



Rio Tinto: The way it really works

Rio Tinto is one of the world's biggest mining and metals companies. It faces controversies around the globe for:

- anti-union behaviour
- failures in worker health and safety
- increased use of precarious workers
- poor relationships with communities
- irresponsible political activity
- failure to respect indigenous peoples' rights
- lack of transparency

These controversies point to systematic failures in Rio Tinto's approach to environmental, social and governance (ESG) factors.

Rio Tinto's practices not only bring risks to its major stakeholders, such as workers, local communities and investors. They also expose the company to financial, reputational, legal and operational risks. The company's poor practices constitute a governance gap preventing it from adequately managing the risks in its sector.

Investors and others must **assess these risks and try to engage Rio Tinto** on its unsustainable behaviour. One way is by entering into dialogue and raising questions with the company to seek clarification for the issues discussed here, and urging changes in corporate practices where needed (model questions provided at the end).

Why Rio Tinto?

Rio Tinto is an industry leader and portrays itself as socially responsible – Rio Tinto's own claims call for it to be held to a higher standard. But its behaviour is not that of a leader in social responsibility. **Rio Tinto needs to live up to the reputation it paints for itself, and for its actions to match its words.**

Workers' rights

Rio Tinto calls its employees the “foundation of our success”, claiming that “their safety is always our first concern.”ⁱ However the company's treatment of workers and trade unions, its health and safety record, as well as increasing use of precarious labour, tell a different story.

Freedom of association and collective bargaining

Freedom of association and the effective recognition of collective bargaining are universal and fundamental human rights enshrined in International Labour Organization (ILO) Core Conventions No. 87 and No. 98.ⁱⁱ Freedom of association is also a right proclaimed in the Universal Declaration of Human Rights (1948).

Rio Tinto states in its code of business conduct, The Way We Work, that it “recognise[s] the right of all employees to choose to belong or not belong to a union and to seek to bargain collectively.” In its Employment Policy, Rio Tinto reiterates that it “recognise[s] everyone's right to choose whether or not they wish to be represented collectively.”

The company also states that its human rights policy is in line with the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights. Both initiatives highlight that the respect for freedom of association and collective bargaining is central to the human rights responsibilities of business.

Yet while the company commits publicly to respect trade union rights, Rio Tinto also openly defends its practice of what it calls “direct engagement”.

This term “covers all aspects of the company's approach to managing its labour, organising its human resource practices and, by implication, how it deals with unions.”ⁱⁱⁱ It is a practice that treats unions as a third party and an unwanted, external force in a direct employer to employee relationship.^{iv}

This approach is reflected in Rio Tinto's March 2015 submission to an Australian Government inquiry on workplace relations.^v In it, Rio Tinto seeks changes to Australian employment law that arguably breach ILO Core Conventions No. 87 and No. 98. These changes would severely weaken collective bargaining by encouraging workers to enter into binding contracts or agreements that would prevent collective action; seek major new limits on the right to strike in situations where the employer is refusing to bargain; and impose new onerous restrictions on unions' right of entry to a site in a way that would jeopardise their ability to organise workers.

A recent IndustriALL Global Union survey among affiliates representing workers at Rio Tinto's fully or partially owned operations in 14 countries received answers in sharp contrast to Rio Tinto's claims to respect workers' rights to organise into unions. **Instead, they paint a picture of a company with a confrontational attitude, unwilling to engage with unions in good faith.**

At Rio Tinto's Iron Ore Company (IOC) subsidiary in Labrador City (Canada), there were over 2,300 unresolved grievances filed by the United Steelworkers (USW) for alleged violations of the collective labour agreement, as of January 2015. The union has repeatedly sought meetings with IOC leadership but without response. Instead, management has advised the union to arbitrate the grievances. The union says the number of grievances would make it a costly process and that management is systematically violating the collective labour agreement to undermine the agreement and weaken the union.

In the survey, unions also indicate:

- Discriminatory treatment by Rio Tinto against worker-elected representatives for their union activity.^{vi} Examples of this discriminatory treatment include harassment, punitively low wages due to union activities, unilaterally decided relocation of elected representatives and disciplinary measures.

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Rio Tinto has no respect for the union or the officers of the union. The company is always trying to keep the union out of any involvement and constantly looking for our officers to slip up so they can discipline them.

