



S=148932

No. _____
Vancouver Registry

In the Supreme Court of British Columbia

Between

**GIZE YEBEYO ARAYA, KESETE TEKLE FSHAZION and
MIHRETAB YEMANE TEKLE**

Plaintiffs

and

NEVSUN RESOURCES LTD.

Defendant

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Overview

1. In October 2007, Vancouver based Nevsun Resources Ltd. entered into a commercial venture with the rogue state of Eritrea to develop the Bisha gold mine in Eritrea.
2. The mine was built using forced labour, a form of slavery, obtained from the plaintiffs and others coercively and under threat of torture by the Eritrean government and its contracting arms.
3. Eritrea is a repressive, one-party state which uses a system of conscription, torture, arbitrary detention, violence, threats of retribution and other forms of cruel, inhuman and degrading treatment to create a supply of forced labour for various projects in the country including the Bisha mine.

4. By entering into the commercial relationship with Eritrea, Nevsun facilitated, aided, abetted, contributed to and became an accomplice to the use of forced labour, crimes against humanity and other human rights abuses at the Bisha mine.
5. The plaintiffs, Gize Yebeyo Araya, Kesete Tekle Fshazion and Mihretab Yemane Tekle are Eritrean nationals and refugees who were forced to work at the Bisha mine.
6. During their period of forced labour at Bisha, the plaintiffs were subjected to cruel, inhuman and degrading treatment as well as harsh working conditions including long hours, malnutrition and forced confinement for little pay. They worked under the constant threat of physical punishment, torture and imprisonment.
7. The plaintiffs bring this action for damages against Nevsun under customary international law as incorporated into the law of Canada and domestic British Columbia law, on their own behalf and as a representative action on behalf of all Eritrean nationals who were forced to work at the Bisha mine from September 2008 to the present.

The Parties

8. The plaintiffs are refugees who escaped from Eritrea. They have an address for service c/o Camp Fiorante Matthews Mogerman Lawyers, 400-856 Homer Street, Vancouver, B.C.
9. The defendant Nevsun is a transnational mining company that is incorporated under the laws of British Columbia, and is headquartered in Vancouver. Nevsun has an address for service at 1000 – 840 Howe Street, Vancouver, BC.

FACTS

Eritrea is a repressive, rogue state

10. Eritrea is a rogue state and one of the most repressive regimes in the world. It has a well documented history of forced labour, arbitrary arrests and detention, extrajudicial killings, torture, inhuman prison conditions, infringement of freedoms of movement, expression and opinion, assembly, association and religious belief, sexual and gender-based violence, and violations of children's rights.
11. Eritrea is a dictatorial, one-party state which has never held elections or implemented a constitution. Eritrea has a single political party, the People's Front for Democracy and Justice ("PFDJ"). All other political parties are banned.
12. The rule of law does not exist in Eritrea. It has no constitution, functioning legislature or civil justice system, independent judiciary, elections, independent press, or nongovernmental organizations. Power is concentrated in the hands of President Isaias Afewerki.

National Service In Eritrea Is A System of Forced Labour

13. Eritrea uses a system of forced labour including the National Service Program to benefit senior government and military officials and the PFDJ.
14. The National Service Program was established in late 1994 or 1995. Initially, all Eritrean nationals, men and women, between the ages of 18 and 40 were conscripted into the program and were required to undergo 6 months of military training and 12 months of active military service for a total of 18 months of mandatory service.
15. In 2002, the government of Eritrea extended the period of service for conscripts indefinitely and forced the conscripts to provide labour to various companies owned by senior military officials or the PFDJ including the Segen Construction Company, which is owned by the PFDJ, and the Mereb Construction Company, which is controlled by the military.

