



Rights and Accountability in Development

In Need of Repair: Acacia Mining's Grievance Mechanism at North Mara Gold Mine, Tanzania

May 2016

RAID and MiningWatch Canada have engaged in extensive exchanges with Acacia Mining over the past two years about security and human rights concerns at the North Mara Gold Mine.ⁱ The organisations have been critical of the continuing high level of violence at the mine site and the lack of a transparent and effective remedy programme.

During this period, RAID and MiningWatch have conducted two site visits to North Mara and interviewed many individuals and families affected by mine-related violence. The organisations have also had meetings with local community leaders, involved NGOs, Ward Officers, health professionals and mine managers and community relations staff.

On 22 March 2016, RAID and MiningWatch Canada and their legal advisorsⁱⁱ had a preliminary discussion with Katrina White, Head of Legal and Compliance and Peter Geleta, Head of Sustainability, at Acacia's offices in London. The purpose of the meeting was to clarify the process and procedures of North Mara's Non Judicial Grievance Mechanism for the victims of excessive use of force by mine security and police guarding the mine. RAID and MiningWatch Canada have been authorized by over 50 claimants to support them through the grievance mechanism. But the organisations can only proceed with their efforts to support complainants if a fair process can be agreed on in advance with Acacia. At present this cannot be guaranteed.

Problems discussed with Acacia included the following:

1) Absence of a comprehensive remedy framework document

Acacia has yet to give a detailed public explanation of its current procedures or provide a comprehensive remedy framework document setting out how complaints are handled at each stage in the grievance process. This calls into question Acacia's claim that its grievance mechanism for human rights abuses at the North Mara Gold Mine is 'accessible to all'ⁱⁱⁱ and makes it incompatible with the 2011 UN Guiding Principles on Business and Human Rights (GPs) effectiveness criteria for such mechanisms. Unlike the operational grievance mechanisms recommended by the GPs, the primary function of the North Mara grievance mechanism is not 'to serve early warning or escalation mitigation functions'^{iv}, but to provide a remedy to victims of serious human rights abuses resulting from excessive use of force by mine security and police guarding the mine. Both the serious nature of the human rights grievances, and the company's requirement for a waiver from the victims, put a

greater onus on the company to ensure legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, and procedural fairness. The human rights “remedy program” in North Mara was created in response to pending legal action and was not made public until disclosure in a London court case forced the program into the open^v. Although its existence has since been made public, its procedures remain obscure to victims and to those who work with them such as MiningWatch and RAID.

In our meeting, Acacia noted that the grievance mechanism is guided by various internal ‘procedures, policies and process flow documents’. These have not been made public. Acacia offered to share some of these confidential documents with RAID and MiningWatch. We believe that all such documents should be publicly released so that the basis upon which claims are dealt with can be assessed. MiningWatch and RAID will provide feedback on any remedy process documents that are made public. Furthermore, MiningWatch and RAID expressed willingness to provide feedback on a proposed new remedy framework document, but consultation towards the creation of a comprehensive remedy framework document must be with all stakeholders and rights holders and based upon published procedures, if it is to best serve a rights-compatible outcome.

Recommendations:

MiningWatch and RAID recommend that Acacia promptly make public all documents relevant to the grievance process, so that any interim safeguards necessary to protect the interests of claimants can be introduced without delay.

MiningWatch and RAID recommend that Acacia open up a transparent and inclusive process to create a comprehensive rights-compatible remedy framework. Consultation should ensure feedback from victims as indicated in the United Nations GPs effectiveness criteria 31.h, as well as wider stakeholders and human rights experts. If such a consultation process were created, MiningWatch and RAID would participate.

2) Lack of clarity about how claims are investigated

In February 2016 RAID wrote to Acacia about the North Mara Memorandum of Understanding (MoU) with the Tanzanian police, and Acacia’s Mine Investigations Policy (MIP).^{vi} Neither the MoU nor the MIP is published, but copies, dated July 2010 and May 2010 respectively, were disclosed as a result of the legal proceedings in London.^{vii} Acacia informed RAID and MiningWatch that both the MIP and the MoU were updated in 2014, and both are currently under review.

In our discussions with Acacia, MiningWatch Canada and RAID have sought to clarify the role of, and relationship between, the Mine Investigations Group (which investigates problems on site including ‘incidents’, accidents and theft) and the Human Rights Investigations Group, which is tied to the Grievance Mechanism. Since November 2014, Assaye Risk, a UK private security firm, has been in charge of investigating human rights claims. Both groups may be involved in investigating human rights complaints.

