

NORTH MARA GOLD MINE LIMITED

RESPONSE TO AN APRIL 2018 NGO “ASSESSMENT AND RECOMMENDATIONS” REGARDING THE COMMUNITY GRIEVANCE PROCESS AT THE NORTH MARA GOLD MINE, TANZANIA

18 APRIL 2018

Introduction

This paper has been prepared in response to an advocacy paper by Rights and Accountability in Development (“RAID”) and the Tanzanian Legal and Human Rights Centre (“LHRC”) regarding the North Mara Gold Mine in Tanzania (“Mine”).

RAID, which is based in the United Kingdom, has conducted advocacy efforts in relation to the North Mara Gold Mine and several other companies’ operations overseas, while the LHRC is a Tanzanian NGO with a wider remit. For several years, RAID has been publishing advocacy pieces criticising the Mine, NMGML and Acacia (and their predecessor companies). In this context, the companies have engaged and continue to engage extensively with RAID, and intend to continue to do so.

In that regard, NMGML observes that RAID’s advocacy pieces regarding the Mine have on occasion contained some constructive criticisms and feedback, which has been appreciated and accepted by both companies. Such pieces have also on occasion contained criticisms and feedback which the companies have considered to be unfounded or unconstructive, including representations of the historical or current human rights situations at the Mine and the companies’ policies that the companies consider to be inaccurate, and have wrongfully attributed human rights and legal obligations to the companies that are rightly those of the Tanzanian State. RAID has also championed individual claims and made allegations against the Mine which the companies believe to be inaccurate and completely unfounded.

NMGML appreciates the attention given to the North Mara CGP by RAID and the LHRC, in their preparation and dissemination of an “Assessment and Recommendations” paper regarding the new Community Grievance Process (“CGP”) at the Mine. The company disagrees, however, with many of the assertions and conclusions set out in the Assessment, and does not understand many of the specific criticisms that are made. These matters may however arise from misunderstandings regarding the structure and intent of the new CGP as it has been developed, and NMGML trusts that RAID and the LHRC will be in a position to reconsider and refine their views with the benefit of input, explanation and feedback from the Mine regarding the Assessment, including the matters set out in this paper.

In the meantime, NMGML observes that the paper continues to misrepresent the human rights situation at the Mine, and continues to mistakenly attribute to the Mine responsibility

for the conduct of the Tanzanian police and responsibility for the accessibility of State-based accountability and remedy mechanisms. As Acacia and NMGML repeatedly have pointed out, including to RAID, NMGML does not and cannot control the State's police force or the State's response to alleged human rights violations.

RAID's and the LHRC's Assessment also seems to misunderstand the object and purpose of the CGP, particularly with respect to grievances that are directed towards the Mine but relate to the activities of the police. NMGML has established its community grievance process to give the people of North Mara effective access to remedy in respect of impacts that they associate with the Mine. As part of this, the CGP seeks to provide an effective access to remedy to NMGML's local communities specifically in respect of human rights impacts caused by police law and order activities on or in the vicinity of the Mine, but only to the extent that, and so long as, community members are not obtaining an effective remedy from the State.

In their Assessment, RAID and the LHRC also misrepresent the process that has led to the current CGP, and misunderstand or misrepresent its principal design features. NMGML has continued to develop the North Mara CGP to take account of the broad range of latest thinking on company grievance mechanisms. NMGML also has taken account of RAID's past critiques and has anticipated and already sought to address each of the principal issues that underlie RAID's and the LHRC's new Assessment. Contrary to those latest criticisms, therefore, the revised CGP is specifically and explicitly designed to:

- align with the concept expressed in the United Nations Guiding Principles on Business and Human Rights ("UNGPs") that company mechanisms should focus on reaching agreed solutions through dialogue and employ independent dispute resolution mechanisms where agreement through dialogue cannot be reached and in respect of grievances alleging severe human rights impacts;
- be transparent about the way company investigations are conducted
- offer assistance to grievants in gathering evidence or material to support their claims or grievances,
- not ask grievants to settle legal claims or waive their right to access courts even if they receive a remedy through the process, and
- consider and offer remedies in respect of human rights impacts in accordance with parameters based on broader human rights standards.

NMGML has been consulting widely and transparently on the evolution of its grievance process and continues to take account of constructive feedback while seeking to understand feedback or criticism that appears less constructive. It is welcoming private and published comments and feedback on the revised process, in particular comments and feedback made out of a good faith desire to benefit members of the wider North Mara community; that faithfully represent the CGP documents and process; that seek to provide constructive, and well-informed critique based on objective facts; and acknowledge and take into account NMGML's considered responses. NMGML is currently planning to hold further consultation meetings regarding its CGP with interested observers, and with experts on operational-level grievance mechanisms.

