



CASE STUDY 1.4

PROTECTION OF INDIGENOUS LANDS UNDER THE SPOTLIGHT IN WESTERN AUSTRALIA



Former CEO of Rio Tinto, Jean-Sébastien Jacques, resigned as a result of the international outcry which erupted over the destruction of Juukan Gorge.
Source: getty/Scott Barbour/Stringer

The Anglo-Australian mining giant Rio Tinto (www.riotinto.com/en) caused an international outcry in May 2020 when it detonated a battery of explosives that destroyed a sacred 46,000-year-old ancient site at Juukan Gorge in Pilbara in Western Australia. The purpose was to clear the area for expansion of one of its iron ore mines. The site, consisting of a number of rock shelters, was a sacred site for two groups of Indigenous people and also an archaeological site of utmost importance, vital to the understanding of early humans' behaviour and culture. In a parliamentary inquiry that followed, it was shown that the destruction could and should have been avoided. Blame fell heavily on Rio Tinto, raising issues of the relations between the mining industry and Indigenous people, who had traditional land rights that were vulnerable to the

mining industry. Exports of iron ore to China to fund its steel industry were very important economically to Rio Tinto.

Rio Tinto had considerable experience of dealing with local Indigenous people. In 2013, it had obtained permission from the Western Australian government to destroy the Juukan Gorge sites, having consulted the Indigenous groups involved. The two groups gave permission in 2013 not to oppose the destruction or damage of any heritage sites, so long as the company used reasonable endeavours to minimize impacts and consult the people involved in advance. The company had a choice of four options in relation to the Juukan Gorge sites. The first three would have involved minimal damage to the sites, but the fourth, which would give access to bigger volumes of higher grade iron ore, was more destructive. Rio Tinto chose the fourth option.

By 2014, there were new developments, following two significant digs by archaeologists. Rio Tinto was advised in 2014 and 2018 that there were two rock shelters noted for their archaeological importance. The Western Australian government still gave consent to damage and destroy the sites, admitting it did not take into consideration the new evidence from the 2014 digs.

In the days leading up to the disaster in 2020, Rio Tinto had drilled a total of 382 blast holes and filled them with explosives. Detonation of the explosives caused a succession of blasts that blew up the sites, watched on by local people who were aghast. They raised the alarm that the blasting should not go ahead and called on the lawyers they had engaged to make their case. They stressed that they had been misled in the consultation

and the company had not explained the significance of the sites to the government. Rio Tinto's lawyers reminded the group's lawyers that their clients would be in breach of their agreement by complaining publicly.

Western Australia's law in regard to protecting Aboriginal sites dated from 1972 and it was acknowledged to be in need of updating. Under the law, mining companies had to obtain permission before destroying heritage sites. But the statute was loosely drafted and was interpreted in ways that fell short of ensuring informed consent by the Indigenous people affected. There was no dispute resolution procedure and the penalties for the company's breach of agreements were minimal. There was no procedure for reviewing decisions when further evidence emerged. Representatives of the Indigenous peoples were made to sign 'gagging' clauses that prevented them from raising their objections or contacting the media when their sites were at risk.

In evidence to the Australian Senate, Rio Tinto apologized for ignoring the new evidence available regarding the sites and for choosing the highly destructive fourth option. The parliamentary inquiry concluded that Rio Tinto's actions were 'inexcusable', as they were fully aware of the value of the sites (Wahlquist and Allam, 2020). The company was ordered to pay compensation to the local people and to restore the sites as well as possible. Because of the international outcry that erupted, Rio Tinto's global CEO Jean-Sébastien Jacques resigned, along with two other executives. Jacques was barred from taking his short-term performance bonuses, which would have amounted to £2.7 million, but he still received a remuneration package of £7.2 million. The other two executives were also barred from taking their annual bonuses but were granted their long-term bonuses. Mr Jacques said he had been unaware of the importance of the sites until after they were destroyed in May 2020.

Rio Tinto is the world's second largest mining company. It was headquartered in London where its AGM was held. In May 2021 in London, in Rio Tinto's first AGM since the Juukan Gorge blasts, 60% of the shareholders voted against the remuneration package given to the former CEO. This was a clear sign of disapproval of the company's actions from two leading investors, Norway's oil fund and the UK's Local Authority Pension Fund Forum. These investors

are highly conscious of corporate social responsibility. Although the vote was non-binding, it indicated a feeling that the company had been rather reluctant in accepting responsibility. Mr Jacques it seemed was still entitled to £27 million in long-term performance shares. Rio Tinto is dual-listed in both London and Australia and after the Juukan Gorge disaster came under pressure to shift its base to Australia.

The company's chairman Simon Thompson said a new policy would provide that bonuses could be clawed back if there are future events like Juukan Gorge and that environmental and social performance should be considered in awarding short-term bonuses. The new CEO Jakob Stausholm promised a renewed focus on restoring trust with the Indigenous peoples. However, the appointment of Stausholm, a company insider, also caused some disappointment among shareholders who thought that Rio Tinto needed a major overhaul of its methods and culture. Stausholm, who had been the finance director of Rio Tinto since 2018, was considered a sound proponent of shareholder value. In 2020, Rio Tinto made record profits of US\$12.4 billion, mainly on the strength of Chinese demand for its iron ore. The company made total dividend payments to shareholders of \$9 billion, the largest in its 148-year history.

It emerged in the parliamentary inquiry that Rio Tinto intended to destroy another 124 heritage sites about 100 km from the Juukan Gorge rocks shelters. The extent of the mining company's grip on this large area raises wider legal and socioeconomic issues for the Western Australian government.

Questions

- What mistakes were made by Rio Tinto in dealing with these sensitive sites at Juukan Gorge?
- What measures would be needed to protect Indigenous people and their representatives in the sensitive areas where miners operate?
- In what ways was the Western Australian government complicit in the wrongdoing by Rio Tinto?

Explore further

See Emma Young and Tess Ingram's article, 'A year on from the destruction at Juukan, could it happen again?', *The Sydney Morning Herald*, 21 May.



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