16. Conditions in the National Service Program are brutal. Conscripts are regularly subjected to violence and ill-treatment for asking questions or other perceived transgressions. Beatings, torture, and prolonged arbitrary detention are common.
17. Conscripts are paid meagre subsistence wages for their forced labour, are denied basic human rights and freedoms and are often forced to work in harsh conditions, including temperatures of up to 50 degrees Celsius.
18. Conscripts who attempt to leave national service upon completion of 18 months service are subject to severe punishment including torture and imprisonment, and their families are subject to retribution.
19. Eritrea is one of the world's most closed countries, and actively suppresses the release of reliable information as to conditions inside the country. Nonetheless, Nevsun was aware or must have been aware, by the time it commenced construction of the Bisha mine in 2008, of credible, published reports of the use of forced labour, torture and arbitrary detention in Eritrea including:
 - (a) *ERITREA: 'You have no right to ask' - Government resists scrutiny on human rights*, published by Amnesty International on May 19, 2004;
 - (b) *World Report 2007 - Eritrea*, published by Human Rights Watch on January 11, 2007;
 - (c) *World Report 2008 - Eritrea*, published by, Human Rights Watch on January 31, 2008;
 - (d) *2007 Country Reports on Human Rights Practices - Eritrea*, published by the United States Department of State, March 11, 2008;
 - (e) *Amnesty International Report 2008 - Eritrea*, published by Amnesty International on May 28, 2008; and
 - (f) *Freedom in the World 2008 - Eritrea*, published by Freedom House, July 2, 2008.

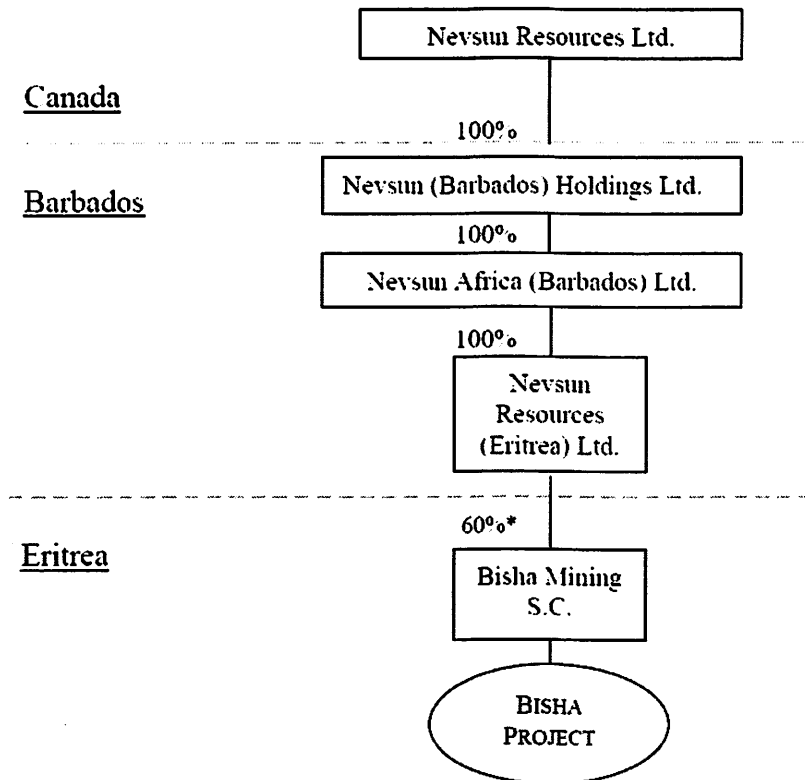
20. Eritrea's system of indefinite conscription enforced by torture, violence, arbitrary detention, retribution against family members and other cruel, inhuman and degrading treatment is a widespread and systematic attack directed against the civilian population of Eritrea.

The Bisha Mine

21. The Bisha mine is a large, high-grade gold, copper and zinc deposit located 150km west of Asmara, Eritrea.

22. Nevsun and the state of Eritrea are engaged in a commercial enterprise for the common purpose of developing and exploiting the Bisha mine.

