum controversy that pitted Ontario against the State of Israel. Justice Côté discussed, among other things, the comparative convenience and cost to witnesses of proceeding in Israel or Ontario. During the course of this discussion, she linked the concern for trial fairness with the risk that the Israeli courts might refuse to enforce Ontario letters of request. At *Haaretz*, para. 47, she warned against courts feeling wedded to the forum chosen by the Plaintiff "in cases where the evidence raises doubt as to whether proceeding in the chosen forum will provide the defendant with a fair opportunity to present its case."

[124] One hallmark of a problematic situation which could deprive a defendant in Barrick's position the ability to adequately defend itself is the unwillingness of the foreign forum to enforce letters of request. As Justice Côté put it, at paras. 64-65, 70:

> [D]etermining whether it is likely that Israel would actually enforce such a letter of request is crucial to ensuring the fairness of a potential trial in Ontario…
>
> …[T]he evidence did not allow the courts below to ensure that [the defendant] Haaretz would be able to compel its witnesses to testify if the trial proceeded in Ontario. Being unable to do so would affect Haaretz's ability to defend itself in Ontario, which would be significantly unfair…

[125] Justice Côté reasoned that the Court's task is to ensure that the Plaintiffs' chosen court provides an even-handed forum in terms of procedure. Where the foreign court lacks a mechanism for enforcing letters of request from an Ontario court, fairness is not served by the action remaining in Ontario. The foreign location of key witnesses, and the inability to compel those key witnesses from the foreign jurisdiction to testify in the home jurisdiction, is an important factor in moving the entire action to the foreign court. In that way, the Court can more adequately carry out its duty "to ensure that both parties are treated fairly": *Haaretz*, at para. 79.

[126] Chief Justice Othman's evidence establishes that Tanzania sits in the same position with respect to letters of request as Israel did in the *Haaretz* case. Key witnesses – in particular, members of the TPF – will not be required to testify at trial in Ontario. That will create evidentiary gaps that would not be present if the trial took place in the same country where the events in issue took place – i.e. in Tanzania – where third parties, including the police, can be compelled to testify as a matter of course.

VI. Jurisdiction

[127] It is well established in law that there is a distinction between whether the Court has jurisdiction over a matter, and if it does, whether that jurisdiction should be exercised. As the Court of Appeal explained in *Excalibur Special Opportunities LP v. Schwartz Levitsky Feldman LLP* (2016), 135 OR (3d) 743, at para. 34, leave to appeal refused, [2017] SCCA No. 54, the analysis always "begins with an inquiry into jurisdiction *simpliciter*".

[128] This analytic approach had earlier been expounded upon by the Court of Appeal in *Muscutt v. Courcelles* (2002). 60 OR (3d) 20, at para. 43, where Sharpe JA said that the analysis entails "a fact-specific inquiry, but the test ultimately rests upon legal principles of general application. The question is whether the forum can assume jurisdiction over the claims of plaintiffs in general against defendants in general given the sort of relationship between the case, the parties and the forum." As Justice Sharpe went on to explain, jurisdiction *simplicit*er asks "whether there is a real and substantial connection between the court and either the defendant . . . or the subject-matter of the litigation": *Ibid*., at para. 69.

[129] The "real and substantial connection" test was ultimately embraced by the Supreme Court of Canada in *Club Resorts Ltd. v. Van Breda*, [2012] 1 SCR 572, at paras 101-102. In that case,

Justice LeBel, in a unanimous decision, identified it as foundational to the concept of jurisdiction. He further confirmed that the analysis for establishing jurisdiction is separate and distinct from the subsequent question of whether the court should exercise its discretion to hear the matter. The latter analysis arises as a secondary step once jurisdiction has been found to exist, and only if a defendant seeks such a discretionary order in a *forum non conveniens* motion.

[130] Although the jurisdictional analysis and the logically subsequent *forum non conveniens* analysis have elements that are similar, the Supreme Court has drawn a clear distinction between the two. Neither of them are perfunctory issues; that is, each stage in its own way requires the court to delve into a careful analysis of the appropriate geographical home for the litigation. The overall approach prioritizes order and predictability by putting the jurisdictional issue up front, before analyzing the subsidiary issue of whether fairness and efficiency will be best served by the court exercising its jurisdiction: *Jacubovich v. Israel (State)*, 2021 ONSC 3558, at para. 58, citing *Haaertz*, at para 28.

[131] Starting with the question of jurisdiction, the Court of Appeal has indicated that there is nothing in the case law to suggest that "an Ontario court should approach the issue of taking jurisdiction in a restrained manner": *Airia Brands Inc. v. Air Canada*, 2017 ONCA 792, at para. 99. To the contrary, the entire analysis "begins with an inquiry into jurisdiction *simpliciter*, on the principles set out in *Club Resorts Ltd. v. Van Breda*" – i.e. with an application of the real and substantial connection test: *Excalibur*, at para. 34.

[132] In *Van Breda*, the Supreme Court was careful not to leave the applicable test without providing some guidance on how to apply it. Justice LeBel elaborated, at para. 90:

> [90] To recap, in a case concerning a tort, the following factors are presumptive connecting factors that, *prima facie*, entitle a court to assume jurisdiction over a dispute:
>
> (a) the defendant is domiciled or resident in the province;
>
> (b) the defendant carries on business in the province;
>
> (c) the tort was committed in the province; and
>
> (d) a contract connected with the dispute was made in the province.

[133] Justice LeBel then went on to clarify, at para. 95, that, "The presumption of jurisdiction that arises where a recognized connecting factor — whether listed or new — applies is not irrebuttable." It is open to the party challenging jurisdiction to "establish facts which demonstrate that the presumptive connecting factor does not point to any real relationship between the subject matter of the litigation and the forum or points only to a weak relationship between them": *Ibid*.

[134] Accordingly, a court could conclude that it lacks jurisdiction either "because none of the presumptive connecting factors exist ***or*** because the presumption of jurisdiction that flows from

one of those factors has been rebutted": *Ibid*., at para. 100 [emphasis added]. In either case, it must dismiss or stay the action; the court cannot proceed with a case in the absence of jurisdiction. On the other hand, if jurisdiction is established, "the claim may proceed, subject to the court's discretion to stay the proceedings on the basis of the doctrine of *forum non conveniens*": *Ibid*.

[135] Counsel for the Plaintiffs takes the position that the question of a real and substantial connection to the forum is only relevant where a plaintiff's chosen forum is one where a defendant has no discernable physical presence in the jurisdiction. This submission is further elaborated in their factum: "The real and substantial connection test applies only in cases of *assumed jurisdiction*, where the defendant is found outside the province. It has no application where jurisdiction is exercised on the basis of the defendant's presence in the jurisdiction ('presence-based jurisdiction')."

[136] In other words, it is the Plaintiffs' view that once jurisdiction has been *prima facie* established through application of one of the factors listed in para. 90 of *Van Breda*, the 'real and substantial connection' inquiry is done away with. That approach would, in Barrick's case, dispense with the need for any further analysis of Ontario jurisdiction.

[137] Barrick, as previously indicated, does have a physical presence in Ontario – its relatively small, but nevertheless its existing finance, legal, and communications office is located in Toronto. It therefore falls with the description of para. 90(b) of *Van Breda* – it "carries on business in the province". In Plaintiffs' counsel's view, that dispenses with any further need to establish jurisdiction or to show a real and substantial connection.

[138] With the greatest of respect, Plaintiffs' counsel overstate the role played by the *prima facie* jurisdictional factors set out in para. 90 of *Van Breda*. The 'real and substantial connection' analysis does not end with a finding of *prima facie* jurisdiction; rather, the onus changes. In fact, the Supreme Court has stated that if, *prima facie*, jurisdiction is asserted in the absence of a real and substantial connection of the claim to the location of the court, it would amount to "forum shopping": *Amchem Products Incorporated v. British Columbia (Workers' Compensation Board)*, [1993] 1 SCR 897, at para. 32. The Court of Appeal has echoed that view, stating that "forum shopping, while understandable, is unprincipled and is not to be encouraged": *Vale Canada v. Royal & Sun Alliance Insurance Co*, 2022 ONCA 862, para 156.

[139] It was a feature of older English common law that the presence of a defendant within a plaintiff's chosen jurisdiction sufficed to establish that jurisdiction as the forum for the action. In fact, the rule was strict enough that once a party was served in the jurisdiction with an originating process, jurisdiction *simpliciter* was firmly established. As described by Lord Denning, this applied regardless of the circumstances that made the service possible, including the fortuitous visit of a foreign defendant to England to see the races at Ascot: *Maharanee of Baroda v. Wildenstein* [1972] 2 QB 283, at paras. 12-13 (CA).

[140] In more recent times this strict, one-dimensional jurisdictional rule has been reconsidered in the U.K.: see *Spiliada Maritime Corp v Cansulex Ltd*. [1986] UKHL 10. In Canadian law, the situation has become somewhat more complex, and presence-based jurisdiction, at least where a defendant carries on business in the given province (although not, presumably, where he or she

merely visits for a day), is still a recognized basis on which a court may assert its authority: *Chevron Corp. v. Yaiguaje*, [2015] 3 SCR 69, at para. 81. As Justice LeBel went on to elaborate in *Van Breda*, at para. 96, a defendant's carrying on business within the territory of a plaintiff's chosen court is a *prima facie* indicator of jurisdiction, but that can be rebutted where the real subject matter of the litigation "is unrelated to the defendant's business activities in the province."

[141] Thus, while the Plaintiffs have established that Ontario has *prima facie* jurisdiction over this action against Barrick, that is only the first stage of the *Van Breda* analysis. As defendant, Barrick can bring evidence to show that, despite its presence in the jurisdiction, there is no relationship – no real and substantial connection – between the subject matter of the litigation and the jurisdiction chosen by the Plaintiff. In *Van Breda*, Justice LeBel used this example in explaining, at para. 96, how *prima facia* jurisdiction can be rebutted:

> [W]here the presumptive connecting factor is the fact that the defendant is carrying on business in the province, the presumption can be rebutted by showing that the subject matter of the litigation is unrelated to the defendant's business activities in the province. On the other hand, where the presumptive connecting factor is the commission of a tort in the province, rebutting the presumption of jurisdiction would appear to be difficult, although it may be possible to do so in a case involving a multi-jurisdictional tort where only a relatively minor element of the tort has occurred in the province.

[142] It is Barrick's position that the subject matter of the litigation – the injuries and deaths that took place at the North Mara Gold Mine and the acts responsible for those harms – is located in Tanzania. Barrick further states that the business that it does carry on in Ontario – finance, media relations, and legal affairs – does not amount to any real relationship, or only to an unsubstantial relationship, between the subject-matter of the litigation and Ontario: *Kornhaber v. Starwood Hotels*, 2014 ONSC 6182, at para. 8.

[143] More to the point, regulatory filings and other communications about Barrick's global policies of sustainability do not bring the actual management, supervision, and security measures at the Mine into Ontario. These filings and communications do not assign a geographic location to matters at issue in the action, and the ability to rebut them is an important check on jurisdiction. This is especially the case in the internet age, where publications can be accessed anywhere and can otherwise appear to place an action anywhere in the world: *Haaretz*, at para. 40.

[144] As an example, filings and communications by a global mining company like Barrick, or postings and links on its website, are analogous to the marketing efforts of an international hotel chain like the Westin hotels. This Court has held that communications and website postings about healthy cuisine do not bring an episode of food poisoning at a China-based restaurant owned by Westin into Ontario jurisdiction: *Ibid*., at para. 11. The place where the injurious food was prepared, served, and consumed is the jurisdiction with the real and substantial connection, regardless of the general communications strategy carried out at Westin's Toronto office.

[145] The presence in Ontario of communications personnel and policy statements may suffice as presumptive connecting factors, but they "are tenuous and not sufficiently connected to the

subject matter of the litigation": *Jacubovich*, at para. 98. The fact that the Mine is operated by NMGML, which is a Tanzanian company managed in Tanzania and overseen by senior management and board members based in Tanzania, makes the connection to Tanzania a strong one and any connection to Ontario a tenuous one at best. Added to that is the fact that the specific and crucial relationship between the Mine and the TPF is pursuant to a contract formed in Tanzania between that country's police and the Tanzania-based NMGML.

[146] With all of this connection to Tanzania and disconnection from Ontario, the presumption of presence-based jurisdiction in Ontario is rebutted.

[147] To find that this Court has jurisdiction over this claim "would result in Ontario becoming an international 'hosting court' for any number of international disputes that have no real or substantial connection to Ontario. This would be inconsistent with the principles of fairness, predictability and comity set out in *Van Breda*…": *Jacubovich*, at para. 97. No invoking of solemn principles of human rights and corporate responsibility can overcome the evidence that the corporate entity that manages the Mine, the individuals responsible for security policies and other operations, and the violent incidents resulting in the Plaintiffs' injuries, are all located in Africa and centred in Tanzania.

[148] In short, the evidence is conclusive that the Mine at the centre of the claim is not operated or overseen from Ontario. It is likewise conclusive that the incidents that are the subject matter of the claim did not occur in Ontario, and that the human rights violations alleged in the claim did not take place in Ontario. Any presumption of jurisdiction that flows from Barrick's unrelated presence in Ontario is thereby rebutted.

VII. *Forum non conveniens*

[149] Since I have concluded that Ontario does not have jurisdiction *simpliciter*, it is not necessary to ask whether the court should exercise its discretion to decline jurisdiction. However, in the event that I am wrong in my conclusion about jurisdiction, I will at least briefly engage in a *forum non conveniens* analysis.

[150] The Supreme Court of Canada has instructed that, "The party raising *forum non conveniens* has the burden of showing that his or her forum is clearly more appropriate": *Breeden v. Black*, [2012] 1 SCR 666, at para. 37. As Justice Lebell explained it in *Van Breda*, at para. 103, "The defendant must show, using the same analytical approach the court followed to establish the existence of a real and substantial connection with the local forum, what connections this alternative forum has with the subject matter of the litigation."

[151] Justice LeBel then set out a non-exhaustive list of factors to consider in sizing up the competing forums, at para. 105:

> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
>
> (b) the law to be applied to issues in the proceeding;

(c) the desirability of avoiding multiplicity of legal proceedings;

(d) the desirability of avoiding conflicting decisions in different courts;

(e) the enforcement of an eventual judgment; and

(f) the fair and efficient working of the Canadian legal system as a whole.

[152] Of these factors, only (a) and (f) are of particular relevance or controversy here. In terms of a multiplicity of proceedings, other cases have already been brought against Barrick in the Tanzanian courts. Since the present actions now appear to encompass all known claimants in respect of TPF shootings at the Mine, a multiplicity will be avoided if this action is litigated in the Tanzanian courts.

[153] Furthermore, "…the law to be applied in torts is the law of the place where the activity occurred, i.e. the *lex loci delicti*": *Tolofson v. Jensen; Lucas (Litigation Guardian of) v. Gagnon*, [1994] 3 SCR 1022, at 1050. And, according to the Court of Appeal, there is "no actionable wrong without the injury. The place where 'the activity took place' which gives rise to the action is in the [place where the accident/injury occurred]: *Leonard v. Houle* (1997), 36 OR (3d) 357, at para. 20 (CA).

[154] The Plaintiffs' claim is that Barrick should have interceded in, and that it negligently monitored and oversaw, matters at the Mine in Tanzania. As previously discussed, any involvement in the Mine's affairs by Barrick will turn on evidence regarding its executives in Tanzania and, regionally, in South Aftica. The lawsuit does not realistically claim that the Plaintiffs were injured by anything Barrick did in Ontario, although the Plaintiffs have in their pleading – in what Barrick's counsel says amounts to "pleading artifice" – tried to place the alleged wrongdoing in Ontario: *Das v. George Weston Limited*, 2017 ONSC 4129, at para. 236, aff'd 2018 ONCA 1053.

[155] In this respect, the claim is analogous to the Ontario class action claim against Loblaws in respect of injuries and deaths caused by the collapse of the Rana Plaza, a building in Bangladesh used by Loblaws' contractors in that country. In that case, "the [plaintiffs] framed their pleadings to situate the wrongful activity in Ontario" by focusing on a lack of oversight and structural audits by Loblaws. Nevertheless, the Court found that the plaintiffs' injuries, and the tort, "occurred in Bangladesh, the 'jurisdiction substantially affected by the [respondents'] activities": *Ibid*. (CA), at para. 34.

[156] It is likewise Tanzanian law that will apply to the management and security protocols at the mine, and to the oversight and implementation of those strategies during the incidents in which the Plaintiffs were injured or in which their relatives died. It is in Tanzania that the tort occurred and the injuries were incurred. That will be the only choice of law open to the court, whether this case is litigated in Ontario or Tanzania.

[157] In any case, Chief Justice Othman's evidence establishes that Tanzanian tort law – and, especially, negligence law – is from the same common law origin and embraces the same legal principles as Ontario tort law. The former Chief Justice is also clear that Tanzanian courts are as capable as any in flexibly applying the law and innovating with new causes of action if the circumstances call for it. There will be no conflicting decisions if the present actions are litigated in Tanzania.

[158] One consequence of the application of Tanzanian law is that the *Family Law Act* ("*FLA*") claims brought by surviving relatives of deceased individuals who died at the Mine will have to be dismissed regardless of where the case is tried: *Prefontaine v Frizzle*, 1990 Carswell Ont 347 (ON CA). The courts have reasoned that *FLA* claims are derivative, and will be struck if the main claims are not based on Ontario law: *Bowes v. Chalifour*, [1992] OJ No 2960, at para. 12 (SCJ). Accordingly, those Plaintiffs whose claim derives from rights conferred in the *FLA* will lack a cause of action unless they can find a claim under Tanzanian law that parallels that under Ontario's *FLA*. I will add, parenthetically, that the Plaintiffs have not pleaded any such Tanzanian source of the derivative family claims.

[159] Turning to the question of enforceability, there should be no problem enforcing any eventual judgment against Barrick, since it has indicated that it will attorn to the Tanzanian courts and submit itself to Tanzanian law. Barrick is a corporation with a presence, and assets, in multiple jurisdictions across the globe. A judgment from a court to which it attorned would doubtless be enforceable in any of those jurisdictions; it certainly would be in Ontario or across Canada, if that is where Barrick's assets are found. In fact, given that NMGML could easily be added as a co-Defendant with Barrick if the case is litigated in Tanzania, enforcement would be easiest, and would avoid a multiplicity of proceedings, if it took place within the same legal system as the trial itself – i.e. in Tanzania: see *Haaretz*, at para. 142.

[160] That leaves the first and last factors – convenience and expense on one hand, and fairness and efficiency on the other. Convenience and expense weigh in favour of Tanzania as the jurisdiction where virtually all of the witnesses are located. Although the Plaintiffs argue that their expenses will be greater in Tanzania due to the lack of contingency fees, the expert evidence of Chief Justice Othman is that the Plaintiffs will indeed have access to *pro bono* or subsidized representation by Tanzanian legal aid organizations.

[161] Frankly, it defies logic to say that flying dozens of witnesses some 12,000 km across an ocean is more convenient and efficient than bringing them from the North Mara region to the nearest courthouse in Tanzania. I will also note here that the Court of Appeal has advised that the "new reality" of virtual hearings does not lessen the significant weight given to the distance and time change factor that one must account for in dealing with witnesses located in foreign locations: *Black & McDonald Limited v. Eiffage Innovative Canada Inc*., 2023 ONCA 91, at para. 22. The great distance of Ontario from the witness' location in terms of geography and time zone is of great significance to the *forum non conveniens* analysis.

[162] And that is to say nothing of the costs involved in housing the witnesses for the duration of a trial in Toronto, translating all documents from Swahili to English and having Swahili-English

simultaneous interpretation throughout the trial. The time and resources for this language effort would be necessary in an Ontario trial. But as Chief Justice Othman indicates, Tanzania trials are conducted in Swahili and English as a matter of course, and this combination of languages would engage no special allocation of resources.

[163] In terms of fairness, the trial must be fair to both parties: *Haaretz*, at para. 79. Given the unavailability of police witnesses, a trial in Ontario would certainly be unfair to Barrick. It is also possible that the Plaintiffs themselves or their witnesses will be unable to travel the great distance, making an Ontario trial unfair to the Plaintiffs' side as well. A trial in Tanzania, by contrast, would not suffer from these problems.

[164] Again, Chief Justice Othman's uncontradicted evidence is that there no mechanism in Tanzania for compelling any witness – and definitely not a police officer – to testify in a foreign proceeding. Without that, Barrick would be limited to its own, NMGML's, and perhaps Twiga's personnel as witnesses, but would not be able to call any police officers to testify as to precisely what happened during the incidents in which the Plaintiffs were injured or killed. Justice Côté observed the very same problem at play in *Haaretz*, at paras. 65, 70:

> …[T]he evidence did not allow the courts below to ensure that [the defendant] Haaretz would be able to compel its witnesses to testify if the trial proceeded in Ontario. Being unable to do so would affect Haaretz's ability to defend itself in Ontario, which would be significantly unfair…
>
> …I conclude that this factor weighs heavily in favour of a trial in Israel. … [T]he courts below never satisfied themselves that [key] witnesses could be compelled to testify if the action proceeded in Ontario, despite the fact that it would be significantly unfair for Haaretz to be unable to compel them.

[165] Barrick's counsel point out that in *Haaretz*, at para. 79, the Ontario action was stayed on the basis of a serious, but unproven concern that letters of request might not be enforced in Israel. In the case at bar, that concern has crystallized into a proven fact. There is undisputed expert evidence from Chief Justice Othman, which is supported in the expert evidence of Professor Shaidi, that the Courts of Tanzania will not enforce letters of request issued by this Court. This unchallenged evidence establishes that the Tanzanian courts will not compel evidence from residents of that country, including TPF officers, for use in a foreign (i.e. Ontario) proceeding, but they will do so in a domestic (i.e. Tanzanian) proceeding.

[166] Accordingly, if this Court were to take jurisdiction over the trial, Barrick would be severely hampered in its defense of the Plaintiffs' claims. Virtually all of the witnesses whose evidence will be required for it to mount a viable defense reside in Tanzania. And as some of the most important witnesses are not employees of either Barrick or, for that matter, NMGML, Barrick cannot compel, and will likely not persuade, any of them to testify or produce relevant documents for a trial in Ontario.

[167] In that case, the court in Ontario would hear no witnesses with respect to the manner in which the incidents involving the TPF occurred, or whether they happened at all. The court would then have no evidence for determining whether the TPF actions were justified in the specific circumstances of each incident. It would likewise have little or no evidence of the ways in which the Plaintiffs' injuries were incurred, the extent of each injury and whether the injury was in fact the cause of the Plaintiffs' family member's death, etc.

[168] Counsel for Barrick submit that it is unimaginable that this Court could entertain multiple wrongful death claims in the absence of first-hand witnesses to each incident that is alleged to have caused the deaths. I agree. And yet, the record before me suggests that the Plaintiffs cannot produce even one relevant witness to the incidents in question. As indicated at an earlier stage of these reasons, the only Plaintiffs who testified in connection with this motion confirmed that they have no such first-hand evidence. The eye-witnesses will therefore have to be produced by Barrick as defendant, but without a means to compel their attendance, Barrick would be stymied in its efforts.

[169] There is really no comparison between Ontario and Tanzania as jurisdictions that can properly try this case. A trial in Ontario would either be bereft of relevant evidence, or it would focus its efforts on platitudes about human rights and corporate responsibility without delving into the actual facts at issue in the claim.

[170] Barrick, in effect, concedes that corporations should make every effort to ensure safety and human rights compliance at the sites of their operations and investments. But no corporation, including a global giant like Barrick, is responsible for violence and/or deaths caused by others or contributorily caused by the claimants themselves.

[171] I am cognizant of the fact that a *forum non conveniens* analysis must also take into account any unfairness the Plaintiffs would suffer if I decline jurisdiction in favour of Tanzania. However, the record before me establishes to my satisfaction that the laws, the judiciary, the bar, and the justice system of Tanzania overall, present no insurmountable hurdle to a fair trial of this action.

[172] What the Plaintiffs offer as a reason to reject Tanzania as an appropriate forum is an inapt comparison to a non-democratic, non-rule of law country – Eritrea – and unfounded allegations of prejudice, political intimidation, and a lack of independence by the judiciary. Those suggestions are not based on the kind of cogent evidence – the "real risk" rather than the spectre of hypothetical risk – that is required to counter an otherwise appropriate foreign jurisdiction: *Garcia v. Tahoe Resources Inc*., 2017 BCCA 39, at para. 124.

[173] On the other hand, cogent evidence of the common law foundation and proper functioning of the Tanzanian court and legal system has been provided by the former Chief Justice of the country and one of its most prominent law professors. To overlook that evidence, and to use the *Nevsun* case and its factual origin in Eritrea as a constant reference, risks undermining comity and expresses unfounded insult on Tanzania as the forum under consideration: see *Das*, at para. 288; *Das* (CA), at para. 37.

[174] Given the remoteness of Ontario from the matters at issue, and the fact that crucial witnesses would inevitably be absent from an Ontario trial, it is incumbent on me to decline

jurisdiction over the trial of this action. A trial in Tanzania is the only way for all the relevant evidence on both sides to be aired in court.

[175] The evidence before me establishes that the Tanzanian bar and the Tanzanian judiciary are capable of conducting a fair, efficient, and just trial. As between Ontario and Tanzania, it is Tanzania that is clearly the more appropriate forum in which to try the matters raised in this claim.

VIII. Disposition

[176] This Court lacks jurisdiction to determine the matters at issue. The actions are dismissed.

[177] If the Court had jurisdiction, the actions would be permanently stayed on the basis of *forum non conveniens*.

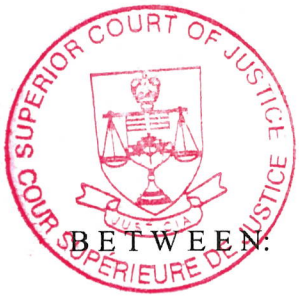
IX. Costs

[178] The parties may make written submissions on costs. I would ask counsel for Barrick to send their brief submissions by email to my assistant within 10 days of today, and for counsel for the Plaintiffs to send their equally brief submissions to my assistant within 10 days thereafter.



Date: November 26, 2024 **Morgan J.**

TAB 3



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE CV-22-00690649-0000

BETWEEN:

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.

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;

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

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.

(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

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 polices 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;

(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.

TAB 4



Annual Information Form

For the year ended December 31, 2022

Dated as of March 17, 2023

Barrick Gold Corporation
161 Bay Street, Suite 3700
Toronto, Canada M5J 2S1

or mineral project assessment, or any combination of these, has experience relevant to the subject matter of the mineral project, and is a member in good standing of a professional association.

Each of Messrs. Fiddes, Yuhasz, Peattie, Bottoms, and Steele is an officer or employee of Barrick and/or an officer, director or employee of one or more of its associates or affiliates. No such person has received or will receive a direct or indirect interest in any property of Barrick or any of its associates or affiliates. As of the date hereof, each such person owns beneficially, directly or indirectly, less than 1% of any outstanding class of securities of Barrick and less than 1% of any outstanding class of securities of Barrick's associates or affiliates.

GENERAL INFORMATION

Organizational Structure

Barrick is a company governed by the *Business Corporations Act* (British Columbia) ("BCBCA"). Barrick resulted from the amalgamation, effective July 14, 1984, of Camflo Mines Limited, Bob-Clare Investments Limited and the former Barrick Resources Corporation pursuant to the *Business Corporations Act* (Ontario) (the "OBCA"). By articles of amendment effective December 9, 1985, the Company changed its name to American Barrick Resources Corporation. Effective January 1, 1995, as a result of an amalgamation with a wholly-owned subsidiary, the Company changed its name from American Barrick Resources Corporation to Barrick Gold Corporation. On December 7, 2001, in connection with its acquisition of Homestake Mining Company, the Company amended its articles to create a special voting share designed to permit holders of Barrick Gold Inc. (formerly Homestake Canada Inc.) ("BGI") exchangeable shares to vote as a single class with the holders of Barrick common shares. In March 2009, in connection with Barrick's redemption of all of the outstanding BGI exchangeable shares, the single outstanding special voting share was redeemed and cancelled. In connection with its acquisition of Placer Dome Inc. ("Placer Dome"), Barrick amalgamated with Placer Dome pursuant to articles of amalgamation dated May 9, 2006. In connection with the acquisition of Arizona Star Resource Corp. ("Arizona Star"), Barrick amalgamated with Arizona Star pursuant to articles of amalgamation dated January 1, 2009. On November 27, 2018, pursuant to a continuation application, Barrick continued from the Province of Ontario under the OBCA into the Province of British Columbia under the BCBCA. The notice of articles and articles of Barrick under the BCBCA are substantially similar to Barrick's previous articles and by-laws. Key changes include a bifurcated approach to amendments to the articles where a special resolution is required for certain matters and an ordinary resolution is required for other matters; authorizing only one class of an unlimited number of common shares (preferred share classes are no longer authorized); and a reduction of the notice period to hold shareholder meetings following the fixing of record dates. Barrick's registered office is located at 1600 - 925 West Georgia Street, Vancouver, British Columbia V6C 3L2. Barrick's head office is located at Brookfield Place, TD Canada Trust Tower, 161 Bay Street, Suite 3700, Toronto, Ontario M5J 2S1.

Barrick's business is organized into operating segments for financial reporting purposes, comprising eighteen individual minesites. For the year ended December 31, 2022, Barrick's reportable operating segments were Carlin, Cortez, Turquoise Ridge, Pueblo Viejo, Loulo-Gounkoto, Kibali, Veladero, North Mara and Bulyanhulu. For financial reporting purposes, the Company's remaining operating segments that are not reportable operating segments are grouped into an "other" category and are not reported on individually. Barrick's material properties presented in this Annual Information Form are: Cortez, Carlin, Turquoise Ridge, Pueblo Viejo, Kibali and Loulo-Gounkoto. See "Narrative Description of the Business – Reportable Operating Segments".

Subsidiaries

A significant portion of Barrick's business is carried on through its subsidiaries. A chart showing Barrick's mines, projects, related operating subsidiaries, other significant subsidiaries and certain associated subsidiaries as at March 13, 2023 and their respective locations or jurisdictions of

countries. This is augmented by prioritizing the purchase of goods and services from local communities and host countries.

In addition, Barrick invests in community-led development initiatives. The Company believes that no one knows the needs of local communities better than the communities themselves. That is why Barrick has established community development committees ("CDCs") at every operating site - a target that was achieved in 2020. The role of the CDC is to allocate the community investment budget to those projects and initiatives most needed and desired by local stakeholders. Each CDC is elected and made up of a mix of local leaders and community members, as well as representatives from local women and youth groups. In 2022, Barrick invested approximately $35 million in local community development projects.

Human Rights

Respect for human rights is one of the key pillars of Barrick's sustainability vision and strategy. Barrick has zero tolerance for human rights violations wherever it operates. The Company avoids causing or contributing to human rights violations and facilitates access to remedies. This includes the use of a grievance mechanism at each of the Company's minesites, which allows local communities to formally lodge grievances and Barrick to understand and address community concerns before they escalate. Barrick's commitment to respect human rights is codified in the Company's Human Rights Policy and informed by the expectations of the UN Guiding Principles on Business and Human Rights, the VPSHR, and the OECD Guidelines for Multinational Enterprises. Further, Barrick's commitment to respect human rights is fulfilled on the ground via the Company's Human Rights Program, the fundamental principles of which include: monitoring and reporting; due diligence; training; and disciplinary action and remedy. Barrick also expects the same standards from its suppliers, and the Company's Supplier Code of Ethics incorporates human rights provisions.

Responsibility for the oversight and implementation of the Company's human rights compliance program sits with Barrick's Group Sustainability Executive, with support from the Senior Vice President Business Assurance, Risk and Business Integrity, and Barrick's Human Resources Executive.

During 2022, Barrick continued to provide security and human rights training to security forces across its minesites, as well as undertake independent human rights assessments at certain of its minesites. Barrick continues to implement its global human rights compliance program, including by conducting human rights assessments at certain operations and reporting to the VPSHR Plenary. See "Sustainability" above for more information on these efforts.

In addition, in 2019, prior to Barrick's acquisition of the minority shareholding of Acacia Mining plc ("Acacia"), the London Bullion Gold Association ("LBMA") commenced an Incident Review Process ("IRP") against North Mara, following complaints made by the UK-based non-governmental organization, Rights and Accountability in Development. Due to the IRP, the refiner MMTC-PAMP appointed independent consultants, Synergy, to undertake an assessment of North Mara based on the LBMA's Responsible Gold Guidance and the OECD Due Diligence Guidance. Synergy completed site assessments in both 2019 and 2021, as well as several desktop reviews during the process. During the fourth quarter of 2022, the LBMA confirmed that the IRP is now closed, citing Synergy's findings that there has been significant measurable progress at North Mara since the original assessment in 2019, and the recommendation that MMTC-PAMP continues trading with North Mara. This concludes a multi-year process that provides independent support for the measurable progress and impact implementing Barrick's sustainability strategy has had at North Mara.

The Company continues to face sporadic security challenges at North Mara as armed and coordinated trespassers continue to intermittently attempt to access the mine, and place the property and its employees at risk. Intrusions have decreased since 2019 and have remained relatively stable in the subsequent years. Barrick will continue with its ongoing extensive community engagement and development efforts in Tanzania.

TAB 5

INVESTMENT IN GROWTH OPENS NEW OPPORTUNITIES



BARRICK

ANNUAL REPORT 2022

Attributable minesite sustaining capital expenditure[6] for 2023 is expected to be in the range of $1,450 to $1,700 million, which compares to the actual spend for 2022 of $1,678 million. The guidance range for 2023 is split between our gold assets ($1,170 to $1,370 million) and copper assets ($280 to $330 million). Compared to the prior year, minesite sustaining capital expenditures[6] in 2023 are expected to be approximately $100 million higher at NGM, driven by underground infrastructure development, haul truck replacements at Carlin, as well as the natural gas conversion project at the TS Power Plant. Significant underground infrastructure projects include the portals at Pete Bajo and Rita K, the Meikle paste plant as well as dewatering at Carlin. Offsetting this impact, minesite sustaining capital expenditures[6] at Lumwana are expected to be approximately $80 million lower compared to 2022.

Effective Income Tax Rate

Based on a gold price assumption of $1,650/oz, our expected effective tax rate range for 2023 is 27% to 32%, unchanged from 2022. The rate is sensitive to the relative proportion of sales in high versus low tax jurisdictions, realized gold and copper prices, the proportion of income from our equity accounted investments and the level of non-tax affected costs in countries where we generate net losses.

OUTLOOK ASSUMPTIONS AND ECONOMIC SENSITIVITY ANALYSIS

	2023 Guidance Assumption	Hypothetical Change	Impact on EBITDA[a] (millions)	Impact on TCC and AISC[a]
Gold price sensitivity	$ 1,650/oz	+/- $ 100/oz	+/- $ 590	+/- $ 5/oz
Copper price sensitivity	$ 3.50/lb	+/- $ 0.25/lb	+/- $ 110	+/- $ 0.01/lb

a. Further information on these non-GAAP financial measures, including detailed reconciliations, is included on pages 114–140 of this MD&A.

Environmental, Social and Governance

Sustainability is entrenched in our DNA: our sustainability strategy is our business plan.

Barrick's approach to sustainability is integrated and holistic; sustainability aspects and impacts do not occur in silos, but rather overlap and interlink, and must be tackled in conjunction with, and reference to, each other. We call this approach Holistic and Integrated Sustainability Management. Although we integrate our sustainability management, we discuss our sustainability strategy within four overarching pillars: (1) respecting human rights; (2) protecting the health and safety of our people and local communities; (3) sharing the benefits of our operations; and (4) managing our impacts on the environment.

We implement this strategy by blending top-down accountability with bottom-up responsibility. This means we place the day-to-day ownership of sustainability, and the associated risks and opportunities, in the hands of individual sites. In the same way that each site must manage its geological, operational and technical capabilities to meet business objectives, it must also manage and identify programs, metrics, and targets that measure progress and deliver real value for the business and our stakeholders, including our host countries and local communities. The Group Sustainability Executive, supported by regional sustainability leads, provides oversight and direction over this site-level ownership, to ensure alignment with the strategic priorities of the overall business.

Governance

The bedrock of our sustainability strategy is strong governance. Our most senior management-level body dedicated to sustainability is the E&S Committee, which connects site-level ownership of our sustainability strategy with the leadership of the Group. It is chaired by the President and Chief Executive Officer and includes: (1) regional Chief Operating Officers; (2) minesite General Managers; (3) Health, Safety, Environment and Closure Leads; (4) the Group Sustainability Executive; (5) in-house legal counsel; and (6) an independent sustainability consultant in an advisory role. The E&S Committee meets on a quarterly basis to review our performance across a range of key performance indicators, and to provide independent oversight and review of sustainability management.

The President and Chief Executive Officer reviews the reports of the E&S Committee at every quarterly meeting of the Board's ESG & Nominating Committee. The reports are reviewed to ensure the implementation of our sustainability policies and to drive performance of our environmental, health and safety, corporate social responsibility, and human rights programs.

This is supplemented by weekly meetings, at a minimum, between the Regional Sustainability Leads and the Group Sustainability Executive. These meetings examine the sustainability-related risks and opportunities facing the business in real time, as well as the progress and issues integrated into weekly Executive Committee review meetings.

Our industry-first Sustainability Scorecard accounts for 25% of the long-term incentive awards for senior leaders as part of the Barrick Partnership Plan. As we strive for ongoing strong performance, the Sustainability Scorecard targets and metrics are updated annually. The results of the 2022 Sustainability Scorecard, and updated metrics and targets for 2023, will be disclosed in our 2022 Sustainability Report, to be published in April 2023. The E&S Committee tracks our progress against all metrics.

In the fourth quarter of 2022, we hosted our Annual Roundtable, during which we discussed Barrick's sustainability vision, policies, approach, and site-level performance, including Board and management oversight of sustainability matters. All of the leading ESG rating firms were invited and the content of the presentation was based on direct feedback from those ESG rating firms. The session included a discussion where attendees could ask questions and engage with the Group Sustainability Executive and other members of management. The intention of the Roundtable was to provide accurate and up-to-date information to the ESG ratings firms, allowing those ratings firms to make informed decisions with respect to their listed controversies.

In late 2022, our Lead Director and the Chair of the Compensation Committee met with significant shareholders representing approximately 30% of the issued and outstanding Barrick Shares (as at December 31, 2022) to provide an update on a variety of topics, including our performance, sustainability strategy, environmental goals, human capital strategy, continued active risk oversight of increasingly complex geopolitical dynamics, executive compensation matters, as well as key governance priorities, including Board composition, diversity, and renewal. The meetings were an instructive two-way discussion where we heard about our shareholders' priorities, discussed Barrick's sustainability vision and provided an opportunity for our performance to be constructively challenged.

Human rights

Our commitment to respect human rights is codified in our standalone Human Rights Policy and informed by the expectations of the United Nations Guiding Principles on Business and Human Rights, the Voluntary Principles on Security and Human Rights and the OECD Guidelines for Multinational Enterprises. This commitment is fulfilled on the ground via our Human Rights Program, the fundamental principles of which include: monitoring and reporting, due diligence, training, as well as disciplinary action and remedy.

We continue to assess and manage security and human rights risks at all our operations and provide security and human rights training to security forces across our sites.