As a final point of introduction, the Assessment appears to be misconceived in its suggestion that operational-level grievance mechanisms generally (and the CGP in particular) create obstacles to access to remedy for individuals who may have experienced human rights impacts related to private businesses. NMGML agrees with RAID's and the LHRC's assertion that incidents involving serious human rights issues should be dealt with by courts and by States, and that the priority of States should be to tackle legal and institutional barriers to access to justice. As noted above, however, 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.

It therefore makes no sense to say, as RAID and the LHRC do in their Assessment, that the revised CGP establishes barriers and obstacles to redress. The NMGML CGP in fact provides a completely separate and additional mechanism to enable redress for individuals who may have claims for redress against the police, but who may choose to bring them to the Mine in preference to seeking redress directly from the State, or through the courts.

Although we therefore take issue with many of RAID's and the LHRC's starting premises, we have read their Assessment of the revised CGP closely, including to seek to identify evidence of the practical barriers and obstacles to redress to which they allude so that, if such barriers or obstacles actually exist, we can consider whether and how to address them.

We seek to respond in more detail to some of RAID's and the LHRC's particular concerns and critiques contained in their Assessment below, including to address some of their apparent misunderstandings about the CGP process. This Response should be read in conjunction with the RAID and LHRC Assessment ("Assessment"), which will also be posted on Acacia's website on the pages designated to facilitate consultation on the North Mara CGP documents at: <http://www.acciamining.com/sustainability/grievance-process/english.aspx>.

RAID's and LHRC's "Key Concerns with Acacia's New Community Grievance Process"

1. "Lack of human rights benchmarks"

Grievances lodged with the GCP that raise possible human rights concerns are considered and remedied against human rights standards. RAID's and the LHRC's claim to the contrary reflects their apparent lack of understanding of the process, and failure to inform themselves thoroughly before publishing their Assessment, including through the study of the published CGP documents and consultation materials. NMGML has broadened the scope of its revised grievance process from a "Human Rights Grievance Process" to a more all-encompassing "Community Grievance Process" in response to feedback from community members and international experts. Observers considered that grievances of every type – not just human rights grievances – should be capable of being received into the CGP, although different types of grievance relating to different subject matters may be investigated, considered and resolved in a manner that suits its type.

Grievances alleging security-related human rights impacts, for example, are considered against relevant local and international human rights standards. A Reference Guide that

focuses on Security and Human Rights Standards has been developed to guide everyone involved in the process of seeking to determine whether it is reasonably likely that security personnel at the Mine or members of the State's law and order forces may have caused human rights impacts in situations linked to the Mine. The Guide, which is now undergoing consultation, will be provided to anyone who lodges a Grievance that conceivably could relate to security and human rights. It also will be provided to experts with whom NMGML is consulting, and to interested observers including LHRC and RAID, and posted on Acacia's website together with the other NMGML CGP materials.

RAID's and the LHRC's apparent alarm about the current Handbook for Grievants not containing human rights standards is therefore misplaced. The Handbook explains only the procedural aspects of the CGP and applies to all types of Grievances. It would be confusing if it went into detail about the standards that apply just to human rights grievances. The NGOs also are mistaken when they claim that it is not clear whether the CGP will operate in alignment with the effectiveness criteria of the UNGPs. Article 2(2) of the Standard Operating Procedure for the CGP provides: *"This SOP is designed to assist the Mine to maintain a Grievance Process that is legitimate in the eyes of community members, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue."* Those are the effectiveness criteria set out in the UNGPs.

2. "Confusion over admissibility of complaints involving the police"

The Mine does not understand the basis for RAID's and the LHRC's apparent confusion over the admissibility of complaints involving the police. Both NGOs are well-aware that the CGP will receive and consider grievances involving the conduct of the police when the activities complained of in maintaining law and order are linked to the Mine. There is no ambiguity in the CGP documents about this, even as those documents are paraphrased by the NGOs in their Assessment, and members of the North Mara community who are presenting grievances to the CGP certainly understand it.

The NGO also are mistaken when they claim that the CGP does not seek to safeguard victims. The CGP gives priority to protecting grievants from harassment, intimidation, retaliation and re-victimisation, while seeking to deliver an effective mechanism for redress for real impacts. Related questions are addressed in the Handbook for Grievants at Sections II(C)(2)-(4): "Is the Grievance Process confidential?"; "How does the Grievance Process address potential crimes or third parties?"; "Are sensitive or complex Grievances treated carefully?".

