



Mining Ombudsman case report: Didipio gold and copper mine



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Font cover: Some Didipio community members express their opposition to the proposed Didipio mine and their desire for a continuation of long-term sustainable agricultural development in the Didipio area.

Opposite: The Didipio valley and some of the community's rice fields.

Photos: Jason McLeod/OxfamAUS.

Acknowledgements

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Feedback welcome

We appreciate any feedback, comments or input you may have about issues and cases discussed in this report. Comments can also be emailed to mining.ombudsman@oxfam.org.au

This report is available online at
www.oxfam.org.au/campaigns/mining

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Executive summary

This Mining Ombudsman case report highlights what can happen when a mining company fails to obtain the fully informed consent of affected communities before a project's development. This failure can have detrimental impacts on a community even before mining operations begin. The report outlines the key elements of free, prior and informed consent and provides guidance on how to apply the principle of free, prior and informed consent as part of a rights-based approach to development.

The subject of this case report is the Australian-owned Didipio mining project in the Philippines, known as "Dinkidi", which is yet to start production. The report details that many people in the Didipio community believe that they have not given their free, prior and informed consent to the mining company in question, Australasian Philippines Mining Inc (APMI), a wholly owned subsidiary of OceanaGold Corporation. Failure to obtain free, prior and informed consent has contributed to community discord and the proposed project is having disrupting impacts on family and intra-community relations.

OceanaGold is an Australian Stock Exchange-listed company with its head office in Melbourne, Australia. In 2006, OceanaGold merged with the then owners of the Didipio project, Climax Mining, which was also an Australian company. This report includes details of activities that occurred during the period in which Climax Mining oversaw the project, as well as those that have occurred since the merger. As a merged entity, OceanaGold attained the rights and responsibilities of Climax Mining and remains accountable for the repercussions of its actions. OceanaGold has retained key board members and employees of Climax Mining who have knowledge of and experience in these activities. The current Chairman of OceanaGold, James Askew, is the former Chairman and Managing Director of Climax Mining; another OceanaGold board director Terrence Fern is also a former Chairman and Chief Executive Officer of Climax Mining. In respect of Didipio project, OceanaGold has continued to rely on Climax Mining's previous actions. Moreover, since the formation merger, OceanaGold and its subsidiaries have engaged in conduct that has given rise to new and very serious grievances. Climax Mining and OceanaGold are hereafter referred to as OceanaGold.

In 2002, community members affected by the Didipio mining project approached Oxfam Australia with a request for the Mining Ombudsman to take up their case. Since then, the Mining Ombudsman project has conducted several field investigations, written a series of letters to the Didipio mining project's owners and met with the Chief Executive Officer of OceanaGold, Mr Stephen Orr. While Mr Orr has said that the Didipio project is not viable without the communities' support, the company has failed to substantively respond to the community grievances contained in this report.

The Mining Ombudsman investigation airs the communities' grievances about the way OceanaGold has pursued the proposed mine. The underlying factor has been the company's failure to obtain the community's fully-informed, freely-given consent before starting the mining development. Obtaining such free, prior and informed consent would be consistent with national Filipino law, international law and good business practice. Instead, many community members assert that OceanaGold has used various means to try to secure regulatory approval and gain access to their lands without proper community engagement. They allege that the company and/or its representatives have:

- intimidated, harassed or forced community members to give the company access to or sell their land at prices determined by the company;
- sought to gain approval for the proposed mine in inappropriate ways, including by misrepresentation and offering material incentives to political officials;
- failed to provide full information about the proposed project and its likely impacts on the community in a form they understand;
- failed to give information about proposed relocations;
- sought to circumvent established regulatory consent requirements that prioritise the need for local council (Barangay) consent. The Barangay Council of Didipio has consistently opposed the mine project since 2002; and
- publicly misrepresented the level of support that the project and the company have been able to attain.

Community members in the Didipio area have profoundly felt the effects of these activities. The once quite harmonious village of Didipio is now marred by personal anguish, family division and deep social discord.

Lack of consent for the project

Didipio community members support development, however, they are deeply divided as to how to achieve this. Some community members regard the proposed mine as a source of employment and infrastructure development. Others see it as a threat to their land, livelihoods, health and wellbeing. Consequently, many people in the local community oppose the project.

Land has always been essential to the Didipio people's livelihoods and survival. Many of them want to ensure that they can continue to use their land as a source of food and income generation. In particular, many people wish to pursue citrus production, which has proved a lucrative crop in neighbouring areas. These community members regard the proposed mine as a threat to this form of development. The mine project's own amended environment impact statement (EIS) indicates that the Didipio mine will have a significant environmental, social, and economic impact on the entire municipality of Kasibu (in which Didipio is located) and beyond.¹ Communities from the Kasibu province and the neighbouring Quirino province have expressed their concern about the potential harmful environmental impacts of the proposed mine site on the Addalam River valley.²

The democratically-elected Didipio Barangay Council, which has primary responsibility for development projects in the Didipio area, has consistently rejected the proposed mine since 2002. Leaders of other barangay councils have also opposed the mine. Similarly, the municipal council ("Sangguniang Bayan") has not given its consent to the Didipio project and on 11 November 2002 unanimously passed a resolution denying support for it.

Consents not freely given — allegations of bribes, harassment and intimidation

The Mining Ombudsman received complaints that bribery and intimidation have occurred since the company's initial involvement in Didipio. Community members allege that the offering of such incentives is the reason why several members of the former barangay council and two minority members of the current council support the mine. The Mining Ombudsman met with many of these former and current councillors who stated that they are now receiving salaries from OceanaGold. One of these councillors said the company offered him a price for his land that was 15 times higher than payments offered to other landholders. One current councillor who refused these offers alleges that the company offered him so much money that "as long as I was alive I would not be able to consume this money".³ It is noted that bribery of foreign officials is prohibited under Australian law and that these allegations warrant a full investigation by the appropriate authorities.

Community members also allege that company representatives have unduly pressured them to endorse the project and to allow OceanaGold access to their land. They also assert that the company has incited an adversarial atmosphere to fuel community division over the project, in an attempt to force their approval. During the Mining Ombudsman investigations, community members furnished documents demonstrating the strong-arm tactics of the company's lawyers. These tactics, which include initiating legal proceedings against illiterate farmers, require landholders to relinquish land rights at prices unilaterally determined by the company.

Not informed consent

It is evident from the Mining Ombudsman's investigation that the community lacks clear and accessible information about the impact all stages of the mine will have on their community and livelihood. Even community members who support the mine are concerned about not knowing the full extent of the impacts, are shocked by photographs of open-pit mines and declare they were not aware that their land might be so drastically transformed.

Public misrepresentations that relevant consents have been gained

Despite significant evidence to the contrary, OceanaGold and its officers have stated, without qualification, on several occasions that the Didipio project has gained community and barangay council approval. These representations may mislead potential investors and may be contrary to Australian corporate law.

Recommendations

The report makes recommendations that are intended to address the community complaints as voiced through testimonies and documentary evidence gathered during the Mining Ombudsman's investigations. It is recommended that OceanaGold:

1. Ensures its employees do not partake in corrupt practices, or engage in actions that involve intimidation, violence or threats of violence. The company should enquire into the allegations of bribery and intimidation and support an official investigation into these allegations.
2. Ceases the Surface Rights Acquisition process, which community members find harassing and intimidating and begins fair negotiations with all residents who indicate that they have been pressured into providing access to their land and/or selling their land.
3. Respects the authority of the current Didipio Barangay Council and the community to approve or reject the proposed mine.
4. Provides communities with the opportunity to give or deny their free, prior and informed consent consistent with forms of decision-making acceptable to the community. This means immediately recognising their right to determine whether the project proceeds to the next phase of development.

5. Ensures as part of obtaining community members' free, prior and informed consent that:

- community members have access to comprehensive information in an accessible form and to independent legal and technical advice;
- written information on all aspects of the mine is easily available in a range of appropriate and accessible languages (including the local Ilocano language);
- it develops and communicates a relocation policy which does not involve forced relocations;
- all documents (in English and Ilocano) are released to the community and supporting non-government organisations; and
- community members are fully informed about the contents of official documents before signing them.

6. Supports independent social, environmental and gender impact assessments that provide an accurate picture of all the project's likely impacts.

7. Ensures that tenant farmers and those with houses on land that they do not own will be adequately compensated, given alternative accommodation and supported to gain secure access to land in a place that is acceptable to them.

It is imperative that the company supports processes agreed to by all parties to resolve conflict, and respects the local community's authority to determine its development objectives including, if necessary, rejecting the project.

Oxfam Australia's approach to mining

Oxfam Australia is an independent, non-government aid and development agency and a member of the Oxfam International confederation. For more than 50 years, it has been a vehicle for Australians to help others to build a fairer and more sustainable world by fighting global poverty and injustice. The agency undertakes long-term development projects, provides humanitarian responses during disaster and conflict, and advocates for policy and practice changes that promote human rights and justice.

Oxfam Australia takes a rights-based approach to its work. This reflects the view that poverty and suffering are primarily caused and perpetuated by injustice between and within nations, resulting in the exploitation and oppression of vulnerable people. Such injustice and suffering are neither natural nor inevitable; they result from systems based on injustice, inequality and discrimination and from the violation of human rights by those with greater access to power.

The agency is not opposed to mining but believes it must be done in accordance with rights codified under the international human rights system, including the right that indigenous peoples and local community members have to determine their development and give or withhold free, prior and informed consent to mining activities. Oxfam Australia believes that

private sector investment can be a driver of economic growth and poverty reduction, provided appropriate regulations and controls exist. However, without adherence to human rights standards, mining can cause the loss of land and livelihoods, degradation of land and waterways, and increased violence and conflict. The most vulnerable or marginalised members of communities — such as women, children and indigenous people — tend to be most excluded from the economic benefits of mining, and tend to bear the brunt of its negative social and environmental impacts.

Oxfam Australia speaks in its own voice. It does not assume a mandate to speak on behalf of others, but aims to facilitate local and indigenous communities to speak for themselves.

The Mining Ombudsman project

In the past few decades, the Australian mining industry has become more active in developing countries where it is increasingly affecting poor and vulnerable communities. Many communities have complained of human rights abuses and environmental degradation caused by, or on behalf of, Australian mining companies. Many of these communities find that companies disregard their concerns, while the State often provides no effective institution where they can go for fair and equitable redress. Lack of access to an independent complaints mechanism sometimes leads to costly legal actions or violent confrontations.

In February 2000, Oxfam Australia established a Mining Ombudsman to:

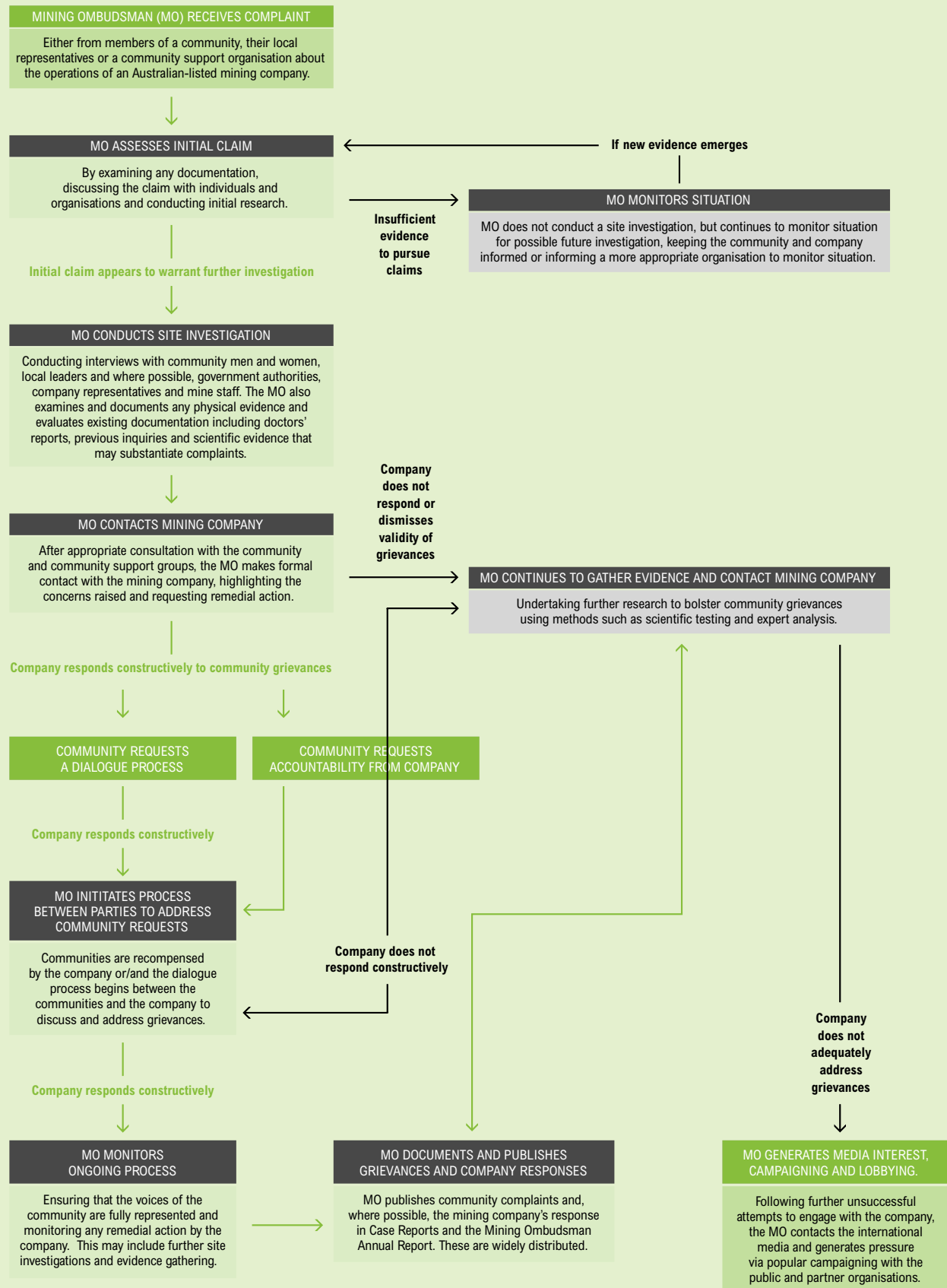
- support and help women and men from local and indigenous communities affected by mining, whose basic human rights may be compromised by the operations of Australian mining companies;
- help those local women and men to understand and defend their rights under international law;
- help ensure that the Australian mining industry operates in such a way that the rights of women and men from local communities affected by mining are better protected;
- demonstrate the need for an official complaints mechanism within Australia; and
- demonstrate the need for enforceable, transparent and binding extraterritorial controls that would require Australian mining companies to adhere to universal human rights standards wherever they operate.

The Mining Ombudsman receives complaints through Oxfam Australia networks throughout the world. The Mining Ombudsman checks all claims through site investigations, a process involving extensive interviews with local men, women and youth, civil society organisations and, where possible, government and company officials.

