



Acacia Mining's Revised Operational Grievance Mechanism at North Mara Gold Mine, Tanzania

Assessment and Recommendations

April 2018

Introduction:

Acacia Mining plc is a London based company that owns the North Mara Gold Mine in Tanzania. Its majority shareholder is Canadian mining giant, Barrick Gold Corporation.¹ Acacia's North Mara mine has a history of serious human rights abuses. In an unprecedented series of incidents since at least 2005, local people have been shot or seriously injured at North Mara as the result of security operations. 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. Following public pressure, Acacia acknowledged in its [annual report](#) published in March 2017 that 32 'trespasser-related' deaths had occurred at its mine between 2014 and 2016. 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.²

Acacia has sought to redress the human rights violations at North Mara through an operational level grievance mechanism. Since 2014, RAID, LHRC and other civil society groups have raised [concerns](#) about the mechanism which lacked independence, permitted total company control over investigations, pressurised claimants to sign settlements they did not understand, used legal waivers to stop claimants turning to the courts, and, offered inadequate compensation for the small minority of victims who made it through the process. According to Acacia's own statistics published in its 2017 annual report, 93 per cent of claims were rejected with no explanation provided.

Following public pressure, Acacia acknowledged there were problems and began revising the grievance mechanism. Beginning around August 2017, it presented a new draft mechanism to a number of local communities, attended by local leaders and chiefs, near its North Mara mine. Copies of a *Human Rights Grievance Mechanism: Handbook for Grievants* ('the earlier Handbook'³) were left at the back of the venue. Those who attended the presentations were requested to provide comments, though the process by which feedback was collected and considered is not clear. Acacia has not published any feedback it received.

In December 2017, Acacia posted a new draft mechanism on its website. This version is called the Community Grievance Process (the 'current [Handbook](#)') and it is accompanied by a technical document detailing the standard operating procedures ('[Standard Procedure](#)'). The Handbook is

¹ Acacia Mining is UK-registered and London-listed. It owns three gold mines in Tanzania, of which North Mara Gold Mine is one. Barrick Gold Corporation holds 63.8% of Acacia's shares.

² A summary of the inquiry report was presented locally, but the full report has not been published.

³ Copy on file at RAID (version dated October 2017). This document was not put on Acacia's website.

notable for the removal of much of the human rights language from the earlier version, which was presented very differently to local communities.

Recommendation:

- Acacia should publish the comments and feedback it has received on the revised mechanism, whether from the local level or from the ‘international civil society organisations’ it has consulted.

RAID’s and LHRC’s position on operational-level grievance mechanisms:

RAID and LHRC continue to question whether company-controlled grievance mechanisms, which by their nature lack true independence, are an appropriate way to deal with serious human rights violations, including killings. RAID and LHRC recognise that justice is not always available through the courts because victims cannot meet costs or find representation or because a culture of impunity exists. The priority must be to tackle these barriers to justice. But it nevertheless remains essential that any company-level redress recognises its own limits, as [set out](#) in the *UN Guiding Principles on Business and Human Rights*:

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.

Unfortunately, it is also the case that Acacia’s new grievance mechanism introduces its own set of barriers and obstacles to redress, but without proper safeguards for victims.

This assessment of the new grievance mechanism is input to Acacia consultation process.⁴ While Acacia has set out to improve its original grievance mechanism, which RAID previously [critiqued](#), RAID and LHRC continue to have a number of concerns as detailed below.

Key Concerns with Acacia’s New Community Grievance Process

1. Lack of human rights benchmarks

Acacia’s earlier Handbook was underpinned by human rights standards. It referred to human rights recognised under international law and cited, amongst others, the Universal Declaration of Human Rights and the African Charter on Human and Peoples’ Rights as being key benchmarks for its grievance mechanism.

The current Handbook drops all mention of these benchmarks as well as all references to United Nations and other codes governing the conduct and use of force by police and private security. The list of 24 rights explicitly set out in the earlier Handbook – for example, the right to life, freedom from torture and from cruel, inhuman and degrading treatment, to protection from arbitrary arrest – have been removed.

