

Mining in the Philippines

Concerns and conflicts

Fact Finding Mission to the Philippines Report



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Report of a Fact-Finding Trip to the Philippines

July-August 2006

Acknowledgments

The Fact Finding Mission wishes to thank all those who took time to meet with us. The right to enjoy human rights and development is universal. We wish to encourage any and all communities and local authorities adversely affected by mining impacts to continue to explore and pursue all avenues available within the law at local, national and international levels to register their concerns and aspirations and seek redress for wrongs. We offer our continued support to all parties in future efforts to realize a national path to sustainable development based on justice.

Disclaimer

The views expressed in this report are those of the authors and not necessarily those of the participating or supporting organizations. The authors have however done their best to reflect the views, of the many people they met in the Philippines and the views of the people and organizations who have commented on the report.

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Foreword

Having visited many developing countries and seen many places where environmental degradation or destructive development has damaged the livelihoods of people, I was nevertheless deeply shocked by the negative impact of mining in the Philippines. In July 2006 I led a team of human rights and environmental experts on a fact finding visit to the Philippines in order to examine the impact of mining on the environment and people's livelihoods. We met with communities affected by mining and proposals for new mines. We heard how indigenous people had been shifted off their lands to make way for mining and how their consultation rights had been undermined and ignored. We saw polluted rivers, destroyed mangrove forests, damaged coral and ruined agriculture. We concluded that the Philippines is in danger of losing much of its rich biodiversity and damaging the lives of unique indigenous cultures. I believe that current plans for mining in the Philippines should be scrapped and a new strategy put in place which takes proper account of the large number of jobs that already exist in small scale mining and the need to establish criteria for that development of the mining industry which protects the precious and unique biodiversity of the Philippines and the rights of indigenous communities.

During our visit, we found scant evidence of mining benefiting local people or the country's economy. We believe that the Government of the Philippines and the mining companies have failed to comply with national law and international standards. We believe that the Government should be challenged to demonstrate that it is willing to adhere to its own laws and international mining best practice by immediately refusing all mining applications which would damage critical watersheds, ecosystems, agriculture or fisheries or lead to serious social disruption. We are also concerned that some of the mining companies are based in the UK and increasingly money raised in the City of London is being used to fund disastrous projects.

World Bank support for an expansion of destructive mining in the Philippines is also a matter of great concern and given the substantial provision of funding to the World Bank by UK taxpayers, a matter that should be taken up by parliamentarians and the Department for International Development. Similarly the European Union claims that its development programmes are dedicated to the protection of the rights of indigenous people and to a strong commitment to sustainable development but its development interventions in the Philippines are failing to live up to these standards. All these development agencies should play a bigger role in helping the Philippines protect and restore its degraded environment and thus enhance and provide a sustainable future for millions of poor people working in agriculture and fisheries. We also believe that the investor community must behave more responsibly in their investment decisions in the Philippines.

My own conclusion from the visit was that I have never seen anything so systematically destructive as the mining programme in the Philippines. The environmental effects are catastrophic as are the effects on people's livelihoods.

The attached report has been prepared by Cathal Doyle, Irish Centre for Human Rights, National University of Ireland, Galway, Clive Wicks a UK Member of CEESP the IUCN Commission on Environmental Economic and Social Policy and Fr Frank Nally, UK Columban Faith and Justice Office and takes further the conclusions that I have outlined here. We all wish to express our solidarity with and admiration for the Catholic Bishops' Conference of the Philippines which has been vocal in its public opposition to the country's 1995 Mining Act, local mining practices and plans for a massive expansion of mining.



Clare Short MP
House of Commons
13 December 2006

Acronyms and Abbreviations

ADSDPP	Ancestral Domain Sustainable Development Protection Plans
ASEAN	Association of South East Asian Nations
CADT	Certificate of Ancestral Domain Title
CAFGU	Citizens Armed Forces Geographical Unit
CALT	Certificate of Ancestral Land Title
CBCP	Catholic Bishops Conference of the Philippines
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CEESP	IUCN Commission on Environmental, Economic and Social Policy
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child
DENR	Department of Environment and Natural Resources
EIA	Environmental Impact Assessment
EIR	Extractive Industry Review
ESIA	Environmental Social Impact Assessment
EU	European Union
FPIC	Free, Prior, Informed, Consent
FTAA	Financial and Technical Assistance Agreement
FTT	Fact Finding Team
GoP	Government of the Philippines
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IFC	International Finance Corporation
ILO	International Labour Organization
IPRA	Indigenous Peoples' Rights Act
IPs	Indigenous Peoples
IRR	Implementing Rules and Regulations
LGU	Local Government Unit
MAP	Mineral Action Plan
MDGs	Millennium Development Goals
MILF	Moro Islamic Liberation Front
MPSA	Mineral Production Sharing Agreement
NASSA	National Secretariat for Social Action
NCIP	National Commission on Indigenous Peoples
NDF	National Democratic Front
NEDA	National Economic and Development Authority
NPA	New People's Army
OECD	Organization for Economic Cooperation and Development
SCAA	Special CAFGU Armed Auxiliary
SEA	Strategic Environmental Appraisal
SMSG	Special Representative of the Secretary General
STD	Submarine Tailings Disposal
UNEP	United Nations Environmental Programme
UNCTAD	United Nations Commission on Trade and Development

Executive Summary

A team led by Clare Short MP, the former UK Secretary of State for Overseas Development, visited the Philippines in July and August 2006.

The Catholic Bishops of the Philippines attracted international attention because of their concerns regarding the proposed expansion of the mining industry, which has already had major negative impacts on local communities and the environment. In their view 'The implementation of the Mining Act will certainly destroy both the environment and people and will lead to national unrest'.

The team was shocked by what they heard and saw during their visit. In its attempts to woo foreign direct investment, the Philippines government appears willing to circumvent its own laws protecting the environment and human rights and reduce standards below acceptable international practice. Internationally the World Bank's Extractive Industry Review (EIR), a range of academic studies and UN reports have been highly critical of such an approach. All identify mining companies as the main beneficiaries of regulatory concessions in the extractive industry, while the long-term burden of environmental and social costs remains with the developing countries and some of their poorest communities.

The team recognizes the external pressures on the Philippines as a deeply indebted country to generate foreign investment but fears that the emphasis on export-driven mining based on foreign investment may diminish rather than improve the possibility of a balanced, long-term, sustainable development strategy. The problems are exacerbated by the unresolved problems of corruption and the fact that, again contrary to the recommendations of the EIR, many of the proposed new mining sites are in areas of conflict including Mindanao.

Mining in the Philippines is being developed at a speed and scale (See Appendix 9 Scale of Planned Mineral Opportunities presented to Investors), and in a manner likely to cause massive long-term environmental damage and social problems. Current mining plans will undermine the Government's own strategy for sustainable development by destroying or severely damaging critical eco-systems, including watersheds, rivers, marine eco-systems and important agricultural production areas.

The population, currently 84 million, is expected to reach 150 million by 2036. Maintaining the productivity and viability of the land and marine environment is surely the highest priority. Food shortages already exist. The Medium Term Philippine Development Plan (MTPDP) of the National Economic and Development Authority highlights the need to address environmental degradation. The team fears further damage to the environment by mining will occur and will increase the threat to the country's long-term food security and the survival of future generations of Filipinos.

The Philippines is one of the 17 countries in the world to be categorized as a mega-biodiversity country. It is also a geo-hazard hotspot, prone to typhoons, earthquakes, landslides and volcanoes. Its environmental sustainability is already under serious threat with the UNDP highlighting the urgent need to properly manage the country's natural resources if MDG 7 is to be achieved¹. These factors, together with potential social impacts, should require the Philippine government to exercise extreme caution in authorizing large-scale mining projects.

The Philippines has relatively strong laws designed to protect the environment, communities and indigenous peoples. The reality, however, is that where investments are concerned the law is too often viewed as a mere technicality to be overlooked or circumvented. Human rights abuses and misreporting are clearly associated with some current mining activities. It is of concern that those in

government and international agencies seem to lack the capacity or inclination to challenge and end such misconduct. Philippine Law requires that before any development takes place within the ancestral lands of indigenous people they must give their free, prior, informed consent (FPIC). The team heard, however, that this consent is sometimes obtained through misinformation, misrepresentation, bribery and intimidation. Government agencies, in particular the National Commission on Indigenous Peoples (NCIP), are, according to indigenous people the team talked to, failing to fulfill their mandate to protect indigenous peoples' rights. Many indigenous peoples view the NCIP as siding with mining companies. They feel the need for an independent body to ensure indigenous peoples are adequately informed about plans to operate and expand mines, and to assist them in representing their views.

The World Bank is implicated in the expansion of mining in the Philippines. Despite historical problems with mining and a legacy of 800 abandoned mines, the Bank was one of the major actors influencing the liberalized Mining Act of 1995. More recently, it has played a crucial role in sponsoring and promoting the adoption of the National Minerals Policy, the Mineral Action Plan and the revitalization of the mining industry. In failing to address the negative impacts of mining plans on the poor and marginal, the Bank is failing in its duty both to assist with the country's steps to sustainable development and is failing to abide by obligations to its own mandate and obligations under international human rights law.

Based on the economic evidence available, the team believes that implementation of the proposed mining plan will bring insufficient benefits to the Filipino people. Once incentives to mining firms have been considered and revenues offset against the associated costs – in particular the environmental costs – the net gain will be far lower than that claimed by the companies and the promoters of mining in government. The country may be left with clean-up costs that run into billions of dollars.

Corruption is a serious problem in the Philippines and it can be expected that plans for extensive mining operations in remote areas requiring licensing, regulation and monitoring will make it worse.

The Philippines currently faces a crisis of extra-judicial killings. More than 700 activists – including civil rights and environmental advocates – have been killed since the current administration came to power in 2001. Corruption and extrajudicial killings will do untold damage to the reputation of the Philippines worldwide, limiting its ability to promote tourism and other sustainable activities, or responsible foreign direct investment of any kind.

The following is a summary of the recommendations the team makes, some of which are elaborated on in the concluding recommendation section. These recommendations are informed by our various experiences, informants in the Philippines, existing practice in other parts of the world and emerging standards suggested by authoritative international processes.

1 Recommended immediate actions by the Philippine government

1.1 Demonstrate that it is willing to adhere to its own laws and to international mining best practice and standards

by immediately canceling all current mining applications which will inevitably cause major environmental damage to critical watersheds, eco-systems, agriculture or fisheries and result in social disruption, such as those in Midsalip visited by the team. This should include cases where there is strong evidence of serious inadequacies in the consultation and consent processes. Best International practice would also require that:

- Mining licenses should not be issued in conflict zones as recommended by the Extractive Industry Review (EIR).
- The precautionary approach to mining is adopted as required by the Rio Declaration - this would require a ban on submarine and riverine tailings disposal and marine mining.

- No further mining licenses be issued until adequate enforceable legislation and controls are put in place to protect the environment and the economic, social, cultural, civil and political human rights of the Indigenous Peoples and mining impacted communities.

1.2 Ensure regulation and redress. We recommend that the government addresses the shift of its role from ‘regulator of mining’ to ‘active promoter of mining’ by ensuring that all relevant government agencies confine their activities to the impartial regulation of mining.

1.3 Revoke the 1995 Mining Act. We suggest that the government heeds the calls to revoke the Mining Act of 1995 and enact alternative legislation that more effectively protects the interests of the affected local communities, indigenous peoples and the environment.

1.4 Establish an independent mining review body involving civil society and affected communities, with the power to recommend cancellation of mining licenses.

1.5 Provide independent technical and legal advice and support to communities and indigenous peoples throughout the mining application phase in both the FPIC and ESIA processes and where licenses are granted, throughout the life of the projects. The EU and other international donors could assist in establishing and funding such an independent body.

1.6 Upgrade and restructure the Department of Environment and Natural Resources (DENR) to focus exclusively on the protection and development of the Philippines environment and renewable natural resources. A Department of Mines, Hydrocarbons and Geosciences could deal with licensing of mining and hydrocarbon development and ensure compliance with the highest international technical standards. Consider establishing an office of Mining Ombudsman.

1.7 Strengthen legal frameworks for sustainable development by empowering government departments, covering health agriculture and tourism, to enforce standards and take appropriate action where mining projects threaten the national strategy for sustainable development.

1.8 Establish an inter-departmental coordinating committee to approve all extractive industry projects. To ensure transparency and accountability civil society participation at committee level would be required.

1.9 Empower local communities and civil society to explore and pursue all avenues available within the law, at local national and international levels, to register their concerns and aspirations and seek redress for wrongs caused by mining operations.

1.10 Sign up to the Extractive Industry Transparency Initiative (EITI) and publish details of all payments, taxes and royalties made by mining companies. Implement EITI in accordance with the six EITI criteria, ensuring participation by self-selected representatives of civil society at each stage of the process.

2 Issues of Environmental concern and sustainable development:

2.1 Protect biodiversity and apply the Precautionary Principle to any mining or other high impact development to ensure that they only proceed where there will not be significant negative impact on the lives of the pre-existing population, the environment or the ability of future generations to meet their needs.

2.2 We recommend that DENR **conduct regional Strategic Environmental Appraisals (SEAs)** with independent technical support and effective participation of civil society. International donors, including the World Bank and the EU, should endorse and support this approach. For each mining

project proposed, joint Environmental and Social Impact Assessments (ESIAs), open to independent verification, should be developed with appropriate community participation.

3 International Governance

3.1 We recommend that **governments establish binding frameworks** to regulate mining, and ensure access to courts and other effective mechanisms of redress within the home countries of transnational mining companies and the financial institutions that support them.

3.2 We call on the **World Bank Group to uphold its mandate** to help reduce world poverty and protect the environment by halting its promotion and support for mining expansion in the Philippines under current conditions. The Bank should assist with the country's sustainable development by providing technical and financial support for the protection and development of renewable resources, sustainable activities and poverty reduction programs and support Strategy Environmental Appraisals (SEAs) of the key islands and regions affected by mining. It should be strictly guided by its Operational Principle 4.10 on Indigenous Peoples, OD 430 on Involuntary Resettlement and IFC Safeguard policies.

4 Human Rights Issues

4.1 Address Human Rights Violations. We urge the government to increase its efforts to stamp out the spate of killings of politically active citizens and prosecute the perpetrators. Independent investigations should be conducted with invites extended to the UN Human Rights Special Rapporteurs.

4.2 The implementation of laws to protect communities necessitates independent monitoring of the processes of determining FPIC and community consent. The participation in such monitoring by the Human Rights Commission, civil society, relevant religious and academic institutions and indigenous peoples organizations is required to ensure credibility. The EU and other international partners could assist in this.

4.3 Ratification of international treaties. In keeping with the spirit of the Philippine Constitutional provisions (1987) and IPRA (1997) we recommend that the Philippine Government ratify ILO Convention 169 on Indigenous and Tribal Peoples and support the Declaration on Indigenous Peoples in the next General Assembly vote.

4.4 Prior claims. In line with the 1987 constitutional recognition of prior indigenous peoples' rights to their ancestral lands we urge the government to end the contradictory practice of allowing the proposition that mining companies can assert prior rights claims over indigenous peoples' (the traditional owners/occupiers of the land) ancestral lands.

4.5 European Union should place an emphasis on ensuring that FPIC is effectively incorporated as a core element of the 2007-2013 EC Philippines Country Strategy Paper in its midterm review. It should exert its good offices to reduce tension and promote dialogue and a strict adherence to legal process and informed decision-making.

5 Financing

5.1 We urge **mining companies and the investor community to exercise extreme caution** in funding any mining operations in the Philippines until effective structures, laws and controls are in place to protect the environment and human rights. They should improve methods of exercising due diligence over investments in mining projects based on reliable independent information.

5.2 Financial probity. We encourage financial institutions to adopt and adhere to the Equator Principles, and governments in the EU and other major investor countries to ensure that public

money is not invested in ways which directly or indirectly support irresponsible or damaging mining projects.

5.3 Adequate bonds, commensurate with the potential impact of mining, should be required to fully cover potential damage and end-of-life environmental and social costs. Provisions for mine closure should adhere to the current highest standards as stated in the Extractive Industry Review.

6 Company specific recommendations

The FFT discussed a number of cases in depth with local impacted communities. Regarding the following subset of these cases it makes a number of specific recommendations which are included in the final section of the report: Geotechniques and Mines Inc (GAMI) in Midsalip, Zamboanga del Sur, Mindanao; TVI Pacific in Mt Canatuan, Siocon, Zamboanga del Norte Mindanao and Crew Development Group in Victoria, Mindoro.

1. Introduction

Mining has a very poor record in the Philippines as a result of the massive social and environmental problems it has caused historically. Records kept by the United Nations Environmental Programme (UNEP) reveal the Philippines to be among the worst countries in the world with regard to tailings dam failures² whereby the surface impoundments containing the toxic waste from the mining process failed with disastrous consequences for local people and the environment.

In spite of this, since 1992, the Government of the Philippines has been pursuing an aggressive policy to revitalize the mining industry, potentially opening 30 per cent of the country's land area to mining.³ It has promised that mining will be carried out to full international standards and that environmental and social problems will be addressed effectively.

The government has conducted mining road shows⁴ across the globe. Incentives for foreign firms make their operations effectively tax-free for the first five years. Billions of dollars in investments have been promised and a total of 2,000 mining permit applications are pending.⁵ However, critics say there is scant evidence of economic benefit to the Philippines at the national level. At the local level evidence of the detrimental economic, environmental and social impact is widespread. The 'streamlining' of the mining application process has become synonymous with a relaxing of environmental laws combined with attempts to undermine the legal protections afforded to indigenous peoples. It is feared that proposed constitutional change⁶ may further weaken protections.

The Philippines, which consists of 7,107 islands, has fragile tropical ecosystems and is an outstanding biodiversity hotspot. It is one of the 17 countries in the world that are the richest in biodiversity. More than 52,177 species have been identified, half of them are found nowhere else in the world. According to the biodiversity conservation priorities of the Department of Environment and Natural Resources (DENR), 'the Philippines is one of the few countries in the world that is both a mega-diversity country and a biodiversity hotspot.⁷ It recognizes that there is a 'small window of opportunity in which it is still possible to save this global hotspot from complete devastation and the unique life forms found within from extinction'. This extraordinary biological diversity is at risk because the forest cover of the Philippines has dropped from 270,000km² when the Spanish left the country in 1898, to 150,000 km² at Independence in 1946, to just 8,000 km² in 2006.⁸ Mining is targeted for many upland areas where it would further reduce forest cover and leave a toxic heritage for succeeding generations.

Natural hazards are common in the Philippines, with major portions of the country classified as natural disaster hotspots.⁹ Much of its mineral resources lie either in areas of rich biodiversity, in geo-hazard zones or within the ancestral domain of indigenous peoples.

Responsible mining, in accordance with international best practice, is simply not being observed in the country. Despite the legal frameworks and guidelines, in practice mining applications are considered for watershed areas. The Environmental and Social Impact Assessments performed fail to protect the environment adequately, and submarine tailings disposal (STD) – a practice vehemently opposed by many marine scientists and effectively illegal in some of those mining companies' home countries – is being proposed.¹⁰ Mining is also pursued in conflict zones, a practice contrary to the recommendations of the World Bank-commissioned Extractive Industry Review (EIR).¹¹

The combination of inadequate protection measures and natural hazards can be and has been catastrophic. The country's record of mining accidents is evidence of this. Most infamous is the Marcopper disaster of 1996, on Marinduque Island, when a mine tailings spill of more than four million metric tons of waste caused widespread flooding and damage to farm lands and property. Villages were evacuated and an estimated 20,000 people along the Boac River were affected. The river was subsequently declared biologically dead.¹² More recently, following spills of cyanide and tailings

at Rapu-Rapu Island – the government’s current mining showcase – in Albay, Southern Luzon, an independent commission established by the Government found the company guilty of negligence and recommended that the mining operation be closed down¹³. The government failed to do this and the mine remains open.

Most of the Philippines’ mineral resources are located within the ancestral domain of its indigenous peoples.¹⁴ By law, it is required that indigenous peoples give their free, prior, informed consent (FPIC) before any projects proceed within their territories.¹⁵ The fact-finding team learned of several incidents where companies violated the legal guidelines and ‘engineered’ the required consent.

The fact-finding team witnessed at first hand the havoc mining is wreaking on the livelihoods, health and human rights of indigenous peoples and other local communities. They also saw the potential for massive environmental damage to critical water catchment areas, thousands of hectares of agricultural land and the valuable marine environment. Given the rapidly growing population, which is projected to rise from 84 million to 150 million by 2036, the destruction of these vital ecosystems will have serious implications for the food security and future sustainable development of the country. Unless the water catchment areas are protected and forests are replanted on a massive scale with native species, it is estimated that at least 50 per cent of sustainable agriculture, which require irrigation, will be lost.

There are many vocal advocates for the rights of indigenous peoples, local communities and protection of the environment. Such advocates include an active and well-organized civil society with a history of challenging legislation and policy, the Catholic Bishops Conference of the Philippines (CBCP),¹⁶ and indigenous peoples’ organizations. The development of mining under current circumstances is understandably a major and controversial issue. There have been many legitimate expressions of concern and opposition. Even in Congress strong voices are calling for amendments to the mining law. Some people in government and in corporations, however, have labeled critics of these policies as ‘anti-mining’ and leftist. In the context of the ongoing armed conflict in the Philippines between government and left-wing guerrilla forces, it is feared that such labeling is viewed by some in the military as an incitement to action. The fact-finding team was particularly alarmed to learn that hundreds of people labeled in this way, including many involved in peaceful and legitimate criticism of mining projects and policies, have been killed and targeted for execution. One human rights organization has recorded more than 700¹⁷ extra-judicial killings since 2001, with many human rights and environmental activists among the victims. Calls have come from the Philippine Commissioner on Human Rights, Senators in the Philippines, from Amnesty International and UN Special Rapporteurs for immediate action to stop the killings.

From the information acquired during their visit, the fact-finding team fear that the government’s current mining plans will result in heightened divisions and social conflict. They have already resulted in human rights abuses, environmental disasters and the destabilization of rural communities in many areas of the Philippines. The team also fears that such developments and associated conflicts could damage the country’s ability to protect and develop sustainable agriculture, forestry, fisheries, tourism, and renewable energy – thereby potentially further increasing rural poverty.

2. Trip Overview

The fact finding team (FFT) consisted of the Rt Honourable Clare Short, MP and former UK International Development Secretary; Clive Wicks, a Member of CEESP the IUCN Commission on Environmental Economic and Social Policy; Cathal Doyle, a representative of the Irish Centre for Human Rights; and Fr Frank Nally, Columban Faith and Justice Office. Their aim was to assess reports of corruption, human rights abuses and environmental degradation associated with planned and current mining operations (July-August 2006). They met with representatives of the Catholic Bishops' Conference of the Philippines, non-governmental organizations (NGOs), indigenous peoples' organizations, academics, Senate and House members, the Chairman of Transparency International-Philippines, a provincial governor, the World Bank, the Under-Secretary of the Department of the Environment and Natural Resources, the British Ambassador, the Chairman of the Chamber of Mines, the Minerals Development Council, the Chief Justice, and the Ombudsman. (See Appendix 1)

The team had intended to visit three local communities affected by mining on the island of Mindanao in the south of the Philippines. To obtain a comprehensive overview, the communities selected represented the three phases of the mining operations: the application phase, when mining companies seek mining permits; the exploration and mining operation phase; and the post-mining phase, when the mining site is officially closed. However, the team was able to visit only two of these sites. Owing to the presence of an ex-minister in the delegation, the team was strongly advised, on security grounds, against visiting the Mt Canatuan site, which is situated in a region where both rebel groups and paramilitaries have been and are active. The team did, however, meet residents from the local community. They also had extensive discussions, both before and during the visit, with representatives from organizations that have visited this site.

The following is a summary of the site visits. More detailed overviews are provided in Appendix 2: Case Studies. Photos of the some of places visited and people met are included in Appendix 7.

Pre-operation phase - Midsalip

The team met with the Subaanen people of Midsalip, Zamboanga del Sur, Mindanao.¹⁸ The local community successfully opposed past attempts by Rio Tinto (TEPI) to enter and mine in the area¹⁹. They also opposed illegal logging with a five-month blockade to protect the watershed and forest in 1987/8. The latest in the series of attempts to acquire their lands is an application for an iron ore mining permit by Geotechniques and Mines Inc (GAMI), purportedly a Chinese firm, one of several mining companies applying for rights over up to 70 per cent of the land in the municipality.

The Midsalip iron ore deposit is located beneath the sacred mountain range, Mt Pinukis, of the Subaanen people. This mountain range is also the source of three rivers. It is surrounded by fertile irrigated rice fields. The Subaanen and others in the local community made it clear to the FFT that they view mining as a threat to their livelihoods, food security, culture and very existence.

The Subaanen people of Midsalip explained how their right, enshrined in the IPRA law, to give Free, Prior, Informed Consent (FPIC) to any mining proposals on their lands, was being overridden through tactics including misrepresentation, lack of effective participation, a serious deficit of information on the potential negative impact of mining and false promises. They also described similar attempts to obtain their FPIC in the past. Subsequent meetings were held with local people including environmentalists, church members, representatives of farmers and local irrigators. The day culminated in a meeting with over 300 community members in the local church. All of these meetings revealed a people living in dread of 70 percent of their municipality being taken over by mining. The team was utterly shocked that applications were being considered for open-cast mining

in a watershed area which would inevitably bring destruction to rich irrigated agricultural land and seriously impact local livelihoods.

