



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

Mr Mark Cutifani
Chief Executive Officer
Anglo American plc

By email: ashley.labuschagne@angloamerican.com

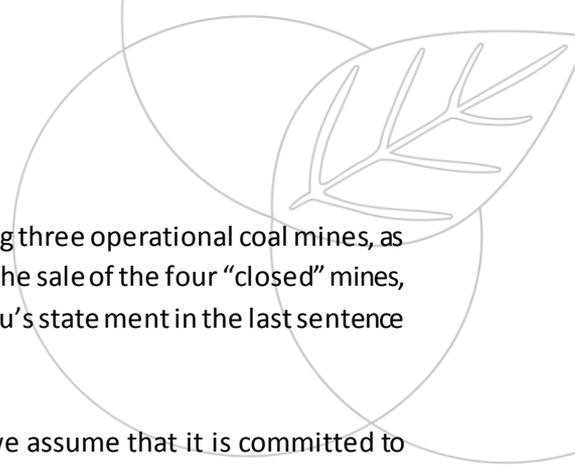
13 April 2017

Dear Mr Cutifani

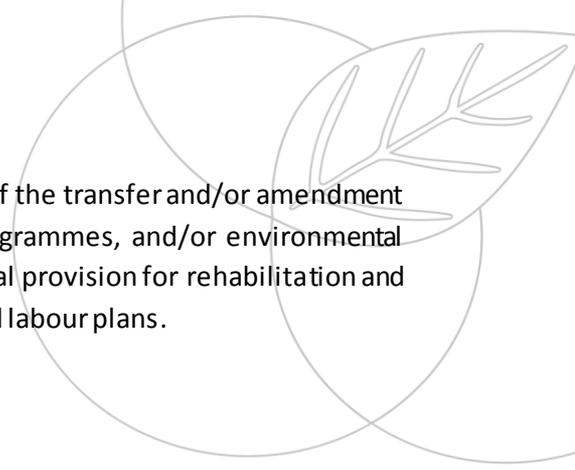
SALE OF ANGLO AMERICAN'S ESKOM MINES TO SERITI RESOURCES

1. The Centre for Environmental Rights (CER) is a non-profit organisation of environmental lawyers that helps communities defend their right to a healthy environment. We do this by advocating and litigating for transparency, accountability and compliance with environmental laws.
2. The CER wrote to you on 29 February 2016, in response to Anglo American's announcement on 16 February 2016 of its restructuring plans, in particular its plans to sell off coal and iron ore assets in South Africa. In that letter, we raised the issue of the significant risks posed to the South African public and to our environment by the trend of large mining companies selling their mines, usually with significant environmental liabilities, to smaller mining companies. These smaller mining companies are often either unable, or unwilling, to comply with the rehabilitation obligations attached to the mining rights for these mines. The lack of transparency with which these transfers are implemented severely exacerbates this problem.
3. The CER therefore asked Anglo American to act transparently in the transfer of any mining rights, and to conduct public participation processes in respect of the sale of its assets, including in respect of the transfer of environmental liabilities. We asked you to make all documents relating to these sales and transfers publicly available.
4. In his response to our letter on your behalf, dated 16 March 2016, Anglo American South Africa's executive head, Andile Sangqu, stated that "Anglo American has consistently demonstrated good corporate citizenship and remains committed to conducting its businesses in compliance with all applicable laws in the jurisdictions in which it operates". Mr Sangqu stated that "Anglo American will publish all information that it is required by law to publish, in the prescribed manner and within the required timeframes". He did not commit to making publicly available any of the information referred to in our letter. Mr Sangqu also said that "we believe that each operation earmarked for disposal has a sustainable and profitable remaining life of mine".

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5. We note from recent media reports¹ that Anglo American is selling three operational coal mines, as well as four “closed” coal mines, to Seriti Resources. In relation to the sale of the four “closed” mines, in particular, it is unclear how this sale is consistent with Mr Sangqu’s statement in the last sentence of the previous paragraph.
 6. If Anglo American is the good corporate citizen it claims to be, we assume that it is committed to ensuring that its mining operations comply with the law, and do not have detrimental consequences for the communities living around its mines. More pertinently, and whatever the terms of the agreement between Anglo American and Seriti Resources, as a good corporate citizen Anglo American should then be equally concerned about the legacy of its mines, and the ability and willingness of any entity to which it sells its mines to comply with all legal obligations relating to environmental liabilities and rehabilitation for these assets.
 7. As you are aware, s.11 of the Mineral and Petroleum Resources Development Act, 2002 requires the transferee of a mining right to demonstrate that it is “capable of carrying out and complying with the obligations and the terms and conditions of the right in question”, and that it satisfies the requirements of s.23. If such submissions are made to the Minister of Mineral Resources behind closed doors, there is no way for affected parties to assess these claims, and to make representations on an administrative act that has direct legal consequences for them.
 8. Conducting the sale transparently, and making key environmental and social documentation publicly available, will improve the prospects of the sale of these assets proceeding in such a manner that the environmental liabilities are not ultimately abandoned, becoming the responsibility of the state, and therefore of the South African public. It is the only way for stakeholders, particularly communities living around the mines, to trust that their concerns have been taken into account. It is also our view, as expressed in previous correspondence, that such transparency is a legal requirement under the Promotion of Administrative Justice Act, 2000.
 9. Beyond legal compliance, good corporate citizenship requires that companies act in the best interests of all stakeholders, engage in real and meaningful consultation with those stakeholders, and do not deflect challenges by relying on platitudes and generic statements. We therefore once again call on Anglo American to:
 - a. inform us of the company’s plans for public participation in relation to the sale, particularly for the purpose of the regulatory approvals required; and
 - b. make the following documents publicly available, by publication on its website:
 - i. the mining licences which it intends to transfer as part of this restructuring process;
 - ii. the environmental management programmes and social and labour plans governing these operations;
 - iii. its assessments of its environmental liability in respect of each operation to be sold, including financial provision for rehabilitation;
 - iv. the applications lodged with the Department of Mineral Resources (DMR) for approval of the transfer of the various mining rights;

¹ <https://www.businesslive.co.za/bd/companies/mining/2017-04-11-black-owned-seriti-buys-eskom-mines-from-anglo/>

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- v. the applications lodged with the DMR for approval of the transfer and/or amendment of the respective environmental management programmes, and/or environmental authorisations, together with the proposed financial provision for rehabilitation and environmental liability, and the respective social and labour plans.

10. We look forward to hearing from you.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

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