



MAY 2025

# Reflections on Legal Proceedings in Canada against Barrick Gold Regarding the North Mara Gold Mine in Tanzania

Catherine Coumans, Ph.D.



## TABLE OF CONTENTS

Legal Context	3
Reflections on Legal Proceedings in Canada on the North Mara Gold Mine	5
Use of national police and military as security by Canadian mining companies	5
Parent company accountability	6
International human rights law	8
The Voluntary Principles on Security and Human Rights	10
Appendix: Excerpts from Court Documents	11
Plaintiff's Factum	11
Barrick's Factums	12
Affidavit from Grant Beringer	13
Affidavit from Johann Sebastiaan Bock	14
Cross Examination of Johann Sebastiaan Bock	15
Affidavit from Apolinary Lyambiko	16
Justice E.M. Morgan's Ruling	17

This report focuses on specific aspects of the legal proceedings in the context of international human rights norms. For additional information on the positions of, among others, the plaintiffs, the defendant, and Justice E.M. Morgan, see references and links provided.

### COVER PHOTO:

Ontario Superior Court of Justice in Toronto.

Credit: Catherine Coumans, MiningWatch Canada

## Legal Context

On 23 November 2022, Barrick Gold Corp. (Barrick) was sued in its home country Canada by 21 plaintiffs (*Sophia Matiko John v. Barrick Gold Corporation*)<sup>2</sup> in regard to alleged excess use of force by police paid under Memorandums of Understanding<sup>3</sup> to provide additional security to the area around the North Mara Gold Mine Ltd. (NMGML) in Tanzania leading to deaths and injuries of local Kuria peoples. The plaintiffs' statement of claim notes that "acts of extreme violence committed by the Mine Police in the service of Barrick in and around the North Mara Mine" include "killings of five local residents" and "numerous beatings and shootings."<sup>4</sup>

On 5 February 2024, eight additional Kuria plaintiffs filed a claim (*Ester Nyangi Petro v. Barrick Gold Corporation*).<sup>5</sup> The plaintiffs' statement of claim refers to two additional alleged shootings by Mine Police at the NMGML leading to death, one plaintiff who was beaten by Mine Police and suffered serious injuries, and three other plaintiffs who allege to have been shot by Mine Police and who survived with serious injuries.<sup>6</sup>

The allegations brought in both cases occurred between April 2021 and July 2023, after Barrick's September 2019 increase in indirect ownership in the NMGML.<sup>7</sup> In its capacity as indirect majority shareholder, Barrick has three appointees on the five-member Board of Directors of the NMGML and has management control over the mine. One of the three directors of NMGML has been identified as Mark Bristow, CEO of Barrick Gold Corp. (Appendix p.15).<sup>8</sup> The plaintiffs' statement of claim notes: "since Barrick assumed direct control over the North Mara Mine in September 2019, it has increased reliance on the use of the heavily armed Mine Police to deal with members of the local community who enter or are suspected of entering the waste rock

---

<sup>2</sup> Statement of Claim *Sophia Matiko John v. Barrick Gold Corporation*. 23 November 2022.

[https://www.barrickontrial.ca/wp-content/uploads/2025/03/22\\_11\\_23\\_Statement-of-Claim-North-Mara.pdf](https://www.barrickontrial.ca/wp-content/uploads/2025/03/22_11_23_Statement-of-Claim-North-Mara.pdf)

<sup>3</sup> The two Memorandums of Understanding (MOU) - dated 2019 and 2022 - relevant to the related cases brought against Barrick in Canada are between the Tanzania Police Force and North Mara Gold Mine Ltd. For a copy of the 2022 MOU see

[https://s25.q4cdn.com/322814910/files/doc\\_downloads/north\\_mara/MOU\\_North-Mara\\_Tanzania-Police-Force.pdf](https://s25.q4cdn.com/322814910/files/doc_downloads/north_mara/MOU_North-Mara_Tanzania-Police-Force.pdf)

<sup>4</sup> Statement of Claim *Sophia Matiko John v. Barrick Gold Corporation*. 23 November 2022.

[https://www.barrickontrial.ca/wp-content/uploads/2025/03/22\\_11\\_23\\_Statement-of-Claim-North-Mara.pdf](https://www.barrickontrial.ca/wp-content/uploads/2025/03/22_11_23_Statement-of-Claim-North-Mara.pdf)

<sup>5</sup> Statement of Claim *Ester Nyangi Petro v. Barrick Gold Corporation*. 5 February 2024.

[https://www.barrickontrial.ca/wp-content/uploads/2025/03/24-02-05\\_Statement-of-Claim\\_North-Mara.pdf](https://www.barrickontrial.ca/wp-content/uploads/2025/03/24-02-05_Statement-of-Claim_North-Mara.pdf)

<sup>6</sup> *Idem*.

<sup>7</sup> Barrick has held a majority share, through subsidiaries, in the North Mara Gold Mine since 2006. In September 2019, Barrick Gold purchased the shares of minority shareholders in its subsidiary, Acacia Mining, in a \$1.2bn buy-out. Barrick now has an 84% indirect ownership in the North Mara Gold Mine. The Government of Tanzania owns the remaining 16%.