The team recommends canceling all current mining applications in Midsalip because they have the potential to cause major environmental damage to critical watersheds, eco-systems, agriculture and fisheries and to result in social disruption. We also suggest that this policy be applied to all such areas in the Philippines.

Both the Indigenous Peoples Rights Act and the Mining Act require that indigenous peoples' free, prior, informed, consent (FPIC) be obtained before mining permits are issued. Local residents told the team that the company, GAMI, had fabricated the indigenous peoples' consent. They claimed that the National Commission on Indigenous Peoples (NCIP) had failed to adhere to its mandate to ensure the execution of the FPIC process in line with IPRA's implementing rules and regulations. They described that the methods used to do this included the undermining of traditional decision-making structures, misrepresentation, false promises and misinformation. The indigenous people said they had not been provided with adequate information about the potential environmental and social impacts on which to base their free, prior and informed consent.

The team also recommends that the existing FPIC process be declared invalid and proposes that an investigation into the role of NCIP's in the FPIC process be undertaken by the office of the Ombudsman. Any future FPIC process should be in strict adherence with the implementing rules and regulations of IPRA. To ensure that such an FPIC process is credible in the eyes of the Subanen people, the participation of an independent body, capable of providing information on the potential environmental and social impact of mining as well as legal advice should be ensured.

The community of Midsalip also has a long-standing complaint that the local municipal officers were paying themselves the salaries to which only officials in cities such as Manila were entitled, thus using all the funding provided for the municipality leaving little for services. A complaint to the local ombudsman had been turned down and the case is now before the Supreme Court. In the meantime, the malpractice is spreading to other municipalities, particularly to those in which mining is being proposed. The team recommends that measures be taken to address this disturbing phenomenon.

While in Midsalip the Pagadian Diocesan Social Action Centre presented the FFT with documents detailing mining applications and local community protest to same in municipalities throughout the diocese. The team was alarmed by the scale of the mining applications, both in terms of the land area covered and the number of communities potentially impacted. In November 2006 the FFT were provided with a petition filed by the Midsalip community, against the most recent application for an exploration permit in their municipality by TVI Resource Development Philippines (henceforth TVI), a company with existing mining operations in Mt Canatuan. The petition is attached in Appendix 6.

Operation Phase – TVI - Canatuan

Mt Canatuan is located close to the town of Siocon in Zamboanga del Norte, Mindanao. It is part of the ancestral domain of the Subanon people in the area and was their sacred mountain. The area around Mt Canatuan has been described as the 'rice granary of Zamboanga del Norte' and is a critical water catchment zone. It is also an area categorized by Conservation International as a biodiversity hotspot.

The Subanon people and ancestral domain holders have been protesting against mining on Mt Canatuan since 1989. Despite this, a mining permit (a Mineral Production Sharing Agreement – MPSA) was awarded in the name of RV Bosque and Benguet Corporation. It was acquired by what were reported to the team to be dubious means²⁰ and against the wishes of the indigenous people. This process allegedly involved the duping of small-scale miners. Benguet Corporation subsequently

sold this permit to TVI, a Canadian mining company, in 1994. Because this permit predates the IPRA, the company claims that there is no legal requirement to obtain the FPIC of the indigenous peoples.

Although unable to visit the actual mine site the FFT met with members of the Subanon community, including traditional leader and Certificate of Ancestral Domain Title holder, Timuay Jose Boy Anoy. It also met with members of the small scale mining community that predates TVI on the Canatuan site. According to this community, they were the original proponents of the mining application which was subsequently registered in the name of only one of their number, Ramon Bosque. This group has subsequently suffered numerous and serious violations of their rights including forced displacement, restriction of movement, as well as seizure and destruction of property. A high level investigation by the DENR into the legality of the original claim filed by Ramon Bosque would appear to be a minimum requirement. The FFT notes that there are clearly deeply disturbing conflicts that have arisen in the Canatuan Subanon community, and surrounding district, as a result of the actions of TVI Pacific mining company. It was of concern that - despite the high level of conflict, loss of life and series of reported ambushes, shooting incidents and other reported acts of violence - many issues remain unresolved with community protests and even legal petitions remaining unanswered.

Families living in the Subanon ancestral domain have been evicted, and their sacred site has been desecrated by mining operations. The company employs a large paramilitary security force called Special CAFGU Armed Auxiliary (SCAA), armed, trained and supported by the Philippines military but paid for and under the control of the company. The SCAA stand accused of numerous human rights abuses – ranging from violence and intimidation to the placing of hidden barbed nails in trails, food blockades and shooting at people during pickets.²¹ Serious accusations were substantiated by the Philippine Commission on Human Rights in their report on violent dispersals of a picket in 1999.

Local farmers, fishermen and fish-farmers have reported damage to their livelihoods and health. There have been clear reductions in crop yields and fish harvests that people claim is caused by pollution from the mine, and people exposed to contact with river water developed skin infections. With 70 per cent depending on agriculture and fishing for their livelihood, the threat to their environment is a very serious cause for concern. Timuay 'Boy' Anoy, whose ancestral domain rights were recognized by two Philippines Presidents, views the unwelcome entrance of TVI into the Subanon ancestral domain as an act of plunder. He and other Subanon told the fact-finding team that the desecration of their sacred mountain, the human rights abuses suffered, the severing of their symbiotic links with their lands and the presence of outsiders contesting their ancestral land rights have destabilized and divided the Subanon community.

We suggest the intervention of a Joint Commission for Human Rights / National Bureau of Investigation / Department of Justice team of prosecutors to investigate and prosecute any human rights violations in Canatuan. A credible independent investigation into the role of the NCIP, who are accused of being involved in causing the division within the community, and dislodging the genuine Timuay, Jose Boy Anoy, is suggested.

We recommend that, in line with the provisions of IPRA, the NCIP should use and recognize traditional leadership structures and not those created under government registered/incorporate organizations. It is our view that an independent investigation should be conducted into TVI's adherence to the mandatory FPIC process, as stipulated in IPRA's implementing rules and regulations, at Mt Canatuan. If it is found that the requirements have not been adhered to the DENR should review the validity of the TVI MPSA.

For conflicting presentations of the local reality see the local dioceses committee on mining issues (DCMI), Mining Watch Canada and TVI's websites at <http://www.dcmiphil.org>, www.miningwatch.ca and www.tvipacific.com, respectively. (Also see Appendix 7 & 8)

Post-operation phase – Philex - Libay

The barangay²² of Libay is located on the coast of Sibutad, Zamboanga del Norte, Mindanao. It is a picturesque area with lush vegetation and rolling hills covered in forest. At the foot of the hills are homes, rice fields and Murcellagos Bay, containing coral and mangroves and important fishing grounds. Philex Gold, a Canadian registered subsidiary of the Philippines parent company Philex, started large-scale mining there in 1997, stripping the surface of the mountainside and exposing it to erosion. Following protests and falling mineral prices, Philex Gold suspended its operations in 2002.

Local residents told the team how between 1997 and 2002 tailings dam overflows and mudslides destroyed rice fields and filled the bay with mud. Mangroves and coral died. They explained that owing to toxicity and massive siltation of Murcellagos Bay, fishing was no longer viable. They claimed that rice production had fallen by up to 50 percent. The effects were said to be felt by surrounding communities up to 30 kilometers away, affecting up to 15,000 people. Mining was also accompanied by violence: a small-scale miner was shot dead by a company security guard for trespassing in 1998.²³

Philex Gold remains in control of the Libay site. Local residents report that small-scale miners who have come from Davao (outside the local area) use Philex's equipment to perform open-pit mining and pay a commission to Philex. They use cyanide to process the ore. Effects on health, crop production, water pollution and animal sterility are, it was claimed, still being felt. The fact finding team witnessed the damage caused by recent landslides, a phenomena common in deforested areas, which destroyed 14 houses.

With 90 per cent of the ore remaining, locals fear the resumption of large-scale mining. Other small-scale miners, displaced by large-scale mining operations from Mt Canatuan in Siocon, also operate in the area independently of Philex. They follow gold-rich veins and use mercury to extract gold from ore. They receive no technical or financial assistance from the government. The mining rights afforded to the Philex small-scale miners are not extended to this community.²⁴

Other mining sites

In addition to these three Mindanao communities, representatives from civil society, church organizations and local and provincial governments from other areas came to Manila to meet with the fact-finding team. They included people affected by four mining operations: Victoria, Mindoro (Crew Gold Canada/Norway/UK); Tampakan, Mindanao (Saggitarius Mines Inc, Australia); Rapu-Rapu, Albay, Southern Luzon (Lafayette, Australia); Sibuyan Island, Province of Romblon (Pelican Resources, Australia).

Victoria, Mindoro, Crew Gold

The FFT had meetings with Atty Arnan C. Panaligan, the Provincial Governor of Mindoro Oriental and a range of local officials, civil society organizations and indigenous representatives. Through these meetings and the written submissions of resolutions and other documents, it is clear that many local organizations in Mindoro, including affected indigenous and down stream communities, oppose any development of the Victoria, Mindoro Nickel project. The company seems not to have secured the necessary FPIC from the affected indigenous populations nor the community consent or planning permission from the local authorities. The Governor of Mindoro Oriental clearly expressed his frustration, that despite all their efforts to register their legitimate opposition, the project remains on the government's priority projects list and the company continues to include the project in its corporate plans. We appeal to the government and the corporation to resolve the current anomalous and destabilizing position by announcing the removal of the Victoria, Mindoro Nickel Project from the 23 National Priority projects and the cancellation of the project in line with the expressed wishes of the affected population and LGUs.

Tampakan, Saggitarius Mines Inc

A major copper and gold project is in preparation at Tampakan. This project was initiated by Australian miner WMC. However it sold on its rights to the current developers. The FFT met with the Bishop of the Diocese of Marbel, South Cotabato, Bishop Dinualdo Gutierrez. He expressed his outrage at the proposed copper and gold mining operation in Tampakan, Mindanao by Saggitarius Mines Inc, Australia, which he claims will threaten the food security of Mindanao. The Bishop explained that the proposed mining site is in a watershed area that supplies water to 5 rivers in 4 provinces. South Cotabato is known as the food basket of Mindanao and Bishop Gutierrez believes that it is inevitable that the planned mining operation would lead to the pollution of the nearby downstream Lake Buluan and upstream Liguasan Marsh, damaging farmlands and fisheries and seriously impacting the food source for the Muslim and indigenous populations while destroying their livelihoods. This eventuality, he concluded, would most certainly lead to major social unrest. The bishop's sentiments reflect those of the local Sangguniang Bayan (municipal council) of Buluan in Maguindanao which recently passed a resolution opposing the operations of Sagittarius Mines, Inc. in the mountains of Tampakan in South Cotabato, expressing 'fears that it would destroy the livelihood of thousands of residents dependent on Lake Buluan'²⁵.

Gold mining in Rapu-Rapu is already under way. It was halted in 2005 in response to tailings spills, but the mine has since reopened. In Sibuyan Island, a company has drilled for nickel using small-scale mining permits, and is now seeking to expand its operations.

Rapu-Rapu, Sibuyan Island and Victoria are located in geo-hazard areas. In Rapu-Rapu, negligence and the failure of environmental protection measures were linked to fish kills, documented by an independent, government sanctioned fact-finding commission.²⁶ The commission felt that there was 'high probability of connection or that the incidents [which caused damage to marine life] subsequently led to or caused certain negative consequences to health, environmental and economic problems to the people of Rapu-Rapu and nearby coastal municipalities'²⁷. It also noted the failure to adhere to international environmental best practices regarding testing and monitoring.

Tampakan, Victoria and Sibuyan Island are areas of high biodiversity where mining would threaten endemic species. They are also watershed areas. In Sibuyan the proposed future mining areas encroach on a national park. In Victoria submarine tailings disposal has been proposed, and mining would take place on a site the indigenous people hold sacred.

People from all four sites reported that large-scale mining had created divisions among local and indigenous communities. They also reported lack of participation and transparency in the preparation, validation and availability of Environmental Impact Assessments (EIAs). Those from Rapu-Rapu and Sibuyan Island told the team that the companies had failed to recognize that their operations could have an impact on indigenous peoples and had failed to consult them. In Sibuyan Island the company simply ignored the objections of local communities and the local government. It was the same in Victoria where, in addition to ignoring the objections of local and provincial government, residents said, the company had misrepresented their views and made false claims that they had consented to mining. People from all four sites felt that the media had privileged the company position over those of local communities.

The team was alarmed by the repeated and extensive complaints concerning processes and abuse of requirements and processes. The major themes that emerged are addressed in the following section and reflect the team's discussions with a wide range of concerned groups in the Philippines.

3. Areas of Concern

3.1. *Human Rights*

The extractive industry worldwide has been described as having an ‘enormous and intrusive social and environmental footprint’.²⁸ The UN Secretary General’s Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Professor John Ruggie, has acknowledged its deplorable record in relation to human rights, resulting from militarization and corruption, and leading to a broad array of abuses ‘up to and including complicity in crimes against humanity’.²⁹ He described the extractive industry as ‘utterly dominat[ing]’ in terms of reported abuses, accounting for two-thirds of the total reported.³⁰ This trend is evident in the Philippines with abuses affecting local communities, especially indigenous people.

3.1.1. Security firms and militarization

The global trend of increasing human rights violations associated with mining security and militarization is evident in the Philippines. Following his country visit in 2003, the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, Professor Rodolfo Stavenhagen, stated that the ‘militarization of indigenous areas is a grave human rights problem’. Members of the Subanon indigenous people told the fact-finding team that 169 armed security guards, hired by the TVI mining company,³¹ were manning checkpoints and blocking access to their ancestral domain.

The dangers of doing business in the conflict zones of the rural Philippines was highlighted during a Canadian parliamentary hearing in 2005 into the activities of TVI and other Canadian mining companies overseas³². In hearing evidence the committee referred to statements made by Allan Laird, a former project manager from the KingKing Mine Inc (a mine located in Southern Mindanao and controlled by Echo Bay Mines, with TVI as junior partner³³). Laird had claimed that it was the practice for the mine to make illegal payments of protection money to a range of terrorist and military groups ‘By the time the project was completed, approximately \$2 million was provided to terror/insurgent groups’.³⁴ He said he was so concerned about this that he ensured that his monthly management reports to the company board ‘included detailed summaries of payments made to the military, political figures and terror/insurgent groups’. The board members were quoted as characterizing these illegal payments as the ‘cost of doing business’.³⁵ In response to the committee’s questions regarding Laird’s claims, Mr. Clifford James, President and CEO of TVI Pacific Inc, replied that he was on the board and had never received reports ‘that there was anything like that going on’³⁶.

Presentations to the FFT by church and other groups report that the use of intimidation and force by mining security forces, military and police against indigenous peoples and small-scale miners at mining sites is widespread. During their visit the fact-finding team met a small-scale miner who was one of four people shot and injured in 2004 when a company guard opened fire on an unarmed picket blocking the road to stop equipment destined for the mining site at Canatuan. Another one of the injured in the same incident was Timuay Macario Salacao, a 70-year old traditional leader of the Subanons in Siocon who was one of the leaders of the picket. TVI claimed that the pickets were acting in a violent and menacing manner and that the company’s armed guards acted in self-defense. In the history of TVI’s presence in Canatuan, four shootings have been documented by NGOs. Complaints over these incidents have also been filed with the police.

Extrajudicial killings

According to Karapatan³⁷ and other human rights organizations, since 2001 more than 700 citizens of the Philippines, many of them associated with legal political opposition groups and protest causes have been killed. It is claimed that at least 11 of these extrajudicial killings were related to protests against mining.³⁸ The Philippines Commissioner on Human Rights has warned that the

country is in danger of being blacklisted by the UN because the 'authorities have failed to stop the spate of killings and abductions of activists'.³⁹ At least half of the cases of disappearances investigated by the Commission on Human Rights (CHR) were allegedly perpetrated by the military or the police.

International attention is increasingly focusing on human rights abuses in the Philippines. The political killings are the subject of an Amnesty International report.⁴⁰ A joint Dutch-Belgian delegation of lawyers highlighted the killing of 15 lawyers and 10 judges and recommended that the Government of the Philippines order an independent investigation into the killings. The delegation stated that 'a culture of impunity' was developing.⁴¹ The call for action was echoed by Senator Jamby Madrigal, who has filed complaints with a number of UN Special Rapporteurs. The Special Rapporteur on Freedom of Expression has committed to making the Philippines his priority and has requested permission from the Philippine Permanent Mission in Geneva to visit the country. The UN Human Rights Council may review the Philippines' track record as part of its Universal Periodic Review in the coming months. The government is also coming under increasing pressure to meet its long-neglected international human rights reporting obligations.⁴²

The fact-finding team members were disturbed by the climate of fear developing among legitimate protesters against government policies and commercial projects and the apparent lack of effective protection of the right to peaceful protest and opposition. The team concluded, in line with the conclusions of Dr Emil Salim's Extractive Industries Review for the World Bank, that it is inadvisable to develop large-scale and controversial mining projects in an environmentally and socially responsible way if people feel threatened when they criticize government and corporate practices.

3.2. *Corruption*

The Philippines was categorized by Transparency International in 2004 as suffering from 'rampant corruption'.⁴³ The mining sector in the Philippines appears to be no exception to this. The fact-finding team was provided with examples of corruption linked with mining at local government level.⁴⁴ The fact-finding team is supporting a complaint to the national ombudsman in relation to corruption in Midsalip.

The Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, listed large-scale corruption as one of the abuses typically associated with the extractive industry.⁴⁵ The Extractive Industry Review, commissioned by the World Bank to review the possible contribution of Bank investment in mining projects to poverty alleviation and sustainable development, highlighted the connection between corruption and mining.⁴⁶ Other international studies have likewise linked dependency on natural resources to high rates of corruption.⁴⁷

A 2005 European Commission report stated that the DENR had 'shied away' from introducing 'internal controls to curb corruption, which has traditionally been notorious with respect to illegal logging and mining concessions'.⁴⁸

Extractive Industry Transparency Initiative

The EITI is a multi-stakeholder initiative to address corruption within the extractive industries. The EITI requires government, industry and civil society to work together to publish and verify company payments and government revenues from mining.⁴⁹ Although participation by mineral-rich countries is voluntary, a new validation mechanism has recently been agreed to evaluate whether a country is fulfilling its commitment to implement the EITI or not.

The Government of the Philippines and the Philippines Chamber of Mines have expressed interest in this initiative but have not yet signed up to it. Participation in the EITI process by the government would be welcome, but this must also be accompanied by the meaningful involvement of genuine representatives of Filipino civil society. Unless there is the political will to address the underlying issues outlined in this and

other reports, engagement with the initiative will be ineffectual and risks unduly legitimizing the operations of the mining industry within the country.

3.3. *Pressure on the judiciary*

At the Philippine government's mining roadshow in London in June 2005, the Speaker of the House of Representatives, Jose DeVenecia, told international mining investors about his role in the controversial reversal of a Supreme Court decision on the constitutionality of the Mining Act in the La Bugal-B'laan Tribal Ass'n v. Ramos case of 2004.⁵⁰ He announced that, together with the Chamber of Mines 'we mounted a strong campaign to get the Supreme Court to reverse itself. It was a difficult task to get 15 proud men and women of the Supreme Court to reverse themselves. But we succeeded. Finally, the law was declared constitutional.'⁵¹ The statement appeared to indicate that the Philippines judiciary may be vulnerable to pressure from legislators.

While it is clear that laws in the Philippines seem to provide a framework for the protection of local rights, the fact-finding team was told that it appears to be practically impossible for local communities to obtain timely and effective resolution of cases submitted at municipal and regional trial courts.

3.4. *Environmental concerns*

The record of mining companies with regard to environmental protection, disasters and post-mining clean-up in the Philippines is widely acknowledged, even within the government, to be very poor.⁵² As of 2003, there had been at least 16 serious tailings dam failures in the preceding 20 years⁵³ and over 800 abandoned mine sites have not been cleaned up. Clean-up costs are estimated in billions of dollars and the damage caused will never be fully reversed.⁵⁴

Modern mining in the Philippines typically consists of open-pit mining of low-grade ores for copper and gold, and strip-mining for nickel. This involves flattening mountaintops, creating huge craters and producing vast amounts of waste in the form of tailings. Large-scale gold mining is particularly destructive because it involves the processing of huge volumes of ground rock, using cyanide to separate gold from the ore. This process also releases other potentially harmful toxic metals, the monitoring of which has been described as inadequate in certain mining operations in the Philippines.⁵⁵

The DENR has described the Philippines as the 'hottest of hotspots' in the world in terms of threats to its 'mega diverse' biodiversity. It highlighted the 'urgent need to properly manage natural resources and protect the environment'.⁵⁶ In a once densely forested country, which today has the second lowest forest cover in the Association of South East Asian Nations (ASEAN), this is not an overstatement. The loss of forest has resulted in increased flooding, devastating landslides, siltation and the destruction of biodiversity areas. Large-scale mining has the potential to seriously exacerbate this. In the Philippines 81 per cent of the globally important land-based biodiversity areas are in forest habitats. It is estimated that 37 per cent of this forest area may be opened up to new mining.⁵⁷

According to the United States Environmental Protection Agency, water contamination from mining poses one of the top three ecological security threats in the world.⁵⁸ Many mining applications in the Philippines are in water catchment areas very close to the sea, and pose a major threat to valuable marine environments. In addition a number of companies are proposing to use submarine tailings disposal (STD) also referred to as deep-sea tailings placement. The full potential impact of this on the vital marine environment is only now being discovered. The practice is effectively illegal in Canada and the United States and has never been proposed for use in Australia – the home countries of some

of the companies proposing STD in the Philippines.⁵⁹ The FFT was disturbed by this apparent double standard among companies claiming to operate to the highest international standards.

The Philippines has very high geo-hazard risks.⁶⁰ Typhoons, earthquakes, volcanoes and landslides are common. The eruption of the Mt Mayon volcano during the fact-finding team's visit served as a timely reminder of this. The eruption displaced 43,000 people. Alarming, in the Philippines over half of the active mining concessions and two-thirds of exploratory concessions are located in areas of high seismic risk where earthquakes are considered likely.⁶¹ The Marcopper disaster was blamed by Placer Dome, the company operating the mine, on a minor earthquake.⁶² The disaster in 1996, involving the rupture of a cement plug in the base of a tailings dumping pit, spilled an estimated 4 million tons of tailings slurry into the Boac river. The spill affected 20,000 people and resulted in the river being declared biologically dead.

Food and Water Security

Mining can be both a major consumer and a major polluter of water. According to the United States Environmental Protection Agency, water contamination from mining poses one of the top three ecological security threats in the world.⁶³

The communities that the fact-finding team met with and a range of organizations all voiced grave concerns about the potential impact on the volume and quality of water. These concerns are reflected in the documented experience of many communities downstream of existing mines. International experience suggests that if pursued on the scale currently proposed by the Philippine government, mining could weaken the food security of affected communities and even of the country as a whole. Local communities feared that pollution and siltation of rivers may deplete water sources, reducing rice production and fisheries.

The last national census estimated that the population will grow from its current level of 84 million to over 150 million within 30 years. The crisis of water management and irrigation has been raised by the National Economic and Development Authority (NEDA) in the Philippine Medium Term Development Plan 2004-2010. According to NEDA, 'the management of watersheds has not been properly given attention. This has led to shortages of water for irrigation, industrial and domestic uses and is thus likely to negatively affect future development initiatives.'⁶⁴

In the Philippines many mining and exploration concessions overlap watershed areas where demand for water exceeds the available supply. Mining in these areas would therefore be likely to compete with the needs of other users, including farmers and households, for scarce water.⁶⁵ Many mining sites are located on mountains that act as watersheds for numerous rivers, potentially compounding the threat.

While the DENR recognizes that 'pollution of water sources such as rivers and lakes is evident in many parts of the country', there appears to be a disjunction between this assessment and its recommendations on mining. In its mining plan the DENR states that '8.5 million hectares or 94.4 percent of mineralized areas [approximately 28 per cent of the total land area of the Philippines] have yet to be developed', without reference to the potential environmental damage. Those most likely to be adversely affected will be the indigenous and local communities who rely on agriculture and fishing for their livelihoods and food. In the long term, the entire economy and food security of the Philippines will suffer. As the then Secretary of the DENR Heherson Alvares put it: *'What does it gain a nation to be short-sighted and merely think of money when an irreparable damage to the environment will cost human lives, health, and livelihood capacity of our farmers and fisherfolk endangering the food security of our people?'*⁶⁶

3.4.1. Legislation

The Philippines has gained international credibility for its legislation on indigenous peoples' rights. Its environmental legislation has also, in the past, been described as the most progressive in South East Asia.⁶⁷ Protection of peoples' right to enjoy 'a balanced and healthful ecology' is afforded in the constitution.⁶⁸ A progressive Supreme Court case, *Oposa v. Factoran*, halted deforestation of the Philippine rainforests by recognizing the *locus standi* (or the right to appear in court) of both present and future (unborn) generations.⁶⁹ The Philippine government, under pressure from civil society, had made some progress towards meeting the Rio Declaration requirements for public participation in environmental decision making.⁷⁰

3.4.2. Environmental Social Impact Assessments & Strategic Environmental Assessments

However, hard-won provisions for public participation in Environmental Impact Assessments (EIAs) are being eroded in the name of 'streamlining' application processes. Recent Administrative Orders have weakened participation rights, including the right to information, participation in decision making and access to justice. EIA processing timeframes have been reduced, with automatic approval if they are exceeded. Requirements to provide public information have been relaxed, as has the need to provide notice of public hearings⁷¹. These changes have been accompanied by relaxing of the controls in the Mining Act. Taken together, they seriously undermine the protection afforded by EIAs in the Philippines.

