

Mining Ombudsman

Annual Report 2001 – 2002

 **Oxfam**
Community Aid Abroad



Oxfam Community Aid Abroad Mining Ombudsman Annual Report 2001 – 2002

Oxfam Community Aid Abroad
November 2002

National Office
156 George Street Fitzroy
Victoria, Australia 3065
Telephone: +61 3 9289 9444
ABN 18 055 208 636

Website: www.caa.org.au
Email: miningombudsman@caa.org.au

Oxfam Community Aid Abroad is affiliated with the following organisations:

The Australian Council for Overseas Aid (ACFOA), whose code of ethics we are bound by (for a copy of the code contact the national office); Oxfam International, whose constitution and code of conduct we are bound by; and the Refugee Council of Australia.

Acknowledgements:

The publication of this report has utilised the skills, knowledge and hard work of many dedicated people. The primary group of people who deserve our thanks and utmost respect are the many women and men from communities who suffer the impacts of irresponsible mining activities on their daily lives. The information, knowledge and learning contained within this document can be largely attributed to their assistance and support for the Oxfam Community Aid Abroad Mining Campaign. Additionally there have been many Non-Government Organisations and researchers who have supplied first hand case information that has been invaluable to our work. The cases could not have been written without their help.

- Authors: Ingrid Macdonald and Brendan Ross
- Editor: Elizabeth Wheeler
- Picture Editor: Martin Wurt
- Design: IRIS Design Agency
- Printer: Imprinta
- Contributors: Robert Ashley, Jeff Atkinson, James Ensor, Kerry Hill, Juliet Hunt, Sarah Lowe, Jo Sanson, Michael Simon.

We appreciate any feedback, comments or input you wish to make about the issues and cases discussed in this publication. There is an evaluation form inserted in this publication or comments can be emailed to us at: miningombudsman@caa.org.au

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

Cover Photo: Ipihania Usca Magaña, Maria Trinidad Usca Yauri, Teodora Usca Yauri, Ingracia Cuti de Usca and Eusebia Capa de Usca hold up their list of complaints about the Tintaya mine pit behind them. They all once lived where the pit is now located.
PHOTO: Ingrid Macdonald/Oxfam CAA

Message from the Mining Ombudsman	2
1. Objectives of the Mining Ombudsman	3
2. Human rights and transnational corporations	4
Increasing the power of the vulnerable to defend their rights against the powerful	4
The Oxfam rights-based approach	4
The power of transnational corporations	4
Why human rights compliance is good for business	5
3. Extending international human rights duties to transnational corporations	6
4. Extraterritorial regulation	7
5. Corporate social responsibility	8
Voluntary Mechanisms	8
Public Relations or legitimate change?	8
Critique of industry codes of conduct	9
Complaints mechanisms	12
A complaints mechanism for the Australian mining industry	14
6. Mining Ombudsman cases 2001 – 2002	16
• Tintaya – Peru	20
• Tolukuma – Papua New Guinea	28
• Rawas – Indonesia	34
• Kelian – Indonesia	37
• Indo Muro – Indonesia	38
• Gag Island – Indonesia	44
7. Preliminary Reports 2001 – 2002	48
• Didipio – Philippines	48
• Marinduque – Philippines	50
8. Conclusion	55
9. Glossary and acronyms	56
Appendix 1 – Benchmarks for the Mining Industry	57
Appendix 2 – Oxfam's rights based approach	64
References	69



This is an issue about people...



Ingrid Macdonald, Mining Ombudsman, at the Women Mining and Communities forum, convened by Oxfam Community Aid Abroad which highlighted the need for governments, the mining industry and other stakeholders to improve gender policies and practices.

PHOTO: Martin Wurtl/Oxfam CAA

"Globalisation has much potential...But this requires strong democratic foundations based on a political will to ensure equity and justice...The corporate community understands the need for rules. Indeed it argues for regulation to protect intellectual property, physical property rights and contract law. So why does it oppose global regulation to protect people and the environment?"

Following the success of last year's inaugural Oxfam Community Aid Abroad Mining Ombudsman Annual Report, we are pleased to present the 2001 – 2002 edition. Over the last year it has been heartening to observe the level of genuine interest being expressed by stakeholders for establishing an independent complaints mechanism for the mining industry. Like last year's, the cases within this report demonstrate the pressing need for establishing such a mechanism. Despite the encouraging developments in the Tintaya case, generally the cases illustrate how many mining companies are continuing to not listen or address the concerns of men and women in communities affected by mining.

There are many men and women from communities around the world with complaints against mining companies. I have spent the last year visiting some of these people and attending meetings involving representatives from different local, national, and international groups. Many of the men and women I spoke with had very similar concerns. As a result of mining activities – to which they have usually not consented – they have lost their land and livelihoods; their environment is contaminated; they are abused and intimidated by mine security and the military; alcoholism and community and family violence has increased; they have received little, if any, compensation; and their physical health has deteriorated. All these concerns result directly from the lack of respect and protection afforded by governments and companies to the human rights of communities, and particularly their right to prior, free and informed consent, and self-determination.

Whilst mining companies officials often make positive statements about raising environmental performance and respecting human rights, in reality many mine sites continue to have ongoing problems. Whether these statements represent a genuine concern by mining officials or are an attempt to merely change the public image of the industry, the sentiments can often be far-removed from the reality of performance. What is needed is for mining companies to make tangible commitments to concrete changes in their policies and practices, such as a measurable, enforceable and verifiable commitment to the universal and inalienable human rights laid down under the international human rights system.

What is more, Australian mining companies that are genuinely committed to respecting and protecting human rights should fully support the establishment of an independent complaints mechanism that communities can access to address infringements and abuses of their rights by non-performing companies. Over the last year, it has become clear that considerable benefits can be gained for all stakeholders by using an independent facilitator such as the Oxfam Community Aid Abroad Mining Ombudsman. However, it is also evident – through the cases of the Indo Muro mine and Rawas mine in Indonesia and the Tolukuma mine in Papua New Guinea – that a facilitator can only achieve a certain amount without mechanisms of compulsion and enforcement. Not only does an industry complaints mechanism need to be independent and accessible, it must have the ability to hold non-performers to account in a transparent and accountable manner.

Ultimately, this is an issue about people and their basic human rights, which are neither negotiable nor tradeable. Companies should afford the same level of respect and protection to the human rights of all people – no matter where they live – that company directors would expect, and no doubt demand, for themselves.

Ingrid Macdonald
Mining Ombudsman

1. Ombudsman objectives

For the last fifty years, Oxfam Community Aid Abroad has been a vehicle for Australians from all walks of life to help communities build a fairer and sustainable world by ending global poverty and injustice.

Oxfam Community Aid Abroad is an independent, Australian non-government development agency that is the Australian member of the Oxfam International confederation. Today, the agencies affiliated to Oxfam International employ thousands of staff working in 120 countries throughout the world. The agency undertakes local, regional, and national development projects, provides humanitarian response, and advocates for policy and practice changes. While Oxfam Community Aid Abroad speaks in its own voice, it does not assume a mandate to speak on behalf of others and prioritises the facilitation of people to speak for themselves. As a result, Oxfam Community Aid Abroad is not opposed to mining in general, but believes that this activity must be undertaken in accordance with the rights laid down under the international human rights system, particularly the right of men and women from affected communities to prior, free and informed consent to both exploration and mining activities.

Oxfam Community Aid Abroad established the Mining Ombudsman in February 2000 due to the absence of an industry commitment to establishing a formal complaints mechanism for the Australian mining industry. The Mining Ombudsman has no official status in terms of the Australian Government or mining industry. As a pilot program, it is intended to achieve the following objectives:

1. To assist men and women from communities affected by mining whose basic human rights are being threatened by the operations of Australian based mining companies, by raising their cases directly with the companies concerned within Australia.
2. To assist men and women from communities affected by mining that are, or might be, affected by a mining operation to understand their rights as established under international human rights instruments and in respect of industry best practice.
3. To help ensure that the Australian mining industry operates in such a way that the basic rights of landowners and men and women from communities affected by mining are better protected.
4. To demonstrate the need for the Australian mining industry and the Australian Government to establish an official complaints mechanism within Australia.
5. To demonstrate the need for developing enforceable, transparent and binding extraterritorial controls which would require Australian mining companies to adhere to the universal human rights standards laid down under the international system no matter where these companies operate.

The Mining Ombudsman receives complaints from communities affected by the operations of Australian-based mining companies, usually through Oxfam Community Aid Abroad's networks in Asia, the Pacific, Africa, and Latin America.

The Ombudsman checks all claims by making on-site investigations and takes action where the grievances appear to be credible. The Ombudsman consults with communities and community support organisations over any actions Oxfam Community Aid Abroad undertakes in respect of their case.

The role of the Mining Ombudsman is not to adjudicate on cases, but rather to seek to ensure that the process by which companies deal with communities is a fair and equitable one that respects the fundamental rights of men and women from affected communities. Essentially, it seeks to create opportunities for the voices of the powerless to be heard by the powerful. When people with grievances live in remote areas and lack the capability to access company officials at the highest levels, it is appropriate that someone undertake a facilitation role in order to ensure that their problems are articulated clearly to the people who have the power to deal with them.



PHOTO: Penny Tweedie/Oxfam GB



2. Human rights and transnational corporations

Increasing the power of the vulnerable to defend their rights against the powerful

All people possess human rights by virtue of their humanity. Human rights provide people with universal claims against society and other people. These rights transcend national borders, economic paradigms and political structures.

Human rights, applied through the international human rights system and national human rights laws, are intended to ensure that the rights of less powerful people are not infringed, abused or violated by actors that are more powerful.

The basis of the international human rights system is the *Universal Declaration of Human Rights 1948* (UDHR), the *International Covenant of Civil and Political Rights 1966* (ICCPR) and the *International Covenant of Economic, Social and Cultural Rights 1963* (ICESCR). The system is also comprised of other important human rights instruments, such as the eight core Conventions of the International Labor Organisation (ILO);² the *Convention on the Elimination of All forms of Discrimination Against Women*; the *International Convention on the Elimination of all Forms of Racial Discrimination*; the *Convention on the Rights of the Child*; and the *United Nations Draft Declaration on the Rights of Indigenous Peoples* (see Appendix Two). The rights guaranteed under the international human rights system are universal, inalienable, interdependent, indivisible, and complementary.³

The Oxfam rights based approach

Oxfam Community Aid Abroad takes a rights-based approach to its work on poverty, injustice, and suffering. This approach reflects the view that poverty and suffering are primarily caused and perpetuated by injustice between and within nations and peoples, resulting in the exploitation and oppression of marginalised peoples. The rights-based approach recognises equality and asserts that all people are responsible for trying to secure their own and others' human rights.⁴ This approach is founded on five rights all derived from and enshrined in the above and other international agreements and covenants.

- The right to a sustainable livelihood
- The right to basic social services
- The right to life and security
- The right to be heard
- The right to an identity

Traditionally governments, collectively and individually, have had primary responsibility for respecting, protecting, and promoting the human rights of all people. However, within the current context of globalisation, non-state actors such as trans-national corporations (TNCs) and non-government organisations (NGOs) have a moral and social duty, and increasingly a legal duty, to respect and protect the human rights of people whom their activities affect – no matter where these activities occur. (For example, see Figure 3.1)

For the mining industry in particular, which often operates in remote regions amongst marginalised peoples where a host country's controls may be inadequate or not implemented, certain fundamental and inalienable universal human rights must be protected. For example, rights to clean water, a safe environment, sustainable livelihoods, and especially in the case of indigenous people, the right to control the use of their land. Importantly, all people have the right to fair compensation for loss of property and the right to be free of intimidation and violence.

The Benchmarks for the Mining Industry set out in Appendix One provide a detailed set of standards based on an application of Oxfam's rights-based approach to the mining industry (see Appendix Two).

The power of transnational corporations (TNCs)

"A government will have serious conflicting interests if it tries to act on behalf of victims, or to develop laws that hold corporations accountable, and at the same time tries to attract foreign investment. The ability of multinationals to move capital between different countries, to create flexible international structures, and exploit the legal fiction that subsidiaries are independent from their parents, makes it difficult for any single state to regulate their activities."⁵

The influence and power of TNCs has increased dramatically, in line with the global movements towards a free market system supported by international multilateral institutions such as the International Monetary Fund and the World Bank Group. The pressure on developing countries to deregulate markets and industries has made it easier for TNCs to have a far greater presence amongst some of the world's most vulnerable communities. In 1990, the private sector accounted for 25% of investment into the developing world, with the other 75% of investment comprising foreign aid. By 1996, the numbers had reversed, with 75% of investment coming from the private sector. Recent figures show that the revenues of five of the largest TNCs are more than double the combined GDP of the poorest 100 countries.⁶

Whilst private sector investment can be an important driver for economic growth and poverty reduction, in the absence

of adequate regulation such investment in developing countries can undermine human rights, exacerbate conflict, and devastate the environment. Greater international mobility has resulted in what is popularly called a 'race to the bottom' in which some TNCs seek to minimise costs by investing in countries that provide the lowest cost of production and regulatory standards in areas such as environmental protection and workers' rights.

In the mining industry, companies can also acquire state-like power through activities that are outside the scope of regular business activities and are traditionally the realm of the state. These include building public infrastructure and providing health services, transport services or community development projects. Despite some good intentions, it is clear that in some of the cases within this report, mining companies have taken on supra-corporate roles where their responsibilities vis-à-vis the community have been of great significance. They have dominated the economic life of a community through direct and indirect employment and through their construction of infrastructure and public works. This has placed companies in a position of extreme power over the community. Even though these public works may benefit communities while maintained by the company, in reality, they often represent essential works that are required for a mine operation and its employees, for example, the provision of electricity, roads, and sanitation facilities. In the end, communities may become dependent on these works, creating enormous problems for maintenance and ongoing operations upon mine closure.

Why human rights compliance is good for business

Apart from human rights being universal guarantees, there is an obvious business case for companies to protect human rights. Benefits include effective risk management, avoidance of litigation, shareholder confidence, enhanced reputation, staff and public goodwill and other competitive advantages. Companies have also realised that significant financial losses can be incurred when unethical operations result in labour strikes, community uprisings or bad publicity. Additionally, some companies have suggested that respecting human rights, and environmental considerations increases profits. This might be achieved by improving ratings on ethical investment indexes, opening up new 'green' markets, or simply by being prepared for the changing demands on future business practice.

Markets do not form or operate spontaneously. Every market has numerous background norms, such as rules about property, contract, fraud, and competition.⁷ These norms are essential for the efficient functioning of the marketplace. Human rights protections applied to the activities of companies are also appropriate background norms. They are fundamental to the efficient and effective functioning of the global marketplace, especially in terms of long-term sustainability.

A community member affected by a mine site conveys his concerns to the Mining Ombudsman at a community meeting.

PHOTO: Oxfam CAA/Ingrid Macdonald

Business is ultimately reliant upon the continued effective functioning of society and the global environment, however global statistics demonstrate that current trends are unsustainable. We live in a world in which our trading system forces developing countries to pay \$100 billion a year in tariffs to rich countries, while receiving only half that amount in much-needed aid. 840 million people are starving. There are growing gaps between the rich and the poor in developed and developing countries alike. Three business leaders possess more wealth than the world's 41 poorest countries. Industry-related ecological crises ranging from global warming to salinity are limiting human possibilities for generations to come.⁸

Increased consumer awareness of human rights and environmental issues in developed countries has placed corporations under greater public scrutiny. This has resulted in many industries and corporations developing policies that appear to address these wider public concerns relating to human rights and the environment. However, while policy decision-makers have recognised that respect for human rights and the environment are good for business, many of these policies appear to have failed to address the issues. In some cases they have not been implemented at all.⁹ Environmental and human rights considerations are now crucial elements in many companies' brand management strategies. However, there appears to be a large gap between rhetoric and practice.

Respecting human rights is an increasingly important issue in the mining industry. Several cases included in this Annual Report demonstrate the potential impacts of not recognising the importance of human rights in the course of operations. The Marinduque mine in the Philippines was shut down after a negligent mine disaster in 1996 and two mine executives are still the subject of litigation. Legal proceedings have been brought against Aurora Gold due to alleged human rights abuses committed at the mine site. Legal proceedings may also be brought against Tolukuma Gold Mine in Papua New Guinea. Community resistance over social and environmental concerns is preventing the opening of the mine at Didipio in the Philippines.

3. Extending international human rights duties to transnational corporations

"Just as human rights law was initially developed as a response to the power of states, now there is a need to respond to the growing power of private enterprise, which affects the lives of millions of people around the world."¹⁰

An international governance regime covering the activities of transnational corporations is required. Such a regime needs to be developed, regulated, and enforced by states, and to comply with benchmarks set out under international human rights law.

Traditionally, companies have not been considered as duty-holders under the international human rights system. However, rights and duties under international law are slowly being extended to non-state actors and individuals. Thus far, individuals have been found legally responsible for war crimes, crimes against humanity and other gross human rights abuses.¹¹ Accordingly, companies, including mining companies, may be not only morally and socially responsible for respecting and protecting human rights, but also increasingly *legally* liable as 'organs of society.' (See Figure 3.1)

Over the last few decades, there have been considerable changes in the structure of international society. TNCs including mining companies are now influential actors with considerable power over communities and countries. Law is intended to adapt to reflect the needs of society, and there is no reason why responsibilities under the international system should not now be extended to companies. As the basis of international human rights law is to protect the less powerful from the powerful, it is archaic to exclude powerful global mining companies from direct human rights accountability.



An Australian mining company in Indonesia entertains military officials at a ceremony at a mine site. Companies should not pay for, nor provide logistical support for, the police or armed forces of the host country in return for them maintaining security at the mine.

TNCs are lobbying hard to ensure that the international system protects their rights and interests. They had, for example, a large presence at the recent World Summit on Sustainable Development held earlier this year in Johannesburg, South Africa. At the same time, they are working equally hard to ensure that they bear no responsibilities under this system. As a result, companies are acquiring rights under the international system, particularly in the area of international commercial arbitration.¹² If TNCs are prepared to reap the benefits of the international system then they should be required to fulfil the duties required under that same system.

"There is... no doubt that some form of international regulation of international business is necessary."¹³

Figure 3.1 The Universal Declaration of Human Rights (UDHR)

The basis of the international human rights system, the UDHR, states in its preamble:

"The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance."

The renowned international legal scholar, Professor Louis Henkin, stated in 1998:

"Every individual includes juridical persons. Every individual and every organ of society excludes no one, no company, no market, no cyberspace. The Universal Declaration applies to them all."¹⁴

The community of states negotiated the text of the UDHR over 50 years ago, and to date, no state has ever declared its disagreement with the rights enshrined within it. It has been endorsed repeatedly in every human rights instrument since 1948 and has been ratified by nearly every nation in the world. It has been incorporated into many national laws and in 1993, 171 states "reaffirm[ed] their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights."¹⁵

See *Beyond Volunteerism: Human Rights and the Developing International Legal Obligations of Companies*, International Council on Human Rights Policy, 2002

4. Extraterritorial regulation

"Regulation – the establishment and implementation of rules-based regimes – has long been used to ensure that corporations are accountable to society at large."¹⁶

According to the principles of 'equity between nations' and 'common but differentiated responsibilities,'¹⁷ which underpin the concept of sustainable development, economically rich countries have some responsibility for pursuing mechanisms to control the overseas activities of mining companies that have headquarters located within their jurisdiction. Much of the profit of TNCs is repatriated to the industrialised countries in which they are headquartered. This benefits the economies of industrialised countries and further increases the disparities between the impoverished and wealthy within and between countries.¹⁸ Countries such as Australia, which receives repatriated mining profits from Australian mining companies operating overseas, should seek to ensure that these profits are accumulated in a manner consistent with the standards that these companies would be required to fulfil in Australia. Countries should also assist with rectifying and mitigating human and environmental degradation, where these are a consequence of the development that has helped provide them with their economic wealth.

The cases documented within this report demonstrate why the Australian mining industry requires controls over its overseas activities if human rights are to be protected everywhere in the world. Such controls would best be achieved through the development of extraterritorial regulations by the Australian Commonwealth Government that are consistent with international human rights standards as was proposed in the Corporate Code of Conduct Bill 2000 (see Figure 4.1). There are already some precedents for extra-territorial regulation by the Australian Government:

- The Organisation for Economic Co-operation and Development (OECD) *Convention on Combating Bribery of Public Officials in International Business Transactions*, which has been signed by the 29 member states of the OECD and five others.
- Amendment to the *Crimes Act*, which allows for the prosecution of Australian citizens who commit child sex offences overseas.
- Legislation allowing for the prosecution of those who commit crimes against Australians serving overseas as United Nations personnel.

Figure 4.1 Australian Corporate Code of Conduct Bill 2000

The Australian Democrats introduced the Corporate Code of Conduct Bill 2000 to the Senate in September 2000. The Bill aimed to:

- Extend environmental, employment, health and safety, and human rights standards to the conduct of Australian corporations that employ more than 100 persons in a foreign country.
- Require such corporations to report in Australia on their compliance with the standards.
- Provide for the enforcement of the standards.

Oxfam Community Aid Abroad identified the following strengths of the Bill:¹⁹

- It would have required companies to take all reasonable measures to limit their impact on the environment and to undertake Environmental Impact Assessments of all new developments.
- It would have required Australian corporations employing workers overseas to take all reasonable measures to adhere to minimum labour standards as contained in ILO Conventions.
- It proposed that company directors be held accountable for contravening these standards by allowing any person who suffers loss or damage to bring an action in the Federal Court of Australia – including people living overseas who are directly impacted.

In order to strengthen the Bill, Oxfam Community Aid Abroad recommended that it should apply to corporations employing more than 50 persons in a foreign country, rather than 100, and that corporations must ensure activities are conducted in a manner consistent with international human rights standards. Oxfam Community Aid Abroad also recommended that an independent complaints mechanism be set up to act in conjunction with the Bill.

In other jurisdictions, similar initiatives have also been pursued. For example, in July 2000, US Congresswoman Cynthia McKinney introduced a Corporate Code of Conduct Bill into the United States House of Representatives that was similar to the Democrats' Bill.²⁰

5. Corporate Social Responsibility



PHOTO: Penny Tweedie/Oxfam GB

Many corporations began to pay serious consideration to the environmental and social impact of their activities in response to broad-based criticism during the 1990s. These companies formulated policies on Corporate Social Responsibility (CSR) and there was considerable debate surrounding the obligations and responsibilities of corporations to society, including communities and workers, and to the environment.

While there are no standard definitions, 'corporate responsibility', 'corporate accountability' and 'corporate citizenship' are broadly synonymous terms. Corporate responsibility generally refers to business decision-making that is linked to ethical values, occupational health and safety, labour practices and respect for people, communities, and the environment. It recognises that a company or business-like organisation has social, cultural, and environmental responsibilities to the community in which it operates, as well as economic and financial responsibilities to its shareholders and other such stakeholders.²¹

The prevailing methods for putting corporate responsibility into practice over the last decade have been through three voluntary mechanisms (other than upholding ad hoc legislated standards):

- Self regulation – company-specific codes of conduct, policies or guidelines.
- Industry regulation – codes of conduct prescribed by industry groupings with voluntary membership such as the Minerals Council of Australia (MCA).
- Pressure from civil society and community, and multi-stakeholder initiatives.

While this does at least indicate that human rights and environmental considerations are now on the agenda, the cases within this report illustrate that company rhetoric does not always match on-the-ground performance.

Voluntary mechanisms

Oxfam Community Aid Abroad does not see voluntary mechanisms as an alternative to state regulation.²² However, provided they fulfill certain important criteria such as possessing independent monitoring and verification systems, such mechanisms have the potential to be a step towards the establishment and implementation of effective legislated regulation. The recognition of rights by companies and the development of company policies also reflects an attitudinal change within corporations that is important for implementing legislation that seeks to secure human rights standards.²³ Voluntary mechanisms and codes have some benefits. They:²⁴

- Raise the acceptable threshold for industry performance and standards.
- Provide some leverage upon which stakeholders can hold companies accountable if a company fails to implement its own code.
- Can bring about long-term behavioural change in employees of the company by raising their awareness of factors outside regular business activity.
- Can extend responsibility to account for the activities of suppliers.

There are various different types of voluntary mechanisms being pursued by the private sector. The critique below relating to voluntary codes of conduct is applicable to all forms of voluntary mechanisms to differing degrees.

Public relations or legitimate change?

Public perception of companies and brands has an enormous impact upon profitability. This impact is now far greater than in previous generations due to the high-speed of information dissemination, heightened community awareness, and greater participation in stock trading.

Companies and industries under attack or suffering an image problem commonly try to reassure the public by establishing a code of conduct for themselves or their suppliers. However there are often considerable gaps between what they say they do and what they *actually* do. Furthermore, companies have huge resources at their disposal to influence public opinion and government

policies. They can stage strong campaigns to maintain and improve positive brand images, thus reasserting their power over vulnerable communities.

Some sections of the mining industry may perceive their problems as based in public relations, rather than their operations. In May 2001, the Australasian Institute of Mining and Metallurgy found that leading company executives in Australia believed that the industry needed increased public relations skills to influence the public sector, in response to growing negative sentiment towards the industry. They did not believe there was an issue with the industry's ability to operate in environmentally sound methods.²⁵ From this point of view, some sections of the industry may have difficulty accepting this report not because of the grievances verified by the Mining Ombudsman, but rather because of the negative publicity and sentiment derived from such grievances.

Critique of voluntary codes of conduct

Codes of conduct cannot replace the legitimate function of human rights law to enforce the protection of the less powerful from the powerful. While codes of conduct can be useful internal standard-setting tools for companies and industry groups, they are not, and should not be, promoted as substitutes for binding international and national standards, especially human rights standards. Some of the deficiencies of voluntary industry codes of conduct include:

1. Codes of conduct are generally voluntary and therefore rely on industry members agreeing to be parties to the code. If industry members refuse to sign the code – as many do – then their activities are not covered.

A good example of this 'free-rider' scenario occurred with a cyanide spill on 31 January 2000 from the Baia Mare mine in Romania, involving the Australian-based gold mining company, Esmeralda Exploration Ltd. The mine spilt some 100,000 cubic meters of cyanide-contaminated water into the Danube River system and reportedly cut off water supplies to more than two million people. An Australian mining industry watchdog noted that the Australian mining industry "was at pains to point out that Esmeralda was not a signatory to the [MCA] Code [for Environmental Management], nor a member of the MCA." The watchdog opined that the industry seemed mostly concerned about protecting the integrity of their 'voluntary' and 'aspirational' Code of Environmental Management (see Figure 5.1).²⁶ It is equally disappointing that even if Esmeralda had been a signatory to the Code, it would have faced no sanctions under the voluntary mechanism.

2. In order to attract industry members to sign on to codes

of conduct, the general standards of such codes can be negotiated down to the 'lowest common denominator'. As a result, many codes are not based on the minimum standards of the international system, such as universal norms laid down in the international human rights system. For example, a recent OECD study of 246 voluntary codes showed that the only issue which all included was the prohibition on child labour and that less than half recognised the right to freedom of association.²⁷ Codes of conduct are therefore often criticised as mere public relations exercises.

