

Rio Tinto And Bougainville – A Fatal Connection. A Mine, A War, And An Uncertain Future

VOLKER BOEGE 

The University of Queensland

At the end of 2019 in Papua New Guinea's Autonomous Region of Bougainville, a referendum was held on the region's future political status, in which almost 98 per cent voted for independence. Bougainville will now undergo a transition process, during which the issue of the Panguna mine is bound to resurface. The mine was at the core of a ten-year war in the 1990s, ceasing operations because of it, and has remained closed ever since. Peace on Bougainville can only be sustained if the Panguna problem is resolved, and on Bougainville, the former mine owner Rio Tinto is widely seen as having an obligation to contribute to a solution, particularly in regard to the clean-up of environmental degradation caused by the mine. This article brings historical depth to the current debates, exploring Rio Tinto's involvement in the causation and escalation of the war, and the human rights violations and war crimes committed in its course. Rio Tinto's post-war attitude is briefly discussed and some generalising conclusions drawn regarding corporate accountability and the inclusion of external business actors in local traditional reconciliation processes.

Introduction

For decades, the fate of the South Pacific island of Bougainville has been closely linked to the operations of one of the biggest multinational mining companies, Rio Tinto. The Panguna mine, a huge copper and gold mine established in the early 1970s by Rio Tinto's predecessor Conzinc Riotinto of Australia, has had fundamental economic, political, social, environmental, and cultural impacts on the island. It caused a decade-long war in the course of which the mine was forced to cease operations — and it has remained closed until today. The war was followed by two decades of complicated, but so far successful, peacebuilding, culminating in a referendum in November 2019, in which Bougainvilleans overwhelmingly voted for separation from Papua New Guinea (PNG) (97.7 per cent for independence, only 2 per cent for greater autonomy within PNG). This result is an unmistakably clear expression of the political will of the people of Bougainville. However, it is not the end of the story. According to the Bougainville Peace Agreement (BPA) of August 2001, which ended the war on Bougainville that in the 1990s had been fought between security forces of the government of PNG and its Bougainville auxiliaries (the Resistance Forces) on the one hand and a secessionist guerilla army, the Bougainville Revolutionary Army (BRA), on the other, the referendum is non-binding; consultations between PNG and Bougainville have to be held, with final ratification of results through the parliament of PNG.¹

¹ Government of the Independent State of Papua New Guinea and Leaders representing the people of Bougainville, *Bougainville Peace Agreement*, 30 August 2001, available at <https://www.abg.gov.pg/peace-agreement>. The Bougainville war was highly complex, given that “traditional local conflicts were also fought under the umbrella of the ‘great’ war of secession [...] [T]he Bougainville war is best understood as a hybrid, shaped by a patchwork of actors and interests both from the local social

Due to the COVID-19 crisis, the consultation and transition process had to be put on hold. It is clear, however, that in the post-referendum transition phase, the Panguna mine issue will resurface. Bougainvilleans will have to decide whether to re-open the mine, and if so, under what conditions and in which form. The history of the mine and its legacy will play an important role in these debates.

The Panguna mine problem had been deliberately put aside during the first stages of the peace process because of its divisiveness. Over the past few years, however, the debate over the future of the mine (and about the future of mining on Bougainville in general) has intensified. People are highly divided, with some strong voices in favour of re-opening the mine and others strongly against. Furthermore, those in favour of re-opening do not agree among themselves on the preconditions and the most suitable future mine operator. They argue that an independent Bougainville can only prosper in a globalised economy if it generates value from its mineral wealth. Opponents of this position point to the destruction and bloodshed the Panguna mine caused, and to the environmental and other problems that large-scale mining would again inevitably bring if the mine were to be re-opened; they point to alternatives such as agriculture, fisheries, and tourism. However, all stakeholders are aware that sustainable peace on Bougainville can only be achieved if the Panguna problem is solved, and all hold the view that it is necessary to clean up the massive environmental degradation caused by the mine. They are convinced that the former mine owner Rio Tinto bears an obligation to contribute to this environmental clean-up.² Rio Tinto, however, so far has rejected any responsibility. In 2016, it transferred its 53.8 per cent shares in Bougainville Copper Limited (BCL), the company which had operated the Panguna mine, to the government of PNG and the ABG — at no cost.³ At the same time, Rio Tinto made it clear that it saw no obligation to address the mine's legacy, arguing that it had adhered to the laws of the day.⁴

This article will focus on a specific aspect of the Rio Tinto–Bougainville connection: the company's involvement in the causation and escalation of the war that destroyed the island in the 1990s. It can be argued that Rio Tinto is not only responsible for the environmental degradation but also shares responsibility for the outbreak of violent conflict and its escalation, as well as the gross human rights violations and war crimes

and the modern state and economic sphere. The overlap of these spheres with regard to the causes of conflict, the issues at stake, the perceptions, values, and motives of the conflict actors, as well as the forms of their (violent) behavior and activities gave the war its specific features". For more detail, see Volker Boege "Peace Formation in Bougainville," in *The Palgrave Encyclopedia of Peace and Conflict Studies*, Oliver Richmond and Gëzim Visoka, eds (Cham: Palgrave Macmillan, 2019), p. 4. Often in Bougainville the war is referred to as "the crisis".

² These concerns were frequently raised in interviews and focus group discussions conducted by the author in the context of projects in the Panguna mine area: the Panguna Dialogue Project (2015–16) and the Panguna Listening Project (2018–20). See Peace & Conflict Studies Institute Australia, *Stories from the Panguna Dialogue Project* (PACSA, 2016), https://pacsia.com.au/wordpress/wp-content/uploads/2016/05/PDP_32p_A4_Book_English_final_SP_LR.pdf; and Catholic Diocese of Bougainville, *We are crying for our land: Stories from the Panguna Listening Project* (Diocese of Bougainville, 2019), https://www.misereor.org/fileadmin/user_upload/misereororg/publication/en/plp-bougainville-stories.pdf.

³ Rio Tinto, "Bougainville Copper Limited Shareholding," 30 June 2016, <https://www.riotinto.com/en/news/releases/Bougainville-Copper-Limited-shareholding>.

⁴ In a letter written in response to a letter from Bougainville President John Momis, Rio Tinto stated: "In terms of what you describe as the legacy issues arising from the operation of the Panguna mine, we believe that BCL was fully compliant with all regulatory requirements and applicable standards at the time". Joanne Farrell, Rio Tinto Group executive, Health, Safety & Environment, to Chief Dr. John L. Momis, President, Autonomous Region of Bougainville, letter, 5 August 2016.

committed in its course. The text deals with historical events that affect the present and might have consequences in the future — both in Bougainville and on the international stage. Peace on Bougainville can only be sustained if the Panguna mine issue is resolved and Rio Tinto joins reconciliation endeavours, which must include truth-telling and the provision of justice. Furthermore, this historical case raises general questions about the corporate accountability of multinational companies with regard to their operations in fragile or conflict-prone areas and situations. In Australia, for example, there currently are barely any legal avenues for holding companies to account for crimes and human rights violations committed overseas. So far, voluntary commitments and non-enforceable standards prevail. The history of Rio Tinto in Panguna can be seen as a case study in the culture of corporate impunity. It strengthens calls for enhancing corporate criminal liability for transnational human rights abuses. Hence, it speaks to the need to hold multinationals accountable in two different contexts: the local context of custom, customary law and reconciliation, and the international legal context of corporate and criminal law.

The article is based on primary sources from the time of the war, such as: Amnesty International reports; reports by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions; reports and documentation by other organisations and individuals containing first-hand accounts by stakeholders; as well as statements in court proceedings. These are supplemented by secondary sources, such as published diaries and literature. Furthermore, the topic was discussed with Bougainvilleans from all walks of life in countless interviews and conversations which the author conducted as part of several research and practice projects on Bougainville from 1998 to 2020.