Unifor, Kitimat, Canada

- Lack of respect for the role of trade union representatives'. Unions reported that management attempts to undermine union-elected representatives by dealing directly with workers and by contradicting what was discussed and agreed during collective bargaining. Rio Tinto uses different ways to undermine collective bargaining, like delaying the process and limiting union access to information. Many unions denounced attempts from management not to provide information and consult unions about restructuring or closures.^{vii}

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Busy closing activities that are not profitable enough for them; outsourcing support functions, and suppressing jobs in Europe, senior management has no time left to meet its legal obligations for providing information for EWC's representatives and its economic expert.^{viii}

Representatives of the Rio Tinto European Works Council (EWC)

- Failure of the company to meet its obligations under the collective agreement. In October 2014, management at the Rössing mine in Namibia changed the payment of hours worked on Sundays without consulting the union.

Health and safety at Rio Tinto

The protection of life and health at work is a worker's fundamental right.^{ix} Rio Tinto management repeatedly states that health and safety of its employees is a key priority.

But numbers show a different reality. **Since 2013, 46 workers have died at operations wholly or partially owned by Rio Tinto.**

Yet Rio Tinto does not take responsibility for most of these deaths. 39 occurred at Rio Tinto's partially owned Grasberg worksite in West Papua, Indonesia, which the company states that Freeport-McMoRan, not Rio Tinto, manages. While Rio Tinto notes the six deaths in 2014 at Grasberg in its Annual Report, they are not included in the fatality rate for 2014. However Rio Tinto serves on the operating, technical and sustainable development committees at Grasberg and lists the site in its Annual Report as one of its “core operating assets”.

Given Rio Tinto's influence and stake in Grasberg, the worker deaths are part of Rio Tinto's responsibility.

Results of the IndustriALL survey raise further questions about Rio Tinto's claim that safety is its first concern. Unions reported that the company pressures workers for higher productivity at the expense of occupational health and safety (OHS). At Alma in Canada, the union reports that there are attempts to bypass OHS procedures in order to speed up production.

Unions also report on violations of fundamental principles of OHS by the company:

- No respect of workers' rights to remove themselves from an unsafe work situation. Rio Tinto claims that “it empowers its people to stop work if it they sense it is unsafe”.^x However several unions reported that workers who exercised these rights have been “bullied”, “harassed” or “disciplined”.

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[The] decision to stop work over H&S issue will see subsequent, indirect bullying and harassment towards workers.

Western Mine Workers' Alliance,
Greater Paraburdoo / Pilbara, Australia

- Preventing the genuine involvement of trade unions in health and safety matters. Involving workers in controlling risks at work is fundamental in creating a safety culture.^{xi} However, workers' ability to participate in OHS through their unions is hindered by Rio Tinto's direct engagement philosophy. According to survey results, at some worksites in Asia and Africa, health and safety committees either do not exist or, if they do, unions are not aware of them.

When OHS committees do exist and unions are involved, the unions comment that Rio Tinto undermines their involvement. At Kitimat (Canada), UNIFOR says:

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“When Rio Tinto took over Alcan [it] had a Joint Health and Safety Program that took years to develop. Rio Tinto came in and basically ignored the Joint Program and instituted their own philosophies/programs. This impact[ed] [the union] representatives’ ability to address overall safety in the plant.”

Unifor, Kitimat, Canada

In December 2013, a leach tank failure occurred at the Rössing worksite in Namibia. Even though Rio Tinto organised a presentation to talk about this failure, the union was reportedly denied access to the investigation report.

Rio Tinto likes to describe its risk management system as “critical” based on “rigorous risk assessment” and “critical control monitoring plans”.^{xii} In 2013, however, a worker was killed at Alma while unblocking machinery, in accordance with the established work process. The Occupational Health and Safety Commission of Quebec **found the worker’s death to have been preventable and Rio Tinto to have been negligent.**^{xiii} The employer failed to identify the risk and to control it despite another incident involving the same machinery before the fatality.

The IndustriALL survey responses highlight weaknesses in the company’s implementation of the health and safety risk management processes.^{xiv}

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Rio Tinto may have health and safety procedures but the way they are applied seems to be arbitrary.

USW Metallos, Alma, Canada

Reporting of hazards [is] not genuinely addressed through formal H&S structure. On paper H&S structures would seem functional but on the job there is less legitimacy...