23. Nevsun owns a controlling interest in the Bisha mine through the following corporate structure:



24. The government of Eritrea holds a 40% share of the Bisha Mine Share Corporation (BMSC) through the state-owned Eritrean National Mining Corporation (ENAMCO).
25. The terms of the arrangement amongst Nevsun, ENAMCO, BMSC and the Eritrean government call for ENAMCO to pay for 33.3% of the mine development costs through its share of mine revenues.
26. Nevsun's principal and most valuable asset is the Bisha mine. All important decisions relating to the development and operation of the Bisha mine, including the retainer of contractors, were made and/or approved by Nevsun's senior management and/or the Board of Directors.
27. Nevsun engaged Segen, Mereb and the Eritrean military to build the infrastructure and mine facilities at Bisha. Segen, Mereb and the Eritrean military deployed forced labour obtained from the plaintiffs and others to carry out this work.
28. Development of the Bisha mine commenced in early 2008. The mine was commissioned in the fourth quarter of 2010 and commercial production commenced in the first quarter of 2011.
29. Since February 22, 2011, the Bisha mine has produced revenues of approximately \$1.6 billion and net income of approximately \$645 million. Approximately \$250 million of net income has been paid to ENAMCO, thereby providing massive financial support and incentives to continue Eritrea's system of forced labour and human rights abuses.
30. Nevsun has projected that the Bisha mine will continue to generate significant cash flow for its shareholders over the current estimated remaining mine life of eleven years.

Nevsun's Corporate Responsibility Policies

31. Nevsun, through its executives, managers, and Board of Directors, develops, monitors and implements policies governing human resources and working conditions at the Bisha mine.
32. Nevsun's stated policy is that it is unequivocally committed to responsible operations and practices at the Bisha mine, based on international standards of safety, governance, and human rights.
33. Nevsun's Board of Directors has stated that it "has the responsibility to oversee the conduct of our business and to supervise the management of our business... The Board is accountable to and considers the legitimate interests of our shareholders and other stakeholders such as government authorities, employees, contractors, customers, communities and the public."
34. Nevsun has adopted the 2006 International Finance Corporation (IFC) standards on social and environmental performance. These standards require the company to:
 - (a) conduct an integrated assessment to identify the social impacts, risks and opportunities of the Bisha mine, including labour and safety risks;
 - (b) identify social impacts, both positive and negative, in the mine's area of influence including the primary site and those of contractors employed by the company;
 - (c) avoid, or where avoidance is not possible, minimize, mitigate or compensate for adverse impacts on workers and affected communities;
 - (d) design and implement a management plan to manage social impacts and risks identified in the assessment;
 - (e) monitor performance of the management plan;
 - (f) retain outside experts where required to verify its monitoring activities;

- (g) promote the fair treatment, non-discrimination and equal opportunity of workers;
- (h) protect workers by addressing forced labour risks;
- (i) promote safe and healthy working conditions;
- (j) use commercially reasonable efforts to protect workers of contractors;
- (k) use commercially reasonable efforts to ensure that contractors are reputable and legitimate enterprises; and
- (l) use commercially reasonable efforts to require contractors to abide by the IFC standards including the prohibition on forced labour.

Use of Forced Labour at the Bisha Mine

35. Between 2008 and 2012, over one thousand Eritrean nationals were forced to work at the Bisha mine. The forced labour came from at least four sources:
- (a) conscripts deployed by Segen;
 - (b) conscripts deployed by Mereb;
 - (c) conscripts deployed by the Eritrean military; and
 - (d) workers who joined Segen and Mereb voluntarily, but who were subsequently prohibited from leaving and were forced against their will to continue working at the Bisha mine.
36. The Plaintiff Kesete Tekle Fshazion was conscripted into National Service in 2002. In 2008, after 6 years of service, he was issued a demobilization card but was not permitted to leave.
37. On December 25, 2008, Kesete Tekle Fshazion was deployed by Segen to the Bisha mine where he was put to work as a lab technician. He escaped the Bisha mine in October 2012 and escaped Eritrea in December 2012.

