



Mining Ombudsman **Annual Report 2003**



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.

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Small photos (left to right)

Dinaon Cut-ing, Case 1 Didipio

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Pak Pius (rear) and Pak Talin, Case 5 Kelian.

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Elizabeth Kitai, Case 2 Tolukuma

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Dora Usca, Case 3A Tintaya

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Man from Dubiulenga village, Case 2 Tolukuma

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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.

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Oxfam Community Aid Abroad is an Australian, independent, non-government aid and development agency that is the Australian member of the Oxfam International confederation. Over the past 50 years, Oxfam Community Aid Abroad has been a vehicle for Australians to help communities build a fairer and more sustainable world by fighting global poverty and injustice. The agency undertakes local, regional, and national long-term development projects, provides humanitarian responses during disaster and conflict, and advocates for policy and practice changes that promote human rights and justice.

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. Oxfam Community Aid Abroad is not opposed to mining, but believes that this activity must be undertaken in accordance with the rights established by the international human rights system, particularly the right of men and women from communities to prior, free and informed consent to both exploration and mining activities.

Oxfam Community Aid Abroad believes that private sector investment can be an important driver of economic growth and poverty reduction, provided that appropriate regulation and controls exist. Such controls must include adherence by mining companies to the universal human rights standards laid down under the international legal system. Without adherence to these standards, mining can bring significant negative impacts, including loss of land and livelihoods, the degradation of land and waterways, and an increased incidence of violence and conflict. It can also not be assumed that local communities – especially women, children and indigenous peoples – will automatically benefit from mine development. The forum *Tunnel Vision: Women, Mining and Communities* convened by Oxfam Community Aid Abroad in 2002, illustrated how women, in particular, have tended to be excluded from the economic benefits of mining and bear the burden of many of the negative social and environmental impacts.

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[†] See Macdonald, I. & Rowland, C. (eds), (2002), *Tunnel Vision: Women, Mining and Communities*, Oxfam Community Aid Abroad, p 3.

Message from the Mining Ombudsman



Ingrid Macdonald
Photo: Martin Wurt/OxfamCAA

The Australian mining industry needs a complaints mechanism.

The mining activities discussed within this annual report have had significant impacts on local communities and their environments. In the Tolukuma case, local communities from Papua New Guinea complain that the dumping of tens of thousands of tonnes of mine waste directly into their water system annually is polluting their water sources and undermining food security.

In the Indo Muro case, the indigenous Indonesian Dayak communities have suffered violent evictions from their land without compensation, while mine security have killed and wounded a number of small-scale miners.

In the Philippines, the local communities of Didipio allege that company officials falsified documents and bribed community leaders in an attempt to manufacture community consent for exploration and mine activities. These alleged violations of the rights of local community members including their rights to prior informed consent; to live free of violence and intimidation; to a clean and healthy environment; and to a sustainable livelihood, are unacceptable and totally avoidable.

Human rights infringements and violations are neither natural nor inevitable. They result from deliberate choices and actions by the perpetrators. Nor is poverty a natural state or phenomenon. Poverty results from the direct denial, or violation, of the human rights of men, women, girls and boys, by entities that have greater access to power, or through systems that are based on injustice, inequality and discrimination. If mining is to play a part in combating poverty and promoting development, as is often claimed by industry associations and companies, then mining companies can no longer, under any circumstances, tolerate or excuse human rights infringements or violations.

Since 2000, the Oxfam Community Aid Abroad Mining Ombudsman has acted to receive and address community grievances and demonstrate the feasibility and need for an official Australian mining industry complaints mechanism. The Tintaya case, in particular, illustrates the beneficial results that can be achieved through such a mechanism. Prior to the intervention of the Mining Ombudsman, there appeared to be intractable differences and conflict between the local Peruvian communities and the company. However, the Mining Ombudsman process has helped to improve communication between all stakeholders so that now community members are more confident in negotiating with the company to address their environmental and social concerns. Even in the Tolukuma case, where last year the company had steadfastly refused to acknowledge the grievances of local communities, this year, the company has recognised that it is accountable to these communities and attempted some communication in respect of their concerns.

On the other hand, the Didipio case in the Philippines and the Indo Muro case in Indonesia justify why an industry complaints mechanism would need to have regulatory powers of enforcement over *all* Australian mining companies. Climax Mining and Aurora Gold have refused to acknowledge or address the concerns of communities impacted by their operations, and without regulatory compulsion, these free-rider companies appear unlikely to do so.

Given the complaints of local communities detailed in this report, and the increasing power of Australian mining companies vis-a-vis economically developing countries, there is a pressing need for a formal regulated system to ensure that mining companies uphold and protect the human rights of people impacted by their activities. An essential component of such a system would be the establishment of an industry-wide, independent complaints mechanism to oversee the operations of mining companies both domestically and abroad. Section 4 of this report describes the potential framework for such a mechanism, including the appropriate standards, extraterritorial nature, funding sources, enforcement capabilities, accessibility requirements and its need for suitable levels of independence, accountability and transparency.

Unlike many other Australian industries, the Australian mining industry does not have a grievance mechanism, despite its large size and the significant environmental and social impacts it can have. Yet, an industry complaints mechanism would bring competitive advantages to mining companies endeavouring to be responsible by exposing and punishing non-performers that, by association, damage the reputation of better performing companies. It would also serve to provide a bridge between the sizeable power inequalities that exist between local communities and mining companies, by supplying local communities with the ability to defend their own rights and hold to account powerful transnational mining companies in a transparent, impartial and formal manner.

If the Australian mining industry is serious about being socially and environmentally responsible, it should actively support the establishment of an independent industry complaints mechanism that would ensure that companies contribute to combating poverty by upholding the rights of the people affected by their activities.

Ingrid Macdonald
Mining Ombudsman

1. The Mining Ombudsman project and objectives

Over the last few decades, the Australian mining industry has increased its activity within economically developing countries located in the Asia-Pacific region, Africa and Latin America. The operations of Australian mining companies are therefore increasingly impacting on economically poor and vulnerable communities living in remote locations – the same communities that Oxfam Community Aid Abroad has been working with for 50 years.

In recent years, many communities have complained of human rights abuses and environmental degradation perpetrated by, or on behalf of, various Australian mining companies. Often the people making these complaints have no institution that they can access in order to seek fair and equitable redress. Similarly, the mining companies involved have been able to disregard the concerns of the complainants. Such situations have sometimes led to lengthy and costly legal actions and violent confrontations between mine operators and local communities.

There are numerous grievance mechanisms available to users of Australian government and industry services, and many industry Ombudsmen and complaints mechanisms have been established over recent years. Examples include: the Telecommunications Industry Ombudsman, the Australian Banking Industry Ombudsman, the Energy Industry Ombudsman (New South Wales), the Financial Industry Complaints Service, the Australian Press Council and the Australian Broadcasting Authority.¹

However, unlike other Australian industries, the Australian mining industry does not have a grievance mechanism, despite its large size and the significant environmental and social impacts it can have.

As the cases within this and previous Mining Ombudsman annual reports demonstrate, there is an obvious need for such an independent, formal, broad-based complaints mechanism to oversee the operations of the Australian mining industry both domestically and abroad. The function of this mechanism would be to assist in redressing the power inequalities between large companies and local communities; to receive complaints; to provide human rights protection; and ensure compliance by companies. As discussed later in Section 3, it would also assist in generating greater transparency, competitiveness and efficiency within the industry, and greater levels of accountability of companies to mine affected communities.

Oxfam Community Aid Abroad established a Mining Ombudsman in February 2000 due to the absence of such a formal complaints mechanism for the Australian 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 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 Mining Ombudsman checks all claims by making on-site investigations. The Mining Ombudsman consults with the communities and community support organisations over any action undertaken 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, which respects the fundamental rights of men and women from local communities affected by exploration and mining activities. Essentially, it seeks to create opportunities for men and women, who may live in remote areas with limited access to high-level company decision-makers, to communicate their grievances to these decision-makers with the aim of resolving any conflicts and increasing the accountability of companies to local communities.

¹ See Macdonald, I. & Ross, B. (2002) Mining Ombudsman Annual Report 2001-2002, Oxfam Community Aid Abroad, pp.12-15.

2. The rights based approach

Oxfam Community Aid Abroad takes a human rights based approach to its work. This approach reflects the view that poverty and suffering are primarily caused and perpetuated by injustice between and within nations, resulting in the exploitation and oppression of marginalised peoples. Such injustice and suffering includes the denial and violation of the human rights of men, women, girls and boys impacted by the activities of the Australian mining industry.

Poverty is not a natural state or phenomenon. Poverty results from the direct denial, violation and abuse of the human rights of men, women, girls and boys, by entities that have more access to power, or through systems that are based on injustice, inequality and discrimination. Similarly, respect for and the protection and promotion of human rights are fundamental components of sustainable development.¹ The United Nations Development Programme asserts that ‘...[h]uman rights and sustainable human development are interdependent and mutually reinforcing.’² In order to combat poverty and therefore contribute positively to sustainable development, it is necessary for all state and non-state actors, including mining companies, to uphold and promote the human rights of people everywhere. As noted by one commentator:

“Rights make it clear that violations are neither inevitable nor natural, but arise from deliberate decisions and policies. By demanding explanations and accountability, human rights expose the hidden priorities and structures behind violations. Thus, the demystification of human rights, both in terms of their economic and social content and their applicability to non-state actors, constitutes a critical step towards challenging the conditions that create and tolerate poverty.”³

The modern international human rights system is founded on 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 numerous other important human rights instruments.⁴ As discussed in Figure 2.1, the rights guaranteed under the international human rights system are inherent universal, inalienable, interdependent, indivisible, and complementary.⁵

Oxfam Community Aid Abroad condenses these rights into the following five general ‘rights’:

1. The right to a sustainable livelihood
2. The right to basic social services
3. The right to life and security
4. The right to be heard
5. The right to an identity

Figure 2.1: Human rights – inherent, universal, inalienable, indivisible, interdependent and complementary

Human rights are ‘inherent’ in that all people – men, women, girls and boys – possess basic rights by virtue of the fact that they are human. They are ‘inalienable’ in that they cannot be exchanged, traded or taken from a person.

These rights are ‘universally’ guaranteed to all people ‘without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’⁶ The ‘universality’ of human rights also means that every person is entitled to the same level of protection of their rights no matter where they live and work, whether this is in

These five ‘rights’ provide the basis of the rights based approach and their application to the mining industry, which is discussed more fully in Appendix 1 and 2.

Human rights and transnational mining corporations

Over the last few decades, there have been considerable changes in the structure of international society. Transnational corporations, including mining companies, have gained unprecedented influence over patterns of economic development – particularly in developing countries which are competing for foreign direct investment. As stated in a recent Oxfam America briefing paper:⁷

“Foreign direct investment (FDI)... has become such an important part of global development strategies that it has replaced foreign aid as the main source of external capital for many developing countries. Today, FDI amounts to about 60 per cent of the international capital flowing into developing countries each year and is nearly ten times larger than official development assistance. In contrast, in the late 1980s, the amounts of annual aid and FDI in developing countries were roughly the same.”⁸

Recent figures also show that the revenues of five of the largest transnational corporations are more than double the combined Gross Domestic Product of the poorest 100 countries.⁹

The influence and power of transnational corporations has increased dramatically. This has been in line with the global movement toward a free market system, which is supported by international multilateral institutions such as the International Monetary Fund, the World Bank Group and other development banks such as the Asian Development Bank. The pressure on developing countries to deregulate markets and privatise industries has made it easier for transnational corporations to have a far greater presence amongst some of the world's most remote communities.¹⁰ The recent increase in international company and financial mobility has also enhanced the ability of corporations to engage in what is popularly called a ‘race to the bottom’ with some seeking to minimise costs by investing in countries that provide the lowest cost of production and regulatory standards. In turn this has generated a ‘chilling effect’

Australia, Papua New Guinea, China or the United States. As a result, these rights transcend national borders, economic paradigms and political structures.

The ‘interdependence’, ‘indivisibility’ and ‘complementary’ nature of human rights means that it is necessary to protect and promote a person's civil, political, social, economic and cultural rights, and what are commonly called their

‘collective rights’, to enable them to enjoy full human dignity. Oxfam Community Aid Abroad maintains that in the interests of social justice and equality, these rights cannot be divided into categories where some are more important than others or they are ‘indivisible’. Human rights can be individual rights – that apply to individuals, or collective rights – that apply to groups of people.



Photo: Martin Wurt/OxfamCAA

where countries fear raising environmental, labour and occupational health and safety standards because it may make them less attractive to private sector investment.¹¹

Given the increasing power of the private sector throughout the world, including the mining and minerals sector, it is essential that companies contribute positively to poverty alleviation and development by upholding and promoting the human rights of people affected by their activities. This is especially important when mining companies operate in countries where the national laws are inconsistent with international human rights standards, or in the majority of cases, where human rights standards are integrated into national law yet the relevant governments fail to uphold these standards.

The feminist critique of international law provides further justification for why mining companies should protect and promote the human rights of the people impacted by their activities. This critique, which is more fully discussed in Figure 2.2, questions the traditional public (state actors) / private (non-state actors) separation which has traditionally made human rights duties the sole responsibility of governments. The logical extension of this critique is that, as the basis of international human rights law is to enable those who have less power to protect themselves from those who have more, it is archaic to exclude powerful global mining companies from direct human rights accountability just because they are not governments. Similarly, it is also important to establish mechanisms that can provide those with less power with the ability to defend their own rights and hold to account powerful companies in a transparent and formal manner.

Nevertheless, whilst governments have traditionally been considered to have primary responsibility for upholding human rights, duties and rights 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.¹² Accordingly, non-state actors such as mining companies may not only be morally and socially responsible for respecting and protecting the human rights of the people who their activities affect, but they may be increasingly *legally* liable as

'organs of society'.¹³ In respect of the *Universal Declaration of Human Rights*, as stated by renowned international legal scholar, Professor Louis Henkin, '... [e]very individual and every organ of society excludes no one, no company, no cyberspace. The Universal Declaration applies to them all!'¹⁴

Such developments are given more weight by considering that the modern United Nations human rights system has its origin in the post World War II period. Partly in response to atrocities that were inflicted on individuals by some governments during World War II, the international community developed instruments that were intended to protect the basic human rights of those with less power from powerful actors – which at the time were state governments. However, the world in 1945 was a very different place to what it is now. In 1945, individual states were undeniably the most powerful actors in the international system and in relation to individual people.

The International Council on Human Rights Policy argues that, as companies have benefited from the development of international law, it is entirely appropriate to apply international legal obligations to them.¹⁵ If international law can protect the rights and interests of companies, it is reasonable that it also places duties on them. As Kofi Annan, Secretary General of the United Nations, has noted:

*"The fragility of globalisation ... poses a direct challenge to the self-interest of the corporate sector, and a central part of the solution is the need ... to accept the obligations – and not merely the opportunities – of global citizenship."*¹⁶

Today, international organisations, global financial institutions, and increasingly, transnational corporations, often possess considerable power and influence as actors within the global system. It is therefore timely that international law responds to this escalation of power by extending international legal human rights duties to transnational corporations, including mining companies.

Figure 2.2: The public/private critique, women's rights and the accountability of mining companies

'...the feminist critique of the international human rights system questions the traditional public (state/formal) and private (non-state/informal) conception that human rights duties are the sole responsibility of governments and their agents. The criticism has

centred on the function of human rights, which is to ensure that the rights of those who have less power are not infringed, abused or violated by more powerful actors. The critics argue that women are not just subjected to violence, and therefore human rights abuse, by governments. In many situations, communities, families and partners inflict violence on women. Traditionally, such acts would be considered to be within the private sphere and therefore not within

the direct realm of human rights law, even though the rights of women are being violated. As a result, human rights law is failing to protect those women who have less power from those non-state groups and individuals who have more. Catherine MacKinnon describes such situations as 'pure gender bias'.¹⁷ This critique of the private/public dichotomy is equally applicable to the responsibility of non-state actors, such as

companies, to protect and promote women's rights.'

From *Tunnel Vision: Women, Mining and Communities* (2002) an anthology from a forum convened by Oxfam Community Aid Abroad in Melbourne, Australia in June 2003 that brought together speakers from Indigenous Australia and the Asia-Pacific to explore the impacts of mining operations on women in local communities.¹⁸



People from Dubiulenga village, who cross the Auga River every day, compare the colour of their yellow feet to the feet of Augustine Hala, a community representative of the Golob Peoples Association (fifth from right), who does not cross the river every day and does not have yellow feet. See Case 2 – Tolukuma. Photo: Grant Walton/NEWG

FOOTNOTES

1 Separate Opinion of Judge Weeramantry, Case Concerning the Gabčíkovo-Nagymaros Project (Hung. v. Slov.), 1997 I.C.J. 92 (Sept. 25); Copenhagen Declaration on Social Development, at para 26. In Report of the UN World Summit on Social Development, U.N. Doc. A/CONF.166/9 (1995); & Programme for Further Implementation of Agenda 21, GA Res. S-19/2, Annex (June 28, 1997). **2** United Nations Development Programme, (1998), Integrating human rights with sustainable human development. A UNDP policy document, January. **3** Jocknick, Chris, (1999) 'Confronting the impunity of non-state actors: new fields for the promotion of human rights', Human Rights Quarterly, pp.56 &60. **4** See Appendix One and Two. **5** Vienna Declaration and Programme of Action – United Nations World Conference on Human Rights, Vienna, 1993, 14 Human Rights Law Journal 352 (1993) 18; & The Beijing Declaration and Platform for Action – Fourth World Conference on Women, Beijing, (1995). **6** Universal Declaration of Human Rights, adopted 10 Dec. 1948, G.A. Res. 217A (III), UN Doc. A/810, at 71 (1948) reprinted in 43 American Journal of International Law Supplement 127 art. 2 **7** Langman, J. (2003) Investing in Destruction: The impacts of a WTO investment agreement on extractive industries in developing countries, Oxfam America and Make Trade Fair, June 2003, p.6. **8** UNCTAD, (2002) Least developed countries report 2002 – escaping the poverty trap, United Nations, New York, p.12. **9** Utting, P. (2002) Regulating Business via Multi-stakeholder Initiatives: A Preliminary Assessment. United Nations Research Institute for Sustainable Development: Available at: <http://www.unrisd.org>. **10** See Langman, J. (2003) pp.5-16; 'If one needs any further evidence that a competition for FDI is on amongst developing countries, according to UNCTAD, since 1991 a total of 1,333 regulatory changes affecting foreign investment have been enacted in at least 76 countries around the world. 95 percent of them, or 1,315, were targeted at making their countries more attractive to foreign investors.' **11** Langman, J. (2003), Op. Cit. **12** 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. **13** Universal Declaration of Human Rights, (1948), Op. Cit, preamble. **14** Henkin, L. (1999) 'The Universal Declaration at 50 and the Challenge to Global Markets', Brooklyn Journal of International Law, 25:1, p.25. **15** International Council on Human Rights Policy, (2002) Beyond Voluntarism: Human Rights and the developing international legal obligations of companies, p9. **16** Address of Kofi Annan, Secretary General of the United Nations, to the World Economic Forum, Davos, Switzerland, 28 January 2001. <http://www.weforum.org> **17** MacKinnon, C. (1993), 'On Torture: A Feminist Perspective on Human Rights' in Kathleen Mahoney and P. Mahoney (eds.), Human Rights in the Twenty-First Century, p.21. **18** Macdonald, I. (2002), 'Women's Rights Undermined', in Macdonald & Rowland, Op. Cit, pp.4-7.

3. The need for an industry complaints mechanism

Establishing a formal, broad-based complaints mechanism to oversee the operations of the Australian mining industry both domestically and abroad would assist in generating increased transparency, competitiveness and efficiency within the industry. It would also help mining companies to be more accountable to communities affected by mine operations.

Since 2000, the Oxfam Community Aid Abroad Mining Ombudsman has acted to receive and address community grievances and demonstrate the pressing need for an official industry mechanism. The Tintaya case (Case 3A) in particular illustrates the benefits of a mining industry complaints mechanism. Prior to the intervention of the Mining Ombudsman, there appeared to be intractable differences and conflict between the local communities and the company. However, in this case the Mining Ombudsman has helped to improve communication between the company, communities and community support organisations so that now community members are generally more positive and confident about negotiating their own solutions, while the company is attempting to address past wrongs.

There are four primary reasons why a complaints mechanism for the Australian mining industry is required:

1. The consistent allegations of human rights violations and environmental degradation against Australian mining companies.
2. Self-regulation has proved an ineffective guarantee to community members at risk of harm from mining companies.
3. There is a lack of legal recourse for local communities affected by Australian mining companies, particularly those located overseas. Legal systems in many host countries do not provide adequate or fair processes of redress for communities who have suffered the negative impacts of mine activities.
4. Through the repatriation of mining profits, Australian companies, shareholders and financiers receive considerable benefits from mining activities located abroad. Australia should therefore be pro-active in ensuring that these profits are not gained at the expense of basic human rights standards.

There are many well-documented cases where mining has generated environmental and social problems, including those detailed in this annual report. In short, mining presents great risks to local communities. Despite industry sponsored initiatives paying tribute to the importance of human rights and environment protection, businesses, by their very profit-driven nature, place human rights and environmental concerns at a disadvantage to the underlying economic bottom-lines of private companies. Industry processes such as the Mining Minerals and Sustainable Development initiative and the World Bank Group Extractive Industries Review, whilst useful for raising awareness amongst the employees and directors of mining companies and international financial institutions, provide no guarantees for local communities at risk. Overall, there are still many poor performing companies that do not respect human rights and industry self-regulation has not changed this.¹

Addressing the inequalities

Under the international human rights system, all people are entitled to have their complaints addressed in a fair and independent manner. An official, independent industry-wide complaints mechanism for the Australian mining industry can ensure that complaints are dealt with in such a transparent and accountable fashion.

A central outcome of the implementation of the Oxfam Community Aid Abroad Mining Ombudsman has been the facilitation of affected

community members' rights to freedom of expression, participation in decision-making, access to information and control over their own resources and livelihoods. The ramifications of mine operations often exceed just physical impacts, to include the suppression of the ability of community members to voice legitimate grievances over the impacts that a mine operation has had or may have upon their life and livelihoods. The fundamental process of developing an impartial and balanced forum where community members can present their grievances and know that they will be acted upon, would be instrumental in communities regaining space for action and sharing in any benefits from mining operations. Complaints mechanisms do not only act to resolve problems and improve industry behaviour, they can also be vehicles through which communities and companies can gain mutual understanding and benefits.

The complaints mechanisms of multilateral development banks can provide useful lessons in how to establish a formal complaints mechanism for the Australian mining industry. An important similarity between local communities affected by multilateral development bank projects and mining industry projects is that the communities making complaints are not in a commercial relationship with the alleged violator. Unlike complainants covered by other industry mechanisms, such as the Australian Banking Industry Ombudsman, local communities impacted by mining activities do not buy or sell a product or service from the company and cannot withdraw their patronage if they are dissatisfied with the company's behaviour. As a result, the company does not have a direct commercial incentive to resolve problems unless there is the potential for bad publicity or work disruptions, which could impact negatively upon the company's profit margins.

This commercial reality, combined with the often strong support for mining companies from host country governments, usually translates into tremendous power inequalities between the communities at risk and the mining company. These inequalities are further compounded by operating conditions that are often characterised by lax environmental and social regulations, or minimal risk of litigation through the host country legal system. An industry complaints mechanism would provide a fundamental bridge between these power inequalities.

Pro-active action will increase Australian mining industry competitiveness

1) Adopt a rights based approach

Traditionally, private sector actors have not had legal obligations under international law, as states have been considered the principle bearers of rights and duties under this system. However, as was discussed in the previous section, the emergence of a globalised, free-market system has resulted in enormous power being transferred to transnational companies, without the transfer of corresponding duties.

It is foreseeable that this power imbalance will eventually be rectified through the development of international mechanisms for controlling the activities of transnational corporations in respect of their environmental, human rights and social performance. More strategic minded companies and industry groups will move to adopt a rights-based approach consistent with the changing expectations of modern societies. The challenge for the Australian

If the Australian mining industry is serious about being socially and environmentally responsible, it should actively support the establishment of an independent industry complaints mechanism that will respond to the grievances of local community members impacted by its activities.

mining industry is whether it wants to risk facing obsolescence by not adapting now or whether it will take the lead and gain a competitive advantage over its industry rivals.

For example, rights based approaches are being discussed in Europe, the United States and the Organisation for Economic Co-operation and Development (OECD). The European Parliamentary Resolution on *Standards for European Enterprises Operating in Developing Countries 1999*, called upon the European Union to establish legally binding requirements on European multinationals. In the United States, the McKinney Bill requires all companies with more than 20 employees abroad to enact a code of conduct in line with international environmental and human rights law, including that company's subsidiaries, subcontractors, affiliates, joint ventures, partners and licensees.² The *OECD Guidelines for Multinational Enterprises* is also an effort, whilst voluntary in nature, to require OECD transnational corporations to operate in accordance with international law.³ Importantly, the OECD guidelines also provide for a mechanism that behaves in a similar manner to a complaints mechanism.⁴

2) Establishing a complaints mechanism

The Australian mining industry can formalise its rights based approach by actively supporting the establishment of an industry complaints mechanism to oversee its operations domestically and abroad. This would be in line with the international trend towards increasing the accountability of companies to stakeholders and strengthening good corporate governance.

Institutions such as multilateral development banks have already recognised the need to establish mechanisms to hear and address the complaints of affected communities. The World Bank set up its *Inspection Panel* in 1993; the InterAmerican Development Bank (IDB) set up the *Independent Investigation Mechanism* in 1994; the Asian Development Bank (ADB) set up its *Inspection Function* in 1995; and the private sector arm of the World Bank, the International Finance Corporation/Multilateral Investment Guarantee Agency, set up the *Compliance Adviser/Ombudsman* office in 1999. Most recently the European Bank for Reconstruction and Development approved an *Independent Recourse Mechanism* in April 2003. As also discussed in the *Mining Ombudsman Annual Report 2002*, many Australian industries already have independent complaints mechanisms, including the telecommunications, banking, financial, broadcasting and insurance industries.

Improved reputation through increased competitiveness

The performance of mining companies are no longer assessed purely on their ability to extract resources; negative environmental and social outcomes will result in increased costs and damaged reputations.

In recent years the mining industry has shifted to present itself as an agent of 'sustainable development',⁵ despite criticism that this positioning is unrealistic, given that mining exploits finite and non-renewable natural resources which makes it inherently unsustainable.⁶ The motivation for the industry shift appears to be a response to public campaigns and legal action by local communities and environmentalists

with complaints over the industries' environmental and social non-performance. These complaints have undermined the profitability, acceptability and reputation of the industry. In response, some mining companies and industry bodies have begun to express sentiments in favour of, or made efforts to become good corporate citizens through improved social and environmental performance. However, in reality many mine sites continue to have ongoing problems.

If the Australian mining industry is serious about being socially and environmentally responsible, it should actively support the establishment of an independent industry complaints mechanism that will respond to the grievances of local community members impacted by its activities. Even the largely industry-sponsored Mining Minerals and Sustainable Development project came to this conclusion stating that a '... commitment [to sustainable development] should be followed by concrete action towards [the] implementation of a complaints mechanism, including adequate funding, cooperation, engagement, access to information, and other forms of spaces for public participation.'⁷

The function of a complaints mechanism overseeing the Australian mining industry would simply be to ensure that human rights are not abused by mining companies, either through direct violations or negative environmental impacts. Those companies that are committed to upholding the human rights of local communities should therefore not be threatened by such a mechanism.

Indeed, for responsible mining companies, a complaints mechanism can bring competitive advantages by reducing the likelihood of the 'free-rider' scenario where non-performing companies benefit from or damage the reputation of progressive companies.⁸ An example of this 'free-rider' situation occurred in Romania when the Australian company, Esmeralda Exploration Ltd., accidentally released 100,000 cubic meters of cyanide contaminated water into the Danube river system. The Australian mining industry peak body, the Minerals Council of Australia, was at pains to point out that Esmeralda was not a signatory to their newly established Environmental Code, or a member of the Council.⁹ However, Esmeralda put a serious dent in the reputation of the entire Australian mining industry.

A complaints mechanism that is underpinned by broad industry-based regulations will significantly balance the playing field for the Australian mining industry. It can expose and punish non-performers that, by association, damage the reputation of well-performing companies, whilst simultaneously protecting the rights and environments of communities at risk from mine operations.

Increased efficiencies through more overarching corporate guidelines and compliance advice

The application of the international human rights system to the activities of the mining industry – as has begun with the 'Benchmarks for the Mining Industry' set out in Appendix 1 – would provide a transparent and clear set of guidelines for Australian mining companies operating abroad. Such clear guidelines would ensure that Australian mining companies could essentially apply a single set of operating policies and practices in all operations irrespective of location. These companies would not need to adjust or redevelop



Photo: Penny Tweedie/Oxfam



Photo: Martin Wurt/OxfamCAA

their policies and practices to the idiosyncrasies of the many different regulatory environments that they operate within, as is the current practice. This would generate increased certainty and therefore global efficiencies for companies that operate in many different locations through the application of one set of policies, standards, performance targets, monitoring and verification systems and audit procedures.

These consistent standards would also provide a basis against which the complaints mechanism could measure compliance and act as a 'compliance adviser'. As such, the mechanism would act as a vehicle for educating companies on how to raise their human rights, social and environmental standards through policy developments and improved implementation. Those companies that actively engage with and support the mechanism would improve their human rights performance and, therefore, be better able to adjust to policy developments reflecting the changing expectations of society in respect of the private sector.

Reduced political and litigation risks and improved goodwill

An Australian mining industry complaints mechanism could foster regional political stability and goodwill towards Australian investment abroad.

Australian mining companies are often perceived as 'ambassadors' of the country. If Australia were to lead with the adoption of a rights based approach and a complaints mechanism for the industry, the image of Australian mining companies could improve dramatically compared to their international competitors. Host governments, which may lack the necessary technical expertise or resource capacity to adequately monitor mining companies operating within their jurisdiction, may view Australian mining companies as more attractive investors than other companies that may be more likely to generate long-term negative social and environmental problems through lower standards of performance.

A complaints mechanism could also uphold the sovereignty of a host country by supplementing its existing powers of authority and increasing its capacity to reduce the likelihood of potentially harmful mining operations in the future. A complaints mechanism based on the international human rights system would also not constitute cultural imperialism as nearly all countries that Australian mining companies operate within have already committed to the basic human rights laid down under the international human rights system.