The current Handbook instead posits ‘human rights’ (without any further elaboration) alongside grievances concerning the environment, land and property rights, housing and livelihoods, and health and safety. Not only is the importance of human rights reduced in this approach, but there is

⁴ Acacia’s said on its website, when posting details of the modified grievance process in December 2017, that it intended ‘to consult with and seek feedback from the Mine’s local communities, and from interested external observers.’

also a failure to recognise that adverse impacts on the environment, livelihoods and health are themselves a failure to respect human rights.

Acacia's stripping out of human rights language from its revised mechanism does not mean that adverse human rights impacts at its operations have gone away nor that the company's new mechanism will cease to deal with such cases. Rather, it leaves victims (referred to as 'grievants') with the perception that their claim does not concern their human rights. It permits Acacia to subsume and minimise the number of human rights complaints at its North Mara mine when commenting publicly on the grievance mechanism.

Recommendations:

- Acacia should ensure its revised grievance mechanism is human rights compliant and is firmly rooted in existing human rights standards.
- Acacia should clarify whether the mechanism will operate according to the effectiveness criteria of the *UN Guiding Principles on Business and Human Rights*.

2. Confusion over admissibility of complaints involving the police

Acacia says the majority of security-related deaths and serious injuries at the mine are the result of confrontations with the police. It is therefore surprising that Acacia's current Handbook is confusing about whether its revised mechanism will accept and offer redress when complaints concern the police.

The current Handbook refers to 'the activities of the Mine or third parties linked to the Mine'. According to the process laid out, 'grievants' are asked to state if they have complained to the police or wish to keep their identity from the police or (albeit only in the intake form) whether the grievance is about the police. It is not clear if such information is collected to include or exclude police-related complaints.

The Standard Procedure is also contradictory in its approach to protecting the identity of victims, especially given that police harassment, intimidation and indemnity is a growing problem in Tanzania.⁵ While the Mine 'will seek consent before revealing the identities of community members involved in a Grievance...to the authorities or third parties' this is qualified to apply only in 'exceptional circumstances' and is not guaranteed. The Mine warns that protecting a victim's identity 'may affect the ability of the Grievance Process to determine whether an adverse impact has occurred', adding to the pressure on a victim to waive their anonymity.

It is also unclear whether the police are considered a 'third party' linked to the mine. 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.' 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 current Handbook also states: 'The Mine may not be able to fully investigate or provide comprehensive remedies on its own where potential crimes, State actors or other third parties are involved in the alleged harm.'

It is critical this confusion is cleared up, especially since a substantial number of grievances directly or indirectly involve the police and also because Acacia has a close working relationship with the

⁵ See, for example, The [US State Department 2016 Country Report on Human Rights Practice in Tanzania](#); Human Rights Watch's 2018 [report](#) on Tanzania; the July 2017 [joint statement](#) by leading human rights groups; and the February 2018 public [statement](#) issued by 105 civil society groups in Tanzania condemning 'unprecedented' violations of human and democratic rights under the present government.

police service in North Mara. Notably, Acacia's subsidiary, North Mara Gold Mine Limited (NMGML), has:

- **A Memorandum of Understanding (MoU) with the police to provide security.** The company pays the police for this service, and controls police access to the mine site. 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.'
- **Joint security operations with the police.** The MOU between the company and the police is clear that police assignments are issued 'in coordination with the Mine Site Security Manager' and 'the Company shall always be in coordination, cooperation, and communication with the Police regarding security and safety issues, including human rights' [North Mara MoU, 1.1.10 and 2.9].

Recommendations:

- Acacia should provide clarity that complaints against the police operating at or near the mine who have been called in by the mine or are acting as part of any joint security operations can be lodged under the revised grievance mechanism.
- Acacia should give priority to protecting victims from harassment and intimidation, which must include withholding their identity. Many investigative and remedial processes (judicial and non-judicial) operating in other contexts have successfully pursued justice and redress while safeguarding victims.

3. Questions about process for clearing the backlog of cases

Acacia says consultation over its revised mechanism is an exercise to discover whether it 'will meet the needs of the Mine's local communities as a process to raise grievances against the Mine'. The company has, however, been 'piloting' elements of its revised mechanism at North Mara to clear a backlog of grievances. This has been happening since at least November 2016 with, for example, appeals being heard where claimants have been dissatisfied with previous settlements. These appeals have come before a panel appointed by the company, according to a letter Acacia sent to RAID on 17 January 2017. It is unclear exactly how this 'stop-gap' process worked or how security-related cases have been handled, including the many that involve the police.

