

Evicted for Gold Profits:

Indigenous Kuria forced off land in expansion of Barrick Gold's North Mara Gold Mine in Tanzania

Catherine Coumans, MiningWatch Canada



Given a context of frequent violence by mine security and police against local Kuria villagers, violence that also characterized the eviction process, every effort is made in this report to safeguard the privacy of the individuals with whom MiningWatch Canada spoke and who provided information for this report.

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ABOUT THE REPORT

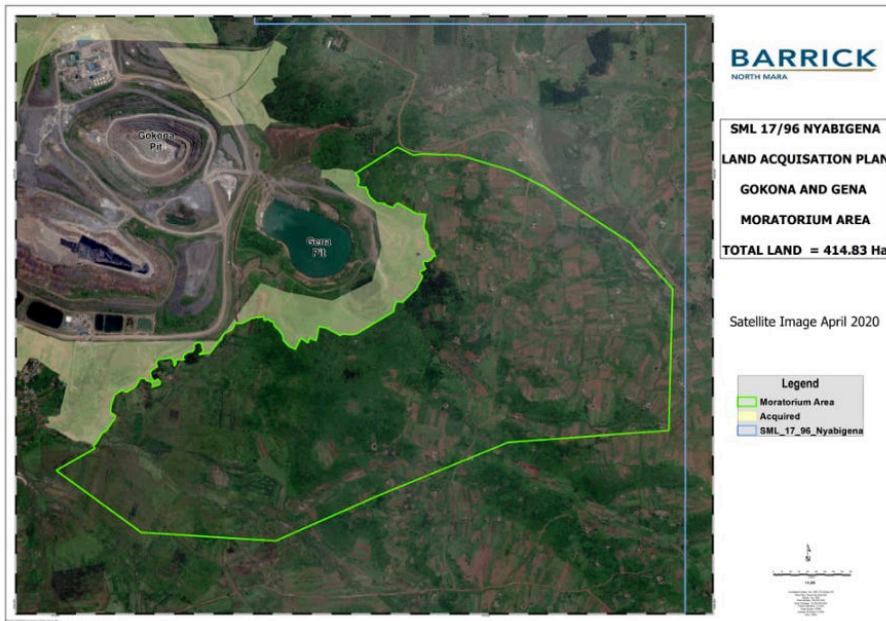
This report was written based on field work conducted by Catherine Coumans in Tarime District, Tanzania, October - November, 2023. Report design by Valerie Croft, Communications Coordinator at MiningWatch Canada.

COVER PHOTOS

Top: Police overseeing the bulldozing of houses in Komarera Village. December 2022. (Still from video with MiningWatch Canada); Bottom left: Family with belongings after the bulldozing of their house. December 2022. (Still from video with MiningWatch Canada); Middle right: House being bulldozed. December 2022. (Still from video with MiningWatch Canada); Bottom right: New fence and guard posts around cleared land and new pit construction. November 2023. (MiningWatch Canada)

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Outline of sections of Komarera and Kewanja Villages to be cleared of inhabitants.

Executive Summary

FORCED EVICTIONS¹

Between mid-2020 and September of 2023 Kuria people from the villages of Komarera² and Kewanja were subjected to a process leading to forced eviction from their lands to make way for the expansion of Barrick Gold's³ North Mara Gold Mine in the Tarime district of Tanzania. Most families were evicted in December 2022, with the remaining families evicted in August and September of 2023.⁴ The eviction process was unpredictable, coercive, intimidating, violent, and possibly not in accordance with Tanzanian law. Impacts on food security and family finances began even before the demolition of villagers' homes, lands and properties and have worsened in the year since these families were evicted. Those who received some compensation for the loss of their lands and homes received so little that they cannot replace what they have lost and most have become landless and homeless with serious consequences, particularly for women

1 MiningWatch uses the term "forced eviction" in this report to describe the involuntary removal of Kuria from their land, based on definitions set out by United Nations bodies, see for example, Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev. 1. 2014. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>. See Section Two below for further elaboration. In a letter exchange with MiningWatch Canada, Barrick Gold has denied there were forced evictions in Komarera. See <https://www.barrick-ontrial.ca/letters/>

2 Most villagers who were forcibly evicted came from the hamlet of Ntarechagini in the village of Komarera.

3 In September 2019, Barrick Gold purchased the shares of minority shareholders in a \$1.2bn buy-out, increasing its ownership of North Mara Gold Mine Ltd. to 100%. Barrick operates the mine through a subsidiary, Twiga Minerals. In October 2019, the government of Tanzania received a 16% free carried shareholding in Twiga Minerals. Barrick now has 84% ownership in the mine and has management control.

4 In August 2022, 32 individuals filed a court case to protect their homes and lands from destruction. Some of these families were spared eviction in December 2022 through a court-ordered restraining order. This restraining order was subsequently renewed, but ultimately lifted leading to the destruction of the final homes and lands in the area targeted for mine expansion in August and September of 2023.

and children. The evictions have traumatized families who watched as their lands, homes and possessions were bulldozed.

Barrick Gold has not been transparent regarding the human rights impacts of the eviction process discussed in this report. In public statements, Barrick⁵ has been singularly fixated on possible cases of development of properties through planting of trees or crops or improvements to houses after an imposed “cut-off” date of May 28, 2020.⁶ This questionable focus, presumably to avoid payments for any such developments, deepened the harm caused by the forced evictions. Villagers became aware of the imposed cut-off ruling at different times throughout the eviction process, starting in June 2020. They reported being warned by village officials and others involved in the eviction process that if they cultivated their own land, they risked losing all compensation for the loss of their homes and lands. This led to families experiencing food shortages well before they received any compensation, which did not occur until 2022. Some reported going into debt to buy food, as they were in fear of planting or harvesting their own crops.

IMPORTANCE OF LAND

For Kuria people, land is essential for survival. The people of Komarera and Kewanja Villages are subsistence farmers and herders. Excess produce from their land is sold in the market providing funds to build their homes, to pay for goods they cannot produce and for school fees for children. Land is also essential for cultural and social cohesion and mutual support. Many of the families displaced by the forced evictions were living on land passed on to them by their parents and grandparents before them. They do not hold title deed to their lands. Multiple generations commonly live on each piece of land, and extended family members live on adjacent parcels. It is common for 10 or more people in a household to live on each parcel of land. It is also common for those who die to be buried on the land they lived on. Forced eviction from their land has removed the very basis of survival for these Kuria families, has scattered family members among people who have given them temporarily shelter, and has made it very difficult for most of these evicted family members to feed themselves or support each other. Some described having become beggars, relying on the kindness of their former neighbours and friends for survival.

LACK OF CONSENT

The Kuria affected by the forced evictions are Indigenous people, whose primary language is Kuria. In the eight years that MiningWatch Canada (MiningWatch) has met with the Kuria around the North Mara Gold Mine, they have always identified their clan as Kuria and have been able to provide readily the name of their sub-clan. None of the people MiningWatch spoke to in 2022⁷ and 2023 were consulted in regard to the forthcoming evictions. Some reported becoming aware of the eviction process as it was already underway when they were told by

5 In its Sustainability Report 2022, Barrick states: “There has also been illegal land speculation practiced by a minority of the community during this process which involves the illegal development of assets and planting of crops after the establishment of a moratorium.” Barrick Gold Corporation, Barrick Sustainability Report 2022. P. 33. https://s25.q4cdn.com/322814910/files/doc_downloads/sustainability/Barrick_Sustainability_Report_2022.pdf

6 The cut-off date was later changed to June 28, 2020, according to government assessors.

7 MiningWatch Canada, “He was murdered”: Violence against Kuria high after Barrick takeover of mine. October 2022. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>

authorities that it was happening and were instructed to cooperate. Most became aware of the process through rumours or when assessors entered their lands and put numbers on the outside walls of their homes and buildings. Affected villagers were not included in the development of a comprehensive resettlement plan. They were not consulted on alternative land acquisition, new housing design, resettlement, livelihood restoration, or compensation, as international standards recommend and Barrick's own 2022 Sustainability Report details.⁸ The Kuria MiningWatch Canada interviewed in 2022 and 2023 did not give their free, prior and informed consent to be evicted. A Ministry of Lands, Housing and Human Settlements Development report⁹ indicates that villagers resisted the eviction process in various peaceful ways, for example by leaving their lands when the evaluators and police arrived. The process, in turn, relied on intimidation by security and police, threats of violence, actual violence, as well as on manipulation and deception, to get villagers to cooperate.

IMPACTS

The families MiningWatch met with in 2022 and 2023 are now homeless, traumatized, and facing food shortages. The impact is particularly severe for women and children. Widowed women, grandmothers who are primary caregivers for grandchildren, and some wives whose husbands have more than one wife,¹⁰ are particularly vulnerable. Mothers told MiningWatch that their children have stopped going to school because their families no longer have a stable place to live and are facing financial hardship as they can no longer pay school fees. All villagers MiningWatch met with reported having insufficient food to feed their families and some reported having children who are malnourished.

Family members that used to live together have been scattered as they have sought help and shelter with various friends and neighbours whose land was unaffected by the eviction and who could temporarily take in one or a few people. We heard of spouses who separated under the strain of the forced evictions. Mothers have had to find separate places to shelter children. One parent told MiningWatch of being particularly concerned about their female teenagers who have sought shelter with people they do not know well in the nearby city of Tarime. Additionally, in October 2023, the mine started to dig up graves of family members that are traditionally buried on family land. This is another source of trauma as many families no longer have land upon which to rebury these family members.

As the one-year anniversary of their eviction approaches for most of these families, they are finding relationships with those who have taken them in, or have taken their children in, to be increasingly strained. Many are now being asked to move or to pay rent without having the financial resources to do so.

8 Barrick Gold Corporation, Barrick Sustainability Report 2022. P. 37. https://s25.q4cdn.com/322814910/files/doc_downloads/sustainability/Barrick_Sustainability_Report_2022.pdf. For more on human rights requirements and voluntary international standards in regard to resettlement see, respectively, Section Two and Section Three of this report.

9 Valuation Report of Land, Buildings and Crops/Trees for Compensation Purposes of 652 Acres proposed for Extension of Mining Operation at Komarera Village, prepared by the Valuation Section of the Ministry of Lands, Housing and Human Settlements Development for North Mara Gold Mine. June, 2021. On file with MiningWatch. [Note: the date on this report is likely incorrect as issues discussed in the report occurred later than June 2021.] [Hereinafter Ministry of Lands Report]

10 Polygamy is a cultural practice among the Kuria.

A CONTEXT OF VIOLENCE

The forced evictions have taken place in the context of increased violence by mine security and mine police at the North Mara Gold Mine directed against Kuria men and boys who attempt to eke out a living by seeking gold-bearing rocks in the waste rock dumps around the mine. There are currently three ongoing international lawsuits¹¹ on behalf of victims of alleged excess use of force by mine security and mine police at the North Mara mine, or on behalf of their families. The evictions occurred to make way for a new open pit that is currently under construction. Over the last year, MiningWatch has received increased reports from villagers about killings of local Kuria by mine police on, and near, the new waste rock dumps surrounding the pit construction. The evictions in Komarera and Kwanja have led to hunger, homelessness and financial insecurity. These are conditions that are likely driving more desperate young men to seek residual gold in the waste rock dumps that are arising in the place where they used to live and farm.

The forced eviction of Kuria families from their homes and lands is an abuse of their human rights and of their Indigenous rights. The evictions have caused a humanitarian crisis that requires an immediate response.

REPORT SUMMARY

Section One - Section One provides a timeline of the forced eviction process, as well as more in-depth information related to individual stages of the process. It provides insight into the impacts as described by victims of the eviction process.

Section Two – Section Two details the human and Indigenous rights that have been violated in the forced evictions at the North Mara Gold Mine.¹²

Section Three - Section Three discusses international voluntary standards in regard to mining-induced displacement and resettlement (MIDR),¹³ in particular as these apply to Indigenous peoples. It focusses on standards set out by the International Council on Mining and Metals,¹⁴ an industry association of which Barrick is a member, and by the International Finance Corporation¹⁵ of the World Bank, with which Barrick says it is compliant. These standards are contrasted with the process endured by the evicted families at the North Mara Gold Mine.

