



# Mining Ombudsman Annual Report 2004





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Refugee Council of Australia.

*Cover photo: From 1975 to 1991, the Marcopper/Placer Dome mine pumped over 200 million tonnes of mine tailings at surface level into Calancan Bay, Marinduque Island, the Philippines, producing a seven-kilometre causeway, which is still covered in debris. Photo: David Sproule/Oxfam CAA*

*Above: The men of Dubiulenga village tell the Mining Ombudsman how their health has been badly affected; they can no longer drink the water and their crops have suffered since the Tolukuma Gold Mine in Papua New Guinea started dumping over 100,000 tonnes of mine waste annually into the Auga river behind them.*

## Acknowledgements

This report was produced through the skills, knowledge and hard work of many dedicated people.

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***No Australian government funds nor tax-deductible donations have been used to fund the production of this report or the work of the Mining Ombudsman.***

## Feedback welcome

We appreciate any feedback, comments or input you may have about issues and cases discussed in this report. Comments can be emailed to [miningombudsman@oxfam.org.au](mailto:miningombudsman@oxfam.org.au)

**This report is available online at**  
**[www.oxfam.org.au/campaigns/mining](http://www.oxfam.org.au/campaigns/mining)**

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## The rights-based approach to mining advocacy

Oxfam Community Aid Abroad is an independent, non-government aid and development agency and the Australian member of the Oxfam International confederation.

For over 50 years Oxfam Community Aid Abroad has been a vehicle for Australians to assist others to build a fairer and more sustainable world by fighting global poverty and injustice. The agency undertakes long-term development projects, provides humanitarian responses during disaster and conflict, and advocates for policy and practice changes that promote human rights and justice.

Oxfam Community Aid Abroad takes a rights-based approach to its work. This reflects the view that poverty and suffering are primarily caused and perpetuated by injustice between and within nations, resulting in the exploitation and oppression of vulnerable peoples. Such injustice and suffering are neither natural nor inevitable, but result from the violation of the human rights of women, men and children by people or institutions that have greater access to power, and through systems based on injustice, inequality and discrimination.

Oxfam Community Aid Abroad speaks in its own voice. It does not assume a mandate to speak on behalf of others, but aims to facilitate people speaking for themselves. Oxfam Community Aid Abroad is not opposed to mining, but believes it must be undertaken in accordance with rights codified under the international human rights system, particularly the right of women and men from communities to give or withhold free, prior and informed consent to both exploration and mining activities.

Oxfam Community Aid Abroad believes that private sector investment can be a driver of economic growth and poverty reduction, provided appropriate regulations and controls exist. However without adherence to human rights standards, mining can cause the loss of land and livelihoods, degradation of land and waterways, and increased violence and conflict. The most vulnerable or marginalised members of communities – such as women, children and indigenous peoples – tend to be most excluded from the economic benefits of mining, and to bear the brunt of its negative social and environmental impacts.<sup>1</sup>

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# 1. The Mining Ombudsman project

In the past few decades, the Australian mining industry has increased its activity in economically developing countries in the Asia-Pacific, Africa and the Americas. Australian mining operations are increasingly impacting on poor and vulnerable communities – the same communities that Oxfam Community Aid Abroad has worked with for over 50 years.

Many communities have complained of human rights abuses and environmental degradation caused by, or on behalf of, Australian mining companies. These communities often have no institution they can go to for fair and equitable redress, so companies can disregard their concerns. This sometimes leads to costly legal actions and violent confrontations. The seven cases in this report illustrate some of the negative impacts that mining can have on local women, men and children.

**In February 2000 Oxfam Community Aid Abroad set up a Mining Ombudsman to:**

1. Assist women and men from local and Indigenous communities whose human rights are threatened by the operations of Australian-based mining companies.
2. Assist women and men from communities that are, or might be, affected by a mining operation to understand their rights under international law.
3. Help ensure that the Australian mining industry operates in such a way that the rights of women and men from local communities affected by mining are better protected.
4. Demonstrate the need for an official complaints mechanism within Australia.
5. Demonstrate the need for enforceable, transparent and binding extraterritorial controls that would require Australian mining companies to adhere to universal human rights standards wherever they operate.