Mechanisms [are] in place to ensure safe working environment...though effectiveness of mechanisms is tarnished by management coercion/ intimidation

Western Mine Workers’ Alliance,
Greater Paraburdoo / Pilbara, Australia

Rio Tinto claims to be “identifying and managing the key occupational health risks to which [their workers] are exposed” and “minimizing occurrences of occupational illness, supporting [their] people to lead healthy lifestyles

that contribute to their fitness for work, and helping them remain healthy as they travel and work at our more remote sites”.^{xv}

A number of unions report that Rio Tinto management has failed in protecting and promoting workers’ health:

- Rio Tinto’s focus on workers being responsible for their own safety - less focus on taking responsibility for correcting hazards at workplaces and more on demanding workers change their behaviour. This is reflected in the company’s approach to silica dust at its iron ore operations in Labrador, Canada. Silica dust exposure can result in silicosis and cancer. The union representing Rio Tinto employees in Labrador reports that the company provides outdated dust collectors, puts a low priority on clean-up, and removed the onsite full-time health and safety manager. Management focuses on forcing workers to wear masks that workers find difficult to work with.
- Management bullying and intimidating workers, as well as increased pressure on workers for more productivity leading to burnout. According to the unions, management denies responsibility for this:

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The response [to employees’ burn out cases] from the management is always the same: If there is a problem it is likely to be at employee’s place not at the company.

Rio Tinto France, Paris, union of white-collar workers (CFE-CGC)

- Workload and practices generating serious fatigue at work. Rio Tinto recognises that “fatigue contributes to many safety incidents”^{xvi} and explains that the company focuses “on fatigue management”. However the company’s commitment to fatigue management is questionable. In January 2015, Rio Tinto introduced changes in the shift schedule that increased the risk of generating fatigue among workers at its iron ore operations in Labrador:

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Can you imagine driving a haul truck? Right now they’re doing three nights in a row with monotonous back and forth, back and forth, trying to stay awake for 12 hours. Now they’ve got to do it seven shifts in a row.

USW local president, IOC Labrador

Precarious work at Rio Tinto

Rio Tinto rarely mentions the thousands of workers at its operations who are not directly employed by the company. Unions at Rio Tinto report on growing numbers of these indirect, precarious workers.

Precarious work shifts risks and responsibilities from the employer to the worker and is less secure than regular employment. Precarious workers generally experience worse working conditions and lower protection than permanent and direct employees.

Many of the precarious workers at Rio Tinto are outsourced – often casual or temporary workers employed by contractors. They also include labour hire workers employed by temporary work agencies or labour brokers, as well as self-employed workers.

Rio Tinto is not transparent about the use of precarious workers and does not disclose how many people work on sites it directly manages; it reports only direct employees. Among unions surveyed, the percentage of workers at Rio Tinto worksites that are precarious is estimated to be as high as 70 per cent.

Rio Tinto claims in its 2014 Annual Report that in the iron ore sector it is “reducing the use of contractors, external service providers and consultants” as part of its drive to reduce costs and raise productivity. However, unions at Rio Tinto in the aluminium, nuclear, coal and diamond sectors report that the company is increasing the use of precarious forms of employment.

According to unions in the survey, over the last five to ten years, precarious work in France has increased from five to 25 per cent of the workforce. The use of precarious work at Grasberg (Indonesia) has doubled.

Rio Tinto claims that its “success is underpinned by... the best people in the industry” and that it invests “in our people throughout their careers, offering diverse employment prospects, opportunities for development, and competitive rewards and benefits that have a clear link to performance.”^{xvii}

However, according to many unions there is a clear strategy to replace important parts of the permanent workforce by outsourced or casual workers. At Rössing (Namibia), following retrenchments in 2013 and 2014 combined with outsourcing, ex-retrenched employees are now being contacted to work on six-month contracts.

At Rio Tinto's coal mines in Australia, The Construction, Forestry, Mining and Energy Union (CFMEU) reports of Rio Tinto making permanent workers redundant while continuing to employ casual workers, replacing departing permanent workers with casual contractors and in some cases having an open policy of moving to a majority of outsourced workers.

Unions in France and in Sorrel Tracy, Quebec report that it requires constant surveillance to limit Rio Tinto's use of precarious outsourced workers.