In 2019, prior to Barrick's acquisition of the minority shareholding of Acacia Mining plc, the LBMA commenced an IRP against North Mara, following complaints made by the UK-based non-governmental organization Rights and Accountability in Development. Due to the IRP, the refiner MMTC-PAMP appointed independent consultants, Synergy, to undertake an assessment of North Mara based on the LBMA's Responsible Gold Guidance and the OECD Due Diligence Guidance. Synergy completed site assessments in both 2019 and 2021, as well as several desktop reviews during the process. During the fourth quarter of 2022, the LBMA confirmed that the IRP is now closed, citing Synergy's findings that there has been significant measurable progress at North Mara since the original assessment in 2019, and the recommendation that MMTC-PAMP continues trading with North Mara. This concludes a multi-year process that provides independent support for the measurable progress and impact implementing Barrick's sustainability strategy has had at North Mara.

We continue to face sporadic security challenges at North Mara as armed and coordinated trespassers continue to intermittently attempt to access the mine, and place our property and employees at risk. Intrusions have decreased since 2019 and have remained relatively stable in the subsequent years. We will continue with our ongoing extensive community engagement and development efforts in Tanzania.

Safety

We are committed to the safety, health and well-being of our people, their families and the communities in which we operate. Our safety vision is "Every person going home safe and healthy every day."

We continue to implement our "Journey to Zero Harm" initiative, which is focused on engagement with our workforce through Visible Felt Leadership, and by aligning and improving our standards across the Group, ensuring accountability to our safety commitments, and ensuring our employees are fit for duty.

We report our safety performance quarterly as part of both our E&S Committee meetings and to the ESG & Nominating Committee. Our safety performance is a regular standing agenda item on our weekly Executive Committee review meeting.

Our safety performance in the fourth quarter of 2022 did not meet our high standards and regrettably we recorded two fatalities in December 2022, bringing the total number of fatalities for the year to five. The first fatality occurred at Loulo-Gounkoto of a contractor on December 14, 2022, and the second was at Kibali of an employee on December 22, 2022. Furthermore, in January 2023, two incidents occurred that resulted in fatalities: one at Jabal Sayid which resulted in the fatalities of two mining contractors; and one at Carlin that resulted in the fatality of an employee. Fatality incident investigations are underway and immediate Fatality Prevention Criteria and gap assessments are also being implemented across the Group. Group-wide Safety Intervention and Shift Change Interventions were and continue to be implemented to reinforce our safety procedures and communicate our core safety messages and expectations.

In terms of other key performance indicators, for the fourth quarter of 2022, our LTIFR[8] was 0.23 and our TRIFR[8] was 0.93. For the 2022 year, the LTIFR improved significantly to 0.29, and the TRIFR improved to 1.29.

Social

We regard our host communities and countries as important partners in our business. Our sustainability policies commit us to transparency in our relationships with host communities, government authorities, the public and other key stakeholders. Through these policies, we commit to conducting our business with integrity and with absolute opposition to corruption. We require our suppliers to operate ethically and responsibly as a condition of doing business with us.

Community and economic development

Our commitment to social and economic development is set out in our overarching Sustainable Development and Social Performance policies. Mining has been identified as vital for the achievement of the United Nations SDGs, not only for its role in providing the minerals needed to enable the transition to a lower carbon intensive economy, but also because of its ability to drive socio-economic development and build resilience. Creating long-term value and sharing economic benefits is at the heart of our approach to sustainability, as well as community development. This approach is encapsulated in three concepts:

The primacy of partnership: this means that we invest in real partnerships with mutual responsibility. Partnerships include local communities, suppliers, government, and organizations, and this approach is epitomized through our CDCs with development initiatives and investments.

Sharing the benefits: We hire and buy local wherever possible as this injects money into and keeps it in our local communities and host countries. By doing this, we build capacity, community resilience and create opportunity. We also invest in community development through our CDCs. Sharing the benefits also means paying our fair share of taxes, royalties and dividends and doing so transparently, primarily through the reporting mechanism of the Canadian Extractive Sector Transparency Measures Act. In April 2022, we published our first Tax Contribution Report which sets out, in detail, our economic contributions to host governments. We will continue to disclose such contributions on an annual basis.

Engaging and listening to stakeholders: We develop tailored stakeholder engagement plans for every operation and the business as a whole. These plans guide and document how often we engage with various stakeholder groups and allow us to proactively deal with issues before they escalate into significant risks.

We continued our community development initiatives through our CDCs during the quarter. We invested more than $13 million in local community development projects during the fourth quarter of 2022 and $35 million for the full year 2022.

Environment

We know the environment in which we work and our host communities are inextricably linked, and we apply a holistic and integrated approach to sustainability management. Being responsible stewards of the environment by applying the highest standards of environmental management, using natural resources and energy efficiently, recycling and reducing waste as well as working to protect biodiversity, we can deliver significant cost savings to our business, reduce future liabilities and help build stronger stakeholder relationships. Environmental matters such as how we use water, prevent incidents, manage tailings, respond to changing climate, and protect biodiversity are key areas of focus.

We maintained our strong track record of stewardship and did not record any Class 1[9] environmental incidents during the fourth quarter of 2022 or for the full year 2022.

Climate Change

The ESG & Nominating Committee is responsible for overseeing Barrick's policies, programs and performance relating to sustainability and the environment, including climate change. The Audit & Risk Committee assists the Board in overseeing the Group's management of enterprise risks as well as the implementation of policies and standards for monitoring and mitigating such risks. Climate change is built into our formal risk management process, outputs of which are regularly reviewed by the Audit & Risk Committee.

Barrick's climate change strategy has three pillars: (1) identify, understand and mitigate the risks associated with climate change; (2) measure and reduce our GHG emissions across our operations and value chain; and (3) improve our disclosure on climate change. The three pillars of our climate change strategy do not focus solely on the development of emissions reduction targets, rather, we integrate and consider aspects of biodiversity protection, water management and community resilience in our approach.

TAB 6

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

May 2, 2023



BARRICK

Barrick Gold Corporation

INFORMATION CIRCULAR

BARRICK

Notice of 2023 Annual Meeting

Meeting Information

Date:	May 2, 2023
Time:	10:00 a.m. (Toronto time)
Location:	Hockey Hall of Fame and Museum, Tim Horton's Theatre Brookfield Place 30 Yonge Street Toronto, Ontario M5E 1X8 Canada
Live Webcast:	www.barrick.com/investors/agm

Fellow Shareholders:

You are invited to attend Barrick's 2023 Annual Meeting of Shareholders (the **Meeting**) at which you will be asked to vote:

- To elect 12 director nominees;
- To appoint PricewaterhouseCoopers LLP as our auditor for 2023; and
- To approve our non-binding advisory vote on our approach to executive compensation.

Shareholders will also transact any other business properly brought before the Meeting.

Barrick's Board of Directors has approved the contents of this Notice and Circular and the sending of this Notice and Circular to our shareholders, each of our directors, and our auditor.

Barrick is pleased to once again return to a hybrid (physical/virtual) meeting format for this year's Meeting which can be attended in person or virtually by way of a live webcast.

If you plan to attend the Meeting in person, you will need to follow the procedures outlined in the Circular and register with our transfer agent, TSX Trust Company, at the registration desk to obtain an admission card before entering the Meeting. Registered shareholders, non-registered (or beneficial) shareholders, and their duly appointed proxyholders will also be able to participate, ask questions, and vote in "real time" through an online portal that may be accessed at https://web.lumiagm.com/459796288 by following the instructions set out in the Circular. Non-registered shareholders must carefully follow the procedures set out in the Circular in order to vote virtually and ask questions through the online portal. Non-registered shareholders who do not follow the procedures set out in the Circular will nonetheless be able to view a live webcast of the Meeting, but will not be able to ask questions or vote. Please refer to the section of the Circular entitled "*Meeting and Voting Information*" for additional details.

Your vote is important. As a shareholder, it is very important that you read this material carefully and then vote your common shares of Barrick (**Barrick Shares**). You are eligible to vote your Barrick Shares if you were a shareholder of record at the close of business on March 3, 2023. You may vote in person, virtually, or by proxy. See page 5 for further instructions on how you can vote.

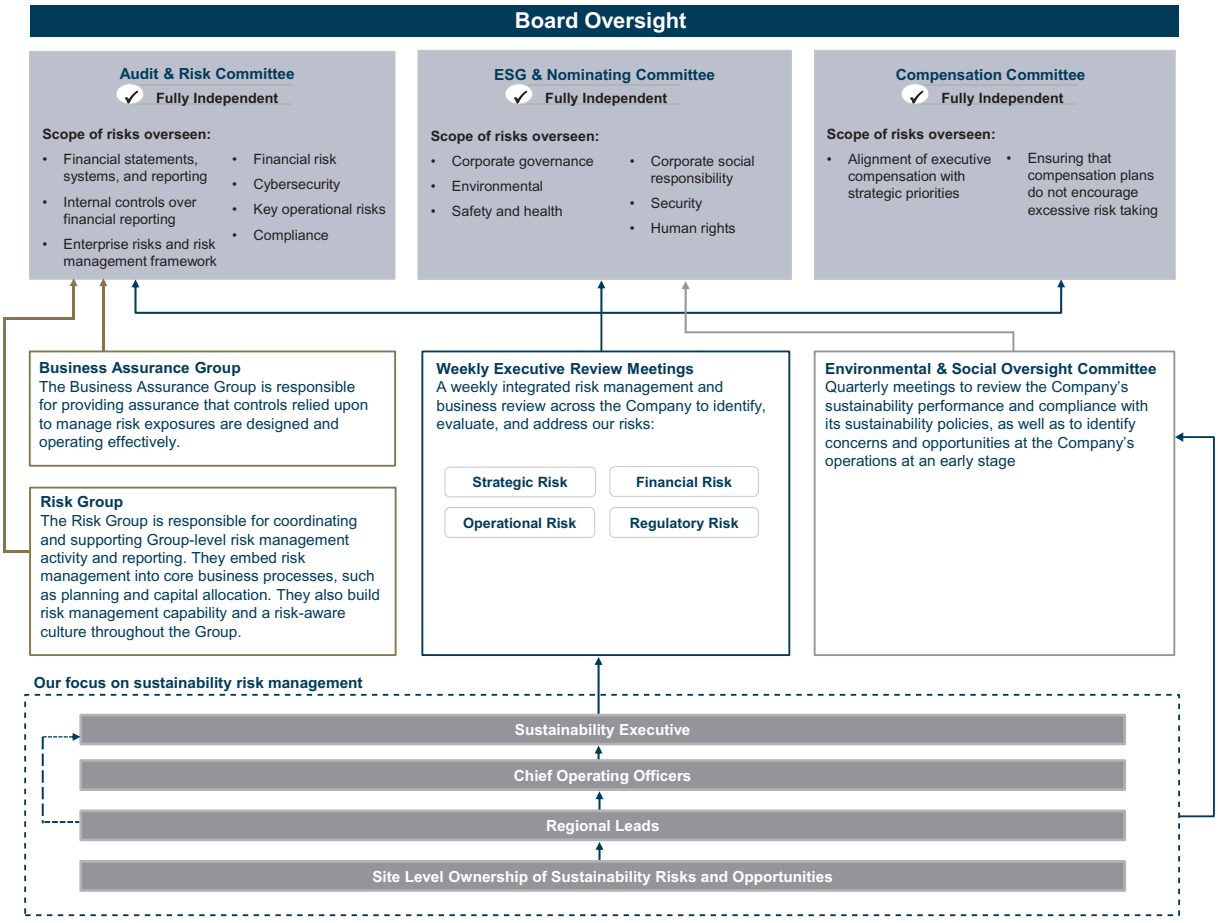
By Order of the Board of Directors,

Dana Stringer
Deputy General Counsel and Corporate Secretary
March 24, 2023

General Information

In this Circular, "you", "your", and "shareholder" refer to the holders of common shares of Barrick. "We", "us", "our", the "Group", the "Company", and "Barrick" refer to Barrick Gold Corporation, unless otherwise indicated. Information in this Circular is as of March 23, 2023, unless otherwise indicated. All references to US $ or $ are to U.S. dollars and all references to Cdn $ are to Canadian dollars. The annual average exchange rate for 2022 reported by the Bank of Canada was US $1.00 = Cdn $1.3013.

The diagram below summarizes our enterprise-wide approach to risk oversight and the allocation of risk oversight responsibilities.



Integrity of Internal Controls

The Board is responsible for overseeing the Company's internal control environment. The Board exercises oversight of assurance activities designed to provide comfort on the effectiveness of internal controls principally through the Audit & Risk Committee. The Audit & Risk Committee regularly reviews reports from the head of the Company's risk management and assurance group, as well as from our independent auditor, to assess the adequacy and effectiveness of our internal controls over financial reporting and disclosure controls and procedures, and other controls considered critical to the management of enterprise-level risks, including cybersecurity risks.

Through the Audit & Risk Committee, the Board oversees assurance relating to accounting and financial reporting and external disclosure. The Audit & Risk Committee also reviews and recommends approval of our consolidated financial statements and other external reporting and audit requirements. At each of its meetings, the Audit & Risk Committee meets with the external auditor and the head of Barrick's Business Assurance function as part of its regular *in camera* session. Through the ESG & Nominating Committee, the Board oversees assurance relating to our environmental, health and safety, corporate social responsibility, security, and human rights performance.

Our Sustainability Vision, Mission, and Guiding Principles

Our corporate vision sets out what sustainability means at Barrick and is rooted in the belief that to operate successfully, we must deliver long-term value to all of our stakeholders and manage our impacts on the wider environment. Focusing on sustainability has long been of critical importance to Barrick and is entrenched in our Company DNA. Our commitments to respecting human rights, protecting the health and safety of our people and local communities, sharing the benefits of our operations, and managing our impact on the environment are core business priorities, and are embedded in our decision-making processes and every facet of our operations. Investors are encouraged to review our Sustainability Report to see how we work toward making a positive difference in the lives of employees, stakeholders, business partners, and host communities around the world.

Human Capital Management and Succession Planning

Our people are the driving force behind our track record of achievements. We strive to be a global employer of choice that attracts and retains the best people to run our portfolio of best-in-class assets and who share our vision and values to become the world's most valued gold and copper mining business. We engage employees and contractors across the globe and empower them to work

TAB 7

BARRICK

HUMAN RIGHTS POLICY

1. Mission Statement

We respect the human rights of all individuals impacted by our operations, including employees, contractors and external stakeholders. Wherever we operate, we seek to avoid causing or contributing to human rights violations and to facilitate access to remedy. While governments have the primary responsibility to protect against human rights violations, we understand and accept our responsibility to respect human rights.

We consider "human rights" to be all internationally recognized human rights in the International Bill of Human Rights and the International Labour Organization (ILO) Declaration of Fundamental Principles and Rights at Work.

2. Our Approach

In fulfilling our mission, we are guided by several principles that help define our approach:

- We are committed to and 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.

- We do not tolerate violations of human rights committed by our employees, affiliates, or any third parties acting on our behalf or related to any aspect of one of our operations.

- We do not tolerate the use of child labour, prison labour, or any form of forced labour, slavery or servitude.

- We believe in fair employment practices and in a workplace in which all individuals are treated with dignity and respect. We do not tolerate discrimination against individuals on the basis of race, colour, gender, religion, political opinion, ethnicity, age, nationality or social origin, sexual orientation, or union membership.

- We aim to pay all employees and contractors fairly. We will enforce working hours to the best of our ability aligned with ILO standards, and provide fairly compensated overtime and pay for periodic holidays and time off.

- We respect the freedom of expression and right to associate of our employees and contractors, including their right to establish and to join organizations of their own choosing to bargain collectively and advance their occupational interests without our previous authorization or unreasonable interference.

- We do not tolerate threats, intimidation, or attacks against human rights defenders.

- In our relationships with host governments, contractors and third-party service providers, we do our utmost to avoid being complicit in adverse human rights impacts, including benefitting from the human rights violations caused by others.

- We monitor and try to continuously improve our human rights performance.

3. Steps We Take

To try and meet those commitments, we will aim to take several steps:

- Develop and implement supporting policies, procedures, training and internal reporting structures to embed this Policy throughout our company.

- Provide training on our human rights expectations to all new employees and all relevant existing employees.

- Provide a safe and healthy workplace for all staff, contractors and subcontractors.

- Follow the Voluntary Principles on Security and Human Rights in our dealings with public and private security providers, local communities and potential victims of human rights violations.

- Comply, and demand that all suppliers and contractors comply, with all national laws, the International Bill of Human Rights, and the ILO Core conventions.

- Conduct human rights due diligence for all new projects and significant modifications to existing operations where there is the potential for negative human rights impacts, and seek to employ reasonable measures to mitigate those impacts.

- For relevant suppliers and third-party service providers, perform reasonable due diligence, insist that human rights terms and conditions be included in contracts (including compliance with this Policy), and require periodic human rights reporting, certifications and/or training.

- Promote human rights by contributing to public debate, supporting international agreements and commitments, and identifying opportunities to constructively engage on human rights issues relevant to the countries in which we operate.

- Only employ people above the minimum employment age set by national law or by ILO Convention 138, whichever is the higher. We will avoid employing individuals below 18 years of age in work that is likely to harm their health, safety or morals.

- Promote fair competition, including respect for property rights.

- Respect the history, culture and traditional ways of indigenous peoples, their standing as distinct, self-determining peoples with collective rights, and their interests in land, waters and the environment.

- Meaningfully engage with the local communities and other stakeholders affected by our operations to create and maintain transparent relationships built on mutual respect and trust.

- Establish and maintain a grievance mechanism for human rights complaints to be reported and addressed without any prejudice to the aggrieved person(s). We will report publicly on how complaints have been managed.

- Prevent, mitigate, and, where appropriate, remedy negative human rights impacts that are caused, or contributed to, by our company. In situations where we are directly linked to negative human rights impacts because of activities in our value chain, we will seek to use our leverage to prevent or mitigate those impacts.

- Take appropriate action where we identify violations of this Policy by employees or contractors.

- Conduct periodic audits and reviews at different sites, of different operating units, and of different contractors, to give us confidence that we are meeting the letter and spirit of this Policy. We may conduct those audits ourselves, or use external third parties. Where appropriate, we will establish performance improvement action plans to respond to the findings of these audits and reviews.

- Communicate this policy to our employees, partners, contractors and sub-contractors and make it available to the public.

- Report on our performance against our human rights objectives and targets.

4. Scope of Policy

The Policy is applicable to our entire workforce of Barrick, including senior executives, financial officers, contractors and members of the Board of Directors, at every site that we operate. Certain of our affiliates and joint ventures, such as Barrick Niugini Limited, maintain their own distinct human rights policies and approaches, however we will use all rights and powers at our disposal as significant shareholders to achieve policies that will, in principle, align with this policy.



Mark Bristow
President and Chief Executive Officer

TAB 8

Human Rights Report



BARRICK

At Barrick, we respect the human rights of all individuals impacted by our operations, including employees, contractors and external stakeholders. We seek to avoid causing or contributing to human rights violations and to facilitate access to remedy, wherever we operate. While governments have the primary responsibility to protect against human rights violations, we understand and accept our responsibility to respect human rights. We do not tolerate violations of human rights committed by employees, affiliates, or any third parties acting on our behalf or related to any aspect of a Barrick operation.

Barrick Human Rights Mission Statement

Contents

Letter from our President and CEO 2

About this Report 5

2020 Performance Highlights 6

Barrick at a Glance 8

Our Policy Commitments 10

Our Approach to Human Rights Governance 16

Salient Human Rights Issues 22

Salient Issues: A Deep Dive 34

- Non-discrimination in the Workplace 35
- Health and Safety 39
- Working Conditions 42
- Resettlement and Human Rights 46
- Security and Human Rights 49
- Water 54
- Respecting the Rights of Indigenous Peoples 59

Appendix A: Human Rights Assessments Methodology 63

Appendix B: Cautionary Statement on Forward-Looking Information 65

Please note, certain photos in this report were taken prior to the Covid-19 pandemic, and as such the wearing of masks and social distancing was not necessary or required. Credit to M Whellams and M Forget for certain photos used in this report.

Letter from our President and CEO

Letter from our President and CEO

Recognizing and respecting human rights have long been a fundamental value for Barrick. It is one of the four key pillars of our sustainability vision and strategy, and our Human Rights Policy was one of the first we updated following our transformational merger with Randgold at the start of 2019 (the 'Merger'). With 17 mines across 13 countries and exploration projects in another three countries, spanning five continents, we must manage a range of divergent human rights impacts and risks which are critical to our continued social license to operate and business success. But more than that, recognizing and respecting human rights is simply the right thing to do.

The importance of human rights as a core value at Barrick is demonstrated in our Sustainability Scorecard. The scorecard, which we developed as part of our 2019 Sustainability Report, uses our performance on human rights as one of the key metrics. Our overall performance on the scorecard is linked to 25% of the long-term incentive compensation for our senior leaders as part of the Barrick Partnership Plan. In 2021, further human rights indicators will be added to the scorecard.

This Human Rights Report, our first since the Merger, sets out in detail how we manage these diverse risks and challenges. It tracks our progress in embedding respect for human rights at our operations, through our supply chain, and in the communities and countries in which we operate.

Our policy, simply put, is to respect the human rights of all individuals impacted by our operations, including employees, contractors and external stakeholders. Wherever we operate, we seek to avoid causing or contributing to human rights violations and to facilitate remedial action. The policy is guided by our philosophy of partnership: building mutually beneficial relationships with our local communities.



Recognising and respecting human rights has long been a fundamental value for Barrick. It is embedded as one of the four key pillars of our sustainability vision and strategy

Progress since the merger

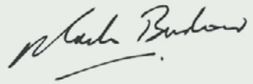
Since 2019, we have worked to roll out a new Human Rights Policy across our sites. Last year, that meant working with independent human rights experts Avanzar to develop online training modules. While online training can never fully replace in-person training, it helped ensure our commitment was not hampered by Covid-19 related travel restrictions. We also developed 'train the trainer' programs to empower our site security leadership with the knowledge and skills to deliver long-term training to their teams and local public security forces. These programs were successfully implemented at our North Mara and Bulyanhulu operations in Tanzania during 2021.

We also revised, updated and restarted our Human Rights Program, under which our operations conduct human rights assessments on a 2–3 year cycle. Every operation evaluates the actual, potential and perceived human rights risks and impact of the mine in the first year. Independent assessments are conducted in the second year at operations deemed to have medium and high exposure to human rights risks. During 2020 and in the first half of 2021, independent assessments were undertaken at North Mara and Bulyanhulu.

On the policy side, we have also revised, updated and developed several human rights-related standards. These include our Use of Force Standard and our Voluntary Principles on Security and Human Rights Standard.

Lots done, lots still to do

The management of human rights was not something we always got right prior to the Merger. This Report also reflects on actions we have taken to remedy these legacy situations, as well as the systems we have or are putting in place to prevent any recurrence. The Merger has also afforded us the opportunity to reset relationships which were impacted by legacy issues. By applying our community-centred model, underpinned by a philosophy of shared benefits, open and honest communication, listening and transparent disclosure, we have been able to resolve many of these old grievances and to restore many damaged relationships. Nowhere is this progress more evident than at North Mara, where community relations have been radically repaired. The mine now has a fully functional Community Development Committee which guides us in our investments in development projects.



Mark Bristow
President and Chief Executive Officer

Monitoring and reporting on resettlement outcomes

PERFORMANCE & PROGRESS

100%

grievances resolved in 2020

Given the diverse nature of each resettlement, each site has a unique site- and resettlement-specific monitoring process in place. However, corporate due diligence procedures will still apply. For example, our corporate Human Rights Assessments review the resettlement processes at high-risk sites through a human rights lens.

Papua New Guinea

Our resettlement planning for two communities in Porgera was halted when the mine was placed on care and maintenance.

Democratic Republic of Congo

In 2016, the Kibali mine resettled 1,400 project affected peoples. Compensation was paid for both physical improvements on the land and crops. Compensation rates were determined in consultation with the local authorities. The project affected people had the option to have the company build a replacement home or receive payments to build their own homes. Payments were divided into four tranches and were released depending on the progress made on building the house. Those opting to receive payments were also provided with financial literacy and planning training. The process was monitored for one year after the houses were completed to determine the displaced persons standard of living. The majority of complaints lodged in the grievance mechanism were related to level of compensation. Six years later, almost 100% of the complaints have been closed since the compensation rates were developed in such a robust manner.

Tanzania

At North Mara, the community of Matongo was resettled in mid-2020 as part of a commitment that was made previously under Acacia's management. The resettlement agreement defined the relocation process for approximately 1,500 people along with the school and the dispensary. As of 2021, almost everyone has now moved from the original location, but the primary school has not yet been relocated. The 2021 Human Rights Assessment found that the school children must now walk to the old school, which is approximately 7 kilometers away from the resettled community. As a result, the site will expedite the construction of the school in compliance with the resettlement agreement.

Kokiza was a village we created as part of a Resettlement Action Plan for the Kibali mine in the DRC.



Security and Human Rights

To ensure the continuity of our operations and to protect our assets, Barrick operations employ private security and receive support from public security. We have implemented a comprehensive security and human rights program to ensure that these security operations respect the rights of our communities, contractors, and employees.

Managing Security and Human Rights Risks

Voluntary Principles Standard

Since 2010, we have been a member of the Voluntary Principles on Security and Human Rights (VPSHR). Our Human Rights Policy commits us to comply with the VPSHR, and it is the central tenet of our security management system. Our Voluntary Principles Standard sets out the responsibilities across the company for managing security and human rights related risks and the process used to assess the specific risks and mitigation measures for each mine site. The standard also requires that each mine engage with neighboring communities, civil society, host country, private security, and public security to consult on the nature of these risks and how best to address these issues. In 2020, our Voluntary Principles Standard and related procedures were revised to ensure alignment with the latest international guidelines, principles related to security and human rights and findings from past Voluntary Principle compliance assessments. The procedures were cross referenced with ICMM, IFC, UNICEF, ICRC, and IPIECA guidance for the implementation of the VPSHR, and industry best practice. By streamlining these procedures and aligning them with our Human Rights Policy, we are facilitating site adoption and implementation.

Supporting procedures

We have created a series of procedures to ensure implementation of the expectations outlined in the VPSHR Standard. For example, the Arrest and Detention procedure outlines 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. The procedure for Managing Relationships/Agreements with Public Security (Police/Military) details how to best engage with public security to comply with the VPSHR, the Foreign Corrupt Practices Act and our Anti-Bribery and Anti-Corruption policies. The Security Code of Conduct outlines the minimum standards for the treatment of others by private security personnel and sets standards for ethical and lawful behavior by all employees. The Use of Force Procedure establishes the way force can be used by security personnel to comply with international standards and law.

Training

We require all employees and contractors to complete human rights training that focuses on how to prevent and mitigate negative human rights impacts, and promote the respect for human rights in their area of operations. We continue to provide security personnel specific training on human rights, the VPSHR and Barrick's Use of Force Procedure. In 2019, 4,800 security personnel were trained. However, due to the pandemic, our training decreased in 2020 to 3,500 private and public security personnel. During 2020, all employees who completed the Code of Business Conduct and Ethics refresher training also received updated training on human rights as part of the course.

In 2020, we contracted Avanzar to develop online training for Human Rights and the VPSHR. The shift to online training reflects the need to continue our training despite the restrictions presented by Covid-19. We do however recognize the limitations of online training and we provide supplemental in person training to security personnel. This includes a train-the-trainer workshop which is provided at all high-risk sites so that security supervisors learn how to go through the online training with their security guards in an interactive manner and carry out additional participatory learning activities to put theory into practice.

We have also worked with Avanzar to develop and facilitate in-person human rights workshops that include a specific section on security and human rights, for managers and supervisors at each high-risk mine site. The workshop provides interactive exercises to understand, identify, report, and prevent human rights risks and impacts. We plan to roll out these training to most high-risk sites throughout 2021.

We require all employees and contractors to complete human rights training that focuses on how to prevent and mitigate negative human rights impacts, and promote the respect for human rights in their area of operations.

PERFORMANCE & PROGRESS

Security and human rights training[8]



8 Covid-19 restrictions limited the amount of in-person training we were able to provide in 2020.



Stakeholder engagement

At a corporate level, we engage with the Voluntary Principles Initiative through the corporate pillar member working group to share best practice and promote the implementation of the VPSHR. We have also participated in the meetings of the ICMM Security and Human Rights Working Group, and the WGC's ESG taskforce.

Since the merger, we have also redoubled our efforts to engage with our local communities, authorities and governments around the issues that matter to them. We have established CDCs at most sites to channel information and consultation discussions, including security. Our partnership with the CDCs includes a commitment to assist in reduced tensions and conflict. We see our work with the CDCs as our first line of security. We also work with local authorities to create awareness of the dangers of trespassing, artisanal mining, and the use of mercury.

Monitoring and reporting on security and human rights impacts

The Security Function uses the Human Rights Investigation and Reporting Procedure whenever an allegation of human rights abuses surfaces about private or public security personnel. We also commission Voluntary Principles on Security Human Rights assessments conducted by a third party. Since our last stand-alone Human Rights Report in 2018, assessments have been conducted at the North Mara, Bulyanhulu and Veladero mines. Three more high risk sites will be assessed in 2021.

Whenever an allegation of a human rights abuse occurs (such as an excessive use of force), the personnel involved are removed from the site pending the investigation. Some guards are allowed back after receiving training, depending on the level of the offense.

PERFORMANCE & PROGRESS

The risk of an excessive use of force by private security personnel was substantially reduced with the removal of all weapons from all sites in 2019.	At Bulyanhulu, while the mine was on care and maintenance in 2020, more than 10,000 artisanal miners who operated informally on our lease area were removed by the authorities in a peaceful manner without any incident when the mine restarted its operations.
Established a comprehensive MOU with Tanzania police that aligns with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the VPSHR.	In Veladero, an external assessment found that Veladero achieved a high compliance with the VPSHR. Now the goal will be to achieve and maintain full compliance.



Case study
Improving the security at North Mara

Since our last stand-alone human rights report in 2018, Barrick security and human rights related incidents linked to our relationships with private and public security have occurred at our North Mara mine. These incidents occurred under the previous Acacia management, prior to Barrick acquiring the minority share of Acacia and taking operational control of Acacia's assets in Tanzania. In September 2019 when we assumed operational control of North Mara, major changes were implemented both in terms of the standards used, and monitoring. Further to this in line with our local partnership philosophy a new local private security company was hired; we increased the amount of training provided, and we have worked to improve the relationship between the mine and the community. Other actions include reviewing the relationship with the local police to establish clear boundaries. Police now only enter the mine site when requested by senior management to engage on criminal matters. There have been no new security-related human rights incidents raised to group level in the two years since Barrick acquired the remaining minority interest in Acacia.

BARRICK

Barrick Gold Corporation
161 Bay Street, Suite 3700
Toronto, Ontario M5J 2S1
Canada

Tel: +1 416 861-9911
Toll Free (North America): 1-800-720-7415

barrick.com

TAB 9

NEWS
DECEMBER 10, 2021

Barrick Publishes Human Rights Report

Press Release | Human Rights Report

Toronto – Barrick Gold Corporation (NYSE:GOLD)(TSX:ABX) published its **report on Human Rights** today outlining the company's revised policies and standards and their implementation since the merger with Randgold Resources.

The publication of the report coincides with the United Nations' Human Rights Day, which commemorates the day, in 1948, when the UN General Assembly adopted the Universal Declaration of Human Rights. The theme for this year is Equality.

During 2020, Barrick updated several standards including the Use of Force Standard and developed a new Voluntary Principles on Security and Human Rights Standard. It also revised, updated and restarted its human rights program, in which every operation conducts a human rights assessment on a two- to three-year cycle. To date, all high- and medium-risk sites have been assessed, with Kibali in the Democratic Republic of Congo and Loulo-Gounkoto in Mali completed during 2021.

Barrick trained its employees and contractors in these updated standards and policies and worked with independent human rights experts, Avanzar, to develop online modules to ensure that human rights training was not hampered by Covid-19 related travel and social distancing restrictions. Barrick also developed 'train the trainer' programs to empower its site security leadership with the knowledge and skills to deliver long-term training to their teams and local public security forces. These programs were successfully implemented at the North Mara and Bulyanhulu operations in Tanzania during 2021.

In the report, president and chief executive Mark Bristow said that recognizing and respecting human rights was a core value for Barrick, and its Human Rights Policy was one of the first the group updated following the merger with Randgold Resources. It is codified in Barrick's standalone Human Rights Policy and informed by the expectations of the UN Guiding Principles on Business and Human Rights (UNGPs), the Voluntary Principles on Security and Human Rights (VPs) and the OECD Guidelines for Multinational Enterprises.

"Our policy, simply put, is to respect the human rights of all individuals impacted by our operations, including employees, contractors and external stakeholders. Wherever we operate, we seek to avoid causing or contributing to human rights violations and to facilitate remedial action. The policy is guided by our philosophy of building mutually beneficial relationships with our local communities," Bristow said.

The report also provides an insight into Barrick's salient human rights issues such as non-discrimination in the workplace, health and safety, working conditions, resettlement, security, water and the rights of indigenous people; and reflects on Barrick's legacy human rights challenges as well as the actions the company has taken to remedy these.

Enquiries:

Investor and Media Relations
Kathy du Plessis
+44 20 7557 7738
Email: barrick@dpapr.com

Cautionary Statement on Forward-Looking Information

Certain information contained or incorporated by reference in this press release, including any information as to our strategy, projects, plans, or future performance, constitutes "forward-looking statements". All statements, other than statements of historical fact, are forward-looking statements. The words "ensure", "empower", "seek", "facilitate", "guide", "challenge", "may", "will", "can", "should", "could", "would", and similar expressions identify forward-looking statements. In particular, this press release contains forward-looking statements including, without limitation, with respect to Barrick's Human Rights Policy and the implementation of Barrick's Human Rights Policy and related standards following the merger with Randgold; the anticipated benefits of Barrick's human rights training program and human rights assessments, Barrick's commitment to respecting the human rights of all individuals impacted by our operations, and actions taken by Barrick to facilitate remedial action including with respect to legacy human rights challenges and salient human rights issues in line with Barrick's Human Rights Policy. Forward-looking statements are necessarily based upon a number of estimates and assumptions that, while considered reasonable by Barrick as at the date of this press release in light of management's experience and perception of current conditions and expected developments, are inherently subject to significant business, economic and competitive uncertainties and contingencies.

Many of these uncertainties and contingencies can affect our actual results and could cause actual results to differ materially from those expressed or implied in any forward-looking statements made by, or on behalf of, us. Readers are cautioned not to put

TAB 10

BARRICK

Sustainability Report 2021

Investing in a better future







Introduction

Our approach

Our business at a glance: Managing our business sustainably

Governance of sustainability

Risk management

Stakeholder engagement

Materiality assessment

Business integrity and ethics

Social and economic development

Health & safety

Human rights

Environment

GOVERNANCE OF SUSTAINABILITY

Bottom-up leadership

We believe sustainability can only truly be delivered on the ground at each site, not from a corporate office. We operate a bottom-up governance structure which empowers each site to take the lead for its own unique sustainability context and issues. This means that just as each site must manage its geological, operational and technical capabilities to meet our business objectives, each site must also identify and implement its own sustainability initiatives and targets to manage its performance in support of our sustainability strategy.

All our mines have dedicated teams responsible for the management of health & safety, as well as community and environmental aspects across the site. But we do not leave it there. Support and direction are provided to each site by our Regional Sustainability Leads, with oversight provided by our Group Sustainability Executive and our Chief Operating Officers.

Our Group Sustainability Executive reports weekly to the Executive Committee on sustainability-related aspects, including safety incidents, progress against targets and any grievances raised. Ultimate accountability for our sustainability performance, including achievement of our targets, resides with our Board of Directors and Executive Officers, including the President and CEO.

We take pride in and strive for excellence in social and environmental management, both at a group and a site level, and link financial incentives across the group to our sustainability performance.



Introduction

Our approach

Our business at a glance: Managing our business sustainably

Governance of sustainability

Risk management

Stakeholder engagement

Materiality assessment

Business integrity and ethics

Social and economic development

Health & safety

Human rights

Environment

Environmental & Social Oversight Committee

Our most senior management-level body dedicated to sustainability is the Environmental & Social Oversight Committee (E&S Committee) which meets on a quarterly basis. The E&S Committee connects site-level ownership of sustainability to our Executive Officers and our Board of Directors, who have ultimate responsibility for our sustainability performance.

The E&S Committee is chaired by our President and CEO, and members include:

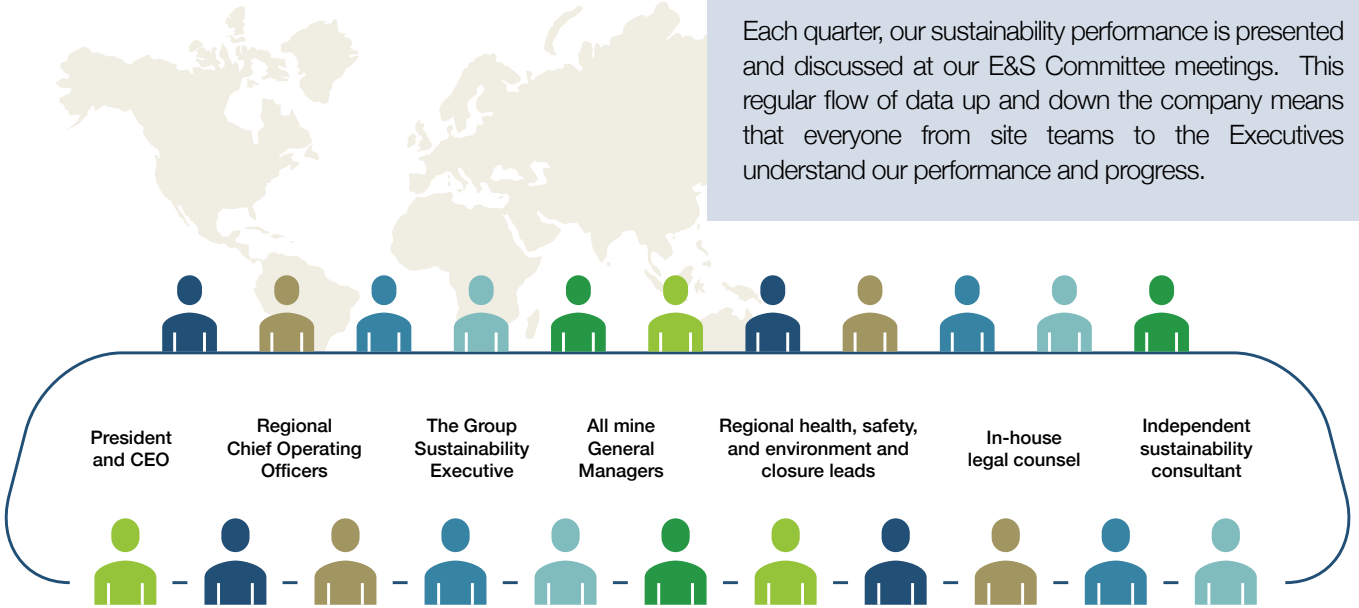
- Chief Operating Officers for each region;
- The Group Sustainability Executive;
- The General Managers for each mine;
- Regional and site health, safety, environment and closure leads;
- In-house legal counsel; and
- An independent third-party sustainability expert.

