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AusNCP

Australian National Contact Point
for Responsible Business Conduct

Update statement

Update on complaint submitted by Human Rights Law Centre
on behalf of affected individuals regarding Rio Tinto

29 March 2023

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Update statement

1. In September 2020, the Australian National Contact Point for Responsible Business Conduct (AusNCP) received a complaint from the Human Rights Law Centre on behalf of villagers in Bougainville, Papua New Guinea (complainants) regarding the mining company Rio Tinto. The complaint concerns the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and impacts arising from previous mining operations at the Panguna mine site which Bougainville Copper Limited used to operate. Bougainville Copper Limited was formerly majority-owned by Rio Tinto. This is the third update statement about the progress of the complaint. Earlier statements were published in July 2021¹ and December 2021².
2. The complaint identified concerns under the OECD Guidelines and sought three commitments from Rio Tinto. These were (1) to engage with the complainants and other Panguna mine-affected communities to help find solutions and undertake formal reconciliation as per Bougainvillean custom; (2) fund an independent environmental and human rights impact assessment of the mine and to develop recommendations to address the mine's impacts; and (3) contribute to a substantial, independently-managed fund to help address harms caused by the mine and assist rehabilitation in accordance with the assessment's recommendations and local communities' identified needs.
3. The AusNCP accepted the complaint and since November 2020 the parties, including lead complainants Theonila Roka Matbob and Nathan Matbob, have engaged through the AusNCP's good offices conciliation processes to help resolve the complaint. The parties agreed to first focus on the independent environmental and human rights impact assessment, which can then inform the parties' engagement in relation to the assessment's recommendations and other aspects of the complaint.
4. By the end of 2022, the AusNCP Independent Examiner had facilitated 29 online meetings between the parties to the complaint. Separate to the AusNCP good offices meetings, the parties have also had regular meetings with each other and stakeholders including meeting in person in Australia and Bougainville.
5. Over several AusNCP good offices meetings, the parties developed the scope for an independent Legacy Impact Assessment to assess the mine's environmental impacts and the social and human rights impacts directly connected to those environmental impacts. The parties also worked with the Autonomous Bougainville Government and other stakeholders in establishing a Panguna

¹ Australian National Contact Point for Multinational Enterprises (AusNCP), 'Update July 2021 – Complaint by Human Rights Law Centre (on behalf of affected individuals) regarding Rio Tinto', Australian Government, 21 July 2021, accessed 13 January 2023. https://ausncp.gov.au/sites/default/files/2021-07/210721_update_statement_AusNCP.pdf

² Australian National Contact Point for Multinational Enterprises (AusNCP), 'Update December 2021 – Complaint by Human Rights Law Centre (on behalf of affected individuals) regarding Rio Tinto', Australian Government, 22 December 2021, accessed 13 January 2023. https://ausncp.gov.au/sites/default/files/2021-12/21_AusNCP_Update_Statement.pdf

Mine Legacy Impact Assessment Oversight Committee (Committee), in an effort to ensure the impact assessment is done in a way that is supported by the majority of stakeholders and that the broader community has trust in the process. The Committee comprises senior landowner and community representatives, as well as members from the Autonomous Bougainville Government (ABG), Rio Tinto, the Human Rights Law Centre, the Independent State of Papua New Guinea, and Bougainville Copper Limited.

6. The Committee is chaired by an Independent Facilitator who is independent from all Committee members including the PNG Government and the ABG, Rio Tinto, and the complainants. The Committee first met in November 2021. At this meeting Rio Tinto apologised for not coming forward earlier to understand the impacts from the mine and committed to making sure the process is fair and representative. There have been seven subsequent Committee meetings, including a Committee meeting in September 2022 in Buka in which Rio Tinto were able to join other Committee members in Bougainville. This was the first time a Rio Tinto representative has visited Bougainville since the mine's operations were suspended.
7. The Committee is continuing to oversee the Legacy Impact Assessment process and is supported by a secretariat team. The Committee's Secretariat maintains a website which publishes details about the process, the Committee and the progress (and reports) of the Legacy Impact Assessment.³ The Committee's Secretariat also runs a community-led dialogue project to help support community participation and engagement in the impact assessment.
8. Phase One of the Legacy Impact Assessment is examining acute impacts of the Panguna mine, particularly priority areas for communities' health and safety. A preparatory baseline report examining existing data and imagery related to the mine was undertaken and made public in August 2022. The results are informing priority areas for Phase 1 of the Impact Assessment and led to a separate ABG-led fast-tracked assessment of acute levee failure and flooding risks in September 2022.
9. Rio Tinto agreed to predominantly fund the Legacy Impact Assessment, with Bougainville Copper Limited also contributing, through a separate funding company with independent directors. After a competitive tender process, the Committee named Tetra Tech Coffey to lead Phase One of the Legacy Impact Assessment, which has already commenced. The Legacy Impact Assessment was successfully launched by H.E. Ishmael Toroama, the President of Bougainville on 6 December 2022 in Arawa. Tetra Tech Coffey are planning significant visits to mine-impacted areas as part of progressing the impact assessment in the coming months.
10. In parallel with the Legacy Impact Assessment and Committee developments, the parties to the complaint have continued to participate in AusNCP good offices meetings. While the Committee oversees the Legacy Impact Assessment, the AusNCP good offices provide the parties with an opportunity to discuss how the Legacy Impact Assessment may support the resolution and other aspects of the complaint.