3. Most codes of conduct are not transparent and lack independent monitoring and verification systems. Industries are made up of unelected, undemocratic and unrepresentative private companies, whose main function is profit-maximisation for private or public shareholders. In most codes of conduct, representatives of these companies effectively act as legislature, judge, jury, and police over their own activities. Such systems lack transparency and accountability and rarely ensure the protection of the vulnerable from the powerful. Companies do not have the checks and balances provided through democratic elections and the constitutional separation of powers, which separates the arms of the judiciary, enforcement and the legislature. It is the role of democratically elected governments to develop the laws and regulations, internationally, regionally and nationally, which control the activities of all actors within a society, including companies, with regard to protecting universal human rights.



PHOTO: Martin Wurt/Oxfam CAA



4. Most codes of conduct do not have representative third party participation. Now that the Minerals Mining and Sustainable Development (MMSD) project that was mostly funded by the mining industry is complete, some of the larger mining companies have given over primary responsibility for implementing selected recommendations of the report to the International Council of Metals and Mining. This Council is funded and controlled by the mining industry and lacks effective third-party representation by civil society and affected communities. One recommendation to be acted upon by the Council is the development of an international voluntary code of conduct for its members.

5. The success of codes of conduct often depends heavily on market mechanisms, or the business case for compliance. Some industry advocates argue that self-regulation and other voluntary approaches control company behaviour more effectively, as companies are more likely to respect rules that they are involved in designing. However, it would be disturbing if human rights were reduced to mere things or objects where the justification for their protection depended on the market value or business case for protecting them. Human rights are guaranteed under the international human rights system. They represent minimum standards that cannot be traded off against other priorities.

Some industry advocates also believe that market forces will ensure that companies adopt best practice regarding human rights and issues of corporate responsibility.²⁸ However, history has shown that protecting human rights is not always necessary for profitable business. Many companies have, and continue to prosper, under corrupt, authoritarian, and oppressive regimes. A good example here is the prosperity of diamond companies in South Africa under apartheid.²⁹ It is therefore inappropriate to reduce basic human rights to factors within the business cycle that can be traded or negotiated depending on how good they are for business.

Traditionally, the market system has not assigned value to human rights, or to the natural resources and ecological systems that are essential to life. It is possible that this lack of value has been a significant cause of their abuse and degradation.³⁰ As one author reasons, "...while civil liberty and formal political rights are generally consistent with the demands of the market place, economic, social and cultural rights are often not."³¹

6. It is unacceptable to leave the protection of human rights to so-called consumer pressure, particularly in the mining industry. Generally, mining companies sell their product onto global commodities markets. In most cases, the sources of the constituent parts of goods containing mining products are not disclosed to consumers. In any case, there are obvious complications for consumers and producers in trying to trace and record the origins of metals and the like within each

product. In these circumstances, companies that do not respect human rights do not necessarily risk reduced turnover due to poor brand reputation.

7. In general, the systems that industry has put in place to ensure compliance with codes of conduct have not worked. The OECD in its 1999 study "Voluntary Approaches for Environmental Policy: An Assessment," found that self-regulation of environmental performance through voluntary mechanisms had limited impact on the actual performance of many of the companies studied.

Furthermore, ongoing human rights violations contradict arguments in favour of self-regulation by mining corporations. The cases contained within this report demonstrate that human rights infringements involving exploration and mining projects are continuing to occur, despite the proliferation of voluntary codes of conduct and industry self-regulatory mechanisms.

"If selfregulation and market forces were the best means to ensure respect for human rights, one may expect, since this has been the dominant paradigm, the number of abuses attributable to companies to have diminished. In fact, in many parts of the world, the experience of workers and local communities is precisely the opposite."³²

8. Finally, the ability of victims to claim redress will often depend on the good intentions or benevolence of companies, as many codes of conduct do not provide complainants with access to independent complaints mechanisms. The accountability of a company to victims should not depend on the goodwill of that company.

Figure 5.1 Minerals Council of Australia – Code for Environmental Management

The MCA Code for Environmental Management was developed in 1996 and updated in 1999 with the aim of improving the Australian mineral industry's environmental performance and reputation. Although signatories to the code agree to *aspire* to better their environmental performance, overall the code is unenforceable, voluntary and does not address human rights, labour rights, and social impact issues.

Forty-six of Australia's biggest mining companies signed this code and agreed to abide by its standards. The positive aspect of the code is that it obliges signatory companies to produce an annual self-evaluation report on their environmental and social performance.

The principles of the Code are vague and general. Compliance with the Code cannot be easily measured and it is not based on internationally-recognised human rights, labour or environmental standards. As it stands, the Code only addresses environmental issues as defined by the

MCA. The Code is also voluntary, enabling the 'free-rider' phenomenon, and allowing companies to choose to commit or not commit to the code. It carries no sanctions for non-compliance and fails to provide opportunities for recourse for negatively affected communities. That is, there is no complaints mechanism to compel compliance with the code. Furthermore, there is no independent monitoring or evaluation of the Code's implementation, or requirements for signatories to inform communities affected by their operations about the code.

The Code has not prevented Australian mining companies being associated with human rights abuses and environmental degradation, as demonstrated in some of the cases within this report.

Figure 5.2 Guidelines for Multinational Enterprises, adopted by the OECD

The OECD Guidelines for Multinational Enterprises include the rights laid down in the Universal Declaration of Human Rights, the International Labor Organisation Conventions, and the implementation of the environmental 'precautionary principal' as per the Rio Declaration. All 30 member countries (and six non-OECD countries) have endorsed the revised Guidelines.³³ Along with the Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy adopted by the ILO, the Guidelines are the only international procedures that can be used to directly scrutinise the degree to which companies are respecting human rights.

The Guidelines recognise that a state has the right to "prescribe the conditions under which multinational enterprises operate within its national jurisdiction,"³⁴ however this right is qualified as "subject to international law and to the international agreements to which the state has subscribed."³⁵ While not representing a substitute for national law, the Guidelines are supplementary measures to international law and companies are expected to adhere to them. This may require that a company comply with standards over and above those that are set out in the host country's domestic law. The adhering governments are the main source of the world's direct investment flows into the developing world and home to most trans-national corporations. They are obliged to delegate to a government official or department (called a National Contact Point) responsibility for promoting the Guidelines at the national level, handling inquiries and assisting in solving problems that may arise between companies, labour and communities.

Many remain sceptical about the value of the Guidelines, and view them as recommending "minimal social and behavioural practices for multinational enterprises."³⁶ So far, there has been relatively little practical experience of

the implementation process. Companies appear unfamiliar with the Guidelines despite the Business and Industry Advisory Committee's efforts at dissemination. There is a prevailing feeling that not all sectors of business have fully embraced the new text and procedures.³⁷

Oxfam Community Aid Abroad argues that although the Guidelines provide a useful framework, they are still no alternative to the extension of international and national laws over the activities of companies operating abroad. The Guidelines are not binding or legally enforceable, lack an effective monitoring and verification mechanism, and rely heavily on the will of governments. Among the options for strengthening the mechanism are the use of government sanctions against companies found to be seriously in breach of the Guidelines, and more effective monitoring, investigation and reporting mechanisms. Oxfam Community Aid Abroad also believes that compliance with the Guidelines should be a pre-condition for companies being awarded government contracts or receiving government assistance.³⁸

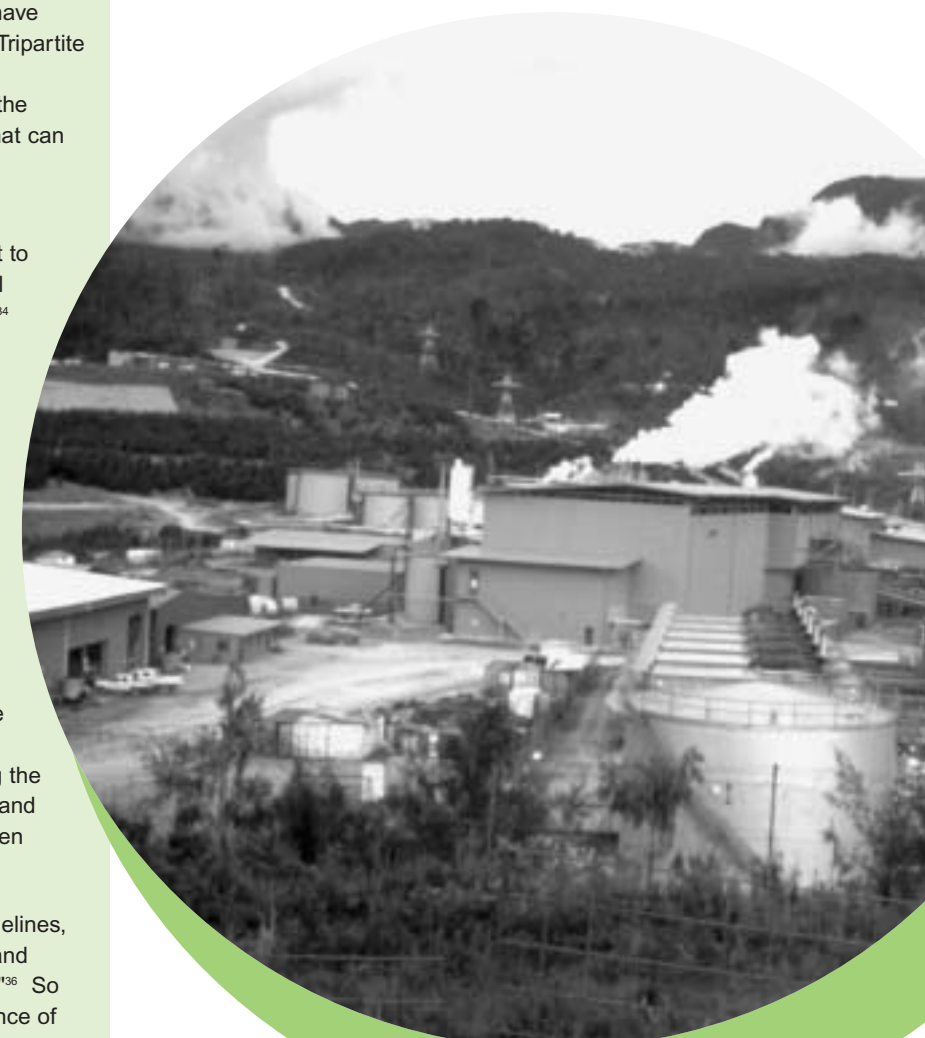


PHOTO: Jeff Atkinson/Oxfam CAA

Complaints mechanisms

The Australian mining industry does not have a mechanism to receive complaints from those negatively impacted by Australian mining companies. Given the documented experiences of many communities affected by Australian mining companies, Oxfam Community Aid Abroad believes that a formal and independent complaints mechanism is essential for the Australian mining industry. The function of such a mechanism should be to receive complaints and act as a forum for dispute settlement, and to provide for the enforcement of international human rights standards in respect of the activities of Australian mining companies anywhere in the world.

There is currently a wide variety of complaints mechanisms available to users of Australian government and industry services, and a number of industry ombudsmen have been appointed in recent years. The following section provides a brief description of two of the Australian Ombudsman and a more extensive discussion of the World Bank Group's Complaints Advisor/Ombudsman.

The Telecommunications Industry Ombudsman (TIO)

Mandate: The TIO was established at the direction of the Australian Government in 1993 to resolve disputes between telecommunications companies and residential and small business customers.

Funding: It is a free service to consumers and is funded by contributions from industry members, the size of which depends on the severity and total number of complaints made against each member.

Legislation: The Telecommunications Act (1999) requires all telecommunications carriers and eligible service providers to be members of the TIO scheme.³⁹

Independence: The TIO is intended to act independently of telecommunications companies, consumer groups, and government. However, it is governed by a Board that represents members responsible for corporate governance functions, and a Council, with an independent chairman, comprising equal numbers of industry and consumer group representatives.

Powers/Enforcement: The TIO has the authority to make legally enforceable decisions up to the value of \$10,000 and can also make recommendations up to the value of \$50,000.

Accessibility: The TIO disseminates information to customers through newsletters and the media. Non-English speaking complainants are requested to contact the TIO through the government interpreter service. Complainants have responsibility for undertaking the complaints without any apparent assistance from the TIO. Members do not appear to be required to inform customers of their rights or of the Ombudsman's existence.⁴⁰

The Australian Commonwealth Ombudsman

Mandate: The Ombudsman investigates complaints from people who believe they have been treated unfairly or unreasonably by a Commonwealth Government department or agency, including the Australian Taxation Office, the Australian Federal Police, the Department of Immigration and Multicultural and Indigenous Affairs, and the Australian Defence Force. The Ombudsman also seeks remedies for those affected by defective administration and acts to improve public administration generally.

Funding: The service is free to complainants and is funded by the Australian government.

Legislation: The Commonwealth Ombudsman and Deputy Commonwealth Ombudsman were created by the Ombudsman Act 1976, and apply to all Commonwealth Departments and almost all Commonwealth-controlled agencies, including some government business undertakings and private contractors delivering government services to the community.⁴¹

Independence: The Ombudsman is appointed by the Governor General, and may only be removed following a vote by the Senate and House of Representatives.

Powers/Enforcement: The Commonwealth Ombudsman has the statutory power to compel any person (not just employees of an agency under investigation, and not just those in Australia) to provide information, documents, or answers to questions in the course of an investigation.⁴² The legislation provides that failure or refusal to comply is an offence and gives the Federal Court power to order compliance.⁴³ The Ombudsman's powers following an investigation are recommendatory only, but the Ombudsman may inform the Prime Minister or report to Parliament if s/he does not consider adequate and appropriate action has been taken.

Extraterritorial powers: Section 3A of the Ombudsman Act makes it clear that it applies within and outside Australia.⁴⁴ The Ombudsman can and does investigate the actions of the Department of Immigration and Multicultural and Indigenous Affairs and the Department of Foreign Affairs and Trade foreign-based staff.⁴⁵

Accessibility: For non-English speaking complainants, the Ombudsman can arrange for translation and interpreter services. However, emphasis for conducting the complaint appears to rest with the complainant, and there appear to be no formal provisions requiring departments to inform the public of their rights, or of the Ombudsman's existence.

World Bank Complaints Advisor/Ombudsman Complaints Mechanism

Background: The World Bank Group is one of the world's largest sources of development assistance.⁴⁶ Through its loans and support, the World Bank has provided funds and assistance to many large-scale infrastructure projects, including mining projects, aimed at reducing poverty and improving living standards in the developing world. However, these projects have repeatedly had negative impacts upon poor and marginalised communities.

Compliance Advisor/Ombudsman: In April 1999, the Bank established a Compliance Advisor/Ombudsman (CAO) specifically concerned with the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), which provide loans, insurance and other support to private sector projects, including those involving mining. The two main goals of the CAO are:

"[F]irst, to help the IFC and MIGA address – in a manner that is fair, objective, and constructive – complaints made by people who have been or may be affected by projects in which the IFC and MIGA play a role; and second, to enhance the social and environmental outcomes of these projects."⁴⁷

Mandate: The CAO's three distinct roles are: responding to complaints; providing independent advice to the President and senior management of the IFC and MIGA; and overseeing audits of IFC's and MIGA's social and environmental performance. The aim is to identify problems, recommend practical remedial action and address structural issues that have contributed to the problems, rather than to find fault.⁴⁸ Complaints may relate to any aspect of the planning, implementation or impact of a project, such as the adequacy of measures for the mitigation of social and environmental impacts of the project, the arrangements for affected communities in the project, or the manner in which the project is implemented.

Governance: The CAO reports directly to the President of the World Bank Group and is independent from the management line of the IFC and MIGA. This helps to provide for more objective and effective advice.⁴⁹

Accessibility: Guidelines and information about the CAO's accessibility is available through avenues such as World Bank Group contacts and NGOs, and is communicated in the local language of the affected communities. Communication with complainants, including reports, agreements, and plans are translated and are presented in a culturally appropriate manner. Complaints can be submitted to the CAO in any language. However, the onus for conducting the complaint rests largely with the complainant, as no formal support or assistance mechanisms appear to be in place. There also appears to be no onus on private companies to inform communities about the CAO.

Procedure: The CAO accepts or rejects complaints based on the following criteria:⁵⁰

- Complainants have demonstrated that they have been affected, or are likely to be affected, by actual or potential social and/or environmental impacts on the ground;
- The complaint relates to an aspect of the planning, implementation or impact of an IFC or MIGA project;
- There are sufficient and specific grounds for the complaint; and
- The complaint is genuine.

If accepted, the CAO assesses the complaint and decides whether or not to proceed further, and if so, outlines a proposed course of action. Options usually utilise problem-solving approaches, such as facilitation, mediation, and negotiation. Determining the priority of a complaint and subsequent course of action will take account of factors such as: the numbers affected; the threat of irreversible harm; the phase reached in the project; the seriousness of the issues; the relevance of the complaint to the CAO's mandate; and the potential for positive intervention.

When problem-solving approaches fail, the CAO may conduct further investigations. These might include researching IFC or MIGA files; visiting project sites; hiring experts and meeting with stakeholders. When a satisfactory settlement has been reached or where further measures are considered unlikely to be productive, the complaint process may be concluded with the CAO reporting to the President. This may include recommendations about future action on the part of IFC or MIGA in order to address the issues raised by the complainant. Where possible, the CAO also ensures that agreements between parties include mutually agreed time-lines and indicators. The CAO will undertake monitoring where practicable, and it may request assistance from IFC or MIGA staff or other agencies on the ground.⁵¹



PHOTO: Martin Wurtl/Oxfam CAA



A complaints mechanism for the mining industry

The Oxfam Community Aid Abroad Mining Ombudsman attempts to facilitate a process by which the voices of communities being affected by Australian mining companies are heard by those with power within these companies. The Tintaya case study is an encouraging example of what can be achieved through such a mechanism. However, in its current format, the Mining Ombudsman relies on the voluntary cooperation and goodwill of mining companies. The only sanction available to the Ombudsman is publicly naming and shaming companies, and then only as a last resort.

This report provides examples of ‘free rider’ companies. These companies are unlikely to change their destructive practices unless they are compelled to do so by the threat of punishment by an independent Ombudsman with mandated enforcement powers. It is a fundamental basis of our justice system that penalties are required to deter most people from breaking the rules and to punish those who continue to break the rules anyway.

An independent complaints mechanism covering the mining industry would assist communities to bring to account companies that abuse, infringe, or violate their human rights. Communities would not have to rely on company goodwill for their concerns to be heard and addressed. Communities would not be forced to consent to projects against their will, and would have a means of redress when companies renege on their promises. Such a system would help ensure that companies that are not implementing their public rhetoric do not get a ‘free ride’ on the back of companies that are fulfilling their promises. Respect for human rights and the environment would no longer be merely dependent on a company perceiving a competitive advantage from positive public relations.



PHOTO: Penny Tweedie/Oxfam GB

As the cases within this report demonstrate, there is an obvious need for such a mechanism covering the Australian mining industry. This report documents allegations of unacceptable environmental and human rights violations ranging from forced land appropriation to physical abuse and environmental degradation. Based on an analysis of other complaints mechanisms including those described in the above Section 5D, we have identified a framework for an effective complaints mechanism within the mining industry.

Standards

1. The standards for application by the complaints mechanism must be those standards laid down under the international human rights system as discussed in the Benchmarks for the Mining Industry set out in Appendix One. These Benchmarks merely represent an application of some parts of the international human rights system to the activities of the mining industry. These fundamental human rights are guaranteed to all people by virtue of their humanity and there is no reason why the mining industry should be exempt from adhering to these universal and inalienable rights.

Funding

2. The mechanisms should be free of charge to complainants so all people have equal access to the mechanism irrespective of their individual wealth and income. The mechanism should also be funded in a transparent manner that is outside the control of the industry, in order to ensure independence and impartiality. Section 5D provides some examples of possible funding methods.
3. A reasonable amount of legal aid should be available to complainants so that they can acquire appropriate technical and legal support for their complaint and dedicate sufficient time to undertaking the complaint.

Independence

4. The mechanism should be independent of the industry, industry consultants and industry associations, in order to guarantee objectivity and impartiality.

Enforcement

5. All industry members or agencies including companies, their subsidiaries, contractors, suppliers and agents should come within the jurisdiction of the mechanism to ensure a level playing field for all companies and minimise potential ‘free-rider’ scenarios. The complaints mechanism must be binding upon all parties providing a service to the mining company.

6. The mechanism should have the power to reprimand and sanction, which would need to be guaranteed through legislation underpinning the mechanism.
7. The mechanism should have the ability to reprimand and sanction directors and employees of companies, to prevent directors hiding behind the corporate veil.⁵²

Extraterritorial jurisdiction

8. The mechanism should have extraterritorial jurisdiction that covers the global operations of transnational corporations, given the transnational nature of the mining industry.

Accessibility

9. The mechanism should supply all information in host country languages and community dialects to community members and their support groups and ensure that companies advise communities of the existence of the mechanism throughout all stages of the mine operation. The complaints mechanism staff should monitor companies in order to ensure that they have fulfilled this requirement.
10. The mechanism should be accessible, simple to understand, free of intimidation, and supported by companies.
11. The mechanism should recognise the large power differentials in favour of the company vis-a-vis communities.
12. The mechanism should ensure that any action is considered appropriate to the complainant community’s needs.

Accountability and transparency

13. The results of any investigation should be made public for the sake of transparency, trust, and accountability. The value of naming poor-performing companies is vital to improving the overall image of the industry as a whole and raising the standards of best practice.



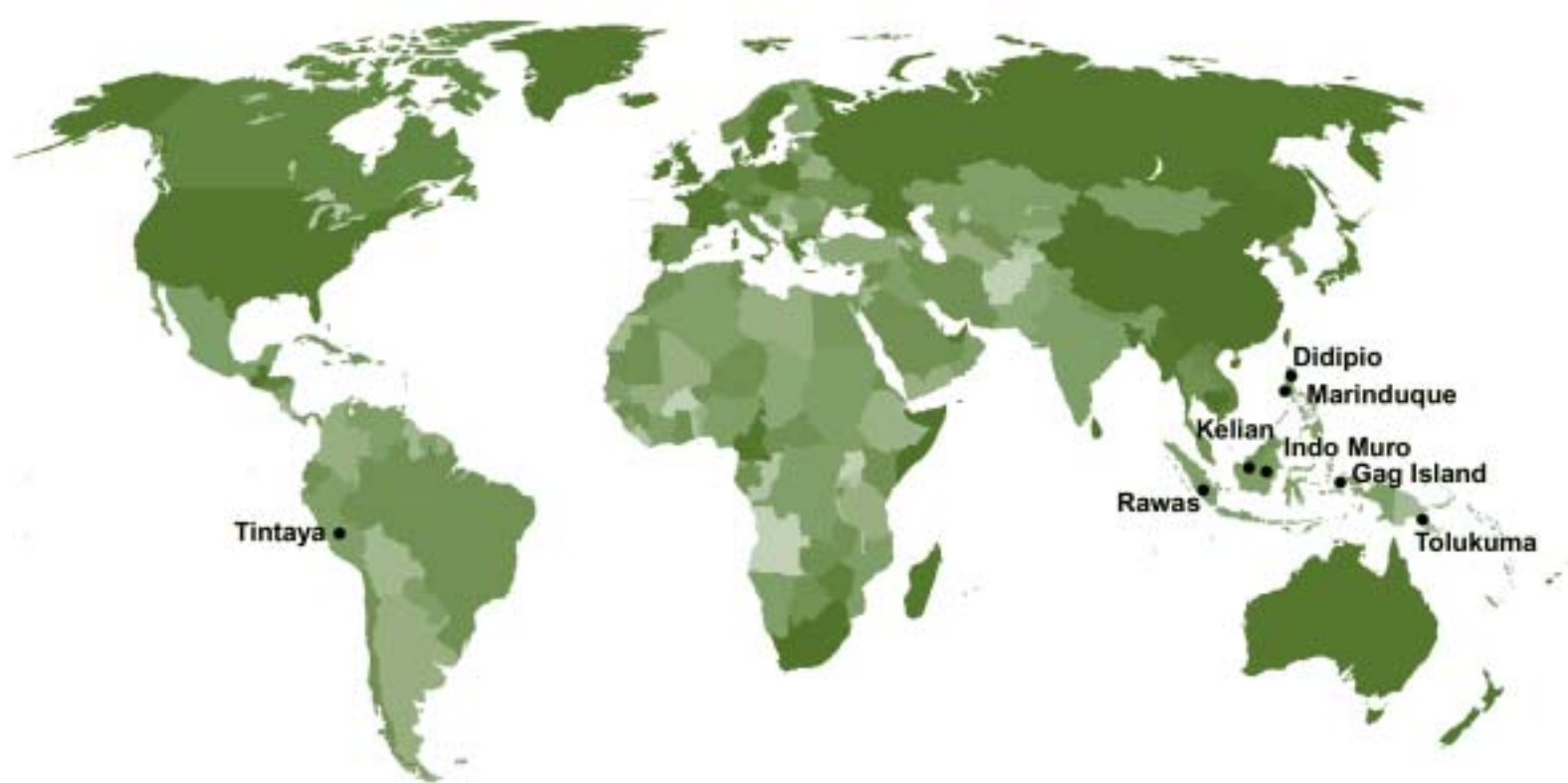
Community members present their testimonies to the Mining Ombudsman at a community meeting.

PHOTO: Oxfam CAA

14. The mechanism should include a function whereby companies are required to report periodically against the standards. Parties not within the sphere of influence of the company should verify these reports.
15. Artificial timeframes must not be imposed upon the handling of complaints; and the process must include the right to suspend operations or individuals where violations are of a very serious nature.



6. Mining Ombudsman cases 2001 – 2002



The impact of mining differs according to the phase of mine development and/or operations. Each phase poses inherent risks to the basic human rights of men and women affected by mine activities. Overall the mine operations documented within this report have produced consistent patterns of human rights infringements across these phases.

Grievances that are not properly dealt with in any particular phase of an operation are not forgotten or somehow diminished once the company moves into the next phase of operations. Evidence from the Ombudsman cases illustrates that grievances tend to fester, causing distrust and conflict. They do not simply go away with time and are often further exacerbated by new concerns arising at later stages in the mining operation⁵³. Clearly, no company – community dialogue can be meaningful without addressing all grievances, both old and new, as well as emerging concerns for the future.

Dialogue must be ongoing, transparent, comprehensive and inclusive of all affected parties, from start to finish. Most importantly, companies must respect the right of communities to provide informed dissent to mining and exploration projects. If communities choose to pursue alternate means of development, such as agricultural alternatives, then this is their right. Similarly, if communities make free and fully informed decisions to choose to pursue exploration and mining activities, and provided these activities are undertaken in a manner that respects and protects the human rights of all affected people, then this is also their right. As a result, there must be a precedent of positive community engagement and access to full information in the exploration and feasibility phases to

facilitate trust and open engagement between the community and company for the life of the project. Consultation must not simply be confined to gaining consent to begin mining operations⁵⁴.