The article first provides a brief overview of the war on Bougainville in the 1990s. The major part of the article is devoted to a discussion of Rio Tinto/BCL's performance in the lead-up to and during the war. This is followed by a brief description of the company's post-war attitude of denial and neglect. The article closes with some conclusions from the findings, and some reflections on their relevance to the current debate about the Panguna mine and corporate accountability.

The Panguna Mine As A Cause Of War

The Panguna copper and gold mine, situated in the Crown Prince Range in the centre of Bougainville, was a project of Conzinc Riotinto of Australia (CRA), one of the world's largest mining companies (which since has become Rio Tinto) and its subsidiary BCL. It commenced operations in 1972, and in the 1970s and 1980s, Panguna was one of the largest open-pit mines in the world; most of its copper ore was exported to the Norddeutsche Affinerie, a copper refinery in Hamburg, Germany.⁵

For CRA, the Panguna project brought enormous profits and considerable revenues for the central government of PNG in the far-away capital city of Port Moresby on mainland New Guinea. The mine was the largest single source of income for the government and the backbone of PNG's economy.⁶ For the local people on the ground,

⁵ For more details see: Volker Boege, "Mining, Environmental Degradation and War: The Bougainville Case," in *Ecology, Politics and Violent Conflict* Mohamed Suliman, ed. (London, New York: Zed Books, 1999), pp. 211–27; Volker Boege, "Mining, War and Peacebuilding on Bougainville," in *A Region in Transition: Politics and Power in the Pacific Islands Countries*, Andreas Holtz, Matthais Kowasch, and Oliver Hasenkamp, eds (Saarbrücken: Germany Universaar, 2016), pp. 525–50.

⁶ Paul Quodling, *Bougainville: The Mine and the People*, CIS Pacific papers, No 3 (St Leonards, NSW: Centre for Independent Studies, 1991), pp. 34–6. Paul W. Quodling, "Bougainville: some financial and ownership issues," *The Contemporary Pacific*, Vol 4, 2 (Fall 1992), pp. 346–54.

however, the mining operation had major negative environmental, social, and cultural effects.⁷ Land was taken from local communities on a large scale as BCL was granted leases for mining, tailings disposal, and the building of roads, mining towns, and port facilities. The “physical impact of the mine was overwhelming”.⁸ Mining caused enormous environmental degradation. It replaced agricultural land on a large scale.⁹ Loss of land also meant loss of sources of drinking water and timber. Tailings were directly disposed into the local river system. Rivers were polluted, and sediment loads in rivers became extremely high.¹⁰ As a consequence, fertile land on the river banks was lost and the rivers became devoid of fish. Forest depletion impacted on traditional hunting and gathering activities. Wildlife declined drastically or even disappeared completely. In short, the environmental degradation threatened the lifestyle of the local population, which is closely linked to the land. To the local communities, land not only forms the basis of their subsistence and smallholder economy, but also the core dimension of their social, cultural, and spiritual life. The mine, “with its apparently insatiable appetite for land, had a traumatic impact on the resident society, who saw land rights being violated and land being permanently taken out of traditional usage”.¹¹

Environmental degradation was accompanied by social disintegration. The establishment of the Panguna mine led to population growth and urbanisation at an unprecedented scale.¹² The majority of the overall urban population were young male non-Bougainvillean mine workers from other parts of PNG (only a minority of mine workers were locals, around 30 per cent, out of a workforce of around 3,600 in 1988). An upsurge of law and order problems ensued, including rape, assault, rascallism, prostitution, and alcohol abuse.¹³ Often workers brought in their *wantoks* (relatives) and squatted on land without asking. Squatter settlements became a widespread phenomenon.¹⁴ Local people blamed outsiders — workers, expatriate company management, and the agents of the central government — for not respecting Indigenous culture and the status and customary rights of the original owners of the land.¹⁵

⁷ Donald Denoon, *Getting Under the Skin: The Bougainville Copper Agreement and the Creation of the Panguna Mine*, (Carlton, Vic.: Melbourne University Press, 2000); Donald Denoon, *A Trial Separation: Australia and the Decolonisation of Papua New Guinea* (Canberra: ANU Press, 2012), p. 134.

⁸ Denoon, *Getting under the Skin*, p. 160.

⁹ John Connell, “Compensation and Conflict: The Bougainville Copper Mine, Papua New Guinea,” in *Mining and Indigenous Peoples in Australasia*, John Connell and Richard Howitt, eds (Sydney: Sydney University Press in association with Oxford University Press, 1991), pp. 55–77.

¹⁰ Quodling, *Bougainville*, pp.29–31.

¹¹ *Ibid.*, p. 32.

¹² Quodling, *Bougainville*; Connell, *Compensation and Conflict*.

¹³ Denoon, *Getting under the Skin*, pp. 150–3.

¹⁴ Anthony J. Regan, “Bougainville: Origins of the Conflict, and Debating the Future of Large-Scale Mining,” in *Large-scale Mines and Local-level Politics: Between New Caledonia and Papua New Guinea*, Colin Filer and Pierre-Yves Le Meur, eds (Canberra: ANU Press, 2017), pp. 353–414, in particular see p. 367.

¹⁵ On the disintegrative social effects of the Panguna mine in particular, and of mining in a Melanesian context in general, see Colin Filer, “The Bougainville Rebellion, the Mining Industry and the Process of Social Disintegration in Papua New Guinea,” *Canberra Anthropology*, Vol 13, 1 (1990), pp. 1–40; Colin Filer, “The escalation of disintegration and the reinvention of authority,” in *The Bougainville Crisis: 1991 Update*, Political and Social Change Monograph 16, Matthew Spriggs and Donald Denoon, eds (Bathurst, NSW: Department of Political and Social Change in association with Crawford House Press, 1992), pp.112–40; Terence A. Wesley-Smith and Eugene Ogan, “Copper, Class, and Crisis: Changing Relations of Production in Bougainville,” *The Contemporary Pacific*, Vol 4, 2 (1992), pp. 245–67; Denoon, *Getting under the Skin*; Regan, *Bougainville*. On the

Moreover, the mining project also led to the development of social inequality within what had previously been fairly egalitarian local communities. Differences emerged, such as between those with a job at the mine and those without, between those receiving compensation and those who were left out, between the older generation, whose representatives had struck a deal with the mine operator, and the younger generation, who had not been included. This led to unrest and infighting within and among communities. Divisions intensified in the lead up to and during the war, with some groups staying loyal to Rio Tinto/BCL, and others escalating their opposition. The distribution of revenues from mining was highly unbalanced, with 62 per cent of BCL gross revenue going to the central government of PNG, 33 per cent to foreign shareholders (mainly CRA), 4 per cent to the Bougainville provincial government, and 1 per cent to local Indowners.¹⁶

In the late 1980s, people on the ground started to demand meaningful environmental protection measures, compensation for environmental damage, and a larger share of the revenues generated.¹⁷ The mining company and the PNG government disregarded the concerns of the Bougainvilleans and rejected their demands. Consequently, young members of the local clans in the mine area brought the mine to a standstill by acts of sabotage in late 1988. Upon the request of the mine operators, the PNG central government sent its police riot squads and later its military to the island and declared a state of emergency on Bougainville on 26 June 1989 which remained in place during the whole time of the war.¹⁸

Opponents of mine operations established the Bougainville Revolutionary Army (BRA). Fighting that started in the mine area in central Bougainville soon spread across the whole island. The BRA adopted a secessionist stance and called for political independence for Bougainville.¹⁹ The mine-affected areas around Panguna and downstream of the mine became the heartland of the BRA. Other Bougainvilleans continued to support BCL and mining, while divisions among Bougainvilleans deepened.

