

End of Mission Report

**The Independent International Advisory Panel (IIAP) to the Rio Tinto (RT)
Ilmenite Project in Southeastern Madagascar**

February 10, 2016

DEDICATION

This End of Mission Report is dedicated by the three remaining panel members to the memory of Alison Jolly, a member of the panel from its establishment in 2000 until her death on February 6, 2014. She was a world-renowned primatologist and conservationist with a deep love for and dedication to Madagascar. For the three surviving panel members, she was a treasured colleague who shared selflessly the impressive scope of her knowledge. Her contribution to and complete solidarity in everything we were able to do were invaluable. Thank you Alison; you will ever be missed.

Keith Bezanson

Léon Rajaobalena

Jacques Gérin

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In 1999, Rio Tinto decided to seek the advice of an independent international panel to advise on a mining project being planned in Madagascar by its subsidiary QMM¹.

The Independent International Advisory Panel (IIAP) consisted of Keith Bezanson, international development economist, Alison Jolly, primatologist and conservationist, Léon Rajaobelina, environmental economist and Director of Conservation International in Madagascar and, from 2006, Jacques Gérin, engineer and environmentalist. This is the IIAP's final report. Unlike the many reports we have prepared over the past 15 years, it is not based on recent field visits, up to date interviews and round table conversations, nor is it a summary of our work over that period. Rather, it attempts to:

- Furnish for the record a brief history of the IIAP and how it has functioned over the years;
- Explain the rationale for its termination;
- Point to some of the lessons learned from our experience that may be helpful to the establishment by the company of a new panel, should the company decide to do so at some future date and, more broadly, to the possible formation of similar panels elsewhere or by other extractive industry companies.

Establishing the IIAP: Antecedent Factors and Considerations

We were approached individually by RT in 1999 to form a panel and provide 'independent' social, environmental and developmentally sound advice to the company on a proposed 30-50 year extractive project in one of the poorest and most isolated regions of one of the world's poorest countries. This raised two fundamental questions.

The first was whether the company was trustworthy, actually wanted independent advice and would take advice seriously. Much of the documented history of large extractive projects in poor countries, including those of RT, showed that they tended to operate on an enclave basis and with negative environmental and social results². Were there credible reasons to believe that RT would comport itself any differently in this case? To say that our initial reactions involved a degree of scepticism would be an understatement.

Yet we were also aware that three years earlier, in 1997, nine of the largest mining companies had commissioned the highly respected International Institute for Environment and Development (IIED) to conduct an independent analysis on what the sector would need to do to transition to sustainable development. The IIED report,

¹ Although the acronyms QMM, RTQMM and RT are all used frequently, this report will use RT throughout.

² Perhaps the most serious example of this was the Bougainville Copper project in Papua-New Guinea (PNG) which operated from 1971 until 1989 when local uprisings reached such intensity that the mine was closed.

published in 1999, had made detailed recommendations on norms, standards and processes and laid out a pathway of next steps. Actions were underway on those next steps in 1999 and these led, in 2001, to the creation of the International Council on Mining and Metals (ICMM) by 21 of the world's biggest mining companies, all of whose members committed publicly to the principles of sustainable development and to being held accountable to them through regular and transparent reporting and independent assessments.

When we probed further, we learned that the main force behind the contracting of IIED and the resulting formation of the ICMM had been RT and its then CEO, Robert Wilson. The social, political and environmental bad old days and ways of RT and other major mining companies appeared to be undergoing seismic changes. Moreover, although a decision to invest in the project was still some years into the future, Robert Wilson had affirmed that, if approved for investment, the Madagascar project would be its "flagship project in sustainable development" and that the company genuinely wanted honest, forthright and independent advice on "how to make it happen".

This led to our second fundamental question: even if RT was fully committed to all the principles and practices of sustainable development, what evidence was there that a massive extractive project could deliver desired and enduring development benefits in the context of Southeastern Madagascar? Our effort to address this question included an initial, exploratory visit to the area in April, 2000. That visit left no doubt in our minds that the challenges to the proposed project in the southeast would be especially daunting. Environmentally, the proposed mining would take place in three coastal forest (littoral forest) zones. All of Madagascar's forests are threatened but its coastal forest is the most threatened of all. What little of it that now remains is found in only small patches which also happen to be the only known remaining habitats of numerous unique plant species.

In terms of assets, with the exception of the minerals in its soil, the entire region is very poorly endowed with natural and economic resources. Agricultural land is scant and of poor quality. Rainfall patterns are highly irregular and the region has always been subject to periodic droughts and famines. Deforestation in the region's hills and mountains is severe and watershed slopes are highly degraded. In human terms, the population growth rate is very high, doubling every 15 years; extreme poverty is endemic with per capita GDP estimates ranging from \$150 to \$180; an estimated 80% do not have access to clean water; literacy is less than 20%; and malnutrition and stunting levels are amongst the highest in the world, as are infant mortality rates. Also, in 2000 the region remained, as it had been throughout history, without infrastructure and cut off from the rest of the country. With the exception of a few environmental and social NGOs and a couple of international emergency and relief organizations, there were virtually no investment flows to or within the region in 2000. Finally, there was little local and regional institutional capacity, including for governance.

Consideration of these factors underscored strongly that a large mining project in such an environmentally and socially vulnerable setting would entail exceptionally high risks. Moreover, while many of the people and groups with whom we spoke in April 2000 expressed strong support for the proposed project as "our only hope for development and a better life", some others told us that the environmental and social risks were too high to take and that "we are better off without the project".

Clearly, there could never be an absolute case on whether the mine would prove good or bad for the region. It would all come down to the counterfactual question: what were the future prospects for the region without the mine? Among the key regional trends were: declining agricultural yields as a result of soil depletion, leaching and erosion; accelerating rates of deforestation (including of the coastal littoral forest) to meet the firewood needs of a fast-expanding subsistence population; declining fisheries livelihoods as a result of overfishing; inadequate and deteriorated physical infrastructure; and no prospects for capital investment, other than for the RT mine.

