Rights and Accountability in Development

Human Rights Violations Under Private Control:

Acacia Mining's Grievance Mechanism and the Denial of Rights

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Introduction

In late 2017, UK company Acacia Mining Plc, published a new version of a company grievance mechanism it was rolling out at its North Mara gold mine in Tanzania. The grievance mechanism is important as it is meant to deal with scores of serious human rights violations that occurred as a result of Acacia's mining activities in recent years, including killings, life changing injuries and sexual violence. Acacia says its revised grievance mechanism provides redress to victims, fairly compensates them and is compliant with the United Nations Guiding Principles on Business and Human Rights (UNGPs), the key standard companies are expected to apply. New research by RAID has found the opposite.

Based on in-depth research, RAID has found that Acacia's grievance mechanism subjects those harmed by the company's gold mining operations to a disempowering and often humiliating process. It permits the company to act as investigator, judge and jury on the serious human rights violations by its security agents and/or the Tanzania police working alongside them. It denies victims basic procedural rights, characterises them or their family members as 'criminals,' and entrenches the stark power imbalance between a rich gold mining company and impoverished local residents. Acacia's revised grievance mechanism is failing victims and local residents and is a far cry from being compliant with the UNGPs.

This report provides a detailed analysis of Acacia Mining's grievance mechanism. It is based on in-depth research into the mechanism's implementation and how it operates, including interviews with over 90 victims over a five-year period; Acacia company officials and those of its local operating subsidiary, North Mara Gold Mine Limited; Tanzanian government officials; and Tanzanian civil society organizations; as well as written correspondence with Acacia; participation in company-led consultations regarding the revised grievance mechanism; and direct experience of the mechanism through assistance to individuals and families seeking redress.

RAID's research provides a rare case study of how those harmed by a company's operations experience an operational grievance mechanism. The findings starkly demonstrate the concerning expansion of corporate power over local residents and their human rights. Acacia's grievance mechanism permits the company to define how the human rights of victims should be understood and the manner in which these rights are to be realised or denied. In essence, the company decides what their experience of "justice" will be.

The report is based on an earlier submission to the United Nations Office of the High Commissioner for Human Rights, dated 30 April 2019, in response to its call for contributions focusing on enhancing the effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuses. This Executive Summary should be read in conjunction with the full report, where supporting information and Acacia's responses are evidenced in detail.

Background to operational-level grievance mechanisms

In 2011, the United Nations Human Rights Council endorsed the *UN Guiding Principles on Business and Human Rights.* The UNGPs provide that companies should establish or participate in 'operational-level grievance mechanisms' for individuals and communities who may have been negatively affected by a company's operations. These grievance mechanisms are also known as 'private' or 'company-led' grievance mechanisms. They are intended to enhance access to remedy for human rights violations or other harm and to prevent abuses from escalating. Since the endorsement of the UNGPs, there has been increasing interest by companies, international bodies and civil society in grievance mechanisms and how they may support or undermine human rights. Few analyses, however, provide detailed field research on how these company-designed grievance mechanisms operate for individual human rights claimants.

This report seeks to introduce the experience of those who pursue redress for human rights violations through a private grievance mechanism in order to provide important lessons for the use of such mechanisms more generally.

Acacia's troubled North Mara gold mine

Acacia's North Mara gold mine is its most profitable mine, having commenced commercial production in 2002. It is located in the remote northern region of Tanzania where less than 10% of the rural population have completed secondary education, over 30% are illiterate and the primary economic activity is small scale agriculture.

Acacia's operations in North Mara have long been plagued by troubled community relations. Incidents of violence, with reports of killings, beatings and sexual violence by police and security forces at the mine date back to at least 2005. RAID and MiningWatch Canada, working with local organisations, documented at least 22 people killed and 69 injured at or near the mine between 2014 and 2016. Acacia itself acknowledged 32 'trespasser-related' deaths at its mine during that period. The numbers may be even higher: a 2016 parliamentary inquiry into complaints at North Mara mine received reports of 65 killings and 270 people injured by police jointly responsible for mine security.

> "The relationship between the local people and the mine is getting worse. People are still grieving. People have lost jobs and there is no access to gold so the economic situation is worse."
>
> *RAID interview with claimant, North Mara, 14 June 2018.*

Although Acacia notes a decrease in 'security threats,' since 2016, RAID's research shows that serious violations continue to be perpetrated by forces providing security at the mine. Acacia itself reported four possible 'human rights impacts' involving the police at the mine in 2018, but has failed to provide further meaningful details.

At the heart of the violence is the Mine's relationship with the Tanzanian police. Under a written agreement, which Acacia has not made public, the Mine pays and equips the police to provide security and supervise, select and issue assignments to police personnel in coordination with the company. It is agreed that the Mine controls police entry onto its site, and the company has elected to have over 100 police officers stationed there in accommodation it provides.

> "The police are all over the area. Police are here because of the mine so the mine can't say it's nothing to do with them."
>
> *RAID interview with victim. North Mara. 31 Julv 2016.*

Acacia's troubles extend beyond human rights concerns. Since 2017, the company has also been subject to an export ban by the Tanzanian government for alleged unpaid taxes, and in 2018 Tanzanian authorities brought corruption-related charges against Acacia's subsidiaries, including North Mara Gold Mine Limited (NMGML), and current and former employees. The charges are denied. The North Mara mine has also been fined and threatened with closure for environmental damage.

Acacia's revised North Mara grievance process

Acacia's first implemented a grievance mechanism at the North Mara mine around 2014. The mechanism was deeply flawed and was subject to intense criticism by RAID and other civil society groups. As a result of the critiques, Acacia set out to reform it. The revised version, termed the 'Community Grievance Process,' was published on Acacia's website in late 2017.

On paper, Acacia's grievance process permits claims by community members, groups or civil society organisations concerning 'adverse impacts' by the 'Mine' (which is not defined but is taken to mean NMGML and/or Acacia) or third parties linked to it on particular 'interests or rights.' These adverse impacts are specified to include: human rights, the environment, enjoyment of land or other property, housing and livelihoods, or health and safety.

Grievances are to be resolved through two steps: (1) identify if an 'adverse impact' involving the Mine or a linked third party has occurred; (2) if yes, identify a remedy. Each step in turn contemplates two stages. The first stage involves a meeting between the Mine and the person or persons making the complaint, termed in the process as a 'grievant', in order to agree if there has been an adverse impact or remedy. If the meeting between the parties does not result in agreement, the second stage permits the grievant to request an appeal hearing by the Grievance Committee. This committee is comprised of three members chosen by the Mine from rosters. The individuals listed on the rosters are directly or indirectly appointed by the Mine.

The Mine thus controls not simply the design of the grievance process, but also its implementation and the outcome of all grievances. The result of this near total control of the grievance process is evident from the company's own published materials: by Acacia's own count, the Mine has accepted a 'security-related' human rights impact in only 30 (or 18%) of the 163 grievances concluded. Moreover, when Acacia reports that a negative impact was 'accepted' it tells only part of the story and says nothing about whether those who brought the complaint received fair or adequate compensation. Many interviewed by RAID said that they had not.

The Mine's absolute control over the grievance process means it can, and frequently does, disregard its own published procedure, generally to the prejudice of grievants. Acacia's public-facing documents purporting to govern the process thus offer only a partial, and often inaccurate, picture of how it actually operates in practice.

The design and implementation of the grievance process, and the ways in which it is failing those seeking redress, are analysed in detail in the full report. Here, focus is placed on how the grievance

process does more than just subject individual claimants to an unfair and wholly one-sided process. It represents a troubling expansion of corporate power by: (i) permitting violations to continue rather than preventing them; (ii) substituting company 'adjudication' for justice; (iii) defining how human rights are experienced; (iv) erecting barriers to remedy; (v) extending authority over local community members through their disempowerment; and, (vi) misrepresenting human rights harms by extending control over information.

(i) Permitting violations to continue rather than preventing them

Central to the UNGPs' endorsement of operational-level grievance mechanisms is the idea that such mechanisms enable companies not simply to redress human rights harms, but to take corrective measures to prevent them from continuing. Acacia's grievance process purports to reflect this aim. Yet it is clear that Acacia's use of the grievance process has primarily served the purpose, not of preventing or mitigating adverse impacts, but of providing a cover for them to continue.

Acacia's grievance process has already received close to 200 security-related grievances. It is clear from these grievances, and information published by RAID, other NGOs, and Acacia itself that the company's relationship with the Tanzanian police is central to many of these grievances, particularly those involving the most serious harms. The large number of grievances involving the use of force by police should have alarmed Acacia's management. Senior managers should have initiated a comprehensive and transparent review into whether the company should continue to use the Tanzanian police for its security operations, why no police officers were being held to account for the widespread killings and serious injuries occurring at the Mine, and if the company could continue to conduct businesses responsibly in light of these serious violations. Despite the clear evidence of ongoing and serious human rights abuses over many years by the Tanzanian police operating at the Mine, Acacia has maintained its close relationship with the police, claiming it could not operate at North Mara 'without the assistance provided by the Tanzanian Police' because 'it would not be able effectively to respond to the scale and frequency of criminal activity directed towards the Mine, NMGML's employees and property.'

The UNGPs are clear that the function of grievance mechanisms is to prevent 'harms from compounding and grievances from escalating.' If Acacia took seriously its claim that its grievance process was intended to help prevent or mitigate adverse impacts, it would have ceased its relationship with the Tanzanian police.

The grievance process helps Acacia continue to contract for that security assistance, on terms shown to enhance the likelihood of serious human rights violations, by purporting to offer the possibility of redress for those violations *ex post facto*. In that sense, redress represents simply a 'cost of doing business.' Even if the process was fair, some losses cannot be redressed in any meaningful sense given the nature of many of the harms, which include killing and life-changing injuries.

> **"**I'll never forget that night. It has affected me psychologically. I only thought animals were shot like that. It has taken a toll on me because my friend was shot.**"**
>
> *RAID interview with witness, North Mara, 27 July 2016.*

Box: Police violence, fear and impunity

Tanzanian police stationed at the mine have been responsible for:

- *Shootings, causing death and severe injuries*
- *Leaving people to bleed to death from gunshot wounds*
- *Severe beatings, resulting in broken bones and life-changing injuries, including paralysis*
- *Throwing rocks down on people, killing at least one man in this manner*
- *Firing 'non-lethal' rounds and teargas at close range, causing serious wounds*

Widespread fear of the arbitrary nature and abuse of police power is a key factor in fostering impunity. Victims reported to RAID not daring to seek medical help after an incident for fear of police reprisals including arrest for 'trespassing' or 'theft.' Friends and family of one man shot by police at the mine never completed a form that would have entitled him to medical care because they were fearful of naming the police as perpetrators. The man later died. RAID has also documented instances where the police tried to conceal their involvement in the violence: intimidating hospital staff to falsify the nature of injuries or the circumstances in which a death occurred; trying to prevent post-mortems being held at all or intimidating families to hand over the body of a relative for a post-mortem carried out under the control of the police, without providing the family with the results; recording the cause of death or injury as 'a sharp object,' which is a euphemism for a bullet.

RAID is not aware that a single police officer guarding the mine has ever been charged, let alone convicted, of a crime associated with the excessive use of force. Acacia appears to have uncritically accepted the determination by the Attorney General's Office that the use of force had been justified in most cases.

(ii) Substitution of company 'adjudication' for justice

Operational-level grievance mechanisms are meant to complement, not replace, state-based mechanisms. They should not represent the sole or primary means by which those whose human rights have been violated may seek remedy, let alone justice. Acacia's grievance process shows how they may nevertheless serve that role.

> **"**I think that the process wasn't fair at all....There was no justice at all.**"**
>
> *RAID interview with claimant, North Mara, 4 December 2018.*

Acacia has designed its grievance process in the image of state-based mechanisms. The process is adversarial. Even the initial 'engagement and dialogue' stage is based on the Mine's determination as to whether a human rights 'impact' occurred, including whether excessive force was used. If, as is usually the case, the Mine concludes no such impact occurred, grievants must argue against that conclusion. If the Mine refuses to change its position, the matter proceeds to a hearing before a Grievance Committee, at which grievants must substantiate their claims through evidence and submissions, which are

opposed by the Mine's representatives. The Grievance Committee, which is ultimately controlled by the Mine, issues decisions that effectively read as judgments.

In this way, the appearance of a state-based mechanism is given; yet in fact it is one that is wholly controlled by the company. Both the initial determination by the Mine of a violation and the 'judgment' by the Grievance Committee are contrary to the UNGPs explicit direction that adjudication occur through independent third parties.

Acacia's employment of the Tanzanian police further positions it in the place of the state insofar as 'adjudicating' human rights claims against it and/or the police, undermining local people's faith in institutions supposedly constituted and mandated to protect them. The police are the perpetrators of, or otherwise complicit in, the violations. The police's independence, perceived and real, is undermined since the Mine provides their funding and other benefits. And as the employer of the police, the Mine is seen to – and in important respects does – have authority over police personnel, and becomes the place to which to turn for reparations.

Acacia also increases the likelihood that claims are channeled through its grievance process by precluding people from pursuing parallel claims for the same violations in other, including state-based, forums.

It is no answer for Acacia to say that claims may be pursued elsewhere having exhausted its grievance process. Acacia controls how onerous the process is for grievants and can exhaust their capacity and resources to bring claims in other forums. Claims subject to short limitation periods may also be precluded in state-based mechanisms by the time grievances are completed. Nor is it an answer to blame weak state institutions for failing to provide a viable avenue for justice when Acacia's own conduct, including through the employment of the police, actively works against them.

> **"**They said I could take my complaint elsewhere if I was not happy and there were lots of other places I could go. They did not say where I could go and I did not know where else I could go so I accepted.**"**
>
> *RAID interview with claimant, North Mara, 14 June 2018.*

(iii) Defining how human rights are experienced

Having positioned its grievance process as the primary forum for human rights claims, Acacia has empowered itself to define how human rights are realised by or, more commonly, denied to those bringing claims. Acacia claims its grievance process adheres to the UNGPs, and it acknowledges that people are entitled to the full range of human rights recognised by international instruments such as the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights.

Yet contrary to these instruments, Acacia's grievance process explicitly differentiates human rights from harms to people's rights in the environment, land or other property, housing and livelihood, and health and safety. Instead, it delimits human rights to those categorised as 'security-related,' and then confines their realisation to three 'subject areas': use of force and firearms; arrest, apprehension and detention; and sexual violence. In this way, the majority of human rights, especially those guaranteed for vulnerable groups, are minimised or denied through the process;

grievants face enhanced evidential burdens to establish human rights impacts, such as proving that police did not follow proper procedure, that are inconsistent with international law and standards; and grievants are treated firstly as security threats, rather than rights holders.

(iv) Erecting barriers to remedy

The UNGPs endorse operational-level grievance mechanisms as a means by which to enhance access to remedy for human rights violations. Acacia's grievance process, however, does the reverse: it erects barriers to remedy for such violations.

The Grievance Process is complicated and highly legalistic. Navigating it requires understanding of scores of provisions setting out rules regarding how evidence is presented, timeframes for specific steps, the conduct of meetings, the preparation of minutes and the use of experts.

> "No one from the Mine explained what the steps in the process were, or what evidence I needed to provide."
>
> *RAID interview with claimant, North Mara, 4 December 2018.*

Simply to initiate a grievance, grievants, many of whom cannot read or write, must complete a 10-page intake form requiring significant details including identifying who was responsible for the harm, the rights that were affected through referencing legal standards, documentary evidence and the identity of possible witnesses.

Once grievances are initiated, grievants enter an adversarial process wholly controlled by the Mine. Throughout, the Mine, which generally possesses crucial evidence, such as CCTV footage, internal reports, and evidence from the police, is only required to disclose evidence on which it relies to support its position. It is not obliged to disclose incriminating evidence of its own and/or police wrongdoing or justifying a high remedy.

> "I asked if I should have a lawyer and they said I didn't need to bring my own since the Mine already had lawyers….I think it would have been better if I had gone with a lawyer of my own."
>
> *RAID interview with claimant, North Mara, 14 June 2018.*

The Mine's representatives have training and expertise, as well as recourse to Acacia's General Counsel, who under company policy receives witness statements and directs investigations into incidents involving serious injuries, and any other legal expertise the company chooses to engage. Yet Acacia says that grievants do not require a lawyer. The company does offer a voucher covering four hours of legal advice, though, in most cases, four hours is inadequate even to complete the intake form. Even so, grievants are rarely informed of their right to the voucher. When they are told, they are left on their own to find a lawyer, a challenging task since they can often only be found in cities over four hours travel from the mine and the vouchers do not cover travel costs.

(v) Extending authority over local community members through their disempowerment

The UNGPs recognise that '[p]oorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.' With Acacia's grievance process, this effect is stark. Those whose rights have been violated are required to seek redress from the company they

identify as responsible. Upon submission of their grievance, they enter a process wholly controlled by that company, while the harm they have suffered – as serious as the killing of a family member or a life-changing injury – is downplayed as an 'adverse impact.'

> "I am not happy. I think it was unfair. Others have decided for me and there was no person to advocate for me....All the work was done by the mine and I don't know what type of ulterior motives they had."
>
> *RAID interview with claimant, North Mara, 14 June 2018.*

Disempowerment is further assured by the complex and legalistic process. Grievants consistently expressed to RAID they did not understand it, a concern arbitrarily disregarded by the Mine. Grievants often must accept help from the Mine to file their grievance, because they do not have or understand the specifics required, and/or cannot read or write. Many are forced to make repeated requests of the Mine simply to know whether their grievances will progress, often being told only that the Mine will contact them when ready.

Grievants are also reliant on the Mine for evidence, as most is under direct or indirect company control. Even when they bring their own evidence, the Mine insists that it be in a form or manner acceptable to the Mine. Grievants have told RAID that the company has asked for, then not returned, medical records and other forms, and has even instructed doctors not to share the results of examinations, arranged by the company, with the grievant.

> "They make people go back and forth with documents and this is exhausting....Most victims do not know how to read or write English or even Swahili.'"
>
> *RAID interview with claimant, North Mara, 14 June 2018.*

Grievants must appear at meetings and hearings without the opportunity to adequately prepare, as the Mine often does not disclose evidence or even notify grievants of hearings until just before they occur.

Throughout, grievants face trained and experienced Mine representatives in an adversarial process that privileges knowledge and understanding of domestic and international law, standards and codes of conduct. In most cases, grievants have no knowledge or access to such materials. And they must do so in a context that seeks to focus attention on their and/or their family members' 'criminality.' There have even been instances when bystanders outside the mine have been injured in cross-fire from security operations, but then apprehended as 'trespassers', whilst others have been killed.