BRA operations led to the indefinite shutdown of the mine, and BCL had to abandon the mine and leave Bougainville for good in March 1990. The mine has been lying dormant ever since, with no proper mine closure or post-mining rehabilitation whatsoever. Until this day, the mine area is controlled by a faction of the former BRA, the Meekamui movement.

The war, which lasted for almost a decade, brought enormous hardships for all Bougainvilleans. Villages and houses were destroyed on a large scale, and all sides committed war crimes and gross human rights violations. Bougainvilleans suffered from the collapse of basic services, such as health and education, and the breakdown of infrastructure and public administration. Out of the approximately twenty-thousand

historical, social, and political context see the contributions in Anthony J. Regan and Helga M. Griffin, eds, *Bougainville before the conflict* (Canberra: ANU Press, 2005).

¹⁶ Denoon, *A Trial Separation*, p. 135; Quodling, *Bougainville*.

¹⁷ Connell, *Compensation and Conflict*.

¹⁸ On the emergence of the Panguna conflict see Michael C. Howard, *Mining, Politics, and Development in the South Pacific* (Boulder, CO: Westview Press, 1991); Regan, *Bougainville*.

¹⁹ There had been secessionist movements on Bougainville before, beginning in the 1970s. Before PNG became independent in mid-September 1975, Bougainville had even declared its own independence on 1 September 1975. Bougainville only revoked this step and joined PNG after lengthy negotiations, that led to the implementation of a provincial government system in PNG. The BRA took up these previous calls for independence. On the early “seeds of session” on Bougainville see Denoon, *Getting under the Skin*, pp. 27, 171–81.

Bougainvilleans who lost their lives during the war, only a minority were combatants killed in action; the vast majority were civilians. A total blockade imposed by the PNG government on the island was a major cause of people dying from preventable diseases and starvation, in particular children and elderly people. Fighting also led to the displacement of more than 40 per cent of Bougainville's population of approximately 300,000 people. They were either forcibly put into so-called care centres by the PNG military or fled into the bush in BRA-controlled areas.²⁰

After years of privation and bloodshed, peace negotiations commenced in 1997, a ceasefire came into effect in April 1998, and the BPA was signed in August 2001.

BCL's Involvement In The War

Rio Tinto/BCL played a key role in causing the war and in the conduct of the war, at least in its early stages. It can be argued that the company shares responsibility for the gross human rights violations, mass atrocity crimes, war crimes, and crimes against humanity committed by the security forces of PNG during the war.

The Company In The Lead Up To The War

The environmental degradation and social disintegration caused by the Panguna mine was a major cause of the war. It can be argued that BCL's disregard of the environmental destruction and the hardships mine-affected communities suffered including forced relocation of villages, destruction of food gardens, and exposure to health risks, fundamentally violated the human rights of the affected people. Although Rio Tinto today claims that it abided by the laws of the time, it is clear that the character of operations was deeply harmful for human beings and the environment. Riverine tailings disposal, for example, as practiced by the Panguna mine back then, is outlawed throughout most of the world today.²¹

Protests were ignored by BCL. The company's management was not willing to engage in substantial discussions with protesters about their concerns. From the very beginning of the crisis which unfolded around the mine in 1988, management pursued a heavy-handed approach and expected the same from the PNG state authorities. BCL did not want to appear "weak" in dealing with the local landowning communities.²²

The government of PNG (GoPNG) came under pressure from BCL to enforce a solution to the problems in Panguna based on the use of force. The government initially had adopted "a conciliatory approach" and:

²⁰ For an overview over the war see John Braithwaite, et al., *Reconciliation and architectures of commitment: sequencing peace in Bougainville* (Canberra: ANU Press, 2010); Anthony J. Regan, *Light Intervention. Lessons from Bougainville* (Washington: USIP Press, 2010).

²¹ Volker Boege and Daniel M. Franks, "Reopening and developing mines in post-conflict settings: The challenge of company-community relations," in *High-Value Natural Resources and Post-Conflict Peacebuilding*, Paivi Lujala and Siri Aas Rustard, eds (New York: Routledge, 2012), pp. 87–120.

²² There had been a major shift at the top of BCL's management immediately before the crisis broke out; new persons with little experience in PNG came in, and this might have contributed to the insensitive approach taken by the company in the critical situation of 1988–1989 which finally led into the war. In 1986 BCL's Chairman Don Vernon was replaced by Don Carruthers, and in 1987 BCL's Managing Director Paul Quodling was replaced by Robert (Bob) Cornelius. Both Vernon and Quodling had been involved with the Panguna mine since its beginnings in the 1960s. See Kristian Lasslett, *State Crime on the Margins of Empire. Rio Tinto, the War on Bougainville and Resistance to Mining* (London: Pluto Press, 2014), p. 52; Quodling, *Bougainville*; Don Vernon, "The Panguna Mine," in Regan and Griffin, *Bougainville before the conflict*, pp. 258–73. With their departure important historical knowledge and personal connections got lost.

favoured a negotiated settlement to end the conflict. However, the government's policy of conciliation came under growing pressure, not only from BCL, but from a national political elite that was increasingly concerned about the impact of the rebellion on investor confidence.²³

Sir Michael Somare — founding father of the independent state of PNG and its first Prime Minister — was PNG's Foreign Minister in the critical years 1988 to 1992 and laid the blame squarely on BCL. In his 2001 sworn affidavit in the US court case against Rio Tinto (see below), he even posited that Rio Tinto/BCL was in a position to dictate to the PNG government what to do with regard to Panguna and Bougainville, given that CRA/Rio Tinto was the majority shareholder in BCL with the PNG government being only a minority partner, and Rio Tinto's overall financial influence in PNG. He posited that "Rio Tinto exerted and exercised significant control over the government's actions on Bougainville [...]. BCL gave the orders and the government executed them with the company's assistance and cooperation".²⁴ In short, "[t]he government of PNG followed Rio Tinto's instructions and carried out its requests".²⁵ Somare explained that "BCL pressured the PNG government to ensure that the government would do everything in its power to reopen the mine by threatening to pull all of its investments out of the country entirely".²⁶ He is of the opinion that the tensions around the Panguna mine "would never have led to a civil war without Rio Tinto and its command that the government take all necessary action to reopen the mine".²⁷ This view was shared by John Momis, a leading politician in PNG and Bougainville for decades and Bougainville's President during 2010–20. In his declaration, in the same court case, he said: "At all times, Rio Tinto, through BCL, controlled the government's actions on Bougainville [...] whenever government action was called for on Bougainville, BCL was the one that requested it. PNG took its directions from BCL's management".²⁸

These statements have to be qualified. The government was not only a minority partner of Rio Tinto in a business endeavour, but it was also the supreme decision-making institution of a sovereign state and as such, had the powers to regulate and control business activities and to take its own political decisions. Presenting it as a puppet of Rio Tinto over-simplifies more complicated relationships and interactions motivated by specific political interests — not least the desire to downplay the agency of PNG's political leadership of the time. The GoPNG had its own reasons to go to war: "concerns about the economic impacts of [a] permanent mine closure and the potential consequences of the rebellion for investor confidence and national cohesion ultimately meant that a military solution was called for by the national political elite".²⁹ Rather than presenting the PNG leadership as merely a victim of Rio Tinto's pressure, the

²³ Matthew G. Allen, *Resource Extraction and Contentious States: Mining and the Politics of Scale in the Pacific Islands* (Singapore: Palgrave Pivot, 2018), p. 38.

²⁴ Michael Somare, "Declaration of Sir Michael Somare, Former Prime Minister of Papua New Guinea," *Alexis Holyweek Sarei, et al. v. Rio Tinto Plc*, Case No. 00-11695 MMM AIJx., (United States District Court: Central District of California, 2001), p. 100.

²⁵ Somare, "Declaration," p. 102.

²⁶ *Ibid.*, p. 101.

²⁷ *Ibid.*, p. 103.