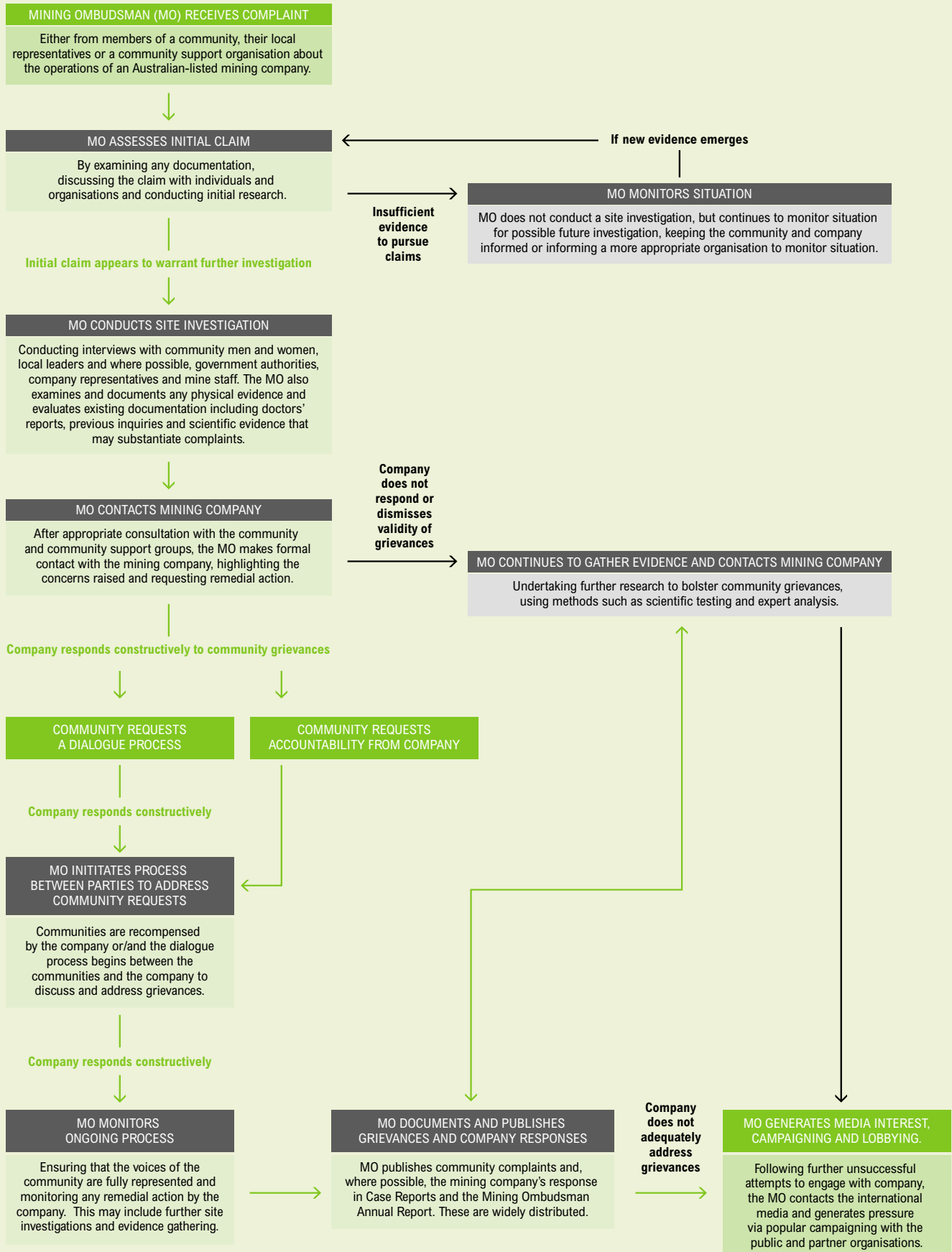


The Mining Ombudsman receives complaints through Oxfam Community Aid Abroad networks in Asia, the Pacific, Africa and the Americas. The Mining Ombudsman checks all claims through site investigations, a process involving extensive interviews with local community men, women and youth, civil society organisations and where possible, government and company officials. The Mining Ombudsman then produces an investigation report that is sent to all stakeholders for comment and action, and undertakes on-site progress evaluations every 18 months to two years.

It is not the Mining Ombudsman's role to judge individual mining projects, but rather to try to ensure that companies treat local communities in a fair and equitable manner, respecting the human rights of women, men and children.

*Above: Mining Ombudsman Ingrid Macdonald collecting testimonies from communities affected by the Tintaya mine in Peru. Photo: Brendan Ross/OxfamCAA*

# The Mining Ombudsman process



## 2. The year in review

This has been a challenging but rewarding year for the Mining Ombudsman project. Achievements include continual encouraging developments in the Tintaya case in Peru, widespread support for the International Women and Mining Network and amendments to Australian corporate law requiring the disclosure of nominee company identities. The Mining Ombudsman has also taken up a case on behalf of communities at the Vatukoula Gold Mine in Fiji.

The Mining Ombudsman has adopted a new reporting structure aimed at increasing transparency, accessibility and accountability. Detailed individual Case Reports will be published after each investigation, enabling the Annual Report to focus primarily on policy issues.

Through this change the Mining Ombudsman aims to: provide more in-depth analysis and better facilitation of local community voices; be more responsive to the needs of local communities; and increase transparency of the Mining Ombudsman's dealings with companies. The first Case Report, on the Vatukoula Gold Mine in Fiji, was released in July 2004 and is available at [www.oxfam.org.au/campaigns/mining](http://www.oxfam.org.au/campaigns/mining)

The year's biggest disappointment was the response of World Bank Group management to the progressive recommendations of its own Extractive Industries Review (EIR). These included both a rights-based approach to poverty alleviation, and support for complaints mechanisms for extractive industries. In the past three years, scarce resources of various civil society groups – including the Mining Ombudsman – have been devoted to the EIR process. Despite positive dialogue, the World Bank again failed to commit to fundamental changes needed to achieve its mandate for poverty alleviation through sustainable development. The EIR is discussed further in Figure B on page 9.

In recent years the mining industry has moved to present itself as an agent of 'sustainable development',<sup>2</sup> despite criticism that this is perhaps oxymoronic for an industry defined by exploitation of non-renewable resources.<sup>3</sup> The main drivers for this shift appear to be public campaigning and legal action against various companies by local communities. Both have shone a global spotlight on the industry, undermining its profitability and reputation. As a result, some companies and industry bodies have begun moves towards more responsible

corporate citizenship. Yet too many mines continue to have the kinds of negative social and environmental impacts demonstrated in this and previous Annual Reports, and in the Mining Ombudsman's Case Reports.

### Tintaya, Peru

This case is perhaps the best illustration of the capacity of an Mining Ombudsman's role to bring about positive change.

In 2001, five communities affected by the Tintaya copper mine in Espinar, Peru requested that the Mining Ombudsman investigate their situation.

Their grievances included: forced evictions with little to no compensation; loss of livelihoods; pollution; lack of employment opportunities; and increased violence against women. The Mining Ombudsman facilitated a multi-stakeholder dialogue (the Dialogue Table) that included the communities, civil society and the company, BHP Billiton. Five working commissions followed in 2002, and the Mining Ombudsman undertook evaluations in April and October 2003. While far from perfect, these processes have produced tangible improvements such as:

- Increased participation of women in decision-making, and increased community access to information in local languages, to inform their decision-making.
- An in-principle agreement that each community will receive land of 125 –150 per cent of the area of land previously acquired by the company, depending on that land's value. A sustainable development package is still under discussion but progressing.
- BHP Billiton set up a 'Framework Agreement' pledging an annual US\$1.5 million or three percent of before-tax mine profit (whichever is greater) to fund sustainable

development programs. Unfortunately some communities were frustrated by inadequate consultation during the setting up of this agreement.

- Training by local NGO CooperAccion to enable participation by community members in Community Environmental Surveillance programs.
- Joint community/company studies by the Environment Commission, which found some contamination. Progress is being made to address this.

Prior to the Mining Ombudsman intervention, there appeared to be intractable differences and conflict between the communities and BHP Billiton. Two years on, they are working together to resolve problems, with mutual appreciation for each other's viewpoints.

The story is not all positive. During an evaluation visit in October 2003, the Mining Ombudsman found that some unresolved issues were still causing frustration for local people and their support organisations. For example, processes have been slow and complicated; the company has constructed a tailings dam at the top of the Ccanipia river without prior consent from five communities; and communities felt inadequately consulted regarding the Framework Agreement.

*A detailed Case Report will be published later this year, available in hard copy and at [www.oxfam.org.au/campaigns/mining](http://www.oxfam.org.au/campaigns/mining)*

### Tolukuma, Papua New Guinea

This year the Mining Ombudsman continued to raise the concerns of Papua New Guinean communities affected by the Tolukuma Gold Mine with company Durban Roodepoort Deep (DRD). The mine discharges more than 100,000 tonnes of tailings into the Auga River system annually. The women and men living along the river are concerned about negative impacts on the environment, on their ability to grow enough food and on their health, including the unexplained deaths of over 30 people. They are also concerned about DRD's plans to expand operations.

*Right: Sonny Boy Mataya, from Bocboc, Mogpog in front of the millions of tonnes of mine waste and rusted pipes at the headwaters of the Mogpog River, Marinduque Island, the Philippines. The Maquila-Quila dam failed in 1993, sending a toxic wall of silt and water down the Mogpog river sweeping away homes, people and livestock and killing two children. As the dam is in a state of disrepair, locals fear that another disaster may happen at any time. Photo: Ingrid Macdonald/Oxfam CAA*





Following the initial investigation in August 2001, the Mining Ombudsman undertook an extensive evaluation at Tolukuma in January 2004, interviewing numerous local community men, women and youth affected by the mine, attending community meetings, and meeting with key representatives of various local organisations, government and mine management. The Mining Ombudsman found that community grievances had not been substantially addressed since being raised in 2001. Although DRD senior management appear to have become more aware of their social and environmental responsibilities, including, according to some local communities, recent positive statements by the new Mine Manager, there has been little change reported on the ground.

