



Rights and Accountability in Development

Clarification sought from Barrick and Acacia **Oxford, 27 March 2015**

Human Rights Impact Assessments

In their separate responses to RAID of March 2015, both Acacia Mining plc (formerly known as African Barrick Gold plc – ABG) and Barrick Gold Corporation state:

Acacia operates its own human rights programme, conducts its own assessments, and engages in its own analysis and follow-up activities, entirely independent of Barrick

On the specific matter of Human Rights Impact Assessments (HRAs), RAID relies upon statements made by Barrick in its 2013 *Assessing Human Rights Risks & Impacts*:¹

In 2011, the Office of the General Counsel (OGC) at Barrick launched the company's formal human rights evaluation process by developing a program to conduct human rights risk and impact assessments (HRAs) at its sites and operations, primarily using an external consultancy.¹

¹ African Barrick Gold oversees assessments at its sites and projects using the same assessment process.

[Foreword, Sybil Veenman Senior Vice President and General Counsel February 2014, p.4]

In 2013, Avanzar conducted assessments at four higher risk sites (Porgera in PNG, Lumwana in Zambia, Jabal Sayid in Saudi Arabia, and Pueblo Viejo in the Dominican Republic) and one medium risk site (Pierina in Peru). Avanzar also was commissioned by African Barrick Gold to conduct an assessment at the North Mara Mine in Tanzania, which is part of African Barrick Gold's portfolio. High-level issues identified by the 2013 HRAs appear below.

[3. Human Rights Assessments 2013: Process, p.11]

The reference to ABG's HRA, carried out by the same consultancy (Avanzar), following the same process, and made within Barrick's own summary assessment; the reference to ABG's

¹ The report is not posted online. However, Barrick states: 'A summary report of the 2013 assessments is available by request to s.jimenez@barrick.com' (see <<http://barrickresponsibility.com/2013-performance/human-rights/>>, visited 26 March 2015).

North Mara site, in the context of the same paragraph identifying four other higher-risk sites and; the referral (within the same paragraph) to high-level issues from the HRAs to 'appear below', would all suggest that Barrick's summary assessment included a consideration of ABG's HRAs.

- **However, if Acacia has an alternative summary HRA, or a more detailed or a more recent HRA, whether compiled under its own or Barrick's HRA process, RAID would welcome its publication. We note Acacia's offer, that the company is 'glad to provide further information related to our human rights assessments, or any other aspect of our human rights program'.**

Independence of the companies, their practices and policies

On the wider questions of independence, Barrick's relationship to ABG (now Acacia) and the sharing or separation of policies relating to human rights, RAID has relied upon reports and statements made by both companies.

- **At times, these statements, considered together, give rise to ambiguities or a lack of clarity: again, RAID invites the companies to explain which statements should be relied upon; or which statements used to apply (and to define the period over which they applied), but no longer do so.**

It is RAID's understanding that:

Barrick Gold Corporation ('Barrick') describes itself as 'the world's leading gold company'.ⁱⁱ In 2013, Barrick's market capitalisation was over US\$20.5 billion and its revenue US\$12.5 billion.ⁱⁱⁱ It is headquartered and registered in Toronto, Canada, and traded on the New York Stock Exchange and the Toronto Stock Exchange.^{iv}

The UK-registered and London-listed company African Barrick Gold plc indirectly owns the North Mara gold mine in Tanzania, via its wholly owned subsidiary, North Mara Gold Mine Ltd.^v Barrick acquired North Mara in 2006.^{vi} ABG was 'spun-off' from Barrick in March 2010, although the latter retained a majority interest.^{vii} In Barrick's 2013 annual report, ABG is

ⁱⁱ See <<http://www.barrick.com/company/default.aspx>> (visited 26 March 2015).

ⁱⁱⁱ At the end of 2013, Barrick had 1,165 million outstanding common shares at a closing price on 31 December 2013 of US\$17.63, giving a market capitalisation of US\$20.5 billion. See Barrick, Annual Report 2013, Shareholder Information, p.158. Revenue figures are given on p.18, available at: <<http://www.barrick.com/investors/annual-report/default.aspx>> (visited 26 March 2015).

^{iv} The Company's head and registered office is located at Brookfield Place, TD Canada Trust Tower, 161 Bay Street, Suite 3700, Toronto, Ontario, M5J 2S1.