²⁸ John Momis, "Declaration of John Momis, Governor of North Solomons Province of Bougainville," *Alexis Holyweek Sarei et al. v. Rio Tinto*, Case No. 00-11695 MMM AIJx., (United States District Court: Central District of California, 2001), p. 108.

²⁹ Allen, *Resource Extraction*, p. 48.

GoPNG should not be denied agency; it is more plausible that both sides had an interest in re-opening Panguna — by all means, including the use of force.

After protesters had destroyed power pylons and other company installations and the mine's operations had to be suspended temporarily in late November/early December 1988, the BCL management demanded the PNG government send in riot mobile squad units, well aware of the mobile squads reputation: they were notorious for their heavy-handed, excessively violent approach to any kind of civil unrest or disobedient behaviour.³⁰ The GoPNG sent two heavily-armed mobile squads (approximately four hundred officers) of its Royal Papua New Guinea Constabulary (RPNGC), but initially confined their task to protection of the mine site, albeit under orders to shoot and kill saboteurs.³¹ This was criticised by BCL as not being enough. BCL had expected a more active approach.³² Soon enough the riot squads went on a rampage. They “burnt entire villages, innocent of any involvement, and they beat up young Bougainvilleans rounded up from suspected BRA villages”.³³ Matthew Allen talks about “the brutal campaign of terror waged by PNG security forces in early 1989”,³⁴ and Anthony Regan, a scholar who is arguably more knowledgeable about Bougainville's contemporary history than anybody else, is convinced that this heavy-handed approach was the cause of the escalation of the conflict into a full-blown war:

With the benefit of hindsight, it is clear that the riot-squad deployment was a disastrous move. [...] [T]he riot squads employed their standard tactic of using violence to intimidate communities [...] police reprisals were directed indiscriminately at communities in and around the mine lease areas [...]. Within weeks of being deployed, the almost entirely non-Bougainvillean riot squads became seen as the enemy by many.³⁵

The UN Special Rapporteur on extrajudicial, summary, or arbitrary executions found that the “Police Riot Squad [...] acted by committing indiscriminate violence [...]. The methods used included the burning of villages, beatings, lootings and on occasion even rape and murder”.³⁶

³⁰ Kristian Lasslett, “Winning hearts and mines. The Bougainville Crisis, 1988–90,” in *Contemporary State Terrorism: Theory and Practice*, Richard Jackson, Eamon Murphy, and Scott Poynting, eds (Hoboken, NJ: Taylor and Francis, 2009), pp. 141–62, especially p. 148; Lasslett, *State Crime*, p. 77; Regan, *Light Intervention*, p. 20. According to a BCL official: “Basically the riot squads are thugs [...]. Usually they were from other provinces, other tribes, who would come in and see it as an opportunity to come and beat up a few of these Bougainvilleans” (quoted from Lasslett, *State Crime*, p. 85).

³¹ Howard, *Mining*, p. 88.

³² Lasslett, *State Crime*, p. 79.

³³ Yauka Aluamba Liria, *Bougainville Campaign Diary* (Eltham North, Vic.: Indra Publishing, 1993), p. 65. Numerous incidents of human rights violations and ruthless behaviour of the RPNGC are documented in Marilyn Taleo Havini, *A Compilation of Human Rights Abuses against the People of Bougainville: 1989–95*, Vol I (Ersineville, NSW: Bougainville Freedom Movement, 1995) and Marilyn Taleo Havini, *A Compilation of Human Rights Abuses against the People of Bougainville: 1989–96*, Vol 2, (Ersineville, NSW: Bougainville Freedom Movement, 1996).

³⁴ Allen, *Resource Extraction*, p. 38.

³⁵ Anthony J. Regan, “The Bougainville Conflict: Political and Economic Agendas,” in *The Political Economy of Armed Conflict: Beyond Greed and Grievance*, Karen Ballentine and Jake Sherman, eds (Boulder, Co: Lynne Rienner Publishers, 2003), pp. 133–66, especially p. 144.

³⁶ United Nations, *Report by the Special Rapporteur on his mission to Papua New Guinea island of Bougainville from 23 to 28 October 1995*, E/CN.4/1996/4 Add. 2 (United Nations: Economic and Social Council, 1996), <http://hrlibrary.umn.edu/commission/country52/4-add2.htm>, p. 5 [28].

The mobile squad units were actively supported by BCL. A senior BCL manager remembered in 2006: “There were absolutely no arrangements for accommodation, no arrangements for messing, or transportation, so it was expected that the company was going to feed, and house, and transport these guys”.³⁷ The company actually provided transport, housing, and food for them. The same happened when the PNG military came to Bougainville in March 1989, after it had become clear that the RPNGC was incapable of suppressing the rebellion. John Momis posits that the deployment of the PNG military also happened upon BCL’s request: “In fact, it was BCL that requested the aid of its partner, PNG, to deploy defence forces to suppress the uprising and reopen the mine”.³⁸ Again, it was the company that filled the logistic gaps of the Papua New Guinea Defence Force (PNGDF) units sent to Bougainville. Hence, when an all-out war began on the island, the company was firmly on the side of one of the warring parties and was substantially contributing to its fighting capacities.

To summarise: BCL’s attitude and activities during the crisis years of 1988 and 1989 considerably contributed to the escalation of the crisis and the eventual outbreak of the war.

BCL’s Key Role In The First Stages Of The War

Eyewitnesses from both the company and the military stress the importance of the support BCL gave to the PNGDF. A BCL official explained in an interview in 2006:

The reality was, “we can’t do our thing because we haven’t got vehicles”. So we’d give them vehicles. “Ah, we haven’t got radios so we can’t communicate. So we’d give them two way radios. “Ah, we can’t support our men over here, we haven’t got enough provisions”. So we’d put them in the mess, we’d feed them in the mess, we’d provide them with accommodation. We did everything they asked of us to make their life more comfortable, and better able to manage through, with transport, communications, provisions, whatever, fuel. You know we gave them everything, because as far as we saw it we were hoping that they were going to solve the situation, so we could start operating again. So we supported them every way we could.”³⁹

Funds for this support must have been approved by Rio Tinto/CRA headquarters in London and Melbourne.

Brigadier-General Gerry Singirok, who was involved in the Bougainville war as Major and Operations Manager from July 1989 onwards, and who later became supreme commander of the PNGDF, posited that the PNGDF acted as the company’s private security force, ordered by BCL to take action to re-open the Panguna mine by any means necessary. He explained:

In addition to demanding PNGDF involvement, BCL actively participated in the combat efforts to quell the uprising and reopen the mine. For example, BCL provided the infrastructure and bases for the operations, including the command post, battalion headquarters, essential high-speed and mobile communications, and troop barracks. BCL also provided the logistical support to store and issue combat supplies including ammunition and gear. BCL provided food and rations. BCL quartered the troops. BCL provided medical facilities. BCL provided troop transport vehicles for the patrol and combat operations. BCL provided the fuel (petrol and diesel) for the operations.

³⁷ Quoted from Lasslett, “Winning Hearts,” p. 149. Kristian Lasslett managed to conduct more than forty interviews with former officials from BCL and from Australian and PNG state institutions during field research in 2006 and 2007. He extensively quotes from these interviews in Lasslett, *State Crime*, and in other publications. See Lasslett, “Winning Hearts”; Kristian Lasslett, “State Crime by Proxy. Australia and the Bougainville Conflict,” *British Journal of Criminology*, Vol 52, 4 (2012), pp. 705–23.

³⁸ Momis, *Declaration*, p. 109.

³⁹ Quoted from Lasslett, *State Crime*, p. 128.