Acacia said in its annual report published in March 2017 that it had rejected 109 out of 117 of such complaints. It provided no explanation for the rejection of so many complaints, other than saying they were 'unsubstantiated.' The backlog of claims has been cleared prior to publication of any Handbook or Standard Procedure.

Recommendation:

- Acacia should provide detailed public information about the process used to clear the backlog of existing cases, including indicators of the nature of the complaints, the number of appeals and the outcome. Where complaints have been rejected, Acacia should provide additional information to the complainant, including the reason why it was rejected.

4. Control over investigations

As with Acacia's previous grievance mechanism, the revised mechanism lacks independence. Investigations into complaints continue to be largely controlled by the company. As the current Handbook sets out, Acacia's Grievance Team – made up of company staff – will categorize

complaints and give direction on ‘the appropriate manner of investigating Grievances’ (though there is a lack of clarity over the initial handling of complaints submitted via village liaison officers). It is the company that gathers, stores and controls the information and evidence.

The onus is on the victim – often individuals with limited experience of such matters and few resources – to provide the evidence. According to the current Handbook, ‘A Grievant shall be more likely to be able to substantiate his or her Grievance if she or he provides: a detailed statement regarding the alleged impact; detailed statements from any witnesses; and copies of any relevant documentary evidence.’

Acacia recognises that victims may have difficulty gathering information and permits them to choose anyone they like to assist them, including a civil society organisation or other experts, though the company sets strict limits on paying for legal assistance (see below), thereby limiting the assistance a victim may be able to obtain.

Acacia’s proposes its staff can assist a victim without clarifying how it would tackle the serious conflict of interest that would arise. The current Handbook states: ‘If you [the victim] request assistance, the Investigations Team will help you gather evidence about your Grievance, such as documents and information from people with knowledge about what happened.’ At the same time, the current Handbook states clearly that the Investigations Team ‘investigates Grievances on the Mine’s behalf and represents the Mine during the Grievance Process.’ The Standard Procedure is more explicit: ‘The Investigations Team Report shall represent the Mine’s view of the events which are the subject of the Grievance and conclusions regarding whether there has been or could be an adverse impact....’

Acacia has sent RAID another manual, its *Handbook for Investigating Allegations of Security & Human Rights Impacts*.⁶ It governs how Acacia’s Mine Investigations Group carries out its duties, with a remit much wider than human rights. This document too sets out unequivocally that such investigations are conducted to protect the interests of the company.

It remains unclear to RAID and LHRC how the Investigations Team will deal with conflicts of interest or how they will coordinate their work with Acacia’s overarching and legalistically-framed Investigations Policy.⁷

Recommendations:

- Acacia should consider an alternative way of dealing with evidence by reversing the emphasis and instead stipulate that the company must disclose all information it has to the ‘grievant,’ including, but not limited to, witness statements, hospital records, photographs and video footage.
- Acacia should ensure the grievance mechanism is operated in accordance with the *UN Guiding Principles*, which means it should be legitimate, equitable and rights-compatible. Given the conflicts of interest highlighted, Acacia should remove company staff from running it and instead outsource it to a professional and independent team at arm’s length from the company.
- Acacia should explicitly set out procedures for the handling of grievances submitted via village liaison officers to ensure their fair and timely consideration.

⁶ Acacia shared this document with RAID via email on 6 December 2017 and said it was not intended as an external document. RAID had previously informed Acacia it did not wish to receive such documents confidentially, since we believe company grievance mechanisms, including the documents that underpin it, should be public and transparent, in accordance with the effectiveness criteria set out in the Guiding Principles on Business and Human Rights.

⁷ A copy on file at RAID. Acacia has also not published this policy.

