High-Risk Areas, Resources and Sustainability

N.A.J. Taylor

Investing in conflict-affected and high-risk areas is a growing concern for responsible businesses and investors. Often times companies based in developed countries operate in lesser-developed, foreign markets, where governance standards are lax, corruption is high and business practices are poor.
This chapter focuses on one specific Anglo-Australian company that operates in West Papua, one of the poorest provinces of Indonesia. The risks for the company include the potential to contribute to environmental and social damage in a foreign market. The risks for investors include financing a company that does not get its risk management right. This is the story of how the Norwegian Pension Fund blacklisted Rio Tinto.

An ancient copper mine located near Huelva in southernmost Spain changed hands in 1873. A group of opportunistic Anglo-German investors, equipped with modern techniques that favored mining aboveground, acquired it from the Spanish government. The mine's copper had stained the surrounding water to such an extent that the indigenes named the river Rio Tinto—literally meaning red river.

The mine at Rio Tinto had supplied the Phoenicians, ancient Greeks, Carthaginians, and the Roman Empire. Its copper had paid for Carthage's numerous wars on Rome and had been held by both Scipio and Hannibal. We can only assume that these investors, aware of such indelible marks on the environment and history, missed the irony, because they named their company, Rio Tinto.

However, the red river has since flowed a long way from home. The company has expanded its operations through Australia, North and South America, Asia, Europe, and southern Africa—across coal, aluminum, copper, diamonds, uranium, gold, industrial minerals, and iron ore. Rio Tinto is now so large that its dual listing on the Australian and London stock exchanges commands it a value of over US$100 billion.

Preprint copy: N.A.J. Taylor, 'High-risk areas, resources and sustainability', in Cary Krosinsky, Nick Robins, Stephen Viederman (eds.) *Evolutions in Sustainable Investing: Strategies, Funds and Thought Leadership*, John Wiley & Sons, US: New York, December 2011, 329-44.

What's left behind near the Spanish town of Huelva is a 58-mile-long river flowing through one of the world's largest deposits of pyrite, or fool's gold. Because of the mine, the river has a pH reading similar to that of automobile battery acid and contains virtually no oxygen in its lower depths. In the late 1980s, temporary flooding dissolved a power substation, a mandibular crusher, and several hundred yards of transport belts. More recently, NASA astrobiologists used the conditions of the river to replicate the conditions of Mars. "If you remove the green," one of them remarked, "it looks like Mars."[1] The thinking goes that if something could live in such an acidic river, then there is likely to be life on Mars too.

Every Australian—through public monies invested by elected governments, or their choice of superannuation fund, insurer, and bank—is funding this red river now too. Rio Tinto is so large and so profitable that, for the average Australian, investment in it is very near unavoidable.

Blacklisted

On September 9, 2008—amid the turmoil of the global financial crisis—the Norwegian government announced that it had liquidated its entire $1 billion investment in Rio Tinto for "grossly unethical conduct." Operating the second largest fund in the world, the Norwegians' decision focused solely on the Grasberg mine in West Papua on New Guinea, which it believed posed the "unacceptable risk" of contributing to "severe environmental damage" if it were to continue funding the Anglo-Australian mining giant.[2]

Rio Tinto had been blacklisted.

The following day, Rio Tinto's official statement relayed that the company was "surprised and disappointed," given both its recognized leadership in environmental sustainability and its noncontrolling interest in the Grasberg mine.[3] As with most claims of sustainability, the truth is otherwise.

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[1] David Holley, 'A "Red River" in Spain may yield clues to life on the red planet', *LA Times*, 24 August 2002, accessed at http://articles.latimes.com/2002/aug/24/world/fg-tinto24 on 10 March 2009.

[2] Norwegian Pension Fund, 'Recommendation of February 15, 2008, on exclusion of companies Rio Tinto Plc and Rio Tinto Ltd.', *Ethical Committee*, 9 September 2008, accessed at http://www.regjeringen.no/pages/2105350/Recommendation%20RT%20final.pdf on 1 July 2009.

[3] Rio Tinto, 'Norwegian Pension Fund', *Media Release,* 10 September 2008, accessed at http://www.riotinto.com/media/news_12275.asp on 1 November 2008.

