



Response to Synergy Global Consulting and MMTC-PAMP

Human Rights Assessment at the North Mara mine, Tanzania

Introduction

On 10 July 2020, MMTC-PAMP (part of the MKS PAMP Group) published a [response](#) addressed to RAID by Synergy Global, the consultancy hired by the refiner to assess whether the Barrick-owned North Mara gold mine in Tanzania met responsible sourcing standards.

The assessment was prompted by [extensive reporting](#) by *Forbidden Stories* in mid-2019 of human rights violations at the mine. On 3 July 2020, MMTC-PAMP published the [Executive Summary](#) of Synergy's assessment, which RAID [found](#) lacked independence and was deeply flawed. RAID made a public [submission](#) to the London Bullion Market Association (LBMA), the body responsible for issuing "responsible gold" certificates to MMTC-PAMP, highlighting numerous areas of concern with the assessment and detailing where, in its view, MMTC-PAMP had failed to meet the LBMA's standards. RAID's submission was provided to the LBMA under its [Incident Review Process](#), which the LBMA had initiated to look into the refiners compliance with its [Responsible Gold Guidance](#) (RGG).

RAID welcomes MMTC-PAMP's posting of Synergy's response which recognises that RAID's serious concerns over the assessment and compliance with the RGG warrant due consideration. RAID notes that Synergy takes the points raised by RAID very seriously, welcomes "the scrutiny which RAID and other civil society organisations have provided over many years on the human rights issues at North Mara", describing this "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." Synergy acknowledges "the need to address any issues which may need to be improved or resolved", commits to taking seriously "material gaps" in stakeholder consultation and their effect on any subsequent findings and recommendations, and recognises the potential for "learning or improvements in clarity" over responsible sourcing standards arising out of the exchange.

For the reasons set out in RAID's submission to the LBMA, there is a prima facie failure by MMTC-PAMP to comply with the RGG. Synergy's response to RAID, which is analysed below, fails to clarify how the assessment met the standard of enhanced due diligence and, indeed, the extent to which it can be considered to underpin MMTC-PAMP's compliance at all.

To coincide with its publication of the Executive Summary, MMTC-PAMP also issued its annual [Compliance Report](#), a key part of which is based upon Synergy's assessment. However, Synergy's response to RAID makes clear that its remit was not to assess MMTC-PAMP's due diligence and compliance, but rather to focus on risk management at the North Mara mine. This confusion creates serious concern as to how the LBMA's responsible sourcing programme has been applied in this case. It also obfuscates the key question at the heart of the public reporting by *Forbidden Stories* and civil society groups: how could MMTC-PAMP have sourced gold from North Mara, a mine troubled by widely reported systematic and widespread human rights abuses for a decade, without raising red flags under the LBMA's responsible gold certification scheme?

RAID reiterates its [call](#) for the LBMA to issue a public statement that it is conducting an Incident Review of PAMP/MMTC-PAMP's adherence to its responsible sourcing standards, as it did recently in the case of Perth Mint. Given that companies downstream in the supply-chain, as well as consumers, ultimately rely upon the LBMA's responsible gold certification, the LBMA must surely recognise the need to transparently report on the Incident Review to date, including its consideration of suspending MMTC-PAMP from its Good Delivery List pending publication of its findings on compliance and any action or sanction that may result.

Synergy's response to RAID confirms a number of our findings. For example, it confirms that no meetings were held with victims of human rights abuses, that the assessment of risk management was restricted to the period from September 2019 onwards, and that Synergy considered itself to be engaged in enhanced due diligence (notwithstanding its failure to conduct the assessment accordingly).

Synergy also makes grave assertions for which it should provide evidence. Chief amongst these are statements that the assessment "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"; leading Synergy to conclude that "[t]he assessment did not identify the occurrence of any... serious human rights abuses".

As expanded on below, this questionable claim clearly requires further evidence, especially considering the considerable amount of evidence to the contrary, including a current case in the UK courts filed by Tanzanian human rights victims which has yet to be concluded; a previous human rights case in 2015 which was settled confidentially out of court; a 2016 Tanzanian parliamentary inquiry which received reports of 65 people killed and 270 injuries; and a significant number of Tanzanian and international civil society reports exposing dozens of serious human rights abuses. These reports and inquiries were based on significantly more field research than the short time Synergy's assessor spent in North Mara.