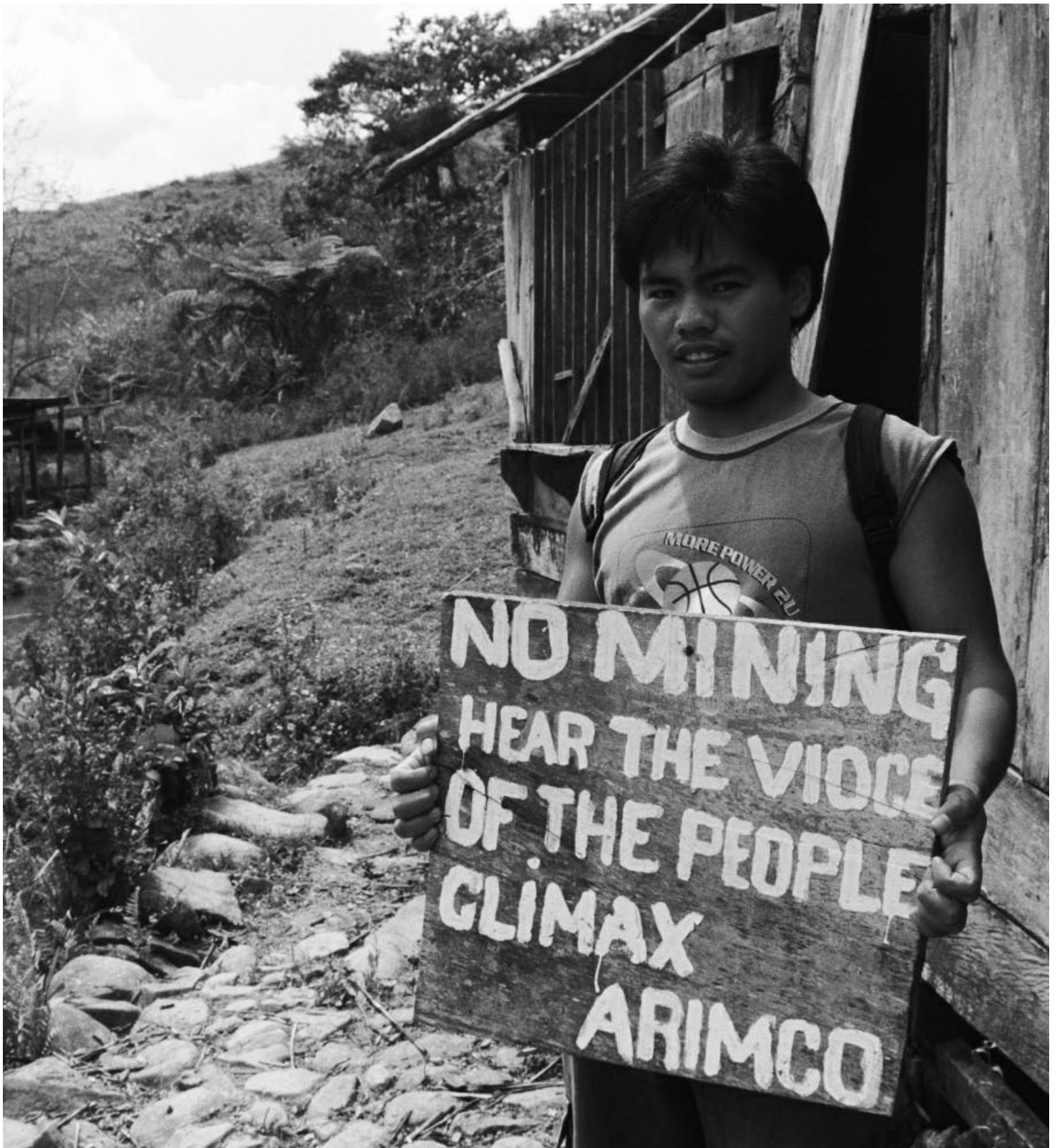
The Mining Ombudsman then produces an investigation report that is sent to all stakeholders for comment and action, and undertakes on-site progress evaluations every 18 months to two years. It is not the Mining Ombudsman's role to judge individual mining projects, but rather to try to ensure that companies treat local communities in a fair and equitable manner, respecting the human rights of local women and men.

More detailed information about a framework for a complaints mechanism and the Mining Ombudsman investigation process can be found at: www.oxfam.org.au/campaigns/mining

The Mining Ombudsman process



Didipio case investigation



Didipio case study at a glance

Mine operator: Australasian Philippines Mining Inc (APMI), a wholly-owned subsidiary of OceanaGold Limited. OceanaGold has a 92% interest in the project.

Resources: Gold and copper.

Mine location: Barangay Didipio, Kasibu municipality, Nueva Vizcaya province, North Central Luzon, Philippines.

Project stage: Exploration completed but the project has not yet proceeded to the construction and operations stage.

Exploration in other areas included as part of the Financial or Technical Assistance Agreement (FTAA) continues.

Affected communities: Ifugao, Ilongot, Kalanguya, Ibaloi, Tagalog, Illocano and other Visayan settlers.

Community groups: Didipio Earth Savers' Multi-Purpose Association (DESAMA).

Community support groups: Diocesan Social Action Center; Task Force Detainees of the Philippines; Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK/Friends of the Earth Philippines).



Chronology of events

1989:

Climax Mining begins sampling in the Didipio Valley.

1992:

Climax Mining begins exploration in the Didipio Valley.

March 1994:

Climax Mining discovers gold and copper.

June 1994:

President Ramos grants the first Financial or Technical Assistance Agreement (FTAA) in the Philippines to Climax Mining. The company gains the right to explore for up to 50 years⁴ and the potential for 100% foreign ownership.

28 June 1999:

Didipio Barangay Council enters into a Memorandum of Agreement (MoA) with Climax Mining, despite the opposition of many community members.

16 July 1999:

The local community establishes the Didipio Earth Savers' Multi-Purpose Association (DESAMA), a group opposed to mining in Didipio, and begins the "Power of People's Initiative" to obtain a referendum on the proposed mining activities.

August 1999:

The Department of Energy and Natural Resources (DENR) issues an Environmental Compliance Certificate (ECC) to Climax Mining.

19 October 1999:

DESAMA collects 109 signatures for a People's Initiative⁵ petition asking the Commission of Elections to hold a referendum among the people as to whether they are in favour of the mine.

27 August 2000:

The Regional Development Council (RDC) denies a Climax Mining request to certify that the project conforms to the Regional Physical Framework plan of Region II.

27 October 2000:

DENR declares the project "closed to any form of mining".

11 October 2001:

DENR suspends the FTAA, stating that the project is not socially acceptable.⁶ Climax Mining maintains a presence at the mine camp.

17 December 2001:

The second MoA is signed — community members say that they did not give their informed consent to the signing of the MoA.

May 2002:

The Oxfam Australia Mining Ombudsman attends the National Meeting of Mine-Affected Communities in Baguio City, Philippines.

12 June 2002:

The Mining Ombudsman is approached by members of the Didipio community to take up their case.

6 August 2002:

Didipio council elections run on pro-mining and anti-mining platforms result in the election of five anti-mining councillors out of seven. The first order of business of the newly-elected council is to revoke the barangay's consent to the MoA.

September 2002:

The Mining Ombudsman conducts an investigation in Didipio, interviewing local women, men, local government and community relations officials, local mine staff and community group representatives. A public meeting is held with more than 70 community members in attendance.

4 November 2002:

The Oxfam Australia *Mining Ombudsman Annual Report 2002* is published with a preliminary report on the Didipio case.

11 November 2002:

The municipal council of Kasibu formally denies the petition for the endorsement of mining activities by the former council in its Resolution No. 156, S 2002.

18 December 2002:

The Mining Ombudsman writes to Climax Mining with the findings of the case investigation. The company does not reply.

5 March 2003:

The Mining Ombudsman writes to Climax Mining for a second time and again there is no reply.

16 April 2003:

Climax Mining appoints a new Managing Director and Chief Executive Officer.

6 May 2003:

DESAMA joins together with other civil society groups in filing a petition in the Supreme Court. The petition challenges the legality of Climax Mining's FTAA for Didipio and calls for its cancellation.

16 June 2003:

The Mining Ombudsman writes to the new Chief Executive Officer of Climax Mining to request a response to the findings of the case investigation and the concerns of the communities. The company does not reply.

September 2003:

The Oxfam Australia *Mining Ombudsman Annual Report 2003* is published with a full report on the Didipio case.

27 January 2004:

A Supreme Court ruling disallows 100% foreign ownership of large-scale mining projects in the case of Western Mining Corporation's FTAA, with implications for Climax Mining's FTAA yet to be decided by the courts.

6 August 2004:

DENR grants Climax Mining an ECC.

Opposite: A community member expresses his opposition to the mine and demands that the mining company listen to the views of the local community

Photo: Jason McLeod/OxfamAUS.

1 December 2004:

The Supreme Court of the Philippines reverses its 27 January ruling that Western Mining Corporation's FTAA is unconstitutional. The court declares by a vote of ten to four with one abstention, that certain sections of the Philippines Mining Act of 1995 pertaining to the FTAA are valid and constitutional. The status of Climax Mining's FTAA is still legal and valid. However, DESAMA's lawyers emphasise that the court has not yet ruled on Climax Mining's FTAA.

14 January 2005:

DENR grants Climax Mining an Environmental Protection and Enhancement Programme (EPEP).

20 January 2005:

Community support group LRC-KSK/ Friends of the Earth Philippines files a motion for reconsideration of the Western Mining Corporation FTAA case.

1 February 2005:

24 Barangay captains from the association of barangay captains in the municipality of Kasibu pass a joint resolution rejecting any large-scale mining operation in Kasibu, Nueva Vizcaya.⁷

2 February 2005:

Bishop Ramon Villena of Bayombong, the capital of Nueva Vizcaya province, calls for a 50-year moratorium on mining.⁸

23 February 2005:

A consultant appointed by the Mining Ombudsman returns to Didipio to carry out a second investigation. Interviews are conducted with the community and Climax Mining staff. Two public meetings are convened, the first with 157 community members who oppose mining, the second with approximately 80 members who support mining.

1 March 2005:

The Mining Ombudsman writes to Climax Mining in Manila to request a number of documents in English and the Ilocano language, including a copy of the Environmental Impact Statement (EIS); copies of documents relating to due process; copies of the two MoAs; and copies of documents showing environmental and social assessments undertaken by Climax Mining and its contractors for the Didipio project. The company did not provide these documents.

23 August 2005:

The Philippine Government approves Climax Mining's FTAA for Didipio, giving the company permission to start operations. As at the date of publication of this report, Australasian Philippines Mining Inc (APMI) is expected to begin production by the beginning of 2009.⁹

8 March 2006:

The community of Barangay Didipio, Kasibu, Nueva Vizcaya, filed a Petition for Mandamus against the DENR, Climax Mining and the company's transferee, APMI, to force the department to cancel the ECC issued to Climax Mining/APMI and prevent the implementation of an invalid ECC.

30 March 2006:

The Supreme Court of the Philippines upholds the constitutionality of the Mining Act 1995, which allows 100% foreign ownership of mining projects.

24 April 2006:

DESAMA files a motion for reconsideration, urging the Supreme Court to set aside its 30 March decision.

11 July 2006:

Climax Mining and Oceana Gold Limited (a company listed on the Australian and New Zealand stock exchanges) announce a merger by scheme of arrangement.

5 October 2006:

DESAMA's legal action to have the DENR cancel Climax Mining's ECC is dismissed by the Regional Trial Court as it failed to exhaust administrative remedies against APMI.¹⁰

6 November 2006:

The merger between Climax Mining and Oceana Gold Limited is completed with the company assuming the name of OceanaGold.

15 November 2006:

The Mining Ombudsman sends a draft copy of this report to OceanaGold.

17 November 2006:

The Mining Ombudsman meets with OceanaGold Chief Executive Officer Stephen Orr requesting a substantive response to grievances in this report and a commitment to obtaining the free, prior and informed consent of the community. Mr Orr states that in his view, many of the grievances relating to Climax Mining may be valid. He further states that the project cannot be viable without the support of the community. However, he indicates that the company has "bet the bank on this project" and intends to proceed.

6 December 2006:

OceanaGold responds with a brief letter that does not address the specific grievances discussed in this report and in the meeting with Mr Orr.

December 2006:

In a telephone conversation between Mr Orr and the Mining Ombudsman, Mr Orr stated that the company had recently signed a new MoA "with the council".

2–6 March 2007:

The Mining Ombudsman undertakes a follow-up field visit to Didipio to determine the current status of grievances and verify whether an MoA has been signed with the barangay council.

14 March 2007:

During an Extraordinary General Meeting of shareholders on 14 March 2007, a proxy for Oxfam Australia queries whether OceanaGold has in fact signed an MOA with the duly-elected barangay council and is given the response that there is no doubt that the the barangay council signed the MoA.

28 March 2007:

The Mining Ombudsman writes to OceanaGold with results of the visit, highlighting that the the barangay council has not signed the MoA and that community members have raised serious new allegations against the company.

8 June 2007:

Didipio Barangay Council passes Resolution No. 07, 2007 denouncing the MoA entered into between APMI and the "Didipio Community Negotiating Panel", which is not a part of, or recognised by, the legitimate Barangay Council of Didipio.

Case background

About Didipio

The Barangay of Didipio is located in a remote and mountainous area of Nueva Vizcaya in the Cagayan Valley, in North Luzon, the Philippines. Didipio sits at a high point in the Addalam River watershed area, which encompasses large tracts of the Nueva Vizcaya province and parts of the adjacent Quirino province. Barangay Didipio is a small and isolated rural district made up of nine *sitios* (smaller villages) scattered around the valley. These *sitios* are known as Upper and Lower Dinaoayan, Ancabo, Verona, Waterfalls, Dagupan, Bacbaacan, Surong, Camgat and Didipio proper.¹¹

Almost all members of the Didipio community depend on land for subsistence. Some community members derive income from farming, with many growing citrus crop plantations which rely on the availability of clean water from the Addalam River watershed area.

About OceanaGold

OceanaGold (formerly Climax Mining) is a publicly-listed Australian company engaged in exploration and the development and operation of gold and other mineral mining activities. It has interests in New Zealand and the Philippines and has been active in Didipio since 1989.

In 1994, the company was granted the first Financial or Technical Assistance Agreement (FTAA) in the Philippines for 37,000 hectares located in the Nueva Vizcaya and Quirino provinces.¹² This FTAA has since been revised to cover an area of 21,465 hectares.¹³ The FTAA is a contract specifically for large-scale mining operations. It allows the entry of foreign-owned mining corporations. The agreement has a term of 25 years, renewable for another 25 years,¹⁴ and includes a gold and copper discovery at Didipio, referred to as “Dinkidi” by OceanaGold. Since the FTAA’s re-approval in August 2005 by the Philippine Government, OceanaGold anticipates that its wholly-owned subsidiary, Australasian Philippines Mining Inc (APMI), will begin production by the beginning of 2009.¹⁵



On 9 February 2006, OceanaGold announced the placement of 81.3 million ordinary shares at 23 cents per share to raise AUD \$18.7 million.¹⁶ These funds will enable the company to complete the pre-development phase of the Dinkidi project at Didipio.¹⁷ On 11 April 2006, the company announced the appointment of ANZ Investment Bank as the lead arranger of debt financing for the mining project at Didipio.¹⁸ In December 2006, OceanaGold raised AUD \$140 million of committed financing to fund project developments in the Philippines and New Zealand.