A detailed Case Report will be published later this year, available in hard copy and at [www.oxfam.org.au/campaigns/mining](http://www.oxfam.org.au/campaigns/mining)

### Vatukoula, Fiji

This case was brought to the Mining Ombudsman in 2003. In November 2003, the Mining Ombudsman conducted an investigation of the Vatukoula gold mine in response to a formal request by the Fiji Mine Workers Union and the Citizens Constitutional Forum. In 1991, hundreds of mine workers at Vatukoula withdrew their

labour in protest against unsafe working conditions, poor pay, inadequate safety measures, gender discrimination, sub-standard housing and water quality, and because of concerns about their health and the environment. Thirteen years later the dispute continues. More than 300 ex-workers are still picketing the mine despite the strike being declared illegal in June 2004 by the Fiji High Court. Pay and conditions have improved since 1991, yet current workers allege their pay still does not cover their cost of living. The broader Vatukoula community is also concerned about air pollution, untreated drinking water, outstanding land-owner claims and other social issues related to the mine.

In March 2004 DRD – the subject of the Tolukuma investigation – launched a takeover bid for Vatukoula mine company Emperor Mines Ltd. The offer was increased on 16 June and was due to close on 30 July 2004.

In June 2004 the High Court of Fiji upheld a challenge from Emperor Gold to the validity of a previous Fijian Commission of Inquiry into conditions at Vatukoula. The Court found the 1995 GP Lala Commission of Inquiry Report and its recommendations to be invalid and unlawful.



*Mine tailings being dumped into the tailings dam at Vatukoula Gold Mine by Emperor Mines Limited. Photo: Anne Lockley/Oxfam CAA*

The Vatukoula Case Report was published in July 2004 and is available at [www.oxfam.org.au/campaigns/mining](http://www.oxfam.org.au/campaigns/mining)

### Marinduque, The Philippines

The Placer Dome company continues to deny responsibility for environmental rehabilitation and compensation of local Filipino communities on Marinduque Island left with the appalling legacy of the Marcopper mine.

In 1993 the collapse of the Maguila-Guila dam at the Marcopper mine released a flood of metal-enriched silt into the Mogpog River. The flood killed two children, destroyed homes, drowned livestock and contaminated farmland. In 1996 a plug in a drainage tunnel to the Boac River burst, filling the river with up to four million tonnes of mine tailings. Over a 16-year period approximately 200 million tonnes of tailings were also pumped at surface level into the nearby Calancan Bay.

The concerns of community women and men have remained since Placer Dome divested in 1996 and walked away from the problems at Marinduque. Communities at Mogpog and Calancan Bay claim that there has been no rehabilitation of their environment and no payment of appropriate compensation. They are concerned about the integrity of the Maguila-Guila dam, and continue to experience health, environmental and farming problems.

## Figure A: What about the women?

In June 2002, Oxfam Community Aid Abroad convened the 'Tunnel Vision: Women, Mining and Communities' workshop in Melbourne. The first of its kind in Australia, the workshop brought together speakers from Indigenous Australia and the Asia Pacific. It found that women had overwhelmingly been excluded from the benefits of mining, and borne the brunt of its negative social and environmental impacts. Issues raised echoed the grievances voiced by women from communities who have brought their complaints to the Mining Ombudsman.

This year the Mining Ombudsman has actively engaged in the International Women and Mining Network, made up of women both affected by and engaged in mining. The Network meets every four years; its third gathering is in India in October 2004, with support from Oxfam Community Aid Abroad. The agency will also support participation by women from Indonesia, Papua New Guinea, Fiji and Australia.

This year the Oxfam Community Aid Abroad Mining Ombudsman supported Women and Mining workshops in Papua New Guinea and Western Australia, and presented papers at the Voices for Change: Women in Mining conference in Papua New Guinea and the Australian National University Pit Women: Women Miners in the Asia Pacific workshop. This work aimed to raise awareness about the different and often detrimental impacts of mining on women, and to promote gender-aware policies and practice amongst individuals, communities and organisations involved in mining issues.

For more information about Oxfam Community Aid Abroad's support of women and mining projects visit [www.oxfam.org.au/campaigns/mining](http://www.oxfam.org.au/campaigns/mining)



In March 2004 the Mining Ombudsman conducted an extensive investigation at Marinduque. In June 2004 the Mining Ombudsman sponsored an investigation of water quality, sedimentation and soil pollution along the Mogpog River to determine pollution levels. The results will be available later this year with the Marinduque Case Report, available in hard copy and at [www.oxfam.org.au/campaigns/mining](http://www.oxfam.org.au/campaigns/mining)

### Didipio, The Philippines

Recent developments have called into question the validity of Climax Mining Ltd's 50-year exploration licence at Didipio in the Philippines. The Philippines Legal Rights Centre has successfully challenged the constitutionality of provisions in the *Philippines Mining Act 1995* allowing 100 per cent foreign ownership of Filipino mining operations. Despite this, local residents assert that company employees continue to falsify documents and bribe community leaders in attempts to manufacture consent for the mine, which has already been rejected by communities.

The Mining Ombudsman's first investigation was in September 2002. In March 2004 the Mining Ombudsman reinterviewed community representatives and their support organisations to assess progress. They indicated that since the initial investigation Climax Mining has increased communication through a new Director of Operations, prominent Filipino Jose Leviste Jr. However, their grievances relating to their lack of prior informed consent for the project and its potential environmental damage have not yet been addressed.

### Projects in Indonesia

The status of the mine at Gag Island remains largely unchanged since previous Mining Ombudsman reports. However, BHP Billiton this year stated in discussions with Oxfam Community Aid Abroad concerning Gag Island that it would not use submarine tailings disposal. Further, the company has formally stated:

*"BHP Billiton has decided not to pursue Deep Sea Tailing Placement (DSTP) as a potential tailing disposal option for any of its current prospects. The Company also believes that given the very specific circumstances where DSTP could be considered appropriate, it is unlikely that the technology will be pursued in any of our future developments."*<sup>4</sup>

### Figure B: The World Bank Extractive Industries Review

Under the auspices of an Eminent Person – former Indonesian Environment Minister Dr Emil Salim – the World Bank Group's *Extractive Industries Review Final Report: Striking a Better Balance* was presented to Bank President James Wolfenson in January 2004. The Extractive Industries Review (EIR) involved a multi-stakeholder process with representatives from industry, governments, the Bank and civil society. These included the Mining Ombudsman and community representatives from Didipio, Vatukoula, Kelian and Tolukuma. Initiated by Wolfenson in 2001, the EIR was intended to assess whether World Bank support for extractive industries could positively contribute to the Bank's mandate of sustainable development and poverty alleviation.