5. Lack of adequate provision for legal assistance

The revised grievance mechanism sets out two steps to resolve a complaint. The first step 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 and agree remedy. The process for both steps could leave a 'grievant' at a serious disadvantage if the victim does not have adequate legal assistance. Acacia says a lawyer is not required⁸, but given the quasi-judicial nature of the process drawn-up by the company, the assistance of a lawyer is likely to secure a better outcome.

The current Handbook provides for a limited amount of up to 4 hours of legal aid.⁹ This free advice appears only under 'Lodging a grievance' - the point in the process at which the complaint is filed. While 4 hours may be adequate to lodge a complaint in some cases, it may be inadequate for complex cases. Furthermore, there is no clarity on whether the 4 hours includes travel time for lawyers. Most victims will find it difficult to hire a suitably experienced lawyer locally. In many cases, victims will likely need to find such lawyers in Arusha or Dar-es-Salaam, both a considerable distance from Tarime.

There is also no reference to additional pro-bono legal advice for victims if their complaint is accepted and they proceed through the grievance process. The lack of further legal advice for victims raises important questions about equality of arms, especially since Acacia will have full recourse to its own General Counsel and any other legal expertise it chooses to engage. A significant number of complaints involve serious human rights violations, as previously documented by RAID and MiningWatch Canada, including death, life-changing injuries and sexual violence. Such cases are likely to require legal advice throughout the process, including if the victim decides to appeal to the Grievance Committee if no appropriate outcome is achieved.

Recommendations:

- Acacia should ensure legal assistance for the victims is fair and link provision of legal aid to the seriousness and complexity of the case, rather than a blanket 4 hours for each case.
- Acacia should set aside a provision to cover transportation costs for legal aid, including from other places within Tanzania, if this is where a 'grievant' wishes to engage a lawyer.

6. A legalistic process

Not only do victims carry the burden of gathering the evidence to substantiate their claim if it is to be accepted by the mine, they also carry the burden of setting out the exact details of who has been affected, how, and what the remedy should be. The onus on a victim to substantiate a remedy is unnecessary when he or she has already established an adverse impact. While a victim is likely to want to provide their view on these matters, Acacia's grievance process places a tremendous strain on victims who will likely lack resources, experience or expertise in such matters.

As the current Handbook states, it is for the 'grievant ... [to] substantiate his or her Request for Remedies'. Specifically, this should include:

'[D]etailed statements regarding the situation and circumstances of the community members who were affected by the impact both before and after the impact; detailed statements regarding the measures which might be taken to restore, as far

⁸ The Standard Procedure states: 'The Grievance Process is not determinative of legal rights or liabilities and representation by a lawyer is not required'.

⁹ The current Handbook states: 'You may request a voucher from the Grievance Office for four hours of legal advice and assistance from a qualified and legally registered lawyer of your own choosing if you wish'.

as possible, the interests and rights of those affected; and copies of any relevant documentary evidence.'

The Handbook says that Acacia can offer the services of its Investigations Team to assist the 'grievant', although there is the obvious conflict of interest as described above. An expert report may also be provided, but the terms or use of such a report is unclear (see below).

It is the Mine's Grievance Team who facilitates the exchange of information between the parties, but the procedure allows only 'seven days or such other reasonable time period' (presumably determined by the company) for either side to respond. This disadvantages unsupported victims.

At both the determination and redress stages, the victim has to establish an adverse impact and negotiate remedy through one or more meetings with the mine's Grievance Team and the mine's Investigations Team. While both teams are portrayed as assisting the 'grievant', they consist of staff tasked by the mine to 'separate legitimate claims from false claims through the examination of all information or evidence'. What Acacia describes as 'engagement and dialogue' with the victim is in reality a discussion conducted under conditions that resemble a court hearing, but without the safeguards of a judicial process.

For example, the current Handbook states that:

- 'During a Meeting, the parties may present any document, item of evidence or testimony from a witness and/or expert which has already been provided to the other party prior to the Meeting.'
- 'The Grievance Team may allow either party to submit new documentary and/or oral evidence during the Meeting. The Grievance Team shall grant the parties a prudential time period for submitting their observations on the new evidence.'

The victims of abuse, likely having used up any pro-bono legal assistance and possibly having accepted the assistance of mine investigators who represent the interest of the company, may be left on their own to argue their evidence and negotiate compensation.

