

Mandates of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children and the Special Rapporteur on violence against women and girls, its causes and consequences

Ref.: AL GBR 4/2024

(Please use this reference in your reply)

22 April 2024

Excellency,

We have the honour to address you in our capacities as Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Working Group on the issue of human rights and transnational corporations and other business enterprises; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the sale, sexual exploitation and sexual abuse of children and Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolutions 51/13, 53/3, 54/14, 53/4, 52/26 and 50/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged human rights violations and abuses committed at North Mara mine, which is an industrial gold mine located in Nyamongo, an area in the Tarime District, Mara Region, in northern Tanzania.

It is operated by Barrick Gold Corporation (Barrick), a Canadian-based gold and copper producer in collaboration with SGA Security and Nguvu Moja private security contractors and owned in partnership with the Government of Tanzania. The main investors and pension funds relevant to Barrick are: Wellington Management Group LLP; Van Eck Associates Corp; Vanguard Group Inc; Blackrock Inc.; Capital World Investors; First Eagle Investment Management LLC; Royal Bank of Canada; Fidelity Management & Research Company LLC (FMR Co.); Invesco Ltd.; and Bank of Montreal.

The London Bullion Market Association (LBMA) is an industry association representing those trading in gold and certifying gold as responsibly sourced. Only gold refined by the LBMA's accredited refiners (placed on its Good Delivery List (GDL)) can be traded on the London market. Its accreditation provides the basis on which gold from North Mara mine, refined by GDL refiners, enters the supply chain of bullion banks and consumer-facing companies.

The allegations relate to human rights abuses committed by security forces, including private security contractors, namely SGA Security and Nguvu Moja and public security forces assigned, and paid, to secure the North Mara mine. **The allegations include international human rights law abuses including killings and security-related deaths; assaults, torture and other cruel, inhuman or degrading treatment or punishment (including the health and well-being of children, including infants, exposed to tear gas and 'sound bomb' attacks and at risk of**

long-term or permanent injury, and death); arbitrary arrest and detention; sexual abuse and violence against women and girls, some of which may amount to international crimes.

According to the information received:

In September and October 2019, Barrick assumed operational control of the mine after reacquiring the remaining minority shares in its subsidiary, Acacia Mining, which had owned and operated the mine since 2010 (having been acquired by Barrick in 2006). On assuming operational control, Barrick formed a joint venture with the Government of United Republic of Tanzania. Barrick's shareholding in the joint venture is 84%, and the Government of Tanzania's is 16%. After assuming operational control, Barrick is reported to have shut down the mine's grievance mechanism, which had accepted human rights grievances concerning police assigned to the mine, and instituted a new mechanism that does not accept such grievances. In addition, Barrick shut down the operations of the Mine Investigation Group and the Community Impacts & Remediation Investigation Team tasked with investigating human rights violations.

Allegations of human rights violations have occurred in all three pits, currently being operated by Barrick. Effectively, **Gokona** (underground) and **Nyabigena** (open pit), which are adjacent to one another and connected to **Nyabirama** (open pit), several kilometres away, by a road that runs through Kurya villages. Gokona and Nyabirama are at least partially encircled by a high cement wall, topped with razor and electrical wire, that runs for kilometres around the pits and related production facilities, rock dumps, and mine living quarters. Nyabigena, which recommenced operations in 2023, does not have a cement wall, but a fence, which is topped by barbed wire, which is only partially encircling the pit. All three pits have security cameras monitored from the mine's control room.

The Kurya (sometimes spelled 'Kuria') people of Tanzania's Mara region, have been reportedly living in their ancestral home since before the colonial period. Members of the Kurya community in North Mara are known to share a strong attachment to the land and distinct identity, language, and local governance system. They also experience exacerbated vulnerability and challenges in relation to land tenure insecurity and poverty.

For generations, artisanal and small-scale mining and agropastoralism have been mainstays of the economy for the area's Kurya communities, and their customary land tenure system has been recognised as an important source of natural resource management. The mine's construction in Nyamongo, an area in the Tarime District of the Mara Region in northern Tanzania amidst preexisting Kurya villages and its subsequent expansion, have severely limited Kurya residents' access to land and other resources. The mine's development has been beset by longstanding allegations of forced evictions, violence, and a lack of consultation with or consent by the Kurya people of the area.

Reports suggest that in September 2020, Barrick made significant changes to security at the mine by the integration of in-house security, a private security contractor, and the Tanzanian police. Reportedly, roughly 150 officers are

assigned to the mine on an ongoing basis. In 2020, Barrick hired new, less experienced, in-house security personnel and replaced its private security contractor (G4S) with a Tanzanian security contractor, Nguvu Moja. Having appointed Nguvu Moja, Barrick disarmed Nguvu Moja's guards. To the best of the experts' knowledge, Nguvu Moja had reportedly no prior experience managing security at a large-scale industrial mine. According to the information received, Barrick's decision to disarm the mine's private security guards has not prevented such guards' involvement in violations as they have reportedly armed themselves with, *inter alia*, clubs and metal rods.