Irrespective of the extent of effort and the sincerity of RT's commitment to the principles of sustainable development, the proposed project would necessarily be a very high risk venture. But consideration of the counterfactual indicated to us that the risks to the region if the project were not to proceed could be greater. Finally, it seemed to us that the company's public pledge to be held to account through independent verification of its commitments and the lead role it had exercised across its entire industry in establishing the ICMM deserved to be put to the acid test.

Based on the above considerations and following our exploratory visit of April, 2000, we agreed to form and become members of the IIAP.

Defining an Operational Framework

Our research was unable to identify any precedents for the formation of an independent panel like the IIAP at the initiative of a multinational extractive industry company. It is to RT's credit that it pioneered the concept of an independent panel and accepted the risks that might accompany independent advice. After the IIAP was established, several panels formed for projects in other countries, although their defining features are generally quite different from those of the IIAP. Because of this, even had they predated the IIAP, it seems unlikely that they would have furnished much guidance on how we should proceed (see the following box).

Examples of Panels Formed After the IIAP

i)- In February 2001, the International Advisory Group (IAG) was established by the World Bank with a mandate to monitor progress of a large oil field and pipeline project in Chad and Cameroon. Although it did furnish advice to the company (ExxonMobil), this was not part of its TORs which were to provide advice to the Bank and the two governments.

ii) - In 2003, on the recommendation of the World Bank, the Caspian Development Advisory Panel was formed to provide management advice on economic, social, and environmental impacts of a British Petroleum pipeline project in Azerbaijan, Georgia, and Turkey. Set up for three years and then extended for a fourth before ending its work, the panel was not envisaged and did not function as a longer term source of independent counsel.

iii) - in 2004, Shell Oil established the External Review Committee to review and comment on the company's Annual Sustainability Report on its world-wide operations.

iv) - In 2007, the Peru Advisory Board was established by the Hunt Oil Company. Its work and its reports are highly circumscribed and it meets as a board only once yearly for three days.

Thus, in determining our approach and deciding on how best to operate we were unable to benefit from prior experiences, draw from any demonstrated best practices or lessons on pitfalls to avoid. As our first action after agreeing to form a panel, therefore, we set out a framework of main objectives, principles and operating modalities which were followed throughout our tenure. These are summarized in the following box.

<u>Principal IIAP Modalities</u>
<p>Objectives</p> <ul style="list-style-type: none"> • Provide a forum for discussion of the social, economic, institutional and environmental issues related to the project; • Bring to the project fully independent international experience, advice and recommendations; • Conduct regular literature reviews with a view to identifying experiences and best practices of relevance to the project and bring these to the attention of the company and other interested stakeholders; • Advise QMM and other parties as appropriate on all non-technical aspects of the project.
<p>Guiding Principles</p> <ul style="list-style-type: none"> • Open, candid and transparent communication; • Respect for confidentiality and, as required and appropriate, non-attribution of discussions; • Timely response by QMM to any request for non-proprietary information by the panel; • Unrestricted and public access to panel members and panel processes; • Freedom of Panel members to communicate, individually or collectively, about Panel activities and the project.
<p>Operating Modalities</p> <ul style="list-style-type: none"> • The panel will meet at least once a year in Madagascar; during such visits, it will consult with and seek candid assessments from key stakeholders, individually and in round table discussions; • Through regular feedback and reports between meetings, the panel will work to track progress, assemble evidence of compliance with commitments and remain informed on major developments, including unforeseen problems, barriers and new challenges; • The panel will set its own agenda and provide independent advice to QMM; • The panel may invite any person from QMM and from "Interested & Affected Parties" to its meetings; • Panel reports will be made available in their entirety and publicly accessible electronically; • Following its formal meetings, the panel will issue publicly accessible reports, including QMM responses to observations and recommendations, on a timely basis; • The panel may issue additional assessments of progress as it deems appropriate.

Panel Operations

Since 2000, the work of the panel can be roughly divided into four distinct periods: i)- 2000 and 2001 (Focus on Social and Environmental Assessment); ii)- 2002-2005 (Getting to the Decision to Invest Stage); iii)- 2005-2009 (From Investment Decision to Implementation; and iv-) 2009-2015 (Dark Days and Entirely New Challenges).

2000 and 2001: Focus on Social and Environmental Assessment

In 1985, the Government of Madagascar granted Rio Tinto a 20 year “concession permit” to ilmenite (the precursor to titanium dioxide) deposits in the Anosy region of Southeastern Madagascar. The permit accorded RT a two decade exclusive right to conduct exploration work, engineering and other studies and project planning. If RT was to mine the site, however, it would need to obtain further legal authorizations in the form of an environmental permit and a mining permit. It would also need to confirm an investment decision by late 2005.

By the time the panel began its operations, RT had already invested substantially in exploration, in extensive engineering, water resources, energy, demographic and other studies and in community consultations. It had carried out comprehensive research on the flora and fauna of the region, which had included the identification of previously unknown and endangered species. It had also initiated studies and consultations with international organizations aimed at ensuring that the project would avoid the trap of creating and functioning in an enclave. A legal and fiscal framework agreement between RT and the Government of Madagascar had been concluded in 1998 and ratified by the Government. In order to be able to move beyond exploration and project planning stages, the next legal requirement under Madagascar law was to obtain an “environmental permit”. The stipulations for such a permit included far more than duty of care measures for the physical environment. They required a Social and Environmental Impact Assessment (SEIA) that would include social responsibility measures, standards, norms and commitments. The prerequisites for the environmental permit, therefore, were really those that encompassed the broad principles of sustainable development.

