



## Questions & Answers

### Acacia Mining: Human rights violations and the company's grievance mechanism in North Mara, Tanzania

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### ***1. What is an operational-level grievance mechanism?***

As its name suggests, an operational-level or company-based grievance mechanism is a way for companies to deal with complaints about problems their operations have caused or contributed to, especially at the local level. Certain companies may have had some kind of complaints process previously, but the need for such mechanisms and the criteria to make them 'effective' were set out in the 2011 [UN Guiding Principles on Business and Human Rights](#). These principles were endorsed by the UN Human Rights Council, and set out human rights standards that business are expected to adhere to. These types of operational-level grievance mechanisms are commonly known as 'OGMs'.

### ***2. Why are they important?***

Overall, businesses are responsible for any harm they may have caused or to which they have contributed. But to get redress is beyond the reach of most people because of barriers to taking a company to court, including the high costs. Company-based grievance mechanisms are meant to offer businesses and those affected an accessible, and relatively cheap, way of addressing problems. They are intended to work through engagement and dialogue between the company and the claimant, resulting in a remedy for any harm caused. This could include compensation. By understanding what kind of cases they are receiving, companies are meant to learn from their mistakes and take action to stop problems arising in the first place.

### ***3. What do grievance mechanisms have to do with human rights?***

The UN Guiding Principles made the establishment of grievance mechanisms a key component of human rights principles specifically directed towards business corporations. It is therefore inevitable that companies will use them to try to address human rights issues. The UN Guiding Principles advocate the early use of company-based grievance mechanisms to help prevent additional harm to people and to stop grievances from escalating into major disputes.

The trouble is that this is not the way companies are using them. Instead, in certain instances, companies use grievance mechanisms to deal with the most serious human rights violations, including killings, serious injuries and sexual violence. The UN Guiding Principles refer to the wide range of human rights – civil, political, social, economic, cultural, labour, indigenous, minority – but don't explicitly set out when company-based grievance mechanisms are unsuitable for dealing with particular violations.

### ***4. Why do businesses like company-based grievance mechanisms?***

Such grievance mechanisms put businesses in control of potentially damaging claims, allowing them to deal with problems 'in-house' before there is any wider fall-out. The company is also in control of the type and level of redress or compensation it offers. While the UN Guiding Principles list a number of 'effectiveness criteria,' including that grievance mechanisms should be accessible, equitable and transparent, the reality is that those bringing claims are often pitted against a well-resourced company in a process that it controls. The UN Guiding Principles say nothing explicitly, for example, about how complaints are investigated or that claimants should have access to free and independent advice.

## ***5. Do companies themselves investigate and decide grievances?***

Yes, in many instances. The UN Guiding Principles advise that companies ‘cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome.’ They therefore focus on finding solutions through dialogue. The trouble is that such dialogue is often unequal. The UN Guiding Principles have failed to set down guidance to tackle this inequality. For example, companies can choose what information they disclose about any particular claim. Furthermore, dialogue often only starts after a company has already finished its own investigation and decided whether or not there has been a human rights impact. The reality is that without knowledge or advice, claimants often find it difficult to argue against the company’s conclusions.

The UN Guiding Principles do state that ‘[w]here adjudication is needed, this should be provided by a legitimate, independent third-party mechanism’, but even when an appeal process is part of a grievance mechanism, this isn’t always sufficiently arms-length from the company. Some appeal committees are, for example, made up of experts or representatives chosen by the company. When it comes to the final say in accepting or rejecting any decision reached, because the company monopolises control over evidence, and often directly or indirectly controls the appeal body, it enters the appeal process at a significant advantage.

## ***6. Who is Acacia Mining and where is its North Mara Gold Mine?***

Acacia Mining plc is a UK-based and London-listed company operating three gold mines in Tanzania – North Mara, Bulyanhulu and Buzwagi. The company also has exploration projects in Kenya, Mali and Burkina Faso.

The North Mara gold mine is Acacia’s main mine, located in north-west Tanzania. It is close to Tanzania’s Serengeti National Park and the Masai Mara National Reserve over the Kenyan border. According to Acacia’s [2018 annual report](#), the North Mara mine accounted for almost two-thirds of the company’s gold production. North Mara has been [identified](#) as a potential ‘tier 1’ asset, producing 500,000 ounces of gold annually, with an expected mine life of more than 10 years and low production costs.

In Tanzania, Acacia operates its mines through Tanzanian-registered subsidiaries, including North Mara Gold Mine Limited.

## ***7. How is Acacia Mining linked to Barrick Gold?***

Canadian mining giant Barrick Gold acquired the North Mara mine in 2006 and operated it under the name of African Barrick Gold (‘ABG’). It was [‘spun-off’](#) from Barrick in March 2010, although Barrick [retained](#) a majority interest holding 63.9% of the shares. The company [changed](#) its name to Acacia Mining plc in late 2014. Barrick [retains](#) a 63.9% holding in Acacia. In 2018, Barrick [merged](#) with Randgold to create the world’s largest gold mining company with a market capitalisation of over \$23 billion. On 21 May 2019 Barrick made a proposal to buy out Acacia’s minority shareholders and take Acacia back in-house. At the time of writing, the offer had not yet been finalized.