It appears that police officers, who are now reportedly performing a security role that previously private security were trained and equipped to perform, are armed with submachine guns, rifles, tear gas launchers and 'sound bombs.

In April 2022, according to the information received, in meetings convened in local villages involving mine personnel, village leadership and police officials, community members were informed that they would be met with violence if they entered the mine in search of gold-bearing material. Since these meetings, residents have alleged that security personnel have not only been shooting people more frequently but appear increasingly to be doing so deliberately. According to multiple sources, witnesses to shootings describe police lying in wait to ambush people entering or inside the mine before emerging to fire on them; opening fire without warning; saying to one another words to the effect of 'kill them' when they find people at the mine.

Furthermore, in January 2023, the mine restarted operations at a third pit, known as Nyabigena (see above), which had been previously shut by the mine authorities for several years. Commencing these operations involved further expansion into areas owned and relied on by Kurya community members, who have been displaced, and has led to the creation of new rock dumps near residential areas, including one by the mine's airstrip that only has a non-contiguous mine fence through which people walk to reach nearby villages (located outside the mine wall encircling Gokona pit).

These activities have reportedly both deprived Kurya residents of land on which they depended for income and sustenance and increased the number of security-related operations conducted in and around residential areas. A high proportion of the most recent alleged violations reported to the experts have occurred in and around Muruambe, a hamlet in Kewanja village, which is nearest to these new rock dumps; and villages adjacent to Nyabigena pit, around only part of which the mine has built a fence.

During and after those operations, reports of violations and abuses of international human rights law by "the mine police, including private military and security companies" were received from different sources:

In particular:

a. Killing and security related deaths:

It is reported that 12 deaths which allegedly occurred during/resulting from operations by security forces assigned to the mine. Of these, six have been

allegedly the result of Barrick operations.

According to Barrick's statements:

In September 2023, an "incident occurred where police assistance was once again requested to engage with aggressive armed invaders", during which "a policeman discharged his firearm and wounded an intruder" who "succumbed to his injuries". Barrick has not, according to different sources, provided any further statements, or further evidence to support its account that the "invaders" were aggressive or specified what they were allegedly armed with.

According to Barrick, in September 2023, "[u]narmed private security contractors responded" to an incident "where approximately 100 intruders unlawfully invaded the mine property". According to different sources, the security contractors "requested police intervention to remove the aggressive intruders" and "one intruder, injured in the fighting amongst [other intruders] was found unconscious by the police but later succumbed to his injuries". Barrick has not, according to different sources, provided any further statements on the matter, nor provided any evidence to support its account, including as to the alleged cause of death.

Similarly, in July 2023, "unarmed private security contractors responded to repeal armed trespassers and subsequently requested the police to enter the site to remove the intruders from the [Nyabigena] pit. During this operation one of the intruders was injured", due to which he died. It appears that Barrick has reported that "it is unclear how the intruder was fatally injured". Barrick has not, according to different sources, provided any further statements on the matter, nor clarified what the "intruders" were allegedly armed with.

In March 2023, a mine employee (who was also a local community member) died underground at the Gokona pit during an operation by a government task force that included police, mine security, and Nguvu Moja. Barrick and the police have alleged that the employee was engaged in illegal mining at the time and relied on a police statement according to which he fell to his death when the task force intervened. However, neither the police nor Barrick have, according to sources, provided evidence in support of this account purporting to absolve them of responsibility, and Barrick has not responded to any questions concerning this account.

Furthermore, in December 2022, an "intruder" was injured after "the mine asked the police to enter the site and remove" intruders who had "attacked and overpowered" the "unarmed private security contractors". The "intruder" "succumbed to his injuries". Barrick said the "nature of the deceased's injury and the cause of his death have not yet been established". Barrick has not, according to the source, provided any further statements on the matter, nor provided any evidence to support its allegation that the "intruders" attacked and overpowered security contractors. Reportedly, according to witnesses interviewed, the deceased was shot with a bullet in the neck by police as he tried to get away from security forces to safety during a security operation at Nyabirama.

Barrick said in its above-referenced statements that it would request or had requested investigations from the authorities, or that the authorities had launched an investigation, in relation to these five deaths. Except for the death of the employee, regarding which the police reported that the deceased fell to his death, no further information has been provided regarding any such investigations. No family members interviewed were aware of the outcome of any such investigation, if any had in fact been conducted; nor did they say that Barrick/the mine had reached out to them regarding the deaths.