For the few whose claims are 'substantiated,' they are often left in the dark as to the reasoning behind their compensation and may find it severely inadequate, effectively devaluing their loss. And all must bear the costs of participating, even if, as it sometimes does, this means borrowing money.

> **"**The Mine said that they could only offer [redacted amount] to me and the committee said they could not help me get any more. There was no reason given....I have now received the money and I signed a document, but I don't have a copy of that. I have been promised it but it has still not arrived.**"**
>
> *RAID interview with claimant, North Mara, 14 June 2018.*

(vi) Misrepresenting human rights harms by extending control over information

The grievance process enables Acacia to present a misleading image as to the human costs of its operations in North Mara in at least two ways. First, by restricting human rights claims to those that are 'security-related,' Acacia downplays the harm caused, categorising other claims, many of which implicate human rights, as environmental or concerning land and property, or 'other.' Moreover, differential impacts on vulnerable groups goes unreported.

Second, the Grievance Process forms part of a larger system by which Acacia and NMGML control information. That system includes a Mine Investigation Policy that includes provisions on 'confidential informant management' and provides, for serious injuries and deaths, '[a]ll information is to be marked "Legal and Confidential and subject to legal privilege",' and that no other person than the company's general counsel is to receive copies of witness statements or commissioned investigation statements. The Grievance Process complements this policy by ensuring that claims concerning such incidents remain in a confidential, company-controlled process. To participate, those whose human rights have been violated, and civil society organisations assisting them, must agree to keep proceedings and evidence 'strictly confidential.' Importantly, that same confidentiality does not bind the Mine, which is expressly permitted, amongst other things, to publish anonymised or summarised reports regarding the process. Those whose rights have been violated and those who assist them are thus effectively muzzled through the process, while Acacia may publish information of its choosing. And to the extent that Acacia does publish such information through its annual reports, it is minimal, highly generalised and appears largely self-serving.

Conclusion

Acacia's Grievance Process is not compliant with the UNGPs. In fact, the process itself arguably violates human rights. RAID's research on Acacia's process shows how, unless carefully circumscribed, grievance mechanisms offer companies the possibility of investigating and sitting in judgment on human rights violations resulting from their operations, including defining how human rights are realised, or more often denied.

This report thus cautions against the use of private grievance mechanisms beyond the limited contexts in which they genuinely serve the purposes of preventing or mitigating harms and complement rather than operate in place of state-based processes. Drawing on the lessons learned from Acacia's grievance process, RAID concludes that company led grievance mechanisms are fundamentally unsuitable for systematic or grave human rights violations. Otherwise, such mechanisms could represent another step towards a corporate takeover of human rights.

RAID has publicly called upon Acacia to:

- Urgently reconsider the Mine's relationship with the Tanzanian police, who have been involved in many of the most serious human rights violations at North Mara. The violations and accompanying impunity have continued for nearly a decade and has long since reached a point where it should be ringing alarm bells for senior management and Acacia's Board.

  Without meaningful controls to prevent police abuses at the North Mara mine, Acacia must consider whether it can continue to use the police for joint security operations. RAID has urged Acacia's Board to review the use of the police for security operations at North Mara.

- Suspend the existing grievance mechanism pending an independent review of the grievance process by a respected, internationally recognised third party, such as the UN Working Group on business and human rights, with a view to incorporating the repeated critiques made by victims, Tanzanian and international civil society. An internal review by company officials, or their advisers, responsible for the current mechanism will lack credibility and is unlikely to bring about the required changes. In the interim, RAID has urged Acacia to cooperate with local Tanzanian authorities to ensure accountability and to continue to take precautionary measures and provide humanitarian assistance.

Human Rights Violations Under Private Control:

Acacia Mining's Grievance Mechanism and the Denial of Rights

Introduction

Rights and Accountability in Development (RAID) is a UK based non-governmental organization that exposes corporate human rights abuses in Africa and works with those harmed to hold companies to account. Our goal is to strengthen regulation of business and achieve justice. RAID's focus is on the extractives sector and links its knowledge of individual cases it has documented to national and international policy debates to press for the development of fair and just policies.

This report is based on a submission made in April 2019 to the UN Office of the High Commissioner for Human Rights in response to its call for contributions to Part III of its Accountability and Remedy Project. That project focuses on enhancing the effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuses.

The report provides a detailed analysis of the non-State-based grievance mechanism put in place by Acacia Mining Plc ('Acacia') at its North Mara gold mine in Tanzania. It is based on in-depth research into its implementation since 2014, including interviews with scores of individuals who suffered from human rights violations. RAID has consistently highlighted problems under previous iterations of the grievance mechanism. However, the main focus of this report is a close examination of the re-design of the mechanism in late 2017, based on interviews with over a dozen individuals whose claims have been accepted into the mechanism, and correspondence with Acacia and representatives of its local subsidiary.

The structure of the report is as follows:

I. **Background** – this part provides relevant information concerning Acacia and its operating subsidiary, North Mara Gold Mine Limited ('NMGML'). It describes the human rights situation at North Mara Mine ('the Mine'), and the relationship between Acacia, NMGML and the state police, which has contributed to the serious abuses at the mine.

II. **Acacia's grievance process on paper** – this part provides a detailed analysis of the structure of the company's grievance mechanism. It identifies critical problems, namely the ways in which the mechanism privileges the interests of the Mine over those of the claimant, including how human rights are defined and realised or denied; the manner in which other avenues of redress are blocked-off; the complicated and legalistic nature of the process, which individuals are largely left to navigate on their own; the near total lack of independence of the process from the company; and the lack of transparency.

III. **Acacia's grievance process in practice** – this part concentrates on the implementation of the grievance mechanism, based on in-person interviews with participants, and review of relevant materials pertaining to claims accepted into the process. It identifies certain broader concerns regarding the mechanism and provides a detailed account of the way in

which each step of the process has operated for those seeking redress for human rights violations.

IV. **Recommendations** – this part sets out a series of recommendations, drawing on lessons learned from examination of Acacia's North Mara grievance process in design and practice.

Acacia's North Mara grievance process offers the possibility for greater understanding of private grievance mechanisms as means to resolve or respond to human rights claims. The process operates in a context where it represents the only realistic forum, given the lack of political will to provide an independent means of adjudicating on violations by businesses, for most of those seeking redress for human rights violations associated with the Mine. The Mine is located in the remote northern region of Tanzania where less than 10% of the rural population have completed secondary education, over 30% are not literate and more than three-quarters of the primary economic activity is agricultural.[1] The grievance process currently implemented is the latest iteration of a grievance mechanism first made public in 2014, which in its various forms has determined hundreds of claims, many involving serious human rights violations.[2]

In a meeting with RAID in 2016, Acacia said that it sought to implement a grievance mechanism which could be regarded as 'best in class.' Acacia says its mechanism adheres to the *United Nations Guiding Principles on Business and Human Rights*, including the effectiveness criteria. It refers to its mechanism as a 'community' grievance process, seemingly providing for community involvement, and claims that it has both an 'independent' review stage and resolves grievances through the application of international and domestic laws, standards, and codes of conduct. Acacia also refers to claimants who have suffered human rights violations as 'grievants' (although the use of this term downplays the depth of a person's often traumatic experience, RAID has nonetheless used it where necessary in this report to avoid confusion when referring to the Mine's procedures).

Despite, or perhaps because of, these features, Acacia's North Mara grievance process exemplifies many of the risks posed by private grievance mechanisms to the realisation of human rights. As this report shows, close examination of the process reveals a gulf between company rhetoric and the way in which it operates for those who have suffered human rights violations in practice. As Acacia openly acknowledges in its annual reports, the grievance process is a 'security management' measure.[3] The grievance process enables the company to act as investigator, advocate, judge and jury regarding allegations of human rights violations, many of which appear to constitute serious crimes. It lends the company an apparent legitimacy that permits Acacia to define for those whose claims it determines how their human rights are understood and the manner in which they are realised, if at all, and to decide, ultimately, how they experience 'justice' at the hands of the company that caused them harm in the first place. It entrenches local people's lack of power relative to the company at each step. And it ensures that Acacia gains access to and extends its control over information, while presenting to the public a highly misleading picture of the human

[1] These statistics are taken from the Mara Regional Profile of Tanzania's 2012 census, available at: <https://www.nbs.go.tz/index.php/en/regional-profiles>.

[2] Acacia states that a grievance mechanism has been in place at North Mara since 2012. However, it hurriedly posted a two-page 'ABG Grievance Mechanism' in early 2014 after RAID and Mining Watch Canada were alerted to the existence of an in-house process when legal waivers precluding further action in any forum, which victims were forced to sign to obtain compensation, came to light after claims by a number of victims were filed in the UK courts (see, *intra*, below).

[3] Acacia Mining, Annual Report 2018, p. 35; Acacia Mining, Annual Report 2017, p. 29. Annual reports are available at: <https://www.acaciamining.com/investors/reports/>.

rights impacts of its operations on local people and the steps it is taking to prevent and redress them.

Drawing on Acacia's grievance process as a case study, this report raises fundamental concerns about private grievance mechanisms that purport to resolve claims of serious wrongdoing on the part of a company. It is an example of how without genuine commitments to independence, transparency and enforceable oversight, a company may engage in rhetoric suggesting independence and community agency to achieve substantial influence over the lives of local communities, enabling human rights violations to continue with impunity and disempowering those negatively affected by its operations.

I. Background

Acacia Mining Plc is a UK-registered company listed on the London Stock Exchange. Through its wholly owned subsidiary North Mara Gold Mine Ltd,[4] Acacia owns the North Mara gold mine, one of three mines the company owns in Tanzania.

Acacia Mining plc

Canadian mining giant Barrick Gold acquired North Mara in 2006, operated under African Barrick Gold ('ABG').[5] ABG was 'spun-off' from Barrick in March 2010, although the latter retained a majority interest.[6] ABG changed its name to Acacia Mining plc in late 2014.[7] Barrick retains a 63.9% holding in Acacia.[8] In 2018, Randgold and Barrick Gold merged to create the largest gold mining company in the world with a market capitalisation of over $23 billion.[9]

In partnership with local NGOs and human rights monitors, RAID has undertaken regular, in-depth field research at the North Mara Mine since 2014. As part of that research, RAID has:

- Conducted interviews with local community members affected by the Mine;
- Conducted interviews and corresponded with representatives of Acacia and NMGML;
- Assisted individuals who suffered human rights violations participate in the Mine's grievance mechanisms;
- Corresponded and met with Tanzanian government officials;
- Participated in a company led consultation with international civil society about the grievance process;

[4] NMGML is incorporated in Tanzania and is a 100% owned subsidiary of Acacia. See Acacia Mining, Annual Report 2017, op. cit., Notes to the consolidated financial statements, 1. General information, p.116.
[5] African Barrick Gold, Prospectus, 19 March 2010, p.43, available at: <http://www.acaciamining.com/~/media/Files/A/Acacia/reports/2010/abg-prospectus.pdf>.
[6] Barrick Gold Corporation, Press Release, 'Barrick Announces Pricing of African Barrick Gold plc Initial Public Offering', 19 March 2010, available at: <https://www.barrick.com/news/news-details/2010/Barrick-Announces-Closing-of-African-Barrick-Gold-plc-Initial-Public-Offering/default.aspx> . See also ABG Prospectus, op. cit.
[7] Acacia Mining plc (formerly African Barrick Gold plc), News Release, 27 November 2014, Change of Name and Investor Day, available at: <http://otp.investis.com/clients/uk/acacia_mining/rns/regulatory-story.aspx?cid=286&newsid=459267>.
[8] See African Barrick Gold plc, 'Completion of Placing by Barrick Gold Corporation', 11 March 2014, available at: <http://www.acaciamining.com/~/media/Files/A/Acacia/press-release/2014/completion-of-placing-by-barrick-gold-corporation.pdf>; Also Barrick Gold Corporation, Press Release, 'Barrick Completes Partial Divestment of African Barrick Gold plc Holding ', 11 March 2014, available at: <http://www.barrick.com/files/press-release/2014/Barrick-Completes-Partial-Divestment-of-African-Barrick-Gold-plc-Holding.pdf>.
[9] <https://www.barrick.com/English/news/news-details/2019/barrick-randgold-merger-consummated-as-trading-starts-in-new-companys-shares/default.aspx>.

- Published reports concerning the Mine, its impact on local communities and its grievance mechanisms.[10]

In this report, RAID draws upon this work. RAID also makes reference to responses received previously from Acacia.[11]

a. Human rights violations

Serious human rights violations have been perpetrated at the North Mara mine over many years. There have been reports of 'a long series of killings by police and security forces at North Mara, dating back to 2005 or earlier'.[12] From December 2008 to January 2014, police at North Mara used lethal force against local people at or in close proximity to the mine site, resulting in at least 16 deaths and 11 others injured.[13] Where they have acknowledged these shootings, both Barrick and African Barrick Gold (now Acacia) attributed them to the actions of the police in dealing with incursions.[14]

In March 2013, proceedings were brought by Tanzanian claimants represented by UK-based law firm Leigh Day against Africa Barrick Gold (now Acacia) and its NMGML subsidiary in the High Court of England and Wales.[15] The claim was that 'the companies are liable for the deaths and injuries of local villagers, including through complicity in the killing of at least six local villagers by police at the North Mara mine in Tanzania' between July 2010 and May 2012.[16] When the claim was filed, Africa Barrick Gold stated:[17] 'ABG believes that these proceedings are without merit, and intends to vigorously defend its interests.' ABG also stated:[18] 'we will not compensate illegitimate claims or lawsuits.' In February 2015, the company settled the claim out of court, although it has not commented publicly on the settlement nor released any details about its nature or magnitude.[19]

RAID and MiningWatch Canada, working with local grass-roots organisations, visited the North Mara mine and surrounding communities in June/July 2014, and conducted interviews with more

[10] In addition to the reports and other materials published by RAID in relation to Acacia's North Mara grievance process cited *infra*, RAID published *Principles without justice: The Corporate takeover of human rights* (March 2016), available at: < http://www.raid-uk.org/sites/default/files/principles_without_justice.pdf>.

[11] Acacia has published its responses to some of RAID's previous correspondence and reports on its website, available at: <https://www.acaciamining.com/sustainability/grievance-process/gp-english.aspx>.

[12] Geoffrey York, 'Barrick's Tanzanian project tests ethical mining policies', *The Globe and Mail*, 29 September 2011, available at: <http://www.theglobeandmail.com/report-on-business/rob-magazine/barricks-tanzanian-project-tests-ethical-mining-policies/article559188/?page=all>.

[13] RAID, London Mining Network, MiningWatch Canada, and CORE, African Barrick Gold plc: A pattern of abuse: Human Rights at Risk at the North Mara Mine, Tanzania, April 2014 , available at: <http://www.raid-uk.org/sites/default/files/abg-abuse.pdf>.

[14] See, for example, ABG Prospectus, op. cit., Security, p. 73. See also, for example, Barrick, 7 June 2011, 'Response to Article on North Mara Mine, Tanzania', available at: <http://business-humanrights.org/sites/default/files/media/documents/barrick-response-re-sakura-saunders-7-jun-2011.pdf> and; African Barrick Gold plc, 'Update on North Mara', 30 May 2011, available at: <https://www.acaciamining.com/~/media/Files/A/Acacia/press-release/2011/North-Mara-update-Sept-30.pdf>.

[15] *Magige Ghati Kesabo and 13 others v African Barrick Gold Plc, North Mara Gold Mine Ltd*, Case No: HQ13X02118, High Court of Justice Queen's Bench Division, 28 March 2013. The 13 other claimants subsequently reduced to 11.

[16] Leigh Day, 'Tanzanian villagers sue London-based African Barrick Gold for deaths and injuries', 30 July 2013, available at: <http://www.leighday.co.uk/News/2013/July-2013/Tanzanian-villagers-sue-London-based-African-Barri> (visited prior to out-of-court settlement of the claim; web page now taken down).

[17] ABG, 'Statement Regarding Legal Claim', 30 July 2013, available at: <http://www.acaciamining.com/media/press-releases/2013/a2013-07-30.aspx> (visited prior to out-of-court settlement of the claim; web page now taken down).

[18] The Observer, 19 July 2014, 'Killings at UK-owned Tanzanian gold mine alarm MPs', available at: <http://www.theguardian.com/world/2014/jul/19/killings-uk-owned-gold-mine-tanzania-concern>.

[19] Leigh Day has stated: 'In 2013, a number of Tanzanian claimants represented by Leigh Day initiated proceedings against African Barrick Gold plc (now Acacia Mining plc) and its subsidiary, North Mara Gold Mine Limited (NMGML), in the English Courts in relation to injuries and fatalities at the North Mara mine. The claims were denied by Acacia Mining and NMGML. The litigation and further claims have been settled out of court.' See <http://www.leighday.co.uk/International-and-group-claims/Tanzania>. See also, Reuters, 6 February 2015, 'Acacia settles with Tanzanian villagers over mine fatalities', available at: <http://uk.reuters.com/article/2015/02/06/uk-acacia-settlement-idUKKBN0LA23D20150206>.

than 30 individuals who suffered alleged human rights abuses. A joint briefing was published in August 2014.[20] During the visit, MiningWatch Canada and RAID also had meetings with staff at the mine and with the company's NGO partner, Search for Common Ground, and collected data from health staff in local medical facilities. Most of those interviewed had been shot by police or assaulted by the mine's own security guards within the last five years. Acacia issued a statement in February 2015: 'We also strongly dispute the allegations in relation to the number of fatalities in the period referenced by MWC [Mining Watch Canada] and RAID.'[21] Between late October and early November 2015, RAID and MiningWatch Canada undertook a second human rights fieldwork assessment around the mine. More than 50 interviews were conducted with victims of violence perpetrated by mine security and police. RAID and MiningWatch issued a press release on their findings and concerns, which elicited a response from Acacia.[22]

Overall, RAID and MiningWatch Canada documented at least 22 people killed and 69 injured, many by bullets, at or near the mine between 2014 and 2016.[23] In March 2017, after much pressure from RAID and other NGOs, Acacia acknowledged in its annual report published in March 2017 that 32 'trespasser-related' deaths had occurred at its mine between 2014 and 2016, with an additional 2 such deaths in 2017.[24] The death toll may be even higher: a 2016 parliamentary inquiry into complaints at North Mara mine received reports of 65 killings and 270 people injured by police jointly responsible for mine security.[25]

In 2017, a number of those who suffered human rights violations instructed UK-based lawyers Deighton Pierce Glynn, and filed legal cases saying Acacia has been unwilling to adequately compensate them.