During its visit the fact-finding team was informed by locals and NGOs of the difficulty communities had in obtaining copies of EIAs, and of the lack of independent analysis or explanation of their contents and implications. Communities are not provided with adequate independent information to enable them to monitor mining companies' compliance with environmental standards. Bodies that provide this type of independent environmental review and monitoring exist in other countries,⁷² but there seems to be no adequate Philippine equivalent as yet.

Another area of concern to the team is the seeming lack of attention to the social and environmental impact of projects. Best practice would require Strategic Environmental Appraisals (SEAs) to identify threats to biodiversity and sustainable development. These identify all biodiversity areas, including mangroves, coral reefs, seabed grasses, fish breeding grounds, the migratory routes of fish, turtles and marine mammals, the areas of highest fish catch, direction of currents at different times of year, critical water catchment areas, major agricultural areas and forested areas. SEAs would identify current and all potential threats and their potential accumulative impacts. To ensure protection of indigenous peoples' rights, SEAs should also identify all protected areas, including the sacred sites of indigenous peoples. Currently there seems to be no comprehensive assessment of these important potential impacts. Best practice would also require that a joint Environmental and Social Impact Assessment (ESIA) be prepared and independently reviewed for each project.

It was also disturbing to discover that apparently the Philippine Council for Sustainable Development (PCSD) has not been called to meet by the Government for the past two years.

3.5. *Indigenous peoples and Free, Prior, Informed, Consent*

The Indigenous Peoples Rights Act (IPRA, 1997) and the Mining Code (Republic Act 7942, 1995) guarantee indigenous peoples the right to free, prior, informed consent (FPIC) over decisions affecting them and developments on their lands (See Appendix 12 for an overview of the location of

the Philippines 10 – 15 million indigenous peoples). The right to FPIC extends to natural resource extraction projects. FPIC is defined as:

*the consensus of all members of the ICCs/IPs [Indigenous Cultural Communities/Indigenous Peoples] to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference or coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.*⁷³

The definition is based on what has subsequently become Article 32 of the UN Declaration on Indigenous Peoples and similar provisions exist in ILO Convention 169 on Indigenous and Tribal Peoples.

The FFT heard compelling evidence that this right to FPIC is being systematically denied to the indigenous peoples of the Philippines. The indigenous communities they met raised a number of issues that they claim were serious impediments to the effective implementation of their right to FPIC.

One of the major concerns voiced by the indigenous peoples is the lack of independent information regarding mining that is made available to them. They felt that, rather than being informed about the potential impacts of mining, as required by law, the information they are currently provided frequently amounted to little more than propaganda by mining companies. As a result they feel that they are not in a position to make an informed choice.⁷⁴ Based on the experiences of other indigenous communities in the Philippines they fear that many of the promises made by the mining companies during the FPIC negotiations would not be subsequently fulfilled. In some cases verbal promises made to them border on the absurd.⁷⁵

Another serious issue raised by the indigenous communities was what they described as a type of 'foot in the door' policy being operated by mining companies. They described how companies only provide them with details of their initial planned operations and do not give them information on the potential for future expansion. The experience of indigenous communities has been that, once mining operations have been established the incremental processing costs are minimal, expansion is almost inevitable regardless of the wishes of the communities impacted.

The Midsalip community described how attendance sheets at meetings with a mining company had been used as proof of consent. They, along with other indigenous communities that the FFT met, recounted offers ranging from bags of rice to cash amounts, significant by local standards, offered in exchange for their consent.

In the FFT discussions with the indigenous peoples two common themes emerged. Firstly, indigenous communities felt that mining companies lacked respect for their traditional cultures, viewing their right to FPIC as a technical obstacle to be overcome as quickly as possible rather than a necessary protection of rights. Concrete examples provided by indigenous peoples included cases where mining companies arbitrarily declared that their sacred sites were 'not sacred'. This lack of respect was reflected in a speech by a mining company CEO when he dismissed a mountain that indigenous people had been fighting to protect as being 'a bit of an ugly looking place'.⁷⁶

The second theme that emerged from discussions with the indigenous peoples relates to factionalism and misrepresentation. A pattern appears to exist of mining companies attempting to capitalize on, or generate, division within indigenous communities. In cases where the consent of the indigenous people has not been forthcoming, non-representative indigenous leaders have been created and recognized by the NCIP and the mining companies. The indigenous people view the selection of elders through procedures that do not respect customary laws as invalid. According to them consent obtained in this manner should not and cannot be the basis of FPIC. This view is supported by IPRA

which requires that consent be obtained ‘in accordance with the customary laws and practices’ and ‘free from any external manipulation’.

Cases similar to those recounted to the FFT, where mining companies engineered consent, have been documented all over the country.⁷⁷

3.5.1. Lack of independent monitoring & expertise provision & the NCIP

The National Commission on Indigenous Peoples (NCIP) is the body mandated to ‘protect and promote the interest and well-being of the ICCs/IPs’. It is responsible for ensuring adherence to the implementing rules and regulations of the IPRA. The perception among indigenous peoples, based on their experience of the FPIC process to date, is that the NCIP is failing in its mandate and has in many cases sided with mining companies. Some blame this on a lack of funding for the NCIP, others on its lack of independence from a political agenda that is strongly pro-mining; others still attribute it to corruption and bribes by mining companies.

Given this perception of the NCIP’s bias against indigenous peoples, there is a need to address its lack of credibility and restore confidence in legal processes. This might take the form of a credible independent body to certify that consent has been given in line with the IPRA’s legal guidelines. The Philippine Commission on Human Rights may be able to play an important role in certifying indigenous peoples’ consent. Where methods used to obtain consent breach the IPRA guidelines, legal remedies should be accessible to the affected communities. It should be noted that communities repeat their concern that the finances and expertise available to companies and the inability of communities to ‘afford’ the lawyers and costs of access to justice, is a significant barrier to just outcomes. The team believes that given the scale of the violations, the office of the Ombudsman should be strengthened to deal with violations of indigenous peoples’ rights. The model implemented in Venezuela, of a post of Special Ombudsman on Indigenous Issues, should be considered. A credible selection process and the employment of staff sympathetic to, and knowledgeable about, indigenous cultures is essential for this office to be credible in the eyes of indigenous peoples.

There is also a need to mandate an independent body to provide scientific and legal assistance to indigenous peoples during the FPIC process. Such a body is essential to ensure that indigenous peoples are in a position to consider giving their informed consent. There is a need to provide independent assessments and explanations of ESIAs. This and other information should be provided as part of the FPIC process in a language and format understandable by indigenous peoples, to ensure that they are fully informed of the potential impacts.⁷⁸

3.5.2. Weaknesses in the Law

There are a number of weaknesses in the current IPRA legislation and its Implementing Rules and Regulations (IRR), as currently revised, in relation to FPIC. Two major problems are:

- the short timeframe allotted for consensus building in the Implementing Rules and Regulations;
- the current interpretation of Section 56 of the IPRA which seeks to deny indigenous peoples the right to FPIC for mining operations that existed before the enactment of the IPRA.

The government, in the interest of speeding up permit applications and with the approval of the NCIP, has implemented new guidelines for the FPIC process. Rather than addressing existing concerns, they focus on speeding up the FPIC process and may even reduce protections that currently exist.

Philippine obligations under International Law

The Philippines has ratified all the main United Nations international human rights treaties, but surprisingly it abstained from voting on the recent UN Human Rights Council resolution on the Declaration of Indigenous Peoples' Rights (June 29, 2006), which was approved and sent to the General Assembly for final confirmation.

The Philippines has also ratified international environmental treaties and agreements such as the Convention on Biodiversity, the Basel Convention on Hazardous Wastes, the UN Convention on the Law of the Sea, the Convention on Marine Dumping and the Convention on Wetlands. In Philippine law, international agreements that the country has ratified have the same status as legislative acts. The Philippines is thus bound by the obligations they impose. Rights guaranteed in the existing international human rights treaties that are particularly relevant to indigenous peoples include the right to self-determination, the right to non-discrimination and the right to culture.

In addressing previous reports completed by the government of the Philippines, the Human Rights Committee (HRC), responsible for overseeing the International Covenant on Civil and Political Rights (ICCPR), and the Committee on the Convention on Elimination of all forms of Racial Discrimination (CERD) have raised the issue of indigenous peoples' rights in the context of mining. The HRC expressed concern for the 'human rights implications for indigenous groups of economic activities, such as mining operations' in the Philippines.⁷⁹ It also requested that the IPRA be effectively enforced, the capacity of the NCIP be strengthened and that 'indigenous peoples' land and resource rights enjoy adequate protection in relation to mining and other competing usage'.⁸⁰ The CERD committee raised similar concerns and questioned the displacement of indigenous peoples from their ancestral lands as a result of development.⁸¹

Both the CERD Committee and the Committee on Economic Social and Cultural Rights (CESCR) have stated that consent of indigenous peoples should be obtained for mining. The HRC has highlighted the need to protect indigenous peoples' 'cultural identity and traditional livelihood' in relation to extractive industries.

The Convention on Biodiversity provides for the preservation of indigenous peoples' traditional lifestyles and their involvement in sharing their knowledge and benefits from those lifestyles.⁸² The Declaration on Indigenous Peoples requires that indigenous peoples be afforded the right to FPIC in all decisions that affect them.

The Philippine Commissioner on Human Rights, Purificacion V. Quisumbing, recently chastised the government for its failure to meet its reporting commitments to the human rights treaty bodies. With some reports 14 years overdue, she warned that the Philippines may be listed as a violator of its treaty obligations.⁸³

3.6. *The Philippines Local Government Code*

The Local Government Code of 1991 requires that local governments be consulted with regard to development initiatives, including mining operations, within their jurisdiction. In practice it seems this requirement is frequently over-ridden by national government, or ignored, or rendered ineffective by bribery.

3.7. *Health impacts*

Mining can have serious health implications for local communities. Professor Rodolfo Stavenhagen the UN Special Rapporteur on indigenous peoples' rights, on his visit to the Philippines in 2002, identified threats to health as one of the negative impacts of mining that urgently needed to be halted.⁸⁴ In Mindanao the fact-finding team heard numerous reports of people suffering from itching and skin rashes as a result of washing with water or working in their rice fields. They attributed these to pollution caused by mining operations. In much commercial mining, cyanide separation is used to extract gold from ore. It is estimated that one-millionth of a gram of cyanide per liter of water can be

fatal to fish. The mining process can also lead to toxic metals being released from the ore. If toxic metals, mercury or cyanide get into the food chain they can seriously damage health⁸⁵.

Decreased productivity of farming or fishing - a widespread complaint of affected communities - has an immediate impact on health, in particular that of children, as nutrition levels fall and families can no longer afford health services.

The collapse of tailings dams has resulted in injuries and deaths, but can also have disastrous longer term health effects, with contaminated water leading to skin infections, loss of food sources and chemicals entering the food chain. The full potential direct and indirect health impacts of submarine tailings disposal are unknown⁸⁶. Health impacts also result from the influx of people into the mine site. The introduction of HIV/AIDS, sometimes associated with migrant male workers, is a major worry among local communities. In indigenous communities, the health of individuals can suffer when their connection with the land is broken, because this limits their access to traditional sources of food and medicine. This dislocation from their natural environment can also be detrimental to their psychological well-being. To address these concerns the EIR commissioned by the World Bank emphasized the importance of the health impacts of mining and recommended that Health Impact Assessments be performed.

3.8. *Militarized commerce*

The EIR noted that 'the large economic rents generated by extractive industries may help provoke or prolong civil conflict. Indigenous peoples are particularly vulnerable.' The review recommended that one of the 'core macro-governance' criteria in relation to mining should be 'the absence of conflict or of a high risk of conflict' and that in no circumstance should the World Bank support mining projects in areas involved in armed conflict.

In the Philippines mining is currently proceeding in conflict zones. The Special Rapporteur on indigenous peoples' rights noted that there had been 'extensive human rights violations by the army in northern Mindanao' in connection with economic development projects including mining. Both the Moro Islamic Liberation Front (MILF) and Abu Sayyaf are reported to have been active in the Zamboanga provinces, where TVI is operating.

The record of the logging industry in the Philippines reveals that many logging operations in remote areas attracted the attention of bandit and guerrilla groups and many were forced to pay protection money. Mining operations, particularly for gold, in zones of conflict seem inevitably to draw attention from armed groups. Records of payments made to various armed groups by Kingking Mines in the Davao Gulf in Mindanao have been published by the Sierra club, a respected North American Environmental group and presented to a Canadian parliamentary committee in 2005.

Militarization and conflict are widespread in the Philippines, and human rights violations are committed by the military, private armies and rebel groups.⁸⁷ Mining in these conflict areas has led to significant increases in militarization and an associated escalation of human rights abuses.

Peace agreements

One area of concern brought to the attention of the fact-finding team was that peace negotiations between the government and the MILF may enable mining on indigenous peoples' lands without their consent.

Failure to address the concerns of indigenous peoples in the peace negotiations could lead to instability and the denial of rights to indigenous peoples of the region. A recent statement by 26 indigenous tribes – comprising the United Indigenous Nations of Mindanao – expressed their opposition to the inclusion of their ancestral domains and ancestral lands in the proposed coverage

of the Bangsamoro homeland. The statement said that the agreements would not be a guarantee for peace and unity between Muslims and indigenous peoples⁸⁸ and called on the government of the Philippines, the MILF and the Malaysian government, which is mediating the talks, to give 'considerable attention' to their position if they wish to achieve a lasting peace.

3.9. *Economic model*

The government of the Philippines is promoting mining as 'assisting in the Government's program on poverty alleviation and contributing to the general economic well being of the nation'.⁸⁹ Despite this laudable goal the fact-finding team found scant evidence of mining benefiting the local poor or the country's economy as a whole. Evidence seemed rather to point to the contrary. Examples include Marinduque and Benguet, whose experiences have been well documented. Despite their past international importance as mining areas, they remain among the poorest regions in the Philippines.⁹⁰

At a macro level the figures presented by the National Economic Development Authority (NEDA) and the Mines and Geosciences Bureau (MGB) make a less than compelling case for mining. NEDA based its economic forecasts for the total benefit of proposed mining operations on the commercial figures produced by mining companies to generate investment. These figures are not regarded as reliable forecasts of actual earnings within the mining sector itself, nor do they take account of the costs that will have to be borne by the taxpayer to facilitate the mining sector or the cost of the environmental and social legacies often left behind by mining companies.

The NEDA / MGB figures, listed in the 2004 – 2010 Presidents Ten-Point Legacy, for the 23 priority mining projects show a total annual cumulative revenue (before incentives) of \$135m⁹¹. When incentives are factored in, the total revenues drop significantly – in some cases close to zero. According to the CEO of Climax Mining Limited, a subsidiary of Climax Mining an Australian company,⁹² the conditions offered with the Financial and Technical Assistance Agreement (FTAA) to foreign firms are 'sweet and very attractive' and 'effectively tax free for the first five years'. In addition to tax holidays, foreign firms are entitled to full repatriation of profits.⁹³ With many project life spans ranging from five to 20 years the macro-economic gains to the Philippines are far from evident.

This conclusion is borne out by numerous international empirical studies regarding the macro-economic impacts of mining and was also recently reiterated by the 2005 United Nations Conference on Trade and Development report in the context of similar policies on mining in Africa.⁹⁴ Macro-economic benefits were shown to be minimal, owing to such factors as dependency on exports with no processing of raw minerals, low employment due to the technology-intensive nature of large-scale mining, costs associated with social and environmental damage and low tax rates combined with large financial incentives for mining companies.⁹⁵

According to an Oxfam study and other academic reviews, at the micro level 'historic mining regions have become synonymous with persistent poverty, not prosperity'⁹⁶. In the Philippines the negative social, environmental and cultural impact of mining reported at local level include militarization, human rights abuses, pollution and the destruction of indigenous communities. The livelihoods of farmers and fishermen are affected by pollution. Small-scale miners are displaced by large-scale operations, often with the net result of fewer jobs.⁹⁷ Mining communities that the fact-finding team spoke to said that those employed by the mines include many who come from outside the local communities, but are skilled.

Mining policies in the Philippines are directed towards the export of minerals. As contemporary mining is highly capital intensive, its ability to create jobs would appear limited.

The fact-finding team requested economic models providing projections of income from mining from government agencies, the World Bank and the Chamber of Mines. Apart from the NEDA / MGB figures for the 23 priority mines, none were forthcoming. Philip Romualdez, President of the Chamber of Mines and CEO of Benguet Mining Corp, accredited with ‘almost single handedly spearheading the revival of local mining through aggressive road-shows’⁹⁸ was asked, during a meeting with the fact-finding team and others at the British embassy, what the economic benefits to the country and local people were. He replied that it was ‘impossible to answer’ and could be known only once mining had been carried out. It would appear that in effect the people of the Philippines are being asked to risk their natural resources, biodiversity, livelihoods and culture with little indication of what the benefits will be and no estimation of the costs for them.

The Supreme Court, in overturning its original decision declaring provisions of the Mining Act as unconstitutional,⁹⁹ based its decision on claimed economic benefits of FTAAAs, which allow 100% foreign ownership, on the argument that the additional government share of net mining revenues compensates for the low tax rates and high incentives. However, there is widespread skepticism that this will yield the revenue sharing expected by the Court.¹⁰⁰ A manifestation of this skepticism was seen in the Rapu-Rapu Fact Finding Commission report which recommended an investigation of Lafayette Philippines Incorporated ‘for possible underreporting of ore/processed’¹⁰¹ which the Commission claimed had impacted on the tax due. The DENR committed to following up on the Rapu-Rapu Commissions recommendation by forwarding the request to investigate the alleged underreporting of ore to the Bureau of Internal Revenue¹⁰².

On the evidence available to it, the fact-finding team has strong grounds to believe that:

- Large-scale, technologically sophisticated mining appears unlikely to lead to job creation. There is considerable basis for the fear that more livelihoods will be destroyed (through damage to agricultural land and fisheries, and displacement of small-sale miners) than new jobs created.
- It seems clear that revenues to the state, once incentives have been accounted for, will be substantially less than expected.
- Based on all past experience, affected poor and indigenous communities on site and downstream will be worse off. The fact-finding team was not convinced that royalty payments would adequately offset such impacts. They remain concerned that the management of royalty payments was lacking in transparency and participation, and might become a source of corruption and conflict.

3.9.1. Alternative economic and sustainable development models

The above economic analysis does not address the potential negative impacts of mining. Damage caused by pollution and mining disasters, if a cost can be fully estimated, could run into billions of dollars. Nor does the macro-economic analysis look at the alternative sources of revenue available to the Philippines, a country rich in renewable natural resources. The World Bank has identified tourism and agriculture as being major potential growth areas. It has also stated that, for this potential to be realized, environmental protection is essential. To put this into context, the World Bank estimates that the damage currently being done to the Philippine economy as a result of water pollution alone, is about \$1.3 billion a year.¹⁰³ This is prior to mining expansion. There is a serious need to revise existing policies, programmes and projects, in particular those pertaining to mining, to bring them into line with sustainable development commitments. (see Appendix 10 Maps of Marine and Terrestrial Conservation Priorities and Appendix 11 Gross Value Added in Agriculture, Fisheries and Forestry).

The Long-Term Philippine Development Plan (LTPDP), 2000-2025 (Plan 21), if effectively implemented, would require sustainable development programs to be integrated into the decision-

making process of all government departments and agencies at national and local levels. Doing so would raise inherent contradictions between the promotion of current mining policy and the nation's blueprint for sustainable development. This proved to be the case in Mindoro Oriental, where the national government's promotion of the mining agenda clashed with the local government's Agenda 21 plan based on fisheries, farming and tourism.

The Philippines has a range of options for sustainable economic expansion. Its rich marine resources, its beautiful countryside and beaches and its young, educated, English-speaking workforce are but a few of its many assets. The options include making greater use of marine resources, meeting the growing global demand for organic produce, and capitalizing on biodiversity through bio-prospecting and Payments for Environmental Services (PESs). Mining, as currently proposed, could place all of these alternative sources of long-term sustainable revenue at risk.

In the context of indigenous peoples sustainable development the NCIP is required to provide assistance in the formulation of Ancestral Domain Sustainable Development and Protection Plans (ADSDPP) to indigenous peoples.¹⁰⁴ The purpose of these plans is to involve indigenous peoples in the 'sustainable management and development of the land and natural resources' based on the principle of self-determination. Preparation of ADSDPPs addressing the range of economic opportunities available to indigenous peoples would help provide a basis on which informed decisions on the available options – potentially including large- or small-scale mining – could be reached in a meaningful FPIC process. The team was informed by indigenous groups that in certain cases ADSDPPs were being formulated by and with mining companies, something they regarded as a disturbing abuse of the process.¹⁰⁵

Small-scale miners

The EIR has recommended that greater attention be paid to small-scale mining by the World Bank.¹⁰⁶ It was noted that in the Philippines the government has taken some steps in this direction. However, based on their meetings with small-scale miners in Libay and discussions with civil society, the fact-finding team urges the government of the Philippine to do more in this regard, particularly towards the poorest in the sector.

It has been estimated that there are at least 300,000 small-scale miners currently in the Philippines.¹⁰⁷ The probable displacement of these miners by commercial large-scale projects is omitted from the figures for employment generation estimated by the MGB and NEDA. Based on past experience it is reasonable to assume that the number of jobs 'created' by large-scale, technology-intensive, open-pit mining will at best equal, and most probably fall short of, the number of small-scale miners displaced to facilitate it.¹⁰⁸ In some cases these small-scale miners are indigenous people residing on their ancestral domains.¹⁰⁹ Currently relatively little assistance is provided to small-scale miners by the government, with priority given to large, foreign-owned firms.¹¹⁰ In the Philippines the opening up of mining to foreign corporations has resulted in increasing confrontations between these companies and small-scale miners. According to accounts received (from Canatuan and elsewhere) their tunnels were bulldozed, they were prohibited from entering their traditional mining areas or maintaining their houses there, and as a result they have been displaced. Some have been evicted by force. Protests by small-scale miners have been met with human rights violations, including blockades to control the entry of goods, food and people, and a series of shooting incidents, violence and threats by security firms working for mining corporations.¹¹¹

Small-scale gold mining can be dangerous and environmentally damaging. It tends to follow visible high-grade gold ore, in contrast to open-cast methods which are extensive and generate large volumes of waste. However small-scale mining is already clearly an important rural employer. If managed appropriately with technical and financial assistance, SSM has the potential to make a significant contribution to rural livelihoods and poverty reduction, without the massive social and environmental disturbances of large-scale mining.

4. Conclusion

The Philippines is globally important as a centre of biological diversity. Additionally many poor people depend on the environment and its bounty to sustain their lives. The economic, cultural and spiritual potential of Philippine biodiversity for the future of the nation and especially its poorest citizens, should be given priority in planning for the future.

In her inauguration speech in 2004 the Philippines President, Gloria Macapagal-Arroyo, promised 'a pro-poor agenda that will lift up our poorest brothers and sisters, invest them with dignity, imbue them with hope'.¹¹² Unfortunately, far from uplifting the poor and imbuing them with hope, the current administration's promotion of mining appears to threaten exactly the opposite.

Since the overthrow of the Marcos dictatorship in the Philippines in 1986 the Filipino nation has been struggling with the legacies of debt, corruption, over exploitation of natural resources and militarization which underpinned the Marcos regime.

Lessons should be learned from the past. In the 1960s and 70s - and particularly during the Marcos regime - the World Bank promoted a development path through the exploitation of Philippine natural wealth in the form of the rapid development of logging. The result was that major logging projects destroyed much of the country's tropical forests and benefited only around 65 elite families¹¹³ while impoverishing indigenous and other poor communities whose living depended upon the forest and its rivers.

Mining, as it is currently envisaged, is perceived by many as a repeat of the logging experience. People frequently reported to the FFT that they feared that mining threatens major environmental destruction and the further impoverishment of the majority to the benefit of only a few. This has led to the wide scale opposition to mining of those who once again see their lands and future threatened. Significant changes in perception, practice and outcomes are essential if the concerned communities are ever to consider mining as anything more than a curse. Such changes would almost inevitably include a major scaling back of current proposals for mining expansion, and the strengthening of the legal framework. There are frequent calls for a moratorium on all mining.

The Philippines is to be congratulated for some of the steps it has taken. The 1987 Philippine Constitution was a historic step, in its recognition of the historical injustice to indigenous peoples and the final recognition of their land rights. The passage of the 1991 Local Government Code, the 1997 Indigenous Peoples Rights Act (IPRA) and the formation of the Philippine Council for Sustainable Development have all been welcomed, both nationally and internationally.

