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Response to RAID article “LBMA Should Suspend Gold Refiner MMTC-PAMP”

We note RAID’s article of 9 July 2020 “LBMA Should Suspend Gold Refiner MMTC-PAMP” <https://www.raid-uk.org/blog/lbma-should-suspend-gold-refiner-mmtc-pamp> and the related references, including the “Submission under the LBMA’s Incident Review of PAMP/MMTC-PAMP” https://www.raid-uk.org/sites/default/files/raid_analysis_of_synergy_assessment_north_mara_gold_mine_update.pdf, which raise concerns relating to MMTC-PAMP’s assessment of North Mara Gold Mine (NMGM) which was conducted by Synergy Global Consulting (Synergy). This submission is an initial response to the points raised.

Synergy has experience over two decades in conducting independent assessments for clients on the human rights impacts of businesses operating in complex environments. We have had a particular focus on mining projects in Africa during this time. We are a values-driven organisation, and our expertise and integrity in the services which we provide – as well as effective stakeholder engagement as part of these services – is integral to us maintaining our trusted reputation with our clients and other stakeholders.

We therefore take the points raised by RAID very seriously and recognise the need to address any issues which may need to be improved or resolved. In particular, at the heart of our work is a strong interest in ensuring that human rights impacts in relation to NMGM are demonstrably and effectively managed, and that any human rights abuses which may have occurred are effectively remedied.

We welcome the scrutiny which RAID and other civil society organisations have provided over many years on the human rights issues at North Mara, including on this assessment, and also on responsible mineral supply chain due diligence more widely – however challenging this may be for us. This role is an essential part in the prevention and remedy of serious human rights abuses and ensuring accountability and ongoing improvements in effective human rights due diligence.

Whilst we recognise the basis for many of the questions which RAID raises, having reviewed the issues it is our view that: i) the assessment conducted meets the LBMA Responsible Gold Guidance (RGG) and OECD Due Diligence Guidance requirements in line with the scope of the assessment, ii) that the assessment process and outcomes were independent, without conflicts of interest, and exercised with due professional care and to the highest ethical standards, and; iii) that the assessment process ensured that the findings and recommendations were based on a detailed understanding of the circumstances on-the-ground – including through stakeholder engagement as well as other sources of information – and reported truthfully and accurately on the situation, including careful consideration of allegations of previous serious human rights abuses, and the extent to which these have been adequately investigated and where necessary remedied.

Synergy Global Consulting

www.synergy-global.net

Synergy Global Group Ltd, Registered in England and Wales 12467635; Synergy Global Consulting Ltd, Registered in England and Wales 3755559; Synergy Global Consulting (Pty) Ltd, Registered in South Africa 2008/017622/07, Synergy Global Consulting (France), registered in France 852 861 608

United Kingdom office:

Tel: +44 (0)1865 558811
1a Walton Crescent
Oxford OX1 2JG
United Kingdom

South Africa office:

Tel: +27 (0)11 403 3077
Forum II, 4th Floor, Braampark
33 Hoofd Street, Braamfontein
Johannesburg, 2001, South Africa

France office:

Tel : +33 (0) 659 45 39 95
7, rue Cadet
75009, Paris
France

We understand that RAID's comments are based only on the Executive Summary of the assessment. The comments therefore make certain assumptions and inferences about the contents of the full report which may not be accurate.

In addition, we also note that some of the comments are based on interpretations and application of LBMA RGG and OECD Due Diligence Guidance which are potentially inaccurate, not fully in context or significantly different to those which are commonly accepted (such as interpretations of independence). We appreciate the potential for any learning or improvements in clarity which may come out of this.

Independence and conflict of interest

For on-the-ground assessments such as this, both the OECD Due Diligence Guidance and the RGG section 2.3 envisage that gold producers (e.g. NMGM) may establish a joint team with their customers (e.g. MMTC-PAMP), and that these "On-site visits should be conducted by competent employees or a competent independent third-party consultant free of any conflict of interest".

Synergy's was explicitly contracted to conduct an independent assessment and therefore our independence was central to our work. Synergy is not aware of any conflicts of interest in regard to this assessment, whether it be with NMGM, Barrick Gold or MMTC-PAMP. The joint nature of the team required collaboration and coordination in the approach, however this did not compromise the independence or create a conflict of interest. MMTC-PAMP and Barrick were provided the opportunity to review the draft assessment report to identify any factual inaccuracies, errors or omissions. Any views provided on Synergy's findings and recommendations were considered, however Synergy exercised its own independent and professional judgement on the final content and the assessment accurately and truthfully represents the view of the assessors. It is important to note that a contractual commercial relationship does not in itself constitute a conflict of interest, nor do confidentiality requirements create a lack of independence, but are rather essential to ensuring access to information which can form a basis for the assessment. We will however continue to take seriously any substantiated cases where our independence may have been compromised or where there may have been a conflict of interest.

It is also noted that Synergy has client relationships with both MMTC-PAMP and LBMA. Both these relationships were entered into with full disclosure about our work in order to ensure there was no potential conflict of interest or restrictions on independence, and we have maintained strict confidentiality at all times. It should be noted that Synergy was contracted by MMTC-PAMP to carry out a due diligence assessment on their behalf on one supplier at a single site, and this does not include any assessment, audit or advice relating to MMTC-PAMP's approach to due diligence strategy and disclosure.

Consideration of victims of potential human rights abuses

NMGM has been subject to extensive scrutiny and criticism over a period of several years in relation to human rights issues. These human rights issues were a central part of the context in which the assessment was conducted. As such, the assessment necessarily considered the contextual circumstances relating to these human rights issues, including reported cases of human rights abuses.