RAID undertook a further field mission to North Mara in June 2018 to document the experience of victims who had gone through Acacia's revised grievance mechanism. On 21 June 2018, RAID also met with key members of the mine's complaints investigations team at Acacia's London office to discuss how complaints about human rights violations were investigated and the company's security arrangements. At the end of October 2018, RAID assisted human rights claimants and their families in interacting with the company's revised grievance mechanism and on this and another subsequent visit RAID met with families who told us about additional human rights violations at the mine during 2018.

In its reporting, Acacia seeks to differentiate between security-related deaths of 'intruders' and deaths from other causes. Hence, in 2014, 2016 and 2017, Acacia's annual reports record, respectively, 3, 2 and 1 deaths relating to the use of force against intruders and/or police involvement (no such deaths are recorded for 2015). The number of 'intruder fatalities' attributed to other causes (14, 9, 4 and 1 in each respective year from 2014 – 2017) are attributed to 'fall from

[20] RAID and MiningWatch Canada, 'Violence Ongoing at Barrick Mine in Tanzania: MiningWatch Canada and RAID (UK) Complete Human Rights Assessment', 5 August 2014, available at: <http://www.raid-uk.org/sites/default/files/pr-barrick-mara-violence.pdf>..

[21] Acacia Mining's (formerly African Barrick Gold) response regarding allegations on its grievance mechanism in Tanzania, 12 January 2015, available at: <http://business-humanrights.org/sites/default/files/documents/Acacia%20Mining%20re%20Tanzania%20Grievance%20Mechanism_0.docx> .

[22] More information on the fieldwork can be found at: <http://www.raid-uk.org/content/african-barrick-gold-and-north-mara> and < https://miningwatch.ca/news/2015/11/17/broken-bones-and-broken-promises-barrick-gold-fails-address-ongoing-violence>. Acacia's response is at: <http://www.acaciamining.com/~/media/Files/A/Acacia/documents/Response%20to%20MWC%20and%20RAID%20Field%20Assessment%20Report%20-%20November%202015.pdf>.

[23] <http://www.raid-uk.org/sites/default/files/adding_insult_to_injury_north_mara.pdf>.

[24] Respectively, Acacia's annual reports for 2016 and 2017, available at: <https://www.acaciamining.com/investors/reports/>.

[25] A summary of the inquiry report was presented locally, but the full report has not been published. See: https://www.theglobeandmail.com/report-on-business/international-business/african-and-mideast-business/police-killed-65-injured-270-at-tanzanian-mine-inquiry-hears/article32013998/>; and <http://www.raid-uk.org/sites/default/files/pr_100s_of_claims_of_violence_at_acacias_north_mara_mine.pdf>.

height', 'infighting', 'drowning', 'rockfall', 'vehicle accident', and 'other'. One man told RAID how his brother was killed at the Mine in 2015 after being struck on the head by one of several rocks thrown by police.

In Acacia's 2018 annual report, the company itself acknowledged four incidents at North Mara 'involving the police on or in the vicinity of the mine that raised, or were alleged by others to raise, possible human rights impacts (two more than in 2017),' at least one of which appears to have involved a fatality.[26] The report further states that three more individuals were killed 'while illegally mining at North Mara. In three separate incidents the illegal mine workings they were excavating caved in on them.'[27] The information provided offers few details and is not independently verified.

Furthermore, Acacia fails to report on injuries to 'intruders', which is anomalous given the high incidence of injuries (270) referred to by the parliamentary inquiry and the number of serious and life-changing injuries reported to RAID. A request of the company made by RAID in July 2018 for more information concerning previous statistics on 'intruders' published by Acacia has gone unanswered, though Acacia said that it would review the material and revert to RAID.[28]

Acacia's operations in North Mara have also been subject to charges and complaints concerning other matters with potentially significant human rights impacts. Most recently, in 10 January 2019, Tanzania's National Environment Management Council issued a fine of US$130,000 against NMGML for breaches of environmental regulations relating to discharges of hazardous substances, which NMGML paid '[p]ending further factual clarification.'[29] On 8 March 2019, the Government of Tanzania directed NMGML to halt contaminated water seeping into the local environment or face shutdown of its operations.[30] Acacia blamed vandalism or theft for the issue.[31] And in October 2018, an employee of the Acacia Group was named as part of a series of charges brought in Tanzanian courts for corruption relating to NMGML's acquisition of land from local community members, while a former and two current employees and three local subsidiaries were subject to separate corruption-related charges.[32] The charges have been denied.[33]

b. Operational context

Security at the North Mara mine is provided through a combination of in-house, contracted and state security. Acacia publishes almost no details about the different providers, but RAID has been given by the company, or has obtained, internal company documents that shed some light on these arrangements. Furthermore, RAID met with members of the mine's complaints investigation team at Acacia's London office in June 2018, who provided additional details about security at NMGML.

Of particular relevance for this report, considering that many of the most serious claims brought to the grievance process concern police-related violence, is the company's relationship with state

[26] Acacia Mining, Annual Report 2018, available at: <https://www.acaciamining.com/~/media/Files/A/Acacia/reports/2019/acacia-ar-2018.pdf>, at p. 68.
[27] Ibid.
[28] <http://www.raid-uk.org/sites/default/files/follow-up_questions_from_raid_to_acacia_mining_july_2018.pdf>. Acacia said that it would review the material and revert to RAID, but has not done so (Charlie Ritchie, Head of Legal and Compliance, Acacia Mining, e-mail to RAID, 6 July 2018).
[29] Acacia Mining, Annual Report 2018, op. cit. p. 12.
[30] 'Tanzania orders cleanup at Acacia gold mine, threatens closure', Fumbuka Ng'wanakilala, *Reuter*, 8 March 2019, available at <https://uk.reuters.com/article/us-tanzania-mining/tanzania-orders-cleanup-at-acacia-gold-mine-threatens-closure-idUKKCN1QP0JF>.
[31] Acacia Mining, Annual Report 2018, op. cit., p. 12.
[32] Ibid.
[33] Ibid.

forces. NMGML has in place an agreement, known as a Memorandum of Understanding ('MoU') with 'the Tanzania Police Force, Community Policing Unit' and the 'RPC (Tarime-Rorya Special Police Zone).'[34] The MoU provides for company support for the police 'solely in its responsibility of maintaining law and order in and around the Mine Site and developing community policing capacity around or servicing the Mine Site.'[35]

Despite disclaimers that the MoU does not establish an employment, agency or joint venture relationship between company and police,[36] and does not authorise the Mine to 'supervise, direct or control any mission, assignment or function of the Police,'[37] the MoU empowers Acacia and NMGML in significant ways. The MoU provides that the responsibility of hierarchical police officers for supervising, selecting and issuing assignments to police personnel is to be 'in coordination with the Mine Site Security Manager,'[38] and states that 'the Company [defined as NMGML] shall always be in coordination, cooperation and communication with the Police regarding security and safety issues, including human rights'.[39] The MoU also stipulates that 'the Company shall have the right to refuse any individual Police personnel that fail to meet the standards set forth in this MoU.' And the MoU guarantees company control over access to the Mine Site, stating that 'all security services provided by police shall be outside the perimeter of the Mine Site compound and drilling locations' unless requested by Acacia, through its Regional Security Manager.[40]

On its website, Acacia states that 'police are only called upon to enter our sites in the case of emergency where police assistance is required to maintain law and order; otherwise access is restricted.'[41] But the MoU refers to providing 'specific support' (including per diems, meals and accommodation) for over 100 police officers 'on a regular basis,' as well as to 'additional police officers as and when required due to emergency situations'.[42] So while the company has control over access by the police to the mine, it elects to have the police stationed there to provide security. If the MoU is considered akin to a contract, then the state police take on many of the characteristics of private security at North Mara.

In a meeting with RAID in 2018, Acacia confirmed that police are always accompanied by mine security, the only caveat being that, in certain confrontational situations, the 'better equipped' police may proceed on their own.[43] Acacia also told RAID that, although there could be incidents that mine security did not know about, by and large the operations room at the mine keeps abreast of everything going on through CCTV and monitoring radio transmissions.[44] Mine security has its own radio frequency, but the police can (and do) use this frequency too (although they can also use their own frequencies). The operations room uses CCTV to help direct security operations, including joint operations with the police.[45]

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[34] Memorandum of Understanding, dated August 2014 (MoU). A copy is posted at: <http://www.raid-uk.org/sites/default/files/mou_with_police_august_2014.pdf>. Acacia provided RAID with a version of this MoU, which we were told was to be replaced at the end of July 2016. However, despite repeated requests, Acacia has not provided RAID with an updated MoU.
[35] Ibid.
[36] Ibid, s. 1.1.11.
[37] Ibid, s. 2.9.
[38] Ibid, s. 1.1.10
[39] Ibid, s. 2.9.
[40] Ibid, s. 1.1.2.
[41] <https://www.acaciamining.com/sustainability/our-material-areas/security-and-human-rights.aspx>.
[42] MoU, Annex A, Schedule of Monetary and In-Kind Support to be Provided by the Company.
[43] Meeting between RAID and leaders of the Investigations and Community Engagement Team at North Mara, held at Acacia's London office, 21 June 2018. Acacia's legal representative sat in on the meeting.
[44] Ibid.
[45] Ibid.

II. Acacia's grievance process on paper

Companies have always been free to establish mechanisms to address complaints or claims concerning their activities and practices. In 2011, the *United Nations Guiding Principles for Business and Human Rights* (UNGPs)[46] provided for a particular form of such mechanisms, which it referred to as operational-level grievance mechanisms (OGM), to address adverse human rights 'impacts.' Principle 29 provides:

> To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

Commentary to Principle 29 explains that OGMs are typically, though not necessarily, administered by the company and identifies two functions for them to perform: (i) identifying adverse human rights impacts 'by providing a channel for those directly impacted by the enterprise's operations to raise concerns;' and (ii) enabling early remediation, 'thereby preventing harms from compounding and grievances from escalating.'

Principle 31 sets out a series of 'effectiveness criteria' which grievance mechanisms should reflect. The first seven of these apply to both State-based and non-State-based non-judicial grievance mechanisms. They provide that grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning. The eighth, which is specific to OGMs, provides that they should be based on engagement and dialogue because a grievance mechanism 'can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it.'

Acacia's grievance process is formulated as an operational-level grievance mechanism within the meaning of the UNGPs and the company says it is consistent with the UNGPs and the effectiveness criteria.[47] For the reasons set out below, this report argues that in fact, the mechanism is not compliant with the UNGPs. Indeed it arguably violates human rights, when, as is often the case, it subjects those whose rights have already been violated to a disempowering and disrespectful process that exacerbates the harm, denies them basic procedural rights, characterises them or their family members as 'criminals,' entrenches power imbalances, and ultimately frustrates rather than enables access to remedy.

a. The revised North Mara Grievance Process

Since 2014, RAID and other international and Tanzanian civil society groups have raised concerns about the mechanism at North Mara lacking independence, permitting total company control over investigations, pressurising claimants to sign settlements they did not understand, using legal waivers to stop claimants having recourse to the courts, and offering inadequate compensation for the small minority of individuals who made it through the process.[48]

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[46] <https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf>.

[47] Acacia Community Grievance Process Standard Operating Procedure ('SOP'), available <https://www.acaciamining.com/~/media/Files/A/Acacia/documents/grievance/community-grievance-process-sop-20171208.pdf> [accessed April 2019], article 2(2); Acacia Mining, Annual Report 2018, op. cit., p. 68.

[48] RAID and MiningWatch Canada, In Need of Repair: Acacia Mining's Grievance Mechanism at North Mara Gold Mine, Tanzania, May 2016, available at: <http://www.raid-uk.org/sites/default/files/memorandum_to_acacia_revised.pdf>.

Following public pressure, Acacia acknowledged that there were problems and began revising the grievance mechanism. It produced a Community Grievance Management Procedure in June 2016, setting out requirements for grievance mechanisms at all sites, without referring to community participation in its design.[49] In correspondence, Acacia confirmed that this June 2016 procedure was implemented at the Mine. RAID raised concerns about this procedure given that complaints were decided on the basis of reports drawn up by staff nominated by senior managers and when the 'second order' appeals committee consisted of 'appropriate external representation,' appointed by senior managers at the Mine.[50] Use of the June 2016 procedure appears to correspond to Acacia clearing a backlog of pending cases, rejecting over 90% of complaints as 'unsubstantiated or inconclusive'.[51]

Beginning around August 2017, Acacia presented a new draft mechanism to a number of local communities, attended by local leaders and chiefs, near its North Mara mine. Those who attended the presentations were requested to provide comments, though the process by which feedback was collected and considered was not clear. Acacia has not published any feedback it received from these meetings.

In December 2017, Acacia posted a new draft mechanism on its website. This version is called the Community Grievance Process.[52] RAID and other civil society groups have raised significant concerns about the new mechanism, and Acacia has posted these critiques and their responses on its website.[53]

The revised mechanism permits claims by community members, groups or civil society organisations concerning 'adverse impacts' by the Mine (a term that is not defined but is taken to mean NMGML and/or Acacia) or third parties linked to the Mine on particular 'interests or rights.' These are specified to include: human rights, the environment, enjoyment of land or other property, housing and livelihoods, or health and safety.[54]

The Grievance Process framework is set out in four documents, the latter two of which include annexes:[55]

[49] <https://www.acaciamining.com/~/media/Files/A/Acacia/documents/acacia-community-grievance-management-201606.pdf>. See '7. Site Grievance Mechanism and Grievance Management Procedure.'
[50] Ibid., '11. Second Order Mechanism.' Use of the June 2016 process was confirmed in a letter from Peter Geleta, Head of People, to RAID and MiningWatch Canada, 17 January 2017, available at: < https://miningwatch.ca/sites/default/files/pgeletalettertoraidmwcjan17.pdf>.
[51] Acacia refers to this backlog of 117 cases 'relating to public or private security,' confirming that 109 were 'found to be unsubstantiated or inconclusive.' See Acacia Mining, Annual Report 2016, op. cit., p.58.
[52] <https://www.acaciamining.com/sustainability/grievance-process/gp-english.aspx>.
[53] RAID and the Legal and Human Rights Centre prepared a joint report: *Acacia Mining's Revised Operational Grievance Mechanism at North Mara Gold Mine, Tanzania: Assessment and Recommendations*, April 2018, available at: <http://www.raid-uk.org/sites/default/files/raid_lhrc_assessment_of_acacia_ogm.pdf>. See also RAID's 1 May 2018 letter and Key concerns over Acacia's revised Community Grievance Process, available at: <http://www.raid-uk.org/sites/default/files/raid_letter_to_acacia_mining_1_may_2018.pdf>. The company's responses can be found on Acacia's website: <https://www.acaciamining.com/sustainability/grievance-process/gp-english.aspx>.
[54] SOP, op. cit., article 17(2). In respect of land and property, however, the extent to which claims may be resolved through the grievance process is limited, as article 2(3) provides that grievances seeking 'determination of legal rights with respect of the acquisition of and compensation for land, property interests and resettlement' will be referred to the Mine's Lands Department 'in coordination with relevant State-based processes.'
[55] Acacia has published these materials on its website, available here <https://www.acaciamining.com/sustainability/grievance-process/gp-english.aspx> [accessed April 2019]. Each of these documents indicate or imply that they are in 'draft' form, either by including a header stating 'Working Draft Last Revised December 2017' or 'Draft April 2018' (as the Handbook and Guides do, respectively), or by not giving an approval date, instead including '[DATE]', as the SOP does. However, the grievance process has been operating under these versions of the materials for many months, during which time it has finally determined a significant number of grievances. As such, it is unclear in what sense they should be considered drafts.

Standard Operating Procedure ('SOP') – sets out the procedural rules that govern the Grievance Process, and provides for the constitution, powers and mandates of the bodies that administer it; the terms by which matters will be referred to third parties; and the circumstances in which the company may offer urgent or humanitarian relief or take precautionary measures.

Handbook for Grievants ('Handbook') – framed as an explanatory guide for those submitting grievances. It includes at its end a Grievance Intake Form, which is a ten-page document to be completed by complainants.

Security & Human Rights Standards Reference Guide ('Standards Reference Guide') – sets out a step-by-step methodology to assess the conduct of the Mine's private security personnel, contractors, Tanzanian police and other law enforcement officials and determine whether that conduct 'has caused or contributed to adverse impacts on human rights.' An annex includes an excerpt from the Mine's MoU with the Tanzanian police and certain instruments governing the provision of security, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Remedies for Security-Related Human Rights Impacts Reference Guide ('Remedies Reference Guide') – provides details on the awarding of remedies, including a step-by-step methodology to assess them, which it specifies requires consideration of the extent of the harm caused and the measures by which the Mine may restore the situation prior to that harm. It includes an annex of national and international benchmarks for calculating compensation.

The Grievance Process framework establishes two steps to resolve a complaint. The first is to identify if an 'adverse impact' involving the Mine or a linked third party has occurred. If such an impact is confirmed, the second step is to identify a remedy. Each step in turn contemplates two stages. The 'Dialogue & Engagement' stage involves a meeting at which the Mine and grievant seek to agree on the adverse impact or remedy. If they cannot, the 'Independent Review' stage permits the grievant to ask that the disagreement be resolved by a committee.

The Grievance Process is administered by three bodies. The Community Grievance Team is comprised of a Team Leader and Grievance Officers, all of whom are appointed by the Mine and are to 'have expertise in relevant fields, including human rights.'[56] The Grievance Team is mandated to 'administer and coordinate all aspects of the Grievance Process,' meaning that they are tasked with overseeing and facilitating the Grievance Process for individual claims, as well as engaging in community consultations and tracking Grievance Process activities, outcomes and statistics.[57]

The Community Impacts and Remedies Investigations Team, which is to receive training or have expertise in investigations and human rights, is charged with investigating claims.[58] This may include receiving and analysis of information from grievants and operational reports from the Mine, gathering and analysing evidence, commissioning studies, taking witness statements, and preparing

[56] SOP, op. cit., article 4(1) and (2).
[57] Ibid, article 4(4).
[58] Ibid, article 6.

reports on issues of impact and remedy.[59] It is also mandated to request, receive and analyse police reports or decisions by other public authorities.[60]

Finally, the Community Grievance Committee is a committee to which the grievant may have recourse if unable to reach an agreement with the Mine regarding the existence of an 'adverse impact' or the provision of remedy. The Grievance Committee is comprised of three members, one chosen from each of three rosters. The details of these rosters are described below, but they are currently all directly or indirectly appointed by the Mine.

b. Human rights remedies as a 'security management' measure

The UNGPs provide that businesses' responsibility to respect human rights extends, at a minimum, to the rights and freedoms protected by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights (collectively, the International Bill of Human Rights).[61] According to the UNGPs, businesses can impact 'virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights.'