11 www.barrickontrial.ca

12 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P. 3. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

13 Mines, Minerals and Sustainable Development (MMSD), Breaking New Ground, Chapter 7, 2002. <https://www.iiied.org/sites/default/files/pdfs/migrate/G00899.pdf>; see also, Downing, Theodore, E. 2002, Avoiding New Poverty: Mining-Induced Displacement and Resettlement. Commissioned by MMSD. <https://www.iiied.org/sites/default/files/pdfs/migrate/G00549.pdf>

14 ICMM. Land acquisition and resettlement: Lessons learned. https://www.icmm.com/website/publications/pdfs/social-performance/2015/guidance_land-acquisition-and-resettlement.pdf

15 International Finance Corporation. Performance Standard 5. Land Acquisition and Involuntary Resettlement. <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standard-5>

Section Four – Section Four notes that Barrick did not prevent the harm that evicted villagers experienced, even though the company received prior warnings of the high risk of violations of human rights as a result of the proposed evictions. Both international consultants Synergy Global Consulting (Synergy)¹⁶ and MiningWatch Canada¹⁷ raised concern with Barrick ahead of the evictions.

Section Five - Section Five details a pattern of human rights abuses associated with land acquisitions at the North Mara Gold Mine. This section discusses another eviction process that was initiated in 2012, with devastating consequences for Kuria people from four villages over the ensuing decade. In 2023 they were told that they will not be compensated for these losses.

Section Six – Section Six addresses the urgent need for remedy for families who have been evicted from their lands without their consent and are suffering significant consequences. Remedy is also necessary for the villagers discussed in Section Five who waited for compensation for over a decade. This section also provides recommendations for the prevention of future forced evictions at the North Mara Gold Mine, as an active drilling program indicates potential future mine expansions.

16 Synergy Global Consulting Ltd. MMTC-PAMP North Mara Gold Mine Assessment. Executive Summary. May 2020. https://www.mmtcpamp.com/documents/41872/225059/North_Mara_Gold_Mine_Limited_Synergy_Assessment_report_Exec_Summ.pdf; Synergy Global Consulting Ltd. MMTC-PAMP North Mara Gold Mine Independent Assessment. Ongoing monitoring of risk management – On-site assessment report. Executive Summary. September 2022. https://www.mmtcpamp.com/documents/41872/225059/22_09_12-NMGM-On-site+assessment-Synergy-report-ExecSummary-12Sep22.pdf

17 MiningWatch Canada, “He was murdered”: Violence against Kuria high after Barrick takeover of mine. October 2022. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>; MiningWatch Canada, Letter to Barrick, October 2022. <https://miningwatch.ca/sites/default/files/lettermarkbristownorthmaraoctober2022.pdf>

1. The evictions process – 2020 – 2023

TIMELINE

- In April 2020, the North Mara Gold Mine (the mine) secured the services of Whiteknights Real Estate Investment Analysts Company Ltd. (Whiteknights) to carry out an evaluation of homes, lands and properties of Kuria families living on 414.83 hectares of land in Komarera and Kewanja Villages, which the mine sought to acquire for the development of a new open pit.
- On May 28, 2020, the mine received a Moratorium Notification from Tarime District authorities restraining villagers in the area to be acquired by the mine from carrying out any developments on their land.¹⁸
- In June 2020, Whiteknights started evaluating properties, but met resistance. The process was halted.
- On March 31, 2021, the General Manager of the North Mara Gold Mine requested of the Chief Government Valuer of the Ministry of Lands, Housing and Human Settlements Development that her office take over the valuation of 414.83 hectares of land and properties. The letter clarified that the North Mara Gold Mine would pay per diems and extra duty allowances to government officials deployed in the valuation, as well as provide transport for field work, office space, printing facilities, stationaries, personal protective equipment, two desktop computers and any other support deemed necessary.
- On April 20, 2021, the Permanent Secretary of the Ministry of Lands, Housing and Human Settlements Development agreed to take on the work of evaluating the properties on 414.83 hectares over a period of 57 days at an estimated cost of 271,080,000 Tanzania Shillings.
- On June 26, 2021, the evaluation of properties was initiated and it was completed by December 31, 2021.
- In April 2022, landowners started to be called to the village office to be told what their compensation would be.
- In August 2022, 32 landowners commenced legal proceedings against the North Mara Gold Mine Ltd. and obtained a restraining order to protect their properties from being destroyed.
- On December 14, 2022, a further 22 villagers commenced legal proceedings against the North Mara Gold Mine Ltd., while their properties were still intact.¹⁹

18 North Mara Gold Mine, Statement of Defence. January 2023. On file with MiningWatch. Note, government assessors put the “cut-off” date they maintained at 28 June 2020.

19 In its Sustainability Report 2022, Barrick only mentions the 32 villagers who filed a lawsuit against the North

- In November and December of 2022, all properties were destroyed, save those of the villagers that filed their case in August 2022 who were protected by a restraining order.²⁰
- In January 2023, an additional 28 villagers commenced legal proceedings against the North Mara Gold Mine Ltd.
- In August and September of 2023, the remaining properties of villagers who had obtained a restraining order in August 2022, which was subsequently renewed, were destroyed when the restraining order was lifted. The case continues.

HOUSES MARKED FOR DESTRUCTION

A meeting was called by village authorities in the Komarera Village office in late May 2020, to inform people of the upcoming evictions.²¹ However, most of the affected families were not represented at that meeting. In interviews conducted by MiningWatch Canada in October of 2022 and October of 2023, many villagers said that they first realized their properties were targeted for destruction by the mine through rumours they heard starting in 2020.²² Others²³ were unaware of the planned evictions until evaluators entered their lands to paint identification numbers on the outside walls of their homes and buildings.²⁴ The marking of houses started in 2020.

Those who were at the May 2020 meeting, or heard about the meeting from others, reported that they were told that the mine wanted the land for mining purposes and that they should no longer harvest or plant or build on their land. This message, warning people to stop “developing” their land, was heard by various villagers at different times starting in 2020, either through rumours, or at the time their land was entered and identification numbers were put on their houses.



Photo: Marks such as those put on houses due for destruction in Komarera and Kewanja. 2022. (Still from video with MiningWatch Canada)

Mara Gold Mine in August 2022, failing to mention this later case, also filed in 2022, bringing the total number of villagers who took legal action against the forced evictions in 2022 to 54. Barrick Gold Corporation, Barrick Sustainability Report 2022. P. 33. https://s25.q4cdn.com/322814910/files/doc_downloads/sustainability/Barrick_Sustainability_Report_2022.pdf

20 MiningWatch was told that 7 of the 32 properties that should have been protected under the restraining order were also destroyed in November/December 2022.

21 Some villagers MiningWatch interviewed attended the meeting, or knew someone who had: #4-2023; #15-2023; #19-2023

22 Among others, #1-2023; #2-2023; #3-2023; #6-2023; #8-2023; #10-2023; #11-2023; #20-2023

23 Among others, #3-2022; #8-2022; #5-2023; #9-2023; #12-2023; #13-2023; #14-2023

24 In addition to houses for various multigenerational family members, or for first and second wives and their children, buildings on parcels of land also commonly include food storage shelters and separate bathroom facilities.

A father in a household of nine said,

“I knew for the first time that they were going to take my place the day they came to mark my house. I was very sad and hurt. I had inherited this area from my father. They prevented us from building or plowing or harvesting.”

The command to stop using their land as usual was accompanied by a threat that if villagers ignored this warning they may not receive any compensation for their land, plantings and houses. For many, this prohibition on continued use of their land became the first source of deprivation, loss of livelihood, food security and financial stability. Komarera was a forested area. In addition to crops, people told MiningWatch of having many fruit bearing trees, such as orange, avocado, guava, papaya, banana and mango. They also had so-called “wood trees” that they could use and sell for lumber. Common crops each family grew on their land included staples, such as cassava, sweet potato, maize, and millet. People also kept gardens where they cultivated, among others, tomatoes, carrots, cabbage and spinach.

The fixation on stopping development on the targeted lands, presumably to avoid having to pay compensation for these developments, had serious implications. A report by the Ministry of Lands, Housing and Human Settlements Development to the North Mara Gold Mine named “unacceptable issues” observed in the behaviour of Project Affected Persons (PAPs) including “taking off matured cassava” from their land.²⁵

A father, living on land he had inherited and looking after 10 children – his own and those of a deceased family member – explained that he first understood that the mine wanted his land when assessors came to put identification numbers on his houses in 2020.²⁶ He was told not to use his land anymore. The full assessment of his land did not occur until more than a year later in 2021. It was not until 2022 that he was told what he would receive in compensation. By that time, he and his wife had started to farm on someone else’s land to make ends meet and had borrowed money at a high interest rate to buy food for the children.

The initial encroachment on villagers’ land to paint identification numbers on the outside of their houses and buildings was described to MiningWatch as an intimidating experience. Landowners described being approached by a large group, always containing “mine people,” wearing recognizable blue and yellow uniforms with “Barrick-North Mara” insignia, and police – usually a combination of regular police, in black beret hats, and Field Force Unit (FFU) police in red beret hats. Field Force Units are a special division of the national police force with responsibility for controlling unlawful demonstrations and riots.²⁷ There were also usually government evaluators and village administrators present. People often mentioned the presence of Rashid Magetta, the team leader of the evaluation.²⁸ Landowners were told that only the buildings that were marked would be compensated and admonished not to build any more houses. Only later in the process it became clear that not all buildings that were marked with identity numbers would, in fact, be compensated.

25 Ministry of Lands Report, p.vi. Previously cited.

26 #9-2023.

27 United States State Department. Tanzania. <https://2009-2017.state.gov/documents/organization/160147.pdf>

28 MiningWatch has reported on particular concerns expressed by villagers about the intimidating and, in some cases, allegedly violent role of Rashid Magetta in the evictions process in our 2022 report. MiningWatch Canada, “He was murdered”: Violence against Kuria high after Barrick takeover of mine. October 2022. pps 15-16. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>

PROPERTIES EVALUATED

The next step in the eviction process was the evaluation of the land, crops, trees, and buildings, which started in June of 2021. For some this came a year after the marking of their homes and buildings with identifications numbers. For others it was sooner. This was an intimidating and violent stage of the evictions process.

Ahead of the evaluation process there was another meeting called in the Komarera Village office. Again, few of the landowners attended. One reported back: *"The District Commissioner said, 'We don't want to see people protesting about this. (...) We will catch people and detain them. When we give instructions, do not be a troublemaker. The government wants to earn and the mine wants to earn and make a profit from this. The government and the mine are partners. Your job is to listen and do as you are told.'"*

Homeowners were again approached by a large group of people arriving in the white mine vehicles with a raised orange flag at the back. The group always including police, often both regular and FFU, and "mine people," identified through their blue and yellow uniforms with "Barrick-North Mara" insignia. Commonly the group also included government evaluators and village officials. Some reported that the evaluation of their property was carried out by mine people, others by the government evaluators.

A father of eight children said, *"[t]he police were there to make sure the property owner does not do anything or get close to the evaluators."*

A mother of eight children said, *"[t]he police were there to see who was being a troublemaker in the evaluation process so that they could detain them. We stayed calm because my husband was so afraid of being beaten up, because people were being beaten up."*

The evaluation process was stressful and alarming for landowners. Many of the people interviewed by Mining-Watch expressed distress when they realized that not all their trees or crops were being recorded by the valuator – in particular large mature trees, fruit bearing trees, and perennial crops. One landowner said: *"I asked, 'why are you doing this?' One answered, 'we are doing this to make sure that you are not paid a big amount of money, but a small amount.'"*



Photo: Scars from wounds man received when beaten by police with a wooden stick when he protested the valuation of his property. 2023. (Catherine Coumans, MiningWatch Canada)

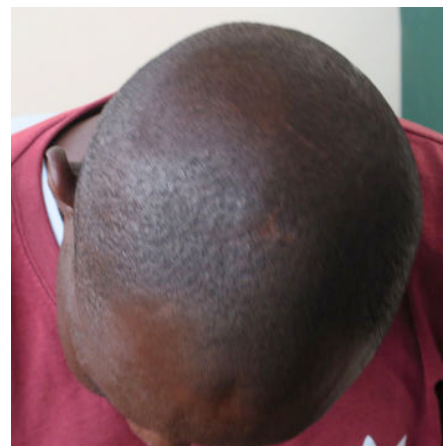


Photo: Scars on man's head from beatings with a wooden stick by police when he protested the valuation of his property. 2022. (Catherine Coumans, MiningWatch Canada).