According to different sources, no evidence that the force used in any of the deaths documented was justified.

b. Assaults, torture and other cruel, inhuman or degrading treatment or punishment:

Since December 2019, reports received by the experts indicate 42 alleged incidents of shootings with live ammunition and/or projectiles (generally either sound bombs or tear gas canisters), and other assaults allegedly by security forces, including private military security personnel at the mine. According to witnesses interviewed by the source, one person was knocked unconscious by a rock thrown by Nguvu Moja security guards from behind at close quarters inside mine walls, and two were severely injured after a mine vehicle driven by police struck them, which, according to multiple witnesses interviewed independently, appeared to be deliberate.

According to birth certificates reviewed by the source, two of those injured in incidents in 2023 were children under the age of 18. According to witnesses, in one case allegedly, a sixteen year-old was dragged from his home, accused of going to the mine, beaten with thick sticks, kicked, bitten and headbutted before being placed by police in a vehicle that came from the mine, where the beating by police continued as they patrolled around the mine before taking him to the police station, at which he was held for several nights and charged with unlawfully entering the mine; and in another, a seventeen year-old was shot at the mine by police with a bullet in the knee as he tried to get to safety.

According to the sources, Barrick has not issued any public statements regarding any of these specific incidents. None of those interviewed by the source had been allegedly informed of the outcome of any police or company investigation into the incident, if such an investigation was conducted.

According to witnesses (including those injured) interviewed, the incidents documented involved members of the ‘mine police’, the internal security team and/or the private security contractor. Frequently, such witnesses described it as joint operations by private security guards and police.

Many of those shot or beaten suffered serious, in some cases long-term and possibly permanent, injuries. In no case did the reports received by different sources, find evidence that the police, internal or private contracted security (or anyone else at the mine) ensured provision of medical assistance to those injured “at the earliest possible moment”. Further, allegedly police involvement impeded access to such assistance, including by detaining those injured at local police stations, often for days or weeks, without medical

treatment (treatment in detention and the impeding of medical assistance is detailed in following sections). In many cases, the medical treatment that was received appears to have been inadequate given the severity of the injury, including due to fear in obtaining it and/or inability to afford it.

c. Torture:

The Working Group on Mercenaries has received credible reports that since December 2019, 17 incidents allegedly involving torture in mine-related security operations have occurred. Of the 17, five alleged incidents of torture are part of the Barrick Action, which are all alleged to have occurred since July 2021. Distinct from those five, have documented reports of 12 incidents of torture, all of which also occurred since July 2021.

These incidents have allegedly involved infliction of severe pain and suffering perpetrated by police officers to obtain from the individual information or a confession relating to alleged unlawful entry onto or theft from the mine; as punishment for an alleged act relating to the mine; and/or to intimidate or coerce the individual and/or third parties regarding future acts relating to the mine.

In the cases documented, the infliction of severe pain and suffering included beatings with batons, clubs, and/or the flat sides of pangas, generally targeting joints, the bottoms of feet and palms, and existing injuries. Many of those tortured were subsequently held in inhuman and degrading conditions (see subsection (3) immediately below). One of the individuals, while being held at a local police station, said that a tear gas canister exploded in the cell in which he was being detained.

According to different sources the incidences are reportedly pointing to a systematized approach, witnesses (those injured) often described torture as occurring in the following manner: the person had their hands tied or handcuffed, held in place with an iron or wooden rod that pinned their arms either behind their back or under their knees, and were then beaten, often on their joints, palms or bottom of their feet.

In some cases, the individuals were reportedly suspended in the air as they were beaten. Such suspension was achieved by resting the ends of the rod on chairs or other elevated objects, or using a rope tied to the ceiling. In another case, the person's feet were tied together, then tied to a T-bar, and beaten on the bottom of his feet and ankles. In each case, the individual was interrogated about alleged mine-related unlawful activities during the beatings.

d. Arbitrary arrest and detention and cruel, inhuman or degrading conditions in police custody

The experts have further received credible reports of many instances of alleged arbitrary arrest and detention during the last three years. According to these reports, as part of their security operations in local villages, police from the mine, in nearly all cases using mine vehicles, arbitrarily detain (without arrest warrants) village residents, primarily young men, who are then deprived of liberty for extended periods of time at local stations, either without charges or

under what witnesses say are false charges related to the mine. In some cases, those being detained appear to have been extorted by police officers, who threaten to continue to hold them and/or proceed with mine-related offences, which can carry particularly heavy penalties, unless those detainees pay them. Notably, where authorities – even for a few hours – refuse to acknowledge the deprivation of liberty or otherwise conceal the fate or whereabouts of the person deprived of his or her liberty, this amounts to an enforced disappearance. Accordingly, the information received raises concern about the perpetration of enforced disappearance in the context analysed or, at the very least, about the lack of guarantees to prevent this from happening.