In its response to RAID, Synergy recognized "the need to address any issues which may need to be improved or resolved" in its assessment of the human rights situation at North Mara. We have therefore set out questions in each section below where we believe further clarification is required either from MMTC-PAMP or Synergy, as its appointed assessor. We recognize that it is MMTC-PAMP's conduct which is under scrutiny by the LBMA under the RGG and that ultimately it is for the refiner to demonstrate that it has complied with the relevant standards.

The failure to identify serious human rights abuses

Synergy's Response states that its assessment was based on "careful consideration of allegations of previous serious human rights abuses, and the extent to which these have been adequately investigated and where necessary remedied." This consideration included the "considerable amount of information from third-party sources, as well as from Acacia" in the public domain and Synergy's meeting with RAID. Synergy nevertheless concludes that the "assessment did not identify the occurrence of any...serious human rights abuses" committed by, or linked to, the North Mara mine.

This conclusion requires elaboration. It goes to the heart of the assessment yet is not stated in the Executive Summary. The Executive Summary uses the term "allegations of personal injury claims" to describe the shootings and assaults at and around the mine, and makes no express finding on whether human rights abuses occurred. If, as now appears confirmed, the assessment relied on a determination that no serious human rights abuses could be identified, further clarification is clearly necessary.

RAID [provided](#) MMTC-PAMP, which it [confirmed](#) was also provided to Synergy, numerous publicly available third party sources identifying serious human rights abuses at the mine. They included reports, letters to Acacia Mining and North Mara Gold Mine Limited, and press releases by RAID, reports by other civil society organisations such as MiningWatch Canada and the Tanzanian Legal and Human Rights

Centre, and media coverage by international and regional publications including *The Guardian*, *Le Monde*, *The Namibian*, *The East African*, and *The Globe and Mail*. These materials cover a period of roughly ten years, refer to scores of serious human rights abuses, including dozens of killings, shootings and assaults, and to Acacia's 2015 confidential settlement of a legal action brought in British courts by victims of serious human rights abuses.

Synergy also considered information published by Acacia. It would thus have been aware that the mine [accepted](#) that 30 "security-related" human rights grievances concerning the mine were substantiated from 2016 to 2018 alone (albeit a paltry percentage of the over 160 security-related human rights grievances considered). According to [The Guardian](#), in March 2019 the mine paid the family of a young man shot and killed on the mine site.

During its meeting with Synergy, RAID emphasised the many serious human rights abuses that it and others had identified at the North Mara mine, the mine's failure to provide any or adequate remedies to the vast majority of those whose rights were violated, and the importance of meeting with victims. RAID also notified Synergy and PAMP/MMTC-PAMP of the latest legal action commenced in February 2020 in UK courts by human rights victims.

Synergy's assessment, confirmed in its response to RAID, that no serious human rights abuses linked to the North Mara mine could be identified is extraordinary considering the extensive information concerning such abuses that it confirms it considered. Synergy's site visit spanned less than three days (and covered a range of issues), hardly sufficient time to properly investigate the human rights claims of the scores of people injured and killed. Synergy has not offered any explanation as to how it nevertheless reached its assessment that no serious human rights abuses could be identified, nor how it could do so fairly without meeting any victims, their families and their legal representatives.

Synergy's conclusion on serious human rights abuses forms the foundation of MMTC-PAMP's responsibility under both Step 2 (identification of risk) and Step 3 (risk management strategy) of the RGG. In RAID's view, it is further evidence that the assessment cannot be considered credible and that MMTC-PAMP's decision to continue to source gold must be inconsistent with the RGG.

Synergy's conclusion also denies the experience, without even meeting with them, of many Tanzanian victims who have suffered life-changing injuries or lost family members. It may prejudice those whose claims against the mine remain outstanding in UK courts and in other complaints mechanisms, particularly in light of the assertions by Synergy and MMTC-PAMP that the assessment was "independent".