In response to our meeting on March 22, Acacia has since provided a copy of the 2014 MoU. The 2014 MOU differs little from the 2010 version, which RAID and MiningWatch have already critiqued. The 2014 version will remain in place for a short period of time while Acacia undertakes a more

detailed review. Acacia has offered to forward a draft of the revised 2016 MoU, although not for public release at this stage. The company also agreed to provide a copy of the 2014 MIP, but has not done so to date. It invited MiningWatch and RAID to provide suggestions on how both the MoU and the MIP can be improved. MiningWatch and RAID will not provide comments on documents that are not in the public realm.

Recommendation:

MiningWatch and RAID recommend that the current version of the North Mara MoU with the Tanzanian police, the current version of the MIP for North Mara, as well as the procedures followed when investigating human rights claims, be provided for feedback in a transparent review process of the North Mara remedy mechanism. The company should also publicly share any drafts of these documents for comment. Such a review should be open to affected communities and other stakeholders and experts. MiningWatch and RAID would participate in such a process.

3) Lack of clarity about how claims are accepted or rejected

In its 7 January 2016 response to RAID and MiningWatch Canada, Acacia refers to ‘...230 grievances being lodged by community members in 2015. These grievances included 91 human rights-related claims, of which 3 have been found to be substantiated, with 62 found not to be substantiated and the remainder currently being in the process of being investigated.’^{viii}

During our meeting, RAID and MiningWatch asked Acacia to account for the high rejection rate – almost 90% – of security-related human rights claims. The company said that there had been ‘a spike’ in complaints between February and May 2015, which it attributed to a possible reaction to news about the settlement with the Leigh Day.^{ix} The company also said that the lack of follow up on some claims stemmed from the difficulty that grievance officers faced in verifying the identity of claimants and tracking down others to follow-up on the claim.

Based on our meeting with Acacia it was not clear that complainants received detailed reasons for rejection of their claim, and it appears that appeals, if they are heard, are decided upon largely by internal mine staff, with perhaps sometimes an external expert. The high rejection rate remains problematic in the absence of written reasons and a transparent grievance process.

Recommendation:

RAID and MiningWatch recommend that issues related to the acceptance and rejection of claims be addressed in a transparent and inclusive review of the remedy process as proposed under 1) above.

4) Complainants lack access to adequate, independent legal advice

At the intake stage, and before they have independent legal support, complainants are required to sign a claims form certifying that the information they have provided to company officials is correct. In response to our meeting of March 22, Acacia has said that it would be willing to amend the intake form to remove this requirement.

According to our discussion with Acacia, complainants are only entitled to independent legal advice at the very end of the claims process, after their claims have been investigated, accepted and the

level of compensation decided upon by the company. At that point, Acacia may provide a voucher for independent legal advice that would cover at best a four hour consultation with a lawyer to assess the agreement and legal waiver drafted by the company.

RAID and MiningWatch are concerned that victims participating in this process are not obtaining timely and meaningful access to independent legal counsel and do not know what the value of the voucher is.

In response to our meeting of March 22, Acacia states that claimants are advised of the opportunity to seek four hours of legal advice and that this option has been taken up. Given the volume of claims that it considers to be unsubstantiated, Acacia does not believe paying for legal fees from the lodgement of a grievance is appropriate. The company is willing to discuss whether its paying for legal fees at a later stage in the process (though presumably before any settlement is tabled) may be workable.

Recommendations:

As an interim measure – though ultimately subject to review – Acacia must set out how the current voucher scheme works and ensure it covers all stages of the grievance process, extending, as necessary, the number of hours of independent legal advice the company pays for.

With immediate effect, counsel needs to have complete access to documents and information relevant to their client’s claim.

In light of the need to address the kind of imbalance in access to advice highlighted under GP 31(d), RAID and MiningWatch recommend that, as part of an open review of Acacia’s remedy framework, there is careful consideration of how claimants are to receive independent legal advice.

5) Use of Legal Waivers

The absence of clear and transparent rules of procedures, the absence of independence of the remedy mechanism from Acacia, and the lack of access to independent legal advice throughout the claims process makes the use of legal waivers to prevent claimants who accept a remedy package from Acacia/North Mara from suing the company, its contractors and agents completely inappropriate. One stated aim of such waivers is to prevent ‘double recovery’ but there are various means of achieving this end without interfering with the victim’s right to access the courts.

In the meeting of MiningWatch and RAID with Acacia on March 22nd, we raised the issue of waivers, but Acacia deferred a discussion of this topic, noting it had made its position in relation to waivers clear in earlier correspondence and had not altered its views. Flaws that are apparent in the North Mara remedy process are even more severe than those that have already been thoroughly documented in the case of Barrick Gold’s Porgera Joint Venture mine in Papua New Guinea. In that case, the human rights clinics at Harvard and Columbia Universities have called for a repeal of the waivers that have been required of victims of rape by mine security guards.^x

Recommendation:

MiningWatch and RAID recommend that there is a moratorium on the use of legal waivers in the settlement of claims, pending a comprehensive, transparent and inclusive review of the North Mara remedy process as recommended under 1) above. This review should include determining the basis upon which waivers have been required of claimants in the past. MiningWatch Canada and RAID would be willing to participate in such a process.