BCL also provided one helicopter which was used as a gunship, the heli-pad and a few helicopter pilots to assist in the combat operations, field reconnaissance, casualty evacuation, troop insertion and extraction, and supply of critical supplies (e.g. ammunition) to troops in the fields around Panguna.⁴⁰

Yauko Aluambo Liria, who was based as a PNGDF Intelligence Officer at Panguna from May to September 1989, in his Declaration in the above-mentioned court case describes in detail how BCL “was actively involved in supporting and/or facilitating the PNGDF’s and RPNGC’s military operations against the Bougainville People”.⁴¹ He explains that the tactical headquarters of the PNGDF Task Force in Panguna were located in a BCL building where the twenty to thirty PNGDF personnel were “provided with BCL telephone services for speedy communications”; this was “important for the military operations because it provided reliable telephone and facsimile communications to army headquarters at Murray Barracks in Port Moresby”.⁴² He goes on to mention that BCL buildings were used to accommodate troops and to store combat supplies, including ammunition, that three BCL messes were made available for PNGDF, that “many” BCL vehicles were used for mobile patrols “and also for the combat operations against the Bougainville rebels”,⁴³ and that BCL supplied fuel for vehicles. Furthermore, sick and wounded PNGDF soldiers were treated at BCL’s Panguna hospital.

Liria states that BCL helicopters were used by the PNGDF for:

field reconnaissance trips, casualty evacuation, troop insertion into combat zones, troop extraction from field to Panguna, and supply of combat critical supplies (e.g. ammunition) to troops in the fields around Panguna. BCL helicopters were flown by BCL pilots, using the BCL Helipad below camp 10 (at Panguna) and supported by staff of the helicopter division who were all BCL workers or companies contracted by BCL.⁴⁴

In his published Bougainville Campaign Diary, Liria gives numerous examples of BCL’s support to the PNGDF and combat operations.⁴⁵ All the major military operations between March 1989, the time when the PNGDF arrived on Bougainville, and March 1990, the time when the PNGDF and BCL withdrew from the island, were supported by BCL.

The PNGDF did not pay for any of the services provided by BCL. Liria is of the opinion that the “BCL accommodation and food significantly boosted the troop’s morale”,⁴⁶ and he is convinced that “the PNGDF operations at Panguna would have had significant constraints without BCL’s active participation. From an operational perspective, BCL’s involvement made all of the difference”.⁴⁷ And he concludes “that

⁴⁰ Quoted from Lasslett, *State Crime*, p. 128. Australia also supplied Iroquois helicopters which were used as gunships by the PNGDF. The helicopters were much feared by the Bougainvilleans. Helicopters, fitted with machine-guns and grenade launchers, strafed villages, shot at people working in their food gardens or on the run. They were also used to dump the bodies of (alleged) BRA members over the open sea. See United Nations, *Report by the Special Rapporteur on his mission*, pp. 8 [50], p. 12 [73]. Australia provided military aid to PNG throughout the war and supplied significant logistic support to the PNGDF fighting on Bougainville. For more discussion, see Braithwaite, et al., *Reconciliation*, p. 30.

⁴¹ Liria, *Bougainville*, p. 119.

⁴² *Ibid.*

⁴³ *Ibid.*, p. 121.

⁴⁴ *Ibid.*, p. 122.

⁴⁵ See Liria, *Bougainville*, pp. 50, 53, 57, 106, 113, 130.

⁴⁶ *Ibid.*, p. 120.

⁴⁷ *Ibid.*, p. 123.

the logistical assistance provided by BCL management at Panguna to the military were significant for combat support. They helped in significantly raising the combat power of the PNG military in its operations against the Bougainville rebels”.⁴⁸

Sam Kauona, the Supreme Commander of the BRA, confirmed this from the other side of the front, saying “when we were fighting during that time around the mine all the Bougainville Copper Ltd. vehicles were being used by the security forces”.⁴⁹

When it became clear that the war against the BRA would not be won any time soon and that there was a real chance that the rebels might attack and conquer the mine, BCL management decided in February 1990 to withdraw from Panguna. All non-Bougainville staff (expatriates and PNG citizens from other parts of PNG) were evacuated. This was followed by the complete withdrawal of the PNGDF and all other PNG security forces from Bougainville, which was completed on 16 March 1990. BCL staff were evacuated hastily, and the mine site was abandoned. By mid-March 1990, the last BCL personnel had left. The mine, which had previously been closed due to unrest for shorter periods in 1988 and 1989, was now closed for good.⁵⁰ The BRA occupied the Panguna mine shortly after and established its headquarters at the mine site. The mine has not been reopened to this day, thirty years later.

Although BCL after its withdrawal could not support the fighting forces of the PNGDF on the ground any longer, the company’s involvement in the war nevertheless continued from a distance. It supported the total blockade of the island which was imposed by the GoPNG on 7 May 1990. As a response, the political arm of the BRA — the Bougainville Interim Government (BIG) — unilaterally declared Bougainville’s independence on 17 May 1990.

The blockade caused tremendous hardship for the people on the ground. “What gradually became apparent was that the most devastating aspect of the blockade for the lives of ordinary Bougainvilleans was that it included a blockade of medical supplies”.⁵¹ Due to lack of medicines, vaccines and other medical supplies, and the breakdown of the health system in general, many people died from preventable diseases. Women died in childbirth, babies and young children died from easily treatable illnesses. Malnutrition claimed the lives of infants and elderly people in particular. Although no exact figures are available, it is certain that many thousands of people died because of the blockade. According to the Red Cross, the blockade caused the deaths of more than two thousand children during their first two years of life.⁵² The UN Special Rapporteur on extrajudicial, summary, or arbitrary executions found that the:

breakdown of health services, arising out of the conflict, the scarcity of medicines, due to the blockade and the withdrawal of organizations like Medecins sans frontieres have seriously jeopardized the right

⁴⁸ *Ibid.*, p. 124.

⁴⁹ Quoted from Brian Thomson, “Dateline: Blood and treasure – the transcript,” *Papua New Guinea Mine Watch*, 27 June 2011, p. 3.

⁵⁰ The precise date of the mine shutdown is somewhat contested. According to May, the mine was finally “mothballed” in December 1989. See Ron J. May, *The changing role of the military in Papua New Guinea* (Canberra: Strategic and Defence Studies Centre, ANU, 1993), p. 60. While Howard cites 7 January 1990 as the key date, see Howard, *Mining*, p. 96. The shutdown of the mine saw around two thousand workers laid off, leaving only a skeleton staff of some three hundred. The remaining staff had left entirely by mid-March 1990.

⁵¹ Braithwaite, et al., *Reconciliation*, p. 27.

⁵² EJOLT, *The Rio Tinto Case in Papua New Guinea: Fact Sheet 40*, 29 July 2015, <http://www.ejolt.org/wordpress/wp-content/uploads/2015/07/fs-40.pdf>, p. 2.

to health of the civilian population of Bougainville. In this context, the situation of children is especially difficult as they are deprived of preventive as well as primary medical care.⁵³

BCL, according to the Declaration of Michael Somare, demanded that the blockade was to be maintained until it had “starved the bastards out”.⁵⁴ This “starving the bastards out” quote is also confirmed by John Momis.⁵⁵ After the return of the PNGDF, first to the neighbouring island of Buka in September 1990, and then to Bougainville in April 1991, the blockade remained in place for the BRA-controlled areas.