Recommendation:

In addition to the recommendations made under (5), Acacia should:

- Abandon the burdensome requirements for the grievant to prove again and substantiate, at the remedy stage, that an adverse impact has occurred.
- Set out proper rules for disclosure, with an onus upon the company to provide information, reports and documents to the victim prior to any meeting.
- Consult the victim to agree a timeframe for the exchange of information, allowing requests for extensions by the victim, so that victims are not disadvantaged by being subjected to timeframes determined 'reasonable' by the company.

7. Unfair process to determine remedy

Acacia will also produce a 'Remedies Report' alongside the information the victim has been able to present about a proposed remedy for the harm suffered. According to the current Handbook, Acacia's report 'shall represent the Mine's view of the appropriate remedy for the purpose of the Grievance Process only'. This report will presumably be prepared in accordance with guidance that Acacia has not published (see below).

The Standard Procedure says that this report ‘is not a determination of the Grievance Process’, but rather is the basis upon which the Grievance Team ‘shall facilitate the exchange of questions and requests for information between the parties.’ It typically provides seven days for a response from the victim to the company’s report, a timeframe likely to be much too short in cases where serious abuse is alleged, although again it is the Mine that has discretion to set ‘other such reasonable period’. Victims and the Mine either agree the proposed remedy through dialogue meetings or, if they cannot agree, the complainant can lodge an appeal (see below).

Since Acacia’s Grievance Team represents the mine’s interest and is made up of mine staff, it cannot be seen as a neutral intermediary. It is hard to see how the team can fairly weigh up their own report against that of the victim.

The Standard Procedure does refer to ‘the direct payment of fees to service providers’, a practice which has caused problems in the past, for example, when claimants have had no choice but to use private businesses, some associated with the Mine. For example, payments have been made to companies supplying building materials or providing training at a high cost rather than allowing victims to shop around so that their settlements go further.

Overall, the process whereby a remedy is decided clearly favours the company. This lack of neutrality and imbalance of power will likely feed a perception that settlements are neither fair nor proportionate.

Recommendations:

In addition to the recommendations made under (5) and (6), Acacia should:

- Publish its *Human Rights Remedies Reference Guide* and any other materials or benchmarks it uses to arrive at a remedy and provide them to parties invited to discuss remedies.
- Publish meaningful information in the Grievance Team Leader’s annual report that gives an indication of the type and level of remedies offered.
- Ensure that victims are able to determine how agreed remedies are to be delivered.

8. Lack of independence in appeals

Acacia’s revised grievance mechanism has an appeals process through a Grievance Committee. Its composition and functioning, as set out by the current Handbook, raises important questions about its independence from the company.

Victims can ask for the Grievance Committee to review their complaint 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 for a review of how an agreed remedy is being delivered.

The current Handbook describes a Grievance Committee as consisting of ‘three members who are independent from Grievants and the Mine’. In the earlier Handbook, Acacia admitted that the Mine appointed all the Grievance Committee members, although it envisaged changes to the roster system (see below) ‘following the current consultation’.

Even when functioning as envisaged, the composition of the committee is likely to undermine its independence as two out of the three members, including the chairperson, will be directly or indirectly appointed by the mine.

The Grievance Committee is to include one member from each of the following groups:

- A member from a Mine Roster (i.e., someone from the company),
- A member from a Community Roster (i.e., a community representative). These members will be chosen by a Community Consultation Body of 22 people from local villages.¹⁰
- A member from the Chairperson Roster, chosen by an Advisory Board to the mine. The Chairperson will likely have additional powers – such as a casting vote to break a deadlock – but Acacia has not yet published detailed procedures for the Grievance Committee.

The Team Leader of the grievance process (a mine employee) appoints each Grievance Committee from the pool described above. The current Handbook states that this person will make the appointments ‘taking into account the type of Grievance, the expertise required and the identities of those involved.’

The Advisory Board’s role is to nominate both members of the Chairperson Roster and an Experts Roster (to report on certain grievances – see below). It is made up of four experts including human rights, the environment and social issues, who will be ‘identified and selected by the Mine’. The board will also include Acacia’s Head of Legal & Compliance, its most senior legal executive. The draft Standard Procedures further states that the Advisory Board, by majority vote, will determine whether a Roster member’s activities (such as those affecting ‘independence or impartiality’) are ‘incompatible’ with their continued appointment. This value-judgement will be made by individuals who are, in effect, company appointees.