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Rio Tinto should not have been surprised by the Norwegian stance on Grasberg. Records show there had been months—in fact, years—of dialogue with the Norwegians about Grasberg's inadequate environmental and social performance.[4] Rio Tinto had faced a litany of signposts indicating that multinational and Indonesian involvement in West Papua was not meeting various standards, laws, and norms: Institutions such as the World Bank, Australian Council for Overseas Aid, International Finance Corporation, Overseas Private Investment Commission, United Nations Committee against Torture, U.S. State Department, and the Indonesian Environment Ministry, as well as many U.S. and European politicians, independent environmental assessments, international media, Papuan leaders, civil society groups, and shareholders had brought the problems to Rio Tinto's attention.

That an institutional investor should act on environmental, social, and corporate governance considerations is a newly evolving development within the global investment industry, and one in which many Australian institutional investors and service providers have been quick to claim leadership. However, the blacklisting of Rio Tinto by the Norwegian government was uniquely public, transparent, and forward-thinking. Yet this wholesale dumping of one of Australia's blue-chip stocks received only syndicated coverage in the local media.

Behind the headlines of the global financial crisis is a deeper, more systemic fault line that rewards rampant capitalism. Too many invest in and operate mines such as Grasberg without any consideration of the ethics of so doing.

Background

New Guinea, geographically as well as historically, is Australia's closest relative. Separated from the mainland during the last glacial period, the waters filled in what now separates them: about 95 miles of the Torres Strait.

While Australia and New Guinea both have enviable mineral stores, economic and political exploitation has left the latter as home to many of the poorest people on Earth. New Guinea is also an island of two histories.

[4] See for instance the history of discussion including Freeport-McMoRan and representatives of Rio Tinto who sat on the Freeport-Indonesia Board: Norwegian Pension Fund, 'Recommendation of August 15, 2006, on exclusion of FreeportMcMoRan Copper & Gold Inc', *Ethical Committee*, 15 February 2006, accessed at http://www.regjeringen.no/pages/1956975/F%20Recommendation%20Final.pdf on 1 July 2009.

The eastern half forms the independent state of Papua New Guinea—a status it has enjoyed since breaking from Australia in 1975. With its natural resources of oil and industrial metals, Papua New Guinea has long been exploited for its minerals at places like Ok Tedi and Bougainville. Both projects ended in social and environmental disaster. The environmental impact of Ok Tedi was so great that in 1999, then BHP chief executive Paul Anderson conceded the mine was "not compatible with our environmental values."[5] But it did serve the company's pursuit of profit. It was not until the Ok Tedi environmental disaster three years later that the true impact of BHP's mining practices came to the attention of the global public. BHP subsequently sold its interest, established a fund to restore the sustainable development of the affected people, and received immunity from further prosecution.

The western half of New Guinea has had a lesser-known but equally tragic history centered around the Jayawijaya Mountain, home to the Amungme, and farther downstream, the Kamoro people. As with much of East Asia, the indigenes were under Dutch rule when a geological expedition in 1936 located a significant *ertsberg* (ore mountain) deep in the southwestern highlands. World War II intervened, and the Japanese claimed Indonesia and some of the western parts of New Guinea. Following defeat in the war, the Japanese were marshaled back to their home territory, and Dutch colonialism resumed. Importantly, when Indonesian independence was obtained from the Dutch in 1949, few knew of the *ertsberg* hidden deep in West Papua's wilderness. And so the Dutch began a ten-year Papuanization program in 1957 that would see West Papua handed back to the indigenes, creating the independent state of West Papua around 1972.

Despite multiple territorial claims, the ore mountain lay dormant for over 20 years.

West Papua

On March 6, 1959, the *New York Times* reported the presence of alluvial gold in the Arafura Sea just off the coast of West Papua.[6] Reminded of their earlier discovery, Dutch geologists were said to be returning to the ore mountain, now simply known as Ertsberg.

[5] Bob Burton, 'BHP admits Ok Tedi mine is environmental disaster', *Asia Times*, 13 August 1999, accessed at http://www.atimes.com/oceania/AH13Ah01.html on 10 July 2009.

[6] Lindesay Parrott, 'Dutch to explore New Guinea area: Remote section disputed territory will be object of intensive research', *New York Times*, 6 March 1959, accessed at http://wpik.org/Src/NYT/19590306newExplor.pdf on 1 July 2009.

The indigenes, meanwhile, as part of their program toward independence, established a Papuan National Council and provisional government as well as their own military, police force, currency, national anthem, and flag. At the time, West Papua's independence was due before the United Nations Decolonization Commission, and representatives took part in various cultural and political activities throughout the region. By December 1, 1961, the West Papuan "Morning Star'" flag had been raised alongside the Dutch for the first time. Many assumed that independence was imminent.