The three phases defined in this document are⁵⁵:

- **Exploration and feasibility** – includes obtaining appropriate official titles or leases to explore, acquisition of this land, exploration, determination of ore reserves, feasibility studies, some infrastructure development.
- **Mine development and mineral extraction** – includes obtaining appropriate official authority to extract mineral reserves, further land acquisitions, design and construction of mine, development of necessary infrastructure such as roads and housing, hiring of labour force, extraction of minerals.
- **Post-mine works** – includes completion of outstanding contractual agreements such as environmental rehabilitation or mine reclamation, new exploration in the lease area, sale of mine machinery, departure from mine site.

Exploration and feasibility phase

The exploration and feasibility phase of mine operations generally has the lowest level of physical environmental impact, but does have significant psychological and social

impacts on affected communities. What is simply the potential location of a mine for a company may be for others a home or a livelihood, perhaps holding ancestral or religious significance. The stakes in mining are very different for communities and mining companies, and the value of land may be determined by far broader principles than just profit⁵⁶. However, as illustrated in this report, it appears that some mining companies fail to understand the socio-cultural and spiritual dimensions of communities' attachment to their land, particularly in the case of Indigenous Peoples.

Common issues and grievances arising in this phase of operation include:

- The unexplained arrival of foreign people who often engage in activities that do not respect local customs.
- Lack of negotiation and information regarding mine companies objectives for the future.
- Lack of information regarding the potential negative impacts of the operation.
- Lack of regard for women's needs and views in the negotiation of agreements and settlements (this may results in women being further disempowered within the community and experiencing an increased burden in the mineral extraction phase).
- Lack of respect and sensitivity for local culture.
- Environmentally destructive methods of mine exploration.
- Coercion, intimidation, and the use of threats to secure agreements.
- Divisive tactics by the company in negotiations, whereby the company focuses negotiations on segments or individuals within a community rather than the whole.
- The onset of negative social impacts through exposure to foreign cultures, substances and diseases.

The exploration and feasibility phase is arguably the most crucial stage in the development of community and company relations. If the members of the affected communities do not understand the full impacts of the mine in this phase of the project, problems often arise later on. There must be free and frank discussions between mining companies and affected communities about all impacts of the mine – positive and negative. Companies must be clear that communities' "engagement [in the discussion process] ... does not imply determinism."⁵⁷

Communities must be able to make free and fully informed decisions to consent to or reject mining projects and all initial agreements must distinguish between a company's right to explore the area and its right to commence mining.

In order to provide space for this kind of dialogue, there is little doubt that mining companies need to change their socio-cultural and environmental approaches. One different approach might be to implement the 'precautionary principle' that is currently applied to the argument for the safe use of agricultural biotechnology:

When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof.

The process of applying the Precautionary Principle must be open, informed, and democratic and must include potentially affected parties. It must also involve an examination of the full range of alternatives, **including no action**.⁵⁸

As an alternative to current methods of risk assessment, which are ostensibly based on profit analyses, the 'precautionary principle' focuses on minimising environmental and social impacts. As the Director General of the European Commission's Health and Consumer Protection Directorate, Robert J. Coleman, stated in January 2002, "... the precautionary principle is a principle of common sense."⁵⁹



Ilidifonso Cuti Ccapa, Libia Ccolque and Valentina Ccapa de Cuti from Alto Huancane with the Tintaya tailing pond behind them. Ilidifonso told the Mining Ombudsman, 'My house used to be where the tailing pond is and I now only own three hectares next to the pond. I lost my land in 1983 and it is suffering from contamination.'

PHOTO: Ingrid Macdonald/Oxfam CAA



Mine development and mineral extraction phase

Mine development and mineral extraction have the largest physical impacts upon the environment and communities. Ordinarily they are viewed as two distinct operations in mining, however for the purposes of this document, they are grouped together as a continuum of physical, environmental and social impacts.

Common issues encountered at this stage of operations include:

- Forced eviction from traditional lands without appropriate compensation.
- Destruction of natural habitats at the mine site.
- Pollution and contamination from the mine, which disturbs traditional farming methods and lifestyles. This can bring disease, illness, and death through the consumption of contaminated water sources, which are consumed by local communities or their animals, and air pollution.
- Large intrusive infrastructure developed near the mine, including tailings dams, housing complexes and roads, which can have an enormous environmental impact and disrupt or inhibit traditional lifestyles.
- Large influxes of foreign people (predominately men) bringing new cultures, substances, philosophies and diseases, such as sexually transmitted infections and HIV/AIDS. This can cause a break-down in traditional values leading to social problems including substance abuse, gambling, prostitution, sexual and family violence, lawlessness and community divisions.

As environments change, local people can experience a sudden loss of livelihood and unwanted incursions upon their culture and lifestyles. The speed alone of this change can have devastating emotional, spiritual, and psychological impacts. Communities and individuals need great resilience, and too often, managing such change is beyond their capacity or the capacity of local government.

Post-mine works phase

This is often the time when communities are most neglected. Some companies will see no direct or future profits from their efforts and there is broad scope for community dissatisfaction and anger, particularly if there is a history of conflict with mine operators. Each company's efforts in this regard are a reflection of the seriousness with which they take community demands and the respect they have for local communities.

Issues pertinent to communities include:

- Compensation/education for mine employees who have lost their livelihood with the closure of the mine.

- Rehabilitation of land for agricultural and other use, including aesthetic rejuvenation and removal of toxins from water systems and land.
- Continued infrastructure support. If a mining company withdraws funding upon its departure, then roads, housing, bridges, education, and health systems may suffer.
- Sudden and extreme loss of economic activity as mine workers, mining subcontractors, and small businesses lose incomes.
- The lasting impacts of altered ways of life. These may leave individuals and communities ill equipped for the future. Communities may not wish to return to subsistence livelihoods and there may be no alternative industry. Mine activities may have rendered the environment infertile.
- Mine operations may have inadvertently facilitated problems such as alcohol abuse, the breakdown of traditional family structures, illicit drug use and medical problems, including the spread of HIV/AIDS that will continue to affect the community well after the life of a mine project.

Mining companies must take responsibility for these issues and address them as part of all phases of their project cycle.

Mining Ombudsman activities

Six mines are included as cases in this report (one case as an update only). A further two mines are included as preliminary reports. In these, communities that have expressed concerns over negative impacts of mining to the Mining Ombudsman, and secondary research has shown sufficient justification for their inclusion herein. Case investigations are in the process of being undertaken or are pending on these two cases. Of the eight mines included, two of these are in the exploration and feasibility phase, four are in the mine development and mineral extraction phase, and two are in the post-mine works phase.

All cases within the report have been analysed against the Oxfam rights-based approach, especially in respect of the application of this approach to the mining industry as developed in the Benchmarks for the Mining Industry contained in Appendix One.

The exploration and feasibility phase:

- **Gag Island Nickel Mine**, Indonesia
- **Didipio Gold and Copper mine**, Philippines (preliminary report)

The mine development and mineral extraction phase:

- **Tintaya Copper Mine**, Peru
- **Tolukuma Gold Mine**, Papua New Guinea
- **Indo Muro Kencana Gold Mine**, Indonesia
- **Kelian**, Indonesia (update)

The post-mine works phase:

- **Barisan Gold and Silver Mine**, Indonesia
- **Marinduque Copper Mine**, Philippines (preliminary report)

A member of the Didipio community performing a traditional war dance at the 2002 Kasibu Citrus Festival. The communities of Kasibu, including Didipio are concerned that the proposed CAMC mine will contaminate the environment and thereby, destroy citrus production which they hope to develop into an export industry.

PHOTO: Ingrid Macdonald/Oxfam CAA



Chronology of events – Tintaya

Post 1980:	Peruvian government expropriates 2368 hectares of land for developing the Tintaya copper mine in Yauri, Espinar Province.
1994:	Mine privatised and acquired by US-based Magma Copper.
1996:	BHPB acquires Magma Copper and a 99.94% interest in the mine.
1996:	BHPB acquires 1,263 hectares of Tintaya Marquiri Community land for the purpose of building the copper oxide plant and increasing the capacity of the mine.
1996:	BHPB acquires 246 hectares of Alto Huancane Community land in order to ensure greater security of the tailings dam.
Post 1996:	In order to advance exploration activities BHPB acquires 400 hectares of Huano Huano Community land, 477 hectares of Alto Huarca Community land and to provide space for a projected tailings dam, 875 hectares from individual property owners in the region.
11/2000:	Oxfam Community Aid Abroad is requested by CONACAMI to take up the Tintaya case with BHPB head office in Australia.
3 – 11/12/2001:	Mining Ombudsman visits the communities affected by the Tintaya mine in order to undertake a field investigation.
10/12/2001:	Initial dialogue meeting held in Lima facilitated by the Oxfam Community Aid Abroad Mining Ombudsman. Participants include BHPB Base Metals, BHPB Tintaya S.A., CONACAMI, CORECAMI – Cusco, Oxfam America, CooperAcción and the Municipality of Espinar.
23/1/2002:	Mining Ombudsman writes to Ian Wood (Vice President of Sustainability, BHPB) outlining community concerns and recommendations from site investigations.
29/1/2002:	Jaap Zwaan (President of BHPB Tintaya Mine) expresses a desire to investigate community grievances in response to the Mining Ombudsman letter.
2/2002:	Ian Wood conducts an audit/field investigation of the Tintaya Mine.
6/2/2002:	The first meeting of the 'Mesa de Dialogo' (Dialogue Table), a negotiation process that flowed out of the Mining Ombudsman visit in December 2001, which is intended to address the concerns of communities affected by the Tintaya mine. The participants include BHPB, CooperAcción, CONACAMI, the Mayor of Espinar, CORECAMI, CODEPE, Oxfam America and is led by a professional facilitator. The Dialogue Table agrees to establish four commissions to address specific community concerns: the Land Commission, Human Rights Commission, Sustainable Development Commission, and Environmental Commission.
1/3/2002:	Second meeting of the Dialogue Table.
4/4/2002:	Third meeting of the Dialogue Table.
7/6/2002:	Fourth meeting of the Dialogue Table.
13/8/2002:	Fifth meeting of the Dialogue Table.

Case 1: Tintaya



Resource:	Copper
Mine location:	Espinar Province, Peru.
Mining Methods:	Open-pit Sulphide processing Oxide processing
Copper Reserves:	53 Mt of sulphide ore grading 1.6% copper. 22 Mt of oxide ore grading 1.44% copper.
Mine capacity:	Sulphide operation – 90 000 tpa Oxide operation – 34 000 tpa
Affected communities:	Tintaya Marquiri, Huisa, Alto Huarca, Alto Huancane, Huano Huano, the Yauri township represented by the Municipality of Espinar
Community groups:	CONACAMI (The National Coordinator of Communities Affected by Mining) comunidades@conacamiperu.org CORECAMI (Regional Coordinator of Communities Affected by Mining), regional arm of CONACAMI
Community support groups:	CooperAcción: www.CooperAcción.org.pe Oxfam America: www.oxfamamerica.org
Mine operator/s:	(1996 – present) BHP Billiton (BHPB) Tintaya S.A.

"Theodora Usca's lands and house were expropriated in 1982 and the pit is now located on them. She gave birth on a Friday and on the following Saturday they bulldozed her house and used force to evict her."

Request

In November 2000, Oxfam Community Aid Abroad's Mining Ombudsman received a request from CONACAMI to take up the case with BHPB in Australia. The request was accepted and was followed by a case investigation in December 2001.

Grievances

In December 2001, the Mining Ombudsman travelled to Peru to undertake the Tintaya case investigation. She met with representatives from Oxfam America, CooperAccion, EQUAS SA (an environmental monitoring firm which conducted hydrological testing at the mine site), Casa Campesina, the Public Ombudsman for Cusco, and the Mayor of Espinar. She attended a large community meeting convened by the Municipality of Espinar, at which grievances were heard from over 100 members of various affected communities. She also attended numerous other community meetings at affected sites and in the community itself, where grievances were also heard. The grievances are broad in nature and have a history that extends back to the time before BHPB acquired the mine.

Loss of land to the mine through negotiations conducted under unfair conditions with inadequate compensation

- Some communities reported that the land sale negotiations (if there were any) and/or land expropriations were conducted not with the community but with targeted individuals. Community members claimed that the negotiations and sales involved corruption, bribery, and fraud. Some community representatives expressed concerns that their land had been sold to the company without their agreement or knowledge. Other community representatives stated that their land had been simply expropriated for little, if any, compensation. Most representatives stated that they had been forced off their land (sometimes through violent evictions).
- The communities reported that where negotiations did occur, they did not have the necessary technical and legal knowledge or assistance to give informed consent. Some representatives reported that they did not understand what they were signing, as they could not read or write.
- Others said that they did not understand that the sale of their land meant that they

would not be able to use their land again. Many representatives complained that the company had reneged on agreements associated with the land sales, including verbal agreements that the community would retain the right to use the land for pasturing stock and promises that community members would gain employment at the mine. Negotiations did not always respect traditional land tenure systems in which the community as a whole, rather than individuals and families, owned the land.

- Many community representatives described how the land negotiations were conducted under the threat of compulsory acquisition, which is allowed by pro-mining state legislation. This same legislation enabled the land to be valued at its lowest during the acquisition process. This low value allegedly did not include, or undervalued, improvements to the land, including the worth of structures such as houses and animal pens.

Marcusa Cuti Alcamari (Alto Huancane Huinumayo)
The past President of the community received \$US 8000 when he sold Marcusa Cuti Alcamari's land. He did not share this money with Marcusa or her family. Marcusa described how the company came with dogs to force her off land that her family had used for generations and believe they still own.



Livia Colque de Cuti from Alto Huancane – Paccpaco lifts a rock in a stream flowing from the Tintaya tailings pond to show contamination sludge and discoloration underneath. She complains that she and her family are sick from contaminated water and dust from the tailing pond.
PHOTO: Ingrid Macdonald/Oxfam CAA



Forced evictions from land and human rights abuses against women

- Some of the women interviewed alleged that they had been forcibly evicted from their land after its expropriation or sale without their informed consent. In some instances, their houses were bulldozed in order to ensure that they did not return to the land. Some representatives told of being forced to leave their lands and houses during the wet season without anywhere to go for shelter. As a result, a number of described how they had suffered miscarriages, some children and some of the elderly had died, and people were forced to live in plastic bag houses with their animals.
- Many of the women also recounted incidents in which mine security guards using horses and dogs, beat them when they grazed their animals on traditional lands. The last reported incident occurred in August 2001 and the resulting injuries were witnessed by the Peruvian based French funded NGO, Casa Campesina. One representative complained of permanent spinal injuries that resulted from a beating from company security guards. The security guards were also accused of killing the women's animals.

Dora Usca (Tintaya Marquiri)

The ex-President of the community sold Dora Usca's family land without authorisation in 1982, and her parents were not compensated for their houses, animals, and pens. When Magma bought the mine, the company allowed the women to graze animals on the lands, but demanded that they pay 5000 soles for the right. Since 1998, Dora reports that BHPB has sued her family to get her off the land. She described how her mother, sons, and daughters were all abused with sticks and said she has spinal problems from the beating. Some of this abuse occurred in January 2001 during the beginning of the Oxide Plant construction. She will fight until she gets her land back.

Loss of sustainable livelihoods

- All of the communities complained that they had lost their traditional means of providing for sustainable livelihoods due to loss of land to the mine and the contamination of the land and rivers by the mine and tailings pond.
- The communities reported high levels of unemployment through the loss of their agricultural lands and having no alternative means of employment. Additionally, the company was widely accused of failing to employ people from the affected communities even when they had appropriate skills. There was a lot of concern for the future of the communities' children.
- All communities complained about the pollution of the environment and especially the water systems from the mine and the tailing pond. Many settlements are within the immediate vicinity of the mine, tailings pond and other mine structures. There is perceived contamination from the mine and tailing waste, which is being discharged or leaking into streams and leaching into the groundwater. There is also concern that strong winds

carry contaminated dust and odours from the tailings pond across the land and settlements. The communities report that their domestic animals have become sick and thin from grazing on contaminated land and drinking contaminated water. The rivers no longer sustain fish life and wild animals no longer drink from them. The communities report stomach, kidney, and sight problems as well as skin rashes and headaches, especially amongst the children and elderly. These were not prevalent before the mine opened.

An independent hydrological study of freshwater in the Alto Huancane region supports the community allegations. The study was conducted by EQUAS SA, a professional hydrological consultancy, on behalf of CooperAcción. It showed very high levels of copper, arsenic, and lead pollution in the drinking water of the community.

- Some community members stated that the company failed to support community based projects designed to provide alternative industries and livelihoods for the communities. They claim that the company instead preferred to hand out gifts.

Theodora Usca (Tintaya Marquiri)

Theodora Usca's lands and house were expropriated in 1982 and the pit is now located on them. She gave birth on a Friday and on the following Saturday they bulldozed her house and used force to evict her. Her newborn son died soon after and her 11-year-old son died a week after the eviction. She got 10 soles a hectare for 95 hectares of land and nothing for a further 10 hectares that was expropriated. Dora described how she still lives on company land and how the company has threatened to take her to court. She has four children who have no work and nowhere to go. The land is her world and her wealth.

Forced land acquisition at Tintaya's new project – Antapaccay

- The communities alleged that the company was intending to reopen the old mine site in Alto Huarca, with the new project Antapaccay. BHPB has been acquiring much of the land around the mine from the local community. The community complained that the company forced them to acquire individual title over their lands. If they refused to participate in this process, then the company simply did it without their consent. The company then forced the community members to sell their individual title to them at very low prices.

Melcora Camaque (Tintaya Marquiri)

Melcora Camaque described how her land of 50 hectares was expropriated in 1996 and she received no compensation. The company undertook measuring and valuation without her consent. Melcora reported that she successfully sued the company on the basis that she was not informed about the valuing and measuring and did not sign the deeds of sale. Her daughter is sick and is haemorrhaging from the nose. They do not know what is wrong with her.

Anxiety over the construction of a new tailings pond

- The communities, especially the Huisa Community, are concerned about the construction of the new tailing pond on Huisa Community land. Their main concerns are with the potential pollution from the tailing pond in this very fertile milk production area. The new pond is expected to be located within 200 meters of the settlement and their irrigation system.

Flavio Wanque (President of Alto Huancane) – The

community want more transparency in the operations of the company. They want environmental assessments and monitoring and would like the company to look at the EQUAS study. They want a negotiated document of commitment between the company and the community that will provide for a clean and healthy environment, and education and training for the men. They want BHPB to pay for the health care of the community. They want Oxfam Community Aid Abroad to take their problems to Australia to show people what is really occurring.

Lima meeting

While in Peru the Mining Ombudsman was approached by BHPB to meet with the company to discuss the case investigation. She refused to meet with the company unless the affected communities, community-based organisations and non-government organisations agreed to this meeting and also sent representatives with her from each organisation. In her meetings with the affected communities, the Mining Ombudsman asked the communities about whether they wished her to meet with the company while she was in Peru. The communities were eager for her to do so and to put their concerns directly to the company officials. As a result, on 10 December 2001, a meeting was held in Lima between BHPB Base metals, BHPB Tintaya, CONACAMI, CORECAMI – Cusco, Oxfam America, CooperAcción, and the Municipality of Espinar where all parties agreed to look at setting up a dialogue process provided community members agreed to this process.

'Mesa de Dialogo' – Dialogue Table

The following excerpt is part of a progress report called the 'Report of the Dialogue Table of BHPB Tintaya and the Neighbouring Communities of the Tintaya Mine'. This report was signed on June 25, 2002, by all parties involved in this process including; CONACAMI, CooperAcción, Oxfam America, BHPB and Board of Directors, BHPB Tintaya S.A. The Mesa de Dialogo officially endorsed the progress report at its meeting on 13 August 2002.

THE DIALOGUE PROCESS

The beginning

A meeting on December 10, 2001, presided by Ms Ingrid Macdonald, featured an extensive report by those affected followed by an exchange of ideas. It was agreed that a "Mesa de Diálogo" (Dialogue Table) would be formed with the commitment to work jointly to arrive at solutions to the different problems that had been identified.



Rubbish from mining contractors servicing the Tintaya mine site dumped around the town of Yauri.

PHOTO: Ingrid Macdonald/Oxfam CAA



Community members gather at the Alto Huanca Community Centre to present their concerns about the Tintaya mine site to the Mining Ombudsman.

PHOTO: Ingrid Macdonald/Oxfam CAA

Forming of the Working Commissions

In the first session of the *Mesa de Diálogo*, participants defined the high-priority issues and agreed that four working commissions would be formed: Land, Environment, Human Rights and Sustainable Development.

Land Commission

The Land Commission, which has met a number of times in Espinar, has dedicated the greater part of its time to receiving information from community leaders and members who have openly and freely expressed their problems, complaints and ideas.

In regards to this issue, CooperAcción has insisted on reviewing the most prominent aspects of the past negotiation processes between the Company and the communities, to identify mistakes made and to avoid the likelihood that these could re-occur in current or future negotiation processes.

In the session of June 6, the Company presented the specific outline of an integrated plan to solve the problems arising from the sale of lands by the Community of Tintaya Marquiri, beginning with a proposal that had been written before the *Mesa de Diálogo*. This proposal, based on the concept of resettlement with development, through a process of participatory planning, is currently being reviewed by the community and is open to contributions from all parties.

Environment Commission

The Environment Commission has played an important role in addressing specific incidents that have occurred in recent months and has begun development of an early warning system. It has also developed plans for joint evaluation and monitoring, a health baseline for neighbouring residents and a health baseline for the livestock in the area.

Human Rights Commission

The Human Rights Commission has dedicated most of its time to listening to the concerns of residents. All of the claims deal with real or perceived problems that have occurred prior to the dialogue process. No claims have been presented about new abuses. There have been some difficulties in determining the exact facts of events

that have been presented, due to the time that has passed or because of the different versions that have been presented. For this reason, the Human Rights Commission has recommended that an independent entity, trusted by all, be sought to conduct an independent and objective investigation of the events that have happened. The search for an appropriate figure is underway and is the responsibility of a sub-commission made up of representatives from CORECAMI – Cusco, Oxfam America, CooperAcción and BHPB Tintaya. Furthermore the commission has obtained an agreement from the Company that it will improve its systems of orientation, training and internal control to avoid instances of human rights abuse in the future, and that all parties will have a participatory role in this process.

The Sustainable Development Commission

The Sustainable Development Commission has been evaluating various options to strengthen the productive capacity of the communities, including a market study for local products and a training program for young people in the management of small businesses. The Company will prepare a socio-economic baseline study, which is to be monitored and evaluated by an independent institution named by the *Mesa de Diálogo*.

commissions, of all the parties: communities of the area of influence of the mining activity, CORECAMI – Cusco, CONACAMI, the Municipality of Espinar, BHPB Tintaya, CooperAcción, and Oxfam América.

- The above-mentioned commitment and participation has also implied mutual recognition between the parties, which takes into account aspects such as representation and the different roles and/or contributions that all can bring to the success of the *Mesa*.
- The commitment that at least three of the commissions (Environment, Human Rights and Sustainable Development) are defined as areas of permanent work. This agreement shows the will to establish processes of collaboration in the medium and long term as well as to face up to work in the short term.
- The partial advances by the commissions, as presented above.

These results reflect a considerable advances in the process after five months of working together. It is important to underline that, at the beginning of the process, each party arrived – as is natural – with a unilateral vision of the conflict. Therefore the work done to date has possibly laid the groundwork for building a more articulated vision of the relationship between BHPB Tintaya and the communities. This commonly agreed vision should help us to find the means to solve the conflicts identified and to define the basis of coexistence in mutual respect between BHPB Tintaya and the communities around it.

The advances through this process also demonstrate the importance of a dialogue mechanism that brings all stakeholders together to address and resolve conflicts. To the extent that the process advances and can show concrete results, it will affirm a culture of dialogue and coming together to replace the traditional models of confrontation.

PERSPECTIVES

The process opened up by the *Mesa de Diálogo* represents the beginning of a new stage in the relationship between BHPB Tintaya and the communities of Espinar. The success of the process will permit this new stage to be characterised by dialogue and mutual collaboration in which sustainable development is a guiding principle for the area impacted by the mining activities.

The dialogue process should define the new relationship between the communities and the mining company where the presence of mining is compatible with the aspirations of sustainable development and recognition of the economic, social, and cultural rights of the communities.

Development of the *Mesa de Diálogo*

The *Mesa de Diálogo* has had four plenary sessions attended by all the stakeholders. The first was on February 6 2002, the second on March 1, and the third on April 4, all in the city of Lima. A fourth meeting took place on June 7, 2002 in the town of Yauri, Espinar. There was no meeting in May because it was agreed by consensus that other activities would be suspended pending the clarification of an environmental incident in the oxide plant that caused the precipitation of copper hydrates in the Ccamacmayo (Huinumayo) basin, temporarily restricting water use for human and animal consumption.

From the beginning, it was agreed that participation in the *Mesa de Diálogo* would be voluntary, intensely participative and seek a harmonious long-term co-existence and mutual respect between the mining operation and the communities around it.

When activities re-started after the environmental incident had been overcome, the parties recognized that the *Mesa de Diálogo* had entered a second stage in which greater energies should be devoted to investigations regarding land claims, while other commissions should take on a more permanent nature. Additionally, there was a consensus that the issues of the distinct communities should be prioritised rather than addressed simultaneously, because they were not of the same nature. The communities themselves agreed that Tintaya Marquiri would receive first attention.

RESULTS TO DATE

With respect to the dialogue process the following results can be identified:

- The different parties involved have been organising themselves to approach the work in the *Mesa* and the respective commissions. This has meant forming of working teams of all participants (company, communities, CONACAMI, and the organisations that advise and support the communities) that have been going through an important learning experience that will strengthen their respective organisations and facilitate strategies that favour dialogue and consensus building in the resolution of conflicts.
- The identification by consensus of the main issues to be worked on by the *Mesa de Diálogo*: Land, Environment, Human Rights, and Sustainable Development.
- The agreement on a methodology that combines work in plenary sessions (meetings of the *Mesa de Diálogo*) supported by an external facilitator, with work in specific commissions. Up until now, with a few adjustments that have been applied in the development of the process itself, this approach has been working adequately.
- The ongoing commitment and participation, both in the plenary meetings and in the working



Maria Usca from the Tintaya Marquiri community dumps dead animals on the stage at a Community Congress hosted by the Mayor of Espinar. She angrily declares to the Mining Ombudsman that the dead animals were killed by pollution from the Tintaya mine site.

PHOTO: Ingrid Macdonald/Oxfam CAA

Based on these perspectives, the members of the Mesa de Diálogo declared:

- "Our satisfaction with the establishment of a dialogue process begun five months ago and our willingness to continue working to obtain satisfactory solutions for all involved parties.
- We are committed to maintaining a dialogue process that will last the time needed to find solutions to the issues of greatest importance.
- The issues of greatest concern to the parties are problems arising from the purchase and sale of land, protection of the environment, respect for human rights, and sustainable development.
- Through this dialogue process, we are convinced that we will be able to achieve a meaningful balance between the legitimate aspirations of the surrounding communities towards sustainable development, and the mining activities of BHPB Tintaya. In this way, we will lay the groundwork for a harmonious future and lasting coexistence between the mining company and the neighbouring communities and a desirable model for the solution of conflicts."