Stakeholder engagement is an important part of assessment processes. Stakeholders interviews are necessarily limited and are selected in order to ensure that engagement has appropriately covered a diversity of perspectives, added new information and verified other sources of information. Selection also needs to consider the scope and time available for the assessment, reliable information on stakeholder perspectives from other secondary sources, and sensitivities and ethical considerations of engagement.

During the site assessment, Synergy had stakeholder interviews with a range of community representatives, which provided useful new insights and a range of views, including perspectives on actions taken by Barrick since they had been operating at NMGM.

Due to the high level of attention paid by civil society organisations, including RAID, to NMGM, there is a considerable amount of information from third-party sources, as well as from Acacia, in the public domain. This information was reviewed in detail and considered carefully in the assessment process. In our experience it is unusual to have this level of publicly available third-party information to draw on for assessments such as this, and this would usually need to be supplemented by (less extensive) information from stakeholder engagement during a site visit. Additionally, Synergy did meet with RAID in London after the site visit in order to consider any new information and cover issues in further detail.

In addition, there are sensitivities to be considered related to interviewing victims of potential human rights abuses, and the canvassing of these issues during interviews may not always be appropriate for such assessments, particularly when there is already information available from previous interviews and statements. We appreciate RAID's offer to facilitate meetings with other stakeholders.

The Executive Summary includes a recommendation that Barrick ensures an independent process to address serious and complex grievances, and a more effective process for addressing less serious grievances. More detailed findings and recommendations were included in the main report. This included a high-level review of the NMGM grievance mechanism against the eight criteria for effective non-judicial grievance mechanisms, as set out in the United Nations Guiding Principles for Business and Human Rights (UNGPs) and therefore the extent to which access to remedy for human rights issues was effective.

Whilst we understand the concerns relating to the assessment team not meeting with victims of potential human rights abuses or Tanzanian civil society groups, the assessment carefully considered the range of views of stakeholders, information from different sources and the situation of people who had potentially suffered harm. We will consider seriously any instances where the approach to stakeholder engagement may have led to material gaps in the assessment of the context and any subsequent findings and recommendations.

The OECD Due Diligence Guidance (page 18, third edition) state that "If companies pursue risk mitigation efforts while continuing trade ..., they should consult with suppliers and affected stakeholders, including local and central government authorities, international or civil society organisations and affected third parties, where appropriate, and agree on the strategy for measurable risk mitigation in the risk management plan" and that this consultation may be done whilst implementing, monitoring and tracking performance of the risk management plan. We would therefore support ongoing stakeholder engagement by MMTC-PAMP and Barrick, including appropriate engagement with the victims of potential human rights abuses referred to by RAID and Tanzanian civil society organisations.

Scope of the assessment

In accordance with the LBMA RGG and the OECD guidance, the scope of the assessment was specifically on risks of NMGM contributing to or being associated with significant adverse impacts, including serious human rights abuses and conflict, including the actions and plans that Barrick had already implemented and intends to implement at NMGM to mitigate them.

The nature of the assessment is focused on actual and potential risks, and therefore is forward looking. It should be noted that this includes impacts which have (or may have) occurred in the past but are yet to be appropriately remedied and which the company may have responsibility for, as these constitute current risks. The assessment therefore considered in detail NMGM's previous human rights record, including consideration of the extensive public information provided by RAID and other civil society organisations.

Synergy's site visit to NMGM was conducted between 19 and 21 November 2019. The assessment was therefore conducted approximately two months after Barrick had taken operational control of NMGM following the acquisition by Barrick of Barrick TZ Limited (formerly Acacia Mining plc). It is perhaps unusual for assessments of this kind to be conducted so soon after a change in management control, and the assessment should be seen in this light. As such, the extent to which due diligence systems and risk

management relied on by Acacia, could be considered relevant to the assessment was limited. Similarly, due to this short time scale, even where changes and improvements to management had already been made by Barrick, it was not possible to conclude at the time of the assessment that these measures could yet be considered to reasonably manage existing risks, nor that there had yet been a failure to demonstrate adequate improvement in risk management.

Assessment recommendations

As part of the assessment Executive Summary, Synergy recommended that Barrick continues with its focus to improve the mitigation of and reporting on the above risk areas at NMGM (following the key concept of “progressive (or continual) improvement”). Barrick should develop a plan for measurable risk mitigation in consultation with MMTC-PAMP and other stakeholders. More detailed recommendations and potential performance indicators were included in the main report.

Synergy also recommended to MMTC-PAMP that it continues trading with NMGM while engaging with Barrick and reviews progress on the above-mentioned risk areas and related improvement plan by the end of 2020 and to reassess NMGM’s alignment to the principles outlined in the OECD Due Diligence Guidance and the LBMA Responsible Gold Guidance. Progress on these items should be regularly monitored and reviewed by MMTC-PAMP during 2020, along with the implementation and progress on the risk-specific recommendations identified in this report.

Any decisions relating to suspension or continuation of trade rest with MMTC-PAMP, although this may be informed by assessments such as this. It should be noted that in accordance with the OECD Due Diligence Guidance (page 21, third edition), immediate suspension of trade with upstream suppliers (including large-scale mines) should occur where there is a reasonable risk that sourcing is from, or linked to, any party committing serious human rights abuses. The assessment did not identify the occurrence of any of these serious human rights abuses. The assessment did however identify several areas which require improved risk management and raised recommendations accordingly (including relating to security forces management, historical and future resettlement, and the site grievance mechanism).

Finally, we recognise this issue has potentially wider implications for responsible mineral supply chain due diligence, and we hope that it will result in ongoing awareness of existing guidance and improvements in good practices more widely.



Ed O’Keefe, Director

Synergy Global Consulting Ltd

eokeefe@synergy-global.net