Company Complicity In Human Rights Violations

There is rich documentation of the broad scope, extent, and intensity of the human rights violations, war crimes, and mass atrocity crimes committed by the security forces of PNG during the war on Bougainville.⁵⁶ These included extrajudicial killings and executions, torture, rape and other forms of sexual abuse, harassment and beatings (including being slashed with knives, having fingers or toes cut off, being burned with lighted cigarettes), “disappearances”, arbitrary arrests and unlawful detention, wanton destruction of property and pillage.⁵⁷

The PNGDF committed numerous massacres of civilians.⁵⁸ “It became a routine tactic for both the police and the military in Bougainville to set fire to houses during patrols. Thousands of houses were razed”.⁵⁹ The PNGDF were only initially more disciplined than the RPNGC, but soon “became even more brutal in its treatment of civilians and villages suspected of supporting the BRA as units took on casualties”.⁶⁰ The PNGDF’s “behavior became worse than that of the riot squads, and appalling abuses of human rights occurred”.⁶¹ The UN Special Rapporteur reported that the PNGDF’s tactics “included widespread looting, burning of homesteads, gardens and

⁵³ United Nations, *Report by the Special Rapporteur on his mission*, p. 10 [57]. Numerous stories of the devastating effects of the blockade can be found in Marilyn Taleo Havini and Josephine Tankunani Sirivi, eds, ... *as Mothers of the Land. The birth of the Bougainville Women for Peace and Freedom* (Canberra: Pandanus Books, 2004) and its online-addenda.

⁵⁴ Quoted from Somare, *Declaration*, p. 102.

⁵⁵ Momis, *Declaration*, p. 109.

⁵⁶ The BRA also committed serious human rights violations. But this will not be discussed here because the focus is on Rio Tinto’s and BCL’s role during the war. They were aligned with the PNG security forces, while the BRA was their enemy.

⁵⁷ See the detailed documentation in Amnesty International, *Papua New Guinea: Human Rights Violations on Bougainville, 1989–1990*, Amnesty International Secretariat, AI Index: ASA 34/05/90 (London: Amnesty International, 1990); Amnesty International, *Under the Barrel of a Gun: Bougainville 1991 to 1993*, Amnesty International Secretariat, AI Index: ASA 34/05/93 (London: Amnesty International, 1993); Amnesty International, *Papua New Guinea. Bougainville: Political Killings and ‘Disappearances’ Continue*, Amnesty International Secretariat, AI Index: ASA 34/02/95 (London: Amnesty International, 1995); Amnesty International, *Papua New Guinea: An Agenda for Human Rights*, Amnesty International Secretariat, AI Index: ASA 34/01/95 (London: Amnesty International, 1995); Amnesty International, *Bougainville: The Forgotten Human Rights Tragedy*, Amnesty International Secretariat, AI Index: ASA 34/01/97 (London: Amnesty International, 1997). Havini, *Compilation*, and Havini, *Compilation*, Vol 2; Moses Havini, “Human Rights violations and community disruptions,” in Ron J. May and Matthew Spriggs, eds, *The Bougainville Crisis* (Bathurst, NSW: Crawford House Press, 1990), pp. 31–7.

⁵⁸ These massacres are documented in the various Amnesty International reports and also in Havini, *Compilation*, and Havini, *Compilation*, Vol 2.

⁵⁹ Braithwaite, et al., *Reconciliation*, p. 25.

⁶⁰ Regan, *Light Intervention*, p. 21.

⁶¹ Regan, *Bougainville Conflict*, p. 145.

entire villages, as well as rape and killings”.⁶² He gave concrete examples of civilians “killed in Densiro village during a raid [...], killed while on their way to a peace ceremony [...] burnt alive on the beach [...] tortured to death”.⁶³ Systematic mass rapes were a particularly terrible feature of the war; thousands of Bougainville women were raped by PNG security forces.⁶⁴

The “care centres” — internment camps where people were forced to live under the control of the PNGDF after they had been forcibly removed from their villages, or where they had moved in order to avoid being caught between the frontlines — were sites of continuous human rights violations.⁶⁵ In particular, women were frequently the victims of (mass) rape and other forms of sexual abuse in the care centres. Beatings, forced labour, unlawful killings and “disappearances” were common in the centres.⁶⁶ The UN Special Rapporteur reported that “assaults, rape, killing and torture have been committed [...] against those who were living in care centres”.⁶⁷

Amnesty International identified “a pattern” of ongoing and systematic serious human rights violations, and the United Nations Special Rapporteur confirmed a pattern of unlawful killings.⁶⁸

The security forces operated totally free from public scrutiny. Journalists and human rights monitors or other international observers were not allowed onto the island, nor were humanitarian and human rights NGOs. Humanitarian assistance or neutral reporting was thus prevented. “In effect the security forces have been shielded from international scrutiny of and accountability for their human rights record and this has contributed to the climate of impunity which has apparently prevailed throughout the armed conflict”.⁶⁹ Amnesty International was “concerned that the long-standing lack of human rights investigation has resulted in a climate of impunity for members of the security forces responsible for human rights violations on Bougainville”.⁷⁰ Perpetrators of human rights violations were sure that they would not be prosecuted. The PNG political and military leadership showed no interest in preventing or stopping the gross and systematic human rights violations and mass atrocity crimes committed by the security forces.⁷¹ There were no investigations of human rights violations.

It can be argued that Rio Tinto/BCL shares responsibility for the human rights violations and crimes committed by the security forces. The company was involved

⁶² United Nations, *Report by the Special Rapporteur on his mission*, p. 6 [33].

⁶³ United Nations, *Report by the Special Rapporteur. Extrajudicial, summary or arbitrary executions*, E/CN.4/1996/4 (United Nations, 1996), p. 89 [376].

⁶⁴ Braithwaite, et al., *Reconciliation*; Ruby Miringka, “Community Developments and BOCBIHP,” in Havini and Sirivi, ... *as Mothers* Online-addenda (no page numbers); Scholastica Raren Miriori, “Rape, a Weapon of War,” in Havini and Sirivi, ... *as Mothers*, pp. 63–5; Daphne Zale, “Human Rights abuses and survival behind the blockade,” in Havini and Sirivi, ... *as Mothers*, pp. 47–50.

⁶⁵ The first “care centres” were established as early as July 1989. For more, see Braithwaite, et al., *Reconciliation*, p. 24. At the height of the war around 68,000 internally displaced people (out of a total population of about 300,000) lived in forty nine PNGDF-controlled “care centres”.

⁶⁶ Amnesty International, *Bougainville*, p. 24.

⁶⁷ United Nations, *Report by the Special Rapporteur on his mission* (United Nations, 1996), pp. 8 [42], 9 [53].

⁶⁸ Amnesty International, *Bougainville*, p. 12; United Nations, *Report by the Special Rapporteur on his mission*; United Nations, *Report by the Special Rapporteur. Extrajudicial, summary or arbitrary executions*.

⁶⁹ Amnesty International, *Under the Barrel*, no page.

⁷⁰ Amnesty International, *Papua New Guinea*, p. 3.

⁷¹ Amnesty International, *Bougainville*, p.9; Regan, “Bougainville Conflict,” p. 146.

indirectly through its various forms of support for the war effort, the pressure it put on the PNG government to start the war, and the activities that caused the war in the first place. Rio Tinto/BCL was also directly involved, in particular through the provision of company helicopters and pilots even after reports of war crimes had become public. Colonel Liria's testimony is very clear in this regard:

Some of the BCL staff who were directly involved in the military operations were helicopter pilots and BCL Panguna hospital staff. BCL helicopter staff were involved in all aspects of field operations and support, including supply of ammunition, combat operations, casualty evacuation (of troops) by helicopters and their treatment of sick and wounded troops at Panguna.⁷²

Amnesty International documented numerous raids on villages during the time BCL was still on the ground and provided vehicles and other support for the PNGDF to conduct such raids. These raids included harassment and intimidation of civilians, beatings, sexual abuse and rape, house burning, random and excessive lethal force.⁷³ Amnesty International also documented many cases of extrajudicial executions, ill-treatment and torture of individual Bougainvilleans for the time period when BCL was still present in Panguna.⁷⁴ Several of the incidents described by Amnesty International took place in Panguna, presumably on BCL premises and/or under the eyes of and with the knowledge of BCL personnel.

The extent to which Rio Tinto/BCL had knowledge of and was also aiding and abetting the commission of war crimes, crimes against humanity, other inhumane acts and gross human rights violations, or was even directly involved in committing these acts, warrants further investigation.

