



**AFRICAN
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1 July 2014

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Canada

Patricia Feeney
Executive Director
Rights and Accountability in Development
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United Kingdom

VIA EMAIL

Dear Ms. Coumans and Ms. Feeney:

Re: African Barrick Gold's non-judicial grievance mechanism at North Mara, Tanzania

We write in response to your letter dated 22 April 2014 concerning the grievance mechanism at North Mara Gold Mine Limited ("NMGML"). In your letter, you continue to accuse African Barrick Gold plc ("ABG") of not being transparent with respect to remedies that NMGML has provided in connection with alleged incidents of the use of excessive force and sexual violence by police and site security personnel against individuals intruding on the mine site. You also reassert your opposition to the use of legal waivers in grievance resolution agreements.

ABG and NMGML are committed to ensuring that NMGML's grievance mechanism, as well as the remedies and agreements associated with it, satisfy the effectiveness criteria for non-judicial grievance mechanisms set forth in the UN Guiding Principles on Business and Human Rights ("UNGPs"), including the transparency criteria in UNGP 31(e). We also appreciate that civil society has an important role to play in monitoring and helping improve company performance in that regard.

We therefore provided, by letter dated 11 March 2014, a comprehensive 12-page response to your first letter, dated 21 February 2014. We are disappointed to see that you have largely overlooked or misportrayed our response, and have chosen to ask many of the same questions again in your most recent letter.

In our March letter, we responded to the dozens of specific questions you posed in your February letter, pointed to information that was already openly available about NMGML's grievance mechanism and provided further information, including about the grievance mechanism's outcomes with respect to sexual assault allegations and other human rights related grievances. Specifically, we described in detail the steps that have been taken by NMGML to ensure that, with respect to human rights issues in particular, its grievance mechanism is:

- **Legitimate and Accessible:** NMGML has engaged in extensive consultations with respect to the grievance mechanism and remediation packages, and taken numerous steps to ensure that there are no barriers to access.
- **Based on Free and Informed Consent:** Potential complainants have always been assured that they are not precluded from seeking redress elsewhere and encouraged to seek third-party assistance. Every complainant has been repeatedly encouraged to consult with a lawyer of their own choosing, and NMGML offers vouchers to those claimants to fund such consultations. Out of an abundance of caution, every complainant has met with a retired Justice of the Tanzanian High Court before entering into a grievance resolution agreement in order for the terms of the resolution agreement to be clearly explained to them.
- **Designed to Resolve Grievances Through Engagement and Dialogue:** To date, 55 individuals (31 men and 24 women), have been offered and have accepted remedy packages in response to grievances that might be considered human rights-related because they involved allegations regarding the use of force by mine security or police against intruders. Seventeen of the women alleged that they were victims of sexual violence, while the claims of the other women are based on harm suffered by male relatives.¹ Remedies for human rights grievances are tailored to each individual and may include, for example, construction materials, various types of rehabilitation, training and education, involvement in alternative livelihood programs, livelihood assistance and/or financial assistance (benchmarked against Tanzania's Workers Compensation Act and civil damage awards from Tanzanian courts).

¹ Since our March letter, one woman, who previously had been identified as eligible for remediation, but then was not available, has approached the grievance office and registered a grievance regarding a historical incident, which grievance has been resolved.

In our March letter, we also responded to the suggestion you made in your February letter that one specific Grievance Resolution Agreement that you have obtained is not rights-compatible, including your expansive reading of the legal waiver contained in that agreement and your apparent view that the need for transparency should trump the need for confidentiality in such an agreement. We explained the context surrounding that agreement and why your allegations based on it with respect to NMGML's policies and practices were unfounded. In particular, we addressed your criticisms regarding:

- **Legal Waivers:** In August 2013, the UN Office of the High Commissioner for Human Rights accepted that the need for predictability and finality justified the use of narrowly-tailored legal waivers. While the legal waiver in the 2012 grievance resolution agreement that you have obtained was not intended to be read as broadly as you read it, subsequent agreement formats have used more precise language to eliminate the possibility of such a broad reading and NMGML has committed in writing to all complainants who entered into agreements with language like that in the 2012 agreement to interpret the waiver provision narrowly.
- **Confidentiality Provisions:** The report of a pilot project on grievance mechanisms conducted for the UN Special Representative on Business and Human Rights and published as an addendum to the UNGPs warned that the call for transparency in Article 31(e) of the UNGPs must be balanced against the need for confidentiality, particularly in situations where providing information about specific remedies or levels of financial compensation could lead to the identification and targeting of complainants who wish to remain anonymous. As this is such a situation, ABG and NMGML are unwilling to provide the information you have requested about specific remedies and levels of financial compensation provided to women complainants. While NMGML will continue to honour the confidentiality provisions in existing grievance resolution agreements, subsequent agreements have used language making those provisions binding only on NMGML and NMGML has committed in writing to all complainants who entered into agreements with confidentiality provisions like that in the 2012 agreement to interpret those provisions as binding only on NMGML.

In light of the information that is widely available regarding NMGML's grievance mechanism and our detailed response to you in March as summarized above, we believe that we have amply satisfied the criterion of transparency set forth in UNGP 31(e) and thereby enabled you to assess the mechanism's effectiveness. We are not persuaded that your ability in that regard would be further enhanced by our repeating in full answers that we have already given to the questions in your latest letter or by our continuing to exchange letters with ever-increasing levels of detail on matters that in our view do not go to the question of the mechanism's effectiveness.

We are, however, happy to continue engaging with you and civil society more broadly with a view to addressing constructive concerns and building confidence regarding the effectiveness of NMGML's grievance mechanism. To that end, we would like to invite you to a meeting at our offices in London at the earliest mutually convenient time. We are also gathering statistics and considering ways to present cases studies or more detailed information about the handling of certain cases by NMGML's grievance mechanism without compromising confidentiality.

We look forward to your response regarding our invitation to a meeting.

Yours sincerely,



Deo Mwanyika
Vice President – Corporate Affairs

- cc. Dr. Navanethem Pillay, UN High Commissioner for Human Rights
Mr. James Anaya, Special Rapporteur on the rights of Indigenous Peoples
Mr. Pablo De Greiff, Special Rapporteur on the promotion of truth, justice, reparation guarantees of non-recurrence
Ms. Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences
Ms. Rita Izsak, Independent Expert on minority issues
Working Group on the issue of discrimination against women in law and in practice
Working Group on the issue of human rights and transnational corporations and other business enterprises
Hon John Baird, Department of Foreign Affairs, Trade and Development Canada
Hon Ed Fast, Department of Foreign Affairs, Trade and Development Canada
Hon Christian Paradis, Department of Foreign Affairs, Trade and Development Canada
Rt Hon William Hague, Foreign Secretary, UK
Rt Hon Vince Cable, Secretary of State at the Department of Business, Innovation and Skills, UK
Lee Waldorf, Human Rights Advisor, UN Women
ESCR-Net - Corporate Accountability Working Group
Canadian Network on Corporate Accountability
European Coalition for Corporate Justice
Corporate Responsibility Coalition
International Corporate Accountability Roundtable
Amnesty International
OECD-Watch