An Australian mining industry complaints mechanism based on human rights could contribute to Australia's wider foreign policy commitments to human rights, peace and security. It could reduce the potential for conflict at mine sites and may increase the possibility that Australian mine operations would bring positive economic outcomes for Australia, host country governments and local communities.

Cases such as the Ok Tedi litigation, Bougainville conflict, and the Esmeralda and Tolukuma cyanide spills (Case 2) – which have had severe impacts on local communities and the environment – have generated enormous costs for some of the companies concerned. The reputation of the mining companies and the Australian mining industry in general has also suffered and it has reflected poorly on Australia and Australian businesses as a whole. Headlines such as '*Australian miner rejects cyanide disaster reports*'¹⁰ and '*Australian mining co cleans up PNG cyanide spill*'¹¹ illustrate that Australia's international image is linked with the performance of Australian companies operating abroad. A mechanism to ensure that Australian companies are performing at acceptable standards should be a priority for the Australian government.

Answering the critics

Critics contend that establishing a broad-based and regulated industry complaints mechanism could have a dampening or chilling effect on investment in the Australian mining industry. It has been suggested that the regulatory nature of such a mechanism may make Australian mining operations too costly, which could cause companies to relocate their head offices away from Australia.

However, there are numerous location, efficiency and even lifestyle reasons why the headquarters of hundreds of mining and associated companies are located within Australia. Moreover, the Australian regulatory environment is already more stringent in terms of most labour, environmental and occupational health and safety standards than many other countries. This more stringent regulatory environment has not deterred strong investment in the mining sector in Australia. Over the last 100 years there have been many regulatory changes and requirements placed on mining companies that were initially opposed, as it was feared that they would undermine the efficiency of the industry. And in each case, the change has occurred and the Australian mining industry has remained efficient and attractive to investors. For these reasons and those presented above, it is therefore unlikely that establishing an industry complaints mechanism would greatly impact on the decisions of mining companies to locate their headquarters in Australia.

FOOTNOTES

- ¹ See Macdonald, I. & Ross, B. (2003), *Mining Ombudsman Annual Report 2002*, Oxfam Community Aid Abroad, p.8. ² McKinney, C. (2000), 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.
- ³ OECD (2001), *The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications*, 31 October, available at <http://www.oecd.org/daf/investment/> (accessed 27 April 2003), p.16.
- ⁴ Feeney, P. (2002), *The Relevance of the OECD Guidelines for Multinational Enterprises to the Mining Sector and the Promotion of Sustainable Development*, Oxford, January. ⁵ See ICMM (2002), *Spreading the Wealth: The Role of the World Bank Group in Mining*, 11 December, Available at <http://www.natural-resources.org/minerals/law/docs/pdf/EIR%20Submission%20-%20ICMM.pdf> (accessed 7 July 2003). ⁶ Hafild, E. (Secretary General of Transparency International Indonesia) (2003), *Revenue Transparency in Extractive Industry*, 29 April. See <http://www.eireview.org>
- ⁷ Orellana, M. A. (2002), *Code of Codes: Compliance Oversight*, Mining Minerals and Sustainable Development, Washington DC, January, No.56, p.5.
- ⁸ Macdonald, I. & Ross, B. (2003), Op. Cit. p.14. ⁹ Minerals Policy Institute (2000), *Corporate Code of Conduct Bill Mineral Policy Submission to Senate Inquiry*, p.8, Available at: <http://www.natural-resources.org/minerals/generalforum/csr/docs/csr/MPI%20Submission%20-%20Corp%20Code%20Bill%202000.pdf> (accessed 10 July 2003).
- ¹⁰ Reuters, (2000) 'Australian miner rejects cyanide disaster reports', 11 February. Available at: <http://www.planetark.org/dailynewsstory.cfm?newsid=5669> (accessed 11 July 2003). ¹¹ Ibid.

4. Framework of a mining industry complaints mechanism

Acknowledging the inequalities and power differentials between mining companies and affected communities is the most useful (and appropriate) starting point in developing a complaints mechanism for the Australian mining industry. It should be recognised that people affected by mining need a mechanism that they can access for raising concerns and seeking redress; it should be acknowledged that there is a need for improved standards that protect human rights and the environment, and it should also be recognised that this will not happen without an authoritative body ensuring compliance.

These three factors form the foundation of a complaints mechanism that will affect long-term change in mining industry practice as well as providing effective recourse for affected peoples. The three roles can be summarised as follows:

1. Complaint handling – receiving and investigating complaints from affected communities followed by detailed recommendations to the communities and the specific company, and where appropriate, the industry at large.
2. Advisory – providing advice to industry and government on necessary developments in policy and standards.
3. Compliance – ensuring companies comply with the recommendations from the complaints mechanism and the industry implements appropriate standards and policies.

The International Finance Corporation/Multilateral Investment Guarantee Agency Complaints Adviser/Ombudsman has adopted three functions comparable to those proposed above.¹ The Mining Minerals and Sustainable Development paper by Orellana also argues for a complaints mechanism for the mining industry with similar characteristics.²

The framework detailed in the *Mining Ombudsman Annual Report 2002* set out a brief analysis of the characteristics necessary for an effective mining industry complaints mechanism. This analysis is continued below and summarised in Figure 4.1. The principles of this mechanism are also applicable to the mining industry internationally.

Standards

As stated in the *Mining Ombudsman Annual Report 2001* and *2002*, the standards upon which the complaints mechanism should be founded are the same as those laid down in the international human rights system.

If mining is to assist in combating poverty, as mining companies often publicly acclaim that they do, then international human rights principles must serve as the benchmark of their activities.

In the interests of ensuring that standards are applied equally within home and host countries, it would also be appropriate for Australian mining companies to comply with Australian laws if these are higher than the applicable international human rights standards.

The 'Benchmarks for the Mining Industry', set out in Appendix 1, and the requirements of public disclosure contained within Section 5, provide a clear starting point for the standards against which a complaints mechanism can determine the compliance of companies. The Ombudsman would make use of these standards as criteria to determine the validity of claims and the appropriate use of the complaints mechanism in particular cases. These standards would also be used by the complaints mechanism to advise and educate industry and communities alike.

Funding

It is essential that the complaints mechanism is free of charge for local communities affected by mining. Moreover, a reasonable amount of financial, technical and legal assistance needs to be available to communities in order to address the inequalities in power that exist between local communities and companies.

The mechanism could be funded by contributions from mining companies as a percentage based on the economic value of their projects, as presented in feasibility studies (new projects) and annual financial statements (existing projects). A penalty system could be developed to increase the percentage contributed by each company based on the number of complaints made against a company and the severity of the complaints, as occurs with the Australian Telecommunications Industry Ombudsman.³

The initial capital to establish the mechanism could come from the government as an indication of its support. In order to ensure a secure and independent funding base, all funding could be guaranteed through regulations applicable to the entire mining industry, and the funds should be held independently by the office of the complaints mechanism.

Figure 4.1 – The guiding principles for a complaints mechanism

Oxfam Community Aid Abroad has identified seven guiding principles for an effective complaints mechanism for the mining industry. They are:

1. Standards – to correspond with the universally accepted human rights standards.
2. Funding – should be free of charge to complainants and must be funded transparently to ensure independence and impartiality.
3. Independence – should operate independently of the interested stakeholders, especially the industry, industry consultants and industry associations.
4. Enforcement – the mechanism should be underpinned through legislation and that covers all mining companies listed on the Australian Stock Exchange. It should also have the power to sanction and impose penalties on non-complying companies and their suppliers, contractors, agents and subsidiaries as well as employees and directors.
5. Extraterritorial jurisdiction – the mechanism should cover the operations of Australian companies operating anywhere, both inside and outside Australia.
6. Accessibility – all information should be available in the appropriate language for communities at risk and should be made available at all stages of the mine operation. The mechanism must recognise power inequalities and be sensitive to community needs and cultures.
7. Accountability and transparency – the results of investigations should be disclosed publicly for the sake of transparency, trust and accountability. There should also be monitoring of compliance performance against the recommendations or compliance charges arising from each investigation.



Photo: Martin Wurt/OxfamCAA



Photo: Penny Tweedie/Oxfam

Enforcement

Legislation is the only appropriate mechanism for ensuring that equal treatment and natural justice would be dispersed in all cases where complaints are lodged against Australian mining companies. Legislation would ensure that the complaints mechanism has formal jurisdiction over all industry members or agencies, including subsidiaries, joint ventures, contractors and suppliers, and not just those that choose to join, thereby, countering the 'free rider' problems of self-regulation. Whilst self-regulation can be a useful internal standard-setting tool for companies and industry groups, it can not substitute binding international and national standards, especially in relation to upholding the human rights of local communities impacted by mining operations.

Self-regulation has many problems in respect of enforcement. These include the negotiating down of standards and enforcement mechanisms to the 'lowest common denominator' in order to attract industry signatories; reliance on a business case or risk argument as the primary justification for human rights protection; and relying on the benevolence of companies to award victims redress. Ultimately however, the most pertinent argument is impact. The OECD in its study *Voluntary Approaches for Environmental Policy: An Assessment* found that self-regulation of environmental performance through voluntary mechanism had limited impact on the actual performance of many of the companies studied.⁴ Furthermore:

"If self-regulation 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."⁵

Legislation would ensure that the complaints mechanism has the authority and power to impose penalties on non-performing mining companies. Legislation would also provide the only means for imposing penalties on non-performing company directors and employees, which would help prevent directors hiding behind the corporate veil when they are legally responsible for violations. Full public disclosure of findings should also be used to encourage the accountability of companies through the sanction of 'naming and shaming', or alternately, public vindication.

Independence

It is essential that all stakeholders trust and respect the complaints mechanism. The mechanism needs to be independent from interested parties, especially mining companies and industry associations. The mechanism would need a consistent, impartial, objective, fair and just approach in all investigations and decisions. Similarly, to prevent interference, all funds would need to be kept independent of the control or influence of any stakeholders.

A periodic process of independent verification would be necessary to verify the independence of the mechanism. The process would require a panel of representatives from independent organisations who are not chosen by the stakeholders or complaints mechanism staff,

to investigate the mechanism's implementation program and report on whether the mechanism has been effective in responding to complainants and rectifying lack of compliance by companies. Such investigations should involve original field research, including confidential interviews with those whose interests the mechanism purports to protect. Independent verification has been a key feature of successful civil regulation or government-industry-community partnerships.⁶

Extraterritorial jurisdiction

The cases documented within this annual report demonstrate why the Australian mining industry requires controls over its overseas activities if the human rights of local communities are to be upheld wherever these companies operate. Such controls would best be achieved through the development of extraterritorial regulations by the Australian government that are consistent with the Benchmarks for the Mining Industry contained in Appendix 1 and the proposals concerning disclosure detailed in Section 5. Precedents that already exist for extra-territorial regulations by the Australian government include:

- > The inclusion of the requirements of the OECD *Convention on Combating Bribery of Public Officials in International Business Transactions 1999* which has been signed by the 29 members of the OECD and five others. This was incorporated into Australian law via the *Criminal Code Amendment (Bribery of Foreign Public Officials) Bill 1999, No. 43, 1999*.⁷
- > 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.

Countries such as Australia, which receive repatriated mining profits from Australian mining companies operating abroad, should seek to ensure that these profits are accumulated in a manner that is consistent with the standards that these companies would be required to fulfil within Australia. As a considerable proportion of the Australian mining industry undertakes operations abroad, the local people impacted by these activities are entitled to the same level of protection as those impacted by operations undertaken by these same mining companies within Australia.

Accessibility

As stated above, it is essential that the complaints mechanism is free of charge and that assistance is available in order to address inequalities in power.

Where necessary, the complaints mechanism should hold its hearings where local community members live, and in appropriate surroundings that are not intimidating. Full anonymity should be provided for complainants who have concerns over their security, and independent translators should be used at all times. Appropriate timeframes should be negotiated with all parties, especially the complainants. As soon as a complaint has been lodged, all parties have a responsibility to work within agreed timeframes.



Mining Ombudsman Ingrid Macdonald interviews community member Dora Usca from Tintaya. See Case 3A – Tintaya. Photo: Brendan Ross/OxfamCAA.

Guidelines on the use and operation of the mechanism should be distributed throughout Australian government departments, chambers of mines, companies and industry associations such as, the Australian Institute for Mining and Metallurgy, the Minerals Council of Australia and the various Chambers of Mines, and to all Australian mining companies.

Mining companies should be required to ensure that full information and training concerning the complaints mechanism is provided to local community members, both men and women, in an appropriate language and manner throughout the lifecycle of the project. Where necessary, translations of pertinent documentation into relevant local languages should be undertaken.

Accountability and transparency

Complete transparency through the full public disclosure of all information and decisions should be standard practice, provided the identity of complainants and witnesses can be kept confidential where requested. There should also be full public disclosure of all financial records and the finding of the independent verification process, as discussed above.

The complaints mechanism should periodically report to the Australian Stock Exchange (ASX) as to the performance of the mining companies that have been brought to its attention and this information should be listed on the ASX website in order to advise shareholders of any risk. All complaints, investigations and findings should be posted on a dedicated website as they become available and published within an annual report. Companies should also be required to undertake internal audits, based on the standards of the complaints mechanism and submit the resulting report to the mechanism, which should also be published on the dedicated website.

Adherence to the disclosure standards set out in Section 5, including the 'Publish What You Pay' campaign, should be mandatory for all mining companies. Full disclosure should also be required for all financiers and shareholders.

A woman provides a testimony at the public meeting of the Tintaya Dialogue Table on 8 April. See Case 3A – Tintaya. Photo: Diego Nebel/Oxfam America.



FOOTNOTES

- 1** Operational Guidelines for the Office of the IFC/MIGA Compliance Advisor/Ombudsman, Available at: http://www.ifc.org/cao/english/guidelines/ENGLISH_09-20-00.pdf (accessed 27 July 2002).
2 Orellana, M.A. (2002), *Code of Codes: Compliance Oversight*, Mines Minerals and Sustainable Development, Washington DC, January, No.56, p.5. **3** See Telecommunications Industry Ombudsman, Annual Report 2000/01 at <http://www.tio.com.au> **4** OECD, (1999), *Voluntary Approaches for Environmental Policy: An Assessment*, see <http://www.oecd.org> **5** International Council on Human Rights Policy (2002), *Beyond Voluntarism: Human rights and developing international legal obligations of companies*, p.7. **6** Utting, P. (2000), *Business Responsibility for Sustainable Development*, United Nations Research Institute for Social Development. **7** See OECD (1999), *Convention on Combating Bribery of Public Officials in International Business Transactions*, 15 February & Australian Commonwealth Government ratification, (1999), *Criminal Code Amendment (Bribery of Foreign Public Officials) Bill 1999, No. 43*, both available at http://www.oecd.org/document/21/0,2340,en_2649_34859_2017813_1_1_1_1,00.html

5. The need for accountable management of mining revenues

“Corruption creates and perpetuates discrimination between the various groups in societies, minorities, castes, religious groups. It affects women in particular. Corruption attacks society as a whole and cripples essential societal functions. It results in an unlawful and undue gain for one party, be it a government official, private individual or business organisation at the expense of the public good. Thus education, justice, health, law enforcement, and the provision of essential services, which the State is obligated to provide to everyone without discrimination, are mismanaged.”¹

Mary Robinson, Executive Director of the Ethical Globalisation Initiative and Chairperson of Oxfam International.

The Mining Ombudsman believes that industry regulations which require the full public disclosure of payments made by mining companies to governments and others is fundamental if mining is to generate benefits for local communities and not undermine their human rights. A central component of an Australian mining industry complaints mechanism should be the requirement for revenue disclosure, as set out in the ‘Publish What You Pay campaign.’ Oxfam Community Aid Abroad is a coalition member of this campaign, which is discussed in Figure 5.1.

It is necessary for extractive companies, including Australian mining companies, to publicly disclose all payments made to governments and others in order to help eradicate any corruption, misappropriation, mismanagement and squandering of these funds. Otherwise known as the ‘resource curse,’ numerous studies, including the Oxfam America *Extractive Sectors and the Poor* research,² have shown that many of the world’s most resource rich countries are also the world’s poorest in economic terms. Oil, gas and mining industries are important to more than 50 developing countries, which are home to 3.5 billion people. Yet more than 1.5 billion of these people live on less than \$2 US per day. Moreover, 12 of the world’s 25 most mineral-dependent states, and six of the world’s most oil-dependent states, are classified by the World Bank as ‘highly indebted poor countries’ with the world’s worst human development statistics.³ These resource-rich, but economically poor states, are also amongst some of the lowest rating nations of the 102 countries listed in the Transparency International Corruption Perception Index.⁴

Despite enormous funds being generated through resource extraction, these funds have largely not been used to combat poverty. Instead, the revenues generated by extraction have often been embezzled by corrupt elites, spent on military armaments by authoritarian regimes, or have even fuelled regional instability through groups warring over control of the revenue streams from resource extraction.⁵ Principally, the people living in resource-rich countries have the constitutional right to the revenues resulting from mining, oil and gas extraction. However, many of these people remain impoverished and their rights are undermined due to corruption and economic mismanagement.

It is anticipated that by mining companies being publicly transparent in terms of the aggregate payments made to governments, that this will assist people in holding their governments accountable and thereby reduce corruption, increase good governance and improve economic development. These steps are also in line with international trends in corporate disclosure and social responsibility. As stated in the *OECD Guidelines for Multinational Enterprises*, Section 3 – Disclosure:

“...enterprises should be transparent in their operations and responsive to the public’s increasingly sophisticated demands for information.”⁶

Figure 5.1:
Publish What You Pay

The Publish What You Pay coalition believes that countries such as Australia should have extraterritorial regulations which require their extractive companies to publicly report aggregate taxes, fees and other payments made to all governments, on a country-by-country basis. This campaign ‘proposes that publicly listed natural resource and oil companies be required by market regulators, as a condition of public listing, to disclose aggregate information about tax payments, payments-in-kind, forward sales of future revenues, and commercial

transactions with government and public sector entities.’⁷

Such a legal, rather than voluntary mechanism would ensure that non-transparent countries or corrupt government officials cannot require confidentiality agreements which prevent the company from disclosing any revenue payments made to the government. This industry-wide regulated proposal would help level the playing field between competing companies, by ensuring that those companies that do disclose payments are not discriminated against by governments that do not want disclosure. As a result, whilst the recent United Kingdom

Government’s Extractive Industries Transparency Initiative is a step in the right direction in that it proposes requirements for the public disclosure of extractive industry payments to governments, it fails in its proposal of voluntary rather than regulatory requirements.⁸ There will also be minimal regulatory burden and additional costs for companies as the information already exists, it will just involve re-packaging it for public disclosure.

Overall, this initiative will be good for business in developing countries by reducing corruption, increasing growth, increasing the accountability of governments to

citizens and ensuring that mining revenues are used for the public good rather than private gain. Mining companies will benefit through improved competitiveness, a more level playing field, greater security of legal rights, enhanced reputation and consistency with the principles of corporate social responsibility and recent trends such as the OECD’s Convention Against Bribery.

Much of this information is from the Publish What You Pay campaign website at <http://www.publishwhatyoupay.org>

FOOTNOTES

¹ Robinson, M. (2003), *Ethical Governance and Globalization – 10 years of Fighting Corruption* Key Transparency International Speeches, 19 June 2003, Available at: http://www.transparency.org/speeches/robinson_10yrs_fighting_corr.html, (accessed 3 July 2003). ² Ross, M. (2001), *Extractive Sectors and the Poor*, Oxfam America, p.7. ³ Ross, M. (2001), Op. Cit. p.7. ⁴ Hafild, E. (Secretary General of Transparency International Indonesia) (2003), *Revenue Transparency in Extractive Industry*, 29 April 2003 available at <http://www.eireview.org>. ⁵ See Ross, M. (2001), Op. Cit.; Global Witness, (1999), *A Crude Awakening* concerning Angola, oil revenues and corruption at <http://www.globalwitness.org>; the *Conflict Diamond Campaign* and Hafild, E. (2003) Op. Cit. ⁶ OECD (2001) *The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications*, 31 October, p.16. Available at: <http://www.oecd.org/daf/investment/> (accessed 27 April 2003). ⁷ The Publish What You Pay Proposal, at: <http://www.publishwhatyoupay.org/resources/talkingpoints.shtml> (accessed 7 March 2003). ⁸ See <http://www.dfid.gov.uk> for information on the Extractive Industries Transparency Initiative and <http://www.publishwhatyoupay.org>

6. The need for accountability in project financing and shareholding

The disclosure of project financing is critical in increasing the transparency and accountability of mining companies and decreasing corruption. Access to information concerning the entities that are financing a mining or exploration project, and who are the shareholders of the mining company, is very important for stakeholders, especially local community men and women impacted by the company or project. Not only is this a fundamental tenet of the informed consent of local communities, it reflects corporate social responsibility and current international trends to combat corruption and the misappropriation of extractives payments.

The major shareholders and financiers (both funders and insurers) of mining companies and projects can wield considerable influence over the policies and practices of a company or project. In order to secure or retain funding, a company may have to demonstrate how it or its project complies with requirements imposed by a financier. This will often be achieved through mechanisms such as due diligence procedures, risk assessments and contractual clauses requiring adherence to certain policies, performance targets or guarantees. Large shareholders will generally also have prerequisites that must be satisfied before they invest in a company, not to mention considerable voting rights in terms of a company's management. Furthermore, without financing or shareholder investment, mining projects and exploration would be impossible. Given the influence of financiers and major shareholders, it is appropriate that their true identities and the requirements that they are imposing on the company and/or project are publicly disclosed so that the local impacted communities can access this information for their own use and hold these entities accountable.

While disclosure laws are such that ownership, funding and insurance information is sometimes publicly available, there are a number of large gaps in current disclosure laws, including nominee companies and Export Credit Agencies (ECA).

Company shareholdings: nominee companies

Nominee companies feature prominently within the cases in this report, especially in the case of Climax Mining's proposed mine at Didipio, in the Philippines (Case 1). Of Climax Mining's top 20 shareholders, nine are nominee companies and of that nine, four are amongst the five largest shareholders. The shareholdings of these nominee companies equates to 69.81 per cent of Climax Mining's total company shares (as at October 2002). The largest shareholder, ANZ Nominees, holds 37.64 per cent of the shares by itself.¹ So why does this information, which is apparently transparent, require further public disclosure?

It relates to what exactly nominee companies are. Nominee companies are not actual shareholders, but representatives of other investors. For example, while ANZ Nominees holds 37.64 per cent of Climax Mining Ltd's shares, it only does so as an 'intermediary' on behalf of another company or individual who has directed ANZ Nominees to invest in Climax Mining on their behalf. Nominee companies, such as ANZ Nominees, are not subject to the ASX Listing Rule 4.10.9, which means they do not have to reveal to the public or normally even the company being invested in, the identity or any information relating to the companies or individuals that actually hold its shares.² This means that the communities of Didipio have no idea which companies or individuals hold over 69 per cent of the shareholding in Climax Mining, and therefore do not know the identities of key entities that hold considerable power in relation to the mining project that is being proposed in their locality. Not only is this not transparent, it violates the communities' right to access full information about the project as well as their right to free prior informed consent.

In the absence of transparent trading, the motivation for these anonymous shareholders to invest in the Didipio project raises questions. With the identities of these shareholders remaining anonymous, they are beyond public scrutiny and any form of accountability to the local communities impacted by their shareholding. For example, on 13 March 2003 the Mining Ombudsman advised the manager of ANZ Nominees, ANZ Bank, of the grievances of the Didipio community as well as the potential risks entailed. The Mining Ombudsman requested the Bank to assist in addressing the grievances. In response, ANZ Bank stated on 13 May 2003:

"As you are aware, a nominee company's sole function is to hold shares or securities on behalf of other parties. ANZ Nominees is not a direct investor in Climax Mining Limited with our primary responsibility being to administer shares or securities on behalf of the investors."

*Unfortunately, we are prevented by privacy legislation and the terms of our custody agreement with investors from providing you with details of the individual investors who hold shares in Climax Mining Limited through ANZ Nominees."*³

This response illustrates how shareholders investing in Climax Mining, through ANZ Nominees, would be able to evade accountability to the people of Didipio if they wish to, despite their many serious environmental and social grievances with the current and potential impacts of Climax Mining's activities in their locality.

Nominee companies were established for the legitimate purpose of facilitating the clearance and settlement of trade in shares of publicly listed companies, most commonly for reasons of convenience by international traders. However, a report produced by the OECD Steering Committee on Corporate Governance in 2001 acknowledged that in other circumstances the rationale for using nominee companies is less persuasive and may lead to abuse.⁴ The report suggests that corporate entities, such as nominee companies, may be used for illicit purposes including money laundering, bribery, corruption, improper insider dealings, illicit tax practices, and financing terrorist activity.⁵

Having said this, most stockmarkets have investigatory powers to identify those investing in nominee companies in order to protect the interests of companies/share issuers and regulators who are concerned with insider trading and the possibility of hostile takeovers. The Australian Securities and Investment Commission is no exception. However, this information is only available to the public at the listed company's discretion. This is unlike the stockmarkets of New Zealand⁷, South Africa⁸, the United States of America and the United Kingdom⁹, which all have regulatory frameworks for nominee companies that involve the public disclosure of investing companies and individuals.



Photo: Martin Wurt/OxfamCAA

A recommendation of the OECD Steering Committee on Corporate Governance was the introduction of up-front disclosure of the identities of companies and individuals investing in nominee companies at the incorporation stage and the updating of such information on a timely basis.¹⁰ Oxfam Community Aid Abroad supports this proposal and recommends that the Australian government enact corresponding laws. Given the disclosure laws that already exist in investment markets similar to Australia, the potential for nominee companies to be used to support illegal and unethical activities, and the potential use of these companies to evade accountability to local communities, such as the Didipio community, the improvement of Australia's disclosure laws relating to nominee companies is especially important.

Project Financing: Export Credit Agencies

Export Credit Agencies (ECA) are publicly-funded government-backed corporations that receive public funds to support domestic or home companies by providing political risk insurance or loans to overseas companies buying goods or services from home country companies. In recent years, ECAs have emerged as important financiers of private sector projects in economically developing countries. Research by the Australian NGO AidWatch has shown that ECAs have collectively become responsible for 40 per cent of developing country debt; this is in comparison to the World Bank Group, which is responsible for 22 per cent.¹¹ However, unlike the World Bank and other multilateral development banks, ECAs have no development mandate, and their single purpose is to assist domestic industries to export and invest abroad. Furthermore, most ECAs have

no environmental or social policies and lack basic transparency due to 'commercial-in-confidence' legislation, which makes it difficult to know which projects and countries are receiving support.¹² This lack of adequate or any environmental and social reporting by ECAs is out of step with recent developments in the international banking sector, as described in Figure 6.1.

Australia's ECA, the Export Finance Insurance Corporation (EFIC), has supported two of Papua New Guinea's most controversial mines: Panguna in Bougainville and OK Tedi. At the time of supporting these mines, EFIC had no environmental or social policies, but due to civil society pressure, the organisation developed environmental guidelines in 1999/2000. While EFIC is the only international ECA to have implemented such guidelines, these guidelines have been criticised as inadequate environmental safeguards that do not take into account development principles. EFIC generates 95.4 per cent of the foreign debt owed to Australia.¹³

Given that EFIC is publicly funded, there is an obvious need for full disclosure of which projects EFIC is funding and the environmental and social standards applicable to the projects, so that Australians can ensure that its taxpayer dollars are being spent ethically and appropriately. It would also be in the public interest to require EFIC to ensure that the local people impacted by the projects it supports are guaranteed the same level of human rights and environmental protections as they would be entitled to in Australia. This public interest argument is particularly important where EFIC supports mining projects, given the potentially significant human rights and environmental impacts that may arise from these operations.

Figure 6.1: International banking, project finance and the 'Equator Principles'

An encouraging move by ten of the world's leading banks in project finance is the adoption of the 'Equator Principles'.

'In adopting the Equator Principles, a bank undertakes to provide loans only to those projects whose sponsors can demonstrate to the satisfaction of the bank their ability and willingness to comply with comprehensive processes aimed at ensuring that projects are developed in a socially responsible manner and according to sound environmental management practices.'¹⁴

However, the Equator Principles are not without problems or criticism, notably:

- > They only apply to loans for projects above \$50 million US, leaving a significant proportion of bank activities without effective environmental or social guidelines.
- > The Equator Principles are based on the World Bank and International Finance Corporation safeguard policies, which have been criticised by civil society groups for not having adequately protected communities and environments in the past.
- > The Equator Principles do not directly address the question of human rights protection.

> The Equator Principles are voluntary, leaving the option open for unacceptable projects to obtain funding from other banks.

> The Equator Principles have no mechanism for ensuring that the banks are adhering to the principles.

Nevertheless, the implicit recognition that responsible financing can have positive impacts by reducing the likelihood that unacceptable projects will receive funding and the forced adherence of companies to social and environmental policies, is a positive step. It is a step that ECAs have yet to make, as one commentator states, it is 'an embarrassment to ECAs'.¹⁵

The examples above provide a snapshot of the fragmented corporate environment within which mining companies operate. The difficulties in attributing ownership and therefore responsibility are not in line with internationally accepted principles of disclosure. Correspondingly, the environmental and social guidelines being applied are not adequately protecting communities and environments at risk from unacceptable corporate behaviour. Human rights protections are at best sporadically applied and the obligations and responsibilities of mine operators/owners can be, initially, difficult to attribute and, secondly, difficult to enforce.