BCL's And Rio Tinto's Post-War Attitude: Neglect And Denial

Rio Tinto and BCL so far have refused to publicly acknowledge their role in the war. They shy away from taking on the responsibility and engaging in truth-telling and reconciliation processes. Many Bougainvilleans, however, are not prepared to forget the past. The memory of the hardships caused by the mine and the war, and Rio Tinto's and BCL's responsibility for those hardships, is very much alive in Bougainville today.

When a group of Bougainvilleans initiated a class action lawsuit against Rio Tinto in September 2000 in the US with the support of law firm Hagens Berman Sobol Shapiro (HBSS), Rio Tinto did all it could to prevent the case from being heard. The plaintiffs put forward their case under the Alien Tort Claims Act (ATCA), a US act which permits non-US citizens to present a civil claim in a US court for actions that did not take place in the US when, allegedly, the law of nations has been breached. The plaintiffs (around twenty), led by Alexis Sarei, a former member of parliament in PNG and a grand figure of Bougainville politics, came from various regions of Bougainville and represented "a cross-section of the Bougainville community".⁷⁵ They focussed on the two issues of environmental damages and human rights abuses,⁷⁶ raising numerous claims regarding: crimes against humanity resulting from the blockade; war crimes in the form of murder and torture; violations of the rights to life, health, and security of the person resulting from the environmental damage caused by the mine; racial discrimination against black

⁷² Yauka Aluamba Liria, "Declaration of Yauka Aluamba Liria," *Alexis Holyweek Sarei, et al. v. Rio Tinto*, Case No. 00-11695 MMM AIJx., (United States District Court: Central District of California, 2001), pp. 122–3.

⁷³ Amnesty International, *Human Rights Violations*, p. 33. For examples see pp. 34–5.

⁷⁴ Amnesty International, *Human Rights Violations*, pp. 22–33.

⁷⁵ Allen, *Resource Extraction*, p.69.

⁷⁶ *Ibid.*

workers; cruel, degrading, and inhuman treatment; violation of international environmental rights; killing, serious bodily harm, and deliberate infliction of conditions of starvation, all amounting to genocide; and “a consistent pattern of gross violations of human rights resulting from the destruction of the environment, racial discrimination, and PNG military activities”.⁷⁷ Plaintiffs alleged that Rio Tinto was complicit in war crimes and crimes against humanity committed by the PNG security forces, with Rio Tinto management in London and Melbourne as well as at BCL headquarters involved in decision-making, planning, and execution of military operations.

Rio Tinto moved to dismiss the complaint, giving the following reasons: the court lacked subject matter jurisdiction; the case raised questions that are nonjusticiable because they involved acts of state and political issues; and because ruling on them would breach standards of international comity. Rio Tinto even argued that the litigation would negatively affect the ongoing peace process. The GoPNG followed this line of argument, raising its own objections to the litigation with the support of the US State Department, which issued a statement opposing the court case because it could negatively affect USA’s foreign relations. It argued that “continued adjudication of the claims [...] would risk a potentially serious adverse impact on the peace process, and hence on the conduct of our foreign relations”; furthermore, it would “sweep away the basis of the peace agreement”.⁷⁸

This view, however, was strongly rejected by prominent PNG and Bougainville politicians who were directly involved in the peace process in leading positions. John Momis, who back then was Bougainville Governor and chief negotiator on the Bougainville side, declared that the peace negotiations “were not affected (and have never been affected) by the existence of the litigation”.⁸⁰ This was confirmed by Michael Somare.⁸¹ In 2002, the US District Court, Northern District of California, nevertheless rejected the case, arguing, *inter alia*, that the complaint was about non-justiciable political questions. Over the coming decade the case went back and forth between the US Court of Appeals and the district court, with the controversy being over the question whether US courts did or did not have jurisdiction over the case. Hence the litigation became entangled for years in preliminary legal issues. The case was finally dismissed for good in June 2013, with the main reason given the extraterritoriality of the case (non-US residents against a non-US company).⁸² This

⁷⁷ US Court of Appeals for the Ninth Circuit, 11 October 2007, *Alexis Holyweek Sarei et al. v. Rio Tinto*, US App LEXIS 25279 (United States District Court: Central District of California, 2008), 16 December 2008, Filed, p. 2. See also, US Court of Appeals for the Ninth Circuit, 21 September 2010, *Alexis Holyweek Sarei et al. v. Rio Tinto*, No 02-56256, DC No 2:00-cv-MMM-MAN, 25 October 2011, Filed, pp. 19332, 19365.

⁷⁸ Department of State, “Statement of Interest of the United States,” *Alexis Holyweek Sarei, et al. v. Rio Tinto* (The Legal Adviser: Department of the State Washington, 31 October 2001), p. 005. Both the US State Department and the PNG government changed their position in 2009, then arguing that foreign policy concerns would no longer hamper the court case from going ahead, see US court of Appeals 2010, p. 19356.

⁸⁰ Momis, *Declaration*, p. 107.

⁸¹ Somare, *Declaration*, p. 104.

⁸² The dismissal came after the US Supreme Court’s decision in the *Kiobel v. Shell* case in 2013, which proved to be a turning point in extraterritorial human rights claims in the US. Up to then, the ATCA had provided a unique possibility for victims of human rights violation from all over the world to take cases to US courts. The *Kiobel* decision restricted the scope of the Act considerably, so that it has become much more difficult to file a case against a company in a US court. Among the cases pending at the time of the *Kiobel* decision which were dismissed by lower US courts was also the *Sarei v. Rio Tinto* case.

meant that Rio Tinto was able to escape liability based on technical legal arguments, the actual substantive case was never really explored before the courts and Rio Tinto did not have to defend itself against the claims.

Conclusions And Prospects

The war on Bougainville was accompanied by severe human rights violations and numerous mass atrocity crimes. A causal chain can be identified between Rio Tinto's mine, its negative environmental and social effects, conflict, war, and these crimes. Rio Tinto/BCL played a key role in conflict escalation, which led to violence and finally to war. The company management supported a "solution" based on the use of force, which included the risk of commitment of gross human rights violations.

BCL directly supported the PNG security forces in the first phases of the war, by providing company infrastructure, personnel, etc. for the conduct of military operations, which included the commitment of war crimes. It is not clear whether the company personnel were directly involved or company assets were directly used for the commission of such crimes. But it is probable, and it warrants further investigation. Even after the company abandoned the Panguna mine and had left Bougainville, BCL in the later stages of the war, sided with the PNG security forces and endorsed their way of operating, in particular the blockade.

Rio Tinto/BCL will have to take its share of responsibility for the damage done and the wrongs committed. It will have to show willingness to make reparations and to participate in environmental rehabilitation. It will have to acknowledge its status as a party to the conflict. This first and foremost means that it will have to participate in traditional Bougainville conflict resolution, accepting the obligations that come with it. Participation in local forms of reconciliation could even be an alternative to legal proceedings in the formal judicial system, or it could supplement them. Customary reconciliations can be linked to concepts of restorative justice, and in tandem, can provide avenues for peacebuilding. This combination, as well as the inclusion of external actors, such as multinational mining companies in customary reconciliations poses major challenges, but it can be done — and it is expected by the local communities.⁸³ It involves truth-telling, the search for justice, apology, asking for and granting forgiveness. For many people on the ground, such traditional local reconciliation enjoys more legitimacy and is more important than legal proceedings. Rio Tinto/BCL's participation in customary reconciliation is imperative for the finalisation of the peace process. Without such reconciliation, according to Bougainville traditional understandings, the war would not be over.⁸⁴

In recent years, there have been some attempts to include BCL in the reconciliation. In fact, quite a lot of thought and effort has been put into a "*bel kol*" process. *Bel kol* (cooling of the heart) is the first symbolic phase in a longer reconciliation process, a gesture of willingness to start reconciliation. Various dates for a *bel kol* ceremony have

⁸³ Volker Boege, "Reconciliations (Melanesian style) and transitional justice," *Global Change, Peace & Security*, Vol 31, 2 (2019), pp. 139–57; Kylie McKenna, *Corporate Social Responsibility and Natural Resource Conflict* (Abingdon and New York: Routledge, 2016).