OceanaGold plans to operate the Dinkidi mine for 15 years. It is estimated that 2.5 million tonnes of ore will be extracted per annum.¹⁹ OceanaGold indicates that the initial capital investment required for this project will be US \$66.3 million (AUD \$85 million).²⁰

The Mining Ombudsman and Didipio

During the May 2002 Philippine National Conference on Mining, the Oxfam Australia Mining Ombudsman met with women and men from Didipio.²¹ On 12 June 2002, the Didipio Earth Savers’ Multi-Purpose Association (DESAMA) requested that the Mining Ombudsman take up its case and in September 2002, the Mining Ombudsman conducted an investigation in Didipio. A preliminary report of the Mining Ombudsman’s findings was printed in the *Mining Ombudsman Annual Report 2002*, with the final report published in the *Mining Ombudsman Annual Report 2003*. Both reports are available at www.oxfam.org.au/campaigns/mining

In February 2005, an investigator appointed by the Mining Ombudsman travelled to Didipio to follow up the case and report on what had happened since 2002. He conducted interviews with community women and men, community support groups and mine staff and consulted with community members for and against the mining development. Two public meetings were convened, one attended by 157 community members who opposed the mine, the other by about 80 community members who supported the mine.

In March 2007, the Mining Ombudsman conducted a further follow-up investigation to determine whether there had been any substantial change in the level of community support or opposition to the project since the merger of OceanaGold and Climax Mining, and to determine whether community grievances raised in the draft of this report had been addressed. The Mining Ombudsman conducted interviews with Didipio Barangay Council members, APMI management, organisations and individuals supportive of the mining project, organisations and residents opposed to the mining project (including a meeting of approximately 80 residents and four representatives from a neighbouring barangay that will also be affected by the mine), residents who are being approached by the company to sell their land, and small-scale miners who have arrived in Didipio over the past 12 months.

This report is based on these field investigations and additional research.

Community views

The proposed mine has opened debate within the Didipio community about the definition and consequences of different forms of development. All members of the community who spoke to the Mining Ombudsman have expressed their desire for development. But views on how to achieve this development are strongly divided. Many want to ensure that they can continue to use their land as a source of food and income while others regard the proposed mine as a source of employment and infrastructure development. Consequently, support for the proposed mine is split within the Didipio community.

Some community members believe that OceanaGold is a socially and environmentally responsible mining company, committed to sustainable development. They assert that the positive economic spin-offs from mine development could be a driver for economic development in the community. They spoke of how they have either received work from the mine (such as the construction of roads and bunk-houses) or directly benefited from OceanaGold's presence through leasing their land to the company.

Community members in favour of the mine describe how OceanaGold has provided infrastructure including dirt roads, a health clinic and improvements to the local school. They believe that OceanaGold will spend more money on developing public utilities, such as education, healthcare and public roads. However, others express concern about becoming dependent on a foreign company to provide these services, as they believe this is the role of the government.

Even members of the community who support mining report that they are concerned that the company's presence is a source of division. "Before the mining company came, there was unity in the community," community member Simeon Ananayo says.²² OceanaGold's community relations officer reports that the "issue of mining has caused many divisions in the community and I hope there can be greater understanding between the two sides. It is very hard because our principles divide us".²³ Community members supportive of the mine's development still wish to ensure protection of their heritage and indigenous culture.

"When the mining company came, even in our family people are fighting inside the house just because of mining. In fact, my parents asked my older sister to go abroad just because she is pro-mining and this was causing conflict in the house. My parents borrowed money so she could go abroad. I feel so sad. She is my sister and just because of arguments about mining there is conflict and now she has gone away."

Kagawad Roldan Cut-ing, community member.

Community members opposed to the proposed mine emphasise that they are not anti-development. "We also want a road, health and education services and other things," community leader Kagawad Roldan Cut-ing says. They object to the OceanaGold project being promoted and justified in the name of development because they strongly believe it will undermine their own "life project" — the determination of indigenous people to define their own identity and culture. As such, they are arguing for an indigenous view of development that integrates all aspects of their life, including culture and their relationships with the land and one another.

Community members speak of a deep attachment to land in Didipio. While not all of the community derives income from farming, virtually everyone in Didipio depends on the land for sustenance. Aside from meeting their basic needs, many farmers are planting citrus crops and favour long-term sustainable economic development through citrus crop plantations. These farmers argue citrus growing can be passed on to their children and grandchildren, whereas, based on other experiences in the Philippines, a mine and its money may be gone in a generation or less. Tenant farmers express concern that their rights would not be respected in the development of a mine and that their ability to make a sustainable livelihood would be jeopardised.





The proposed development comprises both open cut mining and underground sub-level caving operations. The Mining Ombudsman investigation consulted with many farmers, all of whom expressed deep concern that the mine would disturb the soil, pollute or dry up the water, and threaten their health, their livelihoods and the ecosystem. By contrast, members of the community supportive of the mine were surprisingly uninformed about the limited potential to return the land scheduled to be part of the open pit to agricultural use.

Those who oppose the mine are sceptical as to whether any net economic benefits will flow to the community. They refer to their experiences on field trips to visit other mines in the neighbouring province of Benguet and on Marinduque Island. They point out that other communities that have experienced mining have not benefited. Indeed, they suggest that many are now worse off.

Those opposed to the mine told the Mining Ombudsman investigation that OceanaGold has disregarded widespread opposition to the project and undermined the authority of the Barangay council which opposes the mine.

OceanaGold's view

OceanaGold argues that it should be given a chance to show that it takes social and environmental responsibility seriously.²⁴ The company maintains that it is being tainted by other less scrupulous companies in the Philippines, which it readily acknowledges have left a legacy of environmental destruction, poverty and social conflict. The company claims that it is different from other mining companies in the Philippines because it has a comprehensive program of community development that will benefit Didipio, and that it will use the latest technology and world's best practice to extract the ore body.

OceanaGold's Community Development Supervisor Esmeraldo Carpio, says that "if the company's operations do result in environmental or social problems, then there is a contingency liability rehabilitation fund set up". However, Mr Carpio noted that he does not foresee this happening because of the mitigating measures put in place.

It is understood that the company has set aside US \$6–8 million (AUD \$7.7–10 million) in case of environmental and social disasters, as mandated by Philippine law, although company representatives question whether this is enough.²⁵

OceanaGold has conducted information, education and communication (IEC) campaigns in the surrounding *sitios* and further afield. In so doing, the company has employed local residents to conduct these campaigns in an effort to consolidate community support. OceanaGold community relations officers told the Mining Ombudsman that company staff who conduct the campaigns provide a complete and comprehensive overview of the project.²⁶ They also report — and the amended environmental impact statement (EIS) states²⁷ — that written information in *Ilocano* language on the various aspects of the mine is readily available.

"I do not believe the company's promise of development. We went on a field trip. Some of the other companies promised to the people that when the mine was pushed through they would give development to that place. But what happened was that during their operations and after, the people were worse off, or it was only some people who benefited."

Antonio Dincog, Didipio Barangay Captain.

Above: A community member points to the "Dinkidi" hill which OceanaGold intends to mine despite widespread community opposition.

Opposite: Local community members pack citrus fruit for sale, in Bayombong, Nueva Vizcaya.

Photos: Shanta Martin/OxfamAUS.

Community grievances

There are several significant grievances that community members have communicated to the Mining Ombudsman. These include:

- allegations that the company has not presented information about the proposed impacts of the mine in an accessible way or language, including failing to explain technical aspects of the proposed mine in an easily understood form;
- the relevant council (Barangay Didipio Council), authorised by the Philippine Government, has not given its consent to mine operations going ahead;
- complaints that community members are being forced to sell their lands or provide access to the company to use their lands at a price unilaterally determined by the company;
- allegations that they have not been given information about proposed relocations; and
- allegations that they have not been given adequate and accessible information about the potential environmental impacts of the proposed mine.

Many of these grievances can be attributed to the failure of the company to obtain the community's free, prior and informed consent consistent with both indigenous practices and local decision-making processes.



Free, prior and informed consent in the Philippines

In the Philippines, the *Indigenous Peoples Rights Act 1997* requires that free, prior and informed consent of indigenous peoples is sought and obtained for any activity undertaken in their ancestral lands and territories. The Act defines free, prior and informed consent as the “consensus of all members of the indigenous peoples to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.”²⁹ The Act codifies indigenous peoples’ rights to:³⁰

1. Be consulted and have their consent secured.
2. Negotiate the terms of any agreement.
3. Veto certain projects.

The Act clearly states that in the absence of clear consent, a project cannot proceed.

Under Philippine law, other local communities are also entitled to participate in decision-making regarding projects that affect their development. This is reflected in a “social acceptability” requirement in environmental impact assessments. Social acceptability is a condition required by sections 2, 26 and 27 of the *Local Government Code*,³¹ an additional and separate requirement from free, prior and informed consent under the *Indigenous Peoples Rights Act 1997*. It requires consultation with the people that will be directly affected by a project that might impact on the environment. This process requires the participation of various stakeholders such as barangay (district) governments and non-government organisations. The concerns expressed by the residents of Didipio, discussed later in this report, include the failure of the project to fulfil the regulatory social acceptability requirements.

Philippine law requires that free, prior and informed consent of indigenous people is sought and obtained for any activity undertaken in their ancestral lands and territories. The Philippine Government does not consider that free, prior and informed consent is relevant in the case of the Didipio community because, while they are indigenous, the community members are not indigenous to the area. Those who are indigenous to the area are the Bokolot people who no longer live in great numbers in Didipio.²⁸ The narrow interpretation of free, prior and informed consent to exclude indigenous peoples who have moved onto land with the consent of traditional owners is arguably inconsistent with international legal principles. In any event, good business practice would recognise the need for obtaining the free, prior and informed consent of all people occupying land.

Oxfam Australia, and indeed many other international agencies and bodies, considers that free, prior and informed consent must be gained from a community affected by a mining project regardless of whether they are indigenous or non-indigenous to the area. It is important to recognise, however, that indigenous people may have particular consent processes outside of recognised state processes. The Didipio community comprises various groups of indigenous people that have migrated within the Philippines to the Didipio area. To maximise community cohesion, the consent processes of these people should also be respected in addition to the formal political processes required under national and local law.

The following grievances raised by community members opposed to the proposed mine (and in some cases who are supportive of the mine) demonstrate that the free, prior and informed consent of the Didipio community has not been gained.

The Dinaoan valley where OceanaGold intends to build a tailings dam for the mine.
Photo: Jason McLeod/OxfamAUS.

1. Community discord and division

Disagreements over whether the mine should go ahead are causing community discord on a number of levels — within families, among different sectors of the community, and between the community and the company. The community discord is a source of deep pain, with both pro-mining and anti-mining community members visibly distressed as they talked about the effect the proposed mine has already had on community relations.

Community members report that divisions are affecting the practices, traditions and customs which have shaped indigenous culture in Didipio. Many people shared how, in the past, there was a spirit of mutual aid.

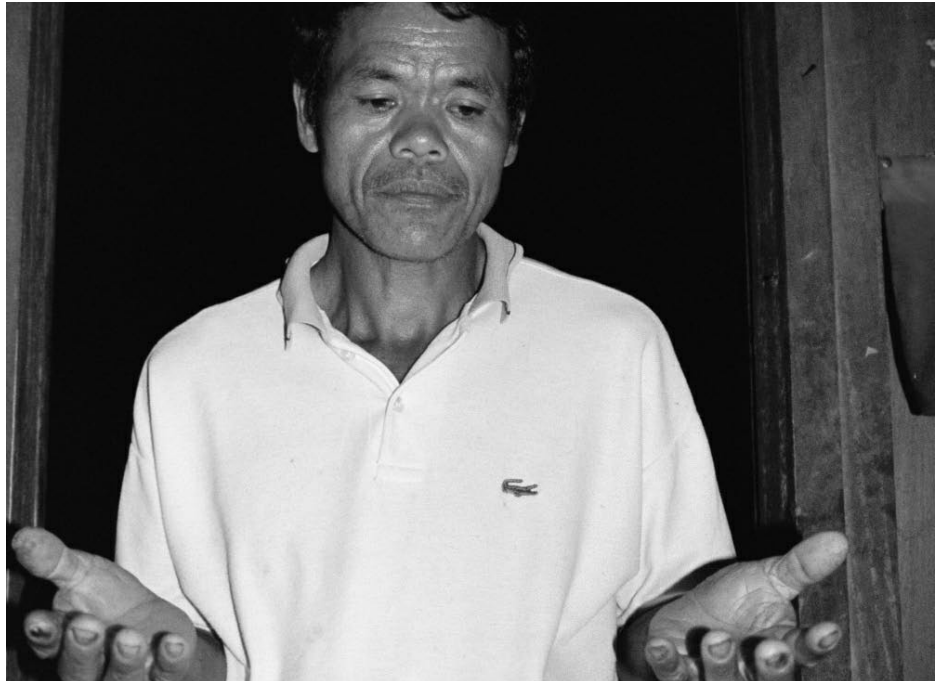
The Didipio community has worked to insulate and inoculate itself against social problems that afflict urban areas and is proud of its safe and “clean living” reputation. For example, the community recently initiated a ban on the sale of liquor. Many people are concerned that if mining goes ahead, in-migration may lead to alcoholism, prostitution, HIV and AIDS, violence, gambling and other social problems. OceanaGold’s amended EIS indicates that Didipio’s population will double during the project’s construction phase (see discussion p 30), potentially leading to social problems, but does not address how these problems might be prevented. It remains unclear what policies the company has in place to protect the Didipio community from these potential problems.

Community members with opposing views on the mine development have not been able to meet to resolve conflicts or make community decisions as relationships between the two sides have deteriorated. Barangay Captain Antonio Dincog asks:

“What is the meaning of development if there is no unity? The first thing for us to develop in Didipio is the unity. Even if a person is very rich, but there is no unity, then that is not development.”³²

Above right: Lorenzo Pulido.

Photo: Jason McLeod/OxfamAUS.



Lorenzo Pulido's story

“I live in Bacbacan. Bacbacan is the sitio next to the hill the mining company calls Dinkidi, the place they want to mine. This is a strong pro-mining sitio.

“In 2002, I planted a lot of squash to sell at market. At that time, the company was conducting a lot of signature campaigns. During the signature campaign, I was afraid because many people were pro-mining and I would not sign. Sometimes, they would look at me and spit. Often, I would take the long way home when I went to Mass or meetings, just to avoid conflict with my neighbours. At that time there was also an agreement between Barangay Alimit and the company to build a road from Alimit to Didipio.

“When the crop ripened, we harvested three truckloads of squash. I wanted to take my squash to market but I could not do it. The pro-mining residents in Bacbacan said because I didn’t support the mine I could not use the road. They prevented me from loading my produce onto the trucks and laughed. So the squash rotted and I cried. What am I going to give to my family?

“My son who was in college had to leave because there was no money for school fees. Now I have stopped planting squash. I only plant food for my family and I to eat. My neighbours say that if the mine does not push through, we should give them food because we in the anti-mining group have stopped the mine and therefore prevented them from receiving work at the mine.”

Lorenzo Pulido, resident of Bacbacan sitio, Didipio.

“People used to carry the sick to hospital even if it meant walking for many hours. We used to help one another when it was time to plant rice. There was a spirit of mutual help and volunteerism. Now the person who is sick may cry before they are brought to hospital.”

Jose Bahag, local school teacher.

2. Relocation

“Yes the mine will develop our community but what is the point of that if in the end our land is destroyed?”

Community member, name withheld.

OceanaGold intends to relocate people living in *sitios* Dinaoyan, Bacbacan and Dagupan,³³ as well as most residents in Central Didipio who live close to the operations area.³⁴

Residents are concerned that they lack information about proposed relocations, and note that previous plans for relocations were abandoned when it became apparent that there were already people living at the proposed relocation site.³⁵ Although the amended EIS clearly indicates that relocations will be required for the project to proceed,³⁶ as yet, the company has not communicated specific plans for relocations.