However the FFT was concerned by accounts of the disparity between the provisions of the legal framework for the protection and exercise of the rights of local communities and Indigenous Peoples, and the negative practical experience of those who seek to exercise their rights against mining proposals. In particular the welcome and important provision for Free Prior Informed Consent is, according to accounts received being subjected to manipulation and misuse to the benefit of mining interests, resulting in division, conflict and dispossession for the affected communities. The FFT was not in a position to ascertain conclusively the full circumstances in each of several cases presented to them, but did note the similar and disturbing complaints of various diverse communities.

The FFT was also concerned that laws formulated to safeguard respect for the decisions of local communities and indigenous peoples are being implemented through more recent fast track Implementing Rules and Regulations that seem to work in contradiction to the spirit and purpose of

the original law. Further, they are being implemented in ways, seen by affected communities, as being both arbitrary and biased in favor of mining interests.

The Philippines is a deeply indebted country. It is clear that the national mineral wealth is perceived as one means to reduce such debt and improve the economic situation. Hence the international community bears a direct responsibility for the current thrust for mining expansion in the Philippines. The current policies were formulated and are being implemented under the guidance of the World Bank and other international institutions, financiers, mining companies and investors, with the support of the home countries of mining companies. In so doing, these institutions have, in the view of the FFT, paid insufficient attention to the potential negative impacts of large-scale mining on the poor and marginal. These negative consequences are therefore also, in our view, a shared responsibility. If the problems are to be overcome the international community will need to share the responsibility and act to avoid any future occurrence.

The World Bank has actively promoted mining law liberalization and mining development in the Philippines for more than 15 years. It has done this despite substantial evidence of the adverse impacts of these policies and in contradiction of the stated objectives of the Bank to promote sustainable development and alleviate poverty. The Bank has failed to adequately consider or safeguard the interests of the poor and marginal - including indigenous peoples - in its promotion of mining. The Bank has also failed to implement the recommendations of the Extractive Industry Review which it financed. Similar conclusions regarding mining policy were reached in a 2005 UNCTAD report addressing mining in Africa. It described export-orientated, foreign direct investment driven mining as a "Winners Curse"¹¹⁴. From what we have seen, the conditions leading to this "Winners Curse" also exist in the Philippines. In its operations in the Philippines the FFT believes the Bank has failed to adhere to its own guidelines, safeguards and directives as well as its obligations under international law. Its policy recommendations on mining are also tending to subvert the national legal protective framework in the Philippines on issues of sustainable development and especially the protection of indigenous peoples' rights.

The home countries of mining companies need to hold their corporations to account. Mining companies need to act more responsibly and as a minimum adhere to national and international laws and international best practice. Despite rhetoric to the contrary it is clear that this is not currently occurring. Governments that seek to benefit from a globalized economy should also provide, within their political processes and courts, for adequate means to raise concerns and gain redress if and where adequate standards are not maintained in overseas operations. The international community further needs to ensure that its international finance institutions better translate their internal policy priorities into practice. Donor countries concerned for the future of the Philippines, including the EU, should ensure that their development programs live up to their rhetoric on indigenous peoples' rights, pro-poor development and environmental protection.

The massive scale of mining expansion proposed for the Philippines inevitably generates concern and opposition. The shift in the position of the government from regulator to active promoter and advocate of mining has also added to this concern. It is clear to the FFT that the active promotion by government of the mining industry, and the subsequent foreign led mining boom, has damaged the standing and credibility of government in many affected rural communities who fear and oppose mining. To restore public confidence the Philippines government should demonstrate more clearly that it is committed to upholding its own national laws, including the IPRA and Local Government Code. It should also prioritize its international obligations to human rights, even where these might be seen to negatively impact on private investors.

In this regard the Philippine Government needs to maintain adequate standards of environmental and human rights protection. Unfortunately, in the Philippine context - of high population density,

typhoons, heavy seasonal rains and the constant danger of seismic activity – it is not clear whether or not maintaining these precautionary standards is within the technical and financial capacity of current best practice in the global mining industry. What is blatantly clear, however, is that many mines in the Philippines - including those most recently opened at Rapu-Rapu, Canatuan and Sibutad - have negatively impacted on the environment and have seriously adversely affected significant sectors of the poorest communities living nearby.

Treat the earth well: it was not given to you by your parents, it was loaned to you by your children.

We do not inherit the Earth from our Ancestors, we borrow it from our Children. *Chief Seattle*

5. Recommendations

The FFT offers the following comments and suggestions. These are informed by our various experiences, informants in the Philippines, existing practice in other parts of the world and emerging standards suggested by authoritative international processes¹¹⁵.

The context of our comments is that the current thrust for mining expansion in the Philippines is clearly deeply divisive. We were profoundly disturbed and surprised by the negative impacts and negative perceptions of mining proposals and the widespread opposition to mining in many areas.

Our suggestions are focused on constructive steps to address these widespread concerns. Since the passage of the Mining Code in 1995 there have been significant changes in the global economic and environmental situation. We hope, therefore, that this is accepted as a good time for a reappraisal.

The team is aware that some of its recommendations would require increased financing. We can only observe that the potential for social division and environmental damage and impoverishment which might result from a failing process argue strongly for this investment. The final report of the Extractive Industries Review of Dr Emil Salim¹¹⁶ made the point that if mining is to have beneficial outcomes for the poor then a pre-requisite is strong checks and balances in governance that provide adequate protection for the interests of the weak and marginal. We support his view and we feel that international, national and non-government financial support should be directed to this end.

It is of great concern to the FFT that the international community seems, so far, to be more interested in uncritically promoting their national investment opportunities than facing up to the environmental and social damage that may result.

1. Recommended urgent actions by the Philippine government

1.1 The Philippine government should demonstrate that it is willing to adhere to its own laws and international mining best practice and standards by immediately canceling all current mining applications which will inevitably cause major environmental damage to critical watersheds, ecosystems, agriculture or fisheries and result in social disruption, such as those in Midsalip visited by the team. This should include cases where there is strong evidence of serious inadequacies in the consultation and consent processes.

Best International practice would also require:

- That mining licenses should not be issued in conflict zones as recommended by the Extractive Industry Review.
- The adoption of the precautionary approach to mining as required by the Rio Declaration - this would require a ban on submarine and riverine tailings disposal and marine mining.
- That no further mining licenses be issued until adequate enforceable legislation and controls are put in place to protect the environment and the economic, social, cultural, civil and political human rights of the indigenous peoples mining impacted communities and the needs of future generations

1.2 Regulation and redress. Effective regulation and access to redress are essential both within and outside the Philippines. The current trend towards self-regulation is inappropriate to the potential seriousness of mining impacts. The shift of government from 'regulator of mining' to 'active promoter of mining' sets up a conflict of interest which tends to undermine confidence in the impartiality of government agencies, especially at the community level. We recommend that all relevant government agencies confine their activities to the impartial regulation of mining.

1.3 Revoke the 1995 Mining Act. Among civil society groups we met there were repeated calls for the scrapping of the 1995 Mining Code. We suggest, given the division and conflict associated with it, that the government heeds the calls to revoke the Mining Act of 1995 and enact alternative legislation to regulate mining, based on a participatory process that more effectively protects the interests of the affected local communities, indigenous peoples and the environment.

1.4 Mining Review Body. We recommend that the government establishes a credible independent mining review body and subject all recently granted mining licenses under the 1995 Mining Code to a credible independent review, involving civil society and affected communities in the process. This review body should have the power to recommend cancellation of mining licenses where anomalies in process or breaches in standards are revealed.

1.5 Independent technical advice. The processes, pertaining to mining applications and subsequent operations, would benefit greatly if communities and indigenous peoples had access to an independent resource pool, drawn from academia and other sections of civil society, to provide independent technical and legal advice (and where necessary legal support) throughout the life of the projects. This body could also provide information, expertise and capacity building to indigenous peoples during the free, prior, informed consent process. The EU and other international donors could assist in establishing and funding an independent body providing legal and scientific advice to indigenous peoples during the FPIC and ESIA processes. The body could be composed of a combination of indigenous peoples' organizations, civil society organizations and academia. For example a centre for indigenous peoples' rights could be established within a respected Philippine University.

1.6 Upgrading and restructuring of government departments. In line with best international practice and the recommendations of the EIR, we urge the government to consider the restructuring of the Department of Environment and Natural Resources (DENR). This should be done to eliminate the conflict of interest in the DENR mandate, by divorcing the office for approval of exploration and mining applications from the office of environmental regulation, monitoring and legal enforcement.¹¹⁷ The DENR could then better focus on the protection and development of the Philippine environment and renewable natural resources; while a Department of Mines, Hydrocarbons and Geosciences could deal with licensing of mining and hydrocarbon development and ensure compliance with the highest international technical standards. The government should also establish an office of mining ombudsman where any concerns and complaints over process and where accusations in relation to human rights, arising from mining activities, might be addressed.

1.7 Strengthen legal frameworks for sustainable development. Government departments, including those covering health, agriculture and tourism should be empowered to take appropriate action where mining or other projects, threaten or cause environmental or social damage affecting the national plans towards sustainable development. The government and international partners should also ensure that the DENR, and others responsible for enforcing regulations and standards, are allocated a sufficient budget to effectively monitor and hold companies to account.

1.8 Establish an inter-departmental coordinating committee to approve all extractive industry projects and ensure that they meet national and international environmental and social standards for sustainable development, including full compliance with FPIC for indigenous people and broad community consent for all affected communities. To ensure transparency and accountability, we suggest that civil society participation at committee level would be essential.

1.9 Local communities and civil society The right to enjoy human rights and development are universal. We wish to encourage any and all communities adversely affected by mining impacts to

continue to explore and pursue all avenues available within the law at local, national and international levels to register their concerns and aspirations and seek redress for wrongs.

1.10 Sign up to the Extractive Industry Transparency Initiative (EITI) and publish details of all payments, taxes and royalties made by mining companies. Implement EITI in accordance with the six EITI criteria, ensuring participation by self-selected representatives of civil society at each stage of the process.

2. Issues of environmental concern and sustainable development

2.1 Biodiversity and the precautionary principle. Given the global importance of the Philippines as a centre of biodiversity, the past damage caused and current pressures on the Philippine environment, the Precautionary Principle should be applied to any mining or other high impact development to ensure it only proceeds where there will not be significant negative impact on the lives of the pre-existing population or on the environment.

2.2 Access to information. To assist in determining if and where mining might or might not take place, we suggest that both communities and government agencies are in need of more information independent of the commercial interests of corporations. The team recommends that more effort and resources be directed to the goal of providing timely information to communities. This is a recommendation directed to government, international agencies and the NGO community.

2.3 Strategic Environmental Appraisals (SEAs). The team notes and welcomes the provisions in the Mining Code which bar mining development from key environmental zones and ancestral lands of indigenous peoples, but are concerned by reports of a growing list of exceptions. We suggest regional SEAs might be carried out by the DENR with the effective participation of civil society. Such assessments of the context and potential impact of mining development could set the framework for all subsequent studies, ESIAAs and environmental management systems. We urge international donors, including the World Bank and EU, to endorse and support this approach. (See Section 3.4.2 above)

2.4 Prepare joint Environmental and Social Impact Assessments (ESIAs). ESIAs should be developed for each mining project and proposed exploration activity. Potential social impacts can be among the most serious. We therefore recommend community participation is maximized and the results be made widely available - including through the Internet - and open to independent verification.¹¹⁸ The current potential for automatic approval of EIAs seems inappropriate to us given the potential impacts and controversy surrounding many projects. These independently verified ESIAs should be presented to indigenous peoples as part of the FPIC process. We urge international donors including the World Bank and EU, to endorse and support this approach.

2.5 Health impact. Health impact assessments should be performed and information provided to communities in advance of mining operations. Monitoring on the basis of these base line studies should be conducted in the vicinity of all mining sites, and companies held accountable for any negative effects observed. Companies should be required to provide a bond against potential health impacts. (See recommendation 5.3 below)

3. International governance

3.1 Binding frameworks. The evidence available to the FFT argues strongly for the need for binding international frameworks of accountability to regulate mining, and national level access to courts and other effective mechanisms within the home countries of transnational mining companies and

financial institutions which finance damaging mining operations. We also encourage corporations and investors to adhere to obligations under existing and emerging international law as articulated in various treaties, declarations, standards and international consultative processes: including the UN Norms on Transnational Corporations; the Declaration of Indigenous Peoples Rights; ILO Convention 169; the Equator Bank Principles; the Extractive Industry Review Report; World Bank Operational Directive 4.10 and IFC Safeguard Policies; the Aarhus Principles; the OECD Guidelines and the Aken Kon Guidelines on the Implementation of the Convention on Biodiversity.

3.2 The World Bank Group. The FFT calls on the World Bank to halt its promotion of, and support for, mining expansion in the Philippines under current conditions and to adhere to its stated objectives of poverty alleviation and sustainable development by:

- Complying with recommendations of the Extractive Industry Review:
- Assisting with the implementation of the country's sustainable development strategy by providing technical and financial support for the protection and development of renewable resources, sustainable activities and poverty reduction programs.
- Instigating and supporting an independent mining sector review addressing the social and environmental problems that have been identified.
- Supporting an economic analysis of the revenues from mining based on the current tax incentives and revenue sharing schemes, including Government expenditure required to support mining operations and clean up costs. As recommended by the EIR such an analysis should 'evaluate whether an extractive project provides the best option in the context of poverty alleviation through sustainable development and in line with the Precautionary Principle'. Impact of mining on, and alternatives to mining in, sectors such as fishing, agriculture and tourism should be factored into analysis as should the direct and indirect costs and benefits.
- Supporting Strategy Environmental Appraisals (SEAs) of the key islands and regions likely to be affected by mining operations especially the twenty three priority mining projects.
- Ensuring strict adherence to its safeguards and policies on indigenous peoples including recognizing the principle of Free Prior Informed Consent, as stated in the Philippines Indigenous Peoples Rights Act and the UN Declaration on Indigenous Peoples, as a condition for funding of all World Bank Group member institution projects that impact on indigenous peoples.

Note: These recommendations could apply to other Financial Institutions such as the Asian Development Bank.

4. Human Rights issues

4.1 Human Rights violations. We urge the government to increase its efforts to stamp out the spate of killings of politically active citizens and prosecute the perpetrators. We commend to the government the value of independent investigation and the potential assistance that could be provided for this by the UN system through the input of the UN Human Rights Special Rapporteurs, were they invited to visit and report.

4.2 Implementation of laws to protect communities. It is clear that a credible independent monitoring of the processes of determining FPIC and community consent is urgently needed. The current exclusively government administered processes, including those within the DENR and the NCIP, lack public confidence and need to be strengthened. The FFT felt that the participation in such monitoring by the Human Rights Commission, civil society, religious and academic institutions and indigenous peoples organizations would enhance the credibility and effectiveness of such a process.

This might include provision of subsidized access to legal assistance. The EU and other international partners could assist in this.

4.3 Ratification of international treaties. The Philippine constitutional provisions of 1987 and IPRA are a clear and welcome expression of national aspirations in relation to indigenous peoples' rights. As national legislation is already generally in line with the provisions of the UN Declaration on Indigenous Peoples Rights and International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, the team recommends that the Philippines government ratifies ILO Convention 169 and support the Declaration on Indigenous Peoples in the General Assembly, availing of any support for implementation and education that might result from implementation of same.

4.4 Prior claims. In line with the 1987 constitutional recognition of prior indigenous peoples' rights to their ancestral lands we urge the government to end the contradictory practice of allowing the proposition that mining companies can assert prior rights claims over indigenous peoples (the traditional owners/occupiers of the land) ancestral lands .

4.5 European Union support. The EU should mainstream Indigenous Rights in the 2007-2013 EC Philippines Country Strategy Paper. Emphasis should be placed on this in its midterm review, ensuring that FPIC is incorporated as a core element of the country strategy. The EU should exert its good offices to reduce tension and promote dialogue and a strict adherence to legal process and informed decision-making.

5. Financing

5.1 Caution from mining companies and the investor community. Investors should exercise caution. We urge mining companies and potential investors to exercise extreme caution in funding any mining operations in the Philippines unless and until effective structures, laws and controls are in place to protect the environment and human rights. Companies and investors need to improve methods of exercising due diligence over investments in such mining projects, including consideration of more independent information about the practices of mining companies in relation to human rights and the environment. To this end consultations should be held with communities and NGOs to obtain reliable independent information. (See Appendix 4 for discussion on investment risks)

5.2 Financial probity. We encourage financial institutions to adopt and adhere to the Equator Principles and governments in the EU and other major investor countries to ensure that public money such as export credit agency finance or pension funds are not invested in a way that directly or indirectly supports irresponsible or damaging mining projects.

5.3 Bonds. Regulatory authorities should ensure that adequate bonds, commensurate with the potential impact of mining, are required to fully cover potential damage and end-of-life environmental and social costs. The provisions for mine closure should adhere to the integrated closure planning recommendation of the EIR or to the current highest standards as identified by independent experts. (See recommendation 2.5 above).

6. Recommendations on specific mining sites

The FFT discussed some cases in more depth and makes the following more case specific comments.

6.1 Geotechniques and Mines Inc (GAMI) in Midsalip, Zamboanga del Sur, Mindanao .

The team was utterly shocked that applications were being considered for open-cast mining in a watershed area which would inevitably bring destruction to rich irrigated agricultural land, destroy the water catchment area, damage rivers and seriously impact local livelihoods.

We recommend:

- canceling all current mining applications in Midsalip because they have the potential to cause major environmental damage to critical watersheds, eco-systems, agriculture and fisheries and result in social disruption. We also suggest that this policy be applied to all such areas in the Philippines.
- that the previous FPIC process be declared invalid and propose an investigation into the role of NCIP's in the FPIC process be undertaken by the office of the Ombudsman. Any future FPIC process should be in strict adherence with the implementing rules and regulations of IRPA.
- that measures be taken to address the disturbing malpractice under which local municipal officers were paying themselves the salaries to which only officials in cities such as Manila were entitled, thus using all the funding provided for the municipality leaving little for services.

6.2 TVI Pacific in Mt Canatuan, Siocon, Zamboanga del Norte, Mindanao.

It was of concern that - despite the high level of conflict, loss of life and series of reported ambushes, shooting incidents and other reported acts of violence - many issues remain unresolved with community protests and even legal petitions remaining unanswered.

We recommend:

- the intervention of a Joint Commission for Human Rights / National Bureau of Investigation / Department of Justice team of prosecutors to investigate and prosecute any human rights violations in Canatuan.
- a credible independent investigation into the role of the NCIP, who are accused of being involved in causing the division within the community, and dislodging the genuine Timuay, Jose Anoy.
- that, in line with the provisions of IPRA, the NCIP should use and recognize traditional leadership structures and not those created under government registered/incorporated organizations.
- an independent investigation be conducted into TVI's adherence to the mandatory FPIC process, as stipulated in IPRA's implementing rules and regulations, at Mt Canatuan. If it is found that the requirements have not been adhered to the DENR should review the validity of the TVI MPSA.
- a high level investigation by the DENR into the legality of the original mining claim filed by Ramon Bosque.

6.3 Crew Development Group in Victoria, Mindoro

In view of the potential environmental damage to the water catchment area, agricultural productivity and the marine environment we appeal to the government and corporation to resolve the current anomalous and destabilizing position by announcing the removal of the Victoria, Mindoro Nickel Project from the 23 National Priority projects and the cancellation of the project in line with the expressed wishes of the affected population and Local Government Units (LGUs).

Appendix 1. Itinerary

Fact Finding Team:-

Honorable Clare Short MP UK.

Cathal Doyle - Irish Center for Human Rights, NUI Galway, Ireland

Clive Wicks - CEESP (IUCN Commission on Environmental, Economic and Social Policy)

Fr. Fank Nally SSC - Columban Faith and Justice Office, UK

The following is a summary of the meetings attended by the team. The Honorable Clare Short attended meetings from the 27th July to the 2nd August.

Date / Time	Location	Attendees
Tuesday 25 th July 2006 pm	Manila	Meeting with retired Judge Dolores Español - Transparency International – Philippines
Wednesday 26 th July 2006 am	Manila	Javier and Antonio Claparol Ecological Society of the Philippines, members of CEESP (IUCN Commission on Environmental, Economic and Social Policy), and SEAPRISE (IUCN Working Group on the Social and Environmental Accountability of the Private Sector).
Thursday 27 th July pm	Malate Convento, Manila	LRC-KSK (Friends of the Earth Philippines), Tebtebba, Lingkod Tao Kalikasan, ATM – Philidhraa, Haribon, Mother Earth, FPE - Foundation for Philippine Environment, Defend the National Patrimony, CEC – Center for Environment Concern/ Kalikasan, WWF. Paulino Alecha, Felix Unabia - Midsalip
Friday 28 th July am	Quezon City	Ombudsman Ma. Merceditas N. Guterrez
Friday 28 th July pm	Sto. Thomas University Social Research Center, Pontifical University of Sto. Tomas, Manila	Director Ernesto R. Gonzales, Ph.D (Environmental Economist); Research Associates: Dr. Alvin P. Ang (Economics) ; Dr. Arlene Ancheta (Environmental Science); Dr. Jaime Jimenez (Socio-political studies). Peoples’ Movement: Mr. Ronald Llamas, Akbayan Peoples’ Party; Ms. Rizza Hontiveros, Akbayan Peoples’ Party; Mr. P. Torres, National Rizalistas Organization. Non-governmental Organizations: Director Nito Doria, Institute for Strategic Studies; Mr. Ed Aurelio Reyes, Convenor, Saniblakas Foundation of the Philippines and among others, representatives from the Sibuyan Island.
Friday 28 th July pm	Supreme Court, Manila	Chief Justice Artemio V. Panganiban
Saturday 29 th	Diocesan Social	Subanon of Mt Canatuan. Timuay Boy Anoy,

July pm	Action Center, Dipolog Mindanao	Representatives from Jose Dalman and Bayog at DDMI (D = DIOPIM = Dioceses of Dipolog, Iligan, Ozamiz, Pagadian, Ipil, Marawi). CMI = Committee on Mining Issues)
Sunday 30 th am	Midsalip, Mindanao	Meeting with Subaanen Indigenous Peoples Meeting with Mining Concerns group
Sunday 30 th pm	Midsalip, Mindanao	Meeting with local community
Sunday 30 th pm	Midsalip, Mindanao	Visit mining application area with local community
Monday 31 st July am	Sibutad, Mindanao	Local Residents impacted by Philex Mines Operation
Monday 31 st July am	Mindanao	Bishop Jose Manguiran
Monday 31 st July pm	Manila	Senator Pimentel
Tuesday August 1 st am	Congress	Briefings on Human Rights situation Congressman Satur C Ocampo, Bayan Muna. Congresswoman 'Risa' Ana Theresia <u>Hontiveros-Baraquel</u> , 'Risa' – Akbayan.
Tuesday August 1 st pm	NASSA offices, Manila	Bishop. Gutierrez and representatives of CBCP/NASSA
Wednesday August 2 nd am	Meeting at British Embassy, Manila	His Excellency Ambassador Peter Beckingham; the Governor of Mindoro, Honorable Arnan C. Panaligan; Fr Edwin Gariguez; Department of Environment and Natural Resources, Undersecretary for Mines, Ramon J.P. Paje; Executive Director of Minerals Development Council, Soledad M. Cagampang-De Castro; Wai-Hang Lok, Desk Officer South East Asia and Pacific Group, Foreign and Commonwealth Office, London; John Charles Chick MBE, Director Trade and Investment, British Embassy, Manila.
Wednesday August 2 nd pm	Meeting at British Embassy, Manila	Mr. Benjamin Philip G. Romualdez, President Chamber of Mines and President of ASEAN Federation of Mining Associations, Nelia C. Halcon, Executive Vice President of Chamber of Mines and Secretary General ASEAN Federation of Mining Associations.

Appendix 2. Case Studies

During the trip the fact-finding team visited three local communities affected by mining on the island of Mindanao in the south of the Philippines. To obtain a comprehensive overview, the communities selected represented the three phases of the mining operations: the application phase when mining companies are seeking permits, the exploration and mining operation phase, and the post-mining phase when the mining site is officially closed.

The application phase

Midsalip municipality is situated in the centre of the Zamboanga Peninsula. It sits at the foot of forested mountains, which are the source of three rivers that provide water for the three neighboring provinces. The surrounding lands contain beautifully terraced, fertile and well-irrigated rice fields. The mountain range is home to a biologically diverse ecosystem and has been considered as sacred by the Subaanen people since time immemorial (See Appendix 7 for photos of Midsalip and Subaanen people). It is home to the Philippine eagle, an endangered species. In the past, mineral exploration has shown the mountains to contain iron ore and other minerals. As a result mining operations have frequently been proposed for these lands.

The indigenous people of Midsalip see the proposed mine as a threat to their livelihoods, food security, culture and very existence. Together with others in the local community they have a long history of resisting mining and logging operations in their mountains. Over the past 11 years the local community has repeatedly filed complaints and held rallies and protests to object to attempts by mining companies to obtain permits. Most recently they have filed a petition against TVIs application for an exploration permit (See Appendix 6).

The current national government policy to promote mining means that they face an onslaught of mining applications. The most recent applications for mining come from seven companies and cover 70 percent of the municipality, including indigenous ancestral lands. Accessing the iron ore will require stripping away the face of the mountain, destroying forests and biodiversity and damaging a watershed that is the source of irrigation and local communities' water supply.