Grievances alleging impacts involving the conduct of the police while maintaining law and order in the region but linked to the Mine obviously pose particular challenges for the CGP. On the one hand, fears of formal prosecution for illegal or criminal activities may be real for grievants who make allegations regarding the police's use of excessive force or other misconduct where a grievant is engaging in illegal activity. On the other hand, there are particularly strong reasons for the Mine to report such allegations to the police for comment, investigation and response in its efforts to achieve an effective mechanism to provide redress for real impacts:

- First, it may be impossible to determine whether activity or conduct by the Police may have resulted in a human rights impact without reliable information or evidence regarding whether an incident has occurred (and if so what sort of an incident, where, when and involving what other people), what a grievant was doing (e.g., including whether they were posing an imminent threat to personal safety or life, or not) and what members of the police were doing (e.g., did an officer use force and if so what level of force). Generally, the two primary sources of such information about these threshold issues will be a grievant and members of the police, together with any first hand witnesses.
- Second, it is incumbent on the Mine to report credible allegations of misconduct and criminal activity to authorities for investigation, discipline and criminal prosecution where appropriate. Conduct by security personnel or members of the Police force in an incident which led to a human rights impact may represent the commission of a criminal offence. As an operational matter, the Mine has obtained commitments from the Police that they will seek to ensure their members comply with and uphold applicable local and international standards designed to secure respect for human rights. As a matter of corporate social responsibility principles, including the UNGPs, the Mine will also press for adequate investigation and redress when relevant human rights impacts are associated with the Mine caused by third parties including the Police. A commitment to take some action in that regard may form part of an appropriate, rights-compatible remedy provided through the CGP. RAID and the LHRC themselves emphasise this point on the final page of their Assessment.
- Finally, as a matter of general human rights law principles, a comprehensive, rights-compatible remedy for a human rights impact caused by the police could and should include an element of satisfaction from the State, in the form of criminal investigations and sanctions on perpetrators. It also could and should include guarantees of non-repetition (from the State) in the form of State vetting of officers and State training on human rights.

It will be very difficult to deliver an effective grievance process which meets and promote these objectives without providing details of grievants involved and the circumstances of alleged incidents and impacts to the Police. To seek to address this concern, Grievance officers inform all Grievants who allege that they suffered human rights impacts on the Mine site that the Mine shall refer credible allegations of criminal activity by the Mine's private security personnel and contractors or members of the TPF to the appropriate authorities. Grievants are given the opportunity to consider whether they wish to withdraw their grievance in light of this information or discuss whether there are reasonable ways to try to protect them from credible fear of retaliation (e.g., allowing them anonymity). See Handbook Section II(A)(3) and SOP Article 23(1)(j).

Grievants are also assured, as set out at Article 65 of the SOP that, "subject to applicable laws, the Mine shall not report or press charges against Grievants or witnesses in connection with the lodging of a Grievance." The Mine also commits not to carry out or instigate reprisals for lodging of grievances.

3. “Questions about process for clearing the backlog of cases”

RAID and the LHRC request detailed information regarding the process used to resolve grievances since late 2016 and data regarding the CGP’s operation and outcomes. RAID has repeatedly been informed of the process used to resolve grievances since 2016 as the CGP has been evolving into the process set out in the Handbook and SOP currently posted on Acacia’s website at:

<http://www.acaciamining.com/sustainability/grievance-process/english.aspx>.

Information regarding the CGP’s operation and outcomes during 2017 has been published in Acacia’s Annual Report. Since late 2016, 14 people have approached the Mine asking that previously rejected grievances alleging security-related human rights impacts be reconsidered and 15 people have asked that previously awarded grievance packages be reconsidered by the CGP. The Mine decided to admit these requests for reconsideration to the CGP, and has been seeking to reach agreement with these historical grievants through engagement and dialogue or, where agreement cannot be reached, by referring the requests to the Community Grievance Committee.

Of the 14 previously rejected grievances that have been reconsidered by the CGP since late 2016, two have now been determined through the CGP as reasonably likely to have involved a human rights impact in accordance with the terms of the CGP, including by reference to the principles in NMGML’s draft Reference Guide on Security and Human Rights Standards. There was no evidence to support, or the evidence pointed against, the idea that it was reasonably likely that there had been a human rights impact in the other cases. The CGP explicitly does not require strict rules of evidence or legally applicable standards or burdens of proof for grievants to have a determination in their favour.

Of the 16 past grievances which had previously resulted in a remedy package that have been reconsidered since late 2016, 13 have been determined to be insufficient in accordance with the updated guidance in NMGML’s draft Reference Guide on Remedies for Security-Related Human Rights Impacts, and enhanced remedy packages have been recommended or agreed. For the rest, the remedy previously provided was determined to have been sufficient or, in two cases, the Community Grievance Committee was of the view that there was no human rights impact in the first place and thus no remedy was merited in the first place (and the past remedy was not adjusted).