If residents are to be relocated, the company is suggesting three broad options:³⁷

1. Residents can look for an alternative site and the company will arrange a land swap if that is suitable with the owner of the land.
2. Residents can sell their land and choose what to do with the money.

3. Residents can rent their land to the company; following mine closure and rehabilitation, the company will give their land back.

In addition, the company will provide educational assistance to land owners with children in school and guarantee that one person per family unit will be employed by the company.³⁸

Although a number of residents report that they are willing to be relocated, there are many residents who are adamant that they do not want to move. They cite attachment to land, a desire to continue farming, and community and cultural continuity as their reasons for wanting to stay.

The company is proposing relocation and compensation on a case-by-case basis and through individual negotiation.³⁹ However, residents report that they are considering collective negotiation to secure better

compensation packages. According to those who have been offered compensation, the company was offering 80,000 pesos (USD \$1,600 or AUD \$2,050) per hectare of improved land and a lesser amount is reportedly being offered for unimproved land.⁴⁰ This amount has since been revised. During interviews with APMI management on 5 March 2007, company personnel explained that the company offers a “standard fixed rate” of 200,000 pesos per hectare. Beyond that, the company makes unilateral decisions to vary certain terms of the offer according to their own assessments.

Those who have been asked to sell their land claim that these amounts are not enough to buy land elsewhere and do not leave enough money to build a house. Those who have rejected the offer point out that if they keep farming, they can sell their rice harvest twice a year, at a profit of at

“Can you show me one instance where mining and agriculture can exist happily side by side?”

Antonio Dincog,
Barangay Didipio Captain.



Barangay Councillor Kagawad Peter Duyapat says, “OceanaGold has offered to relocate people to a site the community has never heard of or seen... people do not want to leave their lifestyle in Didipio.”

Photo: Ingrid McDonald/OxfamAUS.



Jose Tuccad stands in front of land that OceanaGold wants to acquire through its Surface Rights Acquisition process. Mr Tuccad says he used to support the mine project but now that he has received legal documents to force him to sell, he no longer wants the mine.

Photo: Shanta Martin/OxfamAUS.

least 130,000 pesos (USD \$2,600 or AUD \$3,335) per cultivated hectare per year.⁴¹ This amount does not include revenue from ginger or citrus crops which are still in their early stages. Community members question whether they can pursue their agricultural development objectives when the proposed mine will be located on or very close to their land.

In regard to the proposed tailings dam in the Dinaoyan Valley, company employees maintain that “even if one landowner does not want to sell their land in the area where the tailings dam is proposed, the mine will not go ahead.”⁴² On 24 February 2005, at a public meeting in Didipio with community members supportive of mining, OceanaGold Community Development Supervisor Esmeraldo Carpio backed up that statement with the pledge that the company will not pursue the project if any one of the residents in the area proposed for the tailings dam does not want to sell their land. “If the tailings dam is rejected, the company will wait,” Mr Carpio said. However, OceanaGold has already undertaken construction of camp sites and expects to begin production by the beginning of 2009.⁴³ This begs the question — what does the company intend to do if residents in the Dinaoyan refuse to move off their land? Moreover, the assertion that the company will wait is inconsistent with the recent experience of community women and men who allege they are being forced to sell their land.

Impacts of relocation and the need for FPIC

The Organisation for Economic Co-operation and Development (OECD) has found that involuntary relocation can cause grave problems for communities, including:

*“Severe economic, social, and environmental problems: production systems are dismantled, productive assets and income sources are lost, and people are relocated to environments where their social and productive skills may be less applicable and the competition for resources greater. Involuntary resettlement thus may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out”. OECD, **Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects**, 1992. www.oecd.org/dataoecd/37/27/1887708.pdf*

Similar findings were made by the multi-stakeholder World Commission on Dams, **Dams and Development; A New Framework for Decision Making (2000)**.

For this reason, many international organisations have strict guidelines for how relocations should occur, insisting on seeking the free, prior and informed consent of people. The Inter-American Development Bank (IDB) policy on involuntary resettlement, for example, states “every effort will be made to avoid or minimize the need for involuntary resettlement.” (IDB, **Operational Policy OP-710 on Involuntary Resettlement**, (1998)). The IDB requires that affected people “have given their informed consent to the resettlement and compensation measures”.

The African Development Bank also has explicit guidelines:

*“Displaced persons and host communities should be meaningfully consulted early in the planning process and encouraged to participate in the planning and implementation of the resettlement program. The displaced persons should be informed about their options and rights pertaining to resettlement. They should be given genuine choices among technically and economically feasible resettlement alternatives. In this regard, particular attention should be paid to the location and scheduling of activities. In order for consultation to be meaningful, information about the proposed project and the plans regarding resettlement and rehabilitation must be made available to local people and national civil society organizations in a timely manner and in a form and manner that is appropriate and understandable to local people.” AFDB, **Policy on Involuntary Resettlement (2003), Section 3.3(b)**.*

3. Forceful acquisition of land

3.1 Allegations of intimidation and harassment

Community members have raised very serious grievances against a company-employed legal team that uses allegedly intimidating tactics to acquire their lands. Many people reported that they are being pressured to sell their lands at company-determined prices. Some of those reporting these activities were pro-mining community members who are confused that the company should be taking such a forceful approach, with many stating that they find the process unfair.

According to company management, APMI has recently employed a husband and wife legal team (Jem and July Agpoa) to conduct a Surface Rights Acquisition (SRA) process. According to Mine Site Construction Manager Mr Art Ranin, this team was hired because of their successful tactics when employed by the Australian owned Lafayette Mine at Rapu Rapu. The team reports to the APMI Management Board, which consists of Mr Joey Leviste (APMI Chairman), Mr Albert Brantley (APMI President), Mr Yulo Perez (General Manager), Mr Mike Robins (Commercial Vice President), and Mr Maya Manzananas (Administrative Director).

Mr Ranin explained that under the SRA process, the landholder is approached by the legal team, which has a set formula according to which it will make an offer to buy the land. As referred to above, the SRA process is based on a “standard fixed rate” of 200,000 pesos per hectare. Beyond that, the company may elect to vary the terms of the offer depending on whether the land is “forest land” or “alienable and disposable land”. The terms will differ depending on whether the company deems the land to be “returnable” after the mine’s closure. In a letter to the Mining Ombudsman, OceanaGold later stated that the rates vary depending on land type, crops being cultivated, existing dwellings and other structures on the land. In their view, “the rates offered by the Company are approximately 60% above the rates recommended by the regional tax office, to ensure that affected landowners and occupants were compensated not only for the value of the land and any improvements, but also for the disruption to their lives.”⁴⁴

According to the company’s management, APMI does not revise its original offer if a landholder rejects it. As APMI Provincial Community Liaison Manager Mr Arnel Arrojo stated, “We do not move from our original offer because we must stick to the classification.” Similarly, by letter dated 26 April 2007, in response to concerns raised by the Mining Ombudsman, OceanaGold stated that “the Company discontinues negotiations when landowners refuse to accept the above-market compensation that we offer”. Instead of entering into a negotiation, the legal team therefore insists that the offer must be accepted, often allegedly representing that a failure to accept will mean that the government will assist the company to obtain the land compulsorily and will pay even less.

Many community members stated that they felt harassed by these approaches, with the company representatives coming to their houses almost every day. The situation has become so common that last year members of Didipio Earth Savers Multipurpose Association (DESAMA) passed a resolution stating they did not wish to sell their land and requested that the company cease coming to their land demanding that they sell. The company has ignored this resolution.

If, despite the persistent efforts of the company, a landholder still rejects the offer the legal team sends letters threatening to start legal proceedings unless the landholder accepts the offer. Finally, if a landholder continues to reject the offer, the legal team takes the matter before an arbitration panel that may allow the company to enter and use the land in exchange for a Bond to Enter Private Land. The Mining Ombudsman has obtained copies of some of these letters and legal documents, which are clearly dated since OceanaGold’s merger with Climax.⁴⁵ Provincial Community Liaison Manager Mr Arnel Arrojo referred to this Surface Rights Acquisition process as a negotiation, yet stated that the company does not shift from its original offer. When asked how it is a negotiation if the company does not move from its original offer, Mr Arrojo was unable to respond other than to say that “we keep trying to convince people”.

Community Relations Officer Mrs Simplicia Ananayo stated, “If people do not want us to do something, we will not insist.”⁴⁶ When asked how that statement fits with the Surface Rights Acquisition process by which the company is insisting on getting access to land and which community members stated included threatening letters and intimidating behaviour, Mrs Ananayo responded, “We respect your rights, we respect what you say but we also have the government, we have the laws, so we have our legal counsel.”⁴⁷ Mrs Ananayo and Mr Arrojo agreed it is confusing that the company is saying it won’t force people yet is doing so via its lawyers.

For most Didipio residents these frequent visits, letters, notices and legal processes are harassing and intimidating. Even residents who were previously supportive of the mine complained about the SRA process, with many reporting that as a result of these intimidating tactics they no longer support the project. Some residents, who are illiterate, said they were asked to sign for receipt of documents they could not read. Most community members who have been served with a notice to attend the tribunal hearings do not have the capacity to obtain legal advice or representation and therefore are unable to attend the hearings. Documents obtained by the Mining Ombudsman demonstrate that the arbitration panel invariably relies on the company’s assessment to determine the amount of money to be paid as a bond for entry onto land.

For community members living on land determined to be “forest land”, the situation is even more precarious. “Forest land” legally belongs to the government, however, it is not uncommon to find areas that have long been occupied and cultivated by community members. OceanaGold’s view is that:

“These inhabitants are illegal squatters who are not paying taxes and are now facing criminal prosecution due to their unlawful occupation of public lands. ... Despite their unlawful status, the Company offered the same level of compensation to these people as to those who hold valid title so as not to disadvantage any community member.”⁴⁸

It appears that if these community members do not accept the company's offer, the government helps the company evict them. For example, documentation the Mining Ombudsman has obtained shows that one community member was served with a Notice of Violation and Summons for Unlawful Occupation of Forest Lands. The notice was issued by the Department of Environment and Natural Resources and the Provincial Environment and Natural Resources Office. Yet, a transcript of the meeting to hear the matter shows that the company lawyer appeared and stated that the company would be filing a case.

Given the company's failure to enter into bona fide negotiations and the intimidating and harassing techniques being used in the SRA process, it is clear that community members are being forced to sell or provide access to their lands at a price determined by the company. Not surprisingly, community members report that they feel APMI and OceanaGold have abused them and treated them unfairly.

OceanaGold responded to these concerns, stating that it "rejects any claim of intimidation or harassment. Oceana has an established commitment to working with the community, but recognises there will be opposing views in such a diverse community as exists in the Didipio Valley."⁴⁹ The company maintains that "there has been no force exerted by the Company in the process of Surface Rights Acquisition".



"The Department of Energy and Natural Resources is more acting as an agent of APMI in the sense that they are in favour of it; they are selling it. When it comes to explaining it, it is not the company people explaining it, but the DENR people. But they should be independent and looking after the environment."

Bishop Ramon Villena of Nueva Vizcaya.

3.2 Allegations of military involvement

Some community members reported that those serving the letters of demand have occasionally been accompanied by armed soldiers. There are allegedly two platoons serving in the area. Many community members state that the military have only been present in Didipio since the company started operations and are there at the behest of the company. On 4 March 2007, for example, community member Juanita Cut-ing reported that two days earlier, two military men came to her house, along with a company representative and someone claiming to be from the Department of Environment and Natural Resources. She said she found the behaviour of the military personnel threatening.⁵⁰

When questioned about military activities endorsed or assisted by the company, management deny that the military accompany them or the legal team in serving notices or entering community members' land. Mr Arnel did state, however, that the security personnel hired by the company include representatives from the Kasibu police and may also include ex-military. He also stated that the company requests military accompaniment for ex-patriot management personnel travelling from Quirino to Didipio.

Juanita Cut-ing tells of her fears when armed soldiers accompanied a company representative to her house.
Photo: Shanta Martin/OxfamAUS.

3.3 Other concerns about the land acquisition process

Several people who had agreed to sell their land to the company stated that they signed an agreement under which their children would be entitled to a scholarship. However, they stated that they felt they would not be able to insist on these scholarships being fulfilled as the company had not given them copies of the agreement.

Many community members also complained that the company was not following through on its representations when it came to buying the land. One man, Mr Lopez Dumalag, was told that if there were a grave on the land, the company would remove it and pay 10,000 pesos (AUD \$256) for the cost of reburial. He said that he still had not received the money even though the body was exhumed a month ago.⁵¹ Until he receives the money, the remains must be kept in his house. Other residents also complained that the company had told them they would receive a payment if they demolished buildings on their lands, however, they have yet to be paid despite the demolitions having been completed.

Many community members also allege that the company has entered land without obtaining appropriate approval. The Captain of neighbouring Barangay Alimit stated that the company was purporting to construct a road and a drainage tunnel without having sought the permission from the Alimit Barangay Council. The Captain said that despite the council passing a resolution to stop these activities being carried out without permission, the company cleared grasses in February 2007, again without seeking the council's permission.

"They tried to force us to sign the receipt [of an offer to buy] but we refused. I was afraid because they saw the 'No to mining' sign outside my house. The military men were there with their fingers on the trigger and were peering behind the house and in the bathroom."

Juanita Cut-ing, community member.

4 Irregularities in the social acceptability process

"The social acceptance is not 100%. There are still hundreds of people who oppose the mine."⁵²

Josephine Ansibey, OceanaGold Community Relations Officer.

Didipio community members opposed to the mine are increasingly withdrawing their cooperation from any activity associated with the mining company. The situation has now deteriorated to almost total non-communication between community members opposing the mine and the company. OceanaGold Community Development Supervisor Esmeraldo Carpio commented on the community division, admitting that "the main problem for the mining company is that despite continuous efforts we can't meet with the anti-mining side."⁵³ Community members report that the communication breakdown is the result of a loss of trust and a lack of open communication between the company and the community. They see the company's previous declarations that the project had the community's support to be flawed and misleading. Consequently, many community members and the majority of the barangay councillors state that they do not wish to participate further in company initiatives.

OceanaGold contracted environmental consultancy firm Gaia South Inc to prepare an amended environmental impact statement (EIS) necessary to obtain Department of Environment and Natural Resources clearance to proceed with the project. As part of the EIS, Gaia South assessed the social acceptability of the project. In 2005, the Mining Ombudsman obtained a copy of the amended EIS⁵⁴ and was concerned about how it determined social acceptability.

In the amended EIS, Gaia South documents how it used a variety of methods to determine the social acceptability of the mining project. These included, "scoping sessions, [a] perception survey, focus group discussions, intensive and on-going information, education, and communication (IEC) and [b] social preparation program planned and being implemented by the proponent."⁵⁵ The purpose of these activities was "to provide opportunities to the various stakeholders (those affected by the project) to be heard and [to have] their views taken into account."⁵⁶ Special attention was given to the community affected by the project.⁵⁷

These environmental assessments are undertaken in accordance with Philippine legislation "to ensure that before decisions are made, full consideration is given to [a project's] potential environmental effects, both direct and indirect."⁵⁸

Gaia South was aware of significant opposition to the mine and lists community group DESAMA and the Barangay Didipio Council in its report as stakeholders that oppose the project.⁵⁹ However, in a discussion of its findings, Gaia South does not list, does not discuss, and minimises the depth and breadth of concerns of the community group that refuse to accept the mine. Given the widespread and public opposition to the mine in Didipio, it is troubling that these community concerns were not given fuller consideration.