Those that questioned the evaluation process were threatened with, or experienced, violence.²⁹ A father, with 14 people in his household, said, “[o]ne [police] came and took a runga [a wooden club] and pressed it on top of my foot and started hitting me with it. I pulled my leg back. He asked if he should hit me on the head. The other one [police] told him not to.”

At the end of each evaluation the landowner was instructed to sign the evaluation form (Valuation Form 3). This again was a source of stress as many villagers cannot read and many only speak Kuria. The form was in Swahili. Some asked for the opportunity to have a family member, who could read, read it to them. In all such cases interviewed by MiningWatch, this request was denied. Even those who could read were not given an opportunity to carefully review the document. Many asked for a copy of what they were being told to sign. They were told no one could have a copy. A few landowners who had smartphones asked if they could take a picture of the form. They were also told that was not allowed. Some refused to sign. They were told that the only way they may, eventually, get a copy of this evaluation document would be to sign it now. A mother with 13 people in her household said, “We were told that we have to sign so that we can get the evaluation document at the village office later.”

A father with 11 people in his household said,

“When the mine people finished evaluating, at that time I was surrounded by police. They came and told the police ‘we are done and we want him to sign.’ I asked them, ‘why should I sign something that I do not understand?’ Then they said ‘You old man, are you joking with us? Nyoko [swear word].’ They started beating me. I was badly beaten that day. Then I signed without understanding what I was signing and they took a photo of me.”

At the end of the evaluation process, landowners were asked to pose in front of their property with a piece of paper that had their evaluation number on it in bold lettering with a marker. This piece of paper was all they were left with. They were told they would be asked to produce that paper later to get their evaluation documentation and compensation.

The evaluation process was another moment in which villagers were reminded that they should not use their land or construct any more buildings. One man described the hardship this caused because he had no other land to cultivate. As his children became hungry, he had to sell his cows for money to buy food. It was not enough, however, so he took on day labour to feed his family and started burning wood to make charcoal to sell.³⁰

A mother of 10 children said, “[a]fter the evaluation they stopped us from farming our land. Later they came and chopped down all the trees, before we were even called to the village office for the payment (...) the whole year when we were stopped from cultivating the land, we would go looking for cheap labour work and, with the money, we would buy food for the children.”

29 See also cases discussed in: MiningWatch Canada, “He was murdered”: Violence against Kuria high after Barrick takeover of mine. October 2022, pps. 15-16. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>

30 #19-2023

A report prepared by the Ministry of Lands, Housing and Human Settlements Development for the North Mara Gold Mine provides insight into ways that deception was used to get people to comply with the evaluation process. The report notes that, initially, assessors refused to count what they considered to be newly-planted trees (presumably trees they assessed as having been planted after the cut-off date of June 28, 2020). However, the report explains that, as a result, landowners sometimes would not be present when the assessors came. This in turn caused problems for the assessors as “the valuation team could not understand their land parcels boundaries and how they neighbored with each other....”³¹ The report notes that after a discussion among the assessment team about how to address this issue, they decided to count all properties and buildings – even those they considered to not be “genuine” – and subsequently prepare two reports. One report was based on their assessment with landowners present and the other report only valued the plantings and buildings the assessors decided to compensate. The Ministry of Lands report concludes that this strategy improved compliance with the process, although some landowners who disagreed with the assessment still refused to sign Valuation Form 3.³²

Based on testimonies from evicted villagers, and on the Ministry of Lands report, the property evaluation process was intimidating, at times violent, manipulative, and clearly not aligned with human rights requirements, international standards, nor with the rights of Indigenous peoples to free, prior and informed consent.

COMPENSATION PROCESS

In April 2022, people started to be called to the village office to be told what their compensation would be. They were asked to bring personal identification and the sheet with the identification number for their property, with which they were photographed at the end of the evaluation process.

Between the time of the assessment of their properties in 2021, and the time when landowners started to be called to the village office to find out what their compensation would be, in 2022, the mine started cutting down trees and clearing people’s land. One father with five children said, “[t]hey cut down the trees before I even got paid. I complained to the District Commissioner. I said to the DC that my trees were cut down before they would tell me how much I would be paid for the trees.”

At the village office, landowners were asked to sign a Land Form No 69, dated 2021. This form says: “You will be informed of the date on which your property will be inspected by an appraiser in collaboration with your village/street leader and you must be present on that day. After the inspection, there will be a special form Valuation Form 3 that will list your properties to be inspected and it will be signed by you, the village/street leader and the appraiser who participated in the exercise.”³³ Villagers were asked to sign this form in 2022 although it clearly should have been received by them prior to the evaluation. Villagers were then told what they would

31 Ministry of Lands Report, p. vi. Previously cited.

32 *Ibid.* p. vi-vii.

33 Translation from Swahili.

receive in compensation, and told that the amount they would receive was not for everything that was recorded in the evaluation as only some things were deemed compensable. Some villagers told MiningWatch that they were asked to sign-off on another Valuation Form 3, which was not the same as the one they had signed the day of the valuation.

Another form labeled “Compensation Agreement-Komarera” was placed in front of landowners in both Swahili and English. There is no official designation on this form. The form is a waiver, noting the amount to be paid and requiring the signature – or fingerprint – of the landowner.

It sets out:

“By accepting this payment from North Mara Gold Mine Limited, I certify that I have surrendered all my rights, claims, and interests – whether past, present or future over the said Land, Buildings, Crops and Other Items. I acknowledge and agree that I shall have no right whatsoever to claim any additional or alternative compensation for such Land, Buildings, Crops and Other Items set out in the Compensation Schedule.”³⁴

The Ministry of Lands report notes that the assessors “invented some two other forms, which are not statute bound, that [sic] helped us in the exercise.” One of these was “special forms [sic] for agreement with the PAPs [Project Affected Persons].”³⁵ It is possible this special form was the waiver. This waiver violates human rights norms, as detailed in Section Two below, which require that legal remedies be provided and even supported through legal aid for those affected by eviction, rather than restricted through legal waivers.³⁶



Photo: Section of legal waiver that must be signed in order to receive compensation.

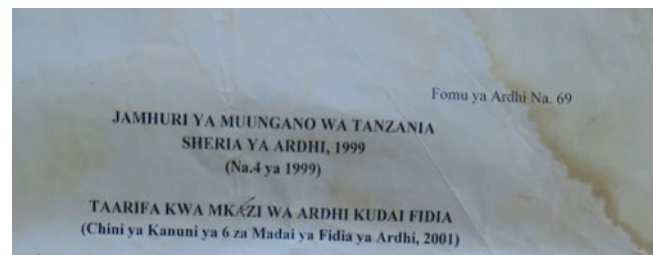


Photo: Top of Form No 69.

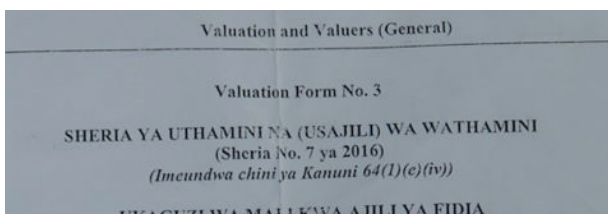


Photo: Top of Valuation Form No. 3.

34 On file with MiningWatch Canada.

35 Ministry of Lands Report, p. vi. Previously cited.

36 Office of the High Commissioner for Human Rights. The right to adequate housing (Art.11.1): forced evictions: 20/05/97. CESCR General comment 7. (General Comments). <https://www.refworld.org/docid/47a70799d.html>

All landowners told MiningWatch that the amount they were told they would receive came as a shock, because it was so low. Many noted that on the Valuation Form 3 their recorded acreage was lower than the actual amount, or no acreage was included.³⁷ In addition, only a percentage of their trees and crops were included and mature trees were marked at 15% growth, for which landowners were told there would be no compensation.³⁸ Often buildings, including the houses they and their family occupied, were not included. Many landowners left the village office in dismay refusing to sign off on the amount offered and did not get compensation.³⁹ Some later returned to accept the payment. Those who ultimately accepted the payment commonly gave MiningWatch the same reason – their children were starving and, as they could no longer cultivate their land, they needed the money to buy food for them. In all cases, villagers told MiningWatch that they could not recover their land, trees, crops, homes and buildings with the amounts that were offered. Some landowners who refused to accept the payment thought that their homes and lands could not be destroyed as long as there was not yet an agreed-upon compensation amount.

A father of eight children said, “[w]hen I went to the village office, I found out that my payment was [X, a low amount]. I was unable to take that amount, I asked them ‘is [x] a correct payment, really?’ They told me, ‘that is your payment old man. Either you take it or not, that is up to you.’ I could not take it. It was hard for me to take that payment.”

A mother with 16 people in her household said,

“[w]hen I realized that I was not fairly compensated, I went back to the village office to complain. They told me ‘That is what you have received, where can you go to complain about it? Who is going to help you?’”

A widow with seven children who received no compensation for her land and very little for her two houses said, “[a]fter seeing my evaluation form I did not sign. I asked them, ‘you are saying the house had a small piece of land? You came and put numbers. There were two houses. When you came to evaluate, did you find additional houses? I only had two houses and when you came to evaluate you only found the same two houses.’ They told me ‘madam, we will discuss that later, but now sign.’ I said ‘no, I won’t sign. Is there a house for [amount under 50,000 Tanzanian Shillings] or for [amount under 300,000 Tanzanian Shillings]?’ They said, your land is very small and there was a time that our plane passed there and there were no houses.”

37 #11-2023; #13-2023; #15-2023; #19-2023. MiningWatch has copies of Valuation Form 3s on which there is no acreage provided. See also: MiningWatch Canada, “He was murdered”: Violence against Kuria high after Barrick takeover of mine. October 2022, p. 14. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>

38 This position taken by valuers, that crops or trees evaluated at 15% growth are not compensable, is not in accordance with Tanzanian law. See also: MiningWatch Canada, “He was murdered”: Violence against Kuria high after Barrick takeover of mine. October 2022, p. 14. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>

39 #1-2023; #2-2023; #3-2023; #4-2023; #5-2023; #13-2023; #14-2023. See also Daily News Reporter, “4881 people compensated by Barrick North Mara,” January 9, 2023, which reports that people refused to accept the compensation offered. <https://dailynews.co.tz/4881-people-compensated-by-barrick-north-mara/>

A mother of eight children said, "I started to have health issues soon after I went to the village office to see how much they are going to pay me. When I saw my payment I started sweating and shaking and experienced weakness. I was taken to the hospital and was admitted one week. They told me my blood pressure is very high. I became so depressed."



Photo: Komarera Village office, where villagers came to find out what their compensation would be. Now just outside the fenced off area. November 2023. (Still from video with MiningWatch Canada)

A father of seven children said,

"[t]hey did not give a reason why they are not paying for my house. They were very hateful and angry when I asked them this question. When I asked, I was answered, 'Do you think I'm the one who pays or the white man is the one who pays? He won't pay you for that. What do you want me to do?'"

A common complaint MiningWatch heard was that houses and buildings that had been marked with identification numbers earlier in the process were not included in the ultimate compensation being offered. When they questioned this, people were told that either a plane or a satellite had flown over their land and taken images and had not seen the houses and buildings that were not included for compensation. Villagers were accused of having built these structures after the cut-off date. This explanation was baffling for people MiningWatch spoke to, as they described homes they had lived in for decades being included in the category of homes that were not compensable, as well as toilet structures and food storage buildings.

Villagers who signed off on the compensation amount were asked to pose for a picture with a model cheque of the amount they would receive. They subsequently had to open a bank account, as many did not have one, and they received a cheque to deposit from the North Mara Gold Mine.