⁸⁴ Volker Boege, "Between kastom, church and commercialization: Reconciliations on Bougainville as a form of 'transitional justice'?" in *Civil Society and Transitional Justice in Asia and the Pacific*, Lia Kent, Joanne Wallis, Claire Cronin, eds (Acton, ACT: ANU Press, 2019), pp. 183–202. This also applies to other outside actors involved in the war: Australia, Solomon Islands, the PNG government. Bougainvilleans over the last years have had many reconciliations amongst themselves, but reconciliations with those outside actors are still outstanding.

been announced over the years, but the ceremony had to be postponed again and again.⁸⁵ Stakeholders could not agree on the content, form, and meaning of *bel kol*. Rio Tinto so far refuses to apologise. Glynn Cochrane observes:

What Rio Tinto also needed to do, but did not, was to say “sorry” about the suffering and damage caused by the conflict in a public, locally meaningful, way [...] in a peacemaking ritual signifying joint participation in an expression of regret for the past [...].⁸⁶

Persuading Rio Tinto to say “sorry”, to join reconciliation, rehabilitation, and restorative justice processes might take considerable pressure and lobbying. A number of activities have been initiated in this regard, both in the Bougainville context and on the international stage. Internationally, the main drivers have been the London Mining Network and Human Rights Law Centre (HRLC) (Melbourne), and in Bougainville, the Catholic church. The Panguna mine/Rio Tinto legacy issue is likely to gain prominence in the near future, given that all political factions, who otherwise are deeply divided with regard to the issue of mining and the re-opening of the Panguna mine, are united in their call for an environmental clean-up and for Rio Tinto to be held accountable. The general view on Bougainville is that Rio Tinto has an obligation to make a major contribution.

Rio Tinto has so far adopted the standpoint that because they no longer have shares in BCL, they have nothing to do with the Panguna mine legacy. However, Rio Tinto might find it difficult to uphold this position. The company has come under immense pressure, both publicly and from its shareholders and investors, since it destroyed a 46,000-year-old Aboriginal sacred site in Western Australia (Juukan Gorge) in May 2020 to expand one of its iron ore mines. Rio Tinto was compelled to apologise for this act. Rio Tinto is accused of similar mistreatment of communities affected by its operations in other parts of the world, such as in West Papua/Indonesia (Freeport Grasberg mine), Guinea (CBG Bauxite Mine), Mongolia (Oyu Tolgoi), Madagascar (Qit Minerals Madagascar), Namibia (Rossing Uranium mine) — and in Bougainville.⁸⁷ It is to be expected that as a consequence of the Juukan Gorge disaster, Rio Tinto will become more sensitive with regard to its community relations and legacy issues, and this may also lead to a change in the way it deals with its Bougainville legacy. There are already some indications of a change of tack. On 29 September 2020, HRLC filed a complaint against Rio Tinto with the National Contact Point for the OECD Guidelines on Business and Human Rights in Australia on behalf of more than 150 members of mine-affected communities.⁸⁸ The complaint alleges that Rio Tinto’s failure to address the Panguna legacy “breaches human rights and environmental standards set out in the OECD Guidelines, a leading international standard on responsible business conduct”.⁸⁹ In response, Rio Tinto

⁸⁵ Kylie McKenna, *Mining and Reconciliation: Negotiating the Future of the Panguna Mine in Bougainville*, SSGM In Brief 2015/35.

⁸⁶ Glynn Cochrane, *Anthropology in the Mining Industry: Community Relations after Bougainville’s Civil War* (Cham: Springer, 2017), p. 30.

⁸⁷ For brief case studies see London Mining Network, *Cut and Run: How Britain’s top two mining companies have wrecked ecosystems without being held to account* (London Mining Network, 2020).

⁸⁸ The Australian OECD National Contact Point is based in the Australian Government’s Department of Treasury. It can investigate complaints made against Australian companies operating overseas, to issue findings and recommend actions if breaches of the OECD Guidelines have occurred.

⁸⁹ Human Rights Law Centre, 29 September 2020, <https://www.hrlc.org.au/news/2020/9/28/bougainville-communities-file-human-rights-complaint-rio-tinto> The complaint can be found at <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5f71485babd4ac5b16bff4d9/1601259616769/OECD+complaint+Bougainville+Final.pdf>

announced that it was ready to talk — something it had completely rejected in previous years.⁹⁰

Rio Tinto is signatory to a variety of voluntary human rights, mining, and business covenants, such as the OECD Guidelines for Multinational Enterprises, and is committed — on paper — to impressive corporate social responsibility standards. Yet the Juukan Gorge and Panguna disasters demonstrate that voluntary commitments and measures are not enough to overcome the culture of corporate impunity. There is a need for stricter legal regulations enabling multinationals to be held to account for transnational corporate crimes and human rights abuses. In August 2020, the Australian Law Reform Commission tabled a report in the Australian Parliament on corporate criminal responsibility, which includes proposals for strengthening Australia's corporate criminal laws with regard to human rights abuses committed by Australian companies overseas.⁹¹ Obstacles to investigating and prosecuting companies in Australia for serious human rights violations committed overseas must be removed. Accountability for transnational corporate human rights abuses has to be strengthened, and overseas communities affected by the activities of transnational corporations operating out of Australia must be given possibilities to pursue justice in Australia. Moreover, it is vital that mandatory human rights for due diligence and reporting obligations for companies operating in fragile locations be established.⁹²

Additionally, companies have to be open to participation in customary justice and reconciliation processes in places where these processes enjoy superior legitimacy with the local Indigenous communities affected by mining operations, as is clearly the case with Panguna.

The memory of the war and the war crimes are still very much alive in Bougainville. People aspire to make their experiences known to a wider public and to have them acknowledged. It could be worthwhile to collect stories from community members about the war, about crimes committed during the war, and BCL's involvement. So far, there is some anecdotal evidence “out there” [the stories told in the families, in the villages], but there is no comprehensive collection and no written documentation. Such stories could complement the documentation contained in the accounts of Amnesty International, the UN, and other organisations on which this article is based. They would be an additional powerful tool in the quest to hold Rio Tinto to account.

Rio Tinto has a case to answer regarding its history on Bougainville. As the then president of Bougainville, John Momis, declared in 2016, by its own corporate social responsibility and sustainable development standards “Rio Tinto cannot realistically think it can just walk away from its responsibilities at Panguna”.⁹³

⁹⁰ Rio Tinto Statement, 28 September 2020. See also Reuters, <https://au.investing.com/news/stock-market-news/rio-tinto-changes-tack-ready-for-talks-over-bougainville-mine-2216922> and RNZ, 30 September 2020, <https://www.rnz.co.nz/international/pacific-news/427200/bougainville-communities-file-human-rights-complaint-over-panguna>.

⁹¹ Australian Law Reform Commission, *Final Report Corporate Criminal Responsibility* ALRC Report 136, <https://www.alrc.gov.au/wp-content/uploads/2020/05/ALRC-CCR-Final-Report-websml.pdf>.

⁹² Human Rights Law Centre, *Nowhere to Turn: Addressing Australian corporate abuses overseas* (Melbourne: Human Rights Law Centre, 2018).

⁹³ President John Momis, “Rio Tinto’s Decision to Divest its BCL Shares, And Deny Responsibility For Panguna Mine Legacy Issues,” *Department of the President & The Bougainville Executive Council Office of the President: Minister Responsible for Inter-Government Affairs, Autonomy, Implementation & Monitoring*, House of Representatives - Special Meeting (20 July 2016), p. 7.