In these circumstances, it is incumbent on Synergy and MMTC-PAMP to make clear on what basis the assessment can have failed to identify any serious human rights abuses.

Questions to Synergy and PAMP/MMTC-PAMP:

- 1) *Under RGG 2.3.3, refiners such as MMTC-PAMP should "collect evidence of any serious abuse of human rights committed by any party at mine sites". What evidence did Synergy and/or MMTC-PAMP collect in relation to the serious human rights abuses identified in the publicly available materials?*
- 2) *What specific evidence did Synergy rely on to conclude that, notwithstanding such extensive reporting, no serious human rights abuses linked to the North Mara mine could be identified?*
- 3) *Do Synergy and PAMP/MMTC-PAMP accept that if it was "possible" there were serious human rights abuses at the North Mara mine, MMTC-PAMP should suspend trading until*

it could confirm that any such abuses were effectively remedied and adequate management strategy measures were implemented?

The failure to meet human rights victims

Synergy's response to RAID explicitly acknowledges that its assessors did not meet with any victims.. This is inconsistent with both the [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#) and certain provisions within the RGG.¹ It is also contrary to provision within overarching instruments concerning human rights due diligence, such as the United Nations [Guiding Principles on Business and Human Rights](#).²

MMTC-PAMP itself states in its [Human Rights Policy](#) that it seeks "to avoid involvement in human rights abuses, identifying, assessing and minimising potential adverse impacts through due diligence and...resolving grievances from affected stakeholders effectively." It further commits to "[e]ngaging with stakeholders in an inclusive, transparent and culturally appropriate manner on human rights concerns related to our business activities". Similarly, Synergy states that "[w]e help companies and communities understand each other, see each other differently....We have years of experience in stakeholder consultation, analysis and planning, and mediation." Synergy offers this service because it recognises that "[c]ompanies usually operate in complex stakeholder ecosystems that are rich in history, politics, power and very often conflict." The failure of both the refiner and Synergy to meet with human rights victims at North Mara is in stark contrast to these commitments and statements.

Synergy's belated attempt in its response to RAID to justify not meeting victims lacks credibility. Firstly, Synergy argues that "[s]takeholders interviews are necessarily limited and are selected in order to ensure that engagement has appropriately covered a diversity of perspectives", but Synergy utterly failed to cover the perspective of human rights victims at all while acknowledging the extent of its contact with Barrick executives and mine personnel.

Secondly, by referring to "reliable information on stakeholder perspectives from other secondary sources", that publicly available third-party information "would **usually** [emphasis added] need to be supplemented by (less extensive) information from stakeholder engagement during a site visit", Synergy strongly intimates that it considers secondary sources and its meeting with RAID as fulfilling the requirement to meet with victims. RAID rejects such an approach, as demonstrated by our commitment to partner with those harmed, and our reiterating to PAMP/MMTC-PAMP and Synergy both before and during the assessment of the need to meet victims face-to-face.

Thirdly, Synergy in its response to RAID refers to the sensitivities around conducting interviews with human rights victims as a reason for it not doing so. But this is precisely why RAID repeatedly offered its services (see [correspondence](#) and [chronology](#)), including ensuring an experienced staff member was on hand in North Mara at the time of the assessment, to assist in arranging and mediating such meetings as required. It also ignores the clear desire by victims to meet with the assessor, eager to have their views heard. To deny victims a voice on the basis of "appropriateness" without actually finding out how they felt about being interviewed, especially in a situation when RAID as a trusted partner was on hand, is questionable. Neither Synergy nor PAMP/MMTC-PAMP made any attempt to raise such issues at the

¹ For example, the OECD Guidance, Annex I, 3 B); Supplement on Gold, Step 3, Section I, C.2, b) requires that companies: "Consult with suppliers and affected stakeholders...". The introduction to the RGG directs refiners to "forge close long lasting relationships with all relevant stakeholders"; under RGG, 3.3: "Refiners should, where appropriate, cooperate and/or consult relevant stakeholders (such as...civil society organisations and affected third parties)."

² See principle 18.

time. Instead, they referred to Barrick's logistical control over the site visit, Barrick's purported safety concerns, and the on-site team's schedule as reasons why they would not meet with victims.