Since late 2016, 25 new grievances alleging human rights impacts as a result of activities of Mine security personnel or the Tanzanian Police Force have been lodged with the Mine. Two grievances are still at the investigation stage. Nine were considered and rejected by the Mine through earlier iterations of the revised process. One grievant withdrew their grievance in favour of local litigation. Seven grievances have been resolved under the new CGP through engagement and dialogue between the Mine and the grievant, and the Mine agreeing that it was reasonably likely that there had been an impact in three cases and extending a remedy package. Six grievances have been referred onwards to the independent Community Grievance Committee. The Committee has determined that it was not reasonably likely that there had been an impact in four grievances and no remedy package should be extended, and two grievances still await a determination by the Committee.

4. “Control over investigations”

The Mine disagrees with RAID’s and the LHRC’s assertions that the Mine should not investigate the subject matter of grievances and instead should entirely outsource investigations to an independent third party.

As noted above, the SOP is designed to assist the Mine to maintain an operational grievance mechanism that meets the effectiveness criteria set out in the UNGPs. The UNGPs do not suggest that a company must “*remove company staff from running [its grievance mechanism] and instead outsource it to a professional and independent team at arm’s length from the company*” in order to be effective, as RAID and the LHRC claims. That would be inconsistent with the principal purpose of a company’s operational grievance process, which is to help the company anticipate, identify and remedy community grievances relating to alleged human rights impacts related to its own operations in an effective manner. The Mine is not seeking to substitute for the Tanzanian judicial process, and is not stepping in to meet any responsibility that the State might have to provide for independent State mechanisms for the receipt, hearing and determination of private grievances against State actors including the TPF.

That said, to seek to promote thorough internal investigations and minimize internal and external perception of potential conflicts of interest, a department of NMGML unrelated to the Mine’s security function or relations with the Tanzanian Police Force investigates grievances alleging impacts as a result of the actions of the Mine’s security personnel, or members of the TPF. The Human Rights Investigations Team (“HRIT”) investigates the circumstances of all grievances received that include allegations of human rights impacts as a result of the conduct of Mine security personnel or of members of the TPF. This team is also unrelated to the separate investigations functions which investigate serious incidents for purposes other than investigating grievances made under the CGP. The HRIT and other teams involved in the CGP report functionally through to the Mine’s Sustainable Communities Manager, responsible for community relations and sustainability, and through the Sustainable Communities Manager to the General Manager of NMGML.

NMGML would be pleased to hear that the State was establishing an entirely independent and professional investigation and remedy process, which would obviously work at arm’s length from the company, to receive and hear complaints regarding the police and other State actors, and provided remedies to those who experienced human rights impacts as a result of police actions. It encourages RAID and the LHRC to advocate for such a process.

RAID and the LHRC also are incorrect to allege that in the CGP the “*onus is on the victims*” to provide evidence of the human rights impacts of which they complain. The Handbook for Grievants and the SOP explain clearly that the HRIT will assist Grievants, upon request, in the gathering of evidence upon which Grievants may wish to rely. Section II(B)(3) of the Handbook for Grievants and Articles 29(2) and 32 of the SOP also explain that the company will disclose to the grievant the information upon which the company relies regarding the company’s position regarding an incident that is the subject of a grievance (and this may include but not be limited to, witness statements, hospital records, photographs and video footage).

5. ***“Lack of adequate provision for legal assistance”***

The Mine does not understand RAID’s and the LHRC’s complaints about the need for and lack of provision of legal assistance for people who bring their grievances to the CGP.

The CGP is a non-judicial process operated by the Mine as an operational grievance mechanism and as part of the Mine’s broader corporate social responsibilities. It is not intended, designed or implemented to seek to finally settle claims as a matter of law, or to make binding findings of fact or determinations of legal liability. The Handbook for Grievants explains this and confirms in Section II(C)(6) that Grievants are not required to sign any legal documents to receive a remedy. In providing a remedy, the Mine will only ask that the remedy be taken into account in the future if the grievant brings another claim on the same facts in another forum.

While grievances certainly may in theory invoke legal principles, or the terms of a contract, in seeking to support their claims or allegations of impact, and thereby invite the potential involvement of lawyers, in practice grievances never do. Instead, grievances submitted to the Mine regarding allegations of human rights impacts as a result of the conduct of Mine security or the TPF tend to invoke general notions of unfairness or injustice that a grievant has sustained harm in connection with the Mine’s activities. The Mine seeks to resolve such grievances through the CGP on the basis of broad principles of social responsibility, rather than legal liability.