RT had begun preparation of a formal SEIA in 1998. From its inception in 2000 and for much of 2001, the panel focussed more or less exclusively on trying to furnish advice that would help to ensure that the SEIA would incorporate generally accepted international best practices as recommended by organizations such as the International Association for Impact Assessment, the World Bank and IFC. We also sought to make the document realistic and specific as to what could (and could not) be done, to include clear commitments and specification of how they would be tracked, measured, reported and on how accountability for them would be assured.

When the Panel met again in Madagascar in February, 2001, it reviewed the initial SEIA document prepared by the company. The panel’s overall assessment was that the document did not adequately reflect many of the generally accepted standards of best practices for social and environmental impact assessments and that much greater precision was required on commitments, measurement, independent verification, consultation and communication. The panel also made numerous suggestions for changes, the extent of which probably came as something of a shock to the project’s management of the day which had put endless months of work into preparation of the document.

Shock or not, this proved a seminal learning experience for both company management and the panel. The company management accepted and incorporated most of what the panel recommended, even though this required substantial rethinking, reordering, taking on many additional commitments and rewriting much of the document. RT management affirmed subsequently that it was in no doubt that the hard-hitting and fully independent advice of the panel had substantially improved alignment with best practice while at the same time strengthening very considerably the final document. For the panel, the company's reaction furnished strong evidence that it was serious in its expressed desire for independent counsel; it added further credibility to RT's pledge to apply the principles of sustainable development; and it provided concrete evidence to the panel that it could make a positive contribution and that its work should continue.

On November 20, 2001, the Government of Madagascar issued the environmental permit. But, while the permit was a necessary condition for the project to proceed, it was far from a sufficient condition. *Inter alia*, the company's shareholders would need to make an investment decision by late 2005 or the concession permit it had been accorded in 1985 would expire. In 2001, many barriers to such a decision remained.

2002-2005: Getting to the Decision to Invest Stage

The granting of the environmental permit shifted dramatically the focus of debates and efforts. Up to that point, the main focus had been on ensuring that the SEIA would commit the project to safeguards and undertakings that would respond to concerns in three broad areas: i)- the natural environment and biodiversity conservation; ii)- the adequacy, credibility and seriousness of inclusion (i.e. the extent to which proposals and processes of consultation and participation accorded with the wishes and needs of local populations in the Fort Dauphin area); and iii)- the requirements for social development and human security arising from the project. In other words, the focus had been largely bounded by the project itself – its characteristics, standards, safeguards, responsibilities, commitments, etc.

While many issues specific to the project itself still remained to be addressed, a much greater focus was now accorded to larger regional issues, including one of the most difficult questions of all – how to reach agreements and arrangements for a distribution of taxes and royalties from the project that would be equitable and would ensure fair and adequate local and regional benefits. The SEIA had included company commitments to develop specific programs that would clarify what the company would do and what its responsibilities would be on such major regional issues as local employment, migration, sexually transmitted diseases, conservation, plantations and the development of an urban plan for the town of Fort-Dauphin. Finally, the SEIA included undertakings that RT would work with regional authorities, the World Bank and the Government of Madagascar to secure the financing for construction of a new port that would be essential for the RT project but that could also serve a larger and longer-term purpose as a principal motor for economic development of the region.

The company had already carried out studies on many of the above-mentioned topics, including some baseline social, demographic and economic studies, but the number and intensity of these now increased in quantum terms. Also, discussions with the Government of Madagascar and the World Bank on a proposed new port had been

underway since 1998. Approval of the environmental permit added intensity to all of this and also generated a virtual explosion of further studies, new proposals and reviews, involving local, regional, national and international levels.

It would take volumes to summarize all of these. The intent in what follows is to point briefly to just a few of the initiatives, efforts and developments that occurred during this period:

- **The significant efforts made to produce a long-term development plan for the region.** A regional voluntary association, the Regional Development Committee (Comité Régional de Développement – CRD) had formed a few years earlier and was trying to spearhead preparation of a plan for the region. It was seriously under-resourced, however, and lacked financing for even the most basic of studies. In 2003, an injection of financial support from the World Bank and RT³, allowed the CRD to launch studies of the potential and investment requirements in sectors such as agriculture, aquaculture, tourism, public health and human resources development.

The panel assigned great importance to this. Indeed, its first note to the company following its exploratory visit in 2000 stated that: “The potential of the mine for significant and sustained development in the region will depend on it becoming one component – an important component but only one of many – of a comprehensive, multi-year regional development plan with multiple sources of financing. The level of capital investment for the mine may turn out to be the largest single investment ever for Madagascar, but it will still be only a fraction of what will be needed to place the region on a solid path towards poverty reduction and sustained, long-term economic growth. Moreover, in the absence of a sound regional plan and the forging of partnerships to make it work, the risk-benefit balance for the project will be weighted on the negative side with a strong probability that the project could evolve only along enclave lines.”⁴

- **The region as part of a national growth pole program.** The national government and the World Bank had earlier begun joint work towards a growth pole approach to economic and social development as the “first priority” for national development. In 2002, the Government proposed Fort Dauphin as one of three growth poles. The new port, included in the RT proposal as essential to the mining project, was a principal factor in the choice of Fort Dauphin. For the company, the port would be needed to get its product to market. For the Government and the Bank, however, the port held a greater potential as a long-term public good that could open up the region and make other exports and investments feasible. Nevertheless, in 2002 it was far from certain that the Bank would agree to port financing as part of a public-private partnership.

The possibility of the growth pole project held a further significance for the mining project. If Fort Dauphin became a growth pole with significant World Bank, Government and possibly other international public financing, the risks of RT becoming “the only game in town” would be reduced. Were the mine to proceed in the absence of the growth pole, it would be the only significant source of

³ The Panel report of 2002 had recommended this action as a matter of urgency.