Gaia South selected 99 people from the *sitios* of Didipio to take part in a survey.⁶⁰ Some community members allege that this sample was heavily biased towards those who support the project,⁶¹ resulting in conclusions that do not represent the broader community and are misleading.

Between 17 and 26 February 2004, Gaia South conducted five focus group discussions with Didipio residents. The 2005 Mining Ombudsman investigation found that OceanaGold appears to have established some of these focus groups and minutes of the focus group discussions contained in the appendix of the amended EIS confirm this. Also, according to documentation provided by Gaia South in the amended EIS, several people who attended the focus group discussions are on OceanaGold's payroll. Furthermore, it appears that Gaia South had a significant role in helping to establish at least one of the community groups which support the mine, the Didipio Multi-Purpose Co-operative. In a copy of the minutes of the focus group discussion with the Didipio Multi-Purpose Co-operative, the Chair of the Co-op, Efren Bulawan, (who at the time of writing was on the payroll of OceanaGold) expresses his "thanks with Gaia in assisting them during the organisation and formalization of the Co-op in 1997."⁶⁵

Gaia South also conducted a focus group discussion with the pre-2002 barangay officials sympathetic to the mine and who signed the MoAs under contested circumstances. However, it did not conduct a focus group discussion with the current barangay council — of which five out of seven councillors oppose the project — nor did it include the council in its interviews with nine "key informants."

Based on these five focus group discussions and supplementary information, including written letters signed by the office bearers of each organisation, Gaia South concludes that there is a high level of social acceptability for the OceanaGold project.⁶⁶

Misleading results

Based on the perception survey, Gaia South claims that 95 of the 99 respondents interviewed (95.9%) favour the mining project.⁶² Similarly, in the Dinaoan Valley, where the company proposes to build a dam to divert the Dinaoan River and construct a tailings dam, Gaia South canvassed the opinions of 16 people out of 291. Of those 16 canvassed, 15 reported that they favour the project and one gave no answer. This sample therefore suggests that 93.75% of people in the Dinaoan Valley support the dam project.⁶³ This is despite the fact that the proposed dam would displace all the residents of Upper Dinaoan, a *sitio* where the Mining Ombudsman has noted significant resistance to the project. Kagawad Peter Duyapat, of Upper Dinaoan, claims most residents oppose the mine.⁶⁴ Given the strong, vocal and persistent opposition in the Dinaoan Valley, the views of this small sample are potentially misleading and do not fully represent community opinion.

*Opposite: Barangay Councillor Kagawad Peter Duyapat at a community meeting called to discuss the proposed mine.
Photo: Shanta Martin/OxfamAUS.*



5. Social acceptability and memoranda of agreement



The "Dinkidi" hill with the Didipio River in the foreground.

Photo: Jason McLeod/OxfamAUS.

An MoA usually forms the basis of agreements made between a company and elected representatives acting in good faith on behalf of a community. An Environment Compliance Certificate — a permit issued by the Department of Environment and Natural Resources for the company to proceed on environmental grounds — will generally be granted by the Philippine Government on condition there is an agreed MoA.

Representatives of Didipio Barangay Council and OceanaGold have signed two MoAs, authorising pre-mining activities to occur at Didipio. The first agreement was signed on 28 June 1999 however it lapsed due to a failure of the company to obtain all permissions needed for the mine to proceed. A second MoA, known as the pre-development MoA, was signed on 17 December 2001. As a result, OceanaGold claims that the Dinkidi mine is acceptable to the community.

However, the 2002, 2005 and 2007 Mining Ombudsman investigations found that the two MoAs signed by the previous barangay council were rejected by a large proportion of the population of Didipio who claim that the MoAs do not represent the will of the people. Many in the community dispute the manner in which the MoAs were signed by the former representatives of Barangay Didipio, alleging that the elected officials acted in their own interests for material gain and contrary to the interests of the community. Community members and one of the barangay councillors during that time allege that the company was paying the councillors. They also explain that those who signed the MoA acted contrary to a community assembly in which community members expressed their opposition to the mine project and asked the councillors not to sign. Discontent with these officials was reflected in the 2002 election results, where five of seven elected officials had run for office on the basis of their opposition to the proposed mine.

In December 2006, the Chief Executive Officer of OceanaGold informed the Mining Ombudsman that the company had signed a new MoA with the Barangay Council. OceanaGold repeated this assertion to shareholders during an Extraordinary General Meeting on 14 March 2007.

During the investigation from 2 to 6 March 2007, the Mining Ombudsman interviewed the members of the Barangay Council and obtained from APMI a copy of a document entitled *Memorandum of Agreement*, dated 2 December 2006. This MoA document provides for the company to pay 250,000 pesos (AUD \$6,400) per month for development projects in exchange for those signing the MoA to bind themselves to “guarantee full endorsement of the Didipio Gold Copper Project and its exploration activities within the Barangay Didipio”. The document is clearly not signed by the barangay council, a point which was reiterated by a majority of the Council. Rather, the MoA dated 2 December 2006 has been signed by 26 persons purporting to represent 17 organisations or sectors, collectively referred to as the “Didipio Community Negotiating Panel”. The great bulk of the signatories are company employees, including two promising barangay councillors. One of these councillors is Kagawad Henry Guay, a barangay councillor who under the annex to the MoA purports to represent the Didipio Barangay councillors. Another councillor and a council youth representative have signed as ex-officio members. In interviews with the two councillors, they acknowledged that they acted without the consent and authority of the Barangay Council when they signed the MoA.⁶⁷

The Barangay Council has repeatedly declared its opposition to the mine project. APMI management are well aware of this opposition. In interviews with APMI management on 5 March 2007, Mr Art Ranin (Manager Site Construction), Mr Arnel Arrojo (Manager Provincial Community Liaison), and Mrs Simplicia Ananayo (Community Relations Officer) all stated that they know that the Barangay Council does not support the MoA. In their view, the councillors that signed were not indicating that the Council supported the project.

All of the other signatures on the MoA are those of people purporting to represent organisations or sectors. It appears that these councillors were permitted to sign as if they were representing the Council even though management readily admit they know the Barangay Council is opposed to the project. It would therefore be misleading to allege that a MoA signed by two councillors represents the general support of the Council. There is also a conflict of interest as APMI's Community Relations Office employs these two councillors. The MoA also represents a disregard for the Barangay Council's proper processes, which makes decisions by way of majority vote.⁶⁸

It should also be noted that the MoA was not signed in Didipio, but rather, in a hotel in Bayombong, a city several hours' drive from Didipio. It was therefore not open to Didipio residents to attend or witness the signing. There also appears to be an anomaly with the document as it is accompanied by an acknowledgement by a notary public that changes the date on which he allegedly witnesses the signatures to 31 January 2007 and the location to Makati City.

Community members opposed to the mine allege that most of the organisations signing the MoA were created by or with the support of the company. They also state that the membership of the organisations is so intermingled that the same people represent many organisations, giving the illusion that there is broad support across the entire community. When the Mining Ombudsman raised this concern with one of the company's community relations officers, it was affirmed that there is a lot of crossover and that it would be possible to meet with most of the organisations by meeting with just a few people who are members of each of the different groups.

The Mining Ombudsman raised detailed concerns about the MoA with OceanaGold. By letter dated 26 April 2007, OceanaGold stated that:

“The Barangay Council has been questioned by Didipio community members recently because of the actions of some of the incumbent members ... [and that a] community committee, known as the Didipio Community Negotiating Panel (“DCNP”), has been formed largely at the request of community members concerned at the refusal of some members of the Barangay Council to discuss Project matters.”

OceanaGold does not respond to the allegation that most of the MoA's signatories are company employees. The company does state, however, that “[n]o Barangay officials were paid to support the Project. During previous exploration activity, Climax provided jobs to local residents, some of whom were also elected Barangay officials ... This practice continues today”.

OceanaGold also refers to community projects it has undertaken under the MoA, including four suspension bridges, irrigation and water system improvements, a day care centre and funding for scholarships. The company “notes that the Barangay Council has not opposed the investment by the Company in these recent community works programmes”.

On 7 June 2007, the Barangay Council passed Resolution No. 07 of 2007 referring to its previous resolutions rejecting the project and denouncing the MoA entered into between APMI and the “Didipio Community Negotiating Panel”. The resolution objects that the panel is neither a part of nor recognised by the legitimate Barangay Council of Didipio.

6. Allegations of tampering

During the 2002 and 2007 Mining Ombudsman investigations, some community members explained how the company required them to sign attendance forms at meetings. Some claimed they had signed forms with a large blank space at the top and that they thought false headings were later added stating they supported the project. Similarly, people described how they were asked to sign a document that was supposed to be a request for a hanging bridge but, they claimed, the final version of this document had additional text stating that all signatories were in favour of the mine. In yet another instance, community members stated that documents they had signed authorising improvements to the local school were actually an endorsement of the mine. These community members told the Mining Ombudsman that they believed that these attendance forms had been used to illegitimately demonstrate their consent for the project.

During the visit to Didipio in March 2007, APMI provided the Mining Ombudsman with copies of the signatures that the company had allegedly gathered as part of the social acceptability process. The 31-page document dated 18 December 2003 is behind a cover document entitled *Proofs of Project Acceptability*. Ordinarily, one would expect a petition to be printed in such a manner that the header would be precisely the same on each page. This 31-page document, however, includes a header with content and typesetting that changes from page to page. This suggests it is possible that a header may have been added after the signatures were gathered. Testimony from a community member, Lorenzo Pulido, corroborates this view:

"We have been cheated. The company called for meetings in different communities ... they would ask people to sign a sheet for their attendance. But when the company went to court in Manila, we found out that the attendance sheets had actually been approval forms for mining. The company used the sheets to back up their project. All those that signed the attendance forms were really cheated."

7. Failure to inform

It appears that there is a lack of information written in an accessible form that clearly outlines various aspects of the project. Community members and barangay officials stated that they had not received information in the Ilocano language and argue the lack of information prevents them from being fully informed about the project. The Mining Ombudsman investigations found that many community members believe that the whole truth about the project, including its potential negative effects, has not been fully presented. They allege that the technical aspects have not been explained, and that they do not have access to independent information or legal and technical representatives to help them make informed decisions.

Another allegation is that company employees have told people that if they endorsed the project, then they would receive work. However, based on the company's own labour requirements, set out in the amended EIS, only 264 workers will be employed from the local area⁶⁹ and most of these will be laid off once the year-long construction phase ends.⁷⁰

During the Mining Ombudsman's visit in 2007, it was apparent that many people, particularly those who support the mine, continue to be quite unaware of the mine's potential impacts. For example, one of the barangay councillors supporting the mine who requested his name not be published, responded that he had "no idea" about the potential impacts of the mine and said that the company had not explained them to him. When asked why he supported the mine, he stated that he believed it would bring jobs and scholarships and so long

as he still had land to cultivate he would be satisfied. He was unable to explain how many jobs would be made available by the mine. He also stated that the area for relocations would not be large enough to allow cultivation, but he expected that he would be able to refuse the company's offers to buy his land. Other pro-mining residents of the Bacbacan sitio (which is immediately on and adjacent to the area to be made an open-pit) also believed that they would be able to return to the land when the company had left. When shown a picture of an open-pit mine, they were shocked and said they did not know what it would look like and wondered how they would be able to return to it.

A meeting where the community has gathered to discuss the proposed mine.
Photo: Ingrid McDonald/OxfamAUS.



8 Elected authorities disregarded

"The responsibility of the Barangay Councils has been removed. We do not want the municipal, provincial, national or the international community to decide on our behalf. It is the barangays here in Didipio that are directly affected, not the municipality, not the national level. We must be the ones who decide what happens here in Didipio. If we don't want to be mined, then others must respect this decision."

Caesar Marino, a Didipio elder.

Within the Philippines, the barangay council is equivalent to a local council. Above the barangay is the municipal council and above that is the provincial council. Under Philippine law, local (Barangay) Councils are recognised as having the most direct contact with communities and therefore being the most relevant authority to determine local development issues such as whether a mining project should proceed.⁷¹ As stated previously in this report, the current Barangay Council of Didipio (which has been in place since 2002) has not given its consent for mining operations to proceed. Furthermore, leaders of other barangay councils in the province have also expressed their opposition to the mine by means of a resolution of the Association of Barangay Captains, dated 1 February 2005. Similarly, the municipal council ("Sangguniang Bayan") has not given its consent to the Didipio project and on 11 November 2002 unanimously passed a resolution denying support for it.

Several community members alleged that OceanaGold was paying salaries to the pre-2002 Barangay councillors who endorsed the first MoA. Many community members said that the councillors were initially against the mine, but that all except one suddenly changed their position from opposition to endorsement after a visit to the mine site. One Barangay official alleged that company officials had offered him money, land, a car and a house if he supported the mine and signed the MoA. Community members claimed the previous barangay council did not acknowledge the wide community opposition to the first MoA during and after a community assembly on the matter. During the assembly, some community members asserted that they had objected to the MoA, but when they saw the completed MoA it stated that no-one had objected.

In mid-2002, five out of seven Barangay councillors were elected in Didipio on a platform of opposing the mine project. This new Barangay Council rejected the mine and demanded that the company leave. In recognition of the increased elected council's opposition, the company allegedly sought an amended Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources which would not require the company to obtain the Council's consent. On 6 August 2004, the Department reportedly issued the amended ECC without the requirement to obtain the Council's endorsement.⁷² There was no change to the requirement to also obtain the consent of the municipal council, whose endorsement has not been provided.

Some non-government organisations (NGOs) that support the Didipio community consider that the failure to fulfil the local government consent requirements has rendered the company's ECC invalid. They argue that any mining operation that starts in the area will be illegal.⁷³ DESAMA, with the support of local Philippine NGO, the Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK/ Friends of the Earth Philippines), intends to pursue legal action challenging the validity of the company's certificates and requiring the Secretary of the Department of Environment and Natural Resources to cancel the ECC based on the company's failure to obtain the necessary consent from all concerned local government units.⁷⁴

Barangay officials report that they are coming under increasing pressure as social conflict increases and the politicisation of mining, both locally and nationally, intensifies. Officials report that the company and the national government has ignored the local Barangay Council's decision to oppose the mine. They state that it is becoming increasingly difficult to compete with the company's economic and political influence. Kagawad Roldan Cut-ing, Chair of DESAMA and a Barangay official, says he is frustrated by the situation:

"Most of the pro-mining group are blaming me and the other Barangay officials for the lack of progress. They say that we are only helping the anti-mining group and that we don't want to help the pro-mining group. Sometimes, the employees of the company come to us and ask us to sign documents endorsing the mine ... They pressure us to help the pro-mining side. It is a big problem for us. We, the Barangay officials, are looking for the improvement of the Barangay. They are blaming me because there have been no benefits coming from the government. But we are exerting our efforts going down to Kasibu and the provincial capital to seek improvements. We submit resolutions but we are not the ones who control the funds. But when the company goes to the government, the government usually gives the company what they want ... The company is trying to gain the support of the municipality in Kasibu. They are trying to remove the authority of the Barangay Councils."



Small-scale miners have become prevalent in the Didipio area. The people of Didipio area are concerned that their ability to oppose the mine will be diminished as a result of changes to the demographic of the area that have occurred since the arrival of the mining company.