38. The Plaintiff Gize Yebeyo Araya voluntarily enlisted in National Service in or around March 1997. He completed his 18 months of training and active duty but was not released from National Service.
39. In February 2010, Gize Yebeyo Araya was deployed to the Bisha mine by Segen where he was forced to work in the tailings management facility until October 2010, when his unit was re-assigned. He escaped Eritrea in March 2011.
40. The Plaintiff Mihretab Yemane Tekle was conscripted into National Service in or around December 1994. He completed his 18 months of training and active duty but was not released from National Service.
41. In February 2010, Mihretab Yemane Tekle was transported to the Bisha mine where he was forced to work until October 2010 when his unit was re-assigned. He escaped Eritrea in January 2011.
42. The Plaintiffs and other forced labourers were forced to endure harsh and dangerous working conditions.
43. Forced labourers generally woke up at 5 a.m., ate a breakfast which consisted of a piece of bread and tea, and began work at 6 a.m. At 1 p.m., they would break for lunch which typically consisted of sorghum bread and lentil soup. Work resumed at 3 p.m. and continued until 7 p.m. On occasions when concrete was being poured, the labourers would be forced to work until midnight.
44. Forced labourers deployed by Mereb were required to work six days a week and were often required to work an additional night shift as security guards.
45. Forced labourers deployed by Segen were forced to work six and a half days a week.
46. The forced labourers were required to work in extreme heat, some times as high as 50 degrees Celsius. On at least one occasion, a worker died as a result of heat exhaustion and dehydration.

47. Teklay Tesfazgi was the individual in charge of Segen's operations at the Bisha mine. He used severe punishment to discipline conscripts whom he considered to be disobedient.
48. The treatment included:
 - (a) threats of detention at a prison called "Prima Country," which was notorious in Eritrea for the use of torture;
 - (b) the "helicopter" which consisted of tying the workers' arms together at the elbows behind the back, and the feet together at the ankles, and being left in the hot sun for an hour; and
 - (c) being ordered to roll in the hot sand while being beaten with sticks until losing consciousness.
49. These and other forms of severe punishment served to create an atmosphere of fear and intimidation at the Bisha mine that helped to ensure the continued obedience of conscripts and other workers and caused the plaintiffs and other forced labourers to live in fear for their lives.
50. Forced labourers frequently fell ill due to the lack of nutrition and working conditions. Those who did not return to work after five days had their pay docked regardless of whether they were medically fit to return to work.
51. The plaintiffs and the other forced labourers received meager wages of 450 nakfa per month, equivalent to approximately \$30USD at the official exchange rate or less than half of that at the black-market rate.
52. When not working at the mine site, the plaintiffs and other forced labourers were confined to and housed in camps operated by Segen, Mereb and the military. They were not permitted to leave the camp except on periods of authorized leave. Those who failed to return from authorized leave faced severe punishment and exposed their families to retribution.

PART 2: RELIEF SOUGHT

53. The plaintiffs seek damages under customary international law, as incorporated into the law Canada, from Nevsun for the use of forced labour, torture, slavery, cruel, inhuman or degrading treatment, and crimes against humanity.
54. In addition, the plaintiffs seek damages from Nevsun under domestic British Columbia law for the torts of conversion, battery, unlawful confinement, negligence, conspiracy and negligent infliction of mental distress.
55. The plaintiffs bring this action in a representative capacity on behalf of the following labourers who were forced to work at the Bisha mine:
- (a) all conscripts in the National Service Program who worked at the Bisha mine from 2008 to the present;
 - (b) all other individuals who were housed in the Segen compound and who provided labour to Segen at the Bisha mine from 2008 to the present;
 - (c) all other individuals who were housed in the Mereb compound and who provided labour to Mereb and/or to Segen at the Bisha mine from 2008 to the present; and
 - (d) all other individuals who were housed in the military compound and who provided labour to Segen and/or the military at the Bisha mine from 2008 to the present.
- (collectively the "Forced Labourers" or "Group Members").
56. The Forced Labourers have a common interest in the factual and legal issues pertaining to the liability of Nevsun under.