Finally, RAID notes that Synergy in its response refers to "victims of potential human rights abuses" before concluding that it did not identify the occurrence of any serious human rights abuses. Of course, if Synergy or MMTC-PAMP had met the actual victims of human rights abuse at North Mara it would have been impossible to maintain the fiction that the victims and violations remained entirely hypothetical.

Questions to Synergy and PAMP/MMTC-PAMP:

- 4) *In line with Synergy and MMTC-PAMP's willingness to "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", please could they set out the process for receiving, reviewing and acting upon such information?*
- 5) *In order to address the serious deficiency to meet and consult with affected stakeholders, will Synergy/MMTC-PAMP agree to meet with the North Mara victims of human rights violations?*

Prima facie non-compliance with Responsible Gold Guidance

In the Executive Summary of the assessment report, Synergy does not clarify the basis for its assessment and omits to refer to the provisions within the RGG that it is following. In its response to RAID, for the first time Synergy situates its on-site visit and assessment by reference to provision 2.3, which sets out requirements for enhanced due diligence for "High-Risk Categories", including where mined gold originates from a human rights abuse high-risk area.

While Synergy's response refers to RGG 2.3 on the independence and competence of the assessor (see below), the same provision also requires use of the LBMA's Refiners Toolkit and on-site visit template. Nothing in Synergy's Executive Summary or response to RAID indicates that this was used nor, in the alternative, has Synergy/MMTC-PAMP justified, as required, why these tools were not used.

Synergy's response does not refer to or explain why RGG Step 3.2 has not been applied. This step, which requires the design and implementation of a management strategy to respond to identified risks, applies to the refiner, MMTC-PAMP, while Synergy's entire assessment is orientated to Barrick's mitigation of risks. Synergy's response to RAID provides additional clarity on this point: "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." In other words, the requirements of RGG Step 3 are not fulfilled.

RGG 3.2 is quite clear that a refiner "can continue to refine gold coming from this [high risk] source **provided that it adopts an improvement strategy**" [emphasis added]. But in this case MMTC-PAMP has not done so, yet continues to trade with the North Mara mine. Furthermore, this prima facie non-compliance is compounded by the fact that MMTC-PAMP has not produced a Corrective Action Plan (required under RGG Step 5).

The result is an inconsistent position that cannot be squared with the RGG. MMTC-PAMP claims to meet RGG Step 3 in its recently published Compliance Report based on having "mandated Synergy Global to conduct an independent assessment" and confirming that it has "taken note and will follow the recommendation of Synergy to continue trading", when Synergy categorically states in its response to RAID that it **did not** assess MMTC-PAMP's own due diligence. By confirming that the assessment ruled

out a consideration of MMTC-PAMP's due diligence, there is no basis upon which to claim that MMTC-PAMP has fulfilled RGG Step 3, which, in turn, is the only basis upon which the refiner can justify continuing to trade. Synergy's recommendation that MMTC-PAMP continue to source from North Mara mine is also, therefore, without foundation.

Questions to Synergy and PAMP/MMTC-PAMP and the LBMA:

- 6) *Can Synergy and MMTC-PAMP set out in detail how it followed the RGG, including the requirement to conduct enhanced due diligence and conduct the on-site assessment in accordance with the Refiners Toolkit?*
- 7) *Could Synergy further explain the basis in the RGG for its recommendation to MMTC-PAMP to continue trading with North Mara mine when "possible" serious human rights abuses and the absence of a Corrective Action Plan from the refinery prima facie exclude such continuation?*
- 8) *Could MMTC-PAMP explain how it relies upon the Synergy assessment in fulfilling Step 3 as part of its Compliance Report, when Synergy makes clear that it did not consider MMTC-PAMP's due diligence, including Step 3 compliance?*

Independence

In its response to RAID, Synergy cites RGG 2.3 providing for on-site visits to be conducted by "a competent independent third party consultant free of any conflict of interest." Synergy refers to its credentials as an independent consultancy, with which RAID does not take issue. Rather, RAID's concern is that an independent assessment of the human rights violations at North Mara mine was not possible given the control exercised over its scope and conduct by Barrick and PAMP/MMTC-PAMP.