Oxfam Community Aid Abroad conclusions

The case investigation by the Oxfam Community Aid Abroad Mining Ombudsman was successful in facilitating a process aimed at addressing the grievances of the communities affected by the Tintaya mine. The affected communities have been involved at all stages of the process in order to ensure that their interests were/are not misrepresented by those involved in the dialogue process.

One of the primary goals of the Mining Ombudsman is to provide an avenue for community grievances to be heard by head office decision makers in Australia. However the success of this intervention was also a result of people at the highest levels in the company taking the results of the case investigation seriously. Anecdotal evidence suggests that before the involvement of the Mining Ombudsman, the BHPB Head Office in Melbourne had limited knowledge of the community grievances and demands. Furthermore, the communities benefited from having extremely well organised and prepared support from local community organisations that represented their interests in a forceful and competent manner. While it is refreshing to see a company responding to the serious community concerns over their activities, it is unfortunate that a non-government organisation such as Oxfam Community Aid Abroad has to fill the gap in the Australian regulatory system as it relates to Australian corporate governance abroad.

Recommendations

Oxfam Community Aid Abroad now has a monitoring role in the Tintaya case. The Mining Ombudsman process has served its purpose with the parties choosing their own course of action. However, the Oxfam Community Aid Abroad Mining Ombudsman is available to assist the process if requested by the communities and organisations involved (and has done so on one occasion). As a result, the only recommendations that Oxfam Community Aid Abroad has for this case are the following:

- That the company continues to play a productive part in the dialogue table process and does not attempt to negotiate individually with the community members.
- That the company recognises the grievances of the community as being the central element to the dialogue process and does not attempt to shift the agenda.
- That the outcomes of the investigations and meetings conducted by the four commissions of the dialogue table are honoured by the company, particularly where there have been human rights abuses, and where the awarding of compensation is deemed appropriate.
- That the company recognises the rights of communities to determine their own path of development and, as such, respects their right of self-determination and informed consent.
- That the dialogue process should not further disadvantage or disempower women by engaging exclusively with men.
- That the company should aim to address additional burdens placed upon women and their concerns in relation to the mine.

Maria Merma from Alto Huancane fears that she, her family and her livestock are drinking contaminated water from the stream that flows from the Tintaya mine site past her house. Merma told the Mining Ombudsman, 'The river is contaminated with sewage from the 3 camps and the hospital and also all the oil used for the machines and Oxide Plant is thrown into the water.'

PHOTO: Ingrid Macdonald/Oxfam CAA



Chronology of events – Tolukuma

1983:	Newmont Australia Ltd conducts mineral exploration.
1993:	Dome Resources acquires Newmont Australia's interest in Tolukuma.
1994:	Dome Resources obtains environmental approval and mining license.
1995:	Dome Resources commences mine operations.
2000:	DRD Ltd acquires Dome Resources and the Tolukuma mine.
21/3/2000:	A helicopter drops 1000kg of cyanide in the Yaloge River Valley 20km south of the Tolukuma mine.
12/4/2000:	Mining Ombudsman writes to Dome Resources outlining community concerns over Dome Resources' handling of the cyanide spill.
5/2000:	Minproc Limited submit an internal review on the Tolukuma mine for DRD Ltd.
23/8/2000:	Affected landowners forward a petition documenting their grievances about the Tolukuma mine to the company.
13/9/2000:	A helicopter spills 4000 litres of diesel fuel on the outskirts of the Tolukuma mine.
6/10/2000:	Tolukuma Gold Mine (TGM) and the PNG Government Office of the Environment and Conservation (OEC) respond separately to the petition on the 23/8/2000, both denying responsibility of liability associated with any of the landowner grievances.
1/2001:	Landowners affected by the TGM incorporate The Auga River Waterway Resource Owners Association (ARWROA) to represent them in dealings with TGM.
21/3/2001:	The landowners, dissatisfied with the response to their petition, write to the OEC indicating their intention to take legal action against the company.
23/4/2001:	Letter from OEC to TGM requesting immediate construction of a series of dams designed to minimise sedimentation and turbidity problems downstream. This letter also alludes to the need for further independent studies and the possibility of increased compensation to land owners dependant upon further investigation into the case.
23/5/2001:	NGO Environmental Watch Group (NEWG) faxes a letter to TGM requesting a re-negotiation of the landowners' compensation package.
3/8/2001:	Mining Ombudsman conducts a case investigation and hears submissions from more than 100 representatives from 24 villages.
3/8/2001:	ARWROA writes to Oxfam Community Aid Abroad requesting assistance in the negotiation of the Tolukuma case.
14/8/2001:	Mining Ombudsman writes to DRD. A repeat letter is sent on 25 October 2001 with a copy also sent to OEC. To date no response has been forthcoming.
18/6/2002:	Mining Ombudsman sends a letter to DRD Ltd and NM Rothschild (Australia), a major shareholder, outlining community grievances.
29/7/2002:	NEWG and Centre for Environmental Law and Community Rights (CELCOR) visit the affected communities to conduct scientific testing and obtain information for legal proceedings.

Case 2: Tolukuma



- Resource:**
Gold
- Mine location:**
100km north of Port Moresby in the Central Province of Papua New Guinea.
- Mining method:**
Open pit/underground mine
- Affected communities:**
Yaloge, Fuyuge, Roro, Mekeo, and Kuni people.
- Community groups:**
Auga River Waterway Resource Owners Association (ARWROA)
- Community support groups:**
Environmental Law Centre (ELC)
Centre for Environmental law and Community Rights (CELCOR)
Non-Government Environmental Watch Group (NEWG)
- Mine operator:**
Tolukuma Gold Mine (TGM)
- Mine owner/s:**
(1983 – 1993) Newmont Australia Ltd
(1993 – 1999) Dome Resources
(1999 – present) Durban Roodeport Deep (DRD) Ltd

"An evil force has now descended upon my land... in the form of dumping mine wastes into the river system. This activity has destroyed the river ecosystem, our dependence on the river and thus our life."

Mr Morris Movi of Yuma Village

Request

Oxfam Community Aid Abroad's involvement with the Tolukuma case began in 2000 when the Mining Ombudsman was requested to take up community concerns over a cyanide spill with Dome Resources in Australia. This initial request was followed by a Mining Ombudsman case investigation in 2001 where ARWROA formally requested the Mining Ombudsman to support their activities in Australia.

Grievances

"The development process forced the people to sacrifice their traditional values for money... The rural populations are not going to sacrifice their resources or values for those who sit in modern, air-conditioned buildings and comfortable chairs and benefit from their sacrifices. The silent majority are living a sacrificial life while mining activities are making profits in PNG. Development is like 'using the illiterate to benefit the literate'."⁶⁰

The nature of the communities' grievances were validated by a Mining Ombudsman case investigation and other recent investigations by PNG non-government organisations NEWG and CELCOR. The grievances were presented to TGM and the OEC in the form of a petition organised by ARWROA, the communities' chosen representative body, over two years ago. However, neither OEC nor TGM has accepted the validity of these claims and both have refused to enter into compensation negotiations. As a result, the communities are currently exploring legal avenues to have their grievances addressed.

There are two broad groups of communities affected by the Tolukuma mine. The first group is the Fuyuge, Kuni, Mekeo, and Roro people who live along the Auga, Arabule, and Angabanga river systems; the second is the Yaloge people who live along the Yaloge River.

The Fuyuge, Kuni, Mekeo and Roro peoples

The grievances of these communities relate directly to the pollution of the Auga River system. The communities living along the Auga River are the Fuyuge people who occupy the territory between the mine up to 30km down stream, the Kuni people approximately 30 – 50km downstream, the Mekeo people 50 – 90km downstream and the Roro people 90 – 100km downstream at the river mouth.

TGM pumps over 50,000 tonnes of mine waste into the Auga River system every year, contaminating and

discolouring the river. TGM opted for riverine tailings disposal even though it was aware that this would have severe impacts upon the environment. This was shown in research conducted for Dome prior to the mine opening, which stated that the "resulting high sediment deposition rates are expected to cause oblitative impacts on the fish habitats and food resources".⁶¹

The grievances are as follows:

- Communities attribute the deaths of more than thirty people to having had regular exposure to the Auga River.
- Communities report that betel nut and other fruit trees in and on the banks of the Auga River are severely depleted.
- Communities report that the amount of fish, prawn and eel populations have significantly reduced. There is concern that they have disappeared in long stretches of the Auga River. Villagers have regularly reported fish kills in the river.
- Communities state that mine waste has permanently damaged sacred sites and ritual areas on the Auga River and that TGM has not made adequate efforts to understand local customs to find these sacred sites and show respect for them.



Matilda Koma from NEWG on her way to undertake hydrological tests on the Auga River downstream from the Tolukuma mine site.

Photo courtesy Matilda Koma, NEWG PNG



- It is reported that sediment build up in the Auga River has resulted in people not being able to cross the river, as they cannot see the depth of the riverbed. Villagers also report that sand beaches along the river are now covered by mud.
- In dry seasons, people are dependent on the Auga River for clean drinking and washing water, but they believe they can no longer use this source due to contamination in the river. Specific examples are the Yumu and Tulala villages, whose other water sources are often exhausted in dry seasons.
- TGM is reported to have not honoured the original Memorandum of Agreement (MOA) by declining to provide tangible infrastructure developments such as houses, roads or bridges; support local people in mine business spin-offs or contracts at the mine site; or provide local people with training opportunities to access local positions at the mine.
- Communities complain that the compensation that has been given has been inadequate and not directed to all affected communities.
- Alcohol abuse has occurred at the mine site and the incidence of HIV/AIDS is reported to have risen.

Evidence of river pollution

Evidence supporting allegations and demands relating to the pollution of the Auga River has been found in various independent and internal DRD studies. In 1998 a survey conducted by Unisearch revealed mercury levels exceeding Australia New Zealand Food Authority (ANZFA) maximum permitted concentrations in fish species. Furthermore, the OEC found that mercury levels in the Auga River exceeded acceptable levels in the months of May, June and November in 1999. As a result, it requested a joint survey to identify the source of the mercury.⁶² Additionally, a DRD – funded private review of the Tolukuma Mine conducted by Minproc Limited in May 2000 found that:

"Discharged tailings have a very high total heavy metals content which is unlikely to meet compliance... This presents a pool of heavy metals which over time may become available for biological uptake by the Auga and Angabanga river systems."⁶³

"The location of the sample site in the Auga River which determines the impacts from tailings discharge is located 7 kilometres downstream of the discharge point. Common practice for measuring tailings discharge is to have the sample site at the closest point to discharge or within 500m. 'If this was to be changed by the regulatory authorities then it is very likely that discharges would not meet compliance criteria.'"⁶⁴

Furthermore, graphical information attached to an internal DRD email⁶⁵ dated 19 July 2000, shows mercury discharges measured from company inspection points at levels fifteen times the documented permissible level of 20kg per day. On specific days in January, February, March, April and May 2000 more than 150kg of mercury was discharged, the most being in February when 300kg of mercury was discharged in one day. In May 2000 an average of more than 90kg of mercury was discharged daily while in February it was above 80kg.⁶⁶

In a memorandum dated 13 July 2000, DRD's Chief Executive Officer Mark Wellesley-Wood, indicated his concern regarding legal and financial implications arising from the mercury discharges stating that:

"I noted in the review conducted by D v/d Bergh and M McWha that TGM has a mercury problem...

It would appear that one of the unfortunate chemical properties of mercury is its persistence and ability to concentrate in the food chain. Its effect on humans – birth of deformed babies – is also obnoxious.

This is a crucial risk management exercise and one that, if we get wrong, could have a disastrous effect on the group."⁶⁷

However, Oxfam Community Aid Abroad has found no record of public disclosure by DRD in PNG, Australia or South Africa of the higher than permissible mercury levels. The ongoing environmental and health problems emanating from the mine and the absence of a public admission of the mercury discharges indicates that the communities downstream have been placed in a position of enormous risk due to DRD's actions, and subsequent apparent inaction as the case may be. Additionally the Minproc review highlighted unsafe labour practices due to the inefficient monitoring of vaporised mercury at the mine site. It remains unclear whether measures have been taken to address this.⁶⁸

In addition to high toxicity levels emanating from mine discharges, there is evidence to suggest that the quantity of tailings discharged into the river system may be exceeding permissible levels outlined in the Tolukuma environmental plan approved by the PNG government. This plan allows for the TGM to "discharge a volume of tailings equivalent to the plant's nominal capacity of 100 000 tonnes per annum."⁶⁹ However, Miningweb reported in late 2001 that DRD had received financial backing to increase production at the Tolukuma mine by 50%,⁷⁰ and DRD's Tolukuma mine manager announced in the same article that gold production 'was planned to rise to 115 000 oz next year [and] life expectancy will be further enhanced by the increased exploration programme we are currently undertaking'.⁷¹ The Minproc review recommended that :

"[I]f the life of TGM is extended considerably, then it would be prudent to identify a tailings disposal site in the Auga Valley."⁷²

Neither the communities affected by the Tolukuma mine nor Oxfam Community Aid Abroad have been informed of plans to develop alternative methods to handle mine tailings irrespective of the increased capacity of the mine or the projected extended life of the mine.

The Yaloge people

Cyanide at Tolukuma

Diluted solutions of sodium cyanide are used to leach gold from finely ground ore extracted from the open-pit mine. This is a common method of extraction for many large-scale gold mining operations. The cyanide is extremely poisonous and can be fatal if it is swallowed, breathed or contacted by the skin. Cyanide inhibits or prevents cells from taking up oxygen, resulting in damage to the brain and heart through oxygen deprivation. It can kill in minutes or over longer periods depending on the level of exposure.

There is no vehicle access to the mine at Tolukuma and therefore the cyanide is transported to the mine by helicopter. The cyanide is usually transported in two 1000kg containers on an open sled, which dangles beneath the helicopter. They are reportedly secured with inadequate strapping which supports the sides, but not the ends of the containers.

The International Civil Aviation Organisation (ICAO), of which PNG is a member, has declared cyanide to be a Group One Substance of "great danger" that should only be carried in maximum loads of 50kg, contained within packages of no more than 2.5kg. The practice at Tolukuma clearly contravenes these ICAO standards.

Communities have regularly complained of drums and other items falling from helicopters.

The Yaloge people were affected when one tonne of cyanide was dropped from a helicopter in the Yaloge River valley on the way to the Tolukuma Gold Mine.

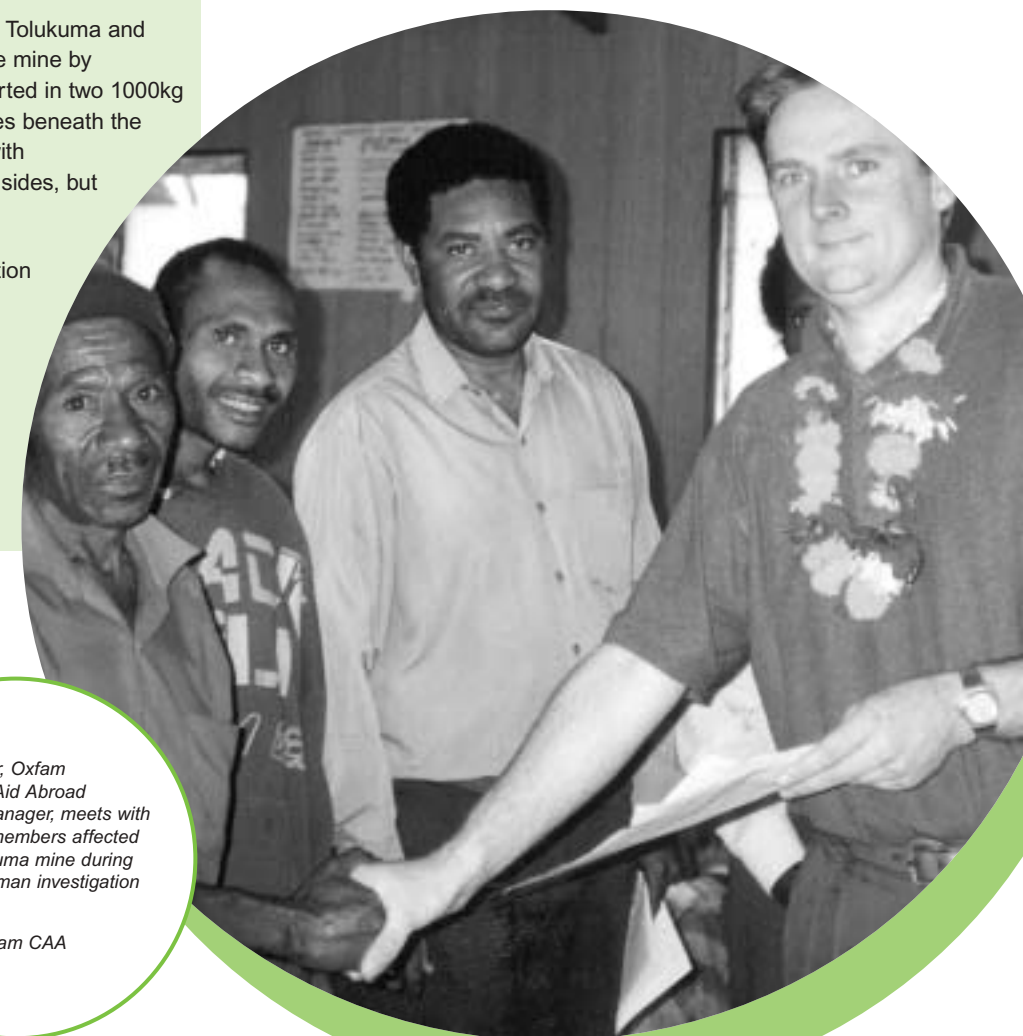
James Ensor, Oxfam Community Aid Abroad Advocacy Manager, meets with community members affected by the Tolukuma mine during the Ombudsman investigation in 2001.

PHOTO: Oxfam CAA

The cyanide crashed approximately 20 metres from a stream that was the main source of water for villagers downstream at the Inaina village. Three days after the spill, TGM announced that clean up operations had been completed, however it continued to advise villagers downstream to avoid using water from the stream, and provided some water to the community. TGM's claims that the clean-up operation was completed were found to be untrue when a team of landowners and local and international NGOs conducted scientific analysis at the test site and recorded testimonials from the affected communities. The results of this investigation showed:

- High anxiety amongst affected communities due to poor communication from TGM
- Incomplete clean-up operations
- Inadequate provision of water and supplies to affected communities
- High levels of toxicity in the water
- Downstream fish kills
- Significant residual contamination at the crash site

Complete findings of this investigation are documented in *Cyanide Crash*.⁷³





Local people crossing a river that has been polluted and discoloured by run-off from the Tolukuma mine in Papua New Guinea.

Photo courtesy Matilda Koma, NEWG PNG

DRD's Responsibilities to the PNG Government

Tolukuma Gold Mine was granted permission to operate on 24 May 1994 subject to twelve Ministerial conditions that TGM is contractually obligated to follow. The review conducted by Minproc Ltd in 2000 alerted DRD to its responsibilities laid out in these Ministerial conditions. In the preamble to these conditions, the Minister for Environment and Conservation urged the Tolukuma Gold Mine:

"To adopt a policy of continuous investigation/analysis and adoption of means and ways to contain mine waste on land rather than direct river discharge."⁷⁵

However, mine waste from the Tolukuma mine is still being discharged into the river.

DRD is in breach of the following conditions that have important implications for the communities:

- Condition 9: "In respect of environmental restoration, all rehabilitation shall be undertaken on a progressive basis throughout the mine life and shall be reported to the Secretary at six monthly intervals for approval prior to their implementation starting in the first calendar year after gold mill plant operation. A final site rehabilitation plan shall be submitted four years from the date of final plant commissioning, or as is agreed with the Secretary, and such shall be implemented as is approved."

According to this condition a rehabilitation plan was due to be submitted in 1999, however to date Oxfam Community Aid Abroad is not aware that any such plan has been forthcoming. The Minproc review stated that none had been produced at the time of its submission in May 2000.

- Condition 4: "The company shall conduct dumping of waste rock with dumping strategies in accordance with sound mining practices and shall endeavour to minimise total suspended solids (TSS) input to the river systems during the construction and operational phases of the project, and thereafter."⁷⁷

The Minproc report found that erosion from "waste dumps and other disturbed operational surfaces",⁷⁸ as well as tailings disposal, contributed to TSS in water and recommended steps be taken to address this problem. The extent to which this problem has been addressed is unknown.

Due to poor communication between TGM and the affected communities, neither the company nor the PNG Government have ever investigated reports of up to six deaths attributed to the cyanide spill. Post mortem studies to determine the reason for death are also virtually impossible in such rural communities. There is therefore almost no chance of validating the community reports, or of the community receiving compensation from TGM or the government. Additional effects of the spill have been that many people have deserted their homes near the river and moved further inland, and there are reports of widespread loss of wildlife up to twenty kilometres downstream from the spill. These facts have gone unnoticed and uncompensated by the company.

The Yaloge people are seeking compensation for:

- Devastating psychological and physical impacts of the cyanide spill.
- Illegal and unsafe packaging of the cyanide.
- Illegal and unsafe transportation of the cyanide.
- Inadequate measures undertaken by TGM immediately following the spill.

In the same year as the cyanide spill, a helicopter dropped 4,000 litres of diesel with similar severe consequences.

The Minproc review of 2000 also describes the poor maintenance of the helicopters used at Tolukuma, reporting that:

"Equipment maintenance has been of a poor quality. The maintenance of the mobile fleet has been described as only being on a break down basis. Expenditure on maintenance has been minimal."⁷⁴

It is not clear if the mobile fleet operating at Tolukuma has been updated, or transport and handling procedures improved.

Action taken

The Mining Ombudsman conducted a field investigation in 2001 and wrote several letters to DRD Ltd, which acquired Dome Resources in 1999. The Mining Ombudsman also wrote to NM Rothschild (Australia), a shareholder of DRD. At the time of this publication neither DRD nor NM Rothschild (Australia) had responded to the community grievances.

Due to the unwillingness of TGM, DRD, and the OEC to recognise the serious grievances of the affected communities, ARWLOA has investigated legal proceedings as a final recourse in order to secure compensation for the impacts of the Tolukuma mine. In July 2002, NEWG and CELCOR conducted scientific and social assessments to confirm these allegations by affected communities and pursue further action if necessary. The Mining Ombudsman fully supports this action and is similarly frustrated with DRD's unwillingness to negotiate these extremely important issues.

Recommendations

- That DRD recognises the serious grievances of the communities and immediately enter a negotiated process by which fair compensation is provided to all communities.
- That DRD immediately finds an alternative method of waste disposal that will not further pollute the Auga River system and further undermine the health and wellbeing of the communities that rely upon it. This is also the expressed wish of the PNG Minister for Environment and Conservation.
- That OEC fully support ARWROA in ensuring DRD honours its obligations in respect of the environment and the communities that are affected by mining activities.
- That DRD transports all materials in a safe manner that does not place communities and environments at risk.
- That DRD follows internationally accepted guidelines on the packaging, handling and transporting of cyanide. Cost is no excuse where human lives are at stake.
- That DRD secures all mine developments in order to prevent further erosion leading to increased pollution in the river system.
- That DRD immediately begins rehabilitation activities in full participation with affected

communities, as required through its contractual agreements.

- That DRD immediately places its discharge sampling point at the closest possible location to the discharge point within 500m, as is common practice outlined in the Minproc Review in May 2000.
- That DRD puts in place a process whereby communities downstream are informed quickly and accurately of toxicity levels in the river system and are provided alternative water to cover all of their daily needs when required.
- That DRD honours all commitments and contractual obligations as laid out in the PNG Ministerial Conditions for approval for the operations of the Tolukuma Gold Mine.
- DRD provide alternate water supply for the Fuyuge communities directly affected by direct disposal of mine tailings into the Auga river.

It is now unfortunate that an evil force has now descended upon my land cutting my people's lifeline. My people's lives are now seeping out and we are helpless to contain it. Many of my people have died as a result... The evil force comes in the form of dumping mine wastes into the river system. This activity has destroyed the river ecosystem, our dependence on the river and thus our life.

Mr Morris Movi of Yumu Village.



A local family – that has been affected by the Tolukuma mine in particular contamination of the river.

Photo courtesy Matilda Koma, NEWG PNG

Chronology of events – Rawas

- 12/1986: PT Barisan Tropical Mining (PT-BTM) obtains a Contract of Work from the Indonesian Government with a lease area of 117 square kilometres.
- 1/1997: Open-pit mining operations begin.
- 3/1997: A large fish kill witnessed in the Lasun River and Tiku River.
- 3/1997: 1,620 square kilometres surrounding the original lease area obtained under the name of PT Barisan Sumatra Mining.
- 8/1998: The death of a child attributed by villagers to pollution from the river.
- 9/1998: PT-BTM's Environment Manager admits that while a new tailings dam was being constructed the company was discharging mine waste directly into the river.
- 16/12/1998: Villagers along the Tiku River witness another large fish kill. As a result WALHI SumSel (local NGO) begins monitoring the quality of the river water from December 1998 until February 1999.
- 7/1999: Forty youths from villages near the mine protest to the Bupati Lubuk Linggau (Lubuk Linggau village head). They deliver a letter that highlights concerns over pollution from the mine, lack of employment of locals by the company, and general lack of benefits for local people.
- 8/2/1999: Local community members meet with the company to present their grievances. There is no resolution, as both sides reject each other's position.
- 8/1999: Durban Roodepoort Deep Ltd (DRD) takes control of the Rawas mine.
- 18/1/2000: Mining Ombudsman sends a letter to Laverton Gold NL asking for a response to community concerns about the Rawas Mine.
- 22/1/2000: WALHI Sumsel issues a media release calling for the President to "decommission all mining activities of PT-BTM until the company improves its methods of production and processing, in compliance with zero emission requirements, and fulfils its social responsibilities."
- 1/2/2000: A letter is sent to the President of Indonesia repeating the demands made on 22/1/2000.
- 20/2/2000: Sixty local people sign a letter to the Bupati (village head) demanding that tailings in the dam be neutralised and that the company employ more locals.
- 3/2000: Mine is closed.
- 5/2000: Mining Ombudsman visits the mine site and witnesses pollution emanating from the mine site into the river. He also sees signs at the mine's base camp warning employees not to drink or bath in the river.
- 5/2000: Another fish kill in the Tiku River is witnessed by communities, prompting 69 people from KMPI to sign a letter to the Minister of Mines and Energy complaining about the company polluting their river. As a result, two Ministry officials visit the mine site approximately six weeks later to conduct a direct investigation. Their conclusions were that "the community does not need to be concerned or uncertain about consuming water from the Tiku River for their daily needs as there is no pollution."
- 18/1/2001: Mining Ombudsman writes a letter to Laverton Gold NL outlining community grievances. Follow up letters are sent to the company on the 22 August 2001 and 29 October 2001. This letter is also forwarded to Consolidated African Mines Australia Pty Ltd, a major shareholder in Laverton Gold.⁸²

Case 3:
Rawas



- Resource:**
Gold
- Mine location:**
Musi Rawas District, South Sumatra, Indonesia
- Mining method:**
Four Open pits, now decommissioned
- Affected communities:**
Over 15,000 people potentially affected by mine.⁷⁹ Specifically, eight villages on the banks of the Tiku River have been seriously affected: Muara Pusan; Lubuk Tambak; Tanjung Bengkuang; Tanjung Harapan; Desa Sungai Jambu; Lubuk Pelubang; Desa Sungai Beringin; and Lubuk Pah.
- Community support groups:**
WALHI SUMSEL⁸⁰ – Indonesian Forum for the Environment, South Sumatra (Friends of the Earth Indonesia) *Email: walhi@walhi.or.id*
Lembaga Bantuan Hukum Palembang (LBH – Palembang Legal Aid Institute).
Kesatuan Solidaritas Kesejahteraan Petani (KSKP – Local Farmers Solidarity Union)
- Mine operator/s:**
(1986 – 1999) P.T. Barisan Tropical Mining
- Ownership:**
Laverton Gold NL
Durban Roodepoort Deep Limited

"The communities living at Rawas were not a party to the negotiations that affect their present and future livelihoods. Their serious grievances were neglected..."