<sup>8</sup> Affidavit of Johann Sebastiaan Bock, Chief Operating Officer for Barrick companies in the Africa and Middle East region. Paragraph 26. (sworn 1 October 2023). In his affidavit Mr. Bock identifies the other two North Mara Gold Mine Ltd. directors as himself and Mr. Simon Bottoms, Executive Vice President, Mineral Resource Management & Evaluations at Barrick Gold Corp.

areas, thereby increasing the risk of harm to members of the local community including those who did not go to the waste rock dumps.”<sup>9</sup>

Between October 15 - 17, 2024, hearings were held in the Ontario Superior Court of Justice in Toronto in response to Barrick’s plea to have the two filed cases “dismissed or permanently stayed on the basis that this Court lacks jurisdiction or, alternatively, on the basis of the doctrine of *forum non conveniens*.”<sup>10</sup>

On November 26, 2024, the two cases were dismissed. Justice E.M. Morgan found that the “Court lacks jurisdiction to determine the matters at issue.”<sup>11</sup> Noting further that “[i]f the Court had jurisdiction, the actions would be permanently stayed on the basis of *forum non conveniens*” (Appendix p.19).<sup>12</sup> The substance of the claims brought by the plaintiffs was not considered in the October 2024 hearings. Legal counsel for the plaintiffs has appealed this ruling.

Barrick and its subsidiaries have settled out of court with plaintiffs on similar claims of excess use of force by mine security at the North Mara Gold Mine in 2015 and 2024. These cases were filed in the United Kingdom. Another case on behalf of alleged victims of excess use of force by mine police at the same mine has been filed against the London Bullion Market Association (LBMA) alleging that the LBMA wrongly certified that gold sourced from the North Mara Gold Mine is free from serious human rights abuses. This case is ongoing.<sup>13</sup>

MiningWatch has conducted nine human rights field assessments at the North Mara Gold Mine, starting in 2014. Our interviews with affected Kuria community members have focussed on understanding the impacts of reported human rights abuses perpetrated by public and private mine security and of forced evictions to clear land for mine expansion. We have also provided reports on the failure of the mine grievance mechanism to equitably address these impacts. Our most recent reports can be found at [www.barrickontrial.ca](http://www.barrickontrial.ca).

---

<sup>9</sup> Statement of Claim *Ester Nyangi Petro v. Barrick Gold Corporation*. 5 February 2024.

[https://www.barrickontrial.ca/wp-content/uploads/2025/03/24-02-05\\_Statement-of-Claim\\_North-Mara.pdf](https://www.barrickontrial.ca/wp-content/uploads/2025/03/24-02-05_Statement-of-Claim_North-Mara.pdf)

<sup>10</sup> *Matiko John v. Barrick Gold Corporation*, 2024 ONSC 6240 COURT FILE NOS.: CV-22-00-690649-0000 CV-24-00-714148-000 DATE: 26 November 2024. P. 2

[https://www.barrickontrial.ca/wp-content/uploads/2025/02/2024-MatikoJohnAll\\_V\\_Barrick-Gold\\_ONSC.pdf](https://www.barrickontrial.ca/wp-content/uploads/2025/02/2024-MatikoJohnAll_V_Barrick-Gold_ONSC.pdf). Note: Jurisdiction means that a court has the authority or power to determine a dispute between parties and the geographic area over which that authority extends. *Forum non conveniens* is a legal doctrine which allows a court to decline to exercise its jurisdiction over a lawsuit, on the basis that a court in another forum, or jurisdiction, is more suitable.

<sup>11</sup> *Ibid.* P. 32.

<sup>12</sup> *Ibid.*

<sup>13</sup> For more on these cases see [www.barrickontrial.ca](http://www.barrickontrial.ca)



## Reflections on Legal Proceedings

### Use of national police and military as security by Canadian mining companies

In MiningWatch Canada's work with global partners, we document reports of human rights abuses suffered by communities and Indigenous peoples that are caused or contributed to by security arrangements at mining projects owned by Canadian multinationals.

Access to remedy for these cases remains elusive. Of ten cases<sup>14</sup> filed in Canada by overseas plaintiffs against Canadian mining companies, seven<sup>15</sup> alleged violence by private and public mine security against local community members including shootings, beatings, killings, torture, maiming, and rape. To date, four of these cases have resulted in out-of-court settlements.<sup>16</sup> Three were dismissed, including the two related cases against Barrick that we are discussing here, which are now under appeal.

In a recent submission to the United Nations Working Group on the Use of Mercenaries,<sup>17</sup> MiningWatch provides four case studies. Two cases involve mines in Guatemala and Peru owned by subsidiaries of Canadian parent company Hudbay Minerals Inc. (Hudbay). The other two cases are in regard to mines in Papua New Guinea and Tanzania owned by subsidiaries of Canadian parent company Barrick Gold Corp. These cases include the two lawsuits brought by Tanzanian plaintiffs reflected on in this brief. In the four case studies, the alleged human rights abuses – including rapes, shootings, beatings, deaths, and maiming – involve both public and private mine security. Often, cases of human rights abuses by mine security implicate armed security: armed private security and armed national police and military who are contracted to provide security services to mines. However, unarmed security, usually private, has also been accused of rapes, beatings, maiming, and deaths.