The final report states the World Bank has a role in the oil, gas and mining sectors "only if its interventions allow extractive industries to contribute to poverty alleviation through sustainable development. And that can only happen when the right conditions are in place."<sup>5</sup> According to the EIR report's recommendations, such conditions would include:

- obtaining free prior informed consent of local communities and Indigenous peoples affected by extractive projects as a precondition for financing;
- ensuring that revenues of Bank-financed projects benefit all affected local groups;
- requiring that freedom of association is present in Bank-financed projects as a basic human/labour rights requirement;
- ensuring that good governance structures are in place *before* project finance and implementation occurs; and
- ensuring that submarine tailings disposal methods are not used.

With a few exceptions, the World Bank management's response in August 2004 to the EIR rejected the most critical conditions for Bank support for extractive industries, and deferred taking decisions or making commitments until later dates and future processes. Although accepting some conditions in principle, the Bank committed to only a few enforceable or participatory implementation measures.

Yet unless the 'right conditions' are in place before the Bank supports extractives industries, its actions are clearly likely to exacerbate poverty and undermine sustainable development. Oxfam Community Aid Abroad has called for an immediate moratorium on any World Bank Group investments in the extractive sector until such conditions are in place for all World Bank supported oil, gas and mining projects.

*Further information can be found on the EIR civil society website at [www.eireview.info](http://www.eireview.info) and the official EIR website at [www.eireview.org](http://www.eireview.org)*

BHP Billiton began exploration at Gag Island in 1995 and signed a Contract of Work for an open-cut nickel mine in 1998. In 1999, the Indonesian government put the project on hold when it enacted Forestry Law No. 41 preventing open-cut mining in protected forests, including Gag Island. In 2002 Conservation International (CI) found the Raja Ampat archipelago, including Gag Island, to be one of the world's most biologically diverse marine areas, and the archipelago is also being considered for World Heritage listing. Since the 1999 protected forests ban, BHP Billiton has claimed Gag Island is no longer a company priority.

The Mining Ombudsman is concerned that the mine will be sold on.

In May 2004, the Indonesian Government issued a Presidential Decree allowing 13 mining companies, including PT Gag Nickel on Gag Island, to resume mining in protected forests. In July 2004, the Indonesian House of Representatives endorsed the Decree. BHP Billiton is yet to officially respond.

At the request of relevant Indonesian civil society organisations, the Mining Ombudsman has now ceased work on the Kelian Equatorial Mining and Indo Muro Kencana cases.

# 3. The problem

Globally, the push towards a free-market system has resulted in increasing the impact of mining companies' activities on the world's poorest and most vulnerable people. Recent figures show that as a result of the increasingly rapid and unfettered movement of international capital, the revenues of five of the world's largest transnational companies add up to more than double the combined Gross Domestic Profit of the poorest 100 countries.<sup>6</sup>

This process of economic globalisation is being driven by transnational companies, wealthy governments and multilateral financial institutions including the International Monetary Fund, World Trade Organisation, World Bank Group and Asian Development Bank.

For decades, poor countries have financed economic development by borrowing heavily from such institutions. These loans often required the imposition of strict structural adjustment programs, obliging borrowing countries to make profound legal and economic changes to produce an environment conducive to foreign investment. The resulting economic liberalisation, market deregulation, privatisation of industries and services has meant that, as stated in a recent Oxfam America briefing paper:<sup>7</sup>

*"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."*<sup>8</sup>

It has also enabled a rapidly growing Australian mining industry to expand into some of the world's most remote communities.<sup>9</sup> Australian mining companies are increasingly operating in countries in the Asia-Pacific, Africa, and the Americas.

Through the Mining Ombudsman project, Oxfam Community Aid Abroad has found that the grievances of community women and men affected by such activities often constitute denial of their human rights – especially to free, prior and informed consent; to self-determination, land, and a livelihood. These grievances are often industry-wide, arising at every stage of the project cycle. Indigenous peoples are particularly vulnerable in part because they are usually the poorest, most marginalised groups in society, and because of the particular damage that can result from loss or damage to the lands, waterways, flora, fauna and sacred sites with which they have a longstanding spiritual, often custodial relationship.

Governments, multilateral financial institutions and companies justify the promotion of large-scale mining in poor countries in the name of economic development and reducing poverty. Yet despite decades of economic liberalisation, deregulation and privatisation easing the way for such activity, inequality between and within countries has increased.<sup>10</sup> The World Bank's own recent Extractive Industries Review (EIR) found that:

*"Data on real per capita gross domestic product (GDP) reveal that developing countries with few natural resources grew two or three times faster than resource-rich countries over the period 1960-2000. Of 45 countries that did not manage to sustain economic growth during this time, all but six were heavily dependent on extractive industries, and a majority of them also experienced violent conflict and civil strife in the 1990s."*<sup>11</sup>

The EIR is the culmination of a two and a half year independent process involving the World Bank, government, industry and civil society. It recommended that if Bank support for mining is to contribute to poverty reduction:

*"... the World Bank Group should adopt a rights-based approach to development and ensure that its support for projects is directed toward fulfilling international guaranteed human rights and in particular addresses power imbalances that affect the full exercise and enjoyment of all human rights by the poor and most vulnerable."*<sup>12</sup>

For more information about the EIR, refer to Figure B on page 9.



Left: Morris Movi points to the Auga River where Durban Roodepoort Deep dumps over 100,000 tonnes of mine waste annually from the Tolukuma Gold Mine. He is concerned about negative environmental and health impacts and the lack of compensation and development from the mine. Photo: Ingrid Macdonald/Oxfam CAA

Right: A discharge pipe at the Vatukoula Gold Mine tailings pond in Fiji, where employees complain of low pay and poor working conditions, and more than 300 ex-workers still sit on a picket line in front of the mine 13 years after an industrial dispute. Photo: Ingrid Macdonald/Oxfam CAA





## 4. Some solutions

**Figure C: The solutions in brief**

1. Mining companies should uphold the same standards of human rights wherever they operate.
2. International human rights duties should be extended to mining companies, given their increasing power and influence.
3. Host countries (where companies operate) should not have sole responsibility for ensuring that companies uphold and promote human rights.
4. Home countries (where companies are owned) should take some responsibility for ensuring that companies uphold and promote human rights when operating abroad.
5. Australian mining companies need an official, independent industry complaints mechanism.

### **1. Mining companies should uphold the same standards of human rights wherever they operate.**

Poverty reduction can only be achieved if companies uphold the human rights of people affected by their activities. This is particularly important for mining companies, which often operate in remote areas amongst some of the world's poorest and most vulnerable people. These rights include the right to clean water, a safe environment, sustainable livelihoods, to give or withhold free prior informed consent, and to control use of their land and natural resources. This last is especially relevant for Indigenous peoples. Others include the right to fair compensation for loss of property and to be free of intimidation and violence.