While these reports indicate that this practice is longstanding, the evidence received by the experts indicates that it has been escalating during the last three years, particularly in 2023. Further, residents are reportedly not aware of how to obtain, and/or cannot afford, legal representation.

In addition to instances of arbitrary detention, residents of local villages have allegedly reported to different sources that those detained and accused of engaging in unlawful mine-related activities are being detained for extended periods of time without charge at local police stations in inhuman and degrading conditions. The practice of police detaining community members in such conditions is not new; however, according to the information received the practice has increased recently, including in relation to the length of time detention is imposed. In some cases, the treatment in detention appears designed to elicit confessions of mine-related illegal activities.

The alleged victims, interviewed by different sources, who had been detained in local police stations consistently described being held in crowded and unclean cells without access to medical care or treatment, even if seriously injured, or the ability to clean themselves or their injuries; not being provided with food or water unless brought by relatives or police officers shared left over food provided by the mine; not being allowed any visitation, or family members having to pay to visit their detained relatives and/or having to pay to learn where their relatives were held; and being denied the means of keeping themselves warm, despite the cells becoming very cold at night. In some cases, those detained reported to the sources that police officers demanded payment to reduce or not proceed with the mine-related charge.

e. Sexual abuse, sexual exploitation and violence against women and girls

As the Working Group on Mercenaries has noted previously in its reports, the unregulated deployment of private military and security contractors and mercenary-related actors can heighten the risk of numerous human rights violations, including, different forms of sexual abuse, exploitation and violence.

According to credible reports from different sources, allegedly various forms of abuse and violence against women and children, including girls have occurred the last decade in the mine area. These forms of violence include sexual harassment and exploitation, beatings, arbitrary arrests and detention, threats, intimidation, and forced entry into homes and private spaces, and

related psychological harm.

Reports based on interviews with community members and leaders indicate that the vulnerability of women and girls to sexual abuse, exploitation and harassment is further exacerbated by economic hardship that in many respects is directly linked to the mine and its operations. Such hardship arises from, amongst other things: forced displacement and loss of income-earning opportunities due to the mine's acquisition of land on which women had depended to sustain themselves; interference by security forces with women's ability to conduct their local businesses; destruction of their homes and belongings; loss of access to education; and the economic burdens that arise due to the loss of income-earning capacity of husbands and sons, due to them being killed or seriously injured, and/or due to having to pay for injured family members' healthcare costs.

f. Use of tear gas and 'sound bombs' in and around residential areas

As stated above, according to the information received, the mine has been built in close proximity to the villages. In many areas, mine walls are separated from residential areas and related infrastructure, such as schools and shops, by only a dirt road, and mine roads cut through villages. Residents of villages report that this proximity has meant that there have long been security operations in and around residential areas and infrastructure. Further, evidence received by the experts point to (private) security forces' use of tear gas and 'sound bombs' (this is the term community members use for stun grenades/flashbang devices) on the well-being of residents, particularly women and children, including girls. Such abuse has been an ongoing issue reported by community members but appears to have escalated significantly during the last year. The source's report indicates that the form of tear gas used by security forces at North Mara includes agent CS (cyanocarbon).

While the resulting scale of damage is currently difficult to measure, according to the source, its escalation is causing residents physical and psychological injury/harm. These effects appear to be disproportionately suffered by women and children, including girls, who are more vulnerable, more frequently close to home, and constrained in the extent to which they can escape the effects.

The reports received by the experts indicate that the alleged use of tear gas and sound bombs by security forces in residential areas is inconsistent with its lawful use. That is, reports point to the use of these weapons being consistently contrary to the principles of legality, precaution, necessity, proportionality, non-discrimination and accountability. Rather, community members have allegedly described their regular use against those engaged in ordinary daily activities, such as gathering at village centres for meals, socialising and shopping, and/or against those fleeing from security forces, with the canisters often fired at low angles to hit those running away.

Use of tear gas and sound bombs, as well as security operations in which live ammunition is fired, has become particularly common in Kewanja village, where according to different sources the alleged violations have consistently occurred on the hamlet of Muruambe (the outskirts of which is separated from the mine wall encircling Gokona pit only by a dirt road). The side of Gokona

on which Muruambe is based is also the location where the mine began this year dumping rocks from Nyabigena pit, with one mound outside the mine wall and another mound just inside it.