The first of the seven mining applications being processed is that of GeoTechniques and Mines Inc (GAMI), a Chinese-based company,¹¹⁹ to extract iron ore from the sacred Mt Pinukis range. As required by the Indigenous Peoples Rights Act (IPRA), the company is engaged in a consultation process to obtain the free, prior, informed, consent of the Subaanen indigenous people.

Strict guidelines on the procedures to be followed with regard to the FPIC process are provided in the Implementing Rules and Regulations of the IPRA. The NCIP is mandated to ensure that this process is followed and the rights of indigenous peoples are protected.

Despite these protections, the indigenous peoples described to the fact-finding team how the mining company, and the NCIP, failed to adhere to these guidelines. They site examples including:

- misrepresentation and appointment of non representative leaders and failure to recognize indigenous peoples' traditional elders, in line with their customary law;
- failure to provide information on the potential negative impacts of mining;
- prevention of indigenous peoples' organizations from providing their views on the impact of mining during the FPIC process;
- creation of false expectations regarding the benefits of mining to local people;
- attempts to have indigenous leaders sign a Memorandum of Agreement with the company, despite the failure to obtain the consent of the indigenous people as required by the Indigenous Peoples Rights Act.

The indigenous peoples of Midsalip, as in many other places, see mining as a threat to their livelihoods, food security, culture and very existence.

The operation phase

Mt. Canatuan is located close to the town of Siocon in Zamboanga del Norte, Mindanao. It is part of the ancestral domain of the Subanon people and is their sacred mountain. The area around Mt Canatuan has been described as the 'rice granary of Zamboanga del Norte'. The mountain itself had important forest cover and is the source of rivers that are used by local farmers to irrigate their lands. The sea, a few kilometers away, provides livelihoods for local fishing communities and fish-farm operators.

From 1989 to the present day the indigenous Subanon people have been protesting against mining activities. This included an objection to the original MPSA acquired by a small-scale miner in dubious circumstances in 1993.¹²⁰ This same MPSA was subsequently sold to TVI, a Canadian mining company, in 1994. In 2003 the traditional leader Timuay Jose 'Boy' Anoy was granted a Certificate of Ancestral Domain Title (CADT) by the President of the Philippines. Since 2004 TVI has been operating an open-pit gold mine on Mt Canatuan, using cyanide to extract gold from the ore and storing the vast quantities of waste behind tailings dams.¹²¹

The fact-finding team met a number of the affected Subanons – including their traditional leader and CADT holder Timuay Jose 'Boy' Anoy, Soliling Onsino Mato – the spokesperson for the descendants of Apo Manglang who established the traditional Subanon boundaries and territories¹²² – and the Galves family, recently evicted from their home, which was demolished to make way for TVI's mining operations (see Appendix 7 & 8 for photos).

In addition to describing how they had been deprived of their right to FPIC in relation to mining on their ancestral lands, the Subanons also gave the fact-finding team details of the human rights abuses they claim were committed since TVI's mining operations started in the area, The abuses included:

- evictions of families living on the ancestral domain; a total of 40 families are directly affected;
- desecration of their sacred mountain;
- multiple security checkpoints blocking indigenous peoples' access to their ancestral domain and preventing them from performing their rituals;
- use of checkpoints to block transport of food and equipment for small-scale miners;
- violence and intimidation by the TVI-financed paramilitary force known as the Special CAFGU (Citizen Armed Forces Geographical Unit) Armed Auxiliary (SCAA), including shooting at picketers and placing hidden barbed nails in trails used by local residents. The SCAA consists of 169 armed security personnel as of August 2006.

Owing to the vocal opposition of the Subanons these violations, along with others, have been well-documented by NGOs. They have been the subject of investigations and reports by the Philippine Commission on Human Rights, a Canadian parliamentary committee¹²³ and a Philippines congressional hearing¹²⁴. The Subanon protests against mining have also included formal complaints to the DENR, the MGB, petitions, rallies, and pickets, as well as advocacy in the UK and Canada.

TVI claims that because the 1995 Mining Act predates the 1997 IPRA, their claim has precedence, ignoring the fact that the IPRA merely codifies the rights of indigenous peoples in the ancestral domain which has been theirs for generations. Given that the legality of the process through which the original MPSA was obtained has been questioned and that the Subanon people have been protesting¹²⁵ against mining before and after TVI purchased this MPSA, they believe that the NCIP should have insisted on:

- 1) a thorough investigation of the process by which the MPSA was acquired;
- 2) the right of the Subanon people to FPIC, as stated in IPRA.

However, according to the Subanon the NCIP appears to have sided with the mining company. They claim that the NCIP violated their traditional customs and practice when it established a Council of Elders, a concept the Subanon claim is alien to them. They facilitated this by the merging of the original anti-mining Siocon Subanon Association Inc (SSAI), the Subanon organization which had protested the MPSA claim, with a pro-mining group consisting mainly of mining employees and supporters of TVI operations.

The impact of mining at Mt Canatuan has already been felt by local farmers, fishermen and fish-farmers. Silt is rising in rivers and coastal areas. Local people complained of reduced crop yields and fish harvests. During the rainy season, when floods come, those in contact with the water have reported skin infections. There was widespread belief that the situation will deteriorate. Local people – Muslims, Christians and Subanons – have protested and signed petitions against TVI (see DCMI website <http://www.dcmiphil.org>). With the livelihood of 70 per cent of the population dependent on agriculture and fishing, the threat to their environment is a very serious ground for concern.

Post-operation phase

The barrio of Libay is located on the coast of the Municipality of Sibutad, Zamboanga del Norte, Mindanao. It is a picturesque area with lush vegetation and rolling hills covered in forest. At the foot of the hills are homes and rice fields. Mangroves, essential for both aquatic and land ecologies, surrounded a bay once rich in coral. The bay was also an abundant source of fish and sea food. (see Appendix 7 for photos of Libay)

Philex Gold started large-scale mining operations in Libay in 1997. Its tailings dams, the remains of its processing site and the cleared area of forest cover are still visible on the mountain slopes that overlook the bay. Following protests and falling mineral prices, Philex Gold officially closed its operations in Libay in 2002.

Local residents recounted that between 1999 and 2002 frequent mudslides destroyed rice fields and filled the bay with mud reaching 200 meters out to sea. They described how every rainy season for three years the clear waters of the bay turned brown. According to the residents, the effects included the death of mangroves and coral, with fishing no longer viable because people were afraid to eat anything that was caught in the bay. They described a tailings dam overflow that caused a major mudslide and fish kills. They said mercury levels in fish had been monitored at over 400 times the norm and claimed that rice production was down by up to 50 per cent. People from neighboring communities claim that the effects were felt up to 30 kilometers away, across 24 barangays, four municipalities and two provinces, with a population close to 15,000 people.

Despite having closed its operations locals claimed that Philex Gold maintains a presence through small-scale miners who moved in from Davao, in the south of Mindanao whom they say pay a commission to Philex. These miners are practically medium-scale miners, using large-scale mining techniques (open-pit mining with cyanide).

According to local residents recent landslides, a result of the deforestation necessary for mining, destroyed 14 houses. People are suffering from skin reactions to water used for irrigation and after bathing with spring water. These effects continue to be felt downstream of the mine. New tailings ponds continue to cause flooding, sterility and even the death of animals. Crop yields remain low. On the positive side, some mangroves have recovered and fish have returned to the bay. However, with no monitoring of toxicity levels, the safety of food being consumed needs to be questioned.

The fact-finding team also met another group of small-scale miners who act independently of Philex mines. They were originally working in Mt Canatuan but were forced to leave when TVI commenced operations there. They follow gold rich veins and use mercury to extract gold from ore. They receive no technical or financial assistance from the government.

Most alarming for the local community, after all their suffering and protests, which led to the closure of the mine, is that they believe that there may be attempts to reopen the main mining site as up to 90 per cent of the ore is estimated to remain.

Other mining operations

In addition to these visits, the team also met representatives of other communities where major mining operations are ongoing or planned, despite local resistance. The following is a sample of these mining operations.

Rapu-Rapu – Lafayette Mining, Australia

Lafayette's mining operation on the Island of Rapu-Rapu was declared the government 'showcase' for the new mining policy. Following two tailings spills in October 2005, which resulted in the death of marine life, the gold mining was stopped. President Arroyo launched an independent fact-finding mission. The report of this commission was completed in March 2006 and presented to the President. The fact-finding team heard an overview of the report's findings.

The report concluded that Lafayette did not have adequate safety measures in place to safeguard the island's eco-system and was negligent in its operations. In addition to documented fish kills, the commission believed that the mining operation 'led to or caused certain negative consequences to health, environmental and economic problems to the people of Rapu-Rapu and nearby coastal municipalities'. It also pointed out that indigenous people affected by the mining had not been consulted. The commission also found evidence of possible underreporting of mineral production.

The report recommended the closure of Lafayette's operations, a ban on mining in Rapu-Rapu and a review of the Mining Act, in particular the provision allowing 100 per cent foreign ownership of local mines. Despite this, the government response was to provide a 30-day trial operation period to Lafayette, which the DENR has subsequently extended.

The reopening of the mine coincided with the visit of the fact-finding team. There was strong local opposition to its continued operation, with protests supported by civil society, church groups, minority parties and academics. A class action court case seeking an injunction against the resumption of operations was also initiated. During the trial period, commitments were made, by the DENR, that the test-run would be open to the public and third-party experts.¹²⁶ The subsequent arrest of a Greenpeace member who was attempting to measure water quality raises serious questions as to the sincerity of the governments promise.

Sibuyan Island – Pelican Resources, Australia

The fact-finding team met local officials from Sibuyan Island, Province of Romblon who are opposing mining. They explained that thirty-three per cent of their small island (44,500 hectares) is covered in primary forest and has been declared a national park. It is home to the world's densest forest, with 54 species of trees found nowhere else in the world. It is also home to a number of endemic species of birds and mammals, some of which are endangered. This island with unique flora and fauna, sandy beaches, and surrounded by a coral reef has huge eco-tourism potential. Agriculture and fishing are also viable sources of economic growth: the soil is fertile and crop yields are high. The seas have an abundant supply of fish of many varieties.¹²⁷

By using small-scale mining permits, the Australian company Pelican Resources is funding nickel-mining on the island. It aims to ship up to 100,000 tones of laterite nickel ore annually. To date 36 diamond core holes have been drilled.¹²⁸ Pelican Resources has submitted MPSA applications adjacent to the current mining sites, according to the locals some of which cross into the national park area. Up to six rivers would be affected by these mining operations.¹²⁹

The provincial government has ignored the wishes of the local mayors. Mining is proceeding despite their objections and without prior consultation with the people. The Environmental Compliance Certificate issued by the DENR thus lacks social acceptability. The Mangyan Taga-Bukid indigenous people on the island may also ultimately be affected. They hold a Certificate of Ancestral Domain Title covering almost 20 per cent of the island.

The World Wildlife Fund, the International Institute for Environment and Development and the Cooperative for Assistance and Relief Everywhere (CARE - Philippines) are currently funding a project to look into the feasibility of payments for environmental services (PES's) on the island.¹³⁰ PES's may in the future act as viable sources of income for indigenous peoples while allowing them to pursue their traditional livelihoods. Mining projects that damage the environment could undercut these attempts to build sustainable economic models for biodiversity-rich areas.

Victoria, Mindoro – Crew Development Group, Canada/UK

Crew Development Group has applied for a permit to mine nickel on the island of Mindoro, to the south of Luzon. The mining area is located in an area of vital forest cover and in an important watershed area. The fact-finding team met the governor of Mindoro Oriental who, along with all the local government units in the province, strongly opposes mining. He explained that mining, with its negative environmental impact, is in direct conflict with their sustainable development plans. A prior application by Crew (then Mindex of Norway) on the same area had been revoked by the then Secretary of the DENR on the basis that the proposed site is a *de facto* watershed area and mining could cause significant damage. This decision was overturned by the Office of the President.

The current Crew application has received strong support from the national government, despite the objections of the provincial governor, local governments and indigenous peoples. The application is now being approved on the basis that three barangays have supposedly consented to it. According to the governor, these same barangays strongly reject mining.

Tampakan, Mindanao - Saggitarius Mines Inc, Australia

See Section 2 Trip Overview.

Appendix 3. Catholic Bishops Conference of the Philippines Stance

The fact-finding team met two Catholic Bishops active in protection of indigenous peoples and the environment. The bishops claim to have the support of the people and say their actions are based on the experiences of their communities. In January 2006 the Catholic Bishops Conference of the Philippines (CBCP) came out with the following statement opposing the Mining Act. It reaffirmed their statement on mining made in 1998.

A Statement on Mining Issues and Concerns

29th January 2006

“Do not defile the land where you live and where I dwell” (Num. 35:34)

Sisters and Brothers in Christ: We are Pastors. We listen to the voice of the flock and take care of them. In our task to care for them, we reiterate our concern for the Earth, the source of life for all.

1. In 1998, we in the CBCP issued “A Statement of Concern on the Mining Act of 1995”. We declared that the government mining policy is offering our lands to foreigners with liberal conditions while our people continue to grow in poverty. (par 4) We stated that the adverse social impact on the affected communities far outweigh the gains promised by mining Trans-National Corporations (TNCs). (par 8) In our 1998 statement we also forewarned that the “implementation of the Mining Act will certainly destroy both environment and people and will lead to national unrest.” (par 9)

2. We reaffirm our stand for the repeal of the Mining Act of 1995. We believe that the Mining Act destroys life. The right to life of people is inseparable from their right to sources of food and livelihood. Allowing the interests of big mining corporations to prevail over people’s right to these sources amounts to violating their right to life. Furthermore, mining threatens people’s health and environmental safety through the wanton dumping of waste and tailings in rivers and seas.

3. Our experiences of environmental tragedies and incidents with the mining transnational corporations belie all assurances of sustainable and responsible mining that the Arroyo Administration is claiming. Increasing number of mining affected communities, Christians and non-Christians alike, are subjected to human rights violations and economic deprivations. We see no relief in sight.

4. President Arroyo’s “Mining Revitalization Program” is encouraging further the entry and operation of large-scale mining of TNCs. Alarming, the mining tenements granted through the program have encroached into seventeen (17) of important biodiversity areas, into thirty-five (35) of national conservation priority areas, and thirty-two (32) of national integrated protected areas. The promised economic benefits of mining by these transnational corporations are outweighed by the dislocation of communities especially among our indigenous brothers and sisters, and the risks to health and livelihood and massive environmental damage. Mining areas remain among the poorest areas in the country such as, the mining communities in CARAGA, Bicol and Cordillera Regions. The cultural fabric of indigenous peoples is also being destroyed by the entry of mining corporations.

5. Moreover, we are apprehensive that the proposed deletion of the nationalist provisions in the Constitution by the Consultative Commission (CONCOM) can pave the way to the wholesale plunder of our National Patrimony, and undermine our Sovereignty.

6. We reiterate our request to the President to recall all approved mining concessions, and to disapprove pending applications.

7. As Shepherds we remind the faithful of God's injunction to us through our first parents to care for and cultivate the Earth (Genesis 2:15). As believers, we should live a lifestyle that is outwardly simple yet inwardly rich and compassionate to the Earth community. We therefore call on all religious leaders:

- a. To support, unify and strengthen the struggle of the local Churches and their constituency against all mining projects, and raise the anti-mining campaign at the national level;
- b. To support the call of various sectors, especially the Indigenous Peoples, to stop the 24 Priority Mining Projects of the government, and the closure of large-scale mining projects, for example, the Rapu-Rapu Polymetallic Project in Albay, HPP Project in Palawan, Didipio Gold-Copper Project in Nueva Vizcaya, Tampakan Copper-gold Project in South Cotabato, Canatuan Gold Project in Zamboanga del Norte, and the San Antonio Copper Project in Marinduque, among others;
- c. To support the conduct of studies on the evil effects of mining in dioceses;
- d. To support all economic activities that are life-enhancing and poverty-alleviating.

8. As we have said in our 1998 statement, "even our best efforts will come to nothing without the help of God, our Creator. We invoke upon you the grace of the Holy Spirit who renews the face of the earth. With gratitude in our hearts we ask the intercession of Mary the Mother of Jesus and our Mother to obtain for us a renewed land and a converted people."

For the Catholic Bishops' Conference of the Philippines,

Angel N. Lagdameo, D.D.

President

Archbishop of Jaro

Appendix 4. Investment risks

The Government of the Philippines and the Chamber of Mines have been promoting the Philippines as a mining companies' paradise. They claim to offer a stable environment, good law and order, strong support from government at all levels, an absence of legal barriers and a single 'one stop shop' for permits in a transparent, corruption-free environment. However, these claims do not match the reality.

Favorable legal regimes

The government has placed great emphasis on the reversal of the Supreme Court decision¹³¹ of January 2004 that declared the Mining Act provision allowing Financial and Technical Assistance Agreements (FTAA) which enable 100% foreign-owned corporations to explore, develop, exploit and use the country's mineral resources, to be unconstitutional. However, as the Chief Justice pointed out, the subsequent Supreme Court judgment, overturning this decision, contains a number of stringent conditions. Among them are the following:

- Regardless of the FTAA provision, minerals will always remain subject to the full control and supervision of the state.
- The state retains 'power to direct overall strategy and to set aside, reverse or modify plans and actions of the contractor'.
- While the President is given the prerogative to determine the net mining revenues between the contractor and the state, if there is deemed to be grave abuse of discretion in the execution of this prerogative the court may nullify specific provisions of the FTAA that are contrary to law or are manifestly and grossly disadvantageous to the nation.
- The court cautioned the President to take appropriate steps to secure the best terms and conditions in the circumstances stating that:

'if it should later be found that the share (of the profit) agreed upon is grossly disadvantageous to the government, the officials responsible for entering into such contract on its behalf will have to answer to the court for their malfeasance and the contract provisions voided'¹³²

In summary contracts are not as secure as the government and Chamber of Mines would make them appear. Changes in administration, or challenges to the real benefits of specific FTAA's in the courts, may result in their being declared void.

The Philippine Constitution also offers strong protections of economic rights. The Chief Justice has stated that the courts are the 'protectors also of economic rights'.¹³³ He has also highlighted that the constitution promotes 'a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty' mandating a 'more equitable distribution of opportunities, income and wealth'. The track record of the Philippine Supreme Court should also be borne in mind. In its first decision on the Mining Act, FTAA's were ruled unconstitutional. It has also in the past upheld the right to a healthy environment, as stated in the constitution,¹³⁴ as a 'specific, fundamental legal right'.¹³⁵ This right to a healthy environment was ruled to supersede non-impairment of contract laws and used to nullify existing logging permits.

Other legal considerations

In 2006 an alliance of civil society groups lobbied House and Senate members for a revised mining bill. The opposition to the existing Act is growing, with the Catholic Bishops Conference coming out strongly against it in January 2006. The indigenous movement also clearly opposes the Mining Act stance. Scrutiny of companies' adherence to the FPIC process is increasing. Numerous resolutions have been filed in the Lower House questioning the legitimacy of the Mining Act and calling for investigation of specific mining operations such as TVI in Mt Canatuan in Zamboanga del Norte,

Placer Dome (now Barrick Gold) in Marinduque and Lafayette in Rapu-Rapu. Congressional Hearings have been held on certain mining operations and courts are hearing applications for injunctions against mining operations.¹³⁶

Changes made by the government to laws designed to protect the environment and indigenous peoples are being challenged. In addition to a constitution that affords protection to the environment, economic rights of the poor and indigenous rights, the Philippines has laws to protect the environment and indigenous peoples' rights, as well as water codes¹³⁷ and a Local Government Code that allow challenges to mining operations on a range of grounds. In a society considered one of the most litigious in the world, with a highly active civil society, legal challenges to mining operations at home and abroad are inevitable.

A recent example of litigation outside the Philippines is the case filed in Nevada by the governor of Marinduque against Placer Dome. The case is for damage to the environment and livelihoods over the 30 years of the Marcopper mine's operation. Placer Dome denied responsibility for the major accidents in 1996, pointing to a minor earthquake that took place a week before the tragedy as the cause.¹³⁸ Barrick Gold, which acquired 81 per cent of Placer Dome's shares, has been included as a defendant in the case.¹³⁹ In a country with a history of mining disasters and a high risk of flooding, landslides, earthquakes, typhoons and volcanoes, similar cases can be expected to follow.

Stable investment environment

The current political environment in the Philippines is far from stable. The clearest evidence of this came in February of 2006 when following claims of a planned coup d'état, the President declared a State of Emergency. More recently there have been calls from the minority leader in the Senate for the President's resignation. These followed earlier attempts to have her impeached. With House elections due next year and growing international attention being focused on the government's atrocious human rights record, the political environment in the Philippines is regarded by many to be in a very fragile state. This has resulted in a deep crisis in the political and social institutions. The level of insecurity was evident in the President's State of the Nation Address (SONA), held during the FFT trip, when sixteen thousand soldiers were posted around Congress. In parallel to this political uncertainty there is growing unrest among lower levels in the military sector. Throughout the country there is a proliferation of arms and the government's current hard line approach to the New People's Army (NPA) is expected to lead to increased violence and escalated human rights abuses. Among the youth there is widespread hopelessness about the future of their country, its leaders and institutions.¹⁴⁰ This uncertainty is spilling into the economic sphere with the local business sector lacking in confidence and hampered by an inability to plan beyond the short term.

Implications for mining

Keenly aware of the fact that environmental protections are not adequately enforced¹⁴¹, civil society, indigenous peoples and church groups have all become watchdogs of the government's performance in this regard. As well as filing legal cases, they have started making representations to international forums, such as the United Nations, to the home governments of the mining companies, to the public at home and to company shareholders.

This pressure has an impact on mining. It has resulted in a commitment by both Houses of Congress to review the 1995 Mining Act. A recent letter¹⁴² from the Chamber of Mines to the President, dated 29 August 2006, highlighted concern over what the chamber perceives as 'a seeming policy shift from active promotion of the previous two years to one of cautious reconsideration of policy reforms'. In his letter the President of the Chamber of Mines, Benjamin Philip Romualdez writes that this 'has led mining companies to believe and confirm their early suspicions that investment policies in the Philippines are not stable and are heightened by high political risks.'

In Rapu-Rapu, following two accidents, an independent commission recommended the closure of the mining operations. International attention was subsequently focused on Lafayette's actions and their share price fell by almost 50 per cent in four months.¹⁴³

Many of the mineral-rich lands of the Philippines lie in, or close to, areas where Muslim rebels and Communist insurgent are active. Given the current global 'war on terror', payments made to these groups by mining companies, which in the past were described as 'the cost of doing business'¹⁴⁴ will no longer be tolerated by the international community. The UN Special Rapporteur on Freedom of Expression has made a commitment to examine extrajudicial killings in the Philippines, so the links between mining and extrajudicial killings of mining activists will come under the spotlight. The actions of mining companies will increasingly come under the scrutiny of the international community, and ultimately of their own shareholders.

Appendix 5. The Threat to Indigenous Rights and Environment by Mining

- A Philippine Case Study

A Letter of His Excellency
MOST REV. RAMON B. VILLENA, D.D.
Bishop's Residence Bishop of Bayombong,
Bayombong, 3700 Nueva Vizcaya

Thursday, 21 September 2006

Latest government statistics on national physical accounts show that mining in the Philippines has gained in value. However the environmental degradation it has caused has also increased. This, it seems, is the principal trigger of the continuing wide opposition against mining as an economic activity in the country. Placed further in the context of extremely high biodiversity, low land base, rising demand for land due to a rising population, extremely socially sensitive tenure regimes involving indigenous peoples, and high downstream impacts of open extraction in a generally mountainous archipelago, the negative externalities of mining invite magnified cause for social, ethical, religious and ecological concerns.

International mining companies from Australia (nine at the last count) have entered into financial and technical assistance agreements. Climax Arimco Mining Corp. (CAMC), whose name has been changed to Australasian Philippines Mining Inc. (APMI) operates on 21,465 hectares of the Didipio Copper/Gold Project in Didipio, Kasibu, Nueva Vizcaya. The site is located some 200 km north of Manila.

The company claims that it has "strong local community and government support." This could not be farther from the truth. The people have resisted the entry of the mine from the beginning of the mid 1990s. Here are some events:

1. Invoking a people's initiative, the local barangay mustered 20% of the legitimate voters and filed a petition to the Commission on Election (COMELEC) for the conduct of a referendum to decide whether the mine should be allowed in or not. However, the COMELEC took almost four years to act on the petition. Eventually, the petition became moot and academic since the majority of the anti-mining candidates for the Sangguniang Barangay (local legislative body) won 6 out of 8 seats. The people retracted their petition for obvious reasons.
2. The local barangay council (Didipio) had passed a resolution approving the mine's entry, which was revoked by the new set of barangay officials after the 2004 election. (The officials were reportedly elected on the basis of their anti-Climax Arimco stand.)
3. In July 2005, the municipality of Kasibu voted against the entry of the mine, but the provincial government (egged on by the regional MGB) approved it the following month.
4. Within a week of the provincial board's decision, the people – led by DESAMA (Didipio Earth Savers Movement) and supported by the Social Action Centre of the Diocese of Bayombong, Nueva Vizcaya – turned out in a well-attended indignation rally in front of the provincial capitol. Despite the rains and the short notice, some 1,000 people were at the rally.