Without adherence to human rights standards, mining can bring significant negative impacts, including loss of land and livelihoods, degradation of land and waterways, and increased violence and conflict. It cannot 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* highlighted how women in particular tend to be excluded from the benefits of mining, and to bear the brunt of its negative social and environmental impacts.<sup>13</sup>

All mining company operations should apply the same set of universal human rights standards wherever they operate, as discussed in Figure D on page 13. 'The Benchmarks for the mining industry' appended to this report illustrate how a rights-based approach to mining can operate, and provide a starting point for action by mining companies.

### **2. International human rights duties should be extended to mining companies, given their increasing power and influence.**

The International Council on Human Rights Policy argues that the development of international law has benefited companies by protecting their rights and interests, and that as such it is appropriate to also extend international legal obligations to them.<sup>15</sup>



Josefa Salau, the President of the Fiji Mine Workers Union, explains how he has been on strike since 1991 due to poor pay and working conditions, environmental concerns and the failure of Emperor Mines Limited to recognise the Union at Vatukoula Gold Mine. Photo: Ingrid Macdonald/Oxfam CAA



Protestors in the Philippines march to the Department of Environment and Natural Resources, calling for the scraping of the Philippine Mining Act of 1995, which they claim to be environmentally destructive. The said mining act allows foreign mining companies to fully operate in the Philippines. Photo: AFP PHOTO/Jay DIRECTO.

As UN Secretary General, Kofi Annan, 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."*<sup>16</sup>

To date, it has been primarily the responsibility of governments to ensure that mining companies do not violate people's rights. This reflects the power historically wielded by the state, both individually and collectively through institutions like the UN. However the increasing global power and influence of transnational companies means that they, alongside governments, must be responsible for upholding human rights within their spheres of influence.

The UN *Universal Declaration of Human Rights* codifies not only the moral responsibility of companies to uphold rights of those affected by their activities, but is increasingly seen as implying their *legal* liability as 'organs of society' to respect, promote and secure human rights.<sup>17</sup> Renowned international legal scholar Professor Louis Henkin states that,

#### Figure D: The nature of human rights

Human rights are 'inherent': all people – men, women, girls and boys – possess human rights because they are human beings.

Human rights are 'inalienable': they cannot be exchanged, traded or taken away.

Human rights are 'universal': guaranteed to all "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."<sup>14</sup>

The universality of human rights means that every person is entitled to the same level of protection of their rights wherever they live and work. Communities that the Mining Ombudsman works with – for example on Marinduque Island in the Philippines, whose rights to clean water, a healthy environment, food security and a sustainable livelihood have been violated – are entitled to the same protections and redress that Australians might expect from mining company Placer Dome in the same situation.

"...[e]very individual and every organ of society excludes no one, no company, no cyberspace. The *Universal Declaration* applies to them all."<sup>18</sup>

The UN Sub-Commission on the Promotion and Protection of Human Rights recently adopted *Norms of the Responsibilities of Transnational Corporations and Other Business*

*Enterprises with Regards to Human Rights* ('UN Norms').<sup>19</sup> The UN Norms codify company duties regarding human rights, and were drafted by independent human rights experts elected from different regions by the UN Commission on Human Rights. Oxfam Community Aid Abroad supports the UN Norms, as should the Australian Government and all mining companies.

### 3. Host countries should not have sole responsibility for ensuring that companies uphold and promote human rights.

Host countries have primary responsibility to ensure that mining companies do not violate people's rights. Yet in reality many developing countries are unable or unwilling to do so. This may stem from fear of losing potential and current investors on which they are economically dependent, or from a lack of resources and capacity to enforce regulations. However companies should not violate and abuse the rights of local communities simply because they can.

As discussed, transnational companies are gaining increasing economic power and influence relative to governments. Multilateral institutions have facilitated this through structural adjustment programs aimed at easing the way for foreign investment. Strengthening and upholding environmental and human rights standards are rarely, if ever, part of these programs.

The prioritisation of conditions favouring investment enables companies to engage in a so-called 'race to the bottom': minimising costs by investing in countries that provide the lowest production costs and regulatory standards.

Greater international financial and company mobility has enabled companies to rapidly invest in 'investor-friendly economies' and divest when conditions change. As a result many countries are reluctant to raise environmental, labour and Occupational Health and Safety standards lest they deter investors.<sup>29</sup>

### 4. Home countries should take some responsibility for ensuring that their companies uphold and promote human rights when operating abroad.

*"Regulation – the establishment and implementation of rules-based regimes – has long been used to ensure that corporations are accountable to society at large."*<sup>30</sup>

Australian mining companies repatriate significant profits from their overseas operations, benefiting the Australian economy, shareholders and investors. Australia should therefore ensure that the way these profits are accumulated is consistent with standards required of companies operating here.

The cases documented in this report demonstrate why controls are required for Australian mining companies operating abroad. Crucially, the Australian Government should develop extraterritorial regulations consistent with the Benchmarks for the mining industry appended to this report. There are a number of precedents for extraterritorial regulations:

- The OECD *Convention on Combating Bribery of Public Officials in International Business Transactions* 1999 was signed by the 29 members of the OECD and five others. Its requirements were incorporated into Australian law via the *Criminal Code Amendment (Bribery of Foreign Public Officials)* Act 1999, No 43, 1999.<sup>31</sup>
- Amendments were made in 1999 to the Crimes Act allowing prosecution of Australian citizens who commit child sex offences overseas.
- Legislation exists allowing prosecution of those who commit crimes against Australians serving overseas as UN personnel.

## Figure E: The UN Norms

Although the *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*<sup>20</sup> recognises that primary responsibility to promote, secure and protect human rights rests with governments, its first general obligation states that:

*"...within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to respect, ensure respect for, prevent abuses of, and promote human rights recognized in international as well as national law, including the rights and interests of Indigenous peoples and other vulnerable groups."*<sup>21</sup>

The UN Norms require companies to ensure that their activities do not contribute directly or indirectly to human rights abuses, and that they do not directly or indirectly benefit from abuses of which they were aware, or ought to have been aware. The Norms oblige companies to refrain from activities that undermine the rule of law and other efforts to respect human rights. Moreover, they oblige them to take an active role in promoting respect for human rights generally.<sup>22</sup>

The Norms contain provisions relating specifically to the mining industry concerning the use of security forces, non-involvement in corruption and bribery, adherence to the precautionary principle (take no action unless it has been proven not to cause harm) and upholding economic, social and cultural rights, such as the right to food, health, clean water, housing and education.<sup>23</sup> The Norms emphasise Indigenous peoples' rights and the importance of gaining free, prior informed consent.<sup>24</sup> They also cover workers' rights including freedom of association and collective bargaining, a safe and healthy working environment, prohibitions on child and forced labour and the right to a living wage.<sup>25</sup>

The Norms oblige companies to adopt internal rules of operation and conduct periodic reviews, and to incorporate these into contracts with other stakeholders. They oblige companies to train managers and workers in these rules, and subject them to periodic monitoring by the UN or other bodies.<sup>26</sup> They require transparent and independent monitoring, and that companies provide prompt, effective and adequate reparation to adversely affected people, entities and communities through reparations, restitution, compensation and/or rehabilitation for damage done or property taken.<sup>27</sup>

The exact binding nature of the UN Norms is still to be determined. However it is clearly a step in the right direction.<sup>28</sup>

For further information see the Office for the United Nations High Commissioner for Human Rights at [www.ohchr.org](http://www.ohchr.org) and Amnesty International, *The UN Human Rights Norms for Business: Towards Legal Accountability* at [www.amnesty.org](http://www.amnesty.org)



## 5. Australian mining companies need an industry complaints mechanism.

Under the international human rights system, all people are entitled to have complaints addressed fairly and independently. Establishing a formal, broad-based complaints mechanism to oversee Australian mining industry activities in Australia and abroad would increase the industry's transparency, competitiveness and efficiency. It would also enable companies to be more transparent and accountable to communities affected by mining.