^v NMGML is incorporated in Tanzania and is a 100% owned subsidiary of ABG. See African Barrick Gold, Annual Report 2013, p. 103, available at: <<http://www.acaciaming.com/~media/Files/A/Acacia/reports/2014/abg-annual-report-final-2013.pdf>>. According to Barrick's annual filing to the New York Stock Exchange, Barrick Gold Corporation's (Ontario) ownership of African Barrick Gold plc (United Kingdom) is: 43.8% via BGC Holdings Ltd. (Cayman Islands), Barrick Holdings International Ltd. (Cayman Islands) and ultimately via Barrick International (Barbados) Corp. (Barbados); 11.03% via PDG Sona (Cayman) Limited (Cayman Islands) and; 9.11% via PDG Aurora LLC (Cayman Islands), PDG France (Cayman) LLC (Cayman Islands), PDG France SRL (Barbados) and ultimately via PDG Bank Limited (Barbados). ABG ultimately owns the North Mara Mine via North Mara Gold Mine Limited (Tanzania), East African Gold Mines limited (Australian Capital Territory) and BUK HoldCo Limited (United Kingdom). See Barrick Gold Corp, Form 40-F (Annual Report (foreign private issuer)), filed 31 March 2014 for the period ending 31 December 2013, organogram p.19, available via the SEC's EDGAR filings service:

<<https://www.sec.gov/Archives/edgar/data/756894/000119312514123835/d693534dex991.htm>> (visited 26 March 2015).

^{vi} African Barrick Gold, Prospectus, 19 March 2010, p.43, available at:

<<http://www.acaciaming.com/~media/Files/A/Acacia/reports/2010/abg-prospectus.pdf>> (visited 26 March 2015).

^{vii} Barrick Gold Corporation, Press Release, 'Barrick Announces Pricing of African Barrick Gold plc Initial Public Offering', 19 March 2010, available at: <<http://www.barrick.com/investors/news/news->

described as a 'subsidiary, publicly traded', at a time when Barrick held a 73.9% interest.^{viii} Barrick has since reduced its shareholding in ABG to 63.9%.^{ix}

ABG changed its name to Acacia Mining plc in late 2014.^x Whilst the change of name to Acacia means that 'Barrick' has been dropped from the company's title, the underlying majority holding of Barrick in Acacia remains unaltered, i.e., Barrick retains exactly the same holding in Acacia as it did in ABG immediately prior to the name change.

In a regulatory filing to the United States Securities and Exchange Commission (SEC), dated 20 February 2015, Barrick states:^{xi}

Subsequent to the divestment [in Acacia], we continue to retain a controlling interest in Acacia and continue to consolidate Acacia.

Barrick uses the term 'affiliate' in relation to ABG (now Acacia).^{xii} Acacia (formerly ABG) is also described as a 'subsidiary, publicly traded' of Barrick.^{xiii}

Prior to the reduction of its equity interest, Barrick appointed 3 directors to ABG's 10-strong board, appointing the same number to a 12 member board following its divestment.^{xiv} The chairman of ABG's (now Acacia's) board is Co-President of Barrick.^{xv} Barrick states:^{xvi}

Our two Co-Presidents execute on Barrick's operating plans and strategic priorities: Kelvin Dushnisky, formerly Senior Executive Vice President responsible for Corporate and Government Affairs and Chairman of Acacia, and Jim Gowans, formerly Executive Vice President and Chief Operating Officer. The new structure emphasizes the critical importance of joint responsibility and accountability for the management of operations and our key relationships with host governments and local communities that afford the company its license to operate; the CoPresidents are responsible for the seamless execution of both functions at all times.

In its latest available annual report to the SEC, Barrick describes how it is organised into 'ten operating units' which include 'Barrick's 63.9% equity interest in African Barrick Gold plc ("ABG")'.^{xvii} Barrick continues: 'Barrick's chief operating decision maker reviews the operating

[details/2010/BarrickAnnouncesPricingofAfricanBarrickGoldplcInitialPublicOffering1121668/default.aspx](http://www.barrick.com/files/press-release/2014/Barrick-Completes-Partial-Divestment-of-African-Barrick-Gold-plc-Holding.pdf)> (visited 26 March 2015). See also ABG Prospectus, op. cit.

^{viii} Annual Report 2013, op. cit., p.81.

