

TO:

BRIAN MOYNIHAN, CHIEF EXECUTIVE OFFICER BANK OF AMERICA

100 NORTH TRYON STREET
28255
CHARLOTTE, NC
UNITED STATES**SUBJECT:**THE RISKS OF INVESTING IN RIO TINTO AND WINNING INTERNATIONAL GROUP'S SIMANDOU
PROJECT IN GUINEA

20 NOVEMBER 2023

Dear Mr. Moynihan,

We are writing to you from BankTrack, Advocates for Community Alternatives, a US and West Africa-based legal advocacy organisation, and the Center for Transnational Environmental Accountability, a US-based organisation, to bring to your attention a number of risks and adverse impacts associated with the Simandou iron ore project in Guinea.

The Simandou project is owned by Australian mining company Rio Tinto and Singapore-based Winning International Group. Rio Tinto has received finance in loans and underwriting from Bank of America in the past. As such, your bank is likely to be considered directly linked to the impacts arising from this project. We are therefore calling on you to take steps to prevent or mitigate these adverse impacts in line with your responsibilities.¹

Background to the Simandou project

The Simandou project in southeastern Guinea is one of the largest untapped high-grade iron ore deposits in the world, and has been coveted by the largest mining companies for decades. Rio Tinto acquired rights to Simandou in 1997 and is the majority shareholder and managing partner of Rio Tinto Simfer, which owns the southern part of the project (Blocks 3 and 4). Simfer's second-largest shareholder is Chalco Iron Ore Holdings, which is majority-owned by the Aluminum Corporation of China, and in which Baowu Resources Ltd, the subsidiary of China Baowu Steel Group Corporation, a Chinese mining giant, holds 20% equity. Winning International Group, a Singaporean private company, leads the Winning Consortium Simandou (WCS), which, since 2019, owns rights to the northern mining area (Blocks 1 and 2). China Hongqiao Group Limited is also part of the WCS, owning 35% of the rights. The structure of the WCS is likely to change as Baowu Resources Ltd has reportedly signed an agreement with WCS for the development of Blocks 1 and 2. Over the years, development of the project was stalled numerous times due to legal disputes, corruption allegations, and extreme political instability in Guinea. In August 2022, however, WCS and Rio Tinto Simfer reached an agreement over construction of infrastructure critical to the project, including a 650 km-long railway and a deepwater port.

¹ Under the [OECD Guidelines for Multinational Enterprises](#) and the [UN Guiding Principles on Business and Human Rights](#) (UNGPs), banks and investors have clear responsibilities that extend to the impacts of the companies they finance. For example, Principle 13 of the UNGPs states that business enterprises – including banks – should ‘avoid causing or contributing to adverse impacts [...] through their own activities, and address such impacts when they occur’, and should ‘seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts’.

Human rights and environmental concerns around the Simandou project

The Simandou mine, one of the world's largest untapped iron ore deposits, poses numerous threats to local communities, biodiversity and the climate, which are detailed in a recently-published Dodgy Deal profile on the BankTrack website.²

The development of the infrastructure needed for this project has already impacted on local communities, their livelihoods, and the environment. For example:

- Communities have not been adequately consulted and fairly compensated ahead of WCS's acquisition of their assets, including homes and lands.
- Similarly, the construction of the railway threatens the homes of several communities, many of whom are encountering challenges in negotiating fair compensations for the loss of their land.
- To make space for the railway, deforestation and land clearing have already taken place on a massive scale, resulting in several impacts on protected nature areas and the loss of habitats of endangered species such as the red colobus monkey and chimpanzees, among others.
- The construction of the port has harmed coastal communities relying on fishing for their livelihoods. Heavy construction resulted in the loss of fish populations and damage to the fishing equipment of local fisherfolk, who often have not received proper compensation.

These negative impacts are likely to increase dramatically as the project's footprint further expands. These relate to the final stages of development of the project and its operation, which is envisioned to start in 2025. Guinean communities and civil society groups have raised concerns about the transparency of the project developers' environmental and social impact assessments (ESIAs), which seem to inadequately capture the project's envisioned carbon emissions, and its impacts on biodiversity and on polluting water resources. Further detailed information outlining risks and impact on climate change³ and water resources⁴ has been compiled by Advocates for Community Alternatives. Action Mines, a Guinean non-governmental organisation, also produced a report in May 2023 highlighting the discrepancies between the ESIs and the situation on the ground.⁵

Guinean civil society demands regarding the Simandou project

Guinean civil society groups work to support the communities of Forécariah, Kindia, Mamou and Kérouané which are affected by the Simandou project. These groups demand that ESIs are revised, supplemented with the most recent information and made publicly available. Rights-holders also call for alignment with international standards such as the International Finance Corporation's Performance Standards. Key demands also concern remedy for harms already resulting from the project, which should be immediately addressed by the companies, and setting up robust grievance mechanisms to address community complaints going forward. These demands are set out more fully in an appendix to this letter.