Australia needs a mining industry complaints mechanism because:

1. There are consistent allegations of human rights violations and environmental degradation against Australian mining companies.
2. Self-regulation has proved an ineffective guarantee to community women and men at risk of harm from mining.
3. There is a lack of legal recourse for people affected by Australian mining companies, particularly if 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 mining.
4. Australian companies, shareholders and financiers receive significant benefits from mining activities abroad through repatriation of mining profits. Australia should therefore be proactive in ensuring that these profits are not gained at the expense of basic human rights.

Even the largely industry-sponsored Mining Minerals and Sustainable Development project stated that:

*"...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."*<sup>33</sup>

A complaints mechanism could result in competitive advantages for a responsible company, by reducing the likelihood of less responsible 'free-rider' companies either benefiting from or damaging their reputation by association.<sup>34</sup>

For example, DRD's Tolukuma gold mine uses outdated riverine tailings disposal technology, considered inappropriate by industry leaders and the World Bank Group. In Marinduque, Placer Dome's claims of corporate social responsibility infuriate those living with the legacy of the Marcopper mine. Placer Dome can be seen as a 'free-rider', espousing corporate social responsibility while bringing the industry into disrepute by refusing to be held accountable for its past actions.

*Right: Crossing an unstable bridge across the Auga River, in Papua New Guinea where Tolukuma Gold Mine dumps over 100,000 tonnes of mine waste into the river annually. Photo: Ingrid Macdonald/Oxfam CAA*



## Figure F: The Corporate Code of Conduct Bill

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

- Extend environmental, employment, OHS and human rights standards to the conduct of Australian corporations employing over 100 people in a foreign country.
- Require such corporations to report in Australia on their compliance with the standards.
- Provide for the enforcement of the standards.

At that time, Oxfam Community Aid Abroad identified the following strengths of the *Bill*:<sup>32</sup>

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

Oxfam Community Aid Abroad recommended that the Bill apply to corporations employing more than 50 people overseas, and that corporations be obligated to ensure their activities are consistent international human rights standards. The agency also recommended that an independent complaints mechanism be set up to act in conjunction with the legislation.

On 24 June 2004 Australian Democrats Senator Natasha Scott Despoja tabled an *Exposure Draft of the Corporate Code of Conduct Bill 2004*, which is a revised version of the Democrats' original Corporate Code of Conduct Bill. The Exposure Draft of the Bill was released before being formally introduced into the Senate by Senator Scott Despoja, in order to enable non-government organisations, businesses, academics and others to resolve some of the difficulties with the original Bill. Oxfam Community Aid Abroad supports actions such as this, and will be providing feedback and suggestions for improvement.

# 5. The framework for a complaints mechanism

Key issues for the formation of a formal industry complaints mechanism include:

- Acknowledgement of power differentials between companies and affected communities;
- Accessibility of the mechanism to the people from affected communities;
- Recognition that human rights and environmental standards must be improved, and that this will not happen across the whole industry without enforcement by an authoritative body.

The Mining Ombudsman recommends that a complaints mechanism have three key functions, comparable to those of the Compliance Adviser/Mining Ombudsman (the CAO) of the World Bank's International Finance Corporation (IFC)/Multilateral Investment Guarantee Agency (MIGA):<sup>35</sup>

- **Complaints handling** – receiving and investigating community complaints and making detailed recommendations to the communities, the company, and where needed to the industry.
- **Advisory** – providing advice to industry and government on developments required in policy and standards.
- **Compliance** – ensuring companies comply with the recommendations from the complaints mechanism, and that the industry implements appropriate standards and policies.



A woman tells the Mining Ombudsman about the 'Dialogue Table' established to address local community concerns with the Tintaya mine in Peru. Photo: Diego Nebel/Oxfam America.

Figure G: Guiding principles for a complaints mechanism

Oxfam Community Aid Abroad has identified six guiding principles for an effective complaints mechanism:

1. **Standards should correspond with universally accepted human rights standards, including extraterritorial jurisdiction, covering the operations of Australian companies outside Australia.**
2. **Enforcement through legislation covering all Australian mining companies and the power to sanction non-complying companies and their suppliers, contractors, agents and subsidiaries, employees and directors.**
3. **Independence from stakeholders, especially the industry, industry consultants and associations.**
4. **Funding should be transparent to ensure independence and impartiality, and it should be free of charge to complainants.**
5. **Accessibility of information in the appropriate language for communities at risk, available at all stages of the mine operation.**
6. **Accountability and transparency including public disclosure of investigation results to ensure transparency, trust and accountability. Compliance should also be monitored regularly.**

A paper prepared for the Mines, Minerals and Sustainable Development project argues for a similar complaints mechanism.<sup>36</sup> The 2004 Extractive Industries Review fully supports the concept of formal complaints mechanisms, stating that:

*"IFC and MIGA should ensure that there is an effective local complaints and dispute resolution system in place in affected communities when supporting extractive projects."*<sup>37</sup>

Unlike complainants covered by industry mechanisms such as the Australian Banking Industry Mining Ombudsman, communities affected by mining are not clients of the company, so do not have the option of withdrawing their patronage. A company has no financial incentive to take action, except where negative publicity or work disruptions might harm their profits.

This situation, along with strong support for companies from most host governments, translates into extremely unequal power dynamics between companies and communities at risk. This is compounded by the lack of environmental and social regulations and the minimal risk of litigation through the host country's legal system. An industry complaints mechanism would provide some bridge between these power inequalities.

## 1. Standards

If mining is to help combat poverty – as is often claimed by companies – then it must comply with international human rights principles. As stated in the *Mining Ombudsman Annual Report 2001, 2002 and 2003*, a complaints mechanism should be founded on the standards codified in the international human rights system. The recent *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* discussed in Figure E on page 14 is an appropriate starting point. The 'Benchmarks for the mining industry' appended to this report also provide a clear application of international standards to the mining industry, against which a complaints mechanism could determine company compliance.

In the interests of consistency of company behaviour at home and in host countries, Australian mining companies should comply with Australian laws in their overseas operations if these laws provide higher standards than those codified in the international human rights system.

*Right: The Tintaya mine in Peru. Since the intervention of the Mining Ombudsman in 2001, community representatives, their support organisations and BHP Billiton have been working together to address local community concerns with the mine. Photo: Diego Nebel/Oxfam America.*





## 2. Enforcement

A complaints mechanism is truly effective to the extent that it can gather evidence and impose sanctions. A mechanism with only advisory or recommendatory powers could not guarantee cooperation and compliance by rogue companies, or retain the confidence and trust of complainants.