Damages

57. As a result of Nevsun's conduct, the plaintiffs and other Forced Labourers have suffered loss of dignity and liberty as well as severe physical and mental pain and suffering.
58. The plaintiffs and Forced Labourers claim:
- (a) damages at customary international law as incorporated into the law of Canada;
 - (b) in the alternative, damages under domestic British Columbia law including:
 - (i) general damages;
 - (ii) special damages;
 - (iii) aggravated damages;
 - (c) punitive damages;
 - (d) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79;
 - (e) costs of this action; and
 - (f) such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

Forced Labour, Slavery, Torture, and Cruel, Inhuman or Degrading Treatment are Prohibited Under Customary International Law.

59. Forced labour, slavery, torture, cruel, inhuman or degrading treatment, and crimes against humanity are prohibited under international law. This prohibition is incorporated into and forms a part of the law of Canada.

60. The use of forced labour is a form of slavery which is universally condemned and prohibited by all civilized states. In particular, forced labour is prohibited under numerous international instruments including specifically:
- (a) the Universal Declaration of Human Rights;
 - (b) the International Covenant on Civil and Political Rights of 1966, ratified by both Canada and Eritrea;
 - (c) the international Covenant on Economic, Social and Cultural Rights of 1966, ratified by both Canada and Eritrea;
 - (d) the Forced Labour Convention (ILO Convention No. 29) of 1930, ratified by both Canada and Eritrea; and
 - (e) the Abolition of Forced Labour Convention (ILO Convention No. 105) of 1957, ratified by both Canada and Eritrea.
61. The prohibition against forced labour is a norm of customary international law as defined in Article 38(1) of the Statute of the International Court of Justice, as well as a *jus cogens* peremptory norm of international law as defined in Article 53 of the Vienna Convention on the Law of Treaties.
62. The use of forced labour is a breach of customary international law and *jus cogens* and is actionable at common law.
63. The use of slavery is universally condemned and prohibited by all civilized states. In particular, slavery is prohibited under numerous international instruments, including specifically:
- (a) the Universal Declaration of Human Rights;
 - (b) the International Covenant on Civil and Political Rights of 1966, ratified by both Canada and Eritrea; and
 - (c) the Slavery Convention of 1926, ratified by Canada.

64. The prohibition against slavery is a norm of customary international law as defined in Article 38(1) of the Statute of the International Court of Justice, as well as a *jus cogens* peremptory norm of international law as defined in Article 53 of the Vienna Convention on the Law of Treaties.
65. Slavery is a breach of customary international law and *jus cogens* and is actionable at common law.
66. The use of torture is universally prohibited by all civilized states and specifically banned under numerous international instruments including:
 - (a) the Universal Declaration of Human Rights;
 - (b) the International Covenant on Civil and Political Rights of 1966, ratified by both Canada and Eritrea; and
 - (c) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, ratified by both Canada and Eritrea.
67. The prohibition against torture is a norm of customary international law as defined in Article 38(1) of the Statute of the International Court of Justice, as well as a *jus cogens* peremptory norm of international law as defined in Article 53 of the Vienna Convention of the Law of Treaties.
68. Torture is a breach of customary international law and *jus cogens* and is actionable at common law.
69. The use of cruel, inhuman or degrading treatment is universally prohibited by all civilized states and specifically banned under numerous instruments including:
 - (a) the Universal Declaration of Human Rights;
 - (b) the International Covenant on Civil and Political Rights of 1966, ratified by both Canada and Eritrea; and

(c) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, ratified by both Canada and Eritrea.

70. The prohibition against cruel, inhuman or degrading treatment is a norm of customary international law as defined in Article 38(1) of the Statute of the International Court of Justice.
71. Cruel, inhuman or degrading treatment is a breach of customary international law and is actionable at common law.