For example, Synergy confirms in its response that it did not meet human rights victims or other human rights groups. The Executive Summary of Synergy's assessment report details a site visit dominated by Barrick: a site tour, a tour of community investment projects, interviews with senior Barrick corporate employees, NMGM management/staff, and a "detailed presentation". It appears Synergy was either not provided the time or the ability to meet with others. Synergy told the [Guardian](#) newspaper it had to check with its client before even confirming publicly that it had not met victims.

Synergy's response to RAID confirms that both Barrick and MMTC-PAMP "were provided the opportunity to review the draft assessment report to identify any factual inaccuracies, errors or omissions" and also to provide views on Synergy's findings and recommendations. No other parties, to RAID's knowledge, were provided with an opportunity to review it. While Synergy states that it exercised its own "independent and professional judgement on the final content", it is clear that the content had already been limited by the control other parties had over the scope of the assessment and its conduct. The terms of reference of the assessment have not been published nor the confidentiality agreement Synergy entered into.

Synergy states that a commercial relationship does not of itself undermine its independence. But it is undermined by signing a contract for an assessment with a restricted scope, with confidential terms of reference, where only a narrow range of stakeholders are consulted and which is subject to review by the client and to binding confidentiality. Synergy was contracted to produce a report that met its client's requirements. The full report has not been published. Synergy does not explain how an assessment coordinated by two parties with a shared commercial interest in continuing to trade can be considered independent, especially when the assignment makes a recommendation on the continuation of MMTC-PAMP's trade with North Mara mine, a matter of obvious commercial interest to the client.

Synergy's response to RAID also states that its commercial relationships with both MMTC-PAMP and the LBMA were entered into "with full disclosure about our work in order to ensure there was no potential conflict of interest", yet in both instances terms of reference have not been publicly disclosed. Synergy has been engaged in an assessment where disclosure has been limited, when the LBMA had an undisclosed role in agreeing the scope of the assessment and is drawing upon it in its confidential Incident Review of PAMP/MMTC-PAMP. It is therefore difficult to understand how it will be possible for Synergy to objectively draw upon this application of the RGG when considering the adequacy of the LBMA's own transparency.

Questions to Synergy and PAMP/MMTC-PAMP:

- 9) *As the terms of reference and confidentiality agreement are at the heart of Synergy's ability to carry out an independent investigation in this instance, could it please publish these?*
- 10) *Could MMTC-PAMP publish the full report produced by Synergy and the revisions made by it and Barrick to the report?*

Overarching points in need of clarification

Synergy makes two overarching points regarding RAID's submission to the LBMA: (i) Since MMTC-PAMP has not published the full report, RAID's comments based on the Executive Summary "make certain assumptions and inferences" regarding the report's contents that "may not be accurate"; and (ii) Some of RAID's comments are based on interpretations and application of the RGG and OECD Guidance that "are potentially inaccurate, not fully in context or significantly different to those which are commonly accepted".

To the first point, Synergy does not identify the assumptions or inferences that "may be" inaccurate. The simplest way to address any possibly inaccurate assumptions or inferences would be for PAMP/MMTC-PAMP to publish the full report, as RAID has consistently urged. If PAMP/MMTC-PAMP does not do so, however, such assumptions and inferences should be identified and the reason for their possible inaccuracy explained.

To the second, Synergy does not identify the interpretations and applications of the RGG and OECD Guidance that are "potentially" inaccurate, or explain how they may be inaccurate or not fully in context. Apart from comments about independence (addressed above), Synergy does not identify any interpretations or applications that, in its view, are significantly different from those that are commonly accepted. RAID would welcome clarification on these points.

Questions to Synergy and PAMP/MMTC-PAMP:

- 11) *What assumptions or inferences in RAID's submission about the full report's contents are inaccurate and in what respects?*
- 12) *What interpretations and/or applications of the RGG in RAID's submission are inaccurate or not fully in context and in what respects?*
- 13) *Will MMTC-PAMP publish Synergy's full assessment to provide complete information for RAID and others to consider?*