Unbeknownst to both the indigenes and the Dutch, U.S. mining company Freeport-McMoRan Copper and Gold was negotiating directly with Suharto—at the time an Indonesian army general—for a small group of its experts to prospect this ore mountain. The path into West Papua through Suharto promised to be fruitful for Freeport, since its board was stacked with the Rockefeller's Indonesian oil interests who already were versed in the general's way of doing business. An exploration agreement was reached, and soon after a geologist from Freeport was forging his way through the wilderness toward Ertsberg.

West Papua was about to change hands again.

Armed with Chinese and Soviet weapons, as well as an increasingly public friendship with the communists, Indonesia declared war on Holland. To protect western interests from the threat of communism, on August 15, 1962, the United Nations (UN) and the United States orchestrated a meeting between Dutch and Indonesian officials during which interim control of West Papua was signed over to Indonesia.

Six years of UN interregnum followed, after which a plebiscite would decide whether to form a separate nation or integrate into Indonesia. All 815,000 West Papuans were to vote in an Act of Free Choice.

To ensure a favorable outcome, the Indonesians worked to suppress Papuan identity. Raising the West Papuan flag and singing of the national anthem were banned, and all political activities were deemed subversive. Indonesia ruled through force, for self-interest. Alarmed by ongoing media reports, on April 5, 1967, in the British House of Lords, Lord Ogmore called for a UN investigation.[7] By early 1968, with Suharto having assumed the presidency of Indonesia, a U.S.

[7] The Djarkta Times, 8 April 1967, cited in Justus Van Der Kroef, 'West New Guinea: The uncertain future', *Asian Survey,* Vol8 No.8, August 1968.

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consular visit almost unanimously agreed that "Indonesia could not win an open election" in West Papua.[8]

West Papua still wanted its independence.

In a desperate attempt to secure West Papua's right to self-determination, two junior politicians crossed the border into Australian-administered Papua and New Guinea on May 29, 1969. They carried damning evidence of Indonesian repression; the hopes of a yet-unformed nation rested on the politicians reaching the UN. As Australia and its allies were amenable to Indonesian control of West Papua, the two were imprisoned upon crossing the border until after the referendum. Their brave plea was silenced.

Between July and August 1969, less than a quarter of 1% of the population—some 1,026 West Papuans—signed the country's freedom over to Indonesia. The election, held under the aegis of the UN, was far from an act of free choice. The following day West Papua was declared a military operation zone, the local people's movement was restricted, and expression of their national identity banned under Indonesian law.

Poor, neglected West Papua.

Ramifications

Control of West Papua proved a lucrative business deal for the Indonesians. Two years prior to the Act of Free Choice—coincidentally the same day the plight of Papua was raised in the House of Lords—Freeport signed a contract of work with the Suharto government entitling a jointly owned company, PT Freeport Indonesia (Freeport-Indonesia), full rights to the Ertsberg mine. In return, Indonesia would derive significant tax revenues and fees as well as a minority 9.36% shareholding. Without the authority to do so, Indonesia nevertheless cut itself into a deal that sold large tracts of West Papua to the U.S. company, intent on sifting it for copper and gold.

Although Ertsberg fulfilled its promise, as production slowed in the mid-1980s, Freeport-Indonesia began to explore surrounding mountains and ridges for other reserves. As is often the case, the best place to establish a new mine is next to another. Sure enough, significant copper and gold reserves were located at Grasberg only a couple of miles southwest of Ertsberg.

[8] Thomas Reynders, 'Memo to Department of State', 10 May 1968, accessed at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB128/8.%20Airgram%20A-570%20from%20Jakarta%20to%20State%20Department,%20May%2010,%201968.pdf on 1 November 2008.

Grasberg has the largest recoverable reserves of copper and gold in the world. It's also Indonesia's economic beachhead.

Observing the Grasberg mine via Google Earth, one sees a scar like no other: Located about 13,000 feet (4,000 meters) above sea level, open-pit (aboveground) mining has bored a hole through the top of the mountain half a mile (1 km) wide. What they're digging for is more than $40 billion worth of copper and gold. Every day the operation discharges 230,000 tons of tailings (waste rock) into the Aghawagon River. This process is expected to continue for up to six more years, at which point exploration will go underground until there's no value left. Freeport estimates that it will be done by 2041.

The operation is so large that it has shifted the borders of the adjacent Lorenz National Park. Listed as a World Heritage site by the UN's Educational, Scientific, and Cultural Organization (UNESCO) in 1999, the park is "the only protected area in the world to incorporate a continuous, intact transect from snowcap to tropical marine environment, including extensive lowland wetlands."[9] For the Amungme and Kamoro indigenes, corporate imperialism had replaced European colonialism.