Since July 2023, reports received by sources interviewing 16 residents of the Muruambe hamlet have alleged that the police from the mine were conducting security operations in their hamlet on a near-daily basis, and that these operations included the regular and high-volume use of tear gas and sound bombs. Those interviewed by the source said such operations had been an issue for many years, but that they had increased in frequency and intensity this year, coinciding with the recommencement of operations at Nyabigena pit and the mine's development of the nearby rock dumps. They consistently reportedly said that the regular use of tear gas and sound bombs near homes and shops was exposing all residents to significant harm, particularly women, children and infants, who were often exposed to smoke in confined spaces. The heightened vulnerability of children and infants especially was primarily attributed in interviews to the fact that they are less able to escape and because, when they are at home, many windows of Muruambe homes are either wire mesh or covered with cardboard.

Parents and grandparents of other children have reportedly stated that their children are regularly exposed to tear gas smoke and in some cases identified ongoing health issues as a result, such as ongoing respiratory difficulties, continual cold-like symptoms, and frequent fevers. Likewise, family members have also reportedly expressed concern regarding psychological effect of these incidents on their children.

It should be noted that tear gas exposure has also been associated with more severe harm, including permanent injuries and even fatalities, with studies identifying severe lung and heart injuries in those with no history of medical concerns, and chronic respiratory and allergic skin conditions in those with previous medical conditions.

Tear gas can also have psychological impacts, resulting in disorientation and agitation. Documented cases further indicate that exposure may cause “significant psychological symptoms and long-term disability”, and symptoms of post-traumatic stress disorder have also been identified amongst those affected.

g. Poverty and adequate housing

Expansion of the mine has deprived people of their livelihood, expanding the risk of economic and social vulnerabilities of the community as a whole.

In addition, the proximity to the mine encompasses severe threats to the right of adequate housing. As noted, many homes are extremely close to the mine, often only separated from giant rock dumps by the mine wall and a dirt road. According to a June 2019 investigative report on North Mara submitted to the experts, “[t]here can be few places in the world where so many people live so close to a vast toxic tailings dam, waste rock dump and chemical processing facility”. The report states that Acacia “says it has been unable to acquire all the land it needs for a 200-metre buffer zone”, which local leaders say is

contrary to Tanzanian law. Such proximity has continued to the present.

Residents are left in an uncertain, precarious, and vulnerable situation, in close proximity not only to vast, active, industrialised gold mine, but to the security forces assigned to protect it. Hence, the right to adequate housing “must be understood in relation to the inherent dignity of the human person”, is indivisible and interdependent with other rights, including the rights to life, security of the person and equality, and must encompass protection against arbitrary or unlawful interference with privacy, family, and home.

The right to adequate housing intersects with the right to an adequate standard of living. As the mine has expanded, it has continued to deprive people of land for homes, as well as farming and small-scale mining. Residents and village leaders have reported that many concerns regarding the mine’s acquisition of land (which is ongoing), without proper consultation or consent, remain unresolved.

The mine’s development has long been associated with forced evictions and its acquisition of land through a lack of consultation or consent. There have also been reports that land that has been acquired was done so based on promises made by the company that have been unfulfilled.

From the outset of the mine’s development, there were allegations that forced evictions were carried out, including with the involvement of members of the Tanzanian police, contrary to domestic and international law. Many of these allegations were set out in a detailed 2003 complaint by the Tanzanian organization Lawyers’ Environmental Action Team (LEAT) on behalf of 1273 former small-scale miners, peasant farmers and landowners.

h. Bribery, corruption and collusion

The Working Group on Mercenaries has also received information that police assigned to the mine have solicited payments from community members for access to the mine’s rock dumps. In September 2023, information received, raised concerns regarding alleged corruption and criminality amongst the mine and/or its staff, police and Tanzanian Government officials. Such potential corruption and organised criminal networks based on high-level collusion may be significant to the reported alleged alignment of the mine and Government, and the repression faced by community members.

According to reports and witness testimonies received by the experts from different sources, police solicitation for payments from community members in return for access to less secure areas of the mine, where such members can search for gold-bearing material amongst the mine’s rock dumps, has been a common practice for over a decade. Simplified, it can take two forms: either payment up front or (which appears to be more common) through the police demanding part of what community members find.

The information received further suggests that, police solicitation of payments for access may result in violence against community members for several reasons: (i) the violence may be a means to enforce the security forces’ understanding of the ‘agreement’ or a reneging on/‘renegotiation’ of it;

(ii) community members witnessing others being permitted to enter the mine may encourage them to do so; (iii) the police may use violence to distract from those they permit to access, enabling them to enter and then exit with their findings; and (iv) police may direct the violence against those who did not pay them for access. According to these reports, such arrangements have contributed to human rights violations by security forces, including killings and assaults.

i. *The situation of human rights defenders and protection of freedom of opinion and expression*

Since Barrick assumed control of the mine and partnered with the Government of Tanzania in late 2019, local leaders and residents have described an increasingly oppressive environment in which people fear speaking out against the mine. In conjunction with this development, reports received by the experts suggest reporting on the human rights situation in North Mara has become significantly more difficult. Those citizens who have met with sources have consistently expressed concern for their security in reporting on human rights issues. They have also consistently said that they have no other alternative pathway to go to report security-related human rights violations safely.

