

24 December 2019

Dr Bruno Oberle
Chair
Global Tailings Review
consultation@globaltailingsreview.org

Dear Dr Oberle,

It was a pleasure to meet you during your recent consultations in Australia. Further to our discussions, we are pleased to make this written submission to the Global Tailings Review.

The submission was prepared by the Human Rights Law Centre, with input from Jubilee Australia and Dr Volker Boege of the University of Queensland.

The Human Rights Law Centre is an Australian legal centre dedicated to promoting and protecting human rights in Australia and in Australian business operations overseas. Jubilee Australia is an Australian research and advocacy organisation whose work promotes economic justice for communities in the Asia-Pacific region and accountability for Australian corporations and government agencies operating there. Dr Volker Boege is an expert on peacebuilding, and environmental degradation, natural resources and violent conflict. Dr Boege attended the Brisbane consultation.

The Global Tailings Standard should contribute towards the safer management of tailings facilities in the future. This is an important and valuable contribution.

However, we believe it is critical that the Global Tailings Review should also take a more holistic view of tailings management and go beyond tailings storage facilities to include all types of tailings disposal systems including riverine and marine tailings disposal. The review should address long-term, 'chronic' effects of tailings disposal not only rapid, 'acute' failures and give attention to so-called legacy tailings sites, many of which pose equally acute risks to nearby communities and the environment.

One such legacy site is the Panguna mine on the island of Bougainville, in Papua New Guinea. The mine was operated by Rio Tinto via its subsidiary Bougainville Copper Limited. Rio Tinto has never admitted liability for the environmental devastation caused by the Panguna mine – mine wastes were dumped into local rivers – and has so far shown no willingness to address the most urgent risks to nearby communities. Some of the impacts experienced by local communities to this day are described in the report "*We are crying for our land: Stories from the Panguna Listening Project*" which is attached separately.

The preamble to the Standard should make it absolutely clear that that the Standard applies to existing, new and legacy sites. Further, the term 'operator' should be amended, and should include a person, corporation etc that operates or controls a tailings facility, or once had responsibility for decisions on tailings management at a site. Without this broad remit, we are concerned that the Standard will fail to meet its goal of achieving zero harm to people and the environment, and fail to ensure that mining companies fully take responsibility for the safe and secure management of

their tailings facilities, through all phases of the project lifecycle, including closure and post-closure.

Indeed, a focus purely on tailings storage facilities could risk, perversely, encouraging companies to revert to other forms of tailings disposal, such as riverine or deep sea dumping, which had been phased out in most countries due to their serious risks to communities and the environment.

We strongly urge you to ensure that the accompanying Recommendations Report reflects the issues we have outlined above. By doing so we hope that companies such as Rio Tinto begin to address the serious and ongoing harms and risks they have caused.

Comments on the Standard

We also strongly recommend that the Standard do more to put affected and at-risk communities front and centre.

Topic I: Knowledge base

Principles 1 and 2 need to better acknowledge the value of, and incorporate, community knowledge into an operation's knowledge base, and promote the co-creation of knowledge between communities and Operators. Doing so will help ensure at-risk communities and then to enable them to engage on more equal terms with Operators on tailings facilities risks.

Topic II: Affected communities.

- Requirements 3.1 and 3.4 would benefit from referencing the relevant operational principles in the UN Guiding Principles on business and human rights, and specific guidance from the UN Working Group on Business and Human Rights on due diligence and gender.¹ By doing so operators are provided with useful references to support human rights due diligence processes and the development of effective, operational-level grievance mechanisms. This will also ensure Operators are better able to comply with Principle 3, which we believe is an essential component of the Standard.
- Affected (or at-risk) communities ultimately bear the consequences of catastrophic tailings dam failures – potentially through the loss of their lives, livelihoods, natural resources and community assets. Given this, Principle 3 should be strengthened to reflect this reality. An alternate wording is proposed: 'Acknowledge that communities ultimately bear the consequences of catastrophic tailings dam failures, and respect the rights of project-affected people and meaningfully engage them at all stages of the tailings facility lifecycle.'
- While we agree that Operators should consider measures to minimise the risk of loss of life or sudden physical and/or economic displacement of people, including to implement resettlement of potentially affected communities (Requirement 3.3),

¹ Including the Working Group's 2018 report to the General Assembly (A/73/163) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/87/PDF/N1822487.pdf?OpenElement> and Companion note II Corporate human rights due diligence – Getting started, emerging practices, tools and resources <https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf>; and the Working Group's Gender dimensions of the Guiding Principles on Business and Human Rights (A/HRC/41/43) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/146/08/PDF/G1914608.pdf?OpenElement>

the Standard needs to guard against situations where companies intentionally drive social risks upwards to the point that resettlement becomes a seemingly “responsible” course of action. Hence Requirement 3.4 should, at a minimum, refer to resettlement as a option of last resort and only if communities give their free, prior and informed consent to resettlement (not to simply be told of such decisions as the Standard currently requires).

Topic V: Emergency Response and Long-term Recovery

Requirements 15.2 would benefit from the addition of a reference to the inclusion of marginalised and vulnerable people from at-risk communities. There is substantial evidence that marginalised and vulnerable people are likely to suffer the effects of disasters, and tend to be excluded from emergency planning and disaster risk reduction decision-making.²

Topic VI: Public Disclosure and Access to Information

As noted above, affected or at-risk communities ultimately bear the consequences of catastrophic tailings dam failures – they are rights holders, not just stakeholders. Principle 17 (and Requirements 17.1 and 17.2) should therefore place an emphasis on public disclose and access to information for affected and at-risk communities. Further, emphasis should also be placed on ensuring that data and information is disclosed in ways that can be understood by affected and at-risk communities, enabling these communities to be able to engage on more equal terms with Operators on tailings facilities risks.

Thank you for considering the suggestions made in this submission. If you require further information on this submission please do not hesitate to contact me via Keren.Adams@hrlc.org.au.

Yours sincerely,



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² See for example <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9464.pdf> and [https://www.preventionweb.net/files/52828_kconsiderationofmarginalized\[1\].pdf](https://www.preventionweb.net/files/52828_kconsiderationofmarginalized[1].pdf)