---

<sup>14</sup> Recherches Internationales Quebec v. Cambior Inc.; Ramírez v. Copper Mesa Mining Corporation; Association canadienne contre l'impunité (ACCI) v. Anvil Mining Ltd.; Choc v. Hudbay; Chub v. Hudbay; Caal v. Hudbay; García v. Tahoe Resources Inc.; Araya v. Nevsun Resources Ltd.; Sophia Matiko John v. Barrick Gold Corporation; Ester Nyangi Petro v. Barrick Gold Corporation.

<sup>15</sup> Ramírez v. Copper Mesa Mining Corporation; Choc v. Hudbay; Chub v. Hudbay; Caal v. Hudbay; García v. Tahoe Resources Inc.; Sophia Matiko John v. Barrick Gold Corporation; Ester Nyangi Petro v. Barrick Gold Corporation.

<sup>16</sup> Choc v. Hudbay; Chub v. Hudbay; Caal v. Hudbay; García v. Tahoe Resources Inc.

<sup>17</sup> Coumans, Catherine. (27 February 2025). *Mine Security - Crossing Boundaries, Abusing Rights*. Submission to the United Nations Working Group on the use of mercenaries to inform the Working Group's report on "The role of mercenaries, mercenary-related actors and private military and/or security companies (PMSCs) in the exploitation of natural resources," to be presented to the 60th Session of the Human Rights Council in September 2025. [https://miningwatch.ca/sites/default/files/2025-02\\_miningwatch-canada-submission-to-the-un-wg-on-the-role-of-mercenaries.pdf](https://miningwatch.ca/sites/default/files/2025-02_miningwatch-canada-submission-to-the-un-wg-on-the-role-of-mercenaries.pdf)

## Parent company accountability

The Tanzanian plaintiffs brought their case in Canada on the basis of direct parent company liability: “The plaintiffs bring claims against Barrick in direct negligence as the parent company with ultimate authority over human rights and security matters at the North Mara mine and for aiding and abetting violations of customary international law” (Appendix p.11). Barrick argued that the case had been brought against the wrong party in the wrong jurisdiction: “Put succinctly, the Plaintiffs have made the deliberate choice to sue the wrong party in the wrong jurisdiction” (Appendix p.12).

Barrick’s counsel maintained that Barrick is the “wrong party” because the plaintiffs’ allegations are against the Tanzania Police Force (TPF), which has contractual arrangements with the NMGML, an indirectly-held subsidiary of Barrick: “The Plaintiffs’ claims pertain to alleged acts of violence supposedly perpetrated by members of the TPF at or near the Mine during the period from April 2021 to July 2023. There is no suggestion that any such acts were committed by employees of NMGML or Barrick” (Appendix p.13). Barrick’s counsel argued that Canada is the “wrong jurisdiction,” although Barrick is headquartered in Canada, because “Barrick’s small corporate office in Toronto has no connection to or involvement in the management or operation of the North Mara Gold Mine” (Appendix p.12).

In addition to arguing that Canada is the wrong jurisdiction to hear this case, Barrick’s counsel argued that Barrick Gold Corp. has no direct presence in Tanzania: “The Mine is owned and operated by North Mara Gold Mine Limited (“NMGML”), a Tanzanian company...” (Appendix p.12).

Details of the legal corporate separateness Barrick Gold Corp. has created between itself and the NMGML are further provided in the affidavit of Johann Sebastiaan Bock, chief operating officer for Barrick companies in the Africa and Middle East region: “Barrick holds an indirect 84% ownership interest in NMGML. The Government of Tanzania owns the remaining 16% of NMGML. Barrick’s indirect ownership interest in NMGML is held through a number of other corporations” (Appendix p.14). These “other companies” include a UK corporation known as North Mara Holdings Limited, in turn owned by another UK corporation known as Barrick TZ Limited, of which Barrick directly owns approximately 47%. The remainder of Barrick TZ Limited is owned by Barbadian and Cayman corporations, which in turn are owned by Jersey corporations that are owned directly by Barrick (Appendix p.14). In the affidavit of Grant Beringer, Group Sustainability Executive of Barrick Gold Corporation, he maintains that: “To be clear, Barrick does not own directly or operate any of the mines and projects in its portfolio. Instead, those mines and projects are owned and operated by operating companies, most of which are incorporated in the jurisdictions in which the mines and projects are located. Barrick has an indirect shareholding interest in those companies. Indeed, Barrick’s principal assets are its shareholding interests in its subsidiaries and affiliates” (Appendix p.13).

Lawyers for the Tanzanian plaintiffs detailed the ways in which Barrick is connected to Canada. Among others, Barrick: is headquartered in Toronto; trades on the Toronto Stock Exchange; when not meeting virtually, holds its annual shareholders meetings in Toronto; is required to file records with Canadian securities regulators; has a strong relationship with the Canadian government and regularly lobbies the Canadian government in Ottawa (Appendix p.11 and 12).