The ramifications are both environmental and social.

The social and economic condition of the indigenous Amungme and Kamoro poses fundamental human rights concerns. Although Freeport-Indonesia directly or indirectly employs a large number of West Papuans and is regularly Indonesia's biggest taxpayer, in 2005, the World Bank found that Papua remained the poorest province in Indonesia.[10] With a marked rise in military personnel and foreign staff has come a number of social issues, including alcohol abuse and prostitution such that Papua now has the highest rate of HIV/AIDS in Indonesia.

Indonesian control of West Papua has been characterized by the ongoing and disproportionate repression of largely peaceful opposition. Few sustained violent interactions have occurred; however, in one major conflict in 1977, more than 1,000 civilian men, women, and children were killed by the Indonesian military in Operasi Tumpas (operation annihilation) after a bomb slurry pipe was severed and partially closed the Ertsberg mine. More recently, in 1995, the Australian Council for Overseas Aid reported that the Indonesian army and security forces killed 37 people involved in protests over the mine in the preceding seven-month period. While the level of violence is difficult to establish, academics

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[9] UNESCO, 'Lorenz National Park', *World Heritage List*, accessed at http://whc.unesco.org/en/list/955 on 1 July 2009.

[10] World Bank, 'Papua public expenditure analysis: Regional finance and service delivery in Indonesia's most remote region', *Overview Report*, August 2005.

at the Centre for Peace and Conflict Studies at the University of Sydney maintain that up to 100,000 West Papuans may have been killed since Indonesian occupation. They call what's happening to West Papua "slow-motion genocide."[11]

There are also two primary environmental concerns over Grasberg.

1. As I have noted, the mine discharges 230,000 tons of tailings (waste rock) a day into surrounding waterways; given the escalating rate of processing, this rate is arguably against national law.
2. Acid rock drainage (outflow of acidic water) has resulted from the disposal of a further 360,000 to 510,000 tons a day of overburden and waste rock in two adjacent valleys covering 4 miles (8 km) up to 975 feet (300 meters) deep. The mine operators dispute both claims.

Riverine methods of waste disposal are banned in every developed country on Earth. The World Bank no longer fund projects that operate this way due to the irreversible ecological devastation, and the International Finance Corporation requires that rock be treated prior to disposal, which is not a practice carried out at Grasberg. Since the mid-1990s, a number of independent environmental assessments have found unacceptably high levels of toxicity and sediment as far as 140 miles away. Freeport and Rio Tinto maintain that riverine tailings disposal is the best solution, given the difficult terrain, the threat of earthquakes, and heavy rainfall.

Grasberg's reserves are so vast that extracting them is expected to create 6 billion tons of industrial waste.

President Suharto, who is now recognized as one of the most corrupt and tyrannical leaders in history, renewed Freeport-Indonesia's exclusive mining rights in 1991 for a further 30 years with an option of two 10-year extensions. The license included an option to prospect another 6.5 million acres (2.6 million hectares), as far as the Papua New Guinea border. "The potential is only limited by the imagination," Freeport's chairman, James Moffett, remarked to shareholders in March 1995. "Every other mining company wants to get into Irian Jaya [West Papua]. Bougainville and Ok Tedi don't hold a candle to Grasberg."[12]

[11] John Wing and Peter King, 'Genocide in West Papua? The role of the Indonesian state apparatus anda current needs assessment of the Papuan people', A report prepared for the West Papua Project at the Centre for Peace and Conflict Studies, Univeristy of Sydney and ELSHAM Jayapura, Papua, August 2005.

[12] Freeport-McMoRan, 'Media Release 10 March 1995', *Media Release*, 10 March 1995.

Enter Rio Tinto

In February 1995, Rio Tinto announced three deals that secured access into Grasberg.

1. It agreed to invest $500 million of new capital in Freeport for a 12% stake in the U.S. miner's business.
2. Rio Tinto agreed to finance a $184 million expansion of the Grasberg mine. In return, it received 40% of post-1995 production revenue that exceeded certain output targets and, from 2021, a 40% stake in all production.
3. Rio Tinto would receive 40% of all production from new excavations elsewhere within West Papua.

Rio Tinto was effectively doing business with Suharto now too.