The E&S Committee reviews sustainability performance and key performance indicators across our operations. It also provides a forum to discuss and learn from the sustainability successes and challenges experienced across each region in each quarter. As well as feedback from an 'on-the-ground' review, appraisal of one Tier One asset is conducted by the third-party expert each quarter.

The President and CEO reviews the reports of the E&S Committee with the Board's Environmental, Social, Governance & Nominating Committee (ESG & Nominating Committee), formerly known as the Corporate Governance & Nominating Committee. The change to this Committee's name was approved by the Board on February 15, 2022, to better reflect the critical role this Committee plays in overseeing Barrick's sustainability performance.

By bringing Executive and Board level attention to key sustainability issues, we can identify concerns and opportunities at an early stage, remedy them and drive continual improvements.

E&S Committee



Data-driven decision-making

From water to waste, grievances to greenhouse gas emissions, we collect critical data regarding our sustainability performance from each site. We track this data because it helps us to make better decisions, de-risks projects, and to identify and discover new opportunities and deliver real value for our business.

Every month our data is rolled up to the regional level, analyzed against the previous month year period, and then reported to the Group Sustainability Executive. The monthly review process enables us to track trends, focus attention on the most critical areas, and identify and proactively manage any issues as they arise.

Each quarter, our sustainability performance is presented and discussed at our E&S Committee meetings. This regular flow of data up and down the company means that everyone from site teams to the Executives understand our performance and progress.

Introduction

Our approach

Our business at a glance: Managing our business sustainably

Governance of sustainability

Risk management

Stakeholder engagement

Materiality assessment

Business integrity and ethics

Social and economic development

Health & safety

Human rights

Environment

Board responsibility

Our Board of Directors and its committees oversee our sustainability activities as part of their stewardship of Barrick's business strategy and risk management. The ESG & Nominating Committee helps the Board to oversee the company's environmental, health & safety, corporate social responsibility, and human rights programs, policies and performance.

Our two other Board-level committees also play key roles in sustainability matters:

- **The Audit & Risk Committee** assists the Board in overseeing the group's management of enterprise risks, as well as the implementation of policies and standards for monitoring and mitigating such risks including compliance with Barrick's Code of Business Conduct and Ethics and Anti-Bribery and Anti-Corruption Policy. The Audit & Risk Committee also reviews the company's approach to climate change in the context of Barrick's public disclosure.
- **The Compensation Committee** assists the Board in ensuring that executive compensation is appropriately linked to our sustainability performance.



Introduction

Our approach

Our business at a glance: Managing our business sustainably

Governance of sustainability

Risk management

Stakeholder engagement

Materiality assessment

Business integrity and ethics

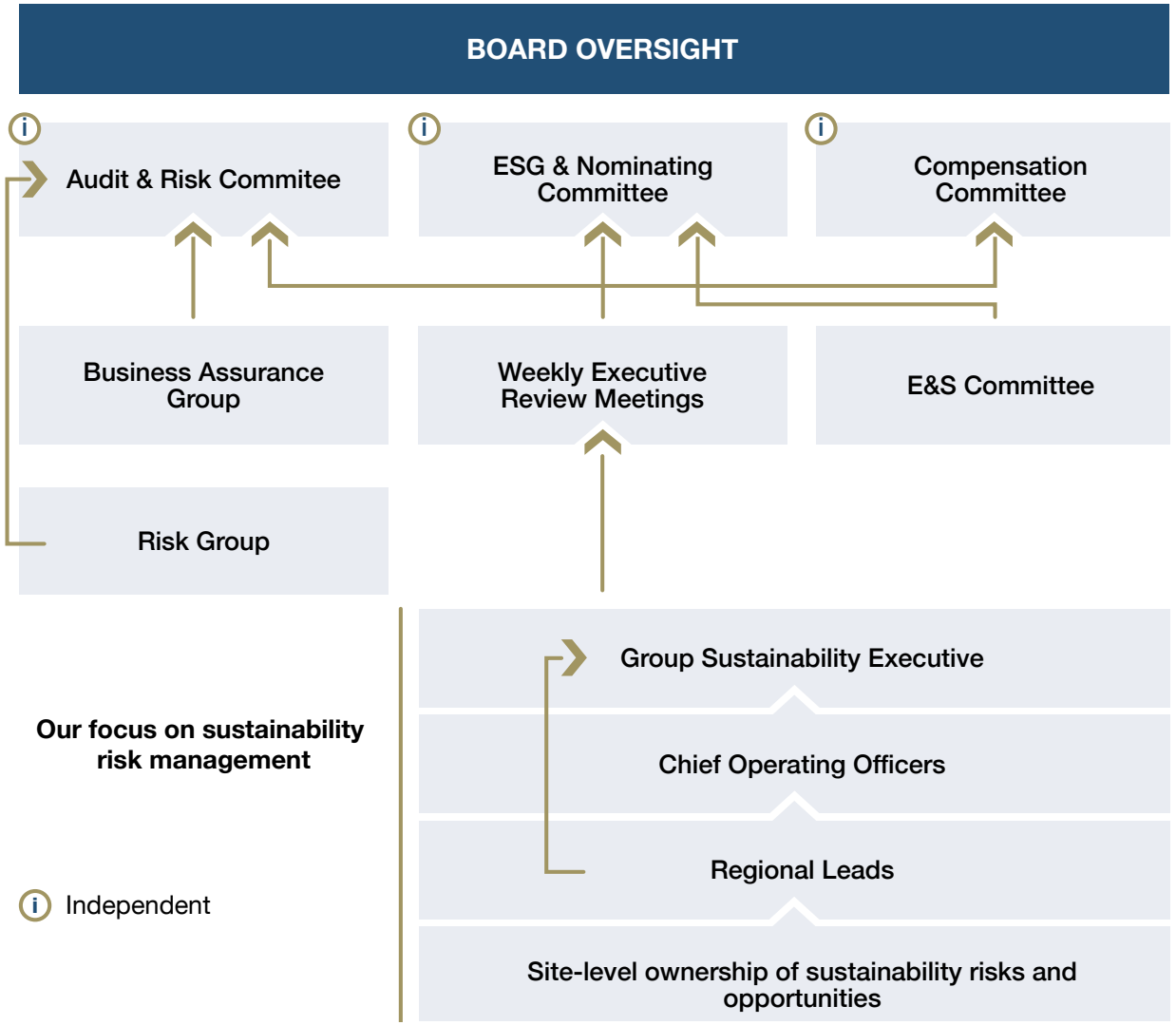
Social and economic development

Health & safety

Human rights

Environment

Sustainability governance



Audit & Risk Commitee oversees:

- Financial statements, systems, and reporting.
- Internal controls over financial reporting.
- Enterprise risks and risk management framework.
- Financial risk.
- Cybersecurity.
- Key operational risks.
- Business integrity and ethics.

ESG & Nominating Committee oversees:

- Corporate governance.
- Environmental.
- Health & safety.
- Corporate social responsibility.
- Security.
- Human rights.

Compensation Committee oversees:

- Alignment of executive compensation with strategic priorities.
- Ensuring that compensation plans do not encourage excessive risk taking.

Business Assurance Group:

- Responsible for providing assurance that controls relied upon to manage risk exposures are designed and operating effectively.

Introduction

Our approach

Social and economic development

Health & safety

Human rights

Security

Addressing our legacy issues

Building strong labour relations

Training our talent

Our indigenous partners

Diversity and inclusion

Environment

Allegations of violent conflict, sexual assaults and human rights violations at the North Mara mine

North Mara is in a remote part of Tanzania close to the Kenyan border. There has been significant in-migration to the area and the law enforcement capacity is limited. Civil unrest due to poverty has also been a problem in the area, and this has been recognized by the Tanzanian authorities. Since the mid-1990s, there have been allegations of human rights violations at North Mara linked to local police and private security forces. This includes allegations of sexual abuse and the use of excessive force.

Resolving allegations

In early 2020, a group of 10 claimants launched legal proceedings against North Mara Gold Mine Limited citing use of excessive force by Tanzanian police during the time the mine was operated by the former Acacia Mining plc (Acacia). Whilst following legal advice we believe that a private company, such as North Mara Gold Mine Limited, cannot be held accountable for the actions of a national police force, we take these legacy claims seriously and are committed to resolving them in an open and transparent manner. As part of our commitment to resolving these claims and rebuilding community trust, we have chosen not to challenge the jurisdiction of the English courts to hear these claims. This means they will be heard in the English court system rather than in the Tanzanian courts.

Restoring community relations

We have worked diligently to restore and rebuild the relationship with the local community. A key focal point of this work has been to ensure the local community meaningfully benefits from our presence. To do this, we have:

- Established a CDC;
- Engaged with the local community to explain our plans for the mine and our commitment to the community;
- Worked to understand and detail the promises made by the previous owners and fulfill them;
- Reviewed the relationship with the local police to establish clear boundaries. Police now only enter the mine site when requested by senior management to engage on criminal matters;
- Replaced the international security provider with a local company. This means that the security team is part of the community and knows and understands their needs and concerns. It also provides further economic benefit to the community through the creation of jobs;
- We also no longer store ammunition on site; and
- Conducted training on the VPs, and undertaken a human rights impact assessment in January 2021.

As a result, the relationship between the mine and the community has improved.

We have also resolved several historic grievances, with the number of new grievances received each month steadily declining. As discussed above, we are currently party to ongoing litigation at the High Court of England and Wales regarding certain legacy incidents. We expect those proceedings to be heard by the courts in 2023.

THIRD PARTY PROGRESS

In early 2022, at the request of one of our refiners, PAMP, third party observers undertook a follow up visit to North Mara. While the formal feedback report is still pending, the following observations were made:

- Visible changes in the community with new houses and businesses;
- Better relations with the community, with North Mara workers able to move freely;
- Management is now addressing root causes of tension including land, and water management;
- Establishment of accountability and clarity on roles and responsibilities including of other stakeholders;
- Investment in resources, including water management, TSF and brine plant;
- Reduction in use of force; and
- Government involvement in resettlement and social investment decision-making.

TAB 11

BARRICK

BARRICK **G**OLD **C**ORPORATION

2021 Annual Report to
The Voluntary Principles on Security and Human Rights

3. Promotion and advancement of the VPs internationally

All Barrick sites actively promote the VPHSR with their private security contractors and public security personnel through training and/or contractual requirements. At Pueblo Viejo in the Dominican Republic, the Security department engages with its business partner to ensure that security personnel at the Power Plant are aware of, and comply with, the VPSHR.

There has been limited in-person engagement with external stakeholders and industry peers on the VPSHR since the start of the Covid-19 pandemic. However, the Security Manager at Loulo has met with Security Managers at two other mines in Mali to discuss VPSHR implementation and promote training initiatives.

Similarly, engagement with local community members about security arrangements and the VPSHR was minimal over the past year due to ongoing Covid-19 restrictions in the countries of operation. In Q4 2021 North Mara invited a group of human rights focused NGOs to meet with mine management and discuss the mine's sustainability philosophy and changes to security at site. Mine personnel met with the NGOs on 25 January 2022, including Voluntary Services Oversees (VSO), Lawyers Environmental Action Team (LEAT), Business and Human Rights Tanzania (BHRT), Legal and Human Rights Centre (LHRC), and International Peace Information Service (IPIS). This was the first of its kind and was largely welcomed by the NGOs and it is something we will continue to improve the transparency of our performance. See Section 10 for more information on engagement with local communities at other operations.

B. Policies, Procedures, and Related Activities

4. *Relevant policies, procedures, and/or guidelines (or any changes thereof from the previous reporting year) to implement the Voluntary Principles.*

The updated VPSHR Standard and related procedures were reviewed and approved by the Group Sustainability Executive, the Senior Vice President, Business Assurance, Risk and Business Integrity and Legal Groups in 2020. The updated Standard and related procedures were discussed with the Barrick Executive Committee, including the Regional Chief Operating Officers, and how the Standard and procedures would be implemented across the group and at the operations. They were rolled out in 2021 at North Mara, Bulyanhulu, Lumwana, Loulo-Gounkoto, Kibali and Pueblo Viejo. Security Managers at each of these sites attended an online webinar about the updated Standard and procedures and live training was conducted in high-risk jurisdictions and departments that are materially affected by and use these procedures. Barrick security and human rights related procedures are also included in the online VPSHR training course for security personnel.

The online training program includes five modules: human rights, use of force, vulnerable peoples, arrest and detention, and corruption. All guards must receive a passing grade of 80% to begin or continue work. In addition, each site reviews key concepts related to its specific security and human rights related policies and procedures during daily shift changes.

5. *Company procedure to conduct security and human rights risk assessments, and integrate findings.*

Barrick's VPSHR Standard includes guidance on how sites should conduct their risk assessments to ensure they consider the security and human rights risks that may impact community members (with a special emphasis on vulnerable populations such as women and children), employees and other stakeholders. As per the VPSHR criteria, the risk assessments must consider the socio-economic and political context of the operations, potential for violence and conflict, the reputation of public and private security, and any risks related to donations or equipment provided to public security.

The risk assessment must be conducted using the Barrick Formal Risk Assessment Procedure and include a Risk Modification Plan that outlines specific options to address the identified security risks, along with the advantages and disadvantages of each option. The risk assessment must also include assigned responsibilities and deadlines for each action. Risk assessments must include sign off by Security, Community Relations Managers and the General Manager. All risk assessments are reviewed and collated at Group level and reporting of significant risks is made at the Board level through the Audit and Risk Committee. All high- risk sites must conduct a risk assessment annually, and medium risk sites must conduct a risk assessment every two years (unless there is a significant change in scope to the operation or operating context in which case the risk assessment should be conducted more frequently).

Barrick continues to conduct its third-party Voluntary Principles Training and Human Rights Risks Assessments. In 2021, third party assessments were carried out at Bulyanhulu, North Mara, Kibali, Loulo-Gounkoto and Pueblo Viejo.

6. *Company procedure or mechanism to report security-related incidents with human rights implications by public/private security forces relating to the company's activities*

Barrick's Human Rights Reporting Procedure provides sites with detailed guidance on how to effectively report human right impacts or allegations (including when, how and to whom). Once a potential human rights violation is reported to designated local management, the reporting contact must within twenty-four (24) hours of becoming aware of the report notify the Head Country In-House Legal Counsel or the General Counsel. Following the report of a potential human rights violation, the General Counsel will promptly alert the President and other relevant personnel as the General Counsel deems appropriate under the circumstances.

Barrick employees, contractors and any third party can report potential violations of our Human Rights Policy or Code of Business Conduct and Ethics and Human Rights concerns confidentially, anonymously and without retaliation through several channels including our global hotline which is operated by an independent provider.

We treat all breaches seriously. All reported breaches are assessed, and investigations are conducted as appropriate. Barrick maintains a stringent no retaliation policy which serves to protect any reporter making an allegation in good faith. We also monitor and track cases reported, which enables us to identify potential trends and act, such as providing additional training at a site or function level to reduce the risk of recurrence. There were no human rights and security related complaints submitted via the Barrick hotline in 2021.

All sites have an operational-level grievance mechanism that external stakeholders can access to report any complaints related to security, including public security contracted by the mine site. Investigations of potential human rights violations are carried out in accordance with Barrick's Human Rights Investigation Procedure (see Section 8 below).

7. Company procedure to consider the Voluntary Principles in entering into relations with private security providers

Barrick's VPSHR Standard includes guidance on vetting private security providers. The Head of Site Security with support from the Regional/Country Legal Counsel is required to conduct appropriate due diligence checks on all private security contractors for both the parent company and any local affiliates. These checks involve completion of the Barrick due diligence vendor questionnaire that includes a series of questions related to any past accusations of human rights related abuses, company policies and procedures to respect human rights, and processes in place to investigate and remediate human rights related impacts. Barrick uses the WorldCheck database to conduct searches on vendors for regulatory flags, political/governmental connections, international sanctions, links to organized crime and human rights related allegations or violations.

The Head of Site Security must ensure that the private security contract requires the acceptance and implementation of the VPSHR Standards, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, the Barrick Use of Force Procedure and the Barrick Code of Business Conduct and Ethics and all other relevant Barrick Standards and procedures.

Once contracted, the Head of Site Security must ensure that the private security contractor screens each individual guard who works at the mine site for any prior violent history, any alleged violations of human rights, including children's rights. A Security Pre-Employment Screening tool is provided to all sites. The Head of Site Security must also ensure that all guards receive induction training on security and human rights prior to beginning work. Sites are encouraged to monitor contractor compliance against a set of suggested key performance indicators (e.g. percentage of guards who have received annual refresher training) during regular performance reviews.

8. Company procedure or mechanism to investigate and remediate security related incidents with human rights implications by public/private security forces relating to the company's activities.

Barrick Human Rights Investigation Procedure outlines who is responsible for carrying out an investigation once a human rights allegation has been reported. The Procedure promotes the involvement of the government when investigating incidents involving public security and provides guidance on when to involve the local authorities. Barrick's Investigation Guidance document outlines the investigation process and was designed to be sensitive towards the gender, education, culture and language abilities of those investigated. Barrick applies the 'do no harm' principal to ensure the legal and physical protection of victims of crime and aggrieved parties. No report shall be submitted to state authorities without explicit consent from the victim and personal information should not be disclosed.

TAB 12

BARRICK

BARRICK **G**OLD **C**ORPORATION

2020 Annual Report to
The Voluntary Principles on Security and Human Rights

the VPs and Barrick's Use of Force Procedure, which is aligned with the United Nations Guidelines for the Use of Force and Firearms by Law Enforcement Officials.

Barrick recognized the need to continue training despite the restrictions presented by COVID-19 and contracted Avanzar to develop online training for Human Rights and the Voluntary Principles. However, the company recognizes the limitations of online training and provides supplemental in person training to security personnel. A train-the-trainer workshop is provided to all high-risk sites so that security supervisors learn how to go through the online training with their security guards in an interactive manner and carry out additional participatory learning activities to put theory into practice.

Barrick has also worked with Avanzar to develop and facilitate in person human rights workshops that include a specific section on security and human rights, for managers and supervisors at each high-risk mine site. The workshop provides interactive exercises to understand, identify, report and prevent human rights risks and impacts. Barrick plans to roll out these training to most high-risk sites throughout 2021.

B. Policies, Procedures, and Related Activities

2. *Relevant policies, procedures, and/or guidelines (or any changes thereof from the previous reporting year) to implement the Voluntary Principles.*

In 2020, Barrick's Voluntary Principles standards and related procedures were revised to ensure alignment with the latest international guidelines, principles related to security and human rights and findings from past VP compliance assessments. The procedures were also cross referenced with ICMM, IFC, UNICEF, ICRC, and IPIECA guidance for the implementation of the VPs; and industry best practice. The procedures were also simplified and aligned with the Human Rights policy and procedures to facilitate site adoption, based on engagement with the Sustainability, Legal and Security Departments.

All procedures were reviewed and approved by the Sustainability, Business Assurance, Risk and Compliance and Legal Groups. The new standards were rolled out virtually to sites at the end of the year and onsite at North Mara and Bulyanhulu in January 2021.

Overarching responsibility for VPSHR implementation falls under the Senior Vice President of Business Assurance and Risk and by Sustainability and Compliance personnel at a corporate level. Day-to-day implementation is led by the Security department at a site level.

3. *Company procedure to conduct security and human rights risk assessments, and integrate findings.*

As part of the procedural review, Barrick has provided additional guidance on how sites should conduct their risk assessments to ensure they consider the security and human rights risks that may impact community members (with a special emphasis on vulnerable populations such as women and children), employees and other stakeholders. Risk assessments must include sign off by Security, Community Relations Managers and the General Manager. The review also added new triggers for when a risk assessment should be conducted such as an outbreak in violence and an economic crisis.

Barrick continues to conduct its third-party Voluntary Principles and Human Rights Risks Assessment.[1] The assessment program was delayed due to COVID travel restrictions by a year. The Tanzanian sites, Bulyanhulu and North Mara were assessed in January 2021. Kibali, Loulo-Gounkoto and Pueblo Viejo will be assessed next unless further delays due to COVID occur.

4. *Company procedure or mechanism to report security-related incidents with human rights implications by public/private security forces relating to the company's activities*

Barrick revised its Human Rights Investigation Procedure and Human Rights Reporting and Escalation Procedure to include greater sensitivity towards gender, education, culture and language abilities of those investigated and provides detailed guidance on how to effectively report (including when, how and to whom). The Reporting procedure promotes an increased involvement of the government when investigating incidents involving public security and provides guidance on when to involve the local authorities.

Corporate has not become aware of any new use of force incidents or complaints regarding security that have occurred at our mine sites in the past year. Some labor rights concerns surfaced in the Tanzania Voluntary Principles assessment regarding the private security contractor. Barrick will build the supplier's capacity and promote greater formalization of business practices and compliance with Tanzania labor laws.

Currently, North Mara is defending a number of personal injury claims at the High Court of England and Wales involving plaintiffs who live in the surrounding communities to the North Mara Gold Mine. Those plaintiffs are claiming North Mara Gold Mine Limited and Barrick TZ Limited (as parent company of North Mara Gold Mine Limited) are liable for a number of injuries caused by local police during incidents that occurred both at the mine property and outside the mine property between 2014 and 2019. Barrick has accepted the jurisdiction of the High Court of England and Wales to hear the claims of the plaintiffs and will accept the outcome of the English court process.

5. *Company procedure to consider the Voluntary Principles in entering into relations with private security providers*

As part of the procedure review, Barrick strengthened its guidance for sites when contracting security providers. Greater guidance was provided to ensure contractual compliance with the Voluntary Principles, and detailed performance indicators for holding providers accountable.

C. Country Implementation

4. *Overview of country operations selected for reporting (include any notable changes from the previous reporting year if the same country is being reported this year)*

The North Mara and Bulyanhulu mines in Tanzania are the focus of this year's report as a thorough external assessment of their compliance with the Voluntary Principles was conducted in January 2021.

[1] See Appendix I for more detail on the VP assessment methodology.

5. *Engagements with stakeholders on country implementation*

The Memorandum of Understanding (MoU) with the Tanzania Police Force (TPF) requires Site Security Managers to conduct regular meetings with the Regional Police Commissioners. Engagement with stakeholders on implementation of the Voluntary Principles at the national level in Tanzania decreased in the past year as senior personnel focused on the transitioning of mine ownership from Acacia to Barrick and resuming operations at Bulyanhulu. The company will explore opportunities to engage with other VPSHR members and embassies of member countries in the coming year.

6. *Voluntary Principles considerations in the selection of private security providers and formulation of contractual agreement with private security providers, as well as an arrangement with public security forces*

Both sites contracted a new local security provider in September 2019. The tender process included a comprehensive evaluation of the top contractors against a set of rigorous set of criteria including experience in the region and track record, management capability and skill level, policies, procedures, training programs, license to operate, reputation, and a local content development plan. Barrick's new vendor onboarding program also required the new contractor to complete a questionnaire related to human rights.

The contract with private security provider outlines screening requirements for all guards assigned to the site. These include a criminal background check, character references, proof of age, open-source check for any previous human rights abuses, and previous employment verification. All security personnel must also undergo induction training on human rights and security prior to beginning work.

Both sites have signed a memorandum of understanding (MoU) with the Tanzanian Police Force to maintain law and order in relation to the areas around the mine sites. The MoU requires the police assigned to the area to comply with all Tanzanian laws, 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. The MoU stipulates that no police officer who receives support under the MoU 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 relation to the use of force, human rights or bribery and corruption. In addition, the MoU requires that all police officers assigned to the site complete mandatory human rights training prior to beginning work. Police conduct is monitored through CCTV cameras whenever police come on site to respond to an emergency.

7. *Examples of supporting outreach, education, and/or training of (i) relevant personnel, (ii) private security, (iii) public security, and/or (iv) civil society (e.g., local NGOs, community groups)*

Both sites provide induction and annual refresher training to all private security personnel. Training includes five modules: human rights, use of force, vulnerable peoples, arrest and detention and corruption. All guards must receive a passing grade of 80% in order to begin or continue work. In addition, the site reviews key concepts related to the site's security and human rights related policies

TAB 13

BARRICK GOLD CORPORATION
161 Bay Street, Suite 3700
Toronto, ON M5J 2S1

Tel +1 416 861 9911
Fax +1 416 861 2482

www.barrick.com

September 2023

Conflict-Free Gold Report for Barrick Gold Corporation

Executive Summary

This report confirms that all gold and gold-bearing materials produced by Barrick Gold Corporation ("Barrick") are in conformance with the World Gold Council's *Conflict-Free Gold Standard* (the "Standard"). The report outlines that Barrick's gold and gold-bearing materials have been provided in a manner that does not cause, support or benefit unlawful armed conflict, or contribute to serious human rights abuses or breaches of international humanitarian law.

This report covers all gold or gold-bearing materials dispatched by Barrick for 2022 and has been assured by an independent assurance provider. This report will be updated annually, or as required by the Standard.

Background

Conflict-Free Gold Policy

Barrick is 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. We have a public Conflict-Free Gold Policy available on our website (www.barrick.com) which sets out our commitment to:

- Full compliance with all relevant legislation and regulations regarding traceability and disclosure.
- Aligning our implementation of this Conflict-Free Gold Policy with full implementation of our Human Rights Policy.
- Transparent communication and engagement in relation to our performance against this policy with internal and external stakeholders.
- Ensuring the effective implementation of this Policy, with Board and Executive level oversight of our performance.

To meet the requirements of our mission statement, we commit to:

- Implement the World Gold Council's Conflict-Free Gold Standard and to report on our conformance with the Standard annually.
- Respect human rights at our operations and in our dealings with stakeholders in accordance with our Human Rights Policy.
- Establish 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.
- Publicly report on payments to governments and government entities, implement appropriate management systems to combat bribery and corruption, and prohibit payments or provide benefits-in-kind to non-government entities that cause, support or benefit unlawful armed conflict or contribute to serious human rights abuses or breaches of international humanitarian law.
- Establish appropriate channels for employees, contractors, local communities and other affected stakeholders to engage with the mine and raise concerns, complaints, or grievances.
- Establish appropriate security and management systems to track the flow of gold and gold-bearing material within our area of control, and to ensure the transport of gold does not support armed conflict or serious human rights abuses.
- Only transport gold or gold-bearing material to board approved refiners or smelters where there is a contract in place which makes explicit reference to the chain of custody of the final product and who apply responsible sourcing practices based on international best practice.
- Prohibit and avoid making local purchases of gold from artisanal or small-scale miners. Should and where externally sourced gold enters our supply chain, we will implement rigorous risk-based due diligence

procedures to ensure it conforms with the standards of the World Gold Council's Conflict-Free Gold Standard.
- Regularly review this Policy to ensure it remains appropriate.

Responsibility for Conformance

Responsibility for the implementation of Barrick's Conflict Free Gold Standard sits with Barrick's Group Sustainability Executive, who reports to the President and Chief Executive Officer (''CEO''). Barrick's CEO is a member of Barrick's Board of Directors. The Group Sustainability Executive also reports on a quarterly basis to the Board of Directors.

Reporting Boundary

The reporting boundary of this Conflict-Free Gold Report includes all mining and processing operations under the control of, managed by, or majority-owned by Barrick. It excludes:
- Exploration sites.
- Projects under development.
- Barrick's copper mines.
- Joint ventures and partly owned operations over which Barrick does not have direct operational control but where Barrick exercises significant influence are included in the reporting boundary.
- Joint ventures operated by our joint venture partners are excluded from the reporting boundary.

On January 1, 2019, Barrick acquired 100% of the issued and outstanding shares of Randgold Resources Limited ("Randgold") which had ownership interests in the following gold mines: Kibali in the Democratic Republic of Congo (''DRC''); Tongon in Côte d'Ivoire; Loulo-Gounkoto and Morila in Mali; and various exploration properties.

On July 1, 2019, Barrick established a joint venture with Newmont Corporation ("Newmont") named Nevada Gold Mines LLC ("Nevada Gold Mines"), which includes Barrick's Cortez, Goldstrike, Turquoise Ridge and Goldrush properties and Newmont's Carlin, Twin Creeks, Phoenix, Long Canyon and Lone Tree properties. Barrick is the operator of the joint venture and owns 61.5%, with Newmont owning the remaining 38.5% of the joint venture.

Prior to September 17, 2019, Barrick held a 63.9% interest in Acacia Mining plc ("Acacia"), a publicly traded mining company which operated the Bulyanhulu, Buzwagi and North Mara mines in Tanzania independently of Barrick. On September 17, 2019, Barrick acquired all of the shares of Acacia that it did not already own and assumed operational control of the Bulyanhulu, Buzwagi and North Mara mines.

In April 2020, Porgera Gold Mine in Papua New Guinea entered into care and maintenance and has remained in care and maintenance at the time of this publication. On November 10, 2020, Barrick sold its 40% interest in the Morila Gold Mine in Mali to Firefinch Limited. On June 1, 2021, Barrick sold its 100% interest in the Lagunas Norte Gold Mine in Peru to Boroo Pte Ltd. On October 14, 2021, Nevada Gold Mines divested its 100% interest in the Lone Tree property to i-80 Gold Corp in exchange for certain other properties. This exchange transaction had an effective date of June 1, 2021. In October 2021, Buzwagi ceased production and entered into closure.

In alignment with Barrick's sustainability-related public disclosures, the former Randgold properties, the properties contributed by Newmont to the Nevada Gold Mines joint venture and the former Acacia operations have been included in Barrick's Management Statement of Conformance for 2023 and reported on in Barrick's 2022 Conflict-Free Gold Report.

Please Refer to Barrick's 2022 Sustainability Report for further details regarding our reporting boundary, available at: https://s25.q4cdn.com/322814910/files/doc_downloads/sustainability/Barrick_Sustainability_Report_2022.pdf

The full list of operations included in the reporting boundary is set forth in Schedule A (attached).

Standard's Requirements

The Standard is comprised of assessments Parts A–E:

Part A – Conflict Assessment
Part B – Company Assessment
Part C – Commodity Assessment
Part D – External Sources of Gold Assessment, and
Part E – Management Statement of Conformance.

The Standard requires companies to first assess in Part A whether they are operating in 'conflict-affected or high-risk' areas and whether there are any international sanctions applicable to their operations. Applying the Standard's criteria, operations that are in an area ranked as 5 (war) or 4 (limited war) within the last two years in the Heidelberg *Conflict Barometer* have been classified as 'conflict-affected or high-risk'. Companies must then complete all remaining assessments in Parts B–E of the Standard for these sites. For mines not located in 'conflict-affected or high-risk' areas and where gold is not transported while in the company's custody, as defined by the Standard, the remaining assessments are Parts D and E.

Barrick's Evaluation

As per Part A – Conflict Assessment, Barrick concluded that although we operate in countries that are considered to be 'conflict-affected or high-risk', particularly the DRC and Mali, we do not breach any international sanctions and we have no operations at the subnational level considered to be in 'conflict-affected or high-risk' areas according to the Standard. As none of Barrick's operations at the subnational level are in 'conflict-affected or high-risk' areas, Part B – Company Assessment and Part C – Commodity Assessment are not required.

Barrick also complies with Part D – Externally Sourced Gold Assessment. We source gold from third-parties at two operations in the United States of America for toll milling and scrap purchasing. In accordance with the Standard, Barrick has implemented the risk-based due diligence procedures outlined in the *Gold Supplement* to the *OECD Due Diligence Guidelines for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* to determine that there are no links between the gold and gold-bearing material purchased or milled and areas assessed to be conflict-affected or high-risk. Barrick is therefore in conformance with Part D of the Standard.

Barrick has produced the appropriate *Management Statement of Conformance* which is sent to our refiners, the next participant in the chain of custody, as required in Part E. A copy of this Statement is attached as Schedule B.

In conclusion, all gold and gold-bearing materials dispatched by Barrick are in conformance with the criteria set out in the *Conflict-Free Gold Standard*.

Independent Assurance

Barrick retained Apex Companies LLC (''Apex''), an independent assurance provider, to assess its conformance with the Standard. Apex conducted its assessment under the standard in respect to the period from January 1, 2022 to December 31, 2022 and confirmed that the mines listed in Schedule A are in conformance with the Standard. Apex's statement is available on our website.

If users of this report wish to provide any feedback with respect to Barrick's adherence to the Standard or this report they should contact Duncan Pettit (duncan.pettit@barrick.com) at Barrick.

TAB 14

Court File No. CV-22-00690649-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

AFFIDAVIT OF GRANT BERINGER
(SWORN OCTOBER 1, 2023)

I, **GRANT BERINGER**, of the City of Johannesburg, in the Province of Gauteng, South Africa, **MAKE OATH AND SAY**:

1. I am the Group Sustainability Executive of Barrick Gold Corporation ("**Barrick**" or the "**Company**"). In that capacity, I have overall oversight of and accountability for sustainability-related matters associated with the mines and mining projects in Barrick's

Security and Human Rights (the "**Voluntary Principles**") around the world, focusing predominantly on the extractives sector. As stated in the introduction to the Voluntary Principles, they are intended to "guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms". Members of the Voluntary Principles Initiative fall into three categories: governments, non-governmental organizations and companies. Barrick remains one of only 30 companies that are members of the Initiative. A copy of the Voluntary Principles is attached to this Affidavit as **Exhibit 5**, and a copy of the list of current members of the Voluntary Principles Initiative is attached to this Affidavit as **Exhibit 6**.

29. Barrick has prepared and approved a Human Rights Policy, and adheres faithfully to it. The development of Barrick's approach to human rights is described in a Human Rights Report issued by the Company in December 2021. A copy of the Human Rights Policy is attached to this Affidavit as **Exhibit 7**. A copy of the Human Rights Report is attached to this Affidavit as **Exhibit 8**.

30. As stated in the Human Rights Policy, Barrick's approach to human rights is guided by a number of important principles. Among other things, the Policy affirms that:

> We are committed to and 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
>
> **We do not tolerate violations of human rights committed by our employees, affiliates, or any third parties acting on**

> **our behalf or related to any aspect of one of our operations.**
>
> […]
>
> **In our relationships with host governments, contractors and third-party services providers, we do our utmost to avoid being complicit in adverse human rights impacts, including benefitting from the human rights violations caused by others.** [emphasis added]

31. Barrick's respect for human rights is also enshrined in the Company's Conflict-Free Gold Policy. The Mission Statement of the Policy affirms that Barrick "is 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". A copy of the Conflict-Free Gold Policy is attached to this Affidavit as **Exhibit 9**.

32. In September 2021 and September 2022, Barrick published Conflict-Free Gold Reports confirming that the Company had complied with the WGC's Conflict-Free Gold Standard in 2020 and 2021. As stated in the Reports, Barrick's assessments that it had complied with the Conflict-Free Gold Standard were confirmed by an external and independent assurance firm. Copies of the Conflict-Free Gold Reports published in September 2021 and September 2022 are attached to this Affidavit as **Exhibits 10** and **11**, respectively.

33. Barrick's diligent approach to respecting human rights is also exemplified and enhanced by the Company's Code of Business Conduct and Ethics, Anti-Bribery and Anti-Corruption Policy and Social Performance Policy. Copies of those documents are attached to this Affidavit as **Exhibits 12**, **13** and **14** respectively.

TAB 15

Court File No. CV-22-00690649-0000
ONTARIO
SUPERIOR COURT OF JUSTICE
B E T W E E N:
OPHIA 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; PASCOMAREMBELA MWITA; NYAHELI MARWA NYAKORENGA; CHRISTOPHER JHOMUMAKENDE; RANGE MWITA RANGE; AND FREDY CHACHA WAMBURA LEMA

Plaintiffs,

- and -

BARRICK GOLD CORPORATION

Defendant.

--- This is the Cross-Examination of GRANT BERINGER, upon his Affidavit sworn October 1st, 2023, taken via Veritext Legal Solution Canada's Zoom virtual platform, with all participants attending remotely, on the 29th day of May, 2024.

-- Upon commencing at 8:00 a.m.

GRANT BERINGER: AFFIRMED.

CROSS-EXAMINATION BY MR. WANLESS:

1 Q. Mr. Beringer, can you please state your full name for the record?

A. It's Grant Bell Beringer.

2 Q. And I'd like to direct you to the affidavit that you swore on October 1st, 2023 and the first paragraph. I'm sharing it on the screen there.

A. Thanks.

3 Q. All right. You state that you are the group sustainability executive of Barrick Gold Corporation; is that correct?

A. That's correct.

4 Q. And you go on to state that you have overall oversight and accountability for sustainability-related matters associated with the mines and mining projects in Barrick's portfolio; that's correct?

A. That's correct.

5 Q. And that includes matters pertaining to human rights and community relations?

A. That's correct.

6 Q. And that includes the North Mara

Mine?

A. Yes, as part of the companies within the group of companies within Barrick Gold.

7 Q. All right. So it's fair to say that you have oversight and accountability for sustainability-related matters at the North Mara Mine?

A. I have oversight of sustainability-related matters of all of the companies within the Barrick Group, one of them being the North Mara Gold Mine.

8 Q. Okay. Who are you employed by?

A. I am employed by Barrick Gold Holdings Limited in Jersey.

9 Q. Okay. But there's no doubt that you're the group sustainability executive for Barrick Gold Corporation?

A. There's no doubt.

10 Q. All right. Ultimately you were in charge of human rights at all of Barrick's mines, including North Mara?

A. I oversee the human rights aspects associated with the group of companies, and one of those companies within that group is North Mara Gold Mine. I mean, I can elaborate on how it is

implemented at a site level if you wish.

Q. Well, I guess in terms of ultimate responsibility, would you agree that you are ultimately responsible for ensuring that human rights abuses do not happen at Barrick's mines?

A. Ultimately at all of Barrick's mines and operations, yes.

Q. Okay. I'm going to direct you to the affidavit of Jeanine Alphonse No. 1, which is Exhibit E, and it's an Annual Information Form dated as of March 17th, 2023, and I want to direct you specifically to page 52 of that document, the second paragraph. It says:

> "The responsibility for the oversight and implementation of the Company's Human Rights Compliance Program sits with Barrick's Group Sustainability Executive, with support from the Senior Vice-President Business Assurance Risk and Business Integrity, and Barrick's Human Resources Executive." (As read).

Do you see that?

A. I do.

MR. THOMSON: I have a note, to answer the witness' question, I have a note that that is dated December of 2021, if that helps.

THE WITNESS: Yes, thank you.

BY MR. WANLESS:

27 Q. And the second paragraph is:

"Day-to-day responsibility for management of our human rights performance sits with our Group Sustainability Executive who is a member of the Company's Executive Committee and supports the sites by providing training as needed and addressing issues escalated by the sites. The Group Sustainability Executive is supported by regional sustainability needs." (As read).

That's correct, is it?

MR. FRANKEL: He just read to you this second paragraph.

THE WITNESS: It is. That's correct.

BY MR. WANLESS:

28 Q. In order for you to do your job properly, you depend on access to information regarding human rights issues at all of Barrick's

mines, correct?

A. That's correct.

29 Q. And that includes North Mara?

A. That's correct.

30 Q. And are you confident that the reporting mechanisms that you have in place ensure that you and your team get the information that you need?

A. Yes, absolutely.

31 Q. All right. And that would include access to documents and access to personnel as required?

A. Yes, that's right.

32 Q. And your compensation is based, in part, on the human rights performance of Barrick; is that correct?

A. It is, yes. It is a component of it.

33 Q. And why does Barrick do that?

A. Well, so maybe if I can explain in terms of how the compensation works related to what we call the sustainability metrics. You would have seen in our Sustainability Report that we've published a sustainability scorecard. Within that scorecard, we have five main themes in that, of

on that.

