



Rights and Accountability in Development

1 May 2018

Mr Charlie Ritchie
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Sent via email

Dear Mr Ritchie,

Thank you for your response to RAID and LHRC's recent [assessment](#) of Acacia's new grievance mechanism and to the joint NGO [open letter](#) to Acacia's board of directors. Your reply was addressed to RAID, but since you referred to the open letter, we've copied our correspondence to the other organisations concerned. We also wish to thank you for sending the additional documents last week and for posting RAID and LHRC's assessment of the grievance mechanism to your website. We appreciate that Acacia is considering the concerns we raised at the highest level.

At the outset, please allow me to respond to Acacia's view that RAID has misrepresented the human rights situation at North Mara Gold Mine. By Acacia's own admission, there were at least 32 'trespasser-related' fatalities on the mine site between 2014 and 2016. Other credible reports indicate the death rate could be much higher and further detail scores of serious injuries. I hope you will agree that, by any measure, death and injury on this scale is alarming, and requires an urgent response by your company.

Furthermore, you refer to RAID championing individual claims, which you characterise as 'unfounded'. RAID has carefully documented cases in several field trips to the area and works closely with local partners to verify information. As you will know, on more than one occasion legal claims have been filed in the British courts for compensation on behalf of victims at North Mara.

Since Acacia has committed to consulting on the Community Grievance Process (CGP) and welcomes feedback, we very much hope Acacia will take on board the concerns we and others have raised and translate these into action by arriving at a grievance mechanism that puts victims and their rights first. To achieve this, we strongly believe Acacia will need to resolve the concerns we raised in our assessment. Some of the new clarifications you provided in your response are important and we urge you to reflect them in documents underpinning the grievance mechanism.

Please find attached, in the light of your response, some of the key concerns that we continue to have about the revised mechanism. We are happy to provide further clarification if that is helpful. We hope you will post this correspondence and the attachment to the website as well, since it forms part of our interaction about the revised grievance mechanism. We also look forward to seeing other feedback that Acacia has received on its grievance mechanism posted on your website.

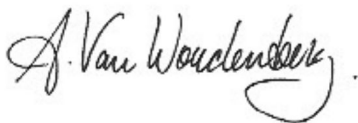
Thank you for your invitation to join a consultation meeting with other interested international observers to gather further feedback on Acacia's revised grievance mechanism. As we have said in previous correspondence, we are happy to participate in any open and transparent consultation process. To collect both expert and diverse feedback, we urge you to also extend such an invitation to local groups within Tanzania, if you have not already done so.

We will be as flexible as possible in the coming months to participate in a consultation meeting. We would greatly appreciate receiving some possible dates you might be considering, the format you hope to use to conduct the consultations and the process whereby participants can feed into the agenda.

Finally, we noted that Barrick Gold Corporation is aiming to complete negotiations with the Tanzanian government over an export and tax dispute during the first half of 2018, as detailed in Barrick's first quarter results published on April 23. Since Barrick owns 63.9% of Acacia, we trust Barrick will also advocate respect for human rights and accountability for violations committed at the Mine as part of the negotiations. As you may recall, a coalition of NGOs [wrote](#) to President John Magufuli on this point in October 2017.

I look forward to hearing back from you with further details about the upcoming consultations.

Yours sincerely,



Anneke Van Woudenberg
Executive Director

CC: CORE Coalition, UK
Legal and Human Rights Center (LHRC), Tanzania
London Mining Network, UK
MiningWatch Canada

Mr Kelvin Dushnisky, Chairman, Acacia Mining plc
Mr Peter Geleta, Interim CEO, Acacia Mining plc
Rachel English, Director, Acacia Mining plc
Andre Falzon, Director, Acacia Mining plc
Stephen Galbraith, Director, Acacia Mining plc
Michael Kenyon, Director, Acacia Mining plc
Steve Lucas, Director, Acacia Mining plc

Key concerns over Acacia's revised Community Grievance Process

State obligations and control of the police: – Acacia says that RAID and LHRC have 'wrongfully attributed human rights and legal obligations to the companies that are rightly those of the Tanzanian State' and that 'the CGP specifically admits grievances involving allegations regarding human rights violations by the police, but only as a measure until or unless members of the North Mara community start effectively accessing State-based remedy and accountability mechanisms and receive comprehensive remedies from the State for human rights violations by the police.' Acacia states that the company 'does not and cannot control the State's police force or the State's response to alleged human rights violations'.

We agree that the Tanzanian state has the primary responsibility for holding to account those responsible for the dozens of serious human rights abuses at North Mara Gold Mine. Our letter to the Tanzanian president was precisely aimed at urging the government to act on this matter. But we believe Acacia omits two crucial points. Firstly, powerful corporates have leverage over States and the *UN Guiding Principles on Business and Human Rights* requires them to use that leverage. The current negotiations between Barrick and the Tanzanian government about Acacia's future operations is a prime opportunity to do just that. Secondly, NMGML has a very close working relationship with the Tanzanian police, who they pay to provide security at the Mine in joint operations with the Mine's own security teams. It is the company who controls access to the Mine and who calls the police in.