In response, Freeport told shareholders that Rio Tinto would "contribute substantial operating and management expertise" through proportional representation on the board as well as various Grasberg operating and technical committees, from which the "policies established by the [board] will be implemented and operation will be conducted." Speaking of the "exceptional potential" of the deal, Rio Tinto's then chief executive, Robert Wilson, agreed that "given [Rio Tinto's] experience in other major open-pit copper ore bodies such as Bingham Canyon, Palabora and Escondida, we anticipate considerable mutual benefit."[13]

Rio Tinto obviously liked how Freeport-Indonesia did business, especially at Grasberg.

By October 1995, an independent U.S. government agency had canceled Freeport's international political risk insurance. The insurer, the Overseas Private Investment Corporation (OPIC), specifically cited the Grasberg mine operation as contravening the Foreign Assistance Act of 1961, which required that "overseas investment projects do not pose unreasonable or major environmental hazards or cause the degradation of tropical forests." Freeport was the first policy holder to be terminated by the OPIC for ethical violations, despite President Suharto and Freeport director Henry Kissinger heavily lobbying the U.S. government to reinstate the policy. Following OPIC's decision, the company did not disclose the environmental performance of the mine again until 2003—it no longer had to.

[13] Freeport-McMoRan, 'Freeport-McMoRan Inc. to sell portion of its shares in Freeport-McMoRan Copper & Gold Inc', *Media Release*, 7 March 1995, accessed at http://www.secinfo.com/dpBXk.ab.d.htm on 1 July 2009.

For a brief time in 2000 and 2001, a particularly sympathetic Indonesian environment minister, Sonny Keraf, pursued numerous avenues to impose penalties and fines on Grasberg, including an unsuccessful attempt to invoke the criminal section of the 1997 Environmental Law to cease Freeport-Indonesia's riverine method of tailings disposal. Under pressure for his pursuit of the part-Indonesian-owned Freeport, Keraf was replaced following the 2001 election

As Suharto's reign came to an end, an increasing number of West Papuans also began to campaign against the environmental and social impact of Grasberg. Papuan leaders brought the matter before the U.S. Federal District Court in April 1996 and before the Subcommittee on International Operations and Human Rights of the U.S. House of Representatives in May 1999. Many more attempts, including one to address shareholders at Rio Tinto's 1998 annual general meeting in London, were foiled by Indonesian authorities.

Building on restrictions introduced in 1991, the U.S. government banned arms transfers to Indonesia for widespread human rights violations in East Timor in 1999. Consequently, Freeport's payments to the Indonesian military and security forces were more closely scrutinized. The *Wall Street Journal* found that between 1991 and 1997, Freeport guaranteed over $500 million in loans so that Suharto's family and allies could purchase a stake in the mine[14]—a great portion of which was written off by Freeport in 2003. An outspoken Australian academic, Lesley McCulloch, also found that the 1996 Timika riots adjacent to the Grasberg mine led to a spike in monetary demands by the Indonesian military, resulting in the funding of a $35 million army base.[15] Freeport and Rio Tinto refused to disclose details of the payments.

Then in August 2002, two American teachers and an Indonesian employed by Freeport-Indonesia were murdered at the Grasberg mine complex. Following one rebel's admission that he was a business partner of the Indonesian military, several New York City pension (superannuation) funds formally requested that Freeport disclose the nature of its Indonesian "security" payments. The shareholders were concerned that such payments violated the Foreign Corrupt Practices Act. Although Freeport was not required to put the proposal to shareholders, the company did begin to disclose its security-related payments. Filings with the U.S. Securities and Exchange Commission since 2001 have confirmed annual payments reaching an average $5 million per annum for

[14] Peter Waldman, 'Hand in glove: How Suharto's circle, mining firm did so well together', *Wall Street Journal*, 29 September 1998, accessed at interactive.wsj.com/articles/SB907020100505646000.htm on 1 July 2009.

[15] Lesley McCulloch, *Trifungsi: The role of the Indonesian military in business*, October 2000, accessed at www.bicc.de/budget/events/milbus/confpapers/mcculloch.pdf on 1 July 2009.

government-provided security of the Grasberg complex and staff and fluctuating annual costs reaching $12 million for unarmed, in-house security costs. A spokesman for the company later told the *Jakarta Post* that these payments had been taking place since the 1970s.[16]

Sporadic accounts began to surface—in the *Sydney Morning Herald*, *Jakarta Post*, and *New York Times*—quoting internal sources that confirmed that the Indonesian had masterminded the killings to extort monies from the Grasberg operators. "Not surprisingly, the Indonesian military has exonerated itself," U.S. Congressmen Joel Hefley and Tom Tancredo said in June 2003. "American investigative teams, including the FBI, have not been able to complete their investigations mainly due to the Indonesian military's refusal to co-operate and tampering of evidence."[17]