⁴ IIAP Aide Memoire, April 29, 2000, pg. 7.

economic investment in the region and attribution of all regional development needs and risks – environmental, social, economic and even political -- could be assigned to the company. This danger would be attenuated by the growth pole program which would make the challenges and risks far more a matter of shared responsibility between different levels of government in Madagascar, local and regional authorities, major international donor agencies and the company.

- **Attempts to achieve an equitable distribution of the proceeds of taxes and royalties.** The company was fully aware from experiences with multiple projects elsewhere of the serious risks and damages that could result from a distorted and imbalanced distribution of financial benefits away from the region.

The company looked internationally for models of fair and effective distribution of financial proceeds that could inform and help guide discussions with national, regional and local authorities. On the recommendation of the panel, it initiated discussions with local and regional authorities, international organizations and NGOs on setting up a fully independent trust or foundation under multi-stakeholder governance and it suggested that the World Bank as an independent third party conduct a study on the feasibility of a foundation. The World Bank did fund a feasibility study, but the challenge of getting all interested parties to agree on basic issues (such as an initial financing model, who would be represented on the governing board and how projects would be submitted and approved) proved complicated and very time-consuming.

Between 2002 and 2005, the panel convened eight times, five in Madagascar and three in London. Each visit to Madagascar included interviews and/or discussion groups with the broadest range of stakeholders possible (i.e. Government Ministers and senior officials, local authorities, representatives of donor agencies, national and local civil society groups, business interests in the region, including of course RT). We tried to identify both what was working well and what was not, to assemble and reflect differing assessments and concerns, to discuss problems and to seek ideas and proposals that might address them. Our written reports are matters of public record. In them, we sought to bring in lessons from elsewhere that might be helpful in problem solving and to make realistic and pragmatic suggestions for improvements where they might be warranted.

In late July, 2005, the World Bank approved a credit of \$55 million for the Fort Dauphin growth pole project which included a \$35 million contribution to construction of a new port. A few days later, Rio Tinto announced its decision to invest \$775 million in the project, of which approximately \$585 million would be spent in Madagascar (these amounts were later increased to \$1.1 billion of which \$940 million was assigned for expenditure in Madagascar).

2006-2009: From Investment Decision to Implementation

The results of the two investment decisions were immediately palpable in the region. Construction work to upgrade the main road in Fort Dauphin began immediately, carrying with it exceptional symbolic importance for the local population, as it

represented the first significant evidence of investment in the region in several decades. At the same time, in addition to numerous construction-related engineering studies, a vast number of social, economic, environmental and juridical initiatives were launched, including for example:

- Preparation of a legally binding framework for land acquisition, land use, and compensation which included a formal requirement for government approval of each acquisition; an accessible and independent appeals mechanism; and oversight and independent external assessments by NGOs.
- Development of a communications strategy to prepare the local population of Fort Dauphin for the potential arrival of migrants and possible social implications and impacts on public services.
- A poverty monitoring methodology and tracking system.
- Community based programs of awareness, information and prevention to address the risks of STDs (especially HIV/AIDS) in the region as a result of migration and a large influx of workers during the construction period.
- In addition to further work on the mine's direct impacts on biodiversity, greatly expanded work on the water and energy needs of the region, including on the domestic energy supply from fuelwood and charcoal.
- Under the Office of the President of the Republic, a pilot project was launched to strengthen local governance capacities through an "asset management framework" (an agreed plan for investments in public services based on the specific arrangements and structures and including means and measures to ensure accountability).

These issues (there were many more) and recommendations on them were addressed in the reports of the panel throughout this period.

It is no exaggeration to say that this was an optimistic and buoyant period in the region. This seemed evident to us in almost all the interviews, round table discussions and conversations that we had. The pockets of opposition to the project that had been evident some years earlier seemed for the most part to have disappeared. At the same time, however, we became more concerned with each visit that expectations might be spiralling out of control. Each additional step towards the full construction phase seemed to increase expectations for secure and well-remunerated employment, for public services and for social and economic benefits of all kinds. Our reports repeatedly urged that the very highest priority should be assigned to communication and public consultation programs aimed at keeping expectations to at least a reasonable level. The consequence of not succeeding in this challenge, we wrote, could be "not only disappointment but damage to social cohesion and even to public and political stability."⁵

Of all problems and challenges, effective communications and keeping expectations to reasonable and achievable levels almost certainly proved the most difficult and intractable. It is not that these challenges were ignored or that efforts were not made on a continuous basis. The company took steps to implement the panel's recommendation for a "delineation of clear boundaries by spelling out in language that everyone can understand not only what are the company's responsibilities and accountabilities but also to differentiate these from the responsibilities and accountabilities of others, such as

⁵ Panel Report, 2006. Page 6.

local government, national government and the international development community”.⁶ Success in communicating this message, however, proved elusive. Locally, the dominant perception of the company continued to hold that its resources were unlimited and that it could – and should – do more and more and more.

From the outset of its work and throughout the entire conceptual and design stages, the reports and counsel of the panel were guided by the view that the mining project should proceed only when it fully met four overarching principles. These were:

- Principle #1. The project’s design must pass the test of accepted international best practices of economic, social and environmental stewardship, including those specifically pertaining to extractive industries such as the stipulations of the Extractive Industries Transparency Initiative;
- Principle #2. Far from being a stand-alone private investment, the project would be integrated into a much larger regional socio-economic development effort, thereby avoiding the enclave traps that have characterized so many extractive industry investments in developing countries;
- Principle #3. The project would specify in a legal framework under Madagascar law clear and measurable obligations and commitments of the project at local, regional and national levels; and
- Principle #4. Arrangements would be in place for independent monitoring and transparent reporting on all commitments and undertakings.