Whereas previously, those injured or whose family members could report incidents through the mine's grievance mechanism (Acacia reported that the mine concluded 163 security-related grievances between 2016 and 2018), the mine no longer accepts such grievances. According to residents, many of the main village leaders are hostile to human rights reporting. Reports from civil society further suggest that they feel pressure not to report on the situation.

Moreover, the repressive environment reported by local residents currently may be exacerbated by the fact that many residents recall prior intimidation and attacks on community leaders and those advocating for the rights of residents during the earlier period of the mine's development, according to reports by Tanzanian human rights organizations.

Since 2019, the experts have been monitoring the situation in Tanzania with regard to alleged violations and abuses accorded to private military security personnel among others. While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned at the alleged involvement of private military and security personnel in the context of the ongoing violations in support of Barrick operations and their alleged involvement in human rights abuses including extrajudicial killings, torture, arbitrary arrest and detention and cruel, inhuman or degrading conditions in police custody, bribery, corruption, sexual abuse and violence against women and girls.

This is exacerbated by the lack of transparency concerning the status, rules of engagement, roles and command and control mechanisms exercised over the above-mentioned operations as well as the precise nature of their activities on behalf of Barrick. Further accountability concerns arise due to the lack of clarity over how, where and under what rules private military and security companies, may be registered. In this respect, it appears that the provision of private military services is not regulated in the law of the Tanzanian government.

In addition, we are concerned that the precise nature and affiliation of the private military personnel in question may be deliberately opaque, in part as a means to avoid qualification as mercenaries and therefore evade related obligations under international law.

We wish to refer to the global study of national regulations of private military and security companies published by the Working Group on the use of mercenaries (A/HRC/36/47) and the Working Group's report on the evolving forms, trends and manifestations of mercenaries and mercenary-related activities (A/75/259), which pointed to the difficulties in preventing and holding private military and security personnel accountable for their actions, including in situations of armed conflict.

Furthermore, we wish to refer to the Working Group's 2019 thematic report, *Relationship between private military and security companies and the extractive industry from a human rights perspective* (A/HRC/42/42, '), refers, *inter alia*, to "the lack of accountability and the unchecked power experienced by victims of human rights abuses and violations with respect to extractive corporations and their affiliates". The Working Group highlighted in its findings that most at risk of human rights abuses are marginalized communities, environmental and other human rights defenders, and artisanal miners"; and it further observes that in some instances, the close association between State security forces and extractive companies raises questions about whose interest the public forces are defending.

Moreover, we wish to refer to the report of the Special Rapporteur on violence against women and girls, its causes and consequences on *violence against indigenous women and girls*, in which she noted how indigenous women and girls are subjected to complex and intersectional forms of violence, including by, *inter alia*, private companies, armed groups and extractive industries (A/HRC/50/26). Furthermore, in the report on *violence against women and girls in the context of the climate crisis, including environmental degradation and related disaster risk mitigation and response*, the Special Rapporteur highlighted that "the extractive industry, energy and production related ventures... have had negative, gendered and often violent impacts" (A/77/136, para. 29). As mentioned in the report, indigenous women and girls, particularly those defending their territories and communities, are at high risk of violence.

As per the recommendations of the report to member states, it is incumbent upon States to fulfil their international human rights obligations by making prompt efforts to address human rights concerns arising from security relationships in the extractive industry and how, "as an industry that wields significant economic power", the extractive sector should leverage its influence by insisting that the security services which are delivered are respectful of human rights of all stakeholders affected by extractive operations, and not commit human rights abuses or facilitate human rights abuses and violations by others".