### **8. What are the human rights problems at North Mara mine?**

There have been numerous [reports](#) of killings, serious injuries and rape by police and security forces at North Mara mine dating back to 2005 or earlier. RAID reported at least 16 deaths between December 2008 to January 2014 caused by the Tanzanian police who used lethal force against local residents at or in close proximity to the mine site. Over the same period, at least 11 others were also shot by police and injured. In the two years that followed, between 2014-2016, RAID and another NGO, MiningWatch Canada, [documented](#) at least 22 people killed and 69 injured, many by bullets, at or near the mine. A 2016 [parliamentary inquiry](#) into the situation at North Mara mine received reports of 65 killings and 270 people injured by police jointly responsible for mine security.

Acacia denied many of these reports. But in March 2017, after much pressure from RAID and other NGOs, Acacia acknowledged in its annual report that 32 ‘intruder fatalities’ had occurred at its mine between 2014 and 2016. It reported a further 2 such deaths in 2017 and 3 more in 2018. Acacia does not attribute all these deaths to ‘police involvement’ and/or as security-related (see also Question 16). A video about the scale of the human rights problems can be seen [here](#).

### **9. Who are these ‘intruders’ who come into the mine?**

So called ‘intruders’ are individuals who come into the mine to scavenge for waste rock. Acacia calls them trespassers. According to Acacia, in 2014, an estimated 7,000 ‘intruders’ entered the mine each month. This fell to around 500 per month in 2015 and to 80 per month in 2018. Acacia says the dramatic fall in ‘intruders’ is due to mining operations going underground, the construction of a concrete wall around active mining areas, the increased use of CCTV coverage, and its specialist security contractor.

Communities who live near to the mine have a different perspective. The North Mara gold mine is built in the middle of seven villages and local residents carried out artisanal mining activities long before industrial mining operations began. The income contributed to meagre incomes gained from subsistence farming. Those who Acacia accuse of ‘trespassing’ are often simply seeking a way to supplement their income to clothe, feed and educate their families.

The acquisition of land for industrial mining has left many local residents feeling unfairly treated and there continue to be significant complaints about land. Companies that profit by acquiring rights to resources or areas to which communities once had access, have a particular challenge in addressing community concerns and gaining legitimacy. Acacia has not been able to effectively tackle this challenge. The close proximity of the mine to the homes of local people further adds to the problems.

### **10. How does the Mine deal with ‘intruders’?**

The Mine appears to use a heavy handed or even a militaristic approach to the so-called ‘intruders.’ A mix of in-house and contracted security personnel work alongside the Tanzanian police in joint security patrols. The police are armed, issued with live ammunition and carry batons. Mine security guards wear body armour and have access to various weapons, including teargas launchers, shotguns (to fire baton rounds, beanbags and other ‘non-lethal’ projectiles), and batons. The security patrols chase intruders from the mine site,

often using force to do so, and sometimes arrest individuals. Although Acacia identifies such individuals as ‘trespassers,’ it says that few of those apprehended are ever charged and convicted.

### ***11. Is it necessary to use force against the ‘intruders’?***

Acacia says the so-called intruders are violent and that they use rocks and pangas (flat machete-like blades, commonly used to clear vegetation) against security personnel and the police. However, the company has never published figures or other evidence about the threat of violence or how many security personnel and police have been injured.

The violence against intruders, however, is clear. RAID has spoken to dozens of victims who have been shot or beaten by the police and/or security personnel at the mine, and to the relatives of those shot and killed. RAID has also received credible reports of incidents when the police have thrown rocks down on ‘intruders’ or when the cause of death or injury has been recorded as ‘a sharp object,’ which is a euphemism for a bullet. During security operations, police and the Mine’s security sometimes chase intruders beyond the mine’s perimeter. This has also resulted in injuries to, and deaths of, bystanders who say they had nothing to do with the intrusions.

In many cases, the use of force by the Tanzanian police and/or the Mine’s security personnel is excessive and in violation of the [United Nations Code of Conduct for Law Enforcement Officials](#) and the [United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#). The codes set out that force may be used only when strictly necessary and only if other means remain ineffective. It must be no more than the minimum necessary to achieve a legitimate purpose. Firearms may only be used for the purposes of self-defence or defence of others against the imminent threat of death or serious injury; or to prevent the perpetration of a particularly serious crime involving grave threat to life.

### ***12. Is the company’s private security also involved in violations?***

The company employs private security at its North Mara mine who guard buildings, production facilities, machinery, and trucks carrying gold-bearing material, to control check-points and gates, and to operate CCTV. Acacia has confirmed that private security and the Tanzanian police operate in joint patrols and that the Mine’s operatives use CCTV to direct such patrols.

A company [memorandum](#) refers to the outsourcing of ‘security management’ to Assaye Risk, a small UK-based private security company, at the end of 2015 and the outsourcing of security staff below management level to G4S from late 2017 at North Mara.

As well as securing the mine site, in-house security also has a role in investigating any incidents that occur, including the discharge of weapons, detentions, serious injuries, and deaths. This is carried out under an investigations policy, including the strict lockdown and non-disclosure of information gathered. This is conducted under ultimate direction of Acacia’s general counsel based in London.

Although Acacia attributes ‘intruder fatalities’ to the police, it is clear that security personnel have also used excessive force. For example, of the 13 new security/human rights ‘grievances’ referred to in its 2017 annual report, five related to mine security personnel. In

2016, Acacia reported that 30 ‘grievances’ related to the excessive use of force by the police, with 7 more alleging the excessive use of force by private security.