Request

Oxfam Community Aid Abroad has a long involvement with the communities affected by the Rawas mine. This dates back to 1998 when the Indonesian NGO, WALHI, brought community grievances to the attention of Oxfam Community Aid Abroad. The case was subsequently taken up the Mining Ombudsman when case investigations were undertaken.

Grievances

As detailed in the 2000 – 2001 Annual Report, there are three essential grievances of the communities affected by the Rawas mine:

1. Pollution of the Tiku River (Sungai Tiku), which is reported to have had severe impacts upon fish stocks and income generation, and caused serious health problems.
2. Forced land acquisition and inadequate compensation which is reported to have been detrimental to livelihoods and income generation.
3. Other impacts that are reported to have had negative consequences on community livelihoods such as less productive rubber trees due to pollution, damaged fruit trees from mine explosions and reduced honey production due to lights from the mine scaring off wild bees.

The closure of the mine in March 2000 severely affected community income generation and livelihoods. Hundreds of workers lost their employment in the mine and flow-on industries spawned by mine operations.

The new mine operator DRD is reported to have not fully committed to mine rehabilitation and reclamation activities. DRD is currently embroiled in a complex corporate dispute over losses from the acquisition of the Rawas mine. Meanwhile pollution and compensation issues remain outstanding and both DRD Ltd and Laverton Gold NL, the former mine operators, appear indifferent to these issues.

Who owns the Rawas mine?
Ownership of the Rawas mine remains in dispute, and this is also a difficulty for the communities. DRD took operating control of the mine in August 1998, obtained revenue from mine operations and spent R20 million developing the project until the mine was closed in March 2000. DRD has since asserted that shares issued by former directors of DRD for the acquisition of PT Barisan Tropical Mining were issued invalidly, therefore rendering the transaction invalid. DRD's

- 8/11/2001: Laverton Gold NL replies to the Ombudsman letters stating that DRD has taken control of the mine and "duty of care and responsibility pertaining to the Rawas mine rehabilitation rightly rests with the owner."⁸³
- 15/2/2002: Mining Ombudsman writes to DRD asking for a response to community grievances regarding the Rawas Mine. Follow up letters are sent on the 18 June 2002 to DRD and NM Rothschilds (Australia), a major shareholder in DRD Ltd. To date no reply has been received.
- 7/6/2002: DRD CEO announces that it has "issued proceedings in the Supreme Court of Western Australia against a number of individuals and companies for the recovery of 'misappropriated funds' during the company's Australasian expansion."⁸⁴

Testing water in the Tiku River for pollution.

PHOTO: Jeff Atkinson /Oxfam CAA



current CEO, Mark Wellesley-Wood, has stated that "DRD shareholders' funds were applied to a financial rescue of Laverton Gold, from which DRD saw no benefit" and that they "would consider legal action [against the relevant directors] where there were reasonable prospects of success."⁸⁵

Although Laverton advised Oxfam Community Aid Abroad that DRD took control of the mine in August 1999,⁸⁶ Laverton's former Managing Director, Barry Bolitho, stated on 31 January 2000 that "Laverton retains ownership of the 1620sqkm Contract of Work 2."⁸⁷ Furthermore, on 31 October 2000, Laverton's director stated that "[e]xploration activities continued on COW 2 [Contract of Work 2], until 15 August 2000 when all field based exploration activities were terminated."⁸⁸ This indicates that while DRD may have had operational control of the mine, Laverton retained a significant exploration interest in the overall project.

Additionally, in June 2002 DRD pursued legal action in the Supreme Court of Western Australia against some of its former directors and consultants in order to recover 'misappropriated funds' from other transactions in DRD's Australasian expansion.⁸⁹ Meanwhile, in South Africa, DRD's current CEO is claiming that conflicts of interest relating to the powerful Kebble family have cost the company R35 million.⁹⁰ While the dispute in South Africa and the current legal proceedings in Australia demonstrate enormous complications and conflicts in DRD's Australasian business development, they are not resolving the ownership issue at Rawas.

Evidently, there are complex legal issues involved in the conflict over ownership of this mine. As a result, obligations vis-à-vis PT-BTM's environmental rehabilitation and compensation issues remain unresolved. Laverton is currently not operating, as it has been voluntarily suspended from the Australian Stock Exchange whilst awaiting resolution of this issue. DRD is "yet to decide whether to finalise the Rawas transaction or walk away and cancel."⁹¹ There has been no indication by either company that community concerns have played any role in their operational decisions. While ownership of the mine is still disputed, the community's concerns are not being addressed and local people continue to suffer.

Recommendations

The rights of the communities affected by the Rawas mine have not only been violated, they have been forgotten. The communities living at Rawas were not a party to the negotiations that affect their present and future livelihoods. Their serious grievances were neglected because their right to determine their own future and the future of their lands was never recognised.

Currently neither company appears to have plans to undertake environmental rehabilitation and resolve outstanding compensation issues. Therefore, the Mining Ombudsman recommends that:

- Both companies immediately deal with the grievances of communities affected by the Rawas mine and engage with these communities to facilitate environmental rehabilitation and resolution of compensation issues.
- That PT-BTM (whomever the owner is) honours its obligation to environmental rehabilitation and resolution of compensation payments.
- That exploration activities are not permitted to resume until the ownership issue is resolved and until the men and women of the affected communities have a full participatory role in all decisions relating to mine activities at Rawas, including a right to prior, free and informed consent to all exploration activities.

This case demonstrates where extraterritorial legislation could have played a crucial role in assuring community representation and transparency in negotiations. If benchmarks such as those detailed in this report were established as a baseline for mine operations, the negatively affected communities would have been able to exert control over the future of their lands and livelihoods. The Mining Ombudsman recommends that:

- The mining industry in collaboration with the Australian government move to implement an industry complaints mechanism with sanctions that will aim to protect and uphold the universal human rights of women and men affected by mining activities. This case demonstrates where such a mechanism would have protected both shareholders and affected communities.

Case 4: Kelian – Update



Resource:
Gold

Mine location:
East Kalimantan

Mining methods:
Open-pit

Affected communities:
Dayak communities

Community groups:
LKMTL – Lembaga Kesejahteraan Masyarakat Tambang & Lingkungan (Council for People's Prosperity, mining and Environment)

Community support groups:
WALHI – Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment – Friends of the Earth Indonesia)
www.walhi.or.id
JATAM – Jaringan Advokasi Tambang (Indonesian Mining Advocacy Network)
www.jatam.org

Mine operator/s:
PT Kelian Equatorial Mining (PT KEM)

Mine owner:
Rio Tinto (90%)
PT Harita Jayaraya (10%)

2. Communities reported that the level of compensation paid was inadequate and the company did not always honour established compensation agreements.
3. Communities stated that the company misled the community with assurances of jobs at the mine.
4. Small-scale miners reported that their legal status was revoked on the mining lease area and that they were displaced without compensation.
5. Communities were concerned with increased health problems due to dust rising from the unsealed road built by Kelian for mine traffic.
6. The Kelian River at Kelian Dalam is reported to be no longer safe for human usage and that there are no fish left in the river due to pollution from the mine.
7. Communities reported human rights violations committed by BRIMOB in the eviction of communities from the lease area.

Update

Given the dialogue being undertaken at a local level between the company and the communities over the past 12 months, the Mining Ombudsman has not been requested by the communities to take any further action in Australia with regard to this mine.

PT KEM will close the mine in 2004 when it anticipates processing the last of the remaining ores. Accordingly, PT KEM has entered into the pre-mine closure phase of operations. A dialogue process, the Mine Closure Steering Committee, involving LKMTL has been established to address the potential problems of this phase of operations. The success of this initiative will depend largely upon PT KEM's commitment to supporting the community once the mine is no longer drawing profits for the company. While PT KEM has been operating the mine for over ten years, it has publicly stated that it will only monitor environmental repercussions for three years following mine closure, until 2007. While PT KEM has entered into dialogue over mine closure activities, the grievances listed above appear to remain outstanding. Negotiations on these issues appear to have stalled.

The Mining Ombudsman will continue to monitor this case to ensure mine closure is undertaken in a participatory manner that respects the rights of the community. The Mining Ombudsman also recommends that Rio Tinto resolve the longstanding compensation and environmental grievances as well as undertaking mine closure operations.

Request

Oxfam Community Aid Abroad received a formal request from the communities to take their grievances to Rio Tinto in Australia in September 1997, before the establishment of the Oxfam Community Aid Abroad Mining Ombudsman.

Grievances

The original grievances voiced by the community were:

1. Villages, sub-villages, and surrounding environments were allegedly destroyed to make way for the mine and associated infrastructure.

Chronology of events – Indo Muro Kencana

* Indicates direct human rights violation.

1993:	Aurora Gold acquires 90% interest in PT IMK (increases to 100%).
1994:	Indo Muro Kencana Gold mine opened.
1996:	Community concerns are brought to the attention of Oxfam Community Aid Abroad.
1997:	Oxfam Community Aid Abroad is asked by community representatives to take up their case with Aurora Gold in Australia.
1997:	Oxfam Community Aid Abroad visits the NGOs and communities affected by the Indo Muro mine.
1/1998:	A representative of the affected Dayak communities travels to Australia to speak directly with the company.
1/1998:	Video interviews and footage of environmental pollution around the mine site are collected.
4/8/1998:	Yayasan Bina Sumber Daya (YBSD) presents a list of 2,292 complainants, their complaints, and a list of seven demands to Aurora Gold, the Australian Embassy in Jakarta, the Indonesian National Human Rights Commission, and the Ministry of Mines.
1998:	Jeff Atkinson (former Oxfam Community Aid Abroad Mining Ombudsman) produces the publication <i>Undermined: The Impact of Australian Mining Companies in Developing Countries</i> (1998), which includes research on the Indo Muro mine.
1/1999:	Oxfam Community Aid Abroad visits the community a second time for further investigations.
8/1999:	Aurora Gold responds to the list of demands and complaints presented by YBSD on 4/8/98.
8/1999:	YBSD expresses disappointment at the company's stance. They announce that negotiations are deadlocked and that both parties agree that there is no possibility of future negotiations.
25/5/2001:	The Australian Ambassador visits the Aurora Gold mine site and has discussions with company directors and provincial government officials, in which he stresses the need to protect the investment of Australian mining companies, particularly as it relates to illegal miners.
*5/6/2001:	Shooting incidents result in the deaths of two people and wounding of three others, when BRIMOB, (Mobile Brigade, the elite unit of the Indonesian Federal Police Force) officers confront so-called illegal miners.
*27/8/2001:	A teenage boy (considered to be an illegal miner) is shot in the leg.
*19/1/2002:	At approximately 7:00am, a local man (considered to be an illegal miner) is shot in the head with a rubber bullet at short range by BRIMOB causing serious injury.
19/1/2002:	At approximately 11:30am, the local Dayak community protests and blockades Aurora Gold's roads and processing plant.
31/1/2002:	Oxfam Community Aid Abroad Mining Ombudsman writes to Michael L Jeffries (CEO of Aurora Gold) asking for a reply to the allegations of human rights abuses occurring at the mine site.
18/2/2002:	Senator Bob Brown tables questions in the Senate to the Minister for Foreign Affairs regarding the involvement of Australian embassy officials in the human rights violations at the Indo Muro mine site.

Case 5:
Indo Muro Kencana



- Resource:**
Gold and silver
- Mine location:**
Central Kalimantan, Indonesia.
- Mining method:**
Multiple pits
- Affected communities:**
Indigenous Dayak people and surrounding villages.
- Community group:**
YBSD – Yayasan Bina Sumber Daya (Foundation for Resource Development)
- Community support groups:**
WALHI – Wahana Lingkungan Hidup (Indonesian Forum for the Environment – Friends of the Earth Indonesia) <http://www.walhi.org.id/>
JATAM – Jaringan Advokasi Tambang (Indonesian Mining Advocacy Network) www.jatam.org.id
TATR – Tim Advokasi Tambang Rakyat (Traditional Mining Advocacy Team)
- Mine operator/s:**
PT Indo Muro Kencana (PT IMK)
- Ownership:**
100% Aurora Gold

"The use of force and discharging of weapons by BRIMOB officers at the Indo Muro mine seriously wounded and killed unarmed community members. Oxfam Community Aid Abroad cannot condone the use of excessive force for the protection of corporate assets..."

Request

In 1997, the communities affected by the Indo Muro mine asked Oxfam Community Aid Abroad to take up their case with Aurora Gold in Australia. Unfortunately, the affected communities lost patience with the process as they continued to experience human rights violations and received little more than rhetoric from the company. The affected communities are now at a point where they have no other recourse than legal proceedings. The Oxfam Community Aid Abroad Mining Ombudsman supports this action, as in this instance, it appears that Aurora Gold Ltd does not intend to adhere to internationally accepted human rights standards.

This case highlights the need for clear Australian regulations controlling the activities of the mining industry abroad and an independent complaints mechanism that communities may access in order to have their human rights upheld.

Grievances

Despite attempts by Oxfam Community Aid Abroad and Indonesian NGOs to facilitate meaningful dialogue between Aurora Gold and the local communities, there has been no satisfactory resolution of the serious human rights violations and community demands reported in the *Mining Ombudsman Annual Report 2000 – 2001*. Indeed, since last year's report, there has been an escalation of violence at the site, generating protests from the community. On 19 January 2002, approximately 2000 people made the following five demands at a community demonstration:

1. That Aurora Gold/PT IMK is held responsible for the victimisation of the community by BRIMOB police officer shootings. Aurora Gold/PT IMK must cease all operations until this victimisation ends.
2. That BRIMOB police officers are no longer posted at the Aurora Gold/PT IMK mine site area.
3. That the BRIMOB police officer responsible for the shooting of 19 January 2001 is investigated and held responsible for his actions.
4. That Aurora Gold/PT IMK cease operations at the Murung Raya area.
5. That the government and/or independent bodies responsible for investigating and taking action on such instances, investigate the claims of violence and human rights violations against the communities and the traditional small-scale miners by the BRIMOB police officers on behalf of Aurora Gold/PT IMK.⁹³

22/2/2002:	Mr. Michael L Jeffries writes to the Mining Ombudsman defending his company's position as it relates to the human rights violations.
17/5/2002:	Aurora Gold releases a press statement announcing the sale of the Indo Muro mine to Archipelago Resources, another Australian mining company, which plans to develop the western areas of the lease. Aurora Gold is still responsible for the reclamation of the current mine site.
30/6/2002:	Aurora Gold officially closes the Indo Muro mine.
15/7/2002:	The Oxfam Community Aid Abroad Executive Director writes to the Minister for Foreign Affairs calling for an independent inquiry into allegations that Australian Embassy officials lobbied Indonesian officials to deal with so-called illegal miners at the Indo Muro mine. Other Australian NGOs also call for an independent inquiry.
26/7/2002:	Ms. Jennifer Rawson from the Department of Foreign Affairs and Trade writes to Oxfam Community Aid Abroad stating, "An independent inquiry... is unwarranted." ⁹²
30/7/2002:	29 indigenous people of the Dayak Siang, Dayak Murung and Dayak Bakumpai communities file a lawsuit through the 'Tim Advokasi Tambang Rakyat' (Traditional Mining Advocacy Team or TATR) against Aurora Gold in the South Jakarta State Court claiming damages over their illegal and violent evictions from their land.
1/8/2002:	Archipelago Resources takes over management responsibilities of the Indo Muro mine.



Women washing clothes by a heavily polluted stream, East Kalimantan Indonesia.
PHOTO: Jeff Atkinson /Oxfam CAA



Small-scale gold mining near East Kalimantan, Indonesia. There have been reports of small-scale miners being shot and killed at the Indo Muro Mine site by mine security.

PHOTO: Courtesy of JATAM



from their homes, which have then been destroyed and their livestock has perished.

3. Before leaving the area, Aurora Gold/PT IMK must rehabilitate the environment that has suffered degradation because of its operations, including the rivers, forests, land gardens, and the mining pits.

4. Aurora Gold/PT IMK and companies operating under Aurora Gold/PT IMK must admit responsibility for violating the traditional laws of the communities and pay compensation for damaging indigenous and sacred land, community rivers and community culture.

5. Aurora Gold/PT IMK must admit responsibility and pay compensation for the takeover of community land and damage to all other community property because of their operations. The payment must be made in transparent manner that it acceptable to the communities.

6. Aurora Gold/PT IMK must pay royalties to the community, especially since the communities originally discovered the gold in the region.

7. Aurora Gold/PT IMK must seriously address the demands of the communities and not act in collusion with government bodies or government officials or seek to cause conflict within the community.

Action taken – historical context

Oxfam Community Aid Abroad conducted a significant amount of research into this case. This is detailed in *Mining Ombudsman Annual Report 2000 – 2001*, and *Undermined: The Impact of Australian Mining Companies in Developing Countries (1998)*.

Oxfam Community Aid Abroad's initial case investigation of the Indo Muro mine was conducted in 1997 before the establishment of the Mining Ombudsman mechanism. Because of this investigation, a group of NGOs including Oxfam Community Aid Abroad assisted a representative of the affected Dayak communities from Yayasan Bina Sumber Daya (YBSD) to visit Australia where a meeting was held with Aurora Gold in January 1998. This meeting resulted in a detailed agreement aimed at resolving the community grievances through a participatory process of dialogue. This dialogue process was continued in Indonesia where Oxfam Community Aid Abroad monitored the proceedings.

A key points in the development of this case was Aurora Gold/PT IMK's failure to expediently and appropriately deal with a report by YBSD given to the company on the August 4 1998.

The affected communities became extremely frustrated with how long it took Aurora Gold/PT IMK to respond to their report and with the failure of the assessment to adequately address their demands and complaints. This led to a complete breakdown of the negotiation process and a noticeable rise in tension and violence between the company and affected communities. In late 1999, a community group blockaded one of the access roads and there were many community-based incursions onto the Indo Muro mine site. These effectively brought the company's operations to a halt. In early 2000, Aurora Gold/PT IMK succeeded in having the police come in to clear the mine pits and break up the blockade. Conflicts developed between security forces, local landowners, small-scale miners, company personnel, and mine workers.

In October 1999, due to the failure of the dialogue process, a legal team, Tim Advokasi Tambang Rakyat (Traditional Mining Advocacy Team), was established. Its role was to investigate all legal matters and claims against Aurora Gold/PT IMK on behalf of the Dayak Siang, Murung, and Bekumpai people. The team is made up of lawyers and activists from a number of advocacy and legal organisations in Indonesia. An investigation of the case was conducted in November 1999, which resulted in the filing of a lawsuit against the company in 2002.

Action taken – current year

The breakdown in the dialogue process has seen a marked increase in the level of violence and a consistent rise in the reports of human rights violations from the mine site. This has altered the role of the Mining Ombudsman, which, in this case, was initially to facilitate a dialogue process in respect of the community grievances. As this is no longer possible, the Mining Ombudsman has monitored violations at the mine site and lobbied Aurora Gold/PT IMK

and the Australian government to investigate the reports of human rights violations committed in order to protect Australian investments overseas.

Initially, in response to confirmed reports of human rights violations by BRIMOB Officers, the elite arm of the Indonesian police force, at the Indo Muro mine site, the Mining Ombudsman sent a letter to the Managing Director and CEO of Aurora Gold, Mr. Michael L. Jeffries. This letter reiterated the existing grievances of the communities and outlined the more recent allegations of human rights violations committed by BRIMOB Officers whilst protecting the mine.

In his response, Mr. Jefferies maintained Aurora Gold's commitment to using Government security forces for the protection of the mine and its staff, stating that

"The company is required to accommodate and feed the government security forces... [and] does not have (and is not permitted to have) its own security forces... their deployment, personnel and operation are matters for the forces and the government authorities. This of course, is not unlike the situation in Australia."⁹⁴

The situation, however, is dissimilar in that the Australian Police Force does not place itself in a position where it is being accommodated and fed by private industry.

Oxfam Community Aid Abroad's *Benchmarks for the Mining Industry* recommends that:

"Companies should not operate in areas where their activities require the use of military forces or excessive security in order to maintain the operation... [and] Companies should not pay for, nor provide logistical support for, the police or armed forces of the host country in return for them maintaining security at the mine." (See Appendix 1)

Furthermore, evidence has arisen showing that Australian embassy officials in Indonesia, most notably the Ambassador, Richard Smith, lobbied Indonesian authorities to address security issues resulting from the so-called illegal mining situation in order to ensure the effective operation of the mine site and maintain investor confidence. The deaths of two community members in June 2001 occurred less than two weeks after the visit by Mr Smith to the mine site.⁹⁵

Questions tabled in the Senate by Senator Bob Brown on 18 February 2002 questioned the way in which Indonesian authorities were being influenced by Australian embassy officials to deal with security issues, including problems with 'illegal' miners, in order to ensure investor confidence in the Indo Muro mine operation.⁹⁶ The Australian embassy has refused to conduct a departmental investigation into the Indo Muro mine situation.



Traditional small scale miners return to their village after a day's work panning for gold in the local river, Central Kalimantan, Indonesia

PHOTO: Courtesy of JATAM

requested an increase in security. Embassy lobbying may have exacerbated the situation with tragically fatal consequences.

The use of force and discharging of weapons by BRIMOB officers at the Indo Muro mine seriously wounded and killed unarmed community members. Oxfam Community Aid Abroad cannot condone the use of excessive force for the protection of corporate assets, and this kind of practice would not be acceptable by any company in Australia.

The Aurora Gold/PT IMK case clearly highlights the need for clear legislated guidelines on industry practice grounded in international human rights standards, such as those proposed in the Benchmarks for the Mining Industry. Furthermore, the Aurora Gold/PT IMK case is an important example where greater regulation of the Australian mining industry overseas may have prevented the loss of lives.

Recommendations

Oxfam Community Aid Abroad joins Australian civil society and other NGOs in calling for an inquiry into the actions of Embassy officials in respect of human rights violations at the Indo Muro mine site. Oxfam Community Aid Abroad is now pursuing other advocacy measures to pressure the mining company and the Australian government to address these serious issues, including a request under the Australian Freedom of Information Act.

"It is unacceptable and inexcusable for human rights violations to be committed against unarmed civilian communities and traditional small-scale miners on behalf of a mining company"⁹⁹

Oxfam Community Aid Abroad called for an independent inquiry into the involvement of the Australian Embassy in this lobbying,⁹⁷ however the Australian Government's response to this request was that:

"...[T]he Australian Ambassador acted appropriately in requesting the Indonesian Government to uphold the law at Australian-owned mining operations in Indonesia... [A]t no stage did the Ambassador or Embassy officials request that Indonesian Government authorities act other than in a peaceful manner, in accordance with Indonesian law. In this context, he did not consider a Department review necessary."

However, due to widely publicised precedents of BRIMOB's aggressive policing culture,⁹⁸ the Australian Embassy should have anticipated that there was a possibility for loss of civilian life at the Indo Muro gold mine when they

A concern in light of current proceedings is the process of mine reclamation and environmental rehabilitation, which will require significant understanding and collaboration between the local community and Aurora Gold/PT IMK. It is critical that Aurora Gold/PT IMK maintains a full commitment and allocation of resources to this process, leaving the environment in a state comparable to the time of the opening of the mine.

Aurora Gold should also pay for rectification of the damages suffered by the local communities.

It is hoped current legal proceedings will be conducted in a fair and consistent manner and the quality of mine reclamation will not be jeopardized due to the current legal proceedings. It is important that the long-term health and sustainability of the communities impacted by the Indo Muro mine be prioritised throughout this process.

Protesters from the Indonesian Forum for Environment (Walhi) outside the Australian embassy in Jakarta on 28 March 2000. They are concerned about environmental damage at the Indo Muro mine site in Central Kalimantan, Indonesia and allegations that the Australian gold mining company, Aurora Gold Ltd, which owns the mine has paid local government officials to take over local residents' land by force.

PHOTO: AFP PHOTO/Weda



Chronology of events –
Gag island

1995:	BHPB explores Gag Island and its laterite nickel deposit.
1999:	Indonesian Government enacts Forestry Law no. 41, which classifies Gag Island as a 'protected forest' thereby preventing open cut mining on the island.
6/2000:	Canadian Company Falconbridge signs a joint venture agreement with BHPB making it a 37.5% joint venture partner in the Gag Island Nickel Project. The agreement is dependant upon Gag Island's forest classification changing to 'production forest'.
2001:	There is an exchange of letters between BHPB and the Oxfam Community Aid Abroad Mining Ombudsman on the proposed project.
12/2001:	Falconbridge Ltd pulls out of the joint venture due to frustration with the forest classification. This means BHPB now has a 75% stake in the project. BHPB suspends the Contract of Work on Gag Island.
1/2/2002:	Mining Ombudsman writes to BHPB requesting reasons for it suspending its operations on Gag Island and information regarding Falconbridge's decision not to pursue the project.
2002:	Conservation International (CI) publishes a report of marine research conducted on the Raja Ampat Islands, of which Gag Island is a part. The report calls for the Raja Ampat islands to be listed as a World Heritage Site.
7/3/2002:	BHPB replies to the Mining Ombudsman letter dated 1/2/2002 stating that it is hopeful of finding a new joint venture partner and resolving the forestry classification issue.
3/2002:	Media reports indicate that the Indonesian government will allow PT Gag Nikel to mine Gag Island as PT Gag Nikel's Contract of Work was signed before the enactment of the 1999 Forestry legislation.
25/7/2002:	Mining Ombudsman writes to BHPB requesting information on the status of the mine and proposed tailings disposal method. This letter makes reference to the Conservation International report.

Case 6:
Gag Island



- Resource:**
Nickel
- Mine location:**
Gag Island, Raja Ampat archipelago, Kabupaten Sorong, Papua Province.
- Mining method:**
Open-pit, however still in feasibility stage.
- Mineral reserves:**
240 million tonnes¹⁰⁰
- Affected communities:**
Gag Island
- Community groups:**
WALHI – Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment – Friends of the Earth Indonesia) www.walhi.or.id
JATAM – Jaringan Advokasi Tambang (Indonesian Mining Advocacy Network) www.jatam.org
- Mine ownership:**
(75%) BHP Billiton (BHPB)
(25%) PT Aneka Tambang (Antam)

"The Rajam Ampat archipelago, which includes Gag Island, was reported to be one of the most biologically diverse marine areas in the world."