34 Q. Thank you. You lead Barrick's sustainability team; is that fair?

A. I have members of my team, in fact I have two members of the team, but Barrick operates very differently to many of our peers in the industry at large, where we have a bottom-up approach in terms of sustainability.

So sustainability is driven from the operations up, and the responsibility of sustainability on a day-to-day basis is given to the site leads, and what I mean by a site lead is on many of our operations, if not all of them, we have environmental HODs - heads of department - and in most instances we have a community head of department that reports into a general manager of that mine or operation.

The general manager has a direct line to our regional COOs - chief operating officers - of which we have three, Africa/Middle East is one region, we have North America and then we have LATAM and Asia Pacific.

Part of the COOs team is also regional sustainability lead. They report directly to the COO.

I have a dotted line to those sustainability leads because those are not my direct reports, they report directly to the COOs, and as such I have a dotted line to the COOs. I report directly to the CEO of Barrick. I have two -- sorry, three direct reports in my structure. I have two sort of generalists, if you will, and one specialist closure person that reports to me.

So it is -- it is quite different in terms of those direct reports in that the regional sustainability leads report to the COOs.

35 Q. All right. And in terms of your direct reports, can you tell me who they are and what they do?

A. Sure. So, one of them is Duncan Pettit who is based in London, England. His title I believe is sustainability manager, and he assists me with the oversight and the implementation of our strategy over the group of companies which sits under Barrick Gold.

I also have Marcel Radyn who is based in British Columbia, Canada. He oversees -- he assists Duncan in some of that work, particularly around investor relations, also things like GHG emissions, data management, and then we've also got

the Voluntary Principles on Security and Human Rights, Barrick is required to submit annual reports on the Voluntary Principles on Security and Human Rights, correct?

A. That is correct.

74 Q. Okay. So, I mentioned four different kinds of reports. There's the sustainability reports that Barrick produces, there's Barrick's Human Rights Report, the stand-alone one that you referred to, there's Barrick's reports regarding the conflict-free gold requirements, and there's Barrick's report to the Voluntary Principles on Security and Human Rights.

And my question is, from Barrick's perspective, is the content of these reports accurate?

A. Yes, the content is. All of the information that is put in those reports is vetted by a third party independent assurer. Apex is our assurer.

75 Q. Apex reviews the information in these reports before it goes out?

A. Yes.

76 Q. And I presume that employees of Barrick also review the reports before they go out?

A. That is correct.

77 Q. Including yourself?

A. Yes.

78 Q. So it's fair to say that these reports paint an accurate picture of Barrick's approach to human rights?

A. Yes.

79 Q. And it's fair to say that these reports paint an accurate picture of what Barrick is actually doing and taking responsibility for?

A. Yes, as well as the group of companies that sit within Barrick, we give details of how each of those companies is implementing the various policies and principles.

80 Q. And it's also fair to say that these reports paint an accurate picture of how information is reported within Barrick, information related to human rights?

A. Sorry, I don't fully understand what the question is asking.

81 Q. Well, some of these reports refer to reporting structures, about how human rights issues and concerns are reported up the chain, and I'm just confirming that if it's in these reports, it's accurate.

A. On how human rights aspects are communicated within the various groups of companies?

82 Q. Yes.

A. Yeah, I would obviously, you know, like to see which sections you're referring to in terms of that reporting structure. Sorry, I'm not entirely clear what the question is.

83 Q. Well, maybe it will help if I direct you to a document. I'm directing you to Exhibit BB of Jeanine Alphonse's Exhibit No. 1. This is the Barrick's 2021 Annual Report to the Voluntary Principles on Security and Human Rights.

A. Um-hmm.

84 Q. And at page 6 of that document, there is:

"Barrick is required to report on Company procedure or mechanism to report security-related incidents with human rights implications by public/private security forces relating to the Company's activities." (As read).

And then it goes on to describe what's called Barrick's Human Rights Reporting Procedure,

which I'll read:

"Barrick's Human Rights Reporting Procedure provides sites with detailed guidance on how to effectively report human rights impacts or allegations (including when, how and to whom). Once a potential human rights violation is reported to designated local management, the reporting contact must, within 24 hours of becoming aware of the report, notify the Head Country In-House Legal Counsel or the General Counsel. Following the report of the potential human rights violation, the General Counsel will promptly alert the President and other relevant personnel as the General Counsel deems appropriate under the circumstances." (As read). Do you see that?

A. I do, yes.

85 Q. Is that an accurate reflection of Barrick's reporting structure regarding human rights issues?

A. Yes, it is. And to be clear, the reporting structure is such that at that operating site it would be reported to the head country in-house legal representative first, and then make its way up to our general counsel, and then ultimately to the president and CEO.

86 Q. Okay. And when you refer to the general counsel, you're talking about Barrick's general counsel?

A. We have -- it's the in-house legal counsel or the general counsel for that region, and then I believe it would be taken up to our general counsel for Barrick which oversees the group of companies, and then to the president and CEO, yes.

87 Q. Okay. And the president and CEO you're talking about is Dr. Bristow?

A. That is correct.

88 Q. And I assume as part of this reporting procedure, you would also expect to be notified about any human rights issues?

A. That is right, yes.

89 Q. And similarly, it would be reported to the COO of Africa and Middle East?

A. Yes, that's correct.

90 Q. I'm now going to direct you to

Exhibit V from the affidavit of Jeanine Alphonse No. 1. This is a press release with the title "Barrick Publishes Human Rights Report," and it is dated December 10th, 2021. And the third paragraph reads:

"During 2020, Barrick updated several standards, including the Use of Force Standard, and developed a new Voluntary Principles on Security and Human Rights Standard." (As read).

That second standard, the Voluntary Principles on Security and Human Rights Standard, that's the one we talked about earlier, correct?

A. Yes, that is correct.

91 Q. And that's an internal document to Barrick?

A. That is right.

92 Q. And the Use of Force Standard, that again is a Barrick standard, correct?

A. It is, but we obviously use guidelines like the Voluntary Principles, hence the name to guide, you know, the content of that. That is an internal standard or part of that standard, yes.

93 Q. Okay. Yes. Just so there's no confusion, my reading of this paragraph is there are two separate standards. There's the Use of Force Standard and then a separate Voluntary Principles on Security and Human Rights Standard; is that correct?

A. You're correct in saying that, the Use of Force Standard is an annexure to the Voluntary Principles on Security and Human Rights Standard. They are both standards, that's right.

94 Q. Can you please produce a copy of the use of force standards?

U/A MR. THOMSON: Take your question under advisement.

BY MR. WANLESS:

95 Q. All right. At paragraph 20, you --

A. Sorry, Cory, what document is that?

96 Q. Sorry, of your affidavit. Paragraph 20 of your affidavit, you state that the company had 12 directors and 17 executive officers as of March 13, 2023. Do any of these directors or executive officers live in Tanzania?

A. No, I don't believe so.

on the corporate side of things. It really is driven at a regional level and so, again, we have that sort of bottom-up approach that I referred to earlier, where you have a regional head of legal for each of those three regions that I mentioned.

So we have our head of legal for Africa/Middle East who is based in London, England; our legal for LATAM -- in fact, I stand to be corrected where he is based, so I'm not going to hazard a guess, but he's the regional lead for LATAM; and then we have the legal head for North America who is based in Salt Lake City, Utah.

113 Q. You referenced earlier Barrick's Human Rights Policy, and I'm going to direct you to paragraph 29 of your affidavit where you stated that:

"Barrick has prepared and approved a Human Rights Policy, and adheres faithfully to it."

Do you agree with that statement?

A. I do.

114 Q. And you are ultimately responsible for ensuring that Barrick adheres faithfully to its Human Rights Policy?

A. Ultimately, yes, I provide

oversight, but as mentioned earlier, there is a responsibility for each of our sites within the companies underneath Barrick that assists with implementation of that Human Rights Policy on a day-to-day basis.

115 Q. Right. But you would not disagree with me that you're ultimately responsible for ensuring that Barrick adheres faithfully to its Human Rights Policy, even though others are involved in implementing it?

A. Yes, I believe that is correct. I think you cited it in one of the paragraphs that we also have our head of compliance and risk that also oversees part of that implementation of the Human Rights Policy.

116 Q. And who is that person?

A. Ashleigh Lawson.

117 Q. And where is Ms. Lawson based?

A. She's based in London, England.

118 Q. I've now put on the screen Exhibit 7 of your affidavit, which is Barrick Gold Corporation's Human Rights Policy. And you would agree that this policy applies to all of Barrick's operations?

A. It does. I think we do make a

distinction where certain of our joint ventures, you know, have their own human rights policies or approaches. We will endeavour to, you know, put this policy in front of them and align those two generally, yes.

119 Q. But this does apply, for example, to North Mara?

A. It does, yes.

120 Q. And these policies, from Barrick's perspective, are mandatory?

A. Yes, they are.

121 Q. And what do you do if you find out that policies are not being followed at a particular mine?

A. We would have generally those -- the review that would make that finding is based on those independent reviews that I referred to earlier that goes through those aspects. Obviously the human rights policy is an overarching document; I think we've talked about the Voluntary Principles Standard on Human Rights which would form part of that, and obviously is how we implement the policy that you have up there.

So generally, it would come through those reviews that take place, and in each of

147 Q. Fair enough. But certainly Barrick has been working with Avanzar since 2019?

A. That's right.

148 Q. And as I understand it, Avanzar does a few things for you folks. They conduct independent human rights assessments, correct?

A. That's right.

149 Q. They help consult on your human rights standards; is that correct?

A. Yes, we ask them to review those in line with, you know, the Voluntary Principles on Security and Human Rights as well as the UN Guiding Principles.

150 Q. And they also provide human rights training?

A. That's correct. Not exclusively but they have, that's correct.

151 Q. All right. And that training is training to the employees of Barrick and Barrick subsidiaries, correct?

A. It actually is related just to the subsidiaries of Barrick. Really those sites which fall under the various group of companies, so for instance, they would have conducted human rights training at North Mara Gold Mine who is -- and the

entities owned by North Mara Gold Mine Limited. So they are focused on those group of companies and the sites that fall underneath those.

In terms of the corporate side of things, which as you may know is a very small team, I think we have 55 members in the Toronto office, and they would receive training through our internal training processes through Ashleigh Lawson who runs, as I mentioned earlier, the head of compliance and risk.

152 Q. All right. Regarding North Mara, just so I am clear on this, training is provided on security and human rights both to the private security contractor, correct?

A. Both?

153 Q. Sorry, to the private security contractor, correct?

A. That is correct.

154 Q. And also to the Tanzanian Police Force?

A. That is correct.

155 Q. And Avanzar is based in North America, correct?

A. I believe so, yes.

156 Q. And it has offices in Calgary,

Alberta and in California, correct?

A. Yes.

157 Q. Regarding the independent human rights assessments that Avanzar has done, they've done assessments for North Mara specifically, correct?

A. That is correct, yes.

158 Q. And in order to do that, they need access to documents, information and employees to speak with, correct?

A. That's correct.

159 Q. In your view, did they have the access that they needed to do their job?

A. I believe they did. It was -- generally it's a week-long visit and they have just done that review, and the general manager at North Mara would facilitate that visit. He's responsible for setting up the agenda as well as making sure that all the heads of department are available for Avanzar, usually two individuals that come from Avanzar, to talk with them and obviously some of our contractors, too. It's not just the employees.

160 Q. How many independent human rights assessments have been conducted by Avanzar related to North Mara since 2019?

A. We certainly conducted one in 2021 and there was one in 2023. I stand to be corrected whether we conducted one in 2019; I don't believe so.

161 Q. All right. Can you please produce a copy of those reports from 2021 and 2023?

U/A MR. THOMSON: We'll take your question under advisement.

BY MR. WANLESS:

162 Q. And I also understand assessments were conducted by Synergy; is that correct?

A. Yes, I think there's probably some useful context to provide there. Those assessments were not requested by North Mara Gold Mine Limited, rather by North Mara Gold Mine Limited's refinery, MMTC-PAMP, who were requested by the LBMA, the London Bullion Market Association, who regulates refineries, had requested that MMTC-PAMP contract a third party independent expert to review North Mara Gold Mine based on the OECD guidelines, due diligence guidance.

163 Q. All right. And as I understand it there were independent assessments in 2019, 2020 and 2022; is that correct?

A. No, I believe it was in 2019,

-- UPON RESUMING AT 9:45 --

BY MR. WANLESS:

166 Q. I'm told that I neglected to mark the Barrick Sustainability Report for 2023 as an exhibit, so I would like to do that now. I believe it's Exhibit 17.

MR. FRANKEL: Yes.

MR. WANLESS: Which is Barrick's Sustainability Report for 2023.

EXHIBIT NO. 17: Barrick's Sustainability Report 2023.

MR. THOMSON: That's fine.

BY MR. WANLESS:

167 Q. Mr. Beringer, in your affidavit you refer to and attach a number of Barrick policies. One of them is the Human Rights Policy that we've already discussed; another is attached as Exhibit 3, which is Barrick's Sustainable Development Policy; another that's attached is Exhibit 9, which is Barrick's Conflict-Free Gold Policy; attached as Exhibit 12 is Barrick's Code of Business Conduct and Ethics; attached as Exhibit 13 is Barrick's Anti-Bribery and Anti-Corruption Policy; and attached as Exhibit 14 is Barrick's Social Performance Policy. And you would agree

with me that all of these policies are issued by Barrick?

A. Yes, that's correct.

168 Q. And they apply to all of Barrick's operations, including North Mara?

A. They do, with obviously the exception I mentioned earlier around --

[Reporter intervenes].

MR. THOMSON: You're breaking in and out.

THE WITNESS: I'll try and speak up. I'm not sure if anything's changed here.

MR. THOMSON: Sorry, Grant, please speak a little more slowly.

THE WITNESS: Okay. Sure. I was saying that with the exception of the JVs where they may have their own policies in place, we certainly engage with them on our policies, but they may have their own.

BY MR. WANLESS:

169 Q. When you speak of JVs, you're talking about joint ventures, correct?

A. That's correct.

170 Q. And the North Mara Mine does not fall under that joint venture exception, correct?

A. No, in that it is a partnership, though, with the government.

171 Q. No, I understand that. I guess my question is all the policies that I referred to, all of them apply directly to North Mara, correct?

A. That is correct.

172 Q. And all of these policies are mandatory, correct?

A. Yes.

173 Q. Are you aware of any lawsuit filed in Tanzania against North Mara Gold Mine Limited or Barrick Gold Corporation regarding any alleged abuses or killing by Tanzanian Police at the North Mara mine?

A. No, I'm not aware.

174 Q. Are you aware of any lawsuits filed in Tanzania against North Mara Gold Mine Limited or Barrick Gold Corporation regarding any alleged human rights abuse at the North Mara Mine?

A. Sorry, Cory, can you just explain what the difference is between those two questions you asked?

175 Q. The second is a little broader. The first related to alleged abuses or killing by the Tanzanian Police, and the second question is

regarding any alleged human rights abuse at the North Mara Mine generally.

A. No, not that I know of.

176 Q. All right. And in your role as sustainability executive, you would know if a lawsuit was filed at North Mara alleging a human rights abuse at that mine?

A. Yes, I would.

MR. WANLESS: All right. Thank you. Those are my questions.

MR. THOMSON: So I only have one question in re-examination.

RE-EXAMINATION BY MR. THOMSON:

177 Q. Mr. Beringer, at the outset of your examination you were asked about Barrick's Human Rights Policy in particular, and you offered to elaborate on how that policy was actually implemented at the North Mara Mine. Do you recall that?

A. I do, yes.

178 Q. And Mr. Wanless did not take you up on your invitation but I will. What is the elaboration you are offering to provide?

A. I think what I was going to explain, and I alluded to it a little bit later, is

TAB 16

Court File No. CV-22-00690649-0000
ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

--- This is the Cross-Examination of SEBASTIAAN BOCK, on his affidavit sworn October 1, 2023, taken at the offices of the DaVinci Hotel and Suites, Corner 5th Street & Maude St, Sandton, 2031, Johannesburg, South Africa, with participants attending both in person and virtually, on the 28th day of May, 2024.

---

89 Q. In order to be successful, Barrick has to be quite good at operating transnationally; correct?

A. Yes, that's correct.

90 Q. You are pretty good at operating across borders?

A. Yes, that's correct.

91 Q. And in different legal jurisdictions?

A. That is correct.

92 Q. And it is fair to say that communication is key in Barrick's ability to operate transnationally?

A. Well, specifically I can say that is very important for my Africa Middle East Region. Communication is really material in terms of the ability to manage your operations in these countries because there are various relationships you need to manage, such as your communities, governments who are -- some of them are shareholders. So yes, communication is important.

93 Q. Okay. And in terms of your region, are you confident in the communication structures that you have in place? Do you get the information that you need from your operations in

Africa?

A. Yes, I do. If I may elaborate, we manage the Africa Middle East Region, as per my affidavit, through a regional structure. We have a regional oversight team that provides the support to the local teams. These -- this specific team are from -- they reside in various different countries, most of them Africa, some of them reside in the UK or in Jersey in the Channel Islands.

We have a weekly what we call our "ExCo call" where everyone dials in, and that is really the main forum which we use to communicate.

And if we are now talking communication, I take it that we are talking internal communication, not external.

But that is our -- one of our key ways to effectively communicate and understand the current state of affairs.

94 Q. And so about North Mara in particular, if you need to get information regarding things that are happening on the ground in North Mara, you are confident you can get that information?

A. I would -- yes, I would say I would be able to get that information if it is

material to my -- to the business unit that I operate, yes.

95 Q. Okay. And if you ask employees of North Mara for information, they'll give it to you?

A. Yes.

96 Q. And if there is problems at the North Mara Mine, they are going to be reported to you?

A. Yes, if the problem is material, it would be reported to my level.

97 Q. And if you need documents or records from North Mara, you can get them?

A. Yes, if I requested those documents, I would get them.

98 Q. Have you ever had any issues getting information from North Mara?

A. No, I haven't. I have not had any issues getting information from North Mara.

99 Q. And have you had any issues getting documents from North Mara?

A. No, I have not.

100 Q. Do you communicate directly with Mr. Lyambiko?

A. Yes, if you are referring to the General Manager, Apolo, yes.

question under advisement.

BY MR. WANLESS:

144 Q. And in particular, Mr. Thomson has been Barrick's go-to lawyer for a number of matters for a number of years; correct?

U/A MR. THOMSON: And I will take that question under advisement.

BY MR. WANLESS:

145 Q. And you would agree with me that from a legal perspective, Barrick is well-represented in Canada?

U/A MR. THOMSON: Well, we take the compliment, but I will take that question under advisement.

BY MR. WANLESS:

146 Q. All right, I'll move on to a different topic.

This is about Barrick's policies. As I understand it, Barrick issues a number of company-wide policies; correct?

A. That is correct.

147 Q. And an example of one of those is the Human Rights Policy?

A. Yes, that is correct.

148 Q. Okay, and these company-wide

policies apply to all of Barrick's operations?

A. Yes, that is correct.

149 Q. And that includes the mines on the ground; correct?

A. Yes, that is correct.

150 Q. And these policies apply to all of the mines in your portfolio; correct?

A. Yes, that is correct.

151 Q. Okay. And who has the authority to set group-wide or region-wide policies?

A. The group-wide policies is usually set by a group of people, but it is managed by our Sustainability Executive who is Grant Beringer, and also it is overseen by the Board of Directors who ultimately oversees the company's environmental health, safety, corporate and social responsibility, including human rights policies, and the Board has an ESG Nominating Committee to that end.

152 Q. What is your role for making sure that these policies are followed?

A. Our role is to ensure that these policies are rolled out across the region. We play an oversight role in that respect. And the role of the operational management itself at the

operational level is to implement them.

153 Q. And what do you do if you find out that the policies are not being followed at a mine in Africa or the Middle East?

A. Most of those policies have specific mechanisms that would point the individuals to what needs to be done if a policy is not followed. So it would be escalated effectively higher up into the organization. Most of the time, if it is a material issue, it would be escalated to Grant Beringer, who is our sustainability executive, and to myself.

154 Q. Mr. Bock, where are you currently based?

A. I live in Stellenbosch in South Africa.

155 Q. And do you travel a lot for your job?

A. I would say I travel -- yes, I do have to travel quite a bit.

156 Q. And how often are you at the actual operating mines in your region?

A. There is a scheduled program where I would travel once a quarter I would try and get to all of the operations, and then I would

intermittently in between those -- and at those quarterly trips, on those trips we would do management reviews and hold Board meetings for the entities that I am a director of.

And then intermittently I would travel to some of the sites, dependent on the needs. Quite often if we are busy with an expansion at an operation, I would then have to spend some time there, or if there are any other material issues which the teams would need assistance with.

157 Q. How often are you at the North Mara Mine?

A. I would say last year I visited North Mara probably six or seven times.

158 Q. As I understand it, Dr. Bristow is fairly hands-on; is that fair?

A. Yes, he travels quite often with me on these quarterly trips, so he would be at these operations at least four times a year.

159 Q. Okay, I am going to direct you to an exhibit attached to the Affidavit of Jeanine Alphonse number 1, which I will share on my screen.

MR. THOMSON: What exhibit is it, Cory?

BY MR. WANLESS:

160 Q. It is Exhibit J, which is the

nationals of those countries, with the exceptions of some ex-pats. They have their own financial systems. They pay their own taxes. They have a Board of Directors of which we are often part of that, some of my team would be part of those directors. And you would also have, if we are in partnerships with the governments, in these entities you would also have the government as part of those directors.

And so when we talk about our operating model, as I have said earlier and referenced in my affidavit, we then have our regional management teams which effectively support that model.

163 Q. I am going to direct you back to paragraph 1 of your affidavit where you state:

"[...] I have overall responsibility for overseeing operations at Barrick's mines and mining projects in Africa and the Middle East."

That is true; correct?

A. Yes, that is true. I think it is important to read that with -- in conjunction with clause 11, the second sentence which says:

"Each region has a regional

operations team that provides support and oversight to local teams that manage the mines and projects within the region. As adverted to above, I lead the regional operating team for Africa and Middle East."

164 Q. Okay, I am not trying to say that there is necessarily a contradiction. I mean, you have just provided some context about how things actually operate, which I presume is true, and it is also true that you have overall responsibility for overseeing operations at Barrick's mines in Africa and Middle East; correct?

A. That is correct, yes.

165 Q. It is fair to say that North Mara, the North Mara Mine is important to the Government of Tanzania?

A. Yes, the Government of Tanzania owns 16 percent of the North Mara Gold Mine, and they share in 50 percent of the benefits. And so yes, it is an important operation for them.

166 Q. When you say "50 percent of the benefits", you mean 50 percent of the profits?

A. Yes, effectively 50 percent of the economic benefits.

167 Q. And North Mara Gold Mine Limited was the largest taxpayer in Tanzania in 2022; correct?

A. Yes, that is correct.

168 Q. And what about today? Is it still the largest taxpayer in Tanzania?

A. Yes, as far as I am aware, it is still the largest taxpayer in Tanzania.

169 Q. What were the economic benefits that went to the Tanzanian government in 2023?

A. It was around about $120 million.

170 Q. And would you call that an average year, a high year or a low year?

A. I would call that is probably safe to say an average year. It -- just to give context, it depends on these economic benefits are after we have made capital investment, so in some years you would invest -- have to invest more and so that number would then be lower.

But I think in terms of an average, that is probably a fair number.

171 Q. And prior to Barrick's takeover of North Mara from Acacia, there was a tax dispute between North Mara -- or sorry, between the Government of Tanzania and Acacia; correct?

Environmental & Social Oversight Committee; is that correct?

A. Yes, that's correct.

232 Q. Okay. And if I can direct you to the Affidavit of Jeanine Alphonse number 1, Exhibit X, and I will put this up on the screen, and page 18 of that document.

MR. THOMSON: Sorry, could we start by identifying the document.

MR. WANLESS: Of course. It is Barrick's 2021 Sustainability Report.

MR. THOMSON: Thank you.

BY MR. WANLESS:

233 Q. Okay, and I am going to direct you to page 18 of that report, and it describes the Environmental & Social Oversight Committee in the following terms:

"Our most senior management-level body dedicated to sustainability is the Environmental & Social Oversight Committee (E&S Committee) which meets on a quarterly basis. The E&S Committee connects site-level ownership of sustainability to our Executive

Officers and our Board of Directors who have ultimate responsibility for our sustainability performance."

Do you see that?

A. Yes, I do.

234 Q. And is that a fair description of what the E&S Committee does?

A. Yes, that is a fair description.

235 Q. All right. And this committee is Chaired by the President and CEO; correct?

A. Yes, that's correct.

236 Q. And that is Dr. Bristow; correct?

A. Yes, that's correct.

237 Q. And this committee also includes the Chief Operating Officers for each region, which would include you; correct?

A. Yes.

238 Q. The Group Sustainability Executive, which is Grant Beringer; correct?

A. Yes, that's correct.

239 Q. The General Managers for each mine, which in the case of North Mara would include Apolo?

A. Yes.

240 Q. Regional and site health, safety

it on my iPad for Mr. Bock because you have not put it on the screen.

BY MR. WANLESS:

253 Q. I have not -- I have not shared it. Fair enough. Let me do that.

All right, Mr. Bock, do you see that now?

A. Yes, I can see it.

254 Q. Okay. And you can confirm that the annual meeting of shareholders for Barrick was held in Toronto on May 2nd, 2023?

A. Yes.

255 Q. Okay. And this year's annual meeting of shareholders was conducted virtually; correct?

A. Yes.

256 Q. And during the pandemic, a number of the meetings were held, a number of the annual meeting of shareholders were held virtually; correct?

A. Yes, that's correct.

257 Q. But over, say, the last ten years or so, is it fair to say that the annual meeting of shareholders were either conducted virtually or in person in Toronto?

MR. THOMSON: You mean of Barrick.
BY MR. WANLESS:
258 Q. Of Barrick.
A. Yes.
259 Q. All right. I am going to go to page 117 of this document. If you are using the PDF, it is PDF page 1885. And it has a chart which, according to the document, and I quote:
"The diagram below summarizes our enterprise-wide approach to risk oversight and the allocation of risk oversight responsibilities."
Do you see that?
A. Yes, I can see that.
260 Q. All right. And do you agree that that diagram does summarize Barrick's enterprise-wide approach to risk oversight and allocation of risk oversight responsibilities?
A. Yes, that would be a fair representation.
261 Q. And those risks include environmental and social risks?
A. Yes.
262 Q. Human rights risks?
A. Yes.

263 Q. Security risks?
A. Yes.
264 Q. And just corporate social responsibility generally?
A. Yes.
265 Q. Okay. And in terms of the various steps of oversight, I guess, at the top there is the "Board Oversight"; correct?
A. Yes.
266 Q. And then there is the "ESG & Nominating Committee"; do you see that?
A. Yes.
267 Q. And who is on that committee? Or can you just describe that committee generally for me?
A. It is a -- that is a subcommittee of the Barrick Board, and it is made up of specific members of the Board who was Gustavo Cisneros, who has now passed, Christopher Coleman, Brian Greenspun, Anne Kabagambe and Loreto Silva. This was at the time of the affidavits.
268 Q. All right. And none of those individuals are based in Tanzania?
A. None of those are. They are based in the Dominican Republic, the United Kingdom,

United States and Chile.

269 Q. All right. And below the "ESG & Nominating Committee", there is the "Weekly Executive Review Meetings". Who participates in those?

A. That would be the executive of the Barrick Group, the management team.

270 Q. Are you on that team?

A. I represent the Africa Middle East Region in that meeting, yes.

271 Q. Okay. So it is top executives at Barrick, including the CEOs of all the regions?

A. Yes, including the COOs, yes.

272 Q. And the CEO is also part of those meetings?

A. Yes.

273 Q. And what about Mr. Beringer, would he be a part of those meetings?

A. Yes, Grant would -- he takes part in that meeting.

274 Q. Okay, and that is a standing weekly meeting?

A. Yes, on every Wednesday afternoon, morning for --

MR. FRANKEL: Sorry, I am just going to

290 Q. Okay. Would you agree that your compensation is linked in part to human rights performance?

A. Yes, that is correct.

291 Q. And why does Barrick do that?

A. I think as an executive team, we have overall responsibility for the performance of the group and to hold the operations to account to the policies that we have implemented, and of course, the human rights policies are one of those policies, if we refer to that one specifically.

Again, we as a management team, we -- the direct executive team manages all of them, quite large teams, and so ultimately the implementation happens at the level of the subsidiaries and the affiliates, but we as a management team need to make sure that we have oversight that that happens.

292 Q. All right. Now I am going to change topics a little bit and go to North Mara Gold Mine Limited. We have discussed before that this is a company that is incorporated under the laws of Tanzania; is that correct?

A. Yes, that is correct.

293 Q. And in your affidavit, at

in the -- he is a financial person, so somewhere in the Ministry of Budget and Finance.

Kasmir I am not currently sure of, what his role is in government. As far as I understood, he is close to retirement or potentially already in retirement.

300 Q. All right. Could you undertake to advise the roles that Andrew and Kasmir have with the Government of Tanzania?

U/T MR. THOMSON: We will make inquiries and see what we can find out.

BY MR. WANLESS:

301 Q. Okay. And regarding the other three directors, they are appointees of Barrick; correct?

A. Yes, they are appointees from Barrick as an indirect shareholder.

302 Q. Okay. And the three directors are you, and you are the COO of Barrick for Africa and the Middle East; correct?

A. Yes, that is correct.

303 Q. And Mark Bristow, who is the CEO and President of Barrick?

A. Yes, that's correct.

304 Q. And Simon Bottoms, who is the

Executive Vice President of Barrick; correct?

A. Yes, that's correct.

305 Q. And just to be accurate and full, his title is Executive Vice President, Mineral Resource Management and Evaluations at Barrick; correct?

A. Yes, correct.

306 Q. Okay. And none of the Barrick appointees reside in Tanzania; correct?

A. Correct.

307 Q. In recent memory, is the COO Africa and Middle East for Barrick always a director of North Mara Gold Mine Limited?

A. Since we took over operatorship and oversight of those operations in Tanzania, in the Africa Middle East team the COO was a director, yes. So my predecessor, Willem Jacobs, was a director.

308 Q. Okay. And at the time, he was also Barrick's COO Africa and Middle East?

A. He was the COO for the Africa Middle East Region, yes.

309 Q. Okay. Since Barrick took over North Mara from Acacia in 2019, has anyone else been a Barrick-appointed Board member of North Mara

Gold Mine Limited other than you, Mr. Bristow, Mr. Bottoms and Mr. Jacobs?

A. As I recall, no. Mr. Bottoms, as I recall, replaced Willem Jacobs when he stepped down as a director.

310 Q. And how does Barrick choose who is going to occupy these Board seats?

A. It would usually be someone that would have some knowledge and can add value to the Board of these entities, and so therefore, as the Chief Operating Officer of the Africa and Middle East Region, I am very familiar with the operation.

Mark Bristow, as pointed out previously, he is very hands-on, so he is quite familiar with the operation and ensures that, you know, we apply our policies and our strategy.

And then Mr. Bottoms, really because of the legacy issues Acacia had with these mines in terms of extending their lives - and if I say "extending their lives", I am talking about the Life of Mine Plans and adding additional resources into those businesses to add more value to them - he is -- you know, he has a very good understanding of that, and therefore he can add quite a bit of strategic value to that Board.

into details, but I suspect that there was some form of investigation or inquiries or whatever, and I don't want to get into that.

But my question for you is has Barrick received the assistance of North Mara Gold Mine when doing that, when responding generally to this lawsuit?

A. Some of the employees of North Mara Gold Mine have been called as witnesses, and in that context, they were supported by the Barrick legal team and legal counsel and -- but more specifically, the external legal counsel.

316 Q. And going forward, your expectation would be that the North Mara Gold Mine employees will provide assistance requested by Barrick and legal counsel regarding documents or access to witnesses or information; correct?

A. Yes.

317 Q. Okay. I want to talk now about the Memorandum of Understanding with the Tanzanian police, and I will refer you to that exact document in a second, but I am just going to ask some preliminary questions if that is okay.

The original 2019 MOU was signed before you were COO Africa and Middle East for Barrick;

had to be corrected, as from time to time, as you review agreements, you update them.

Also, the current North Mara team that were in place at that time and also the Africa Middle East team was a different team who signed the original agreement.

But as I recall, the substance of the agreement remained very much the same. Effectively, the mine would provide the police with some payments in kind and support them to be able to do their job.

327 Q. Okay, thank you. And just to help me understand what this document is, it is a Memorandum of Understanding between the Tanzania Police Force and North Mara Gold Mine Limited; correct?

A. Yes, that's correct.

328 Q. And it is regarding the "Provision of Security Services and Maintaining Law and Order in the Area of North Mara Gold Mining Sites"; correct?

A. Yes, that's correct.

329 Q. And you signed this Memorandum of Understanding on behalf of North Mara Gold Mine Limited; correct?

A. Yes, that's correct. I signed in my capacity as a director, and the General Manager, Apolo, signed as his capacity of General Manager who directly manages the relationship with the police on a day-to-day basis.

330 Q. And it was --

MR. THOMSON: And so we have it for our record, those signatures appear at page 18 of the MOU.

BY MR. WANLESS:

331 Q. Thank you.

And it was also signed by Dr. Jacobs who at the time was a director of North Mara Gold Mine Limited?

A. Yes.

332 Q. And at the time, what was your role with Barrick?

A. I was the Chief Financial Officer for the Africa Middle East Region.

333 Q. And Dr. Jacobs was the COO for the Africa and Middle East Region?

A. Yes.

334 Q. In your capacity as a director for North Mara Gold Mine Limited, would you ever do anything that is against the interests of Barrick?

A. Barrick is -- I think the best way to answer the question and in terms of context is Barrick has very specific policies and procedures that we have implemented across the organization -- not implemented, but we have rolled out across the organization that needs to be adhered to. We need to ensure that, of course, the local operating entities act within the local regulations that are applicable.

And so therefore, within that framework and my capacity as a director of North Mara, which is an independent company, I would sign this agreement and ensure that the independent company acts within those policies. I would make sure that, you know, the various human rights policies are adhered to and that a contract like this, for instance, wouldn't contradict that.

And then, of course, as my capacity as a director, I need to ensure that it is appropriate for the entity itself to sign it.

335 Q. All right, thank you. And I assume that you reviewed the MOU before you signed it?

A. Yes.

336 Q. Who else at Barrick would have

reviewed it and approved it?

A. Simon Bottoms as -- at that point, apologies, Simon Bottoms wasn't a director. So the other director, which would have been Mark Bristow, in his capacity of a director of this company, would have sight of this.

Grant Beringer, who needs to ensure, again, as I pointed out earlier, that as the person who ensures there is oversight and policies in place across our organization, he would look at this to make sure that, you know, those various human rights portions of that policy forms part of this contract and it is appropriate.

And then, of course, Apolo, which is the General Manager on-site.

And the commercial executive for the Africa Middle East Region would also work through this to ensure that, of course, contractually it is appropriate.

And then the legal counsel for the Africa Middle East Region, which is Antoine Thibaud, he would also look at this document.

So I would say those would really be the key people that would look at this.

337 Q. All right. This MOU refers to a

345 Q. Okay. And if we go to section 5.1 of this document, it details the expectations on the Tanzanian Police Force regarding deployment; is that fair?

A. Yes.

346 Q. Okay, and that will include an "Officer Commanding Operations, who shall be located at the Barracks"?

A. Yes, that is what it refers to at point (a), as per point (a), yes.

347 Q. Okay, thanks.

And this is a note for the court reporter. For this next bit, I am going to be referring to both "Barrick" the company and "barracks" where police or other law enforcement reside. So just as a note there, when I say "barracks", I am referring in this instance to a police barracks.

It also provides for 142 Tanzanian Police Force officers to be deployed in relation to the mine site?

A. Yes.

348 Q. And then going down to (e), there is three Tanzanian Police Force Liaison Officers, which I understand are located at the mine site

itself; correct?

A. Yes, which refers to they are in that specific area, yes.

349 Q. Okay. Where at the mine site are they -- do they operate from, these Liaison Officers?

A. I speak under correction because I have never been to that office, but as I recall, there is an office, as per this clause, which they are located at the mine site.

350 Q. Is that office located within the security offices for the mine site?

A. I can't comment on that.

351 Q. Can you undertake to find out --

A. I am not sure.

MR. THOMSON: Sorry, you were speaking at the same time.

BY MR. WANLESS:

352 Q. I believe Mr. Bock said that he can't comment, and I asked him to undertake to find out, please.

U/T MR. THOMSON: Yeah, we'll make an inquiry.

MR. FRANKEL: And for the record, what he said was "I can't comment on that" and "I am not

sure", so it was transcribed correctly.

MR. THOMSON: Okay, thank you.

BY MR. WANLESS:

353 Q. And your understanding of the role of these Liaison Officers is to provide a conduit for information between the Tanzanian Police Force and the North Mara Gold Mine; is that fair?

A. Yes, I think it would be helpful just to provide a little bit more context.

We have a private security force which are unarmed, and they effectively manage the on-site security within the fences.

The police themselves are, in terms of the force that are managing the security on a day-to-day basis, are outside of the fence.

When the security -- the private, our private security, who are unarmed, when they believe that they are threatened and their lives are at risk, they would then call the police to effectively enter the mine premises and to assist us in dealing with the threat.

354 Q. All right. I want to go down to section 6, which is "Allowances and in kind support", and this section governs the payments that are going to go from North Mara Gold Mine to

the Tanzanian Police Force; correct?

A. Yes.

355 Q. All right. And there is an operational daily fee of 100,000 Tanzanian shillings per officer listed on the duty roster; correct?

A. Yes.

356 Q. And just so I understand, for the duty roster, is that any police officer who happens to be working on any given day, or is it all of them that are deployed there regardless of whether or not they are working that day?

A. This is the -- this payment goes to anyone who is deployed on the day.

357 Q. So this amount is not calculated on the basis of officers who happen to not be working on a particular day?

A. This is for officers who are listed on the roster for the day, yes.

358 Q. All right. And again, my purpose here is not -- I am not trying to trip you up or anything like that, and so I just want to understand.

And I'll ask your counsel if that information happens to need some correction, if you

could make that correction?

U/T MR. THOMSON: We will.

BY MR. WANLESS:

359 Q. All right. And my understanding is of that amount, of the 100,000 Tanzanian shillings, half of it, 50,000 shillings, goes as a per diem payment to the officer directly; correct?

A. Yes.

360 Q. And is that payment that is made by North Mara Gold Mine to the officers directly, is that in addition to their wages that they receive as a result of being employed by the Tanzanian Police Force?

A. I can't specifically comment on that, but what I would say -- and my understanding is yes. What I would say is that we operate in a very remote area, and therefore, the police are really underresourced.

And so therefore, through the structure, what we have tried to achieve, just if you look at the overall context, is that we provide some additional resources to the police in that area, which if we did not do that, you wouldn't have necessarily the resources from the state needed to be able to, you know, manage the

379 Q. Now, in that section the agreement differentiates between "the Company", which is North Mara Gold Mine Limited, and "Barrick"; correct?

A. Yes.

380 Q. And this section requires the Tanzanian Police Force to turn their attention to incidents that might have consequences to Barrick; correct?