Crime Against Humanity are Prohibited under Customary International Law

72. The Eritrean government's system of forced labour constitutes crimes against humanity. The system is a widespread and systematic attack directed against the civilian population of Eritrea. The acts of enslavement, torture, imprisonment, severe deprivation of physical liberty and other cruel, inhuman or degrading conduct that took place at the Bisha mine were part of this widespread and systematic attack and therefore constitute crimes against humanity under Article 7 of the Rome Statute of the International Criminal Court, ratified by Canada, as well as Canada's *Crimes Against Humanity and War Crimes Act*.
73. Crimes against humanity are prohibited under international law including Article 7 of the Rome Statute of the International Criminal Court, ratified by Canada.
74. The prohibition against crimes against humanity is a norm of customary international law as defined in Article 38(1) of the Statute of the International Court of Justice, as well as a *jus cogens* peremptory norm of international law as defined in Article 53 of the Vienna Convention on the Law of Treaties.
75. Crimes against humanity are a breach of customary international law and *jus cogens* and are actionable at common law.
76. The plaintiffs seek damages from Nevsun for breach of customary international law and *jus cogens* on the basis that Nevsun:

- (a) Nevsun aided and abetted the use of forced labour, slavery, torture, cruel, inhuman or degrading treatment, and crimes against humanity at the Bisha mine; and/or
- (b) Nevsun ordered, solicited, or induced the use of forced labour, slavery, torture, cruel, inhuman or degrading treatment, and crimes against humanity at the Bisha mine; and/or
- (c) Nevsun, expressly or implicitly, approved of the use of forced labour, slavery, torture, cruel, inhuman or degrading treatment, and crimes against humanity at the Bisha mine; and/or
- (d) Nevsun acquiesced in the use of forced labour, slavery, torture, cruel, inhuman or degrading treatment, and crimes against humanity at the Bisha Mine; and/or
- (e) Nevsun failed to prevent or stop the use of forced labour, slavery, torture, cruel, inhuman or degrading treatment, and crimes against humanity at the Bisha mine; and/or
- (f) Nevsun knowingly and intentionally contributed to the commission of these acts by a group of persons acting with a common purpose in the development of the Bisha mine; and/or
- (g) Nevsun had effective authority and control over Segen and other subordinates at the Bisha mine and failed to properly exercise control over its subordinates at the Bisha mine, and further:
 - (i) Nevsun either knew or consciously disregarded information which indicated that its subordinates at the Bisha mine were committing or about to commit acts in violation of the foregoing principles of customary international law and *jus cogens* and
 - (ii) these acts were within the effective responsibility and control of Nevsun; and

- (iii) Nevsun failed to take all necessary and reasonable measures within its power to prevent or repress their commission.

Nevsun, Segen, Mereb and Ertirea's Conduct is Tortious under British Columbia Law

77. In addition, the plaintiffs seek relief under domestic British Columbia law.
78. Nevsun controlled operations at the Bisha mine and exercised complete control over the actions of BMSC.
79. BMSC acted as agent of Nevsun in its dealings with Segen, Mereb, and the Eritrean state.
80. Segen, Mereb and the Eritrean military deprived the plaintiffs of their freedom, forced them to labour in harsh conditions at the Bisha mine against their will, and confined them to unsanitary and substandard living conditions when not working at the mine.
81. Particulars of their conduct presently known to the plaintiffs include:
- (a) forcing the plaintiffs and other Group Members to provide labour against their will;
 - (b) depriving the plaintiffs and other Group Members of the fruits of their own labour;
 - (c) depriving the plaintiffs and other Group Members of their dignity and free will;
 - (d) subjecting the plaintiffs and other Group Members to harsh working and living conditions;
 - (e) threatening the plaintiffs and other Group Members with severe punishment should they attempt to flee;

(f) physically assaulting and torturing Group Members who were deemed to be disobedient.

82. The conduct of Segen, Mereb and the Eritrean military amounts to conversion, battery, unlawful confinement, and intentional infliction of mental distress.

Direct Liability of Nevsun

83. Nevsun expressly or implicitly condoned the use of forced labour and the system of enforcement through threats and abuse, by the Eritrean military, Segen and Mereb, and is therefore directly liable for the injuries suffered by the plaintiffs and members of the group.

84. Alternatively, Nevsun's failure to stop the use of forced labour and the enforcement practices at its mine site when it was obvious or should have been obvious that the plaintiffs and other Group Members were forced to work there against their will amounts to tacit approval and the aiding and abetting of Segen's and Mereb's conduct. As a result, Nevsun is directly liable for the injuries suffered by the plaintiffs and Group Members.