Request

The status of the mine has not changed since the last Oxfam Community Aid Abroad Mining Ombudsman Annual Report, and accordingly, the community concerns have not altered. Overall, concerns about the potential impacts of the proposed mine appear to remain the greatest issue for the Gag Island community. The initial request, published in last year's report is as follows:

"Oxfam Community Aid Abroad's Mining Ombudsman received a request for assistance in February 2001 from a group of students from Gag Island, currently living in Jayapura, the capital of West Papua. They reported that there is considerable concern and anxiety amongst the Gag Island community about the proposed mining project, and the impact it will have on them and their island. As the island is so small and the mining project so large, they are concerned that their land will be taken or damaged, or that they will be forced to move off the island. The Ombudsman was asked to obtain information from BHPB about the mining project and what it will mean for the local community."¹⁰¹

Grievances

The concerns of the community are that they have not had genuine participation and consultation in the project. The positions of both the Government and BHPB have shifted over the future of the project. However these shifts appear not to have been based upon community concerns, but rather on political and business developments. As a result, there appears to be anxiety amongst the Gag Island community over the future prospects of the mine and its potential economic, social, and environmental impacts.

Additionally, one indigenous community, the Maja tribe, has reportedly been excluded from the consultation that BHPB has entered into with the communities of Gag Island. There are also reported concerns over the long term implications of the project due to the active Papuan Independence movement, which may have serious consequences for the proposed project including compensation payments, mine security and royalty payments.

Young student showing his message for saving the environment, Uiaiku, PNG
PHOTO: Martin Wurtl/Oxfam CAA

Action taken

The Gag Island case was taken up in 2001, and the Mining Ombudsman entered into correspondence with BHPB in February of that year. The initial letter set out a list of community concerns and requested information over negotiating access, resettlement and disposal of the mine's tailings. In March that year BHPB responded by explaining that due to the very early stage of the project, many of the details had yet to be worked out. The company stressed that it had appointed a community liaison officer and would provide the community with opportunities for input into the future development of the project.

The Mining Ombudsman wrote again to BHPB in early 2002, following Falconbridge's withdrawal from the project and the company's request to have the Contract of Work suspended. This letter reiterated the community concerns and requested information both about BHPB's decision to suspend its work contract, and Falconbridge's motives for withdrawing from the joint venture agreement. BHPB's response stated that due to government legislation, Gag Island became unmineable and "will remain so unless either the law is repealed or its land designation is returned to its original classification as 'production forest'."¹⁰² The reason for Falconbridge's departure from the project was the inability to have this classification reversed.



However, following the withdrawal of Falconbridge from the project, the Indonesian Government set up a committee, comprised of the Coordinating Minister for the Economy, the Minister of Energy and Mineral Resources, the Minister of Forestry and the State Minister for the Environment, to resolve the Gag Island mine issue. This committee concluded in March 2002 that mining on Gag Island was allowable, as the Contract of Work for PT Gag Nikel had been signed before the enactment of the 1999 Forestry law.¹⁰³

This decision appeared to provide approval for BHPB to mine Gag Island. However, the status of the project is still suspended as BHPB has indicated that it requires a joint venture partner before it will develop this project. According to Reuters, PT Aneka Tambang has been in talks with a Japanese company to become a joint venture partner,¹⁰⁴ but there have been no public announcements as to the results of these talks.

Gag Island environment

Parallel to business and political developments relating to Gag Island, an independent study on the marine biodiversity of the Raja Ampat islands was conducted by Conservation International (CI). The Raja Ampat archipelago, which includes Gag Island, was reported to be one of the most biologically diverse marine areas in the world. The report found that the biological diversity amongst these islands surpassed that of the Philippines, Papua New Guinea, or Indonesia. Research found that the archipelago has at least 456 varieties of coral species (potentially nine newly discovered species), 699 varieties of molluscs and 828 species of reef fish.¹⁰⁵

"The diverse array of unspoiled coral reefs and superb above-water scenery combine to produce one of the world's premier tropical wildlife areas."¹⁰⁶

The CI report recommended the region, including both land and marine environments, be classified a World Heritage Site.

In light of this report, the Mining Ombudsman wrote to BHPB on 25 July 2002 with environmental concerns raised through the CI report. The Mining Ombudsman requested information regarding the current status of the Gag Island project, information concerning the 'protected forest' issue, the level of community participation in the project and, most importantly, the likely method of tailings disposal.

The small size of the island, high degree of seismic activity and heavy rainfall all have important implications for the method of tailings disposal available to the mine operators on Gag Island. These conditions increase the risk that any engineered land-based tailings disposal pond may collapse. As a result, it is possible that Submarine Tailings Disposal (STD) could be employed for the disposal of mine waste. This controversial process involves pumping mine tailings directly into the ocean, and is being used at some other mine sites in Indonesia. Community groups and NGOs in

countries affected by mining rejected STD in the Manado Declaration of April 30 2001¹⁰⁷ and it is also prohibited in most developed countries. This unproven method of tailing disposal could be particularly devastating to this unique and vulnerable environment given the findings of the CI Report. This is an important issue for the Gag Island community, not only because of the marine bio-diversity, but because people on the island also rely heavily upon the marine environment for their food and livelihoods.

On September 13 BHPB responded to the Mining Ombudsman's letter, stating that had not yet received formal notification of resolution of the Protected forests issue. BHBB stated that:

"Our view (which we believe is similar to that of the local government and eco tourism operators) is that there is room in the Raja Ampat islands for appropriate conservation areas, eco tourism, responsible mining and other sustainable development of the local communities."

It also advised:

"It is too early to know whether mining will proceed on Gag Island [and] [I]t is similarly too early to know what form of tailings deposition would be most suitable for Gag, in the event that mining were to proceed."¹⁰⁸

Recommendations

- That BHPB fully disclose the project objectives, impacts and options to all stakeholders from the Gag Island community, including the options for tailings disposal and the realistic impacts upon the marine diversity.
- That BHPB commission and fund independent environmental and social impact assessments, including a gender analysis and human rights impact assessment, to gauge the potential impacts of the mine and release the results of these assessments for public scrutiny.
- That BHPB encourage and facilitate the exchange of information between men and women from Gag Island with Indonesian NGOs and other communities that have been impacted by similar mine projects so that the communities gain a realistic impression of the potential impacts from the proposed mine project in order to make informed decisions on the future of the project.
- That BHPB respects the right of the communities to prior, free and informed consent and therefore immediately recognises their right to determine whether the project proceeds to the next phase of development through a participatory process of consultation.
- The BHPB not seek to have the 'protected forest' classification changed for Gag Island.

Members of the Didipio community with the CAMC exploration camp in the distance. They are concerned that the rice fields behind them will become a tailings pond if the mine goes ahead (see next page for report).

PHOTO: Ingrid Macdonald/Oxfam CAA



Chronology of events – Didipio†

1991:	CAMC begins exploration in Didipio
3/1994:	CAMC announces discovery of gold and copper at Dinkidi.
6/1994:	President Ramos grants the first 100% foreign owned mining contract in the Philippines to CAMC, a Financial or Technical Assistance Agreement (FTAA), which gives the company the right to explore for up to 50 years.
28/4/1999:	Barangay (District) Council of Didipio enters into a Memorandum of Agreement (MOA) with CAMC.
16/7/1999:	The local community organises the Didipio Earth Savers' Movement (DESAMA), a group aimed at saving the community's way of life from the incursion of CAMC, and begins the Didipio Initiative in order to obtain a referendum on proposed mining activities.
8/1999:	Department of Energy and Natural Resources issues an Environmental Compliance Certificate.
19/10/1999:	DESAMA collects 109 signatures (more than 10% of the population) in a petition asking for a referendum to prevent the proposed mining project. This is placed before the Commission on Elections.
27/10/2000:	The Department of Environment and Natural Resources declares the project "closed to any form of mining." ¹¹⁰
16/10/2001:	The Department of Environment and Natural Resources orders the suspension of exploration activities stating that the project is not socially acceptable. ¹¹¹ However CAMC maintains a presence and continues its efforts to begin mine operations in the area.
5/2002:	The Mining Ombudsman attends the National Mining Meeting in the Philippines.
12/6/2002:	Affected communities of Didipio formally invite Oxfam Community Aid Abroad to conduct a Mining Ombudsman investigation.

Preliminary Report 1 2001 – 2002: Didipio†



- Resource:**
Gold and copper
- Location:**
Barangay Didipio, Nueva Vizcaya, 200km north-east of Manila, Philippines
- Affected communities:**
Ifugao, Kalanguya, Bugkalot, Ibaloi, Kankana-ey
- Community groups:**
DESAMA – Didipio Earth Savers Movement
- Community support groups:**
Diocesan Social Action Center (DSAC)
Task Force Detainees of the Philippines (TFDP)
Legal Rights and Natural Resources Center – Kasama sa kalikasan (LRC-KSK) (Friends of the Earth Philippines)
<http://www.info.com.ph/~lrcksk>
- Mine operator/s:**
Climax Arimco Mining Company (CAMC)

"Allegations include ... that the proposed mine will have severe and irreversible environmental and social impacts on the Didipio community and neighbouring communities."

Request

During the Philippine National Conference on Mining in May 2002, the Mining Ombudsman had initial contact with representatives of the affected communities of Didipio.¹¹² Following this meeting the Mining Ombudsman was requested on 12 June 2002 by DESAMA to undertake a formal case investigation and to take up the case with CAMC in Australia.

Oxfam Community Aid Abroad acknowledges and thanks Sister Eden L. Orlino SPC, the Executive Director of DSAC, Kagawad Peter Duyapat (Didipio Barangay Council official and DESAMA official) and Rina A. Corpus, LRC-KSK for their assistance in providing documents and research upon which the following report is based.

Grievances

This case is still in the preliminary stages of analysis and a case investigation is planned for September 2002. Due to publication time-lines the case investigation was unable to be incorporated in this year's report, but it will feature in the 2002 – 2003 Annual Report. The specific nature of the grievances will be recorded and validated on this field visit. However, the Philippines Government has recently suspended exploration activities at the mine for social reasons, demonstrating the serious nature of the communities concerns.

CAMC succeeded in 1994 in gaining the first FTAA in the Philippines for a 24 000 hectare license area covering Didipio and parts of the adjacent Quirino Province. However, to date, CAMC has been unable to convert this license into an operational mine due to community opposition.¹¹³

Didipio is located in a remote and mountainous area of Nueva Vizcaya, which is an agricultural province in the Cagayan Valley, in North Eastern Luzon that is well known for producing rice, corn and bananas. Didipio also sits at a high point in the Addalam River watershed area. This watershed encompasses large components of the Nueva Vizcaya Province and parts of the adjacent Quirino Province. Communities from both provinces are therefore reported to be very concerned about the potential harmful environmental impacts from the proposed mine site on the watershed. What is more, many of the farmers of Didipio and neighbouring communities have been actively developing citrus crop plantations with the aim of establishing future export markets. Many Didipio community members and neighbouring communities in Nueva Vizcaya are therefore very concerned about the detrimental impacts that the proposed mine may have on their plans for agricultural development.¹¹⁴ They are also concerned about potential health, cultural and social impacts from the proposed mine site.¹¹⁵

In summary, allegations against CAMC made by, or on behalf of, local communities demonstrate a poor relationship between the mining company and parts of the local communities. Allegations include:

- That CAMC conducted geological surveying without the permission of local residents.
- That the FTAA obtained with 100% foreign ownership is unconstitutional.¹¹⁶
- That there was manipulation of Barangay Council members in obtaining the April 1999 MOA, which gives consent to CAMC to begin the open-pit mining project.¹¹⁷
- That CAMC gave gifts to community members and used 'divide and rule' tactics in an attempt to secure consent for the mine project.
- That the proposed mine will have severe and irreversible environmental and social impacts on the Didipio community and neighbouring communities in the Nueva Viscaya Province and the adjacent Quirino Province.

Community action, such as protests, demonstrations, and formal resistance in the form of a petition and a legal case to be filed in the supreme court, suggest that there is considerable community resistance to the proposed mine project at Didipio.¹¹⁸ At recent *Barangay* elections held in mid 2002, five out of seven of the elected *kagawads* were elected on an anti-mining platform, including the President of the *Barangay*. In the neighbouring town of Kasibu, thirty of the thirty elected *Barangay* President/Captains are also reported to be opposed to the proposed Didipio mine, as they are concerned about potentially harmful social and environmental impacts. Such election results represent negative public sentiment towards the current exploration and proposed mining activities that should be understood and respected by CAMC.¹¹⁹ These concerns provide a compelling case for investigation by the Mining Ombudsman.

Recommendations

Until an investigation is undertaken, the Mining Ombudsman recommends that the company cease all activities and immediately enter into discussions with the community. CAMC must respect the right of the Didipio community and all other potentially affected communities in the Neuva Viscaya Province and parts of the Quirino Province to prior, free and informed consent and to determine their own path of development.

† As this is a preliminary report at this stage, Oxfam Community Aid Abroad has not approached CAMC with the community grievances for comment.



Chronology of events – Marinduque†

1967:	Mine construction begins in 1967
1969:	Tapian Pit is commissioned.
1975 – 1991:	Mine tailings from the Tapian Pit are dumped at surface level in Calancan Bay via pipes from the mine site.
1991:	Maguila-Guila Creek is dammed with an earthen dam to hold back toxic silt run-off from a waste rock dump situated above Maguila-Guila Creek at the San Antonio Pit. The operator planned for the contamination of the Maguila-Guila Creek in order to prevent the contamination of the downstream Mogpog River.
1992:	Tapian pit is used for disposing of tailings from the San Antonio Pit.
6/12/1993:	The Maguila-Guila Dam collapses. The ensuing flood of contaminated acidic and metal enriched silt sweeps two children into the sea and destroys homes along the Mogpog River, contaminates agricultural land, and kills livestock in the town of Mogpog. ¹²⁰
24/3/1996:	A plug in a former drainage tunnel linking the Tapian pit to the Boac River bursts, causing 3 – 4 million tonnes of tailings to flood down the Boac River and out to sea. ¹²¹
24/3/1996:	Suspension of the mine permit by the Philippine Government; post-spill mitigation and assessment begins.
1997:	Placer Dome divests from Marcopper to 'Philippine Interests' with evidence suggesting that Placer Dome has protected the assets and mineral rights of Marcopper from creditors by divesting through a once wholly-owned subsidiary in the Cayman Islands, named MR Holdings. ¹²² Placer left a subsidiary, Placer Dome Technical Services (PDTS), to deal exclusively with the clean-up operation of the Boac River System.
2001:	Placer Dome Technical Services leaves the Philippines leaving \$13 million in a trust fund under a confidential agreement with 'F holdings', which is commissioned by Placer Dome to complete the clean up operations. ¹²³ The details of this arrangement are still unclear.

Preliminary Report 2: Marinduque†



- Resource:**
Copper
- Mine locations:**
Marinduque Island, Philippines
- Mining method:**
Open-pit – 2 pits now closed – Tapian Pit and the San Antonio Pit
- Affected communities:**
Marinduque Island communities: Calancan Bay, Mogpog, Boac, Mine Site Community
- Community groups:**
Social Action Commission
Marinduque Council for Environmental Concerns (MACEC)
Email: sac@digitelone.com
Legal Rights and Natural Resources Center – Kasama sa kalikasan (LRC-KSK) (Friends of the Earth Philippines)
<http://www.info.com.ph/~lrcksk>
- Mine operator/s:**
(1967 – present) Marcopper Mining Corporation
- Ownership:**
(1967 – 1994) Philippine Government: 49%
Placer Dome: 39.9%
Philippine Public Shares: 11%
(1994) Philippine Government sells its shares in Marcopper to F Holdings (a Philippine company).
Placer Dome divests from Marcopper Mining Corporation through a Cayman Island Holding Company, leaving a subsidiary, Placer Dome Technical Services (PDTS), to handle Mine reclamation, rehabilitation and compensation issues 'F Holdings', takes over PDTS's job of handling reclamation, rehabilitation, and compensation issues. (See chronology)

"The communities of Kasibu, including Didipio are concerned that the proposed CAMC mine will contaminate the environment and thereby, destroy citrus production which they hope to develop into an export industry."

Request

During the Philippine National Conference on Mining in May 2002, the Mining Ombudsman had initial contact with representatives of the affected communities of Marinduque Island.¹²⁴ The grievances recorded below in this preliminary report are a summary of long-standing broad demands that have been taken to Placer Dome on several occasions by the communities and various NGOs.

Oxfam Community Aid Abroad acknowledges and thanks Dr Catherine Coumans PhD of Mining Watch Canada, Councillor Rolando Larracas, and MACEC for their assistance in providing documents and research upon which the following report is based.

Grievances

The concerns with the impacts of the Marcopper Mine are broadly shared between four communities, those being from Calancan Bay, Mogpog, Boac, and the mine site itself. Brief summaries of the reported community impacts are provided below.

While the mine was in operation there were cash benefits for the people of Marinduque Island through employment and increased economic activity. However the overall economic performance of the island was consistently ranked by the Philippines National Statistics Bureau as being among the lowest in the country throughout the almost thirty years of mining. With the closure of the mines there is little alternative industry for the people of Marinduque Island, particularly as the fishing industry, which was the traditional source of economic livelihood, has been devastated by severe environmental degradation from the mine. The loss of fishing resources has also severely affected upon food security on the island, as fish is a dietary staple for the Marinduque communities. Placer Dome paid some compensation to fishing communities affected by the Boac River Tailings disaster, however the Mogpog and Calancan Bay communities, who also suffered from tailings spills and continual contamination, have received no compensation.

Calancan Bay
Dr Catherine Coumans has documented how mine tailings contaminated the coastal waters of the community for more than 16 years between 1975 and 1991.¹²⁵ Over this period, Marcopper pumped mine tailings into the bay without permission from the Calancan Bay communities, who vigorously and consistently protested this dumping.¹²⁶ In March 1997, Dr. Fellizar and researchers from the University of Philippines concluded that tailings dumped in the bay clearly had damaging socio-economic impacts for the communities.¹²⁷ Dr. Coumans reports that the quantities of dumped tailings are estimated to be up to

200 million tonnes that are spread over 80 square kilometres.

The communities of Calancan Bay have not received compensation for the losses incurred through the devastation of their bay.¹²⁸ There has also been inadequate rehabilitation of the bay despite an order in 1988 by the Philippine government for Marcopper to spend A\$1,032 a day rehabilitating the bay; an order that Marcopper reportedly only fulfilled until mid 1991.¹²⁹

Medical professionals from the Department of Health and the University of the Philippines have found unacceptable levels of lead in the blood of children living along Calacan Bay.¹³⁰ Lead is also known to be leaching from the tailings in the bay (USGS 2000). In light of the findings of the Department of Health and the University of Philippines, the then President of the Philippines, Fidel Ramos declared a State of Calamity for villages along the bay for "health reasons" in 1998.¹³¹

Mogpog
The Maguila-Guila Creek, a headwater to the Mogpog River, was dammed in 1991 to hold back toxic silt from a waste rock dump for the new San Antonio Pit. The Mogpog community was strongly opposed to this action. The toxic waste that piled up behind this dam seeped into the Mogpog River, causing a die-back of forest along the river edge which in turn impacted on animals and humans; and caused heavy siltation in the river which increased flooding.¹³²



The Marcopper mine in Marinduque, Philippines
PHOTO: Courtesy Catherine Coumans, MiningWatch Canada





Tailing pipes, from the Marcopper mine in Marinduque, entering the sea at Calancan Bay, Philippines.

PHOTO: Courtesy Catherine Coumans, MiningWatch Canada

being stored from the San Antonio mine) failed. This caused 3-4 million tonnes of toxic mine tailings to spill down the Boac River at an estimated rate of 5-10 cubic metres per second.¹³⁶ The permit for the Marcopper mine was suspended and one month after this catastrophe, experts sent by the United Nations found the river to be biologically dead.¹³⁷

"The toxic spills immediately caused flash floods, which isolated five villages, with a population of 4,400 people, along the far side of the Boac River. One village, Barangay Hinapula, was buried under six feet of muddy floodwater and 400 families had to flee to higher grounds. Their sources of drinking water were contaminated while fish, freshwater shrimp and pigs were killed. Helicopters had to fly in food, water and medical supplies to the isolated villages. Residents of 20 villages out of the 60 villages in the whole province were advised to evacuate their communities.

The government estimates that this toxic waste killed P1.8 million worth of mature freshwater and marine life and P5 million bangus fry. The 27-kilometre Boac River, which is the main source of livelihood for those who are not part of the 1,000-strong workforce of Marcopper, has been declared dead by government officials."¹³⁸

At the time of this disaster, Placer Dome was the manager of the Marcopper Mine. It had also guaranteed the loans for the mine and had provided all technical assistance. On April 11 1996, then Chief Executive Officer of Placer Dome, John Willson wrote to President Ramos, stating:

"Placer Dome is committed to ensuring that Marcopper will meet all its legal obligations" [and that] "Placer Dome will provide full technical and financial support to Marcopper in implementation of the urgent compensation and rehabilitation programs."¹³⁹

With regard to humanitarian and environmental concerns he outlined various strategies and articulated his company's responsibility plainly:

"I have authorized the following commitments by Placer Dome: The residents of Marinduque who have suffered personal inconvenience or damage to their property as a result of the Marcopper event will be quickly and fairly compensated. ... Placer Dome recognizes its responsibility to rehabilitate all areas impacted by the tailings flow... This program will include: 1) the rehabilitation of the river system; 2) the remediation of off-river impacts; 3) the development and undertaking of a program of river and ocean rehabilitation."¹⁴⁰

On 6 December 1993, due to pressure from heavy siltation at the dam wall, the Mogpog River dam collapsed with catastrophic consequences:

A wall of toxic silt and water raged down the river and into the town, sweeping away homes, people, and livestock. Two children were killed; rice fields were covered in mud; dead and dying animals lay strewn around the river; and in Mogpog town the muddy water rose up to the second floor of many houses...¹³³

In 2002, the people of Mogpog are still very concerned about the dam, especially given the likelihood that the dam will collapse again. In a letter dated August 23 2001, Placer Dome's engineering consultants, Kohn Crippen, highlighted findings from a June 14 report stating that five structures are in need of immediate repair. The report also highlighted that the Tapan Pit and Maguila-Guila Dam are in danger of collapsing, potentially causing "loss of life."¹³⁴

The Mogpog town council has passed numerous resolutions over the growing inefficacy and risk from the potential collapse of the Maguila-Guila Dam. In 1998, the town council demanded the "complete removal of the Maguila-Guila dam, the clean up of the waste dump at the top of the river, and the complete rehabilitation of the Mogpog River and watershed."¹³⁵

Boac River Disaster

On March 24 1996, a concrete plug in a tunnel leading from the bottom of the Tapan pit (where mine tailings were

The people of Boac complain that Placer Dome has failed to fulfil these obligations and responsibilities. According to Coumans, three areas in which Placer Dome has failed the community are of particular note:

- 1) To adequately plug the drainage tunnel
- 2) To remove tailings from and rehabilitate the Boac River and the sea
- 3) To compensate affected villagers from Boac

Placer Dome also requested to use Submarine Tailings Disposal, an illegal practice in Canada and Australia, as a final means of disposal of mine tailings in the Boac River. There is also the emerging problem of Acid Mine Drainage from the Boac River tailings.

Demands

Calancan Bay:

- Acknowledgement by Placer Dome that the tailing disposal into Calancan Bay since 1975 had an immediate detrimental impact on the food security and livelihood of the communities derived from fishing through turbidity from surface disposal and progressive smothering of corals and sea-grasses that sustain fish. Placer Dome has never acknowledged this damage, and its ongoing economic and health effects.¹⁴¹
- Acknowledgement by Placer Dome that the tailings contain heavy metals that are still leaching into the Bay. The Calancan Bay Fisherfolks Association has consistently requested that Placer Dome fund an independent environmental and health investigation of the impacts of the tailings in the Bay.
- Compensation for the fisherfolk for the loss of livelihood since 1975 and sufficient funds to cover health related expenses based on the findings of an independent environmental and health audit.
- Rehabilitation of the Bay so it can once again be a productive eco-system.

Mogpog

- Compensation for the damages and losses suffered in the 1993 Maguila-Guila Dam burst and for Mogpog fisher folk who were also affected by the Boac River spill.
- Decommissioning of the Maguila-Guila Dam and rehabilitation of the Mogpog River.
- Removal of the mine waste that has built up behind the Dam (within the Maguila-Guila Creek) and removal of the mine waste in the San Antonio waste rock dump.

- Commissioning of independent environmental and health studies to determine the extent of the damage.

Boac

- Proper sealing of the tunnel in the Tapan pit.
- Rehabilitation of the Boac River and marine areas impacted by the 1996 spill.
- Compensation for all affected residents of Boac.

Mine site

- A thorough independent hydro geochemical and engineering study of the mine site, focusing on environmental, health and safety risks.
- Stabilisation and eventual decommissioning of all dams and waste structures including the Maguila-Guila Dam, upper and lower Makulapnit Dams, Bol River reservoir dam and all former drainage tunnels in the Tapan pit, especially the 310 tunnel.
- Proper closure of the mine site including complete rehabilitation of the mine site and affected areas around the mine site.

Former Employees and Indirect Employment

- Payment of back-pay and lost benefits to former employees of Marcopper who were locked out in a 1994 labour strike.
- Payment of back-pay and compensation for loss of livelihoods to community members who lost their jobs because of the disaster in 1996.¹⁴²



Dead fish float along the river bank while residents inspect the Boac river polluted by a massive spill of copper mine waste from the Marcopper Mining Corporation in Marinduque Island, the Philippines.

PHOTO: AFP/ ROMEO GACAD-STF



Mining affected communities from the Philippines protest against the Philippines Mining Act 1995 at the National Conference on Mining held in Baguio City, 6 – 10 May 2002

PHOTO: AFP PHOTO/Jay DIRECTO

We reached agreement with Marcopper Mining Corporation and its major shareholder to fund the removal of the tailings remaining in the Boac River after the 1996 tailings spill at the Marcopper mine, in which Placer Dome was an indirect, minority shareholder until 1997. The work will be carried out by Marcopper's major shareholder and brings to an end our activities on the island of Marinduque in the Philippines.¹⁴³

However, for the operational life of the mines, Placer Dome's former Chief Executive Officer, John Willson, confirmed that the company was a major shareholder of the mine that provided technical assistance, not as Taylor describes, "an indirect, minority shareholder." Taylor's letter does reflect Placer Dome's current position with regard to the unresolved issues of Marinduque Island. This is that there are no unresolved issues, or at least none for which Placer Dome accepts any responsibility.

‡ As this is a preliminary report at this stage, Oxfam Community Aid Abroad has not approached Placer Dome or Marcopper Mining Corporation with community grievances for comment.

Conclusion

Six years after the suspension of the Marcopper mine, Marinduque communities continue their struggle for compensation, environmental rehabilitation, and reparation of dilapidated mine structures. Claims of the community have been validated through several internationally qualified independent studies from the United Nations, the United States Geological Society (USGS), and the University of Philippines as well as through the support they are receiving from the Philippine government. Most recently, President Gloria Macapagal Arroyo lobbied the Canadian Government and Placer Dome Executives for compensation and completion of rehabilitation commitments while on a presidential visit to Canada in January 2002.