The local economy is agricultural, with fruits, vegetables, and rice grown in the province and brought for sale to Manila. There is also a thriving citrus fruit production, for which a festival is held every two years, to announce to all that "the people's gold is picked from a tree, not dug from the ground." (Their situation is much like that of Tambogrande, Peru, where farmers engaged in growing lemons and mangoes fought a giant gold mine.) Brooms and baskets woven by the people from locally-sourced plants are also brought to Manila or sold along the highway.

The people are a mixture of Ilocano and several indigenous tribes, notably the indigenous Bugkalot (or Ilongot) and the Ifugao, who went east when the large dams in the Cordilleras displaced them in the 1960s and 1970s.

The people resist the mine because:

5. It will deprive them of their land and livelihood, e.g. Sitio Dinauyan, Climax intends to turn into its tailings dam. To do this, the company will need to drive away the local people from their lands.
6. Right now, the company is going through what the people call "behest buying," where a combination of intimidation and verbal harassment is employed to get the citizens to give up their land.
7. The company has also resorted to bribery, as reported by named officials of the Kabataang Barangay to give up their anti-mining stance.
8. Climax has deceitfully set up pseudo-Indigenous People (IP) groups among those whom they have "convinced" to move to Kasibu from the neighboring town of Cabarroguis and Nagtipunan, both municipalities of Quirino Province.
9. The entry of the mine has caused divisions within families and the barangay itself, undermined the local culture of consultation and cooperation (Free and Prior Informed Consent) and weakened indigenous cultural practices through the company's divide and rule tactics, bribery and intimidation, resulting in a case filed by DESAMA in the local courts.

Who are the people helping the local communities:

10. DESAMA is the local people's organization, composed of residents of Didipio and those from other barangays who oppose the entry of the mine.
11. The Diocesan Social Action Commission, the social advocacy and service arm of the Diocese of Bayombong, under the leadership of Bishop Ramon B. Villena.
12. Other groups: Local Peoples' organizations – KIREG, KOVENANT, LUFA, GNB, Local NGO's – ACDA, Task Force Detainees – Northern Luzon (Region 2), Save the River Movement (referring to Cagayan River, the main river system in Cagayan Valley, one of whose tributaries is Dinauyan River where the tailings will be released), Legal Resources Centre, Foundation for the Philippine Environment, Tebtebba Foundation, and Alyansa Tigil Mina.

The Didipio project is strongly opposed by the majority of the people in Quirino and Nueva Vizcaya and a broad alliance of local government bodies, the Catholic Bishop and church organizations, environmental activists, human rights groups, farmers' organizations, organizations working with social issues and Indigenous Peoples' federations.

The opposition of the residents of Didipio and civil society groups should be more than sufficient in Philippine Law to prevent the project as the informed consent from the affected indigenous peoples, and the consent and endorsement of all affected populations and local authorities, are required for a project of this type to proceed. However, President Arroyo and her central government agencies are strongly promoting foreign mining investment. They are backed in their support to the mining sector by the World Bank, Asian Development Bank and other international investors. Concerns about abuse of process are based on past experience of the impact of mining in the Philippines, e.g. the ongoing impact of the Australian (Melbourne) Lafayette Rapu Rapu polymetallic mine cyanide spills of contaminated tailings on the environment, on safeguarding the rights of local communities and indigenous groups, on accelerating deforestation with consequences for biodiversity, water and soil protection and impacts on local fisherfolk.

The Catholic Church wishes to register its concern at the breakdown in legal process and good governance and the proper protection of local and indigenous rights manifest in the Didipio Copper/Gold Project in Didipio. The Philippine Catholic Bishops seek the active support of Australian Bishops, institutions and civil society actors for the protection of democratic processes, local governance and adequate safeguards for the human rights of Indigenous Peoples, the poor and marginalized, as you celebrate Social Justice Sunday on the 24th of September. As we stated clearly and unequivocally in our Pastoral Letter on Mining:

"[We] support the call of various sectors, especially the Indigenous Peoples, to stop the 24 Priority Mining Projects of the government, and the closure of large-scale mining projects, for example, the Rapu-Rapu Polymetallic Project in Albay, HPP Project in Palawan, Didipio Gold-Copper Project in Nueva Vizcaya, Tampakan Copper-Gold Project in South Cotabato, Canatuan Gold Project in Zamboanga del Norte, and the San Antonio Copper Project in Marinduque, among others; [we] support the conduct of studies on the evil effects of mining in dioceses; [we] support all economic activities that are life-enhancing and poverty-alleviating." (January 29, 2006)

We are also calling for stronger control and safeguards over the activities of corporations based in the Philippines and Australia and operating around the world with particular attention to the extractive industries sector, which has such a large impact on the environment and such a poor record in its dealings on issues of human rights and sustainable development. We pray for your support and understanding in the struggle against irresponsible mining and blatant exploitation of Indigenous Peoples.

We would like to express our appreciation of the efforts of the Australian Bishops' Committee for Justice, Development and Peace for their pastoral statement "CHRISTIANS AND THEIR DUTY TOWARDS NATURE" where they have expressed their call of concern for the care and responsibility towards creation:

"We must consider very carefully the ways in which we can help other nations not to harm the environment. Richer nations can criticize the poorer ones for destroying their forests and ravaging their land, even though the more affluent nations contribute to that destruction. Existing international economic structures are such that nations in the third world are forced into using up their natural resources."

The invitation gives us the assurance that we are one in this advocacy of continuing our duty and responsibility towards nature and the Creator, thus, an essential part of our Faith.

BISHOP RAMON B. VILLENA, D.D.
Bishop of Bayombong Nueva Vizcaya

For further information contact:

SR. EDEN ORLINO, SPC Diocesan Social Action Commission
Diocese of Bayombong
Lunduyan Pastoral Centre
Basa Street
Bayombong
3700, Nueva Vizcaya

Appendix 6. Petition against TVI exploration permit in Midsalip.

**Republic of the Philippines
Province of Zamboanga del Sur
Municipality of Midsalip**

November 22, 2006
The Regional Director—R —IX
Department of Environmental & Natural Resources
Mines and Geosciences Bureau - IX,
2nd Floor GL Building, Veteran Avenue
Tetuan, Zamboanga City

**SUBJECT:
PETITION AGAINST EXPLORATION
PERMIT APPLICATION OF TVI RESOURCE
DEVELOPMENT PHILS., INC. (EXPA 00056-IX)**

Sir/Madam;

We had recently heard that the TVI was applying for an Exploration Permit in our town of Midsalip. We learnt this also from the DENR, Pagadian City. So from the month of October some of our companions went regularly to the Municipal Buildings to check if the application was posted on the bulletin board. We did this every week. Eulalia Abadia, Manuela Pateno and Ricardo Tolino visited again November 20th 2006 and there was no Application of TVI RESOURCE DEVELOPMENT PHILS., INC. posted on the Public Bulletin Board. However when they went upstairs to the Mayor's Office they discovered that the Application had been posted on a wall outside her clerk's office on October 25th 2006. Immediately a Government Employer transferred the application to the Public Bulletin Board downstairs. It was only on November 20th 2006 that the TVI application was posted on the Public Bulletin Board. Even the Vice Mayor and Municipal Secretary were unaware of the TVI application until November 20th 2006.

That's why, yet once again, we are consistently and ardently sending a Petition Against any kind or form of Mining Activities in our locality. We have sent to you (in your office) since last July 28, 2001 more than 5 years now, that we the Peoples of Midsalip, through the groups of {BUHILAMAN} 'Buhing Landong Aron Molambo ang Nasud', (HUBADMI) "Hugpong sa mga Biyuda alang sa Demokrasya sa Midsalip", EARTHLINKS, {KABAMI} "Kahugpong sa mga Bakwiter sa Midsalip", {PMCB} "Provincial Masipag Coordinating Body; {PPC} "Parish Pastoral Council"; {TIMPOBIA} "Timbaboy Poblacion B. Irrigators Association"; POBLACION A – GUMA IRRIGATORS ASSOCIATION INC.; BIBIOP IRRIGATORS ASSOCIATION; AND EXPANDED GROUP AGAINST MINING/ECOLOGICAL DESTRUCTION, strongly and passionately asserting our opposition to any Mining operations anywhere in our town in Midsalip and the neighboring towns.

THESE ARE OUR REASONS FOR OPPOSING MINING OPERATION:

1. We wont allow our Mountains, Forests, Land and Waters of Midsalip to be destroyed because of Mining, as the Livelihood of the Farmers in our place will be lost, most specially those living in the effected barangay's.
2. We wont allow Miners to destroy the home (place) and Land of Subanen Tribe (indigenous peoples) especially their Sacred Mountain, Mount Pinukis, like what happened in Loacan, Benguet, in Sibutad, Zamboanga del Norte, and what happened in other places in the Philippines. Likewise in other places of the World the Sacred Mountains and Holy places of the Indigenous Peoples were destroyed because of Mining.
3. We wont allow them to leave us with their waste and damages as the result of mining. Based on our experiences of the places that were destroyed by Logging they never went back to their original state. What if mining? Through open-cut and open-pit large-scale production they wilt destroy our Mountains. If the Logging Company did not comply with the Written Agreement {TLA} "Timber License Agreement" or Reforestation, how much more will the mining companies not conform to any written agreement. How much more will the environment of Midsalip not return to its original slate after the mining companies move on to other places.
4. The destruction of the Mountains results in many calamities like soil erosion to the Farms, Creeks, Rivers, and Sea. This is what happened in Sipalay, Negros Oriental, where 550 hectares of rice field were silted by soil and rocks because their mountain was open cut by the Philex Gold Mining Company. The same thing happened in Libay, Sibutad, Zamboanga del Norte.
5. The area being applied for by the mining company is an Agricultural Land, which has been the Sources of the Livelihood of Farmers for a long period of time.
6. This place where the mining company is applying for is a Watershed Area. The government has spent a large amount of money to develop and preserve the Sources of Water.
7. In this place where the mining company is applying there are a number of government projects. The government has built Irrigation Dams to supply water to the rice fields for the people who live in the place. The water that comes from these mountain ranges supports the rice fields of Labangan, Pagadian, Dumalinao, and Tigbao. This source of water not only supports the rice fields of the province of Zamboanga del Sur, it also supports water to the rice fields in the provinces of Zamboanga Sibugay and Zamboanga del Norte.

We, the peoples of Midsalip, have consistently opposed all Mining Applications for a long period of time now. For more than 7 years we have Struggled against all mining applications. We have so many petitions that have been sent to the office of DENR/MGB, but why is it until now there are still applications being sent to your office to operate mining in our town of Midsalip? Even though you know that we are so strongly opposed? It makes us sad because we clearly do not want that you accept any further mining applications anywhere in Midsalip or in the neighboring towns like Sominot, Bayog, Dumingag and others.

GIVE US A TIME TO LIVE FREE, HAPPY AND PEACEFUL.

The provisions of Article II of the 1987 Philippines Constitution particularly Section 5 “ the maintenance of peace and Order, the Protection of Life and property” and; Section 16 “ The State shall protect and advance the right of the people to a balanced and healthy ecology in accord with rhythm and harmony of nature”

That’s why we, the different groups of Midsalip, Respectfully send our petition to your office to ask that do not approve TVI RESOURCE DEVELOPMENT PHILS., INC (EXPA 00056-IX) Exploration Permit Application and Plan to operate Mining in our place. We strongly endorse that you do not approve their application because of the reasons stated above.

Very Truly Yours

TERSO LOPECILLO
PPC President

LEONARDO TAMPOS
Chairman, Bibilop Irrigators Association

GERMAN CAMARADOR
BUHILAMAN Chairperson

SALUD ANDIGON
HUBADMI Chairman

IRENE CAANGAY
KABAMI Chairman

FRANCISCO LIGTAS
Earthlinks Chairman

JESUS S. CATAMCO, JR.
Parish Worker

HYDENIA CAMARADOR
HUBADMI Coordinator

RODOLFO TUBA
Timpobia, Vice Chairman

PRIVATO OCIAL
Vice Chairman Pob. A. Guma Irrigators Assn.

PRECTOSO M. TAPITAN
Chairman
**FMCB & EXPANDED GROUP AGAINST
MINING/ECOLOGICAL DESTRUCTION**

Copy Furnished by Registered Mail:

- 1 DENR Secretary North Avenue, Diliman City, Philippines
- 2 TVI RESOURCE DEVELOPMENT PHILS., INC.
Suite 1903 B, West Tower, PSE Centre, Exchange Road. Ortigas Centre, Pasig City, Philippines
- 2 Panel of Arbitrators, Mines and Geosciences Bureau-IX, 2nd Floor GL Building, Veteran
Avenue, Tetuan, Zamboanga City, Philippines
- 3 PENRO, DENR Office, Pagadian City, Philippines
- 4 CENRO, DENR Office, Pagadian City, Philippines
- 5 Environmental Ombudsman, Ombudsman Building, Agham Road, Diliman Quezon City,
Philippines
- 6 Office of the Provincial Governor, Provincial Capitol, Pagadian City, Philippines
- 7 Office of the President, Malacañang Palace. Manila, Philippines
- 8 Isidoro Real Jr, Congressman 1st District, Zamboanga del Sur, Philippines
- 9 Office of the Municipal Mayor, Midsalip, Zamboanga del Sur
- 10 Clive Wick, International Union for the Conservation of Nature, London
- 11 Clare Short, Parliamentary Member, London
- 12 Fr. Frank Nally, JPIC Columban Fathers, London

Appendix 7: Photos of Fact Finding Team Mission



Fact Finding Team in Midsalip. 70% of municipal area is under exploration/mining applications

Local Peoples identity concealed for their safety.



Irrigated rice fields in Midsalip at the foot of the Mt Pinukis range under mining application.



Libay, Sibutad, Zamboanga del Norte. Previous mine site visible at right hand side of picture.



Libay, Sibutad, Zamboanga del Norte. Bay once rich in coral and marine life.



At the Subaanen Indigenous Peoples Center Midsalip.



At the Social Action Center, Dipolog with (left to right), Subanon Soiling Onsino Mato, Subanon hereditary traditional Subanon leader Timuay Jose Boy Anoy and the Galves family who had been recently evicted from their home in Mt Canatuan.



Map of the Zamboanga peninsula, location of the ancestral domain of the Subanon people, (left to right), Subanon Soiling Onsino Mato, Subanon hereditary traditional Subanon leader Timuay Jose Boy Anoy.



Rapu-Rapu Mine.
Source. Layfayette
Phils.Inc.

Appendix 8: Mining Impacts at Mt Canatuan



Typical family farm dwelling in Canatuan.



A family home after mining begins.



TVI current mining area on the Subanon's sacred mountain, Mt. Canatuan.

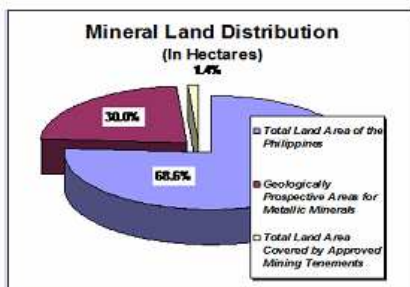


TVI expansion plans in the Zamboanga Peninsula
Source TVI

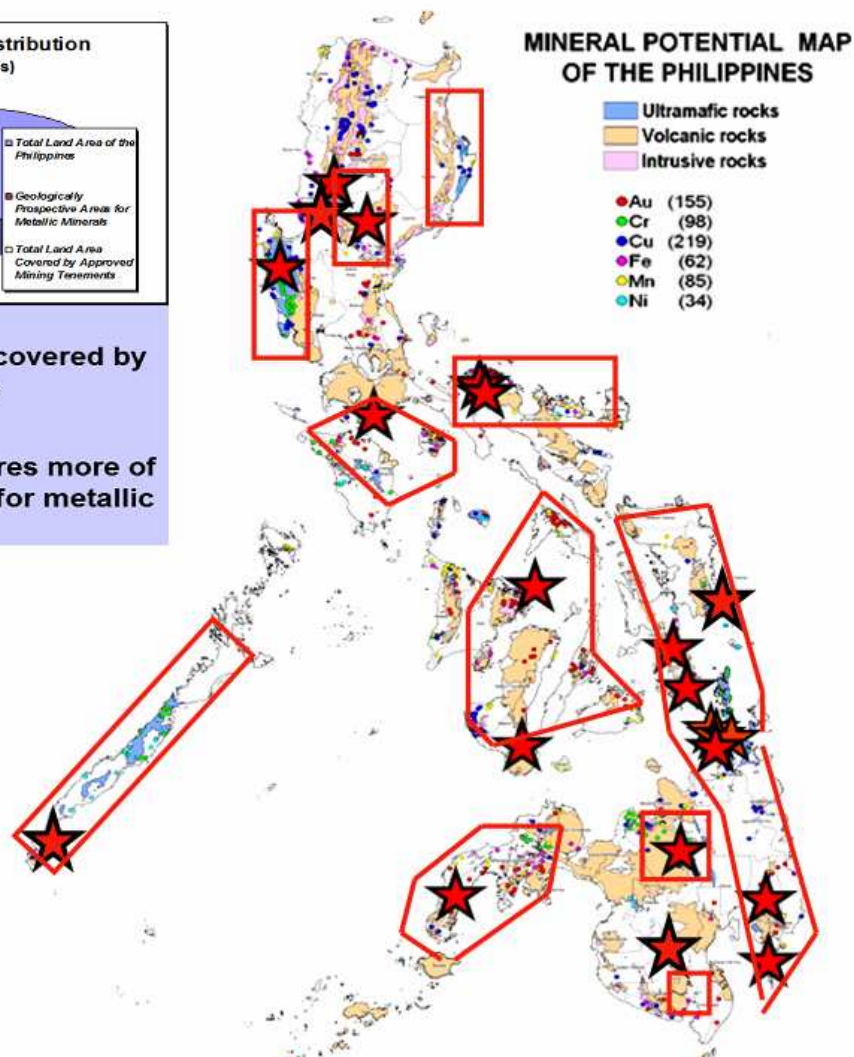
Appendix 9: Scale of Planned Mineral Opportunities presented to Investors

Scale of Planned Mineral Opportunities presented by MGB to Potential Investors

- Potential Areas and Deposits: 
- Existing Operating & Pipeline Mines and Exploration Studies: 



- ✓ Only 1.4% are covered by mining permits
- ✓ 9 million hectares more of potential sites for metallic minerals

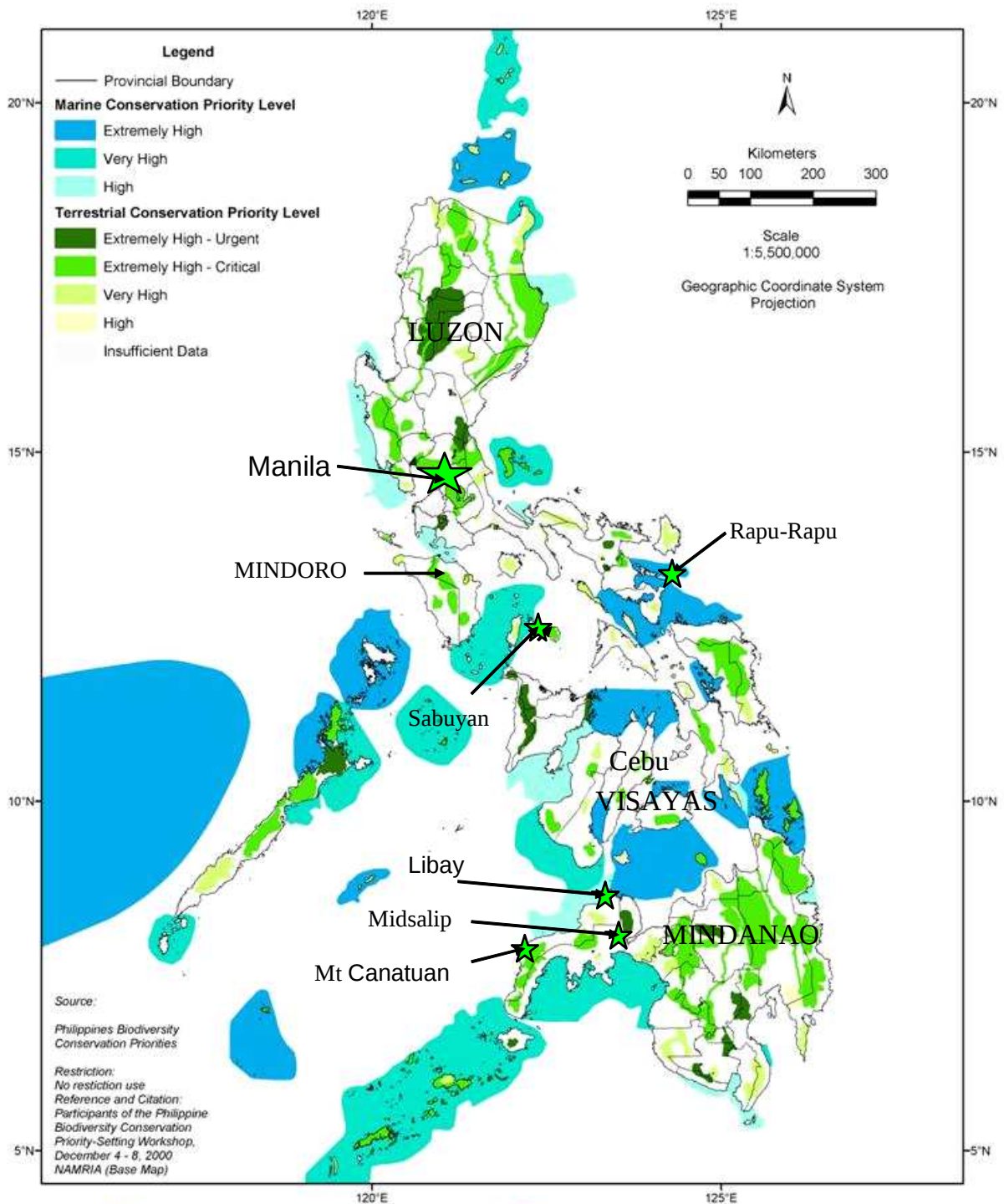


Information extracted from MGB Presentation An overview of Minerals Potential and Opportunity in the Philippines
Slides 5 -17 available at <http://mining2005.virtual-asia.com/program.htm>

Appendix 10: Maps of Marine and Terrestrial Conservation Priorities

Mapping Philippine Vulnerability to Environmental Disasters

Integrated Marine and Terrestrial Priorities



MANILA OBSERVATORY

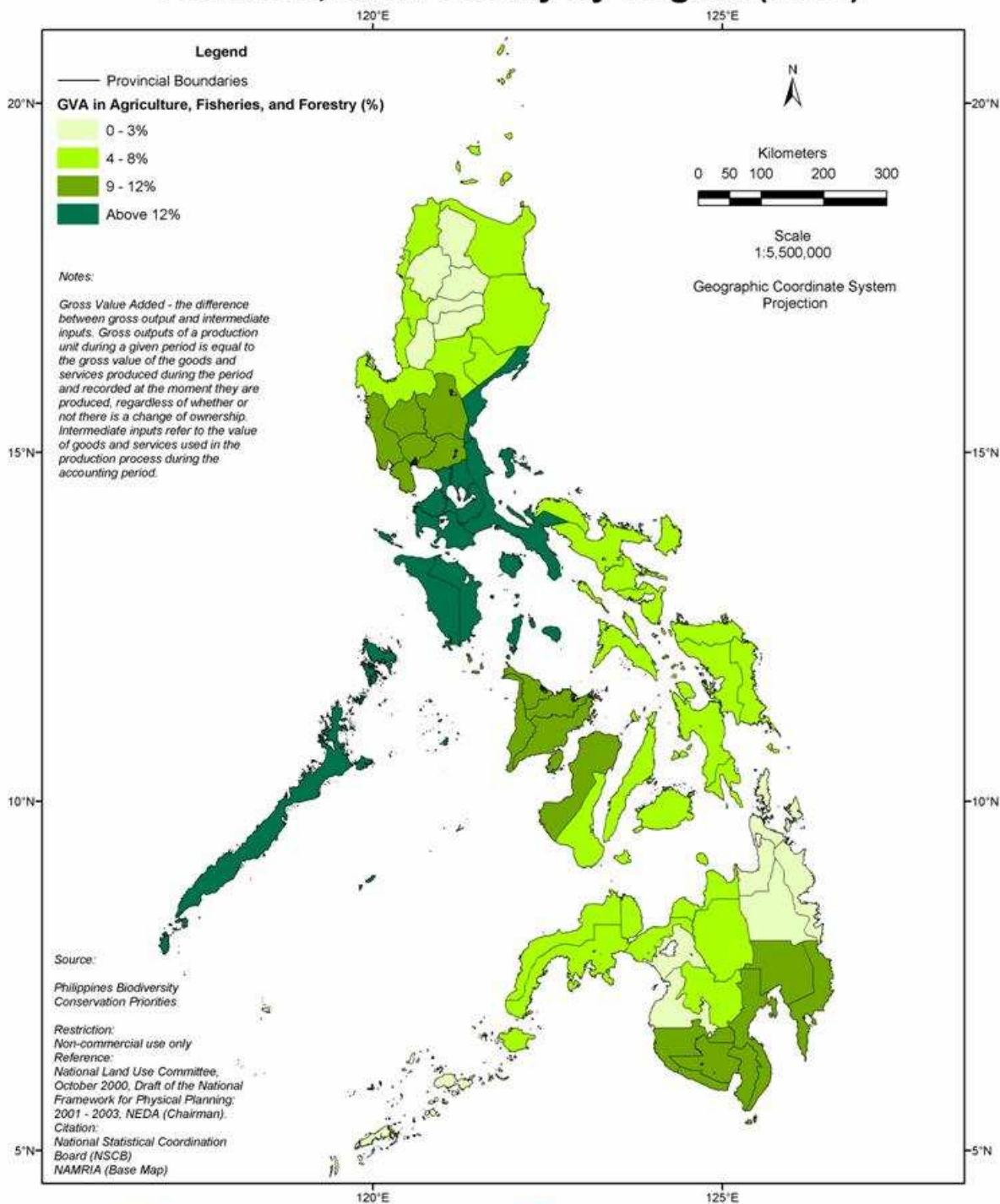


DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES

Appendix 11 Gross Value Added in Agriculture, Fisheries and Forestry

Mapping Philippine Vulnerability to Environmental Disasters

Gross Value Added in Agriculture, Fisheries, and Forestry by Region (1999)