Above: Many community members have painted signs publicly showing their disapproval of a large-scale mine at Didipio. See Case 1 – Didipio. Photo: Ingrid Macdonald/OxfamCAA

FOOTNOTES

- ¹ Climax Mining, (2002) Annual Report, October 2002, p.32 ² There is one exception: The only information that nominee companies are obligated to communicate to the actual shareholder is the information released to the ASX. ³ Lawrence, M. to Macdonald, I. (2003) Community Concerns & Ombudsman Investigation – Didipio 13 March 2003, letter, 13 May 2003. ⁴ OECD Report (2001), Op. Cit, p.31 ⁵ OECD Report (2001), Op. Cit, p.7 & 13. ⁶ OECD Report (2001), Op. Cit, p.12. ⁷ See sections 28 and 29 of the Securities Markets Act 1988 (NZ); & Report on Inquiry into Trading in the Shares of McCollam Printers Limited at <http://www.sec-com.govt.nz/publications/documents/mccollam/report4.shtml>. ⁸ See section 140 (A) of the Companies Act 1973 (ZA): & Lunsche, S. 'Laying down the law on identifying shareholders', (undated) Sunday Times: Business Times, available at: <http://www.btimes.co.za/top100/t44.htm>, (accessed 13 May 2003). ⁹ Disclosure of Beneficial Ownership of Unlisted Companies Regulatory Impact Assessment, A Consultation by HM Treasury/DTI, (July 2002), pp.8-10 Available at http://www.hm-treasury.gov.uk/mediastore/otherfiles/beneficial_condoc.pdf. ¹⁰ OECD Report, p.78. ¹¹ Walsh, K. 'Silent Dealing, Deafening Impacts: The Role of Export Credit Agencies in generating developing country debt', Briefing Paper #1. <http://www.aidwatch.org.au/assets/aw00391/Debt%20Article%2013.7.03.pdf> & see: www.eca-watch.org ¹² Ibid. ¹³ See Walsh, K. (2003), Op. Cit. ¹⁴ The Equator Principles (2003), 'Leading Banks Announce Adoption of Equator Principles', June 4, Press Release, Available at: <http://www.equator-principles.com/pr030604.shtml> (accessed 9 July 2003). ¹⁵ Nelthorpe, Tom (2003), 'Principled finance', in Project Finance Magazine, June, Available at <http://www.equator-principles.com/pfm.shtml> (accessed 8 July 2003).

7. The Mining Ombudsman cases 2003

The impact of mining on local communities differs according to the phase of mine development and/or operations. These different impacts were fully discussed in the *Mining Ombudsman Annual Report 2002*.

The cases contained within this Annual Report also provide tangible examples of how the three different phases of mine operations impact on local communities. The three phases are:¹

- > Exploration and feasibility – includes obtaining appropriate official titles or leases to explore; acquisition of land, exploration and determination of ore reserves; feasibility studies; and 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; and departure from mine site.

The 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 local communities. A common grievance arising in this phase of operation is the failure of companies to gain prior informed consent of local community members, or the manufacturing of consent for exploration and mining activities by companies or governments. This can often result in costly legal action and conflict. Such is the case with the proposed **Didipio Mine** in the Philippines (**Case 1**) where the communities accuse Climax Mining of fabricating community consent for the proposed mine. As a result, the communities have launched legal action against the company in the Philippine Supreme Court and considerable conflict has resulted within the local communities.

Other grievances include the failure of companies to provide accurate information about the potential negative impacts, which often generates problems at later stages. This could eventuate in the **Gag Island** case in Indonesia (**Case 6**), where the future livelihoods of not only the island communities but also the adjacent communities could be irrevocably damaged if submarine tailings disposal is used in such a diverse and abundant marine area. Further, in the case of the **Tolukuma** mine in Papua New Guinea (**Case 2**), there is considerable anger over the company's apparent disregard for negotiating through accepted landowner groups to pursue future exploration opportunities and its refusal to ensure that community support organisations and legal advisers are present in order to provide independent technical and legal advice over the exploration plans.

Mine development and mineral extraction phase

Mine development and mineral extraction have the largest physical impacts upon the environment and communities. Common problems encountered at this stage include: forced eviction without appropriate compensation; mine pollution and contamination of land, air and waterways impacting on the health of the people, their livestock and their gardens; and large influxes of foreign people bringing new cultures, substances and diseases. Many of the problems in the cases in this report fall within this stage of mine development.

The communities of **Tolukuma (Case 2)** complain of unexplained deaths and illnesses, which they blame on the disposal of the mine tailings directly into their river system. Similarly, the communities impacted by the **Tintaya** mine in Peru (**Case 3A**), complain of unexplained illnesses and the deaths of their animals from mine contamination. In the case of Tintaya, unlike Tolukuma, the company is engaged in a dialogue process with the local people and their support organisations and is achieving some success in addressing these and other grievances.

Post-mine works phase

This phase of mine operation is often the time when communities are most neglected as some companies will see no direct or future profits from their efforts. There is broad scope for community dissatisfaction and anger, particularly if there is a history of conflict with mine operators. Issues pertinent to communities include: environmental rehabilitation and remediation; continued support for infrastructure such as roads and housing; the lasting impacts of altered ways of life that may leave individuals ill-equipped for the future.

Mining companies must take responsibility for these issues and address them as part of all phases of their project cycle. The **Indo Muro** mine in Indonesian (**Case 4**), has most of the problems evident at this phase, as over the last decade Aurora Gold has steadfastly refused to address the human rights violations perpetrated by security forces located at the mine, and the company has now divested from the mine without compensating local communities. The **Marinduque** case in the Philippines (**Case 7**) also tragically displays many of the negative aspects of this phase of mine development. Whilst the reported breakdown of the mine closure negotiation process at the **Kelian** mine in Indonesia (**Case 5**) demonstrates how difficult and important this phase of mine development is for the communities who will be left behind.

FOOTNOTES

¹These phases are adapted from Burdge, R.J. and Vanclay, F. (1996), 'Social Impact Assessment', in Vanclay, F. and Bronstein, D.A. (eds.) *Environmental and Social Impact Assessment*, Ch.2, pp.31-66. Burdge and Vanclay present four stages of impacts from project development (1) planning or policy development; (2) construction/implementation; (3) operation and maintenance; and (4) decommissioning or abandonment. For the purpose of this report, Stages 2 and 3 have been combined.

Case 1 – Didipio



Resource:	Gold and copper
Location:	Barangay Didipio, Kasibu Municipality, Nueva Vizcaya Province, North-central Luzon, Philippines.
Affected communities:	Ifugao, Kalanguya, Ibaloi, Tagalog, Ilocano and other Visayan settlers
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.lrcksk.org/
Mine operator:	Climax Mining Ltd – Climax Arimco Mining Co (CAMC)

Chronology of events

1989:	Climax Mining begins sampling in the Didipio Valley.
1992:	Climax Mining begins exploration activities in the Didipio Valley.
3/1994:	Climax Mining announces discovery of gold and copper.
6/1994:	President Ramos grants the first Financial or Technical Assistance Agreement (FTAA) in the Philippines to Climax Mining. The company gains the right to explore for up to 50 years' and potential 100 per cent foreign ownership.
28/4/1999:	The Barangay (District) Council of Didipio enters into a Memorandum of Agreement (MOA) with Climax Mining under contested circumstances.
16/7/1999:	The local community establishes the Didipio Earth Savers' Movement (DESAMA), a group opposed to mining in Didipio, and begins the 'Didipio Initiative' in order to obtain a referendum on the proposed mining activities.
8/1999:	The Department of Energy and Natural Resources (DENR) issues an Environmental Compliance Certificate (ECC) to Climax Mining.
19/10/1999:	DESAMA collects 109 signatures for a 'Peoples Initiative' petition asking the Commission of Elections to hold a referendum among the people as to whether they are in favour of the mine or not.
27/8/2000:	The Regional Development Council (RDC) denies a Climax Mining request to certify that the project conforms to the Regional Physical Framework plan of Region II.
27/10/2000:	The Department of Environment and Natural Resources declares the project 'closed to any form of mining' ¹²
11/10/2001:	The Department of Environment and Natural Resources suspends the FTAA, stating that the project is not socially acceptable. ³ However, Climax Mining maintains a presence at the mine camp.
17/12/2001:	The second MOA is signed under contested circumstances.

Members of the Didipio community perform a traditional war dance at a festival celebrating the citrus industry in their locality. Photo: Ingrid Macdonald/OxfamCAA



Request

During the Philippine National Conference on Mining held in May 2002, the Mining Ombudsman met with representatives of the affected communities of Didipio.⁴ Following this meeting, on 12 June 2002 DESAMA requested that the Mining Ombudsman undertake a formal case investigation and take up the case with Climax Mining in Australia.

In September 2002, the Mining Ombudsman travelled to Didipio to conduct a Mining Ombudsman investigation. This investigation included a comprehensive set of interviews and meetings with the community, municipality, and mine staff, as well as site visits.

Background

The Barangay (District) Didipio is located in a remote and mountainous area of Nueva Vizcaya, which is an agricultural province in the Cagayan Valley, in North Luzon. Didipio sits at a high point in the Addalam River watershed area, which encompasses large components of the Nueva Vizcaya Province and parts of the adjacent Quirino Province. Barangay Didipio is made up of nine sitios (smaller villages) – Dinauyan (Upper and Lower), Ancabo, Verona, Waterfalls, Dagupan, Bacbacan, Surong, Camgat and Didipio proper.⁵

Climax Mining is a publicly listed Australian firm that has been active in Didipio since 1989. In 1994 the company was granted the first Financial or Technical Assistance Agreement (FTAA) in the Philippines for a 37,000 hectare area located in the Nueva Vizcaya and Quirino provinces.⁶ The FTAA is a contract for 50 years and

5/2002:	The Mining Ombudsman attends the National Meeting of Mine Affected Communities in Baguio City, the Philippines.
12/6/2002:	The affected communities of Didipio formally invite Oxfam Community Aid Abroad to conduct a Mining Ombudsman investigation.
6/8/2002:	Didipio Barangay village elections result in the election of five anti-mining councillors out of seven. All 30 Barangay Captains (head councillors) representing 30 different electorates in the Neuva Viscaya region formally express their opposition to the mine.
9/9/2002:	The Mining Ombudsman travels to Didipio to undertake a case investigation. A public meeting is convened with over 70 community members.
10/9/2002:	The Mining Ombudsman meets with Didipio Barangay Captains before visiting the mine site. She meets with community relations officials and community members working for Climax Mining.
4/11/2002:	Oxfam Community Aid Abroad's Mining Ombudsman Annual Report 2002 is published with a preliminary report on the Didipio case.
11/11/2002:	Resolution No. 156, S 2002. The current municipal council of Kasibu formally denies the petition for the endorsement of mining activities by the former council.
18/12/2002:	The Mining Ombudsman writes to Climax Mining with the findings of the case investigation. To date there has been no reply.
5/3/2003:	The Mining Ombudsman writes to Climax Mining for a second time and there is no reply.
16/4/2003:	Climax Mining appoints a new Managing Director and Chief Executive Officer.
6/5/2003:	DESAMA joins together with other civil society groups in filing a petition to the Supreme Court seeking the Philippine Mining Act of 1995 and the implementing rules and regulations regarding the issuing of FTAA's to be declared unconstitutional. The petition also challenges the legality of Climax Mining's FTAA for Didipio and calls for its cancellation.
16/6/2003:	The Mining Ombudsman writes to the new Chief Executive Officer of Climax Mining, Mr Jim Askew to request a response to the findings of the case investigation and the concerns of the communities. To date there has been no reply.



Kagawad Tolention Inlab. In mid 2002, five out of seven of Didipio's councillors (Kagawad) were elected on an anti-mining platform. Photo: Ingrid Macdonald/Oxfam CAA

includes a gold and copper discovery at Didipio, referred to as 'Dinkidi' by Climax Mining. While this prospect appears to be the company's principal focus of operations to date,⁷ the company has been unable to convert it into an operational mine for various reasons including fluctuating mineral prices, political change and community opposition.⁸ Climax Mining does not appear to be planning to operate the mine itself; as stated in its 2002 Annual Report, 'the Company is... actively seeking equity partners, a potential operator and financing... [and] Climax Mining is seeking to farm out the property to an international mining group.'⁹

Communities from both the Kasibu area and neighbouring Quirino Province have expressed their concern about the potential harmful environmental impacts from the proposed mine site on their Addalam River watershed.¹⁰ However, an Environmental Compliance Certificate (ECC) was granted to Climax Mining on 11 August 1999 by the then Secretary of the Department of Environment and Natural Resources (DENR), Antonio H. Cerrilles. It was amended on 12 January 2000 upon request of Climax Mining. It contains 40 general conditions covering the various stages of proposed mine operations. The ECC was suspended by the DENR, with the suspension of the FTAA in October 2001. A precondition of the ECC is social acceptability, which was the stated reason why the FTAA was suspended. Questions have also been raised as to whether the initial ECC applies to a new extraction method that has been proposed by Climax Mining.

In 2003 DESAMA, the Didipio communities' representative body, together with other Philippine civil society groups, filed a petition with the Philippine Supreme Court challenging the constitutionality of the Philippine Mining Act of 1995 and seeking the cancellation of the Climax Mining FTAA for Didipio. If successful, this petition will result in the activities of Climax Mining being deemed illegal and prevent any further operations at Didipio.

To date the Didipio project has not been permitted to develop beyond the exploration stage.

Grievances

The Mining Ombudsman recorded the following grievances in interviews conducted with over 50 community members and in a public meeting with over 70 community attendees during her visit to Didipio in September 2002. The Mining Ombudsman also collected documentation substantiating the community testimonies. The grievances have also been confirmed during investigations by MiningWatch Asia Pacific and the Legal Rights and Natural Resources Centre (LRC-KSK) in 2003.¹¹

Informed consent

Two Memoranda of Agreement (MOA) were signed by some Didipio Barangay Council representatives and the company, authorising pre-mining activities to occur at Didipio. The first agreement was signed on April 28, 1999 and the second, known as the pre-development MOA was signed on December 17, 2001. Most of the community members interviewed said they had not provided their informed consent to the signing of the MOAs.¹²

Many community members believe Climax Mining had not adequately consulted with them about the impacts of the proposed mine project. The reasons given by the communities were:

1. The company did not present all of the available information in meetings, and where information was given, it was not presented in an appropriate language or manner.
2. The community does not have adequate technical and legal representation to understand presentations made by Climax Mining.
3. The company provided education on mining activities after the activities had begun. For example, sampling activity began in 1989, however education was not provided on this activity until the late 1990s.

Community members described how they were required to sign attendance forms in order to attend meetings. They later reported that these attendance forms were used to illegitimately demonstrate their consent for the project and the MOA.

"We have been cheated. The company called for meetings in different communities. At the beginning of a meeting, they would butcher a pig [a local custom that attracted high levels of attendance at meetings]. Then they would ask people to sign a sheet for their attendance. But when the company went to Court in Manila, we found out that the attendance sheets had actually been approval forms for mining. The company used the sheets to back up their project. All those that signed the attendance forms were really cheated." Lorenzo Pulido

Community members also stated how they had signed attendance forms with large gaps at the top of the page and no headings. They informed the Mining Ombudsman that false headings were later added stating that they were in favour of the MOA. Similarly, people described how they were asked to sign a document that was supposed to be a request for a hanging bridge. Community members state that the final version of this document had additional text stating that all signatories were in favour of the mine. In yet another instance, people believed they were signing a document to authorise improvements to the local school, however, according to community members, the form was actually an endorsement of the mine.

It was also alleged that the Barangay councillors who endorsed the first MOA, were being paid salaries by Climax Mining.¹³ Many community members said that the councillors were initially against the mine. However, all but one of them are reported by community members to have suddenly changed this anti-mining position to endorsing the mine after a visit to the mine site. One Barangay official alleged that company officials had offered him money, land, a car and a house if he supported the mine and signed the MOA. Community members claimed the previous Barangay Council did not acknowledge their opposition to the MOA during and after a community assembly on the first MOA. During the assembly, some community members asserted that they had objected to the MOA, but when they saw the completed MOA it stated that no one had objected.

Right: Alonzo Ananayo: "The company is insisting we give them permission to go ahead. Some people depend on the company want it to go on, but we believe that we can only go on through our agricultural activity." Photo: Ingrid Macdonald/OxfamCAA

Far right: Local leader, Kagawad Peter Duyapat: "Climax Mining has offered to relocate people to a site that the community has never heard of or seen... people do not want to leave their lifestyle in Didipio." Photo: Ingrid Macdonald/OxfamCAA



A group of local people visited communities impacted by the Banguet mine, in the neighbouring Cordillera Region of the Philippines. The communities learnt about the potential negative impacts from the proposed mine, which had not been communicated to them by Climax Mining.

A number of people were also anxious that Climax Mining might pursue a 'slap suit,' which would involve the company suing the community for its lost investment given that the previous Council entered into the MOA with the company. This is reported to have occurred in other parts of the Philippines as a way to coerce communities into 'consenting' to projects.

"My father's generation discovered this land and took good care of it. We, their children are not taking care of it – I should not let this happen. I am opposed to the mine not just for now, but for the sake of coming generations." name withheld

Given the numerous community complaints, it is surprising to note that on completion of an audit of the Didipio project by the International Finance Corporation (the private sector funding arm of the World Bank Group), the audit consultant stated that the '... acceptance of the development plan represented the best case of prior informed consent he had ever witnessed.'¹⁴ It is unclear how the consultant could have reached this conclusion given the concerns expressed very openly and publicly by many members of the Didipio communities over the lack of free, prior and informed consent for this project.

Land acquisition

"Climax Mining has offered to relocate people to a site that the community has never heard of or seen. But the people do not want to leave their lifestyle in Didipio. They are not effected by pollution like in the lowlands, they have abundant water and the land is very fertile and good for agriculture. They do not want to be relocated." Kagawad Peter Duyapat, Didipio Barangay Council

Some members of the community complained that they had not received the jobs that they had been promised in return for selling their land to Climax Mining. They described how they now have no money, are landless and have to work for their neighbours.

They spoke of their shame at having lobbied their neighbours to trust Climax Mining, and their sense of responsibility for placing the entire community in the position of conflict by giving Climax Mining a foothold in the area.

Some of mine workers expressed it was better before they sold their land to the company and took up employment. They described how they had previously always had something to eat from their land, but now that they have a small salary and do not have sufficient cash for food.

A number of the community members asserted that Climax Mining had previously used force to access land for exploration activities without gaining the permission of the landowner. They also allege that exploration drilling caused springs to dry up or become polluted.

Teachers' salaries

All of the community members interviewed were very concerned that the salaries of some teachers, a nurse and a health worker had not been paid by Climax Mining since the new predominantly anti-mining Barangay Council was elected in June 2002.¹⁶ Many community members felt that unless the new Council agrees to the MOA, the company would not fund the salaries. The Didipio community places great importance on education, so the uncertainty over teachers' salaries has placed considerable pressure on the community and the Council to support the mine project.

Community division

All people interviewed were very distressed about community divisions between pro-mining and anti-mining advocates that had arisen since the arrival of Climax Mining in Didipio.¹⁷ Whether the people interviewed supported the mine or not, most spoke of the disharmony caused by the mine activities. Many were very emotional, with some unable to complete their testimonies because they were so upset with the conflict within their community and even within families. The DENR fact-finding mission found that, '... (a)rriving at a consensus on the mining project among the members of Didipio community must not be allowed to further polarize them.'¹⁸

Figure 7.1.1: Fact-finding investigation

The Department of Environment and Natural Resources (DENR) conducted an independent fact-finding mission in 2002, prompted by complaints from DESAMA regarding the methods used to collect community signatures for the MOA. The fact-finding mission found anomalies with the methods

of collection and that of the community members interviewed:

1. There were some who retracted their signatures on the endorsement.
2. There were some who were neutral.
3. There were some who claimed that they were not the one who signed.

4. There were some who were below 15 years old.

The mission also found that many of the residents of Didipio and the surrounding communities did not possess the knowledge or expertise to understand the presentations by the representatives of the project, who were mining engineers, geologists, or experts in their field. The

presentations were also in English or Tagalog, which are not the first languages of the communities.¹⁵

The DENR has since recommended that a plebiscite be conducted, in order to determine whether the people of Didipio want the mine to proceed and if Climax Mining can provide 'socially responsible mining.'

One Barangay official alleged that company officials had offered him money, land, a car and a house if he supported the mine and signed the MOA.

"I wish the mining activity would stop, because it is creating disunity in the community. People who are pro-mining say they will not have a job if there isn't a mine. But the rest of the community is developing citrus crops and the mining activity will destroy the citrus planting program. The mining is making our children hate each other." Cesar Mariano

In 1994 a Canadian geologist was accidentally killed by a community member who allegedly shot at a flying helicopter that kept landing on his property without permission.¹⁹ As a result, a military detachment was deployed to the mine site. Community members described how these soldiers stole their chickens and ducks and harassed them. When they reported this to the Climax Mining officials, the soldiers were removed and were replaced by a deputised civilian military force recruited from the pro-mining sections of the community. This military force appears to have only heightened tensions between pro and anti-mining segments of the community.

"If the company does not stop, the community will never be united again. The unity of the people will never be again – our strong wish is that the company would stop and leave."
Barangay Kagawad Eduardo Ananayo

Sustainable livelihoods and environmental stewardship

Some community members believe that Climax Mining is a socially and environmentally responsible mining company, committed to sustainable development. They believe the positive economic spin-offs from mine development can be a driver for economic development in the community. They spoke of how they have either received work from the mine or directly benefited from Climax Mining's presence through leasing their land to the company. However, very few had any specific information about the potential social and environmental impacts of the proposed mining activities. Nor did they know that Climax Mining was actively seeking an operational partner for the mine.

Those in favour of the mine described how Climax Mining has provided infrastructure including dirt roads, a health clinic and improvements to the school. They believe that Climax Mining will spend more money on developing public utilities such as education, health care and public roads. However, others expressed concern about becoming dependent on a foreign company to provide these services, as they believe this is the role of the government.

This difference of opinion did not appear to be because some in the community want 'economic development' and some do not. Rather, it appeared to be a question of how the community should develop. The majority of the people expressed their desire for long-term sustainable economic development through citrus crop plantations. They asserted that the area has fertile soil that is conducive to citrus farming, as demonstrated by the already thriving citrus industry in the lowlands of the Kasibu region.

Those pursuing citrus development fear the mine will cause environmental damage and destroy their livelihood. They believe that in time citrus production will provide them with a non-polluting economically-viable industry that can be passed on to their children and grandchildren whereas the mine and its cash will be gone in a generation.

Many community members discussed their strong sense of respect and steward-ship for the land, and how it would be impossible to be compensated for its loss or contamination. During an interview with the Mining Ombudsman, Climax Mining's Didipio Community Relations officer advised that the proposed mine operations would have 'absolutely no negative impacts on the communities.' When the Mining Ombudsman requested proof of this assertion, the official assured her that he has faith in what the engineers have told him. However, most people expressed distrust that the company is providing accurate and full information regarding the potential environmental impacts of the mine,²⁰ particularly given the company's behaviour in respect of the MOA consent process.

"There have been a lot of lies by Climax. Through their alliance officer they told us that there are no bad effects from mining. There used to be portable water from a spring. Then the company drilled above the spring and the water disappeared – and yet they tell us that there is no effect from mining activity. The drinking water is no longer good and it is not longer potable." Name withheld



Community members are concerned about the impacts of the mine development on future generations. Photo: Ingrid Macdonald/OxfamCAA

Community members and representatives sit above the valley where the tailings dam is proposed to be built.
Photo: Ingrid Macdonald/OxfamCAA



Action taken

The community concerns over the proposed mine at Didipio were first publicly covered by Oxfam Community Aid Abroad as a preliminary case report in the *Mining Ombudsman Annual Report 2002*. The Mining Ombudsman conducted a field investigation in September 2002 and wrote several letters to Climax Mining, on 18 December 2002, 5 March 2003 and 16 June 2003 with the results of the investigation. To date, Climax Mining has not responded to the community grievances or case investigation.

The Mining Ombudsman also wrote to Climax Mining's largest shareholder, ANZ Nominees Ltd on 13 March 2003 in order to inform it of the community concerns with the Didipio project and the results of the Mining Ombudsman investigation. ANZ Nominees Ltd held 37.641 per cent of Climax Mining's share as at 3 October 2002.²¹ ANZ Bank responded to the Mining Ombudsman on 3 May 2003 with no reference to what it would do in respect of the community concerns or the Ombudsman investigation. Please refer to Section 6 for further elaboration about nominee companies and their relationship to the Climax Mining case.

Recommendations

Climax Mining has chosen not to respond to the Mining Ombudsman in respect of the concerns of the communities being impacted by its activities in Didipio. The following recommendations have been communicated to Climax Mining in each letter:

- > That Climax Mining suspend all pre-mine feasibility and exploration activities at Didipio and support an independent plebiscite on the future of the proposed mine project.
- > That Climax Mining respects the rights 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.
- > That Climax Mining recognises the rights of communities to determine their own path of development and, as such, respects their right to decide to pursue agricultural development.

- > That Climax Mining publicly and formally agrees not to pursue a 'slap-suit' against the community, if the Didipio Barangay decides not to endorse the mine.
- > That Climax Mining fully discloses the project objectives, impacts and options to all stakeholders from the Didipio community, including the realistic impacts on the environment, any required relocation and resettlement plans and whether Climax Mining will be operating the mine or whether this will be managed by another company.
- > That Climax Mining does not use company-funded community projects to advance its own agenda and immediately pays all out-standing salaries for health and education workers.
- > That Climax Mining recognises community division as an impact of its activities and takes measures to appropriately and sensitively compensate and/or assist the communities to reestablish harmonious relations with each other.
- > That independent social, gender and environmental impact assessments are conducted immediately to gauge real and potential issues arising from the proposed mine operation in Didipio, and that the results of these assessments be made available to all stakeholders and the general public.
- > That Climax Mining provides all information in a language and manner that is accessible to communities, with adequate funds to seek technical expertise to analyse this information independent of the company.
- > That Climax Mining ensures that its employees do not partake in corrupt practices, such as the bribery of community members in order to gain acceptance of the mine.
- > That Climax Mining ensures that community members are fully informed of what they are signing before they sign official documents of any type and that they have received adequate independent technical and legal assistance prior to signing.
- > That Climax Mining insists that the civilian/military detachment at the mine is disbanded and ensures that factions of the community are not being armed.

FOOTNOTES

¹ Climax Mining Ltd Website. Available at <http://www.climaxmining.com.au/html/projects.html> (accessed online 11 November 02) ² Gascon, Melvin (2001), 'Help Stop Vizcaya Mining, Bishop Appeals to Gloria', *Inquirer News Service*, 15 July. Available at <http://www.inq7net> (accessed 28 May 2002) ³ Brazas, Donna (2001), 'Philippines Suspends Mine Exploration Operations', *The Manila Times*, 17 October, Available at <http://www.minesandcommunities.org> (accessed 28 May 2002) ⁴ See Tebtebba Foundation website at <http://www.tebtebba.org> for a copy of the Conference Statement and the report on the National Conference on Mining. ⁵ See Rovillos, Raymundo. Ramo, Salvador. Corpuz, Jr., Catalino. 'When the 'Isles of Gold' Turn into Isles of Dissent: A Case Study On The Philippine Mining Act of 1995' Tebtebba Foundation paper prepared for the World Bank Extractive Industries Review, p.18 ⁶ Aroco, A., Degyem, W. & Pinaroc, S. (2002), 'Fact-Finding Investigation Report', unpublished article of the Philippine government, July 8, p.7 ⁷ Climax Mining Ltd and its Controlled Entities (2002), *Directors' Report and Full Financial Report*, 30 June, p.2. Available online: <http://www.climaxmining.com.au> ⁸ Ibid. ⁹ Ibid. (Emphasis added) ¹⁰ See Rovillos, et al. Op Cit. ¹¹ Ibid. ¹² Rovillos et al. Op Cit, p.23 ¹³ See also Gobrin, G. and Andrin, A. 'Development Conflict: The Philippine Experience' *Minority Rights Group International*. Available online: <http://www.minorityrights.org/> ¹⁴ See Climax Mining Ltd, (2001) *Community Participation and Social Acceptability*, www.didipio.com/html/1.html (last accessed 29 July 2003). ¹⁵ Aroco, Atty. Alfonso, Degyem, William D. & Pinaroc, Samuel P. (2002), Op. Cit. ¹⁶ See also Gobrin, G. et al. Op Cit. ¹⁷ See also Rovillos, R. et al. Op Cit. p.23 ¹⁸ Aroco, Atty. Alfonso et al (2002) Op. Cit. ¹⁹ See also Gobrin, G. et al. Op Cit. ²⁰ See also Rovillos, R. et al. Op Cit. p.19 ²¹ Climax Mining Limited *Annual Report 2002*, p.32.

Case 2 – Tolukuma



Resource:	Gold
Mine location:	Golila District, Central Province, 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) Golob People's Association The Dilava Community (Mr Henry Ivolo & Committee) Daiana Resources Ltd
Community support groups:	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

Chronology of events

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 licence.
29/8/1994:	Dome Resources commences mine operations.
27/2/1997:	Memorandum of Agreement signed in Sydney, Australia in contested circumstances.
2000:	Durban Roodeport Durban Ltd (DRD) acquires Dome Resources and the Tolukuma Gold Mine (TGM).
21/3/2000:	During transportation to the mine, a helicopter drops 1000kg of cyanide in the Yaloge River Valley 20km south of the Tolukuma mine.
12/4/2000:	The Mining Ombudsman writes to Dome Resources at the request of local community members outlining community concerns over the company's handling of the cyanide spill.
5/2000:	Minproc Limited submits an internal review on the Tolukuma mine for DRD.
7/2000:	The Mineral Policy Institute, Greenpeace and Environmental Law Centre jointly release an investigation into the cyanide spill. ¹
23/8/2000:	Affected landowners forward a petition documenting their grievances with the Tolukuma mine to TGM and the Papua New Guinea (PNG) Office of the Environment and Conservation (OEC).
13/9/2000:	A helicopter drops 4000 litres of diesel fuel on the outskirts of the Tolukuma mine whilst in transit to the site.
6/10/2000:	TGM and the OEC respond separately to the community petition of 23 August 2000, both denying responsibility for the grievances.
1/2001:	Landowners affected by the Tolukuma mine set up the Auga River Waterway Resource Owners Association (ARWROA) to represent them in dealings with TGM.