Company or external lawyers, therefore, are not involved in the CGP’s operations, or decision-making, and they do not represent the company during the process – the HRIT represents the position of the Mine in dialogue and engagement meetings with grievants and, if necessary, before the independent Community Grievance Committee. As there is ordinarily nothing legal or judicial about the CGP, there is no need for lawyers to be involved.

There is nothing stopping Grievants from seeking assistance from lawyers or being represented by lawyers during the process, however. The Mine assists such grievants who do wish to seek assistance from lawyers by offering to pay for four hours of professional legal advice and assistance from a professionally qualified and legally registered lawyer of a grievant’s own choosing, as explained in Section II(A)(4) of the Handbook. This offer of Company support for legal assistance, which has been part of the process since 2014, has only been accepted by grievants on two occasions.

6. ***“A legalistic process”***

The Mine does not understand why RAID and the LHRC claim that the CGP places the burden of gathering evidence to substantiate claims on victims and is a “legalistic process”. The purpose of the CGP is to enable the Mine to identify and seek to remedy human rights impacts with which it may be associated. It therefore is in the Mine’s interest to assist grievants in establishing whether their rights have been impacted, to share with them evidence relevant to the incidents of which they complain and adhere to due process principles while not operating a legalistic process.

To those ends, Section II(B)(3) of the Handbook for Grievants and Articles 29(2) and 32 of the SOP provide that NMGML must disclose the information on which it intends to rely

during the CGP, including reports and documents, to the grievant prior to any meeting. Article 37 of the SOP confirms this. It states that neither the Mine nor a grievant will be permitted to rely on any information or evidence during a dialogue or engagement meeting that the other party has not had an opportunity to review prior to the meeting. This safeguard reflects basic principles of natural justice rather than an attempt to replicate judicial or legal procedures, to seek to ensure that no-one is put at an unfair disadvantage by being surprised by new information being raised for the first time during a meeting without an opportunity to consider it and, if so desired, to seek to respond.

Also, contrary to RAID's claims, there is nothing particularly "legalistic" about the CGP. On the contrary, save for some basic processes stemming from elements of natural justice, the two stage process of dialogue and engagement followed, if necessary, by referral to an independent Committee seeks to set out a simple series of steps while avoiding rigid legal procedural rules. For example, neither the standard nor burden of proof used in the Grievance Process is as rigid as in judicial processes, although as Section II(C)(5) of the Handbook for Grievants explains, to be an effective process the CGP must still endeavour to separate legitimate claims from false claims including through the examination of information or evidence that is available, and an assessment of the credibility of the Grievant. There is no need for the CGP to be as rigid as civil or criminal judicial processes, as the findings of the CGP are relevant only for the CGP. They are based on corporate social responsibility principles, rather than legal principles or the law, and the grievant retains the right to seek a legal remedy elsewhere even after going through the CGP and even after receiving a remedy.

7. *"Unfair process to determine remedy"*

The Mine does not understand RAID's and the LHRC's list of complaints about the process to seek to agree or determine a recommended remedy through the CGP.

As noted above, the CGP is expressly designed to align with the concepts expressed in the UNGPs that company operational grievance mechanisms should focus on reaching agreed solutions through dialogue in the first instance. The CGP follows this guidance, including with respect to the agreement or determination of remedies for human rights impacts.

The Mine and others involved in the CGP seek to identify proportionate, reasonable and rights-appropriate remedies for security-related impacts on human rights against a framework of Tanzanian and international standards for reparation, including methodologies developed by Tanzanian courts and international human rights tribunals. As a guiding principle, remedies aim to restore, as far as possible, the situation that existed before the adverse impact occurred.

A Reference Guide that focuses on Remedies for Security-Related Human Rights Impacts has been drafted to guide everyone involved in the process in identifying a remedy that is "proportionate, individually tailored, culturally appropriate and compatible with the nature and gravity of any adverse Impact." It provides that remedies shall be designed in consultation with the Grievant and other intended Recipients and delivered in a manner designed to try to ensure that they are long-lasting. The draft Guide, which is now undergoing consultation, will be provided to Grievants where it has been agreed or determined that it is reasonably likely that their human rights have been impacted. As part

of its ongoing consultation efforts, NMGML will also shortly post the draft Guide online via the dedicated webpages on Acacia's website, provide it to experts and to interested observers for feedback and comments, and to RAID and the LHRC.

Going forward, the annual reports generated by the Grievance Team Leader will also give meaningful information regarding remedies provided through the CGP, including methodologies used.

8. *"Lack of independence in appeals"*

RAID's and the LHRC's complaint that the Grievance Committee lacks independence seems to be based on a fundamental misunderstanding of the CGP.