Acacia can surely see, as civil society NGOs have repeatedly highlighted, that the Tanzanian state has to date offered no effective redress for the victims of mine-related violence and that the Tanzanian police have largely acted with impunity. To date, as far as we are aware, not a single perpetrator of abuse has been charged or convicted. Acacia should use its leverage to press the Tanzanian government to hold all perpetrators of abuse, including the police, to account. If such pressure proves to be ineffective, and there are no meaningful controls to prevent police abuses, Acacia will need to consider whether it should continue to use the police for joint security operations at its mine sites. Moreover, the Mine must take action against any employees or subcontractors who are responsible for violations, including referring them to the authorities.

Applicability to the police: – We appreciate the clarification that the new grievance mechanism applies to the police. However, this is not explicitly stated in the *Handbook* where the main reference is to 'third parties linked to the Mine'. Indeed, in a presentation about the new mechanism, the company stated: 'A grievance cannot be submitted directly against any other entity or individual, including the police, through the HRGM [Human Rights Grievance Mechanism]'. **We urge you to amend the *Handbook* to clearly state that the mechanism will consider grievances made against the police.**

Barriers to redress: – The only realistic option for redress many victims have is to use the company's grievance mechanism, but many obstacles are placed in their path: (i) most claims are deemed inadmissible at the outset; (ii) there's limited legal support for victims (beyond vouchers to pay for four hours of advice), which creates an inequality of arms when victims are faced with company investigators tasked with concluding whether a breach of legal or other standards has occurred; and (iii) victims are meant to evidence their own claims, when the Mine holds all the

information. **We urge Acacia to provide legal assistance for the victims that is fair and to link provision of legal aid to the seriousness and complexity of the case.**

Evidence and control of information: – Acacia offers ‘assistance to grievants in gathering evidence or material to support their claims or grievances’, but this arrangement gives rise to a fundamental conflict of interest whereby company investigators are deemed to be impartial when they act for the Mine. In its response to our assessment, Acacia clarified that information from the company ‘may include but not be limited to, witness statements, hospital records, photographs and video footage’, although this is not stated in the operating procedure or *Handbook*. Acacia says the Mine ‘must disclose the information on which it intends to rely’, but we see this as different to disclosing information that may not support its case. **Instead, to ensure fairness, we urge there is full disclosure of all information to the victim by the Mine.**

Independent resolution: – When complaints cannot be resolved through dialogue, the Mine says it has an independent Grievance Committee to hear appeals. However, this Committee is not at arms-length from the company because, alongside a single person from the community, it includes a company representative and a chairperson, who is ultimately appointed by the Mine’s advisory board. Acacia has since stated that the person from the Mine Roster ‘is not someone from the company, but rather someone nominated by the company from outside it’, although this is not apparent from the operating procedure or *Handbook*, and it remains unclear who this person is and how independent he or she will be. The Mine pays Committee members sitting fees and attendance expenses. We continue to question whether company-controlled grievance mechanisms, which lack true independence, are an appropriate way to deal with serious human rights violations, including killings. **We recommend that Acacia establish, where adjudication is needed, a genuinely independent, legitimate, third-party mechanism, as advocated in the *UN Guiding Principles*.**

Transparency: – Acacia says it will ‘be transparent about the way company investigations are conducted’. But to date, there has been little transparency. Acacia hasn’t published details of how many are injured in Mine-related violence or given full information on ‘intruder-related’ deaths. Acacia provided RAID with the Standards and Remedies Guides on April 27, and we look forward to these also appearing on the company’s website, but many other underlying policy and process documents, including the Mine’s Investigations Policy, have not yet been disclosed. Acacia states that ‘[i]nternal investigation functions and procedures do not overlap with the grievance process’, but this cannot be ascertained when such procedures remain unpublished. The company states that ‘relevant details’ of its Memorandum of Understanding with the police have been made public, but it has not published this MoU in full. Acacia said in its annual report published in March 2017 that it had rejected 109 out of 117 of cases relating to public or private security. Acacia, in its response, refers to the re-opening of some 30 previously settled or previously rejected complaints and 25 new human rights cases, but the company does not provide details of the basis upon which 93% of claims were rejected. **We urge Acacia to provide further details about these recent cases.**

Even if a complaint goes all the way to appeal, neither Expert reports nor the conclusions of the Grievance Committee (including any dissent) are published. So it is impossible to tell whether claims have been fairly considered. We appreciate that victims may not want details of their claims published, but currently there is no provision for an independent review of the effectiveness of the complaints process, only (unpublished) internal assessments. Acacia says that ‘outcomes of the CGP will continue to be included in Acacia’s Annual Report’, but this is not reassuring given the

superficial nature of such reporting to date. **To ensure full transparency, we urge that these shortcomings are addressed.**

Legal waivers and parallel process – Acacia’s original grievance mechanism at North Mara required victims who settled claims to sign a legal waiver, which was widely criticised for denying justice and closing off avenues of redress for victims. The current *Handbook* confirms 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’. This is a step forward. But the *Handbook* does set out limitations in relation to other legal action which could adversely affect a victim’s options. Acacia, in response to our assessment, has stated that, when a grievance is not admitted because the matter is pending under another process, the reasoning for its exclusion will be explained. **We urge Acacia not to exclude grievances because a civil claim has been initiated if the company’s grievance mechanism, with the consent of the victim, is to be considered as a form of alternative dispute resolution.**