“Since the company has come, customs have broken down ... The company doesn't respect women, and hasn't addressed community issues that affect women.” Elizabeth Kitai, February 2003

21/3/2001:	The landowners, dissatisfied with the response to their petition, write to the OEC indicating their intention to take legal action against TGM.
23/4/2001:	OEC write to the PNG Department of Mining advising of the need for the construction of a series of dams designed to minimise sedimentation and turbidity problems downstream from the mine. This letter also alludes to the need for further independent studies and the possibility of increased compensation for landowners. ²
23/5/2001:	NGO Environmental Watch Group (NEWG) writes to TGM requesting the renegotiation of the landowners' compensation package.
06/2001:	Tolukuma is included as a case in the Mining Ombudsman Annual Report 2001.
3/8/2001:	The Mining Ombudsman conducts a case investigation and hears submissions from more than 100 representatives from 24 villages.
3/8/2001:	ARWROA writes to the Mining Ombudsman requesting further assistance in negotiating the Tolukuma case.
14/8/2001:	The Mining Ombudsman writes to DRD without response.
25/10/2001:	A repeat letter is sent on 25 October 2001 with a copy also sent to OEC. These letters are not responded to.
18/6/2002:	The Mining Ombudsman again writes to DRD outlining the community grievances and requests that the company take action.
29/7/2002:	NEWG and the Centre for Environmental Law and Community Rights (CELCOR) visit the affected communities to conduct scientific testing and obtain information for legal proceedings.
4/11/2002:	The Mining Ombudsman Annual Report 2002 is released. DRD issues an immediate press release denying responsibility for elevated concentration in mercury levels in the Auga/Angabanga River and claiming it is in 'substantial' compliance with PNG environmental legislation.
8/11/2002:	The Mining Ombudsman writes to DRD clarifying community concerns raised in the Mining Ombudsman Annual Report 2002.
13/11/2002:	DRD responds claiming it has operated in 'substantial' compliance with the terms of its environmental obligations.
14/11/2002:	St Gerard's School of Nursing releases a report suggesting possible water contamination of the Auga/Angabanga rivers from TGM discharges that appear to pose health risks to the local population. This includes reports of 18 unexplained deaths and 106 people very ill.
22/11/2002:	DRD issues an open letter to shareholders disclosing and rebutting the issues raised by the Mining Ombudsman.
2/02/2003:	NEWG issues an impact study report from a field trip to the TGM area highlighting community grievances.
6/02/2003:	Business Review Weekly features the Tolukuma case as part of an article on corporate responsibility.
9-15/02/2003:	The Mining Ombudsman travels to PNG and discusses the Tolukuma case with community representatives, NEWG and CELCOR and the Central Province Governor.
11/03/2003:	DRD meets with NEWG, raising the prospect of establishing a community environmental advisory committee for the Tolukuma mine.
19/03/2003:	DRD meets with Oxfam Community Aid Abroad to discuss continuing issues, including the proposed environmental advisory committee, scientific testing and community complaints over exploration being conducted without landowner permission.
3/6/2003:	The Mining Ombudsman writes to DRD requesting advice on the progress with the meeting outcomes, as neither Oxfam Community Aid Abroad nor NEWG and CELCOR have been contacted since.
18/6/2003:	DRD responds that they have been meeting with local communities, wish to pursue the environmental advisory model, expect to make the results of recent scientific tests public, and disagree that they have not obtained the consent of landowners to conduct exploration.

Since December 2003 DRD has made some effort to engage with local communities, NEWG and Oxfam Community Aid Abroad... Although this has assisted the parties to discuss the grievances, these grievances still remain unresolved.

Request

The initial request to take up the concerns of the communities affected by the Tolukuma Gold Mine (TGM), which is owned by Duban Roodepoort Deep Ltd (DRD) was received by Oxfam Community Aid Abroad in 2001. The nature of the request has not altered from the *Mining Ombudsman Annual Reports 2001 and 2002*.

Background

TGM was granted permission to operate at Tolukuma on 24 May 1994 subject to 12 ministerial conditions. In the preamble to these conditions, the then Minister for the Environment and Conservation urged TGM:

"...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."³

Despite the wishes of the then Minister for Environment, TGM does not contain its mine waste on land; instead it discharges over 50,000 tonnes of tailings directly into the Auga River system annually. TGM opted for riverine tailings disposal even though it was warned prior to the mine opening that the, resulting high sedimentation deposition rates are expected to cause oblitative impacts on the fish habitats and food resources.⁴

In late 2001, DRD acquired a three-year loan agreement with the Bank of South Pacific in order to finance an increase of production capacity at the Tolukuma mine.⁵ Upon securing the loan, TGM announced 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".⁶ As a result, Tolukuma mine production may increase by up to 50 per cent.⁷

The planned increase in production and longevity of the mine will greatly increase the quantity of tailings being discharged into the river, which will no doubt increase the levels of sedimentation and intensify the 'oblitative impacts on the fish habitats and food resources' and negative impacts on the people. An internal DRD review of TGM operations also recommended that if the life of the mine was extended the company should pursue land based disposal options, rather than river disposition.⁸ Neither the communities affected by TGM nor Oxfam Community Aid Abroad have been advised of plans to develop alternative mine waste disposal methods despite the increased capacity of the mine or the projected extension of mine life.

The same internal review raised questions as to whether TGM was in compliance with some of the ministerial conditions.⁹ Reports conducted by Unisearch and the PNG Office of Environment and Conservation (OEC), that are discussed in the *Mining Ombudsman Annual Report 2002*, also raise concerns over the high levels of heavy metals – especially mercury – being discharged by TGM into the Auga River system and accumulated by fish species.

Grievances

The grievances of local community members primarily relate to the impacts from the discharge of tailings into the river system and the activities surrounding the Tolukuma mine expansion. Recent reports undertaken since the publication of the Mining Ombudsman Annual Report 2002 by NEWG, CELCOR and others¹⁰ have re-affirmed and validated these grievances, which are as follows:

- > Community members want to identify the cause of disease and illness (specifically yellow feet, swollen stomachs and open sores) prevalent in communities which live close to the Auga/Angabanda River system. Communities attribute the deaths of more than 30 people up until 2001 to regular exposure to the Auga River. They also want to know the reasons for a reported 19 unexplained deaths during 2002.¹¹ They believe these occurrences are related to mine tailings being discharged directly into their river system. They are afraid to use the Auga river water for drinking and washing, which is especially difficult in the dry season when other water sources dry up such as with the Yumu and Tulala villages.
- > Community members believe that environmental degradation, including the loss of vegetation and fruit trees on the banks of the Auga River, and reductions in fish, prawn and eel populations are also due to TGM disposing tailings directly into the river system. They complain that the tailings have caused sedimentation build-up, which prevents them from crossing the river. They also have concerns over reports of unacceptable levels of heavy metals, especially mercury, within the river system.
- > Community members report that TGM has not honoured the original Memorandum of Agreement (MOA) by declining to provide infrastructure development, such as housing, roads or bridges; support for local people in mine business spin-offs; contracts at the mine site; and the provision of training opportunities and employment for the local people. It is reported that the original MOA was never seen or agreed to by communities when it was signed two and a half years after the mine began operation. It was allegedly signed in Sydney, Australia on 24 February 1997 by a youth leader.¹²
- > Community members complain that compensation payments have been inadequate and not directed to all affected communities.
- > Community members allege that alcohol abuse has occurred at the mine site and that sex worker activity has increased along with the incidences of HIV/AIDS and STD infections.¹³
- > Community members complain that there is a lack of communication between the communities, associations and landowner groups, the company and the government. Where there is communication, TGM fails to use recognised associations and landowner groups or established communities in their negotiations.
- > There are allegations of ongoing labour rights violations at the mine site. NEWG received information from mine workers detailing an outstanding pay dispute, which resulted in 43 employees allegedly being ejected from the mine site with the use of an armed police force on 15 October 2002.¹⁴ The workers assert that they have not been given the wages owed to them by the company.

Right: Community members of Dubiulenga
congregate around their source of drinking
water now that their river is polluted.
Photo: Grant Walton/NEW

Far right: Kai Amilio is a principle land owner
near Fane. Kai stressed education as the most
important issue that needs to be addressed
in the future. Photo: Grant Walton/NEW



- > Some community members complain that TGM is undertaking exploration beyond the government permits without the permission of local landowners.
- > Community members complain that TGM uses helicopters to transport everything to and from the mine and have not built a promised road to Port Moresby. This generates considerable noise pollution from helicopter traffic, which disturbs the people and drives away the animals and birds that the communities eat. Similarly, community members complain of drums and other items regularly falling from the helicopters.¹⁵ In 2000 a tonne of cyanide was dropped from a helicopter into the Yaloge Valley and a helicopter travelling to the mine similarly dropped 4000 litres of diesel. The Yaloge people are seeking compensation for the psychological and physical impacts of the cyanide spill; alleged illegal and unsafe packaging and transportation of the cyanide; and inadequate measures undertaken by TGM to clean up the spill.¹⁶

As discussed below, there has been increased dialogue among the affected parties since the release of the Mining Ombudsman Annual Report 2002. However, all grievances remain unresolved and of concern to the affected communities.

"A family member of 20 heads would receive royalty payments in monetary value of K70-90 only each person – not more. That is on a monthly basis, sometimes we don't receive these payments for months on end."

Woman, Ovohuva Village, 29 January 2003 – Name withheld¹⁷

Action taken

DRD did not respond to the local community grievances as detailed in the *Mining Ombudsman Annual Report 2001* or to three subsequent letters sent to DRD in 2001 and 2002. However, DRD reacted immediately to the release of the *Mining Ombudsman Annual Report 2002* via a media statement acknowledging that it is accountable to the PNG government, the local communities and its shareholders.¹⁸ Further, it asserted that it was in 'substantial' compliance with PNG environmental legislation and permit requirements. This was followed up in an open letter to shareholders, in which it was stated:

*"... a routine environmental audit was conducted at the Tolukuma operations. The audit revealed the operations to be in substantial compliance with Papua New Guinea environmental legislation, the Tolukuma environmental plan and the environmental monitoring and management programme. Additionally, the annual environmental report for Tolukuma operations for 2001 confirmed that Tolukuma is currently in substantial compliance with environmental and permit requirements."*¹⁹

These documents, including the environmental audit results, the Tolukuma environmental plan, the environmental monitoring and management program and the Annual Environmental Report for 2001, have not been made public. DRD has refused to release these documents despite repeated requests by Oxfam Community Aid Abroad for the disclosure of this information to the local communities which DRD acknowledges it is accountable to. Further, there has been no indication from DRD as to what it means by 'substantial' compliance, particularly in terms of fulfilling its environmental obligations.

Since December 2003 DRD has made some effort to engage with local communities, NEWG and Oxfam Community Aid Abroad. There have been various letters exchanged and meetings as detailed in the chronology, which have improved communication and understanding between the parties. Although this has assisted the parties to discuss the grievances, these grievances still remain unresolved.

Communication

A key complaint since this case was first raised with the Mining Ombudsman are allegations of poor or non-existent communication between appropriate TGM management and the local communities and appropriate community associations, particularly the communities living outside the mining lease area downstream from the mine. Community members complain that TGM seems to only deal with people of their own choice. Similarly, it is alleged that TGM refuses to provide sufficient notification time before meetings with communities so that they are able to have their Port Moresby based support organisations and legal advisers present. Tolukuma is very remote with the only access via air, which means considerable time is required in order to make arrangements for the presence of the support organisations and advisers.

The Mining Ombudsman, in consultation with local community support organisations, agreed to meet with DRD management, including the Chief Executive Officer, Mark Wellesley-Wood in Melbourne on 19 March 2003. The Mining Ombudsman urged DRD and TGM management to travel to the communities themselves, including downstream communities outside the mining lease area, in order to listen directly to the concerns of the communities. In order to ensure that the communities had adequate technical and legal advice, the Mining Ombudsman asked that DRD formally request that NEWG and CELCOR, the two key community technical and legal advisers, facilitate this process in conjunction with the appropriate landowner associations.

On 3 June 2003 the Mining Ombudsman wrote to DRD, as the company had not contacted Oxfam Community Aid Abroad, CELCOR or NEWG since the meeting. The Mining Ombudsman had also received reports that TGM was again undertaking consultations with people in the area without appropriate landowner representation or through appropriate processes such as through recognised groups or organisations serving the community.

DRD responded on 18 June 2003 advising that it had conducted discussions with local communities in the area, primarily over the development and funding of a health clinic called the Yulai Community Aid Post. During these discussions, the company decided to begin dialogue with the people present about their grievances. DRD expressed the belief that it is not its responsibility to invite the community representatives or advisers to these meetings. However, DRD still does not acknowledge the need for communities to have appropriate representation and independent technical and legal advice prior to and during any consultations. As DRD is conducting these meetings, it is responsible for ensuring that it provides sufficient forewarning and invitations to all parties, including the community support organisations and legal advisers.



People from Dubiulenga village show how their feet have turned yellow as a result of crossing the polluted Auga River. Photo: Grant Walton/NEWG

"TGM's Community Relations Office and the Regional Exploration Department do not negotiate with communities nor their representatives in an open manner, but instead target individuals away from communal meeting places either on the road, in the bush or at isolated hamlets.

For example, the TGM Community Relations Office Manager landed in Kodige in Dilava and met with communities on 23 June 2003. In our meeting with the TGM Regional Geologist in Port Moresby on 15 June 2003, the Golob Peoples Association stressed to him that if TGM had any future meetings with the communities, which we represent TGM first had to contact the Golob People's Association.

During the meeting, the Community Relations Manager promised that TGM was thinking of building a highway to link up Tolukuma with Port Moresby. We would like to find out whether this is true or if it is just to encourage the Dilava people to support TGM's mine developments in Duma and Etasi.

*In this instance, TGM's Community Relations Office has failed again, and as usual, are using divisive tactics, to talk to the villagers instead of going through the representative body of the people, the Golob People's Association."*²⁰
Augustine Hala, Golob People's Association

Exploration

During a trip to PNG in February 2003, community representatives advised the Mining Ombudsman that TGM was undertaking exploration without landowner permission. They wanted this activity to cease until their current grievances are dealt with by TGM. The Mining Ombudsman raised these concerns with DRD management in their meeting on 19 March 2003. However, after the meeting the Mining Ombudsman continued to receive complaints that the exploration was continuing without the consent of landowners and that this is causing considerable anxiety in the population. On 18 June 2003 DRD advised that:

"Before Tolukuma conducts any exploration, [the company] holds Tok Savés on the site of the exploration program. All community members present are informed in three languages of the exploration procedures and impact. Given that land is such an important commodity in PNG, all our exploration is conducted with the full informed consent of community members."

The validity of TGM undertaking these meetings is hotly contested by the landowners.

*"TGM has not even bothered to open up dialogue with the people's representative group, the Golob Peoples Association Inc, much less shown the courtesy to call the village leaders first to inform us of its intention to carry out the baseline survey activity on our land. This line of activity was already near completion when a member of the community, Mr Julian Manau accidentally discovered their progress while out on a hunting trip. We therefore consider TGM's actions and its attitude as outright criminal."*²¹ Augustine Hala, Golob People's Association

Health and scientific water testing

Evidence supporting allegations and demands relating to the pollution of the Auga River are set out above in the grievances and were outlined in the *Mining Ombudsman Annual Report 2002*. More recently, reports from nurses at St Gerard's School of Nursing²² and NEWG²³ identify significant health issues, recommending that:

*"Funding should be sought immediately for an independent doctor to be flown into the affected communities along the Auga River to conduct tests to find the cause of yellow feet, open sores and swollen stomachs. Trace elements of metals in the blood of respondents should be checked against water samples of the Auga to judge if the river has helped to cause this sickness."*²⁴

Water quality investigations were also carried out during 2002 by NEWG, which indicate unacceptable levels of certain heavy metals in the Auga River.²⁵

In its *Tolukuma Times* newsletter and its letter of 18 June 2003, the company states that it is supporting a medical investigation and water analysis program to be conducted by the Central Province Health Department and the OEC.²⁶ Similarly, DRD advised the Mining Ombudsman on 19 March 2003 that it had implemented a new daily monitoring and testing system at all required measuring points and upstream from the mine. The Mining Ombudsman encouraged DRD to release all data and analysis to the communities, as the communities should have full information as to what is being discharged into their river system. DRD has since advised, 'the results of all studies are expected to be public.'²⁷

The Mining Ombudsman also advised DRD that there is some concern among the community support organisations over conducting testing exclusively during the wet season. If tests are conducted only during the wet season, which will be the case with the current proposed water analysis program, the increased quantities of water may dilute the tailings and skew the results to show low levels of pollution.

Concern was also expressed to the Mining Ombudsman during her visit in February 2003 as to whether the tests would be truly independent and sustainable. It was felt that TGM should not be part of the testing regime and that an outside agency, trusted by the communities, their advisers, the government and the company, should be contracted to undertake the tests. This should occur regularly to ensure consistency of results, and as a check and balance on all times of TGM's operations.

Oxfam Community Aid Abroad has been advised that the environmental test results are soon to be released. At the time of printing the results had not been released.

"There is no positive impact from the mine on our lives or that of our village. Even though the company is harvesting gold from sources many kilometres underground, they have not so much as heard our requests to improve on our lives. ...I was not compensated adequately for the destruction of my garden land and hunting grounds, and the impact of the mine has really bound me up such that I even find it hard to breath and move around ... I don't drink from the big creek any more as it is contaminated. I now have to search for water a long way away. I am living worse off than before the mine; before I was freely living off the land as I wished."
Old Man Yavu Cyril, Ovohuva Village, 29 January 2003²⁸

People from Dubiulenga village crossing the polluted Auga River. Community members have to cross the river everyday in order to tend their gardens. Photo: Grant Walton/NEWG



Environmental advisory committee

DRD has met with local communities, NGOs and PNG government departments to discuss the possibility of setting up a community advisory committee to address environmental and health concerns.²⁹ While such discussions are a positive sign that TGM is improving its communication with the communities, the Mining Ombudsman advised DRD at the 19 March 2003 meeting that community support organisations believe that such a committee should not be established until the company addresses the current concerns, especially with regard to the environmental pollution.

Community representatives and support organisations would like DRD to discuss the idea of a community advisory committee with the community representatives, ARWROA, the Golob People's Association, and their advisers at length rather than rushing in to develop a model themselves. It was felt that this would take time to do properly, which could divert the company from addressing the current and on-going grievances of the local communities. The community also believes that a committee should be established for the new mine lease negotiations; should not have company representation on it; and it should 'operate on funds secured and spent independent of the parties represented'.³⁰

Recommendations

- > 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. This is particularly important given the planned expansion of TGM's production capacity by up to 50 per cent, which will generate considerably more tailings for disposal. DRD should also secure all mine developments in order to prevent further erosion along the banks of the river, which has increased pollution in the river system.
- > That DRD immediately begins rehabilitation activities in full participation with affected communities, as required under its contractual agreements. It should also release its rehabilitation plan to communities and their support organisations.
- > 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 with alternative water to cover all of their daily needs.
- > That DRD honours all commitments and contractual obligations as laid out in the PNG Ministerial Conditions for approval for the operations of the Tolukuma mine.

- > That DRD engages substantively with the all local communities, including those located outside the mine lease area and ensures that all meetings and consultations provide sufficient notification to enable the participation of the community support organisations and legal advisers.
- > That DRD recognises the established associations and landowner groups in all negotiations, particularly ARWROA and the Golob People's Association, and does not seek to undertake separate negotiations with individual landowners.
- > That DRD seeks landowner permission for any further exploration at Tolukuma and ensures that the landowners have received adequate independent advice from their support organisations and legal advisers. DRD should also respect the expressed wish that no further exploration activities are undertaken until they address the current grievances of community members.
- > That analysis of heavy metal in affected river systems should, with the agreement of the local communities and its representatives, be undertaken independently by an organisation agreed between the company and the community support organisations and advisers. The analysis should be undertaken in both the wet and dry season and the results should be released publicly.
- > That independent investigations occur into the causes of disease, illness and death (specifically the cause of yellow feet, swollen stomachs and open sores) prevalent in the local communities around the Auga River.
- > That DRD discusses the environmental advisory committee proposal with the communities, their representatives, their support groups and their legal advisers at length prior to developing any model itself, or imposing a predetermined model on the communities. This activity should not divert attention from the immediate need to deal with the current grievances.
- > That DRD follows internationally accepted guidelines on the packaging, handling and transportation of cyanide and transports all materials in a safe manner that does not place communities and environments at risk.
- > That DRD provides appropriate compensation to the Yaloge people for the impacts of the release of one tonne of cyanide from a helicopter in their area.
- > That DRD consider the deprivation of the communities rights to the use of the Auga river and address this as per the requirements of the Water Resources Act 1992 (PNG).
- > That DRD immediately cease further exploration or development activities at the head of the Dilava River.

FOOTNOTES

- ¹ Divecha, Oakwood, Taylor and Rakova (2000), *Cyanide Crash: Report into the Tolukuma Gold Mine Cyanide Spill of March 2000 in Papua New Guinea*, Mineral Policy Institute, Greenpeace, Environmental Law Centre, available at <http://www.mpi.org.au/n/docs/tolukuma.pdf>. ² Dr Wari Imo, Director OEC to Department of Mining, 25 April 2001. ³ Minproc Limited (2000), 'Tolukuma Gold Mine', Section 5 – Environmental, p.5. ⁴ Natural Systems Research and David Ballach & Associates, (1993) 'Mine Impacts on the River System', Dome Resources, November, 17. ⁵ DRD (2002), 'DRD Secures Loan to Finance Papua New Guinea Expansion', *Media Release*, 12 November. ⁶ Miningweb (2001) 'DRD gets financing for Tolukuma expansion', 12 November, available at <http://www.theminingweb.com> (accessed 29 September 2002). ⁷ Ibid. ⁸ Minproc Limited (2000), Op. Cit, Section 5, p.15. ⁹ Ibid. ¹⁰ Walton, G. (2003), *Tolukuma Gold Mine Case Study: Should NGO Environmental Watch Group incorporate a development arm into its operations?* (Report conducted for NEWG, February 2003); & Dewar, Sr M. (2002), St Gerard's School of Nursing (2002) *Report of verbal conversations and action re: Water Contamination of the Auga and Angabanga rivers, and the morbidity and mortality of people from the Fane area*, 14 November 2002. ¹¹ Manuk, V. (2002), 'Tolukuma requests investigation', *The National*, 12 December. ¹² Hala, A. (2003), *Tolukuma Progressive Brief*, 30 June (unpublished paper), p.11. ¹³ Walton, G. (2003), Op. Cit. ¹⁴ Koma, M. (2002), *Personal communication with OCAA*, 21 October, unpublished. ¹⁵ Hala, Augustine, (2003), Op. Cit, p.18; & Walton, Grant, (2003), Op. Cit. ¹⁶ Divercha, Oakwood, Taylor & Rakova, (2000), Op. Cit. ¹⁷ Walton, G. (2003), Op. Cit. ¹⁸ DRD (2002), 'DRD Responds to Oxfam Statement', *Media Release*, 4 November 2002. ¹⁹ DRD (2002), 'Open Letter to Shareholders', 8 November 2002. ²⁰ Hala, A. (2003), Op. Cit, p. 18 & 30. ²¹ Hala, A. (2003), Op. Cit, p. 26. ²² Dewar, Sr M. (2002), Op. Cit. ²³ Walton, G. (2003), Op. Cit. ²⁴ Ibid. ²⁵ NEWG (Non-Governmental Organisation Environmental Watch Group), (2002), *Water Quality Investigation for Heavy Metals at Compliance Point in Auga River following complaints of Pollution caused by Tolukuma Mines*, July-August 2002. ²⁶ TGM (2003), *The Tolukuma Times*, March, p.1. ²⁷ Wellesley-Wood to Macdonald, letter, 18 June 2003. ²⁸ Walton, G. (2003), Op. Cit. ²⁹ TGM (2003), *The Tolukuma Times*, March, p.1. ³⁰ Hala, A. (2003), Op. Cit, p.20.

Case 3A – 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, Bajo Hunacane, the Yauri township
Community support groups:	CONACAMI (The National Coordinator of Communities Affected by Mining) http://comunidades@conacamiperu.org/ CORECAMI CUSCO (Cusco Region Coordinator of Communities Affected by Mining) Cooperación http://www.cooperación.org.pe Oxfam America http://www.oxfamamerica.org
Mine operator:	(1996-present) BHP Billiton Tintaya S.A.

Chronology of events

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 USA-based Magma Copper.
1996:	BHP acquires Magma Copper and a 99.94% interest in the mine.
1996:	BHP acquires 1263 hectares of Tintaya Marquiri community land for the purpose of building the copper oxide plant and increasing the capacity of the mine.
1996:	BHP acquires 246 hectares of Alto Huancane community land in order to ensure greater security of the Alto Huancane tailings dam.
Post 1996:	In order to advance exploration activities BHP acquires 400 hectares of Huano Huano community land, 477 hectares of Alto Huarca community land and to provide space for a new tailings dam, 875 hectares from individual property owners in the region.
11/2000:	CONACAMI requests Oxfam Community Aid Abroad to take up the Tintaya case with BHP Billiton head office in Australia.
6/2001:	The Tintaya case is included in the <i>Mining Ombudsman Annual Report 2001</i> .
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 BHP Billiton Base Metals, BHP Billiton Tintaya, CONACAMI, CORECAMI-Cusco, Oxfam America, Cooperación and the Municipality of Espinar.
23/1/2002:	Mining Ombudsman writes to Ian Wood (Vice President of Sustainability, BHP Billiton) outlining community concerns and recommendations from site investigations.
29/1/2002:	Jaap Zwaan (President of BHP Billiton 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.

...on 20 June 2003 community representatives, their support organisations and BHP Billiton Tintaya met with the facilitation of Oxfam America....All parties, including the company, have agreed that the relocation and land concerns of the five impacted communities must now be resolved by December 2003.

Request

As stated in the *Mining Ombudsman Annual Report 2001 and 2002*, the involvement of Oxfam Community Aid Abroad in this case was requested by CONACAMI in early 2000.

Grievances

In December 2001, the Mining Ombudsman travelled to Peru to undertake the Tintaya case investigation. She met with representatives from the five impacted communities, their support organisations, local government and BHP Billiton. Grievances recorded during public meetings, site visits and interviews were broad and date back to before BHP Billiton acquired the mine. The grievances are detailed in the *Mining Ombudsman Annual Report 2002* and summarised below:

- > Community representatives complained that land sale negotiations and land expropriations were conducted unfairly, with inadequate compensation and a lack of informed consent.
- > Some women complained of forced evictions and violence by mine security.
- > Community members complained that they had lost their traditional means of livelihoods.
- > Community members complained that water and air pollution from the mine and the Alto Huancane tailings dam had caused the death or illness of their animals, as well as their own poor health.
- > Some community members complained about the lack of employment or business opportunities provided by the mine.
- > There was anxiety about a new Antapaccay project and the construction of a new tailings dam in the Ccanipia Basin.

6/2/2002:	The first meeting of the ' <i>Mesa de Diálogo</i> ' (Dialogue Table), a process that flowed out of the Mining Ombudsman's visit in December 2001, which is intended to address the concerns of communities affected by the Tintaya mine. The participants include the company, community representatives, their support organisations and the municipality. This meeting is lead 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.
13/8/2002:	' <i>Report of the Dialogue Table of BHP Billiton Tintaya and the neighbouring communities of the Tintaya mine</i> ' signed by all parties on 25 June 2002 is sent to the Mining Ombudsman for inclusion within the <i>Mining Ombudsman Annual Report 2002</i> .
4/11/2002:	<i>Mining Ombudsman Annual Report 2002</i> published with results of the Mining Ombudsman Tintaya case investigation and the update presented by the Dialogue Table.
14/11/2002:	BHP Billiton CEO writes a letter of concern to Oxfam Community Aid Abroad over the presentation of the Tintaya case report within the <i>Mining Ombudsman Annual Report 2002</i> .
12/2002:	Oxfam Community Aid Abroad responds after conferring with Oxfam America and community support organisations which concur that the Tintaya case report provides an accurate portrayal of progress to date.
5-11/4/2003:	Mining Ombudsman returns to the communities affected by the Tintaya mine in order to undertake a follow-up investigation and explore the concerns of communities from the Ccanipia River Basin.
8/4/2003:	Mining Ombudsman attends a public meeting of the Dialogue Table. The four Dialogue Table commissions report back their findings and recommendations to community members.
11/4/2003:	Mining Ombudsman meets separately with all parties in Lima, including representatives of BHP Billiton, to discuss the Tintaya case investigation.
4/6/2003:	Mining Ombudsman writes to BHP Billiton urging it to accept and implement the proposals that will be formally presented by the communities on 9 June 2003.
10/6/2003:	Community representatives present a written call for the suspension of all Commissions until BHP Billiton Tintaya commits to its relocation with development in the same way that was provided for the community of Tintaya Marquiri.
20/6/2003:	Meeting facilitated by Oxfam America where BHP Billiton Tintaya, Cooperacción, Oxfam America, CONACAMI, CORECAMI Cusco and Alto Huancane, Alto Huarca, Tintaya Marquiri and Bajo Huancane community representatives made significant agreements, including reaffirming their confidence in the Dialogue Table.

The Dialogue Table has become an accepted process for community members to communicate grievances and complaints involving the mine.

Action taken – 2002

Establishing the *Mesa de Diálogo* (Dialogue Table)

While in Peru, the Mining Ombudsman facilitated a meeting in Lima between BHP Billiton Base Metals, BHP Billiton Tintaya, CONACAMI, CORECAMI – Cusco, Oxfam America, Cooperación and the Municipality of Espinar. This resulted in an agreement to begin a dialogue process between the company and the five impacted communities.

The *Mesa de Diálogo* (Dialogue Table) was established in February 2002, with representatives from company management, the community and the communities' support groups. In a report to the Mining Ombudsman the members of the Dialogue Table described the process as representing a new era in company-community relations which is '...characterised by dialogue and mutual collaboration in which sustainable development is a guiding principle.'

The Dialogue Table has four working commissions: the Land Commission, the Environment Commission, the Human Rights Commission and the Sustainable Development Commission. In July 2002 a fifth commission, the Commission of Coordination, was established to facilitate better communication and coordination between the other four commissions. A timeline was also established which clearly sets out three separate process phases, as follows:

Phase 1 Generating trust amongst participants of the Dialogue Table. Establishing the task commissions.

Phase 2 The task commissions research, collect and analyse information regarding community grievances before drafting reports and recommendations for the implementation of their findings.

Phase 3 Implementation of the task commissions' findings in order to address grievances and put in place measures to foster and maintain ongoing good relations as well as sustainable development.

On 4 November 2002 the *Mining Ombudsman Annual Report 2002* was released, which included the results of the Tintaya case investigation and an update from the Dialogue Table.

Action taken – 2003

The Mining Ombudsman returned to Peru in April 2003 to evaluate the progress of the Dialogue Table and conduct an investigation into the concerns of communities impacted by the construction of the Huinipampa tailings dam (See Case 3B). The Mining Ombudsman again met with community representatives from the five impacted communities, their support organisations and BHP Billiton. She met separately with all parties involved in the Dialogue Table, attended community meetings and undertook a number of site visits and interviews. The Mining Ombudsman also attended an open meeting of the Dialogue Table on 8 April 2003 with over 250 participants at the BHP Billiton Tintaya mine site, which signified the end of Phase 2 of the process.