### ***13. Does Acacia Mining have similar problems at its other mine sites?***

No, not according to Acacia (although none of its information has been independently verified and RAID does not have further information from communities around Acacia’s other mines). At its Bulyanhulu and Buzwagi mines in Tanzania over the period 2015-2018, Acacia reports a total of 10 grievances filed, compared to 532 grievances received at North Mara. Furthermore, all reported ‘trespasser’ fatalities reported over the same period were at North Mara.

### ***14. Why does Acacia use the Tanzanian police to provide security?***

In 2016, Acacia [said](#) 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’ and its employees. 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.’ But the agreement with the police 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’.

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. In essence, the relationship appears to transform the police into a privatised security force for the Mine, rather than an institution mandated to protect local people.

### ***15. Intruders have decreased so aren’t violations only a historical problem?***

Acacia says that the number of times that the police and mine security are required to respond to security threats is declining year by year. However, although nowhere near the record high of 2014, Acacia acknowledges about 80 ‘intrusions’ per month and says incursions into active mining areas ‘remains flat’ (and therefore haven’t seen the same decline). Large-scale security-operations, with the risk of attendant violations, continue. When RAID raised a recent case with Acacia of an individual seriously injured during a security operation, who said he was a passer-by, the company [responded](#) that it was ‘well aware of the circumstances of an organised and violent invasion into the active mining areas of the Mine site of around 100 armed intruders that same evening [31 May 2019], including many intruders who scaled the safety wall.’ It went on to say that two police officers were injured, but does not say how many ‘intruders’ or others caught up in the operation were hurt.

The figures on intruder deaths that Acacia reports do not tell the whole story and raise as many questions as they answer. RAID has interviewed victims of human rights violations that occurred in 2018 that are not apparent in Acacia’s reporting.

There’s an additional reason that human rights concerns at North Mara are not historical, and that’s because there are many victims of violations from past years whose grievances have been rejected or who have been denied adequate, or even any, redress.



### ***16. Are 'intruders' still being killed at North Mara mine?***

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 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. Another told RAID he lost a limb when a boulder was thrown down on him by personnel in a security patrol.

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).' Reference is also made to a fatal vehicle accident involving the police. The report further states that three more individuals were killed 'while illegally mining at North Mara' in three separate incidents when mine workings caved in on them. The information provided offers few details and is not independently verified.

### ***17. Does Acacia report on how many 'intruders' are injured?***

The annual reports provide information on injuries to mine employees as part of health and safety reporting. However, no information is provided on injuries to 'intruders', despite the high incidence of injuries referred to by the parliamentary inquiry and the number of serious and life-changing injuries reported to RAID. It is obvious that the excessive use of force that results in people being injured is a violation of a person's human rights, including the rights to security of the person and life. But Acacia does not publicly acknowledge such violations at all, even though the number injured likely exceeds fatalities.

### ***18. Has Acacia been questioned about its reporting on deaths/injuries?***

In July 2018, RAID [wrote](#) to Acacia to request clarification on its figures. Specifically, RAID asked about: (i) the cause of each security-related death; (ii) how many of the 'intruder' deaths reported as non security-related occurred while security operations were underway; and (iii) the number of intruders injured on the mine site for each reported year, including how the injury was caused. Acacia said it would review the material and get back to us, but it has not done so.

### ***19. Is Acacia right to say that RAID has made 'sweeping claims' and misrepresented the human rights situation?***

No. RAID's findings are based on detailed field research in Tanzania. RAID's staff have visited North Mara several times since 2014, including on four occasions in 2018/19. Over the past five years, we have interviewed over 90 individuals who have suffered human rights violations and/or their families; a lawyer who has assisted claimants; representatives of Acacia and its local subsidiary, North Mara Gold Mine Limited; and Tanzanian government officials. We have also collected other credible reports about the human rights violations, such as a Tanzanian parliamentary report on human rights violations at North Mara mine and country reports by Human Rights Watch and Amnesty International.



Acacia's reporting on deaths at the North Mara mine actually back-up RAID's research. In its [2016 annual report](#), Acacia Mining reported 32 'trespasser-related' deaths at the mine between 2014 and 2016. Acacia says RAID has misrepresented its figures and that some of the deaths of so-called intruders at the mine were not due to violence by its security officials or the police, but rather due to intruders dying as a result of falling, rockfalls, 'infighting' between trespassers or for 'other' reasons. RAID questioned Acacia about this categorization, especially since our research revealed that the tactics of the security personnel have included dropping rocks on people and severe beatings with blunt instruments that avoid blows to the head. Acacia did not respond to RAID's questions. Acacia has also provided no statistics about injuries to so-called intruders. This is a significant omission, since RAID's research has revealed considerable numbers of people who have suffered life-changing injuries.

Acacia is operating a business at North Mara, yet the deaths and injuries of individuals at their site, which would be considered shocking in any health and safety context, receives little explanation in the company's publications. For such a high number of violations to be occurring outside a conflict zone in a business context is shocking and exceptional.

## ***20. If the Tanzanian police are shooting people, why is this the company's responsibility?***

Acacia [states](#) that the Tanzanian police 'are directed by and responsible only to the State' and has drawn up a [memorandum of understanding](#) ('MoU') with the police to provide security at the Mine. The MoU states that 'the Company and the Mine Site have no authority to supervise, direct, or control any mission, assignment, or function of the Police or any member thereof.'

But this is not all that is covered. The MoU further sets out how police assignments are issued 'in coordination' with the Mine's security manager, and that 'the Company shall always be in coordination, cooperation, and communication with the Police regarding security and safety issues, including human rights.' By calling in the police, issuing assignments to the police in coordination with its security personnel, paying for, accommodating, equipping, and working jointly with the police to provide security to deal with 'intruders', Acacia cannot so easily distance itself from responsibility for the actions of the police. The company has effectively transformed parts of the Tanzanian police into its private security force at the North Mara mine, which acutely raises the risk the company could be considered complicit in any serious crimes committed.