A. I think it would be helpful and to the context, the consequences is first and foremost to North Mara Gold Mine who has the contract with -- who signed the MOU with the Police Force, and of course, it has got implications for Barrick as well as a result of our human rights policies and if it is not being appropriately implemented or adhered to.

381 Q. All right. And then 11(b) requires the Tanzanian Police Force:

"to promptly investigate, report, and resolve all such incidents, potential violations or abuses in accordance with applicable national and international law and to keep the Company's Asset

Protection Manager informed of all such investigations."

Correct?

A. Yes, that's correct.

382 Q. All right. So these two sections together require the Toronto police -- or sorry, the Tanzanian Police Force to report security incidents, including use of force and use of weapons, to North Mara Gold Mine Limited; correct?

A. Yes, that is correct.

383 Q. And also to keep them updated about any investigations; correct?

A. Yes, that is correct.

384 Q. And if an incident involving use of weapons or use of force was reported to the North Mara Gold Mine company, you would expect that it would be reported up the chain to you; correct?

A. Yes, in my capacity as one of the executives who are responsible to ensure that these policies are adhered to, I would be one of the people that would be informed, yes.

385 Q. I want to direct you to section 5.6 which reads:

"The Company Asset Protection Manager and the Regional Police

Commander (or such other Senior Police Officer) shall meet regularly to discuss the security situation in the Area, any complaints levied by third parties in connection with the deployment, whether the complaints are received by the Company or any governmental entity, and the implementation of this MoU. At the meeting, the Regional Police Commander (or such other Senior Police Officer) shall also provide updates on the investigation of complaints previously raised (if any) and provide such other information as may reasonably be required by the Company Asset Project Manager to ascertain compliance with the terms of this MoU."

Do you see that?

A. Yes, I do.

386 Q. Are these regular meetings and discussions happening?

A. Yes, as per the communication from

the mine team to myself, these are happening, yes.

387 Q. Do you have any concerns that the Tanzanian Police Force will not abide by the terms of this agreement?

A. My answer is no. The reason for that is myself and the Sustainability Executive, Grant, met with the Regional Police Commander when we were on-site. It was towards the end of next -- sorry, towards the end of last year. I don't recall if it was in October or July, but -- and the reason for that is that we effectively joined the meeting between the Company Asset Protection Manager and the General Manager and the Regional Police Commander and, you know, had a discussion with regards to, you know, as the executive team, which was Grant and myself, what, you know -- that we were comfortable that the Police Commander and his Police Force understands these human rights policies and that they adhere to them.

You know, they of course raised all the challenges that they are dealing with, which were quite significant.

And so, in that specific meeting, the Regional Police Commander and his team that was

there didn't give us any reason to believe that they are not committed, you know, to these human rights policies and to this agreement that the mine has signed with them.

388 Q. All right. So in your view, the Tanzanian Police Force is abiding by the terms of this Memorandum of Understanding?

A. What I would say is with any incident, we abide by this agreement where there is a proper investigation, and as per the agreement, if there was anything untoward on the side of the police, it would be raised and it would be dealt with and any individuals involved would be dealt with.

389 Q. I guess I'll phrase my question in a bit of a different way. This Memorandum of Understanding sets out various responsibilities and obligations and rights of both sides, and I guess from the perspective of North Mara Gold Mine Corporation, to the extent that this agreement gives you certain rights, is there any reason to think that the Tanzanian Police Force would not cooperate?

A. No, the Tanzanian Police Force is -- you know, they are part of a sovereign

security -- or their job is to implement and manage security for Tanzania, which is an independent sovereign country. We don't -- we as North Mara don't direct the police.

The reasons for this memorandum of agreement is as per the OECD -- or sorry, the UN Voluntary Principles. It's best practice to have a Memorandum of Understanding in place because it does give you some recourse as per this agreement.

But ultimately, you know, we don't -- North Mara does not manage the Police Force, and therefore, if there is anything, any incident that has come to light, we act as per this Memorandum of Understanding because that is the only recourse that North Mara really has, and that includes a proper investigation.

390 Q. So in one of my earlier questions I referred to various sections of this agreement which govern information that needs to be provided by the Tanzanian Police Force to North Mara Gold Mine. Your expectation going forward is that the Tanzanian Police Force will abide by those commitments; correct?

MR. THOMSON: Sorry, Cory, which provision are you talking about?

BY MR. WANLESS:

391 Q. Well, the one that is up on the screen, for instance, so 5.6:

"At the meeting, the Regional Police Commander (or such other Senior Police Officer) shall also provide updates on the investigation of complaints previously raised (if any) and provide such other information as may reasonably be required by the Company Asset Project Manager to ascertain compliance with the terms of this MoU."

And so my question is, do you have any reason to think that the Tanzanian Police Force are not going to abide by that?

A. No. In my experience, if there has been an incident we have asked them to investigate, the police would follow their normal investigation route and they would release a report.

392 Q. And if you require more information from the police, you can get it; correct?

A. We would act as per the MOU, yes.

393 Q. All right. In addition to the per diems that we mentioned earlier, North Mara Gold Mine also provides in-kind support; correct?

A. If we could maybe go to that clause, it would be helpful.

394 Q. Sure.

A. Yes.

395 Q. So this is 6.3, and (a) refers to fuel for Tanzanian Police Force vehicles; correct?

A. Yes.

396 Q. And that is provided by North Mara Gold Mine?

A. Yes.

397 Q. The vehicles themselves are also provided by North Mara Gold Mine; correct?

A. Which clause are you referring to?

398 Q. If it helps, the vehicles themselves are referred to in the "Definitions" section, and they are listed by vehicle (a) through (t); do you see that?

MR. THOMSON: Under the heading "TPF Vehicles", so look at page 6 of the agreement.

THE WITNESS: Yes, I see that.

BY MR. WANLESS:

TAB 17

Dated _____ May 2022

MEMORANDUM OF UNDERSTANDING

between

TANZANIA POLICE FORCE

and

NORTH MARA GOLD MINE LIMITED

Concerning

PROVISION OF SECURITY SERVICES AND MAINTAINING LAW AND ORDER IN THE AREA OF NORTH MARA GOLD MINING SITES

2022

5 Permitted Security Presence

5.1 The TPF shall deploy to the surroundings of the Mine Site the following TPF officers to maintain law and order (a **"Permitted Security Presence"**). Each deployed TPF officer shall be identified on a duly authorised duty roster provided by the TPF to the Company, and selected by a Staff Officer (designated by the Regional Police Commander) and who shall report to the Officer Commanding District ("**OCD**") based in Nyamwaga:

(a) Officer Commanding Operations ("**OC**"), who shall be located at the Barracks;

(b) One hundred and forty-two (142) TPF officers, who shall focus on the maintenance of law and order in relation to the Mine Site (subject to clause 5.2) and report directly to the OC;

(c) Two (2) TPF officers, whose focus shall be to undertake with criminal investigations at the Mine Site;

(d) Six (6) Traffic TPF officers for assisting with traffic control in the Area (excluding the Mine Site), including with respect to the Mine Site vehicles and the haul road/village intersections; and

(e) Three (3) TPF Liaison officers, each operating an eight-hour shift (in every 24-hour period) in a designated office provided by the Company which will be located at the Mine Site and reporting to the OC.

5.2 Save as expressly allowed under law or under this MoU, TPF officers shall access the Mine Site only upon request of the Company.

5.3 Where security situation requires the presence of additional TPF officers in the Area other than as set out in this MoU, the TPF shall provide such additional TPF officers and other resources necessary to ensure the maintenance of law and order in the Area. The Allowances set out in clause 6.1, shall be paid to any such additional TPF officers so deployed to the Area, who are listed on a duly authorised duty roster provided by the TPF to the Company.

5.4 The Commissioner of Operations at Police Headquarters shall approve any request for additional TPF officers in writing before that increase in TPF officers is informed by the Regional Police Commander to the Company.

5.5 The Company's Asset Protection Manager may request the termination of a Permitted Security Presence at the Mine Site, or anywhere in the Area, at any time by notice in writing to the Regional Police Commander. Upon receipt of such notice, the Regional Police Commander shall procure the removal of the TPF from the location set out in the notice (or as otherwise requested by the Company's Asset Protection Manager) within 14 days of receipt.

5.6 The Company Asset Protection Manager and the Regional Police Commander (or such other Senior Police Officer) shall meet regularly to discuss the security situation in the Area, any complaints levied by third parties in connection with the deployment, whether the complaints are received by the Company or any governmental entity, and the implementation of this MoU. At the meeting, the Regional Police Commander (or such other Senior Police Officer) shall also provide updates on the investigation of complaints previously raised (if any) and provide such other information as may reasonably be required by the Company Asset Project Manager to ascertain compliance with the terms of this MoU. Upon request from the TPF Headquarters (which shall not be made more than twice in each 12-month period), the Company shall facilitate such TPF officers from TPF Headquarters to the Mine Site to meet with the Company's Asset Protection Manager to discuss the implementation of this MoU, and complaints levied in connection with the deployment, and the security situation in the Area. The Company may deduct the cost for facilitating such visits from the amounts paid in accordance with clause 6(d).

5.7 If there are any complaints levied against individual TPF officers based on conduct occurring while assigned to the Area, whether raised by the Company or any third party, those complaints will be fully investigated according to the established TPF or the Government's procedures, and any individuals under investigation for potential violation of TPF duties, policies or the laws of Tanzania will be suspended from providing security in the Area pending the outcome of such investigation. The Company also notes that if it receives complaints or feedback related to the

deployment, the TPF agrees to process such complaints or feedback through its established grievance mechanism. Complaints or feedback that relate to the conduct or actions of TPF officers will be conveyed to the TPF or the Government's other agencies, as may be appropriate.

6. Allowances and in kind support

6.1 The Company shall pay the following allowances in respect of the Permitted Security Presence, in accordance with applicable TPF duty rosters reflecting appropriate rates:

(a) Operational Daily Fee

A daily operational fee payable to each designated TPF officer who is listed on the TPF duty roster and is deployed to the Area regardless of rank shall be of TZS 100,000 (Tanzania Shillings One Hundred Thousand).

Payment of the daily operational fee (subject to the below deductions) will be paid to an official TPF government bank account (the "**TPF Bank Account**") for and on behalf of the TPF officers deployed at the Area. On receipt, the TPF, through the Regional Police Commander, will make available a payment voucher to each TPF officer so deployed in an amount in aggregate equal to the daily operation fee less the below deductions.

The Regional Police Commander shall keep a payment voucher register which shall record each operational daily fee payment voucher issued under this MoU and be signed by each individual TPF officer in receipt of the payment voucher together with a third party witness confirming that the daily operational fee (less the below deductions) was provided and received. A copy of the payment voucher register will be made available to the Company on a monthly basis.

The Company shall pay the daily operational fee (less the below deductions) to the TPF Bank Account as set out in clause 6.1(c) and the Company shall incur any reasonable banking charges with respect to the transfer of said daily operational fee to the TPF Bank Account.

The daily operational fee shall be rolled-up and paid every two-week period or at such other period as the Parties shall agree.

(b) Daily Per Diem

A daily per diem to each TPF officer deployed to the Area who appears on the TPF duty roster shall be of TZS 50,000 (Tanzania Shillings Fifty Thousand) which shall be deducted from the amount payable in clause 6.1(a).

Payment of the per diem shall be made to the TPF Bank Account for and on behalf of the TPF officers deployed at the Area. On receipt, the TPF, through the Regional Police Commander, shall make available a payment voucher to each individual TPF officer so deployed in an amount in aggregate equal to the per diem.

The Regional Police Commander shall keep a payment voucher register which shall record each per diem payment voucher issued under this MoU and be signed by each individual TPF officer in receipt of the payment voucher together with a third party witness confirming that the daily operational fee (less the deductions set out herein) was provided and received. A copy of the payment voucher register will be made available to the Company on a monthly basis.

The Company shall pay the per diem to the TPF Bank Account as set out in clause 6.1(c) and the Company shall incur any reasonable banking charges with respect to the transfer of the per diem to the TPF Bank Account, signed by the individual officer and a third party witness confirming that the per diem was provided and received.

The per diem shall be rolled-up and paid every two-week period or at such other period as the Parties shall agree.

(c) Operational Administration Fee

There shall be an operational administration fee of TZS 10,000,000 (Tanzania Shillings Ten Million) deducted from the amounts payable in clause 6.1(a) which shall be rolled-up and paid for the period of every two-week or at such other period as the Parties shall agree

(d) Mode of payments

A daily per diem to each TPF officer deployed to the Area as per clause 6.1 (b) and Operational Administration Fee shall be paid to the TPF Bank Account, the details of which are set out below:

Bank Name:	CRDB Bank Plc
Bank Address:	P.O.Box 2, Tarime
Bank Account Name:	[redacted]
Account Number:	[redacted]
SWIFT:	[redacted]

(e) Administrative Fee

There shall be administration fees, rolled-up and paid on a monthly basis on or around the first week of each month or such other period as the Parties shall agree, which shall inter alia used to support the smooth running of the Force and discharge of duties under this MoU, to be paid to the Office of the Chief of Police Force (Inspector General) vide official government account set out below, from the balance in excess of clause 6.1(c), following deductions made over clauses 5.4, 6.1(a) and 6.1(b) (as the case may be).

Bank Name:	Bank of Tanzania
Bank Address:	Mirambo Street, P. O. Box 11884, Dar es Salaam
Bank Account Name:	[redacted]
Account Number:	[redacted]

(f) The Parties, from time to time, not less than every twelve months, may review the operational administration fee as set out in clause 6.1(c), and upon agreement may make an increase of not more than 10 percent in any financial year.

(g) Additional Senior Police Officer Fee

Where it is necessary for additional TPF officers to be deployed to the Area in accordance with clause 5.3, and where as a consequence any additional Senior Police Officers are also required to be deployed to the Area, an additional Senior Police Officer Fee shall be paid to each such Senior Police Officer so deployed and appearing on a duty roster (up to a maximum of 8 Senior Police Officers) (in accordance with the Public Service Circular No. 2 of 2014), of TZS 30,000 (Tanzania Shillings Thirty Thousand) per day. The additional Senior Police Officer fee shall be paid to the TPF Bank Account (on behalf of each Senior Police Officer) by the Company as per the banking details set forth in clause 6(c):

The additional Senior Police Officer fee shall be rolled-up and paid on a monthly basis on or around the first week of each month or such other period as the Parties shall agree.

6.2 The TPF warrant that the bank account details referred to in clauses 6(c) and 6(d) are true and accurate (or will be true and accurate when provided to the Company's Asset Protection Manager), are official governmental accounts, and no person has access to the relevant bank account other than the formally designated TPF representative.

6.3 During the Permitted Security Presence, the Company shall:

(a) provide to the TPF fuel for TPF Vehicles utilised for the Permitted Security Presence, in the Area. Not more than 520 litres of fuel per month per TPF Vehicle shall be made available by the Company to the TPF for any one TPF Vehicle.

(b) repair, maintenance and engine servicing of TPF Vehicles utilised for the Permitted Security Presence. The Company may (but shall not be obliged to) subcontract the repair, maintenance and servicing of the TPF Vehicles to a third party. The Company shall ensure proper records are maintained in respect of any repairs, maintenance and servicing that is undertaken on a TPF Vehicle. It is the TPF's sole responsibility at all times to ensure any vehicles used for the Permitted Security Presence is road worthy and safe to operate. The Company is providing all vehicle support on an "as-is, where is" basis, and makes no warranties of any type as to the fitness or condition of the provided or directly procured support; and

(c) bear the costs of the third-party service provider, chosen amongst the communities living nearby the Mine Site, that provides food to the individuals listed on the TPF duty rosters in the canteen facilities at the Barracks (see clause 17). Not more than TZS 18,000 (Tanzania Shilling Eighteen thousand) per day per individual listed on the TPF duty roster shall be supported by the Company.

Notwithstanding the above, it is the responsibility of the TPF to provide any day-to-day support needed for the operation of the Assets whenever they are utilised for the Permitted Support or the Permitted Security Presence.

7 Deemed Conditions Relating to a Request for Permitted Support or the Provision of Permitted Security Presence

A request for Permitted Support for any Exceptional Event and the provision of Permitted Security Presence will, on each occasion, be deemed to include the following:

(a) The TPF warrant to the Company that:

(i) any TPF officer deployed is at least 18 years of age and has joined the Police at his or her own independent volition.

(ii) any TPF officers or other TPF personnel deployed to the Area have been provided with training on the Applicable Human Rights Principles and international humanitarian law and International Security and Human Rights Standards related to the use of force (e.g. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials) in accordance with the guidance set out in the attached Schedule C (*Voluntary Principles Training*).

(iii) the TPF officers or other TPF personnel deployed to the Area will use force only when strictly necessary, will always use the least force necessary to address a security threat, and will use force in a manner proportionate to the threat and consistent with national law and International Security and Human Rights Standards or consistent with international humanitarian law when applicable.

(iv) the TPF officers or other TPF personnel deployed to the Area will use lethal force only where there is an imminent threat to human life or consistent with international humanitarian law as applicable.

(v) the Company will communicate its policies regarding ethical conduct and human rights to the TPF. The TPF officers or other TPF personnel deployed to the Area will strive to act consistent with those policies in and around the Area.

(vi) no TPF officer or other TPF personnel that has faced credible allegations that he or she has committed violent crimes or was involved in human rights abuses is assigned to duties in connection with the Permitted Support and/or the Permitted Security Presence.

(vii) the TPF officers or other TPF personnel will have received suitable and adequate training in accordance with the TPF training methods and requirements before being

deployed in the Area. This training will include how to implement the International Security and Human Rights Standards, including the Core Competencies set out in Schedule B (*Voluntary Principles Training*).

(v) the TPF officers and other TPF personnel will be adequately and properly supervised by their own chain of command, and without the involvement of the Company or its Personnel.

(vi) the TPF will report to a Senior Police Officer any incident that has caused any injury, death, or substantial damage to property, who in turn will notify the assigned TPF liaison.

(viii) the Personnel will not be involved in the operation of the Assets whilst the Assets are utilised with the Permitted Support or Permitted Security Presence.

(b) an acknowledgement by the TPF that the Company, and BARRICK reserves unconditionally the right:

(i) to take whatever they determine appropriate in order to comply with its obligations under all applicable laws of Tanzania, and the Applicable Human Rights Principles, without being liable to any adverse reaction by the TPF, the Government of Tanzania or any other agency of the Government of Tanzania; and

(ii) to cooperate appropriately with and support any subsequent investigation into the circumstances surrounding the request for and provision of Permitted Support or Permitted Security Presence conducted under the laws of Tanzania or any international agreements or treaties to which Tanzania is a party.

8 Personnel to be Maintained on Site

The Company's Asset Protection Manager may maintain such Personnel at the Mine Site as he deems necessary during any Armed Violence or Natural Disaster.

9 Contact with United Nations, NGOs and Local Community

9.1 The Company may liaise with the United Nations and African Union representatives in Tanzania, and other officials of local and international NGOs to keep them informed of relevant developments and activities in respect to any Exceptional Event, Permitted Support or Permitted Security Request.

9.2 The Company and the TPF agree to meet jointly with the local communities in the Area on a regular basis (and at least quarterly in any 12-month period), to discuss the security situation and in particular the nature of intrusions at the Mine Site, and to work together with the local communities to identify areas of security concerns and to seek resolution of those concerns and any other security and policing related issues.

10 Contact with Public Reporting of an Exceptional Event

10.1 The TPF acknowledge that BARRICK as a publicly listed company has legal obligations to its shareholders and other stakeholders, the international community and other applicable governments to inform of all extraordinary events that may arise in connection with this MoU, including any Exceptional Event.

10.2 As a consequence of clause 10.1, BARRICK (and/or the Company) may issue such public press releases or make such public statements as it considers appropriate on any extraordinary event that may arise in connection with this MoU. In no way, however, will such a release or statement disclose military secrets or endanger the internal or external security of Tanzania.

10.3 The Company may also make such public announcements or statements to the local community in connection with the MoU as it thinks appropriate to protect and serve the Company's or BARRICK's interests, but in doing so the Company will take in account any concerns expressed by the Government of Tanzania as to the security and safety of the TPF officers, other TPF personnel and the efficacy of the operations of the TPF.

10.4 This MoU may be made available in the public domain to adhere with the international principles of transparency and good governance, or in connection with any litigation or other legal proceedings.

11 Security Incidents

The TPF agree:

(a) to promptly advise the Company's Asset Protection Manager of any security incident involving use of weapons or use of force, and of any alleged human rights violation or abuse in which TPF officers or other TPF personnel are involved while performing their duties in the Area, or at any other operation which may have consequences to the Company or to BARRICK.

(b) to promptly investigate, report, and resolve all such incidents, potential violations or abuses in accordance with applicable national and international law and to keep the Company's Asset Protection Manager informed of all such investigations. During the course of any investigation or proceedings, the TPF agree to suspend the TPF officer or other TPF personnel under investigation or being prosecuted as a result of their actions.

(c) following any investigation which finds that a TPF officer or other TPF personnel used disproportionate force, violated or contravened any Applicable Human Rights Principles, human rights and/or international humanitarian law, or agreements on use of weapons or other equipment, to promptly take such proportionate and appropriate disciplinary action against the TPF officer or TPF personnel or take such other preventative measures to ensure that there is no reoccurrence of the offending conduct.

(d) permanently remove a TPF officer or other TPF personnel from the Area on receipt of a request from the Company and to not redeploy to the Area any Police officer or other Police personnel found guilty of any Applicable Human Rights Principles, human rights and/or international humanitarian law, or agreements on use of weapons or other equipment.

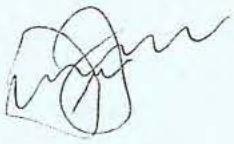
EXECUTION

IN WITNESS whereof the Parties hereto have caused this MoU to be duly executed in three original as of the date first above written.

The Company

Signed by

NORTH MARA GOLD MINE LIMITED



17 May 2022

Dr Willem Jacobs
Director

Date



17 May 2022

Sebastiaan Bock
Director

Date



24 May 2022

Apolinary Lyambiko
General Manager

Date

The Tanzania Police Force

Signed by

[redacted]

24th May 2022

Commissioner of Police for Operations
Authorised Signatory

Date

TAB 18

EXPERT REPORT OF
MOHAMED CHANDE OTHMAN

October 2, 2023

67. Section 7(2) of the *Judges (Remuneration and Terminal Benefits) Act, 2007* provides that "The President may, upon the recommendation of the Commission, add to or modify the benefits specified in the Schedule but such modification shall not have the effect of curtailing or reducing any of the benefits specified in the Schedule". Thus, as with the salaries of Justices and Judges, benefits they are entitled to under the Schedule to this statute are guaranteed and cannot be lowered.

68. Salaries, allowances and retirement benefits payable to Justices and Judges are exempt from income tax pursuant to section 41 of the *Public Service Social Security Fund Act, 2018* and section 4(3) of the *Judges (Remuneration and Terminal Benefits) Act, 2007*.

69. The salaries, allowances and benefits payable to Magistrates and other judicial officers, as well as the terms and conditions of their employment, are determined and reviewed by the Judicial Service Commission in accordance with Sections 29 and 30 of the *Judiciary Administration Act, 2011*, Regulation 27 of the *Judiciary Administration (General) Regulations 2021* and Part VII of the *Judiciary Administration (Service Scheme), 2021*.

(4) Immunity

70. Justices, Judges, Magistrates and other judicial officers in Tanzania are immune from criminal charges and civil claims for acts or omissions carried out in good faith in the performance of their judicial functions. They cannot be prosecuted or held liable in connection with such acts or omissions. This immunity is affirmed in several statutes: (i) Section 65A of the *Judiciary Administration Act, 2011*, as amended by Act No. 6 of 2020; (ii) Section 16 of the *Penal Code* [Cap. 16 R.E. 2022]; (iii) Section 66 of the *Magistrates' Courts Act*; and (iv) Section 3(5) of the *Government Proceedings Act*.

71. This immunity ensures that members of the Tanzanian Judiciary can dispense justice fairly and dispassionately, without concern that they will be exposed to criminal or civil consequences for doing so.

(iii) Judicial Oversight over the Tanzania Police Force

72. Despite the independence and impartiality of the Tanzanian Judiciary, I note that paragraph 73 of the Statement of Claim in this proceeding asserts that "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". I understand that the Statement of Claim uses the term "Mine Police" to refer to members of the Tanzania Police Force who provide policing services in the area of the North Mara Gold Mine.

73. To the extent that the Plaintiffs are suggesting that in 2023 the Tanzanian Judiciary is unable or unwilling to hold members of the Tanzania Police Force legally accountable for their conduct, or to render fair justice in cases involving the alleged

misconduct of members of the Tanzania Police Force, I respectfully but firmly disagree. The fact that the alleged incidents complained of by the Plaintiffs pertain to conduct of members of the Tanzania Police Force would be no obstacle to the Plaintiffs in commencing and pursuing claims in Tanzania, whether against individual Police officers, the Tanzania Police Force itself or against private actors. As explained below, the Courts of Tanzania have a demonstrated track record of exercising proper oversight in respect of Police conduct, and of imposing criminal or civil consequences as appropriate in cases involving members of the Tanzania Police Force.

(1) Criminal Proceedings

74. Any contention that prosecutors lack the capacity to pursue criminal cases against members of the Tanzania Police Force, or that the Tanzanian judiciary is incapable of upholding the law in such cases, is simply wrong. As a result of my career as a Judge of the High Court, a Justice of Appeal and ultimately the Chief Justice of Tanzania, I am aware of a number of criminal proceedings brought against members of Tanzania Police Force.

75. One such case is ***Director of Public Prosecutions v. ACP Abdallah Zombe and 8 others***, [2016] TZA 562 (16 September 2016), which was decided by the Court of Appeal during my tenure as Chief Justice. Three senior members of the Tanzania Police Force, including an Assistant Commissioner of Police, were charged criminally and prosecuted in the High Court in connection with the deaths of four civilians they arrested on suspicion of robbery (10 other members of the Tanzania Police Force were also charged and prosecuted). One of the accused died; the case against the remaining 12 proceeded to trial. After the prosecution closed its case, the High Court determined that three of the accused had no case to answer. The remaining nine accused were acquitted at the conclusion of the trial. The Director of Public Prosecutions appealed to the Court of Appeal, and ultimately pursued the appeal with respect to four of the accused. On appeal, one of the three senior members of the Tanzania Police Force was found guilty of murder. The acquittals of the other accused were upheld on appeal.

76. Another recent example is the case of ***Ex. G2434 PC George v. R***, [2022] TZCA 609, in which a Police officer was convicted of drug-related charges and sentenced to life imprisonment. His appeal to the Court of Appeal was dismissed.

(2) Civil Proceedings

77. The Government of Tanzania and its various departments and institutions, including the Tanzania Police Force, enjoy no immunity from civil claims. As noted above, the *Government Proceedings Act* prescribes procedures for suits against the Government, including the Tanzania Police Force.

78. In fact, the Courts of Tanzania regularly adjudicate cases against State or Public departments and institutions. In my experience, the Courts do so fairly and

impartially, even where the conduct at issue may be unflattering of, embarrassing to or result in a finding of significant liability against the Tanzania Police Force or another State actor.

79. By way of example only, significant cases in which claims have been successfully prosecuted against the State include the following:

(a) ***The Attorney General v. Roseleen Kombe*** **(High Court of Tanzania, Moshi, Civil Case No. 80 of 1999; Court of Appeal of Tanzania, Civil Appeal No. 80 of 2002).** In this case, a widow (who was also the administratrix of the estate of the deceased) sued the Government of Tanzania on her own behalf and on behalf of her five daughters, the deceased's mother, and two grandchildren, following the killing of her husband (the former Director-General of Intelligence of the armed services) by two members of the Tanzania Police Force in the course of their employment. The High Court awarded damages of TZS 300 million in favour of the Plaintiff against the Government. On appeal, the Court of Appeal varied the award of damages to TZS 200 million.

(b) ***Sheikh Mohammad Nassoro Abdulla v. Regional Police Commander, Dar es Salaam and 2 others***, [1985] TLR 1. In this case, the High Court quashed a deportation order issued by the President of Tanzania and ordered the release of the Applicant from Police custody.

(c) ***Elizabeth Ndambala v. Police Force and Others*** **(High Court of Tanzania, Dar es Salaam, Misc. Civil case No. 39 of 2020).** In this case, the Applicant commenced proceedings against a number of Government departments in connection with the allegedly unlawful termination of her employment. The Applicant was awarded costs, as well as certiorari and mandamus orders against the Respondents.

(d) ***Baco and Ayub Co. Ltd. v. The Permanent Secretary, Ministry of Defence and National Service and Others*** **(High Court of Tanzania, Commercial Division, Commercial Case No. 40 of 2015).** In this case, a local company in Tanzania successfully sued the Army for breach of contract for supply of "ready to eat" meals. The High Court awarded the Plaintiff more than TZS 5 billion plus interest.

(e) ***JV Tangerm Construction Co. Ltd. & Technocombine Construction Ltd v. Tanzania Ports Authority and the Attorney General*** **(High Court of Tanzania, Commercial Division, Commercial Case No. 117 of 2015).** In this case, two construction companies successfully sued the Tanzania Ports Authority ("**TPA**"), a Government entity, for breach of contract in connection with the construction of container depots at ports in Dar es Salaam and Tanga. The Court ordered the TPA to pay the Plaintiffs a total of approximately TZS 15.1 billion plus interest.

(f) ***Laemthong Rice Co. Ltd. v. Principal Secretary, Ministry of Finance, Zanzibar*** **(Court of Appeal of Tanzania, Civil Appeal No. 259 of 2019).** In this case, the Court of Appeal ordered the Government of Zanzibar through its Principal Secretary, Ministry of Finance to pay a company approximately US$69 million plus interest for rice that had been supplied 37 years earlier but had not been paid for.

80. The procedure for the execution of a decree against the Tanzania Police Force is governed by the *Government Proceedings Act*. Pursuant to Section 16 of that statute, such a decree is treated as a decree against the Government and is satisfied by submitting the decree to the Permanent Secretary of Treasury or other Government accounting officer as may be appropriate, who is required to pay the relevant amount along with any interest that is lawfully due.

81. The Government of Tanzania is obligated to honour Orders made against it, save where a stay of execution is granted either by the High Court or by the Court of Appeal pending appeal. In my experience, the Government abides by that obligation.

(iv) Access to Justice

82. Articles 13(3) and (6) of the Constitution guarantee access to justice and to a fair hearing as part of the basic rights of all Tanzanians. This constitutional guarantee is, in my experience, borne out in the actual operation of the legal system and of the Judiciary.

83. In my view, the Plaintiffs in the Ontario proceeding would have ready access to justice in Tanzania if they chose to pursue it. There are no significant hurdles that would prevent them from commencing and pursuing claims in the Courts of Tanzania. Three aspects of access to justice are particularly relevant to my opinion in this regard: (i) the availability of the judicial network and resources throughout Tanzania, including in remote areas, such that litigants can commence and participate in legal proceedings; (ii) the costs of accessing the legal system; and (iii) the timeliness of judicial proceedings in Tanzania. I discuss each of these aspects below.

(1) Availability of the Judicial Network and Resources

84. I have been asked by Davies to assume that that the damages sought by the Plaintiffs in the Ontario proceeding will be greater than the upper limit of the pecuniary jurisdiction of the subordinate courts of Tanzania. As a result, if the Plaintiffs were to assert claims in Tanzania in respect of the alleged incidents, those claims would be heard and adjudicated in the High Court. I note as well that if the Plaintiffs were to assert claims against the Tanzania Police Force (and the Attorney General) as co-defendants, the High Court would have exclusive jurisdiction to determine those claims.

application by a party, allow proceedings to be conducted remotely". Rule 5(1) further provides that the Court may direct a remote hearing "where a party, his representative or a witness lives outside or within the jurisdiction of the court and his attendance cannot be procured without undue delay or unreasonable cost". Remote hearings may also be directed for health reasons or "for any other reason that the court considers necessary and appropriate".

92. Where a proceeding is conducted remotely, the Court can appoint a remote proceedings assistant to guide the parties or witnesses in using technological devices so that the hearing can proceed efficiently and effectively. The appointment and functions of a remote proceedings assistant are governed by Rules 6 and 7 of the *Judicature and Application of Laws (Remote Proceedings and Electronic Record) Rules, 2021*. As set out in Rule 17, the Court may direct that proceedings be recorded electronically and preserved in electronic devices or facilities approved by the Judiciary that assure the accuracy and trustworthiness of the proceedings.

(2) Costs of Accessing the Legal System

93. In my opinion, the Plaintiffs' economic means will not preclude them from commencing legal proceedings in Tanzania.

94. In ***Julius Ishengoma Francis Ndyanabo v. Attorney General***, [2004] TLR 14, the Court of Appeal of Tanzania interpreted the right of access to justice broadly by holding that this right should not be curtailed by the requirement to pay a Court fee or to deposit security for costs. The Court of Appeal further held that indigent parties should not be denied the right to access the judicial system in Tanzania due to their economic inability to pay a Court fee or to deposit security for costs.

95. High Court fee rates are prescribed by the *Court Fee Rules, 2018* and are generally affordable. Moreover, indigent parties may apply for a waiver in whole or in part of Court fees, pursuant to Rule 6 of the *Court Fee Rules, 2018*. In my experience, such waivers are granted whenever a party can demonstrate that they do not have the financial means to pay a prescribed fee. A party who is receiving legal aid is automatically exempted from paying Court fees associated with legal proceedings instituted by that party, as set out in Rule 9 of the *Court Fee Rules, 2018*.

96. Parties who cannot afford to retain counsel can seek legal aid by approaching legal aid providers directly, or by asking the relevant Court to appoint a free legal aid provider for them. The provision of legal aid in civil proceedings is governed by the *Legal Aid Act, 2017* [Cap. 21 R.E. 2019] and the *Judicature and Application of Laws (Legal Aid in Civil Proceedings) Rules, 2019*. Notably, legal aid is not restricted to criminal matters. Courts can also assign a legal provider to provide legal aid to an indigent party in a civil matter.

97. There are several legal aid providers in the country. They include, without limitation, the Legal and Human Rights Centre, Tanzania Women Lawyers

Association, Women in Law and Development in Africa, Women's Legal Aid Centre, National Organisation for Legal Assistance, Comprehensive Community Based Rehabilitation in Tanzania, Lawyers Environmental Action Tanzania, Legal Services Facility Tanzania, University of Dar es Salaam Legal Aid Committee, and the Tanganyika Law Society.

98. Legal aid providers in Tanzania are funded by various organizations and entities, both local and international. Based on the Legal Aid Report 2017 published by the Tanzania Network of Legal Aid Providers, in the past one international source of funding has been the Canadian International Development Agency.[1]

99. In my experience, legal aid providers in Tanzania prioritize granting legal aid to vulnerable litigants whose claims raise allegations of human rights abuses. Because of the nature of the claims asserted by or on behalf of the Plaintiffs in the Ontario proceeding, there is high likelihood the Plaintiffs would obtain legal aid—either directly or by asking the High Court to appoint a legal aid provider—if they were to assert claims in Tanzania in respect of the alleged incidents in question. That is so even if the Plaintiffs cannot demonstrate that they are indigent.

100. Although a "loser pays" costs rule is applicable to civil proceedings in Tanzania, a party granted legal aid cannot, by virtue of Section 31 of the *Legal Aid Act, 2017*, be required to pay costs if they lose a case other than in exceptional circumstances. However, Section 30 of the *Legal Aid Act, 2017* gives a party under legal aid or otherwise exempted from payment of Court fees the right to claim costs if they are successful in litigation, provided that the legal aid provider may deduct from any such award costs incurred by the provider to represent the indigent party.

(3) Timeliness of Justice

101. Timely justice is a constitutional right in Tanzania. The Courts are required by Article 107A (2)(b) of the Constitution "not to delay the dispensation of justice without reasonable ground".

102. This constitutional right is reflected in procedural rules governing legal proceedings, the operations and policies of the Tanzanian Judiciary, and applicable laws.

103. To give effect to the constitutional right to timely justice and to reduce case backlogs, court-annexed alternative dispute resolution has been made compulsory in civil proceedings in accordance with Part C of Order 8 of the *Civil Procedure Code* [Cap. 33 R.E. 2002]. Order 8, Rule 22(3) of the *Civil Procedure Code* mandates that proceedings must be judicially concluded within 24 months of the date of failure of alternative dispute resolution. Section 28 of the *Civil Procedure Code* imposes a duty on the courts to deliver their decisions within a period of 90 days from the date of conclusion of the relevant proceedings and within 60 days in

[1] The Legal Aid Report is accessible online at www.tanlap.or.tz/publications/publications/. The relevant excerpt of the Legal Aid Report is also included in Appendix B to this Report.

in Tanzania. Even though the Defendants did not have a contract with the Plaintiff, the High Court took jurisdiction and decided the suit in favour of the Plaintiff.

112. The Courts of Tanzania have, on any number of other occasions, taken jurisdiction in cases involving foreign defendants. In the case of ***Commissioner General, Tanzania Revenue Authority v African Barrick Gold Plc*** (Court of Appeal of Tanzania, Civil Appeal No. 144 of 2018), for instance, the Court of Appeal determined that even though the Defendant was a holding company incorporated in the United Kingdom, it was a resident of Tanzania for the purposes of the *Income Tax Act, 2004*. In ***Shose Sinare v Stanbic Bank Tanzania Ltd and ICB Bank PLC*** (High Court of Tanzania, Civil Case No. 34 of 2016), the High Court was prepared to assert jurisdiction over a limited liability company incorporated in the United Kingdom under the laws of England, holding that the place where a cause of action arose extended to a place where the effect of the wrongful act was felt. The High Court determined, however, that it lacked pecuniary jurisdiction to entertain the matter.

113. In addition, there are a number of cases in which the Courts of Tanzania have taken jurisdiction over local affiliates of foreign mining companies and found them liable for wrongful acts or omissions. For instance:

(a) ***North Mara Gold Mine Limited v. Emmanuel Mwita Magesa*** **(Court of Appeal of Tanzania, Civil Appeal No. 271 of 2019).** In this case, the Respondent pursued a claim against North Mara Gold Mine Limited based on injuries he had allegedly suffered due to the actions of employees of the company. While the Respondent ultimately was unsuccessful before the Court of Appeal, the Judgment of the Court of Appeal makes clear that his claims were thoroughly scrutinized and considered carefully by multiple levels of Court in a fair and even-handed manner.

(b) ***John Barnaba Machera v. North Mara Gold Mine Limited*** **(Court of Appeal of Tanzania, Civil Appeal No. 204 of 2019).** In this case, the Appellant filed a land claim against North Mara Gold Mine Limited but lost due to the expiry of a limitation period. The Court of Appeal allowed the appeal and ordered the Appellant's suit against North Mara Gold Mine Limited to be heard on the merits.

(c) ***Hussein Said Kayagila v. Bulyanhulu Gold Mine Limited*** **(Court of Appeal of Tanzania, Civil Appeal No. 508 of 2021).** In this case, the Appellant was successful in a wrongful dismissal action against Bulyanhulu Gold Mine Limited. In an initial arbitral proceeding, the Appellant was awarded six months' pay, or approximately TZS 9.9 million. He applied unsuccessfully to the High Court to have the award revised upward. On appeal, however, the Court of Appeal found that the sum awarded to the Appellant at trial was insufficient and, relying on domestic and foreign authorities, ordered 20 months' salary as remuneration.