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be

grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. As the home State of the LBMA, please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to fulfil its obligations to protect against human rights abuse by business enterprises under its jurisdiction, and ensuring that business enterprises within its territory conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights.
3. Please describe the guidance, if any, that your Excellency's Government has provided to the LBMA on how to respect human rights throughout their operations in line with the UN Guiding Principles on Business and Human Rights. This guidance may include measures, inter alia, conducting human rights due diligence, consulting meaningfully potentially affected stakeholders, and remediating any negative impacts.
4. Please provide information regarding the measures that your Excellency's Government is taking, or considering to take, to ensure that those trading in gold, and/or certifying gold as responsibly sourced, within the jurisdiction of your Excellency's Government are taking all necessary measures to comply with their responsibilities under the UN Guiding Principles on Business and Human Rights.
5. Please provide information on any additional steps taken by your Excellency's Government to protect against human rights abuses with which the LBMA may be, albeit inadvertently, linked.
6. Please provide information regarding efforts undertaken to ensure the prompt identification, referral for protection and full range of assistance and specialized support services to victims and survivors of sexual abuse and violence, namely women and children.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to

indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that a letter on this subject matter has been also sent to those business enterprises that are involved in the alleged violations, including Barrick Gold Corporation, Nguvu Moja and SGA security. Letters have also been sent to the main investors and pension funds relevant to Barrick Gold Corporation: Wellington Management Group LLP; Van Eck Associates Corp; Vanguard Group Inc; Blackrock Inc.; Capital World Investors; First Eagle Investment Management LLC; Royal Bank of Canada; Fidelity Management & Research Company LLC (FMR Co.); Invesco Ltd.; and Bank of Montreal, as well as to the London Bullion Market Association (LBMA), and to the other home-States of all involved actors (United Republic of Tanzania, United States of America and Canada)

Please accept, Excellency, the assurances of our highest consideration.

Carlos Salazar Couto
Chair-Rapporteur of the Working Group on the use of mercenaries as a means of
violating human rights and impeding the exercise of the right of peoples to
self-determination

Robert McCorquodale
Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Mama Fatima Singhateh
Special Rapporteur on the sale, sexual exploitation and sexual abuse of children

Reem Alsalem
Special Rapporteur on violence against women and girls, its causes and consequences

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to refer to the inherent right to life and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, as enshrined in article 3 and 5 of the Universal Declaration of Human Rights (UDHR) and in article 6 and 7 of the ICCPR, the latter ratified by the United Kingdom of Great Britain and Northern Ireland on the 20 May 1976.

We wish to draw your Excellency's Government attention that the prohibition of enforced disappearance is absolute and non-derogable (articles 2 and 7 of the Declaration on the protection of all persons from enforced disappearance) and which has also attained the status of *jus cogens*.

We also wish to refer to article 9 of the ICCPR, whereby everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention, and no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. We would specifically like to recall that article 9(2) of the ICCPR requires that anyone arrested be informed, at the time of arrest, of the reasons for his or her arrest and be promptly informed of any charges against him or her. Further, article 9(3) of the ICCPR requires that anyone arrested or detained on a criminal charge be brought promptly before a judge and article 9(4) guarantees the right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the detention and order the person's release if the detention is not lawful. Access to a lawyer, including immediately after arrest, is an essential safeguard of the right to challenge the legal basis of one's detention.³ As per the jurisprudence of the Working Group on Arbitrary Detention, a deprivation of liberty may be arbitrary when it constitutes a violation of international law on the grounds of discrimination, including on the basis of ethnic or social origin.

International human rights law requires States to carry out thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions, enforced disappearances, committed by their nationals or armed forces, or on their territory by a foreign State, or over which they have jurisdiction. Furthermore, States must take appropriate measures to bring perpetrators to justice and to provide effective remedies to victims. The right to an effective remedy is enshrined in the UDHR (article 8) and the ICCPR (article 2(3)). We wish to also refer to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law.

We wish to also refer to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, chapter II) and the Principles on Effective Prevention

and Investigation of Extra-legal, Arbitrary and Summary Executions (ECOSOC resolution 1989/65 of 24 May 1989), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

We would like to further recall that it is now widely accepted that States' obligations to protect and fulfil human rights, such as the right to life, extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private actors, and to take positive steps to fulfil human rights. This includes taking appropriate measures to prevent, punish, investigate and bring perpetrators to justice and redress harm caused by both State and private actors (CCPR/C/21/Rev.1/Add.13, para. 8).

Specifically, with respect to the right to life, States are required to effectively regulate, monitor and control the conduct of private individuals or entities empowered or authorized to employ force with potentially lethal consequences, as recalled by the Human Rights Committee (CCPR/C/GC/36, para. 15). For example, States are responsible to take adequate measures to ensure that, "persons who were involved or are currently involved in serious human rights violations or abuses are excluded from private security entities empowered or authorized to employ force" (*Ibid*). The Human Rights Committee also recalled the obligation to take adequate measures to "prevent, investigate, punish and remedy arbitrary deprivation of life by private entities, such as [...] private security firms" (para. 21).

