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Rights and Accountability in Development

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Rebuttal of Acacia Mining's Latest Response to MiningWatch Canada and RAID

MiningWatch Canada (MiningWatch) and Rights and Accountability in Development (RAID, UK) would like to correct assertions made by Acacia Mining (Acacia), a subsidiary of Barrick Gold Corp., in its public reaction¹ to our press release of November 17, 2015.²

The company refers to 'factual inaccuracies' in material about its subsidiary, the North Mara Gold Mine Ltd (NMGML) in Tanzania, and claims that MiningWatch and RAID have repeatedly failed to engage with Acacia, NMGML, and its local NGO Search for Common Ground. Both of these assertions are unfounded.

MiningWatch and RAID's public communications are based on extensive, well-documented, case material gathered in field visits to the North Mara mine, both prior to and following the recent settlement of claims brought by the leading London law firm Leigh Day on behalf of victims of violence at the mine site. The claims were that African Barrick Gold (now Acacia) and NMGML were liable for the deaths and injuries of local villagers, including through complicity in the killing of at least six local villagers by police at the North Mara mine.³ The claims, though denied by the companies, nevertheless resulted in an out-of-court settlement in February 2015.⁴

To date, over 40 complainants whose cases involve allegations of excessive use of force by mine security and police guarding the mine (most alleged assaults occurred in 2014 and 2015) have authorised RAID and MiningWatch to take up their cases with Acacia and NMGML. Given the concerns RAID and MiningWatch have regarding the deeply-flawed company grievance mechanism, we will seek to have adequate safeguards in place to uphold the complainants' rights, before engaging the mechanism and the companies involved.

RAID and MiningWatch intend to enter into a discussion with Acacia about safeguards as soon as possible.

¹ <http://business-humanrights.org/en/tanzania-report-claims-ongoing-violence-against-locals-at-acacias-mine-company-responds#c130081>

² <http://www.miningwatch.ca/news/broken-bones-and-broken-promises-barrick-gold-fails-address-ongoing-violence-tanzania-mine>

³ In March 2013, proceedings were brought in the High Court of England and Wales by the law firm Leigh Day against African Barrick Gold (now Acacia Mining) and its 100% subsidiary, North Mara Gold Mine (NMGML).

⁴ Press Release 'Out- of-Court Settlement Good for Some Tanzanian Villagers – But Many Others Hindered from Participation by Barrick's Grievance Mechanism' MiningWatch and RAID 9 February 2015 . At <http://www.raid-uk.org/documents/out-court-settlement-good-some-tanzanian-villagers-%E2%80%93-many-others-hindered-participation>

1. Security Situation at North Mara

The level of violence surrounding the North Mara mine remains extremely high. Acacia itself acknowledges that in the last month (November) the mine has ‘investigated and assessed’ 35 security-related grievances, although only four of these resulted in remedy agreements. The remaining 31 were rejected by NMGML on the grounds that the claims were ‘false’ or ‘unsubstantiated’. The process by which the company investigates and assesses the merits of such cases goes to the heart of the problem with this operational grievance mechanism – namely its total lack of independence and inherent structural power imbalances that puts the victims at a disadvantage.

Acacia states that there have been no “reports of excessive use of violence by mine security in the period described by MWC and RAID.”⁵ This statement does not square with our findings. The majority of more than 50 victims for whom we have data allege excess use of force in security-related incidents involving both mine security and police guarding the mine between July 2014 and November 2015.⁶

In its response Acacia also highlights that the ‘average monthly spend on security materials used in confrontations with intruders in 2015 has reduced by approximately 98% compared to 2014’. Interviews conducted by RAID and MiningWatch in 2015 found increasing cases of severe beatings by mine police and security personnel, whereby people are allegedly beaten with wooden batons and metal pipes, or crushed by rocks. Such forms of violence may be replacing the need to use ‘security materials’, which must be accounted for and which could trigger investigations, for example when a firearm is discharged.

RAID and MiningWatch are requesting **Acacia to provide details of what constitutes such ‘security materials’** and the actual quantities of each used in 2014 and 2015. Additionally, MiningWatch and RAID seek information on measures taken by Acacia and NMGML to:

- Install cameras on all security vehicles to prevent abuses from taking place in cars and to provide a record of any such abuses;
- Install cameras on all security personnel and police guarding the mine to record their behaviour;
- Expand the use of closed circuit TV, including infrared cameras to monitor the pits, rompad and waste dumps.

2. NMGML’s Grievance Mechanism

Acacia claims that ‘grievance mechanisms’ have been in place at all of its Tanzanian mines since 2008. While it may be true that such a mechanism existed at NMGML to deal with issues such as land claims, a grievance mechanism to address complaints of alleged abuses of local villagers by mine security, and by police guarding the mine, was not initiated by NMGML until 2012. It was initiated only after UK-based Leigh Day & Co. had commenced communications with African Barrick Gold (now Acacia) prior to the filing of a law suit (on July 30, 2013) on behalf of victims of excessive use of force by mine security and police guarding the mine. And although the mechanism to deal with human rights complaints related to mine security was set up in 2012, it was a closely guarded secret. The first public information

⁵<http://www.acciamining.com/~media/Files/A/Acacia/documents/Response%20to%20MWC%20and%20RAID%20Field%20Assessment%20Report%20-%20November%202015.pdf>

⁶ Interview data gathered by RAID and MiningWatch during their visits to the North Mara mine area suggest that the actual number of victims of excess use of force by mine security and police for the period in question may be significantly higher.

about the existence of the mechanism at North Mara emerged in December 2013 as a result of the legal proceedings in London.⁷

It is true that Village Chairmen in the area nearest the North Mara mine are informed about the grievance mechanism. However, from MiningWatch and RAID's extensive interviews over the past two years with community leaders, health professionals and affected individuals, the general population are not well informed about the existence of the mechanism. Acacia has information on its website about the grievance mechanism, including a leaflet in Swahili about how to bring a complaint, but few villagers have internet access and the leaflet does not appear to have been widely distributed.⁸ The majority of the alleged victims we interviewed had not heard of the grievance mechanism or did not know where it was located.