(d) ***North Mara Gold Mine Limited v. Sinda Nyamboge Ntora*** **(Court of Appeal of Tanzania, Civil Appeal No. 457 of 2020).** In this case, North Mara Gold Mine Limited was successfully sued in a dispute over residential property, and was ordered by the High Court of Tanzania to pay the Respondent damages of TZS 144 million plus interest at the rate of 7% per annum from the date of judgment until the date of payment in full. Although North Mara Gold Mine Limited attempted to appeal the judgment, its appeal was struck out for being time-barred.

114. I understand that North Mara Gold Mine Limited and Bulyanhulu Gold Mine Limited own the North Mara Gold Mine and Bulyanhulu Gold Mine, respectively, and that both are partly owned by the Government of Tanzania pursuant to an agreement that was announced publicly in late 2019. The cases referred to above provide further confirmation that members of the Tanzanian Judiciary can and do rule against the interests of the State in civil proceedings.

115. In my view, the Courts of Tanzania would take jurisdiction if the Plaintiffs in the Ontario proceeding were to commence civil proceedings in Tanzania in respect of the alleged incidents. That is particularly so if they were to name one or more members of the Tanzania Police Force, the Police Force itself and/or North Mara Gold Mine Limited as Defendants. I reach this conclusion based on my understanding that: (i) the Plaintiffs were and are residents of Tanzania; (ii) the Plaintiffs who claim to have been injured sustained their injuries in Tanzania; (iii) all of the deceased persons that are the subject of claims in the Ontario proceeding were residents of Tanzania and died in Tanzania; (iv) the incidents in question are said to have occurred in Tanzania; (v) the claims pertain to the alleged acts and omissions of members of the Tanzania Police Force and/or North Mara Gold Mine Limited; and (vi) the North Mara Gold Mine is operated by North Mara Gold Mine Limited, which is a Tanzanian company.

F. Dependants of Deceased Persons Can Assert Wrongful Death Claims

116. There is no doubt that the Plaintiffs who claim to be relatives and dependants of deceased persons would be able to assert wrongful death claims in Tanzania.

117. The ability of relatives of deceased persons to advance wrongful death claims is governed by the *Law Reform (Fatal Accidents and Misc. Provisions) Act*. This statute provides standing for dependants of a deceased person to pursue claims for damages the deceased person would otherwise have been entitled to in circumstances where the deceased person's death has been caused by a wrongful act. The term "dependant" is defined broadly in this statute to include the wife, husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother and half-sister of the deceased person, as well as an infant child whom the deceased person had accepted as a member of their family and every other person who was, on the death of the deceased, entitled to succeed to the property of the deceased (otherwise than under will) in accordance with the law of succession

TAB 19

REPLY EXPERT REPORT OF CHIEF JUSTICE OTHMAN

I. INTRODUCTION

1. I delivered an Expert Report in connection with this proceeding on October 2, 2023.

2. I have reviewed the three responding Expert Reports relied upon by the Plaintiffs. I will largely confine this Reply Report to addressing the most glaring errors contained in the Expert Report of Donald Omondi Deya. I take exception to Mr. Deya's efforts to impugn the independence and integrity of the Tanzanian judicial system. His assertions do not accord with my extensive first-hand experience.

3. I have listed in Appendix A the materials I have relied upon in reaching the conclusions set out in this report.

4. My silence with respect to any specific statement made by Mr. Deya, Mr. Kambole or Mr. Oleshangay should not be construed as agreement with that statement.

II. ROLE OF THE PRESIDENT IN JUDICIAL APPOINTMENTS

5. The unfortunate approach taken by Mr. Deya is perhaps best exemplified in paragraph 98 of his Expert Report, in which he speculates that "one cannot rule out the possibility of interference in cases in which the powerful have an interest, be they the government, or the country's political, bureaucratic or economic elite". That speculative assertion is divorced from the reality I experienced as a member of the judiciary of Tanzania for more than 12 years, including nearly nine years on the Court of Appeal and more than six years as Chief Justice of Tanzania.

6. A central complaint advanced by Mr. Deya is that the President of Tanzania appoints senior judicial officers, including the Chief Justice, Justices of Appeal, High Court judges, Chief Court Administrators, Chief Registrar, Registrar of the Court of Appeal, the High Court Registrar and majority of the members of the Judicial Service Commission. That complaint lies at the core of his argument that "by its very establishment under the Constitution of the

TAB 20

Court File No. CV-22-00690649-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

OPHIA 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; PASCOMAREMBELA MWITA; NYAHELI MARWA NYAKORENGA; CHRISTOPHER JHOMUMAKENDE; RANGE MWITA RANGE; AND FREDY CHACHA WAMBURA LEMA

Plaintiffs,

- and -

BARRICK GOLD CORPORATION

Defendant.

--- This is the Cross-Examination of MOHAMED CHANDE OTHMAN, upon his Affidavit sworn October 2, 2023, taken via Veritext Legal Solution Canada's Zoom virtual platform, with all participants attending remotely, on the 14th day of May, 2024.

---

cities."

Is that an accurate transcription of your comments?

A. Yes, (inaudible).

COURT REPORTER: Sorry, could I have that repeated, please.

THE WITNESS: Yes, that was the situation then pertaining.

BY MR. FIORANTE:

41 Q. Carrying on at 8:01 of the transcript:

"So, in terms of what we call ratio, advocate population ration in Tanzania, we have one advocate for every 82,000 people. South Africa which has almost the same population as us has one advocate for 2,500. The South African population is about almost the same as us."

Is that an accurate transcription of your comment?

A. Yes, it is. It is also pertaining at that time.

42 Q. And then at page 8 of the transcript, starting at the time stamp 8:30:

"So my point is, your future admission and enrolment as advocates, Tanzania would still be probably suffering from under-lawyering, not over-lawyering but maybe also misplaced lawyering, because we will be most of the time in major cities, but not in rural areas."

I'll stop there. Is that an accurate transcription of your remarks?

A. Yes, it is. It says what it says.

43 Q. But I believe the last sentence, which in the transcript reads:

"Again as I said, we have a lawyer gap."

I believe in the video you said "we have justice gap." Do you recall that?

A. Yeah, probably yes.

44 Q. Thank you. Now, sir, do you recall giving a talk on April 16th, 2024 for the strategic -- sorry, The Centre for Strategic Litigation's launch of the 2022 Public Law Yearbook?

A. Yes, I recall that.

the court, but they are also -- for example, those accused who are charged with rape, they don't get legal representation from the court.

So, you have to look at a case-by-case basis to say whether, you know, one has legal representation. It's not like everybody doesn't have legal representation. So there are those who have legal representation, there are those that don't have legal representation depending upon the circumstances, whether it's criminal, whether it's civil, and so on.

80 Q. In your experience, are the issues that you just described unique to Tanzania or within Africa?

MR. FIORANTE: That's a leading question.

BY MR. FRANKEL:

81 Q. It's not. You need to answer the question.

A. No, it is not. I think the problem of access to justice, the problem of legal representation is across Africa because first, in terms of numbers, we have less number of lawyers given the population. The ratio of the population to lawyers is -- is not very high, so that is one

aspect that, you know.

The other aspect which is mentioned here in terms of legal representation which is also, of course, Africa. Many lawyers are in urban areas than there are in rural areas, so this is another issue for legal representation.

You have, for example, also that Tanzania has developed over a number of years now, we have, like, over 15 universities in which students receive law degrees. Years back, we didn't have that.

So, not all African countries, for example, where you have -- you have sufficient law schools, where you have graduates, that is why, for example, in Tanzania we have a strong or developing paralegal profession, paralegal to cover the gap between the qualified lawyer and somebody who can give Legal Aid advice, so that's why we have here legislated in our Legal Aid Act paralegals who assist indigent persons in terms of advising them about marriage issues, on inheritance issues, and so on.

82 Q. Do you recall that, again, early in the cross-examination, Mr. Fiorante asked you whether you agree that there is a deficit of timely

TAB 21

EXPERT REPORT OF PROFESSOR LEONARD PAULO SHAIDI

PART I - INTRODUCTION AND TERMS OF REFERENCE

A. SCOPE OF MY MANDATE

1. I have been retained by Davies Ward Phillips & Vineberg on behalf of Barrick Gold Corporation as an independent expert on matters pertaining to Tanzanian law and the Tanzanian judicial system. In particular, I have been asked to consider and provide my opinion on the following specific issues:

   a. the independence of the Judiciary of Tanzania;

   b. the impartiality of the Judiciary of Tanzania in cases involving claims against the Tanzania Police Force or the State;

   c. the legal status of the Tanzania Police Force and its independence as a matter of Tanzanian law;

   d. the types of records that Tanzania Police Force are legally required to create and maintain in connection with investigations into police–related deaths, the location of those records and the manner in which access to those records can be obtained; and

   e. key characteristics of the Tanzanian legal process that bear on access to justice. These include issues such as the location of courthouses and their proximity to villages surrounding the site of the North Mara Gold Mine, the ability of local judges to hear evidence and submissions in Swahili, the

d. To the extent that the Plaintiffs were to require legal assistance in pursuing their claims in Tanzania, there are a number of organisations in Tanzania that actively provide legal aid services (including the Legal and Human Rights Centre).

e. The Courts of Tanzania are equipped and willing to receive evidence by videoconference where necessary or appropriate. The Musoma High Court Centre is a modern and well-developed facility that provides all of the translation, interpretation and secretarial services required to facilitate the fair and effective conduct of civil proceedings.

f. As described above, the trial process in proceedings before the High Court is efficient. If they elect to pursue claims in the High Court of Tanzania, the Plaintiffs would likely be able to obtain a judicial determination on the merits within two years of filing their claims.

g. The procedure for instituting a suit in Tanzania is simple and straightforward. Order VII of the *Civil Procedure Code* requires a suit to be initiated by way of a document known as a Plaint, the contents of which are similar to the Statement of Claim filed by the Plaintiffs in Ontario. It would require relatively little additional effort for the Plaintiffs to prepare a Plaint and file it with the High Court in Musoma.

TAB 22

REPLY EXPERT REPORT

OF PROFESSOR LEONARD PAULO SHAIDI

April 5, 2024

36. Although these witnesses may believe that the Tanzania Police Force has not conducted such investigations, I am struggling to understand the basis for that belief. The fact that Ms. Karume, Ms. Irondo and Mr. Nyakina do not know whether the Police have investigated a particular matter does not mean that no such investigation has occurred. As a general matter, there is no way for members of the public to know what matters the Tanzania Police Force have investigated or are now investigating. The Police are under no legal obligation to disclose publicly the existence or details of specific investigations, and generally do not do so. Nor am I aware of any law or guideline in Tanzania that would require the Police, as a standard practice, to apprise alleged victims of crimes, their relatives or witnesses to an incident of investigative steps the Police have taken, might take or intend to take.

37. In addition, the absence of criminal charges or convictions in respect of a particular incident does not mean that the matter was not the subject of a Police investigation.

38. In this regard, the final decision to charge or not to charge an individual following the conclusion of an investigation lies with the Director of Public Prosecutions ("**DPP**"). It does not lie with the Tanzania Police Force. Decisions by the DPP not to charge and prosecute a particular person are generally not communicated to victims, family members, witnesses or members of the public. Typically the DPP informs only the investigating agency of decision not to bring a prosecution.

39. Communications of that nature between the DPP and the Police are confidential. As a matter of practice, police case files are forwarded to the DPP with a covering

TAB 23

Court File No. CV-22-00690649-0000
ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

--- This is the Cross-Examination of LEONARD PAULO SHAIDI, on his affidavits sworn October 2, 2023, January 4, 2024 and April 5, 2024 respectively, taken at the offices of the Hyatt Regency, 24 Kivukoni Road, Dar es Salaam, Tanzania, with participants attending both in person and virtually, on the 16th day of May, 2024.

Statement of Claim, please. Do you recognize this to be the Statement of Claim issued by Sophia Matiko John and others in the Superior Court of Justice of Ontario as against Barrick Gold Corporation?

A. Yes.

23 Q. If I could direct you to paragraph 154 of the Statement of Claim, please. You understood from your review of the Statement of Claim that the Plaintiffs in Canada are advancing claims against Barrick Gold Corporation for aiding and abetting breaches of customary international law?

A. Yes.

24 Q. And did you understand that that claim was based on a 2020 decision of the Supreme Court of Canada in the case of Araya v. Nevsun?

A. I've not looked into that case.

25 Q. Okay. So that's not a case that you reviewed in this matter?

A. No, I didn't.

26 Q. Okay. And, sir, is it your -- in your report, would you agree with me that you do not provide any analysis of the jurisprudence in Tanzania as to whether a claim for damages can be

based on customary international law?

A. No, I did not do that, but I know that you -- without saying customary international law, there are other laws under which those claims can be pursued within the legal system of Tanzania.

27 Q. Yes, sir, but I want to be very specific. The claims in Canada are advanced both under tort law; correct?

A. Yes.

28 Q. And for breach of customary international law; correct?

A. Yes.

29 Q. And my questions are focussed on the issue of customary international law. Would you agree with me that you present no analysis in your expert report with respect to whether claims in Tanzania can be based directly on customary international law?

A. I did not do that because my concentration was on cause of action, cause of action for what happened, and the cause of action is justiciable under the Tanzanian legal system.

30 Q. Yeah, I think you mean -- I'll clarify on the transcript. You mean justiciable?

A. Yes.

investigated, they never investigated, at what stage of investigations have they reached. This is information known to the police.

74 Q. But in your report, you stated that you had difficulty understanding the basis for her belief that no investigation had been done, right? That's what you said?

A. I think I said that I don't necessarily accept what they stated because I -- I used the word "allegation", it's what she alleges. But I can't say that I believe what she said because she believes that what she said.

75 Q. And let's just look at paragraph 36 of your reply report, please. And it's the second part of the report, and I think you have stressed this in your evidence already today. And this says:

> "As a general matter, there is no way for members of the public to know what matters the Tanzania Police Force have investigated or are now investigating."

That's your point; correct?

A. That's correct.

76 Q. And that:

"The Police are under no legal obligation to disclose publicly the existence or details of specific investigations, and generally do not do so."

Correct?

A. Correct.

77 Q. And you're not:

"[...] aware of any law or guideline in Tanzania that would require the Police, as a standard practice, to apprise alleged victims of crimes, their relatives or witnesses to an incident of investigative steps the Police have taken, might take or intend to take."

Correct?

A. Correct.

78 Q. So the Tanzanian law is very clear on that point; correct?

A. Yes.

79 Q. The police are under no obligation to inform the family of anything relating to a possible investigation into the shooting of a

family member?

A. It's not the same as saying that they have no -- they cannot have access to this information. There is ways of accessing this type of information.

80 Q. That was not my question, sir.

A. Okay.

81 Q. My question was, the opinion you've presented in paragraph 36 was that Tanzanian law is clear that the police are under no obligation to disclose that information to the family?

A. Yes.

82 Q. Okay. Are you familiar with the United Nations principles for the investigation of extrajudicial executions?

A. I've read these principles before, but I cannot remember everything.

83 Q. Well, we'll pull them up on the screen so we can take a look at them together.

MS. O'SULLIVAN: Sorry, just for the transcript, I think at 26:09 it says "I have read these principles before, but I cannot", and then he said "remember everything".

MR. FIORANTE: Okay.

263 Q. And can we fairly assume that you have not taken on any of those cases; otherwise, you would have listed them as relevant experience?

A. Yeah, but I've taken cases against state interests, not necessarily human rights, and I don't know cases -- any case where an advocate has failed to take up a case against the state related to human rights. There are several cases on human rights which are even now pending in Court.

264 Q. And just to be clear, nowhere in your report do you identify any cases that have been filed in Tanzania against state actors in relation to fatal shootings in the North Mara Mine region; correct?

A. Correct.

265 Q. Sir, when I first raised the question regarding the advocates, you indicated that it was your understanding that Mr. Tairo was going to address the matter of the disciplinary proceedings against those lawyers?

A. I said I have read Mr. Tairo's statement, and I was not even sure. But you know, I've read these statements.

266 Q. Did you read it prior to preparing

TAB 24

INSTRUCTION AND ISSUES ADDRESSED IN THIS REPORT.

Part A. Qualifications, Expertise and Experience

1. I was born, bred in Ngorongoro, Arusha in Tanzania. I now reside in Arusha within the United Republic of Tanzania

2. In 2015, I obtained a law degree from University of Mzumbe in Morogoro region, Tanzania.

3. I subsequently earned a post graduate Diploma in Legal practice from the Law School of Tanzania in 2017 and was admitted as Advocate.

4. I started my legal practice career as legal officer with Ramatlaw and Legal Consultancy, a law firm based in Arusha from 2015 to 2017

5. I joined the Legal and Human Rights Centre at the Arusha legal Aid office in 2018 -2019 as attorney responsible for legal aid.

6. From 2019-2021, I was the National Coordinator for Tanzania civil society consortium on election observation (TACCEO) for observation of the conduct of Tanzania 2019 local government and 2020 general elections. TACCEO is a loose network of 28 civil societies organisation working on improved governance systems in Tanzania.

7. In 2021, I was responsible for restructuring and rebuilding the status and image of Tanzania Centre for Democracy (TCD). TCD is an NGO formed by political parties represented in the Tanzania national parliament. I was responsible for bringing rival political parties together to discuss and renegotiate new paths for restructuring of the Tanzanian governance system.

8. From 2022, I transferred to the Arusha Legal Aid Clinic of the Legal and Human Rights Centre where I am responsible for litigation and legal representation of legal aid clients.

9. At the Legal and Human Rights Centre, I preside over the land cases unit in the Arusha office. As described in more detail below, our work is focused on legal education and empowerment of clients as well as representation in litigation. In 2023, I was responsible for empowerment, legal advice, or legal representation for approximately 4000 legal aid clients, the majority of which relate to land issues.

10. At the Legal and Human Rights Centre, I act as the focal point for matters related to the emerging human rights situation in northern Tanzania. At present, much of my human rights work focuses on forced displacement of Masai tribespeople from their traditional grazing lands. I regularly litigate matters in the High Court.

11. Throughout my career as a practicing Advocate and through research, I have been involved in number of matters of human rights significance, involving police brutality, disregard of law and order by state agencies.

12. In my eight years with the Legal and Human Rights Centre, I have been extensively involved with fact findings related to police brutality in different parts of the United Republic of Tanzania.

13. I have written about and litigated cases that involve extra-legal operations by security agencies in Tanzania.

14. In 2022, I acted as an independent consultant in exploring the Tanzanian constitutional reform stalemate with Change Tanzania.

15. I have published numerous articles, conducted tens of interviews on matters of significant importance to rule of law, human rights, democracy, access to justice, judicial independence, law, and order.

16. I am the recipient of the 2023 Weimar Human Rights award which was awarded on 10th December 2023 as part of my contribution in addressing human rights issues in Tanzania. Weimar Human Rights Award is issued by Weimar City in the Federal Republic of Germany.

Part B. Materials Reviewed in Preparation of Opinions

17. In preparing my opinions on the issues which I was asked to address, I have been guided by the Constitution of United Republic of Tanzania, Civil Procedure Code Chapter 33 R: E 2019, The Law of Evidence Act, Law of Limitation Act and other legal enactments in force in United Republic of Tanzania. I have also been guided by judicial pronouncements of the High Court and Court of Appeal of Tanzania in respect of issues I have been asked to address to as set out in Parts C through G of this Report. I have also relied on different materials, information whose content has been appended to this report. A list of materials referred to in this Report is attached to this Report as **Appendix A.**

Part C : Summary of Opinions on Issues Raised.

18. I have been asked to address the issues relating to the following matters:

    (a) Discovery procedures for civil actions in Tanzania;

    (b) Legal Fees and Disbursements including availability of legal aid in civil cases;

    (c) Jurisprudence involving police and private security;

    (d) Length of Proceedings;

    (e) Customary International Law.

19. In response to the civil procedure issues which I have been asked to address, my opinion is that the rules of civil procedure in Tanzania provide only for very limited forms of discovery. Specifically, there is no requirement to produce an affidavit of documents listing all relevant documents in the possession of a party or to disclose such documents

in the litigation. A party may bring an application to Court to require an opposing party to produce certain relevant documents in their possession, but the requested documents must be described with a high degree of specificity and there must be evidence that the documents are in possession of the party. A general request for production of documents, such as all e-mails or reports relating to an event or incident will be rejected as a "fishing expedition". Further, an application for documents may be blocked by a Minister of the government by lodging a certificate declaring disclosure of the requested documents as contrary to the public interest.

20. There is no right to question the opposing party prior to trial to seek evidence for use at trial. With leave of the Court, a party may issue interrogatories to an opposing party, but the interrogatories may not seek evidence which could be used to discredit the opposing party's case at trial.

21. There is no procedure to compel a company to produce records held by its subsidiary for discovery nor is there a procedure to compel production of documents from third parties for discovery.

22. In response to the issues regarding legal fees and legal aid which I have been asked to address, it is my opinion that contingency fees are not permitted in Tanzania and there is no government funded legal aid available to civil claimants. Legal aid may be available through NGOs, but the scope and depth of the service provided by NGO's is limited and highly dependent on available funding from donors. In my experience, most NGO's face overwhelming demands for legal assistance and therefore focus their resources on empowering claimants and enhancing their abilities for self-representation. In my opinion, it is extremely unlikely that any NGO would commit the necessary resources to provide full legal representation through to trial on a matter such as this. The reality is that many claimants are denied access to justice due to limited economic means. Many claimants cannot even afford the transportation costs to attend at a legal aid office or Court. Legal aid providers do not extend the costs to pay for transportation of the clients from home to court and back to home, and the legal aid providers do not extend the costs to pay for witness attendance in Court – in practice, the party to the case is responsible for that.

23. In response to the cases referred to by former Chief Justice Chande Othman regarding the ability of the claimants to obtain a fair trial in the courts of Tanzania, it is my opinion that the cited cases are highly selective and are not representative of the real risks and difficulties which the claimants would face in bringing a case which challenges important economic interests of the government or in bringing a case against the police for extra-legal conduct. The reality is there is no independent oversight of police and police rarely investigate allegations of police misconduct, so the matters never land in court. In my opinion, the Mwita case demonstrates how difficult it would be to prove a tort case against the mine and the police, given the limited discovery available under the rules of civil procedure.

perform his duty or do anything as an advocate under an advocate's client relationship.

(b) pay compensation to the client.

(c) refund money paid to him by the client for which work done was not commensurate with the fees; or

(d) offer an oral, written or published apology.

Response to Questions 7(a) and 7(b)

76. In answer to questions 7(a) and 7(b), contingency fees are illegal in Tanzania. The sources of the prohibition are set out above. Entering into a contingency fee constitutes professional misconduct. The consequences for professional misconduct include admonishment, payment of fines, suspension, or removal from the Advocates Roll.

Legal Aid and Pro Bono Representation

77. In my considered view, private law firms are not likely to accord these plaintiffs pro bono legal service if they were to file a similar suit in Tanzania Court. Pro bono representation is only mandatory in criminal cases where the Court assigns a lawyer to a case. There is no mandatory pro bono representation in civil cases.

78. There are fewer than 20 Advocates in the country who are routinely involved in litigating human rights and public interest cases. This is a very small number in relation to our population. I do not believe any of them would have the resources to take on a case of this complexity which will require extensive travel and fact finding.

79. Furthermore, human rights and public interest lawyers have been subjected to threats and intimidation for their work. I have received death threats for my work in 2022 in relation to my undertaking as a lawyer representing a community class action against highly invested interests of the state. From June 2022, I was forced to relocate from my home and ceased working out of our offices for a period of 6 months for security reasons. While I continued to work on cases, I tried to avoid establishing any predictable patterns of movement that would make it easier to locate me.

84. As I will explain below, it is also highly unlikely that any legal aid organization in the country would appoint an Advocate to provide legal representation through to trial in a case such as this. Throughout Mara region, there are only two registered legal aid providers and none of them provides legal aid on daily basis or systematically. In order to address the issues relating to legal aid in Tanzania, I have provided an overview of the legal aid system for civil cases.

85. Legal aid is provided by registered legal aid providers who have been registered by the Registrar of Legal Aid under *Section 6 of the Legal Aid Act*, supra and who have obtained a certificate of Registration in accordance with *Section 15 of the Legal Aid Act.* Intended legal aid providers must comply with the requirements under *Section 10(1) of the Act*, whereby the same must prove to have:

(a) Been registered under the relevant laws;

(b) Core function of the said Institution must be provision of Legal Aid Services;

(c) It has office premises and office facilities;

(d) It has not less than;

i. two advocates;

ii. one advocate and one lawyer;

iii. one lawyer and two paralegals;

iv. one advocate and two paralegals; or

v. three paralegals.

86. There is no requirement under the entire *Legal Aid Act* which requires the state to fund the legal aid providers. There is also no government funding for legal aid in Tanzania through any other statute or program. Legal aid providers are generally Non-Government Organizations and or community-based organizations whose funds mostly come from donors outside the United Republic of Tanzania and small amounts collected from members, if any, depending on the structure of the Legal Aid Provider.

87. For instance, Legal and Human Rights Centre[26] (LHRC) is funded by donors including the Norwegian Embassy, the government of Ireland International Development programme and Sweden Sverige[27].

88. The Tanganyika Law Society (TLS) bar association of Tanzania Mainland, founded in 1954 by an Act of Parliament[28] depends mostly on Annual Subscription fees and other contributions from its members to be utilized for provision of legal aid services.

[26] LHRC | LHRC Home (humanrights.or.tz)
[27] *Ibid*
[28] Tanganyika Law Society Ordinance 1954

89. There is no known legal aid provider that receives legal aid funding directly from Tanzania government and no private Advocates receive public funds in connection with legal aid in civil suits.

90. In my considered view, if the Plaintiffs were to file a similar claim in Tanzania, at their option, they can seek legal aid from legal aid providers. Depending on the priority of the legal aid provider, the service may be in the form of legal representation in Court, empowerment of the Plaintiff to represent themselves in Court or some other form of assistance depending on the resources available to the Legal Aid Provider. I believe like all the clients, if Plaintiffs seek legal assistance from legal aid providers in Tanzania, they will be accepted but the extent of legal representation in Court would depend on available resources at the time and number of clients being served.

91. In Tanzania while several organizations have been registered as legal aid providers, few provided systematic legal aid on a daily basis. For example, much of the legal aid is provided by paralegal units of registered legal aid providers. However, paralegal units do not provide direct representation in Court as the law does not allow paralegal audiences in Courts.

92. Not all organizations registered as legal aid providers work throughout the country. Only a few of the registered legal aid providers have multiple offices in different regions in the country. Many have very limited operations.

93. There are a small number of legal aid providers in Tanzania that include the Legal and Human Rights Centre, Tanzania Women Lawyers Association (TAWLA), Women Legal Aid Centre who in my opinion provide systematic legal aid. There is also Women in Law and Development in Africa (WILDAF), Tanganyika Law Society (TLS) who provides legal aid on selected cases.

94. Among the legal aid providers are the following:

(a) The Legal and Human Rights Centre has three legal aid offices in Kinondoni Dar es Salaam, Arusha and Dodoma. Arusha office serves Arusha, Kilimanjaro, Tanga, Manyara, Mara, Mwanza, Shinyanga, Kagera, Tabora, Kagera, Geita and Simiyu Regions. I provide a more detailed description of LHRC's operations below;

(b) I also understand, TAWLA has a regional office in Mwanza serving the Lake Zone (Mwanza, Shinyanga, Simiyu, Geita, Mara and Kagera). Limited resources may affect legal representation of all clients seeking legal representation. The distance from TAWLA nearest office to Musoma where the High Court is located is around 180 kilometers;

(c) My research with WiLDAF indicates that they do not provide comprehensive, systematic legal aid. Their legal aid is limited to industrial workers:

(d) In addition, Legal Services Facility Tanzania does not provide direct legal aid to clients, but only supports the work of paralegals;

(e) In my understanding beside organizations that provide remote or mobile legal aid, in Mara region there are only three legal aid providers that have their offices in Musoma to wit: Centre for Widows and Children Assistance (CWCA) with two lawyers, Legal and Social assistance Centre (LSAC) with one lawyer, and TLS Chapter. None of the three organizations provide legal aid systematically on a daily basis as is done by LHRC and TAWLA, for example. CWCA and LSAC works on empowerment of women's access to resources than legal representation in Court;

(f) I understand Tanganyika Law society does not have an established office in Musoma or Mara region that provides legal aid service. The TLS Musoma chapter works through lawyers with established offices in the area. In the 2022/2023[29] report, TLS indicates to have provided legal aid throughout the country in the following words:

> "TLS members were assigned a total of 102 dock briefs by the Judiciary to represent clients in criminal cases. Furthermore, TLS provided legal assistance to 263 beneficiaries."

95. In my opinion, 263 beneficiaries throughout a country with over sixty million people is a small fraction in relation to demand available. The small number of clients is likely due to the fact that TLS does not have a fully established legal aid system but instead works on legal aid on ad hoc basis.

96. Of the registered legal aid providers, LHRC is by far the largest and most established legal aid provider in Tanzania.

97. If the plaintiffs were to file a similar suit in the High Court at Musoma, Mara Tanzania, it's likely that the conduct of such case would be impeded by the economic situation of the plaintiffs. Throughout my 8 years working with legal aid, many clients cannot afford travel costs from home to Court and to the legal aid office to report on case status. I am aware that the TLS Musoma chapter does not have an office but works remotely with lawyers on few legal issues. There are two other two registered legal aid providers in Musoma, one with two lawyers and the other with one active lawyer. None of them provide daily systematic legal aid but instead work on special events such as law weeks among others.

98. I am aware, with the exception of Wema Bonifas case cited below, that LHRC has not litigated any case in Musoma High Court, or any Court situated in Mara region in the last two years. This fact is a result of the limited resources for lawyers' transportation to Musoma combined with unpredictable litigation timeframe. It's not likely that LHRC would accord a plaintiff full legal representation in Musoma or incur the costs necessary to support a case of this complexity for reasons which I will describe.

[29] https://tls.or.tz/annual-reports/

99. LHRC was established in 1992 and was registered as a legal aid provider in 1995. As mentioned above, it is funded entirely by donors, some of whom target their donations for specific purposes. For instance, the funding from Ireland is very much focused on women and children's issues.

100. LHRC has three departments. Our Advocacy department fulfills the main objective of LHRC by focusing on increasing public awareness and understanding of matters of public importance, such as constitutional reforms and governance. Another element within the Advocacy department is the legal aid sub-department. The main business of the legal aid sun-department is professional advice, empowerment for self-legal representation and for a small fraction of clients, Court representation. Under the legal aid unit, LHRC established a strategic litigation group, of which I am a part of, which is the team responsible for litigation of public interest cases particularly on public law matters.

101. Another department focuses on grassroots education on legal issues and empowerment for self-representation through working with paralegals who do not accord clients legal representation in Court. The corporate responsibility department deals with compliance issues by big companies in Tanzania.

102. LHRC's annual revenue is approximately US $2,500,000 which funds the entire organization across Tanzania, including all salaries and overhead. Most of the budget goes to the advocacy and empowerment departments. For 2024, the legal aid sub department has a budget of $50,000 for providing legal aid to approximately 20,000 clients annually and the strategic litigation unit has an annual budget of only $40,000, which is used for strategic litigation in public law. The framework of strategic litigation does not cover a case of this nature. The budget for legal aid is $2.5 per client per year.

103. LHRC has three offices (Dodoma, Arusha and Dar es Salaam). It does not have an office in the Mara region or the Lake Zone. The distance from the closest LHRC office to Musoma, where the plaintiffs would be required to file their case in Tanzania is 508 kilometers. This is significant because transportation costs in Tanzania are very high and many of our legal aid recipients cannot afford the transportation costs to attend at our offices or Courts. High transportation costs also impede LHRC's ability to go into remote communities to conduct investigations and gather information for legal cases. I work at Arusha legal aid office and as noted above, my work focuses on land issues and emerging human rights situations.

104. Much of LHRC's strategic litigation is focused on public law issues and constitutional challenges. Generally speaking, these cases are focused on legal issues and do not involve extensive fact finding. Most of the cases in these categories are brought as constitutional cases. Tort claims are dealt by LHRC as ordinary cases and fall within ordinary legal aid service provision that attract 20,000 clients annually, as stated above.

105. LHRC takes on approximately 18,000 to 22,000 individual legal aid cases every year. The vast majority receive assistance through capacity building and assistance with drafting court documents. In the year 2023 for example, I handled over 4000 clients, the

majority of whom were empowered for self-representation. I also assisted them in drafting legal documents. I represented only a small fraction of them in Court on highly controversial matters or in situations that may result in jurisprudential change.

106. The cases in which LHRC provides legal representation at Court usually do not involve extensive fact finding because there are not enough lawyers or resources to do this.

107. Sometimes LHRC engages external lawyers to work under the supervision of LHRC on public interest litigation particularly in challenging unconstitutional actions of the state or written law. Engagement of external lawyers is a mechanism to reduce transportation costs for internal lawyers to attend upcountry. Usually, there is no budget set to engage external lawyers on suits that are usually dealt with through legal aid.

108. For clients not represented in Court, the client is empowered to represent himself and bring feedback to the legal aid unit related to case status. It should be understood that empowered clients will not always make a good case as lawyers, and this may affect the case outcome.

109. At present, I am working on a number of high-profile cases involving government dispossession of the Maasai community. As noted above, these cases involve forced displacement of Maasai tribespeople from their ancestral lands[30] so the government can expand a national park and establish a game preserve which will effectively be a private hunting ground for UAE interests.

110. The government has used security forces to forcibly remove and arrest tribespeople and impound their livestock[31]. At times the security forces have used live ammunition to accomplish this[32]. My work involves challenging the legality of these actions including bringing applications to secure the release of individuals who have been detained improperly and without charge as part of our response to the emerging human right situation in this area.

111. My work at LHRC focuses on land dispute cases because of the potential to benefit large groups of claimants through a single action. Land cases do not involve extensive fact finding as it is relatively straightforward to establish a customary right to land or an improper taking of land through the clients' own description of events.

112. I have been involved in cases which require fact finding. For example, I investigated a case involving 14 instances of rape against primary school children by a single perpetrator. While a lawyer does not require permission to travel to meet with a client, permission may be required to conduct research on a case, such as attending the scene of

[30] Amnesty International, https://www.amnesty.org/en/latest/news/2023/06/tanzanian-authorities-brutally-violated-maasai-amid-forced-evictions/

[31] ASKARI WAMFANYIA HAYA WAZIRI MKUU LOLIONDO TAZAMA HADI MWISHO https://www.youtube.com/watch?v=wUCuP80Xcm8 see also Tanzanian authorities seen opening fire on Maasai people in game reserve dispute https://www.climatechangenews.com/2022/06/10/tanzanian-authorities-seen-opening-fire-on-maasai-people-in-game-reserve-dispute/

[32] Kaikai's Kicker | Tanzania, Arab trophy hunters and the shame of Loliondo evictions https://www.youtube.com/watch?v=kSafmZOZdyw

an incident and collecting evidence in the form of fact finding. In this situation that involved systematic rape of 14 primary school children in Basotu, Katesh, I was forced to secure permission from District Executive Director of Hanang' District for the purpose of interviewing a medical doctor who examined the victims. I was not allowed to conduct an interview but rather was required to leave the district within the timeframe provided by the district security committee.

113. In a different situation in Tarime District, I made a request for fact finding on an established Buffer Zone on the western part of Serengeti National Park. The request was turned down. These are just some of the practical difficulties involved in trying to collect information to support a case.

114. It's very unlikely that LHRC would take on a case of this nature through to legal representation at trial due to our limited budget, the distance from the nearest office in Arusha to Musoma and the unpredictable case lifespan. It would be very difficult for LHRC to investigate these cases and to secure evidence in the form of discovery that would be needed to support a fit case for the best interests of the plaintiffs given limited discovery procedure in Tanzania. As mentioned, LHRC does not have an office in Musoma so we would have to incur significant costs to attend court.

115. The case of **Wema S/O Bonifas @ Mgendi**, discussed below, demonstrates the difficulties of prosecuting a case that involves state machineries even in circumstances where evidence that may implicate the police is clearly within reach. It also demonstrates the difficulties of an individual or civil society investigating a matter that surround illegal action of the police.

116. It is unlikely that LHRC would engage a private Advocate for a case of this nature as such engagements have traditionally been on matters related to public law. It's not likely for LHRC to secure a lawyer who will be prepared to collect evidence and litigate on such a matter that would raise allegations of extra-legal conduct, including killings, by police. In the current situation in Tanzania, most private lawyers would not want to risk being targeted by the police or the state as has happened to lawyers who have acted against the state's economic interest in recent cases. In 2023, Advocate Mwabukusi was arrested allegedly for treason[33] in connection with the port deal between Tanzania-UAE. As stated above, Mwabukusi was referred to the Advocate Committee by the Attorney General. Before Fatma Karume suspended from practice, her law firm office was hit by an explosive and no investigation has ever been conducted[34].

[33] Dr Slaa, two others could face treason charges https://www.thecitizen.co.tz/tanzania/news/national/dr-slaa-two-others-could-face-treason-charges-4336140 see also Tanzania: Detained critics of UAE port deal must be immediately and unconditionally released https://www.amnesty.org/en/latest/news/2023/08/detained-critics-of-tanzania-uae-port-deal-must-be-immediately-and-unconditionally-released/

[34] Tanzania: Law firm hit by an explosion https://www.thecitizen.co.tz/News/Tanzania--Law-firm-hit-by-suspected-bomb-blast-/1840340-4071592-3oqkfx/index.html

decision of the Court which had dismissed his appeal, to be referred to the Full Bench of the Court. The two applications are distinguishable.

123. The Court of Appeal of Tanzania has on different occasions refused to exempt indigent persons from court fines. See for example the case of **Revenatha Eliwony Meena Vs Albert Eliawony Meena**.

124. In summary, if a person did not request legal aid services, the court will not inform the said person and he/she may at the end be judged for such failure to his/her detriment. I am not aware of any circumstances where the Court has once initiated itself and issued a certificate directing the legal aid provider to accord legal aid to indigent person in a civil suit. Practice has been that it is up to the indigent to inform the Court of their need for assistance and seek out legal aid. Some of the legal aid providers such as LHRC have established Court annexed legal aid to make it easy for client to access its legal service.

125. Indigent persons may be advised at the complaints desk in the Courthouse to approach legal aid providers for legal aid assistance, but no efforts will be made to ensure that person receives legal aid. It will still be upon the indigent himself to seek legal aid.

126. The Court may however provide assistance by scrutinizing the pleadings before admitting them and generally furnishing any necessary guidance. See **Simon Chatanda Vs Abdul Kisoma**[40].

127. LHRC has tried to establish Court annexed centers but the inability to set up computers, printers and a proper workspace made this unworkable.

128. The few cases referenced above describe how Tanzania Courts have on different occasions failed to embrace and or promote the need to provide legal aid service to indigent persons despite the law requiring the Court to certify the fact that one might have enjoyed said service while his case was being heard at the trial court.

129. In my opinion, even if the Plaintiffs seek out legal aid, it is highly unlikely that the legal aid provider would be able to provide legal representation by an Advocate through to trial. Most legal aid providers face overwhelming demand for assistance with only limited resources to respond and therefore focus on empowering and educating litigants to represent themselves. As explained above, LHRC is the largest and most established legal aid provider in the country, and from the nature of the case it would be difficult for the plaintiffs to collect necessary evidence to support the drafting of the case, nor would LHRC have available sufficient resources to guarantee through to trial legal representation.