This strategy of increasing the use of precarious labour can undermine workers' rights, in-house expertise and a company's control over its operations.

- **Loss of expertise:** In France, the union reports a loss of knowledge, skills and know-how for the company and for the permanent workers. At Kennecott, USA, the union attributes a lack of craft skills in the direct workforce and Rio Tinto's contracting out of this work to the company's abolition of the apprenticeship programme a number of years ago.
- **Inequalities at Rio Tinto worksites:** When resorting to precarious work, Rio Tinto generates inequalities among workers at its worksites, damaging morale and productivity. Several affiliates report important gaps between precarious and permanent workers' working conditions.

At QMM in Madagascar, **outsourced workers sometimes earn less than one fourth the salary** of direct employees. At Rio Tinto's New Zealand and Alma smelters precarious workers reportedly earn 50 per cent less than direct employees. In addition, precarious workers generally have fewer benefits.

Many of these precarious workers come from local communities, **directly contradicting Rio Tinto's stated commitment to these communities' sustainable development.**

- **Exposure to higher health and safety risks:** Many of the unions report that precarious workers are exposed to higher health and safety risks at their worksites. In some of these sites, contracted or temporary agency workers are put under more pressure to complete unsafe work than direct employees. **Afraid of losing their job, they do what they are asked even when it is unsafe.**

At Alma, the individual protection equipment used by the subcontracted workers is outdated and the union is not aware of any health and safety training provided for these workers.

The union at Kestrel (Australia) reports that outsourced workers receive a minimum of training. At Richards Bay Minerals (South Africa), the union reported gross violation of H&S regulation for outsourced workers.

Precarious workers have been involved in a number of the recent fatal incidents at Rio Tinto fully or partially owned worksites. This includes fatalities in Indonesia in 2013 and 2014 and a fatality in South Africa in 2015.

Rio Tinto is ultimately responsible for any OHS failures including fatalities among outsourced workers – lower health and safety standards among these workers present additional risks to the company.

Community relations: indigenous peoples' rights

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By listening carefully to the concerns of our stakeholders, and consistently aiming to align their needs with our own, we work to create mutually beneficial outcomes through collaboration with our partners to manage the shared risks, responsibilities and benefits of the long-life investments we make.”

Rio Tinto, 2014 Annual Report

The right of indigenous peoples to free, prior and informed consent (FPIC) – that is, the right to “free and informed consent prior to the authorization or commencement of any resource extraction project which encroaches, or impacts, on their territories”^{xxviii} – is enshrined in international human rights law. It has also been incorporated into soft law and international standards that are increasingly used as benchmarks of corporate social responsibility.^{xxix} While *states* are directly bound by the duty to protect this right, it is now widely accepted that *companies* must respect this right regardless of whether governments carry out their duty.^{xxx}

Rio Tinto is a member of the International Council on Mining & Metals (ICMM). In 2013, ICMM adopted a position statement on indigenous peoples and mining that applies to all members. Specifically, companies commit to “work to obtain the consent of Indigenous Peoples for new projects (and changes to existing projects) that are located on lands traditionally owned by or under customary use of Indigenous Peoples.”^{xxxi}

In its own position statement on indigenous peoples and FPIC, Rio Tinto says it “seeks to operate in a manner that is consistent with the UNDRIP” (UN Declaration on the Rights of Indigenous Peoples, which incorporates FPIC). And “in particular, we strive to achieve the Free, Prior and Informed Consent (FPIC) of affected Indigenous communities as defined in the 2012 International Finance Corporation (IFC) Performance Standard 7.”^{xxxi}

In practice, however, Rio Tinto has repeatedly failed to respect the rights of indigenous communities that are affected, or stand to be affected, by its operations. In the three examples below, **the company stands accused of moving forward with operations without properly consulting or gaining the consent of indigenous peoples who own and have rights to the land and its resources.** And in each case, it has benefitted from host governments’ failure to protect this right.

This behaviour contrasts sharply with the company’s stated commitment to FPIC, and with what is expected of responsible companies. The reportedly negative impacts that Rio Tinto’s operations in these cases have

on the environment and on indigenous community members’ resources and livelihoods exacerbate the company’s already poor community relations.