^{ix} See African Barrick Gold plc, 'Completion of Placing by Barrick Gold Corporation', 11 March 2014, available at: <<http://www.aciamining.com/~media/Files/A/Acacia/press-release/2014/completion-of-placing-by-barrick-gold-corporation.pdf>>; Also Barrick Gold Corporation, Press Release, 'Barrick Completes Partial Divestment of African Barrick Gold plc Holding', 11 March 2014, available at: <<http://www.barrick.com/files/press-release/2014/Barrick-Completes-Partial-Divestment-of-African-Barrick-Gold-plc-Holding.pdf>>. (Both pages visited 26 March 2015).

^x Acacia Mining plc (formerly African Barrick Gold plc), News Release, 27 November 2014, Change of Name and Investor Day, available at: <http://otp.investis.com/clients/uk/acacia_mining/rms/regulatory-story.aspx?cid=286&newsid=459267> (visited 26 March 2015).

^{xi} Barrick Gold Corporation, Form 6-K, Filed 02/20/15 for the Period Ending 02/20/15, 4> Divestitures, C) Disposition of 10 percent interest in Acacia, p.124.

^{xii} For example, the term affiliate, applied to ABG, is used in: Barrick Gold Corporation, Conflict-Free Gold Report for Barrick Gold Corporation, April 2014, available at: <<http://www.barrick.com/files/reporting/Conflict-Free-Gold-Report-April2014.pdf>> and ; Report Boundary and Limitations, <<http://barrickresponsibility.com/2013-performance/about-barrick/>>. (Both pages were visited on 26 March 2015).

^{xiii} Form 6-K, 02/20/2015, op. cit., table, p.110.

^{xiv} See respectively, Barrick Gold Corporation, Annual Information Form, For the year ended December 31, 2012, Dated as of March 28, 2013, p.23; Annual Information Form, For the year ended December 31, 2013, Dated as of March 31, 2014, p.25.

^{xv} See <<http://www.aciamining.com/about-us/our-leadership/board-of-directors.aspx>> and <<http://www.barrick.com/company/management/default.aspx>> (both visited 26 March 2015). Kevin Dushnisky is listed, respectively, as Chairman of the Board at Acacia and Co-President of Barrick.

^{xvi} Form 6-K, 02/20/2015, op. cit., p.30.

^{xvii} Barrick Gold Corporation, Form 40-F, Filed 03/31/14 for the Period Ending 12/31/13, op. cit., Operating Units, p.22.

results, assesses performance and makes capital allocation decisions for each of these business operations at an operating unit level. Therefore, these operating units are operating segments for financial reporting purposes.’

On Barrick’s website devoted to corporate social responsibility (CSR), Barrick’s 63.9% equity interest in African Barrick Gold plc (ABG) is currently described as a Barrick operating unit and ‘Barrick (including ABG)’ is described as having 17 ‘wholly-owned mines’ at the end of December 2013: the list unequivocally includes North Mara.^{xviii}

In the same annual report to the SEC, Barrick also states: ‘ABG has a greater amount of independence in comparison to Barrick’s operating units’, referring to its London listing and to the existence of a relationship agreement ‘to ensure that ABG is capable of carrying on its business independently of Barrick’.^{xix} Barrick’s recognition that ABG’s assertion of its independence poses risks for Barrick is also recognition that the two entities are, in fact, related when it comes to the latter’s reputation or even its liability:^{xx}

...the minority shareholders of ABG represent an important stakeholder group that is required to be considered in ABG’s corporate governance and decision-making. Given the potential divergence in stakeholder interests, there is a risk that actions undertaken by ABG could differ from actions that would have been taken by Barrick and in certain circumstances could adversely affect Barrick’s reputation and/or result in potential civil or criminal liability for the Company.

Human rights and security

The initial applicability of Barrick’s human rights policies and practices to ABG has recently given way to moves by Barrick to distance itself and such policies and practices from ABG (and vice versa). Whether coincidentally or not, this distancing has occurred in the context of continued human rights concerns at Acacia’s (formerly ABG’s) North Mara gold mine.

The version of Barrick’s Human Rights Policy, effective from 18 May 2012, defines the extent of its applicability:

2. SCOPE

This Policy applies to all Barrick entities and all Barrick operations, whether operated by Barrick, an affiliate, or a subsidiary. It applies to all employees of Barrick, Barrick’s affiliates, or Barrick’s subsidiaries.

It should be recalled that Barrick has described ABG as both a subsidiary and an affiliate.