In late 2006, when the large physical construction phase of the project began, these principles had been imbedded in the structure of the project and in explicit commitments. The new port and the RT mine had been designed as catalysts to the region’s development and as part of an ambitious Regional Development Plan, including the Government-World Bank growth pole program (PIC) for the Anosy region. RT’s investment plans for the project had been instrumental in obtaining World Bank support for the PIC. The mining project had been designed to function as one part of a multi-stakeholder partnership effort involving national, regional and local governments, international development and civil society organizations and the Regional Development Committee (CRD). Legally binding framework agreements had been signed under Madagascar law which stipulated RT’s obligations and the independent monitoring arrangements of all project commitments as set forth in the Social and Environmental Impact Assessment. The National Environment Office (ONE) had been mandated to conduct regular and fully independent monitoring, evaluation and reporting on the performance of the project’s obligations and commitments.

Although upwardly spiralling expectations continued to give cause for concern, the overall picture in late 2008 was highly positive. The net result of the extensive consultations, planning and pre-investment studies that had been conducted over many years had set the performance bar for the project at a very high level. In brief, that bar committed the project over its projected operational lifetime of about 40 years to a “Net Positive Impact (NPI)”, economically, socially and environmentally. Construction of the new port, related roads, the mine plant and other infrastructure was nearly complete and the first shipment of ore was on schedule for the end of the year. Moreover, although still far short of the region’s needs, unprecedented levels of external investments were

⁶ Panel Report 2007, page 11

pouring into the region; while RT investments were dominant, there were significant new inflows from others, including the World Bank, USAID, the European Commission and the African Development Bank and from a large number of international NGOs, both environmental and socio-economic. Construction was about to begin under European Commission financing of a road that would open up and link the region with the rest of the country and additional roads were being planned to open up the interior of the region itself. The national economy was growing at a respectable, although not spectacular, rate of 5-6% annually and private investment inflows, mainly directed to natural and mineral resources, were on a rapid upward trajectory.

The constellations seemed aligned to indicate that this just might be the moment when an isolated, desperately poor and historically neglected part of the world might actually be launched on a path to significant poverty reduction, economic growth and a general improvement in the lives and prospects of its citizenry.

2009-2015: Dark Days and Entirely New Challenges

But the promise was not to be. A *de facto* military-political coup in early 2009 threw the country into a deep and damaging crisis. The international community condemned the coup and its leader as unconstitutional. Foreign investments stopped. Official development assistance on which Madagascar was highly dependent (in 2009 it accounted for fully 50 percent of all public expenditures and 75 percent of all public capital investment) was suspended. GDP contracted by 5 percent in 2009 alone. By late 2010, UNICEF reported that a full decade of social gains in maternal and child mortality rates and malnutrition had been lost. The consequences at the regional and mining project level included:

- The Regional Development Committee (CRD) continued in name but ceased to function with any degree of effectiveness.
- NGOs confirmed widespread food insecurity and rising social unrest.
- While both international and local NGOs continued essential social support and emergency assistance work, RT and the project became, *de facto*, the only source of investment in the region.
- In spite of the very considerable progress that had been made⁷, establishment of the independent development foundation or trust, mentioned earlier in this report, became politically impossible and all efforts were necessarily abandoned.
- With the suspension of development assistance, not only did investment, other than that of RT, evaporate, so also did the prospects that the region would finally be connected to the rest of the country. The suspension of European Commission financing of a highway to link the region to the rest of the country was an especially damaging setback.
- The company found itself increasingly without effective regional, national and international partners to address problems or to apportion responsibility fairly and also without the legitimacy or means to rectify certain legitimate concerns.

In sum, the mining project had been carefully structured to ensure best practices, to be part of a much larger regional development effort and to build on the assets of a comprehensively designed public-private partnership. The design remained sound, but

⁷ This included achievement of an expressed willingness by the government to enact legislation that would enable a proportion of the royalties from the mine to be paid into the foundation.

the institutional assets required to implement the design ceased increasingly to exist as the nation's crisis dragged on through a second, third and fourth year.

Pathways through the crisis required numerous new arrangements and coping strategies. These included, for example, increased support by the company of electrical energy and potable water to Fort Dauphin; a continuing dialogue with the World Bank and other international development organizations on contingency action plans that could be implemented relatively quickly if and when an internationally recognized government returned to the country; extended partnerships with NGOs; initiation by RT of its own three year integrated development program for the mining area and other areas where persons would be affected by its project. In its reports of 2010, 2011 and 2012, the panel examined and made recommendations on these and many other actions taken by the company.

It was in this context that the last field visit by the panel took place late in 2012. At the end of that mission, we discussed the future of the panel with the company leadership in Madagascar and in London. We had stipulated when the panel was formed and had restated regularly that our work should continue only if the company judged it as providing genuine value and, of course, if we concurred in such a judgment. By 2012, however, there were other considerations. Three of us were confronting health challenges and, if the panel was to continue, new members would need to be appointed. At the request of the company, we agreed to remain active until new appointments were made and to assist further by identifying appropriate individuals, reaching out to them to determine their interest and to assist in a transition by providing thorough briefings to new members. By early 2013, we had prepared a list and collected the biographies of 24 individuals whom we considered could furnish the different experiences and expertise best suited to the work of the panel. Before follow through actions could be taken, however, new factors and developments emerged.

By 2011, the cumulative and knock-on effects of "the great recession," initially brought on in December 2007 by the collapse of Lehman Brothers and the subprime mortgage crisis in the United States, had led to a precipitous decline in global commodity prices, including for most metals. The average spot price of iron ore, one of Rio Tinto's main commodities, declined by 72% between 2010-2013 and the ilmenite price declined by 49% over the same period. Heavily in debt and in operating deficit, the company was forced to take write downs of US\$22 billion during 2011 and 2012. This brought about a senior management change in January, 2013, and a program of fundamental restructuring, cost-cutting and debt containment.