There are many concerns with the compensation process and outcomes, including lack of transparency. Landowners were told that they would only receive the form that details the evaluation of their property, Valuation Form 3, if they first agreed to accept the compensation payment. Those who did not agree to accept the payment



Photo: Cheque from North Mara Gold Mine Ltd.

were left with no documentation. Furthermore, the report prepared by the Ministry of Lands, Housing and Human Settlements Development for the North Mara Gold Mine discusses other forms, which landowners MiningWatch interviewed, even those who signed off on the compensation payment, did not receive: Valuation Form 1, Valuation Form 4, and the two forms the assessors say they “invented” for this process.⁴⁰ As noted in our report of 2022,⁴¹ the valuation process is also possibly unlawful as people were told that plantings valued at 15% would not be compensated, which contradicts Tanzania’s 2016 law regarding land assessments.⁴²

Furthermore, there is a lack of transparency about, among others: how many landowners have been compensated; how many have been assessed, but not compensated; the overall number of people affected by the forced evictions; the amount that was offered for an acre of land; how evaluators decided that a plant or tree was planted before or after June 28, 2020. The report prepared by the Ministry of Lands, Housing and Human Settlements Development covers just 652 acres to be cleared of habitation for mine expansion.⁴³ This report notes a rate of 5 million Tanzanian Shillings (TZS) per acre. Based on MiningWatch’s inquiries, this compensation allotment is low. Most people we interviewed said that it would only be possible to pay 5 million TZS for an acre of land in Komarera if the person selling were desperate; for example, if they needed money for hospital expenses. Market rates were placed anywhere between 10 million to 30 million TZS for an acre of land in the Komarera area. The Ministry of Lands, Housing and Human Settlements Development report puts the total amount of compensation paid for land, crops and buildings over 652 acres at 408,397,043.66 TZS.⁴⁴ But the land alone, even at 5 million TZS per acre, would be worth 3,260,000,000 TZS.

Like the evaluation process, the compensation process was intimidating, manipulative, and not transparent. It was also not aligned with human rights norms or international standards for resettlement (as discussed in Sections Two and Three below), nor with the Indigenous rights principle of free, prior and informed consent. People MiningWatch spoke to said they felt the process was designed to limit costs to the North Mara Gold Mine, and some said they were expressly told so by officials involved in the eviction process.

40 Ministry of Lands Report, p.vi. Previously cited.

41 MiningWatch Canada, “He was murdered”: Violence against Kuria high after Barrick takeover of mine. October 2022, p.14. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>

42 mwongozo wa uthamini wa fidia UMETAYARISHWA NA; KITENGO CHA UTHAMINI. WIZARA YA ARDHI, NYUMBA NA MAENDELEO YA MAKAZI. S.L.P 9132. DAR ES SALAAM. MACHI 2016. <https://www.lands.go.tz/uploads/documents/sw-1682065686-MWONGOZO%20WA%20FIDIA.pdf>

43 In other documents, such as letters exchanged between the North Mara Gold Mine and the Ministry of Lands, Housing and Human Settlements Development (in March and April of 2021), the total land mass to be cleared is said to be 414.83 hectares, or 1025.07 acres.

44 Ministry of Lands Report, p.xi. Previously cited.



Photo: Family with belongings after the bulldozing of their house. December 2022.
(Still from video with MiningWatch Canada)

DESTRUCTION OF HOMES AND LANDS

In November 2022, bulldozers closed in on the lands and homes of the Kuria villagers to be evicted. Contrary to statements reportedly made by the District Commissioner,⁴⁵ families were still living in their homes and on their lands when the bulldozers arrived to destroy the properties. In addition to interviews with victims of these forced evictions, MiningWatch also received videos of the bulldozing of lands, homes and structures in Komarera that clearly show families on site, including children, and everyday signs of life such as clothes drying on clothes lines. When asked why they had not moved, the response MiningWatch consistently received from villagers was that they had no place to go. The compensation – for those who had received some – was insufficient to allow families to move away, to buy land of equal value, to rebuild homes, food storage places, toilets, and to plant the trees and crops they had lost.

Villagers who had rejected the offered payment told MiningWatch that they did not believe their houses actually could be destroyed when they had not yet come to an agreement on compensation.

A father of nine children said, “I did not believe that truly they would demolish my home, because I had not received any payment. How can I live? Where am I supposed to go? I felt like the person who was speaking to me was out of his mind because they have not paid me anything and now they are telling me ‘we will demolish your home.’ It was hard to accept, because I thought we would have to have an agreement.”

Most homes were demolished in the days just before Christmas. This was particularly traumatizing for the children who were home for school holidays. The bulldozers were accompanied by armed police.

⁴⁵ According to the Daily News Reporter of January 9, 2023, District Commissioner, Colonel Michael Mntenjele, said: “We urge those who have already been paid compensation to leave so that the mine can continue to clean up this area and finally be able to invest. Habitable houses will not be demolished. Demolition exercise will only cover vacated houses.” <https://dailynews.co.tz/4881-people-compensated-by-barrick-north-mara/>

A father of eight children said,

“[t]hey came in, they took the children out of the house by force, and I was held by the police. Then they demolished the house. They killed chickens and ducks that were still laying eggs. They destroyed food and dishes.”

A father with 12 people in his household said, *“[m]y son, who was born in 2018, up to today he has not forgotten what happened. He keeps asking ‘Father, what happened that day? Why did they demolish our home?’ I have no answer. I only end up in tears.”*

A woman with 16 people in her household said, *“[t]hey started demolishing four houses. Then they told me, ‘We are giving you time to take these children out.’ Before I even started taking the children out, they came and started demolishing the house. I was able to save the children, but all the things inside the house were destroyed.”*

The experience of watching their homes, possessions, and lands bulldozed was traumatizing. One father told MiningWatch that he had been working on another person’s farmland with his wife when their land was bulldozed. Soon after they rushed over and saw that not only their home, but also all their possessions had been bulldozed. His wife left him, taking with her the youngest children.

A mother with 13 people in her household said, *“[the day they bulldozed the house] I was completely out of my mind. The second day when they returned the village executive officer, who was a woman, told my children ‘stay near your mother, she is completely out of her mind.’ When I saw them I ran away (...) and they started searching for me because they thought I went to kill myself, but I had fainted.”*

A mother of eight children said, *“I was at the hospital (...) I received a phone call that I should go back home. I went home and found that they have demolished my home (...) I started wailing. The police started beating me [on both lower legs] with batons.”*

An elderly woman with nine people in her household said, *“[w]hen I came back home and found that they have demolished my home I became sick, ever since then my heart races.”*

A woman with 16 people in her household said, *“[t]hey demolish and leave you there. They don’t care where you will get shelter. They said if I don’t leave they will demolish the house with me inside it.”*



Photo: Scars on woman's legs from beating by police after she started wailing when she discovered her house had been bulldozed. 2023. (Catherine Coumans, MiningWatch Canada)



Photo: Police overseeing bulldozing of houses in Komarera Village. December 2022. (Still from video with MiningWatch)

A mother of 10 children said, “[w]e did not stay to watch the house get demolished. My husband ran away. He said he was going to commit suicide. I cried a lot. It was not easy to see my house get demolished. I was thinking, ‘where can we get the money to build a house?’ I am a person with a family. I had only that one house to live in.”

Initially, some villagers stayed on their bulldozed lands.

An elderly woman who stayed on her land with her family by day for two months said, “[w]e stayed on my demolished land during the day. (...) cooked there and fed the children. In the evening, we would go to a nearby house of a neighbour. That home had a restraining order [against demolishing by the mine] and we could sleep there.”

An elderly father of eight children said, “[w]e stayed there with my wife and the children, under the metal roof. But the animals suffered because they had no shelter.”



Photo: Woman rests after her house was bulldozed. December 2022. (Still from video with MiningWatch)

Eventually, families had to find temporary places to stay. Often households were not able to stay together. As extended families on adjacent lands were all evicted at the same time, they could not help each other, so family members ended up dispersed among neighbours and friends. Now, a year after they were forcibly evicted from their lands, many are finding that they can no longer rely on the hospitality of friends and neighbours.

A father of eight children said, “[w]e were not given a place to stay. It was every person’s responsibility to look for people who could accommodate them. Most of us are living on open spaces of our neighbours, because we do not have money to rent houses. Our elder children have run away from us and are not attending school anymore; they could not sleep in the condition in which we are sleeping now. I don’t know where they are. I am with the younger ones.”



Photos: Houses being bulldozed in Komarera Village. December 2022. (Stills from videos with MiningWatch Canada)

A widowed mother of six children said, “[t]he person who helped me was a neighbour, but now he wants me to pay him.”

A father with a household of 12 people said,

“[m]y main concern is my home, because up to now my family is suffering a lot. The ones who sheltered me since December are tired of us already. They told me it’s about time I look for another place to stay. I’m looking for ways to leave that place, but up to now don’t see how.”

A mother of 10 children said, “[l]iving at another person’s house is not a good situation and not a happy life. Having no place to farm makes life even more difficult.”

The forced evictions and removal of people from the land that sustained them has led to serious food insecurity.

A mother of 10 children said, “[o]ur life is so difficult and bad, we don’t even have a place to farm. I have many children and I have no means of feeding them. I am now a person who roams around [looking for work].” (...) “At my home place, that is where I could farm and sell some of the products from the farm and get money to take the children to school.”

A mother in a household of 13 said, “[w]here I was living, I could grow food to feed my children. I did not buy food. I completely refused to be relocated. That’s why when they came to my home, I was shocked. I hated them. Even when people discussed these issues I would leave. Now I am suffering a lot because where I was living I could feed my children, but now they are starving. I have no money, not even the income I had from my business of bringing vegetables to the market. I cannot do anything.”



Photos: Partially destroyed property. December 2022. (Stills from videos with MiningWatch Canada)



Photos left to right:
Houses bulldozed
in Komarera Village.
December 2022; Elderly
woman surrounded by
her family's bulldozed
houses. September 2023.
(Stills from videos with
MiningWatch Canada)

An 80-year-old female caretaker for five school-aged grandchildren said, “[a]fter the demolition I did not have a place to go, I’ve been moving from place to place. So far I have moved to three places already. The children are not going to school. Now we lack food, because the place I was growing food is destroyed. We are suffering a lot to get food. The small one now has malnutrition.”

An elderly father of eight children said, “I have no land for farming anymore. We are now starving. No food at all. No food at all.”

A widowed mother of six children said, “I reached a time that I started thinking that it would have been better if I had just died. Because it is too much. The children depend on me and have lots of needs. I don’t know what to do.”

The eviction process violated the human rights of thousands of Kuria villagers and has caused an ongoing humanitarian crisis in which families lack adequate shelter, face hunger and financial insecurity, children are at risk of malnutrition and loss of schooling, and young women are at risk who are no longer protected in their family unit.

NO GRIEVANCE PROCEDURE OR NON-JUDICIAL ACCESS TO REMEDY

Many villagers actively protested their treatment and tried to find help. As they told MiningWatch, they protested to the hamlet chairman, the village chairman, the village executive officer, Rashid Magetta (the team leader for the evaluations), and the village office.⁴⁶ Others went to the mine's grievance office.⁴⁷ Some protested to the Divisional Secretary, the District Commissioner, the Regional Commissioner, and even to a Land and Housing Department in Musoma. In addition to testimonies, MiningWatch has received copies of letters and petitions written by villagers seeking help after learning how minimal their compensation was to be. Most commonly, villagers were sent from one office to another with no one actually taking their complaint, investigating it, or acknowledging any authority to provide remedy.

The eviction process itself had no grievance procedure, and there is no other functioning non-judicial mechanism to which villagers can appeal.

A father of eight children said, “[w]hen I went to the mine, I met the grievance mechanism manager. I explained to him how my payment turned out. He told me he has no authority to help me get the right payment. He said ‘You should go to the government authorities.’ He said he has no authority to speak to us who have been evaluated, he said ‘your government is aware and conducted the evaluation.’ But we saw the mine people there working and the police were there guarding. Normally the police are supposed to guard the citizens and their property. But during that time, we were treated as robbers.”