Testimony by Johann Sebastiaan Bock, chief operating officer for Barrick companies in the Africa and Middle East region, details how Barrick Gold Corp. is connected to the NMGML. Among others, Barrick is the parent company of the NMGML with 84 % ownership through subsidiaries (Appendix p.14). Furthermore, as the majority shareholder, Barrick appoints three of the five directors of the North Mara Gold Mine. One of these three appointees is the CEO of Barrick Gold Corp., Mark Bristow. As testified by Bock: "Ultimately, the business and affairs of NMGML are overseen by its Board of Directors. There are five Directors of NMGML. Two of the Directors of NMGML are Tanzanian government officials. Both of them reside in Tanzania. The other three are appointees of Barrick, in its capacity as the indirect majority shareholder of NMGML. I am one of the Barrick appointees to the Board. The other appointees of Barrick are Dr. Bristow and Simon Bottoms (who is Executive Vice President, Mineral Resource Management & Evaluations at Barrick)" (Appendix p.14-15).

The Tanzanian plaintiffs' factum maintains 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. Further, it is alleged that Barrick has retained control over human rights and security policies applicable to North Mara at all material times" (Appendix p.11). Specifically with regard to the Memorandums of Understanding (MOU) between the NMGML and the TPF, the plaintiffs' factum points out that: "Barrick's General Counsel for the AME [Africa-Middle East] region and Barrick's regional Sustainability Team were involved in negotiating the current Memorandum of Understanding ("2022 MOU") with the TPF. The MOU was also reviewed by senior Barrick personnel prior to signing including Barrick's CEO, Dr. Bristow; Mr. Beringer; Mr. Bock; and Barrick's commercial executive for the AME region. Mr. Bock and Willem Jacobs, both senior Barrick executives, personally signed the 2022 MOU as well as a letter extending the previous MOU ("2019 MOU") in their capacity as Barrick's appointees to the NMGML Board" (Appendix p.11-12).

In regard to the alleged acts of violence, Barrick's counsel points out that the plaintiffs claim that these were perpetrated by the TPF (Appendix p.13). And while acknowledging the financial and other support provided by NMGML to the TPF, as set out in the MOUs, Barrick's counsel maintains that: "Although NMGML provides financial assistance and other support to the TPF to enable it to discharge its responsibility to maintain public security in the remote area of the Mine, neither NMGML nor Barrick directs or controls the TPF" (Appendix p.13).

## International human rights law

Arguments made by Barrick's counsel, both in maintaining that the case brought by the plaintiffs is against the wrong party and that it was brought in the wrong jurisdiction, rely on long-standing corporate law provisions regarding separate legal personality, limited liability, and jurisdiction, that effectively shield parent companies from liability in transnational business and human rights claims of alleged harm caused by foreign subsidiaries. These shields exist in law even if the subsidiary is majority owned by the parent and the parent has management control of the subsidiary. These legal shields may protect a parent company no matter how much financial gain it and its shareholders receive from the operations of a subsidiary accused of serious human rights abuses. These legal principles have contributed to a now-widely recognized and persistent gap in access to effective remedy<sup>18</sup> – a human rights principle – for people harmed by foreign subsidiaries of multinational parent companies.

The entrenched problem of parent company impunity has been a central concern for human rights advocates. In 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights (UNGPs), which was unanimously approved by all 193 members of the United Nations.<sup>19</sup> The principles set out in the UNGPs are grounded in international human rights law. Among others, the UNGPs set out the responsibility of business enterprises to respect human rights and extends that responsibility to a corporation's supply chain and "business relationships," which include subsidiaries in a corporate group and contractors. The UNGPs recommend that business enterprises carry out due diligence with respect to the "human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships."<sup>20</sup>

The inclusion of a parent company's subsidiaries as business relationships is critical in this context. Barrick Gold Corp. states that its human rights policy is informed by the expectations of the UNGPs.<sup>21</sup> Barrick further states: "We will seek to ensure that we do not cause, and are not complicit with, human rights abuses either directly or through our business relationships."<sup>22</sup> It is difficult to square these statements with the limited liability arguments made by Barrick's

---

<sup>18</sup> Opening statement by Mr. Surya Deva, Chairperson of the Working Group on Business and Human Rights, UN Forum on Business and Human Rights, 27 November 2017.

<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/ForumSession6/SuryaDeva.pdf>

<sup>19</sup> United Nations. *United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*. 16 July 2011.

[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>20</sup> *Ibid.* P. 17.

<sup>21</sup> Barrick Gold Corp. 2023. *Sustainability Report*. P. 53.

[https://s25.q4cdn.com/322814910/files/doc\\_downloads/sustainability/Barrick\\_Sustainability\\_Report\\_2023.pdf](https://s25.q4cdn.com/322814910/files/doc_downloads/sustainability/Barrick_Sustainability_Report_2023.pdf)

<sup>22</sup> *Ibid.* P. 106.



counsel, which rely heavily on corporate law principles of separate legal personality allowing them to claim that the plaintiffs brought their case against the “wrong party.”