Beyond specifying that the Mine shall cover ‘the reasonable sitting fees and attendance expenses of members of a Grievance Committee’, Acacia has not made it clear how members of all these bodies, boards and rosters will be remunerated by the mine or whether such payments can be managed in a way that does not impinge upon neutrality.

Recommendations:

- Given that the Grievance Committee is not at arms-length from the company, Acacia should establish, where adjudication is needed, a genuinely independent, legitimate, third-party mechanism, as advocated in the *UN Guiding Principles*.
- In accordance with the criteria of legitimacy and transparency within the *UN Guiding Principles*, Acacia should clarify further the extent to which the various bodies, boards and committees referred to receive monetary or other support from the Mine, including any payments made to individuals.

9. Expert reports – in whose interest?

Acacia proposes that ‘Grievants may submit expert reports, including at the Mine’s expense’ to support their claim. However, if the Mine is to pay, the choice is limited to a Roster of Experts nominated by the Advisory Board. Acacia has provided little information about the authority, remit and workings of such experts.

Acacia’s Standard Procedure appears to place contradictory demands upon such experts. While ‘The Investigations Team, the Grievant or the Grievance Committee may request a report from an expert’, ‘at the Mine’s expense in respect of specific Grievances or subject’, it is also stipulated that ‘experts shall undertake not to represent or advise Grievants or their relatives or the Mine before the Grievance Process or otherwise for the period of their term as members of the Roster’. It is not clear how a victim can request an expert report to support their claim when the same expert is prohibited from advising the grievant. This brings focus to potential issues of conflict of interest and

¹⁰ 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.

indirect manipulation whereby the experts involved are paid by the Mine and so most likely to act for the Mine rather than the victim. But most victims would use the Mine's experts because they cannot afford to engage other experts at their own expense.

Recommendations:

- Acacia should clarify the purpose of the expert report, the weight it carries and explain how experts are meant to respond to a victim's request to support a claim while being prevented from advising the victim.
- There should be explicit provision to allow experts outside those on the roster and, if a victim chooses their own external expert, Acacia should pay the associated costs, and such an expert should be automatically permitted to attend dialogue or appeals meetings.

10.Lack of safeguards for providing urgent relief

The revised grievance mechanism provides two new responses which recognize the importance of Acacia reacting quickly to prevent or respond to immediate needs. The two responses are: (i) precautionary measures when serious and urgent situations involving the mine arise, and (ii) the provision of humanitarian relief. The mine, the victim or another person may initiate or request either response. In both instances, it is not clear if appropriate measures to safeguard future redress exist.

- With precautionary measures, the mine responds to an incident within 48 hours without the need to file a grievance. This could include, for example, providing immediate medical or other assistance to a person or halting a certain practice.
- With humanitarian relief, Acacia may assist a victim 'where necessary to halt, prevent or treat life-threatening or life changing injury and its immediate effects'. This could include medical care or subsistence support. According to the current Handbook, this type of assistance is only provided when 'a Grievance has been made but rejected, or where no Grievance has been or will be made'.

A company official, the Grievance Team Leader, will categorise the response as either precautionary or humanitarian, with little time for due process. This categorization is crucial as it will determine whether or not a subsequent grievance can be filed.

The Standard Procedure cites examples which could be categorized as humanitarian relief as 'someone who was injured in an accident while trespassing on the Mine Site'. What this example fails to specify in more detail is that such injuries can occur due to excessive use of force by mine security and/or police in joint security operations. RAID has documented an important number of such violations. Without due safeguards, legitimate claims by victims could be hastily dealt with as humanitarian relief thereby limiting their access to other forms of remedy.

Recommendations:

- Acacia should provide victims with full information about the various options for redress when an urgent response is initiated.
- Acacia requires victims to formally acknowledge receipt of urgent relief, but must also make it clear to victims that, by so doing, they are not signing away their legal rights, endorsing the mine's view of events or the extent of any harm caused.