Nevsun's Liability for Conduct of BMSC

85. BMSC expressly or implicitly condoned the use of forced labour and the system of enforcement through threats and abuse, by the Eritrean military, Segen and Mereb, and is therefore directly responsible for the injuries suffered by the plaintiffs and Group Members.

86. Nevsun is liable for the conduct of BMSC on the grounds that:

- (a) BMSC was at all times acting as the agent of Nevsun;
- (b) BMSC is an extension of the business enterprise of Nevsun, and Nevsun is therefore vicariously liable for BMSC's conduct; and
- (c) the corporate ownership structure separating Nevsun from BMSC is artificial and should be disregarded in the interests of justice.

Vicarious Liability for the Conduct of Segen, Mereb, and Eritrea

87. Nevsun engaged Segen, Mereb and the Eritrean military at the Bisha mine in furtherance of Nevsun's commercial objectives.
88. Nevsun knew or should have known that by engaging with a rogue state such as Eritrea, and its contracting arms, Segen and Mereb, human rights violations, including the use of forced labour, and tortious treatment of labourers at the Bisha mine were inevitable.
89. The plaintiffs and other Group Members have no effective legal remedy against Segen, Mereb or the Eritrean state as there is no functioning system of justice in Eritrea.
90. In these circumstances, Nevsun is vicariously liable for the conduct of Segen, Mereb and the Eritrean military.

Negligence of Nevsun

91. Nevsun owed a duty of care to the plaintiffs. The duty of care is founded on the material facts stated above and the following:
 - (a) the Board of Directors and senior management in Canada are responsible for the development and implementation of Nevsun's corporate responsibility policies;
 - (b) the Board of Directors and senior management in Canada were responsible for all important decisions regarding the development of the Bisha mine including the selection of contractors;
 - (c) Nevsun knew that development of the Bisha mine had the potential to adversely impact local Eritreans;
 - (d) Nevsun knew that labourers "employed" by its contractors were within the sphere of activity impacted by Nevsun's development of the Bisha mine;

- (e) **Nevsun has made public representations regarding its commitment to minimize adverse impacts on members of the local community in Eritrea;**
 - (f) **Nevsun has made public representations regarding its commitment to prevent the use of forced labour at the Bisha mine;**
 - (g) **Nevsun knew that, by engaging in a commercial enterprise with a rogue state such as Eritrea, there was a high risk of harm to the local community unless Nevsun strictly adhered to internationally accepted standards of corporate responsibility, including the IFC Principles.**
92. **It was foreseeable that if Nevsun failed to properly select, train, audit, and supervise the conduct of its contractors, harm would result to the plaintiffs and the other Group Members.**
93. **Nevsun breached the standard of care required of it. Particulars of Nevsun's negligence include:**
- (a) **failing to adhere to any standards of corporate social responsibility including the IFC Principles;**
 - (b) **failing to conduct any, or adequate, due diligence on the risks of adverse impacts on the local community prior to beginning construction on the Bisha mine;**
 - (c) **failing to conduct any, or adequate, due diligence in the selection of Segen, Mereb, and the Eritrean military as contractors for the Bisha mine;**
 - (d) **failing to implement any, or adequate, safeguards against the use of forced labour at the Bisha mine;**
 - (e) **engaging Segen, Mereb, and the Eritrean military as contractors when Nevsun knew or should have known those companies had been credibly implicated in the use of forced labour;**

- (f) failing to include an enforceable provision in its contract with Segen, Mereb and the Eritrean military explicitly prohibiting the use of forced labour;
- (g) failing to adequately investigate and respond to reports of the use of forced labour at the Bisha mine when Nevsun was first made aware of the use of forced labour;
- (h) proceeding with project development without first securing the right to freely and independently access local contractor personnel and facilities;
- (i) proceeding with project development without first securing the agreement of the Eritrean government to allow termination of any contractor that was credibly implicated in human rights abuses, including the use of forced labour; and
- (j) failing to develop robust grievance and whistleblower mechanisms that allow all project employees to report allegations of forced labour and other abuses without fear of retribution.