The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict recalls existing legal obligations of States and private military and security companies and their personnel and draws on various international and human rights agreements and customary international laws, including the references above. In particular, States where a private military and security company is registered or incorporated, or where a private military and security company has its principal place of management, as well as States that directly contract for the services of private military and security companies have an obligation, within their power, to ensure respect of these companies for international law. Such States have an obligation not to encourage or assist in, and to take appropriate measures to prevent and suppress violations of international law committed by the personnel of private military and security companies through appropriate means such as administrative or other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate. Moreover, States are required to enact legislation to provide effective penal sanctions, to search, and to bring before its courts persons alleged to have committed or ordered to be committed the wilful killing or wilfully causing great suffering or serious injury to body or health of a civilian.

The responsibility of States to take appropriate steps to prevent, investigate, punish and redress human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises, is further reiterated by the UN Guiding Principles on Business and Human Rights (endorsed by A/HRC/RES/17/31, guiding principle 1). The guiding principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur. In particular, the guiding principles recognise the heightened risk of gross human rights violations in conflict-affected areas and require States to help ensure that business enterprises operating in those contexts are not involved with

such abuses (guiding principle 7). In this respect, particular consideration needs to be given to the role of “home” States of transnational corporations in ensuring that businesses are not involved with human rights abuse as, in conflict-affected areas, the “host” State may be unable to adequately protect human rights due to a lack of effective control.

Finally, we wish to refer here to the definition of a mercenary in international law, notably in article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and in article 47 of the Protocol Additional I to the Geneva Conventions. The definition contains several cumulative criteria, including inter alia: being specially recruited to fight in an armed conflict, being motivated by private gain, not being a national of a party to the conflict, and not being a member of the armed forces of a party to the conflict.

We wish to stress that the recruitment, use, financing and training of mercenaries impedes the right of peoples to self-determination and violates the purposes and principles enshrined in the Charter of the United Nations, as recalled by the Human Rights Council (A/HRC/RES/42/9). This resolution requests all States to “exercise the utmost vigilance in banning the use of private companies offering international military consultancy and security services when intervening in armed conflicts or actions to destabilize constitutional regimes” (para. 5). Similarly, General Assembly resolution A/RES/74/138 of 2019, supported by 127 States including the United Republic of Tanzania, stresses concerns over the “impact of the activities of private military and security companies on the enjoyment of human rights, in particular when operating in armed conflicts” and noted that such “companies and their personnel are rarely held accountable for violations of human rights” (para. 7).

We would like to bring to Your Excellency’s attention article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Similarly, article 2 provides that violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

We would also like to bring to the attention of your Excellency’s Government article 4(c & d) of the United Nations Declaration on the Elimination of Violence

against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

In addition, we wish to highlight the Convention on the Rights of the Child, ratified by your Excellency's Government on 16 December 1991. Article 34 provides that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. Further, article 39 provides that States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

We would also like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms.
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights.
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached."

According to the guiding principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, general comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory or/and jurisdiction (including abroad). As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (guiding principle 1). This requires States to "state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities" (guiding principle 2). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (guiding principle 3). The guiding principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

As specified in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the General Assembly (A/75/212), on steps that States and business enterprises should take to prevent and address business-related human rights abuse in conflict and post-conflict affected contexts, business should exercise heightened due diligence in conflict-affected contexts because of the increased risk of being involved in serious human rights abuses. The same applies to States.

In addition, the Committee on the Economic, Social and Cultural Rights has indicated that “extraterritorial obligation to protect requires States Parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective.” (General recommendation 24 (2017)).

Furthermore, we draw your attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances articles 9-13, which state that identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances (article 9) and sets out the necessary protection relating to the rights to be held in an officially recognized place of detention; to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons (article 10).

We also would like to recall that the Guiding Principles for the Search for Disappeared Persons of the United Nations Committee on Enforced Disappearances¹ establish that the search for the disappeared should be undertaken without delay (principle 2); should follow a differential approach, ensuring that the entities responsible for the search pay special attention to cases involving disappeared children and adolescents, and develop and carry out search actions and plans that take into account their extreme vulnerability. In addition, officials should respect the principle of the best interests of the child at all stages of the search (principle 4) and the search should be considered a continuing obligation (principle 7).

In its study on enforced or involuntary disappearances and economic, social and cultural rights² the Working Group has highlighted that States with inadequate legislation to protect housing or to provide recognition of legal establishments on certain territories to indigenous, rural, and ethnic-minority groups may leave these groups exposed to land-grabbing and forced evictions. Indigenous peoples, ethnic groups and rural workers on such land often do not have recourse or methods to challenge these seizures and may be left homeless or displaced. These violations or the

¹ [CED/C/7*](#)

² [A/HRC/30/38/Add.5](#)

resistance against them may lead to increased vulnerability to enforced disappearance.