The UNGPs also set out the duty of states to protect human rights, including the right to remedy. The UNGPs note that: “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”<sup>23</sup> Countries in Europe have been taking steps to implement into law the due diligence principles set out in the UNGPs. On 25 July 2024, the EU “Directive on corporate sustainability due diligence (Directive 2024/1760)<sup>24</sup> entered into force.”<sup>25</sup> The EU directive sets out a corporate due diligence duty noting the “core elements of this duty are identifying and addressing potential and actual adverse human rights and environmental impacts in the company’s own operations, their subsidiaries and, where related to their value chain(s), those of their business partners.”<sup>26</sup> The EU Directive creates “better access to justice for victims”<sup>27</sup> as article 29 makes a company jointly and severally liable for damage “*caused jointly by the company and its subsidiary, direct or indirect business partner* [emphasis in original]” even when that subsidiary or business partner is outside of the jurisdiction of the EU courts.<sup>28</sup>

Canada has not yet passed due diligence legislation that creates a civil cause of action against parent companies for the damages caused by their subsidiaries and business relationships. The Canadian Network on Corporate Accountability (CNCA) has prepared model human rights and environmental due diligence legislation and Private Member’s Bill C-262 was filed in Parliament in 2022 based on the CNCA’s draft legislation.<sup>29</sup> However, over the past ten years Canadian courts have accepted five cases against Canadian mining companies for alleged human rights offences by their overseas subsidiaries, all of which resulted in out-of-court settlements.<sup>30</sup>

---

<sup>23</sup> United Nations. *United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*. 16 July 2011. P. 28.

[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf)

<sup>24</sup> Directive 2024/1760. <https://eur-lex.europa.eu/eli/dir/2024/1760/oj>

<sup>25</sup> European Commission, *Corporate sustainability due diligence*,

[https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence\\_en#:~:text=On%2025%20July%202024%2C%20the,across%20their%20global%20value%20chains](https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en#:~:text=On%2025%20July%202024%2C%20the,across%20their%20global%20value%20chains)

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Watson Farley and Williams. 24 May 2024. *The CSDDD and Civil Liability: Expanding the reach of EU Courts*.

<https://www.wfw.com/articles/the-csddd-and-civil-liability-expanding-the-reach-of-eu-courts/#:~:text=Civil%20Liability%20under%20the%20CSDDD,their%20obligations%20under%20the%20directive>

<sup>29</sup> CNCA. A law for mandatory human rights and environmental due diligence.

<https://cnca-rcrce.ca/2024/05/24/as-europe-approves-landmark-due-diligence-directive-canada-continues-to-allow-companies-to-violate-human-rights-with-impunity/#:~:text=The%20directive%20requires%20companies%20to,national%20laws%20with%20the%20directive>

<sup>30</sup> Choc v. Hudbay; Chub v. Hudbay; Caal v. Hudbay; García v. Tahoe Resources Inc; Nevsun Resources Ltd v Araya.

## The Voluntary Principles on Security and Human Rights

In regard to the two related cases filed in Ontario, Canada in 2022 and 2024,<sup>31</sup> Barrick's legal counsel argued that: "Consistent with internationally recognized best practices, NMGML has also entered into arrangements with the TPF [Tanzania Police Force] to ensure that the TPF has the means necessary to discharge its responsibility to provide security in the area of the Mine. Arrangements such as these are not unusual in connection with extractive operations located in remote areas. They are, in fact, specifically contemplated by the Voluntary Principles on Security and Human Rights – an important set of governing principles that NGOs, extractives companies (including Barrick) and nation-states (including Canada, the United States, and the United Kingdom) have adopted" (Appendix p. 12 -13). As Barrick's Factum points out, the Voluntary Principles acknowledge that security is "a fundamental need, shared by individuals, communities, businesses and governments alike," and recognize that arrangements between private companies and public security forces are frequently necessary and entirely appropriate" (Appendix p.13). Citing *Kalma v. African Minerals Ltd.* Justice E.M. Morgan found that "[t]his type of security contract with local police appears to be a standard arrangement in the resource industry" (Appendix p. 18).

It is problematic that Barrick's counsel points to the Voluntary Principles – endorsed by Barrick – as condoning the types of arrangements made with public police forces by Barrick's subsidiary North Mara Gold Mine Ltd. as these police are accused of serious human rights abuses allegedly perpetrated in their capacity of providing services to the mine. The Voluntary Principles do not condone human rights abuses by police. Furthermore, Barrick's counsel simultaneously relies on the legal separation of the parent company from the subsidiary to argue that Barrick has no legal responsibility for the reported actions of these police.

---

<sup>31</sup> Sophia Matiko John v. Barrick Gold Corporation (2022) and Ester Nyangi Petro v. Barrick Gold Corporation (2024).

## Appendix: Excerpts from court documents as relevant for the issues discussed in this reflection<sup>32</sup>

### Plaintiffs Factum – 27 September 2024<sup>33</sup>

The Factum for the plaintiffs argues:

- “Barrick Gold Corporation (“Barrick”) is a global mining company headquartered in Toronto, Ontario.” (p. 4)
- “Barrick’s common shares are listed and traded over the Toronto Stock Exchange.” (p. 4)
- “Barrick’s 2023 annual meeting of shareholders was held in Toronto, and over the last ten years, all of the annual meetings were either conducted in Toronto or remotely.” (p. 4)
- “Barrick is required to regularly file records with Canadian securities regulators.” (p. 4)
- “Barrick has a ‘strong and long-standing relationship with the Canadian government’ and regularly lobbies the Canadian government in Ottawa.” (p. 4)
- “According to Barrick’s CEO, ‘[A]s a Canadian company, we are extremely competitive around the globe.’” (p. 5)
- “The plaintiffs bring claims against Barrick in direct negligence as the parent company with ultimate authority over human rights and security matters at the North Mara mine and for aiding and abetting violations of customary international law.” (p. 6)
- “[T]he plaintiffs plead 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. Further, it is alleged that Barrick has retained control over human rights and security policies applicable to North Mara at all material times. There is ample evidence to establish a strong factual basis for these allegations.” (p. 6-7)
- “Barrick’s executives have been directly involved in arrangements with the Tanzania Police Force (“TPF”) and in selecting private security contractors. While Barrick is not a formal party to agreements with the TPF, it is intimately involved. Barrick’s General Counsel for the AME [Africa-Middle East] region and Barrick’s regional Sustainability Team were involved in negotiating the current Memorandum of Understanding (“2022 MOU”) with the TPF. The MOU was also reviewed by senior Barrick personnel prior to signing including Barrick’s CEO, Dr. Bristow; Mr. Beringer; Mr. Bock; and Barrick’s commercial executive for the AME region. Mr. Bock and Willem Jacobs, both senior Barrick executives, personally signed the 2022 MOU as well as a letter extending the

---

<sup>32</sup> Reference numbers have been removed from the excerpts. For references related to the excerpted statements, see the relevant Factum.

<sup>33</sup> Factum of the Plaintiffs (Jurisdiction Simpliciter and Forum Non Conveniens). 27 September 2024. [https://www.barricktrial.ca/wp-content/uploads/2025/02/2024-09-27\\_PlaintiffsFactum.pdf](https://www.barricktrial.ca/wp-content/uploads/2025/02/2024-09-27_PlaintiffsFactum.pdf)

previous MOU (“2019 MOU”) in their capacity as Barrick’s appointees to the NMGML Board.” (p. 14-15)

- “Barrick has rights under the MOU. Further, the MOU requires the TPF to turn their attention to incidents involving use of force with consequences to Barrick, not just NMGML.” (p. 15)
- “Barrick Gold Corporation, is a Canadian mining company with its head office in Toronto. Barrick controls its global operations, including its North Mara mine, through, amongst other methods, corporate policies and directives issued by head office.” (p. 2)
- “The courts of Tanzania do not provide an adequate alternative forum for the litigation of these complex claims, let alone a forum which is clearly fairer and more efficient than Ontario. The reality is, if this lawsuit is not heard in Ontario, it will not be heard at all.” (p. 3)

## Barrick’s Factums – 16 August 2024<sup>34</sup> and 7 October 2024<sup>35</sup>

Factums for Barrick argue:

- “The two actions that have given rise to this motion are quintessential examples of impermissible forum-shopping. They have no business being litigated and adjudicated in Ontario. Instead, they should be dismissed or permanently stayed on the basis that this Court lacks jurisdiction or, alternatively, on the basis of the doctrine of *forum non conveniens*.” (16 August 2024, p. 1)
- “Put succinctly, the Plaintiffs have made the deliberate choice to sue the wrong party in the wrong jurisdiction.” (16 August 2024, p.1)
- “The Mine is owned and operated by North Mara Gold Mine Limited (“NMGML”), a Tanzanian company...” (16 August 2024, p.1)
- “The uncontroverted evidence is Barrick’s small corporate office in Toronto has no connection to or involvement in the management or operation of the North Mara Gold Mine.” (7 October 2024, p. 2)
- “Tanzania is a functioning democracy that subscribes to and enforces the rule of law. Its legal system, like Canada’s, is derived from the English system.” (7 October 2024, p. 3)
- “Consistent with internationally recognized best practices, NMGML has also entered into arrangements with the TPF to ensure that the TPF has the means necessary to discharge its responsibility to provide security in the area of the Mine. Arrangements such as these are not unusual in connection with extractive operations located in remote areas. They

---

<sup>34</sup> FACTUM OF BARRICK GOLD CORPORATION (MOTION TO DISMISS OR STAY ACTIONS). 16 August 2024.

[https://www.barrickontrial.ca/wp-content/uploads/2025/02/2024-10-09\\_FactumBarrick-Gold-Corporation.pdf](https://www.barrickontrial.ca/wp-content/uploads/2025/02/2024-10-09_FactumBarrick-Gold-Corporation.pdf)

<sup>35</sup> REPLY FACTUM OF BARRICK GOLD CORPORATION (MOTION TO DISMISS OR STAY ACTIONS). 7 September 2024.

[https://www.barrickontrial.ca/wp-content/uploads/2025/02/2024-10-07\\_ReplyFactum\\_MovingParty\\_Barrick.pdf](https://www.barrickontrial.ca/wp-content/uploads/2025/02/2024-10-07_ReplyFactum_MovingParty_Barrick.pdf)

are, in fact, specifically contemplated by the Voluntary Principles on Security and Human Rights—an important set of governing principles that NGOs, extractives companies (including Barrick) and nation-states (including Canada, the United States and the United Kingdom) have adopted. The Voluntary Principles acknowledge that security is ‘a fundamental need, shared by individuals, communities, businesses and governments alike,’ and recognize that arrangements between private companies and public security forces are frequently necessary and entirely appropriate.” (16 August 2024, p. 6-7)