130. The reality is that one of the greatest challenges for access to justice in Tanzania is a litigant's economic situation, as stated above. It affects their ability to choose lawyers of their choice, seek assistance from distant legal aid providers, payment of the cost for the case and travel to and from the Legal Aid office, or to Court to attend the Court case

[40] [1973] LRT no. 11

scheduling. Given my time in working with the Legal and Human Rights Centre, I have confronted countless cases of a client failing to visit the office to collect documents to file them in Court or failing to attend the case for hearing, citing economic hardship. Some of the cases have been dismissed for non-appearance because a party was not able to travel to attend the Court case due to economic hardship.

Costs of Litigating Civil Cases

131. In Tanzania, the costs for conducting civil litigation includes but is not limited to Court fees, instruction fees to counsel, disbursement and other costs related to the conduct of the case. In my experience the Court fees are the smallest fraction of the cost that a litigant may incur in the conduct of the case. As many cases take a long time to resolve, the most substantial costs incurred by a litigant in Tanzania is cost for attending cases in Court, as well as the fee to the Advocate for legal representation.

132. Section 31(1)(2)(3) of the *Legal Aid Act* provides to the effect that, where an aided person receives legal aid for civil proceedings and loses the case, the court shall not award an order of costs against the aided person, unless there are exceptional circumstances. The law further states that in determining whether there are exceptional circumstances the court may take into account: conduct that causes the other party to incur unnecessary costs; unreasonable refusal to negotiate a settlement or participate in alternative dispute resolution; misleading or deceitful conduct; or other conduct that abuses the processes of the court. In addition, the law under Sub Section (3) of Section 31 of the *Legal Aid Act*, provides to the effect that: Where costs are awarded against the aided person, the legal aid provider shall not be liable for payment of such costs.[41]

133. The reality is awards of cost against an aided client are made by the Court have been normalized in Tanzania legal aid jurisprudence, despite explicit provision of the *Legal Aid Act*. Courts in Tanzania have in a number of linked cases ordered indigent persons to pay costs without the court itself giving reasons as to why costs are awarded and whether the exceptional circumstances have been met or not.

134. Here are some examples where the Court awarded costs against legal aided indigent persons despite the existence of a certificate of legal aid from legal aid provider and acceptance of the said certificate from the court itself. The Court of Appeal in the case of **Mondorosi Village Council And 2 Others Vs Tanzania Breweries Limited and 4 Others** Civil Appeal No. 66 of 2017 awarded costs against aided clients having admitted that the party was being accorded legal aid by Legal and Human Rights Centre in the High Court proceedings.

135. Again, in the case of **Revenatha Eliwony Meena Vs Albert Eliawony Meena,**[42] the Court of Appeal upheld an award of costs against an indigent person aided under legal aid for withdrawing an application. The Court found that the withdrawal constituted "exceptional circumstances". The award of costs was made despite existence of

[41] See Section 31(3) of the Legal Aid Act, 2017
[42] Civil Application No. 9/05 of 2017, CAT, Arusha, (Unreported); see also [2019] TZCA 446

> appellant as the trial court found, unfortunately, the learned High Court Judge, he fell hook, line, and sinker and went on upholding that finding.

189. In my opinion, the Court of Appeal erroneously overturned the concurrent findings of fact by the two Courts below and ruled in favor of the Appellant on the basis that the mine police were not identified. Again, the Court of Appeal failed to apply the same standard as was applied in the case of **Francis Ngaire Vs/ National Insurance Corporation of Tanzania Ltd., Civ. Case 130-DSM-70, 5/6/72, Biron, J** with regard admission by the North Mara Gold Mine to the payment of medical expenses.

190. In my opinion, the Mwita case shows the evidentiary challenges which a claimant would face in bringing a case against the North Mara Mine for police misconduct. Based on my reading of the case, the claimants would be required to prove the identity of their assailants to have any prospect of establishing vicarious liability but as I have outlined above, the rules of civil procedure provide for very limited discovery. It is worth noting that in the Mwita case, only three documents were entered into evidence, all by the plaintiff. The defendant mine did not file any documentary evidence.

191. The exhibits included the plaintiff's complaint to the mine and a police form authorizing the plaintiff to receive medical treatment for his injuries known as a PF3. Despite promising to look into it, the mine did not produce any report on the incident. The failure to produce a report did not result in any adverse finding by the Court of Appeal. This is consistent with the general practice in Tanzania that a party has no obligation to turn over documents which may damage a party's legal position unless expressly ordered to do so by the Court.

192. In summary, it is my opinion that the cases cited by former Chief Justice Mohamed Chande Othman do not establish the independence of the judiciary or the ability of citizens to hold police accountable through the court process. The cases are highly selective. There are numerous cases in which the police have failed to investigate allegations of police misconduct including extra-judicial killings and a result, these cases do not land in court. The reality is that investigations of police misconduct only occur in rare instances of intense public pressure. In my opinion, the cited cases actually demonstrate how difficult it would be for ordinary citizens to bring a tort action against the mine or police in cases involving allegations of police brutality.

iv. Are you aware of any other tort cases in Tanzania against mining companies for alleged injuries committed by police or private security personnel?

193. Beside the case of **North Mara Gold Mine Limited v. Emmanuel Mwita Magesa**, I am not aware of any tort case that arises from police or private police brutality in connection with the mining industry that has been adjudicated by the Tanzania Courts.

2011 before an Appeal to the High Court stayed until 2018. Now this case is pending before the Court of Appeal and my client is desirous to execute lawful orders issued in 1979 but never realized.

199. Another important case that highlights the extent of delay of cases in Tanzania Court is the case of **Lamemthong Rice Co. LTD Vs Principal Secretary Ministry of Finance Zanzibar Civil Appeal No. 259 of 2019** Court of Appeal of Tanzania. This case is also referred to in TAB 13 at page 439 of the expert report of former Chief Justice Othman Chande. This appeal arises from the dispute that took place 37 years before the date of the determination of appeal in 2022.

200. On 18 December 2000 the Court of Appeal determined finality in favor of Laemthong in **Laemthong Rice Co. Ltd v. Principal Secretary Ministry of Finance** [2002] T.L.R 389. Execution of the Court of Appeal judgment proved to be a nightmare and was subject to reconsideration in 2022 in which the Court maintained its position as ruled in 2000. The first paragraph of the Court Appeal Judgement in Civil Appeal No. 259 of 2019 discusses relates to the timely disposal of suit:

> This matter does not speak very well of timely justice, although at the bottom of it the two essential facts are undisputed. These are that; on 23 July 1985, 37 years ago, at the request of the Government of Zanzibar, the appellant supplied it with 39,900 tonnes of rice worth USD 12,935,685, …….. And also, that no full payment for the rice has ever been made by the respondent in fulfillment of its contractual obligation. The reason the matter has stood pending in Court for all this long is for determination of the amount that should be paid by the respondent and how execution should be carried out.

Part H: Customary International Law

a. Has a Tanzanian court ever recognized or considered a cause of action in tort for a violation of customary international law?

201. As far as I am aware, there is no Court decision in Tanzanian that ever recognized or considered a cause of action in tort for a violation of customary international law. No case law has ever been reported where the court is asked to determine such a question in Tanzania.

01/02/2024

Date

Joseph Oleshangay

TAB 25

before the High Court at Dar es Salaam. A copy of the Court's decision of May 2023 is included in Appendix B to this Report.[17]

b. The Committee is currently assisting families in Dar es Salaam who claim they have been subjected to water, air and noise pollution by an investor operating under the Economic Processing Zone Authority (EPZA). The EPZA is an autonomous government agency that promotes investment in Tanzania and administers export processing and special economic zones.

c. Since 2013, the Committee has represented persons living with HIV who claim they were subjected to improper drug trials in military hospitals in Tanzania, in proceedings against respondents including the Ministry of Health and the Attorney General.

55. Other legal aid providers are also frequently involved in public interest litigation matters, either by providing legal services to parties involved or by participating directly in the litigation as a party. The Legal and Human Rights Centre has, for instance, initiated or represented persons in several constitutional cases. One example is ***LHRC & Others v. Atttorney General*** [2006] TZHC 66, a copy of which is included in Appendix B to this Report.

(iii) *Funding*

56. Mr. Oleshangay and Mr. Kambole are correct that the *Legal Aid Act* does not require the Government of Tanzania to fund legal aid providers.[18]

57. Legal aid services in Tanzania are provided principally by nongovernmental organizations, community-based organizations, faith-based organizations, institutions of higher learning, by orders of the judiciary and through other institutions. These entities are typically funded by donors, development partners or membership contributions (though the judiciary is funded by the Government).

[17] Jackson Rwehumbiza & Others vs The Parmanent Secretary Ministry of Natural Resources & Tourism & Others (Land Case No. 13 of 2023) [2023] TZHCLandD 16476 (16 May 2023).
[18] Oleshangay Report, para. 86; Kambole Report, para. 33.

TAB 26

Court File No. CV-22-00690649-0000
ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

--- This is the Cross-Examination of ULIMBOKA MWASOMOLA, on his affidavit sworn April 12, 2024, taken at the offices of the Hyatt Regency, 24 Kivukoni Road, Dar es Salaam, Tanzania, with participants attending both in person and virtually, on the 13th day of May, 2024.

---

run by NMG Attorneys. Am I correct that those Legal Aid Clinics take place only in the Ubungo District of Dar es Salaam; is that right?

A. Correct.

120 Q. Okay. So NMG Attorneys does not run Legal Aid Clinics outside of Dar es Salaam; is that fair?

A. Basing on the agreement, we have not, no.

121 Q. So just to be very clear, NMG does not operate Legal Aid Clinics in the Mara Region, for instance?

A. Correct.

122 Q. Now, at paragraph 32, you state that:

"As of 2023, there were approximately 435 legal aid providers registered in Mainland Tanzania alone."

Correct?

A. Correct.

123 Q. But, sir, would it be fair to say that not all of those legal aid providers would be in a position to provide advocates to represent legal aid recipients through to a trial; is that

fair?

A. Very fair.

124 Q. Many of the legal aid organizations focus on providing legal education to indigent persons; correct?

A. Correct.

125 Q. And many of them are also involved in assisting indigent persons with filing documents in Court; is that correct?

A. Correct.

126 Q. And many of them are staffed by paralegals who are not permitted to represent individuals in the High Court; is that fair?

A. Correct.

127 Q. Would you agree with me that in complex cases, an indigent person may require the services of an advocate in order to have a fair chance at achieving justice?

A. Correct.

128 Q. Now, at paragraph 58, you discuss the funding of the Legal Aid Committee; correct?

A. Correct.

129 Q. Okay. But you did not provide for the Court in Canada any information about the litigation budget of the Legal Aid Committee, for

instance; correct?

A. Correct.

130 Q. And am I correct that LAC's only office is in Dar es Salaam?

A. Can you repeat the question?

131 Q. Sorry, am I correct that LAC's only office is in Dar es Salaam?

A. Correct.

132 Q. It does not have an office in Musoma?

A. Correct.

133 Q. Or Mwanza?

A. Correct.

134 Q. Or anywhere in the Mara Region?

A. Correct.

135 Q. And nowhere in your report do you identify the budget that LAC has to travel to other regions of Tanzania to meet with clients; correct?

A. Correct, and that never came to my mind.

136 Q. That's fine. And would it be fair to say that the majority of cases which LAC presently handles involves probate and administration of estates, marriage and divorce matters, land conflicts, labour and employment

rights and child support and maintenance?

A. You are correct, that is some of the nature of the cases that LAC handles, but it is not an exhaustive list of the cases.

137 Q. No, but it's the majority of the cases which LAC handles at present; correct?

A. Correct.

138 Q. Why don't we just take a short break. I'm going to confer with my colleague, but we're almost done.

-- RECESSED AT 12:40 P.M.

-- RESUMED AT 12:45 P.M.

MR. FIORANTE: Okay. We're back on the record.

Thank you, Mr. Mwasomola. I have no further questions for you.

MS. O'SULLIVAN: And we have no questions for re-examination.

-- Adjourned at 12:46 p.m.

TAB 27

14. For the sake of transparency, I should note that I am currently acting for a client in connection with a legal proceeding against North Mara Gold Mine Limited ("**NMGML**") in the High Court of Tanzania.

15. A copy of my curriculum vitae is attached to this Report as Appendix A.

C. Discovery in Civil Proceedings in Tanzania

16. As stated above, I disagree with any contention that the scope of discovery rights in Tanzania deprives parties to litigation of the ability to put forward their cases fairly and effectively. In my view, the discovery regime is entirely adequate and proportionate, and functions appropriately.

17. In conducting the analysis and arriving at my conclusions I have relied upon the materials listed in Appendix B to this Report.

(i) Documentary Discovery Obligations

18. In paragraph 26 of his Report, Mr. Oleshangay asserts that:

> In the Tanzanian legal system, there are no procedures under the Civil Procedure Code comparable to Rule 30.02(1) [in Ontario,] which requires [a] party to a lawsuit to automatically disclose or produce all relevant documents that are in his power, control or possession to the adverse party including internal document[s] that are otherwise private and confidential. The only documents which parties have an absolute right to obtain are those referred to in an opposing party's pleadings.

19. Mr. Kambole provides a similar opinion in paragraph 14 of his Report, where he states that in Tanzania "there is no requirement for the parties to produce all relevant documents in their possession" and therefore "no requirement to produce documents injurious to a party's legal position".

20. It is correct that there is no freestanding obligation, absent an order of the relevant court, for any party to a civil proceeding in Tanzania to produce every single potentially relevant document in the party's power, control or possession. This is so of both plaintiffs and defendants, and therefore does not in my view create an uneven playing field in favour of defendants. Moreover, in my view there is a sound rationale for the approach taken in Tanzania's *Civil Procedure Code*: Litigation would become far more expensive and time-consuming if every litigant were automatically required to search for, collect, review, disclose and produce every single document in their possession, control or power that may be relevant to any matter in issue. Moreover, doing so is rarely necessary to achieve justice in civil disputes, most of which turn on or involve a relatively small number of documents.

21. The *Civil Procedure Code* prescribes procedures for obtaining pre-trial documentary discovery.

22. In this regard, Section 25 of the *Code* states:

> Subject to such conditions and limitations as may be prescribed, **the court may, at any time**, either of its own motion or on application of any party—

invoke these provisions to prevent disclosure of documents which could prove extra-legal conduct by the police.

54. Mr. Kambole offers a similar opinion in paragraph 17 of his Expert Report. Although he concedes that he is "not aware of any reported cases dealing with interpretation of the provision", he asserts that "[a] Minister can block production of the documents whether the government is a party or not" and expresses that view that "in a case like this one against an important private company regarding responsibility for alleged police abuses, there is a strong risk that a Minister would block access to relevant documents".

55. Respectfully, it is difficult to understand how Mr. Oleshangay could conclude that the Government would seek to block documentary discovery if the Plaintiffs in the Ontario proceeding were to instead commence a civil proceeding against NMGML (or Barrick) in Tanzania. Nor do I understand how Mr. Kambole could reach his slightly less unequivocal conclusion that that there is a "strong risk" the Minister would block disclosure. Neither Mr. Oleshangay nor Mr. Kambole cites any authority on this point.

56. It appears no such authority exists. The concerns expressed by Mr. Oleshangay and Mr. Kambole are more theoretical than real. In preparing this Expert Report, I could not find a single case in which the relevant language of Order XI Rules 10 and 12 was invoked to prevent disclosure or production of documents from being made. This is so even though Order XI Rules 10 and 12 have been part of the *Civil Procedure Code* since the *Code* first came into force more than 57 years ago on January 1, 1967.

57. To the contrary, there have been numerous cases against the Government in which production issues have arisen without a Minister invoking the "blocking" power described above. For example, in the matter of *Ernest Munishi* that I referred to above, the Plaintiff filed Miscellaneous Land Application No. 127 of 2020 asking the Court to make a discovery order against government institutions. No Minister produced a certificate to block discovery and the Court made the order requested by the Plaintiff.

58. I should note that section 18 of the *Government Proceedings Act* would have no application in a case solely against Barrick and/or NMGML.

(v) Oral Discovery

59. I agree with Mr. Oleshangay and Mr. Kambole that there is no procedure in Tanzania for conducting an oral examination for discovery of a party prior to trial.

60. I do not, however, agree with their opinions that: (i) leave to deliver interrogatories will not be granted in respect of matters that the party can address in cross-examination; and (ii) interrogatories cannot be used to obtain evidence to help a party's case or undermine the opposite party's case. Mr. Oleshangay advances these opinions in paragraphs 45 to 47 of his Expert Report, and Mr. Kambole advances these opinions in paragraph 21 of his Expert Report. Both of them rely upon the decision of the High Court in *Gomba Estates* in support of the former proposition, and on the decision of the High Court in *Moto Matiko Mabanga vs. Ophir Energy PLC and 2 Others* in support of the latter proposition.

61. *Gomba Estates* does not lay down an inviolable rule that leave to deliver interrogatories will be refused where the matters in question can be cross-examined upon at trial. It is correct that one of the reasons the High Court rejected the request to deliver interrogatories in that case was that "some of the questions intended to be raised in the

TAB 28

Court File No. CV-22-00690649-0000
ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

--- This is the Cross-Examination of AUDAX VEDASTO, on his affidavit sworn April 5, 2024, taken at the offices of the Hyatt Regency, 24 Kivukoni Road, Dar es Salaam, Tanzania, with participants attending both in person and virtually, on the 13th day of May, 2024.

---

subject to the compliance with the rule which requires either an application and, within that application, show that they are relevant and necessary for purposes of the case, to avoid the abuse of this process.

52 Q. Okay. I think we're saying the same thing. Unless the other party applies for an order for production of documents from the other side, there is no requirement to turn over harmful documents; is that fair?

A. Yes, unless there is an application, there is no such requirement.

53 Q. And there is also no right to examine a party prior to trial for the purposes of discovery; is that correct?

A. Prior to trial?

54 Q. Yes.

A. Prior to trial for purposes of discovery, you apply to examine.

55 Q. You apply to deliver interrogatories; is that right?

A. Yes, you apply to deliver interrogatories. That is also allowed.

56 Q. But there is no general right to question a party prior to trial for the purposes of

TAB 29

DocuSign Envelope ID: 17388BFB-206D-4B1C-8F9C-1344506B329A

EXPERT REPORT OF ADVOCATE JEBRA KAMBOLE

PART I - INTRODUCTION AND TERMS OF REFERENCE

A. SCOPE OF MY MANDATE

1. I have been retained by CFM Lawyers, LLP on behalf of Sophia Matiko John and others as an independent expert witness on matters pertaining to Tanzanian laws and legal procedure as well as the judicial system and practice in Tanzania. In particular, I have been asked to consider and provide my opinion on the issues emanating from the expert reports of Professor Leonard Paulo Shaidi and Mohamed Chande Othman, and to address the following areas:

   (a) Civil Procedure and Discovery under Tanzanian Laws;

   (b) Legal Fees and Disbursements in Tanzania;

   (c) Jurisprudence involving police and private security in Tanzania;

   (d) Length of Proceedings in Tanzanian law and practice;

   (e) Customary International Law and its applicability in tort cases.

2. In addressing these issues, I have had regard to Mohamed Chande Othman's opinion that the plaintiffs in this matter would not face significant barriers to pursuing civil claims in the courts of Tanzania and in particular, the conclusion expressed at paragraph 83:

> 83. In my view, the Plaintiffs in the Ontario proceeding would have ready access to justice in Tanzania if they chose to pursue it. There are no significant hurdles that would prevent them from commencing and pursuing claims in the Courts of Tanzania. Three aspects of access to justice are particularly relevant to my opinion in this regard: (i) the availability of the judicial network and resources throughout Tanzania, including in remote areas, such that litigants can commence and participate in legal proceedings; (ii) the costs of accessing the legal system; and (iii) the timeliness of judicial proceedings in Tanzania. I discuss each of these aspects below.

DocuSign Envelope ID: 17388BFB-206D-4B1C-8F9C-1344506B329A

Order XI, Rules 10 and 12 of the CPC

22. As described above, Rules 10 and 12 of Order XI allow the court to exercise its discretion to withhold discovery or production of documents if it deems that such disclosure would be injurious to the public interest.

Access to Police and Hospital Records

23. In my experience representing clients in Tanzanian courts, they routinely encounter difficulties obtaining copies of government records such as police reports and hospital records which would likely be required to present a tort case based on allegations of police misconduct. It is not uncommon for families to be denied copies of post mortem reports and police incident reports. In my experience, these documents are put in the police file, and then police deny citizens access to these documents with the explanation that it is a police file which is confidential and can not be accessed by civilians. Post mortem reports and other medical documents like PF3 (Police Form Number 3) are almost always requested from medical personnel by police and then maintained by police. In my opinion, in a case involving extrajudicial killings or torture, the police are very unlikely to release such files or allow victims access to them.

24. This has serious impacts on a lawyer's ability to gather evidence to present a case, particularly because by practice a plaintiff files their plaint based on the evidence that is in their possession.

Legal Fees and Legal Aid in Tanzania

Types of fees that Tanzanian lawyers are permitted to charge clients

25. Private lawyers typically charge two types of legal fees:

(a) An hourly fee, with the client also having to pay court fees and other related costs; or

(b) A set fee determined by how much the claim is worth, which is governed by the Ninth Schedule to the *Advocates Remuneration Order of 2015*. For example, for a

DocuSign Envelope ID: 17388BFB-206D-4B1C-8F9C-1344506B329A

(c) **Tito Elia Magoti**: is a lawyer who was employed by the Legal and Human Rights Centre. Mr. Magoti was abducted by four unidentified people. The police then acknowledged his detention but refused to disclose his whereabouts and the legal basis for his arrest. While under interrogation, Mr. Magoti was denied access to a lawyer and his family. He was charged with crimes relating to organised crime and money-laundering, for which release on bail is not available under Tanzanian law. He was imprisoned for over one year.

(d) **Boniface Mwabukusi:** is a prominent lawyer and a vocal person challenging a ports deal made by the Tanzanian government. On the Attorney General's initiative, in 2023 he was charged for misconduct and later he was threatened with treason offences. His case is still pending at the Advocates Committee.

(e) **Dr. Rugemeleza Nshala**: is a well educated and prominent lawyer in Tanzania. He has played a pivotal role in opposing the ports deal and has received death threats. He reported the matter to the police but the police threatened to arrest him. I was the counsel representing him.

(f) **Mpale Kaba Mpoki:** In November 2023, Mr. Mpoki and Dr. Nshala were representing Boniface Mwabukusi (mentioned above) before the Advocates Committee. During the hearing Mr. Mboki raised points of preliminary objection. The ruling on the objections was made within less than twenty minutes. Mr. Mboki informed the Chairperson of the Committee that he intended to appeal against the said ruling. The Chairperson accused Mr. Mpoki of having committed professional misconduct and suspended him from practicing law for six months.

52. Personally, I have been threatened with misconduct proceedings. On 10 March 2020, Kisutu Resident Magistrate's Court found nine opposition political party leaders guilty of criminal offences, including unlawful assembly, rioting and sedition. I represented some of those convicted, and the Attorney General alleged that I posted a "contemptuous" message on social media regarding the Court. The Attorney General filed an application

DocuSign Envelope ID: 17388BFB-206D-4B1C-8F9C-1344506B329A

to the Advocates Committee arguing that this post constituted a "criminal act" that had a "seditious intention". Thankfully, later my case was dropped.

53. It is important to understand that lawyers in Tanzania are not a self governing profession. Our conduct is regulated directly by the High Court and the Advocates Committee as described below.[10] The Advocates Committee is formed by: (1) a Judge of the High Court nominated by the Chief Justice; (2) the Attorney General or Deputy Attorney General or Director of Public Prosecution; and (3) a practising Advocate nominated by the Council of the Law Society.[11] However, the Attorney General is most powerfully member because of the following reasons:

(a) Two members make up a quorum and one of them must be the Attorney General, Deputy Attorney General or Director of Public Prosecution. This means you cannot have meeting without a representative of the Attorney General[12]

(b) The Attorney General is the one convening disciplinary meetings after being requested by Chairman.[13]

(c) The Attorney General fixes times and places when the committee may sit.[14]

(d) The Attorney General may also initiate the proceedings.[15]

(e) The Attorney General can also require additional affidavits.[16]

54. In practice, this means a lawyer bringing a case in court against the Government, i.e. against the Attorney General, risks being referred to the Advocates Committee for

[10] Although there is a Tanganyika Law Society, its role is more akin to that of a bar association. It is not involved in the licencing and discipline of lawyers.
[11] Section 4(1) of Advocates Act (Cap 341 R.E 2020)
[12] Section 4(5) of Advocates Act (Cap 341 R.E 2020)
[13] Section 10 of Advocates Act (Cap 341 R.E 2020)
[14] Section 5 of Advocates Act (Cap 341 R.E 2020)
[15] Section 11 of Advocates Act (Cap 341 R.E 2020)
[16] Section 12 of Advocates Act (Cap 341 R.E 2020)

DocuSign Envelope ID: 17388BFB-206D-4B1C-8F9C-1344506B329A

misconduct by the same Attorney General. Furthermore, the Attorney General will always have a representative on the Advocates Committee.

Assessment of whether these claims could be pursued in Tanzania.

55. As noted, I strongly disagree with the opinion of Mohamed Chande Othman that these claimants would not face significant obstacles bringing a tort case in Tanzania whether against the North Mara mine, Barrick Gold Corporation, or the police.

56. In my opinion, the claimants would face serious difficulty retaining counsel to assist them for the reasons set out above. They would be unable to afford the traditional ways by which private lawyers charge fees. Then even if they find a legal aid provider willing to assist them – which is complicated by the lack of legal aid providers in their area – they are likely to only receive information of how to represent themselves in court or to have the support of a paralegal.

57. Even if they secured the assistance of a lawyer, they would also face difficulties obtaining important records needed to prove their case such as police reports, hospital records and post-mortems.

58. The claimants would not be able to rely on rights of discovery to obtain the necessary evidence. There is no absolute right to discovery since all applications for discovery of documents and delivery of interrogatories are discretionary by the court. As described above, there are significant limits on discovery of documents as a party must describe the requested documents with a high degree of specificity. In practice, this means you must know the document exists and have a good understanding of its contents to succeed on the application. Interrogatories cannot be used to obtain evidence or cross examine the opposing party prior to trial. There is no right to any other form of pre-trial questioning.

DocuSign Envelope ID: 17388BFB-206D-4B1C-8F9C-1344506B329A

59. All of these factors make it extremely unlikely that the plaintiffs in this matter could bring such a complex tort case in Tanzania.

2/1/2024

Date

DocuSigned by:
Jebra Kambole
3917AB08903149F...

Jebra Kambole

TAB 30

THE CANADIAN BAR ASSOCIATION

Statement from the CBA President John Stefaniuk on the silencing of lawyers in Tanzania

September 07, 2023

Share

The Canadian Bar Association denounces the recent harassment and detention of lawyers in Tanzania and urges respect for freedom of expression, the right to protest and the right to counsel.

According to reports, 22 people, including several lawyers, have been detained since June 2023 for criticizing a government decision to have a foreign logistics company manage Tanzania's ports.

Members of the legal profession must be able to carry out their professional function without harassment and fear of arrest. Freedom of expression and the right to counsel are fundamental components of the rule of law.

We are concerned that the actions in Tanzania violate core principles of the legal profession including those set out in the United Nations' Basic Principles on the Role of Lawyers.

Those principles state that lawyers, like other citizens, are entitled to freedom of expression and have the right to take part in public discussion of matters concerning the law, administration of justice and the protection of human rights. The principles also underline the importance of cooperation between lawyers and governments to ensure that everyone has access to legal services and that lawyers are able, without improper interference, to assist their clients.

The CBA continues to stand with the international community, including the Tanganyika Law Society, in condemning the situation in Tanzania.

TAB 31

HUMAN RIGHTS WATCH

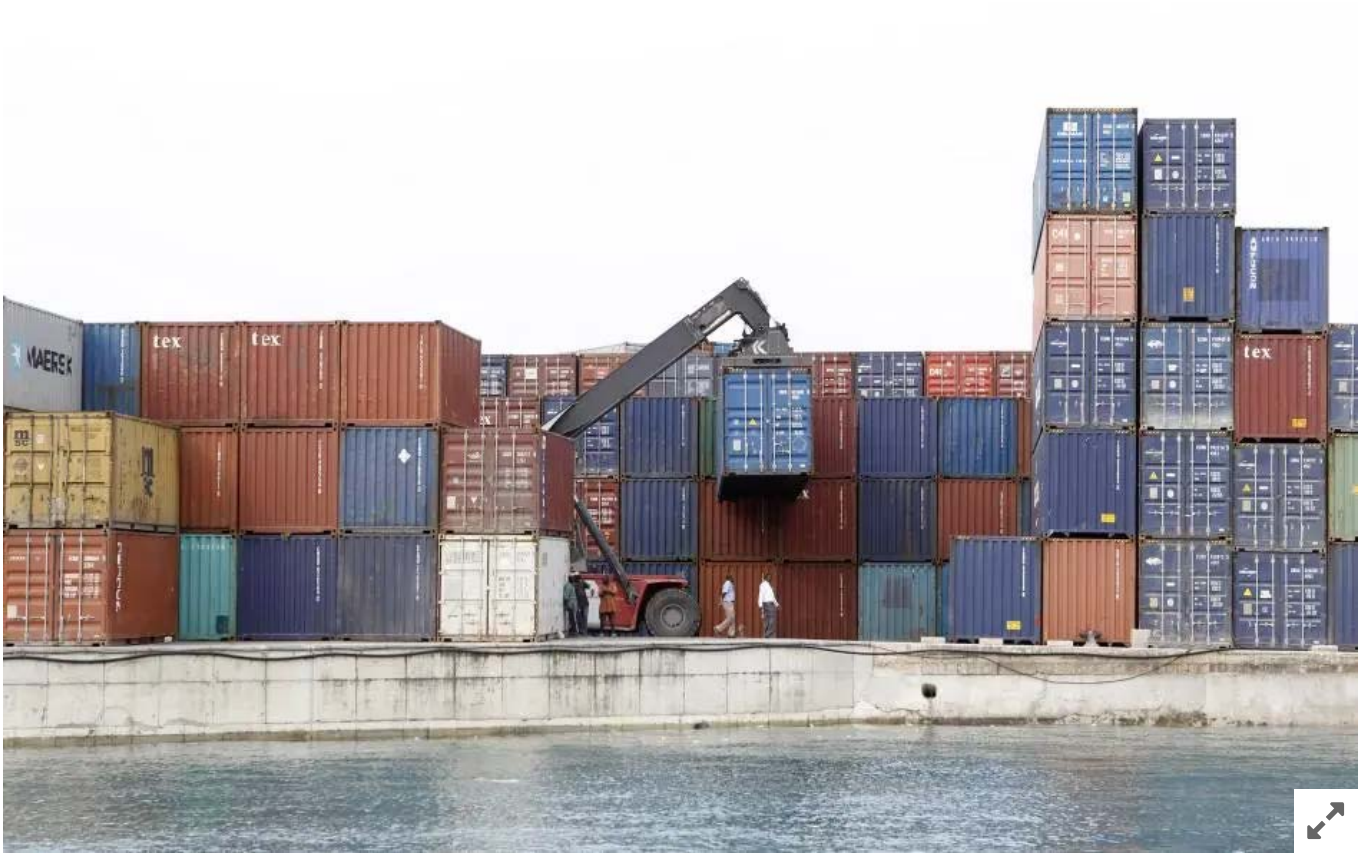
DONATE NOW

August 7, 2023 12:30AM EDT

Available In English Kiswahili

Tanzania: Critics of Port Deal Arrested

Respect Freedom of Expression, Right to Protest



A crane arranges containers at the Port of Zanzibar, Tanzania, July 19, 2012. © 2012 Thomas Mukoya/Reuters

(Nairobi) – Tanzania authorities have detained or threatened at least 22 people since June 10, 2023, including protesters, after they criticized the Tanzania National Assembly's ratification of an agreement for management of Tanzania's ports, Human Rights Watch said today.

The agreement would allow a logistics company controlled by the Emirate of Dubai in the United Arab Emirates to manage major Tanzanian ports. Tanzania should stop harassing and arresting critics of the agreement.

“The Tanzanian government’s suppression of its critics is a troubling sign of its low tolerance for dissenting views,” said Oryem Nyeko, Tanzania researcher at Human Rights Watch. “Instead of clamping down on critics, the government should respect the right to freedom of expression and assembly, and listen to them.”

On June 10, Tanzania’s national assembly approved an “intergovernmental agreement” the Tanzanian government entered into with the Emirate of Dubai in October 2022 aimed at “developing, improving, managing and operating the sea and lake ports in areas like special economic zones, logistic parks and trade corridors.”

The authorities have since cracked down harshly on protesters and activists who criticized the agreement for giving another country excessive control of Tanzania’s ports. The critics contend that the government’s action violated Tanzanian and international law.

On June 19, police arrested and detained 18 people for two days during a protest in Dar es Salaam.

On July 10, the director of criminal investigation ordered Dr. Rugemeleza Nshala, a lawyer and activist, to report to the police, saying the police were “conducting investigations” into remarks he made days earlier on the social media application Clubhouse criticizing the deal. Nshala told Human Rights Watch he fled Tanzania after he received death threats because of his vocal criticism of the deal.

On July 12, police summoned Boniface Mwabukusi, also a lawyer, after he held a news conference, alongside an opposition politician, Mdude Nyagali, in Dar es Salaam to protest the agreement. On July 14, the police arrested Mwabukusi and Nyagali, when they responded to the police summons.

The police confiscated Mwabukusi’s phone and interrogated him for eight hours, then released him without charge. Nyagali remained in detention until July 17 and was released on police bond, also without charge. The police gave Nyagali a letter ordering him to hand over his phones, laptop, and other electrical equipment, which he refused to do. Mwabukusi told Human Rights Watch he went into hiding for three days when he began to receive death threats after he shared his views on the agreement in June.
On July 14, the attorney general filed an application to the Advocate’s Committee – Tanzania’s disciplinary institution for lawyers – alleging professional misconduct by Mwabukusi because of remarks he made during a July 3 news conference about the deal, seeking a declaration that he had committed “gross professional misconduct” and an order to bar him from practicing law.

Mwabukusi has filed a petition with the high court challenging the ratification of the agreement. He contended that it violates Tanzanian law because the public was only given two days to submit their views on it, and that the agreement itself contravenes international law and Tanzania’s domestic law by

handing the management of natural resources to a foreign entity.

On July 17, police arrested Peter Madeleka, also a lawyer, outside a courtroom in Arusha shortly after the high court canceled his plea bargaining deal with the director of public prosecution in a 2020 economic sabotage case, and charged him with new offenses. Both Mwabukusi and Nshala told Human Rights Watch they believed the authorities were holding Madeleka because he had been publicly critical of the port agreement.

Tanzania's human rights situation, particularly for freedoms of expression and association, deteriorated badly after the late President John Magufuli came to power in 2015. The government used laws like the 2015 Cybercrimes Act and the 2016 Media Services Act to censor opposition politicians, journalists, and activists for criticizing the government and the president. Around the October 2020 general elections, when Magufuli was re-elected, the government ramped up these restrictions and arbitrarily arrested scores of opposition party leaders and supporters.

President Samia Suluhu Hassan, who was appointed after Magufuli's death in March 2021, has since taken some measures to respond to rights concerns. In February 2022 the government lifted its ban on four newspapers, and in March it dropped charges against and released Tanzania's main opposition leader, Freeman Mbowe, after he had been detained for seven months. In January, Hassan ended a six-year ban on politicians holding political rallies and meetings outside of election periods.

The government has yet to review repressive provisions of a raft of laws restricting freedom of expression and association that were passed and enforced after Magufuli took power.

The Tanzanian Constitution protects the freedoms of expression and association in line with the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, and guarantees the public a right to challenge violations of fundamental human rights as a matter of public interest.

"The Tanzanian government should end these arbitrary arrests and take further steps to address the challenges to freedom of expression," Nyeko said. "Hassan's government has made important progress on rights, and instead of falling back to the previous government's stance, it should stem this tide of repression."

TAB 32

DocuSign Envelope ID: F13DB944-1DE9-4A5F-A40A-130CD3228A11

Court File No. CV-22-00690649-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

SUPPLEMENTARY AFFIDAVIT OF JOSEPH OLESHANGAY

I, Joesph Oleshangay, of the City of Arusha in the United Republic of Tanzania, MAKE OATH AND SAY AS FOLLOWS:

1. This affidavit is supplementary to my affidavit sworn February 1, 2024, and my report attached thereto as Exhibit “B” (the “Report”). It describes events that occurred subsequent to the swearing of my previous affidavit.

DocuSign Envelope ID: F13DB944-1DE9-4A5F-A40A-130CD3228A11

2. At paragraphs 79 and 109 of my Report, I explained that in the United Republic of Tanzania ("Tanzania"), human rights and public interest lawyers have been subjected to threats and intimidation for their work. In 2022, I received death threats for my work on behalf of Tanzania's Maasai indigenous community, specifically in relation to their forced displacement from their ancestral land. Because of my legal and advocacy work, commencing in June 2022, I was forced to relocate from my home and ceased working out of my work office for a period of six months for security reasons.

3. On 11th March 2024, a post authored by an anonymous person started circulating on different social media platforms such as WhatsApp and X (Twitter) in Tanzania. This text accused me of organizing a dangerous rebellion of the Maasai community against the Tanzanian state, and included statements such as, "If the government does not control JOSEPH OLESHANGAY early, then you should know that he is going to create a dangerous group of REBELLION for the Maasai community in this country." The post was written in Kiswahili, and this is my translation into English. I have attached as **Exhibit "A"** a copy of the text that was re-posted to the social media platform X by #ChangeTanzania with commentary.

4. To be clear, I have never advocated publicly or privately for any form of Maasai rebellion or other dangerous activity against the Tanzanian state, nor have I ever advocated for secession from Tanzania. Instead, in my role both as lawyer and as a leader within the Maasai community, I responsibly advocate for the legal rights of the Maasai within existing legal and political structures in Tanzania. All my work defending human rights has been through litigation in courts of law, in public forums and in public media interviews and is consistent with the right to self determination as protected by international law. Examples of my public advocacy on behalf of the Maasai include a presentation I made before an event at the European Parliament in Brussels, Belgium on May

DocuSign Envelope ID: F13DB944-1DE9-4A5F-A40A-130CD3228A11

31, 2023, which can be found starting at around minute 27 of a video posted on YouTube at: https://www.youtube.com/watch?v=8mq_p9ugcDg.

5. At the time I first saw the statement described above on social media, and despite previous threats I received as a result of my advocacy regarding the issue of displacement of the Maasai, I was not particularly worried as I believed at the time that no credible state authority would take action based on such a vague, general and unsubstantiated statement.

6. At around the same time, the Maasai community had chosen me to be a traditional Maasai leader known as "*Alaigwanani*" as a result of my advocacy regarding land rights for the Maasai. An *Alaigwanani* is responsible for cultural functions, mediating disputes, leading community decision making processes, and ensuring observance of cultural practices that form the foundation of the Maasai community. The ceremony was scheduled to take place on 16th March 2024 at my other home in Ndoinyo Sub-village, Nasipooriong village, Endulen Ward, Ngorongoro.