On the one hand, Acacia situates the Grievance Process within this broad human rights framework, stating that '[t]he Mine operates the Grievance Process as part of its corporate social responsibilities, including those reflected in the United Nations Guiding Principles on Business and Human Rights.'[62] It refers to the International Bill of Human Rights, as well as the African Charter on Human and Peoples' Rights, the Declaration on the Rights of Indigenous Peoples, and conventions dealing specifically with the rights of women and children, and with racial discrimination and torture and cruel, inhuman or degrading treatment or punishment.[63]

On its face, the Grievance Process therefore purports to recognise a broad range of human rights and freedoms, including those relating to health, the environment, livelihood, and the best interests of children, and to offer a means by which 'adverse impacts' on them may be redressed. In actuality, however, it concentrates on, and primarily gives effect to, only an extremely narrow set of human rights violations in the context of 'security-related' incidents. This has significant implications for how the Grievance Process permits human rights to be realised, if at all, or offers a remedy.

Acacia defines the grievance processes at its mines as part of the company's 'security management system.'[64] Its employment of the Grievance Process as primarily a security management tool, rather than a mechanism by which to ensure remedy for human rights harms, is evident throughout the process.

While listing international human rights instruments, the Standards Reference Guide does not set out the underlying rights and freedoms that those instruments protect. [65] Instead, it describes how 'security-related human rights standards' should be applied in relation to just three 'subject areas': use of force and firearms; arrest, apprehension and detention; and sexual violence.

[59] Ibid, article 6(4).
[60] Ibid, article 6(5).
[61] UNGP, op. cit., Principle 12.
[62] Standards Reference Guide, op. cit., p. 4.
[63] Ibid, p. 5.
[64] Acacia Mining, Annual Report 2018, op. cit., p. 35; Acacia Mining, Annual Report 2017, op. cit. p. 29.
[65] Standards Reference Guide, op. cit. p. 5.

For each of these 'subject areas', the Guide sets out a further three-step process. The first two steps entail identifying the applicable standards of expected conduct, ascertained by reference to instruments such as the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and then applying them to the factual circumstances. Only then, at the final step, is consideration given to what human rights may be affected. These too are listed, limited to seven rights: to life, liberty and security, humane treatment, and freedom from arbitrary detention, from torture and cruel, inhuman or degrading treatment, from sexual exploitation and abuse, and from discrimination. The person harmed enters the frame only at the end, and their rights given content only by reference to the specific security 'subject area.'

Thus, for example, the Guide states that '[i]f security personnel or police transgressed the applicable standards of conduct prohibiting sexual violence identified above, they may have caused impacts on the following human rights among others:…The right to liberty and security of person, which is affected by any act of sexual violence or rape.'[66]

This 'security management' emphasis is reflected elsewhere as well. The Handbook and SOP categorise human rights as separate from the environment, enjoyment of land or other property, housing and livelihoods, and health and safety. This is inconsistent with the international human rights instruments the Guide purports to recognise. For example, Article 24 of the African Charter on Human and Peoples' Rights guarantees the right to a 'general satisfactory environment,' while Article 24 of the UN Convention on the Rights of the Child protects children's rights to enjoy 'the highest attainable standard of health.'[67]

By failing to explicitly recognise economic and social rights, the Mine's Grievance Process falls short of the responsibility to consider the full scope of human rights set out in the UNGPs. This is particularly concerning in a context where grievants must rely on the Mine for knowledge of what rights they may assert through the Grievance Process and have little if any access to other means by which to ascertain rights to which they are entitled to under international law. [68]

Restricting human rights to the company's preoccupation with security management has adverse consequences for how the Grievance Process operates and its suitability to provide proper remedy. (i) It minimises or denies the majority of human rights and freedoms, including how these are experienced by vulnerable groups, and thereby the significance of the harm its operations cause; (ii) it claims to address human rights violations of the most serious kind for which it is not well-suited; (iii) it unfairly raises the standards grievants must meet to establish human rights impacts; and (iv) it casts grievants as antagonists, undermining just claims for compensation. Each of these consequences is elaborated in turn.

[66] Standards Reference Guide, Op. cit., p. 16.
[67] Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at <https://www.refworld.org/docid/3ae6b3630.html>; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at https://www.refworld.org/docid/3ae6b38f0.html.
[68] This appears to have been confirmed by Acacia in its response to an assessment and recommendation document published by RAID in conjunction with the Tanzanian NGO Legal and Human Rights Centre. The response, in relation to the concerns regarding the removal of human rights benchmarks from an earlier version of the Handbook, states that grievances 'alleging security-related human rights impacts, for example, are considered against relevant local and international human rights standards' (https://www.acaciamining.com/~/media/Files/A/Acacia/documents/grievance/NMGML-response-RAID-LHRC-assessment-20180418.pdf, p. 3). No explanation was given as to why all human rights impacts are not considered against such standards.

i. minimises or denies human rights and the harmful impacts of mining operations

The International Bill of Human Rights and other international and regional human rights instruments include rights that encompass employment, health and well-being, property and the environment. They also provide specific protections for children and other vulnerable groups.[69] International human rights law recognises that human rights violations may be experienced by individuals differently – i.e. more seriously – where they engage multiple forms of oppression. The latter is often framed in terms of intersectionality.[70] Similarly, the UNGPs direct 'particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.'

Recognising the full scope of rights matters because human rights are afforded elevated status by law, may be infringed only where certain specific conditions are met, and acknowledge the inherent dignity of the rights holder. By narrowly reframing them as 'security-related,' Acacia denies rights holders the full scope of protection to which they are entitled and the dignity international law assures them.

Further doing so enables the Mine to minimise the impacts of its operations. The Grievance Intake Form has one tick-box for human rights, but many other tick-boxes for matters (including land, environmental damage, health, even personal injury and fatalities) that are not explicitly recorded as concerning human rights. The SOP assigns responsibility for categorising grievances according to 'type' to the Grievance Team and it is ultimately therefore the company that decides how a complaint will be characterised. [71]

In its annual reports, Acacia includes a '[b]reakdown of new grievances lodged by type.'[72] This breakdown includes four types: Security/Human Rights, Land and property, Environmental and Other (the 2016 report included 'Livelihoods' as a fifth type).[73] This ring-fencing of human rights enables Acacia to publicly minimise the degree of harm to fundamental rights its operations cause, presenting an inaccurate picture of its effects on local communities. No consideration is given to intersectionality and the differential impact experienced by vulnerable groups goes unreported.

ii. claims to address serious human rights violations

One stated purpose of the UNGPs is to use company-based grievance mechanisms as a means to nip problems in the bud and to prevent them from escalating into human rights violations.[74] However, the lack of specificity in the UNGPs about how and when they should be used has allowed companies, as in Acacia's case, to deploy such grievance mechanisms not to prevent violations occurring, but to deal with violations *after* they have occurred. In this way, even the consideration of instances of the most serious abuse, including the killing of people by security providers at company sites, is being privatised and dealt with 'in-house'.

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[69] United Nations Environmental Programme Compendium on Human Rights and the Environment: Selected International Legal Materials and Cases (UNEP/CIEL) (March 2014), available at <https://www.ciel.org/wp-content/uploads/2015/03/UNEP_Compendium_HRE_Mar2014.pdf>.

[70] For example, the UN Office of the High Commissioner for Human Rights stated in a 2014 report that '[s]ome groups of women face additional forms of discrimination' based on a variety of grounds, such as ethnicity, education and socioeconomic status, and that '[t]hese intersecting forms of discrimination must be taken into account when developing measures and responses to combat discrimination against women.' (UN Office of the High Commissioner for Human Rights, *Women's Rights are Human Rights*, available at: <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>, p. 1).

[71] SOP, op. cit., article 5(2)(b).

[72] Acacia Mining, Annual Report 2017, op. cit., p. 61.

[73] Acacia Mining, Annual Report 2016, op. cit., p. 58.

[74] UNGP, op. cit., Principle 29 and Commentary.

However, for reasons described in subsequent sections, there is cause for serious concern about such private interventions: they place control in the companies' hands, provide the opportunity for contamination, misuse and/or improper disclosure of evidence, offer no guarantees of resolution or redress, can hinder, reshape or preclude more effective, independent adjudication, and may exacerbate the harm by further disempowering or disrespecting the person harmed. Overall, private grievance mechanisms often become a very poor substitute for legal remedy, as once an incident is 'resolved' there is little or no impetus to pursue the perpetrators of abuse through the courts and provide justice for those harmed.

Acacia's treatment of human rights as a security management issue means that its Grievance Process is purposefully *designed* to address precisely such serious violations.

iii. unfairly raises standards for grievants

The Grievance Process purports to provide redress for 'adverse impacts' on human rights and other interests without, ostensibly, examining the question as to whether the act that caused the harm was justified or not: the SOP states that a grievance will be substantiated 'if it is more probable tha[n] not that an impact has occurred or may occur.'[75]

The general legal principle is that the party alleging a fact has the onus of proving it.[76] That means that those claiming that their human rights have been infringed, at least where the rights are not internally limited, bear the onus of establishing that infringement on a *prima facie* basis. It is then for the respondent to establish that the *prima facie* infringement was justified.

However, the Grievance Process effectively reverses the onus, requiring the grievant to show *both* that their rights were impacted and that that impact was not justified. Hence grievants face an exceptionally high evidential burden, one which they would be unlikely to face in a judicial or quasi-judicial process. As described above, the Standards Reference Guide describes a series of steps to be undertaken in relation to determining whether a security-related human rights impact is established, including answering questions such as whether the use of force was necessary and proportionate, and whether appropriate procedures were followed.

It is only after such questions are answered that consideration is given to the rights of the grievant. Thus a grievant can only establish that their human rights are adversely impacted *after* it has been established that, for example, appropriate procedures were not followed and that the grievant did not pose a threat sufficient to justify the particular use of force.

These disproportionate evidential burdens are not obviated by the fact that the SOP provides that the 'standard and burden of proof…shall not be applied as rigidly as in civil or criminal judicial processes.'[77] Indeed, given the adversarial nature of the review stage in particular, at which the Mine advances evidence to disentitle the grievant to a remedy, such provision is as harmful to grievants as it is helpful.

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[75] Ibid, article 25(2).

[76] See, e.g., ECtHR *Timurtas v Turkey*, Judgment of 13 June 2000, RID 2000-VI 303, para. 66 (available at <https://www.echr.coe.int/Documents/Reports_Recueil_2000-VI.pdf>). The Court in that case, which involved a claim for human rights violations by agents of the Turkish state, recognised that the principle would not be applied rigorously where the state had access to the relevant information, i.e. it may be relaxed to the advantage of the claimant where access to relevant information was held by the opposing party. It is notable that the Grievance Process offers no such relaxation, despite the extensive obstacles grievants face to relevant evidence, as expanded on *infra*.

[77] SOP, op. cit., article 25(3).

More importantly, grievants will rarely be in a position to establish whether, for example, the police were appropriately equipped and trained, reasonably felt threatened, or followed appropriate procedure – particularly given that grievants seldom, if ever, have the opportunity to obtain evidence from the police. The Grievance Process thus does more than impose evidential burdens those harmed should not face: it places burdens on grievants that they are frequently not in a position to meet.

iv. depicts grievants as antagonists, undermining just claims for compensation

Treating human rights violations as a security management issue ensures that those harmed are constituted through the Grievance Process in antagonistic terms. This is evident in the analytical methodology set out in the Standards Reference Guide, which weighs 'criminal conduct' in determining whether the use of force was justified, even before an adverse impact on human rights is considered. It is also manifest in the Grievance Process's approach to remedies. The Remedies Reference Guide states:[78]

> In most remedy processes, a person who suffered harm or human rights impacts while they were committing a crime, particularly a violent crime, would be barred from receiving compensation or their compensation would be significantly diminished. In the Grievance Process, however, Aggrieved Parties engaged in criminal conduct when they sustained an impact, for example trespassing on the Mine site and attempting to steal gold bearing material, shall not be barred outright from receiving a Remedy.

Despite this apparent concession, the Remedies Reference Guide goes on to stipulate that 'criminal conduct' will be taken into account in two ways. The first is that income from criminal activities shall not be accounted for in assessing lost earnings. The second is that 'compensation for distress and mental anguish may be reduced if the criminal conduct was particularly egregious (such as participation in an armed or violent intrusion to secured areas of the Mine) at the time of the human rights Impact.'[79] The Remedies Reference Guide states that this is to ensure that criminal conduct is not rewarded or perpetuated. The Mine provides no guidance on how 'criminality' is determined, arrogating for itself that determination. 'Intruders' are seldom charged, let alone tried for criminal offences, yet the Mine treats them as though they are convicted criminals.[80]

Moreover, beyond the UK's Criminal Injuries Compensation Scheme, which operating within a criminal justice context appears to have little relevance to human rights remedy processes, the Remedies Reference Guide cites no authority for its claim that most remedy processes would bar people 'who suffered harm or human rights impacts' if they were committing a crime from receiving compensation, or otherwise significantly diminish their compensation. The claim is surely incorrect. RAID, at least, is unaware of any human rights-related remedy processes that would, for example, bar compensation or significantly diminish it for those who suffer sexual violence simply because they were trespassing on property, or even engaged in 'particularly egregious' forms of criminal conduct.

[78] Ibid, p. 8.
[79] Ibid.
[80] During their June 2018 meeting with RAID, Investigations Team leaders agreed that often there were no formal convictions, but that it was obvious that complainants were intruders, trespassing on the site. In remedy meetings, convictions *per se* were not correlated to grievances, but the presumption was that someone was an intruder seeking to steal waste rock.

c. Lack of independence

The title 'Community Grievance Process' implies community involvement, yet Acacia's mechanism is wholly operated and controlled by the company. Beyond a 'community' representative (currently appointed by Acacia) on the Grievance Committee, community members have no role in administering the CGP.

The control exercised over the Grievance Process by the Mine results in a lack of independence at both the investigation and adjudication stages of a complaint.

i. lack of independence in investigation

The responsibilities and powers assigned to the Investigations Team are extensive. It is tasked with investigating the facts and background to the grievances, including gathering physical and documentary evidence, obtaining studies, instructing experts and taking witness statements.[81] It is also directed to 'request, receive and analyse any Police reports and/or reports or decisions by other public authorities' where illegal activity may be at issue.[82] And it is mandated to issue in respect of each grievance:

(a) an Investigation Report, which includes findings of fact, applicable standards, commitments or codes of conduct, 'conclusions' regarding whether those standards, commitments or codes have been breached, and 'whether there has been or could be an adverse impact as a result of any such breach;'[83] and if the grievance proceeds to remedy,

(b) a Remedies Report, which includes findings of fact, applicable standards for determining appropriate remedies, 'conclusions' regarding whether the remedy proposed by the grievant is consistent with those standards, and a remedy proposed on the Mine's behalf.[84]

It is apparent and concerning that the Investigations Team, in weighing the evidence and reaching 'conclusions' regarding whether standards have been breached (and what, if any, remedy, is appropriate) is serving an adjudicative function (this is contrary to the UNGPs, as discussed below under lack of independence in determination).

Moreover, in performing these functions, the Investigations Team acts exclusively as the Mine's representative. The SOP makes this clear by stipulating that the Investigations Team 'shall represent the Mine through the Grievance Process, including through both the Dialogue & Engagement and the Independent Review stages.'[85] It also states that the Investigation and Remedies reports 'represent the Mine's view' of the relevant events[86] and appropriate remedy.[87]

That the Investigations Team performs its role solely on behalf of the Mine is especially concerning considering the circumstances of many who bring claims. Most grievants will have no experience in collecting, preparing or presenting evidence. The SOP provides that the Investigations Team may

[81] Ibid, article 6(4).
[82] Ibid, article 6(5).
[83] Ibid, article 32(2).
[84] Ibid, article 48(2).
[85] Ibid, article 6(2).
[86] Ibid, article 32(4).
[87] Ibid, article 48(3).

'gather evidence or take witness statements for or from Grievants or their witnesses' if requested.[88] However, any possible value from such assistance is undercut by the fact that the Investigations Team gathers that evidence as the Mine's representatives. Any claimants seeking such assistance effectively turns over control of their own evidence to the Mine.

Even where grievants do not request the Investigations Team's assistance, the Investigations Team's role as representing the Mine creates serious imbalances, including in access to evidence. The Mine is only obliged under the SOP to disclose evidence 'on which it intends to rely,'[89] i.e. that supports the conclusion of the Investigations Team/Mine. The Mine is thus not obliged to disclose incriminating evidence of its own wrongdoing or justifying a high remedy unless the Mine (implausibly) decides to rely on that evidence.

Separate to the Grievance Process, Acacia uses a Mine Investigations Policy ('Policy'), which it has not published, although RAID has obtained a copy.[90] Its review makes clear both that Acacia will have highly material evidence for many 'security-related' human rights harms and that it is unlikely to reveal much of that evidence unless it is helpful for the company.

The Policy, which contains provisions on 'confidential informant management'[91] and 'surveillance units,'[92] refers to a separate investigations body, the Mine Investigations Group, mandated to conduct investigations into incidents, categorised by their seriousness. Category A investigations cover fatalities and serious injuries. The Policy provides that these investigations 'MUST be conducted in accordance with the directions of the Office of the General Counsel' and 'will be undertaken for the dominant purposes of obtaining legal advice and/or preparing for legal proceedings.'[93] If a witness statement is taken, 'UNDER NO CIRCUMSTANCES is a witness or any other person except Legal Counsel to be given a copy of any Category A or commissioned investigation statements.'[94] Reports are to be labelled 'Confidential and Privileged'. Additional provisions are set out for deaths or serious injuries involving illegal miners or detainees, including that '[a]ll information is to be marked "Legal and Confidential and subject to legal privilege",' that the investigation is conducted 'on behalf of the company and OGC and NOT the police', and that 'requests for assistance OR any documents or other investigative material' from the police 'are to be IMMEDIATELY referred to Legal Counsel.'[95]

The Policy is complemented by the MoU, which ensures that Acacia also has access to information from the police. It provides that the Mine is entitled to that information in relation to 'any criminal incident, or any impending criminal incident at or around the Mine Site,' stipulating that the police 'shall formally report the incident in writing to the Company as soon as possible' and that the police 'shall provide such information as requested'.[96]

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[88] Ibid, article 6(4)(g). The Remedies Reference Guide, op. cit., also states that if grievants are unable to provide relevant information or evidence, "the Mine will offer to assist Grievants to do so on their behalf" (p. 7). It is not clear how such assistance would be provided, however, or by which team or department within the Mine.
[89] SOP, op. cit., articles 32(1) and 48(1).
[90] African Barrick Gold (ABG), Mine Investigations Group, Investigations policy, May 2010. RAID has posted the Policy at: <http://www.raid-uk.org/sites/default/files/ABG%20Mine%20Investigation%20Policy.pdf>. RAID was told in a June 2018 meeting at Acacia's London office that the policy was being revised, but had not been replaced.
[91] Ibid, para. 13.1.
[92] Ibid, para. 14.
[93] Ibid, para. 5.1.2.
[94] Ibid, para. 10.2.
[95] Ibid, para. 5.7.1.
[96] North Mara MoU, op. cit., section 2.11.