## ***21. How many police officers have been charged with criminal offences?***

As far as RAID is aware, not a single police officer posted at the mine has ever been charged, let alone convicted, of a crime associated with the excessive use of force, such as assault, grievous bodily harm, wounding with intent or murder.

## ***22. Has Acacia raised the issue of police violations with government officials?***

Yes, Acacia says that it reports incidents where a police officer may have used excessive force up the chain of command in the Tanzanian police for investigation and possible disciplinary and criminal proceedings. It says it insists that such officers are removed from the detail attached to the mine, and asks to be updated on any action taken. However, this

has produced no tangible action by the authorities, with Acacia [acknowledging](#) that the Attorney General's Office determined that the use of force had been justified in most cases.

Acacia describes interactions between the company and the Tanzanian government over the conduct of its force as a 'sensitive issue.' Acacia (and Barrick) should be publicly condemning both the violations and impunity, as required by the UN Guiding Principles. That Acacia is being equivocal needs to be considered alongside the fact that the Mine says that it couldn't continue to do business at North Mara without the police's support.

### ***23. Surely it's not Acacia's fault that Tanzanian authorities do not seek justice?***

Acacia [says](#) the Mine 'does not and cannot control the State's police force or the State's response to alleged human rights violations' and the Mine [states](#) it 'cannot be an alternative to State civil and criminal judicial processes' or 'step into the shoes of the Tanzanian State.' On the face of it, the company's assertions are, of course, correct, but this should not distract from the Mine's close relationship with the police.

The Mine has a written agreement with the police to provide security in coordination with its security managers, including police access to the mine site. As such, the Mine does exert control over the police. Acacia also knows the police are unaccountable since they are aware that no officers have been held to account for any crimes relating to deaths and injuries at the mine. Acacia can say it has pressed the authorities to investigate violations, while maintaining that both the violations, and the need for justice, have nothing to do with it.

### ***24. Is Acacia facing wider problems In Tanzania?***

Yes. Acacia has been subject to an export ban by the Tanzanian government for alleged unpaid taxes since 2017, and Tanzanian authorities have brought [corruption-related charges](#) against Acacia's subsidiaries, including North Mara Gold Mine Limited, and current and former employees. The charges are denied. The North Mara Gold Mine has also been fined and threatened with closure for environmental damage. All these matters aren't removed from human rights issues either: corruption can affect livelihoods when compensation for lost land is diverted or the right to education is undermined when inducements mean that the costly rebuilding of a school, dangerously close to the mine, is avoided. [Reports](#) link the environmental harm for which fines were imposed to the need to protect people's health.

### ***25. Isn't it time RAID and other groups engage constructively with mining companies and work with them to put things right?***

Of course. RAID's aim is for human rights violations to end and to seek justice and remedy for the victims. RAID has repeatedly shared its findings on the North Mara mine with Acacia Mining. RAID's staff have participated in a consultation with Acacia's senior management and legal counsel regarding the revised grievance process, and met with company staff at all levels, both in Tanzania and in the UK, including members of the grievance and investigations teams. This is in addition to extensive written correspondence, including to Acacia Mining's board of directors and to Barrick Gold, Acacia's main shareholder. We have consistently stressed our availability to meet with Acacia's management to discuss our research findings and to discuss the steps necessary to ameliorate the harm. We have also acted in consortium with other Tanzanian and international civil society groups to press Acacia to make changes to improve its human rights record and its grievance mechanism.

Likely as a result of this pressure, Acacia did revise its grievance mechanism in 2017, though as described in previous answers, it has not done so in a way that is compatible with the UN Guiding Principles and its revised grievance mechanism remains deeply problematic.

Acacia says that it is open to receiving feedback. But RAID's experience over many years is that the company appears largely interested in feedback that does not challenge its own conclusions on its human rights record.

## ***26. Why isn't Barrick intervening on the human rights issue at North Mara?***

It should be. Barrick is the majority shareholder and owns almost two-thirds of Acacia's shares (63.9%). Barrick has taken the lead on negotiating with the Tanzanian government about the unpaid taxes and the export ban. Following its merger with Randgold, Barrick has also recently proposed to buy out Acacia's minority shareholders and bring Acacia back in-house.

Yet Barrick has increasingly distanced itself from human rights issues at Acacia. In RAID's view, Barrick should be bringing all the influence it has to bear on stopping human rights violations at the North Mara mine, ensuring that the perpetrators are held to account and making sure that fair compensation is provided to those who have suffered abuse. If it takes upon itself to intervene in matters of tax and exports, then there is no excuse for it not doing so when it comes to the uncomfortable truth about human rights violations.

At the 2019 Mining Indaba, Mark Bristow, the CEO of newly merged Barrick was asked about human rights violations at North Mara mine and what he would do to address them. He [responded](#): 'The historic problem of Barrick in Tanzania was that no one embraced the communities [around the mine].... It will definitely change.' This is an acknowledgement that Acacia has got things wrong and a new approach is needed.

## ***27. How does Acacia's grievance mechanism work?***

Civil society groups, including RAID, [heavily criticised](#) Acacia's original grievance mechanism at North Mara for lacking independence, pressurising claimants to sign inadequate settlements they did not understand and using legal waivers to stop claimants turning to the courts. Acacia acknowledged there were problems and, beginning around August 2017, presented a new draft mechanism at a number of local community meetings.