The Dialogue Table Commissions

"The Dialogue table is positive in that we can discuss things on equal terms, but unfortunately we still depend upon the goodwill of the company to act on the dialogue table to resolve the issues. We are thankful to the support organisations, but it is now the responsibility of each community to put forward solutions for each community." Name withheld

Community member shows his cattle that have wandered on to the tailings pond and are drinking contaminated water. Photo: Diego Nebel/Oxfam America



Right: Miguel Palacin, President of CONACAMI Peru. Speaking at a community meeting in Yauri prior to the public meeting of the Dialogue Table. "Let's now look for definitive solutions. I'm going to be part of the process – we must learn to manage this process." Miguel Palacin, President of CONACAMI Peru. Photo: Diego Nebel/Oxfam America

Far right: A woman from the community attends the Dialogue Table to hear results of the four working commissions. Photo: Diego Nebel/ Oxfam America



A. Land Commission

The Land Commission has responsibility for evaluating which communities have legitimate claims for relocation and how best to assist these communities to relocate or develop alternative options. The Commission agreed at the outset that actions could only be taken once consensus had been reached amongst community members. Achieving consensus was considered a necessary prerequisite for reducing potential problems and has resulted in improved trust between the company and the communities.

The Commission has three sub-commissions to deal with the communities of Tintaya Marquiri; Alto Huancane and Huana Huana; and Alto Huarca and Bajo Huancane.

Senór Miguel Palacin, the Director of CONACAMI and Chair of the Land Commission, in his report to the 8 April meeting, highlighted some positive aspects of the Commission including: the active participation of community members; a recognition of problems by the company; empowerment of the communities; and the provision of greater space for community members to negotiate their own future. However, Senór Palacin noted that the building of trust has taken over six months. He also noted that there has been difficulty in finding suitable tracts of land to accommodate the diversity of the relocation packages. Senór Palacin raised the need to formally secure the support of the company and/or the government for the relocation packages. He highlighted that the relocation plans should include the provision of housing, agricultural infrastructure and community development programs. Maintaining the cultural heritage and unity of the communities was also identified as integral

The relocation program has also been complicated by the perception of some that 14 families relocated to Copaychullo are now living in worse conditions than they did before they left.

The success of the Land Commission will depend on its ability to find appropriate land and funding which satisfies community requirements and their development needs. This point was reaffirmed on Tuesday 10 June 2003 when communities requested the suspension of all commissions until suitable land (with development opportunities) was provided and BHP Billiton reconfirmed its commitment to this process.

Following this request, on 20 June 2003 community representatives, their support organisations and BHP Billiton Tintaya met with the facilitation of Oxfam America. This meeting satisfied the communities, and avoided the suspension of Dialogue Table work. All parties, including the company, have agreed that the relocation and land concerns of the five impacted communities must now be resolved by December 2003.²

B. Environment Commission

The Environment Commission is split into the following three sub-commissions:

- Environmental pollution – company and community representatives conducted tests and monitored environmental pollution. Three separate laboratories analysed the results to ensure validity.
- Human health – independent doctors, chosen by the non-government organisations and the company, assessed the health of community members who live near the mine. A community with similar characteristics was also assessed as a control group.
- Animal health – a vet chosen by consensus assessed whether mine pollution caused the death and ill health of animals. A control community was also used assessed.

The results of the studies were presented at the 8 April 2003 Dialogue Table meeting. Community members complained that many of the presentations were too technical and difficult to understand, or conveyed in an insensitive manner. Whilst many of the conclusions of the Environment Commission were disputed by community members, community and company representatives within the commission, broadly agreed on its findings.

i. Environmental pollution

The sub-commission on environmental pollution found that the company had not caused the degree of contamination alleged by the communities, but some water sources were polluted. As a result, the company is providing drinking water to the affected communities. It also found high levels of selenium and nitrates in some areas. It was later pointed out to the Mining Ombudsman that the tests were conducted when the mine was not fully operational and there were still additional studies to be carried out. It is positive to note that at the 20 June 2003 meeting, BHP Billiton Tintaya committed to resolving the selenium problem and is closing the holes from the exploration activities undertaken in Antapaccay and Corocohuayco in order to eliminate any contamination within these zones.³

ii. Human health

The human health sub-commission found that community members have inadequate health and high levels of parasite infections, but that this is related to poor diet, sanitary and hygiene standards rather than due to mine pollution. The study showed that the levels of heavy metals within the community members tested were at the higher end of the acceptable range, but there were not 'unacceptable' levels of heavy metals present.



Far left: A woman from the community attends the Dialogue Table to hear results of the four working commissions. Photo: Diego Nebel/Oxfam America

Left: Dora Usca, standing in front of the Tintaya mine site. Photo: Brendan Ross/OxfamCAA

Several concerns were raised about the methodology of the testing. Specifically, it was asked why blood samples were only tested, when heavy metals generally accumulate in bones or other areas of the body. There were also questions raised over whether the nutritional deficiencies of community members were related to heavy metal accumulation reducing their ability to absorb nutrients and whether the sub-commission had considered the potential impacts of contamination.

Whilst not answering these specific concerns, which were raised in the Mining Ombudsman investigation report of 20 June 2003, the company responded:

*"The protocols for both studies were agreed upon by all members of the Commission, and included the use of a control group, outside the area of influence of the mine. There were no significant differences between the results found in the control group and those in the communities near to the mine. Both studies included testing for contamination by the mine (although, as the Ombudsman pointed out, some community members believe that the animal study did not)."*⁴

iii. Animal health

The animal health sub-commission concluded that the infections in the animals were due to parasites resulting from poor sanitation, not the mine. The sub-commission also speculated that animal sickness was due to a lack of regular vet supervision.

These findings were in conflict with testimonies taken by the Mining Ombudsman and were vehemently contested by various community members at the meeting. Some community members claimed the researchers only tested for parasites and not for the contamination caused by the mine.

"They say that there is no contamination near mining activities – but there is. The community did some independent studies around human health. We found that Alfonso Cuti had high levels of arsenic. Studies by the commission need to be done seriously. Those chemicals accumulate. Regarding animal health – most of the time animals have malnutrition. Their pancreases are dry. This is not because of parasites; it is because of poisoning." Name withheld

C. Human Rights Commission

The Human Rights commission initially received 34 allegations of human rights violations and remains open to receiving new cases. As the primary support group, CORECAMI – Cusco is the coordination point for the collection and investigation of new cases. To investigate the initial cases, the Human Rights Commission appointed the Peruvian human rights organisation, Legal Defense Institute and the Solidarity Vicariate – Prelature of Sicuani.

The resulting report states that:

- > 4 human rights violations were found to have taken place;
- > 6 were found to have probably taken place;
- > 19 were found to have not taken place; and
- > it was not possible to determine if five of the cases had taken place or not.

BHP Billiton Tintaya has committed to honour the results of the human rights investigation.

The findings of the commission are important in addressing some of the more personal grievances of the community. At the 8 April meeting, it was evident that many of the community members were anxious over the findings and results of this commission in terms of compensation and the restoration of their rights.

The ongoing work of this commission is potentially more complicated than the other commissions in that the interpretation of human rights and human rights violations (and the methods of redress) needs to be adaptable and may need to be broadened. One example comes from Senóra Dora Usca who stated that the commission must also consider issues such as equal employment opportunities for women and the rights of abandoned women and widows who have suffered because of the mine. She suggested that the Sustainable Development Commission must collaborate closely with the Human Rights Commission to address the inequality of women. BHP Billiton has recently endorsed the comments of Senora Usca, '...to address equality issues in order that women are not disadvantaged.'⁵

D. Sustainable Development Commission

It is recognised by the Dialogue Table and the wider community that environmental, health and land issues must be resolved as a basis for sustainable development. It is also recognised that communities must develop their own plans in order to ensure the suitability and sustainability of the proposals.

Despite the preliminary findings of the Environment Commission, many community members still perceive their land to be damaged by mine activities. As a result, they wish to be relocated to 'start again' before they can develop any sustainable development proposals.

Some community representatives were disappointed that the Sustainable Development commission did not address the issue of mine employment. They explained that they were employed at the mine in the early 1990s, but lost their jobs when the government sold the mine to Magma Copper, and jobs were given to outsiders. Company officials believe the commission should not deal with mine employment because the proposals should look to the future, which may not include the mine as an employer. However, they added that they would give local community members preference for work when positions became available.

The success of the Sustainable Development Commission will require a long-term commitment from all parties to the Dialogue Table. It will also require some initial financial and technical input from the company to fund community-led projects.

A woman provides a testimony at the public meeting of the Dialogue Table. She speaks the indigenous language of Quecha. The man in the foreground is translating for her.
Photo: Diego Nebel/Oxfam America



At the meeting between community representatives, their support organisations and BHP Billiton Tintaya on 20 June 2003, Cooperación raised the possibility of preparing a project proposal to obtain funding to address long-term sustainable development issues. The company has agreed to support the project by providing seed capital. This initiative is a first step towards addressing some community concerns relating to the Sustainable Development Commission.

Status of existing grievances

A. 8 April 2003 – The end of Phase 2

Overall the Dialogue Table seems to be improving communication and trust between the company, the communities and their support organisations. In December 2001, it would have been unlikely to think that all parties would be working together to resolve problems, however 18 months later, there is a level of respect and appreciation of each other's views. Community members are pleased that the company is listening to their concerns and working to address some of their problems. The community support organisations also acknowledge that there have also been some important transformations of senior BHP Billiton Tintaya management who are now working towards resolving problems with the mine site to the benefit of local communities.

However, frustration at the inability of the Dialogue Table and its commissions to generate tangible solutions to the numerous grievances documented in the *Mining Ombudsman Annual Report 2002* was high amongst the complaints of community members on 8 April 2003.

There was a perception that although many tests and studies had been conducted, the solutions that community members expected to flow from the Dialogue Table had not been forthcoming and the process was too slow. Many community members were also sceptical about results contradicting their personal experiences. Community members were eager to start Phase 3 of the process.

"The company is always saying that a study is needed. They do not accept anything that we say – they need proof of everything. Many consulting companies come – this is why it takes so long. There are too many studies and the results aren't given to communities. People don't know what is happening."

Name withheld

B. 20 June 2003 – Phase 3

The outcomes of the meeting between community representatives, their support organisations and BHP Billiton on 20 June 2003 should assist in generating concrete solutions to community grievances in relation to land and the environment. Both community representatives and company officials believe this meeting demonstrates a positive next step in resolving the on-going grievances above. The agreed resolutions of this meeting are as follow:⁵

- > Reaffirm confidence in the Dialogue Table as the appropriate vehicle for the resolution of conflicts between BHP Billiton Tintaya and communities.
- > Accelerate the implementation of the solutions obtained through a consensual and participatory methodology in the work of the commissions.
- > Call on all participants to make a greater effort to find solutions to the pending issues as soon as possible.
- > Invite BHP Billiton Tintaya to reinitiate the complete development of mining activities in order to ensure that the resources needed to attend to the claims and solve the disputes are generated.
- > Carry out joint and participatory environmental monitoring of the sulphur plant, with the aim of measuring and discounting the risk of environmental contamination. Compare the results with those obtained previously.
- > Approve the new work methodology of the Land Commission by forming parallel sub-commissions to attend to the problems and conflicts in each community. Such work should not be exclusively bilateral. The presence and advice of representative organisations and NGOs that participate in the Dialogue Table and representatives of the affected communities should be involved.
- > Prioritise the identification of new properties that comply with the requirements and needs of the affected communities. This work would be carried out jointly and in a participatory manner.

The outcomes of this meeting demonstrate the willingness of all parties, including BHP Billiton Tintaya, to set concrete dates and goals to resolve two priority issues: the land and the environmental problems.

New issues and grievances

The Dialogue Table has become an accepted process for community members to communicate grievances and complaints involving the mine. Higher-level mine management are taking a positive approach to community relations, and there is trust between these officials and community representatives and their support groups. However, there have been complaints made against several mid-level company officials and lower-level staff involved in the dialogue process and the commissions. Community members have accused company staff of not listening to them during the investigations of the commission or preventing women in particular from speaking to the consultants. There have also been allegations that company officials have intimidated community members by stating that if they are involved in the Dialogue Table process then they are acting 'against' the mine and will therefore not obtain work at the mine.

These allegations were communicated to the company in June 2003 and it was strongly recommended that an investigation be conducted and appropriate action taken. BHP Billiton responded on 18 July 2003 stating, 'BHP Billiton takes very seriously the concerns expressed about certain individuals working for the company. The allegations will be investigated.'

Overall the Dialogue Table seems to be in improving communication and trust between the company, the communities and their support organisations. In December 2001, it would have been unlikely to think that all parties would be working together to resolve problems, however 18 months later, there is a level of respect and appreciation of each other's views.

Recommendations

- > Reaffirm all recommendations made in the Mining Ombudsman 2002 Annual Report and commend all parties on the efforts made in implementing these recommendations.
- > Encourage the continuation of the level of trust and progress achieved by the parties involved in the Dialogue Table, particularly the progress made by specific company officials in understanding the concerns of the communities and working towards resolving these concerns.
- > Encourage the continuation of the commitment of all parties to the Dialogue Table.
- > Encourage the continued involvement of the public in the dialogue process.
- > As has already begun with the 20 June 2003 meeting, all parties should quickly implement Phase 3 of the Dialogue Table process in order to generate tangible outcomes for the communities impacted by the Tintaya mine.
- > The criticisms by the communities of the sub-commission reports should be evaluated, answered and acted upon where required.
- > The issue of employment should be reconsidered as an issue for the Sustainable Development Commission.
- > Communication of the results of the sub-commission studies should be done in a manner that is more sensitive and can be easily understood by all parties, especially the communities.
- > All relevant information and findings of the commissions should be translated into the Quechua language for non-Spanish speaking community members.
- > Training should be provided to the local people so that they can themselves collect necessary environmental information and monitor the activities of the company.
- > Training should also be provided to community members in order that they can adequately define and propose sustainable solutions that meet their cultural, economic and nutritional needs for now and in the future.
- > The allegations of intimidation by middle and lower-level company employees should be investigated by the members of the Dialogue Table in a transparent manner. If proven, appropriate disciplinary action should be taken.
- > BHP Billiton should undertake training of all company employees, especially security personnel, around the benefits of the Dialogue Table and the rights of local communities. Civil society representatives, such as those from CONACAMI and Cooperación, need to play a role in such training.
- > Cases of human rights violations verified through the Human Rights Commission should be addressed immediately. Further verification around human rights issues should be conducted through the Dialogue Table and a formal mechanism for receiving and handling grievances should be established.
- > The Land Commission and Sustainable Development Commission should work closely together to find successful relocation packages that include investments in infrastructure, agricultural development and preserve the cultural integrity of affected community members.
- > BHP Billiton should provide an assurance that it will fulfil all obligations decided through the Dialogue Table process irrespective of the operational status of the mine or the new Huinipampa tailings dam.
- > The Dialogue Table should continue to make a concerted effort to involve women in the process and seek equal employment, relocation and compensation opportunities for women.

FOOTNOTES

¹ 'Report of the Dialogue Table of BHPB Tintaya and the Neighbouring Communities of the Tintaya Mine' (2002), officially endorsed by the Dialogue Table August 13, 2002 in Macdonald & Ross (2002) *Mining Ombudsman Annual Report 2001-2002*, Oxfam Community Aid Abroad, p.25. ² Minutes of Meeting (2003) *Reunion de la session ampliada, especialmente convocada, de la Commission de Coordinacion y Seguimiento de la Mes de Dialogo*, 20 June 2003. ³ Ibid. ⁴ BHP Billiton Tintaya (2003) 'Response to Concerns in OXFAM CAA Ombudsman Reports', July 2003, p.1. ⁵ Ibid. ⁶ Minutes of Meeting (2003), Op. Cit. ⁷ BHP Billiton Tintaya (2003), Op. Cit, p.2.



Photo: Diego Nebel/Oxfam America
Below: Community member points to the mine. Photo: Diego Nebel/Oxfam America



Case 3B – Tintaya Huinipampa tailings dam



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:	Huisa, Huisa Ccollama, Huarca, Antacollama, Suirocama
Community/ support groups:	Foro Ecologico Front of the Defense of the Interests of Espinar (FDIE) Front for the Defense of the Ccañipia Basin/Frente de Defensa de la Cuenca de Ccañipia (FREDERMIC-E) Oxfam America http://www.oxfamamerica.org
Mine operator:	(1996-present) BHP Billiton Tintaya S.A.

Chronology of events

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 USA-based Magma Copper.
1996:	BHP Billiton acquires Magma Copper and a 99.94% interest in the mine.
Post 1996:	In order to build a new tailings dam BHP Billiton acquires 875 hectares from individual property owners in the region.
11/2000:	CONACAMI requests Oxfam Community Aid Abroad to take up the original Tintaya case with BHP Billiton head office in Australia.
3-11/12/2001:	Mining Ombudsman undertakes an investigation into the impacts of the Tintaya mine operation on the township communities of Tintaya Marquiri, Huisa, Alto Huancane, Alto Huarca, Huano Huano and Yauri.
11/5/2001:	Public consultation is held at BHP Billiton Tintaya mine site by the Ministry of Energy and Mines concerning the construction of a new tailings dam at Huinipampa. Community members of the Ccañipia basin did not attend this meeting.
5/2002:	Communities present letter opposing the operation of the Huinipampa tailings dam to BHP Billiton Tintaya at the mine site.
3/10/2002:	Frente de Defensa de la Cuenca del Ccañipia (FREDERMIC-E) write to the Ministry of Energy and Mines protesting the construction and operation of the Tintaya mine site Huinipampa tailings dam.
25/2/2003:	BHP Billiton Tintaya meet with FREDERMIC-E and the Ministry of Energy and Mines in Lima. BHP Billiton Tintaya agrees to not operate the mine until they gain the consent of the Ccañipia micro-basin communities.

President of the Ccanipia Microbasin, Victor Saico Huaman-Quispe, standing in between two pipes which will bring waste from the mine into the tailings dam. Photo: Ingrid Macdonald/OxfamCAA



BHP Billiton has built a tailings dam in a bad location. It is above the Ccanipia river from which our irrigation canals flow.” Victor Saico Huaman-Quispa

Request

The Mining Ombudsman was requested by the Frente de Defensa de la Cuenca del Ccañipia (the Front for the Defense of the Ccañipia Basin – FREDERMIC-E) to investigate the concerns of local communities with respect to the BHP Billiton Tintaya Huinipampa tailings dam in Espinar, Peru.¹ Dr Carlos Soria, an environmental lawyer with the Peruvian non-government organisation Foro Ecológico forwarded the request to the Mining Ombudsman.²

Background

The Mining Ombudsman travelled to Espinar Province, Peru in April 2003 to conduct a follow-up investigation of the initial Tintaya case. Whilst there she interviewed members of the Ccañipia basin communities, their support groups and BHP Billiton Tintaya mine management about the construction of the Huinipampa tailings dam. The Mining Ombudsman also visited the micro-basin area and viewed the Huinipampa tailings dam and its relationship to the basin in April 2003.

The Ccañipia River basin

The BHP Billiton Tintaya Huinipampa tailings dam was constructed at the top of the Ccañipia River basin watershed. When it becomes operational, it will affect approximately 3500 people living in five communities within the Ccanipia basin: Huisa, Huisa Ccollama, Huarca, Antacollama and Suirocama.³ These communities are not currently part of the *Mesa de Diálogo* (Dialogue Table), as they do not yet consider themselves to be ‘affected’.

In April 2003, community representatives showed the Mining Ombudsman their complex irrigation system, which supplies 700 hectares of pastures within the Ccañipia basin. There are seven irrigation canals running from below the tailings pond, with another two water sources within one mile. The Ccañipia basin is also crossed by numerous waterholes which flood in the rainy season converting the area into a wetland.⁴

The Presidents of the Ccañipia Cattle Producers Association, Señor Modesto Ccorahua Pila and the Ccañipia basin communities, Professor Victor Saico Huaman-Quispe, provided documentation to the Mining Ombudsman confirming their claims that the Ccañipia basin is a very fertile and successful dairy and meat producing area.

20/3/2003:	The Mining Ombudsman receives initial request from FREDERMIC-E dated 10 February 2003 to investigate the concerns with the construction of the BHP Billiton Tintaya Huinipampa tailings dam.
25/3/2003:	The Mining Ombudsman advises that she will be in Peru to undertake a follow-up investigation for the Tintaya case in early April.
7/4/2003:	The Mining Ombudsman interviews Ccañipia community members near part of the new Huinipampa tailings dam infrastructure.
8/4/2003:	The Mining Ombudsman travels to the Ccañipia micro-basin to interview community representatives.
11/4/2003:	The Mining Ombudsman meets with representatives of BHP Billiton Tintaya and the Base Metals Division in Lima to discuss the Tintaya case investigation and the concerns of the people of Ccañipia.
21/5/2003:	Over 1000 people march to the mine site with a set of demands, including the removal of the Huinipampa tailings dam, \$2-4 million US in compensation and the construction of a paved highway. After a delay, the people allegedly force their way into mine property and some threaten to seize the mine site if the General Manager does not sign their demands.
21/5/2003:	BHP Billiton releases a statement that they will not negotiate under pressure.
30/6/2003:	A report of the Mining Ombudsman investigation into the community concerns over the Huinipampa tailings dam is sent to the CEO of BHP Billiton.
15/7/2003:	BHP Billiton CEO acknowledges receipt of the Mining Ombudsman investigation and commits to send the Vice President of Sustainable Development to Tintaya to evaluate the Huinipampa situation.
18/7/2003:	BHP Billiton formally responds to the Mining Ombudsman investigation regarding the concerns of the Ccanipia communities.

"We need the water to drink and for our cattle. We only get water from the Ccanipia river, no other river." Modesto Ccorahua Pila, April 2003

It is well known that the area is the biggest producer of milk, cheese, yoghurt and butter in the Province of Espinar. The pastures hold over 3500 head of cattle, including Brown Swiss and Holstein, as well as Alpacas and Llamas.⁵

The communities assert that they have no problem with the operation of the Tintaya mine, however, they do not want the tailings dam above the Ccanipia basin to become operational. They would like it to be moved to another location in the Province of Arequipa. They fear environmental contamination from the tailings dam and, as a result, FREDERMIC-E have threatened extreme action to prevent its operation, including hunger strikes and the use of force.

Grievances

Lack of prior informed consent and appropriate consultation

Many of the community members interviewed felt that the process of approval for the Huinipampa tailings dam, including the approval of the Environmental Impact Assessment (EIA), ignored their rights and concerns. They allege that the Ministry of Energy and Mines gave permission to BHP Billiton Tintaya for the construction of the tailings dam without first consulting local people. They claim to have only learnt about the planned tailings dam when the previous Mayor of Espinar showed them a copy of the already approved EIA in 2002.

On 11 May 2001, the Ministry of Energy and Mines held a public hearing at the BHP Billiton Tintaya mine site to inform the public of the proposal for the Huinipampa tailings dam.⁶ FREDERMIC-E presented the Mining Ombudsman with an attendance list from the public meeting, claiming it did not include any members of the Ccanipia basin communities. Holding a single public meeting – even without the participation of the Ccanipia basin communities – appears to be all that was legally required of the Ministry and the company, even though it does not satisfy the requirements of 'prior informed consent' as set out under ILO Covenant 169.⁷ While the company may have a 'legal licence to operate' the Huinipampa tailings dam, its failure to acquire prior informed consent from the Ccanipia communities raises questions over the legitimacy and ethics of the consultations and undermines the company's 'social licence to operate' this dam.

In its response to the Mining Ombudsman investigation report of 30 June 2003, BHP Billiton stated on 18 July 2003:

"The company acknowledges that the 2001 tailings dam consultation process should have been broader and more complete, even though it met the requirements of Peruvian law in effect at the time."

The company goes on to state:

*"While the company does not argue that the Ccanipia communities were adequately notified or consulted, it does find it beyond belief that the Ccanipia communities were oblivious to the presence of the dam for a year, while their local government, local media and leaders of neighbouring communities were all aware of it."*⁸

During the Mining Ombudsman investigation, the company officials interviewed also asserted that members of the Ccanipia communities who are now complaining about the tailings dam were actually part of the workforce that constructed the facility. They also observe that the dam is very large and can be seen from throughout the Ccanipia basin.

On 25 February 2003, BHP Billiton Tintaya, FREDERMIC-E and the state met in Lima where the company provided an assurance that the tailings dam would not become operational without the consent of the communities.⁹ However, when interviewed by the Mining Ombudsman, BHP Billiton Tintaya asserted that this was contingent on the communities entering into dialogue with the company. There was some confusion on the part of the company and scepticism from the community as to whether the company would fulfil this commitment as the communities had refused to enter into any further dialogue.¹⁰

In response to the Mining Ombudsman investigation, which highlighted this confusion, the CEO of BHP Billiton committed to send a senior Australian manager to Tintaya to undertake an evaluation and stated:

*"Before the Huinipampa tailings dam is put into operation – and this is not scheduled for a number of months – it is important to address these community concerns in a participative manner, and to ensure and demonstrate that the community's rights, interests, and environment will be safeguarded."*¹¹

Alleged unethical dealings and raised expectations

Community representatives explained that after a public audience about the tailings dam on 21 May 2001, they sent a letter of protest to the company. The president of the community was subsequently employed as the driver for the mine manager in charge of the Ccanipia negotiations. There are now complaints that the driver is causing problems by collecting intelligence for the company and trying to undermine the group's unity.

In response to these allegations, the company asserts that the person in question has been a contract worker for the company at various times going back into the 1990s. They claim the worker did not hold a position of authority when he began employment with the company and they do not believe his employment 'constitutes corruption'.¹² Nevertheless, the company expressed its willingness to investigate this case.

The people of Ccanipia also felt strongly that the Ministry of Energy and Mines was on their side against the company. However, BHP Billiton officials assured the Mining Ombudsman that the Ministry considers the company fulfilled all legal requirements in terms of the EIA, the consultations and the construction of the tailings pond. In fact, company officials spoke of how they felt under pressure from the Ministry to start operations again at the Tintaya mine site.

Right: President of the Milk Producers Association, Modesto Ccorahua Pila, standing in front of the empty tailings dam. Photo: Ingrid Macdonald/OxfamCAA

Far Right: Community representatives standing on a BHP Billiton-built road next to pipes that will bring mine waste to the tailings dam. Photo: Ingrid Macdonald/OxfamCAA



Dam construction considered inadequate

The communities believe that the Huinipampa tailings dam is poorly constructed and will contaminate the Ccañipia River basin. Some described how they had previously worked as miners, or that their children were biologists or engineers and advised them that the dam is built on unsuitable foundations. It is designed to filter the liquid from the tailings through the rock to be discharged directly into the river system and that in such a fragile alpine environment such a tailings dam should have a concrete liner. The communities also claim that the construction of the tailings dam in its current location is actually illegal under Peruvian law, as it is close to basins used for milk production and to where rivers run into irrigation canals used for agriculture.

In response to these concerns, the company argues that it “utilize[s] international practices for dam design, construction, operation and closure.”¹³ According to the company, the dam was reviewed by a panel of North American experts who found the dam ‘to meet or exceed the standards of good practice as reflected by Peruvian and North American standards and guidelines for such facilities.’ The company argues that based on investigations, the foundation and location of the dam is appropriate and less than 1% of water will be delivered into the dam, not counting rainwater. However, water will still seep through the ground and be discharged from the dam, although the company argues that this will be subject to Peruvian water quality criteria. The company also argues that the location of the dam is not illegal as they have complied with Peruvian laws and regulations in its construction.¹⁴

The EIA is considered to be inadequate by the communities and their support organisations.¹⁵ Dr Carlos Soria and Yenny Carmelino argue that the EIA is ambiguous and vague in that it does not use definite language, identify or address all the potential impacts, propose mitigation or remediation measures for any identified impacts or adequately address different treatment options for the tailings. As an example, they say the EIA refers to aggressive control and mitigation measures without specifying what these are, how to implement them and what the cost will be. They also identify that the EIA fails to address the potential socio-economic impacts of the tailings dam.¹⁶ Soria and Carmelino observe that the communities do not have piped water services, so any discharges from the tailings dam into this fragile water system would directly impact the natural environment, the people and their animals. The EIA is further criticised as it does not identify alternative locations or provide justification for why the tailings dam needed to be located in the upper section of the Ccañipia basin.¹⁷

The company has defended the EIA arguing that the water being discharged into the tailings dam will be of a sufficient quality that there will be ‘no significant environmental impact’.¹⁸ As such ‘[t]he EIA made the assumption that with this exceptional water quality, further analysis of the effect on the downstream environment was not required’.¹⁹ According to the company, ‘a weakness of the EIA was in not clearly demonstrating there would be no significant impact and addressing this public concern.’²⁰ However, the negative impacts

being alleged by communities affected by the existing Tintaya tailings dam, despite the company asserting that there is a ‘lack of significant environmental impact[s],’²¹ does fuel the concerns of the Ccañipia community. The company claims that the choice of the location for the tailings dam was based on its storage capacity, which is calculated to last for eight years.

Fear of environmental contamination

Many community members fear the Ccañipia River basin may follow the same fate as that of the Salado River basin. They do not trust the analyses presented by the mining company. They argue that in the case of the Salado River and the Alto Huancane tailings dam, the mining company claimed it would prevent any contamination of the environment and ensure that people were not negatively affected. However, the communities argue that the Alto Huancane tailings dam has polluted the Salado River basin and agricultural activities are no longer viable. They do not want this to happen to their well-developed and profitable dairy business.

BHP Billiton officials insist that the contamination of the Ccañipia River basin would be totally unacceptable, is highly unlikely and that the company ‘is committed to its goal of Zero Harm, and Tintaya is no exception.’²² They want to establish joint monitoring programs, undertaken by the communities, their support groups and the company.

Perception of contamination

Some community members expressed their concern that the mere existence of the tailings dam will reduce the value of their produce no matter how well it is constructed. They believe that others will perceive their produce to be contaminated even if it is not. The company representatives said they could assist the communities to develop their dairy and meat industry as part of a compensation package. The company believes there is a market for the milk from the Ccañipia basin throughout Peru.

Current contamination

Community members from Huisa complained that the construction of the Huinipampa tailings dam occurred 24 hours a day for a year. This involved heavy machinery travelling on gravel roads causing considerable noise disturbance and dust pollution. The community members allege that the company also used materials from the mine site to build the roads so that when it rained, the water washed over this material into a creek and onto their pastures. They say their animals are now suffering unknown diseases. BHP Billiton officials acknowledged that problems may have occurred from the construction of the dam, and have expressed their willingness to address these concerns in discussions with Huinipampa Producers Association.²³

Many of the community members interviewed felt that the process of approval for the Huinipampa tailings dam, including the approval of the Environmental Impact Assessment (EIA), ignored their rights and concerns.