7. In the days leading up to the Maasai event on 16th of March, my family and I were subjected to targeted police action that culminated in the groundless detention of colleagues, a series of warrantless raids and searches of my house, and several attempts to detain me. All of these police actions are illegal. To be clear, I have not engaged in any criminal or illegal activity, and the police have no grounds on which to arrest or detain me, or to search me or my house. The police have not at any time provided any warrants or other legal documents authorizing their action, or any information regarding the reason for any attempted detention or search. I believe that these illegal police actions were taken in response to my advocacy on behalf of the Maasai community, including my legal advocacy.

8. What follows is a summary of these events.

DocuSign Envelope ID: F13DB944-1DE9-4A5F-A40A-130CD3228A11

13. I have been informed by my wife that at around 4am on 15th March 2024, when it was still dark, several cars with police and security operatives encircled my home and conducted a raid on my house. The police forced my wife to open the door and questioned her about my whereabouts. The police were not accompanied by any area local leader or independent person as required by the law, and they searched my house without a search warrant. They refused provide any information regarding the reason for their actions. They left my home around 7am in the morning without providing a search warrant or an arrest warrant or disclosing the reasons for their actions.

14. I returned home after police left and stayed at home until around 2pm when I received a call from Ramat Moses informing me that that several cars have passed Endulen hospital into the direction of my home. I left home soon after and went to stay in a safer location away from home.

15. I was later informed by my wife that soon after I left, five police cars returned to my home inquiring if I had returned home. The police again searched my house without a warrant and without disclosing reasonable grounds to justify the search or to justify their search for me. Around 4pm, they left taking with them various items that were going to be used for the scheduled cultural events the next day, including tents and chairs.

16. In the evening of 15th March 2024, the Officer Commanding District issued a general order that prohibited any gathering within the Ngorongoro division. I have attached as **Exhibit "B"** a copy of the order. The Ngorongoro division has eleven wards and 28 villages spanning 8,292 square kilometers with estimated population of 100,000, most of whom are Maasai. The order reads as follows (this is my English translation of the original Kiswahili):

> According to the investigative information we have, there will be a large gathering on 16.03.2024 in the areas of Enduleni ward, Ngorongoro Division, Ngorongoro District.

DocuSign Envelope ID: F13DB944-1DE9-4A5F-A40A-130CD3228A11

> Due to the presence of indicators of a breach of the PEACE, you are not allowed to hold the gathering without following the procedures of requesting PERMISSION from the relevant authorities.
>
> The Police Force will take strong action against a person, a group of people, community leaders or transportation vehicles that will participate/will participate in facilitating the assembly.

17. During this time, I was active on the social media site X to call out the threats and intimidation tactics employed by police against me, both to shed light on human rights abuses by the police but also in an attempt to keep myself safe. I have attached as **Exhibit "C"** copies of posts I made during this time.

18. On 15th March, I was scheduled to participate in an online panel discussion organized by the American Bar Association. The panel discussion was called "Forced Evictions of the Maasai: Whither the Rule of Law." Because it was not safe for me to be at my home, I participated in the event from an open field, away from my home. This presentation can be found on YouTube at: https://www.youtube.com/watch?v=8uQFkNkPHs8.

19. I have been informed by my wife that just after midnight on 16th March 2024, police came to my house in seven cars, and conducted yet another search. Again, they were not escorted by an independent witness or local leadership as required by the law. After searching my house, all police and seven cars stayed outside my house throughout the night. Three cars left around 6am and the other four cars remained until around 10am. Throughout the hours they stayed in and outside my house, the police did not provide a reason for the search of the house, or why they were looking for me for me. Again, the police did not provide any warrant or summons or any other legal document that might justify their actions.

DocuSign Envelope ID: F13DB944-1DE9-4A5F-A40A-130CD3228A11

20. Despite the above, my community decided to hold the ceremony on 16th March anyway. It was a peaceful and joyous celebration. I posted videos of the ceremony on X at https://twitter.com/Oleshangay/status/1769207463008436477?s=20.

21. Throughout that day, police questioned and harassed various Maasai elders, and asked for my whereabouts. I was told by Maasai elders, Sanguyan Dorop and William Oleseki, that the police told them that they have been monitoring my activities since September 2023 related to what they describe as me inciting the Maasai community against the government. They also mentioned an interview I did with Genocide Watch and posted on social media. I have attached as **Exhibit "D"** a copy of the website describing the interview. The full interview can be found online at: https://www.genocidewatchblog.com/podcast-episodes/tanzania's-maasai-and-the-threat-of-genocide-with-joseph-moses-oleshangay.

22. On 17th March 2024 before 7pm, I received information from Ramat Moses that several cars are leading the way to my home through Endulen hospital road. I was not at home. I have subsequently been informed by my wife that on the 17th of March at around 7pm, six police cars returned to my home see if I was home. They stayed until 9pm when they drove away.

23. On 18th March 2024 I was out of home throughout the day. At around 7pm, I received a call from my wife informing me that police had returned to my house again to inquire if I was around. My wife informed me that the police stayed for almost one hour before driving away. Ponja Koika and Layagieki Lenkeju (the latter being a Maasai traditional leader) informed me that that police vehicles were stationed at three roads (Endulen-Esere, Endulen-Kiloki, Endulen-Ndutu) leading to or out of my village so that they could apprehend me if I tried to exit my own village through these roads.

DocuSign Envelope ID: F13DB944-1DE9-4A5F-A40A-130CD3228A11

24. I returned to my home at around 9 pm on 18th of March after the cars had left. After discussing with my family, I decided to walk by foot throughout the night for 72 kilometers for the nearest exit out of Ngorongoro. I took this extreme measure because of what has happened to other government critics. For example, as I mentioned at paragraph 160(a) of my Report, Alphonce Mawazo and Ben Saanane both received threats of abduction, and subsequently one was murdered and the other disappeared. I am worried about suffering the same fate.

25. Police continued to visit my home and neighbouring areas on 19th and 20th March 2024. As has been the case throughout, and despite the growing public nature of the matter, police still have not produced any warrant, or provided any reason or justification for their actions.

26. During this time, I have done my best to remain in contact with my employer, the Legal and Human Rights Centre, to keep them apprised of these happenings. Concerned for my safety, they issued a public statement on March 28, 2024. A copy of LHRC's statement is attached hereto as **Exhibit "E".**

27. It is my strong belief that Tanzanian police have taken this action against me as a result of my advocacy on behalf of Maasai community rights. In my capacity as a lawyer and advocate on behalf of the Maasai, I have provided pro bono legal services in matters adverse interest to the government of Tanzania, including in cases that challenge the government's efforts to evict Maasai communities in Ngorongoro (approximately 100,000 people) and Loliondo (approximately 97,000 people) to make way for tourism and big game trophy hunting. I have also advocated for the Maasai in various forums outside Tanzania as described above.

DocuSign Envelope ID: F13DB944-1DE9-4A5F-A40A-130CD3228A11

28. For insecurity factors, I remained in a safe location into the month of April. Although I am worried about my safety and security, I am not deterred from pursuing my legal and advocacy activities.

SWORN remotely by Joseph Oleshangay in NAIROBI, Kenya, before me at the City of Vancouver, in the Province of British Columbia, on 6th May 2024, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

DocuSigned by:
A1DF901AB95945C...

Commissioner for Taking Affidavits in Ontario
W. Cory Wanless (LSO# 57288M)
(or as may be)

DocuSigned by:
EE719EC9AED6412...

Joseph Oleshangay

TAB 33

DocuSign Envelope ID: F13DB944-1DE9-4A5F-A40A-130CD3228A11

News & Events



LHRC ALARMED BY SAFETY CONCERNS FACING ITS STAFF AND HUMAN RIGHTS ACTIVIST JOSEPH MOSES OLESHANGAY.

Posted **1 month ago**

We, Legal and Human Rights Centre (LHRC), are concerned about the safety of our staff, Joseph Moses Oleshangay, a long-serving employee who has worked in various capacities and is currently serving as a lawyer under the land unit in the Arusha Branch office.

Joseph is a Maasai by origin and was born and raised in the Endulen Ward, Ngorongoro district in the Arusha region. Due to his profession and position, he has provided legal assistance and advice to his Maasai community, especially those residing within the Ngorongoro Conservation Area (NCAA), where he lives.

Since 2022, the Government has been conducting what it calls a ‘voluntary relocation’ exercise of residents from the Ngorongoro area. Joseph assisted his community in the process, earning him a local and international following, include winning the Weimar Human Rights Award in Germany in December 2023.

Additionally, Joseph was named Human Rights Defender of the Month by Defend Defenders, an organisation that promotes and protects human rights defenders in the East and Horn of Africa. However, since 2023, Joseph's safety has been at risk, as he has been under surveillance, including receiving calls from individuals claiming to be police officers. On the afternoon of March 14th, for example, Joseph received information that he was being followed by individuals believed to be state agents, prompting him to take precautionary measures for his safety.

On the night of March 15th, individuals claiming to be police officers arrived at his home, questioning his wife about Joseph's whereabouts without providing any explanation.

In addition to Joseph's absence, these individuals camped outside his home from March 15th to March 18th, 2024. Joseph and his close relatives are still determining who is following him and for what reasons.

It is worth noting that a few days before Joseph began to be followed, a message circulated on social media warning the government to take action against him, branding him a dangerous individual.

The threatening message mentioned LHRC, the Pastoralists Indigenous Non-Governmental Organization's Forum (PINGO's Forum), the Pastoral Women's Council (PWC), and Susanna Nordlund, an activist, as institutions and individuals supporting Joseph. Although we were alarmed by this message, we did not ignore it.

All these events have caused fear for Joseph and his family, as he has been hunted for a long time. These threats restrict Joseph's freedom to work as a lawyer and serve his community.

TAB 34

Court File No. CV-22-00690649-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

AFFIDAVIT OF BONIFACE A.K. MWABUKUSI

I, Boniface A.K. Mwabukusi, of the City of Mbeya, in the United Republic of Tanzania, MAKE OATH AND SAY:

1. I am an Advocate of the High Court of Tanzania and courts subordinate thereto, and as such have knowledge of the matters to which I hereinafter depose. Where the facts in this affidavit are based on information I obtained from others, I have stated the source of the information and confirm that I believe that information to be true.

2. I have been a licenced lawyer in Tanzania since approximately 2010. My Advocate Roll Number is 1571.

3. Although I have significant litigation experience in Tanzanian courts, in 2023 I was subjected to disbarment proceedings, incommunicado detention, potential treason charges, surveillance, and effective house arrest simply for my role in a legal case and public advocacy.

4. I filed a petition last year challenging an Intergovernmental Agreement ("IGA") between the Government of the United Republic of Tanzania and the Emirate of Dubai regarding a Dubai-based logistics company, Dubai Ports World.

5. The IGA is very controversial and has drawn pointed public criticism by, among others, lawyers who have contested the constitutionality of allowing a foreign company to manage Tanzania's ports.

6. I filed the Petition against the IGA in the High Court of Tanzania at Mbeya in June 2023. Attached hereto as **Exhibit "A"** is a copy of petition I filed.

7. After I filed the Petition, police seized my phones, which they continue to hold under the pretence of an investigation.

Disbarment proceedings

8. On the 2nd of August 2023, the Tanganyika Law Society's Advocates Committee brought to my attention a complaint in which the Attorney General of Tanzania, Eliezer Feleshi, accused me of professional misconduct. Attached hereto as **Exhibit "B"** is a copy of the complaint to the Advocates Committee.

9. The Attorney General's complaint sought, among other prayers, an order to permanently disbar me from practicing law and have my name removed from the Roll of Advocates.

10. The complaint against me was based on a media briefing I conducted immediately after the IGA petition in Mbeya, where I described what had transpired in court.

11. The complaint was heard by the Advocates Committee on the 20th and 21st of November 2023. I was represented by six lawyers led by Senior Counsels Mpale Mpoki and

19. This is the same Attorney General who, while previously serving as a Judge of the High Court, permanently disbarred former Tanganyika Law Society President, Ms. Fatma Amani Karume, in 2019 for unfounded ethical issues.

20. Ms. Karume has never been reinstated to the Bar, despite a Court order requiring her to be reinstated. There have also been consistent calls for her reinstatement from domestic and international organizations, including the Canadian Bar Association, The Law Society of England and Wales, and others.

21. The same Attorney General also attempted to disbar Advocates Jebra Kambole and Edson Kilatu in 2020 for their comments about the state of the rule of law in Tanzania. The Attorney General later withdrew the complaint against them at the Advocates Committee.

Incommunicado detention and Treason allegations

22. On the 12th of August 2023, at around 3am East Africa time, I, together with two fellow travelers, was apprehended and held incommunicado in a National Park by men in plainclothes who, we later learned, were members of the police.

23. Mdude Nyagali, Emmanuel Masonga, and I were traveling from the Tanzanian city of Mbeya to the capital Dar es Salaam. We were stopped and detained in Mikumi National Park in Morogoro and held there for several hours.

24. The plainclothes police then took us back to Mbeya where we were detained at Mbeya Central Police Station for six days. Police interrogated me on accusations that I had committed the offence of treason based on my involvement as a lead Counsel on the IGA petition and my subsequent comments in the press which they alleged was tantamount to planning to overthrow the government of Tanzania.

25. While in police detention, I was not allowed to communicate with family or lawyers for the entire six days. I was held in a cold, dark room. I did not eat, and slept on the floor the entire time. I was not given anything warm to wear beyond my shirt. The police subjected me to psychological abuse.

26. Following calls for my release on social media and by international human rights organizations such as Amnesty International and Human Rights Watch, I was ultimately released from police detention on bail. Attached hereto as **Exhibit "C"** is a copy of a public statement by Amnesty International.

27. My release was subject to conditions including that I not travel outside of Mbeya.

28. Following the criticism of my detention by human rights groups, the government's Minister responsible for Information, Communication and Information Technology, released a statement that I and others had not been arrested merely for criticizing the ports deal. Instead, the Minister claimed that we were arrested for calling for the violent overthrow of the government and inciting citizens to bear arms against the police. Attached hereto as **Exhibit "D"** is a copy of the Minister's statement.

29. I have never called for the violent overthrow of the government or incited citizens to bear arms against the police.

30. On the 3rd of November 2023, after I called for demonstrations in Mbeya to protest against the IGA, police raided my office and house. Plainclothes police also stationed themselves around my house and stayed there for more than a week, trying to limit my movements and participation in wider public calls to challenge the IGA. I was basically living under house arrest.

31. This is in addition to members of the authorities monitoring my movements over a period of months and occasionally following my car.

32. No formal criminal charges have been filed against me though there remains the possibility of charges as the authorities have various files opened against me.

33. I have been living an extremely fragile life during the last year. My security is in constant jeopardy, my professional career might be taken from me, and I might face very serious criminal charges. I have lost important clients as a result of everything I have been

subjected to. I have no fear in providing this affidavit because I feel that I have very little left to lose.

34. During the time that I was preparing this affidavit, my office was broken into, and many items, including my computers, were taken. I believe this was done to further intimidate me.

SWORN remotely by Boniface A.K. Mwabukusi, at the City of Mbeya, in the United Republic of Tanzania, before me at the City of Vancouver, in the Province of British Columbia, on 30 January 2024 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

Joe Fiorante

Commissioner for Taking Affidavits in Ontario
JOE FIORANTE, K.C. (LSO # 86342O)

boniface anyisile mwabukusi
boniface anyisile mwabukusi (Jan 30, 2024 19:15 GMT+3)

Boniface A.K. Mwabukusi

TAB 35

205

Which language would you like to use this site in? CLOSE

ENGLISH ESPAÑOL FRANÇAIS العربية



Amnesty International

August 14, 2023

Tanzania: Detained critics of UAE port deal must be immediately and unconditionally released.

The Tanzanian authorities must immediately and unconditionally release Willibrod Slaa, former parliamentarian and Tanzanian Ambassador to Sweden, Boniface Mwabukusi, a lawyer and activist, and Mdude Nyagali, a political activist, all of whom were arrested between 12 and 13 August simply for criticizing a port deal between Tanzania and the United Arab Emirates (UAE), Amnesty International said today.

The accord sets a legally binding framework for the UAE to collaborate with Tanzania on the development, management and operation of Tanzania's ports, special economic zones, logistics parks, trade corridors and other related infrastructure.

"The Tanzanian authorities' crackdown on critics of the UAE port deal reveals their growing intolerance for dissent. The authorities must stop arbitrarily detaining activists simply for peacefully expressing their views and immediately and unconditionally release these activists to ensure the respect of the right to freedom of expression," said Tigere Chagutah, Amnesty International's Regional Director for East and Southern Africa.

> "
>
> **The authorities must stop arbitrarily detaining activists simply for peacefully expressing their views and immediately and unconditionally release these activists to ensure the respect of the right to freedom of expression**
>
> **Tigere Chagutah, Regional Director, East and Southern Africa, Amnesty International**

206

Slaa, Mwabukusi and Nyagali have all publicly criticized the port deal. Mwabukusi led a court petition arguing that the port accord contains clauses that violate Tanzania's Constitution and endanger national sovereignty and security.

According to his lawyer, Slaa was arrested by police officers at his home in Mbweni, Dar es Salaam, on 13 August at around 1:00 pm and taken to Mbweni Police Station. He was then taken back to his house, where the police conducted a search and confiscated some of his communication devices. After the search, the police took Slaa to Oysterbay Police Station.

Mwabukusi and Nyagali's lawyer told Amnesty International that he received a distress call from the two activists when they were apprehended by police officers on 12 August, at around 3:00 am. According to the lawyer, Mwabukusi and Nyagali were arrested near Mikumi in Morogoro region, eastern Tanzania, while traveling to Dar es Salaam from Mbeya, southwest Tanzania. Emmanuel Masonga, an opposition party official, was also arrested with them but released the same day with orders to report to Mikumi Police Station on 14 August 2023.

Mwabukusi and Nyagali are currently being held at the Central Police Station in Mbeya, having been transferred from Mikumi during the day. According to their lawyer, the two activists have refused to eat or drink anything since their arrest.

On 11 August, Camilius Wambura, Tanzania's Inspector General of Police, told media that critics of the deal will be apprehended over their "seditious" statements that "call for national protests" against the port deal, which he said were tantamount to "inciting the public into overthrowing the government".

Lawyers of the detained critics told Amnesty International that they have all been denied bail. According to the lawyers, the police chiefs in Dar es Salaam and Mbeya said the three critics will be charged with treason but they have not yet provided any official information about the specific charges. The lawyers are yet to be presented with any formal charges against Slaa, Mwabukusi, Nyagali, while the prosecution has shared no details of the alleged offence.

Under Tanzania's Penal Code, treason carries a mandatory death penalty. Treason is also an unbailable offence under section 148 of the Criminal Procedures Act.

> **"By criminalizing public criticism of the port deal, the Tanzanian authorities are clearly trying to snuff out dissent.**
>
> **Tigere Chagutah**

On 10 August, Tanzania's High Court in Mbeya dismissed a petition filed by Mwabukusi and four others that challenged the legality of the port agreement. The petition argued that the agreement violates Tanzanian law as the public was only given two days to submit their views, and that the agreement itself violates international law and Tanzania's domestic law by handing the management of natural resources to a foreign entity.

"By criminalizing public criticism of the port deal, the Tanzanian authorities are clearly trying to snuff out dissent. The government should instead enable the public to engage in discussions of all matters of public interest, including the UAE port agreement, and ensure all aspects of the agreement are transparent to ensure the public's meaningful engagement," said Tigere Chagutah.

Background

207

In October 2022, President Samia Suluhu Hassan and Ahmed Mahboob Musabih, the CEO of the Ports, Customs and Free Zone Corporation, signed an agreement on managing ports in Tanzania on behalf of the Emirate of Dubai. Tanzania's Parliament endorsed the agreement on 10 June 2023.

Between June and August 2023, at least 24 people were arrested — and later released — for criticizing the port deal. Rugemeleza Nshala, a lawyer, activist, and former President of the Tanganyika Law Society (TLS), also fled the country in July after facing intimidation and death threats for criticizing the deal.

Mwabukusi and Nyagali were previously arrested over the port agreement on 14 July, days after holding a news conference in Dar es Salaam in which they criticized the port agreement.

NEWS AFRICA EAST AFRICA, THE HORN AND GREAT LAKES TANZANIA PRESS RELEASE BUSINESS AND HUMAN RIGHTS

CENSORSHIP AND FREEDOM OF EXPRESSION CORPORATE ACCOUNTABILITY DETENTION ECONOMIC, SOCIAL AND CULTURAL RIGHTS FREEDOM OF MOVEMENT

Related Content

COUNTRY

Tanzania

CAMPAIGNS

Case of an immigrant mistreated by the judicial and prison system in Tanzania

CAMPAIGNS

Case on death-row detainees challenging mandatory death penalty

NEWS

Tanzania: End the crackdown on the Maasai standing up against forced evictions in Ngorongoro.

256

TAB 36

Court File No. CV-22-00690649-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

AFFIDAVIT OF FATMA AMANI KARUME

I, **FATMA AMANI KARUME,** of the City of Dar es Salaam, in the Country of the United Republic of Tanzania, **AFFIRM:**

1. I have knowledge of the matters to which I hereinafter depose. Where the facts in this affidavit are based on information I obtained from others, I have stated the source of the information and confirm that I believe that information to be true.

9. In 2018, I was elected as president of the Tanganyika Law Society ("**TLS**") following the attempted assassination of the former TLS president, Mr. Tundu Lissu. I describe the TLS and my role as president below.

10. Since 2000, I have also been involved in international arbitration, both commercial and investor state. In the field of international arbitration. I have either led or co-counselled with lawyers from multiple jurisdictions, including England & Wales, France, Italy, Switzerland, the United States of America, South Africa, Kenya, and Uganda. I have represented or advised several governments and multi-lateral institutions.

11. I was instructed to represent Acacia Plc ("**Acacia**") on several legal issues in Tanzania between 2017 and 2019. This included primarily tax cases and land cases, and some international arbitrations. In my view, my prior relationship with Acacia does not represent a conflict of interest on my ability to provide a factual witness statement relating to the role of lawyers and the current issue of access to justice in Tanzania. I have never represented Barrick Gold Corporation.

12. I take no position on the merits of the underlying claims brought by the plaintiffs in these proceedings.

My experience representing Mr. Tundu Lissu

13. In mid-2017, I represented Mr. Tundu Lissu, a member of the opposition party CHADEMA and also the president of the TLS. I was acting for him in a criminal case in which he had been charged with sedition, because he had called President John Magufuli a "petty dictator".

14. In July 2017, as I was leaving the Kisutu Magistrates Court after representing Mr. Lissu, I was surrounded by riot police and one of them assaulted me. He bruised my forearm. I was saved from further harm by passers-by who stopped a passing car and pushed me into the car in order to help me escape the police. I commenced proceedings against the police officer who assaulted me. The Government of Tanzania through the Attorney General ("**A-G**") filed an application to intervene and my suit was dismissed on the ground that I had not sued the police officer's employer, the Minister of Home Affairs. I was forced to incur further costs by filing a new suit against the police officer and his employer. To my knowledge, this suit has never been heard.

15. At about 2am on 26 August 2017, my office (IMMMA Advocates) was bombed. The managing partner at the time, Sadock Magai, told me that he provided the police with our original recordings of footage from our CCTV cameras. However, so far as I am aware, the police never investigated the matter. Attached hereto as **Exhibit "A"** are copies of Tanzanian news publications about this incident.

16. On 7 September 2017, Mr. Lissu was shot 16 times with a machine gun but survived. Based on my own interactions with Mr. Lissu, I know that he underwent more than two years of treatment outside of Tanzania. The investigation of the bombing of my office and Mr. Lissu's attempted assassination remain open to date. There have been no arrests.

17. A 2018 report by the American Bar Association called "*Warning Shots: Threats to the Independence of the Legal Profession in Tanzania*" described the shooting of Mr. Lissu and the bombing of my offices as having "a deeply chilling effect on the legal profession", noting that "[l]awyers reported high levels of fear regarding openly criticising the government or representing clients that are in dispute with the government…." Attached hereto as **Exhibit "B"** is the

Executive Summary and the Conclusion page of the *Warning Shots* report containing these statements.

18. Following the attempted assassination and his departure from Tanzania, Mr. Lissu was unable to continue acting as the President of the TLS. This was when I decided to run for the presidency of the TLS myself.

My role at the TLS

19. The TLS is an organisation whose role is similar to the Canadian Bar Association. As described below, the TLS is not involved in licencing lawyers. It is funded entirely through membership payments.

20. However, the TLS was founded in 1954 by an Act of Parliament, the *Tanganyika Law Society Ordinance 1954*. Because it is founded by statute, the independence and proper functioning of the TLS has long been threatened. For example, in February 2017, the Minister of Justice and Constitutional Affairs threatened to ban the TLS. The Tanzanian government then changed the law, as described below.

21. Following the assassination attempt against Mr. Lissu, and recognising that the regime of Tanzanian president Magufuli was undermining the rule of law and the independence of the bar and the judiciary, in February 2018 I decided to run for the presidency of the TLS in the hope that I could lead the law society in a fight for its very survival. On 14 April 2018, I was voted president of TLS and served in that role for the next year.

22. While President of the TLS, I campaigned for independence of the bar, rights for lawyers to represent clients without fear of repercussion, rule of law, rights of prisoners and better prison conditions.

23. In July 2018, the Government had tabled a bill in parliament to amend the *Tanganyika Law Society Act* to restrain members who were politically active from running for positions in the TLS governing council, and to award the Attorney General inter alia the power to veto internal TLS regulations made by its independently elected Governing Council. Despite the TLS's brave fight, the Government of Tanzania was successful. The bill amending the TLS Act was passed by Parliament and the independence of the Tanzanian Bar was further diminished.

24. I am proud to have been the president of the TLS who helped raise the funds to complete Wakili House, the permanent home of the TLS paid for by contribution from members of the TLS and bank loans. Following the Government's threat to deregister the TLS, I convinced the Governing Council to set up a trust to own and manage the building for the benefit of all lawyers, in order to protect the building from expropriation as a result of de-registration and dissolution of the TLS, which hangs over the Tanzanian Bar like the sword of Damocles.

Persecution of lawyers in Tanzania

25. Unfortunately, during my presidency of the TLS, the detention of lawyers by the government was a common occurrence.

26. For example, in 2018, Advocate Menrad D'Souza was detained by police while representing a foreign investor in a contractual dispute. I was informed at the time by Mr. D'Souza that a Tanzanian regional commissioner wanted the dispute resolved in a particular way, and he called Mr. D'Souza to his office. Mr. D'Souza refused to advise his client to take the deal being proffered and so the regional commissioner locked Mr. D'Souza (and the client) in his office and then called the police, who detained Mr. D'Souza. Attached hereto as **Exhibit "C"** is a press release by the Tanzania Human Rights Defenders Coalition, a well-respected human

rights organization with which I communicated as president of the TLS, regarding Mr. D'Souza's unlawful detention.

27. As president of the TLS, I also campaigned against what I believed to be abuse of power by Mr. Biswalo Mganga, the Director of Public Prosecution ("**DPP**"). I believed that the DPP used his power of prosecution to persecute lawyers and others perceived as a threat to the regime by charging them with unfounded offences such as money laundering, economic crimes, and drug dealing, for which the accused is not entitled to bail.

28. One such example was the arrest of lawyer Tito Magoti. On 20 December 2019, Mr. Magoti, a member of the TLS with whom I worked closely, criticised the government on social media and was subsequently arrested by the Tanzanian police and held incommunicado for several days. He was then charged by DPP Mganga with the non-bailable offence of money laundering. I campaigned against Mr Magoti's detention and assisted the American Bar Association in bringing public attention to his case. In September 2020, the United Nations Human Rights Council Working Group on Arbitrary Detention found that the detention of Tito Magoti contravened international law. Attached hereto as **Exhibit "D"** are the Working Group's findings. Mr. Magoti continued to be detained without trial until early 2021.

29. Based on my experience at the TLS and on these cases, as well as my own ordeal described below, I can say with certainty that there was and is a widespread and well-grounded fear among legal professionals in Tanzania that discourages them from taking on cases that challenge or affect the government's interests.

TAB 37

Court File No. CV-22-00690649-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

AFFIDAVIT OF ELIZABETH MATIKO IRONDO

I, Elizabeth Matiko Irondo, of the Village of Nyabichune, in the United Republic of Tanzania, SWEAR:

1. I am a plaintiff in this Action, and as such have knowledge of the matters to which I hereinafter depose. Where the facts in this affidavit are based on information I obtained from others, I have stated the source of the information and confirm that I believe that information to be true.

2. My first language is Kurya. I am also fluent in Kiswahili. I do not speak or understand English. I completed primary school to grade 7.

3. I have brought a lawsuit against Barrick Gold Corporation ("Barrick") regarding the killing of my son, Irondo Matiko Irondo, who was shot in July 2021. My lawsuit alleges that Barrick as the owner of the mine is responsible for the killing of my son because of its negligent security strategy and human rights policy that led to his death.

My village and the mine

4. I live in the village of Nyabichune, which is located in the north of Tanzania. This is in the Mara region, which is the same region where the Serengeti is located. It is a little over an hour by vehicle from the border with Kenya.

5. Nyabichune is located right next to the North Mara mine. The North Mara mine, including open pits and waste rock areas, is located right next to and in the middle of several villages, one of which is Nyabichune.

Small-scale mining in my community

6. I was born in Nyabichune in 1965. I have lived all my life in Nyabichune. My parents and my grandparents were also from Nyabichune. My grandmother lived in Nyabichune until she died in 1992 when she was 92 years old.

7. Before the commercial mine started, people from my village, including my family, would dig for gold in the area where the mine now is. I began digging in 1974 with my mother. We dug in the area where the Nyabirama commercial pit now is. The gold was right at the surface. We did not have to dig deep. We used a hoe to pull up the sand and then sift out the gold. The men would sometimes dig deeper with a "ponchi" (chisel) and hammer. Although my parents were also

farmers, gold was our main source of income. My parents got the money to pay for our schooling by digging for gold.

8. A foreign mining company first came in the 1990s, and starting building a mine in the neighbourhood called Nyabirama. Many people had to move away from that area. After the mine started, we were no longer allowed to dig for gold there. My family did not have to relocate in the 1990s because our home was far away from the mine, but by 2009 the mine had expanded all the way to our home and we had to relocate.

9. Most people from my community earn money by engaging in small-scale gold mining and farming. Small-scale mining involves either digging for gold from pits located near but outside the mine wall, or from going onto waste rock piles at the mine. Small-scale miners work by hand often using chisels and hammers. Small-scale miners in the pits can earn around 8,000 to 10,000 Tanzanian shillings per day for this work. I don't know all the details about how much people make by going to the waste rock but I understand that if they find rocks with gold they can make at minimum 5,000 shillings in a day after paying the people who process the rocks.

10. Over the years since the mine started operating, there has been a lot of violence against people – especially young men who go onto the waste rock. It is common knowledge in the community that the police who guard the mine use live ammunition to shoot at people on the waste rock. Here we call them the Mine Police. I know about many people who have been shot and killed at the mine over the years. Not just 20 or 30 people, but I would estimate as many as 100 people since the mine came to my community. My cousin's son is one of those who was killed. It is common knowledge in my community that the police who guard the mine are the ones who shoot them. I am not aware of the police investigating any of these deaths.

My son Irondo Matiko Irondo

11. I have eight children, six of whom are living. My son, Irondo Matiko Irondo, was my fourth child and he was born in 1997. Irondo went to school through grade 7. Irondo was very important to me. He helped me with all aspects of life including farming. I lived with Irondo and his family in the house that he built. It is located close to the mine in a neighbourhood called Masinki.

12. It is a simple house. There is a dirt floor. The walls are made of mud. The roof is corrugated metal. There is no kitchen; we just use a charcoal stove to cook. We also sometimes cook outside with firewood. We do not have electricity or indoor plumbing.

13. At the time of his killing in July 2021, Irondo had a wife, Esta George Range, and three small children: Joseph Samuel, then 5 years old; Godfrey Samuel, then 3 years old; and Philemon Samuel then one year old. Esta was pregnant when Irondo was killed. Their fourth child, Rebeka Samuel, was born several months after Irondo died.

14. Irondo was a small-scale miner. He engaged in small-scale mining to provide for the family. This included working in pits outside the mine. He worked both day shifts and overnight shifts at the pits. He started working at pits in an area called Nyabikondo in 2016. But he also went to waste rock dumps at the mine. Especially before a wall was built in about 2018, it was very common for many people in the community to work on the waste rock including women and children. Irondo worked on the waste rock, as did I. Since the mine built the wall around 2018, the violence by the police has gotten worse.

15. I live very near the mine. The mine has many cameras inside the mine wall which we can see from our neighbourhood. I frequently hear gunshots and teargas projectiles being fired (we call them "bombs"). Sometimes the police fire teargas that affects us. It is common knowledge in my

community that the police assigned to the mine fire teargas and bullets at young men who go to the waste rock dumps inside the mine wall.

Irondo's Death

16. At the time Irondo died, I was living in the same house with Irondo and his family. On that day, I heard a lot of bombs and gunshots around 5 a.m. A little later, Irondo's wife Esta told me she was very worried. She told me that Irondo was not home after being out overnight, even though she expected him by 6:00 a.m. at the latest. I immediately became very worried as well. I and one of my sons tried calling Irondo's phone but could not get through.

17. I went to speak with neighbours to see if they had any news. I was told that earlier that morning, Mine Police were seen around our neighbourhood searching the area with torches. I was also told that the neighbours saw blood on the ground at an area near the mine.

18. I woke up my son Nyaseba and asked him to go find Irondo. Soon after, he went with neighbours to search for him. I later learned from Nyaseba that he had gone to the police station but was told to go to the hospital in Tarime. Nyaseba went with our relatives to the hospital where he was told that a body had arrived. Nyaseba called me from the hospital to inform me that he found Irondo's body in the morgue at the hospital and that he saw a wound that looked like a gunshot through Irondo's chest.

19. I have never been told how and why Irondo died. I believe that the mine has information about his death.

20. I was devastated when I learned that Irondo was dead.

My lawsuit

21. I believe that my son was shot and killed by the Mine Police. I believe the Mine Police were operating according to an agreement with the mine.

22. The Tanzanian legal system has failed my family. No one was ever charged criminally for the killing of Irondo. I think the police simply never investigated it. The police have never spoken with me or anyone in my family about Irondo's death. Mine Police shoot people inside and outside the mine all the time – I have never heard of anyone being investigated or charged criminally in any of these shootings. The mine and the government are partners. I don't have any faith in them to hold anyone responsible for Irondo's death.

23. I do not want to start a lawsuit in Tanzania. I do not have any faith that I would receive a fair trial in Tanzania. I do not have faith in the Tanzanian legal system.

24. Even if I wanted to bring a lawsuit in Tanzania, I cannot afford to pay a lawyer to represent me, or to pay the other costs of a lawsuit. Lawyers in Tanzania must be paid before they help you and take your case to court. I do not have money for a lawyer. I have to use whatever money I have to support my children and Irondo's family since he is no longer here.

25. I am confident no one else in my community can afford a lawyer for a case about someone being shot. Despite all the shootings, I am not aware of anyone filing a case in a Tanzanian court about a shooting by the Mine Police.

26. My main source of income is vegetable farming. I sell them at market. My financial situation is very difficult. Three of my children are supposed to go to school, and Irondo's children are also supposed to go to school. However, I cannot afford to pay for the school uniforms and books for all of them. The school uniform and books for one child cost 300,000 shillings. One of

my children and two of Irondo's children are not currently in school. For one of my children, I saved 150,000 from farming but I had to borrow the other 150,000 so they could attend school.

27. I am prepared to travel to Canada as required to give evidence and otherwise participate in my lawsuit.

SWORN BEFORE ME at the City of Mwanza, United Republic of Tanzania, this 19th day of January, 2024, by the deponent Elizabeth Matiko Irondo through interpretation of Monica Nkwabi, a person fluent in the English and Kiswahili languages, the above having been sworn that she had truly, distinctly and audibly interpreted the contents of this document, and that she would truly and faithfully interpret to the said deponent the oath about to be administered by her.

Commissioner for Taking Affidavits in Ontario
JOE FIORANTE, K.C. (LSO # 86342O)

Elizabeth Matiko Irondo

TAB 38

Court File No. CV-22-00690649-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

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

AFFIDAVIT OF CHARLES DANIEL NYAKINA A.K.A. CHARLES HAGALE MALO

I, Charles Daniel Nyakina a.k.a. Charles Hagale Malo, of the Village of Nyarugusu, Serengeti District, in the United Republic of Tanzania, AFFIRM:

1. I am a plaintiff in this Action, and as such have knowledge of the matters to which I hereinafter depose. Where the facts in this affidavit are based on information I obtained from others, I have stated the source of the information and confirm that I believe that information to be true.

My lawsuit

13. Emmanuel was shot by Mine Police while he was on the waste rock dump at the North Mara mine. I believe that Barrick is responsible for what happened to him. I think Barrick may have information about the shooting of Emmanuel since he was killed inside the mine and there are lots of cameras in that area. Three security camera towers can be seen from my parents' house so I believe the mine may have video footage of Emmanuel's shooting.

14. To date, the police have not investigated my brother's death. It is obvious that he was shot at the North Mara mine, and yet there has been no investigation, and no one has been arrested or charged in his death. The police have not interviewed me or my family, or given us any information regarding Emmanuel's death. I have no faith that there will be justice in Tanzanian over my brother's killing.

15. I cannot bring a lawsuit in Tanzania because I cannot afford it. I support my family by farming and by selling shoes in the street in the town of Tarime. On a really good day selling shoes, I can make about 10,000 Tanzanian shillings. I do not have any other source of income. I have a small farm at my house in Serengeti district where I grow maize for consumption by my family. I farm from January to February and August to September, and during the other months I sell shoes in the street. I save up to 100,000 shillings to sustain myself and my family during the farming months since I do not have income during those months.

16. My parents do not have enough money to hire a lawyer either.

17. I do not trust the courts in Tanzania. I think that there would a good chance that the trial would not be fair if it was in Tanzania. The North Mara mine is very important to the Tanzanian government. So is Barrick. I am concerned that the court in Tanzania would favour the mine because it is so important to the government.

SOPHIA MATIKO JOHN et al.
Plaintiffs/Appellants'

-and-

BARRICK GOLD CORPORATION
Defendant/Respondent

COA File No.: COA-25-CV-0229
Court File No.: CV-22-00-690649-0000
Court File No.: CV-24-00-714148-0000

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

ORAL HEARING COMPENDIUM OF THE PLAINTIFFS/ APPELLANTS - VOLUME 1 OF 2

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

Joe Fiorante, K.C.
(LSBC #9197/LSO # 86342O)
jfiorante@cfmlawyers.ca
Jen Winstanley (LSBC #508967)
jwinstanley@cfmlawyers.ca

PHILLIPS BARRISTERS PROFESSIONAL CORPORATION
36 Toronto Street, Suite 1120 Toronto,
ON M5C 2C5

W. Cory Wanless (LSO No.: 57288M)
cory@phillipsbarristers.ca
Patti Shedden (LSO No.: 46210W)
patti@phillipsbarristers.ca

Tel: 647-261-4486

Lawyers for the Plaintiffs/Appellants