Innu First Nation (Quebec, Canada)

After decades of violations of their Aboriginal rights and destruction of their environment, in 2013 the Innu First Nation of Quebec filed a lawsuit against Iron Ore Company of Canada (IOC), whose majority owner and operator is Rio Tinto. IOC/Rio Tinto’s “megaproject” on the Innu people’s traditional territory (*Nitassinan*) was opened in 1954, and includes 29 iron ore mines in northeastern Quebec and Labrador (20 of them abandoned), a railway, a port and three hydroelectric dams.^{xxiii}

The Innu of Quebec charge that IOC/Rio Tinto has ignored their Aboriginal land title and rights, thus violating their right to free, prior and informed consent. Their lawsuit, which seeks Canadian \$900 million in compensation for damages to their land and traditional way of life, has won a number of recent legal victories.

The Innu of Quebec have signed Impact and Benefit Agreements (IBAs), which “enable First Nations to meet the urgent social and economic needs in their communities while allowing industry to operate with certainty,” with all of the mining companies in the region except IOC/Rio Tinto. In the words of the Innu, IOC/Rio Tinto, which reportedly has refused to sit down in good faith and negotiate with this community, is “a rogue company that has distinguished itself by its disregard for the Innu people.”^{xxiv}

Herders in the South Gobi desert (Mongolia)

As pointed out by Oyu Tolgoi Watch and other NGOs, the Mongolian nomadic herders who have been affected by Rio Tinto’s Oyu Tolgoi mine in the South Gobi region should have been considered indigenous peoples, given their “land-based culture” and their role as “carriers of ancient traditions.”^{xxv}

But Oyu Tolgoi LLC failed to recognise the herders as indigenous, and the mine’s developers “did not recognise areas considered sacred” by the herders. Destruction of these sites “has caused grave cultural and psychological impacts.”^{xxvi}

According to a recent survey of communities affected by the mine, the project was also marked by a lack of consultation, and even “force and coercion” in the relocation process.^{xxvii} OT Watch and others have noted that “true free, prior and informed consent is no longer possible for many aspects of the project, considering that much of the project has already been constructed and many herders physically or economically displaced.”^{xxviii} Although Rio Tinto claims to “strive to achieve” FPIC per IFC Performance Standard 7,^{xxix} NGOs have outlined clearly the many ways in which the Oyu Tolgoi mine has violated this very standard.^{xxx}

In addition to negative impacts on their livelihoods, many herder families have also been affected by pollution, dust, noise and loss of access to water, which is vital to their ability to raise livestock.^{xxxii} Due to what the company called a “technological mistake,” Rio Tinto’s drilling contractor dug faulty exploration holes that have led to shallow water – needed by herders – cascading down into inaccessible and brackish deep aquifers.^{xxxiii}

In a leaked email, an Oyu Tolgoi Vice President, wrote of these exploration holes:

“I am proposing to fill up with cement grout. Of course, it is impossible to stop the cascading completely... However, it will reduce the leakage significantly and at least nobody will hear that some water is leaking down with a noise. I can imagine that if the press media comes to the bore and hear the cascading noise we will be in a very bad situation.”^{xxxiii}

Not only has the company broken its promise to preserve herders’ scarce water sources.^{xxxiv} Its behaviour when the faulty wells were discovered is a shockingly deceitful attempt to cover up the mistake.

In 2013, the US Government declined to fund the expansion of the mine, citing environmental policy concerns and “gaps in critically important information” in the project’s Environmental and Social Impact Assessment.^{xxxv} In 2014, civil society organizations wrote to the World Bank, which approved financing for the mine in 2013, to express continuing concerns about the project. In particular, they noted that herders were worse off “in many ways as a direct result of the company’s actions and its failure to comply with the IFC’s Performance Standards.”^{xxxvi}

Opposition to the project has reportedly increased among herders.^{xxxvii} This potential loss of “social license to operate”, as well as evidence of serious water mismanagement by the company and its partners, call into question the long-term sustainability of the mine. They also stand in stark contrast to the company’s recent statement that its “approach helps us to maintain a positive reputation and uphold our license to operate.”^{xxxviii}