In December 2017, Acacia posted a new draft mechanism on its website, called the 'Community Grievance Process.' Acacia has [produced](#) a handbook for complainants, accompanied by a detailed standard operating procedure, alongside other reference documents concerned with 'security and human rights standards', and the provision of remedy.

The revised grievance mechanism sets out two steps to resolve a 'grievance'. The first step is to identify if an 'adverse impact' occurred involving the Mine or a linked third party. If such an impact is confirmed, the second step is to identify and agree remedy. Both these steps are meant to be agreed through 'dialogue and engagement,' but there is an appeals process through a Grievance Committee if agreement cannot be reached.

## ***28. How are grievances investigated?***

Grievances are investigated by an Investigations Team, staffed by company employees. The evidence is pulled together in a report which may include statements taken from the claimant, witness statements, statements from police officers, CCTV records, information from a site visit, and medical records. However, RAID has been told that, in many cases, such evidence was not provided. The investigation report is key, as it doesn't simply present the evidence, but also reaches conclusions on whether a particular right was 'impacted', including whether excessive force was used.

The Investigations Team represents the Mine throughout the grievance process, so lacks impartiality. Furthermore, it is written into the grievance procedure that the Investigation Team will provide 'evidence on which it intends to rely' to support its conclusions, even when there is clear evidence disproving these and assisting the claimant. Claimants are required to provide detailed evidence to substantiate their case, but even those who understand what doing so entails are put at a complete disadvantage by not having access to information held by the Mine or police. The company's solution is to offer to assist the claimant gather evidence (for example, statements from their witnesses), but this creates a serious conflict of interest when the investigators also represent the Mine. It is particularly concerning because a number of claimants, who are illiterate, have said that the statements taken from them by the Mine did not accurately represent what they had told the Mine, and that there were things included that they had not said. As a lawyer who has been involved in several cases on a largely pro bono basis explained, '[s]ometimes the grievant is not allowed to read the statement, some are illiterate, they are just told to put their thumb here, sign there, and they don't know. Often times, they are told if you do that, we will do things for you.'

The Mine also does not disclose key evidence. For example, in one case known to RAID, the Mine has presented internal reports to the Grievance Committee to disprove the claimant's request but refused the claimant's request to see them on the basis that they were 'confidential.' A lawyer told RAID that although investigation reports have referred to police reports, he has not been given any, and that at Grievance Committee hearings the Mine has brought no witnesses and has relied on evidence that the claimant is not permitted to see.

## ***29. Does Acacia publish any information about the grievances it receives?***

Acacia does publish some information and statistics. In its 2015 annual report, Acacia published the number of 'grievances' it received, breaking these down by mine site (the vast majority have always been at the North Mara mine) and by type of 'grievance' (environmental, security/human rights, land and property, livelihoods and other). Little further information was provided about the nature or seriousness of these cases. In its 2016 report Acacia states that a backlog of 117 cases relating to public or private security at North Mara was cleared. It had dismissed 109 (or 93%) of these as 'unsubstantiated or inconclusive,' with no further explanation given.

By Acacia's own count, the Mine has accepted a 'security-related' impact on human rights in at most only 30 (or 18%) of the 163 'grievances' concluded. Acacia's reporting of 'grievances' as being 'accepted' in terms of an impact says nothing about whether claimants received fair or adequate compensation (many interviewed by RAID said that they had not).

### ***30. Why does civil society think the Mine's grievance mechanism is unfair to claimants?***

There's a long list of serious problems with Acacia's grievance mechanism raised by RAID and other groups, including the Legal and Human Rights Center in Tanzania and MiningWatch Canada. All of these problems stem from the fact that the company would like to stay in total control when it comes to allegations made about its own or the police's conduct and how it seeks to dismiss allegations or settle such cases quietly and at low cost

One of the main concerns is that there is a complete inequality of arms. Claimants, often with few resources and little knowledge of such processes, are faced with a 31-page procedure that is highly complex and legalistic in nature, a Handbook that says they don't require a lawyer when the company has lawyers on hand, company investigators who select what evidence to disclose, and the prospect of having to gather their own evidence or accept evidence gathered for them by the company, while bearing the onus to prove not only that they suffered an 'impact' but the specific losses that they suffered as a result.

The Investigations Team (all employees of the company) that looks into and reaches conclusions on allegations also represents the Mine in proceedings, so lacks independence. Furthermore, the Grievance Committee, as the body that hears appeals, is appointed by the Mine from three rosters, two of which are directly or indirectly drawn up by the Mine, giving its appointees control over the outcome. MiningWatch Canada has recently [interviewed](#) individuals who have acted as the single 'community representative' who say they were side-lined and outvoted as the company's determination was pushed through the committee. A clause stops complainants taking their case elsewhere at the same time, which means that some could even find themselves out of time when it comes to filing a claim in court.

### ***31. Do claimants have lawyers to represent them in the grievance process?***

The vast majority of claimants do not have anyone to advise or represent through Acacia's very complicated and legalistic process. This places them on an unequal footing with the company and at a significant disadvantage. Acacia assures claimants that they do not need legal advice, although the company has lawyers on hand to protect its interests.

Acacia does offer vouchers for legal support, but these are limited to 4 hours or \$400 (inclusive of the lawyer's travel time and expenses) and are totally insufficient to see a grievance about a serious human rights abuse through dialogue, impact, remedy and (possibly) appeal stages.