11. Blocking other avenues of redress

Acacia's original grievance mechanism at North Mara required victims who settled claims to sign a legal waiver. It prevented such individuals from pursuing or taking part in any further legal action against Acacia. Human rights organizations and legal experts have widely criticised such waivers for denying justice and closing off avenues of redress for victims. Acacia has taken this criticism on board. 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....'

At the same time, the current Handbook does set out limitations in relation to other legal action which could have the effect of limiting options for victims. It states that the company 'cannot and will not...consider any Grievance when the same subject matter is pending against the Mine in another remedial process'. Whilst this may be justifiable if civil proceedings are already underway, such a stipulation could also be used to pressure claimants into choosing between filing a grievance or seeking alternative judicial action. The Standard Procedure sets out an encompassing range of processes 'judicial or non-judicial, inside or outside of Tanzania' that could give Acacia reason to exclude a grievance.

There may be occasions when a civil procedure and a grievance process could be ongoing simultaneously. For example, lawyers acting for victims may wish to pre-emptively file a claim at a court to prevent it being out-of-time and to safeguard the victim's rights. Doing so automatically precludes the use of Acacia's Grievance Mechanism, which could itself be viewed as a means of alternative dispute resolution, which has not been exhausted.

Recommendations:

- Acacia should not exclude grievances from consideration because a civil claim has been initiated if the possibility still exists for the company's grievance mechanism, with the consent of the victim, to be considered as a form of alternative dispute resolution.
- Acacia must give full reasons for the exclusion of a grievance on the grounds of duplication of process in order to ensure that any other process is really dealing with remediation *per se* rather than other matters, such as investigating the perpetrators of abuse.

12. Lack of transparency

Acacia's lack of transparency about the functioning of its grievance process has been a recurring problem, repeatedly highlighted by RAID, LHRC and other civil society groups. This is not addressed by the revised grievance mechanism. When Acacia justified its revised grievance mechanism in a presentation to community members, it mentioned the 'effectiveness criteria' of the *UN Guiding Principles on Business and Human Rights*, but notably omitted the requirement of transparency.

Acacia previously only published a short two-page document about its earlier mechanism. Despite repeated requests, the company was unwilling to publish details of the process followed and the policies that underpinned it. Although the publication of its current Handbook is a step in the right direction, Acacia has not published several documents referred to under its revised grievance mechanism, namely: *Reference Guide on Security and Human Rights*; *Handbook for Investigating Allegations of Security & Human Rights Impacts*; *Human Rights Remedies Reference Guide* and; *Mine Investigations Group Investigations Policy*. Beyond outlining their broad remit, the detailed rules of procedure of the various boards are also not provided.

The Standard Procedure sets out Acacia's approach to keeping information about the grievance process and its outcomes out of the public domain: '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.' Evidence too is 'strictly confidential and may not be used in any other process or proceeding by a receiving party'.

A problematic provision restricts a victim's access to the minutes of meetings they have attended, including those under the 'engagement and dialogue' process and those with the Grievance Committee, if the company believes 'their contents could entail some risk to any person or entity.' How this risk is determined is not clear.

A specific grievance, depending on how far it progresses, might generate an Investigation Report on the Grievance, an Expert's Report, a Grievance Resolution Report and a Grievance Committee Report. All these reports will remain confidential, preventing any independent assessment or scrutiny. For example, under the appeal stage, '[a]ny member of the Grievance Committee shall be entitled to append a separate reasoned opinion' although this recognition of possible dissenting views is meaningless when all aspects of the determination are confidential.

Significantly, while confidentiality 'shall...not prevent the Mine from sharing anonymised or summarised reports with the CCB [Community Consultation Body] or Advisory Board, including such reports in its public reporting, and analysing and reporting on statistics regarding the Grievance Process,' this exemption is not extended to victims and any advisers they may have, including civil society organisations.

The grievance 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 will prepare quarterly reports for the mine, CCB 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)'. Such reports are not for wider publication and hence will provide no opportunity for wider scrutiny.

The Advisory Board will also hold quarterly conference calls to review the Team Leader's reports and undertake an annual visit to the mine, making recommendations accordingly. Similar consultation, review and visits are undertaken by the CCB. There is no provision to publish any of this information.