In December 2014, the US Congress passed into law the National Defense Authorization Act (NDAA). The passage of the bill allowed the transfer of 2,400 acres of land, including Oak Flat, a long-protected area that is sacred to the Apache, Yavapai and other Native American tribes, to Resolution Copper Mining, jointly owned by subsidiaries of Rio Tinto (55 per cent) and BHP Billiton (45 per cent). **Rio Tinto had lobbied the US government for a decade to win the land transfer in the face of widespread opposition of not just the San Carlos Apache tribe but over 400 other tribal governments.**^{xli}

The company plans to carry out block-cave mining in the transferred land. The San Carlos Apache have testified to the US Senate that this would cause a massive collapse of the land above the mine, contribute to contamination of water and destroy areas that they have used for centuries for religious rites, collection of medicinal plants and other purposes.^{xlii} Resolution Copper has admitted that a crater two miles wide and 1,000 feet deep will form in Oak Flat due to the mining.^{xliii}

Echoing the case of the herders in Mongolia, in some senses it could be too late for FPIC to be obtained in the Resolution Copper case:

“Resolution officials have said they want to work with the tribes to address their concerns, but the tribes say consultations after the land is already destined for privatization is meaningless.”^{xliii}

According to the same source, the US Secretary of the Interior issued a statement after the passage of the law, “decrying the lack of consultation with Native American tribes before trading their sacred land.” The tribe is now planning an “all-out campaign to stop the transfer of Oak Flat” to Resolution Copper Mining.^{xliii} In such a situation, the company’s words about social license to operate ring hollow.

San Carlos Apache Nation (Arizona, USA)

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The land exchange and resulting copper mine would destroy this sacred place of worship.

San Carlos Apache Chairman Terry Rambler, 2013^{xxxix}

We seek to get the widest possible support for our proposals throughout the lifecycle of our activities.

Rio Tinto, The Way We Work^{xl}

Far from “responsible and transparent”

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We are committed to a culture of transparency and speaking up about issues.

Rio Tinto, Annual Report 2014

In its annual report of 2014, Rio Tinto claims to be a “responsible and transparent” company.^{xvi} What does that mean when it comes to political activity and corporate reporting?

Political activity

Corporate involvement in politics – via donations, lobbying, membership in trade associations and other activities – is the subject of increasing scrutiny, both of investors and of civil society organizations.^{xvii}

For the last three years, Rio Tinto has stated in every annual report that: “No donations were made during [the year in question] for political purposes in the EU, Australia or elsewhere, as defined by the UK Companies Act 2006.”^{xviii} According to the company’s code of business conduct, The Way We Work, Rio Tinto “does not, directly or indirectly, participate in party politics nor make payments to political parties or individual politicians.”^{xix}

The company’s declarations appear to be misleading, even if they might be technically correct.

Rio Tinto has a political action committee (PAC) in the U.S. that donates money to political campaigns. Although sponsored by companies, PACs are separate legal entities that collect funds from the company’s management, employees and/or shareholders. They cannot use funds from the corporate treasury, but in the vast majority of cases decisions about PAC expenditures are made by a company official with CEO approval, and operating costs of the PAC may be covered by corporate treasury money.ⁱ PACs must disclose to the US government the money that they raise and how it is spent.ⁱⁱ

In 2014, Rio Tinto’s PAC (Rio Tinto America Inc PAC) gave about US\$30,000 to individual politicians, including to John McCain,ⁱⁱⁱ the Arizona senator who recently helped to push through the land swap of Oak Flat in Congress (see above). As long as corporate treasury funds are not used, Rio Tinto can state that it did not make these donations. However, given the likely influence of the company over its PAC, the public statements it makes in its code and in its annual reports could be seen as misleading.

Further, the way Rio Tinto words the above statements allows it to skirt disclosure of its spending on political lobbying and its membership in trade associations, for example, some of which undertake lobbying themselves. This is because, under the UK Companies Act, trade association memberships are not considered political donations, nor does the Act address corporate lobbying expenditures.ⁱⁱⁱ **But in 2014 alone, Rio Tinto Group’s total lobbying expenditure in the U.S. was US\$800,000.**^{liv}

The lack of transparency around Rio Tinto’s spending makes it impossible to say what its lobbying expenditures are being used for. And there is strong evidence of irresponsible (even if legal) lobbying by the company, to the potential or actual detriment of human rights and the environment. Two important examples:

- In 2014, Amnesty International and the Corporate Responsibility Coalition (Core) exposed “the extent of lobbying” that Rio Tinto and Shell had undertaken to get the UK government to push for dismissal of lawsuits in the U.S. against the companies accusing them of complicity in grave human rights and environmental abuses (both cases were eventually dismissed.)^v
- In the Oak Flat case in Arizona, Rio Tinto lobbied for ten years to remove from federal protection a parcel of land that is sacred to the Apache tribe so that the company could mine copper there. James Anaya, until 2014 the UN Special Rapporteur on the Rights of Indigenous Peoples, wrote recently that the company “convinced key members of the Arizona congressional delegation to authorize the land swap through an amendment buried in the must-pass National Defense Appropriations Act.” In Anaya’s words, the authorization of the land swap came “through a truncated legislative process that altogether avoided confronting the points of disagreement. Any chances of now meeting local concerns and coming to an agreement with the tribe have been severely damaged.”^{vi}

Corporate reporting

On the surface, Rio Tinto looks like a good corporate reporter. It provides information on its ESG-related targets, policies and principles, and in selected cases it even reports on negative incidents, such as where it has not hit a key performance indicator. But the operative word is “selected.” **Not surprisingly, the controversies in sections II and III of this briefing did not make it into the company’s most recent Annual Report.**

On Resolution Copper Mine, for example, the report makes a generic claim that, as part of the review of the project, it will consult Arizona Native American tribes – which, as noted above, should have happened long ago. There is no mention of the enormous opposition to the

project. No mention, either, of the 2,300 unaddressed grievances the company has with United Steelworkers Local 5795 in Labrador City, Canada,^{lvii} or the Innu community's lawsuit against it. There is no discussion of the negative impacts of Rio Tinto's QMM facility on the environment and the local population in the Anosy region of Madagascar, or the company's failure to engage the community meaningfully about these.^{lviii}

The annual report makes no reference to the fact that, following the uranium spill of December 2013 at its Ranger mine in Australia, a government report in 2014 found that the mine's "management of process safety and corporate governance did not meet expected standards" at the time of the accident.^{lix}

The company actually claims in its public reporting to pay "particularly close attention" to labour rights and the rights of indigenous peoples.^{lx} **This makes the breaches and alleged violations described in previous sections all the more striking.**

In 2013, the Australian organization Catalyst reviewed the sustainability reporting of 32 Australian companies and charted the gap between companies' claimed consistency with the Global Reporting Initiative (GRI) guidelines – the most widely used voluntary corporate reporting standard – and the information the companies actually provided in public reports. Catalyst found that, despite external "assurance", **only 60 per cent of Rio Tinto's sustainability claims were accurate compared to what it reported.** Rio Tinto ranked second to last in the analysis.^{lxi} And in research carried out in 2014, IndustriALL Global Union found Rio Tinto's reporting on workers' health to be faulty on many scores (for example, unsubstantiated narrative, lack of disaggregated data and measurement of occupational illness over too short a time frame).^{lxii}

Risks

Rio Tinto's behaviour is a risk to the business as well as to the rights of stakeholders:

For stakeholders:

- The risk for potential and actual violations of workers' fundamental rights (e.g. freedom of association, safe work place, security of person)
- The risk of potential and actual violations of indigenous peoples' rights (e.g. free, prior and informed consent; religious and cultural freedom; benefits of resource exploitation)^{lxiii}
- Risk to investors' ability to evaluate the company properly and thus make sustainable investment decisions

For the company:

- The risk of damaging stakeholder relationships, leading to the loss of a social license to operate
- Risk of reputational damage and litigation
- Risk of labour disputes because of confrontational relationships with trade unions or in non-organised sites
- With the extensive use of outsourcing, risk of decreased control of the running of the operation and loss of in-house expertise in operating mines