A mother of eight children said, “[w]here could we take our complaint? The police are the ones who made sure our houses were demolished. They are quite aware of what is going on. They will not take our complaint. It is the same for the government officials and the mine officials. They are all involved.”



Photos left to right: Waste rock from construction of new Gena Pit. 2023; Former road in Komarera Village being covered by waste rock. 2023. (Stills from videos with MiningWatch Canada)

46 Among others, #1-2023; #3-2023; #5-2023; #6-2023; #11=2023; #4-2022

47 Among others, #1-2023; #2-2022; #3-2022. MiningWatch has researched and written extensively on the failure of the mine's grievance mechanism to provide access to remedy. See, for example, our 2018 reports: "Inequality of Arms" https://miningwatch.ca/sites/default/files/north_mara_final_brief_-_inequality_of_arms_september_2018_-_clean_0.pdf and the "Review of Barrick Gold/Acacia Mining's Draft 'Community Grievance Process – Standard Operating Procedure' for the North Mara Gold Mine in Tanzania." https://miningwatch.ca/sites/default/files/review_of_new_north_mara_grievance_mechanism_april_2018_final_0.pdf



Photo: New fence and guard posts around cleared land and new pit construction. November 2023. MiningWatch Canada

When MiningWatch asked what remedy they would want to receive for the losses they had suffered through being forcibly evicted, all responded that they just wanted to have back the life they had before: their land, their houses, their crops. They also emphasized the urgent need to have land and houses to be able to reunite their families, which had become scattered after their homes and lands were bulldozed.

A father with 11 in his household said, *“[i]f they pay me my rightful payment according to what the law says about relocating a citizen ‘this is how a citizen is supposed to be paid’ I will be happy. I will buy land and I will be able to bring my whole family together and live like before.”*

A mother with 13 in her household said, *“[i]f I get paid, I will buy a piece of land to cultivate, build a house for my children, and live as we used to live before. And I will continue my business of taking vegetables to the market.”*

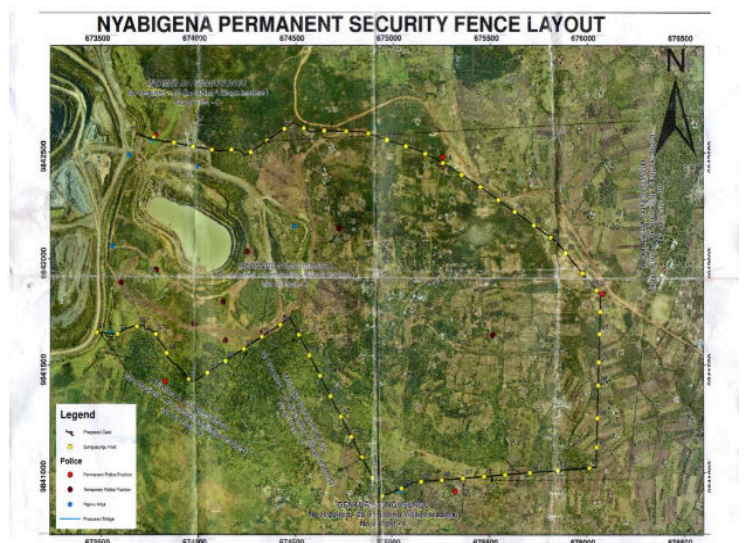


Photo: Security fence layout around new Gena Pit construction and cleared land in Komarera and Kewanja Villages.

2. Human and Indigenous rights norms

Forced eviction was defined by the United Nations Committee on Economic, Social and Cultural Rights (CESCR)⁴⁸ in 1997 as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”⁴⁹

The office of the High Commissioner for Human Rights elaborated in 2014 that:

“Various elements, separately or combined, define a forced eviction:

- A permanent or temporary removal from housing, land or both;
- The removal is carried out against the will of the occupants, with or without the use of force;
- It can be carried out without the provision of proper alternative housing and relocation, adequate compensation and/or access to productive land, when appropriate;
- It is carried out without the possibility of challenging either the decision or the process of eviction, without due process and disregarding the State’s national and international obligations.”⁵⁰

The United Nations recognizes forced eviction as a gross violation of human rights,⁵¹ which is prohibited “under the international human rights framework” and that both State and non-state actors should “refrain from and prohibit forced evictions.”⁵²

Based on the interviews MiningWatch conducted, the evictions were forced evictions. They resulted in a permanent removal from housing and land, carried out against the will of the occupants, with force, without the provision of alternative housing and relocation, adequate compensation, or access to productive land. There was no mechanism or procedure provided to allow the people being evicted to challenge either the decision to evict them, or the process of the evictions, either prior to the eviction process or as it was underway.

48 The Committee on Economic, Social and Cultural Rights (CESCR) is the body of 18 independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its State parties.

49 Office of the High Commissioner for Human Rights. The right to adequate housing (Art.11.1): forced evictions: 20/05/97. CESCR General comment 7. (General Comments). <https://www.refworld.org/docid/47a70799d.html>

50 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P. 3. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

51 Commission on Human Rights, Resolution 1993/77. https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1993-77.doc#:~:text=Affirms%20that%20the%20practice%20of,3

52 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P. 2. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

In its 1997 General Comment No. 7, CESCR notes that “[l]egal remedies or procedures should be provided to those who are affected by eviction orders” and that there should be “provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”⁵³ Although 82 villagers have now filed legal action to seek remedy for the harm they have endured, this constitutes a minority of those who were evicted. Of the three cases that have been filed, two require that the plaintiffs pay lawyers’ fees, which is a burden that these plaintiffs struggle to bear. Furthermore, as any landowners who accepted a payment were required to sign legal waivers, these waivers may also interfere with plaintiffs’ efforts to seek remedy for inequitable payments. Most of the evicted villagers MiningWatch interviewed said they could not afford to take their cases to court. Contrary to the human rights positions set out in CESCR in 1997, lawyers for the North Mara Gold Mine have sought to have the cases brought by evicted villagers dismissed and have even questioned whether the lawyers representing these indigent plaintiffs are doing so legally.⁵⁴

In 2007, the Special Rapporteur on adequate housing wrote in his report “Basic Principles and Guidelines on Development-Based Evictions and Displacement” that, in case of such evictions, it must be ensured “that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted. All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.”⁵⁵

The evicted Kuria have not been resettled as set out by the Special Rapporteur on adequate housing in 2007. Rather, they are scattered among neighbours and friends who have taken them in temporarily, or given them a section of their own land to build temporary shelters on. In addition to the deprivations associated with landlessness and homelessness, these evicted villagers and their families are now facing friction and conflict as they wear out the generosity of their fellow Kuria.

As early as 1993, forced evictions were recognized, by the UN Commission on Human Rights as a gross violation of human rights⁵⁶ because they “violate, directly and indirectly, the full spectrum of civil, cultural, economic, political and social rights enshrined in international instruments”⁵⁷ including:

- “The right to life (International Covenant on Civil and Political Rights, art. 6.1)
- Freedom from cruel, inhuman and degrading treatment (ibid., art. 7)

53 Office of the High Commissioner for Human Rights. The right to adequate housing (Art.11.1): forced evictions: 20/05/97. CESCR General comment 7. (General Comments). Paragraphs 13 and 15. <https://www.refworld.org/docid/47a70799d.html>

54 Letter on file with MiningWatch Canada.

55 Basic Principles and Guidelines on Development-based Evictions and Displacement. February 2007. A/HRC/4/18. Paragraphs 43-44. www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

56 Commission on Human Rights, Resolution 1993/77. https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1993-77.doc#:~:text=Affirms%20that%20the%20practice%20of,3.

57 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P.5. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

- The right to security of the person (ibid., art. 9.1)
- The right to an adequate standard of living, including the right to adequate housing, food, water and sanitation (International Covenant on Economic, Social and Cultural Rights, art. 11, and related Human Rights Council resolutions)
- The right to non-interference with privacy, home and family (International Covenant on Civil and Political Rights, art. 17)
- Freedom of movement and to choose one's residence (ibid., art. 12.1)
- The right to health (International Covenant on Economic, Social and Cultural Rights, art. 12)
- The right to education (ibid., art. 13)
- The right to work (ibid., art. 6.1)
- The right to an effective remedy (International Covenant on Civil and Political Rights, arts. 2.3 and 26)
- The right to property (Universal Declaration of Human Rights, art. 17)
- The rights to vote and take part in the conduct of public affairs (International Covenant on Civil and Political Rights, art. 25).⁵⁸

These rights were indeed violated in the evictions of Kuria people from Komarera and Kewanja. The United Nations Commission on Human Rights further recognizes that harm and human rights abuses are related to *the way* in which evictions are carried out.

"These violations can be directly or indirectly attributed to:

- The way evictions are decided (for instance, no consultation or participation, no information, no recourse mechanisms)
- The way evictions are planned (for instance, no notification, no relocation available, compensation not provided, delayed or subject to unjustified conditions)
- The way evictions are carried out (for instance, at night or in bad weather, no protection for people or their belongings)
- The use of harassment, threats, violence or force (for instance, forcing people to sign agreements, using bulldozers when people are still salvaging their belongings, ...)
- The results of the eviction (for instance, disruption of children's education, interruption of medical treatment, mental trauma, loss of jobs and livelihoods, inability to vote because of homelessness, no access to basic services or justice because identity and property papers were destroyed during the evictions, etc.)⁵⁹

58 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P.6. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

59 *Ibid.*

Accounts of the eviction process provided by villagers from Komarera, both as recounted in MiningWatch's report of 2022⁶⁰ and as set out in this report, reflect the presence of procedural factors that contributed directly and indirectly to the wide range of human rights violations experienced by the Kuria evicted from their homes and lands.

Additional rights that were violated in the forced evictions include: violation of the Right of Indigenous Peoples to Self-Determination; violation of the Human Right to Development; and violation of the Right to be Free from Arbitrary Detention and Arrest.

Violation of the Right of Indigenous Peoples to Self-Determination

In 2007, the Special Rapporteur on adequate housing noted that: "Forced evictions intensify inequality, social conflict, segregation and 'ghettoization', and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples."⁶¹

The Kuria are an Indigenous people. MiningWatch has met with and interviewed Kuria living around the North Mara Gold Mine since 2014; they self-identify as Kuria and speak Kuria. Those affected by these forced evictions have not been granted the rights they hold under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) to self-determination and to free, prior and informed consent. UNDRIP notes that: "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."⁶² The Kuria interviewed by MiningWatch were not even consulted on their eviction, let alone given an opportunity to determine just and fair compensation, or any other aspect of their eviction. They were not invited to participate in the creation of a resettlement plan or otherwise provided an opportunity to participate in the decisions made about their fate. They were not given an opportunity to consent or withhold consent. They were most commonly told to be cooperative or face consequences, such as beatings or detention.

Violation of the Human Right to Development

UNDRIP sets out that "Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development."⁶³ The Kuria living around the North Mara mine are dependent on land for food, security and income. This land has often been passed down from previous generations, or bought with family support, for example in cases where a family's land could no longer be subdivided among children. Forced evictions strip villagers of their land and deprive them of the intergenerational endowments that support life among the Kuria. Land is the basis for food security, for the income needed to build houses, and for the income needed to educate the next generation. It is the basis for development.

60 MiningWatch Canada, "He was murdered": Violence against Kuria high after Barrick takeover of mine. October 2022. Pp. 11-17. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>

61 Basic Principles and Guidelines on Development-based Evictions and Displacement. February 2007. A/HRC/4/18. Paragraph 7. www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

62 UN Declaration on the Right of Indigenous Peoples (2007), [A/RES/61/295](https://www.unhcr.org/refugees/article/43e47314.html), Article 10.

63 *Ibid.* Article 23.

The forced evictions in Komarera and Kewanja, like others before them related to the development of the North Mara Gold Mine, have already impoverished the families that were evicted in December 2022 and August/September 2023. Some villagers have left their traditional lands and moved to nearby cities to try to make a living as labourers. Children have been taken out of school and hunger is now a common problem among those who have been evicted. Some who were interviewed by MiningWatch have mentioned their children have malnutrition. Recovery now requires substantial financial remedy allowing evicted villagers to buy land, build new homes and plant crops, while providing financial support for food, education and shelter as they re-establish their lives and livelihoods.