In relation to all of this information, the Grievance Process entitles the Mine to refuse even to inform grievants of its existence, no matter how relevant to their claim for redress, let alone give grievants access to it.

The Grievance Process is explicitly structured to provide evidence-based resolution of grievances. Both the 'dialogue & engagement' and review stages of the process require the exchange of evidence by the Mine and grievants.[97] The SOP expressly conditions grievants' chances of success on the provision of evidence, providing that they 'shall be more likely to be able to substantiate that adverse impacts were suffered or threatened' if they submit corroborating evidence, such as witness statements and expert reports.[98] The Remedies Reference Guide further conditions the provision of redress on substantiating evidence, stipulating that there 'should be evidence to substantiate the effect of the Impact.'[99] Yet Grievants' ability to meet such evidential burdens is severely prejudiced, in some cases made impossible, by the control exercised by the Mine through the Investigations Team.

ii. lack of independence in determination

Acacia's Grievance Process permits grievants whose grievances are rejected at the initial stage to request that their grievances be referred to a Grievance Committee. Grievants can make such a request if (i) a complaint has been rejected on the grounds that there was 'no adverse impact;' or (ii) when there is disagreement over the remedy offered. The latter also permits a review of how a remedy is being delivered.

The Handbook describes the Grievance Committee as consisting of 'three members who are independent from Grievants and the Mine.' The assurance of independence is misleading, however. The Grievance Committee is to include one member from each of the following groups:

- a member from a Mine Roster, which is chosen by the company.[100]
- a member from a Community Roster, which is supposed to be chosen by a Community Consultation Body from local villages, but because that body has not been constituted is in fact appointed by the Mine.[101]
- a member from the Chairperson Roster, chosen by an Advisory Board to the Mine, which is made up of Acacia's Head of Legal & Compliance, its most senior legal executive, and four others 'of recognised competence in the fields of human rights, environmental management or other social issues who are identified and selected by the Mine.'[102]

The SOP further assures ongoing control over appointments by providing that the company-appointed Advisory Board, by majority vote, will determine whether a Roster member's activities are 'incompatible' with their continued appointment;[103] and for individual cases by assigning the

[97] SOP, op. cit., article 36(1).
[98] Ibid, article 31(1).
[99] Remedies Reference Guide, op. cit., pp. 6-7.
[100] SOP, op. cit., article 8(2).
[101] Given recent crackdowns on dissent in Tanzania, as highlighted by recent attacks on opposition leaders and civil society activists, ensuring that people nominated by village councils and approved by village assemblies are representative of communities and free to speak out against abuse is essential.
[102] Handbook, op. cit., p. 7; SOP, op. cit., article 9(2).
[103] SOP, article 8(5).

appointment of the Grievance Committee for each case from the pool described above to the Grievance Team Leader, a mine employee.[104]

Beyond specifying that the Mine shall cover 'the reasonable sitting fees and attendance expenses of members of a Grievance Committee,'[105] Acacia has not disclosed how members of all these bodies, boards and rosters are remunerated.

The compromised nature of the Grievance Committee is a particular problem considering that it is ostensibly there to address the unfairness inherent in the initial stage, at which the Mine's representatives may unilaterally refuse to agree either an adverse impact or a remedy. Moreover, the Grievance Committee operates as a tribunal of final instance: if it finds against the grievant, the Grievance Process offers no further possibility of redress.

The Grievance Process's failure to ensure independence is contrary to the UNGPs, which expressly direct that OGMs that require adjudication are to be independent. Specifically, Commentary to Principle 31 provides:

> Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

d. Blocking other avenues of redress

The Mine's original grievance mechanism at North Mara required those who settled claims to sign a legal waiver, which prevented such individuals from pursuing or taking part in any further legal action against the company. Human rights organizations and legal experts have widely criticised such waivers for denying justice and closing off avenues of redress.[106] Acacia responded to this criticism in the revised mechanism by providing in the Handbook that 'grievants' will not have to waive any of their rights and 'will not be required to sign any legal documents to receive a remedy.'[107] However, at the same time the SOP provides:[108]

> The Grievance Process shall not consider a Grievance if its subject matter:
>
> (a) is pending determination or settlement pursuant to another process or procedure, whether judicial or non-judicial, inside or outside of Tanzania against the Mine and/or any of its parents or affiliates; or
>
> (b) essentially duplicates a Grievance already examined and settled by the Grievance Process or another process or procedure, whether judicial or non-judicial, inside or outside Tanzania against the Mine or any of its parents or affiliates.

[104] Ibid, article 5(2)(e).
[105] Ibid, article 13(1).
[106] See RAID, *Principles without justice,* op. cit., pp. 62 ff.
[107] Handbook, op. cit., p. 12.
[108] SOP, op. cit., article 26(1).

The preclusion of 'parallel' proceedings is broad. It covers all processes or procedures, regardless of their judicial or non-judicial nature, where they occur or whether they are brought against Acacia or its affiliates. It bears only two narrow exceptions: if the proceeding is 'limited to a general examination of the situation affecting the community around the Mine;' or if the applicant in the 'parallel' proceeding is a third party with no mandate from the grievant. Both exceptions include riders that the 'parallel' proceeding offer no remedy to the grievant or affected persons.

There is no need for such a broad preclusion. As described below, Acacia has imposed strict terms of confidentiality that prevent grievants from relying on or otherwise using any materials obtained through the Grievance Process in other proceedings. Moreover, the SOP is clear that any concessions made by the Mine as part of the Grievance are without prejudice to the Mine in other proceedings. For example, it provides that the Investigations Team reports 'shall not represent a determination by the Grievance Process or findings or concessions of fact, responsibility or liability that are binding on the Mine outside the Grievance Process.'[109]

Further, precluding 'parallel' proceedings is inconsistent with the Mine's stated purpose in creating the Grievance Process. The SOP defines this purpose as twofold: to help the Mine 'identify when its activities or the activities of others linked to the Mine may have caused or contributed to adverse impacts or have the potential to cause adverse impacts if not addressed' and to help 'the Mine prevent, mitigate or remediate adverse impacts.'[110] Both objectives would be served, not hindered, by permitting grievances even where they share subject matter with another proceeding.

Precluding 'parallel' proceedings rather allows the Mine the utmost control over potentially damaging claims. One purpose it serves is to force those whose rights have been violated to choose whether to seek redress through the Grievance Process or other forum. If they choose the Grievance Process, which for most is the seemingly accessible and realistic option, then, by precluding 'parallel' proceedings, the company ensures complete control over the claimant's avenues to redress, and over information concerning their claims.

To many grievants, signing away simultaneous access to other avenues of redress may not appear to be a significant step, but this owes much to the disadvantageous situation that they find themselves in, where they have very few options.

Firstly, accessing the criminal justice system is curtailed. As detailed above, NMGML pays the state police to provide security on an ongoing basis at the mine. In doing so, the company subverts the institutional independence of the state law enforcement, becoming a source of funding and other benefits for the police that the police risk losing if they act counter to the company's interests. The police, which should provide protection to those at risk of being harmed and help investigate human rights violations, instead become the perpetrators of or otherwise complicit in those violations. The employment of state police as security providers thus does more than undermine accountability; it undermines local people's faith in institutions supposedly constituted and mandated to protect them. Those who have suffered human rights violations have confirmed this view to RAID in interviews. The result is that in many instances the company represents their best and perhaps only chance for redress, exacerbating the power imbalance between it and local community members.

[109] Ibid, article 32(4).
[110] Ibid, article 1(2).

Secondly, the Mine's Grievance Process is also the most proximate, seemingly accessible and free way of seeking some compensation, an important consideration for those community members cannot afford to travel and who may also find travelling difficult because of injuries suffered as a result of serious human rights violations.

Thirdly, the Grievance Process itself is actively promoted by the Mine in the community. In some cases, Mine representatives visit those with claims to record their grievances. Some of these individuals have told RAID that they have been pressured by those representatives to submit their grievances through the Grievance Process rather than pursue other avenues. Others have said they were not made aware of any other option.

Fourthly, many of those harmed do not even consider taking legal action against the company because of all the barriers to access, including knowledge of the possibility, potentially high costs, and access to good lawyers. All these barriers apply to the pursuit of claims within Tanzania, let alone pursuing claims overseas through the UK courts.

Under Tanzanian law, law suits for injuries suffered (i.e., torts) are generally subject to a three-year limitation period.[111] While those injured are locked into Acacia's exclusive Grievance Process, applicable limitation periods for their claims may expire and thereby effectively close the door to other forms of legal remedy.

In its 2018 annual report, Acacia states that the 'average turn-around time was seven and a half months from the time of lodging the grievance to its resolution through engagement and dialogue.'[112] But this 'average' relates to just the one single case that was successfully resolved at an early stage, when Acacia confirms that 38 new cases entered the Grievance Process in 2018.[113] However, considering that grievances go through two stages, impact and remedy, and the one case resolved through engagement and dialogue took over seven months just to reach agreement on the issue of impact, it seems probable that most grievances take considerably longer. Moreover, Acacia provides no details on timelines for cases appealed to the Grievance Committee, which only meets periodically, further delaying consideration. RAID is also aware, and Acacia has confirmed, that there is a backlog of cases involving either the reconsideration of complaints originally dealt with under the previous grievance mechanism or new complaints about violations that occurred several years ago.[114] For many, it will already be too late to file legal claims, while others will be approaching the time limit. Entering the exclusive Grievance Process may therefore foreclose the possibility of legal remedy.

Even for claims whose limitation periods do not expire, the Mine becomes the arbiter of 'first instance,' gaining the opportunity to learn the grievants' case without having to disclose any evidence it does not wish to, to exhaust those tied into a complicated and frequently emotionally taxing process, and to shape how they perceive their case and the likelihood of its success. Moreover, for many of the impoverished grievants who bring a claim, there can be considerable costs in participating in the process. Meetings require time away from work often with a loss of income and trips to the mine's offices can incur costs for transport which are not recoverable.

[111] The Law of Limitation Act, [CAP 89 R.E. 2002], s. 3, Schedule Part I.
[112] Acacia Mining Annual Report 2018, op. cit., p. 69.
[113] Ibid.
[114] Acacia refers to this backlog and previous claims, albeit with few details, in its annual reporting. Furthermore, in their June 2018 meeting with RAID, the Investigations Team confirmed that in August 2015, the backlog stood at 130 security/human rights cases.

Precluding 'parallel' proceedings thus extends the Mine's control over claims by increasing the chances its company-controlled process will be the only forum in which they are decided.

e. Lack of clarity over admissibility of complaints involving the police

Acacia has stated that it could not operate at North Mara 'without the assistance provided by the Tanzanian Police under the MoU' because 'it would not be able effectively to respond to the scale and frequency of criminal activity directed towards the Mine, NMGML's employees and property.'[115] Acacia says that the majority of security-related deaths and serious injuries at the mine are the result of confrontations with the police. As stated, police are armed and have shot and killed people inside and in the vicinity of the mine site.

It is therefore essential that the Grievance Process clearly define the manner in which it will treat claims that concern police abuse. Instead, Acacia's published materials are unclear and often contradictory as to whether and under what circumstances it will accept and offer redress when complaints concern the police.

In a presentation describing the revised remedy program, Acacia states, 'A security and human rights grievance is a submission about a perceived negative impact on human rights by the Mine's security guards or police.'[116] It goes on to say, 'the Mine may wish to provide remedies when security contractors or the police cause adverse human rights impacts.' Later in the same document it states '[a] Grievance cannot be submitted...directly against any other entity or individual, including the police.'

The Handbook refers to 'the activities of the Mine or third parties linked to the Mine.' Considering the close relationship between the police and Mine, the former should be considered a linked third party, but this is not clarified. The Remedies Reference Guide states that the Mine 'aims to ensure that, when…police may have violated [applicable] standards and caused adverse impacts on human rights, the people affected have access to effective Remedy processes, whether from the Mine or from another available remedy process in Tanzania.'[117] This begs the question of when such access to remedy will be from the Mine, which is not answered in the Grievance Process's materials. Acacia's 2018 annual report suggests an answer:[118] 'North Mara…will provide access to remedies through the Grievance Process to members of the North Mara community in respect of police actions *only to the extent that such remedies are not forthcoming from the State itself*.' The qualification is significant, leaving the Mine with sole discretion in determining whether it will consider a complaint against the police. The Mine's position suggests that it could require grievants to show that they have exhausted remedy through the Tanzanian state before allowing a complaint under its Grievance Process, but currently it has not done so, rather choosing to deal with complaints against the police 'in-house' under a mechanism it controls.[119]

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[115] Acacia Mining Limited, Letter to RAID and MiningWatch Canada, 7 March 2016, available at: <https://www.acaciamining.com/~/media/Files/A/Acacia/documents/sustainability/Acacia%20Response%20to%20MWC%20and%20RAID%20-%20March%202016.pdf>.

[116] Acacia, North Mara Gold Mine, Human Rights Grievance Mechanism, Community Consultation 2017, available at: <https://www.acaciamining.com/~/media/Files/A/Acacia/documents/grievance/HRGM-what-is-this-consultation-about-english.PDF>.

[117] Remedies Reference Guide, op. cit., p. 4.

[118] Acacia Mining, Annual Report 2018, op. cit., p. 69 (emphasis added).

[119] The Handbook, op. cit., paragraph 3, p.8, sets out what must be included in a grievance, including: 'steps taken (if any) to complain about the subject matter of the Grievance through another process (for example, the Police, other Government agencies, the Courts), and status of such processes including name of any public authority which is considering the subject matter of the Grievance.'

However, Acacia's use of its Grievance Mechanism to consider complaints against the police must be carefully managed to avoid findings that would threaten its close relationship with the police and to be seen to be encroaching into areas of the State authorities. Hence, where crimes may have been committed or 'State actors or other third parties were involved in impacts, the Mine may need to refer the subject matter of the Grievance to the appropriate Tanzanian authorities or to third parties for investigation.' The fact that the Mine 'will seek consent before revealing the identities of community members involved in a Grievance (including Grievants, persons who have suffered impacts or witnesses) to the authorities or third parties' is a tacit acknowledgement of the risk of police reprisal.[120] But, again, the Mine ultimately offers little reassurance, stating that it will only withhold identities '[i]n exceptional circumstances and subject to compliance with applicable laws' also warning that this may affect the ability of the Grievance Process to determine an impact or provide an effective remedy.[121]

f. Complicated and legalistic process without adequate assistance

The Grievance Process is a complicated and highly legalistic mechanism. The SOP alone comprises a total of 67 articles (discounting those dealing with annual reports and consultation processes), many of which have numerous sub-provisions. It sets out rules regarding, amongst other things, the collection, exchange and presentation of evidence, timeframes by which specific steps must be taken, the conduct of meetings and review hearings, the preparation of minutes from meetings and reports, and the use of experts. Moreover, as the Reference Guides set out, establishing an impact and entitlement to remedy requires understanding and application of a range of international and domestic laws, codes and standards.

Acacia says that a lawyer is not required,[122] but the legalistic and adversarial nature of the process combined with significant evidential burdens casts serious doubt on that assertion. The SOP provides that grievants will be offered 'vouchers for fours hours of legal advice and assistance, redeemable upon submission of tax invoices from qualified legal representatives of their own choosing'[123] (no indication is provided as to the hourly rate the Mine will pay). While four hours may be adequate to lodge a complaint in some cases, it is clearly inadequate for anything beyond the most straightforward of cases. The Grievance Intake form runs to a full 10 pages and must be completed by, or on behalf of, the grievant and requires details regarding matters such as:

- the incident or situation that led to the grievance;
- which individuals or entities are allegedly responsible;
- which interests or rights have been impacted, including by reference to the 'legal or social responsibility standards, commitments or codes of conduct or human rights treaties or other international standards';
- documentary evidence;
- what evidence the Investigations Team is authorised to obtain;
- the identity of witnesses, whether that identity must be kept confidential and if so the reasons for the confidentiality; and,
- whether precautionary measures or serious and urgent humanitarian relief is required.

[120] SOP, op. cit., article 66(1). The Mine directs grievants to state on the Grievance Intake Form if they wish to keep their identity from the police.
[121] SOP, op. cit., article 66(2) and article 67(4).
[122] Ibid, article 21(2).
[123] Ibid.

It seems highly improbable that four hours will be sufficient for a lawyer to meet with the grievant, gather this information, the relevant documents, interview or at least identify potential witnesses, and ascertain which standards, commitments, codes of conduct and human rights treaties are applicable, all of which is necessary simply to complete the intake form and initiate the grievance. That is particularly true for the serious human rights violations, including death, life-changing injuries and sexual violence, which the Grievance Process is supposedly designed to address. And it certainly will not cover the time required to:

- take and submit relevant witness statements;
- obtain substantiating documentary evidence from, for example, medical professionals, and details showing loss of earnings, quantifications of damage to property, lost opportunities in employment or education, and loss of financial support;
- review, let alone respond to, the Investigations Team reports, which include findings of fact, consideration of applicable laws, standards and codes, analysis of their application to the facts, the conclusions drawn and all the evidence on which the Mine relies;
- become familiar with the relevant laws, standards and codes, such as the International Code of Conduct for Private Security Service, the UK Criminal Injuries Compensation Scheme, and Tanzania's Workers Compensation Act, applicable or arguably applicable in any given case;
- prepare for and attend the 'dialogue & engagement' meetings, and, as necessary, the Grievance Committee hearings, to determine first the issue of impact and subsequently the issue of remedy;
- review and correct minutes and the Grievance Resolution Reports that are prepared following the 'dialogue & engagement' meetings.