Freeport remained steadfastly opposed to later demands by New York City pension fund investors to cease all payments to the Indonesians until they complied with official U.S. investigations into the August 2002 murders. At the 2004 annual general meeting, president and chief executive Richard Adkerson advised shareholders that "the management and Board believe that the stockholder proposal mischaracterizes the company's relationships with Indonesian security institutions and suggests actions that would undermine the company's relationship with the Indonesian government and the security of the company's operations."[18] Despite the ongoing human rights and corruption concerns in West Papua—including a report by the World Bank and a letter by U.S. senators to then UN Secretary General Kofi Annan calling for the appointment of a special representative to Indonesia—after a vote by shareholders, the resolution was not passed.

On March 23, 2004, Rio Tinto announced it had sold its 11.9% shareholding in Freeport. Rio Tinto made a $518 million profit. Citing no environmental or social reasons, Rio Tinto's then–chief executive Leigh Clifford reassured shareholders that "the sale of [Freeport] does not affect the terms of the joint venture nor the management of the Grasberg mine" and that through "our

[16] As cited in Robin Osborne, *Indonesia's secret war: the guerrilla struggle in Irian Jaya*, Allen & Unwin, Sydney, 1985, p.120.

[17] Joel Hefley and Tom Tancredo, 'Representatives write to Senate to urge on IMET ban', 27 October 2003, accessed at http://www.etan.org/news/2003a/10col.htm on 1 July 2009.

[18] Freeport-McMoRan, 'Notice of Annual Meeting of Stockholders', *Media Release*, 6 May 2004, accessed at www.fcx.com/ir/AR/2003/pdf/fcx-proxy2003.pdf on 1 July 2009.

significant direct interest in Grasberg, we will continue to benefit from our relationship with Freeport."[19]

Rio Tinto remained committed to the mining of Grasberg and would continue overseeing its management through various operating and technical committees.

Sensational claims that illegal payments to individual soldiers, units, and policemen had been routinely made to secure the Grasberg complex and its staff came to light in 2005. A report by Global Witness revealed that an additional $10 million had been paid directly to individual military and police commanders between 1998 and 2004. This included $247,000 between May 2001 and March 2003 to General Mahidin Simbolon, former head of the 1999 East Timor massacre, and monthly payments throughout 2003 to the police Mobile Brigade—a group cited by the U.S. State Department as having "continued to commit numerous serious human rights violations, including extrajudicial killings, torture, rape, and arbitrary detention."[20]

With the U.S. arms trade embargo still in place, Rio Tinto had reassured the market that payments to the Indonesian military were "legally required and legitimate" only months before the news broke. Now Rio Tinto and Freeport-Indonesia came under even greater public pressure. At Rio Tinto's next shareholder meeting, after several West Papuans refugees made statements to the board on Grasberg, shareholder activist Stephen Mayne suggested that "the most appropriate thing for Rio Tinto to do would be to exit."[21] After confirming that Rio Tinto's contractual obligations would permit such a move, then-chairman Sir Rod Eddington informed shareholders that they "make a considerable effort to ensure that the best that Rio Tinto can offer to Freeport in the management of that venture is available to them."[22]

An Indonesian ministerial decree in 2007 demanded that the security of "vital national objects" such as Grasberg be handed over to the police within six

[19] Rio Tinto, 'Rio Tinto reaches agreement to sell shares in FCX', *Media Release*, 22 March 2004, accessed at http://www.riotinto.com/media/18435_media_releases_3383.asp on 1 July 2009.

[20] Global Witness, 'Paying for Protection: The Freeport Mine and the Indonesian Security Forces', July 2005, accessed at http://resources.revenuewatch.org/sites/default/files/Global%20Witness-Paying%20for%20Protection.pdf on 1 July 2009.

[21] Stephen Mayne, 'Rio Tinto 2006 AGM transcript', 22 January 2009, accessed at http://www.maynereport.com/articles/2009/01/22-1202-2283.html on 1 July 2009.