Violation of the Right to be Free from Arbitrary Detention and Arrest

In MiningWatch's report of 2022, and in this report, we describe how each stage of the eviction process was accompanied by police presence, often Field Force Units. We documented cases in which villagers experienced physical violence by police, threats of detention, as well as arbitrary detention.⁶⁴



Photo: Police overseeing the bulldozing of houses in Komarera Village. December 2022. (Still from video with MiningWatch)

64 MiningWatch Canada, "He was murdered": Violence against Kuria high after Barrick takeover of mine. October 2022. P. 16. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>

3. International voluntary standards on Mining-Induced Displacement and Resettlement

There are a number of voluntary international standards that apply to the mining sector with respect to the issue of Mining-Induced Displacement and Resettlement.⁶⁵ This section briefly discusses standards set out by the industry lobby group, International Council on Mining and Metals (ICMM), of which Barrick Gold is a member, and by the International Finance Corporation (IFC), as Barrick says it is compliant⁶⁶ with IFC's standard on "Land Acquisition and Involuntary Resettlement."

The human rights risks associated with Mining-Induced Displacement and Resettlement (MIDR) received international exposure through an industry-led global project called Mining, Minerals and Sustainable Development (MMSD), which concluded in a final report in 2002.⁶⁷ Chapter seven of this report is focused on mining impacts related to "The Control, Use, and Management of Land." A draft of this chapter provides an unvarnished assessment of the risk of MIDR:

"Mining-induced displacement and resettlement (MIDR) significantly increases the risks that local people will be impoverished and will end up subsidizing the mining project by giving more than they get. The argument that some must lose so that others may profit (for example, where a national priority overrides local ones) is unacceptable and shatters public support for the industry, particularly if the poorest people are being asked to make sacrifices for the benefit of those perceived as rich."⁶⁸

The final chapter recognizes the danger inherent in cash-only settlements, such as employed in Komarera and Kwanja: "The more marginalized a community, and the greater its material wants, the more likely it is that cash compensation will be a disaster unless it is part of a carefully thought through plan of resettlement."⁶⁹

This is particularly the case when land is valued at market rates, rather than recognized as the basis for survival: "[T]he values of the property of the poor may principally be expressed in the non-cash economy. In the subsistence economy, for example, a piece of land may be capable of providing a livelihood to a family, while in the cash economy it has a very low market value."⁷⁰ In the case of the evictions in Komarera, government evaluators said they were using market rates, rather than recognizing the significant subsistence value of land to the Kuria. Additionally, the cash values allotted for an acre of land were reported to MiningWatch to be lower than market rates, all but assuring the impoverishment that evicted villagers are now experiencing. The MMSD project gave rise to the creation of an international mining lobby group, the Inter-

65 See for example the Initiative for Responsible Mining Assurance's chapter on resettlement at https://responsiblemining.net/wp-content/uploads/2018/08/Chapter_2.4_Resettlement.pdf

66 Barrick Gold Corporation, Barrick Sustainability Report 2022. P. 37. https://s25.q4cdn.com/322814910/files/doc_downloads/sustainability/Barrick_Sustainability_Report_2022.pdf

67 Breaking New Ground: Mining, Minerals and Sustainable Development. January 2002. <https://www.iied.org/sites/default/files/pdfs/migrate/9084IIED.pdf> [Hereinafter MMSD, Final Report.]

68 MMSD, Draft Chapter 7. "The Control, Use, and Management of Land." 4 March, 2002. P.25 <https://www.iied.org/sites/default/files/pdfs/migrate/G00963.pdf>

69 MMSD, Final Report. Chapter 7. P.160 <https://www.iied.org/sites/default/files/pdfs/migrate/G00899.pdf>

70 MMSD, Draft Report for Comment. Chapter 7. "The Control, Use, and Management of Land." 4 March, 2002. pp's 16-17. <https://www.iied.org/sites/default/files/pdfs/migrate/G00963.pdf>

national Council on Mining and Metals. ICMM has developed a voluntary industry standard to which its members should adhere. Barrick Gold is a member of ICMM.

In regard to mining-induced displacement and resettlement, the ICMM standard provides clarity to its members as to when resettlement should be considered voluntary, or not: “Resettlement can be classified as either voluntary or involuntary, and may be either physical or economic. Resettlement is voluntary when resettled households have the choice to move. When the voluntary nature of resettlement cannot be confirmed, resettlement should be treated as involuntary [emphasis added]. This includes cases where a company has the legal right to take away land. ICMM company members commit to either avoid or minimise involuntary resettlement [emphasis added].”⁷¹

ICMM members, such as Barrick Gold, are expected to: “commit to avoid the involuntary physical or economic displacement of families and communities. Where this is not possible, they commit to apply the mitigation hierarchy and implement actions or remedies that address residual adverse effects to restore or improve livelihoods and standards of living of displaced people [emphasis added].”⁷²

In its guidebook on resettlement, ICMM states that: “ICMM members and many other companies undertake resettlement activities responsibly and make it their goal to leave communities better off than they were previously [emphasis added].”⁷³

Barrick fails to acknowledge that the evictions were involuntary,⁷⁴ and has failed to take actions to prevent harm and to implement remedies to address the harm caused by the forced evictions – let alone improved the lives of the Kuria who are now homeless, landless, and suffering from food shortages.

Around the same time that the MMSD project was underway, the World Bank engaged in a review of its policies with regard to mining. The World Bank Extractive Industries Review came out with a final report in 2003.⁷⁵ It concludes that: “the impacts of involuntary resettlement could be devastating and could undermine any effort in achieving poverty alleviation and sustainable development.”⁷⁶ The report is particularly clear regarding involuntary resettlement of Indigenous peoples: “Involuntary resettlement of indigenous peoples should be strictly prohibited. Resettlement should only be allowed if the indigenous community has given free prior and informed consent, there are guarantees of a right to return once the reason for resettlement ceases to exist, and subsequent to agreement on resettlement benefits. Moreover, the WBG should not support extractive industry projects that affect indigenous peoples without prior recognition of and effective guarantees for indigenous peoples' rights to own, control, and

71 ICMM. Avoid Involuntary Relocation. <https://www.icmm.com/en-gb/our-work/social-performance/indigenous-peoples-and-human-rights/avoid-involuntary-relocation>

72 ICMM. Land acquisition and resettlement: Lessons learned. <https://www.icmm.com/en-gb/guidance/social-performance/2015/land-acquisition-and-resettlement>

73 *Ibid.* See Foreword.

74 In a letter exchange with MiningWatch Canada, Barrick Gold has denied there were forced evictions in Komarera. See <https://www.barrickontrial.ca/letters/>

75 World Bank Group. The Final Report of the Extractive Industries Review. December 2003. <https://documents1.worldbank.org/curated/en/222871468331889018/pdf/842860v10WP0St00Box382152B00PUBLIC0.pdf>

76 *Ibid.* P. 36

manage their lands, territories, and resources.”⁷⁷

The World Bank’s Operational Policy 4.12 acknowledges many of the unmitigated adverse impacts the evicted Kuria described to MiningWatch: “Bank experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social and environmental risks: productive systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost.”⁷⁸

The private sector lending arm of the World Bank Group, the International Finance Corporation (IFC), set out performance standards for corporations, including one on “Land Acquisition and Involuntary Resettlement,”⁷⁹ with which Barrick says it is compliant.⁸⁰

IFC Performance Standard 5 notes that involuntary resettlement refers “both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) as a result of project-related land acquisition and/or restrictions on land use. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement.”⁸¹

The standard recognizes that “involuntary resettlement may result in long-term hardship and impoverishment for the Affected Communities and persons” and recommends, among others: “[t]o avoid forced eviction”⁸²; to “improve, or restore, the livelihoods and standards of living of displaced persons”; and to “improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.”⁸³

The standard calls on companies to provide a grievance mechanism to “address specific concerns about compensation and relocation raised by displaced persons or members of host communities in a timely fashion,” as well as a “resettlement and livelihood restoration plan” and to “establish procedures to monitor and evaluate the implementation of a Resettlement Action Plan or Livelihood Restoration Plan (...) and take corrective action as necessary.”⁸⁴

77 *Ibid.* P. 60

78 The World Bank. Involuntary Resettlement Sourcebook Planning and Implementation in Development Projects. 2004. P. 35 <https://documents1.worldbank.org/curated/en/206671468782373680/pdf/301180v110PAPE1et-tlement0sourcebook.pdf>

79 International Finance Corporation. Performance Standard 5. Land Acquisition and Involuntary Resettlement. <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standard-5>

80 Barrick Gold Corporation, Barrick Sustainability Report 2022. P. 37. https://s25.q4cdn.com/322814910/files/doc_downloads/sustainability/Barrick_Sustainability_Report_2022.pdf

81 International Finance Corporation. Performance Standard 5. Land Acquisition and Involuntary Resettlement. P.1 <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standard-5>

82 *Ibid.*

83 *Ibid.* P. 2

84 *Ibid.* P. 4

The standard aims at improving the security of resettled people by stating that the company “will offer them a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction. Where these displaced persons own and occupy structures, the client will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost, provided that these persons have been occupying the project area prior to the cut-off date for eligibility. Based on consultation with such displaced persons, the client will provide relocation assistance sufficient for them to restore their standard of living at an adequate alternative site.”⁸⁵

IFC Performance Standard 5 regularly refers to IFC Performance Standard 7 on Indigenous peoples.⁸⁶ Among others, this standard notes the requirement to seek free, prior and informed consent of Indigenous peoples when projects have impacts on land held by Indigenous peoples and clarifies that “FPIC applies to project design, implementation, and expected outcomes related to impacts affecting the communities of Indigenous Peoples. When any of these circumstances apply, the client [company] will engage external experts to assist in the identification of the project risks and impacts.”⁸⁷ The standard also specifies that replacement land is preferred over cash compensation and that if the company cannot offer “replacement land, the client [company] must provide verification that such is the case. Under such circumstances, the client [company] will provide non land-based income-earning opportunities over and above cash compensation to the Affected Communities of Indigenous Peoples.”⁸⁸

As illustrated in Section One, the evicted Kuria did not benefit from any of these provisions set out by IFC PSs 5 and 7. They certainly were not asked for, nor did they provide their free, prior and informed consent for the evictions. They did not participate in the development of a Resettlement Action Plan or Livelihood Restoration Plan. They did not even have access to a grievance mechanism throughout their forced evictions. They certainly do not find their livelihoods and standards of living improved, or even restored.

Knowledge of the high degree of risk to affected communities and Indigenous peoples of mining-induced displacement and resettlement, especially when involuntary or forced, has been well-established for over 20 years. Institutions such as the ICMM and the IMF have set out guidelines aimed at avoiding and addressing these harms.⁸⁹ Barrick is a member of ICMM and says it complies with IFC performance standards, but the very serious and ongoing harm caused to Kuria villagers in the forced evictions represent a failure to respect human rights and a failure to mitigate the worst harms through compliance with these guidelines. The most egregious harms endured by the evicted families should have been, and could have been, prevented. Now that the violations have occurred there is an urgent need for Barrick to remedy the harm done to avert further damage to these families.

85 *Ibid.* P. 6

86 International Finance Corporation. Performance Standard 7. Indigenous Peoples. <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-7-en.pdf>

87 *Ibid.* P. 3

88 *Ibid.* P. 4, footnote 11.