The Madagascar project was, of course, directly affected by this. Plans had been advancing to expand quickly into Ste. Luce, the second of the three sites approved for mining, and these were suspended. A major program of cost containment in 2013 and 2014 moved the ilmenite project balance sheet out of deficit, even as lower international demand required an almost 40% reduction in total output from the mining site. Remarkably and a tribute to the exceptional management of the Madagascar project, this was achieved with no layoffs of Malagasy staff⁸ and no modifications to the environmental and social commitments that had been made.

⁸ At the same time, however, there was a major (75%) reduction in expatriate staff.

As these major changes unfolded, RT management insisted that it was committed to continuation of the work of the panel, but that the immediate imperative of cost containment meant that further actions to recruit and renew the panel membership would need to be put on hold for one year. RT management also requested that the current membership maintain contact through telephone and other electronic connectivity means, provide continuing advice where possible and appropriate, and ensure continuity of the overall effort. Several commodity price predications in 2012 suggested that the international price for ilmenite would rebound within a few months. That, however, did not materialize and the price continued to decline throughout 2013, 2014 and up to the present. Further actions to renew the panel membership remained suspended.

Over the past three years, panel members tried from a distance to follow events, to understand new developments, to appreciate shifting challenges and to furnish advice. For example, one panel member was able to attend a multi-stakeholder review of the project held in England in 2013 and other members of the panel contributed assessments and inputs in writing. A major focus of that meeting involved an examination of the company's proposal to make the Social Licence to Operate (SLO) concept the foundation of its approach to community relations and communications. The basic idea is that permission for extractive companies to operate requires not only government permission (or permits) but also "social permission". This is granted by all stakeholders that are or can be affected by mining projects (e.g. local communities, indigenous people) and other groups of interests, such as local governments and NGOs.

The panel's written input to the 2013 meeting encouraged the SLO initiative. At the same time, however, SLO is a somewhat vague concept and there is as yet little serious academic study on its strengths and weaknesses in application. One obvious risk lies in not knowing or being able to establish where its boundaries lie. SLO is not a written agreement but rather an ongoing process. If its boundaries are unclear or continuously contested, it could actually frustrate genuine efforts to align interests by generating differing and non-reconcilable expectations or demands. Thus, while encouraging the initiative, the panel underscores that integral to all SLO consultations and processes should be a continuous stipulation and communication of boundaries.

Since the 2013 meeting in England, the panel has made no further format written inputs of commentary or recommendations on the project. As 2013 turned into 2014, and then 2015, it became increasingly apparent that the situation and the realities on the ground are so complex and ever-changing that it is simply not possible to come to an adequate understanding on a long distance basis, let alone to furnish commentary and advice of significant material value. Moreover, in February, 2014, we were reduced from four to three members with the sad loss of our colleague, Alison Jolly.

Recognizing these factors, the panel and the company agreed at a meeting in August, 2015, that the best course of action would be to bring the panel to an end. It was also agreed that we would prepare by the end of 2015 this End of Mission report, summarizing briefly our history and providing an outline of what we think are some of the lessons that can be taken from our experience. Both the company and the panel hoped that such lessons might be helpful to the establishment of a new panel, if and when such a decision might be made and possibly to the future establishment elsewhere of other panels.

In our August meeting with the CEO of the Madagascar project and in a follow up meeting in September with RT's Chief Operating Officer for global operations in iron, titanium, diamonds and minerals, we also examined implications of RT's serious financial downturn in the global context of depressed mineral prices that are now projected to continue for a considerable time. The message on this from the company's shareholders to management is an unequivocal insistence on "management to the bottom line" and financial returns to investors. The key questions this emphasis raises for us are: i)- What does this mean for the corporate policy pledge to the principles and commitments of the ICMM?; and ii)- Will this result in any retreat from all the specific commitments made in its Madagascar ilmenite project?

With regard to the Madagascar mine, the answers we received were an absolute affirmation that the commitments made in the ilmenite project are irrevocable and that the transparent and independent evaluation and verification mechanisms will assure that to be the case.

Beyond the Madagascar project, to what extent will the company as a whole remain committed in word and in action to the ICMM pledge and commitment to sustainable development principles? That is much harder to judge. The 2014 Annual Report of Rio Tinto has a near-exclusive focus on financial returns to shareholders. It does include, however, one specific mention of the ICMM, stating that: "We have incorporated the requirements of the ten sustainable development principles of the ICMM and the mandatory requirements set out in ICMM Position statements into our own policies, strategies and standards"⁹. The report further mentions successful achievement of the target that all company operations would have in place by 2015 "locally-appropriate, publicly-reported social performance indicators that demonstrate a positive contribution to the economic development of the communities and regions where we work, consistent with the Millennium Development Goals"¹⁰. We hope that these statements indicate that the company's commitment to sustainable development remains – and will continue to remain -- fully intact, notwithstanding adverse market conditions and a serious decline in financial returns. Time, close observation and independent evaluation will be essential to determine if this is the case.

Lessons Learned and Considerations for Any Future Panel

Our panel was a first of its kind. Since there were no previous models or recorded experiences from which to seek lessons and guidance, our approach was predicated on starting with a simple framework of agreed objectives, principles and operating modalities. That framework remained intact throughout our tenure, although adjustments in its application were made as our experience evolved.

Our experience certainly involved a lot of learning. With only annual or semi-annual field visits, the challenges of trying to understand adequately the basic social, economic, political and environmental "facts" were daunting, given the degree of complexity of the area and the project, the multiple and varied interests involved and the rapidity and magnitude of sudden and unanticipated changes. The much more difficult learning challenge, however, was in questions of how: how to build trust and confidence so that people would share with candour their perceptions and concerns; how to relate to and

⁹ 'Delivering Sustainable Stakeholder Returns', Annual Report, 2014, Rio Tinto, page 21.