Potential impact on the Dialogue Table

All parties expressed their concern that the Ccañipia conflict could have an unintended negative impact on the Dialogue Table. The members of the Ccañipia basin were firm that they do not want the Huinipampa tailings dam to become operational. However, the company is refusing to move the tailings dam as they have already spent millions of dollars on its construction and it has been approved by the Ministry of Energy and Mines. Company officials also confirmed that the mine could not operate without the new tailings dam. As a result, there is some anxiety as to whether the company will fulfil its promises to the communities of the Salado River basin who are currently part of the Dialogue Table in the event that the mine is forced to close.

Action taken

In May 2003, the Provincial Defense Front and FREDEMIC-E marched peacefully to the Tintaya mine site to present the company with a petition against the operation of the Huinipampa tailings dam. However, they were delayed by mine security and as a result allegedly forced their way on to mine property. The people presented a set of demands to the mine president, which included the removal of the tailings dam, \$2-4 million US in compensation and the construction of a paved highway. The president was allegedly forced to sign this agreement under threat of seizure of the mine. On the next day the company released a statement stating that they would not negotiate under pressure.

The Mining Ombudsman sent a report of the findings of the investigation into the concerns of the Ccañipia communities with respect to the Huinipampa Tailings dam to the Chief Executive Officer of BHP Billiton on 30 June 2003.²⁴ BHP Billiton's CEO acknowledged receipt on 15 July 2003 and BHP Billiton formally responded to the investigation on 18 July 2003.

It has also been reported to the Mining Ombudsman that the Provincial Defense Front, representing the communities of Ccañipia have since entered into consultation with BHP Billiton Tintaya.

BHP Billiton sent a senior Vice President to the area to investigate the concerns raised in the Mining Ombudsman case investigation.

Recommendations

- > It is important that all parties refrain from using violence or intimidation in order to achieve their objectives.
- > The concerns over informed consent should be investigated, especially the allegations that the communities were not consulted in respect of the location and construction of the Huinipampa tailings dam.
- > The validity of the consultation process should be assessed in accordance with the requirements of ILO 169.
- > BHP Billiton Tintaya should reaffirm its original commitment to not proceed with the use of the Huinipampa tailings dam until the communities of the Ccañipia River basin provide consent for this to occur.

- > The names of the members of the Ccañipia River basin communities alleged by BHP Billiton Tintaya to have been employed in constructing the Huinipampa tailings dam should be released by the company to FREDERMIC-E and other affected parties in order to test this assertion. The release of the information should occur with supporting documentation that is validated by the named individuals.
- > The allegations of corruption should be investigated immediately through a transparent and independent process, and if proved, appropriate disciplinary action should be taken.
- > Each party should seek the advice of the Ministry of Energy and Mines as to what is the position of the Ministry in relation to whether the tailings dam should become operational.
- > The concerns with the EIA should be dealt with immediately. An independent assessment of the tailings dam that considers the environmental, social, economic, cultural and gender impacts of the Huinipampa tailings dam should be undertaken by an appropriately qualified and experienced practitioner chosen by the communities and their support groups and agreed to by the company. The Terms of Reference for this assessment should be developed in a transparent manner with consideration given to the criticisms of Soria and Carmelino.
- > BHP Billiton should disclose to the communities the process undertaken for the selection of the location of the Huinipampa tailings dam.
- > BHP Billiton should disclose to the communities how it intends to prevent the problems that occurred with the Alto Huancane tailings dam and the Salado River basin from occurring in the Ccañipia River basin.
- > The assertion that the tailings dam construction was illegal, as Peruvian law prohibits the construction of tailings dams close to basins used for milk production and where rivers run into irrigation channels, should be investigated further by an appropriate Peruvian environmental lawyer who should submit an independent report that verifies the truth of this assertion.
- > The company should detail any proposed compensation package that it intends to provide to the Ccañipia River basin communities, especially in terms of lost profits as a result of perceived contamination or actual contamination by the tailings dam.
- > If the communities agree to the tailings dam becoming operational, BHP Billiton should provide a financial bond of sufficient quantity to cover the cost of any potential contamination that may occur in the Ccañipia River basin. This should be gauged in accordance with similar bonds provided for such operations in the USA.
- > BHP Billiton should provide a guarantee to the Dialogue Table and the communities involved in the Table, that it will honour the findings of the commissions and the promises made no matter what results from the Huinipampa tailings dam conflict.
- > The communities impacted by the tailings dam construction should be fairly compensated for the noise and dust disturbances and any environmental contamination suffered as a result of construction activities.



Above right: Ignacio Taco Carlos (left), community representative, states his concerns with the tailings dam to the Mining Ombudsman. Photo: Ingrid Macdonald/OxfamCAA
Below: Wife and husband show the milk and yoghurt that they produce daily from their farm in the Ccanipia microbasin. Photo: Ingrid Macdonald/OxfamCAA



FOOTNOTES

- 1** Victor Saico Huamanquispe (2003), Frente de la Cuenca del Ccañipia, Request to Investigate, letter, to Macdonald, 10 February 2003. **2** Dr Carlos Soria to Macdonald, email, 20 March 2003. **3** Frente Defensa De Regantes Microcuenca Ccañipia Espinar Cusco (2002), Memorial to Ministerio De Energia y Minas, 30 October 2002 – Considerando Cuarto. **4** The communities discussed a study commissioned by BHP Billiton Tintaya from the Cusco-based Instituto de Manejo de Agua y Medio Ambiente, which discussed this process. **5** Frente Defensa De Regantes Microcuenca Ccañipia Espinar Cusco, (2002), Op. Cit. **6** Ministerio de Energia y Minas (2001), *Acta de Audiencia Publica No 16-2001-EM-DGM-DGAA*, 11 May 2001. **7** Victor Saico Huamanquispe (2003) Op. Cit. **8** BHP Billiton Tintaya (2003) 'Response to Concerns in OXFAM CAA Ombudsman Reports', July 2003, p.3. **9** Ministerio de Energia y Minas, *Reunion en Lima con representantes del Frente de Defensa y de la Empresa BHP Billiton Tintaya*, 25 February 2003 **10** BHP Billiton Tintaya (2003) Op. Cit. **11** Goodyear to Macdonald, letter, 15 July 2003. **12** BHP Billiton Tintaya, (2003), Op. Cit, p.3. **13** BHP Billiton Tintaya, (2003), Op. Cit, p.4. **14** Ibid. **15** Dr Carlos Soria and MSC. Yenny Carmelino, *Commentarios Al Estudio de Impacto Ambiental Proyecto Huinipampa – BHP Tintaya*, undated. **16** Ibid, p.2-3. **17** Ministerio de Agricultura, Instituto Nacional de Recursos Naturales, *Estudio de Impacto Ambiental Presa de Relaves Huinipampa*, Opinion Technic No. 082-01-Inrena-DGMAR/DEOA, May 2001. **18** BHP Billiton Tintaya (2003), Op. Cit, p.5. **19** Ibid. **20** Ibid. **21** Ibid. **22** Goodyear to Macdonald, letter, 15 July 2003. **23** BHP Billiton Tintaya (2003), Op. Cit, p.6. **24** Macdonald, *Mining Ombudsman Investigation Tintaya Huinipampa Tailings Dam*, Oxfam Community Aid Abroad, 30 June 2003.

Case 4 – Indo Muro



Resource:	Gold and silver
Mine location:	Central Kalimantan, Indonesia
Mining Method:	Multiple pits open cut mine – closed in 2002
Affected communities:	The Siang, Murung and Bakumpai Indigenous Dayak communities, small-scale miners and surrounding villages
Community Groups:	YBSD – Yayasan Bina Sumber Daya (Foundation for Resource Development)
Legal Advisers:	TATR – Tim Advokasi Tambang Rakyat (Traditional Mining Advocacy Team)
NGOs:	WALHI – Wahana Lingkungan Hidup (Indonesian Forum for the Environment – Friends of the Earth Indonesia) – http://www.walhi.or.id JATAM – Jaringan Advokasi Tambang (Indonesian Mining Advocacy Network) – http://www.jatam.org
Mine operator/s:	PT Indo Muro Kencana (PT IMK)
Ownership:	1993-2002: Aurora Gold August 2002: Aurora Gold grants an option to Archipelago Resources Proprietary Limited to purchase PT IMK – the option expired 31 March 2003. January 2003: Aurora Gold merges with Abelle Limited April 2003: Straits Resources Ltd enters a joint venture with Abelle Limited to explore and assess the re-development of Mt Muro.

Chronology of events

21/1/1985:	PT IMK Contract of Work signed by the President of Indonesia. ¹
1986:	PT Indo Muro Kencana (PT IMK) enters the mine area and with the assistance of the police force evicts small scale miners and community members. ²
1993:	Aurora Gold acquires an initial 90% interest in PT IMK (increases to 100%).
1994:	Indo Muro Kencana (Indo Munro Mine) begins operation.
1996-97:	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 communities affected by the Indo Muro mine and their support organisations.
1/1998:	A representative of the affected Dayak communities travels to Australia to speak directly with the company's head office.
4/8/1998:	Yayasan Bina Sumber Daya (YBSD) presents the complaints of 2292 complainants, and a list of seven demands to Aurora Gold, the Australian Embassy in Jakarta, the Indonesian National Human Rights Commission and the Indonesian Ministry of Mines.
1998:	Oxfam Community Aid Abroad publishes <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.
30/8/1999:	Aurora Gold responds to the list of demands and complaints presented by YBSD on 4 August 1998 rejecting community demands.
8/1999:	YBSD announces that negotiations are deadlocked and both parties agree that there is no possibility of future negotiations.
25/5/2001:	The Australian Ambassador visits the Indo Muro mine site where he stresses the need to address security issues. ³
5/6/2001:	Shooting incidents result in two deaths and three people being wounded when BRIMOB ⁴ officers confront so-called illegal miners.

Of particular note were the deaths of two small-scale miners who were shot by security officials at Indo Muro less than two weeks after a visit by [Australian] Ambassador Smith

27/8/2001:	A teenage boy (working as a small-scale miner) is shot in the leg. ⁵
19/1/2002:	A local man and small scale miner is shot in the head with a rubber bullet at short range by BRIMOB mine security. ⁶
19/1/2002:	The local Dayak community protests the shootings and blockades PT IMK's roads and processing plant. ⁷
31/1/2002:	The Mining Ombudsman writes to Michael L Jeffries (CEO of Aurora Gold) asking for a reply to the reports of fatal human rights abuses.
18/2/2002:	Senator Bob Brown questions the Minister for Foreign Affairs about Australian Embassy Officials involvement in the human rights violations.
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 announces the sale of PT IMK to Archipelago Resources. 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:	Oxfam Community Aid Abroad writes to the Minister for Foreign Affairs and Trade calling for an independent inquiry into the reports of Australian Embassy involvement in the human rights violations at the mine site.
26/7/2002:	The Department of Foreign Affairs and Trade (DFAT) states that 'an independent inquiry... is unwarranted'. ⁸
30/7/2002:	29 indigenous people of the Dayak Siang, Dayak Murung and Dayak Bakumpai communities file a lawsuit through 'Tim Advokasi Tambang Rakyat' (Traditional Mining Advocacy Team or TATR) against Aurora Gold in the South Jakarta State Court claiming damages over alleged illegal and violent land evictions. ⁹
1/8/2002:	Archipelago Resources takes over management responsibilities of the Indo Muro mine.
23/8/2002:	Aurora Gold responds to Oxfam Community Aid Abroad's letter from the 15 July and reminder of 12 August.
28/8/2002:	Oxfam Community Aid Abroad writes to the Minister for Foreign Affairs and Trade expressing disappointment that the request for an independent inquiry had been denied and requests access to information concerning the Indo Muro mine site under the Freedom of Information (FOI) Act 1982.
9/2002:	Indo Muro mine closes.
15/1/2003:	Aurora Gold merges with Abelle Limited
30/3/2003:	Archipelago Resources ceases to manage the Indo Muro mine. ¹⁰
23/4/2003:	Abelle enters into joint venture agreement with Straits Resources. Straits Resources acquires a 70% interest and assumes management of PT IMK. ¹¹
1/5/2003:	Harmony Gold Australia Pty Ltd, a wholly owned subsidiary of Harmony Gold Mining Company Ltd, acquires 80% of Abelle's Ltd's shareholdings.
30/5/2003:	The Mining Ombudsman writes to Harmony, Abelle and Straits Resources seeking clarification over the current ownership and operational status of the Indo Muro mine site.
10/2002-6/2003:	The Mining Ombudsman and DFAT exchange correspondence regarding requests to waive fees for the release of information under the Freedom of Information Act.
13/6/2003:	Abelle Limited writes to the Mining Ombudsman stating that neither Abelle nor Aurora Gold are involved in the legal proceedings in the South Jakarta court. ¹²
17/6/2003:	Judgement is awarded in favour of PT IMK in the lawsuit. The Judge states that charges should have been made against the government and the company.
1/7/2003:	The Dayak communities lodge an appeal with the Jakarta Supreme Court.

Oxfam Community Aid Abroad maintains that mining companies should not operate in situations where government security forces are required to safeguard operations.

Request

The grievances of affected community members from the Indo Muro Kencana (Indo Muro) mine site, which is operated by PT Indo Muro Kencana (PT IMK) have been long standing and remain unresolved. Oxfam Community Aid Abroad's involvement with this case began in 1997 when community members requested assistance in having their grievances presented to company officials in Australia. Oxfam Community Aid Abroad has also provided financial assistance to some of the community groups and non government organisations involved in this case.¹³ Subsequent to 1997, dialogue was established between the company and community in the late 1990s, but quickly broke down, as it became apparent that Aurora Gold was not committed to addressing community grievances. In 2002 the community took the company to court to seek damages and compensation for the loss of land, housing and gold revenues. Oxfam Community Aid Abroad continues to monitor the court case and investigate the involvement of Australian interests in this case.

Grievances

The long standing grievances of affected communities, detailed in both previous *Mining Ombudsman Annual Reports 2001* and *2002*, include:

- > forced evictions from land and housing without compensation,
- > loss of established livelihoods without compensation such as small-scale mining and agricultural production,
- > destruction of community owned mining equipment,
- > on-going environmental degradation,
- > intimidation, harassment and killings of unarmed civilians by security forces housed at the mine site.

These grievances remain outstanding. As a result, on 30 July 2002, a lawsuit was served on PT IMK through the South Jakarta Court on behalf of 29 persons who represent the Dayak Siang, Muruk and Bekumpai communities. They claimed that the Indo Muro Contract of Work signed on 21 January 1985 extinguished community gold mining rights and that they were forcibly removed from their land without compensation or consideration for their loss of livelihood.¹⁴ PT IMK chose to defend the claims.¹⁵

This is the first case to be brought by indigenous people against a multinational mining company in Indonesia.¹⁶ The communities hoped that a successful outcome would result in PT IMK and other companies halting their activities at Indo Muro and a restoration of community mining pits. The Dayak Siang, Muruk and Bekumpai communities charged that the actions of the company have resulted in the loss of property to the amount of Rp 364,213,500 and total gold loss to the amount of 379,171 grams.

Tim Advokasi Tambang Rakyat (TATR), representing the community, accused the Company of contravening the following legal principles:¹⁷

- a) Article 7(1) of the International Labour Organisation (ILO) Covenant 169.¹⁸
- b) Indonesian Civil Law Article 1365 which states that actions, which violate the law and bring losses to other persons obligate the guilty party who has caused the losses to provide compensation for those losses. TATR contend that the rights of the affected communities were violated when they were forcibly removed from their mining pits;

- c) Obligations pursuant to the Contract of Work between the Government of the Republic of Indonesia and the company because they took over the mining pits and equipment owned by the communities; and
- d) Violating customary law, as the communities assert that by taking over the gold mining pits and their equipment, the company is acting contrary to the values of humanity of the community held by them, this is supported by the United Nations Draft Declaration on Indigenous Rights.¹⁹

On 17 June the Judge ruled in favour of the company stating that the charges submitted by TATR were incomplete in that they should have also been made against the government who provided the Contract of Work (COW) to the company. Community members have stated that they are not surprised by the decision as other efforts to find justice have also favoured PT IMK. Nevertheless, community members lodged an appeal with the Supreme Court on 1 July 2003.

Actions of the Australian government

As was stated in the *Mining Ombudsman Annual Report 2002*, evidence has arisen which shows that Australian embassy officials in Indonesia, including the Ambassador, Richard Smith, called on Indonesian Officials to address security issues at the mine site in order to ensure investor confidence in the Indo Muro mine operation.²⁰ There is concern amongst civil society groups and journalists that this pressure may have exacerbated conflict between the mine security and small-scale miners resulting in human rights violations. Of particular note were the deaths of two small-scale miners who were shot by security officials at Indo Muro less than two weeks after a visit by Ambassador Smith in June 2001.²¹ Despite questions being tabled in the Senate, the department has refused to agree to requests for an independent inquiry into the behaviour of Embassy staff.

Oxfam Community Aid Abroad wrote to the Minister for Foreign Affairs and Aurora Gold on 15 July 2002 calling for an independent inquiry into these allegations. Other NGOs and journalists have also called for such an inquiry. Unfortunately, as was stated in last year's report, the Department of Foreign Affairs and Trade (DFAT) responded on 26 July 2002 stating that an independent inquiry was 'unwarranted'. Similarly, Aurora Gold claimed that an independent inquiry would not take the matter any further, arguing that information provided by internationally respected NGOs such as Jaringan Advokasi Tambang (JATAM) "could not be substantiated".²² In a letter to the Mining Ombudsman, dated 23 August 2002, Mr Jeffries reiterated his defence of the company's position as it related to the human rights violations. Jeffries was adamant that although '...the company is required to accommodate and feed the government security forces',²³ it is not responsible for human rights violations committed by the security forces.

Oxfam Community Aid Abroad maintains that mining companies should not operate in situations where government security forces are required to safeguard operations. Specifically, companies should not:

- > Initiate, encourage or become involved in actions by the police or armed forces of a host country, which are likely to lead to human rights abuses. This particularly includes actions intended to protect a mining operation

Right: Local people in front of the tailings dam of mine, PT Indo Muro
Photo: Courtesy of JATAM

Far right: Small scale-miner holding up the results of his work.
Photo: Courtesy of JATAM



- > 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, particularly where they have a poor human rights record.

Freedom of Information Act

Following the refusal of the Australian government and Aurora Gold to support an independent inquiry, on 28 August 2002 Oxfam Community Aid Abroad requested information, under the Freedom of Information Act 1982, relating to the activities of Aurora Gold Ltd, its subsidiary, PT IMK and the Australian Embassy in Jakarta in respect of Indo Muro. DFAT has twice denied a request for a waiver of fees for processing this request. Nevertheless, due to the importance of this case, Oxfam Community Aid Abroad recently forwarded payment for the information to DFAT on 4 June 2003 and is awaiting receipt of the documentation.

Ownership Issues at Indo Muro

The Indo Muro Project in Indonesia was placed on care and maintenance in mid-2002 by Aurora Gold. Around the same time, Aurora Gold granted an option to Archipelago Resources to purchase all the shares in PT IMK and through it, the rights to the Indo Muro 'Contract of Work'. However, Archipelago's option expired on 31 March 2003 meaning Indo Muro was automatically reacquired by Abelle, who had merged with Aurora in January 2003.²⁴ Nevertheless, Aurora Gold had always been responsible for the reclamation of existing mining areas, which were nearing completion in August 2003.²⁵ Archipelago was only responsible for the holding costs and care and maintenance of the mine plant and equipment throughout this period.²⁶

Following Archipelago's withdrawal from the project, on 23 April 2003 Abelle reached a Joint Venture agreement with Straits Resources (30:70) to explore and assess the re-development of the Indo Muro 'Contract of Work'.²⁷ Under this agreement, Straits Resources is to '... assume the role of manager and operator of the JV [Joint Venture] from May 1, 2003'. However, for the company to extend the contract they must 'spend a minimum of US\$1 million on exploration per annum over and above holding costs prior to commercial gold production commencing'.²⁸ As a result, the long-term involvement in the operation of Straits Resources is contingent upon finding extractable mineral reserves and a positive assessment of the political, social and environmental conditions. Abelle Directors still consider the Indo Muro Contract of Work to be '...highly prospective and [see] significant potential for new discoveries and a re-start of the operation'.²⁹

Not surprisingly, governance issues have changed considerably over the previous 12 months. Despite the court case against PT IMK being grounded in ownership issues and compensation for lost revenue from gold production, it appears that Aurora Gold has proceeded to sell, and now Abelle is hoping to redevelop, the disputed land and remaining mineral reserves. The ongoing environmental and social issues, as well as community land rights, are not being discussed openly and community members do not appear to have been consulted throughout these changes in corporate ownership. Moreover, although Aurora Gold has been the sole owner of PT IMK for much of its operational life, Abelle's letter of 13 June 2003 states that '[n]either Abelle nor Aurora are involved in legal proceedings regarding alleged negative social and environmental impacts at the Mt Muro mine...'.³⁰ This statement dismisses their core responsibility for the problems and negative legacy issues that have plagued Indo Muro.

Ultimately, serious environmental and social grievances persist at the Indo Muro mine site. It is appropriate that these grievances, some that date back over 15 years, are acknowledged by Abelle, Straits and Aurora Gold as the legacy of Aurora Gold's operations at Indo Muro. These grievances should be recognised and addressed by Aurora Gold and any future operators of the Indo Muro mine, as ethical corporate citizens.

Recommendations

- > That the Australian government immediately commission an independent investigation into the actions and interventions of Embassy officials in the Indo Muro gold mine.
- > That Abelle Ltd and Aurora Gold Ltd acknowledge responsibility for addressing the environmental and social legacies of the PT IMK operation.
- > That Straits Resources undertake extensive social and environmental investigations into the viability of a renewed project at Indo Muro and consult closely with affected and potentially affected community members, before redevelopment.
- > That BRIMOB not be housed or utilised for mine security at Indo Muro. If BRIMOB is required, the viability of a new mine project must be seriously considered.
- > That training be provided to small scale miners and local community members so that environmental pollution can be monitored and prevented.

FOOTNOTES

- ¹ 'First Indigenous Lawsuit Against Mining Multinational in Indonesia', (2003) *Mines & Communities Website*, <http://www.minesandcommunities.org/Company/aurora1.htm> (accessed 27 June 2003). Contract of Work: No.B-07/Pres/1/1985. ² Jatam, Dayaks Take Legal Action, Demand Justice', (2003) http://www.jatam.org/english/news/uploaded/imk_update203.html, 6 February 2003, (accessed 27 June 2003). ³ Official Hansard 15/5/2002, Commonwealth of Australia, No.4, pp.1647-1653. ⁴ BRIMOB – Acronym for 'Mobile Brigade', the elite unit of the Indonesian Federal Police Force. ⁵ Jatam Press Release, 'Shooting at Aurora Gold mine' 22 January 2002; & Mining Monitor, (2002) 'Embassy Ignored Killings at Indonesian Mine', Vol.7 No.2, June 2002 www.mpi.org.au/mm/editions/leadstory_vol7no2.pdf. ⁶ Ibid. ⁷ Ibid. ⁸ Rawson to Gorman, letter, reply to Mining Ombudsman's request for independent inquiry into Indo Muro Gold Mine 26 July 2002. ⁹ 'First Indigenous Lawsuit Against Mining Multinational in Indonesia', *Mines & Communities Website*, <http://www.minesandcommunities.org/Company/aurora1.htm> (accessed 27 June 2003). ¹⁰ Okeby to Macdonald(2003), 'Re: Indo Muro Mine Site, Central Kalimantan', letter, 13 June 2003. ¹¹ Ibid. ¹² Ibid. ¹³ Oxfam Community Aid Abroad has provided funding for Jatam since the organisation's inception in the mid-1990s and has provided funding for both TATR and YBSD. ¹⁴ 'First Indigenous Lawsuit Against Mining Multinational in Indonesia', (2003), Op. Cit. ¹⁵ Abelle Gold, (2002) *Annual Report*, December 2002. ¹⁶ 'First Indigenous Lawsuit Against Mining Multinational in Indonesia', (2003), Op. Cit. ¹⁷ Ibid. ¹⁸ Article 7(1) of the *International Labour Organisation (ILO) Covenant* 169. ¹⁹ Articles 21 and 27 of the *United Nations Draft Declaration on Rights of Indigenous Peoples* support this argument. ²⁰ Official Hansard (2002), Commonwealth of Australia, no. 4, 15 May 2002, pp.1647-1653. <http://www.aph.gov.au/hansard/dailys/ds150502.pdf> : & Mining Monitor, (2002), Op. Cit. ²¹ Official Hansard, (2002), Op. Cit. ²² Jeffries to Macdonald(2002) letter, 22 February 2002. ²³ Ibid. ²⁴ Abelle Quarterly Report (2002), <http://www.abelle.com.au/docs/march2003qtr.pdf> 30 June 2002 (accessed online 28 June 2003). ²⁵ Jeffries to Macdonald, 'Mt. Muro Mine – Kalimantan Indonesia', letter, 23 August 2002. ²⁶ Keenan, R, 'Loosemore takes AIM at Southeast Asia' 2 September 2002 www.miningnews.net (accessed 13 March 2003). ²⁷ Abelle Quarterly Report, (2002), Op. Cit. ²⁸ Ibid. ²⁹ Ibid. ³⁰ Okeby to Macdonald, (2003), Op. Cit.

Case 5 – Kelian



Resource:	Gold
Mine location:	East Kalimantan
Mining methods:	Open-pit
Affected communities:	Dayak communities
Community groups:	LKMTL – Lembaga Kesejahteraan Masyarakat Tambang and Lingkungan (Council for People's Prosperity, Mining and Environment)
NGOs:	WALHI – Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment – Friends of the Earth Indonesia) – http://www.walhi.or.id JATAM – Jaringan Advokasi Tambang (Indonesian Mining Advocacy Network) ¹ – http://www.jatam.org
Mine operator/s:	PT Kelian Equatorial Mining (PT KEM)
Mine owner:	Rio Tinto (90%) PT Harita Jayaraya (10%)

Chronology of events

1976:	Rio Tinto undertakes preliminary mining exploration within the Kelian region.
21/2/1985:	The Contract of Work is signed between PT KEM (90% owned by Rio Tinto) and the then President of Indonesia, Suharto. ²
1987:	PT KEM forcibly evicts local inhabitants from Muara Bayaaq to Kampung Baru, and forbids communities to farm in the area without their concession. ³
1988-89:	Communities engage in protests against their forcible removal.
10/1990:	PT KEM commences mine development operations.
1/1992:	PT KEM commences commercial production at the mine.
1996-97:	Representatives of the local communities contact Oxfam Community Aid Abroad with their grievances and formally request assistance. Oxfam Community Aid Abroad conducts an investigation at Kelian.
1/1998:	Oxfam Community Aid Abroad, WALHI and JATAM assist two representatives from the affected communities to travel to Australia to meet with the company and begin a negotiation process.
3/1998:	First negotiation meeting between affected communities and the company is held in Indonesia.
3/5/1998:	Community representatives formally petition their grievances to PT KEM/Rio Tinto.
6/1998:	A provisional agreement is reached between the local communities and PT KEM dealing with some grievances.
12/1998:	The community establishes LKMTL in order to represent them in the ongoing negotiations with PT KEM.
2000:	PT KEM formally announces its intention to close the Kelian mine in 2004.
2/2000:	The Indonesian National Human Rights Commission (Komnas HAM) releases a report which finds that serious human rights abuses occurred at Kelian, including sexual harassment and assault.
1/5/2000:	Negotiations break down after PT KEM introduce government officials into the process and deal with another group instead of LKMTL. Community demonstrations follow resulting in police violence by the Indonesian Mobile Police Brigade (BRIMOB).

Rio Tinto put a road through Pak Talin's land and for this he demanded compensation. Community leader Pak Pius, Director of LKMTL (rear) has supported hundreds of people like Pak Talin to have their grievances dealt with.
Photo: Jeff Atkinson/OxfamCAA



Request

In 1998, after Oxfam Community Aid Abroad had already been involved in the Kelian case for two years undertaking investigations and supporting community members, community representatives requested Oxfam Community Aid Abroad take up their case with Rio Tinto in Australia.

Background

There is a long history of human rights violations and environmental degradation at the Kelian mine site. Jeff Atkinson's *Undermined: The Impact of Australian Mining Companies in Developing Countries (1998) and the Mining Ombudsman Annual Report 2001* detail reports of forced violent evictions of local people and small-scale miners, and the intimidation and abuse of the local population since 1982.⁴ There have also been verified cases of sexual abuse perpetrated by local military and mine employees.⁵ In 1992,

when the PT KEM mine became operational, there were frequent local demonstrations, which often resulted in local people being detained by the police.⁶ These demonstrations and the resulting human rights violations continued through to 1997 as community anger intensified in response to the negative environmental impacts from mine activities. Air pollution from dust coming off the mine's access road as well as water pollution caused by 1200 drums of chemicals falling into the river system in 1991 created enormous animosity between local communities and the company.⁷

In 1998, after national and international pressure – including interventions by Oxfam Community Aid Abroad – PT KEM entered into negotiations over the community grievances, but this process broke down in 2000. The breakdown was followed by community demonstrations, road blockages and reports of violent repression by the Indonesian Mobile Police Brigade, BRIMOB. According to a local community leader, BRIMOB was receiving payments for protection from PT KEM.⁸

26/5/2000:	BRIMOB officers arrive at a road block set up to stop workers and materials reaching the mine site. They shoot into the air, intimidate community members and take six people into custody.
11/2000:	On recommendation from the World Bank Group's Business Partners for Development, PT KEM establishes a Mine Closure Steering Committee (MCSC), which includes representatives of PT KEM, Rio Tinto, local and central governments, academics and community representatives.
3/2001:	Negotiations recommence between the company and LKMTL, with the involvement of the Chairman of the Indonesian Commission for Human Rights (Komnas HAM), a consultancy; a retired Australian High Court Judge; and an Indonesian Supreme Court Judge. A negotiated agreement is reached including a 60 million rupiah compensation package.
2002:	PT KEM states it has successfully resolved grievances following Komnas HAM's investigations and recommendations on sexual abuse.
23/6/2002:	A reconciliation ceremony is conducted to close sexual abuse grievances.
19/11/2002:	PT KEM writes to Oxfam Community Aid Abroad disputing grievances outlined in the <i>Mining Ombudsman Annual Report 2002</i> .
2/2003:	MCSC process breaks down and locals block an access road to the mine in protest of continuing grievances.
3/2003:	Community members blockade PT KEM's only access road in protest over problems with the validation and payment of compensation.
19/3/2003:	LKMTL pulls out of MCSC, citing numerous grievances with the committee.
4/2003:	PT KEM responds to LKMTL's withdrawal and grievances, inviting continuing negotiation.
2/5/2003:	PT KEM writes to Oxfam Community Aid Abroad claiming LKMTL's withdrawal from the mine closure process resulted from pressure from WALHI and JATAM and that their statements are misleading.
16/6/2003:	Oxfam Community Aid Abroad writes to PT KEM expressing concern at the reasons for LKMTL's departure from the MCSC and disappointment in PT KEM's approach to LKMTL's complaints.
10/7/2003:	PT KEM writes to Oxfam Community Aid Abroad stating that it remains committed to sustainable mine closure at Kelian and that it is still working with LKMTL to implement compensation settlements.
(2004):	Projected mine closure

...a notable grievance of LKMTL is that local government representatives always sided with the company, thereby marginalising community representation.