Photo: Shanta Martin/OxfamAUS.

Barangay Didipio Captain Antonio Dingcog reports that a joint resolution signed by the captains has been ignored:

"It makes me sad that the national government is not supportive of the local government unit when, in fact, democracy should be of the people, by the people, and for the people. It is also painful that the company chooses to ignore the will of not just Didipio Barangay but even a joint resolution of the associations of Barangay councils in Kasibu municipality."

Some community members who support the mine are also concerned about how the Barangay Council is being treated.

"It is not good if the rights of the Barangay Council are erased. We voted for them and we want them to be our leaders. We know they are anti-mining but that is their principles."¹⁵

Josephine Ansibey,
community member
and company employee.

It is also a concern that the company appears to use a recently-created alternative body known as the Interim Barangay Community Development Association as a means of circumventing the Barangay Council's decisions. This alternative body consists of company employees and the spouses or relatives of employees. It also includes the two company-employed barangay councillors who signed the unofficial MoA, dated 2 December 2006. Four of the signatures on this MoA represent this "interim" barangay association.

When queried about the company's perception of the Barangay Council, APMI management stated that they did not believe the Barangay Council was acting consistent with the will of the majority. The company seems to have used this as a reason to ignore the Council's decisions to reject the mine and its funds. Instead, the company has engaged with those councillors who support the mine, along with alternative organisations that the company claims more validly represent the will of the community.

During the visit in March 2007, the Mining Ombudsman heard allegations that company representatives are visiting neighbouring barangays and telling them that the Didipio Barangay Captain supports the project, so their captains should too. The Captain was very upset to hear this as he declares he is opposed to the project.

There were also concerns raised that the company is encouraging small-scale miners who have recently arrived in the Didipio area to register to vote, knowing that these miners are more likely to support a pro-mining campaign during elections scheduled for late 2007. The original inhabitants of the Didipio area are very concerned that their ability to oppose the mine will be diminished as a result of changes to the demographic that have occurred since the mining company arrived in their barangay.

9. Potential environmental impacts

9.1 Addalam River watershed

According to the amended EIS, the new ECC obtained by OceanaGold identifies that the project's primary and secondary impact areas will cover a total of 975 hectares. The primary impact area will cover 325 hectares, of which 241 hectares will cover mine facilities. These include the processing plant, open pit, underground working areas, tailings dam and impoundment, administration and accommodation areas for workers, waste rock dumps, river systems along the tunnel alignment, site of the tunnel portal and the camp and working areas for the tunnelling crew. The road networks will consume 84 hectares. These primary impact zones are surrounded by a secondary impact zone which covers 650 hectares.⁷⁶ Under the terms of the FTAA, OceanaGold is also free to conduct further exploration and potentially open more mines within the 21,465 hectare FTAA area.

According to OceanaGold, construction and development of the mine will take place over one year,⁷⁷ with work beginning on the open pit during this stage. The second stage will involve extracting ore from the open pit and will continue for approximately four years.⁷⁸ In the third stage, ore will be extracted using underground mining technology and the processing of stockpiled high and low grade ore, and will continue for 11 years, totalling an expected minimum 15 years of processing operations.⁷⁹

It is evident from the Mining Ombudsman's investigation that the community lacks clear and accessible information about the impact all stages of the mine will have on their community and livelihood.

Communities from the Kasibu area and neighbouring Quirino province have expressed their concern about the potential harmful environmental impacts of the proposed mine site on the Addalam River valley.⁸⁰ The amended EIS indicates that the Didipio mine will have a significant environmental, social, and economic impact on the entire municipality of Kasibu and beyond, and will have a primary impact on the *sitios* of Didipio, Dagupan, Bacbacan, Dinaoyan, Surong, Camgat, Tubo in Barangay Dingasan, and others.⁸¹

"If the tailings dam is built, where can we find a place to plant rice fields like our fertile place?"

Dinoan Pinkihan, resident of the Upper Dinaoyan Valley, the proposed site of the tailings dam.



Juanita Cut-ing with her son Roldan Cut-ing in their rice field. Many community members question whether they can pursue their agricultural development objectives when the proposed mine will be located on or very close to their land.
Photo: Jason McLeod/OxfamAUS.

9.2 Tailings dam

According to the Gaia South report, OceanaGold intends to build a tailings dam in the Upper Dinaoyan Valley to accommodate an estimated 24 million tonnes of tailings produced over the mine's operation.⁸² The amended EIS cites: "One potential impact is therefore the uncontrolled release of tailings slurry due to leakage from the tailings delivery pipeline."⁸³

The tailings dam will cover an area of approximately 63.8 hectares,⁸⁴ covering the entire Dinaoyan Valley.⁸⁵ Community members report persistent and strong opposition to the tailings dam since its inception. According to the amended EIS, "the dam will be constructed in several stages, initially a 15-metre lift followed by a 5-metre lift using the downstream construction method. The height of the dam will be 68.6 metres and the final elevation of the tailings will be four metres below the dam crest. Approximately two kilometres of the Dinaoyan River and valley will be filled with waste rock and tailings. This will result in a permanent change of topography. Construction of the tailings and diversion dams will require excavation and soil removal thereby increasing the potential for soil loss by erosion."⁸⁶

Immediately upstream from the tailings dam, a diversion dam will be built approximately 18.78 metres high to trap the Dinaoyan River. Water from the diversion dam will be used in the processing plant, with excess water diverted through an underground tunnel, approximately 800 metres long, into the Camgat River.⁸⁷ A number of residents from *sitio* Camgat have been vocal in their opposition to the construction of the diversion tunnel.

The tailings dam site will be rehabilitated during the abandonment stage, at least 14 years after mine operations begin. The amended EIS does not detail the process and timeframe for rehabilitation of the tailings dam, but mine staff informed the Mining Ombudsman investigation that rehabilitation will involve at least six stages:

1. Returning stockpiled top soil.
2. Planting grasses.
3. Soil tests.
4. Planting nitrogen fixing vegetables.
5. Further soil tests.
6. Finally, if the soil is stable, food-bearing trees or rice paddies would be planted, depending on the wishes of local people.⁸⁸

9.3 Drainage tunnel

The amended EIS states:

“Development of the Drainage Tunnel may result in the contamination of Diduyon River by the solid and liquid wastes of construction personnel, sediments and rocks from the excavation, and oil and lubricants from the drilling and earthmoving equipment.”⁸⁹

Since OceanaGold submitted its first EIS in December 1997, the company has modified its initial proposal to include a 5.8-kilometre underground drainage tunnel designed to expel large quantities of groundwater that would impede underground mining.⁹⁰ The exit point for this tunnel will be in *sitio* Tubo, a forested and agricultural area in Barangay Dingasan in the neighbouring province of Quirino. Construction of the drainage tunnel will extend the primary impact zone to *sitio* Tubo, Barangay Dingasan, with secondary impact zones in Barangays Debibi and Tucod in the municipality of Cabarruguis, Quirino.⁹¹ The company plans to house a contingent of workers at the tunnel exit point in *sitio* Tubo during construction of the tunnel.

According to community members from Tubo that the Mining Ombudsman interviewed, most residents living there oppose the drainage tunnel.⁹² They are concerned about pollution, flooding, loss of water, or loss of access to water, as a result of the drainage tunnel. Residents report they have been told by company workers that there will be no problem with the water from the drainage tunnel, but many state they do not believe this.⁹³

9.4 Water supply

Didipio is located at a high point in the Addalam River watershed area, with rivers flowing into Quirino province, eventually draining into the Cagayan River, the longest river in the Philippines.

The possible effects of the mine on the water catchments are causing concern in the community. Responding to these concerns, OceanaGold Community Development Supervisor Esmeraldo Carpio said, “The company plans to relocate people whose water supply is affected.” Mr Carpio also acknowledges that the Didipio River will be affected during the construction period.⁹⁴

Community members are concerned that if the mine goes ahead, their water supply will be affected. This concern is based on their experiences of springs drying up, a reduction in pressure, and contamination of water supply during the exploration period. The community’s dependence on springs for potable water and irrigation raises concerns about the company’s intention to conduct a drainage tunnel to dewater large quantities of groundwater; and the estimated high volume of water the mine will consume. According to the amended EIS, the total water demand for the mine during operations is estimated at 6,205 million cubic litres per day, of which the processing plant will consume 4,480 million cubic litres per day. The company plans to build a water storage facility to supply potable water to the mine, processing plant and village.⁹⁵

At the public meeting in *sitio* Central Didipio on 25 February 2005, organised by members of the pro-mining group and attended by the Mining Ombudsman, residents recounted how their water supply was disrupted in *sitios* Alimit, Bacbacan, Dinaoyan, Camgat and Surong during the exploration period. The people from Alimit allege that “during the drilling period [our] spring dried up”. The company investigated this claim and reported that “it was not the effect of drilling that caused the spring to dry up, it was a natural occurrence caused by the dry season”.⁹⁶ A mine supporter living close to the mineral deposit at Dinkidi stated that she experienced the same problem. “I am residing next to Dinkidi. It was very true that when the company was drilling, our local supply of potable water dried up.”⁹⁷ Antonio Dincog from *sitio* Camgat also had problems with his water supply during the drilling period. Antonio claimed, “They were drilling above my house. This created a lot of mud and our water supply was dirtied for two months. The pressure and amount of water was also reduced by drilling and until now it has still not improved.”⁹⁸



Community members in front of “Dinkidi” hill which OceanaGold intends to mine despite widespread opposition.

Photo: Ingrid McDonald/OxfamAUS

10. Employment issues

Many who support large-scale mining in Didipio report that they do so because they hope to find work with the company. According to the amended EIS, the company intends to recruit 212 workers from outside Didipio (approximately three of whom will be expatriates) and 264 workers from the local area. The EIS does not specify how many of these workers will be from Barangay Didipio. Most workers will be needed for the year-long construction phase, when the bangaray's population is expected to double,⁹⁹ and most residents from Central Didipio will need to be relocated.¹⁰⁰ Despite promises of employment by company representatives, it became apparent during the Mining Ombudsman investigation in 2005 that most people in Didipio are not aware that after one year, when the construction period has finished and operations start, "a large portion of the construction crew will be terminated".¹⁰¹

OceanaGold claims that any reduction in employment once operations start will be offset by "the multiplier effect" — the new economic opportunities that in-migration, wealth generation and disposable income will create for a range of small-, medium- and large-scale businesses to service the mine. Several factors make this outcome unlikely — Didipio's subsistence-based economy; an absence of economic diversification; the skills and background of most residents; the community's isolation; and the experience of similar communities that have hosted large-scale mining projects in the Philippines.

Given these factors, it is more likely that this new economy will follow a predictable boom and bust cycle unless measures are taken to provide long-term sustainable livelihoods beyond the life of the mine. Unless such measures are successfully implemented, the "new economy" generated by the mining company is likely to disappear once the mine closes, throwing the local economy into shock and causing local incomes to plummet.¹⁰²

Oxfam Australia's Mining Ombudsman meets with OceanaGold's mine management.

Photo: Jon Demelleles.



11. Allegations of bribes and threats

"A company executive [name withheld] told me that if I allowed mining and would help him, he would give me much money. He said that as long as I was alive I would not be able to consume this money. And so that you don't have trouble with your community, you can get out of Didipio and go to another place where no-one knows you and you can live there. But I told him: 'What about my children?'... I told him I will not allow my land to be destroyed by the mining company."

Kagawad Peter Duyapat, Barangay Didipio Council

In conducting investigations, the Mining Ombudsman received complaints that bribery and intimidation have occurred since the company's initial involvement.¹⁰³

Community members allege that:

- company employees offered land and money to at least one council official expressing opposition to the mine;
- current pro-mining barangay officials gained employment with the company;
- the company paid teachers' and healthcare workers' salaries at three times the pre-existing rate to advance its agenda;
- the salaries of teachers and healthcare workers were withdrawn when the current Barangay Council was elected. This Council is dominated by people sceptical of the proposed mine's benefits to the community;
- community members were harassed until they endorsed the project. For example, they were followed when they went to fetch water, do their washing or work in the fields;
- community members who opposed the project were threatened; and
- the company incited an adversarial atmosphere to fuel community division over the project.

OceanaGold maintains:

*"No Barangay officials were paid to support the Project. During previous exploration activity, Climax provided jobs to local residents, some of whom were also elected Barangay officials who wanted to work. This practice continues today. No special treatment was afforded to either Barangay officials, or anyone else."*¹⁰⁴

During the 2007 follow-up investigation, the Mining Ombudsman interviewed one of the Didipio Barangay councillors who has declared his support for the mine.¹⁰⁵ This councillor (who requested that his name not be published) stated in an interview on 4 March 2007 that he received 1.5 million pesos for a half-hectare lot that he sold to the company. As referred to above, APMI management explained that the prices offered for land are fixed at 200,000 pesos per hectare. When mine management representative, Mr Arrojo, was questioned as to the high price offered to the Barangay councillor, Mr Arojo said he had no explanation for how it could legitimately be so high, jokingly stating "unless there was a multistorey hotel on it".¹⁰⁶

Philippine NGO, LRC, has advised the Mining Ombudsman that it intends to file criminal proceedings against the provincial environment officer for graft and corruption.¹⁰⁷ It is alleged that APMI is using the officer to compel the sale of community members' land.

It is noted that bribery of foreign officials is prohibited under Australian law.¹⁰⁸ Oxfam Australia considers these allegations should be fully investigated to determine the liability, if any, of the company.



OceanaGold has already undertaken construction of camp sites around Didipio
Photo: Shanta Martin/OxfamAUS.

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12. Further exploration

Under the terms of the FTAA, OceanaGold is free to conduct further exploration and mineral extraction within the 21,465 hectare FTAA area. New exploration is already occurring very close to Didipio; this is of significant concern given the unresolved issues and community division the Didipio project has generated.

As part of the rights that OceanaGold has obtained, the government has given the company an exclusive right to fell trees. Community members are perplexed as to why they, as residents of the area, are not entitled to fell trees for construction, while the company has the only permit to do so. Community members stated it was “embarrassing that big companies are allowed to cut trees while poor people are not”¹⁰⁹ and that it was unfair to be treated as strangers in their own land.

13. Anonymous investors

More than 74% of OceanaGold's shares are owned by nominee companies.¹¹⁰ Westpac Custodian Nominees Ltd (27.46%) and National Nominees Ltd (12.90%) are the largest of these shareholders. Nominee companies are not actual shareholders but representatives of other investors. Australian legislation does not provide for the disclosure of the identities of nominee investors, hence the people of Didipio cannot determine who is providing the means and making the profit from the Didipio project. Community members expressed concern about this during the Mining Ombudsman investigation. Both members of the Didipio council and DESAMA said they wanted to appeal directly to the investors regarding their grievances and to resolve issues.

Opposite: A community member expresses her opposition to the mine and demands that the mining company listen to the views of the local community.

Photo: Ingrid MacDonald/OxfamAUS

Right: The site of the proposed mine.

Photo: Shanta Martin/OxfamAUS.





