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CORE

25 October 2017

President John P. Magufuli
Government of Tanzania
State House
1 Barack Obama Drive
11400, Dar es Salaam
Tanzania

OPEN LETTER

Your Excellency,

RE: Address human rights concerns at Acacia's North Mara Gold Mine under the framework agreement with Barrick Gold Corporation

We wish to follow-up on the breakthrough framework agreement [announced](#) last week between the government and Barrick Gold Corporation concerning Acacia Mining plc's operations in Tanzania.¹ We are writing to respectfully request you to address human rights concerns at Acacia's North Mara Gold Mine as part of the detailed discussions that are to follow. We believe any final agreement should include providing adequate compensation for victims of abuse and an urgent judicial investigation into the alleged unlawful use of force by members of the Tanzanian police and North Mara's mine security.

The announcement on October 19 of a framework for a new partnership between Acacia Mining and the government made no mention of how the critical human rights issues would be addressed. We welcome the fair sharing of economic benefits between Acacia Mining and the government, but we also believe it is vital that the outstanding human rights concerns at Acacia's operations in North Mara are resolved. It is hard to envision a genuine partnership that benefits both sides when Tanzanian citizens continue to lose their lives or suffer terrible injuries at Acacia's operations.

As you may know, there have been numerous detailed [reports](#) and complaints about serious human rights violations at the North Mara mine by residents, Tanzanian parliamentarians, journalists and local and international human rights organizations. These reports describe the unlawful use of force by police and mine security against so-called "intruders," including killings, beatings, and sexual violence.

¹ Barrick Gold Corporation owns 63.9% of Acacia Mining and is the majority shareholder.

A Tanzanian parliamentary inquiry set up to consider the growing complaints in 2016 received reports of 65 killings and 270 people injured by police responsible for mine security, according to a published summary of the committee's findings and recommendations (the full report remains unpublished). UK-based Rights and Accountability in Development (RAID) and MiningWatch Canada, whose researchers conducted detailed field investigations, [found](#) that between 2014 and 2016 at least 22 people were killed and 69 injured, many by bullets, at or near the mine in security related incidents. In September, following a visit to the North Mara mine by a delegation of eminent legal judges and experts, the International Council of Jurists (ICJ) said it was "deeply concerned about the gravity of many of [the] allegations and the difficulties [victims] experienced in accessing any adequate remedy and reparation."

Acacia Mining refutes the reports. In March 2017, after considerable pressure to publish further information about deaths at the mine site, the company confirmed in its [annual report](#) that there had been 32 "trespasser-related" fatalities between 2014 and 2016. It provided a [minimal amount of data](#) on these cases, but acknowledged a number of the deaths were due to police involvement. Acacia's also said it had received 117 security-related complaints in 2016 and previous years, but had rejected 109 (93%) of the complaints through its own in-house grievance mechanism. The only explanation given was that the cases were "unsubstantiated or inconclusive." No details were provided about how the company conducted its investigations or the basis upon which it reached its conclusion to reject such a large number of complaints.

Acacia's North Mara Mine has a formal memorandum of understanding (MoU) with the police for security at the North Mara mine. On 19 November 2014, possibly in response to the growing complaints, the Tanzanian Ministry of Energy and Minerals wrote to Acacia Mining urging for "zero intrusions and zero fatalities" at the North Mara mine.²

To date, we are unaware of any police officer having been held to account for the unlawful use of force or other serious human rights violations at North Mara mine. In its annual report, Acacia said it fired one employee for excessive use of force, but it did not say what the perpetrator did or if the individual faced justice and was held to account.

Victims of abuses have become increasingly frustrated with the lack of accountability. Earlier this year, a number of the victims instructed UK based lawyers Deighton Pierce Glynn, claiming Acacia has been unwilling to adequately compensate them. These are the latest batch of victims turning to the UK judicial system where Acacia Mining is registered. In 2015, Acacia reached an [out-of-court settlement](#) with nine claimants in the UK. Dozens of earlier victims received little or no compensation, many after signing legal waivers in English, which few understand, without a lawyer to represent them.