The version of Barrick’s Human Rights Policy, effective from 6 June 2014, redefines its scope:

2. SCOPE

This Policy is applicable to every employee of Barrick, including senior executive and financial officers, and to members of the Barrick Board of Directors.

On the one hand, Barrick previously expressed a closeness and affiliation with ABG:

^{xviii} <<http://barrickresponsibility.com/2013-performance/about-barrick/>> (visited 26 March 2015).

^{xix} Form 40-F, 03/31/14, op. cit., respectively, p.22 and p.25.

^{xx} Ibid., Holding of African Barrick Gold, pp. 121 – 122.

Barrick issued a statement on North Mara, at the time of the May 2011 shootings at the mine by Tanzanian police, and over a year after ABG's London listing:^{xxi}

Barrick is unwavering in its commitment to eradicate human rights violations at all of its operations and those of its affiliates.

Under a stated 'Commitment to Protecting Human Rights', Barrick describes how ABG initiatives 'to improve the security function and strengthen support to the community at North Mara' are to be undertaken '**with Barrick's assistance**' [emphasis added];^{xxii} *inter alia*, the development of an 'appropriate remedy program for victims of sexual assault, aligned with international human rights norms' and to '[e]xamine alternatives to existing arrangements with public security providers at North Mara'.

It is explicitly stated that:^{xxiii} 'Barrick will also: Commit to conducting human rights assessments at Barrick operations and projects, including those of its affiliates and subsidiaries. ABG sites will be included in this process.' This has been borne out and Barrick's summary human rights assessment makes specific reference to assessments carried out at North Mara.^{xxiv}

In a September 2011 update on North Mara, released by Barrick, it is stated:^{xxv}

African Barrick Gold (ABG) and Barrick Gold Corporation have undertaken a series of initiatives to ensure respect for human rights, strengthen security and improve relations with local communities near the North Mara mine. The following provides an update on the status of these actions, which reflect company commitments made in a May 30, 2011 statement.

...

Strengthening global human rights compliance

Barrick has adopted a new corporate human rights policy based on international best practices and is now implementing a global human rights compliance program. Progress is underway in numerous areas, including:

...

- Human rights assessments to be conducted by third-party experts at all Barrick operations and projects, including those of its affiliates and subsidiaries, encompassing leading human rights indicators, including sexual violence.

At the same time, in September 2011, ABG issued an almost identical release. ABG stated:^{xxvi}

ABG is partnering with Barrick in implementing a new corporate human rights policy based on international best practices and is now implementing an updated human rights compliance programme.

^{xxi} Barrick Gold Corporation, 'Statement from Barrick Gold Corporation concerning the North Mara Mine, Tanzania', 30 May 2011, available at: <<http://www.barrick.com/investors/news/news-details/2011/North-Mara-Mine-Tanzania/default.aspx>> (visited 26 March 2015).

^{xxii} Ibid.

^{xxiii} Ibid.

^{xxiv} *Assessing Human Rights Risks & Impacts 2013*, op. cit., p.7 and p.11. Also *intra*, Human Rights Impact Assessments, p.1.

^{xxv} Barrick Gold Corporation, North Mara Update – September 2011, available at: <<http://www.barrick.com/files/north-mara/North-Mara-Update-Sept-2011.pdf>> (visited 26 March 2015).

^{xxvi} African Barrick Gold plc, North Mara Update, 30 September 2011, available at: <<http://www.africanbarrickgold.com/~media/Files/A/African-Barrick-Gold/Attachments/press-releases/2011/North-Mara-update-Sept-30.pdf>> (visited 26 March 2015).

This statement must indicate that ABG and Barrick worked jointly on a human rights policy.

On the other hand, and more recently, Barrick posits a separation:

On its corporate website, Barrick now states:^{xxvii} ‘These [human rights] commitments are limited to Barrick-operated mines. For information on Acacia Mining plc’s human rights approach, see www.acaciaminging.com.’ Moreover, in relation to security arrangements, Barrick states:^{xxviii} ‘Acacia Mining plc is an independent company, with separate policies, procedures and systems.’