Bank of America and its connection to the project

While finance for the Simandou iron ore project has not yet been agreed, recent reports indicate that at least part of it will likely be financed by capital expenditure from the companies members of the two consortia. For

² https://www.banktrack.org/project/simandou_iron_ore_project_guinea

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<https://advocatesforalternatives.org/wp-content/uploads/2023/09/Simandou-Project-Risks-and-impact-on-climate-change.pdf>

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<https://advocatesforalternatives.org/wp-content/uploads/2023/09/Simandou-Project-Risks-and-impact-on-water-resources.pdf>

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<https://actionminesguinee.org/wp-content/uploads/2023/08/05052023-VF-NOTE-SYNTHESE-DANALYSE-DES-INSUFISANCES-D-E-LA-MISE-EN-OEUVRE-DES-EIES-DU-PROJET-SIMANDOU-BLOC-1-ET-2-WCS-REVUE-1.pdf>

example, it was recently reported that Rio Tinto has so far spent [more than \\$500 million of its own capital](#) on preparatory work on Simandou, while its partners still await for a green light on funding. Bank of America is known to have had financial ties with Rio Tinto in the past. According to an analysis of financial databases conducted by Profundo, in the period between January 2016 and April 2023, Bank of America [financed](#) Rio Tinto with lending totalling USD 993 million and underwriting of USD 178 million respectively. In addition, given the substantial cost and significant risks associated with Simandou, it is possible that its developers will seek project financing to cover at least part of the expenses. WCS, for example, has claimed it is committed to the Equator Principles, meaning it will possibly seek to attract project finance from Equator banks, such as Bank of America.

We call on the bank to engage its client(s) and take all appropriate measures to ensure it upholds its responsibilities to respect human rights as outlined in the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights.

With this letter we hope to bring the risks relating to the Simandou iron ore project in Guinea to your attention and we would like to request a meeting to discuss these issues further. We look forward to receiving a response from you by no later than **4th of December, 2023** and, in the meanwhile, we remain at your disposal should you have any questions or need further clarification.

Sincerely,

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Appendix - Guinean civil society demands:

1. **GREATER TRANSPARENCY: Publish all project agreements and up to date impact assessments.**
Immediate action: Rio Tinto/Simfer and WCS should respond to access to information requests filed by community representatives and nongovernmental organisations and publish certificates of environmental conformity, impact assessments and management plans, and inspection and audit reports.
2. **STRONG SOCIAL AND ENVIRONMENTAL STANDARDS: Implement the Simandou project in line with recognized international standards, including the International Finance Corporation's Performance Standards.**
Immediate action: Rio Tinto/Simfer and WCS should commit to auditing the project against the Standard for Responsible Mining of the Initiative for Responsible Mining Assurance (IRMA), a detailed standard developed in equal participation with civil society organisations, communities, and workers.
3. **FREE, PRIOR, AND INFORMED CONSENT: Commit to obtaining the free, prior, and informed consent of anyone impacted by the project,** in line with the requirements of 2009 ECOWAS mining directive.
4. **FAIR LAND ACQUISITIONS: Ensure that resettlement and land acquisition necessary for the project is undertaken with respect for the highest international standards.**
Immediate action: Rio Tinto/Simfer and WCS should publish revised common land acquisition frameworks that reflect international best practices, including IFC Performance Standard 5. Rio Tinto/Simfer and WCS should also advocate with the Guinean government for the adoption of the national reference manual on compensation and resettlement (*Référentiel national sur la compensation, l'indemnisation et la réinstallation des populations impactées par les projets de développement*), which describes how land acquisitions should occur consistent with international best practices and that was co-developed by Guinean government, civil society, community, and private sector stakeholders. Rio Tinto/Simfer and WCS should also ensure their own land acquisition framework and practices are consistent with the contents of the manual.
5. **ROBUST COMPLAINTS MECHANISMS: Develop independent grievance mechanisms to address community complaints related to the project.**
Immediate action: WCS and Rio Tinto/Simfer should publish and inaugurate a joint grievance mechanism for jointly controlled project infrastructure that builds on WCS's [published grievance mechanism](#) (Version 2.0, April 2022) but that creates a more detailed proposal for an independent complaints process. WCS and Rio Tinto/Simfer should also ensure that the grievance mechanisms developed for their own portions of the Simandou project meet or exceed the same standards as the joint mechanism. Both consortia should take responsibility for handling all grievances arising out of project construction and operation, including complaints relating to the conduct of subsidiaries and sub-contractors.
6. **REMEDY PAST HARMS: Respond promptly and comprehensively to remedy harms suffered by communities already impacted by the Simandou project.**
Immediate action: WCS should respond promptly to the complaints from six villages concerning air pollution, noise pollution, land/soil management, and water pollution/management, as described in a May 2023 [report](#) by Guinean NGO Action Mine.
7. **PROTECT OUR CLIMATE: Properly account for the full, lifecycle climate change impacts of the Simandou project (Scopes 1, 2, and 3) and ensure that their operations are consistent with Guinea's Nationally Determined Contribution under the Paris Accords.**
Immediate action: Rio Tinto/Simfer and WCS should publish a joint, revised climate change impacts assessment for the Simandou project that takes into account the critiques of the climate change sections of WCS's environmental and social impacts published by [ELAW](#), including greenhouse gas emissions caused by land-use change and deforestation.
8. **SECURE BIODIVERSITY: Protect biodiversity by respecting protected areas, high-value conservation landscapes, and endangered species such as the West African chimpanzee through a biodiversity management plan commensurate with the expected impacts.**
Immediate action: Rio Tinto/Simfer and WCS should supplement WCS's existing biodiversity impact assessments and management plans for all components of the project to take into account [critiques](#) published by the Environmental Law Alliance Worldwide.