14. Misrepresentations to shareholders and the Australian Stock Exchange

OceanaGold and its officers have represented without qualification on several occasions that the Didipio project has garnered community and local council approval. These representations include the following:

- At page 19 of the OceanaGold *Concise Annual Report 2006*, the company represents that “[d]uring 2006, the Didipio Gold Copper project achieved the following major milestones: approvals to commence operations, including receipt of environmental permits and community approval ...”. It is noted that the *Concise Annual Report 2006* is a document lodged with the Australian Securities and Investment Commission and statements made in the report are relevant to the application of ss 1308 and 1309 of the Corporations Act.
- In a letter to Oxfam Australia dated 6 December 2006, OceanaGold states that the project “has achieved community support”.
- In a telephone conversation in December 2006 between OceanaGold Chief Executive Officer, Mr Stephen Orr, and Ms Shanta Martin of Oxfam Australia, Mr Orr stated that OceanaGold had recently signed an MoA with the Barangay Council and represented that this was indicative of the community's support for the Didipio project.
- During an Extraordinary General Meeting of shareholders on 14 March 2007, a proxy for Oxfam Australia queried the level of community support for the Didipio project given ongoing controversies around community opposition that had been documented by Oxfam Australia. The proxy queried whether timelines and projections for the development of the project might be inhibited by community opposition. OceanaGold Chief Executive Officer, Mr Stephen Orr, responded to the question stating that all members of the Didipio Barangay Council had signed a memorandum of agreement with the company signalling their support for the project and that this MoA was signed with the Barangay Council in an official capacity. It was also stated more generally by the OceanaGold Chairman, Mr James Askew, that the previous community opposition documented by Oxfam Australia was related to earlier circumstances when the company halted development of the project and that there was not currently significant opposition to the project.
- In personal communications with Oxfam Australia's proxy immediately following the Extraordinary General Meeting on 14 May 2007, assurances were given by Mr Orr and Mr Askew that the MoA was signed with all members of the current Barangay Council in its official capacity.

As detailed above and to the knowledge of the company, its officers and employees, the Didipio Barangay Council, leaders of neighbouring barangay councils, and the municipal council have all expressed their opposition to the Didipio project. There is also evidence of significant opposition by a proportion of the local community. Further, the MoA has not been signed by the current Barangay Council. On 8 June 2007, the Council passed a resolution condemning the MoA.

It is anticipated that legal action challenging the validity of the company's regulatory certificate (the ECC) will be initiated on the basis of the company's failure to obtain the relevant consents.

The Mining Ombudsman has communicated to OceanaGold by way of letter dated 28 March 2007 raising concerns about erroneous representations of community support made by the company. OceanaGold replied stating that “there is no requirement for an ASX [Australian Stock Exchange] release regarding support for our operation at Didipio by the local community or council.”¹¹¹

Opposite: Members of the Didipio community, Lorenzo Pulido is at the right.

Below: Women gather to discuss the proposed Didipio mine.

Photos: Shanta Martin/OxfamAUS.



Actions taken

Legal challenges

One way that some Didipio residents have tried to oppose the project is to challenge the constitutionality of the FTAA's issued to OceanaGold.

In 2003, DESAMA joined with other civil society groups to file a petition to the Supreme Court of the Philippines seeking to repeal the Philippine Mining Act of 1995 and declare the implementing rules and regulations regarding the issuing of FTAA's to be unconstitutional. The Mining Act — or RA 7942 as it is known — is unconstitutional according to DESAMA because the law's provisions do not fully satisfy the requirements in the exercise of eminent domain (a term referring to the power to acquire land for public purposes on payment of just compensation).¹¹² DESAMA says that the Act lacks two essential provisions that would guarantee that mining operations are for public purposes and that landowners whose private properties will be used for mining activities are justly compensated.¹¹³ The petition also challenged the legality of OceanaGold's FTAA's in Didipio and called for their cancellation.

On 27 January 2004, the Supreme Court ruled that the FTAA's previously granted to Western Mining Corporation (WMC) — an Australian mining company operating in the Philippines — was unconstitutional. WMC's and OceanaGold's FTAA's were the only two issued prior to the introduction of the Mining Act in 1995, hence any challenges to the legitimacy of WMC's FTAA's would have strong implications for OceanaGold. WMC appealed this decision and the Supreme Court reversed its earlier ruling, declaring by a vote of 10 to four, with one abstention, that certain sections of the Philippine Mining Act of 1995 pertaining to FTAA's are valid and constitutional.

On 20 January 2005, LRC-KSK/Friends of the Earth Philippines filed a motion for reconsideration, arguing that the court's ruling goes against the whole division of powers between the state and judiciary in the Philippines. The group further maintained that the court has only ruled on WMC's FTAA and not OceanaGold's FTAA. LRC-KSK/Friends of the Earth Philippines maintains that FTAA's, in general, and OceanaGold's FTAA, in particular, are not constitutional because they violate the Philippines constitutional

protection of national ownership. It argues that the management of any technical or financial project cannot be carried out by a foreign company without observing the constitutional provisions regarding foreign ownership.

On 30 March 2006, the Supreme Court ruled to uphold the constitutionality of the Mining Act of 1995, which allows for 100% foreign ownership of mine operations in the Philippines, and despite a declaration that Section 76 of the Mining Act is a "taking" provision. Section 76 of the Philippine Mining Act allows the entry of mining concessionaires into private property by mere notice to the landowners. It was argued that this was an unjust taking of private property. The Supreme Court agreed that Section 76 is essentially a taking of private property. However, it said that this "taking" is not yet an exercise of the State's power of eminent domain. The Supreme Court says that mining proponents can still get the consent of landowners or enter into a voluntary sale of the property before it enters.

Community members gathering to discuss the proposed Didipio mine.
Photo: Jason McLeod/OxfamAUS.



On 24 April 2006, DESAMA filed a motion for reconsideration, urging the Supreme Court to set aside its 30 March 2006 decision. According to DESAMA, the Mining Act must be declared unconstitutional, “as it only intends to enrich mining contractors at the expense of the economic interest of the Philippine Government and Filipino people.”¹¹⁴ On 11 May 2006, environmentally concerned citizens, alleging a violation of public rights, filed a “Motion to Intervene” in the case.

On 14 June 2006, the First Division of the Supreme Court denied the “Motion for Reconsideration” filed by DESAMA and declared the 30 March 2006 decision as final. It also denied the Motion to Intervene for lack of merit.

On 5 October 2006, DESAMA’s legal action to have the Department of Energy and Natural Resources cancel OceanaGold’s ECC was dismissed without prejudice by the Regional Trial Court on technical grounds.¹¹⁵ The subject matter of the action is yet to be determined. As at 20 July 2007, DESAMA, with the support of LRC-KSK/ Friends of the Earth Philippines, intends to pursue legal action challenging the validity of the company’s ECC as it failed to obtain the necessary consent from all concerned local government units.¹¹⁶

Action by the Mining Ombudsman

The Mining Ombudsman undertook field investigations in September 2002 (published in the *Mining Ombudsman Annual Report 2003*), February–March 2005, and March 2007, wrote several letters to the company (including those dated 18 December 2002, 12 July 2004 and 1 March 2005, 28 March 2007 and 20 July 2007) with the results of the investigations and met with OceanaGold Chief Executive Officer Stephen Orr. The company has not substantively responded to any of the grievances or the results of the case investigations. While Mr Orr expressly stated that a project cannot be viable without community support, he refused to commit to stop the project if the company could not gain that support.

Oxfam Australia will continue to try to engage with OceanaGold to advance the grievances of the men and women of Didipio.

The Didipio mine project is located in a fertile agricultural region.
Photo: Shanta Martin/OxfamAUS.

Philippine Mining Act 1995

“We believe that the new Philippine mining laws are very strict and will protect the people and the environment. These laws support sustainable community development and also help protect the environment.”

Efren Bulawan, Didipio resident and Community Development Officer for OceanaGold.

There is much community and civil society concern about the Philippine Mining Act 1995. Community support organisation LRC-KSK/Friends of the Earth Philippines believes that there are not enough safeguards within the Mining Act to protect the environment and the community. The Didipio Earth Savers’ Multi-Purpose Association (DESAMA) shares its concerns. Read about DESAMA’s campaign at: http://didipio.blogs.friendster.com/didipio_campaign

The Mining Act allows foreign companies:

- 100% ownership of mining projects (previously, foreign companies were restricted to a maximum of 40%);
- a mining lease of up to 81,000 hectares onshore or 324,000 hectares offshore. (Philippine-based companies are restricted to 8,000 hectares in one province and 16,000 hectares within the country);
- to repatriate 100% of all profits, equipment and investment;
- a guarantee against expropriation by the state;
- excise duties of 2% (cut from 5%), tax holidays and deferred payment until all costs are recovered;
- to carry losses forward against income tax;
- priority access to water resources within their concession;
- the right to sell gold directly to the international market without intervention from the Central Bank; and
- 25-year mining leases with an optional 25-year extension.

The full text of the Philippine Mining Act 1995 can be found at: <http://www.chanrobles.com/RA7942.htm>



Recommendations

The following recommendations are based on community complaints, voiced through testimonies gathered during the Mining Ombudsman's investigations, as well as additional research.

It is recommended that OceanaGold:

1. Ensures its employees do not partake in corrupt practices, or engage in actions that involve intimidation, violence or threats of violence. The company should enquire into the allegations of bribery and intimidation and support an official investigation into these allegations.
2. Ceases the Surface Rights Acquisition process, which community members find harassing and intimidating and begins fair negotiations with all residents who indicate that they have been pressured into providing access to their land and/or selling their land.
3. Respects the authority of the current Didipio Barangay Council and the community to approve or reject the proposed mine.
4. Provides communities the opportunity to give or deny their free, prior and informed consent consistent with forms of decision making acceptable to the community. This means immediately recognising their right to determine whether the project proceeds to the next phase of development.
5. Ensures as part of obtaining the community members' free, prior and informed consent that:
 - community members have access to comprehensive information in an accessible form and to independent legal and technical advice;
 - written information on all aspects of the mine is easily available in a range of appropriate and accessible languages (including the local language Ilocano);
 - it develops and communicates a policy on relocation which does not involve forced relocations;
 - all documents (in English and Ilocano) are released to the community and supporting non-government organisations, including a copy of the EIS prepared by Maunsell Consultants in December 1997; copies of documents relating to due process; copies of the first two MoAs; copies of documents showing environmental and social assessments undertaken by OceanaGold and its contractors for the Didipio project; and the Dinkidi Feasibility Study (October 2003); and
 - community members are fully informed of the content of official documents before they sign them.
6. Supports independent social, environmental and gender impact assessments that provide an accurate picture of the project's impacts and likely impacts.
7. Ensures that tenant farmers and those with houses on land that they do not own will be adequately compensated, given alternative accommodation and supported to gain secure access to land in a place that is acceptable to them.

It is imperative that the company supports processes agreed to by all parties to resolve conflict and respects the local community's authority to determine its development objectives including, if necessary, rejecting the project.

Residents who have previously indicated their support for the project show copies of lawyers' letters to Barangay Councillor Kagawad Peter Duyapat. These residents now complain that they do not like the company's forceful tactics in determining the sale price for their land.

Photo: Shanta Martin/OxfamAUS.



Annex 1: free, prior and informed consent

Mining and other large-scale development projects can have a significant effect on host communities and the environment. The growth of the mining sector in developing countries has increased the importance of ensuring that local people take part in mining-related decisions. The opportunity to give or withhold free prior and informed consent is both a right of indigenous peoples and a principle that is central to the rights of other local community members. Participation in decision making is a core tenet of a range of human rights, such as the right to development. It is central to achieving truly sustainable development, a principle to which many mining companies, industry associations and governments espouse a commitment.¹¹⁷ In addition, indigenous peoples are recognised by international law and institutions as distinct, self-determining peoples with inherent collective rights. They claim special rights, which include the right to free, prior and informed consent and the right of self-determination. These rights and principles are reflected in international human rights law and in the laws of some States. Gaining affected indigenous peoples' and local communities' consent for mining projects at all stages of a mine's life cycle is therefore an essential aspect of respecting the human rights of those individuals and peoples.

Oxfam Australia takes a rights based approach to development, supporting the rights of indigenous peoples and the rights of local community members to determine their own futures. All indigenous peoples and communities that could potentially be impacted by a project should have access to full information and participation in negotiations. This is the case whether they are located in the area in which the mineral body is found, or in areas that will be impacted by the proposed project, such as downstream communities or communities located on adjacent islands. In Oxfam Australia's view, respect for human rights and a commitment to sound development practices requires that after the company has had an opportunity to present all available information, community women and men and indigenous peoples should have the opportunity to approve or reject an exploration or mining proposal. In the case of indigenous peoples, decisions normally made through traditional and collective processes must be respected.

Free, prior and informed consent requires that local communities and indigenous peoples must be informed about development projects in a timely manner and given the opportunity to approve (or reject) a project before it starts.¹¹⁸ This includes participation in setting the terms and conditions that address the economic, social and environmental impacts of all phases of mining and post-mining operations.

One way of defining the content of free, prior and informed consent is proposed in the Framework for Responsible Mining,¹¹⁹ developed by retailers, investors, insurers, non-government organisations and technical experts working in the minerals sector as a basis for developing responsible sourcing and investing policies.

The Framework proposes the following definitions for free, prior and informed consent:¹²⁰

- **consent** that is obtained **free** of coercion or manipulation;
- securing such consent **prior** to any authorisation by the government or third parties, and prior to commencement of activities that would affect local communities or indigenous peoples; and
- consent that is **informed** by meaningful participation and consultation of indigenous peoples and local communities based on the full disclosure of relevant aspects of the proposed project by the company and permit-granting authority in a form that is understandable and accessible to indigenous peoples and local communities.

The United Nations Working Group on Indigenous Populations has also examined the legal basis for free prior and informed consent. A working paper prepared for the Commission suggested that to be "informed", those affected must have access to information in an accessible form regarding the:¹²¹

- nature, size and scope of the proposed activity;
- duration of the development (including the construction phase);
- locality of areas that will be affected;
- likely impact of the development as outlined in a preliminary assessment;
- reasons/purpose for the development;
- personnel likely to be involved in the construction and operational phases of the development process, including local people, research institutes, sponsors, commercial interests and partners (as possible third parties and beneficiaries);
- specific procedures the development activity would entail;
- potential risks involved (e.g. entry into sacred areas, environmental pollution, partial destruction of a significant site, disturbance of a breeding ground);
- full implications that can realistically be foreseen (e.g. commercial, economic, environmental, cultural); and
- conditions for third-party involvement.

Importantly, communities should also be informed about how revenue generated by a project will be paid and to whom, in keeping with the principles of transparency and combating corruption. Mining companies should be fully transparent, publicly disclosing all revenue and other payments made in respect of a project to ensure accountability in the use of extractives revenues. Such transparency helps combat corruption and facilitates local communities in receiving the benefits of development.

While the form of consent may vary, obtaining consent must allow communities and especially indigenous peoples to participate through their own freely chosen representatives and customary or other institutions.¹²² It is essential that the process of obtaining consent includes a gender perspective and the participation of women, as well as groups that may be marginalised for ethnicity, religion, class, caste or other bases. It is also important to recognise that indigenous peoples may adopt processes for obtaining consent which differ from mainstream political processes in which those very same indigenous peoples may also participate.

It must also be noted that communities should have access to independent technical and legal advisors who can help them interpret information.

In addition to the legal basis in both international law and some national legislatures, there is increasing understanding of the business case for obtaining free, prior informed consent. Today, an increasing number of companies recognise that a "regulatory licence to operate" is insufficient for the sustainability of mining operations. Traditionally, companies tended to only negotiate agreements with national governments to conduct operations. By obtaining the community's full consent and approval to go ahead with operations, mining companies can also be given a "social licence" to operate, allowing them to improve their relationship with the community and thereby lessen the risk of incurring costs due to conflict and delay. Indeed, obtaining a community's informed consent prior to engaging in mining activity can in fact enhance a firm's competitiveness – obtaining community consent reduces the risk of local and global protests which can hurt a company's reputation and result in unnecessary costs.