In March 2001, after interventions from the Indonesian Commission for Human Rights (Komnas HAM), an Australian High Court Judge, an Indonesian Supreme Court Judge and an English consultancy company, negotiations were restarted and a 'peace deal' was brokered. Further discussion led to the establishment of the Mine Closure Steering Committee (MCSC), which is supported by the World Bank Group's Business Partners for Development program.⁹

The MCSC is described as a 'tri-sector' partnership between the company, government and civil society that is attempting to develop 'responsible mine closure'.¹⁰ In order to develop a sustainable process, it was recognised that the longstanding grievances would need to be addressed, resulting in the creation of a 'grievance-resolution' process within the MCSC.¹¹ Although this process has addressed several important community grievances, such as asphaltting the road to the mine site in order to reduce air pollution, investigating and providing compensation for sexual abuse cases and increasing the mine closure rehabilitation period to 2012 (the mine is due to close in 2004),¹² the community's representative group, LKMTL, withdrew from the process in March 2003 citing several serious concerns, as detailed below.

Grievances

LKMTL's withdrawal from the MCSC

PT KEM will cease operations in December 2004 when it anticipates that the last remaining ore will be processed. The MCSC was set up to address issues associated with the impact of the closure of the mine on the local communities, the environment and the West Kutai region. Despite LKMTL's recent withdrawal from the process, the company appears to be still committed to the process, but does not appear to be willing to accept the legitimacy of LKMTL's reasons for withdrawing.¹³ Mine manager, Charlie Lenegan has stated on several occasions that he believes LKMTL has been co-opted by 'anti-mining' groups such as Jaringan Advokasi Tambang – Indonesian Mining Advocacy Network (JATAM) and Wahana Lingkungan Hidup Indonesia – Indonesian Forum for the Environment (WALHI). On 2 May 2003, Lenegan stated that "WALHI/JATAM... are seeking to use LKMTL/KEM as pawns in their anti-mining campaign".¹⁴ Accordingly, PT KEM believes LKMTL's reasons for withdrawing from the MCSC are 'spurious'.¹⁵ However, WALHI and JATAM are important stakeholders in respect of the Indonesian mining industry which have legitimate concerns with the development of the closure process at Kelian, particularly as it is being labelled as an industry model of best practice.

LKMTL's decision to withdraw from the process was primarily due to the MCSC's reported inability to give an acceptable weight to their suggestions and positions within the decision-making process,¹⁶ not because it had adopted an anti-mining approach as Lenegan suggests.¹⁷ Although the MCSC is a "...consultative process, with all decisions being reached by consensus",¹⁸ a notable grievance of LKMTL is that local government representatives always sided with the company, thereby marginalising community representation. Pius states "...as the process went along, LKMTL began to feel that its recommendations were not being taken seriously by the company."¹⁹ This issue is central to the following concerns provided by LKMTL as reasons for its withdrawal from the process.²⁰

- > PT KEM has not provided a Contract of Work outlining its rights and obligations within the concession area.
- > PT KEM is not providing independent monitoring of its laboratories.
- > PT KEM will not take responsibility for community economic recovery post-mine closure.
- > PT KEM will not make substantive commitment to environmental restoration and rehabilitation of the mine area.
- > PT KEM will not provide an insurance/guarantee ensuring support in the case of hazardous pollution during post-mine closure period.
- > PT KEM will not ensure that there is provision of ongoing hospital/health service that monitors health problems associated with the mine.
- > There is a lack of clear explanation as to PT KEM's responsibilities post-mine closure.
- > There is a lack of honest account/explanation of the cases of two deaths at the mine site.

In response to these grievances PT KEM has claimed that prior to LKMTL's withdrawal from the MCSC, these issues had not been raised and therefore could not have been dealt with. Nevertheless, the company does address each of the grievances stating that while it is willing to provide a contract of work, it will only provide limited economic, social and environmental funds and guarantees above what has already been promised.²¹ Lenegan also states that "...[a]lthough the withdrawal of LKMTL is regretted, there is still significant community consultation and involvement in the KEM mine closure process."²² However, LKMTL remains the peak representative body for the affected communities and, therefore, without their involvement in the process, the legitimacy, accountability and effectiveness of the MCSC is undermined and community confidence in the MCSC will no doubt diminish.

Recent correspondence from PT KEM indicates that LKMTL's involvement in the MCSC and engagement with the company to facilitate compensation payments is occurring.²³ While it is encouraging that PT KEM appears committed to maintaining LKMTL's involvement in this process, government and communities should not be left bearing the burden of the ongoing legacy of mine operations. A concern for civil society groups and mine affected communities, including those at Kelian, is that companies do not allow for the costs for environmental rehabilitation and social compensation when these exceed operating revenues. This means that social and environmental impacts will only be compensated insofar as companies can afford to do so. In the case of Kelian, the company has stated clearly that "the continued growth in expectations by communities and government will never be in balance with the reality of KEM's capacity to contribute (after covering all operating, mine closure, community and government costs)".²⁴

Continuing environmental and social concerns

A report by WALHI, *Undermining Indonesia*, presented to Rio Tinto at its London Annual General Meeting in April 2003, details continued environmental degradation occurring in and around the Kelian mine as a result of mining operations, as well as continued conflict over compensation issues.²⁵

Right: Daniel Paras and his family were forcibly evicted from their home in 1991 by the Indonesian Mobile Police Brigade. The family lost most of their belongings. Photo: Jeff Atkinson/Oxfam CAA

Far right: Pak Jau Hau of the Dayak indigenous people of Kalimantan. Photo: Jeff Atkinson/Oxfam CAA



The report states that tailings, which are channelled into the Namuk area, contain high concentrations of cyanide which exceed government regulations.²⁶ It alleges inadequate monitoring procedures in respect of the ground-water system, which has been contaminated by Acid Rock Drainage (ARD).²⁷ WALHI also reports that after mining operations cease, the company does not plan to restore the 450 hectare mine pit and dump sites to their original forested condition due to the costs involved.²⁸

PT KEM's response to the WALHI report states that in an effort to meet compliance targets, KEM hired a team of specialists from Bectel Services, Environment Geochemistry International and Water Solutions to conduct a review of the entire water management system in October 2000.²⁹ Following this review, PT KEM stated that an upgraded water management system was developed and fully implemented in early 2002 to ensure water quality compliance is maintained throughout the remainder of the mine life. They believe that this system has successfully managed ARD flows from stockpiles and the pit areas without significant impacts on the environment.³⁰ KEM does not disclose whether there is independent monitoring of the water management system as proposed by WALHI.

PT KEM's method of preventing ARD from occurring in the future is to use a 'wet cover'. According to KEM, this system prevents potential acid generating rock from being exposed to water and air, the necessary conditions for acid to form. However, this system will require substantial long-term funding for ongoing monitoring as there is the chance that ARD could occur at any point in the future if the conditions were to change. As Trujillo of the industry-sponsored Acid Drainage Technology Initiative stated, "mining companies and land-managing agencies are concerned that the prospect of having contaminated drainage develop 25 to 50 years in the future from mine-waste is a real possibility".³¹ KEM does state that it is committed to providing funding through the 'KEM Mine Closure Trust Fund'.³² However, it is questionable if this is an adequate measure to provide a real guarantee of remediation and compensation for the potential impacts of ARD in the future. Ultimately, the wet cover is simply a cover and its permanency is dependent upon environmental and social factors that KEM will have no control over once it has completed it has divested from the mine site.

With respect to the long-standing issue of compensation payments, an agreement was reached in March 2001, whereby KEM proposed a 60 billion rupiah compensation package, which amounts to approximately \$ AUD 10,500,000. This amount was to compensate thousands of

local community people for nearly 20 years of displacement from their land and houses, damaged access roads and port lands, loss of plants and graves, and other grievances linked to alleged company promises of houses and income.³³ WALHI contend that this package is insufficient and demonstrates a lack of genuine goodwill. WALHI also claims that the package has divided the community between those who want to reject, and those who want to accept the compensation process.³⁴ Largely due to community anger with this compensation package, delays in providing the funds and the refusal to recognise the remaining grievances of community members, the communities again blockaded PT KEM's only access road in March 2003.³⁵

Recommendations

Oxfam Community Aid Abroad is disappointed with the breakdown in the MCSC. The significant factor appears to be the unequal power and inadequate weight given to the interests and concerns of the community representatives within the MCSC. The affected communities must be given appropriate power and weight within this process that balances other apparently unified interests, such as that of the government and company representatives and recognises the communities' place as the rightful owners and inheritors of the land that has been affected.

An appropriate first step in this process would be that PT KEM address the grievances documented in LKMTL's letter of 19 March 2003 and make every effort to restore trust within the process.

In relation to other grievances, Oxfam Community Aid Abroad recommends:

- > That PT KEM establishes an independent monitor in laboratories that will examine all testing to promote trust and participation in the testing process.
- > That PT KEM immediately deals with the grievances of those community members who have not yet received compensation and resolution in relation to displacement and human rights issues.
- > That PT KEM publicly acknowledge their responsibility to victims as well as the community for sexual abuse crimes.
- > That PT KEM defines clearly its responsibilities during the post-mine closure period, including its full responsibility for environmental contamination issues.
- > That PT KEM provides guarantees in perpetuity for ARD impacts.

FOOTNOTES

- 1 Oxfam Community Aid Abroad has been a principle funder of Jatam since its inception in the mid-1990s. 2 Contract of Work: B-06/Pres/1/1985 3 Nyompe, P. E. (2003), 'The Closure of the Kelian Gold Mine and the Role of the Business Partnership for Development/World Bank', presentation to the Extractive Industries Review's Eminent Person and participants at the meeting on Indigenous Peoples, Extractive Industries and the World Bank, Oxford, 15 April. 4 Atkinson, J. (1998), *Undermined: The Impact of Australian Mining Companies in Developing Countries*, Community Aid Abroad, pp. 26-37; & Atkinson, J., Brown, A., & Ensor, J., (2001) *Mining Ombudsman Annual Report 2001*, Oxfam Community Aid Abroad. 5 Nyompe, Pius Erick (2003), Op. Cit. 6 Ibid. 7 Atkinson (1998), Op. Cit. 26-37; & Atkinson, Brown & Ensor (2001), Op. Cit. 8 Nyompe, P. E. (2003), Op. Cit. 9 Ibid. 10 Business Partners for Development. http://www.bpd-naturalresources.org/html/focus_kelian.html (accessed 16 December 2002). 11 Hamann, R. (2002), 'Case Study: Mine closure in Kalimantan, Indonesia', Business Partners for Development, Natural Resources Cluster, September. http://www.bpd-naturalresources.org/html/focus_kelian.html (accessed 16 December 2002). 12 Lenegan, C. to Hewett, A., (2002) letter, 'KEM Human Rights Issues', 19 November 2002. 13 Lenegan, C. to Nyompe, P. E., (2003), letter, 'Resignation from the Mine Closure Steering Committee' April 2003 (exact date not provided). 14 Lenegan, C. to Macdonald, I., email, 'Kelian', 2 May 2003. 15 PT KEM, (2003), 'Kelian Equatorial Mining: Friends of the Earth Press Release – Final Response', 17 April 2003. 16 Nyompe, P. E. (2003), Op. Cit. 17 PT KEM, (2003), Op. Cit. 18 Lenegan, C. to Nyompe, P. E., (2003), Op. Cit. 19 Nyompe, P. E. (2003), Op. Cit. 20 Nyompe, P. E. to President MCSC, President Director Rio Tinto Indonesia, President Director PT Kelian Equatorial Mining, letter 'Re: LKMTL's Withdrawal from the Mine Closure Steering Committee (MCSC)', 19 March 2003. 21 Lenegan, C. to Nyompe, P. E., (2003), Op. Cit. 22 Lenegan, C. to Nyompe, P. E., (2003), Op. Cit. 23 Lenegan, C. to Macdonald, I., letter, 'LKMTL Withdrawal from the Mine Closure Steering Committee', 10 July 2003. 24 Ibid. 25 WALHI (2003) *Undermining Indonesia: Adverse Social and Environmental Impacts of Rio Tinto's mining operations in Indonesia*. 26 Ibid, p.13. 27 Ibid, p.12. 28 Ibid, p.16. 29 PT KEM, (2003), Op. Cit. 30 PT KEM, (2003), Op. Cit. 31 Acid Drainage Technology Initiative (2003), Acid Drainage Technology Initiative (ADTI) Informational Meeting, March 26. http://www.unredu/mines/adti/ADTI_Agenda.html (accessed 27 April 2003). 32 PT KEM, (2003), Op. Cit. 33 PT KEM, (2003), Fact Sheet – Compensation Issues, December. <http://www.keliangold.com/download/20030222070344.pdf> (accessed 8 May 2003). 34 WALHI, (2003), Op. Cit. p.15. 35 ENV-NEWS (2003), 'PT KEM's main road once again blocked', ENV-NEWS, 6 March.

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 tonnes ¹
Affected communities:	Gag & surrounding island communities
NGOs:	WALHI – Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment – Friends of the Earth Indonesia) – http://www.walhi.or.id JATAM – Jaringan Advokasi Tambang (Indonesian Mining Advocacy Network)- http://www.jatam.org
Mine ownership:	(75%) BHP Billiton (25%) PT Aneka Tambang (Antam)

Chronology of events

1995:	BHP undertakes exploration on Gag Island.
2/1998:	A Contract of Work is signed between PT Gag Nickel (75% owned by BHP Billiton) and the Indonesian government to allow exploration and development of a laterite nickel and cobalt mine on Gag Island.
1999:	The 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 enters into a joint-venture agreement with BHP Billiton making it a 37.5% partner in the Gag Island Nickel Project. The agreement is dependent upon reversing Gag Island's 'Protected Forest' classification to allow open-cut mining.
2/2001:	Oxfam Community Aid Abroad receives a request for assistance from a group of students from Gag Island.
2001:	There is an exchange of letters between BHP Billiton and the Mining Ombudsman on the proposed project.
6/2001:	Gag Island is included as a case study in the <i>Mining Ombudsman Annual Report 2001</i> .
12/2001:	Falconbridge pulls out of the joint venture due to the forest classification and BHP Billiton suspends the 'Contract of Work'.
1/2/2002:	The Mining Ombudsman writes to BHP Billiton requesting reasons for its suspension of operations and information on Falconbridge's decision to withdraw from the project.
2002:	Conservation International (CI) publishes a report of marine research conducted on the Raja Ampat Islands group, which includes Gag Island. The report calls for the island group to be listed as a World Heritage site.
7/3/2002:	BHP Billiton writes to the Mining Ombudsman stating that it is seeking a new joint venture partner and it is hopeful of resolving the forestry classification issue.

Informed consent would also require consultation with neighbouring islands, fishing communities and municipalities depending on the project design, impacts and use of royalty payments.

Request

The status of the mine has not changed since previous Mining Ombudsman Annual Reports. Overall, the reported concerns of the communities living in and around Gag Island are primarily over the potential impacts from the proposed mine. The initial request, published in the *Mining Ombudsman Annual Report 2001 and 2002* 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 BHP about the mining project and what it will mean for the local community.”⁴

Grievances

Community members have expressed concern that there has not been genuine participation and consultation with the mining company over the project. Although both the government and BHP Billiton’s position in relation to the future of the proposed mine have shifted throughout the project, these shifts do not appear to have been based upon community concerns, but rather have been a response to political and business developments. As a result there has been anxiety expressed by members of the Gag Island and outer lying island communities over the future prospects of the mine and its potential economic, social and environmental impacts.

Action taken

The Gag Island case was taken up in 2001. The request from affected community members referred to uncertainty over access to negotiations, resettlement and the disposal of mine waste. In March 2001, BHP Billiton responded by explaining that due to the very early stages of the project, many of the details had yet to be confirmed,

3/2002:	The Indonesian government announces that PT Gag Nikel will be permitted to mine Gag Island as its Contract of Work was signed prior to the enactment of the 1999 forestry legislation.
25/7/2002:	The Mining Ombudsman writes to BHP Billiton requesting information on the status of the mine and proposed tailings disposal method, particularly given the CI report.
13/09/2002:	BHP Billiton replies stating that PT Gag Nickel has not been formally advised that it can undertake mining activities, that its Contract of Work is under suspension and that the method of tailings disposal is undecided.
4/11/2002:	Publication of the <i>Mining Ombudsman Annual Report 2002</i> .
2/2003:	The Indonesian government announces that 30% of Gag Island is not classified as a ‘Protected Forest’ and therefore is suitable for open-cut mining and that the remainder will be ‘re-classified’.
14/3/2003:	The Mining Ombudsman writes to BHP Billiton requesting updated information as to the status of the Gag Island mine in relation to the developments of February 2003.
15/4/2003:	BHP Billiton replies to the Mining Ombudsman stating that its position has not changed and that the Gag Island project is not a priority.
17/6/2003:	Indonesian Energy and Resource Minister, Purnomo Yusgiantoro, declares that 15 mines including Gag Island are likely to be given permission to mine in protected areas. ²
23/6/2003:	Indonesia’s former Environment Minister, Sonny Keraf, publicly calls ‘...on parliamentarians to not change the function of protected forests to be developed for mining, and to value conservation.’ ³
25/6/2003:	UNESCO writes to Akbar Tandjung, Speaker of the Indonesian House of Representatives (DPR), stating that the Raja Ampat archipelago, where Gag Island is located, is under consideration as a World Heritage site.
17/7/2003:	Oxfam Community Aid Abroad writes to the Minister of Foreign Affairs to request the cessation of all efforts by the Australian Ambassador and Australian Embassy staff, in lobbying the Indonesian government to allow mining in protected forests, including on Gag Island.

The Ministry of Forestry estimates that between 1.6 and 2.1 million hectares of forest disappear every year in the country, making deforestation in Indonesia more severe than in any other part of the world.

but they had appointed a community liaison officer and would provide the community with opportunities for input into project development. Communication received from BHP Billiton on 15 April 2003,⁵ reaffirmed that the Gag Island project remains a low priority for the company and there are no imminent plans to develop the mine.

Nevertheless, correspondence with Indonesian non-government organisations (NGOs) and community support groups indicate that an operational mine on Gag Island has the potential to cause significant environmental and social problems. The two issues of greatest concern are mining in protected forests, and the use of submarine tailings disposal (STD). These issues are central to the core question of the informed consent of the Gag Island community.

Informed consent

There appear to be difficulties in the process of obtaining the informed consent of community members for the Gag Island project. It is important that informed consent is obtained prior to and during the exploration stage of mining and involves all communities that could be impacted by the project. Accordingly, it would be appropriate for the company to disclose all known information at the current pre-feasibility stage of the project. This includes all relevant project details, studies, findings, potential impacts, and likely outcomes of mine operations on the livelihoods and environments of local people.

Informed consent would also require consultation with neighbouring islands, fishing communities and municipalities depending on the project design, impacts and use of royalty payments. For example, the option of STD (discussed below), could have severe adverse environmental impacts on marine life, affecting potential regional tourism and fishing communities.⁶ This would seriously complicate negotiations and the possibility for the company to obtain the informed consent of all potentially affected communities. It is uncertain what action BHP Billiton has taken to address the problems over informed consent.

Environmental conservation

Public debate surrounding the proposed mine on Gag Island has focussed largely on the conservation issue. Indonesian Law No. 41/1999 ('the Forestry Law') converted Gag Island from the classification of 'Production Forest' to 'Protected Forest' in 1999, a year after the Contract of Work was signed. According to BHP Billiton, Gag Island became unmineable with this law and 'will remain so unless either the law is repealed or its land designation is returned to its original classification as "Production Forest"'.⁷

The Forestry Law bans open-pit mining operations in 'Protected Forests'. The Indonesian government enacted the law in order to protect the country's rapidly disappearing forests.⁸ The Ministry of Forestry estimates that between 1.6 and 2.1 million hectares of forest disappear every year in the country, making deforestation in Indonesia more severe than in any other part of the world.⁹

The Forestry Law directly affects 124 mining companies that were awarded mining contracts prior to 1999, including BHP Billiton.¹⁰

Critics have blamed the law for decreasing the overall attractiveness of Indonesia for mining-related investments, although this claim has never been substantiated. Mining companies, government bodies and industry support groups have used the excuse of restimulating mining related investment within Indonesia to try and reverse or circumvent the law.

In 2002, the Indonesian parliament 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 prior to the enactment of the Forestry Law.¹¹ The Energy and Mineral Resources Minister, Purnomo Yusgiantoro, also suggested that the government would issue a decree to allow 22 mining firms that had work contracts prior to 1999 to operate in areas protected by the Forestry Law.¹² This has met with firm opposition from the Ministry of Forestry and Indonesian NGOs.¹³

In spite of this opposition, the Ministry of Forestry has accepted that 30 per cent of the 56 sq km area of Gag Island is not a 'Protected Forest' and therefore can be used for mining.¹⁴ This admission effectively enables BHP Billiton to begin open-cut mining on that part of the island. In addition, the Indonesian legislature reached an agreement in February 2003 to allow six mining companies, including PT Gag Nickel, to resume mining operations by changing the status of disputed forest lands to 'production' or 'limited production' forest.¹⁵ This reclassification is said to have been determined in accordance with ecological reviews conducted by the parliamentary committee.

Given the dispute between the Ministry of Energy and Mineral Resources and the Ministry of Forestry, on 27 March 2003 the government established a joint ministerial team to finally resolve the forestry issue.¹⁶ This team was given three months to meet with each of the 22 mining companies. Notably, affected communities and relevant NGOs were not to be consulted. On Tuesday 17 June 2003 the team recommended 15 companies, including PT Gag Nikel, be given permission to continue exploration activities in their work contract areas. These recommendations were, reportedly, awaiting the ratification of the Indonesian President, Megawati Soekarnoputri.¹⁷

However, at time of writing, a decision has yet to be made on the 'protected forest' issue. There still appears to be large divisions within the Indonesian parliament and there is also strong opposition to changing the law from academics, civil society and environmental organisations. Most recently the United Nations Educational, Scientific and Cultural Organisation (UNESCO) wrote to the Indonesian House of Representatives (DPR) expressing concern at the proposed development on Gag Island and explicitly asked the DPR to consider the significance of the marine environment in changing the status of Gag Island (see below).

Nevertheless, industry sources believe the opening of Gag Island and other protected forest areas to mining is inevitable despite the legitimate concerns of reputable NGOs and institutions such as UNESCO.¹⁸

Indonesian activists place a banner at the gate of the Australian embassy in Jakarta that reads "Australia's mining business destroys Indonesian forest". Photo: AFP/ ADEK BERRY



Actions of Australian government

The Australian Department of Foreign Affairs and Trade (DFAT), through the Australia Ambassador and Embassy staff in Indonesia, have also made representations to Indonesian government officials supporting changes to the Forestry law in order to allow Australian mining companies to operate in protected areas.¹⁹ DFAT confirmed that it had made representations to Indonesian Government officials on nine occasions at the request of the Australian mining companies affected by the law, including BHP Billiton Indonesia.²⁰ The Indonesian Forum for the Environment (WALHI), has also stated that foreign mining companies have threatened the Indonesian government with 'international arbitration' in order to obtain exemptions to the law.²¹

Oxfam Community Aid Abroad wrote to the Minister of Foreign Affairs on 17 July 2003 to request the cessation of all efforts by the Australian Ambassador and Australian Embassy staff, in lobbying the Indonesian government to amend the Forestry law.²² The agency believes that this lobbying may be counter to Australia's long-term interests as it could be perceived as exerting unfair and inappropriate pressure on the Indonesian government over a legitimate domestic issue and it is in sharp contrast to local and regional support for forest conservation. As a result, Oxfam Community Aid Abroad has requested a full inquiry into the appropriateness, consistency and rationale behind the representations of the Australian embassy on behalf of mining companies in Indonesia, not only in respect of the forestry issue, but also given the concerns raised in the Indo Muro Mining Ombudsman Case 4.

Tailings disposal

In early 2002, Conservation International (CI) published the results of a study on the marine biodiversity of the Raja Ampat archipelago, which includes Gag Island. The report found the Raja Ampat archipelago to be one of the most biologically diverse marine areas in the world, with diversity surpassing that of the Philippines, Papua New Guinea or other parts of Indonesia. The archipelago is reported to have at least 456 varieties of coral species, 699 varieties of molluscs and 828 species of reef fish.²⁸ CI described the land and marine environment of the Raja Ampat Islands as 'one of the world's premier tropical wildlife areas'.²⁹

This research was also backed up recently by an UNESCO research expedition in 2003, which covered 61,200 square kilometres of the Raja Ampat archipelago. The expedition found new coral and fish species bringing totals to 1065 fish species and 505 coral species, 'which is an incredible 64percent of all known coral species in the world'.³⁰ UNESCO concluded that the 'Raja Ampat archipelago contains the richest coral reefs with the highest marine biodiversity world-wide'.³¹ UNESCO's Jakarta Director, Professor Stephen Hill also wrote to the Speaker of the DPR on 25 June 2003, stating that the Raja Ampat archipelago is under consideration as a potential World Heritage site. Hill requested that the significance of the marine environment be considered in any decisions concerning mine development on Gag Island, and the potential use STD.³²

Figure 7.6.1 – Conflict areas and mining

An issue for consideration if the mine at Gag Island proceeds will be the problems associated with conflict areas and extractive industries. The ongoing problems that have plagued the Freeport Grasberg mine also located in West Papua highlight concerns with mining companies operating in this province. Patterns of human rights abuses at the Freeport mine,²³ and the ongoing use of Indonesian security forces as mine protection (including payments to security forces that are in breach of Indonesian law²⁴), underlines the importance of such practices not occurring at Gag Island.

There is considerable evidence linking resource extraction in conflict areas with high levels of corruption, authoritarianism and instability.²⁵ Professor Michael Ross in the Oxfam America Report, Extractive Sectors and the Poor, found:

'Oil and mineral wealth heightens the risk of civil wars in several ways. Poorly-governed mining operations can lead to the expropriation of land, environmental damage, and human rights violations; these factors, in turn, may create grievances that lead to armed conflict, as in the Bougainville rebellion in Papua New Guinea, and the West Papua (Irian Jaya) rebellion in Indonesia.

The discovery of resource wealth in a discontented region may add fuel to separatist sentiments, as in Nigeria (in the Biafra rebellion), Angola (the Cabinda rebellion) and Indonesia (the Aceh rebellion).'²⁶

Ross makes a number of proposals for combating this scenario, including the full disclosure by governments and companies of the revenues and royalties paid and how these are used. These proposals are consistent with the 'Publish What You Pay' initiative, which calls for the mandatory disclosure of oil, gas and mining company payments to, and transactions with, governments in order to

combat the misuse, corruption and increased conflict commonly associated with extractive revenues in many developing countries.²⁷

Oxfam Community Aid Abroad supports the proposals made by Ross and the 'Publish What You Pay' campaign and recommends that these proposals apply to all mining operations and operators as discussed in Section 5. Furthermore, Oxfam Community Aid Abroad strongly advocates that mining companies should not pay or use military personnel or excessive security to protect mining operations or assets.

STD is unproven waste disposal technology that could have severe and long-term impacts on the entire Raja Ampat archipelago environment, which would detrimentally impact on the rights of not just the Gag Island communities, but the communities of neighbouring islands.

While BHP Billiton states that it has not made a decision on which method of tailings disposal it will use,³³ the company has highlighted three likely options:

1. a cut and fill method of placing mine tailings in holes created by extraction;
2. an engineered tailings dam; and
3. the disposal of tailings into the ocean or STD.

Given the small size of the island, the high degree of seismic activity and heavy rainfall, the two land-based tailings disposal methods are likely to be considered less viable and more risky than STD. Moreover, a deep-sea valley located adjacent to the island may make STD an even more attractive option for the disposal of mine waste. A few STD proponents advocate that waste can be deposited below what is known as the 'euphotic zone'³⁴ in such deep-sea valleys where they speculate that the waste represents 'a low risk to the productivity of any utilised resource.'³⁵

The validity of STD as a safe means of mine waste disposal is greatly disputed. STD involves the pumping of mine tailings directly into the ocean, and is largely considered an unproven technology that is effectively prohibited in most OECD countries. Community groups and NGOs from countries affected by mining and STD, including from Indonesia, have rejected the technology in the Manado Declaration of 30 April 2001.³⁶ Critics also argue that STD is banned under the London Dumping Convention, which prohibits the discharge of waste into the ocean from human structures.³⁷ Given these factors, critics

argue that the 'precautionary principle' should apply to STD, which would prevent this technology being used for the disposal of tailings.³⁸

In terms of the applicability of STD to Indonesia, a noted environmental non-government organisation, APEX Environmental, has concluded in a statement of concern that, '...the STD waste management procedure is not considered appropriate for mining activities in Indonesia.'³⁹ It is argued that the:

*"... (i)ndirect surface impacts, as well as direct and indirect subsurface impacts [of STD] have not been considered thus far. The food chain effects can impact on numerous commercially valuable fish species...as well as long-lived mammals such as cetaceans and humans. The indirect surface impact of biological vectors, transporting wastes from subsurface 'disposal' to productive coastal and oceanic waters is not well understood but nonetheless a significant environmental and social risk."*⁴⁰

APEX Environmental also raises concerns over the environmental and human health risks from pipe breakages, which at other locations using STD have taken a long time to fix – from one to six months. This statement of concern is fully supported by other scientists researching Indonesia's marine biology⁴¹ and further reasons for why STD is not an appropriate technology for the Southeast Asia context, including Indonesia are provided in Figure 7.6.2.