6) Intimidation

MiningWatch and RAID also expressed concern at the meeting with Acacia, about reports that, since November 2015, some complainants have been approached, allegedly by employees of the North Mara mine or its agents, and warned not to speak to MiningWatch Canada and RAID and not to sign authorizations that would allow MiningWatch and RAID to support them in a claims process. Acacia, although it was unaware of these reports and considered it unlikely that employees of NMGML were responsible, nevertheless, agreed to make clear to North Mara management and staff that such intimidation and advice to potential claimants is unacceptable.

Conclusion

The GPs' Effectiveness Criteria for non-judicial grievance mechanisms refer to the need for 'continuous learning'^{xi} and Acacia has invited RAID and MiningWatch Canada to offer comments on ways the company might improve its procedures.

MiningWatch Canada and RAID welcome Acacia's greater openness and willingness to engage in a discussion with a view to reaching a positive outcome for individuals and families who have allegedly suffered harm as a result of mine-related operations.

However, ***MiningWatch and RAID see the urgent and clear need for a much wider, transparent, and inclusive review process that prioritizes input from the victim's themselves, as well as from human rights experts who have demonstrated independent expertise in this area.***

ⁱ See the websites of MiningWatch Canada and RAID for letters, briefings and press releases which include:

- Letter to Brad Gordon, CEO African Barrick Gold's non-judicial "remedy programs" at North Mara, Tanzania, 25 February 2014;
- Briefing for Investors and Equity Analysts 'A Pattern of Abuse: Human Rights at Risk at the North Mara Mine, Tanzania' April 2014
- Letter to Jamie C. Sokalsky, President and Chief Executive Officer, Barrick Gold and Deo Mwanyika, Vice President –Corporate Affairs, African Barrick Gold, April 22, 2014
- Press Release 'Violence Ongoing at Barrick Mine in Tanzania: MiningWatch Canada and RAID (UK) Complete Human Rights Assessment', 5 August 2015
- Press Release 'Broken Bones and Broken Promises: Barrick Gold's North Mara Mine Fails to Address Ongoing Violence' 17 November, 2015
- Rebuttal of Acacia Mining's Latest Response to MiningWatch Canada and RAID, 14 December 2015
- Press Release "NGOs Warn: 'Companies Duck Responsibility for Abuse Because of Flawed Human Rights Guidance, Lack of Independent Oversight'", 9 March 2016

ⁱⁱ Andrew Cleland, Trudel, Johnson and Lespérance (Montreal) and Daniel Carey, Deighton Pier Glynn (London and Bristol). The Canadians participated by phone in the meeting .

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- ⁱⁱⁱ See for example, Acacia Mining Response to MiningWatch Canada and RAID, November 2015
<http://www.acaciaminging.com/sustainability/our-material-areas/community-relations/grievance-mechanism.aspx>
- ^{iv} Sarah Knuckey & Eleanor Jenkin (2015) Company-created remedy mechanisms for serious human rights abuses: a promising new frontier for the right to remedy?, *The International Journal of Human Rights*, 19:6, 801-827, DOI:10.1080/13642987.2015.1048645
Available at: <http://dx.doi.org/10.1080/13642987.2015.1048645>
- ^v In 2013, a number of Tanzanian claimants represented by Leigh Day initiated proceedings against African Barrick Gold plc (now Acacia Mining plc) and its subsidiary, North Mara Gold Mine Limited (NMGML), in the English Courts in relation to injuries and fatalities at the North Mara mine. The claims were denied by Acacia Mining and NMGML. The litigation and further claims have been settled out of court.
- ^{vi} Letter from RAID to Brad Gordon, Chief Executive Officer 25 February 2016
- ^{vii} African Barrick Gold (ABG), Mine Investigations Group, Investigations policy, May 2010, [hereafter MIP]. RAID has posted the MIP at:
<http://www.raid-uk.org/sites/default/files/ABG%20Mine%20Investigation%20Policy.pdf>.
- ^{viii} Letter from Katrina White to MiningWatch Canada and RAID, 7 January 2016
- ^{ix} Press release 'Out- of-Court Settlement Good for Some Tanzanian Villagers – But Many Others Hindered from Participation by Barrick's Grievance Mechanism' MiningWatch Canada and RAID 9 February 2015
- ^x See <http://www.rightingwrongsportgera.com/>
- ^{xi} GP Principle 31 (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.