- **If Acacia now has its own human rights policy (none is currently posted on its website, although Acacia refers to such a policy within its Code of Business Conduct and Ethics, which is available online), RAID would invite the company to disclose it. Moreover, numerous references are made in successive ABG Annual Reports from 2011 onwards to the company’s Human Rights Policy. RAID asks Acacia to provide copies of this policy, including any revised editions.**

However, this separation is far from unambiguous. Information on the activities of ABG continue to appear on Barrick’s corporate social responsibility (CSR) website under eight separate sections, including in the areas of law and order, human rights and security.^{xxix}

However, it appears that Barrick has recently added the following disclaimer to its CSR website:^{xxx}

African Barrick Gold plc (ABG) is an independent company listed on the London Stock Exchange that owns gold mines and exploration properties in Africa. Barrick holds a 63.9% equity interest in ABG. All content regarding ABG programs referred to by Barrick anywhere on this website, or in any documentations accessible from this website, is provided and approved by ABG. Furthermore, all such ABG programs are managed exclusively by ABG and any commitments or representations related to such programs are made solely by ABG (and not Barrick). For information on ABG, please see www.africanbarrickgold.com.

An internet archive, which records snapshots of webpages on specific dates, returns a webpage for <<http://barrickresponsibility.com/>> dated 5 August 2014 that does not include this disclaimer.^{xxxi}

Barrick is asked to confirm:

- **When this wording and disclaimer concerning ABG was added to its CSR website?**
- **Why it decided to add this wording and disclaimer, given that it appears not to have formerly been posted at a time when Barrick’s holding in ABG remained at the same level, i.e., a majority holding in the latter of 63.9%?**

^{xxvii} <<http://www.barrick.com/responsibility/human-rights/default.aspx>> (visited 26 March 2015).

^{xxviii} <<http://www.barrick.com/responsibility/security/default.aspx>> (visited 26 March 2015).

^{xxix} Searching <<http://barrickresponsibility.com/>> for references to ABG produces 8 results under headings concerning, *inter alia*, Community Safety and Security <<http://barrickresponsibility.com/additional-information/society/community-safety-and-security/>>, Artisanal Mining <<http://barrickresponsibility.com/additional-information/society/artisanal-mining/>>, Resettlement <<http://barrickresponsibility.com/additional-information/society/resettlement/>>, Social and Economic Development <<http://barrickresponsibility.com/2013-performance/social-and-economic-development/>>, Security and the Voluntary Principles <<http://barrickresponsibility.com/additional-information/governance/security-and-the-voluntary-principles/>>, and Human Rights <<http://barrickresponsibility.com/2013-performance/human-rights/>>. All pages were visited on 26 March 2015.

^{xxx} <<http://barrickresponsibility.com/>> (visited 26 March 2015).

^{xxxi} <<https://web.archive.org/web/20140805145043/http://barrickresponsibility.com/>> (visited 26 March 2015).

➤ **Why material on ABG (now Acacia) appears upon Barrick’s CSR website, both currently and in the past?**

Moreover, the appended disclaimer on ABG is at odds with the substantive text on the webpages, which often makes no clear distinction between ABG and other Barrick operating units when presenting material. To cite examples from two sections:^{xxxii}

In-migration is a concern at only a few of **our** [emphasis added] 21 operations. These include ABG’s North Mara mine in Tanzania....

In an attempt to reduce frequent incursions by illegal miners, **we** [emphasis added] began to install additional perimeter fencing and walls at North Mara and Porgera in 2013.

In the past year, **we** [emphasis added] also looked at opportunities to continue building the human rights capacity of important external stakeholders, including local police forces....And, in Tanzania, Search for Common Ground (an international NGO) provided human rights training to ABG security trainers and the Tanzanian police.

For its part, Acacia currently states:^{xxxiii}

The ‘Voluntary Principles on Security and Human Rights’ are central to our security management system. These are a set of guidelines by which companies in the extractive sector can maintain the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. Our majority shareholder, Barrick Gold Corporation, is a signatory participant. Our security management system is aligned to this commitment and to respecting human rights and the fundamental freedom of individuals overall.

This statement appears on Acacia’s website at the time of writing this response (26 March 2015).

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^{xxxii} Respectively, in the Community Safety and Security section, under ‘In-migration’ and ‘Illegal Mining’, <<http://barrickresponsibility.com/additional-information/society/community-safety-and-security/>> and; in the Human Rights section, under ‘Our performance in 2013’, <<http://barrickresponsibility.com/2013-performance/human-rights/>> (both pages visited 26 March 2015).

^{xxxiii} ABG, Human Rights, <<http://www.acaciaminging.com/sustainability/our-material-areas/security-and-human-rights.aspx>>. (Visited 26 March 2015).