Extraterritorial legislation is an appropriate way to ensure all complainants against Australian companies receive equal treatment. Legislating the jurisdiction of a complaints mechanism over all industry members or agencies – including subsidiaries, joint ventures, contractors and suppliers – would counter the ‘free-rider’ problems of self-regulation.

Legislation should authorise the complaints mechanism to penalise non-performing companies. It should enable the imposition of penalties on non-performing company directors and employees, preventing directors who are legally responsible for violations from hiding behind the ‘corporate veil’. Full disclosure of complaint findings should also be used to encourage accountability through public vindication of companies or ‘naming and shaming’.



*A woman provides a testimony at a public meeting of the 'Dialogue Table'. The Dialogue Table was set up to address local community concerns with the Tintaya mine in Peru after the intervention of the Mining Ombudsman in 2001. Photo: Diego Nebel/Oxfam America.*

The Australian Telecommunications Industry Mining Ombudsman, for example, was given jurisdiction and enforcement powers through legislation. It can order industry members to pay compensation, provide a service or take corrective actions. Members must provide the Mining Ombudsman with all documentation relevant to the complaint (other than that containing confidential third party information) and its decisions are binding. The localised nature of the telecommunications industry means that this Mining Ombudsman's jurisdiction is limited to Australian territory. The international nature of the mining industry would require extraterritorial enforcement and information collection powers.<sup>38</sup>

## 3. Independence

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

Like the Asian Development Bank complaints mechanism, the selection criteria for whoever heads up the complaints mechanism, whether this is a single individual or a panel of members, should include:

1. the ability to deal thoroughly and fairly with the request brought to them;
2. integrity and independence from the mining industry and the communities affected by mining;
3. exposure to developmental issues and living conditions in developing countries; and
4. knowledge and experience of the operations of the mining industry or comparable institutions.

A periodic independent verification process would also be necessary to guarantee the mechanism's independence. Independent verification has been a key feature of successful civil regulation and government/industry/community partnerships.<sup>39</sup>

This would require a panel of impartial representatives – not chosen by stakeholders or complaints mechanism staff – to investigate the mechanism's implementation program, and report on whether it has effectively responded to complainants and ensured company compliance.

## 4. Funding

A complaints mechanism must be free of charge for communities affected by mining. Free access for complainants is provided by most complaints mechanisms, including the Asian Development Bank, the CAO, the Australian Telecommunications Industry Ombudsman and Australian Banking Ombudsman.

To address the inequalities in power and resources between mining companies and communities both within and outside Australia, a reasonable level of financial, technical and legal assistance should be available to communities, to enable them to make their complaints effectively.

The mechanism could be funded by mandatory contributions from companies as a percentage of project value as presented in feasibility studies (for new projects) and annual financial statements (for existing projects). A penalty system could be developed to increase a company's percentage contribution based on the number and severity of complaints against it, as with the Australian Telecommunications Industry Ombudsman.<sup>40</sup> A company could also be responsible for the costs of the complaints mechanism obtaining legal, technical, accounting and other advice in investigating complaints against it.

This funding structure would provide incentive for companies to invest in prevention to avoid complaints and further costs. It also motivates companies to resolve issues efficiently once a complaint has been issued. Furthermore, such a structure would guarantee that companies who comply with human rights and environmental standards are not ‘punished’ by helping foot the bill for dealing with complaints against non-complying companies.

The initial capital required to establish the mechanism could come from a one-off investment by the Australian Government and the mining industry as an indication of their support for the mechanism. To ensure a secure and independent funding base, all funding could be guaranteed through regulations applicable to the entire mining industry, and the funds held independently by the office of the complaints mechanism, as is the case with the World Bank CAO.



*Wilson (right) with his wife and children. Wilson is a fisherman who lost the lower half of his leg. His doctor attributes the amputation to arsenic poisoning and infections from cutting his feet on waste-contaminated rocks and coral. Photo: David Sproule/Oxfam CAA*

## 5. Accessibility

The complaints mechanism would be effective only to the extent that it is accessible to women and men in communities with grievances against Australian mining companies. All relevant information about projects must be available in appropriate languages. The mechanism must be free of charge, and support must be available – particularly for remote or impoverished complainants – including free legal and technical assistance.

Where possible, the mechanism should hold its hearings where local community members live, and in surroundings that are not intimidating to communities. Full anonymity should be provided for complainants concerned about security, and independent translators used at all times. Appropriate timeframes should be negotiated with all parties, especially complainants.

Guidelines on the use and operation of the mechanism should be distributed throughout Australian Government departments, 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 women and men – in an appropriate language and manner throughout the project cycle. Relevant project documentation should also be translated into appropriate local languages.

The CAO – although not perfect – has several advantages in terms of accessibility:

- The CAO enables complaints to be made by a representative on behalf of those affected by a project, and allows complaints to be submitted in any language.<sup>41</sup>
- Communication with complainants – including reports, agreements, and plans – are translated into local languages and presented in a culturally appropriate manner.
- Information about the CAO is available through avenues such as World Bank Group contacts and civil society.

## 6. Accountability and transparency

Transparency is paramount to the success of a mechanism's ability to ensure that companies are held accountable for their actions.

Complete transparency through full public disclosure of all information and decisions should be standard, provided the identity of complainants and witnesses are kept confidential where requested for security reasons. All financial records and the findings of the independent verification process should also be fully disclosed.

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

# 6. Arguments in favour of a complaints mechanism

## 1. An Australian mining industry complaints mechanism would assist local community women and men hold companies that violate their human rights to account.

A complaints mechanism would help bridge the significant power inequalities between mining companies and the poor and vulnerable community women and men affected by their operations, by assisting communities to hold to account companies that violate their rights. Communities would not have to rely on company goodwill for their concerns to be heard and addressed. They would not be forced to consent to projects against their will, and would have a means of redress when companies renege on their promises. Respect for human rights and the environment would be determined by much more concrete factors than company perception of the competitive advantage of positive public relations.

## 2. A legislated complaints mechanism is more effective than self-regulation and voluntary mechanisms.

Although self-regulation can be a useful internal standard-setting tool for companies and industry groups, it cannot be a substitute for binding international and national standards, especially in relation to the rights of local communities impacted by mining operations.

Despite industry-sponsored initiatives paying tribute to the importance of human rights and environmental protection, businesses are by nature profit-driven. Their bottom line is primarily determined by economics rather than social and environmental concerns. Industry processes such as the Mines Minerals and Sustainable Development initiative and the World Bank Group Extractive Industries Review (EIR) have raised awareness among mining companies and international financial institutions, but provide no guarantees for local communities at risk.<sup>42</sup> Self-regulation has not changed the fact that some companies continue to violate human rights, as demonstrated by the cases in this report.

Self-regulation is voluntary. If companies refuse to sign on – as many do – their activities are not covered.