Furthermore, there is no clarity on whether the four hours includes travel time for lawyers, but the SOP's silence on the matter suggests that it does not. In many cases, grievants can only find lawyers in Arusha or Dar-es-Salaam, both a considerable distance and more than four hours' travel time from the mine (simply finding lawyers is itself a significant hurdle for many).

While Acacia claims that a lawyer is not required, it has full recourse to its own General Counsel (who, as noted, the Investigations Policy states is to receive copies of witness statements and direct investigations concerning incidents involving serious injuries) and any other legal expertise it chooses to engage. The Mine's representatives throughout the process benefit from not just the experience gained from dealing with prior grievances, but also specific training and expertise provided for under the SOP.[124] Meaningful access to such expertise is, however, denied to grievants, all but guaranteeing that they must navigate the process almost entirely on their own (given that many interviewed by RAID, as described below, said that they were not informed of the right to the four hours of legal advice).

g. Lack of transparency

Acacia's lack of transparency about the functioning of its grievance process has been a recurring problem, repeatedly highlighted by RAID and other international and Tanzanian civil society groups.[125]

[124] Both the Community Impacts and Remedies Investigations Team and the Community Engagement Team are to receive training under SOP article 6(2) and article 7(2), respectively.
[125] RAID and the Legal and Human Rights Centre, *Acacia Mining's Revised Operational Grievance Mechanism*, op. cit., pp.11 ff.

The publication of the SOP, Handbook and Reference Guides is thus a step in the right direction. However, their detailed provisions are structured to impede, not enhance, transparency and to ensure that Acacia maintains full control over what is disclosed, thereby permitting Acacia to shape public perception of its Grievance Process. Lack of transparency prevents meaningful oversight or accountability and prejudices individual grievants, whose knowledge of the process is limited.

The Grievance Process limits transparency in two respects: (i) for individual grievants within the process and (ii) in contexts outside of the process itself. Regarding the former, the failure to ensure that the Mine discloses relevant evidence has already been examined. But the Mine's lack of transparency is detrimental to individual grievants within the process in other ways too. Grievants' access to the minutes of meetings they have attended, including those under the 'engagement & dialogue' process and those before the Grievance Committee, may be denied if the company believes 'their contents could entail some risk to any person or entity.'[126] How this risk is determined is not specified, but implicitly it is at the discretion of the Mine.

Further, Acacia has not published documents highly germane to many claims in the Grievance Process, including the latest version of the MoU with the police. Acacia acknowledges that the MoU is relevant, including an excerpt from it in the Security Reference Guide Annex. However, that excerpt simply refers to the obligations of the Mine and police to abide by relevant laws and standards. It provides no information regarding the relationship between the Mine and police, the support provided to the police by the Mine, the various ways in which security operations are coordinated between Mine personnel and police, or the mechanisms by which the Mine may ensure accountability from the police in performing contracted for services, access information from the police, or protect victims of violence who bring grievances that relate to the police from retribution. Such information is important, in some cases essential, to the questions of whether a grievance is admissible and entitlement to redress.

Beyond the process itself, the SOP ensures that information about grievances and their treatment is kept out of the public domain, providing that the 'proceedings of Grievance Process meetings, including minutes of meetings and hearings and Grievance Resolution Reports and Grievance Committee Reports, shall be maintained by the parties as strictly confidential and may not be used in any other process or proceeding by or against any party.'[127] A specific grievance, depending on how far it progresses, might generate Investigation and Remedy Reports on the Grievance, expert reports, Grievance Resolution Reports and Grievance Committee Reports on impact and remedy, respectively. All these reports will remain confidential, preventing any independent assessment or scrutiny. Evidence too is 'strictly confidential and may not be used in any other process or proceeding by a receiving party, except where such process or proceeding is directly related to the subject matter of the Grievance.'[128] The Grievance Process thus enables Acacia to exercise control not merely over claims against it and its personnel for human rights violations, but over information concerning those violations.

Significantly, while exemptions to the confidentiality terms are not extended to grievants or any advisers they may have, including civil society organisations, the SOP provides that confidentiality 'shall...not prevent the Mine from sharing anonymised or summarised reports with the [Community

[126] Ibid, article 38(2).
[127] Ibid, article 64(2).
[128] Ibid.

Consultation Body] or Advisory Board, including such reports in its public reporting, and analysing and reporting on statistics regarding the Grievance Process.'[129]

The process generates a plethora of other reports, many of which go beyond recording the details of a specific case. For example, the Grievance Team Leader is responsible for quarterly reports for the Mine, Community Consultation Body and Advisory Board on the team's activities, together with annual reports on 'outcomes and statistics (including the number, type, status, time taken to resolve and outcomes of Grievances).'[130] The Advisory Board will also hold quarterly conference calls to review those reports and undertake an annual visit to the mine, making recommendations accordingly.[131] There is no provision to publish any of this information and hence no opportunity for independent scrutiny, increasing the likelihood of an ongoing lack of confidence in Acacia's approach to handling grievances.

Acacia now publishes in its annual reports information concerning security-related incidents and the performance of the Grievance Process. However, that information is minimal, highly generalised and appears largely self-serving, for example by separating human rights grievances from those concerning the environment or health and safety. Acacia is in a position to manipulate perspectives in this way because it controls the information that is disclosed regarding the Grievance Process, both in terms of individual claims and overall performance. As noted, the questions RAID has put to Acacia about the information it publishes or withholds have gone unanswered.

[129] Ibid, article 64(4).
[130] Ibid, article 5(3)(k).
[131] Ibid, article 9(4) and (5).

III. Acacia's grievance process in practice

The preceding section showed how the Grievance Process is structured not to ensure justice for those whose rights have been violated, but to enable control by the Mine over their claims for redress. Acacia has asserted that the Grievance Process is enabling a speedy resolution of claims, including a significant backlog of claims concerning human rights violations from previous years.[132] Yet, in reality, the disposition of claims, with such an overwhelming majority being rejected, suggests that implementation similarly prioritises the Mine's interests over justice: by Acacia's own count, of the 163 grievances between 2016 and 2018 requiring determination of whether a 'security-related' impact occurred, the Mine accepted such an impact in at most only 30.[133] That is, the Mine has accepted a 'security-related' impact on human rights in only 18% of grievances concluded. It should be noted that Acacia's reporting grievances as being 'accepted' in terms of an impact says nothing about whether grievants have received fair or adequate compensation (as documented below, many interviewed by RAID said that they have not).

Research conducted by RAID into the manner in which the Grievance Process has operated in practice sheds light on its one-sided nature and how it has served to disempower local people, undermine their claims, and ensure company control at each step. In respect of the previous iterations of the grievance mechanism, RAID conducted more than 50 interviews between 2014 and 2016 with those who suffered violence at the Mine. From 2017 onwards, corresponding with Acacia's piloting of the revised mechanism, RAID's research included in-person interviews with a former member of the Grievance Committee and 15 individuals whose claims were accepted into Acacia's revised grievance process; one individual whose since-deceased relative had a claim determined by the revised grievance process; and one individual whose claim had been processed through the earlier grievance mechanism and had been encouraged but declined to submit his claim as part of the revised grievance mechanism. The research also included review of some of the documents that formed part of the grievances, and an on-the-record meeting in June 2018 with Acacia officials directly involved in the human rights and investigations teams.

The interviews of non-company participants in the Grievance Process were conducted by RAID on the assurance that their identities would be kept confidential. Grievants may face reprisals for information disclosed, a particular risk given that many claims involve state police. Some have not yet had their claims determined or their remedy paid out. For these reasons, care is taken in this report not to reveal the identities of those interviewed.

RAID understands from those interviewed that, in a number of cases, grievants:

- were not told of their right to four hours of free legal advice and, in one instance, were told that they did not need a lawyer after requesting one;
- were made to wait months after submitting a grievance before hearing from the Mine, often bearing the onus of following up with the Mine for information, even in cases where medical conditions were deteriorating and treatment was needed urgently;

[132] Acacia Mining, Annual Report 2017, op. cit., p. 61.

[133] These figures are derived from Acacia's reporting on the grievance process in its 2016, 2017 and 2018 Annual Reports. For security-related cases: a backlog of 117 cases and 37 new cases were reported in 2016; 13 new cases were reported in 2017; and 18 new cases were reported in 2018. By the end of 2018, 22 such cases remained 'under consideration', giving a total of 163 concluded. Human rights impacts were accepted in: 8 cases in 2016; 20 cases in 2017 (6 of these at dialogue (Acacia notes 'a grievant agreed to withdraw his grievance in one case'), 14 more by the Grievance Committee); and 2 cases in 2018 (1 at dialogue and 1 by the Grievance Committee).

- were given no information regarding the way in which the Grievance Process works, what documents they should provide or what evidence they should submit, including in relation to witness statements or expert opinions;
- had statements taken by the Mine that they could not read and of which they were not given a copy;
- were made to sign documents that they could not read and/or do not understand because they were illiterate or the documents were in a language they did not speak;
- were provided with no assistance so as to be able to obtain relevant medical evidence to support their claims;
- in the re-consideration of cases decided under the previous mechanism, were not given the opportunity to attend a 'dialogue & engagement' meeting and instead were sent directly to a Grievance Committee hearing;
- in more than one case, there was no 'dialogue and engagement' meeting to agree an 'impact', but instead the Mine pushed for immediate denial of, or minimal, remedy, thereby denying claimants the opportunity to address the gravity, nature or responsibility for the 'impact,' or appeal conclusions on impact to the Grievance Committee; as one grievant told RAID, '*They didn't talk at all about why it was the mine's fault. They only talked about what I wanted as compensation*.'
- were only informed of the Grievance Committee hearing the day before it was set to occur;
- were either not provided with any documents, including the Investigations or Remedies reports, from the Mine in advance of the Grievance Committee hearing, or were given them as late as the evening before the hearing;
- were given documents, including reports, in a form and/or language that they did not understand;
- were given no information as how any compensation offered was calculated; and,
- were pressured to accept the compensation offered.

RAID's research shows that the Grievance Process, flawed as it is on paper, is implemented in such a way as to further deprive grievants of meaningful control over their claims and thereby their rights and possibility for redress. In doing so, it entrenches the power imbalance between the Mine and local people, including those who suffer human rights violations for which it is responsible or with which it is linked.

This section describes how the power imbalance is embedded and experienced by grievants at each step of the process. Before doing so, it sets out five general concerns arising from the process in practice.

a. General concerns from the process in practice

i. resolution of claims outside the Grievance Process

This report focuses on the Grievance Process in design and practice. Research by RAID has found that some human rights claims have been dealt with by the Mine outside the provisions of the published Grievance Process. It has done so by contacting the victim and/or victim's family directly to make offers without filing a grievance, or before it proceeds to resolution.

The Mine appears to engage in this practice in relation to particularly blatant and serious human rights violations.

In the cases of which RAID is aware, the Mine has resolved the cases without affording claimants the opportunity for legal advice, and in a manner that offered no possibility for meaningful oversight or accountability. There were no assurances that those harmed received fair compensation, had the opportunity to consult third parties, or were provided with relevant information or evidence in the Mine's possession prior to settlement, while the terms on which they were receiving compensation are not transparent. Moreover, it is not clear how, if at all, these claims are being reported by Acacia, suggesting that the statistics and other information that it provides publicly in relation to the Grievance Process omit claims concerning some of the worst human rights violations and cases in which the Mine's responsibility for those violations is clearest.

ii. exclusion of advisors

The Handbook states that grievants may be represented on their own or be 'assisted by anyone' they choose, including by civil society organisations.[134] Under the heading 'Representatives, Advisors and Assistance to Grievants,' the SOP confirms that grievants 'may be represented by whomever he or she chooses', but adds that in the case of representatives, the grievant 'shall designate any representative in writing in the Grievance itself or in a separate document.'[135] Moreover, the SOP provides that advisors' attendance at 'dialogue & engagement' meetings do not require the Mine's consent, reserving that requirement for those who are not 'representatives, advisors, witnesses or experts.'[136]

However, despite these assurances, RAID was told by one victim that he and others were facing pressure to revoke their authorisations of RAID as an advisor. He explained that he was approached by 'a businessman' who has previously acted as a supplier to the mine. The victim said:

> *'[The Businessman] asked that the people withdraw the authorizations [and] to go to his shop near the mine area in [redacted] and help them to write a letter to say they have withdrawn themselves and say they no longer want to [be] represented by [RAID and MiningWatch Canada]. They then go to meet [a Mine employee] and connect them with new lawyers who are helping on the new grievance process. [The businessman] writes the letters for them as they don't know how to write.*
>
> *[The businessman] also approached me but I refused. He told me that if I continue to wait for RAID and MiningWatch Canada to get compensation that it's not going to happen. He said the best way was to agree to sign so that I can get paid…I told him that I wanted to think about it, but he has convinced a number of the victims to go to the mine. Some have been successful and others have been told to wait. Some have been paid very little.*
>
> *[The businessman] told me that if I went to the mine that he would guarantee that I would be paid.'*

[134] Handbook, op. cit., p. 9.
[135] SOP, op. cit., article 21(1).
[136] Ibid, article 37(2).

In many instances, RAID has relevant knowledge and/or evidence that may assist the parties in reaching a fair resolution of the case. The Mine's hinderance of RAID's assistance deprives grievants of advisors with whom they are familiar and whom they trust, and is contrary to the terms of the SOP.

iii. selective and prejudicial application of the SOP and Handbook

In the grievances examined by RAID, the Mine repeatedly disregarded the provisions of its own SOP and Handbook. As is detailed in relation to each of the specific steps in the process, contrary to the provisions in the SOP and Handbook, the Mine did not:

- keep grievants informed of the progress of their claims;
- provide material evidence on which it relied to grievants in advance of the 'dialogue & engagement' meetings or Grievance Committee hearings;
- permit grievants to be assisted by advisors of their choosing;
- provide reports and material evidence in Swahili, so that grievants who did not understand English could understand them;
- provide reports or evidence in a 'reasonable time' to permit grievants to review them and ask questions or request information;
- provide grievants with the opportunity to review draft Grievance Resolution Reports so that their comments could be included in the final version sent to the Grievance Committee.

In some of the same grievances in which the Mine disregarded the terms of its own procedure, it insisted that grievants abide by those terms, including on occasion the very terms that the Mine disregarded. By maintaining control of the Grievance Process at every stage, the Mine is able to use its rules of procedure as a selective burden on grievants that it does not itself have to bear.

iv. centrality of Investigations Team

In practice, the Investigations Team's role extends beyond investigating the grievance on behalf of the Mine and providing its reports to prosecuting the Mine's case both in the 'dialogue & engagement' and review stages. Specifically, the Investigations Team presents its reports at the 'dialogue & engagement' meeting, where grievants are permitted to ask questions regarding its findings and conclusions. Similarly, the Investigations Team acts as the Mine's representative before the Grievance Committee, responsible for making submissions, calling and questioning witnesses and presenting evidence.

These roles performed by the Investigations Team further entrench its partisan role as the Mine's representative. It is the Mine's investigator and its advocate. As such, the likelihood that the 'dialogue & engagement' meeting offers grievants a realistic opportunity to sway the Mine from the position expressed in the Investigations Team's reports is undercut. At best, grievants, if properly advised, may be able to question the conclusions reached in the Investigations Report, which is a far cry from 'dialogue' and shifts the focus from agreement through review of all available evidence to altering a decision already made by the company's representative.

Moreover, in appeals before the Grievance Committee, the Investigations Team, which has the most resources and in virtually every case the most access to relevant evidence, is not simply

representing the Mine but prosecuting its case. The dual function further compromises any possibility of neutrality that one would expect of a body tasked with investigating serious human rights violations.

v. disempowerment and disrespect

Commentary to UNGP Principle 31 recognises that '[p]oorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.' In RAID's observation of the Grievance Process, this effect is stark. Those who suffer serious human rights violations are required to seek redress from the company they identify as responsible for those violations. Upon submission of their grievance, the harm they have suffered – as serious as the killing of a family member or a life-changing injury – is downplayed as an 'adverse impact.' They enter a process that is wholly controlled by that same company, which is unfamiliar to them and puts them at an immediate disadvantage.

Disempowerment of grievants is assured by a complex and legalistic process. Grievants consistently expressed to RAID that they did not understand the process, which was a source of considerable frustration. As the quoted passages below attest to, grievants view the process, the Mine's representatives and the Grievance Committee as biased against them.

At each step, grievants' lack of power is driven home. They often must accept help from the Mine to file their grievance, because they do not have or understand the specifics required, cannot read or write, and/or do not understand English. Many are forced to make repeated requests of the Mine simply to know whether their grievances have been accepted and will progress, and are often told that they must wait and that the Mine will contact them when ready. The few who learn that they may access limited legal assistance must find it on their own, in some cases having to travel significant distances to do so. In many cases, that assistance will be severely constrained, leaving grievants on their own when the time covered expires. Those who secure assistance of civil society may face pressure to reject that assistance.

Grievants are also largely reliant on the Mine for evidence, as most is under direct or indirect company control, and in some cases because their opportunity to gather their own evidence in a form or manner acceptable to the Mine depends on the Mine's assistance. Grievants have told RAID that the company has asked for, then not returned, medical records and other forms, and has even instructed doctors not to share the results of examinations, arranged by the company, with the grievant. They have little if any control over when meetings and hearings are scheduled, and in many cases almost no advance notice. These proceedings are conducted on the mine site, behind a high wall which can be entered only through a high-security gate. Grievants must appear at those meetings and hearings without the opportunity to adequately prepare, as the Mine controls when it discloses evidence or notifies grievants of its position, which is often not until just before or at the relevant meeting or hearing. Throughout, grievants face trained and experienced employees who act exclusively on the Mine's behalf in an adversarial process that privileges knowledge and understanding of domestic and international law, standards and codes of conduct that grievants will have no reason to know or even access to. And they must do so in a context that focuses attention on the 'criminality' or threat that they posed when suffering the 'security-related' harm.

There have even been instances when bystanders outside the mine have been injured in cross-fire from security operations, but then apprehended as 'trespassers', whilst others have been killed.

RAID has been told by grievants who have gone through the grievance process that they have felt patronised and belittled by the Mine's representatives. One grievant, who tried to contest the Mine's investigation report about the kind of weapons used by the police during an incident, described being shouted-down during the 'dialogue and engagement' meeting. Another grievant told RAID:

> '*It is like they are talking to a baby, like a dad trying to make a baby feel hopeful, giving small things so that the baby thinks he's going to get something but he isn't. I don't feel like it is going to make a difference*.'