A lawyer who has assisted several claimants in 2018 and 2019 described to RAID the inadequacy of the voucher. Simply to read an investigation report took him roughly 1 to 2 hours, with an additional 13 to 14 hours for travel to and from the mine for a Grievance Committee hearing, to meet the claimants briefly for the first time, and attend a hearing. The professional time required to handle the case, in excess of the 4 hour voucher, he provided pro bono. His travel and other expenses were not reimbursed. The lawyer explained that due to financial constraints he was not in a position to assist his clients gather evidence, and that in his experience 'the [clients] understand that their word is everything,

they don't understand that they are supposed to bring evidence. Some are illiterate. When they bring documents...they don't know if it has evidential value.' The lawyer said that, in his view, to provide reasonable assistance to claimants would require roughly 5 days work, with an additional 5 days if the Mine accepted that it owed the claimant a remedy

Many claimants don't know where to start when looking for bona fide representation. There are few lawyers in Tarime, the nearest town. Many claimants interviewed by RAID said they were unaware that such vouchers were available, reflecting the fact that many will not have been able to read the handbook on the grievance process. Last year, the company acknowledged that the voucher offer had only been taken up once.

The main exception has been when civil society groups or local government officials have intervened and secured legal support, but it is not practical or affordable to do this in each and every case.

### ***32. How does the Mine provide compensation?***

When the company accepts an 'impact,' the claimant is supposed to complete detailed questions to quantify and substantiate his/her claim (in practice, many claimants have told RAID that they have not received any such form). Getting this wrong could put them at a huge disadvantage when it comes, to agreeing or accepting the remedy or compensation offered by the company. The task can be overwhelming and the vast majority of claimants enter into this part of the process without legal advice.

The company controls how remedy is determined. It contemplates several types of redress, ranging from reinstatement of opportunities, compensation for economic loss, distress and suffering, medical care and rehabilitation, apologies and guarantees of non-repetition. Many recent claims appeared to have been settled by a single monetary payment.

### ***33. Are claimants fairly compensated?***

It is hard to know. The lack of transparency on Acacia's part about settlements prevents proper independent evaluation of whether compensation is being fairly calculated. Those interviewed by RAID who have received a remedy under the revised Grievance Process uniformly expressed dissatisfaction in the amount of compensation that they received. Some said they felt pressured into accepting settlements they disagreed with. Others also expressed concern about the delivery of the compensation, in one known case being made to wait six months for payment, which can be a problem for those who need urgent treatment, which virtually none can afford without compensation.

Under an earlier compensation process, RAID criticised the Mine for channelling goods and services through providers exploiting their monopoly position, for arranging for individuals to do jobs as 'compensation' and for requiring them to participate in awareness programs to warn others against 'trespassing'. The revised process expressly provides that payments may be made 'directly to service providers' and stipulates that 'criminal conduct' (which may include someone being 'repeatedly on the Mine site and attempting or succeeding at stealing', those with a 'criminal record for trespassing' on the Mine site or 'putting themselves in danger' or simply being there at night) will be taken into account in determining compensation. But judging what is 'criminal' is almost entirely at the company's discretion and could be used to browbeat a claimant into accepting a low offer. Acacia's lack



of reporting around remedy makes it difficult to establish how these powers to curb or channel compensation are being used.

### ***34. Isn't it a good idea that people get at least some kind of compensation?***

For the few who do receive some compensation, the money can enable life-changing medical treatment and the ability to sustain oneself and one's family, at least for a time. But the question is not whether some compensation for human rights violations is better than none, but whether those who suffer such violations ought to be put through something like Acacia's grievance process to obtain it. The thinking behind the UN Guiding Principles is that people face so many barriers to bringing legal claims, that it would be much better for business to enter a dialogue with complainants to resolve matters effectively. But, firstly, company-based mechanisms are designed to allow the company to present its version of events and dismiss claims so that most cases never make it to the compensation stage. In Acacia's case, the Mine places more obstacles – complex processes, limited access to legal advice, its control of evidence, timelines and the appeals process – in the way of claimants as the legal process, and without the safeguards of due process. Secondly, RAID has spoken to many claimants who are completely dissatisfied with the low level of compensation on offer for, for example, a life-changing injury. Thirdly, many people who have suffered serious harm don't file a claim only because they wish to get compensation, but also because they wish to see injustices put right. When the Mine's grievance process is known for closing cases down, and providing no justice, there is neither closure for individuals, nor does it help improve community relations or end abuses.

### ***35. What information does the Mine make available to claimants about their case?***

When a person lodges a grievance (the company prefers to use 'grievants' rather than claimants), they are supposed to be provided with a handbook outlining the grievance process, which includes a Grievance Intake Form, although none interviewed by RAID said that they had received such a handbook. Once their case is filed, claimants are meant to receive an acknowledgement form that states that the company will update them about the status of their grievance within 30 days. However, claimants have told RAID that either this deadline is missed or even that they hear nothing more about their case.

Once a 'grievance' is accepted, claimants are to be updated at least every 30 days about the status of the investigation into their claim. The company is supposed to provide claimants with the evidence upon which the Mine relies in advance of an 'engagement & dialogue' meeting. Claimants, many of whom cannot read or write and are Swahili speakers, have told RAID that, in some cases, they only received the Mine's Investigation Report the day before the meeting or Committee hearing was to go ahead and/or in English only, putting them at a complete disadvantage. Minutes of the meeting are not automatically provided to the claimant.