References

- i Rio Tinto 2014 Annual Report, p. 2, http://www.riotinto.com/ar2014/pdfs/rio-tinto_2014-annual-report.pdf
- ii Freedom of Association and Protection of the Right to Organise Convention (N°87), 1948 and the Right to Organise and Collective Bargaining Convention, 1949 (N° 98)
- iii Bradon Ellem, Rio Tinto and Direct Engagement, 2014 available on [http://cfmeu.com.au/sites/cfmeu.com.au/files/downloads/\[field_download_state-raw\]/\[field_download_type-raw\]/directengagementreportfinal-revised-low-res.pdf](http://cfmeu.com.au/sites/cfmeu.com.au/files/downloads/[field_download_state-raw]/[field_download_type-raw]/directengagementreportfinal-revised-low-res.pdf). Bradon Ellem is Professor of Employment Relations, Chair of Discipline, Work and Organisational Studies, University of Sydney Business School.
- iv Ibid
- v http://www.pc.gov.au/_data/assets/pdf_file/0009/187929/sub0122-workplace-relations.pdf
- vi Reprisals against trade unions' elected representatives are a clear infringement of OECD guidelines, which call on MNEs not to discriminate against workers with respect to employment or occupation on such grounds as their trade union activities.
- vii OECD guidelines provide that MNEs have the responsibility to disclose timely and accurate information on structure and activities and give reasonable notice to workers and unions of changes of operations.
- viii Rio Tinto EWC, Press Release, 1 October 2014.
- ix Article 23 of the United Nations Universal Declaration of Human Rights, 1948; Article 7 of The United Nations International Covenant on Economic, Social and Cultural Rights, 1976
- x <http://www.riotinto.com/ourcommitment/safety-and-health-4792.aspx>. This responsibility is repeated in the OECD Guidelines for Multinational Enterprises.
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IndustriALL Global Union

IndustriALL represents thousands of Rio Tinto workers in all regions of the globe, taking up the fight for better working conditions and trade union rights around the world.

**www.industrialunion.org
press@industrialunion.org**

Head Office

IndustriALL Global Union

54 bis, route des Acacias
 Case Postale 1516
 1227 Geneva Switzerland
 Tel: +41 22 308 5050
 Email: info@industrialunion.org

Questions to the company

The following are questions that all stakeholders – investors, workers, local communities, civil society organizations and others – should consider putting to the company.

GRASBERG MINE, INDONESIA:

Rio Tinto labels Grasberg a “core operating asset”. With its participation in the mine’s operating, technical and sustainable development committees, Rio Tinto bears some responsibility for the 39 deaths at the mine since 2013. And yet Rio Tinto insists that it has been a good influence on the mine operations. If this is the case, why have there been so many recent worker deaths? Does Rio Tinto face sanctions for these deaths? What is the potential for a negative governmental reaction against the mine and what are the implications for Rio Tinto?

ON PRECARIOUS LABOUR:

Unions are reporting an increase in Rio Tinto’s use of indirect, precarious workers. Retrenched workers are being rehired on temporary contracts, for example at the Rössing facility in Namibia. Shifting the workforce to contract workers appears to be a clear company policy in Australia, New Zealand, Canada and France. And yet ultimately, in most cases absolute liability for health and safety lies with the mine operator and cannot be passed on to the contractor. In addition, Rio Tinto cedes some of the profit margin when it uses contractors. What are the implications of this increasing use of outsourced, precarious workers for the company’s ability to maintain control over health and safety at its operations? And why does Rio Tinto appear to be giving away profits to third parties in a mineral cycle downturn? Investors need information: why does Rio Tinto not provide figures on how many precarious workers are employed at its facilities?

ON OYU TOLGOI:

In Mongolia, water is essential to the Oyu Tolgoi project, yet clearly there are problems with water management as well as significant questions about the long-term sustainability of this operation. What is Rio Tinto doing to address these? What is it doing to address the growing discontent of herders, including their significant concerns about the negative impacts of road building (dust, etc.) on the livelihoods of the herders and the health of the herders and their animals?

ON THE INNU FIRST NATION LAWSUIT IN CANADA:

Why does IOC/Rio Tinto stand out in such negative contrast to other mining companies in the area, to the point where First Nation communities are suing it?

RESOLUTION MINE, ARIZONA:

Rio Tinto claims to respect the rights of indigenous peoples, in particular, free, prior and informed consent. Why has Rio Tinto continued to push so hard to begin mining in an area that is sacred to the Apache people, and in a manner that is so deeply opposed by so many Native American communities?

POLITICAL ACTIVITY:

Investors are increasingly demanding full disclosure of political spending by companies. Who in the company is making decisions regarding spending by Rio Tinto’s Political Action Committee (PAC) in the U.S.? How can investors and others know what Rio Tinto’s lobbying and political expenditures are used for without full transparency? What would Rio Tinto say if investors asked it to disclose *all of its political spending on all activities*?