[22] Mayne Report, 'Rio Tinto 2006 AGM transcript', *Mayne Report*, 22 January 2009, accessed at http://www.maynereport.com/articles/2009/01/22-1202-2283.html on 1 July 2009.

months. Evidence obtained by world news service AFP suggests this is not happening. In a filing to the U.S. Securities and Exchange Commission, Freeport disclosed additional direct payments of "less than" $1.6 million in 2008 to 1,850 soldiers, despite the fact that 447 policemen make up the official number of personnel responsible for security at the Grasberg complex.[23] The company's 2008 Sustainable Development report confirms that Freeport-Indonesia makes contributions to "security institutions (including both police and military)."[24] Alarmingly, according to Amnesty International, as recently as 2008, fundamental human rights violations such as the "torture, excessive use of force and unlawful killings by police and security forces"[25] – reports that have subsequently been confirmed by the UN Special Representative of the Secretary General on Human Rights Defenders, and United Nations Committee against Torture.

"There is no alternative to our reliance on the Indonesian military and police," Freeport chairman James Moffett said to the *New York Times* in 2005. "The need for this security, the support provided for such security, and the procedures governing such support, as well as decisions regarding our relationships with the Indonesian government and its security institutions, are ordinary business activities."[26]

Ordinary Business Activities

Ordinary business activities got both Rio Tinto and Freeport blacklisted.

First, Freeport. In October 2005, the Norwegian government began five months of deliberations over the company's "extensive, long-term and irreversible" environmental damage at the Grasberg complex. Entering into dialog with the company in December, the Norwegians found Freeport's response gave

[23] As cited in AFP, 'US mining giant still paying Indonesia military', AFP, 22 March 2009, accessed at http://www.google.com/hostednews/afp/article/ALeqM5jJMKtoD9LnT34URkkkJmTjaSf8EA on 1 July 2009.

[24] Freeport-McMoRan, '2008 working toward sustainable development report', accessed at www.fcx.com/envir/wtsd/pdf-wtsd/2008/WTSD_2008.pdf on 1 July 2009.

[25] Amnesty International, 'Amnesty International Report 2009 – Indonesia', *Amnesty International Country Report*, 28 May 2009, accessed at http://www.unhcr.org/refworld/country,,AMNESTY,,IDN,,4a1fade478,0.html on 1 July 2009.

[26] Jane Perlez and Raymond Bonner, 'Below a mountain of wealth, a river of waste', *New York Times*, 27 December 2005, accessed at http://www.nytimes.com/2005/12/27/international/asia/27gold.html?pagewanted=print on 1 July 2009.

little evidence otherwise, choosing to instead criticize the use of "outdated information or biased reports issued by non-governmental organizations that are anti-mining or have a political agenda." And so, in February 2006, Freeport became the first company the Norwegians blacklisted for environmental reasons. Although public disclosures of investment decisions are rarely made public, the Norwegian's released a detailed 32-page recommendation report after the shares were sold in June 2006.[27]

Second, Rio Tinto. In December 2007, the Norwegians began eight months of deliberations over "severe environmental damage" resulting from the Freeport joint venture in West Papua. Entering into dialogue with the Norwegians in December 2007, Rio Tinto claimed that the tailings were "an engineered, managed system for deposition and control" and that the rock is natural rock with little environmental impact. And so, as with Freeport, the Norwegians made the decision to divest from Rio Tinto in February 2008 due to the "unacceptable risk that the Fund, through continued ownership in the company, would contribute to ongoing and future severe environmental damage." Referring to the earlier Freeport report, in September 2008, the Norwegians published an additional 10-page recommendation report on the Rio Tinto sale.[28]

For the Norwegians, it wasn't so much about what had been done in the past; it was what Rio Tinto and Freeport were going to do next.

The following day, Rio Tinto told the market that it was "surprised and disappointed" in the Norwegians decision and that it had a "non-controlling" interest in the mine.[29] Following years of signals from the international community, knowledge of the Freeport divestment in 2006, and months of dialogue over the matter, this is not so. As 12% shareholders in Freeport between 1996 and 2004, Rio Tinto enjoyed proportional representation on the company's board as well as input through various operating and technical committees specific to Grasberg. For example, Rio Tinto's chief executive between 2000 until 2007 was also a director of Freeport from 2000 to 2004.

[27] Norwegian Pension Fund, 'Recommendation of August 15, 2006, on exclusion of FreeportMcMoRan Copper & Gold Inc', *Ethical Committee*, 15 February 2006, accessed at http://www.regjeringen.no/pages/1956975/F%20Recommendation%20Final.pdf on 1 July 2009.

[28] Norwegian Pension Fund, 'Recommendation of February 15, 2008, on exclusion of companies Rio Tinto Plc and Rio Tinto Ltd.', *Ethical Committee*, 9 September 2008, accessed at http://www.regjeringen.no/pages/2105350/Recommendation%20RT%20final.pdf on 1 July 2009.