Moreover, grievants bear significant costs simply to participate in the Grievance Process that they do not recoup. The SOP provides that the Mine will cover 'the reasonable attendant expenses of the Grievance Process,'[137] but in no case of which RAID is aware has it applied this to ensure that grievants' expenses are covered (even if successful in establishing entitlement to remedy). Those with jobs or other means of earning income must take days away from their work, often on extremely short notice, and in some cases incur significant travel expenses, to attend the Mine for meetings and hearings. For individuals living close to the poverty line, as many grievants are, these expenses are hard to bear and in some cases covered only through borrowing.

For the few whose claims are 'substantiated,' they are often left in the dark as to the reasoning behind their compensation and may find it severely inadequate, effectively devaluing their loss. For the many whose claims are rejected, they must bear the costs and attendant disempowerment without any redress at all.

b. Grievance Process Steps

This section breaks the grievance process into eight steps, showing how, in practice, the Grievance Process disadvantages grievants at each step.

i. lodging of grievance

Distrust of the Mine and its grievance process presents an initial barrier to the lodging of grievances. For example, one individual interviewed by RAID, whose claim had been filed in the earlier grievance mechanism, said:

> *'The relationship between the local people and the mine is getting worse. People are still grieving. People have lost jobs and there is no access to gold so the economic situation is worse. Some people have gone to seek employment with small miners and others have gone into small business. At Nyamongo they can't do agriculture which is a shame as that is what they used to do.*

[137] Ibid, article 13(1).

I fear going back to the new grievance mechanism as I am not sure I will get a fair payment… There are no lawyers who help people. Victims go themselves with their letters. The committee decides if they will give compensation.

I have not made any follow-up on what the mine offers. I don't think they are fair so I have not followed-up. They make people go back and forth with documents and this is exhausting. We want [RAID] to be there when we are signing new grievances. That is all we want. The people who are at the mine are not trustworthy. Most victims do not know how to read or write English or even Swahili.'

The Handbook includes a Grievance Intake Form, but this asks for extensive, detailed information. The Handbook states that 'Grievance Officers generally will maintain contact with the Grievant'.[138]

The Handbook further states that the Grievance Officer will send the grievant a written Grievance Notification within seven days of receiving and recording the grievance, and that the Grievance Team Leader will write within 14 days to inform the grievant that the grievance has been registered and providing a 'preliminary indication as to the particular type of Grievance', request additional information or documentation or inform the grievant if the grievance 'cannot be processed.'[139] Once registered, the Grievance Team 'will ask the Grievant and the Investigations Team to provide any further observations or evidence…within a reasonable period of time.'[140]

These provisions supposedly ensure that grievants are informed of the progress of their grievances and understand at least the initial steps that are to be taken. Yet beyond the provision to grievants of a Complaint Acknowledgement Form, evidence shows that they are rarely if ever applied.

Some of those interviewed by RAID were not provided with relevant documents, such as the Grievance Intake Form. In another instance, the grievant said that he was not told that he could file a grievance, but simply that he should leave the grievance office and would be called by the Mine when it was ready.

The Handbook also states that grievants 'may request a voucher from the Grievance Office for four hours of legal advice…at the Mine's expense.'[141] But grievants interviewed by RAID said that they were not informed of the availability of the four hours of legal advice at this initial stage. One person told RAID:

'I asked if I should have a lawyer and they said I didn't need to bring my own since the Mine already had lawyers…I think it would have been better if I had gone with a lawyer of my own.'

That evidence is supported by RAID's June 2018 meeting with the Investigations Team leaders, at which RAID was told that a legal voucher had been used in only one case, in late 2017.

[138] Handbook, op. cit., p. 8.
[139] Ibid.
[140] Ibid, p. 10.

The lack of legal advice in the lodging of a grievance is particularly concerning because the completion of the Grievance Intake Form represents a crucial step in the process with potentially significant implications for a grievant's claim. Several interviewed by RAID were not even aware of the form, stating only that they had been asked a series of questions by the Mine representative. Even when a lawyer can be found, the limitations can be considerable. RAID met with grievants relating to an incident in 2018 who had to meet their own travel costs to engage a lawyer, who then did not liaise with them about their case nor give them any forms to bring or fill out prior to the 'dialogue and engagement' meeting. Yet the extensive nature of the information grievants are supposed to provide as part of the intake form will be recalled: it includes not just describing the incident, but identifying those alleged to be responsible, the rights harmed, the potentially applicable international and domestic laws, standards and codes, the evidence relied on and the evidence that the Investigations Team is authorised to obtain, and identities that must be kept confidential. Missteps on any of these points, a likelihood given that few if any grievants possess relevant knowledge or expertise in relation to many of the questions, may be seriously prejudicial to the grievants' chances. Even on the basic question as to how the harm occurred, RAID has been told by grievants that they have omitted reference to police involvement out of fear of reprisals.

Those who suffered violence reported to RAID not daring to seek medical help or obtain a form (known as a PF3) from the police for medical treatment after an incident for fear of police reprisals including arrest for 'trespassing' or 'theft'. One man died of tetanus after being shot in the leg by police at the Mine, but his friends and family never sought a PF3 form because they were afraid of further police involvement. The widespread fear of the arbitrary nature and abuse of police power is a key factor in fostering impunity. RAID has also documented instances where the police tried to conceal their involvement in the violence: intimidating hospital staff to falsify the nature of injuries or the circumstances in which a death occurred; trying to prevent post-mortems being held at all or held outside of the mine and even intimidating families to hand over the body of a relative for a post-mortem carried out under the control of the police, without providing the family with the results.

Grievants interviewed by RAID reported being asked to give statements to the Mine upon filing their grievances, which were retained by the Mine without copies being given to the grievants. Moreover, some could not read and although they said that the statement was read back to them, had no way of confirming whether what had been written down was accurate. One grievant told RAID that what had been written down was not what he had told the Mine's representative. Another grievant told RAID that he was given a document in English, which he did not understand and thus could not confirm, but was nevertheless told to sign it.

Three individuals who suffered serious human rights violations interviewed by RAID were forced to wait many months to hear from the Mine following submission of their grievances despite urgently needing medical treatment that they could not afford and being unable to work due to their injuries. They were advised that they would hear from the Mine within 30 days of submitting their grievance, an assurance that was also provided on the Complaint Acknowledgement Form given to them, which states 'Barrick [sic] commits to reporting back to you about the status of the grievance investigation within thirty (30) days of the date the…grievance was registered' (reference to 'Barrick' is presumed to be due to the failure to update old forms, and intended as either Acacia or NMGML).

Yet despite repeated efforts to learn of the progress, if any, of their grievances, these individuals were provided with no information, including even as to whether their claims had been accepted or categorised. The uncertainty enhanced their anxiety and the stress to which they were already subject.

ii. gathering of and access to evidence

Once a grievance has been submitted and registered, the next step in the process involves the gathering and exchange of evidence. Many of the claims brought by those interviewed by RAID concerned serious human rights violations, involve life-changing injuries and complex medical conditions and evidence, and determine entitlement to remedy based on issues of causation. On the latter point, the Remedies Reference Guide states that a 'Remedy shall be provided only where there is a causal link between the adverse Impact; the accepted effect, damage or harm; and the measures to be included in a Remedy,'[142] and that such links must be established by the evidence. Grievants are generally ill-equipped to provide such evidence.

Grievants told RAID that they were not aware of what evidence they were supposed to submit to the Mine in support of their case, and were not informed of the possibility of obtaining expert opinion. Many of those interviewed by RAID cannot read or write and thus, even if they were aware of the need to submit evidence, were not in a position to know what documentary evidence is available to them, its relevance or the extent to which it supported their claim, or to muster such evidence through, for example, taking witness statements.

The Investigations Team did little or nothing to mitigate this disadvantage; on the contrary, the team entrenched it. It did not promptly collect evidence, in some cases waiting years following submission of the grievance before taking statements from relevant witnesses. In one case, filed in 2015 under the previous grievance process, but still ongoing, as well as in a more recent case, the Mine did not disclose the names of witnesses on whose evidence it relied to disprove grievants' claims, thereby depriving the individual of any way to confirm these statements, let alone test them. The Investigations Team did not provide grievants with access to highly relevant evidence supportive of the grievants' claim because, for obvious reasons, it was not evidence upon which the Mine had chosen to rely. Overall, the Investigations Team exercises an effective monopoly over much of the relevant evidence, such as CCTV footage, witnesses' testimony, and information from the police, and makes it available only on a selective basis in the Mine's interests. If individuals are given access to CCTV footage, this is only done under the company's direction at the mine site, which may deter people from viewing sometimes traumatic footage in an alien environment. They are refused copies of the footage. One individual, who alleged he was shot by police near the mine gate in 2015, had his complaint rejected because the Mine denied that there was any CCTV footage to support his account. A witness to the shooting told RAID:

> *'I'll never forget that night. It has affected me psychologically. I only thought animals were shot like that. It has taken a toll on me because my friend was shot.'*

Because the Grievance Process is designed for 'security-related' human rights harms, Mine employees and the police often have relevant evidence regarding claims. Both have reason to favour the Mine in their evidence. Mine employees risk losing their jobs should their evidence be

[142] Remedies Reference Guide, op. cit., p. 6.

prejudicial to the company, while the police protect their officers who are providing security services to the Mine in return for payments and other benefits. According to one local resident interviewed by RAID:

> *'The police are all over the area. Police are here because of the mine so the mine can't say it's nothing to do with them.'*

Moreover, the Mine routinely ignores the SOP's guarantee that documents will be in Swahili, which is stated to be the 'official language of the Grievance Process.'[143] RAID knows of instances when the Mine has provided documents to grievants exclusively in English, which they were unable to understand without assistance. One grievant told RAID:

> *'[t]he people who are at the mine are not trustworthy. Most victims do not know how to read or write English or even Swahili.'*

iii. 'dialogue & engagement' meeting

Following the exchange of evidence, the Grievance Team is mandated to convene a 'dialogue & engagement' meeting. The purpose of this stage is 'to seek to reach a mutual understanding' between the Mine and grievant regarding whether an adverse impact is established and, if so, the remedy to be provided. According to Acacia's 2018 annual report, only one of 38 'security-related' human rights grievances resolved the issue of impact at the 'dialogue and engagement' stage, a strong indication that the stage is not well-suited to engendering agreement. That conclusion is supported by RAID's research into how the meetings actually function.

Prior claims

RAID's interviews with grievants whose claims had initially been heard through the former grievance mechanism indicate that 'dialogue & engagement' meetings are not held in relation to their claims. Instead, their claims are progressed directly to a hearing before the Grievance Committee. This was true both for claims for which some compensation had been paid and those which had been rejected.

The failure to hold a 'dialogue & engagement' meeting disadvantages grievants. Most of the evidence is often held by the Mine and grievants only get to learn of the evidence on which the Mine is relying prior to the 'dialogue & engagement' meeting. Even though there is little to suggest that the 'dialogue & engagement' meeting offers a meaningful opportunity for grievants to persuade the Mine of their entitlement to redress, it is the only opportunity they have to learn the Mine's position and case against them. Depriving them of that opportunity prejudices their chances before the Grievance Committee, as they enter the hearings with virtually no advance notice of the Mine's evidence or position. It is also in breach of the procedure established by the SOP and Handbook.

[143] SOP, op. cit., article 12(1).

'New' claims

RAID understands that at least some grievances not previously addressed through the Mine's earlier grievance mechanism are put through a 'dialogue & engagement' stage.

The SOP tasks the Grievance Team with facilitating 'the exchange of each party's observations, evidence and reports' in advance of the meeting, as well as the exchange of questions and requests for information.[144] It further provides that the Grievance Team shall 'permit the parties seven days or such other reasonable time period to respond' to these questions and/or requests.[145] In doing so, the SOP purports to provide grievants with an opportunity to review the Investigations Team reports, the evidence on which the Mine relies, seek clarifications and further information, and, as necessary, obtain responsive evidence.

In practice, grievants have not received the Investigations Team reports until the week before the meeting is set to take place, in some instances only the day before. One grievant received the investigation report even though they were never asked to set out what had happened to them or for any evidence they had prior to the writing of this report. It will be recalled that these reports not only set out the Mine's 'findings of fact', but are supposed to include all of the evidence on which the Mine relies, potentially including several witness statements, information from a site visit, medical records, records from the Mine Investigations database, police and other law enforcement reports, and CCTV records. In respect of some of this potential evidence, albeit in a case outside the revised grievance process, the company has stated that it cannot provide copies of records and documents it has seen, but which it considers can only be released to an interested party by the state authorities. In many cases, grievants only saw the Mine's evidence at the meeting; they were provided with none before then. Moreover, the evidence with which they were provided was minimal and did not include much of the most important evidence.

One grievant told RAID following a 'dialogue and engagement' meeting:

> '*They haven't shown me any evidence. They haven't told me about any other evidence except what's in the report. I haven't seen any of that evidence*.'

Further, the Investigations Team reports are not always provided in Swahili. The same is true of much of the evidence, which, if provided at all, is not always provided to the grievants in Swahili, but in English only. Grievants interviewed confirmed that they did not understand at least some of the evidence advanced by the Mine.

The conduct of the 'dialogue & engagement' meeting further ensures that this first stage does not take place on an equal footing. Because the Mine is not obliged to make all relevant evidence available, and because in practice it often does not disclose even evidence on which it does rely, the format is not geared to open or fully informed discussion. Rather, the 'dialogue & engagement' meetings centre on the Investigations Team reports and the presentation of the Mine's facts and conclusions. One grievant told RAID:

[144] SOP, op. cit., articles 33(1) and (3)
[145] Ibid, s. 33(2).

'They didn't ask me any questions… If you ask a question, they say no, that doesn't match the report, ask a question that matches the report.'

Another said that when she tried to explain why a finding in the report was not accurate, the mine representative replied *'"no, no, no" very loudly and became angry. So I didn't go on because I was scared.'*

The 'dialogue & engagement' meeting thus does not provide the opportunity for actual dialogue, but rather the presentation of a set of conclusions by the Mine to grievants, who can then ask questions of the Mine's representative regarding those conclusions. In fact, it is not clear whether or in what conditions the Mine's representatives at the 'dialogue & engagement' meeting are empowered to change the conclusions expressed in the Investigations Team reports. In any case, its one-sided, pre-judged, opaque nature helps to explain why it has failed to achieve agreement in virtually all cases.

iv. referral to Grievance Committee

If no agreement is reached between the Mine and the grievant at the 'dialogue & engagement' meeting, the onus is on the grievant to request that their grievance be referred to the Grievance Committee. They are given three months to do so, otherwise the grievance is 'archived.'[146] There is no assurance that grievants are aware of the three-month deadline, and the Handbook confusingly says that the 'Grievance may be archived if, despite monthly reminders, you do not respond within three months,' suggesting the three months may begin later than the final meeting.[147] It is not clear from the SOP whether there is any process whereby an 'archived' grievance may be revived, but implicitly it appears that the Mine has reserved for itself the right to refuse requests that are not made within three months.

Following a request for a Grievance Committee review, the SOP provides that the Grievance Team shall enquire whether the Investigations Team and grievant wish to attend a hearing or whether the Grievance Committee shall determine the matter on the basis of written observations and evidence from the parties at the 'dialogue & engagement' meetings and Grievance Resolution Report.[148]

The Grievance Resolution Report is one of two documents that the Grievance Team is tasked with preparing following the conclusion of the 'dialogue & engagement' meeting. At the 'impacts' stage, it is supposed to indicate whether mutual understanding was reached between the Mine and grievant, and set out the evidence submitted by both sides and details regarding the agreement or disagreement concerning the issues of impact, applicable laws, standards or codes of conduct, the Mine's involvement and whether a remedy should be considered.[149] Grievance Resolution Reports thus provide the basis for the Grievance Committee hearing, setting out matters that have been agreed between the parties, those still in issue, and the evidence relied on.

In line with the importance of the Grievance Resolution Report, the SOP provides that the Grievance Resolution Report 'shall be transmitted to the parties as promptly as feasible following

[146] Ibid, article 40(1).
[147] Handbook, op. cit., p. 12.
[148] SOP, op. cit., article 41(1).
[149] Ibid, s. 39(2).

the final meeting,' and that parties who do not agree with the draft 'may provide comments and any comments shall be specifically noted in the' report.[150] But in a number of cases, grievants appear to have been afforded no meaningful opportunity to make corrections or comments prior to their transmission to the Grievance Committee, leaving a very one-sided view of what occurred.

Similar issues were apparent in relation to minutes of the 'dialogue & engagement' meeting. According to the SOP, these are to record agreements reached and commitments assumed by the parties, which leaves open to question whether other important details, such as the questioning of evidence, are captured.[151] These are presumptively 'internal working documents' and must be requested by the grievants. The minutes should be helpful documents to grievants, as they record the position adopted by the Mine in relation to their case, including any admissions or concessions made, and thus should form the basis for argument before the Grievance Committee. Yet most claimants interviewed by RAID do not refer to having received minutes, presumably because they were unaware of the need to request them.

The 'dialogue & engagement' meetings are ostensibly to generate mutual understanding on at least some of the matters so that issues may be narrowed before the Grievance Committee. Yet when concessions and admissions made by the Mine, which ought to be part of any mutual agreement on specific issues, are not disclosed, grievants cannot be certain of the Mine's position going into the review stage and this information will be kept from the Grievance Committee. Receiving the Grievance Resolution Reports and minutes late exacerbate that problem for grievants.

v. submissions and new evidence

The ability of grievants to submit new evidence between the 'dialogue & engagement' and review stage is particularly important in a process where they only learn of the Mine's case against them at the 'dialogue & engagement' meeting. The SOP does not prohibit such new evidence, but does not provide for its exchange in advance of the hearing. Rather, it states that for new evidence submitted during the hearing, 'the Grievance Committee shall grant the parties a prudential time period for submitting their observations' regarding 'new documentary or oral evidence submitted during the Hearing.'[152] In practice, the Mine, represented by the Grievance and Investigations Teams, appears to largely control the submission of evidence, including new evidence, via its reporting and prior access to the Grievance Committee.

vi. access to Grievance Committee

The SOP directs that the Grievance Committee will convene a pre-hearing meeting at which it will review the parties' observations and evidence and the Grievance Resolution Report, and prepare questions.[153] This hearing forms a crucial part of the review stage: it is the Grievance Committee's opportunity to examine the evidence on which the parties rely and learn the points at issue and those agreed. In some cases, the evidence will be complex, involving close study of events captured on CCTV footage, Mine documents and medical reports. How that evidence is presented and explained, and how the parties' 'observations' are advanced, will thus shape the Grievance Committee's understanding of the case and the position of each party. It represents the

[150] Ibid, article 39(2) and (3).
[151] Ibid, article 38.
[152] Ibid, article 42(4).
[153] Ibid, article 41(3).