Given the recognition by UNESCO that the Gag Island area contains the richest coral reefs with the highest marine biodiversity in the world, and the many concerns raised by Indonesian community groups,

Figure 7.6.2 – Potential environmental and socio-economic impacts of submarine tailings disposal

In a paper presented at the World Bank Extractive Industries Review Asia Pacific Consultations in Bali on 26 April 2003, the Director of APEX Environmental, which undertakes extensive investigations of Indonesian marine biology (including field surveys and ecological research on whales and dolphins), expressed some of the following concerns about the use of STD:

- > In a region as oceanographically complex as Southeast Asia, with its extensive archipelagos and diverse bathymetry, the argument that any assumed marine thermocline could act as an effective barrier against vertical transport is not realistic.
- > STD waste and toxin resuspension to surface water

- may occur through biological vectors.
- > STD has an inherent economical risk to local and export fisheries because of (real or perceived) contamination of marine resources.
- > STD may affect increased human health risks through direct or indirect exposure to mining wastes.
- > Mining procedures such as STD may have a negative impact on numerous other important socio-economic and environmental factors, ranging from additional (and often illegal) small-scale mining activities by opportunistic individuals, to reduced marine tourism potential.
- > STD is likely to cause large-scale habitat degradation of meso- and bathypelagic oceanic ecosystems and may affect

- large and often endangered marine life, including whales, dolphins and marine turtles.
- > STD has major operational risks which are not easily mitigated on-site, including pipe breakages (surface and/or depth) and compliance to waste controls.
- > Environmental Impact Assessments (EIA) of mining operations with STD as their main mechanism for waste management do not adequately assess any adverse effects in the deep sea and marine food web, and such potential impacts should be included in the scope, and terms of reference, for such studies.
- Inclusion of these concerns in coastal mining EIA terms of reference is necessary because:
- > Submarine tailings disposal is currently the preferred waste

- disposal procedure of most large-scale mining operations in a critical region of maximum marine bio-diversity and of global marine conservation significance: South East Asia and the South Pacific,
- > Its effects (if any) on tropical marine life, marine resource use and ecosystem function are not well understood,
- > There will be a significant increase in the use of STD for already approved and proposed large-scale mining operations in South East Asia and South Pacific in the next 10 years, while the practice is banned in most western coastal states, and
- > There is an urgent need to address the major gap in biological data on (possible) effects of STD on tropical marine ecosystems, and the Indo-Pacific deep-sea in particular.⁴²



civil society groups and scientists over the use of STD, it would be appropriate for BHP Billiton to publicly agree to not pursue this technology as an option for waste disposal at Gag Island. Such an action by BHP Billiton would be consistent with the requirements of the 'precautionary principle.' STD is unproven waste disposal technology that could have severe and long-term impacts on the entire Raja Ampat archipelago environment, which would detrimentally impact on the rights of not just the Gag Island communities, but the communities of neighbouring islands. At a minimum, BHP Billiton should ensure that the Gag and neighbouring island communities have access to full independent information about the potential impacts of STD and any impact assessments undertaken by the company.

Recommendations

It is not evident whether BHP Billiton has acted upon any of the recommendations proposed in the *Mining Ombudsman Annual Report 2002*. They are repeated below:

- > That BHP Billiton fully discloses the project objectives, impacts and options to all stakeholders from the Gag Island community and potentially impacted areas, including the options for tailings disposal and the realistic impacts upon the marine biodiversity.
- > That BHP Billiton commissions and funds independent environmental and social impact assessments, including a gender analysis and human rights impact assessment, to gauge the potential impacts of the mine and releases the results of these assessments for public scrutiny.

- > That BHP Billiton encourages and facilitates the exchange of information between men and women from Gag Island with Indonesian NGOs and other communities which have been impacted by similar mine projects. This will enable the communities to 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 BHP Billiton respects the right of the communities to prior, free and informed consent and therefore recognises their right to determine whether the project proceeds to the next phase of development.
- > That BHP Billiton does not seek to have the Protected Forest classification changed for Gag Island.

In addition to last year's recommendations:

- > That BHP Billiton does not threaten to, or pursue, legal action against the Indonesian government in respect of the effect of the Forestry Law on its Contract of Work.
- > Consistent with the requirements of the 'precautionary principle,' BHP Billiton should not use STD at Gag Island if the mine is permitted to proceed.
- > That all companies, including BHP Billiton, sign on to and support the 'Publish What You Pay' initiative and fully disclose all revenue, royalty and facilitation payments made to date and in the future.
- > In the event that the project proceeds, BHP Billiton should ensure that military forces or excessive security are not used for protection of their mining interests or assets.

FOOTNOTES

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Case 7 – Marinduque



Resource:	Copper (with gold and silver by-products)	
Mine locations:	Marinduque Island, Philippines	
Mining method:	Open-pit. Two pits now closed – Tapan Pit and the San Antonio Pit	
Affected communities:	Marinduque Island communities: Calancan Bay, Mogpog, Boac, Mine Site Community	
Community support groups:	Social Action Commission Marinduque Council for Environmental Concerns (MACEC)	
NGOs:	Legal Rights and Natural Resources Center-Kasama sa kalikasan (LRC-KSK) (Friends of the Earth Philippines) (National Office) – http://www.info.com.ph/~lrcksk	
Mine operator/s:	(1967 – 1997) (1997-present)	Marcopper Mining Corporation (Placer Dome) Marcopper Mining Corporation
Ownership:	(1967 – 1994) (1994) (1997) (2001)	Philippine Government: 49% Placer Dome: 39.9% Philippine Public Shares: 11% Philippine Government sells its shares in Marcopper to F Holdings (a Philippine company). Placer Dome divests from Marcopper Mining Corporation, 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).

Chronology of events

1967:	Mine construction begins.
1969:	Tapan Pit is commissioned.
1975 – 1991:	Mine tailings from the Tapan 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 contaminated silt run-off from a waste rock dump at the San Antonio Pit.
1992:	Tapan 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. ¹
24/3/1996:	A plug in a former drainage tunnel linking the Tapan pit to the Boac River bursts, causing 3 – 4 million tonnes of tailings to flood down the Boac River and out to sea. ²
30/9/1996:	The United Nations issues its findings from an independent post-spill investigation.
24/3/1996:	The Philippine Government suspends the mine permit and post-spill mitigation and assessment begins.
11/4/1996:	Then President of Placer Dome, John Willson, writes to Philippine president Fidel Ramos expressing deep regret for the accident stating that 'Placer Dome will provide full technical and financial support to Marcopper in implementation of compensation and rehabilitation programs'. ³
1997:	Placer Dome divests from Marcopper. ⁴ Placer leaves a subsidiary, Placer Dome Technical Services (PDTS), to deal exclusively with the clean-up operation of the Boac River system.

“Finally, when will you [Placer Dome] acknowledge the legitimate claims for compensation from the people of Calancan Bay who are affected by the 200 million tons of lead contaminated waste you dumped in their bay over 16 years?”

Ned Santo Domingo – Marinduque Island, 30 April 2003

30/10/97:	The Philippine Department of Environment and Natural Resources (DENR) rejects the first permit application for Submarine Tailings Disposal (STD) of the remaining tailings in the Boac river. ⁵
16/2/1999:	The second application for a STD permit is rejected by the then Secretary of DENR, Antonio Cerilles, on the basis of an 'absence of social acceptability as evidenced by the consistent opposition from directly affected stakeholders of Marinduque'. ⁶
14/3/2000:	A Memorandum of Agreement (MOA) is organised between the DENR and the provincial government of Marinduque. It requires that the community of Marinduque, through the provincial governor, select a consultant to conduct an independent review and recommend a final remediation plan for the river. ⁷
19/1/2001:	In the final days of the Estrada regime, DENR secretary Antonio Cerilles signs an Environmental Compliance Certificate (ECC) permitting Marcopper to use STD to clean up the Boac River. The ECC is cancelled weeks later by the incoming administration. ⁸
11/2001:	Placer Dome leaves the Philippines. The company leaves \$12 million in an escrow account for further clean up of the river, and \$1 million into an escrow account for further compensation. The money is to be overseen by consulting firm URS and the clean up work is to be carried out by Marcopper.
21/1/2002:	The Municipality of Boac pass resolution No. 2002-10 requesting the President, House Committee on Ecology and the DENR to intercede on behalf of 48,000 stakeholders from the community of Marinduque.
29/1/2002:	In Canada, President Macapagal Arroyo requests compensation to be provided to the peoples of Marinduque from Placer Dome. ⁹ President Arroyo also states that she will use 20 million pesos from her Social Fund, to fund a full independent assessment of environmental and health concerns in all mining affected areas of Marinduque.
31/1/2002:	Placer Dome Technical Services announces the company's decision to hand over responsibility for the remaining tailings clean up to Marcopper Mining Corporation. ¹⁰
24/3/2002:	Residents of Boac commemorate Palm Sunday and the six-year anniversary of the Marcopper mine tailings spill. ¹¹
3/2002:	Community members begin bagging the tailings at Boac, Marinduque under orders from Marcopper. ¹²
5/2002:	The Mining Ombudsman is approached by members of the Marinduque community at the Philippine National Conference on Mining.
8/2002:	Experts from a Canadian consulting firm commissioned by Placer Dome state that the Tapan Pit, which leaked in 1996 and the Maguila Guila siltation dam, which burst in 1993, are in imminent danger of collapsing. ¹³
14/9/2002:	The Regional Trial Court of Marinduque hears plaintiffs from a civil case filed against Marcopper/Placer Dome. ¹⁴
11/2002:	Oxfam Community Aid Abroad <i>Mining Ombudsman Annual Report 2002</i> is published, including a preliminary report of the Marinduque case.
17/12/2002:	K.D. Ferguson, Placer Dome Vice President of Safety and Sustainability, writes to the Oxfam Community Aid Abroad arguing that the Marinduque Preliminary Report contains several factual inaccuracies and misleading statements.
30/4/2003:	Ned Santo Domingo, from Marinduque Island, reads a statement from the Marinduque Council for Environmental Concerns and Marinduque International at Placer Dome's Annual General Meeting in Toronto, Canada. ¹⁵
9/6/2003:	An independent team of geologists and mine experts from the United States, led by the USGS, start their environmental and health review of all the mine effected areas in Marinduque. ¹⁶ The study is paid for by the Philippine President's Social Fund. ¹⁷
10/6/2003:	Oxfam Community Aid Abroad Executive Director responds to the Placer Dome letter of 17 December 2002 reaffirming the view that Placer Dome has not fulfilled its commitments and obligations to the communities of Marinduque Island.
17/6/2003:	Mike Cabalda of the DENR releases a statement saying 'the tailings in the [Boac] river appear to be no longer reactive'. ¹⁸ In response, Dr. Aloysius U. Baes of the Center for Environmental Concerns asserts that it is impossible for these type of tailings to be inactive.
25/6/2003:	In a letter to the editor of the Philippine Daily Inquirer, Mines and Geosciences chief Horacio Ramos states 'the presidential assistance will not absolve Placer Dome Inc. and Marcopper Mining Corp. of their responsibility of funding the rehabilitation option that will be recommended by the US scientists as well as in compensating residents affected by the incident'

At Placer Dome's Annual General Meeting in 2003, Ned Santo Domingo of Marinduque Island, representing the Marinduque Council for Environmental Concerns (MACEC) and Marinduque International, reiterated the community grievances.

Request

As stated in the *Mining Ombudsman Report 2002*, the Mining Ombudsman was approached by representatives of the affected communities of Marinduque Island during the Philippine National Conference on Mining in May 2002.¹⁹

Due to the high-level travel warnings in the Philippines caused by international and domestic incidents, the Mining Ombudsman has, to date, been prevented from conducting a case investigation at Marinduque. Security precautions permitting, an Ombudsman investigation will be conducted before the end of 2003.

Grievances

Detailed grievances and demands made by the affected communities of Marinduque Island are documented in the Mining Ombudsman Report 2002. The concerns about the impacts of the Marcopper Mine are shared between four communities from Calancan Bay, Mogpog, Boac, and the mine site itself.

- > In Calancan Bay, mine tailings were pumped into the coastal waters for more than 16 years without permission from affected communities. Coumans estimates that 200 million tonnes of mine waste are spread over 80 square kilometres. Communities assert that they are yet to receive compensation or adequate rehabilitation of the bay.²⁰
- > Despite strong opposition from the Mogpog community, the Maguila-Guila creek – a headwater to the Mogpog river – was dammed in 1991. The dam was created to hold back tailings and waste from mining activities at the San Antonio pit. This dam silted up leading to seepage into the Mogpog river, which caused dieback along the banks of the river. In 1993 the dam collapsed causing a flash flood, which killed two children and devastated the environment. In 2001, engineering consultants, Klohn Krippen, stated that the dam was in danger of collapsing again and could potentially lead to the loss of life. In 2002, the dam is reported as close to collapse.²¹
- > On March 24 1996, a concrete plug in an old drainage tunnel leading from the bottom of the Tapan pit, a converted tailings pond for the new San Antonio mine pit, failed. This caused 3-4 million tonnes of mine tailings to spill down the Boac river. Following this disaster the Marcopper mine was shut down by the Philippine government. Rehabilitation of the Boac river remains incomplete and MACEC argues compensation has been inadequate.²² In November 2001, Placer Dome placed \$12 million for the clean up of Boac river and \$1 million for compensation payments into an escrow account. There is no evidence available of public accounting of how these funds are being spent. At time of print, independent studies are being undertaken by a USGS led team to determine the final requirements for clean up. However, community groups, such as the Center for Environmental Concerns and Kalikasan-Peoples Network for the Environment, are anxious about the validity and independence of these studies.²³

In last year's report it was stated that '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'.²⁴ Unfortunately, Placer Dome's approach to these issues does not seem to have altered. The company appears to have placed finances for further rehabilitation and compensation at Boac into an escrow account, however in correspondence with Oxfam Community Aid Abroad, the company claimed that it does not have any responsibility for the issues relating to Mogpog, Calancan Bay and the mine site. Placer Dome continues to insist that full responsibility for remaining compensation and reclamation issues lies with Marcopper, the Philippine company Placer Dome divested from one year following the Boac river tailings spill in April 1996.²⁵

At Placer Dome's Annual General Meeting in 2003, Ned Santo Domingo of Marinduque Island, representing the Marinduque Council for Environmental Concerns (MACEC) and Marinduque International, reiterated the community grievances. Domingo stated that compensation claims sent to Placer Dome in 1997 and 1998 were again sent to Placer Dome's Australian headquarters in 2003, yet there has been no response. While Domingo notes that Placer Dome states that it has spent \$70 million following the 1996 spill, he maintains that "32 affected villages have not yet received compensation for 1997 and 1998".²⁶ With respect to the \$13 million Placer Dome put into an escrow account, Domingo asks for transparency and accountability in its use. In conclusion Domingo asks:

"Finally, when will you [Placer Dome] acknowledge the legitimate claims for compensation from the people of Calancan Bay who are affected by the 200 million tons of lead contaminated waste you dumped in their bay over 16 years? And when will you finally acknowledge the legitimate claims of the people of Mogpog whose river was destroyed in the 1993 dam burst and whose fishermen have suffered from the 1996 mine spill?"²⁷



Demonstrators hold up streamers urging the Philippine government's Environment and Natural Resources Department to 'Save Mother Earth'. A rally of 500 people took over the streets in Manila after an accident at Marcopper Mining Corp spilled tonnes of mine wastes into a river on Marinduque island. Photo: Reuters/Romeo Ranoco



Community demands²⁸

Community demands remain largely unchanged. The following demands have been voiced on many occasions in the seven years since the mine was shut down in 1996.

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. This damage has ongoing economic and health effects.²⁹
- > 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 into the impacts of the tailings in the bay.
- > Compensation for the fisher folk for the loss of livelihood since 1975 and sufficient funds to cover health-related expenses. Such demands are 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 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 1996.³⁰

FOOTNOTES

¹ Coumans, C. (2000) 'Canadian Companies in the Philippines', *Undermining the Forests: The Need To Control Transnational Companies: A Canadian Case Study Forest People's Program*, pp. 59-67. ² Ibid.
³ Willson, J. to Ramos, F. (1996), letter, 11 April 1996. ⁴ Coumans, C. (2000) Op. Cit, pp.59-67. ⁵ 'PDTS's view was, and continues to be, that the best method of dealing with the residual tailing is submarine disposal.' See Placer Dome Technical Services (2001), *Post-spill Impact Assessment: Summary Report*, December, p.6. ⁶ MACEC and Coumans, C. (2002) 'The Successful; Struggle against STD in Marinduque' in *STD Toolkit*. Available at <http://www.miningwatch.ca> (accessed 15 July 2002). ⁷ Ibid. ⁸ Ibid. ⁹ 'Macapaal seeks damages from Canadian mining Firm' *Inquirer News Service*, 29 Jan 2002 ¹⁰ Loney, J. to shareholders, (2002), letter, 31 Jan 2002. ¹¹ Mallari Jr, D. (2002) 'A waiting game for Marcopper Victims', *Inquirer News Service*, 4 April 2002. ¹² The Provincial, Environment and Natural Resources Officer, Boac, Marinduque to The Regional Executive Director (DENR), Memo, 8 March 2002. ¹³ Datinguinoo, V. (2002), 'Another Disaster Looms in Marinduque', *PCIJ*, 6 April. Available at <http://www.pcij.org/stories/2002/marcopper.html> (accessed online 12 June 2003). ¹⁴ Mallari Jr, D. (2002) 'Hearings Against Marcopper Start' *Inquirer News Service* 14 September 2002. ¹⁵ Statement from the Marinduque Council for Environmental Concerns and Marinduque International at Placer Dome's AGM, (2003) MiningWatch Canada, http://www.miningwatch.ca/issues/Placer_Dome/MACEC_stmt_at_2003_AGM.html, 30 June 2003 (accessed online 23 June 2003). ¹⁶ Gaylican, C. (2003), 'DENR says Marinduque river rehab to begin Monday', in *Inquirer News Service*, 8 June 2003. ¹⁷ Kalikasan-Peoples Network for the Environment, (2003) 'Government pre-empting the rehabilitation study of Marinduque', press release, 17 June 2003. ¹⁸ Adraneda, K. (2003) 'US scientists arriving for final rehab study' in *The Philippine Star*, 7 June. ¹⁹ See <http://www.tetebba.org> for a copy of the Conference Statement and report on the National Conference on Mining. ²⁰ Coumans, C. (2000), Op. Cit, pp. 59-67. ²¹ MACEC & Coumans, C. (2002), Op. Cit. ²² Coumans, C. (2000), Op. Cit, pp. 59-67. ²³ Kalikasan-Peoples Network for the Environment, (2003), Op. Cit. ²⁴ Macdonald, I., and Ross, B., (2002), *Mining Ombudsman Annual Report 20012002*, Oxfam Community Aid Abroad, p.54. ²⁵ Ferguson to Hewett, A. letter, 17 December 2002. ²⁶ Statement from the Marinduque Council for Environmental Concerns and Marinduque International at Placer Dome's AGM, (2003), Op. Cit. ²⁷ Ibid. ²⁸ As detailed in Macdonald, I. & Ross, B. (2002), Op. Cit, p.54. ²⁹ In 1998, Placer Dome's former CEO, J. Willson, was quoted in the *Globe and Mail* as saying "Placer does not concede that there is damage in the bay", *Globe and Mail*, Canada, 16 April 1998. ³⁰ Cuarteron, A. O., to Baculio, A. H., (2001) letter, 9 October 2001.

Glossary and Acronyms

ADB	Asian Development Bank	ILO	International Labor Organisation
AIDS	Acquired Immune Deficiency Syndrome	JATAM	Jaringan Advokasi Tambang (Indonesian Mining Advocacy Network)
ARWOA	Auga River Waterway Resource Owners Association	Komnas HAM	Indonesian National Commission on Human Rights
ASIC	Australian Securities Investment Commission	LKMTL	Lembaga Kesejahteraan Masyarakat Tambang & Lingkungan (Council for People's Prosperity, Mining and Environment)
ASX	Australian Stock Exchange	LRC-KSK	Legal Rights and Natural Resources Center-Kasama sa kalikasan
Barangay	District	MACEC	Marinduque Council for Environmental Concerns
BHP	Broken Hill Pty Ltd	MCA	Minerals Council of Australia
BRIMOB	Mobile Brigade, the elite unit of the Indonesian Federal Police Force.	MCSC	Mine Closure Steering Committee
CAMC	Climax Arimco Mining Company	Mesa de Dialogo	Dialogue Table
CAO	Compliance Advisor/Ombudsman (World Bank Group, IFC/MIGA))	MIGA	Multilateral Investment Guarantee Agency
CELCOR	Centre for Environmental Law and Community Rights	MMSD	Mining Minerals and Sustainable Development
CEO	Chief Executive Officer	MOA	Memorandum of Agreement
CI	Conservation International	NEWG	Non-Government Environmental Watch Group
CONACAMI	National Coordinator of Communities Affected by Mining (Peru)	NGO	Non-Government Organisation
CORECAMI	Regional Coordinator of Communities Affected by Mining, regional arm of CONACAMI	OEC	PNG Government Office of the Environment and Conservation
DENR	Philippine Department of Environment and Natural Resources	OECD	Organisation for Economic Co-operation and Development
DESAMA	Didipio Earth Savers Movement	PDS	Placer Dome Technical Services
DFAT	Australian Department of Foreign Affairs and Trade	PT IMK	PT Indo Muro Kencana
DPR	Indonesian House of Representatives	PT KEM	PT Kelian Equatorial Mining
DRD	Durban Roodeport Deep Ltd	RDC	Regional Development Council
DSAC	Diocesan Social Action Center	Riverine tailings disposal	Disposal of tailings directly into a river system
ECA	Export Credit Agencies	STD	Submarine Tailings Disposal (the pumping of mine tailings directly into the ocean.)
ECC	Environment Compliance Certificate	Tailings	Material rejected from a mine after most of the recoverable valuable minerals have been extracted
EFIC	Export Finance Insurance Corporation (Australia)	TATR	Tim Advokasi Tambang Rakyat (Traditional Mining Advocacy Team)
EIA	Environment Impact Assessment	TFDP	Task Force Detainees of the Philippines
ELC	Environmental Law Centre	TGM	Tolukuma Gold Mine
EQUAS SA	Professional hydrological consultancy conducting studies in the Tintaya case	TIO	Telecommunications Industry Ombudsman
FDIE	Front of the Defense of the Interests of Espinar	TNC	Trans National Corporation
FREDERMIC-E	Front for the Defense of the Ccañipia Basin	UDHR	Universal Declaration of Human Rights 1948
FTAA	Financial or Technical Assistance Agreement	UNESCO	United Nations Educational, Scientific and Cultural Organisation
HIV	Human Immunodeficiency Virus	USA	United States of America
ICCPR 1966	International Covenant of Civil and Political Rights	USGS	United States Geological Society
ICESCR 1963	International Covenant of Economic, Social and Cultural Rights	WALHI	Wahana Lingkungan Hidup Indonesia (Indonesian Forum for the Environment)
ICMM	International Council of Metals and Mining	YBSD	Yayasan Bina Sumber Daya (Foundation for Resource Development)
IFC	International Finance Corporation		

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.

The benchmarks are intended to 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 have less ability to hold companies to account in respect of their human rights performance. 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 and have final say over the appointment and use of all consultants and groups. 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
- > Community men and women should fully participate in all aspects of the base line studies and impact assessments, including the selection, appointment and use of consultants and the development of Terms of Reference for studies.

1. Right to be Heard

Access to Information

Communities have a legitimate right to determine their own future; and therefore companies must respect the right of community members to free, prior 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. All communities that could be potentially impacted by a project have a right to access to full information and participation in negotiations, whether they are located in the area that the mineral body is located, or near the proposed project site, for example, downstream communities or communities located on adjacent islands.

- > Mining companies must respect the right of all community members, and especially indigenous communities, that may be impacted by a project to free, fair and prior informed consent to exploration and mining projects
- > Sufficient, accurate, and detailed information about a proposed project 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; any alternatives considered; mitigation, remediation and avoidance measures and strategies that will be utilised; 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 should have access to independent technical and legal advisors that can assist them in the interpretation of all information.
- > 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.
- > Communities should have access to full information as to the identities and policies of the financiers and shareholders of the proposed project. This information should be updated throughout the life of the project as required.
- > Communities should have access to full information from companies as to how the revenue generated by a project is to be paid and to whom. Mining companies should provide annual reports to community members detailing all revenue and other payments made in respect of the project.
- > Companies should publicly disclose all revenue and other payments made in respect of a project in order to ensure transparency and accountability in the use of extractives revenues and combat corruption and misappropriation of funds.
- > 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.

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. All community members have a right to participate in negotiations and decision making concerning project proposals and on-going operations.

- > 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. Companies should endeavour to lessen these inequalities by ensuring communities have access to independent technical and legal advisers that are selected and appointed by the communities in conjunction with civil society support organisations.

2. 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. Where relocation and resettlement is freely agreed to by communities, they should be guaranteed a standard of living that is higher than that which they had prior to resettlement.

- > 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, with the full support of the company.
 - 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.
 - 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 and 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 is 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 whose culture, sacred sites or spiritual connections to their land or natural resources have been harmed or detrimentally affected;
 - 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 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
- > Companies should put in place performance bonds at the beginning of a project that are held in trust by an independent body on behalf of the company and communities to cover any unexpected or unforeseen rehabilitation, mitigation or remediation costs that result from the project.
- > Companies should produce mine closure plans in consultation with local communities that identify any relevant compensation required for future losses, especially in relation to environmental degradation. These plans should be revisited bi-annually in order to ensure that they are consistent with changing circumstances.
- > Companies should publicly disclose all revenue and other payments made in respect of a project in order to ensure transparency and accountability in the use of extractives revenues and combat corruption and misappropriation of funds

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.
- > Company policies, internal monitoring and verification systems should be implemented to ensure that all employees and management are committed to and required to protect women's rights and pursue gender equality and women's empowerment. Accountability and incentive mechanisms should be put in place for encouraging and enforcing these policies and systems.
- > 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. Companies will also need to ensure that they develop appropriate capacity, allocate adequate resources, and foster the political will, to achieve successful policy development, implementation and enforcement.
- > 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 both men and women, 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 avoid or 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 down-stream 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 mine 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.

3. 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, or that companies and governments act together as a 'majority' block against communities.

- > 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.

4. 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.

Appendix 2 – Oxfam’s rights based approach¹

5. 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.

- > 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, increased risk STD and HIV/AIDS infections and so forth. This should be supplemented by staff training, including cross-cultural and gender training and a fostering of the political will within the company to develop, implement and enforce the Code of Conduct.
- > 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.
- > 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.
- > Companies should recognise the right of indigenous peoples to participate in all negotiations and decision making concerning their natural resources, land and right to development.
- > 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.
- > Women should be involved in all elements of decision-making and companies should provide opportunities for women to define what is appropriate development and participation for themselves.
- > Companies and projects should not only consider the practical gender needs of women, such as the provision of food and water, but women's strategic interests, such as ensuring that men and women have equal control and access over the resources and benefits from a project.

Aim 1: Right to a sustainable livelihood

1948, Universal Declaration of Human Rights

The General Assembly, whereas 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:

- > 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

States Parties to the present Covenant, *recognising* 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:

- > All peoples have the right to self-determination, by virtue of which right they freely pursue their economic, social and cultural development
- > States Parties to recognise the right to work and the enjoyment of just and favourable conditions of work
- > States Parties undertake to ensure the right to strike
- > States Parties to recognise the right to social security
- > States Parties 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 to recognise the fundamental right of everyone to be free from hunger

1992, Rio Declaration on Environment and Development

The United Nations Conference on Environment and Development, *recognising* the integral and interdependent nature of the Earth, our home, proclaims that:

- > 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)

As Heads of State and Government, *sharing* 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:

- > 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 and World Food Summit Plan of Action

We, the Heads of State and Government, *reaffirm* 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 Action

Aim 2: Right to basic social services

1948, Universal Declaration of Human Rights

- > 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

- > States Parties to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
- > States Parties 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

States Parties to the present Convention, *bearing in mind* the need to extend particular care to the child, recognise 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")

Participants in the World Conference on Education for All, *recalling* that education is a basic right for all people ... proclaim:

- > 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

Participants to the International Conference on Population and Development will be guided by:

- > Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health
- > States 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
- > All couples and individuals have the basic right to freely and responsibly decide the number, spacing and timing of their children

1995, Copenhagen Declaration and Program of Action (Social Summit)

- > Universal and equitable access to quality education
- > Highest attainable standard of physical and mental health
- > Access of all to primary health care

Aim 3: Right to life and security

1948, Universal Declaration of Human Rights

- > 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)

High Contracting Parties, considering that the UN has, on various occasions, manifested its profound concern for refugees ... have agreed

- > 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 ("refouler") a refugee.

1998, Guiding Principles on Internal Displacement (UNOCHA)

The principles are consistent with international human rights and humanitarian law. They provide guidance to the UN, States, other authorities, and NGOs.

- > 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

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances

- > 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 organization 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

The States Parties to this Statute, *mindful* that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity and *resolved* to guarantee lasting respect for and the enforcement of international justice, have agreed:

- > 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

Parties, realizing that the individual, having duties to other individuals and to the community, agree:

- > 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

- > 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)

The General Conference of the International Labor Organization, *considering* that the recognition of the principle of freedom of expression to be a means of improving conditions of labour and of establishing peace, adopts:

- > Workers and employers shall have the right to establish and to join organizations of their own choosing
- > The right to establish and join federations and confederations
- 1966, International Covenant on Economic, Social and Cultural Rights
- > 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

- > 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 CEDAW

The States Parties to this Protocol, *reaffirming* 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, recognize 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

Aim 5: Right to an identity

1948, Universal Declaration of Human Rights

- > 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

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:

- > 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 organizations which are based on theories of superiority of one race or one group of persons...

1966, International Covenant on Economic, Social and Cultural Rights

- > 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 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

- > 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

States Parties to the present Convention, *determined* 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:

- > 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 (C. 169)

The general Conference of the International Labor Organization, *noting* 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:

- > 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 Declaration and Program of Action (Social Summit)

- > 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

FOOTNOTE

1 Oxfam International (2001) Towards Global Equity: Strategic Plan 2001-2004.



An Indonesian activist holds a picture of a destroyed forest due to mining at a demonstration in front of Parliament building in Jakarta. Students demanded that the Indonesia Government stop mining in protected forests. Photo: AFP/Bay ISMOYO

Notes



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