[29] Rio Tinto, 'Norwegian Pension Fund', *Media Release,* 10 September 2008, accessed at http://www.riotinto.com/media/news_12275.asp on 1 November 2008.

Curiously, a letter to the Norwegians from chief executive Tom Albanese claims that Rio Tinto had "not been asked by the Ministry to discuss its concerns prior to the sale." Citing the sustainable fashion in which Rio Tinto supply diamonds and gold to Tiffany, Albanese reassured the Norwegians that the company makes a point of "carefully selecting our partners to be organizations with comparable standards to our own in environmental performance, as well as other areas such as community relations and human rights."30 A company with good governance wouldn't have gone into business with Freeport, let alone a business deal in which Suharto had a stake.

There has been some criticism of the Norwegians' divestment within the investment community. Much of it centers on four issues.

1. Ethical divestments remove the opportunity for dialogue to influence the practices of companies, especially when the sale represented only 1% of Rio Tinto value.
2. The decision contravenes investment theory. By reducing the number of companies in which to invest, one interferes with the efficient market and thereby constrains the financial returns available to it.
3. Investors should focus on increasing shareholder value rather than adopting value-based positions—there are no sin stocks, only leaders and laggards.
4. The Norwegians are largely investing monies earned from the country's vast oil reserves, so how can they claim to be so ethical?

But in annual sustainable development reports, both Rio Tinto and Freeport position themselves as socially responsible businesses. We're told that Freeport was a pioneer in recognizing the land rights of the Amungme and Kamoro people, paving the way to compensation and dialog since 1974 and an updated Memorandum of Understanding in 2000. We find that 14 "invalid and unsubstantiated" land rights claims were made against the company globally in their 2008 report and that steps are being taken to process such claims better in future.[31] And we are told that Rio Tinto and Freeport set aside 1% of net revenues from the Grasberg complex, which has enabled the indigenous Amungme and Kamoro people "to become equity participants in the mine" since 1996. But we find the indigenous people are told, "the river upstream will largely recover naturally." The language of ethics has been hijacked such that what is claimed is not what is actually happening.

[30] Rio Tinto, 'Norwegian Pension Fund – Response Letter', *Media Release*, 26 September 2008, accessed at http://www.riotinto.com/media/news_12469.asp on 1 July 2009.

[31] Freeport-McMoRan, '2008 working toward sustainable development report', accessed at www.fcx.com/envir/wtsd/pdf-wtsd/2008/WTSD_2008.pdf on 1 July 2009.

In June 2008, the Norwegians called for public input into the country's ethical guidelines. In his submission to the Norwegian Government, pioneering shareholder activist Robert A. G. Monks sets the tone with the line: "There's a fine saying that one should not blame Columbus because he was not Magellan."[32] Indeed, acting and striving to be ethical is a noble achievement in itself, especially when lured with the financial fruits of rampant capitalism.

The blacklisting of Rio Tinto is not an exemplar of capitalism. There are, to be sure, many equally compelling stories of what can go wrong when blinded by the relentless pursuit of wealth. But what the story of the Grasberg complex does teach us is that the global financial crisis was not caused by the limits of "extreme capitalism," as the Australian prime minister, Kevin Rudd, suggests his government can control,[33] but the rampant and uncontrollable nature of capitalism itself. Nearly all of Australia's financial institutions are invested in Rio Tinto, and the federal government's $60 billion Future Fund does not disclose what it is invested in whatsoever. The government decides what is a "good investment," and in the absence of transparency and accountability, Australians just have to trust that what the government is doing is ethical.

Summary

Within days of the Norwegians' announcement, reports of homemade mortar bombs firing at the gates of the Grasberg complex rippled through world news media. For now, that was West Papua's response. Given that both Rio Tinto and Freeport are yet to accept their right of reply adequately, we hope the silence will be broken by other stakeholders who value what's important here: the Amungme and Kamoro people who just wanted their land but are left with this "red river."

[32] Private correspondence made available by Robert A.G. Monks to the author.

[33] Kevin Rudd, 'The Global Financial Crisis', *The Monthly*, February 2009, accessed at http://www.themonthly.com.au/monthly-essays-kevin-rudd-global-financial-crisis--1421 on 1 March 2009.

Preprint copy: N.A.J. Taylor, 'High-risk areas, resources and sustainability', in Cary Krosinsky, Nick Robins, Stephen Viederman (eds.) *Evolutions in Sustainable Investing: Strategies, Funds and Thought Leadership*, John Wiley & Sons, US: New York, December 2011, 329-44.