89 Note that the ICMM guidelines on resettlement are considerably weaker and less detailed than those of the IFC.

4. Barrick fails to prevent harm despite prior warnings of risks to human rights

Barrick was warned of significant human rights risks associated with the planned evictions in Komarera and Kewanja prior to the destruction of people's homes. In May 2020, Barrick received a risk assessment report by consultants Synergy Global Consulting Ltd. (Synergy).⁹⁰ One of the risk areas assessed by Synergy was land access issues, including historical and future resettlement. Synergy ranked the risk level related to both historical and future resettlement as "high" due to "the scale of actual and potential significant negative impacts."⁹¹ Synergy recommended that Barrick address historical resettlement issues consistent with international good practice, and, for future resettlement, that Barrick assess the risks, seek to avoid or minimize resettlement, and manage unavoidable resettlement according to international good practice.⁹²

In September 2022, Barrick received another report from Synergy, again, before the houses, possessions and lands of villagers from Komarera and Kewanja were bulldozed. Synergy again ranked the risk of past and future resettlement issues as "high" due to "the potential impacts on livelihoods due to *involuntary resettlement* [emphasis added]."⁹³ Synergy commends Barrick for "working to resolve outstanding historical resettlement issues" and for developing a "site wide plan for future resettlement," but concludes that the risk remains high due to, among other issues, the scale of resettlement, the high number of project affected persons, and the need for "further detailed studies and monitoring to understand impacts at an individual level, particularly vulnerable individuals."⁹⁴ Synergy recommends that the North Mara Gold Mine hire "an experienced resettlement specialist" to ensure that outstanding resettlement issues be resolved and future resettlement be conducted "consistent with international good practice."⁹⁵ Synergy notes that resolving historical issues should include addressing issues related to compensation and livelihood restoration.⁹⁶

In October 2022, MiningWatch Canada conducted its 7th human rights field assessment at the North Mara Gold Mine. In addition to continued investigation into ongoing excess use of force and killings by mine police of Kuria villagers who enter the mine's waste rock dumps in search of residual gold, MiningWatch looked into the forced evictions process that was underway in Komarera and Kewanja. MiningWatch issued a report in October 2022 that laid out the harm

90 Synergy assesses risk of significant negative impacts or human rights abuses that companies may contribute to, or with which they may be associated. Synergy has assessed the North Mara Gold Mine Ltd. on behalf of MMTC-PAMP, a precious metals refiner that sources from the mine.

91 Synergy Global Consulting Ltd. MMTC-PAMP North Mara Gold Mine Assessment. Executive Summary. May 2020. P. 6. https://www.mmtcpamp.com/documents/41872/225059/North_Mara_Gold_Mine_Limited_Synergy_Assessment_report_Exec_Summ.pdf

92 *Ibid.* P. 7

93 Synergy Global Consulting Ltd. MMTC-PAMP North Mara Gold Mine Independent Assessment. Ongoing monitoring of risk management – On-site assessment report. Executive Summary. September 2022. P. 5. https://www.mmtcpamp.com/documents/41872/225059/22_09_12-NMGM-On-site+assessment-Synergy-report-ExecSummary-12Sep22.pdf

94 *Ibid.* P. 6

95 *Ibid.* P. 7

96 *Ibid.* P. 7

that had already being caused by the process, including coercion, intimidation, and violence associated with the property assessment process and lack of transparency, coercion, and inequity in the payment process.⁹⁷

In its report MiningWatch called on Barrick to “immediately call a halt to the forced evictions process and voluntarily expand the court ordered restraining order to all properties targeted for mine expansion until a proper review of the legality and human rights implications of the process can be established and the harm already done can be addressed.”⁹⁸

MiningWatch followed up on the report with a letter to Barrick on October 18, 2022.⁹⁹ In the letter MiningWatch summarizes nine findings from its field assessment that pointed to human rights abuses in the forced eviction process and highlights the use of violence and arbitrary detention in the process. MiningWatch concluded by calling on Barrick to:

- voluntarily and urgently halt the assessment and forced eviction process;
- carry out a transparent due diligence process on, among others, the issues that we have documented, preferably by an independent third party. The report of this third party should be made public;
- ensure that people who have already been harmed by this process can safely file their complaints and receive equitable compensation for their losses;
- revise the process to align it with international human rights standards and the rights of vulnerable people affected by the mine expansion.¹⁰⁰

In its response of 14 November 2022, Barrick asserts that in the resettlement process “[t]he forced eviction or removal of any person from their land, or the use of violence when dealing with any person, is strictly prohibited.” Barrick also asserts that “OECD Guidelines and international best practices are adhered to.”

Based on video evidence of the houses being bulldozed, which MiningWatch received in December 2022, and the interviews MiningWatch conducted in 2023, the evictions were forced on Kuria who were not prepared to leave their homes and these evictions were not in compliance with human rights norms or international standards. The fact that Barrick received prior warnings of the high risk of human rights abuses in this process from Synergy and MiningWatch, but did not avert the very serious harm endured by the evicted Kuria calls for immediate remedial action by Barrick.

97 MiningWatch Canada, “He was murdered”: Violence against Kuria high after Barrick takeover of mine. October 2022. <https://miningwatch.ca/sites/default/files/northmaramwcreportoct112022.pdf>

98 *Ibid.* P. 17

99 <https://miningwatch.ca/sites/default/files/lettermarkbristownorthmaraoctober2022.pdf> For the seven-letter exchange between MiningWatch and Barrick on this issue see: <https://www.barrickontrial.ca/letters/>

100 *Ibid.*

5. An ongoing pattern of human rights abuses related to land at the North Mara Gold Mine

The history of human rights violations related to eviction of villagers from their land with little or no compensation in order to make way for the North Mara Gold Mine goes back to the very start of mine construction leading to the opening of the mine in 2002¹⁰¹ and is recognized as an ongoing violation of rights.¹⁰² The same year that Barrick took over the mine from another Canadian company, Placer Dome, lawyer and activist Tundu Lissu wrote in an open letter:

In the period after the forced evictions of the villagers in August 2001, hundreds of villagers, particularly community leaders and prominent locals were targeted for illegal arrests, criminal prosecutions and long term imprisonment. (...) [B]eginning 2004, the company has been taking by force villagers' lands it requires for its mining operations. This is done by simply dumping millions of tons of waste rock and rubble onto village lands without even the pretense of seeking owners' consent or payment of compensation as required by law. The lands surrounding the Gokona Pit to the north of the Mine were taken over this. The Kihinda Clan and dozens of other landowners in the area have lost their lands in this way. Similarly, lands to the west and south-west of the Mine at Nyangoto Village have been taken over by simply dumping mountains of waste rock onto farmlands and residential areas thereby forcing the villagers off. All this is done with the active participation of the district and administration and police. (Lissu, June 2006)¹⁰³

In 2012, while the mine was run by African Barrick Gold, in which Barrick held a 73.9% ownership and controlling stake, the decision was made to evict villagers from parts of Nyangoto, Matongo, Kewanja and Nyakunguru Villages, near the Gokona pit, to make way for expanding waste rock dumps. An evaluation of the lands, crops, buildings and houses took place between 2012 and 2014.¹⁰⁴ As was the case in Komarera and Kewanja, people were told they should no longer carry out any activities in regard to their homes, including basic upkeep, or cultivate their crops, or they risked losing their compensation.¹⁰⁵ Villagers were told that the cut-off date for halting development on the land was satellite imagery taken in February 2014.¹⁰⁶

However, after the evaluation, which was conducted by the mine, there was no progression towards compensation payments. As reported to MiningWatch by long-time residents of Nya-

101 See <https://www.theglobeandmail.com/report-on-business/rob-magazine/barricks-tanzanian-project-tests-ethical-mining-policies/article559188/>; Onesmo Olengurumwa, 2011. Killings around North Mara Gold Mine: The human cost of gold in Tanzania – The shootings of the five. https://www.academia.edu/7827818/KILLINGS_AROUND_NORTH_MARA_GOLD_MINE_THE_HUMAN_COST_OF_GOLD_IN_TANZANIA_THE_SHOOTINGS_OF_THE_FIVE

102 See for example, <https://www.ajhssr.com/wp-content/uploads/2021/03/D21533037.pdf>

103 Tundu Lissu. Six Villagers Killed in Barrick's North Mara Mine. June 17, 2006. <https://www.jamiiforums.com/threads/tundu-lissu-na-wenzake-waachiwa-kwa-dhamana-na-masharti-magumu.139000/page-4>

104 MiningWatch has copies on file of Valuation Form 3 from villagers in this area as, unlike in the evictions process in Komarera and Kewanja, landowners from Nyangoto, Matongo, Kewanja and Nyakunguru Villages received copies of Valuation Form 3 following the assessments of their properties.

105 Among others, #17-2023; #18-2023

106 Letter from mine manager Gary Chapman, May 24, 2014. On file with MiningWatch Canada.

michele hamlet in Nyakunguru Village,¹⁰⁷ equipment from the mine came in and bulldozed crops and tree plantations, and people started to be regularly harassed and beaten by mine security and mine police who tried to intimidate them into vacating the land.

In 2016, after years of complaints, the governor of the region ordered the mine to pay some compensation for loss of crops and for the disruption, or inconvenience, people had experienced. The

payment schedule for the people from Nyamichele hamlet was to start December 8, 2016 and run through February 2017.¹⁰⁸ Villagers were to receive just a percentage of the assessed value of their properties per year for each of the years since they had been assessed. As reported to MiningWatch, these payments were to be 8% of the assessed value of properties. These payments were never made.



Photo: Houses assessed between 2012-2014 now falling apart in Kewanja Village as villagers wait for compensation. November 2023. (MiningWatch Canada)

As reported to MiningWatch, violence by mine police against the villagers who remained on their land and in their houses continued, even as the houses themselves deteriorated. Additionally, waste rock was dumped close to the houses and now villagers have to contend with clashes between mine police and those who are trying to eke out a living on the waste dumps by seeking residual gold in the rocks. Additionally, blasting and constant light from expanding mine activities has made life very difficult. People in Nyamichele, who should have been properly compensated for their homes and lands after the assessments were completed in 2014, are now left living within 100 metres of a mine wall in crumbling houses. Those who have left, did so without ever receiving compensation.

In July of this year, villagers who should have been resettled were told that the mine no longer requires their land and they can stay if they want. As reported to MiningWatch, these villagers are now being offered just 7% of the value ascribed to their lands and properties during the assessment of 2012-2014. They have been told by village officials to accept this token amount as a “cloth to wipe their tears with.”¹⁰⁹ The amounts being offered are completely inadequate to compensate for the harm endured during years of waiting for compensation that never came. The funds are not sufficient to allow these villagers to abandon their lands and houses and start over somewhere else. Furthermore, the rationale that the mine no longer requires the land is not credible. The mine has encroached on this area and made life for villagers who remain untenable. Those who spoke to MiningWatch pointed out that they have not received any official document to the effect that the land has been returned to them.¹¹⁰

107 Among others, #17-2023; #18-2023

108 Letter from mine manager Abraham Van Ghent, December 5, 2016. On file with MiningWatch Canada.

109 Among others, #17-2023; #18-2023

110 Among others, #17-2023; #18-2023



Photo: Barrick – North Mara drilling in Genkuru Village as part of the mine's ongoing exploration." November 2023. (MiningWatch Canada)

Unless human rights norms are applied, the pattern of abusive eviction processes is set to continue as Barrick maintains an active drilling program around the existing operations. MiningWatch spoke to a woman who owns agricultural land in Nyaiheto hamlet in Kewanja Village.¹¹¹ Agricultural land in that area was evaluated between March and May of 2022. Neighbouring areas in Komarera North and Nyakunguru Village were also evaluated between 2020 and 2022. When her land was evaluated she was told not to harvest from, or cultivate, the land anymore. That land had provided funds for her children's school fees. In the year and a half since the evaluation was done, there was no further move to compensate the people. In November 2023, a public notice was issued to say that the mine would no longer require these areas and the prohibition on their use was lifted. No mention was made of compensation for the losses people endured in the years that they could not use their land for food security and income.¹¹²

111 Among others, #16-2023

112 Public Notice. November 30, 2023. Issued by Solomon I. Shati, Executive Director, District Council of Tarime. On file with MiningWatch.

6. Recommendations for remedy for rights violations and for prevention of future forced evictions at the North Mara Gold Mine

As discussed in Section Five, the North Mara Gold Mine has a long history of evicting local Kuria from their land and leaving them impoverished, landless, homeless and desperate. These evictions have perpetuated the equally long history of Kuria villagers trying to eke out a living by entering the waste rock dumps that arise where their homes and lands used to be, to find residual gold in the mine's waste; many of these Kuria are maimed or killed by mine security and mine police.¹¹³ This cycle of eviction and violence against local Kuria needs to be broken.