See www.oxfam.org.au/campaigns/mining/ombudsman/consent.html for further information on free, prior and informed consent.

Endnotes

- 1 Gaia South Inc, *Amendment Environmental Impact Statement Volume 1 and 2: Didipio Gold/Copper Project*. (March 2004), ES – 40–41.
- 2 Interviews with Didipio residents (Didipio, 23–27 February 2005; 2–6 March 2007).
- 3 Interviews with Kagawad Peter Duyapat (Manila, 27 February 2005. Similar sentiments expressed during interview with Kagawad Peter Duyapat, Didipio, 3 March 2007).
- 4 Climax Mining website, *Project Didipio*, [www.climaxmining.com.au /project/_didipio_p.htm](http://www.climaxmining.com.au/project/_didipio_p.htm) (at 19 April 2005).
- 5 A People's Initiative is a constitutional right of the voting constituents that seeks to invalidate a decision made by the duly elected government body. The initiative involves the collection of signatures in the form of a petition presented to the Commission of Elections requesting a referendum.
- 6 Brazas, Donna, "Philippines Suspends Mine Exploration Operations", *The Manila Times* (Philippines, 17 October 2001).
- 7 Association of Barangay Captains, Kasibu, Nueva Vizcaya, "A Joint Resolution of Barangay Captains Requesting the Sangguniang Bayan Members Headed by the Presiding Officer Not to Endorse the Didipio Gold Copper Mining Project or CAMA and to Spare the Entire Municipality from any Mining Application", 1 February 2005. The joint resolution of Barangay captains rejects any large-scale mining operation in Kasibu, Nueva Vizcaya and strongly urges the municipal mayor and Sangguniang Bayan members to heed the call of their constituents to spare the entire municipality from any mining operation and application, and for this reason, to issue a resolution stating unequivocal non-endorsement of the Didipio Gold Copper Mining Project.
- 8 Solmerin, Florante, "N.Vizcaya folk back bishop's mining stand", *The Manila Times* (Philippines, 19 February 2005).
- 9 OceanaGold, *Our Business – Development, Philippines*, available at www.oceanagold.com.au (at August 2007).
- 10 Philippine Information Agency, "NVizcaya court stops petition of anti-mining groups" (press release, 5 October 2006).
- 11 Oxfam Australia *Mining Ombudsman Annual Report 2003* (2003), 21.
- 12 Aroco, A., Degyem, W. & Pinaroc, S., "Fact-Finding Investigation Report", unpublished article of the Philippine Government, 8 July 2002.
- 13 Climax Mining, *Climax Mining Profile-Feb-March 2006*, http://www.climaxmining.com.au/pdf/Climax%20Company%20Profile_LR.PDF (at 29 November 2006).
- 14 Republic Act No 7942, *An Act Instituting A New System of Mineral Resources Exploration, Development, Utilization, and Conservation*, Section 38: *Term of Financial or Technical Assistance Agreement*, available at <http://www.chanrobles.com/RA7942.htm> (at 22 September 2006).
- 15 OceanaGold, above n 10. Earlier projections for production are referred to in Climax Mining, *Annual Report 2005* (2005) 10.
- 16 Climax Mining, *Quarterly Report for the three months ended 31 March 2006 (2006)* http://www.climaxmining.com.au/reports/download_pdf.php?item=19 (at 29 June 2006).
- 17 Climax Mining Ltd, *Climax Mining Profile-Feb-March 2006*, http://www.climaxmining.com.au/pdf/Climax%20Company%20Profile_LR.PDF (at 29 November 2006).
- 18 Ibid.
- 19 OceanaGold, above n 10. See also Gaia South Inc above n 1, 2–3.
- 20 Gaia South Inc, above n 1, ES – 4.
- 21 See the Tebtebba Foundation website at <http://www.tebtebba.org> for a copy of the conference statement and Engr. Catalino Corpuz, Jr, *Report on the National Conference on Mining*, May 6–8, 2002, Baguio City, Philippines.
- 22 Simeon Ananayo, public meeting (Central Didipio, 25 February 2005).
- 23 Interview with Climax Mining's Community Relations Officer (Central Didipio, 24 February 2005).
- 24 Interview with Esmeraldo Carpio (Didipio, 25 February 2005); interview with Josephine Ansibey and Efren Bulawen (Didipio, 24 February 2005); meeting with Stephen Orr, CEO, OceanaGold, (Melbourne, 31 October 2006).
- 25 Mr Arnel Arrojo, Provincial Community Liaison Manager, APMI, stated that he accepted that the bond is not enough to cover an extraordinary event (APMI Site Office, 5 March 2007).
- 26 Interview with Climax Mining community relations officers (Didipio, 24 February 2005).
- 27 Gaia South Inc, above n 1, 6–4.
- 28 The pioneers of Didipio were originally from the Ifugao indigenous peoples of Hungduan, a municipality of Ifugao province. In the 1950s they came to the valley in waves in response to the governments offer to open up frontier areas for resettlement. The new settlers encountered Iloggots or the Bugkalots and the Ifugao settlers heard the word "Kasibu" which means "venue where people come to settle their differences."
- 29 Philippines Indigenous People's Rights Act 1997, Section 3(g).
- 30 Philippines Indigenous People's Rights Act 1997, Section 3(g).
- 31 Local Government Code of the Philippines: Sections 2, 26 and 27.
- 32 Interview with Barangay Captain Antonio Dincog (Didipio, 24 March 2005).
- 33 Gaia South Inc above n 1, 4–30, 6–2.
- 34 Ibid, 4–9.
- 35 Esmeraldo Carpio, public meeting (Didipio, 25 April 2005).
- 36 Gaia South Inc above n 1, 4–9.
- 37 Esmeraldo Carpio, public meeting (Didipio, 25 April 2005).
- 38 Interviews with community members (Didipio, 24 and 25 February 2005).
- 39 Interview with OceanaGold staff (Didipio, 24 April 2005).
- 40 Interview with member of the local Barangay council (Didipio, 27 February 2005).
- 41 Interview with local community member (February 2005).
- 42 Interview with Josephine Ansibey (Didipio, 24 February 2005).
- 43 OceanaGold, above n 10.
- 44 Letter from Jane Nosworthy, Company Secretary, OceanaGold to Shanta Martin, Mining Ombudsman, Oxfam Australia, dated 26 April 2007.
- 45 Copies of these documents are available from Oxfam Australia on request.
- 46 Interview with Simplicia Ananayo (APMI Site Office, 5 March 2007).
- 47 Interview with Simplicia Ananayo (APMI Site Office, 5 March 2007).
- 40 Mining Ombudsman case report: Didipio gold and copper mine

- 48 Letter from Jane Nosworthy, Company Secretary, OceanaGold to Shanta Martin, Mining Ombudsman, Oxfam Australia, dated 26 April 2007.
- 49 Ibid.
- 50 Interview with Juanita Cut-ing (public meeting, 4 March 2007).
- 51 Interview with Lopez Dumalag (public meeting, 4 March 2007).
- 52 Interview with Josephine Ansibey, OceanaGold staff (Central Didipio, 25 February 2005).
- 53 Interview with Esmeraldo Carpio, Supervisor of Community Development for OceanaGold, (Didipio, 24 February 2005).
- 54 Despite several requests, OceanaGold has still not supplied the original EIS produced by Maunsell Consultants in 1997.
- 55 Gaia South Inc above n 1, 1-2 – 1-3.
- 56 Ibid, 1-2.
- 57 Ibid.
- 58 Ibid.
- 59 Ibid, Table 3.4-58a.
- 60 Ibid, 3-77.
- 61 Interview with Peter Duyapat (Manila, 27 February 2005); interviews with community members (Didipio, 2-6 March 2007).
- 62 Gaia South Inc above n 1, 3-77.
- 63 Ibid, Table 3.4-62".
- 64 Interview with Peter Duyapat (Manila, 27 February 2005).
- 65 Gaia South Inc above n 1, Volume 2 Appendix J.
- 66 Ibid, Volume 2 Annex Q.
- 67 Interviews with Kagawad Romeo Duhalngon and Kagawad Henry Guay (Didipio, 4 March 2007).
- 68 Interview with 5 of the Barangay councillors and the Captain of the Barangay (Didipio, 4 March 2007).
- 69 Gaia South Inc above n 1, 4-25.
- 70 Ibid, 4-26.
- 71 Local Government Code of the Philippines, Section 5(A).
- 72 The Didipio Campaign, http://didipio.blogs.friendster.com/didipio_campaign/ (at 3 July 2006).
- 73 Ibid.
- 74 Email communication from LRC to Oxfam Australia, 19 July 2007.
- 75 Interview with Josephine Ansibey, OceanaGold PR staff (Central Didipio, 24 February 2005).
- 76 Gaia South Inc above n 1, 2-2.
- 77 Ibid, 2-3.
- 78 OceanaGold, above n10.
- 79 Ibid.
- 80 Interviews with Didipio residents (Didipio, 23 –27 February 2005 and 2-6 March 2007). See also Rovillos, RD, Ramo, SB & Corpuz Jr, C *When the Isles of Gold turn into Isles of Dissent: A case study on the Philippines Mining Act of 1995 Forest Peoples Program Tebtebba Foundation* (2003).
- 81 Gaia South Inc above n 1, ES – 40-41.
- 82 Gaia South Inc above n 1, ES-5.
- 83 Ibid, 4-15.
- 84 Ibid, 4-18.
- 85 Ibid, ES-17.
- 86 Ibid, 4-18.
- 87 Ibid, 2-7.
- 88 Interview with Esmeraldo Carpio and Lourdes Dolinon (Didipio, 25 February 2005).
- 89 Gaia South Inc above n 1, 4-15.
- 90 Gaia South Inc above n 1, 2-8.
- 91 Ibid, 4-25.
- 92 Interview with members of Tubo village (Didipio, 24 February 2005); interview with Esmeraldo Carpio (Didipio, 25 February 2005).
- 93 Ibid.
- 94 Statements made by Esmeraldo Carpio during public meeting (Didipio, 25 February 2005).
- 95 Ibid, ES-45.
- 96 Comments made by residents at a public meeting organised by the pro-mining group (Central Didipio, 25 February 2005).
- 97 Ibid.
- 98 Interview with Barangay Captain Antonio Dincog (Didipio, 24 February 2005).
- 99 Gaia South Inc above n 1, 4-26.
- 100 Ibid, 4-9.
- 101 Ibid, 4-26.
- 102 Power, Professor Michael, *Digging to Development? A Historical Look at Mining and Economic Development*, (September 2002) Oxfam America.
- 103 Interview with Peter Duyapat, Eugene Ansibey, Liberio Cut-ting (Manila, 27 February 2005); Interview with Peter Duyapat (Didipio, 3 March 2007); public statements made during meeting of approximately 80 community members (Didipio 4 March 2007).
- 104 Letter from Jane Nosworthy, Company Secretary, OceanaGold to Shanta Martin, Mining Ombudsman, Oxfam Australia, dated 26 April 2007.
- 105 Interview with Barangay Councillor (name withheld upon request), (Didipio, 4 March 2007).
- 106 Interview with Mr Arnel Arrojo, APMI Provincial Community Liaison Manager, (Didipio APMI Site Office, 5 March 2007).
- 107 Email communication between LRC and Oxfam Australia, 19 July 2007.
- 108 Criminal Code Act 1995 (Cth), Ch 4, Div 70.
- 109 Interview with DESAMA members (Didipio, 4 March 2007)
- 110 OceanaGold Limited, Top 20 Holders, available at www.oceanagold.com.au at 12 September 2007.
- 111 Letter from Jane Nosworthy, Company Secretary, OceanaGold to Shanta Martin, Mining Ombudsman, Oxfam Australia, dated 26 April 2007.

Endnotes

Glossary

- 112 If it were to exercise its power of eminent domain, the state has to comply with the requirements under Section 9, Article III of the Constitution of the Philippines. There should be (1) taking for (2) public use and (3) upon payment of just compensation.
- 113 The Didipio Campaign, see: http://didipio.blogs.friendster.com/didipio_campaign/
- 114 Ibid.
- 115 Philippine Information Agency, "NVizcaya court stops petition of anti-mining groups" (press release, 5 October 2006).
- 116 Email communication from LRC to Oxfam Australia, 19 July 2007.
- 117 Specifically, the International Council for Mining and Metals (ICMM) principles. In May 2003, the ICMM Council of CEOs committed corporate members to implement and measure their performance against ten sustainable development principles. See *ICMM Principles* (2003) ICMM http://www.icmm.com/icmm_principles.php at 8 September 2006; The Minerals Council of Australia (MCA) has developed Enduring Value - the Australian Minerals Industry Framework for Sustainable Development, See, *Enduring Value - the Australian Minerals Industry Framework for Sustainable Development* (2004) MCA <http://www.minerals.org.au/enduringvalue> at 8 September 2006; specific mining company commitments to sustainable development include, Rio Tinto: "Rio Tinto has made a strategic commitment to sustainable development, in the belief that acting responsibly will result in long term business benefits such as lowering risks, reducing costs, creating options, and leveraging reputation." See RioTinto, *Rio Tinto and Sustainable Development* (2005) <http://www.riotinto.com/SustainableReview/development/programmes/default.aspx> at 8 September 2006; BHPB's Sustainable Development Policy states: "We aspire to Zero Harm to people, our host communities and the environment and strive to achieve leading industry practice. Sound principles to govern safety, business conduct, social, environmental and economic activities are integral to the way we do business." See, BHPB *Sustainable Development Policy* (2005) <http://www.bhpbilliton.com/bbContentRepository/docs/SustainableDevelopment/policiesAndKeyDocuments/HSECPolicy.pdf> at 8 September 2006.
- 118 Environmental Law Institute, Oxfam America and Sociedad Peruana de Derecho Ambiental, *Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities* (2004) Washington, pvii.
- 119 Miranda, Chambers and Coumans, *Framework for Responsible Mining: A Guide to Evolving Standards* (2005).
- 120 Ibid.
- 121 United Nations Economic and Social Council, Commission on Human Rights, Working Paper on the principle of free, prior and informed consent. E/CN.4/Sub.2/AC4/2004/4 8 July 2004 <http://www.ohchr.org/english/issues/indigenous/docs/wgip22/4.pdf> (at 20 July 2006).
- 122 Economic and Social Council Permanent Forum on Indigenous Issues, *Report of the International Workshop on Methodologies Regarding Free, Prior and Informed Consent and Indigenous Peoples* (2005) UN Doc No E/c.19/2005/3

APMI	Australasian Philippines Mining Inc
Barangay	District
DENR	Department of Energy and Natural Resources
DESAMA	Didipio Earth Savers' Multi-Purpose Association
ECC	Environment Compliance Certificate
EIS	Environmental Impact Statement
FPIC	Free, prior and informed consent
FTAA	Financial or Technical Assistance Agreement
MCEP	Mining Certification Evaluation Project
MoA	Memorandum of Agreement
sitio	small village

Opposite: Small-scale miners are now prevalent in the Didipio area.

Photo: Shanta Martin/OxfamAUS.

Back cover: Members of the Didipio community perform a traditional war dance at a festival celebrating the local citrus industry.

Photo: Ingrid MacDonald/OxfamAUS.





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