¹⁰ Ibid.

build trust over very different and often mutually-suspicious constituencies; how to frame our assessments, conclusions and recommendations in ways that might prove most helpful by opening up pathways to constructive discourse where it was needed but largely absent; and how to facilitate receptivity to and appreciation of the widely differing viewpoints we encountered and that are probably unavoidable in a mining project like this one.

The brief listing that follows points to some of the lessons we took from our experience. We hope may be of value to a new panel, if and when one is formed, or to new panels elsewhere. It should not, however, be viewed as a road map on how a panel should be set up and how it should operate. We do not think there can be a single best model for a panel such as ours. The circumstances of each situation will probably entail major differences and this indicates to us that the structuring and composition of independent advisory panels should be approached with flexibility and adaptation to different settings and characteristics.

Some Attributes of a Successful Panel:

- Full independence is essential both to the quality of counsel that a panel can provide and to the credibility and acceptance of its work across different stakeholder groups and this should be established as a *sine qua non* condition. Such independence should include unfettered communication freedom by panellists, individually or collectively, of findings, observations and conclusions. This would not include, however, public communication of any commercial proprietary or other confidential information that might be shared with a panel. These principles should be embodied in an agreement between the panel and the company at the outset of panel formation and no panel should function under the title of an independent panel in the absence of this precondition.
- Before agreeing to form a panel, its prospective members should investigate and take reasonable due diligence steps to assess the seriousness of the commitment of the company to best practices, the sincerity of its expressed wish for independent counsel and its openness to dialogue. There are numerous documented examples of work done by experts and scientists whose main purpose has been to lend legitimacy to questionable company practices. Many such examples have been exposed as “whitewashing” by civil society organizations, academics, journalists and others. Reasonable antecedent due diligence steps on this are in the mutual reputational interests of the panel, its individual members and the company.
- Transparency is also essential as is respect for confidentiality. In our experience, the assurance of confidentiality and non-attribution was critical to any capacity we had to assemble vast amounts of information during relatively brief field visits and to being able to achieve at least some understanding of widely differing viewpoints, interests and concerns.
- Investment at the outset in establishing an enabling chemistry and division of labour among panel members pays dividends. Our field visits from 2000 to 2012 typically comprised intense schedules involving dozens of interviews, round

tables, inspection of sites and facilities, meetings with government leaders and officials, international organizations, civil society groups, technical specialists, local authorities and many others. It was often necessary for us to work separately to achieve the required coverage. And it required synthesizing and reaching consensus at the end of each day on what we had learned, what was important and what messages, conclusions and recommendations might be most constructive. A genuinely trusting chemistry between us was the key ingredient to our capacity to do this and then to produce public reports that followed in short order from our visits, thereby assuring that these were timely. In addition, one panel member should hold the pen for report writing purposes. Report drafting by committee can be very time consuming and usually results in an unnecessarily complex narrative. Agreement at the outset on who will hold the pen facilitates the production of timely and readable reports.

- Priority should be accorded to building a solid relationship of trust with the company. Although there are some parallels, the role of a panel like ours is distinct from that of an external auditor, evaluator or consultant. To be effective, the relationship must also include that of a trusted confidant to the chief executive of the company. But it must also be an arm's length relationship and one that is viewed as being at arm's length. If this is absent, perceptions of capture and conflict of interest would become a fatal limitation. To strike the balance required between this and a relationship of trust is, of course, challenging. We believe, however, that our experience indicates that it is possible to find that balance by demonstrating to all stakeholders a combination of willingness and ability to "tell truth to power" and that information of a confidential or privileged nature will not be compromised.

Thus, in addition to public written reports, the practice we adopted at the end of every field mission included full and candid discussion with the company CEO of our observations, conclusions and recommendations. This often brought into sharp perspective important factors we had overlooked and even, in some instances, serious errors in judgments and conclusions that we had reached. It also allowed for a mutual directness and candour that might have been quite inappropriate or even damaging in a public document. Also, as a last step before making our reports public, we asked the company to check for any errors of fact or misrepresentations. There have been three chief executives of the Madagascar project since the IIAP was formed in 2000. The excellent, trust-based relationships between all three and our panel have been, in our judgment, a central factor to the effectiveness of our work. We recommend that any future panel take this into careful consideration.

- Continuity and regular field visits are essential. The membership of our panel was continuous throughout its tenure and our experience indicates that this proved invaluable. Unforeseen and dramatic shocks have been a defining characteristic of the project's trajectory over the past 15 years. These included the coup of 2009 and the collapse of commodity markets that shattered some of the most fundamental political-economy assumptions on which the project had been predicated, undid important work that had been done and created new vulnerabilities. Previously unknown or unforeseen shifts at the local level were also a regular feature of the project's evolution. These included changes in local leadership that turned a positive and mutually-respectful relationship into a

difficult and distrustful one. Without continuity of panel membership and regular field visits it would not have been possible to gain perspective and a reasonable understanding of such occurrences. Continuity of panel membership was also a precondition to establishing and retaining sufficient trust with our interlocutors for them to be comfortable in sharing personal assessments that were often of a politically sensitive nature. We suggest, therefore, continuity and regular field visits as a principal lesson of our experience.

- If a new panel is to be established at some future moment or a similar panel elsewhere, the initiating company should as its first step leave to the panel the preparation of the Terms of Reference (TORs) for its work. The TORs should make unequivocal the panel's independence and include clear objectives, guiding principles and operating modalities. TORs prepared by the company would risk capture by the company or, probably much more damaging, widespread perceptions among different stakeholders of capture.
- Panels should be assembled early enough to influence the Social and Environmental Assessment process and should also regularly and publicly provide feedback on actions taken in response to panel recommendations.