- “At the time of the incidents complained of in these proceedings, the terms of NMGML’s relationship with the TPF were prescribed by two Memoranda of Understanding (the “MOUs”): one entered into in April 2019 and a replacement agreement entered into in May 2022.” (16 August 2024, p. 7)<sup>36</sup>
- “Although NMGML provides financial assistance and other support to the TPF to enable it to discharge its responsibility to maintain public security in the remote area of the Mine, neither NMGML nor Barrick directs or controls the TPF.” (16 August 2024, p. 8)
- “The Plaintiffs’ claims pertain to alleged acts of violence supposedly perpetrated by members of the TPF at or near the Mine during the period from April 2021 to July 2023. There is no suggestion that any such acts were committed by employees of NMGML or Barrick.” (16 August 2024, p. 8)

### Affidavit of Grant Beringer, Group Sustainability Executive of Barrick Gold Corporation<sup>37</sup>

- “To be clear, Barrick does not own directly or operate any of the mines and projects in its portfolio. Instead, those mines and projects are owned and operated by operating companies, most of which are incorporated in the jurisdictions in which the mines and projects are located. Barrick has an indirect shareholding interest in those companies. Indeed, Barrick’s principal assets are its shareholding interests in its subsidiaries and affiliates.” (p. 5)
- “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

---

<sup>36</sup> For a copy of the 2022 Memorandum of Understanding between the North Mara Gold Mine Ltd (NMGML) and the Tanzania Police Force (TPF) see:

[https://s25.q4cdn.com/322814910/files/doc\\_downloads/north\\_mara/MOU\\_North-Mara\\_Tanzania-Police-Force.pdf](https://s25.q4cdn.com/322814910/files/doc_downloads/north_mara/MOU_North-Mara_Tanzania-Police-Force.pdf)

<sup>37</sup> Affidavit of Grant Beringer (sworn October 1, 2023).



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].” (p. 10-11)

- “Although there is a Memorandum of Understanding in place between NMGML and the Tanzanian Police Force concerning supplemental policing in the area of North Mara, arrangements of this nature with local police forces are not unusual in the extractives sector. Nor is it unusual for companies in the extractives sector to reimburse or contribute to the costs associated with supplemental policing.” (p. 15-16)
- “[T]he Voluntary Principles recognize that protecting the safety, security and well-being of employees, as well as company equipment and other property and assets, may require the use of supplemental public security resources. The Voluntary Principles also affirm that the company in question may have to defray part or all of the associated costs.” (p. 16)

### Affidavit of Johann Sebastiaan Bock, Chief Operating Officer for Barrick companies in the Africa and Middle East region<sup>38</sup>

- “Barrick holds an indirect 84% ownership interest in NMGML. The Government of Tanzania owns the remaining 16% of NMGML. Barrick’s indirect ownership interest in NMGML is held through a number of other corporations.” (Paragraph 16)
- “As set out in the organizational chart below, 84% of NMGML will be owned by a U.K. corporation known as North Mara Holdings Limited. That corporation will, in turn, be owned by another U.K. corporation known as Barrick TZ Limited. Barrick will own directly approximately 47% of Barrick TZ Limited. The remainder of Barrick TZ Limited will be owned by Barbadian and Cayman corporations, which will in turn be owned by Jersey corporations that will be owned directly by Barrick.” (Paragraph 17)
- “As noted above, NMGML’s local team at North Mara receives support from Barrick’s regional team for Africa and the Middle East. Key members of the regional team in this regard include a Country Manager for Tanzania and a General Manager Operations—Central and East Africa. The Country Manager for Tanzania is responsible for, among other things, government relations. The General Manager Operations—Central and East Africa is involved in the oversight of mining activities at various African and Middle Eastern mines in Barrick’s portfolio.” (Paragraph 24)
- “Ultimately, the business and affairs of NMGML are overseen by its Board of Directors. There are five Directors of NMGML. Two of the Directors of NMGML are Tanzanian government officials. Both of them reside in Tanzania. The other three are appointees of Barrick, in its capacity as the indirect majority shareholder of NMGML. I am one of

---

<sup>38</sup> Affidavit of Johann Sebastiaan Bock (sworn 1 October 2023).

the Barrick appointees to the Board. The other appointees of Barrick are Dr. Bristow and Simon Bottoms (who is Executive Vice President, Mineral Resource Management & Evaluations at Barrick).” (Paragraph 26)

## Cross examination by legal counsel for the plaintiffs of Johann Sebastiaan Bock, Chief Operating Officer for Barrick companies in the Africa and Middle East region. May 28, 2024.

[This section focuses on questions in regard to provisions in the 2022 Memorandum of Understanding<sup>39</sup> between the Tanzania Police Force (TPF) and the North Mara Gold Mine Ltd (NMGML). The MOU lists the provision of 20 Toyota Land Cruisers provided by the NMGML to the police (p.6) and the provision of “One hundred and forty-two (142) TPF officers, who shall focus on the maintenance of law and order in relation to the Mine Site...” (p. 9).]