The Marinduque communities are frustrated at Placer Dome's refusal to fulfil its commitments in respect of its compensation agreements and the reclamation of Marinduque Island. Despite their case being recognised at the highest level in the Philippines, Placer Dome's current Chief Executive Officer, Jay Taylor made the following comments in their 2001 Financial Results:

8. Conclusion

The resentment of communities who have brought their cases to the Mining Ombudsman is a direct response to the continued denial of their basic human rights – especially rights to self-determination, land and livelihoods. Many of the grievances presented in this report reflect those documented in the 2000 – 2001 Annual Report. These grievances have proved to be largely similar across the industry and throughout the lifecycle of mine projects. They generally fall under the following four categories :

- Loss of land without proper compensation.
- Loss of sustainable livelihoods.
- Degradation of waterways and other natural resources upon which people depend.
- Human rights abuses by the police or security forces acting in the interests of the company.

In this report, all grievances and concerns are documented and analysed using the framework of Oxfam's rights-based approach. This approach is grounded in the universal and inalienable human rights guaranteed under the international human rights system. Oxfam Community Aid Abroad's Benchmarks for the Mining Industry represent a first attempt at the application of the rights-based approach to the activities of the mining industry. These Benchmarks represent minimum standards that should underpin the activities of the Australian mining industry. If adhered to, they would help ensure that mining companies respect and uphold the universal and inalienable human rights of the people who are affected by their activities throughout the world.

Some of the worst impacts generated by the mining industry involve human rights violations resulting from militarisation, corruption, forced resettlement, the lack of free and fair informed consent, and environmental pollution and contamination. Sections of the industry appear to be starting to recognise that such impacts are unacceptable and are beginning to develop corporate policy statements to address sustainability and environmental concerns. However, human rights violations still occur, with many of the communities and environments featured within this report continuing to be adversely affected by the impacts of mining. Whilst there appears to be greater attention being given to human rights and environmental issues by some parts of the mining industry, there are also concerns that this attention may be more focused on improving the image of the industry than on achieving concrete changes to policies and practices. There appears to still be a large gap between the statements of many mining companies and actual on the ground performance.

It is now time for the mining industry as a whole to take pro-active and concrete steps to demonstrate its commitment to respecting and protecting the human rights of the men and women affected by its activities. These steps include adherence to mandatory, independently

monitored and verified, enforceable and extraterritorial controls on the industry's activities based on the universal benchmarks laid down under the international human rights system. Companies need to commit to the principle of obtaining the prior, free and informed consent of landowners and affected communities as a precondition for their exploration and mining activities. They also need to put in place genuinely participatory and independent processes for monitoring mine operations and their impact on the local community, economy, and environment. Furthermore, companies must commit to fulfilling their post-mine responsibilities in close consultation with local stakeholders.

This report provides justification for establishing an Australian mining industry complaints mechanism. Such a mechanism is not a new precedent for private and public enterprise, and various examples are given in this document. A complaints mechanism founded in universal human rights would provide a viable and non-violent method for communities to voice their complaints and dissatisfaction. It would also provide companies that are adhering to their social and environmental policies with a mechanism that would hold to account those companies that are not.



PHOTO: AFP PHOTO/Jay DIRECTO

10. Glossary and acronyms

ACTU	Australian Council of Trade Unions	LRC-KSK	Legal Rights and Natural Resources Center-Kasama sa kalikasan (Friends of the Earth Philippines)
AIDS	Acquired Immunodeficiency Syndrome	MACEC	Marinduque Council for Environmental Concerns
ANZFA	Australia New Zealand Food Authority	MCA	Minerals Council of Australia
ARWOA	Auga River Waterway Resource Owners Association	Mesa de Dialogo	Dialogue Table
Barangay	District	MIGA	Multilateral Investment Guarantee Agency
BHPB	BHP Billiton	MMSD	Minerals Mining and Sustainable Development
BRIMOB	Mobile Brigade, the elite unit of the Indonesian Federal Police Force.	MOA	Memorandum of Agreement
CAMC	Climax Arimco Mining Company	NEWG	Non-Government Environmental Watch Group
CAO	Compliance Advisor / Ombudsman (World Bank Group)	NGO	Non-Government Organisation
CELCOR	Centre for Environmental law and Community Rights	OEC	PNG Government Office of the Environment and Conservation
CONACAMI	National Coordinator of Communities Affected by Mining	OECD	Organisation for Economic Co-operation and Development
CORECAMI	Regional Coordinator of Communities Affected by Mining, regional arm of CONACAMI	PDTS	Placer Dome Technical Services
CI	Conservation International	PT IMK	PT Indo Muro Kencana – operator of the Indo Muro Kencana Gold Mine
CSR	Corporate Social Responsibility	PT KEM	PT Kelian Equatorial Mining
DESAMA	Didipio Earth Savers Movement Community Support Groups		Riverine tailings disposal
DRD	Durban Roodeport Deep Ltd		Disposal of tailings directly into a river system
DSAC	Diocesan Social Action Center	STD	Submarine Tailings Disposal (the pumping of mine tailings directly into the ocean. This is largely considered as unproven technology and is illegal in most developed countries)
ELC	Environmental Law Centre	Tailings	Material rejected from a mine after most of the recoverable valuable minerals have been extracted
EQUAS SA	Professional hydrological consultancy conducting studies in the Tintaya case	TATR	Tim Advokasi Tambang Rakyat (Traditional Mining Advocacy Team)
FTAA	Financial or Technical Assistance Agreement	TFDP	Task Force Detainees of the Philippines
HIV	Human Immunodeficiency Virus	TGM	Tolukuma Gold Mine
ICAO	International Civil Aviation Authority	TIO	Telecommunications Industry Ombudsman
ICCPR	International Covenant of Civil and Political Rights 1966	TNC	Trans National Corporation
ICESCR	Covenant of Economic, Social and Cultural Rights 1963	TSS	Total Suspended Solids
ICMM	International Council of Metals and Mining	UDHR	Universal Declaration of Human Rights 1948
IFC	International Finance Corporation	USGS	United States Geological Society
ILO	International Labor Organisation	WALHI	Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment – Friends of the Earth Indonesia)
JATAM	Jaringan Advokasi Tambang (Indonesian Mining Advocacy Network)	YBSD	Yayasan Bina Sumber Daya (Foundation for Resource Development)
KSKP	Kesatuan Solidaritas Kesejahteraan Petani (Local Farmers Solidarity Union)		
Laterite	A residual soil developed in tropical countries out of which the silica has been leached. May form ore bodies of iron, nickel, bauxite and manganese.		
LBH	Lembaga Bantuan Hukum (Palembang Legal Aid Institute)		
LKMTL	Lembaga Kesejahteraan Masyarakat Tambang & Lingkungan (Council for People's Prosperity, Mining and Environment)		

Appendix 1

Benchmarks for the mining industry

Oxfam Community Aid Abroad's approach to the mining industry is based on its concern for the protection of the basic human rights of people affected by mining operations. The five basic rights identified by Oxfam Community Aid Abroad are discussed in detail in Appendix 2, and should be read in conjunction with this document. These rights are:

- The right to be heard
- The right to a sustainable livelihood
- The right to basic services
- The right to life and security
- The right to an identity

In this document Oxfam Community Aid Abroad aims to outline a set of 'benchmarks,' which illustrate the application of the rights-based approach to mining activities. The benchmarks have been developed through independent research and Oxfam Community Aid Abroad's first hand experience with communities affected by mining operations. They are a work in progress that will be further developed as understandings of the impacts of mining evolve. They are not intended to be a definitive answer, but an initial attempt at applying the norms underpinning the rights based approach to the activities of the exploration and mining industry.

The benchmarks should apply to all company operations to the same universal standards no matter where a company operates. Companies cannot lower operating standards in respect of human rights simply because they are undertaking activities in areas where communities and people are vulnerable, impoverished or marginalised. Companies should also ensure that the benchmarks apply to all of the activities that contractors, consultants, agents, subsidiaries, and suppliers undertake on behalf of the company. Responsibility and liability for the performance of mining operations assessed against the benchmarks should be borne by all employees and management of a company, including members of the Board of Directors, managers, and individual employees.

Social mapping

Any proposed exploration or mining activity should be preceded by and based on an independent social mapping exercise which includes a social impact study, a human rights impact assessment and a gender analysis. Appropriately qualified and independent groups who are familiar with the communities and the environment should undertake the social mapping exercise. Local

stakeholders who are not appointed by the company, including independent organisations and local civil society should verify the study's findings in order to ensure rigour and accuracy.

The results of the social mapping exercise should also be presented to all community members in an appropriate language and manner so that they can act as an effective check and balance. Communities should be provided with sufficient resources and time to be able to fully participate in all aspects of this process. Customary laws over access and the secrecy of customary information should also be respected at all times. The mapping process should be ongoing throughout the life of the project in order to ensure that the changes within communities are understood and addressed effectively.

- Mining companies should commission independent base line studies before they engage with a community. One of the fundamental criteria to be satisfied by these studies should be an assessment of whether a company can undertake its activities in accordance with basic human rights standards.
- Companies should not proceed if baseline studies suggest that their activities may violate basic human rights standards, even if human rights are not upheld by national laws or practice.



Young student showing her message for saving the oceans, Uiaiku, PNG

PHOTO: Martin Wurt/Oxfam CAA

Right to be heard

Access to information

Communities have a legitimate right to determine their own future; companies must respect the right of communities to prior and informed consent. Unless exploration and mining projects are undertaken correctly from the beginning and have full community support, they will always be plagued with problems and conflict, and as a result cost companies time and money and generate suffering and harm in communities.

- Sufficient, accurate, and detailed information about a proposal must be provided to all members of affected communities in an appropriate manner and language, in order that they are able to give informed consent or dissent to any mining activity or exploration. This should include the submission of a proposal detailing: information about the company and its business activities; a description of the land that will be affected by the proposal; an outline of the proposed exploration or mining activity; how long the mine will be in operation; how sacred sites, the environment and other such related factors are to be affected and protected; what social services are to be provided; expected social, economic, health, cultural and gender impacts; how negative social impacts on female and male community members and disadvantaged or vulnerable groups can be avoided or addressed; and strategies for mine closure.
- Communities must be able to seek information from sources other than the mining company regarding the potential impacts of the proposed exploration and mine on their lives. Where possible, this should include facilitating both female and male community representatives to visit operations of a similar nature and scale elsewhere, to freely discuss the impacts with local people.
- Communities must have a right to reject an exploration or mining proposal after a reasonable period of negotiation. The regime established under Part IV of the Aboriginal Land Rights) Act 1976 (Northern Territory) provides an example of how negotiation can be timed.

Decision making

Companies must carry out open and transparent consultations with both men and women in affected communities from the outset of any proposed activity (e.g. exploration or mining) and use decision-making processes that are participatory, representative, and fair.

- Negotiations with communities regarding exploration or mining should take a cautious approach to representation and internal decision making processes. The following factors should be considered:

- The proponent should not under any circumstances attempt to impose on communities any arbitrary time lines and project-driven decision making processes.
- Different types of decision-making processes may be needed for different types of communities, depending on their customary governance structures and the degree of diversity in the communities affected. However, companies should ensure that such community decision-making processes respect the human rights of all community members – and do not further marginalise men, women, youth, the elderly and groups that may traditionally be denied social power due to ethnicity, religion, class or caste. In cases where women or other groups are being excluded from these decision making processes, advice should be sought through consultation with local women or these groups, about what would be appropriate ways of ensuring that their views are also heard and their rights protected. Gender equality in decision making should always be sought.
- Decision making processes should recognise that companies have more power than communities in terms of access to technical, legal and financial information.
- Decision making processes should include all communities who could be affected by any proposed operation; not just those with recognised land ownership. For example, down-stream communities who may be affected by a mine operation should also be involved in decision making processes.
- Negotiations should be over permission for a company to explore or mine on land, rather than over transfer of land ownership to the company.
- Where agreements are reached with mining companies, community representatives should have the right to enter into disjunctive agreements, that is, agreements that clearly distinguish between consent to explore as distinct from consent to commence mining operations. Such agreements should include: all terms and conditions agreed to in relation to the exploration or mining operation; payments for the use of land; compensation for the loss of amenity; restrictions on where and how the company can operate; services and amenities to be provided; access to jobs, training, contract work and so forth. Companies must recognise that men and women may have very different needs and interests in this process and that both should be fully considered and represented in any agreements.
- Communities that lack the required knowledge about contractual agreements and their rights should be provided with ongoing independent training and technical advice in order to ensure that they are fully aware of their rights and of the contractual arrangements they are entering into.

- A joint monitoring committee consisting of government, affected community men and women, independent experts and organisations, and civil society, that are not appointed by the company, should be established to monitor the implementation of the company's operation and its compliance with the terms and conditions of all agreements throughout the life of the project. Company representatives will play a vital role servicing the monitoring committee information and implementing its recommendations, but where possible, they should not be represented on the committee, as it is their actions that are being verified and monitored. Where this is impossible, company representatives should be a minority on the committee. The monitoring committee should be required to report to the community in an appropriate manner and language and publicly release all findings and reports. The inclusion of government officials on the committee should not be a substitute for them fulfilling their role as regulators.

Right to a Sustainable Livelihood

Just as mining companies profit from their operations, so should the inhabitants of areas affected by mining. All planning must include measures to ensure that, upon mine closure, the community is in a better position than when the mine began. Furthermore, the community should not be dependent on the mine to sustain that position. Companies must work with government and communities to avoid the boom/bust syndrome that is the legacy of many mining operations.

- People have a right to a livelihood that enables them to meet their basic needs.

Resettlement

Because mining-induced removal and resettlement threatens the right of existing populations to a livelihood so seriously, mining operations should be designed so that resettlement is minimised or avoided wherever possible.

- All members of communities must be given the choice to relocate or resettle if required by a project. They must not be forcibly removed or resettled.
- If people do choose to be resettled, then they must have the right to negotiate how the resettlement and subsequent rehabilitation is to be carried out, and to prevent it proceeding until and unless an agreement is reached which is acceptable to all sides. Where people choose to be resettled, resettlement plans:

- Should be developed with full consultation and active participation of the affected persons, groups or communities.
- Should take into account alternative plan or sites proposed by community members.
- Should take into account that women and men often use land and other resources differently and therefore may have different needs and interests regarding resettlement. Companies must ensure that both women and men are fully considered in this process.
- Should recognise that resettlement may exacerbate already weak social structures or tensions resulting in already marginalised groups being further marginalised. As a result, opportunities must be maximised to assist communities to address situations such as HIV/AIDS education and gender equality.
- No resettlement should take place until policies and facilities are in place that will allow the relocated people to preserve their standard of living. Therefore:
 - Communities should have sufficient lead-time to rebuild lost or damaged agricultural resources or other forms of livelihood at the resettlement site before moving.
 - Where those being displaced have agriculture as their primary source of income and livelihood, every effort must be made to replace land with land. If suitable land is not available, other strategies for employment or self-employment acceptable to the community must be implemented.

Community members in front of a 'No To Mining' sign at the Didipio.

PHOTO: Ingrid Macdonald/Oxfam CAA





PHOTO: Penny Tweedie/Oxfam GB

- Women's and men's different uses of land and other resources (eg. for agriculture, foraging or grazing) needs to be considered, both in terms of the type of land to be replaced, and the development of other livelihood strategies. Resettlement policies must include programs designed in consultation with local women to meet the needs of women.
 - Every effort should be made to ensure that communities are kept together.
 - If this is impossible, community members should be resettled as close as possible to the rest of the community.
 - Relocated communities should receive legal land title, either collective or individual depending on the wishes of the community, for their resettlement plots, whether these are house plots or agricultural land. The resettlement must ensure equal rights for women, including the right to property ownership and access to resources. Female-headed households should be eligible for land title, and the needs of young women and men should also be considered.
 - Steps should be taken to ensure that relocated people are integrated socially and economically into the host communities at the resettlement sites, so that adverse effects on both communities are minimised and potential conflict in reduced.
 - Resettlement plans should include agreements that are developed in consultation with the communities as to what will occur to the land that was vacated for the mining activities once the mine closes.
 - Host communities should also be guaranteed all the rights set out in the 'Benchmarks' as they will be affected by the activities of the mine by being a host community.
- ### Compensation
- Any individual, group, or community that suffers a loss of assets, income, or amenity as a direct result of mining operations must receive compensation from the mining company. This includes:
 - Those who lose land, crops, trees, houses, mining equipment or other property;
 - Those whose land or property is damaged by mining operations;
 - Those who lose sources of income such as jobs, access to forest products, or the right to engage in small-scale mining;
 - Those who have to be resettled to make way for the mine; and
 - Those who are affected by any form of pollution or degradation: water, sea, land, air, or noise, from the company's operations.
 - Customary ownership of assets including land should be given the same status as formal legal ownership when assessing compensation.
 - The different uses of land and community assets by different groups, which may not be based on explicit legal or customary rights, should also be considered in assessing compensation.
 - Female-headed households should be recognised and treated in the same way as male-headed when assessing compensation.
 - Compensation should be determined through a fair process of negotiation between all affected parties and the mining company as already discussed above.
 - In order to ensure that companies do not take on the role of government, government authorities should always be involved with companies and communities in compensation negotiations, but the company must ensure that there is no intimidation of claimants by those authorities, the police, or armed forces.
 - The compensation must be sufficient for those who receive it to sustainably retain their former standard of living
 - Compensation must be assessed according to the actual full costs to people and communities, as these people and communities define those costs.

- An independent dispute resolution mechanism should be put in place locally so that those who feel they have not been fairly compensated can take their complaint to this mechanism in order to obtain a fair hearing. It is essential that women as well as men have the information and right to access complaint processes.
- Compensation should be based on recognition that many communities believe they own the minerals on their lands. It should include payment of a share in the value of the minerals extracted from the land. Such payments are normally in the form of a royalty based on a percentage of the value of the ore extracted. The company's financial reporting must be accurate and transparent. Royalties should reflect the true value of the ore extracted, rather than one diminished by practices such as transfer pricing.

Employment

Companies should provide jobs, services, and other developmental benefits locally. These must maximise the direct benefits to communities in the area affected by mining, as they bear most of the negative impacts. Original inhabitants should be given preference over newcomers and outsiders in the allocation of jobs.

- Every project should have a training plan that is aimed particularly at enabling local people to acquire relevant employment skills.
- Training and employment should focus on the acquisition of long-term skills by community members and not just those associated with the mining activities, so that upon mine closure people have opportunities in non-mining related industries.
- Every mining project should adopt a policy of maximising training and employment opportunities for women and actively counter discrimination, harassment, and male backlash in the work place. All planning in this area should be undertaken in consultation with women.
- Mining companies should provide equal remuneration for work of equal value, regardless of local labour markets that may value labour according to gender, caste, or ethnicity.
- Mining companies must not make use of child labour.
- At a minimum, a company needs to ensure that they do not contribute to the spread of HIV/AIDS in any environment in which they operate by:
 - Providing basic HIV/AIDS awareness training for all staff and their families; and
 - Developing appropriate HIV/AIDS Human Resources policies to protect, support and provide for staff and their families living with HIV/AIDS;
- All employees should be entitled to the protections guaranteed under the eight core International Labor Organisation Conventions, including the right to freedom of association and collective bargaining.
- The company should establish independent verification procedures to ensure that the rights of employees are protected. These procedures should include a panel of representatives from employee associations and independent organisations that are not selected by the company and which investigates the company's independent monitoring and implementation program and report on whether the company has been effective in identifying and rectifying lack of compliance.
- Employees should be provided with education as to their rights and entitlements. Such education should include an explanation of the monitoring and verification procedures and how employees can access an independent complaint mechanism, if one exists.
- In the case of disputes arise in the workplace and with management, employees should be able to appeal to an independent complaints mechanism. This mechanism should investigate and report on complaints and suggest means of rectifying the problem if one is found. It should be accessible, affordable and able to be accessed confidentially.
- All employees should be entitled at a minimum to a living wage, which guarantees a sufficient money to not only provide themselves and their families with adequate shelter, food, clothing, education, healthcare and transport but also for a small amount of discretionary income.
- Mining companies should not unilaterally withdraw from an active project without consultation with all stakeholders. All agreements entered into with the community and local government must be honoured to the same or better standards by the any new purchaser or investor upon the transfer of ownership.

Environment

The design and implementation of mining projects must minimise disturbance to the physical environment.

- People who will be directly affected by the proposed method of waste disposal (overburden, tailings, etc) from the mine must have the right to negotiate with the company over the method to be used and the right to prevent waste disposal (and therefore mine operations) proceeding until a satisfactory method is agreed to by all parties.

- In their overseas operations, Australian mining companies should aim to operate at least to the equivalent of Australian practices and standards of environmental management.
- The Precautionary Principle should apply in its most stringent form to all mining operations whereby mining companies must bear the cost of using environmentally sound technologies and not use unproven technologies or methods that may jeopardise the safety or sustainability of communities and environments. As a result:
 - All overburden, tailings and other waste should be contained on site and not disposed of in river systems or the ocean.
 - The mining of high sulphide ore-bodies should only proceed if adequate steps have been taken to prevent acid mine drainage, and if this is impossible, mining should not proceed, given the permanent environmental implications.
 - Companies should respect conservation and environmental designations that may restrict or prohibit mining and exploration activities, such as 'Protected forest' classifications, marine reserves and 'World Heritage' sites.
- Companies should maintain a system of environmental monitoring of the area around a mine, including river systems, and have mechanisms in place to ensure that corrective action is taken when the monitoring reveals a problem. This system should include independent and rigorous verification mechanisms by government, community members, and civil society who are not chosen by the company. All findings should be made publicly available in order to ensure transparency and accountability.
- If rivers or streams used by communities downstream are inadvertently polluted by the company's operations, it must take responsibility for stopping the source of the pollution as soon as possible, repairing any damage caused and providing compensation for those affected.
- Companies must ensure that when decommissioned, mine sites are left in a safe and stable condition, and that landforms, flora and fauna are restored as near as possible to the pre-mine state.
- Rehabilitation bonds must be sufficient to cover all rehabilitation costs and any required remediation.
- There must always be adequate closure plans in place before the beginning of a project. These plans must be developed in consultation with all community members. At a minimum, they should reflect the standards of the company's host nation. These plans should be revisited bi-annually in order to ensure that they are consistent with changing circumstances.

Right to Basic Social Services

Companies should be conscious of the need to avoid becoming a de-facto provider of government services to affected communities. If a government is under-resourced or lacks capacity, companies should endeavour to build capacity within government by including appropriate bureaucrats in all components of community consultation and project decision-making. However, companies should ensure that there is no intimidation of women and men from affected communities in these processes by those authorities, the police or armed forces.

- Companies should provide local government with funding to provide services such as health clinics and schools so that the local population has access to such services. This funding must be transferred in a transparent and accountable manner with reporting on the use of the funding being publicly available. Community members should be trained so that they can operate all services for themselves and financial arrangements should be made to ensure that such services continue to operate sustainably after the mine is closed.
- Companies should recognise that their employees can pose considerable risks to the often marginalised, isolated and fragile communities in which they operate through introducing illnesses such as HIV/AIDS. Such communities will often lack the infrastructure or access to adequate social services to deal with an epidemic as devastating as HIV/AIDS.
- In an appropriate manner and language, the company should provide basic HIV/AIDS training and education for all groups, especially women in affected communities in consultation with these groups.

Right to Life and Security

Everyone living near a mine site has the right to live free from the threat of violence. If a company knows, or ought to know, that the basic human rights of community members are being abused or infringed in order to facilitate the commencement or continuation of company operations, then that company is in effect acting as an accomplice to those abuses and infringements.

- The activities of mining companies should never help to perpetuate systems of oppression, exploitation, and marginalisation.
- Mining companies should not initiate, encourage, or become involved in actions by the police or armed forces of a host country that are likely to lead to human rights abuses, particularly actions intended to protect a mining operation.

- While having the right to protect staff and property, companies should not rely on police or military action to solve problems in their relations with communities. They should actively discourage host governments from using such methods. Companies should always use negotiation rather than force to defuse conflict.
- Companies should not operate in areas where their activities require the use of military forces or excessive security in order to maintain the operation as such situations are likely to result in human rights abuses. This includes situations in which there has been forced removal or clearing of people before mining begins, or where there is a civil war or armed conflict in progress.
- Mining companies should not undertake mining activities if they know that the benefits from their activities are being channelled into corrupt regimes. Mining companies should therefore disclose all payments that they make to any government and all stakeholders.
- No mining company should undertake activities within countries where their activities are helping to perpetuate gross human rights abuses.
- Mining companies should not partake in corrupt activities, including making facilitation payments.
- Mining companies should ensure that all mine closure plans consider how the human rights of people and communities who have been affected by mining activities are to be protected and respected once a mine closes.
- Companies should not pay for, nor provide logistical or other support for, the police or armed forces of the host country in return for them maintaining security at the mine.
- Companies should acknowledge that peaceful demonstrations are an expression of democratic rights and not call in the police or military to stop them. They should also take all reasonable steps to dissuade government authorities from doing so.
- Companies should take responsibility for their own security personnel to ensure that they do not become involved in harassment, assaults, violence against women, or other abuses of human rights.
- Those hired to protect the company, mine property or its staff from theft and other crimes should be supervised, appropriately skilled in methods for conflict resolution, and fully aware of their human rights obligations.
- Companies should not adopt policies that exacerbate tension in divided communities, for example, by recruiting traditional enemies of the local community as security guards.

Right to an Identity

Social problems often associated with mining include excessive gambling and drinking, prostitution, sexually transmitted diseases, rape and other forms of violence against women. Women have the right to be free of discrimination and harassment. The special relationship that Indigenous Peoples have to their land must be recognised and respected.

- Mining companies should be responsible for the social impact of their employees upon local populations.
- Companies should have a code of conduct for employees covering such areas as cross-cultural relations, responsible use of alcohol, relations with local women, etc. This should be supplemented by staff training, including cross-cultural and gender training.
- Companies should fund women's resource centres and programs that local women choose for themselves, and assist women with obtaining information, advice, training and support so that they can manage these facilities for themselves.
- Mining companies should recognise the rights of Indigenous Peoples, even when this is not required under the laws of the host country. Indigenous Peoples may have specific needs and rights due to their spiritual and cultural connections to the land. Such connections may not be quantifiable in material terms, however they are invaluable to Indigenous Peoples as they provide a sense of identity and are a source of meaning.
- Mining companies should work towards ensuring gender equality in all aspects of their operations and influence. Oppression of the rights of any group or person is illegitimate.

The Tintaya camp with the mine in the background.