Committee panels are comprised of three members who are independent from Grievants and the Mine. Every panel is intended to have a member from the "Mine Roster", which is not someone from the company, but rather someone nominated by the company from outside it; a member from the "Community Roster", which is not someone related to the Grievant, but rather someone from a panel of members nominated by community representatives; and a member from the Chairperson Roster, which is not someone related to either the Mine or the Grievant, but rather intended to be someone from a panel of members nominated by an Advisory Board to the CGP. The intended composition of the independent Community Grievance Committee is described in Section I(E) of the Handbook and Article 8 of the SOP .

The Advisory Board is appointed by the Mine and intended to be comprised of four independent experts in the fields of human rights, environmental management, sustainable livelihoods or resettlement together with Acacia's Head of Legal & Compliance. The nomination of Acacia's Head of Legal & Compliance to sit on the Advisory Board reflects the incumbent's functional accountabilities as well as his practical and professional experience with the procedural and substantive aspects of designing, implementing and managing community engagement and dispute resolution agreements and processes, and with the standards and considerations that may apply with respect to the array of subjects that might come before the CGP. The nomination of an appropriate company representative to the Advisory Board might be subject to change as the North Mara CGP and other Acacia community grievance processes evolve.

Article 13 of the SOP clarifies that *"[t]he Mine shall cover the reasonable attendant expenses of the Grievance Process. This includes the reasonable sitting fees and attendance expenses of members of a Grievance Committee."*

9. *Expert report – in whose interest?*

The Mine also does not understand RAID's and the LHRC's concerns about the potential role of independent legal experts in the operation of the CGP.

Independent experts play an educational role in many forms of dispute resolution when technical knowledge of a subject could help the parties or adjudicators identify the best outcome. The CGP in the SOP and Handbook contemplates the possibility that the Mine, a Grievant or the Grievance Committee itself may wish to engage an independent expert to

provide an opinion on the subject matter of a grievance. In the case of grievances alleging human rights impacts as a result of the actions of Mine security or the TPF, an expert might provide insights or views on security or policing techniques, or an opinion on whether a particular incident may have (or not) involved an excessive use of force in the circumstances, for example. The weight given to an expert opinion that might be made available to a Committee will always depend on the expert's credentials, perceived or actual independence, and the effectiveness of his or her presentation.

The CGP is designed to ensure that independent experts do not advise or represent the party who engages them. If they do, they would lose their independence. Article 11(2) of the SOP, therefore, provides 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 [Expert] Roster."*

NMGML has sought in the CGP to provide for circumstances where grievants may wish to obtain an expert opinion if they think that this might shed light on the subject matter of their grievance. The purpose of the CGP is to help the Mine identify and remedy impacts; it is not meant as an adversarial process. Genuine and independent experts are not easy to find, however, while we must also acknowledge the risks of corruption. The Handbook and SOP therefore contemplate that a list of experts will be identified to form an established Expert Roster from which grievants, the Mine or the Grievance Committee may choose, with the Mine covering the cost. Of course a grievant may engage any expert he or she chooses at his or her own expense.

If RAID would like to suggest some experts for inclusion on an experts' Roster, the Advisory Board might consider including them.

When independent experts are used in adjudication processes, they ordinarily are required to attend any oral hearings so that they may be asked questions regarding their expert report or opinion (although not to advocate for any particular position). NMGML considers that there would be little or no benefit for an expert to attend engagement and dialogue meetings, but that if an independent expert opinion is relied upon then the relevant expert should attend a hearing of the Grievance Committee if possible.

10. *"Lack of safeguards for providing urgent relief"*

The Mine does not understand RAID's and the LHRC's complaints about the processes that permit the Mine to react quickly to prevent imminent impacts or respond to immediate needs.

The NGOs insist that community members should be provided with full information about the various options for redress when an urgent response is initiated. But that is exactly what Section III of the Grievant's Handbook and Articles 60-63 SOP provide for. Moreover, contrary to the NGOs' claims, it is clear from those documents that the categorisation of a request for urgent relief as one for Precautionary Measures or Humanitarian Relief does not determine whether or not a grievance can or must be filed subsequently, or have any bearing on the outcome of a pending grievance.

The NGOs also suggest that individuals will fear that, in accepting urgent relief, they will forfeit legal rights. However, there is nothing in the Handbook or SOP that would provoke

such a fear. NMGML merely requires recipients to acknowledge receipt of urgent relief, if provided by the Mine, for a range of obvious and practical reasons, including so that it can: keep a record of the relief provided and monitor the situation to ensure that the recipient's urgent needs are being addressed effectively; take measures already granted into account when a pending grievance is considered, if a subsequent grievance is filed or if a request is made to some other remedy process; and differentiate between forms of urgent relief and final CGP remedies, if agreed or recommended, for the purposes of continuous learning and reporting.