- 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. (p. 98-99)
- 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. (p. 107)
- 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. (p. 107)
- 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. 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 under resourced. 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

---

<sup>39</sup> For a copy of the 2022 Memorandum of Understanding between the North Mara Gold Mine Ltd (NMGML) and the Tanzania Police Force (TPF) see: [https://s25.q4cdn.com/322814910/files/doc\\_downloads/north\\_mara/MOU\\_North-Mara\\_Tanzania-Police-Force.pdf](https://s25.q4cdn.com/322814910/files/doc_downloads/north_mara/MOU_North-Mara_Tanzania-Police-Force.pdf)

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 specific -- or to pay the police in that area and the size of the force you would need." (p. 107-108)

- Q. So this is 6.3, and (a) refers to fuel for Tanzanian Police Force vehicles; correct? A. Yes. Q. And that is provided by North Mara Gold Mine? A. Yes (p. 122)
- Q. The vehicles themselves are also provided by North Mara Gold Mine; correct? A. Which clause are you referring to? 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. (p. 122)
- Q. All right. And back at 6.3, North Mara Gold Mine is also providing repair and maintenance and engine servicing for those vehicles? A. Yes, we -- North Mara takes the responsibility of the cost for that repair and maintenance, yes. Q. And North Mara also provides food to the Tanzanian Police Force officers? That is under 6.3 - A. Yes, that is true. (p. 123)
- Q. And if you could go to section 17, I'll start with 17(b), North Mara Gold Mine Limited also agreed to pay for the construction of canteen facilities at the barracks; correct? A. Yes. Q. And the barracks are referred to above as the Toronto -- or sorry, the Tanzanian Police Force barracks located at Nyamongo Police Station, and that is defined as "Barracks"; did you see that? A. Yes. (p. 123-124)

### Affidavit of Apolinary Lyambiko, General Manager of the North Mara Gold Mine<sup>40</sup>

- "For many years, North Mara has contended with significant security concerns. Unfortunately, the Mine is targeted regularly by trespassers who illegally invade the Mine site seeking to steal gold-bearing rock and other property, including fuel and equipment." (p. 11)
- "The Memoranda of Understanding provide for supplemental policing in the area of the Mine, and for NMGML to provide allowances to the Tanzanian Police Force in respect of their deployment." (p. 17)
- "Significantly, the Memoranda of Understanding are the means by which NMGML has obtained commitments from the Tanzanian Police Force that officers assigned to the area of North Mara will be properly trained in, and comply with, relevant human rights standards." (p. 17-18)
- "NMGML provides allowances to the Tanzanian Police Force, and also makes certain equipment available to members of the Tanzanian Police Force, in order to offset costs

---

<sup>40</sup> Affidavit of Apolinary Lyambiko (Sworn 1 October 2023).

the Police Force would otherwise incur in connection with the provision of supplemental policing services in the area of the Mine.” (p. 18)

- “The term of the 2019 MoU was originally intended to expire on April 30, 2021. NMGML and the Tanzanian Police Force ultimately extended the term of the 2019 MoU until December 31, 2021 pursuant to a letter agreement, a copy of which is attached to this Affidavit as Exhibit 3. From January 1, 2022 to late May 2022, the parties continued to operate under the terms of the 2019 MoU pending the negotiation and finalization of a replacement Memorandum of Understanding.” (p. 19)
- “The 2022 MoU also provides that: To the extent that any third party files any type of legal claim or lawsuit seeking monetary damages alleging that acts of the [Police], its members or any other government official associated with the deployment are attributable to the [NMGML] (or [NMGML] Personnel), in whole or in part, as a result of the deployment or any support provided by the [NMGML] to the [Police], the [Police] or relevant government agencies will (i) lodge a formal objection in the court or forum where the claim is made at the [NMGML]'s request, (ii) otherwise reasonably assist the [NMGML] in defending that allegation, and (iii) indemnify the [NMGML] for any monetary payment the [NMGML] may make or be obligated to make, whether through a legal judgment or settlement.” (p. 22)

### Justice E.M Morgan’s ruling<sup>41</sup> November 26, 2024

- “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.” (p. 2)
- “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 [sic] 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.” (p. 2-3)
- “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.” (p. 6-7)

---

<sup>41</sup> Matiko John v. Barrick Gold Corporation, 2024 ONSC 6240 COURT FILE NOS.: CV-22-00-690649-0000 CV-24-00-714148-000 DATE: 20241126.

[https://www.barricktrial.ca/wp-content/uploads/2025/02/2024-MatikoJohnAll\\_V\\_Barrick-Gold\\_ONSC.pdf](https://www.barricktrial.ca/wp-content/uploads/2025/02/2024-MatikoJohnAll_V_Barrick-Gold_ONSC.pdf)

- "...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." (p. 3)
- "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." (p. 4)
- Plaintiff's counsel "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." (p. 4)
- "This type of security contract with local police appears to be a standard arrangement in the resource industry." (p. 6)
- "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." (p. 6)
- "...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." (p. 7)
- "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." (p. 11)
- "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." (p. 22)



- “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.” (p. 23)
- “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.” (p. 26)
- “With all of this connection to Tanzania and disconnection from Ontario, the presumption of presence-based jurisdiction in Ontario is rebutted.” (p. 27)
- “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.” (p. 27)
- “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.” (p. 27)
- “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.” (p. 30)
- “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.” (p. 32)
- “This Court lacks jurisdiction to determine the matters at issue. The actions are dismissed. If the Court had jurisdiction, the actions would be permanently stayed on the basis of *forum non conveniens*.” (p. 32)