President John Magufuli said that he is pursuing reform of the mining sector to enhance the development of Tanzania and the social and economic rights of its people. In its *National Five Year Development Plan* published in 2016, the government identifies "promoting and protecting human rights for all" as key to improving social protection and good governance.³ Specifically, the government said it will play an active role in ensuring economic governance, including

² Letter from Eliakim Maswi, Permanent Secretary, Tanzanian Ministry of Energy and Minerals, to Deo Mwanyika, Vice President Africa Barrick Gold 19 November 2014. The letter was made available to the 2016 Committee of Inquiry.

³ National Five Year Development Plan 2016/17 - 2020/21, Ministry of Finance and Planning, June 2016, respectively 4.3.7 Social Protection, p.76 and 4.3.8 Good Governance, p.77.

“promoting the private sector, through ensuring enjoyment and protection of all human rights... in accordance with existing legal and regulatory frameworks.”⁴

In addition, as you no doubt know, Tanzania has ratified the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights which not only guarantee the rights violated at North Mara, but also require effective remedy. According to the jurisprudence of the African Commission, the violation of rights protected by the Charter further gives rise to reparations, including monetary compensation. In a recent decision on a case in the Democratic Republic of Congo, the African Commission specifically referred to extractive industry companies and said “At a minimum they should avoid engaging in actions that violate the rights of members of the communities in their zones of operation. This includes not participating in or supporting the perpetration of human and peoples’ rights.”

Tanzania also has obligations under international law arising from the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

We hope you agree with us that working to reform the mining sector to ensure Tanzania’s natural resources improve the living conditions of its people and ending human rights violations and impunity at mine sites are mutually compatible goals. We hope you will give equal consideration to respect for human rights and ensuring fair government revenue in the ongoing consultations of the working group between the Tanzanian government and Barrick.

To assist in this regard, we urge you to:

- Include resolving the outstanding human rights violation at Acacia’s North Mara mine at the top of the agenda for ongoing discussions.
- Launch an urgent judicial investigation into the unlawful use of force, killings, injuries, rape and other human rights violations by the Tanzanian police and mine security at the North Mara mine. Hold to account anyone found to have violated the law.
- Ensure victims of abuse receive adequate compensation from the company through a fully rights-compatible grievance mechanism and/or through national or international judicial proceedings. Insist that Acacia Mining stop using legal waivers to settle complaints through their grievance mechanism, which are not considered best practice.
- Insist Acacia Mining publishes in full its current in-house grievance mechanism, its investigations policy, and other related documents so local residents are fully informed and aware of how their complaints will be treated by the company.
- Publish in full the 2016 Parliamentary inquiry report into human rights and other issues at North Mara mine.
- Revisit the Memorandum of Understanding between Acacia’s North Mara mine and the Tanzanian Police to ensure it includes more detailed provisions for reporting human rights violations and clearly sets out the process for investigating such violations and holding perpetrators to account. Insist the MoU is published to ensure it is available to local communities.
- Use international human rights mechanisms to help Tanzania address the human rights issues at North Mara by inviting the UN Special Rapporteur on extrajudicial, summary or

⁴ Ibid., vi. Active role of state in economic governance, (h), p.113.

arbitrary executions; the UN Working Group on Business and Human Rights; and/or the African Commission Working Group on Death Penalty and Extra-Judicial and Summary or Arbitrary killings in Africa to visit Tanzania and North Mara mine.

We have copied this letter to Barrick Gold and to Acacia Mining, but will also be writing to them separately about the need to resolve human rights concerns as part of the discussions. Since Barrick is a company which prides itself on leading the way in applying the UN Guiding Principles on Business and Human Rights and as a signatory to the Voluntary Principles on Security and Human Rights, we assume its senior managers will not object to addressing the pressing human rights concerns at North Mara as part of your ongoing bilateral discussions.

Yours respectfully,

Legal and Human Rights Center (LHRC), Tanzania
Tanzanian Human Rights Defenders Coalition
Haki Rasilimali, Tanzania
Rights and Accountability in Development (RAID), UK
MiningWatch Canada
London Mining Network, UK
CORE Coalition, UK

Cc: Hon. Professor Palamagamba Kabudi, Minister of Constitutional and Legal Affairs
John Thornton, Executive Chairman, Barrick Gold Corporation
Brad Gordon, CEO, Acacia Mining Ltd.