After the end of the engagement and dialogue process, the company is supposed to provide the claimant with a Grievance Resolution Report, although no timeframe is given for when this will be produced. This sets out the issues that have been agreed and those that have not, including on whether an 'adverse impact' occurred. Many of those interviewed by RAID have said that they never got to see any such report. When an adverse impact is accepted, claimants are supposed to receive a Remedies Report setting out what the Mine is prepared



to offer them, though most of those interviewed by RAID said that they had not received such a form. If a grievance is rejected or if there is ultimately no agreement over the remedy on offer, claimants can appeal to the Grievance Committee.

Claimants are put at an immediate disadvantage when it comes to the exchange of information with the Grievance Committee. The Mine's team presents its case, including its interpretation of the claimant's case and the evidence, to the Committee in a 'pre-hearing meeting,' which is not attended by the claimant. Claimants have been denied an opportunity to present further arguments to the Committee. Once the hearing is over, claimants are meant to receive a Grievance Committee Report determining their appeal. However, in practice, the process has been far more haphazard, especially when it comes to appeals over remedy, with the Committee sometimes making on the spot determinations with little or no reasoning given. Furthermore, while claimants are supposed to receive the Committee's report within 28 days of the hearing, no timeframe is set for convening the Committee to hear an appeal in the first place. Hence complainants can wait many months before the appeals process even begins.

### ***36. Does the Mine always follow the procedure set out in its published documents?***

No. Civil society groups have identified serious shortcomings in the published procedures and guides. These concerns are compounded by the fact that what's written on paper isn't followed in practice. Examples include claimants being frustrated when trying to access advisers of their choosing, the Mine withholding evidence, failing to translate key documents into Swahili, failing to keep claimants informed about their claims, failing to inform them about legal representation, and failing to meet its own deadlines while insisting that claimants do so.

Furthermore, the so-called 'Independent Review' is carried out by a committee comprised of three members chosen by the Mine, including from an 'expert' and a 'mine' roster that the company directly or indirectly appoints. The single 'community representative' is outnumbered and, [according](#) to those who've been on the committee, they are sidelined to ensure the company's case prevails. Moreover, all are paid by the Mine. A lawyer who has assisted several claimants on a largely pro bono basis told RAID, '[i]f there is a Chairperson who always rules in favour of the Grievant, I don't think the Mine will choose him again.' Despite detailed guides on remedy, the actual compensation offered to claimants has been arrived at in an arbitrary process without proper calculation or reasoning, leaving most claimants completely dissatisfied. Some have even been pressured or cajoled into accepting offers they initially refused.

### ***37. Why do people bring grievances if the process is not fair?***

Sadly, local people have little choice but to turn to the Mine. There are several reasons for this, both push and pull factors. Firstly, most would not even consider seeking compensation through the courts in Tanzania, because of insurmountable barriers including knowledge of it as an option and the legal system, the high costs involved, and the difficulty of getting good legal advice. A lawyer who has assisted several claimants on a largely pro bono basis explained to RAID, 'I don't trust it, the grievants don't trust it, we just go through it because we don't have any options...the people are too poor to afford a lawyer.' One person told RAID he had never seen a legal office before his injury and thought courts were for putting

people in jail. In contrast, the Mine actively promotes its grievance process in local communities. Secondly, such claims would involve formally identifying the police as the perpetrators of violations, with clear risks for the claimants. Thirdly, it seems inevitable to many that if the Mine employs the police to provide security, then it is to the Mine they must turn when a violation involving the police happens within the mine site.

### ***38. Could the Grievance Process itself violate human rights?***

Yes, given how it is written to disadvantage the claimant and how the few safeguards that are included don't apply in practice. The UN Guiding Principles comment that 'Poorly 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.' They also set out that grievance mechanisms should be 'Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights'.

Acacia's process 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.

### ***39. Why is a private company considering grievances against the police at all?***

It does seem highly unusual that a private company would be examining the actions of a State police force and offering redress for the harm caused by their actions. But then Acacia has a very different relationship with the police at North Mara, effectively turning a public police force into a security provider to the company.

If Acacia was to strongly condemn police violations, even taking action against the police for acts carried out at the mine site, then it would have to answer difficult questions about why the police were operating in joint security patrols paid for by the company in the first place. In addition, Acacia would risk alienating the police and losing the security upon which it says it relies to do business.

The fact that Acacia does not explicitly say in the Handbook that grievances can be brought about the police, though, in reality, the majority of cases concern the actions of the police, speaks volumes about Acacia's approach.

For Acacia to acknowledge that it will consider grievances against the police is likely to sit uncomfortably with Acacia's other stated position, that it has nothing to do with police violations and that it is for the authorities to deal with such crimes. This may explain why, in its latest annual report, Acacia says '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, especially as Acacia does not explain what steps are necessary to show that remedies are not forthcoming from the State, leaving the Mine with sole discretion in determining whether it will consider a grievance against the police.

It is of serious concern that a company adjudicates on serious human rights violations when it has no expertise or legitimacy to do so. And there is a clear conflict of interest in reaching such decisions against the police. It is also contrary to the UN Guiding Principles, which require that such adjudications be made by an independent third party. Unsurprisingly, the company seeks to keep all of its ‘findings’ confidential.

#### ***40. Are people at risk if they bring grievances against the police?***

Yes. RAID has interviewed victims and their families who have been subjected to police intimidation either after an incident or when a grievance is raised. Victims reported to RAID that they did not dare to seek medical help or obtain a form from the police for medical treatment after an incident for fear of police reprisals, including arrest for ‘trespassing’ or ‘theft’.