Committee's first impression of the case, and may be their only opportunity to review much of the most relevant evidence.

Given its importance, one would anticipate that the SOP would ensure that grievants are given the right to attend these meetings, at a minimum to ensure that the evidence and observations are presented in a fair manner. However, the SOP is silent on this issue. Moreover, the Handbook, which is supposed to be the explanatory text for grievants, does not even refer to the pre-hearing meeting.

That these meetings are limited to Mine representatives and Grievance Committee members is confirmed by RAID's interviews: none of the grievants interviewed by RAID attended these pre-hearing meetings.

The Grievance Committee stage is structured on adversarial lines. The Investigations Team makes submissions and calls evidence on behalf of the Mine; the grievants are responsible for doing the same in support of their grievances. That only the Mine's representatives are present when the Grievance Committee first studies the case and examines the evidence is thus a serious breach of the most basic principles of procedural fairness.

vii. Grievance Committee hearings

For those interviewed by RAID whose grievances were 're-submitted' through the revised grievance mechanism, and who did not benefit from seeing the Mine's evidence or conclusions at the 'dialogue & engagement' stage, it was particularly important that they have every chance to prepare for the Grievance Committee hearing. However, these grievants received virtually no advance notice of the hearing, what it required of them, or the Mine's evidence, position or argument.

Those interviewed told RAID that they were given no information by the Mine about the Grievance Committee or the process followed. Unless they had external help, they did not know what evidence they should take with them. For example, some were not aware that they should or could bring witnesses, and thus many did not. One person who participated in a Grievance Committee hearing told RAID that in none of the hearings in which he was present did a grievant call a witness (or expert).

In at least one case, the grievant was only advised of the hearing the day before. And in more than one case, the grievants either did not receive the Investigations Team reports prior to the hearing or only received them the day before. And they consistently expressed confusion as to the process. According to one grievant, the Mine gave him the report:

> *'one day before the committee meeting. They said I would meet the committee the next day. They gave it to me at 7 pm and I had to meet the committee the next day. I did not really understand the report.'*

Other grievants told RAID:

'I had been told nothing about the committee or the process. I was just told to go. I asked if I should go with a lawyer and they refused…There was no reason given as to why I shouldn't bring a lawyer. They gave me some documents one day before I met the committee. It was around 5 pm that they gave it to me. I could not read the report and I tried to find someone else to read it to me but the persons I found also did not understand them. I went to the committee the next day without knowing what the documents said.'

****

'The Mine did not explain to me about the committee, the process or what I should do. They just said I should come to meet the committee. There was a month between the time the mine called me and the time I met the committee. I asked if I should have a lawyer and they said I didn't need to bring my own since the Mine already had lawyers…I think it would have been better if I had gone with a lawyer of my own. There was no report from the mine before I went to the committee. I only knew about the report when I got to the committee meeting. The report was read to me during the committee hearing.'

The grievants similarly expressed frustration with the process before the Grievance Committee at the hearings, where they described a process in which they were there not to present their case, but to be asked questions by the Grievance Committee (suggesting that the Grievance Committee had already formed its opinion on much of the evidence from the pre-hearing meeting that the grievant did not get to attend). For example, two of those interviewed stated, respectively:

'They [the Grievance Committee members] asked me questions. I was asked what I wanted the mine to do for me? They asked me if I wanted the mine to make me as I was before and I said yes. They asked me what kind of job I had during the agreement?

I think the committee is very unfair. I wish I could have gone with a lawyer as I think I would have had a better offer. I think the committee are con-artists.'

****

'I can't remember everything but the committee meeting did not go well. There were a lot of misunderstandings. Some people became furious. When I tried to explain about the earlier agreement, [a Mine representative] said … and insulted [us]. She said a lot of other bad things, but those words stand out in my mind.

All the committee members asked me questions. They asked me why I wasn't satisfied with the first payment. I told them I was not paid as a whole, but only instalments, and that I had to work for the money. There were many other questions but I don't remember.
…
I am not happy. I think it was unfair. Others have decided for me and there was no person to advocate for me and I had no lawyer. All the work was done by the mine and I don't know what type of ulterior motives they had.'

One grievant, whose claim concerned a life-changing injury, said he had met with the lawyer for approximately half an hour before the Grievance Committee hearing. He did not know whether the

lawyer received any documents from the Mine. He further told RAID that the lawyer attended the Grievance Committee with him, where he asked to see the file regarding the injury and was told that it was lost. The grievant also said that when he was called to return before the Grievance Committee approximately a month after the hearing to learn its decision, his lawyer said he would not go with him and thus he had to attend alone. He said that he was told by the Committee Chairman that his grievance was rejected because he did not have any witnesses or other evidence. The grievant concluded by saying:

> *'At no time before then did I meet with the Mine when they read out a report, or anything like that.*
>
> *I think that the process wasn't fair at all. At first, they read me a statement that if I was hurt at the Mine area, I would be compensated; they said that I did not have a witness. There was no justice at all.*
>
> *The Mine didn't keep me informed about the process at all. I didn't understand the evidence I was supposed to provide.*
>
> *The Committee was biased. They gave me conditions, but they agreed that I was hurt at the Mine but not necessarily by the people.*
>
> *No one from the Mine offered to help me collect evidence. No one from the Mine explained what the steps in the process were, or what evidence I needed to provide.'*

The distrust expressed by the grievants of the Grievance Committee extends to the supposed 'community' member. For example, one of those interviewed said to RAID of that member*: 'I don't think he is a good person. When he was a village chairman he gave land to Acacia. That is why they have asked for him but he is rejected by the village for what he did.'*

viii. remedy stage

Under the SOP and Handbook, the remedy stage is supposed to be distinct from the initial stage that determines whether an adverse impact is recognised. It is supposed to follow the same two steps as the initial stage, with first a 'dialogue & engagement' meeting, for which the Investigations Team provides a Remedies Report, and second a review by the Grievance Committee should agreement not be reached at the meeting.

As in the 'impact' stage, it does not appear that the 'dialogue & engagement' meeting for remedies is in fact geared toward either dialogue or engagement in any meaningful sense. One grievant told RAID:

> '*They asked me what should we do for you. I said what do you think you should do for me, because you were the ones that did this to me? They said that it was still an ongoing discussion but when they had decided they would let me know.*

It felt like they were testing me, to see what my reaction would be. That is why I asked the question back, what did they think they should do.

They were not at all specific about when they would get back to me, they said that they had my number and would call me when they had decided.'

Moreover, despite a lengthy Remedies Reference Guide that cites and provides text from international and domestic instruments for assessing remedies, grievants have told RAID that the Mine has told them in 'dialogue and engagement' meetings that they will be compensated according to the percentage that they were injured. That is, grievants are told that they are, for example, 5 or 10% injured. The grievants expressed confusion as to what method the Mine was using to calculate their percentage, or how much it would mean they would be compensated. The Remedies Reference Guide, which refers to no such methodology for assessing remedies, provides no assistance.

RAID has criticised remedy under previous versions of the Mine's grievance mechanism for being calculated in an opaque manner, inadequate, and conditional on the person whose rights were violated agreeing to carry out certain tasks.[154] A significant number of those whose claims were resolved under previous versions of the Mine's grievance mechanism received 'remedies' that were tied to employment. That is, their 'compensation' had to be earned through the provision of service to the Mine. Some remedies were also provided through direct payment to service providers. This too presented problems, as recipients had no control over the choice of providers or the manner of their provision.

Moreover, settlements treated those whose rights were violated as criminals, requiring their participation in awareness programs to warn others against trespassing or curtailing agreed benefits if they intruded on the mine site again. RAID is not aware of these practices continuing under the current version of the grievance mechanism, although the Remedies Reference Guide does expressly provide that payments may be made 'directly to service providers'.[155] Similarly, as noted, the same guide stipulates that 'criminal conduct' will be taken into account in determining compensation. Acacia's lack of transparency makes it difficult to confirm how many remedies are being provided in this manner.

[154] RAID, *Principles without justice,* op. cit., pp. 61 ff.
[155] Remedies Reference Guide, op. cit., p. 7.

Examples of redress under the Mine's original grievance mechanism

In the case of one agreement brought to public attention as a result of the UK legal claim in 2013, not only is the compensation package (for a person shot in the knee) dependent on waiving rights to sue the company, but was conditional on the person working for their compensation and other terms, which, if breached, could result in loss of benefits.[156] The "Condolence Disbursement," totalling 8,780,000 TZS [approximately 5,400 USD] consisted of two years employment in a company in the town of Nyamongo near the mine site, as well as remuneration for "participating in NMGML's campaign to create awareness in the local community of the hazards of trespassing on the mine site." Failure to abide by terms of employment provided by the local employer were to "result in the automatic termination of benefits to which the Complainant is otherwise entitled." In return for attending monthly Awareness Meetings, the complainant was to be paid an attendance fee by the Mine, failure to attend resulted in loss of payment. Finally, the agreement set out how the complainant would also forfeit benefits he was "found to have trespassed on the NMGML mine site."

Other examples concerning incidents at North Mara from agreements made in late 2012/2013 include:

Person shot in the knee whose leg had to be amputated:	~Tshs 14,000,000 (US$ 8,750)[157]
Death of husband:	~Tshs 28,000,000 (US$ 17,500)
Death of son:	~Tshs 8,000,000 (US$ 5,000)

Those interviewed by RAID who had received a remedy from the Mine through the revised Grievance Process uniformly expressed dissatisfaction in the amount of compensation that they received. Some also expressed concern about the delivery of the compensation, in one case being made to wait six months for payment. None told RAID that they had sought review of the delivery of the remedy, although the Grievance Process apparently does provide for such review.

Lack of transparency on Acacia's part prevents proper independent evaluation of whether compensation was fairly calculated. Moreover, that lack of transparency itself helped create dissatisfaction. As one grievant put it of the Grievance Committee determination, which he believed insufficient:

> '*I went the next day with [a relative] to the committee. The committee decided to give me [redacted] shillings. They did not say how they come to the amount. I had no choice and had to accept it. I spoke, but what I said did not help. My [relative] also spoke. He said that he expected the committee to give me a good amount to compensate me. The committee said the amount was the only one they could offer me. They said I could take my complaint elsewhere if I was not happy and there were lots of other places I could go. They did not say where I could go and I did not know where else I could go so I accepted. The Mine said that they could only offer [redacted] to me and the committee said they could not help me get any more. There was no reason given. They said they had paid me previously and that it was enough…*

[156] Letter from RAID and MiningWatch Canada to African Barrick Gold plc, 25 February 2014, Annex, available at: <http://www.raid-uk.org/sites/default/files/Letter%20to%20ABG%20re%20North%20Mara%2024%20Feb%202014.pdf>.
[157] The average 2013 exchange rate of Tshs 1600 = US$1 has been used.

I have now received the money and I signed a document, but I don't have a copy of that. I have been promised it but it has still not arrived.'

Another explained to RAID how his circumstances meant he needed some compensation, and thus accepted an amount he considered unfair:

'I was asked to step outside while the committee discussed. The people from the mine stepped out too. I was then called back and the committee said I should be paid [redacted], which included [redacted] compensation for the land. I was not happy and refused. The committee was surprised. My brother urged me to take it as I had a sick aunt. I therefore took the agreement.'

More troubling still, RAID was told by grievants that they were pressured to accept the remedies offered. For example, one grievant told RAID:

'*[The Chairperson read] the report the mine had prepared. They told me this was how the process was. They said I was supposed to be paid [redacted] shillings but since I was already paid [redacted] shillings, I would receive [redacted]. This was later increased to [redacted] shillings.*

When I refused the offer someone came after me and reached me at the gate. I was called back to the committee. The committee said they had sat down and agreed to increase the amount. At first they said I would only get [redacted] shillings and then they increased it to [redacted] shillings. They said the committee had decided to increase the amount, although the mine had only offered [redacted]. But I refused that too....

They called [a relative] a few days later and said I had to come and sign. They said if I refused they would detain me….. I took it as a threat. I knew I should take the money. My [relative] said I should just accept the amount since we had nothing. I went to sign and they gave me a cheque....'

These grievances, in which grievants have said that they felt pressure, in some cases directly from the Mine, to accept the remedy offered, are recorded by Acacia as being resolved in favour of the grievants.

Conclusion

Acacia's Grievance Process is not compliant with the UNGPs. In fact, the process itself arguably violates human rights. There are many specific rights that may be violated in any given case, such as the right of children to have their best interests be the primary consideration and the rights to equal treatment and to health, but in virtually every case the process denies people the dignity to which all are entitled and which international human rights law guarantees through a wide range of different rights and freedoms. RAID's research on Acacia's process shows how, unless carefully circumscribed, grievance mechanisms offer companies the possibility of investigating and sitting in judgment on human rights violations resulting from their operations, including defining how human rights are realised, or more often denied. Such a possibility is particularly troubling when many of those violations appear to constitute serious crimes and have been perpetrated in a systematic and ongoing manner.

It is vital that the use of private grievance mechanisms be limited to contexts in which they genuinely serve the purposes of preventing or mitigating harms, and seek to complement rather than operate in place of state-based processes. They should not be employed by companies to avoid their responsibility to use their leverage to press states to hold perpetrators of abuse to account, nor to undermine state institutions.

Moreover, company led grievance mechanisms are fundamentally unsuitable for systematic or grave human rights violations. Otherwise, there is a real risk that such mechanisms may represent another step towards a corporate takeover of human rights.

Recommendations

This section sets out recommendations for the use of private grievance mechanisms. They are drawn from analysis of Acacia's North Mara grievance process in design and practice, but have relevance for all private grievance mechanisms that seek to address human rights claims.

a. **OGMs are unsuitable for the consideration of systematic or grave human rights violations** – Private grievance mechanisms are not appropriate for the consideration of human rights violations that are part of a pattern of excessive use of force. Such violations require independent oversight from a neutral body of sufficient expertise, with investigative, adjudicative and enforcement powers. Violations that encompass killings, sexual violence, torture and cruel, inhuman and degrading treatment are crimes.

b. **Need for supranational oversight** – If necessary, and in order to ensure independent adjudication in the case of systematic and grave human rights violations, for example, where state security or police forces regularly use excessive force that results in deaths or serious injury, and where there is a culture of impunity, such a body could be constituted at the international or regional level.

c. **Legally binding obligations are necessary** – Companies are able to abide by the UNGPs or not as they choose. Companies benefit from positive associations by professing adherence to the UNGPs often without concern as to whether they are effective enforcement mechanisms which respect human rights. Legally binding obligations upon companies are necessary at both the domestic and international level. This is particularly evident in matters of redress for human rights violations where those harmed by irresponsible practices need yet are so often deprived of appropriate remedy,

d. **Companies should avoid the use of state security forces on an ongoing basis** – Companies should not rely upon state security forces and/or the police to provide security services for their operations on a regular and ongoing basis. Memorandums of understanding and other forms of contractual arrangements that regularise these relationships should not be used purely as a tool to manage and limit legal and other risks to the company.

e. **Companies should cease doing business in contexts of impunity** – When a company cannot operate without recourse to state security forces in order to carry out its day-to-day business, and when such forces are responsible for systematic and grave human rights violations with impunity, then it should cease to do business until effective reforms to stop such abuse are implemented.

f. **State-based processes should not be undermined** – Private grievance mechanisms should complement, not replace state-based processes. Where state security forces are contracted to provide security on an ongoing basis, state actors lose their independence and local people are likely to lose faith in them. When the interests of state actors and the company become ever more closely aligned, recourse to justice or other state-based redress is undermined.

The following recommendations should **only** apply when private grievance mechanisms are used, in accordance with principle 29 of the UNGPs, to prevent problems from escalating into serious human rights violations (and not to deal with serious human rights violations themselves). In such circumstances, companies which use grievance mechanisms should do the following:

g. **Engage in a genuine community-level process** – Company control of grievance mechanisms, whether exercised directly or through the power of appointments and management over the administrative process, is wholly inconsistent with principles of procedural fairness, and is contrary to the clear direction of the UNGPs.

h. **Ensure simple and clear rules of procedure** – Claimants must be able to understand the process and what is required of them at each step of the process. It is not sufficient to provide simplified written guides if they do not represent the actual process that is being implemented. Claims and chances for redress are prejudiced by unduly complicated and legalistic procedures.

i. **Ensure that power imbalances are appropriately addressed** – Those seeking redress for human rights violations should not be disadvantaged by a relative lack of access to assistance necessary to navigate a process intended to ensure that they receive just redress. Without assurances that they will be adequately assisted, including through legal representation where appropriate, private grievance mechanisms will be disempowering, reinforcing problematic dynamics of corporate power.

j. **Provide for independent and adequate investigations** – Impartial investigations into incidents are essential to ensure adequate redress for human rights violations, accountability for wrongdoers and better practices. To these ends, investigations should be independent, free from company control and interference, and should complement rather than impede or improperly influence parallel investigations by public authorities. They should guarantee preservation of and access to any relevant information, including information that may be detrimental to the company's case, and ensure its full disclosure to claimants.

k. **Require independent adjudication** – When a problem cannot be agreed and remedied through dialogue, in accordance with principle 31 of the UNGPs, a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine the outcome. Adjudication should be provided by a legitimate, independent third-party mechanism.

l. **Not hinder or block redress in other forums** – Given that the main purpose of private grievance mechanisms is to provide agreed remedy through dialogue to prevent problems from escalating, it is difficult to see how preventing those whose human rights have been violated from also pursuing their claims in other forums is antithetical to this. Proceedings under private mechanisms are generally conducted on a 'without prejudice' basis, but can be prejudicial to the interest of those seeking redress if they are forced to choose one avenue of redress over others, especially when limitations periods may close-off other routes.

m. **Provide full transparency for claimants and the process** – Grievance mechanisms that prevent claimants from accessing relevant evidence or materials, including those that define relationships between companies and associated parties such as state police, cannot ensure that their claims will receive fair determination. More generally, a lack of transparency regarding the process, its performance, treatment of individual claimants and resolution of claims precludes oversight and is vulnerable to abuse, while affording the opportunity for misleading public representations.

n. **Be open to scrutiny beyond 'self-reporting'** – Where concerns are raised about the use of private grievance mechanisms by those who have suffered human rights violations and civil society, the UN Working Group on Business and Human Rights or an independent expert or Special Rapporteur from a relevant thematic mechanism should undertake a review of their functioning.