MANILA OBSERVATORY



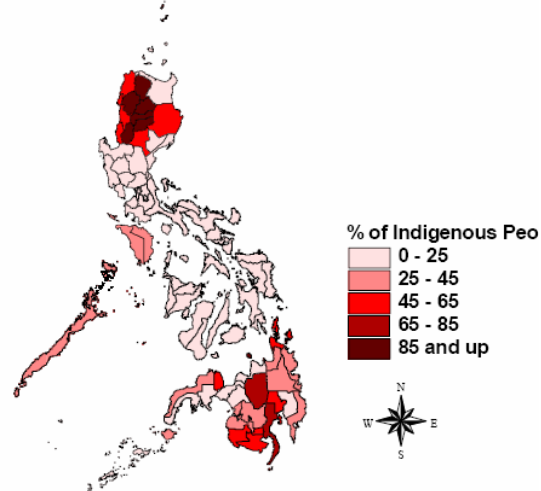
DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES

Appendix 12: Concentration of Indigenous Peoples in the Philippines

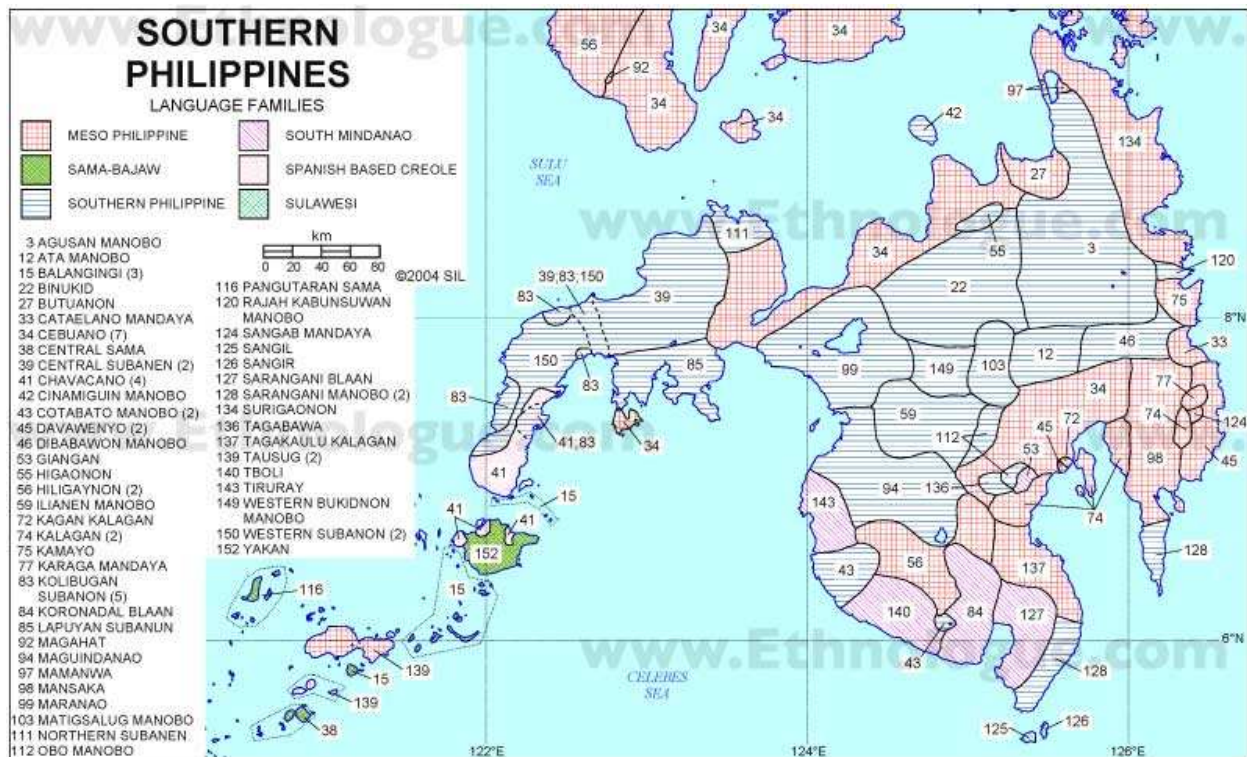
Indigenous Peoples in the Philippines and Mindanao

Map 9

Concentration of Indigenous People per Province



Source UNDP 2003



Endnotes

¹ Asia and the Pacific Philippines Progress Towards Environmental Sustainability MDG 7 UNDP p198 see <http://www.undp.org/energyandenvironment/sustainabledifference/PDFs/Asia/Philippines.com.pdf>

² Tailings are the residue of the milling process that is used to extract metals of interest from mined ores. Most of the mill tailings mass produced worldwide is dumped in large surface impoundments which are known as "tailings dams". Due to a combination of the geo-hazards in the Philippines and a lack of adequate assessment and continuous monitoring and control of the dams, during the construction or operations phases, there have been a number of complete or partial failures which have had disastrous consequences for local people and the environment. See *Chronology of Tailings Dam Failures in the Philippines (1982-2002)*, compiled by Philippine Indigenous Peoples Links <http://www.piplinks.org> 29 October 2003. On file with fact finding team. The information is based on the records of the United Nations Environment Programme (UNEP), (www.unep.org) and other sources.

³ Mines and GeoSciences Bureau, *An Overview of Minerals Potential and Opportunity in the Philippines*, Slide 5, available at <http://clients.westminster-digital.co.uk/minesite/microsite/events/philippines/index.aspx>.

⁴ As of October 2005 the Chamber of Mines and the government had held investment promotion road shows in 12 countries. *BizNews Asia* 5-12 October 2005, p12.

⁵ Department of Environment and Natural Resources (DENR), Summary of the Status of Implementation of the Philippines Mining Act of 1995 (Republic Act No 7942), p2. As of June 2006 there were 1,953 applications. Until June 2006 the total number of major mining tenements under the Mining Act was 250.

⁶ Proposed constitutional changes include a transition from the present presidential bi-cameral system to a parliamentary form of government and additional measures, including some intended to facilitate increased foreign investment.

⁷ DENR, *Philippine Biodiversity Conservation Priorities: National Biodiversity Strategy and Action Plan, Executive Summary*, Quezon City, Philippines, 2002.

⁸ Haribon Foundation presentation, 'Status of Philippine Biodiversity' Slides 86 and 92.

⁹ Legal Rights and Natural Resources Center – Kasama Sa Kalikasan/Friends of the Earth Philippines (LRC-KsK/FoE-Phil) presentation, 'Mining Situation', Slide 22, presented to the fact-finding team on 27 July, at a meeting with NGOs and Indigenous Peoples' Organizations, Malate Parish Hall, Manila. The information quoted from *Natural Disaster Hotspots – A Global Risk Analysis 2005*, World Bank and Columbia University see <http://www.earth.columbia.edu/news/2005/story03-29-05.html> See also The Manila Observatory, Mapping Philippine Vulnerability to Environmental Disasters at www.observatory.ph/vm/hazard.html.

¹⁰ The practice is effectively illegal in Canada and the United States. See *Submarine Tailings Disposal Toolkit* 'Introduction: Mining's Problem with Waste', p1, available at www.miningwatch.ca/index.php?/Crew/STD_toolkit. Published jointly by MiningWatch Canada and Project Underground, June 2002.

The European Parliament, in response to the Extractive Industry Review, called on its member states 'to bring their influence to bear to minimize its support for the use of toxic materials such as cyanide and mercury and to support a moratorium on submarine tailing disposal.' European Parliament Resolution on World Bank-commissioned Extractive Industry Review (EIR)2004, available at http://www.environmentaldefense.org/documents/3637_EPFinalResOnEIR.pdf#search=%22european%20parliament%20resolution%20extractive%20industry%20review%22.

¹¹ The EIR noted that 'The large economic rents generated by extractive industries may help provoke or prolong civil conflict. Indigenous peoples are particularly vulnerable' (p6). The review recommended that one of the 'core macro-governance' criteria in relation to mining should be 'the absence of conflict or of a high risk of conflict' and that in no circumstance should the Bank support mining projects in areas involved in armed conflict (p46).

¹² Placer Dome, the Canadian company, were holders of a 40 per cent stake in the Marcopper operations, and were the only mining company involved in the mine. After the spill, Marcopper closed and Placer Dome subsequently withdrew. The provincial authorities in Marinduque are currently pursuing a case against Placer Dome in the US courts to try to gain some redress. The result was the loss of livelihoods for the local Marinduque population and huge economic loss for the Philippines. See <http://www.umich.edu/~snre492/Jones/marcopper.htm> University of Michigan Environmental Justice, *Case Study Marcopper in the Philippines*. See also the UNEP report *Final Report of the United Nations Expert Assessment Mission Marinduque Island, Philippines 30 September, 1996* pp65, 69, which declared the river biologically dead.

¹³ "President Gloria Macapagal Arroyo's Administrative Order No. 145, created the Rapu-Rapu fact-finding commission. See Findings and Recommendations of the Fact-Finding Commission on the Mining Operations in Rapu-Rapu Island May 19th 2006 Executive Summary p12, p24. The company Lafayette Philippines Inc is 100% owned by Lafayette Mining Limited of Australia"

The commission received submissions from Lafayette see <http://www.greenpeace.org/seasia/en/targets/lafayette> for more details. The full report is available at http://www.gham.org/index.php?option=com_docman&task=cat_view&gid=40&Itemid=33

The Department of Environment and Natural Resources own report also accused the company of negligence 'The main cause of the two incidents can largely be attributed to the negligence and un-preparedness of the company to address such emergencies.' DENR Assessment of the Rapu-Rapu Polymetallic Project P35 available at <http://www.greenpeace.org/raw/content/seasia/en/press/reports/denr-assessment-of-the-rapu-ra.pdf>.

¹⁴ It is estimated that up to 15 per cent of the population of the Philippines is indigenous. Indigenous peoples are defined in the Indigenous Peoples Rights Act Chapter II, Section 3 h.

¹⁵ The Indigenous Peoples Rights Act of 1997 and the Mining Act of 1995 require free, prior, informed consent from an indigenous people for any outside development to take place within their ancestral lands. It is also required in the UN Declaration of Indigenous Peoples Rights.

¹⁶ See Appendix 3: Catholic Bishops Conference of the Philippines Stance.

¹⁷ The team was provided with documents listing over 700 activists killed since 2001, based on statistics provided by the human rights organization Karapatan. These statistics are available at Stop the Killings in the Philippines Campaign www.stopthekillings.org. Amnesty International highlights the lack of reliable statistics and confirms that there have been at least 244 killings. See *Philippines: Political Killings, Human Rights and the Peace Process*, Amnesty International, 15 August 2006.

¹⁸ The Subanen of Midsalip, Zamboanga del Sur, (are from the same tribal grouping as Subanon in Canatuan) are the largest tribal group in the Philippines (300,000) and are the indigenous inhabitants of the Zamboanga peninsula in Western Mindanao.

¹⁹ A series of protests launched in 1996 and including meetings with the company both in the Philippines and UK led to Rio Tinto announcing its withdrawal in 1999.

²⁰ Small scale miners accused Ramon Bosque of duping them in order to obtain his claim. See Christian Aid and PIPLinks, *Breaking Promises, Making Profits Mining in the Philippines*, December 2004 p30

²¹ There have been at least four documented incidents from 1997-2004 see www.minesandcommunities.org.

²² A barangay is the smallest unit of local government.

²³ See www.minesandcommunities.org/company/philex1.htm. The site documents the study ‘*The Impact Of Philex Mining Operation In Sibutad*’ By Tito Natividad Fiel Coordinator DIOPIM Committee on Mining Issues, DCMI (DIOPIM Committee on Mining Issues), Sicayab, Dipolog City’ of the mining operations of Philex Mining at Sibutad. According to which, Crelem Cadalin was shot and killed by mine security personnel on 3 May 1998. The site also provides details of the environmental, health and economic damage arising from the mining operation.

²⁴ Authorization from the local government is required to set up a legal entity under the Small-scale Miners Act of 1992. This authorization has been granted to the small-scale miners from Davao who work with Philex Mines, but not to those who operate independently.

²⁵ *Buluan town opposes SMI mining* Written by Carolyn O. Arguillas/MindaNews Thursday, 05 October 2006 Available at http://mindaanews.com/index.php?option=com_content&task=view&id=1008&Itemid=50

²⁶ *Rapu-Rapu Finding and Recommendations of the Fact-Finding Commission on the Mining Operations in Rapu-Rapu Island 19th May 2006*, Chapter 2, p303 ‘Ignored were indigenous Taboi people in the periphery of the mine site. They were not only not consulted, Lafayette’s EIS also failed to mention them’

²⁷ See Findings and Recommendations of the Fact-Finding Commission on the Mining Operations in Rapu-Rapu Island May 19th 2006 Executive Summary p14

²⁸ John Ruggie, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. E/CN.4/2006/97 (2006). Para 29 ‘Extractive sector is unique because no other has so enormous and intrusive a social and environmental footprint’ (para 29) which operates in contexts where ‘there is clearly a negative symbiosis between the worst corporate-related human rights abuses and host countries that are characterized by a combination of relatively low national income, current or recent conflict exposure, and weak or corrupt governance’ (para 30)

²⁹ John Ruggie, *ibid.* Para 25

³⁰ *Ibid.*

³¹ TVI was nominated for Public Eye Awards [http://www.evb.ch/cm_data/public/TVI%20PublicEye_Awards_Nomination .pdf](http://www.evb.ch/cm_data/public/TVI%20PublicEye_Awards_Nomination.pdf)

³² 38th PARLIAMENT, 1st SESSION Subcommittee on Human Rights and International Development of the Standing Committee on Foreign Affairs and International Trade Evidence Contents: Wednesday, March 23, 2005 See <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=127056> and Wednesday, May 18, 2005 available at <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=127044>

³³ Echo Bay Mines, a North American mining corporation now controlled by Kinross Gold Corporation, was the primary manager of the KingKing mine. TVI and Benguet Corporation were junior operating partners. Echo Bay Mines had a corporate vice-president on TVI’s board of directors.

³⁴ Statement by Allan Laird to the Subcommittee on Human Rights and International Development of the Standing Committee on Foreign Affairs and International Trade Meeting May 18, 2005. Ottawa Kingking Mines Inc. Corporate Support of Terrorism in the Philippines available at http://www.dcmiphil.org/Allan_Laird%27s_Statement.pdf

³⁵ http://www.dcmiphil.org/Allan_Laird%27s_Statement.pdf Reports showing payments to Abu Sayyaf were provided to the FBI in June 1994. In 2004 the Sierra Club published a report on the KingKing mine ‘The Cost of doing Business’

available at <http://www.sierraclub.org/sierra/200405/terrorism/page1.asp> providing copies of receipt for payments to the NPA and the MNLF.

³⁶ 38th PARLIAMENT, 1st SESSION Subcommittee on Human Rights and International Development of the Standing Committee on Foreign Affairs and International Trade Evidence Contents Wednesday, May 18, 2005 available at <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?SourceId=127044> 'I was on the board of that company. I can tell you that I never received any report from anybody, including Allan Laird, that there was anything like that going on'

³⁷ *Karapatan* (Alliance for the Advancement of People's Rights) is an alliance of human rights advocates. Seen as within the broad array of left-leaning cause-orientated groups, it focuses on exposing and documenting human rights violations committed by government forces in the context of counter-insurgency operations, including killings and torture, and calls for the release of all political prisoners.

³⁸ The fact-finding team was provided with documents listing the over 700 activists killed since 2001 based on Karapatan statistics. Statistics provided by the Karapatan organization are available at Stop the Killings in the Philippines Campaign www.stopthekillings.org. Amnesty International highlights the lack of reliable statistics and confirms that there have been at least 244 killings. See Amnesty International, *Philippines: Political Killings, Human Rights and the Peace Process*, 15 August 2006.

³⁹ 'RP faces UN blacklist over rights record, says CHR chair', Philippine Daily Inquirer, 28 July 2006.

⁴⁰ Amnesty International, *Philippines: Political Killings, Human Rights and the Peace Process*, 15 August 2006. <http://web.amnesty.org/library/Index/ENGASA350062006>

⁴¹ Dutch Lawyers for Lawyers Foundation, *From Facts to Action Report on the Attacks Against Filipino Lawyers and Judges. The International Fact Finding Mission (IFFM)*, 24 July 2006 pp37-39.

⁴² The Chairperson of the CHR, Purificacion Valera Quisumbing, has also chastised the Philippine government for its failure to report to international human rights treaty bodies. She stated that this may result in the Philippines being listed as a violator of its treaty obligations, with 14 reports overdue and an alarming record of human rights violations with regard to extrajudicial killings and violations of the rights of indigenous peoples. See 'UN blacklist over rights record, says CHR chair' Philippine Daily Inquirer 28 July 2006.

⁴³ Transparency International Annual Report 2004 p8-9 available at http://www.transparency.org/publications/annual_report.

⁴⁴ A Supreme Court case is currently pending with regard to corruption in the use of the Internal Revenue Allotment in the municipality of Midsalip. Locals provided the fact finding team with lists of similar cases throughout the Zamboanga Peninsula. One group of locals, who for safety reasons wished to remain anonymous, claimed that the granting of mining rights was linked to corruption in relation to up-coming elections. The Canadian parliamentary hearings addressed payments made by the KingKing mine to political figures. See Statement by Allan Laird for the Subcommittee on Human Rights and International Development of the Standing Committee on Foreign Affairs and International Trade Meeting May 18, 2005. Ottawa Kingking Mines Inc. Corporate Support of Terrorism in the Philippines available at http://www.dcmphil.org/Allan_Laird%27s_Statement.pdf

⁴⁵ John Ruggie, Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, U.N. Doc. E/CN.4/2006/97 (2006). Paragraph 25.

⁴⁶ *Shifting the balance The World Bank Group and Extractive Industries The Final Report of Extractive Industries Review* December 2003 p18. The EIR found that in the context of extractive industry projects 'there was often the increased risk of corruption by local officials dealing with land issues and an increase in organized crime against landowners who received compensation.' It also highlighted that in the extractive sector issues of weak governance (for example corruption) are particularly problematic because all revenues are channeled through central government (p6).

⁴⁷ See Legal Remedies for the Resource Curse. A Digest of Experience in Using Law to Combat Natural Resource Corruption. Open Society Justice Initiative 6 September 2005 available at http://www.justiceinitiative.org/db/resource2?res_id=102966 See also Carlos Leite & J Weidmann. Does Mother Nature Corrupt? Natural Resources, Corruption and Economic Growth, IMF Working Paper WP/99/85 (1999).

⁴⁸ Review of Environmental Actions Funded by the European Commission and the EU Member States in the Philippines June 2005 Executive Summary Pg xi http://www.delphi.cec.eu.int/docs/Env.actions_EC_EUMS.PDF

⁴⁹ See Extractive Industry Transparency Initiative <http://www.eitransparency.org/countryupdates.htm>

⁵⁰ *La Bugal-B'laan Tribal Ass'n v. Ramos*, G.R. No 127882 421 S.C.R.A. 148 (Dec. 1, 2004)

⁵¹ See Minesite.com Speech of Jose DeVenecia 17 June 2005, London, <http://clients.westminster-digital.co.uk/minesite/microsite/events/philippines/index.aspx>

⁵² A L Clark, (1994) *The Phillippines Mineral Sector to 2010: Policy and Recommendations*, Report to the Asian Development Bank on T.A. No 1894-PHI. East-West Center Honolulu, Hawaii, p360. Quoted in E Caruso, M Colchester, F McKay, N Hildyard & G Nettleton (2005) *Synthesis Report Extracting Promises Indigenous Peoples, Extractive Industries and the World Bank*, Second Edition, Tebtebba Indigenous Peoples International Centre for Policy Research and Education and Forest Peoples Programme (Tebtebba Foundation) p63.

⁵³ *Chronology of Tailings Dam Failures in the Philippines (1982-2002)* Compiled by Philippine Indigenous Peoples Links <http://www.piplinks.org> last updated: 29 October 2003 See endnote 2 for explanation re tailing dam failures.

⁵⁴ Ronnie E Calumpita, '857 abandoned mines pose health menace, say NGOs', The Manila Times Reporter, 11 October 2005. The article quotes information provided by Kalikasan-People's Network for the Environment. available at <http://www.minesandcommunities.org/Action/press759.htm>

⁵⁵ See *Rapu-Rapu Finding and Recommendations of the Fact-Finding Commission on the Mining Operations in Rapu-Rapu Island*, 19 May 2006, Executive Summary p15.

⁵⁶ National Economic and Development Authority, *Medium Term Philippine Development Plan*, p44, available at www.neda.gov.ph

⁵⁷ *State of the Philippines Forest and Important Biodiversity Areas, Harribon Foundation Protecting Nature Preserving Life* Slide 6 Presented to the FFT 27th July Meeting with NGOs and Indigenous Peoples Organizations Malate Parish Hall, Manila

⁵⁸ *Submarine Tailings Disposal Toolkit*, 'Introduction: Mining's Problem with Waste', p1, available at www.miningwatch.ca/index.php?/Crew/STD_toolkit Published jointly by Mining Watch Canada and Project Underground 2002

⁵⁹ See www.miningwatch.ca/index.php?/Crew/STD_toolkit the European Parliament, in response to the EIR, called on its member states 'to bring their influence to bear to minimize its support for the use of toxic materials such as cyanide and mercury and to support a moratorium on submarine tailing disposal' European Parliament Resolution on World Bank-commissioned Extractive Industry Review available at http://www.environmentaldefense.org/documents/3637_EPFinalResOnEIR.pdf#search=%22european%20parliament%20resolution%20extractive%20industry%20review%22

⁶⁰ According to information provided by the World Bank to the Centre for Hazards and Risk Research, the Philippines was among the top 20 countries requiring loans for disaster reconstruction needs from 1980 to 2003. Maxx Dilley, Robert S. Chen, Uwe Deichmann, Arthur L. Lerner-Lam and Margaret Arnold, Jonathan Agwe, Piet Buys, Oddvar Kjekstad, Bradfield Lyon and Gregory Yetman Natural Disaster Hotspots: A Global Risk Analysis Synthesis Report, March 2005. 2005, International Bank for Reconstruction and Development/The World Bank and Columbia University, p23, available at <http://sedac.ciesin.columbia.edu/hazards/hotspots/synthesisreport.pdf> see also <http://www.worldbank.org/hazards>.

⁶¹ Legal Rights and Natural Resources Center – Kasama Sa Kalikasan/Friends of the Earth Philippines (LRC-KsK/FoE-Phil), Mining Situation Presentation, Slide 24 Presented to the FFT 27 July at a meeting with NGOs and indigenous peoples' organizations. Malate Parish Hall, Manila.

⁶² See <http://www.umich.edu/~snre492/Jones/marcopper.htm> University of Michigan *Environmental Justice Case Study Marcopper in the Philippines*

⁶³ *Submarine Tailing Disposal Toolkit* Introduction: Mining's Problem with Waste p1 available at www.miningwatch.ca/index.php?/Crew/STD_toolkit see also recent reports from Earthwatch highlighting the impact of mining on water pollution and the necessity for independent monitoring available at www.mine-aid.org/predictions

⁶⁴ National Economic and Development Authority, *Medium Term Philippine Development Plan*, p44, available at www.neda.gov.ph

⁶⁵ Legal Rights and Natural Resources Center – Kasama Sa Kalikasan/ Friends of the Earth Philippines (LRC-KsK/FoE-Phil) *Mining Situation Presentation Slide 23 Map 7: Stressed Watersheds in the Philippines*. Presented to the FFT 27th July Meeting with NGOs and Indigenous Peoples Organizations Malate Parish Hall Manila,

⁶⁶ Philippine Star, November 13, 2001

⁶⁷ Lye Lin Heng, 'Public Participation in the Environment: A South-East Asian Perspective' in D N Zillman, A R Lucas and G Pring (eds) (2002) *Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources*, Oxford University Press, Oxford, p673.

⁶⁸ Constitution of the Philippines, section 16 article II (1987).

⁶⁹ *Oposa v. Factoran* 224 Sup. Cts. Ann. Reps. 792 (1993) Sup. Ct. of the Philippines.