Other Lessons

- No number of feasibility studies or benefit-cost analyses can bring absolute or even adequate clarity to the first critical question of whether a mine like this one should proceed in the first place. Answering that question can only come down to the counterfactual of what would likely happen if there were no mine. That is the metric applied by the IIAP and is likely the only metric that can be applied to a similar extractive industry proposal. Did we make the right judgment? Only time will tell.
- There will always be detractors who will remain inalterably opposed to projects like this one and dismissive of everything a panel might do. Opposition can be a simply ideological (i.e. association of any kind with an extractive industry company is necessarily corrupt). All efforts to reach out or to open spaces for constructive dialogue will be repulsed. However frustrating that can be, it is a reality that needs to be accepted by any panel. This does not mean, however, that the effort to engage should not be made and made repeatedly. Sometimes even very hardened positions alter. Over the lifetime of our panel, the positions of some individuals and organizations that had initially been strongly opposed to the project did shift, in some cases radically.
- There will be disruptions, no matter how great the efforts to prevent or minimize them. A project of the magnitude of this one may be relatively modest in the international scale of things, but it will still inevitably overwhelm the population of a desperately poor, neglected and highly traditional part of the world. This emerges as one of the most consistent lessons in development. Composed of the right mix of knowledge and experience, a panel such as ours can play a positive role in this regard by opening non-threatening spaces for individuals and groups to make known their concerns, fears, hopes and perceptions and then

communicating these to the company with options and recommendations as to how these might be addressed, as appropriate.

- Is it possible for a project such as the mine in a context as poor and complex as southeast Madagascar to contain expectations and ensure that they do not become unrealistic? There seems to be no clear answer to this question. What is clear is that this proved exceptionally difficult in this project and that much more attention to this matter should be accorded in any future efforts. It was always inevitable that this project would produce winners and also losers (or those who see themselves as being left behind). This is a lesson not merely for a project of this type but from all experiences when traditional societies confront major change. Expectations usually inflate initially to impossible levels only to be followed by bitter disappointment. Yet this is almost never addressed by governments or companies before it becomes manifest in unrest, protest or political action. However great the challenges involved, serious and sustained investments and strategies to address expectations and to try to keep them within reasonable boundaries are indispensable.
- Almost without exception, IIAP reports over 15 years have pointed to communication weaknesses resulting in misunderstandings, antagonism, distrust, anger and even feelings of betrayal. Over that same period, the company would redouble its communication efforts, but often with disappointing results. Indeed, the company's own assessment is that achieving effective communications (including management of expectations) has been the most daunting and frustrating of all the challenges confronted by the project. A part of the problem during the earlier years of the project was that the company's communication emphasis was overwhelmingly based on what was right about the project and how people would benefit. The company was anything but unique in this. Emphasizing the positive is almost always the natural communications default of governments, NGOs, industry and others. The panel, however, expressed early and repeated concern about this, arguing that such an approach to communication might yield short-term gains in support for the project, but that long-term benefits would require a very different approach. We urged an approach to communication: "based on the demanding requirements of continuous dialogue and creating spaces for ongoing feedback, and that works to clarify the boundaries of what will be done and what cannot be done, is open and candid about limitations, setbacks, failures and disappointments and that seeks common ground on ways to mitigate these"¹¹.

To its credit, the company made major efforts and strides in this direction, especially over the past few years. It tried to communicate, for example, that the construction phase of the project would bring to the region unprecedented economic activity and short-term employment benefits, but that it would also probably bring price inflation for food and accommodation and that the end of the construction phase was guaranteed to bring about a sudden collapse in employment and a much diminished level of economic activity. The effort was at best only a partial success. To some extent, this may have been inevitable in the context of a largely subsistence society that had never experienced an economic boom. Perhaps more innovative and experimental approaches to

¹¹ Aide Memoire, December 2005, Page 17.

communications would have proved more effective, such as focus group methods adapted to local realities or role playing presentations by local actors. Whatever the approaches, a doubling and then a redoubling again of effort to achieve a better and more realistic appreciation of expectations would be one of the most important investments to make in any future project of this type. Any advances achieved in this regard should pay longer term dividends to all concerned.

Concluding Remarks

The beginning of this report recounts that before we agreed to form a panel in 2000, the big question we tried to address was whether the region would be better off with or without the mining project. We found, as this report also recounts, no straightforward or unequivocal answer. Clearly, if the project were to proceed it was always going to be a very high risk venture. But our conclusion from an examination of the counterfactual was that the risk was worth taking and that the risks to the environment and to the opportunities for poverty reduction of not proceeding were greater.

To close this end of mission report it seems appropriate to return to that question and to ask whether we made the right judgment. It will, of course, take many more years before this can be answered authoritatively. The five years of internationally unrecognized government inflicted severe damages to many of the key arrangements and much of the positive momentum that had been established before the political coup of 2009. The state of global commodity markets today is a limiting factor to the project's potential benefits for the region. However, many critical platforms for development (e.g. the port, road works, energy supply, potable water, reforestation) that have resulted from the project were largely unaffected by the political interregnum. The return of a democratic and recognized government has restored development assistance flows to the region. The basic platforms and institutional arrangements for a long-term regional development plan should not be too difficult to revitalize. And the mining project has a 40-50 year time horizon and commodity prices can rebound, so there remain at least three decades of revenues and economic spillovers that can contribute measurably to the well-being of the region.

Development has always been difficult, uncertain and arduous. This adage was always going to prove valid in the context of Southeastern Madagascar and the potential of a single mining project as an important contributor to long term, sustainable benefits for the region was always going to involve major challenges. Setbacks notwithstanding, much has been done, as we hope this report has shown. We remain convinced that our judgment on the counterfactual of not going forward with the project was the right one. That is a judgment that was strongly shared by Alison Jolly. At the close of her posthumously published book, "Thank You Madagascar", she wrote: "I am convinced that development is necessary. The counterfactual of no development is a downward spiral of degradation for environment and society. However, it all depends on how development is done"¹².

No one could have said it better.

¹² Jolly, Alison, 2015, Thank You Madagascar, Zed Books, page 369.