There is an urgent need for remedy for the latest victims of forced evictions from Komarera and Kwanja (2020-2023), discussed in Section One, and for families from Nyangoto, Matongo, Kwanja and Nyakunguru (2012-2023), discussed in Section Five, who have yet to be compensated or resettled. There is also an urgent need for prevention of future harm, a need to change the pattern of these evictions. Barrick's drilling program, ongoing in Genkuru, places yet more Kuria at risk of abusive forced evictions.

RECOMMENDATIONS FOR REMEDY

Access to remedy for those whose rights have been violated by actions caused or contributed to by corporations is one of the three central pillars of the UN Guiding Principles on Business and Human Rights (UN GPs).¹¹⁴ The OECD Due Diligence Guidance for Responsible Business Conduct (OECD DD Guidance), clarifies that: "When the enterprise identifies that it has caused or contributed to actual adverse impacts, address such impacts by providing for or cooperating in their remediation."¹¹⁵ The OECD DD Guidance recommends that companies should "[s]eek to restore the affected person or persons to the situation they would be in had the adverse impact not occurred (where possible) and enable remediation that is proportionate to the significance and scale of the adverse impact" and they should, "[i]n relation to human rights impacts, consult and engage with impacted rightsholders and their representatives in the determination of the remedy."¹¹⁶ The OECD DD Guidance also recommends to "seek out international guidelines on remediation where available...."¹¹⁷

113 www.BarrickonTrial.ca

114 United Nations Guiding Principles on Business and Human Rights. 2012. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

115 OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct. P. 34. <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>

116 *Ibid.*

117 *Ibid.*

The following recommendations should not be considered exhaustive.

With respect to evicted landowners, families, and households of Komarera and Kwanja (Section One):

The IFC's Performance Standard 5 on Land Acquisition and Involuntary Resettlement recognizes that "involuntary resettlement may result in long-term hardship and impoverishment for the Affected Communities and persons."¹¹⁸ This harm has occurred in the forced evictions discussed in this report. Based on MiningWatch's interviews, those who were evicted are now facing numerous devastating impacts including: being landless and homeless, facing food insecurity, scattered families, children who are no longer going to school, and physical and mental health effects.

Barrick Gold should provide immediate support to the evicted families, and their extended households who lived together on the cleared land, to ensure they can, among others: rent suitable places to stay; provide food for their families; pay for their children's education; secure health care; and repay debts they have incurred to cover these expenses.

The IFC's Performance Standard 5 requires that companies "improve, or restore, the livelihoods and standards of living of displaced persons. To improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites. Security of tenure means that resettled individuals or communities are resettled to a site that they can legally occupy and where they are protected from the risk of eviction."¹¹⁹

Barrick Gold should enter into discussions with the evicted landowners to create a transparent resettlement plan that provides for, among others: sufficient alternative land with security of tenure to be able to house and feed the households that were evicted; resettlement homes that suit their needs; and support to restore livelihoods until such time that they can recover the trees and crops they used to rely upon.

Barrick Gold should resettle these evicted families according to human rights norms.¹²⁰

The Office of the High Commissioner for Human Rights clarifies that "[a]ll persons threatened with, or subject to, forced evictions have the right of access to a timely remedy, including a fair hearing, access to legal counsel and legal aid (free, if necessary)."¹²¹

Lawyers for North Mara Gold Mine Ltd. should not undermine the evicted plaintiffs' effort to seek legal remedy by questioning the legality of their lawyers' representation of these plaintiffs.¹²²

118 IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement. P. 1. <https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standard-5-en.pdf>

119 *Ibid.* P. 2

120 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

121 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P. 31. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

122 Supporting document on file with MiningWatch Canada.

Barrick Gold should settle the three cases evicted plaintiffs have brought quickly and equitably, rather than prolonging these cases.

Barrick Gold should remove any impediments evicted plaintiffs may have to seeking legal remedy for the harm they have endured, including any legal waivers they were asked to sign in order to obtain their compensation payments.

With respect to the landowners, families, and households of Nyangoto, Matongo, Kwanja and Nyakunguru (Section Five):

Families from these villages had their houses, lands and crops assessed between 2012 and 2014 in preparation for forced eviction. At that time, they were told to no longer maintain their houses or harvest from their land or they would risk not being compensated. According to interviews conducted by MiningWatch, in the following decade these villagers have endured consistent harassment, including beatings, from mine security and mine police who have told them they should move away, and some have had their tree crops cut down by mine personnel. In the ensuing years the mine's operations have expanded to impact on their lands and homes. These families have yet to be compensated for the harm they have endured and have yet to be resettled.

Barrick Gold should equitably compensate the families who have remained on their land for the past decade, while they: lived in unmaintained houses; could not cultivate their lands for food and income; endured financial hardship; suffered harassment, at times violent, by mine security and mine police; suffered health impacts; and continued to wait to be equitably compensated and resettled.

Barrick Gold should equitably compensate the families, and family members, who abandoned their homes and lands because of the hardships imposed on them. These families, and family members, have had to seek alternative housing and land at their own expense.

Barrick Gold should resettle, in accordance with human rights norms,¹²³ the families that have remained on their assessed lands, as well as any families or family members who have abandoned their lands, and who wish to be resettled.

RECOMMENDATIONS FOR PREVENTION OF FUTURE FORCED EVICTIONS

Barrick's drilling program around the North Mara Gold Mine is aimed at expanding the mine's operations. This puts more Kuria at risk of harm from forced evictions. Those with land in Nyaiheto hamlet in Kwanja (Section Five) experienced the first stages of the same harmful process that people in Komarera endured (Section One). Their land was assessed between March and May of 2022 and they were told to stop cultivating and using the land. They were not compensated for their losses nor, for those with homes in that area, were they resettled. In November 2023, they were told the mine would not use their land after all, but they have not been offered compensation for the loss of the use of their land for the past years.

123 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. pp's 24-35. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

As discussed in Section Two, the UN Commission on Human Rights recognizes forced eviction as a gross violation of human rights,¹²⁴ which is prohibited “under the international human rights framework.”¹²⁵ Both State and non-state actors should “refrain from and prohibit forced evictions.”¹²⁶ The Office of the High Commissioner notes that according to the “Guiding Principles on Business and Human Rights, business enterprises have a responsibility to respect all human rights, including the prohibition on forced eviction.”¹²⁷ The international voluntary standards discussed in this report are also clear that companies should avoid forced evictions.¹²⁸ Furthermore, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) specifies that “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development.”¹²⁹ UNDRIP also stipulates that “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”¹³⁰

The following recommendations should not be considered exhaustive.

Barrick Gold should not plan for, or carry out, any relocation of Kuria from their lands without their free, prior, and informed consent.

Any future relocations must be compliant with UN norms,¹³¹ including:

- Prior completion of an eviction impact assessment of the real cost to and the impact of evictions on the community,¹³² recognizing that these costs go beyond market prices for land and homes.¹³³ Such an assessment needs to consider, among others, risks of landlessness, loss of land-based income, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property and family and social disarticulation.
- Respect for due process for persons threatened with, or subject to, forced evictions, including provision of legal remedies and provision of legal aid to persons who need it to

124 Commission on Human Rights, Resolution 1993/77. https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1993-77.doc#:~:text=Affirms%20that%20the%20practice%20of,3

125 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P. 2. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

126 *Ibid.*

127 *Ibid.* P. 38.

128 ICCM. Land acquisition and resettlement: Lessons learned. <https://www.icmm.com/en-gb/guidance/social-performance/2015/land-acquisition-and-resettlement>; International Finance Corporation. Performance Standard 5. Land Acquisition and Involuntary Resettlement. P.1 <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standard-5>

129 UN Declaration on the Right of Indigenous Peoples (2007), *A/RES/61/295*, article 23.

130 *Ibid.* Article 10.

131 See for example: Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

132 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P. 27. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

133 See OHCHR and UN-Habitat, *A Loss More Significant Than They Think: A Review of Eviction Impact Assessment Methodologies* (2011).

seek redress through the courts.¹³⁴ Any eviction needs to be suspended as long as a case is pending before an independent complaint body or a court.¹³⁵

- Respect for the rights of those evicted to participate meaningfully in decisions on alternative housing, relocation and compensation.¹³⁶
- “Forced evictions should not result in homelessness or put people in life- or health-threatening situations.”¹³⁷ Alternative and sustainable accommodation that is culturally appropriate should be provided before any eviction is carried out.¹³⁸ Such alternative accommodation should, among others: provide security of tenure; be safe and not lead to potential conflict or tension with host communities; provide access to productive land.¹³⁹
- “Cash compensation should in principle not replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.”¹⁴⁰
- “Those who are evicted must have access to: (a) essential food, safe drinking water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare.”¹⁴¹
- “The evictions should not be carried out in a way that threatens the health or life of the evictees, for instance destroying structures where people are still trying to salvage their belongings.”¹⁴²

Barrick Gold should also comply with key provisions in IFC Performance Standard 5,¹⁴³ including:

- The development of a Resettlement Action Plan, in consultation with those to be relocated. “The Plan will be designed to mitigate the negative impacts of displacement; identify development opportunities; develop a resettlement budget and schedule; and establish the entitlements of all categories of affected persons (including host communities). Particular attention will be paid to the needs of the poor and the vulnerable.”¹⁴⁴

134 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P. 30 <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

135 *Ibid.* P. 31.

136 *Ibid.* P. 30.

137 *Ibid.* P. 31

138 *Ibid.* P. 32

139 *Ibid.*

140 *Ibid.* P. 33

141 *Ibid.* P. 34

142 *Ibid.*

143 International Finance Corporation. Performance Standard 5. Land Acquisition and Involuntary Resettlement. <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standard-5>. Note Barrick says it complies with this standard, but that is not evident in the forced evictions in Komarera and Kewanja.

144 *Ibid.* P. 5

- “New resettlement sites built for displaced persons must offer improved living conditions. The displaced persons’ preferences with respect to relocating in preexisting communities and groups will be taken into consideration. Existing social and cultural institutions of the displaced persons and any host communities will be respected.”¹⁴⁵
- “[O]ffer them a choice of options for adequate housing with security of tenure so that they can resettle legally without having to face the risk of forced eviction.”¹⁴⁶
- “Based on consultation with such displaced persons, the client [company] will provide relocation assistance sufficient for them to restore their standard of living at an adequate alternative site.”¹⁴⁷
- “For persons whose livelihoods are land-based, replacement land that has a combination of productive potential, locational advantages, and other factors at least equivalent to that being lost should be offered as a matter of priority. (...) Cash compensation alone, however, is frequently insufficient to restore livelihoods.”¹⁴⁸
- “Transitional support should be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.”¹⁴⁹
- “Where land acquisition and resettlement are the responsibility of the government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this Performance Standard.”¹⁵⁰

RECOMMENDATIONS FOR TRANSPARENCY

Barrick Gold should provide greater transparency regarding past and current forced evictions at the North Mara Gold Mine regarding, among others: compensation rates offered, for example for an acre of land; requirements for those evicted to sign legal waivers; eviction procedures followed; reasons for denial of compensation; and full reports of independent assessments conducted by Synergy Global Consulting. The Office of the High Commissioner for Human Rights specifies that: “Information on decisions and the criteria for their justification need to be public and transparent”¹⁵¹; “All stages of the process need to be transparent”¹⁵²; and, “It is therefore essential that transparent and accountable mechanisms are put in place to ensure that no human rights violations occur as a result of these activities.”¹⁵³

145 *Ibid.*

146 *Ibid.* P. 6

147 *Ibid.*

148 *Ibid.* P. 7

149 *Ibid.*

150 *Ibid.*

151 Office of the High Commissioner for Human Rights. Forced Evictions, Fact Sheet No. 25/Rev.1. 2014. P. 27. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

152 *Ibid.* P. 30

153 *Ibid.* P. 36