Police have 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 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. RAID has been told by victims that they sometimes omit references to police involvement in violations out of fear of reprisals. The lengths the police operating at the mine will go to falsely discredit those harmed is exemplified by [Zakaria’s story](#).

#### ***41. Does the Mine help to safeguard those raising grievances?***

The Mine acknowledges it ‘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.’ This appears to be a tacit acknowledgement of the risk of police reprisal. But 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.

#### ***42. Does the Mine provide humanitarian assistance?***

Yes, but only on a highly restrictive basis in a narrow set of circumstances. The Mine says that humanitarian assistance, such as short-term medical care or subsistence, may be considered for ‘a serious and urgent medical situation which appears to be linked to an injury incurred on the Mine Site’ only if it is ‘necessary to halt, prevent or treat life-threatening or life changing injury and its immediate effects.’ It is thus limited to exceptional circumstances, and appears to exclude injuries suffered at the hands of security forces/police off the mine site, even if related to mine activities. Moreover, the Mine also says that humanitarian assistance will only be available if a grievance has been rejected or will not be made. The latter requirement is particularly concerning, obliging those facing life-changing/threatening injuries to concede their claim against the Mine for such injuries in order to get urgently needed help. Such a requirement is clearly inconsistent with the Mine’s responsibilities to provide access to remedy.

Acacia does not publish information regarding its provision of humanitarian assistance. RAID is aware of many cases in which life-changing/threatening injuries were suffered that required urgent care for which no such assistance was provided.

#### ***43. Why have some claimants decided to take legal action in the UK?***

Acacia is a UK registered company and claimants can seek to bring a civil case against the company in the UK courts for the harm they have suffered. The barriers to such legal actions are high, not least because it is expensive and there are a few lawyers willing to take on such cases.

UK law firm Leigh Day [represented](#) Tanzanian claimants in March 2013 proceedings against ABG (now Acacia) and its North Mara subsidiary in the High Court of England and Wales following press coverage of a number of deaths. The claimants included the relatives of six men who were killed at the mine site on 16 May 2011 and one man who was left paraplegic. The company settled the claim out of court in 2013. It has not commented publicly on the settlement nor released any details about its nature or magnitude.

In 2017, further victims of human rights violations [instructed](#) UK-based lawyers Deighton Pierce Glynn, to take up their cases with Acacia. These claims are yet to be resolved.

#### ***44. What should Acacia Mining do to address the problems at North Mara?***

RAID has set out two key areas where Acacia Mining should take immediate action:

Firstly, the company should 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 at least a decade and have long since reached a point where this 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.

Secondly, it should 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 claimants, 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.

#### ***45. Why is RAID calling on Acacia to end the Mine's agreement with the police when companies are encouraged to make such arrangements?***

Civil society groups have been critical of initiatives that advocate for agreements with state security agents as a kind of 'risk insurance' in case the security arrangements go wrong. For example, some companies will point to a Memorandum of Understanding with the police, army or other state forces and claim it set out its expectations in writing about how such state security agents should conduct themselves. If later any human rights violations did occur by the state forces, a company may try to claim that it was not its fault.

In Acacia's case, it often cites how its agreement with the Tanzanian police includes human rights training and that it expects the police to abide by human rights standards and codes

of conduct on the use of force. Such training can be useful but should not be seen of absolving Acacia of its responsibilities in employing the police. Despite the fact that the agreement with the police has been in place at North Mara mine for a decade, there has been an alarming number of human rights violations by police stationed at the mine. This should be ringing alarm bells for Acacia.

Perhaps even more important is that Acacia's agreement with the Tanzanian police sets out that the police will receive a range of benefits in return for security services (including per diems, food, fuel, and accommodation) and that the police's security services will be 'in coordination' with the Mine's security personnel. In effect, the police appear to serve the interests of the Mine, not the local residents. The agreement empowers the Mine to exert significant control over the Tanzanian police. It is clear that the agreement between the Mine and the police permits the company to employ a public force to provide private security services for a company. As such, it risks undermining local people's trust in the police.

#### ***46. Will RAID's call for Acacia to suspend the Mine's grievance mechanism stop people getting any remedy?***

RAID has based its call for a suspension on what we know about the grievance process. For a start, the company itself prevents most claimants from getting any remedy. 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 (which says nothing about whether they got adequate compensation). In 2016, when dealing with a backlog of over 100 security-related cases, the Mine dismissed over 90% of these as 'unsubstantiated or inconclusive'. The numbers are backed up by what people have told us: that the company has either denied that any harm was done to them or else offered arbitrary and low levels of compensation.

Furthermore, and crucially, people who have been through the process have found it to be intimidating, patronising and coercive. In interviews with RAID and other civil society groups, they say they feel no sense of satisfaction, closure or justice. Combining these overwhelmingly poor outcomes with the warning from the UN Guiding Principles that such mechanisms should not be disrespectful and disempowering, the Mine's current grievance process appears not fit for purpose.

RAID has called for Acacia to 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.

Suspending the grievance process while it undergoes independent review does not mean that the Mine should cease providing immediate, interim relief to those it has harmed. That would be inconsistent with its international and domestic responsibilities. Meanwhile, RAID has called on Acacia to cooperate with local Tanzanian authorities to ensure accountability and to continue to take precautionary measures and provide broad-based humanitarian assistance, without any of the restrictions and exceptions it currently applies.