PHOTO: Oxfam CAA/Ingrid Macdonald

Appendix 2

The Oxfam rights-based approach and international human rights instruments

Aim 1: Right to a sustainable livelihood

1948, Universal Declaration of Human Rights	<p>The General Assembly, <i>whereas</i> recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace and the world, proclaims this Universal Declaration as a common standard of achievement for all peoples and all nations:</p> <ul style="list-style-type: none"> • Everyone has the right to own property; • Everyone has the right to work and leisure; • Everyone has the right to an adequate standard of living, including food, clothing, housing and the right to security in the case of event of unemployment or other lack of livelihood.
1966, International Covenant on Economic, Social and Cultural Rights	<p>States Parties to the present Covenant, <i>recognising</i> that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, agree:</p> <ul style="list-style-type: none"> • All peoples have the right to self-determination, by virtue of which right they freely pursue their economic, social and cultural development; • States Parties are to recognise the right to work and the enjoyment of just and favourable conditions of work; • States Parties are to undertake to ensure the right to strike; • States Parties are to recognise the right to social security; • States Parties are to recognise the right to an adequate standard of living, including adequate food, clothing and housing and to the continuous improvement of living conditions; • States Parties are to recognise the fundamental right of everyone to be free from hunger.
1992, Rio Declaration on Environment and Development	<p>The United Nations Conference on Environment and Development, <i>recognising</i> the integral and interdependent nature of the Earth, our home, proclaims that:</p> <ul style="list-style-type: none"> • Human beings are at the centre of concerns for sustainable development; • States have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies; • The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations; • In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process.
1995, Copenhagen Declaration and Program of Action (Social Summit)	<p>As Heads of State and Government, <i>sharing</i> the conviction that social development and social justice are indispensable for the achievement and maintenance of peace and security within and among our nations we are committed to a political, economic, ethical and spiritual vision for social development that is based on human dignity, human rights, equality, respect, peace and democracy and commit ourselves to:</p> <ul style="list-style-type: none"> • Create an economic, political, social, cultural and legal environment that will enable people to achieve their social development; • To enable all men and women to attain secure and sustainable livelihoods through freely chosen productive employment and work.
1996, Rome Declaration on World Food Security World Food Summit Plan of Action	<p>We, the Heads of State and Government, <i>reaffirm</i> the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger, and pledge our actions and support to implement the World Food Summit Plan of and Action.</p>

Aim 2: Right to basic social services

1948, Universal Declaration of Human Rights	<ul style="list-style-type: none"> • Everyone has the right to an adequate standard of living, including medical care. • Everyone has the right to education.
1966, International Covenant on Economic, Social and Cultural Rights	<ul style="list-style-type: none"> • States Parties are to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. • States Parties are to recognise the right of everyone to education, and with a view to realising this right, primary education shall be compulsory, available free to all.
1989, Convention on the Rights of the Child	<p>States Parties to the present Convention, <i>bearing in mind</i> the need to extend particular care to the child, recognise:</p> <ul style="list-style-type: none"> • That mentally or physically disabled children should enjoy a full and decent life; • The right of the child to enjoy highest attainable standard of health and facilities for treatment; • The right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development; • States to provide assistance, with regard to nutrition, clothing and housing; • The right of the child to education; • States to make primary education compulsory and available free to all.
1990, World Declaration on Education for All ("the Jomtien Declaration")	<p>Participants in the World Conference on Education for All, <i>recalling</i> that education is a basic right for all people ... proclaim:</p> <ul style="list-style-type: none"> • Every person – child, youth and adult – shall be able to benefit from educational opportunities designed to meet their basic learning needs.
1994, Declaration and Program of Action of the United Nations International Conference on Population and Development, endorsed by the General Assembly	<p><i>Participants to the International Conference on Population and Development will be guided by the following principles:</i></p> <ul style="list-style-type: none"> • Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health; • States are to take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health care services, including those related to reproductive health care; • All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children; • Everyone has the right to education; • The child has the right to standards of living adequate for its well-being and the right to the highest attainable standards of health, and the right to education.
1995, Copenhagen Declaration and Program of Action (Social Summit)	<ul style="list-style-type: none"> • Universal and equitable access to quality education. • Highest attainable standard of physical and mental health. • Access by all to primary health care.

Aim 3: Right to life and security

1948, Universal Declaration of Human Rights	<ul style="list-style-type: none">Everyone has the right to life, liberty and security of the person.No one shall be held in slavery or servitude.No one shall be subjected to torture.No one shall be subjected to arbitrary arrest.No one shall be subjected to arbitrary interference with his privacy.Everyone has the right to freedom of movement.Everyone has the right to seek and enjoy asylum.
1951, Convention on the Status of Refugees and Protocol (1967)	<p>High Contracting Parties, considering that the UN has, on various occasions, manifested its profound concern for refugees ... have agreed:</p> <ul style="list-style-type: none">To apply provisions of this Convention to refugees without discrimination;The personal status of a refugee shall be governed by the law of the country of his residence;No Contracting State shall expel or return a refugee.
1998, Guiding Principles on Internal Displacement (UNOCHA)	<p>The principles are consistent with international human rights and humanitarian law. They provide guidance to the UN, States, other authorities, and NGOs.</p> <ul style="list-style-type: none">Internally displaced persons shall enjoy in full equality the same rights and freedoms as do other persons in their country.Internally displaced persons have the right to request and receive protection and humanitarian assistance.
1949, Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War	<p>The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances</p> <ul style="list-style-type: none">Convention shall apply to all cases of partial or total occupation of the territory of a High Contracting Party;Persons protected by the Convention are those who find themselves in case of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. Provisions cover the whole of the populations of the countries in conflict, without any adverse distinction based on race, nationality, religion or political opinion;Provisions of present Convention constitute no obstacle to humanitarian activities that the ICRC or any other impartial humanitarian organisation undertakes for the protection of civilian persons and their relief.
1998, Rome Statute of the International Criminal Court Not yet in force, but ratification has started	<p>The States Parties to this Statute, <i>mindful</i> that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity and <i>resolved</i> to guarantee lasting respect for and the enforcement of international justice, have agreed:</p> <ul style="list-style-type: none">To the establishment of an International Criminal Court as a permanent institution for the most serious crimes of international concern, the crime of genocide; crimes against humanity; war crimes; the crime of aggression.
1966, International Covenant on Civil and Political Rights	<p>Parties, realising that the individual, having duties to other individuals and to the community, agree:</p> <ul style="list-style-type: none">No one shall be held in slavery;No one shall be subjected to torture.

Aim 4: Right to be heard

1948, Universal Declaration of Human Rights	<ul style="list-style-type: none">Everyone has the right to freedom of thought, conscience and religion.Everyone has the right to freedom of opinion and expression.Everyone has the right to freedom of peaceful assembly and association.Everyone has the right to take part in the government of his country.
1948, Freedom of Association and Protection of the Right to Organize Convention (C. 87)	<p>The General Conference of the International Labor Organization, <i>considering</i> that the recognition of the principle of freedom of expression to be a means of improving conditions of labour and of establishing peace, adopts:</p> <ul style="list-style-type: none">Workers and employers shall have the right to establish and to join organisations of their own choosing;The right to establish and join federations and confederations.
1966, International Covenant on Economic, Social and Cultural Rights	<ul style="list-style-type: none">The right of everyone to form trade unions and join the trade union of his choice.The right to strike.
1966, International Covenant on Civil and Political Rights	<ul style="list-style-type: none">All peoples have the right to self-determination, by virtue of which right they freely determine their political status.All persons shall be equal before the court; fair and public hearing by a competent, independent and impartial tribunal established by law.Everyone shall have the right to freedom of thought, conscience and religion.Everyone shall have the right to freedom of expression.Recognition of the right to peaceful assembly.Everyone shall have the right to freedom of association.Every citizen shall have the right and opportunity to take part in the conduct of public affairs; to vote and to be elected.Everyone has the right to liberty and security of person.Everyone shall have the liberty of movement.No one shall be subjected to arbitrary interference with his privacy.
1999, Optional Protocol Committee on the Elimination of Discrimination against Women (CEDAW)	<p>The States Parties to this Protocol, <i>reaffirming</i> their determination to ensure full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms, recognise the competence of the Committee on the Elimination of Discrimination against Women, to receive and consider [written] communications, by or on behalf of individuals or groups of individuals, claiming to be victims of a violation of any of the rights set forth in CEDAW.</p>



References

Aim 5: Right to an identity

1948, Universal Declaration of Human Rights	<ul style="list-style-type: none">• All human beings are born free and equal in dignity and rights.• Everyone has the right to recognition as a person before the law.• All are entitled without any discrimination to equal protection of the law.• Everyone has the right to a nationality.
1965, International Convention on the Elimination of all Forms of Racial Discrimination	<p>States Parties to this Convention, considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and incitement to discrimination, have agreed:</p> <ul style="list-style-type: none">• To condemn racial discrimination (which is any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin);• To condemn all propaganda and organisations which are based on theories of superiority of one race or one group of persons.
1966, International Covenant on Economic, Social and Cultural Rights	<ul style="list-style-type: none">• All peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.• States Parties are to undertake that the rights enunciated in the Covenant, will be exercised without discrimination of any kind.
1966, International Covenant on Civil and Political Rights	<ul style="list-style-type: none">• Equal right of men and women to the enjoyment of all civil and political rights.• Persons belonging to minorities shall not be denied the right to enjoy their own culture, profess and practice own religion or to use own language.
1979, Convention on the Elimination of Discrimination against Women	<p>States Parties to the present Convention, <i>determined</i> to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations, have agreed:</p> <ul style="list-style-type: none">• To condemn discrimination against women (which is any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights) in all its forms.
1989, Indigenous and Tribal Peoples Convention (ILO C. 169)	<p>The general Conference of the International Labor Organization, <i>noting</i> that in many parts of the world these peoples are unable to enjoy their fundamental rights to the same degree as the rest of the population of the States in which they live, adopts:</p> <ul style="list-style-type: none">• Governments shall have the responsibility for developing, with the participation of the peoples concerned, action to protect the rights of these peoples and to guarantee respect for their integrity;• Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedom without hindrance or discrimination.
1995, Copenhagen Program of Action (Social Summit)	<ul style="list-style-type: none">• Promote social integration by fostering societies that are based on the promotion and protection of all human rights, as well as on non-discrimination, respect for diversity and on participation of all people, including disadvantaged and vulnerable groups and persons.

1. Sharan Burrows, ACTU President, in an address at the World Economic Forum – Asia-Pacific Business Conference, 12 September 2000
2. There are eight 'core' ILO Conventions on labour rights, namely Convention 29 (forced labour), 87 (freedom of association and protection of the rights to organise), 98 (right to organise and collective bargaining), 100 (equal opportunities and equal treatment for men and women workers: workers with family responsibilities), together with ILO Conventions 182 & 190 (child labour) and 169 (the rights of indigenous and tribal people).
3. The Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women, Beijing, 4 – 15 September 1995 reaffirmed the universality, objectivity, and non-selectivity of human rights.
4. The United Nations Charter requires all countries '...to take joint and separate action in co-operation...' with the United Nations in order to achieve '...respect for the principle of equal rights and self-determination of peoples,' and '...universal respect for, and observance of, human rights and fundamental freedoms for all.' *Charter of the United Nations*, adopted 26 June 1945, entered into force October 1945, 892 UNTS 119, art 1, 55 and 56.
5. International Council on Human Rights Policy, *Beyond Voluntarism: Human rights and the Developing International Legal Obligations of Companies*, 2002, p. 12.
6. Utting, Peter, 'Business Responsibility for Sustainable Development', United Nations Research Institute for Social Development, 2000, p. 1. <http://www.unrisd.org/>
7. Jeffrey L Dunoff, 'The Death of the Trade regime,' *European Journal of International Law* 10:4, 1990, pp. 733, 746 – 7.
8. UNDP, *Human Development Report 2002: Deepening Democracy in a Developing World*; *Human Development Report 2001: Making New Technologies Work for Human Development* at <http://www.undp.org> and World Bank Group, *World Development Report 2003: Sustainable Development in a Dynamic Economy* at <http://www.worldbank.org>.
9. Utting, Peter, 'Regulating Business via Multistakeholder Initiatives: A Preliminary Assessment', *United Nations Research Institute for Social Development*, 2002 at <http://www.unrisd.org/>
10. International Council on Human Rights Policy, *op. cit.*
11. See cases concerning: *Trial of Major War Criminals Before the International Military Tribunal Nuremberg*, 1947; *Statute of the International Criminal Tribunal for the Former Yugoslavia*, UN Doc S/Res/827, 1993; *Statute of the International Tribunal for Rwanda*, SC Res 955, 49 UN SCOR (3452nd meeting), UN Doc S/Res/955, 1994; and the requirements of the *Rome Statute of the International Criminal Court*, 37 ILM 999, opened for signature 17 July 1998.
12. International Council on Human Rights Policy, *op. cit.*; and Sullivan, Rory and Peter Frankental, *Human Rights and Mining: Reconciling Expectations, Perceptions and Reality*, 2001.
13. Fitzgerald, E.V.K. 'Regulating Large International Firms', *United Nations Research Institute for Social Development*, 2001, p. 15. <http://www.unrisd.org>
14. Henkin, 'The Universal Declaration at 50 and the Challenge of Global Markets,' *Brooklyn Journal of International Law*, 25:1, 1999, p25.
15. *The Vienna Declaration and Programme of Action*, adopted by the United Nations World Conference on Human Rights, Vienna, June 25 1993, paragraph 5.
16. Richter, Judith *Holding Corporations Accountable: Corporate Conduct, International Codes and Citizen Action*, Zed Books, UNICEF, 2001, p 6.
17. See Principle 7 of the *Rio Declaration on Environment and Development* 31 ILM 874, 1992.
18. UNDP, *Human Development Report 2001*, *op. cit.* states that "The income gap between the richest one-fifth of the world's people and the poorest one-fifth measured on average national income per head, increased from 30 to 1 in 1960 to 74 to 1 in 1997."
19. Oxfam Community Aid Abroad, *Submission to the Joint Parliamentary Committee on Corporations and Securities Inquiry into the Corporate Code of Conduct Bill 2000*, Oxfam Community Aid Abroad, 2000.
20. McKinney, C. A Bill to require nationals of the United States that employ more than 20 persons in a foreign country to implement a Corporate Code of Conduct with respect to the employment of those persons and for other purposes, 106th Congress, 2nd Session, 2000.
21. 'Stakeholders' may include those who are influenced by, or have an interest in, the operations of a particular company. This includes customers, suppliers, employees, communities, investors, civil society, and so on.
22. See the conclusion of Tim Connor, "We Are Not Machines", 2002 for a discussion of the requirements of voluntary codes of conduct in relation to the shoe manufacturing industry at <http://www.caa.org.au/campaigns/nike/reports/machines/conclusion.html>.
23. International Council on Human Rights Policy, *op. cit.*, p. 70.
24. Adapted from Jenkins, Rhys 'Corporate Codes of Conduct: Self-regulation in a Global Economy', *United Nations Research Institute for Social Development*, 2001, p. 28 – 29.
25. World Competitive Practices Pty Ltd for the Australian Institute of Mining and Metallurgy, 'Rising to the Challenge: Building Professional Staff Capability' in the *Australian Mineral Industry for the New Century*, 5/2000, Department of Education, Training and Youth Affairs, Commonwealth of Australia, p. 18.
26. Minerals Policy Institute, *Corporate Code of Conduct Bill Mineral Policy Submission to Senate Inquiry*, 2000.
27. International Council on Human Rights Policy, *op. cit.* p. 16.
28. *Ibid.* p. 7.
29. *Ibid.*
30. See, for example, Hawken P. et al, *Natural Capitalism: The Next Industrial Revolution*, Earthscan, London, 1999.
31. Jochnick, Chris, 'Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights,' *Human Rights Quarterly*, 21, 1999, pp. 56, 64.
32. International Council on Human Rights Policy, *op. cit.* p. 7.
33. OECD, *About Guidelines for Multinational Enterprises*, 2002, at <http://www.oecd.org/EN/about/0,,EN-about-93-3-no-no-no-0,00.html>
34. OECD, *OECD Guidelines for Multinational Enterprises*, Revision, 2000.
35. *Ibid.*
36. Global Mining Campaign, 'A Survey of the Mining Landscape: Situational Analysis', Sept. 2001.
37. Submission from Amnesty International 'The Relevance of the OECD Guidelines for Multinational Enterprises to the Mining Sector and the Promotion of Sustainable Development', 2002.



38. Oxfam International, 'Policy Recommendations on the Protection of Labour Rights', Draft, June 2002.
39. See Telecommunications Industry Ombudsman, Annual Report 2000/01 at http://www.tio.com.au/publications/annual_reports/annual_2001.7.htm#1
40. Based on research conducted in June 2002 of the Telecommunications Industry Ombudsman, reported at <http://www.tio.com.au>
41. See Commonwealth Ombudsman *Annual Report 2000 – 2001*; Ombudsman Act 1976, s.3AB at http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/s3ab.html
42. *Ombudsman Act 1976*, s.9 – http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/s9.html
43. *Ibid.* Ombudsman Act 1976 s.36 at http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/s36.html
44. *Ibid.* s.3A states: "This Act applies both within and outside Australia and extends to every external Territory," at http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/s3a.html
45. See Commonwealth Ombudsman, *op. cit.*
46. World Bank Group "About Us" – <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,pagePK:43912~piPK:36602,00.html>
47. International Finance Corporation / Multilateral Investment Guarantee Agency, Compliance Advisor / Ombudsman, Annual Report 2000 – 01, p. 2.
48. Operational Guidelines for the Office of the IFC / MIGA Compliance Advisor / Ombudsman – http://www.ifc.org/cao/english/guidelines/ENGLISH_09-20-00.pdf
49. *Ibid.*
50. *Ibid.*
51. *Ibid.*
52. 'Corporate veil' is where company executives avoid prosecution for human rights violations or environmental negligence by arguing that the company, not the individual, is responsible for violations.
53. The Indo Muro Kencana, Tolukuma and Tintaya cases show a steady growth in grievances about inadequate consent and land acquisition processes through to concerns over environmental pollution and human rights violations during the operational phases.
54. Davis, S., 'Consultation and the East Asian Perspective, Mining and the Community: Results of the Quito Conference', in McMabon, G., Ed., *World Bank EMT Occasional Paper No. 11*, April 1998.
55. These phases are adapted from Burdge, R.J. and Vanclay, F., 'Social Impact Assessment', in Vanclay, F. and Bronstein, D.A. (eds.) *Environmental and Social Impact Assessment*, 1996, Ch.2, pp. 31 – 66.
56. For a case study that illustrates a community's cultural connections to the land, see Harwood, Alison, 'Indigenous Sovereignty and Century Zinc' in Evans, Goodman & Lansbury (Eds), *Moving Mountains: Communities Confront Mining and Globalisation*, Otford Press, Sydney, 2001, p. 75 – 90.
57. Finn, Janet L., *Tracing the Veins*, University of California Press, Berkeley, 1998, p. 13.
58. Taken from the 'Wingspread Statement on the Precautionary Principle', at <http://www.monitor.net/rachel/r586.html> – accessed 7/7/02 (emphasis added).
59. Coleman, Robert J. 'The US, Europe, and Precaution: A Comparative Case Study Analysis of the Management of Risk in a Complex World', Speech on 11/12 January, 2002, at http://www.europa.eu.int/comm/dgs/health_consumer/library/speeches/speech139_en.pdf – accessed 7/7/02
60. ARWROA, 17/11/2000
61. Natural Systems Research and David Ballach & Associates, 'Mine Impacts on the River System', Dome Resources, November 1993, p. 17
62. Atkinson to Wellesley Wood (CEO DRD Ltd.), 'Re Landowner Concerns – Tolukuma Mine', letter, 14/8/01.
63. Minproc Limited, 2000, 'Tolukuma Gold Mine', Section 5 – Environmental, p. 5.
64. *Ibid.*
65. McWha to Bolitho, 'Tolukuma Mercury Discharge', email, 19/7/00.
66. *Ibid.*
67. Wellesley-Wood, Mark (CEO DRD Ltd), 'Memo – Tolukuma Mercury Issue', 13/7/02.
68. Minproc Limited, *op. cit.*, 'Section 4 – Process', p. 8.
69. DRD website, <http://www.drd.co.za> accessed 29/09/02
70. Miningweb, 'DRD gets financing for Tolukuma expansion', 12/11/01 at <http://www.theminingweb.com> (accessed 29/9/02)
71. *Ibid.*
72. Minproc Limited, *op.cit.*, Section 5 – Environmental, p. 15.
73. ELC, Greenpeace & the Mineral Policy Institute, 'Cyanide Crash', 7/2000, available online <http://www.mpi.org.au/rr/docs/tolukuma.pdf> – accessed 29/8/2002
74. Minproc Limited, *op. cit.*, Section 10 – Risk Analysis, p. 6.
75. Minproc Limited, *op. cit.*, Section 5 – Environmental, p. 7.
76. *Ibid.* p. 9.
77. *Ibid.*
78. *Ibid.* p. 5.
79. WALHI South Sumatra, Press Release: 'Forum on the mining activities of PT Barisan Tropical Mining', Palembang, Indonesia, 11/2/1999.
80. Wahana Lingkungan Hidup Indonesia Sumatra Selatan
81. Sumatra Ekspres, Friday 7 July 2000, p. 7
82. Roger Kebble, then CEO of Consolidated Africa Mines was a former CEO of DRD Ltd and remained on the board of DRD until March 20002.
83. Stratton to Atkinson, 8/11/2001, personal correspondence
84. DRD, News Release 7/6/02, <http://www.durbans.com>, accessed 27/8/02
85. *Ibid.*
86. See Stratton to Atkinson, *op. cit.*
87. Bolitho, Barry, 31/1/00, 'Second Quarter Activities Report' at <http://www.asx.com.au> accessed 27/8/02
88. Stratton, 31/10/02, 'First Quarter Activities Report', in <http://www.asx.com.au> accessed 27/8/02
89. *Ibid.*
90. *Ibid.*
91. *Ibid.*
92. Rawson to Gorman, letter, reply to Mining Ombudsman's request for independent inquiry into Indo Muro Gold Mine 26/7/02
93. Jatam, correspondence, 'Shooting at Aurora Gold mine' 22/1/2002
94. Jeffries to Macdonald, letter, 'Mt Muro Mine – Central Kalimantan' 22/2/02
95. Official Hansard 15/5/02, Commonwealth of Australia, no.4, pp. 1647 – 1653, <http://www.aph.gov.au/hansard/senate/dailys/ds150502.pdf>
96. *Ibid.* and Mining Monitor, 'Embassy Ignored Killings at Indonesian Mine', Vol.7 No.2, 6/02, http://www.mpi.org.au/mm/editions/leadstory_vol7no2.pdf
97. Gorman to Downer, letter, 'Re Indo Muro Gold Mine – Indonesia' 15/7/02
98. Human Rights Watch Asia, <http://www.hrw.org/reports/2001/papua/PAPUA0701-05.htm> <http://www.hrw.org/reports/2001/aceh/indaceh0801-11.htm> <http://www.hrw.org/reports/1997/indtimor/Indtimor-04.htm>
99. Gorman to Downer, *op. cit.*
100. (approximate figure) Mbendi, 'Gag Island', <http://www.mbendi.co.za/facility/f1x8.htm>, accessed 14/8/02.
101. Oxfam Community Aid Abroad, 6/2001, *Mining Ombudsman Annual Report 2000 – 2001*, p. 39.
102. Huggins to Macdonald, Letter, 'Gag Island Nickel Project – Suspension of Contract of Work', 7/3/02.
103. *Tempo*, March 19 – 25, 2002.
104. Reuters, 'Antam Eyes Japan Firm for Gag Nickel', 5/8/02.
105. McKenna, Allen, *A Marine Rapid Assessment of the Raja Ampat Islands, Papua Province, Indonesia*, Suryadi, 2002, pp. 17 – 18.
106. *Ibid.* p15.
107. Available on JATAM's website at http://www.jatam.org/wti/deklarasi/manado_eng.html.
108. Wood (BHPB Vice President Sustainable Development) to Macdonald, letter, 'Gag Island Nickel Project', 13/9/02.
109. <http://www.climaxmining.com.au/html/projects.html>.
110. Gascon, Melvin 'Help Stop Vizcaya Mining, Bishop Appeals to Gloria', Inquirer News Service, 15/07/01 at <http://www.inq7.net> accessed 05/28/02
111. Brazas, Donna, 'Philippines Suspends Mine Exploration Operations', *The Manila Times*, 17/10/01, at <http://www.minesandcommunities.org> accessed 28/05/02
112. See the web-site of the Tettebba Foundation at www.tebtebba.org for a copy of the Conference Statement and the report on the National Conference on Mining.
113. *Ibid.*
114. Orlino, Sr. Eden L., 'The Struggle of Didipio Against a Mining Giant Named Climax Arimco Mining Company,' *Unpublished Paper*, DSAC Bayombong, September 2002.
115. *Ibid.*
116. Mission, Gina, 'A Community Speaks Out', Pan-Philippine News and Information Service, 16/02/00, at <http://www.cyberdyaryo.org> accessed 28/05/02.
117. See Brazas, *op. cit.*
118. Gascon, *op. cit.*
119. Orlino to Macdonald, 'Didipio Research' 20/7/02.
120. Coumans, Catherine, 'Canadian Companies in the Philippines', *Undermining the Forests: The Need to Control Transnational Companies: A Canadian Case Study Forest People's Program*, (2000) pp. 59 – 67.
121. *Ibid.*
122. *Ibid.*
123. Mining Watch Canada, 'Placer Dome's Ongoing Problems in the Philippines', Newsletter, Number 8 Winter/Spring 2002.
124. See the web-site of the Tettebba Foundation at www.tebtebba.org for a copy of the Conference Statement and the report on the National Conference on Mining.
125. Coumans, 2000, *op. cit.*, pp. 59 – 67.
126. *Ibid.*
127. *Ibid.*
128. MACEC & Coumans, Catherine, 2002, 'The Successful Struggle against STD in Marinduque' in *STD Toolkit* available at www.miningwatch.ca, accessed 15/7/02
129. See Coumans, 2000, *op. cit.*, pp. 59 – 67
130. *Ibid.*
131. *Ibid.*
132. *Ibid.*
133. *Ibid.*
134. MACEC & Coumans, Catherine, 2002, *op. cit.*
135. Coumans, 2000, *op. cit.*, pp. 59 – 67.
136. Tauli-Corpuz, Victoria, The Third World Network, <http://www.twinside.org.sg/title/toxic-ch.htm>, accessed 15/7/02)
137. U.N. Report, 1996, cited in Coumans, 2000, *op. cit.*
138. Tauli-Corpuz, *op. cit.*
139. Willson, John (CEO Placer Dome) to Ramos, Fidel (President Philippines), letter, 11/4/96.
140. *Ibid.*
141. In 1998, Placer Dome's former CEO, John Willson, was famously quoted in the *Globe and Mail* as saying 'Placer does not concede that there is damage in the bay'. *Globe and Mail*, Canada, 16/4/98.
142. Cuarteron, Alberto O. (Representative of Remaining Employees of Marcopper), to Baculio, Augusto H., (Chairman, Committee on Ecology), letter, 9/10/2001.
143. Taylor, Jay K., 'Introduction', 2001 *Financial Results*, Placer Dome, 2001, p. 11.
144. Willson, *op. cit.*
145. Oxfam Community Aid Abroad, *Mining Ombudsman Annual Report 2000 – 2001*, *op. cit.*, p. 46.
146. Oxfam International, *Towards Global Equity: Strategic Plan 2001 – 2004*, 2001





PHOTO: Crispin Hughes Oxfam GB

 **Oxfam**
Community Aid Abroad

www.caa.org.au