Nevsun, BMSC, Segen, Mereb and the Eritrean military unlawfully conspired to injure the plaintiffs

- 94. Nevsun, BMSC, Segen, Mereb and Eritrea entered into an unlawful agreement for the supply of forced labour to the Bisha mine in circumstances where they knew or should have known harm and injury would result to the plaintiffs and other Group Members.
- 95. The agreement was entered into in or around 2007.
- 96. As described above, forced labour is prohibited under customary international law and any agreement to supply forced labour is unlawful.
- 97. The conduct of Nevsun, BMSC, Segen, Mereb and Eritrea constitutes a conspiracy to injure the plaintiffs and other Group Members.

98. Nevsun, BMSC, Segen, Mereb and Eritrea acted in furtherance of the conspiracy by:
- (a) forcing the plaintiffs and other Group Members to provide labour at the Bisha mine against their will;
 - (b) depriving the plaintiffs and other Group Members of the fruits of their own labour;
 - (c) depriving the plaintiffs and other Group Members of their dignity and free will;
 - (d) subjecting the plaintiffs and other Group Members to harsh working and living conditions;
 - (e) threatening the plaintiffs and other Group Members with severe punishment should they attempt to flee;
 - (f) physically assaulting and torturing Group Members who were deemed to be disobedient; and
 - (g) confining the plaintiffs and other Group Members in camps when they were not working at the Bisha mine.

The plaintiffs are entitled to restitution and equitable relief.

99. Nevsun has been enriched by the receipt of labour obtained from the plaintiffs and other Group Members.
100. The plaintiffs and the other Group Members have suffered a corresponding deprivation as described above and includes the amount of the labour that they were forced to contribute to the Bisha mine.
101. For the reasons set out above there is and can be no juristic reason for Nevsun's enrichment and the plaintiffs and other Group Members corresponding deprivation. The plaintiff and other Group Members were forced to labour on the

Bisha mine as slaves, there was no valid legal authorization for that forced labour and any contract providing for that forced labour would be void from its inception.

102. Nevsun holds its interest in the Bisha mine in trust for the plaintiffs and other Group Members because:

- (a) monetary damages are inadequate; and
- (b) there is a direct link between the plaintiffs and other Group Members' contribution of slave labour and Nevsun's property interest in the Bisha mine.

103. The plaintiffs and other Group Members are entitled to an accounting of any benefits that Nevsun has obtained because of its interest in the Bisha mine.

104. In the alternative, the plaintiffs waive the torts and plead that they are entitled to recover under restitutionary principles.

Punitive Damages

105. Nevsun's conduct was malicious and reckless and constitutes a wanton disregard for the plaintiffs' and other Group Member's rights which warrants condemnation by an award of aggravated and punitive damages.

Plaintiffs' address for service:

CAMP FIORANTE MATTHEWS MOGERMAN
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

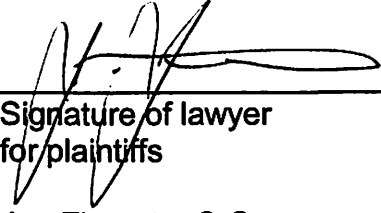
Defendant's address for service:

c/o Miller Thomson LLP
1000-840 Howe Street
Vancouver, BC V6Z 2M1

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 20/November/2014



Signature of lawyer
for plaintiffs
Joe Fiorante, Q.C.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

In October 2007, Vancouver based Nevsun Resources Ltd. entered into a commercial venture with the rogue state of Eritrea to develop the Bisha gold mine in Eritrea.

The mine was built using forced labour, a form of slavery, obtained from the plaintiffs and others coercively and under threat of torture by the Eritrean government and its contracting arms.

The plaintiffs bring this action for damages against Nevsun under customary international law as incorporated into the law of Canada and domestic British Columbia law, on their own behalf and as a representative action on behalf of all Eritrean nationals who were forced to work at the Bisha mine from September 2008 to the present.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know