RAID and MiningWatch are calling upon Acacia and NMGML to put in place an independent human rights grievance mechanism, as opposed to the current corporate-run mechanism. Acacia and NMGML also need to do more to promote an accessible, transparent and human rights compatible complaints process.

3. Grievance Resolution Agreements

Many of those interviewed claimed there had been irregularities in the handling of grievances that resulted in them agreeing to sign a legal waiver in exchange for receiving a compensation package from Acacia. We have provided examples of these irregularities in previous releases.⁹

Acacia states that the claimants are given the opportunity to have independent legal advice before signing away their legal rights and that Acacia 'offers vouchers to fund consultations with independent lawyers'. Despite repeated requests, no information has been forthcoming from Acacia or NMGML about the number of claimants who have used these vouchers or their value.

Acacia says that claimants receive assistance from a 'retired Justice of the Tanzanian High Court' who 'reviews the agreements carefully with the complainants'. As we have noted in previous communications, several victims we have interviewed, who signed away their legal rights, complained of intimidating behaviour by the retired Judge who was involved in their cases and insist that they did not know what was in the documents they signed.

Acacia claims that there have 'been no cancellations of community relations programmes as a result of disputes over grievance agreements'. Indeed, the expectation must be that business would respond constructively to

legitimate disputes and not take retaliatory action. The interviews we conducted with victims raised numerous concerns about the remedy provided and the ongoing relationship with the mine. As Acacia must be aware, there is a great deal

⁷ The existence of the grievance mechanism for human rights abuses by mine security was not made public by Barrick or African Barrick Gold until after a legal waiver - signed by a victim who had been a Leigh Day client but who left the law suit in favour of benefits offered by the remedy program - was made public by MiningWatch and RAID (Available

at: http://www.miningwatch.ca/sites/www.miningwatch.ca/files/privatized_remedy_and_human_rights-un_forum-2014-12-01.pdf).

⁸ <http://www.acaciamining.com/~media/Files/A/Acacia/documents/sustainability/nmgml-grievance-mechanism-leaflet.pdf>

⁹ See for example: <http://www.miningwatch.ca/news/broken-bones-and-broken-promises-barrick-gold-fails-address-ongoing-violence-tanzania-mine>

of dissatisfaction about settlements, which resulted in a two-day occupation of the Community Relations Office at the mine in July 2015. In our release of November 17, 2015, MiningWatch and RAID outlined some of the problems people in the remedy programmes have raised with us regarding the implementation of the ‘grievance agreements,’ including the sudden cessation of programs before contracts were completed.¹⁰

MiningWatch and RAID intend to continue to raise these issues in writing and with personnel of Acacia, Barrick Gold and North Mara Gold Mine Ltd. Existing legal waivers should be rescinded and Acacia and NMGML should no longer oblige claimants to relinquish their rights to sue before they can receive compensation.

4. On Engagement with Acacia and North Mara Gold Mine Ltd.

Acacia gives a wholly misleading impression that MiningWatch and RAID have been unwilling to meet with the company and its subsidiary, NMGML. Acacia also incorrectly asserts that we have not contacted Search for Common Ground (SFCG), the community-relations NGO hired by Acacia to work with NMGML.

There have already been meetings with NMGML staff at the mine site on two occasions: in July 2014 and November 2015. Having previously been requested to meet Deodatus Mwanyika (Director, North Mara Gold Mine Ltd and Vice President Corporate Affairs, Acacia), Catherine Coumans of MiningWatch made repeated attempts over a four day visit to Dar es Salaam in July 2014 to finalise arrangements. Mr Mwanyika was unable to find time in his busy schedule for the meeting.

During their visits to Tanzania, RAID and MiningWatch have consulted widely and met a range of local NGOs, community leaders, Ward Officers and Village Chairmen. In July 2014 MiningWatch and RAID visited SFCG at its office in Tarime. SFCG explains its work with the North Mara mine as ‘process-oriented’ and focussed on providing training modules on ‘rumour management, non-adversarial advocacy and conflict resolution’. SFCG also conducts human rights training for the police guarding the mine. But as far as MiningWatch and RAID are aware, SFCG does not have a formal role in the grievance mechanism nor does it report publicly on human rights violations.

Acacia should drop its pretence that RAID and MiningWatch Canada are unwilling to engage. In our letter to Acacia and NMGML of 3 November 2015, we have asked for a meeting to discuss the functioning of the complaints office, as well as urgent humanitarian cases. We expect to meet with Acacia Mining and NMGML to further the cases of those alleged victims who have sought our assistance.

¹⁰ Ibid. See also <http://www.miningwatch.ca/news/violence-ongoing-barrick-mine-tanzania-miningwatch-canada-and-raid-uk-complete-human-rights-ass> and http://www.miningwatch.ca/sites/www.miningwatch.ca/files/privatized_remedy_and_human_rights-un_forum-2014-12-01.pdf