The continued lack of transparency about the grievance process is antithetical to justice and is likely to lead to an ongoing lack of confidence in Acacia's approach to handling grievances.

Recommendations:

- Acacia should release to victims minutes of meetings they attended as a matter of course and without restriction.
- Acacia should make publicly available all underlying process and policy documents relating to the grievance process. This includes those documents where there is overlap with the grievance process, such as human rights policies and reporting, Mine Investigations Group policies and procedures, and agreements or memorandums between the Mine and both the police and private security contractors.
- Acacia should publish the analysis and reporting carried out by the Grievance Team Leader, the results of the Community Consultation Body's and Advisory Board's annual visits to the Mine, and any recommendations made by either body.
- Acacia should publish expert reports that have been commissioned, while making provision to protect the identity and privacy of claimants. Similarly, where a dissenting opinion is expressed by a member of the Grievance Committee, this should be publicly noted.

Conclusion: continued lack of justice

In March 2017, after significant pressure from RAID, LHRC and other civil society groups, Acacia for the first time released aggregate figures on intruder deaths at the North Mara mine and the number of security-related incidents.¹¹ Acacia also publicly recorded the termination of employment of one employee ‘for excessive use of force’. There has been no reporting by the company on whether or not mine police officers have faced disciplinary proceedings or court action. RAID and LHRC are unaware of any such prosecutions or official action. The earlier Handbook included ‘an apology’ as one possible form of redress. This was discarded in the current version which makes no reference to justice under the revised mechanism.

The current Handbook does include some troubling references about Acacia’s responsibility to report criminal activity. For example, where potential crimes have been committed by the police or other third parties, ‘The Mine *may* [emphasis added] need to refer credible allegations to the appropriate Tanzanian authorities’. A diagram of the grievance process describes when victims credibly allege ‘conduct which might be criminal’ the company route is: ‘*Possible* [emphasis added] referral to authorities in addition to referral to the ‘Mine Legal Counsel’.

The Standard Procedure offers the grievant ‘assistance from the Mine in filing a criminal complaint or accessing other accountability or remedy processes’ but says nothing about any such assistance being provided through an independent lawyer or advising on issues such as a victim waiving anonymity.

Furthermore, while justice for victims is a priority, involvement in an incident of a third party, such as the police, should not be used by the company as a pretext for diverting such claims away from the mine, especially given the joint nature of security provision and the close relationship between the mine and the police.

Elsewhere, Acacia states,

‘The Tanzanian State retains its own obligations to respect human rights, including with respect to remediation, even where North Mara has accepted its corporate social responsibility and operates a community grievance mechanism, and Acacia invites RAID to engage with the Tanzanian State to address allegations of human rights violations caused by public security forces.’

LHRC and RAID, alongside other NGOs, have, in fact, [pressed](#) the Tanzanian government to hold those responsible for violations to account, including in a recent [letter](#) to President Magufuli. Yet the question about a company’s use of leverage (advocated within the *UN Guiding Principles*) also arises.

The onus is on Acacia and its majority shareholder, Barrick, to press for justice when violations are committed by mine security and/or the police in relation to Acacia’s operations. The revised grievance mechanism outlines only that annual ‘Government Summits’ will ‘provide opportunities for the Mine and the Government to raise and consider concerns about the Grievance Process and the impacts of the activities of the Mine on the community’. This approach fails to spell out exactly how Acacia will use its leverage to press for justice, for example, by disclosing details of when the police have used excessive force, how many officers have been disciplined or prosecuted, or whether Acacia has considered curtailing arrangements under which the police are paid for providing security.

¹¹ Acacia Mining’s Annual 2016 Report published in March 2017. No information was published about injuries during security-related operations.

Without those responsible for unlawful killings and abuse being held to account, there can be no justice and there is a strong likelihood that the human rights violations that have blighted Acacia's operations at North Mara will continue.

For more information on RAID's work on Acacia, please visit: www.raid-uk.org or via [Twitter](#) or on [Facebook](#).

To learn more about LHRC's work, please visit: www.humanrights.or.tz or via [Twitter](#) or on [Facebook](#).