11. ***“Blocking other avenues of redress”***

The Mine disagrees with and does not understand RAID's and the LHRC's complaint that the current Handbook somehow sets *“out limitations in relation to other legal action which could have the effect of limiting options for victims”*.

The CGP does not block any other avenues of redress, including avenues for seeking civil damages through judicial proceedings. Article 1 of the SOP provides that, *“[a]s a non-judicial process operated by the Mine, [the CGP] is not designed to settle claims for legal liability or substitute for or impede access to judicial or other remedy processes.”* Article 54(2) indicates that grievants are not *“required to waive their rights to bring a claim against the Mine in another forum in order to participate in or resolve Grievances through the Grievance Process.”* Section II(C)(6) of the Handbook explains this to grievants.

That said, NMGML's policy has been to refuse to consider a grievance when the same subject matter is pending against the Mine in another remedial process, especially civil proceedings. This policy is reflected in Section II(C)(9) of the Handbook and Article 6 of the SOP. The objective of this policy is not, as RAID and the LHRC suggest, to *“pressure claimants into choosing between filing a grievance or seeking alternative judicial action.”* Rather, the objective is to preserve the practical distinctions between the CGP and civil proceedings and avoid the risks to the CGP and NMGML associated with the Mine being subject to two distinct types of proceedings simultaneously. The CGP is different from and independent of judicial proceedings in that:

- The Mine provides access to remedies for alleged human rights impacts out of a commitment to corporate social responsibility, rather than out of legal obligation, whether perceived or real. In the case of human rights impacts alleged to have been caused by the police, the Mine provides access to remedies without seeking to determine whether it has contributed to those impacts or is merely linked to them and despite believing that it could not be legally liable to grievants for any such impacts under Tanzanian or other laws.
- The CGP applies a burden of proof that is lower than in civil proceedings. See Section II(C)(5) of the Handbook and Article 25(c) of the SOP.
- The CGP *“cannot and will not: make any legally binding determinations of fact or law . . . [or] decide if the Mine, any other entity or any individual, is legally liable or criminally responsible for adverse impacts.”* See Section II(C)(9) of the Handbook.

If the CGP addresses grievances when the same subject matter is pending before civil proceedings, there is a significant risk that the distinctions between the two types and bases of processes will be lost. The Mine would therefore need to adopt legalistic, more defensive

and inevitably slower, more adversarial and ultimately less effective processes within any operational grievance mechanism. The Mine naturally would want to reconsider the standards of proof in the CGP, to avoid giving undue credence to speculative or false claims, out of a concern about promoting risks in concurrent litigation. And it naturally would want to agree that there was a human rights impact and to a remediation plan only when it accepted that it might be legally liable for the impact. Significant additional legalistic process and procedure would be required. All of this would be contrary to the object and purpose of the CGP, which is to provide an effective access to remedy for members of the Mine's community in a non-legalistic manner based on CSR principles, rather than by reference to legal rights, obligations and duties.

It also is worth noting that, if there are ongoing civil proceedings it is almost inevitable that there will be a court-mandated process of alternative dispute resolution with respect to those proceedings. Having commenced legal proceedings, a claimant interested in ADR will always be able to pursue such methods of ADR.

NMGML has considered RAID's thoughtful recommendation that the Grievance Team Leader give "full reasons for the exclusion of grievances 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." RAID appears to have overlooked the substantive processes of Article 26(2) of the SOP, which provides:

"For avoidance of doubt, the Grievance Process shall not refrain from considering a Grievance if:

- a. another process or procedure is or has been limited to a general examination of the situation affecting the community around the Mine and there has been no remedy given or may be pending in favour of the Grievant or persons affected; or*
- b. the applicant in another process or procedure is a third party having no mandate from the Grievant and therefore no remedy has been given or may be pending in favour of the Grievant or persons affected."*

Thus, the CGP will not refrain from considering a grievance if the other process is not really dealing with remediation per se but rather other matters, such as investigating the perpetrators of abuse. Nevertheless, for the avoidance of doubt, NMGML will add the following words of emphasis to Article 28 dealing with communications with grievants:

"2. The Grievance Team shall write to the Grievant within 14 days of the Acknowledgement of Receipt to:

- a. inform the Grievant that the Grievance has been registered for processing, with a preliminary indication as to the particular type of Grievance;*
- b. request additional information or documentation from the Grievant; or*

- c. *inform the Grievant that the Grievance cannot be processed because the subject matter is pending before another remedy process or has already been the subject of a Grievance and there are no circumstances that would warrant considering it again. **The Grievance Team Leader's reasoning shall be explained.***

12. **"Lack of transparency"**

The Mine disagrees with and does not understand RAID's and the LHRC's assertion that the revision of the CGP has been done without transparency. The NGO's even acknowledge a presentation to community members done as part of the consultation process.