⁷⁰ Rio Declaration on Environment and Development, Principles 10 and 17. See

<http://www.unep.org/Documents/multilingual/Default.asp?DocumentID=78&ArticleID=1163>. Participation is also required by the ASEAN Agreement on the Conservation of Nature and Natural Resources, which the Philippines has ratified. It requires that states circulate information regarding conservation measures and 'organize participation of the public in the planning and implementation of conservation measures'. This agreement was signed in 1985 by the six ASEAN countries but has yet to be ratified by Singapore, Brunei and Malaysia. See also Ingrid Gorre, Jason Lamchek, *Streamlining Environmental Impact Assessment in the Philippines Implications for Human Rights* Issue Paper 2005-03, Legal Rights and Natural Resource Centre Inc Kasama sa Kalikasan (LRC-KsK/Friends of the Earth Philippines), (2005, Manila) p11.

⁷¹ Gorre & Lamchek *ibid*, p25 'Public proponents are no longer required to provide information to the public 'public hearings are required for environmentally critical projects but not for non-environmentally critical projects located in environmentally critical areas. The notice requirements for public hearings are not replicated in the new Administrative Order'

⁷² An example is the *Prince William Sound Regional Citizens' Advisory Council* in Alaska. Following the 1989 Exxon Valdez Oil Spill in Alaska, the need for an independent body to review oil operations was recognized and it was decided to

set up a totally independent civil society organization called a 'Citizen's Advisory Council'. The oil companies are required to pay money into a trust fund which is used by the council to employ a team of experts who monitor all oil company operations and report independently to the government, civil society and the companies.. See <http://www.pwsrccac.org/about/index.html>

⁷³ Indigenous Peoples Rights Act, Chapter III Section 3 g.

⁷⁴ Submarine Tailings Disposal is a good example of where independent expert information provision is essential. Mining companies are stating that it is safe to use this method in the Philippines due to the deep ocean trenches. However, the reality is that the risks to deep sea marine life and the impact to the greater marine eco system are not yet known. Lack of independent expertise in this case could have disastrous consequences.

An example of lack of scientific evidence leading to disastrous impacts to the environment and the local community is the case of Ok Tedi in Papua New Guinea. According to the mining company BHP Billiton Limited 'The decision to proceed at the time was based on evidence that the downstream aquatic ecosystem was well adapted to recovering from natural inputs of massive amounts of sediment. Predicted environmental impacts were based on the best available knowledge at the time.' This resulted in the killing of fish and the destruction of vegetation along the river bank impacting the 40,000 downstream dwellers. Subsequent to this and attempted litigation by the local community BHP has publicly stated that it would no longer invest in new projects using riverine tailings disposal. It appears that a disaster on the scale of Ok Tedi is required before mining companies admit the potential impacts of operations are either unknown or, as many indigenous communities have experienced, are being deliberately understated. See

<http://www.bhpbilliton.com/bb/sustainableDevelopment/community/okTediSustainableDevelopmentProgram.jsp> Ok Tedi Sustainable Development Program. See also Zhiguo Gao, George Akpan Jim Vanjik *The Ok Tedi Case and its Implications in Human Rights in Natural Resource Development* Zillman Lucas and Pring (eds) (Oxford University Press 2002) p679-694

⁷⁵ In Midsalip during the FPIC process, Mr Real of Geotechniques informed the indigenous people that those directly affected by mining would become millionaires and be able to buy Mercedes Benz cars; he also claimed that up to 10,000 jobs would be created. See 'Mining Midsalip, Zamboanga del Sur's Future', *Business World* 10 February 2006 available at <http://news.vehey.com/news3.asp?c=14&i=139843>

⁷⁶ TVI declared that Mt Canatuan, the sacred mountain of the Subanon people, was not a sacred place because small-scale miners were operating there. This was despite the fact that the Subanon has already objected to the small-scale miners' presence.

At a presentation at the Sydney Mining Club Robert Thomas CEO "Climax Mining Limited" (CMX) discussed CMX plans including its planned mining operations at Didipio, in the lands of the Ifugao people in Luzon, he described the mountain to be mined as 'a bit of an ugly looking place' "Climax Mining Limited" CMX, Sydney Mining Club, *Philippines Focus*, Tuesday, 8 August 2006 <http://www.brr.com.au/event/CMX/837/12916/wmp/221.242.254.150/wsl.wmp>. There is a long history of conflict between the Ifugao people and Climax over mining at this site (See Appendix 5). See also http://www.minorityrights.org/Dev/mrg_dev_title4_philippines/mrg_dev_title3_philippines_6.htm.

⁷⁷ See Joji Carino *Indigenous Peoples' Right to Free Prior Informed Consent: Reflections on Concepts and Practice* Vol 22 (2005) Arizona Journal of International and Comparative Law pp19-39. The Tebtebba Foundation is currently documenting FPIC processes throughout the Philippines.

⁷⁸ Ingrid L. Gorre Jason S. Lamchek *Streamlining Environmental Impact Assessment in the Philippines: Implications for Human Rights Issue Paper 2005-03*, Legal Rights and Natural Resources Center – Kasama Sa Kalikasan/Friends of the Earth Philippines (LRC-KsK/FoE-Phil). See also 'Free Prior Informed Consent Process: Emerging Issues and Recommendations' available at www.tebtebba.org

⁷⁹ Concluding observations of the Human Rights Committee: Philippines : Philippines. 01/12/2003. CCPR/CO/79/PHL

⁸⁰ *Ibid.* (Concluding Observations/Comments) para 16. 'The Committee welcomes the adoption of the Indigenous Peoples' Rights Act (IPRA) in 1997 and the subsequent establishment of the National Commission on Indigenous Peoples (NCIP), but remains concerned about the lack of effective implementation of the legislation ... It is further concerned at the human rights implications for indigenous groups of economic activities, such as mining operations. The State party should ensure effective enforcement of the above legislation and ensure that indigenous peoples' land and resource rights enjoy adequate protection in relation to mining and other competing usage, and that the capacity of the National Commission on Indigenous Peoples is strengthened. Positive measure should be expanded to include land rights issues.'

⁸¹ Concluding observations of the Committee on the Elimination of Racial Discrimination: Philippines. 15/10/97. CERD/C/304/Add.34. (Concluding Observations/Comments) Para 14, 17.

⁸² The Convention on Biodiversity Article 8 j 'Each Contracting Party shall, as far as possible and as appropriate: ... subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices'.

⁸³ 'RP faces UN blacklist over rights record, says CHR chair' Philippines Daily Inquirer, 28 July 2006.

⁸⁴ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Mission to Philippines E/CN.4/2003/90/Add 3, para 63.

⁸⁵ See <http://www.epa.gov/mercury/effects.htm#elem>, see also *Cyanide Gold Minings Devastating Killer* Greenpeace <http://www.greenpeace.org/raw/content/seasia/en/press/reports/cyanide-gold-mining-s-devasta.pdf>

⁸⁶ Serious claims of adverse affects on health have been made at the Buyat Bay area of Sulawesi, Indonesia by local people and health professions. Newmont mining, responsible for the STD in the bay disputes these claims. See for example “U.S. Mining Giant Called Lax in Waste Disposal in Indonesia” Perlez, Jane, *The New York Times*, February 3rd, 2006

⁸⁷ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen Mission to Philippines E/CN.4/2003/90/Add 3, para 51-52.

⁸⁸ See ‘26 Tribes oppose bid for Bangsamoro land’, *Manila Bulletin*, Saturday August 5 2006. See also *The Quest of the Indigenous Communities Mindanao, Philippines: Rights to Ancestral Domain*, Commission on Human Rights 12-16 May 2003. Paper prepared by Erlinda M. Burton, Research Institute for Mindanao Culture, Xavier University, Cagayan de Oro City, Philippines UN Doc E/CN.4/Sub.2/AC.5/2003/WP.15 p 19 ‘How would the Islamic government deal with the IPs situation within the Islamic framework, specifically their rights to ancestral domain? This is a crucial problem that the IPs are so much concerned because their future, they believe, hinges on their gaining of their ancestral domain.’ See also http://mindanews.com/index2.php?option=com_content&do_pdf=1&id=553 Statement: *Hiniusang baroganan sa mga Lumad sa GRP-MILF Kasabotan sa Bangsamoro Homeland* Contributed by United Indigenous Peoples of Mindanao Monday, 31 July 2006.

⁸⁹ ‘An overview of mineral potential opportunities in the Philippines’, Mines and GeoSciences Bureau 2005, Slide 31 available at <http://clients.westminster-digital.co.uk/minesite/microsite/events/philippines/index.aspx>

⁹⁰ Christian Aid and PIPLinks, *Breaking Promises, Making Profits Mining in the Philippines*, December 2004, pp17, 22- 28 illustrates the lack of economic benefits in Mankayan, Benguet, despite a long history of mining in the area.

⁹¹ Department of Environment and Natural Resources Mines and GeoSciences Bureau *Medium To Large Scale Mineral Resources Development Projects Under The Ten-Point Legacy Of President Gloria Macapagal Arroyo (2004-2010) Investments Profile* http://www.mgb.gov.ph/revitalization_files/revitalization_23projects.htm

⁹² The Department of Environment and Natural Resources Mines and GeoSciences Bureau estimates for Climax Mining Limited operations show potential annual excise revenues of almost 5M US\$ before incentives for the same project. After incentives this drops to 0 for 5 years.

⁹³ The Mining Act provides generous concessions to foreign firms investors including: tax holidays from five to ten years, full repatriation of investments, full remittance of earnings and freedom from expropriation, tax deductible operational expenses see <http://www.chanrobles.com/RA7942.htm>

⁹⁴ Among the empirical studies conducted are the following: Jeffrey D Sachs and Andrew M. Warner (1997) ‘Natural Resource Abundance and Economic Growth’, updated and extended version of NBER working paper 5398 (October 1995) Harvard University, Harvard Institute for International Development, Cambridge, MA. Jeffrey D. Sachs and Andrew M. Warner (2001) ‘*The Curse of Natural Resources*’, *European Economic Review*, 45(2001):827-838. Richard M. Auty (1998) *Resource Abundance and Economic Development: Improving the Performance of Resource-Rich Countries*, UNU/WIDNER, Research for Action 44, 1998. See also United Nations Conference on Trade and Development 2005 *Economic Development in Africa Rethinking the Role of Foreign Direct Investment* www.unctad.org/en/docs/gdsafira20051_en.pdf.

These studies suggest that export-oriented models such as that being pushed by the government of the Philippines are unlikely to effectively boost the GDP; researches show that the overall growth rate after a natural resource boom is at best the same as before it and at worst negative.

Controversial studies associated with the mining industry claim that mining contributed positively to national development in such countries as Canada, the USA and Australia. However, as pointed out by Professor Power, owing to vastly different initial conditions, these models have little relevance to the current situation in many southern economies, including the Philippines. In addition the importance of mining to the successful growth of these economies is strongly disputed. See Thomas Michael Power, *Digging to development: A Historical Look at Mining and Economic Development*. Oxfam America Report, September 2002.

⁹⁵ Economic, geographical and developmental maturity were very different in these countries than in the Philippines These conditions include: the scale of operations and large national economies capable of absorbing local booms and busts; technology and knowledge developed and stayed in these countries rather than being imported; less volatility in markets; minerals mined stayed in the countries generating other industries rather than being exported.

⁹⁶ Thomas Michael Power, *Digging to development: A Historical Look at Mining and Economic Development*. Oxfam America Report, September 2002 p20

⁹⁷ The Canadian Human Rights Alliance British Columbia Committee for Human Rights in the Philippines has noted this negative effect. ‘Our investigations into mining inform us that communities are not benefiting economically or socially from local mining regardless. It appears that more revenue has been taken away from small-scale mining with the incursions of large-scale mining activities’. *Roundtable Discussion on Extractive Industries Foreign Affairs and International Trade* Canada Vancouver, B.C. June 14, 2006.

<http://international.gc.ca/cip-pic/library/BCCHRP.pdf#search=%22TVI%20canadian%20ambassador%22>

⁹⁸ Antonio S. Lopez, 'Mining is Back' *BizNews Asia*, Vol 3 No 56 October 5-12, 2005 p11.

⁹⁹ See *La Bugal-B'laan Tribal Ass'n v. Ramos*, G.R. No 127882 421 S.C.R.A. 148 (Dec. 1, 2004)

¹⁰⁰ Companies are expected to either reduce their net mining revenues or ensure that the State is entitled to a smaller portion of same. The lack of State control over operational expenses reported by mining companies is seen as a weakness. In addition FTAA contracts may be negotiated with the government containing clauses that provide the means by which the company could reduce the government entitlement. This was the case with the WMCP FTAA until the Supreme Court ruled one of the clauses permitting it as invalid. See *La Bugal-B'laan Tribal Ass'n v. Ramos*, G.R. No 127882 421 S.C.R.A. 148 (Dec. 1, 2004).

¹⁰¹ Rapu-Rapu Finding and Recommendations of the Fact-Finding Commission on the Mining Operations in Rapu Rapu Island, 19 May 2006, Introduction p23.

¹⁰² DENR Assessment of the Rapu-Rapu Polymetallic Project Executive Summary p9 'The DENR will take the required appropriate actions to resolve hanging issues vis-à-vis Rapu-Rapu Fact Finding Commission Report. These actions will essentially consist of the following:... 5) The forwarding of a request to the BIR to undertake an investigation of the issue concerning alleged under-reporting of ore production.'

Available at <http://www.greenpeace.org/raw/content/seasia/en/press/reports/denr-assessment-of-the-rapu-ra.pdf>

¹⁰³ Estimates are based on health costs, reductions in fisheries production and tourism. *An Agenda for Sustainable Development DENR in the Next 5 Years*, Slide 9 quoting a World Bank report.

¹⁰⁴ The point has been made that it should not be assumed that indigenous peoples want to partake in the development of an ADSDPP and that by not doing so they may in fact be exercising their right to self-determination. See Notes on NCIP Administrative Issuances 2002 – 2003 Issue Paper 2004 – 02 Legal Rights and Natural Resource Centre Inc p13

¹⁰⁵ A complaint made by Timuay Boy Anoy among others regarding TVI and NCIP at the Canatuan mine.

¹⁰⁶ The EIR recommends that the World Bank incorporate this sector into its Country Strategy Assessments.

¹⁰⁷ Antonio A Tujan Jr. and Rosario Bella Guzman (2002) *Globalizing Philippine Mining*, IBON Foundation Inc. Databank and Research Centre, IBON Books, Manila) p142. They estimate that this number could be as high as 500,000. They quote Central Bank figure showing small-scale miners contributed 45 per cent of the country's gold between 1993 and 1997 pp19 and 142.

See also *Breaking Promises, Making Profits Mining in the Philippines*, A Christian Aid and PIPLinks report December 2004 p18 & 19 studies by the Asian Development Bank estimated that there are 300,000 small-scale miners.

¹⁰⁸ The fact-finding team met small-scale miners who had been operating at Mt Canatuan before TVI displaced them. They said that the small-scale miners outnumbered the total current TVI workforce at the mining site by at least two to one. This is supported by a case study carried out by Christian Aid and PIPLinks: *Breaking Promises, Making Profits Mining in the Philippines*, December 2004, p39.

¹⁰⁹ The Benguet Corporations operation at Antamok Itogon on the Ibaloi lands displaced small scale miners. It then switched its operations to large scale open bit mining reducing work forces from 6,000, many of whom were indigenous peoples, to 600. *Extracting Promises Indigenous Peoples Extractive Industries & the World Bank* Second Edition (Tebtebba 2005 Baguio City) p65

¹¹⁰ Little attention is given to small scale miners in the Philippines Mineral Action Plan. It provides large tax breaks for foreign firms while offering no benefits, other than the regulation of their activities, to small-scale miners. Many believe that this regulation would be used to limit their activity in favour of large mines. See ILO study of small-scale miners, Norman S. Jennings (ed) (2002) *Small-scale gold mining: Examples from Bolivia, Philippines and Zimbabwe* Industrial Activities Branch Working Paper, available at

<http://www.ilo.org/public/english/dialogue/sector/papers/goldmine/130e2.htm>

¹¹¹ The FFT met with a small-scale miner wounded when shot at during protest against TVI. The private armed security force known as the Special CAFGU Armed Auxiliary (SCAA) enforced a food and economic blockade against the small scale miners in 1997. See Antonio A. Tujan Jr. Rosario Bella Guzman *Globalizing Philippine Mining* IBON Foundation Inc. Databank and Research Centre 2002 (IBON Books Manila) p149, quoting *Manila Times*, 28 May 1997.

¹¹² http://www.news.ops.gov.ph/inaugural_speech2004.htm

¹¹³ *The Death of Life: The Horror of Extinction* Sean MacDonagh SSC (Columba Press Dublin, 2005), p21 highlights that despite the astronomical profits from mining only a few elite families benefited from logging in the Philippines. Also interview with Sean MacDonagh, 31/07/06 Manila Philippines.

¹¹⁴ United Nations Conference on Trade and Development 2005 *Economic Development in Africa Rethinking the Role of Foreign Direct Investment* www.unctad.org/en/docs/gdsafrika20051_en.pdf

¹¹⁵ Including *Striking a Better Balance, Final report of the Extractive Industries Review*, World Bank, Washington 2003

¹¹⁶ *ibid*, *Striking a Better Balance*

¹¹⁷ Academic reviews of the Philippines' environmental protections have suggested that perhaps the time has come to split the DENR functions. See A Khee-Jin Tan, *All that Glitters: Foreign Investment in Mining Trumps the Environment in the Philippines*, 23 Pace Environmental Law Review p206.

¹¹⁸ Exploration, as defined below, that can continue up to eight years, clearly has potential environmental and social impacts. According to Republic Act No. 7942 [An Act Instituting A New System Of Mineral Resources Exploration, Development, Utilization, And Conservation], Section 3q: 'Exploration means the searching or prospecting for mineral

resources by geological, geochemical or geophysical surveys, remote sensing, test pitting, trenching, drilling, shaft sinking, tunneling or any other means for the purpose of determining the existence, extent, quantity and quality thereof and the feasibility of mining them for profit.’

¹¹⁹ As of August 2006 inadequate information was available at the Securities and Exchange Commission to determine which corporations are behind Geotechniques.

¹²⁰ Following an agreement between the small-scale miner, Ramon Bosque, and the Benguet Corp, a Philippine mining company. The president of Benguet Corp, Benjamin Romualdez, is currently the President of the Chamber of Mines.

¹²¹ For photos of the scared mountain before and after TVI’s arrival, see Appendix 7, see also <http://www.dcmiphil.org/photogallery.htm>.

¹²² A Tebtebba case study documents the history of the Subanon people in the region of the Seven Rivers on the Zamboanga peninsula. Penelope C Sanz *How to get a MOA without even trying? The Subanon of Canatuan experience* Draft version on file with the fact-finding team.

¹²³ Hearings were held by the Canadian Standing Committee on Foreign Affairs and International Trade see http://www.piplinks.org/development_issues/articles/success.htm

¹²⁴ http://www.piplinks.org/development_issues/articles/sep_29_2005.htm

¹²⁵ Protests of the Subanon people are documented and are available at <http://www.dcmiphil.org/documents.htm>

¹²⁶ Rapu-Rapu Finding and Recommendations of the Fact-Finding Commission on the Mining Operations in Rapu-Rapu Island 19th May 2006 Summary Report pg 8

¹²⁷ For a descriptions of the biological diversity of the Sibuyan Island see http://www.fieldmuseum.org/vanishing_treasures/Discover_4.htm and Herbarium Digital Library <http://www.pnh.com.ph/category/5-Critical-Plant-Sites/14-Sibuyan-Island-page-1.html>.

¹²⁸ <http://www.infomine.com/countries/philippines.asp>

¹²⁹ <http://clearblogs.com/SAM/page2/&thisy=&thism=&thisd=>

¹³⁰ World Wildlife Fund, *Payments for Environmental Services, An Equitable Approach for Reducing Poverty and Conserving Nature*, June 2006, pp14, 20, 35, 69. A Philippines National Conference-Workshop on Payments for Environmental Services: Developing Incentives for Conservation and Poverty Alleviation, 1-2 March 2005, addressed present PESs in the Philippines, drawing on lessons in developing direct incentives and payment mechanisms for conservation and poverty reduction. Issues related to mining arose, such as conflicting land claims of mining companies and indigenous peoples, competing water use, conflicting water and land rights.

¹³¹ *La Bugal-B’laan Tribal Ass’n v. Ramos* G.R. No. 127882. December 1, 2004

¹³² *ibid*

¹³³ <http://www.supremecourt.gov.ph/speech/twin.pdf#search=%22Bugal-B%E2%80%99laan%20Tribal%20Association%20v.%20Ramos%22>

¹³⁴ Constitution of the Philippines Article II Section 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

¹³⁵ Philippines Supreme Court case, *Minors Oposa v. Secretary of the Department of Environment and Natural Resources (DENR)*, 33 I.L.M 173 (1994). The case sought to halt the granting of timber licences by the government.

¹³⁶ Congressional hearing have been held with regard to TVI’s operations in Mt Canatuan and an injunction was sought against Lafayette’s operations in Rapu-Rapu.

¹³⁷ For example conflicts of use arise between easement rights given by the Mining Act section 75 and Water Acts.

¹³⁸ See Environmental Justice case study, *Marcopper in the Philippines*

<http://www.umich.edu/~snre492/Jones/marcopper.htm>.

¹³⁹ *Marinduque government includes Barrick Gold as defendant in Nevada case*, Press Release June 21, 2006 see http://www.jatam.org/english/index.php?option=com_content&task=view&id=31&Itemid=75&PHPSESSID=1fb645bd6710164a978444ac92b8dca9 see Mining Ombudsman Case updates 2005 Oxfam Australia August 2006 available at http://www.oxfam.org.au/campaigns/mining/ombudsman/2005/case_updates.pdf page 13

¹⁴⁰ *BizNews Asia* Vol 3 No 36 October 5-12 2005 p 32

¹⁴¹ *Miners behaving badly abroad* by: Techa Beaumont 18th August 2006 [www.newmatilda.com](http://www.newmatilda.com/policytoolkit/policydetail.asp?PolicyID=478) available at <http://www.newmatilda.com/policytoolkit/policydetail.asp?PolicyID=478>

¹⁴² See *Miners say GMA fails to live up to vows, cancel int'l meet* by Ayen Infante, Tribune 12th September [available at http://www.tribune.net.ph/20060912/business/20060912bus2.html](http://www.tribune.net.ph/20060912/business/20060912bus2.html) also available at

<http://www.minesandcommunities.org/Action/press1215.htm> See also ‘*Manila review hits miners*’ The Standard, Chinese Business Newspaper 21 September 2006 available at

http://www.thestandard.com.hk/news_detail.asp?pp_cat=22&art_id=27731&sid=10019223&con_type=1

¹⁴³ Following a consistent rise, share prices in the month of April 2006 reached \$1.50, as of the 19th of August 2006 share prices had fallen to \$0.76 see

<http://www.asx.com.au/asx/research/CompanyInfoSearchResults.jsp?searchBy=asxCode&allinfo=on&asxCode=LAF>

¹⁴⁴ http://www.dcmiphil.org/Allan_Laird%27s_Statement.pdf. Reports showing payments to the Abu Sayyaf were provided to the FBI in June 1994.



“Not only have the oil, gas and mining industries not helped the poorest people in developing countries, they have often made them worse off. Scores of recent academic studies and many of the bank's own studies confirmed our findings that countries which rely primarily on extractive industries tend to have higher levels of poverty, child morbidity and mortality, civil war, corruption and totalitarianism than those with more diversified economies. Does this mean extractive industries can never play a positive role in a nation's economy? No, it simply means that the only evidence of such a positive role we could find took place after a country's democratic governance had developed to such a degree that the poorest could see some of the benefits...”. *Dr Emil Salim, World Bank Extractive Industries Review 2004 (EIR). UK Financial Times on 16 June 2004.*

“... We must therefore encourage and support the 'ecological conversion' which in recent decades has made humanity more sensitive to the catastrophe to which it has been heading. Man is no longer the Creator's 'steward', but an autonomous despot, who is finally beginning to understand that he must stop at the edge of the abyss”. *Pope John Paul II 17 January 2001*

“[We] support the call of various sectors, especially the Indigenous Peoples, to stop the 24 Priority Mining Projects of the government, and the closure of large-scale mining projects, for example, the Rapu-Rapu Polymetallic Project in Albay, HPP Project in Palawan, Didipio Gold-Copper Project in Nueva Vizcaya, Tampakan Copper-Gold Project in South Cotabato, Canatuan Gold Project in Zamboanga del Norte, and the San Antonio Copper Project in Marinduque, among others; [we] support the conduct of studies on the evil effects of mining in dioceses; [we] support all economic activities that are life-enhancing and poverty-alleviating.” (*CBCP Pastoral, January 29, 2006*)

“What does it gain a nation to be short-sighted and merely think of money when an irreparable damage to the environment will cost human lives, health, and livelihood capacity of our farmers and fisherfolks endangering the food security of our people.”

Then Secretary of the DENR Heherson Alvares. Philippine Star, November 13, 2001

Photos of the fact-finding trip can be found on:
<http://philippinesfactfinding.blogspot.com/>

Front cover: Timbaboy, Midsalip, Zamboanga del Sur, Mindanao. Ricefields thrive in rich irrigated volcanic soils in the Mt Pinukis range of mountains, held sacred by the Subaanen People. They are now threatened by mining.