3 Panguna Mine Legacy Impact Committee, 'Panguna Mine Environmental & Human Rights Impact Assessment', n.d., accessed 4 Jan 2023. <http://tanorama.com/pangunasecretariat.html>

11. In 2022, as part of its ongoing support to the complainants and work relating to the impacts of the Panguna mine, the Human Rights Law Centre met with landowners in the Loloho and Rorovana areas of Bougainville (north-east of the Panguna mine area) which they had not previously visited (the Landowners). The Landowners identified concerns about ongoing impacts associated with the previous mining and infrastructure, which are similar to the concerns detailed in the original complaint lodged with the AusNCP in September 2020.
12. The Landowners requested to be added to the AusNCP complaint. After discussions with the original complainants on whose behalf the complaint was filed, and Rio Tinto, all parties agreed with this request. The parties also agreed that the Legacy Impact Assessment will include assessment of the geographic areas relevant to the issues raised by the Landowners.
13. The Independent Examiner decided it was appropriate to include the Landowners as represented by Human Rights Law Centre in the AusNCP complaint, and their interests will be included in the existing good offices process which is already underway.
12. The Independent Examiner is aware of the complexities being addressed by the parties involved in the AusNCP good offices process. The issues about which they are engaging, including the ongoing impacts and responsibilities from mining several decades' earlier, are exceedingly complex. The parties' engagement has been robust, but courteous and constructive, and has involved other interests and actors where appropriate.
13. Rio Tinto's approach to the complaint and their provision of the majority of the funding for the impact assessment processes is a good example of some measures expected by the OECD Guidelines. The Human Rights Law Centre's research and documentation in the complaint provided the initial detail and substance to progress the AusNCP process, and their ongoing representation has been critical to progress. The Examiner also acknowledges the lead complainants and the persons on whose behalf the complaint was filed. Their patience with the long process (given the ongoing impacts) is noted, and their thorough engagement and dissemination of information around communities in Bougainville have ensured the process has the best chance of achieving lasting improvements.
14. The AusNCP commends the parties' constructive engagement on the issues raised in the complaint. This engagement has led to significant progress: agreeing the scope and terms of the Legacy Impact assessment, establishing the Committee and secretariat, and arranging and resourcing for Phase One of the Legacy Impact Assessment. The AusNCP good offices process will continue and, in 2023, is expected to consider the next aspects of the complaint including progress of the Legacy Impact Assessment and questions about addressing impacts, rehabilitation, and reconciliation in line with the complaint's requests.
15. The AusNCP has made no determination on the merits of the claims presented, nor an assessment of whether Rio Tinto's previous actions were consistent with the OECD Guidelines.
16. The content of this statement was agreed with the parties and the AusNCP Independent Examiner. The statement is available on the AusNCP website at <https://ausncp.gov.au> .

17. Enquiries regarding the progress with the Legacy Impact Assessment of the Panguna mine should be directed to the parties' respective media contacts:

Human Rights Law Centre: Michelle Bennett M+61 419 100 519 michelle.bennett@hrlc.org.au

Rio Tinto: Matt Chambers M +61 433 525 739; Jesse Riseborough M: +61 436 653 412

18. Enquiries regarding AusNCP's Update Statement should be directed to the AusNCP Secretariat: Secretariat@ausncp.gov.au; telephone: +61 2 6263 2224.

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OECD Guidelines for Multinational Enterprises

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