They also are mistaken when they claim that the presentation omitted reference to transparency. As noted above, the CGP is designed to meet the effectiveness criteria for operational level grievance mechanisms described in the UNGPs, including the criteria of transparency. Transparency is a priority of the CGP and a topic of consultation in all presentations to community members with respect to the further development of the grievance process. The presentation to which we believe RAID refers has been posted on the Acacia website accompanying this Response and the Assessment, addresses transparency on the 59th slide of the English version.

CGP proceedings and outcomes are entirely transparent to grievants and their authorized representatives. As noted above, the Mine provides all the evidence and reports on which it relies to grievants and, as the Handbook explains at Section II(B)(8), grievants receive a final Grievance Resolution Report or Grievance Committee Report. These reports record the agreements and/or determinations with respect to whether the Mine may have been involved in an adverse impact and sets out any remedies the Mine agrees to provide or that the Grievance Committee recommends that the Mine provide.

To limit the delays and paperwork involved in the process, Articles 38 and 43 of the SOP provide that the minutes of dialogue and engagement meetings and independent Grievance Committee hearings are to be considered internal working documents of the Grievance Team and Grievance Committee respectively. This is not intended to limit transparency, as both provisions also indicate that, if a party so requests, the minutes shall be provided to them, unless, their contents could entail some risk to a person or entity. Grievants and their representatives are of course welcome to take notes of the proceedings as well.

All underlying process and policy documents relating to the CGP are already publicly available, or will be publicly available as soon as ongoing targeted consultations give way to further rounds of consultations, including on the two Reference Guides referred to here. NMGML's human rights policies are publicly available and Acacia reports on NMGML's community relations, security and human rights matters in the Acacia annual report. Internal investigation functions and procedures do not overlap with the grievance process, contrary to the NGOs' claims, as explained above. Further, relevant details of the Memorandum of Understanding between NMGML and the Tanzanian Police Force providing for support by NMGML to the TPF in its efforts to discharge its responsibilities to maintain law and order in the region have been made public.

Article 69 of the SOP describes the details that must be included in the annual reporting of the Grievance Team Leader to the Mine, Community Consultation Board and Advisory Board. The Mine also intends to report externally on the annual operations of the CGP as part of its annual reporting on its community and sustainability performance, and separately the processes and outcomes of the CGP will continue to be included in Acacia's Annual Report.

Article 64 of the SOP provides that Grievance Committee Reports, and information and evidence (including testimony) exchanged between the parties as part of the CGP shall be maintained by the parties as strictly confidential. This would not permit the publication of expert reports and testimony exchanged between the parties or dissenting opinions in Grievance Committee Reports.

“Conclusion: Continued lack of justice”

The Mine does not understand RAID's and the LHRC's claim that the current Handbook includes “some troubling references about Acacia's responsibility to report criminal activity”. This may come from a misunderstanding of the intentions of the CGP.

The Handbook and SOP, as well as the discussion at issue 2 above, address NMGML's responsibility to report potentially criminal activity, including of police and of grievants' themselves. As noted above, this responsibility may come into tension with the Mine's efforts expressed through the CGP process to protect grievants from harassment, intimidation, retaliation and re-victimisation, and its commitment not to retaliate against grievants. To enable the Mine to seek to adequately and appropriately deal this tension on a case by case basis, as well as ensuring the Mine continues to be able to meet any legal obligations it might have under local law, Article 1(4) of the SOP provides that the Mine *“may need to refer credible allegations of criminal conduct to the appropriate Tanzanian authorities, and refer matters involving third parties to such third parties in order to help Grievants obtain effective redress.”*

The draft Reference Guide on Remedies for Security Related Human Rights impacts sets out examples of the forms of satisfaction and non-repetition that might be included in a remedy provided under the CGP. They provide examples of how NMGML might seek to assist grievants to press for justice. CGP reporting will document outcomes of such efforts, where known to the Mine.

In addition to addressing the right to remedy through the CGP, NMGML continues to be actively engaged with seeking to minimize and prevent impacts on members of its communities as a result of incidents involving Mine security personnel or the TPF. These efforts, including wider efforts by the Mine to promote and support sustainable livelihoods around the Mine, are addressed in Acacia's Annual Report, and will continue to be included within North Mara's annual CSR reporting.