### Figure H: Arguments in favour of a complaints mechanism

1. An Australian mining industry complaints mechanism would assist local women and men hold companies that violate their rights to account.
2. A legislated complaints mechanism is more effective than self-regulation and voluntary mechanisms.
3. An Australian mining industry complaints mechanism could foster regional goodwill towards Australian investment abroad.
4. A complaints mechanism would contribute to Australia's wider foreign policy commitments to human rights, peace and security.
5. A complaints mechanism underpinned by broad-based regulations will significantly balance the playing field for the Australian mining industry.
6. A complaints mechanism could reduce the costs for the mining industry.
7. The Australian mining industry can become a world leader if it adopts a complaints mechanism now.
8. A complaints mechanism would not constitute cultural imperialism.
9. An Australian mining industry complaints mechanism would not cause companies to relocate their head offices away from Australia.

Disadvantages of self-regulatory mechanisms include:

- they are often difficult to enforce;
- they lack transparent and independent monitoring and verification systems;
- they can be negotiated down to attract industry signatories;
- they use business cases and risk arguments as the primary justification for human rights protection; and
- they rely on the benevolence of companies.

The strongest argument against self-regulation, however, is its demonstrated impact. The OECD study, *Voluntary Approaches for Environmental Policy: An Assessment*, found that self-regulation of environmental performance had limited impact on the performance of many of the companies studied.<sup>43</sup> Furthermore it argued:

*"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."*<sup>44</sup>



Many houses in the community have painted signs that publicly oppose the proposed large-scale Climax Mining Limited gold mine at Didipio, the Philippines. Photo: Ingrid Macdonald/Oxfam CAA



### 3. An Australian mining industry complaints mechanism could foster regional goodwill towards Australian investment abroad.

Mining companies are often perceived as ‘ambassadors’ of their home country. If Australia were to lead with a complaints mechanism and a rights-based approach, the image of Australian mining companies would improve dramatically relative to their international competitors. Host governments might view Australian mining companies as more attractive investors than companies with lower standards.

Furthermore, headlines such as ‘*Australian miner rejects cyanide disaster reports*’<sup>45</sup> and ‘*Australian mining co cleans up PNG cyanide spill*’<sup>46</sup> clearly show that Australia’s international image is linked with the behaviour of Australian companies operating abroad. Poor industry performers impact on all Australian companies. A mechanism to ensure that Australian companies are performing at acceptable standards should be a priority for the Australian government.

### 4. A complaints mechanism would contribute to Australia’s wider foreign policy commitments to human rights, peace and security.

A complaints mechanism would reduce the potential for conflict at mine sites. The conflict at the Panguna copper mine in Bougainville, the conflicts at the Freeport-Grasberg mine in West Papua and the Indo Muro case previously tackled by the Mining Ombudsman demonstrate how mining activities can generate conflict with and among local communities.

Furthermore, there is considerable evidence linking resource extraction in conflict areas with high levels of corruption, authoritarianism and instability.<sup>47</sup> 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).<sup>48</sup>*

Ross makes a number of proposals, including full disclosure by governments and companies of revenues and royalties paid and how these are used. These proposals are consistent with the NGO coalition ‘Publish What You Pay’ platform, which is supported by Oxfam Community Aid Abroad. The platform calls for mandatory disclosure of oil, gas and mining company payments to, and transactions with, governments. The aim is to combat the corruption and increased conflict commonly associated with extractive revenues in many developing countries.<sup>49</sup>

Evidence from Mining Ombudsman cases illustrate that grievances tend to fester, causing distrust and conflict. They do not simply go away with time, and are often further exacerbated by new concerns arising at later stages in the mining operation.<sup>50</sup> A complaints mechanism could help address such grievances fairly and transparently, reducing the risk of internal conflict and failed states in Australia’s neighbourhood and beyond. It could also increase the likelihood of Australian mining operations bringing positive economic outcomes for Australia, host-country governments and local communities.

### 5. A complaints mechanism underpinned by broad-based regulations will significantly balance the playing field for the Australian mining industry.

A complaints mechanism could expose and punish non-performers that, by association, damage the reputation of more responsible companies. An example of this problem occurred in Romania, when Australian company Esmeralda Exploration Ltd accidentally released 100,000 cubic metres of cyanide contaminated water into the Danube river system. The peak body, Minerals Council of Australia, was at pains to point out that Esmeralda was neither a signatory to their newly-established Environmental Code, nor a member of the Council.<sup>51</sup> Yet Esmeralda put a serious dent in the reputation of the Australian mining industry worldwide.

Above: Mataqali landowner spokesman, Iosefo Javacami shows Ponipate Ravula from the Citizens Constitutional Forum documents relating to the disputed land that the Vatukoula Gold Mine is located on in Fiji. Photo: Ingrid Macdonald/Oxfam CAA



## 6. A complaints mechanism could reduce costs for the mining industry.

The performance of mining companies can no longer be assessed purely on their ability to extract resources; negative environmental and social impacts clearly result in both increased financial costs and damaged reputations.

Several cases in this report demonstrate the potential impact of not recognising human rights in the course of operations, and the costs incurred by not resolving the grievances of local communities:

- The Marinduque mine was shut down after a disaster caused by company negligence in 1996, and two mine executives are still the subjects of litigation.
- Legal proceedings have been brought against Straits Resources due to human rights abuses at the Indo Muro mine site.
- Legal proceedings may also be brought in relation to the Tolukuma gold mine.
- Community resistance over social and environmental concerns is preventing the opening of the mine at Didipio, at considerable ongoing costs to Climax Mining.
- Cases such as the Ok Tedi litigation, the Bougainville conflict, and the Esmeralda spills – all of which had severe impacts on local communities and the environment – have all been very costly for the companies involved.

## 7. The Australian mining industry can become a world leader if it adopts a complaints mechanism now.

International mechanisms for controlling mining activities are likely to be established in the foreseeable future, as heralded by the UN Norms discussed in Figure E on page 14, increased pressure on governments for extraterritorial legislation and increasing numbers of complaints mechanisms being established in other industries and internationally. Forward-thinking companies and industry groups will respond by adopting a rights-based approach and supporting the establishment of an official complaints mechanism. The challenge for the Australian mining industry is whether it will take the lead and gain a competitive advantage, or risk being left behind.

Legislated rights-based approaches are now being discussed in Europe, the US and the OECD. The European Parliamentary Resolution on *Standards for European Enterprises Operating in Developing Countries* 1999 called on the EU to establish legally-binding requirements on European transnational companies. There is also the US McKinney Bill,<sup>52</sup> and the OECD *Guidelines for Multinational Enterprises*.<sup>53</sup> In Australia, the *Corporate Code of Conduct Bill* 2000 sought to impose standards Australian companies operating abroad, as discussed in Figure F on page 15.

Institutions such as multilateral development banks have already recognised the need for complaints mechanisms. The World Bank set up the Inspection Panel in 1993 and CAO in 1999; the InterAmerican Development Bank set up the Independent Investigation Mechanism in 1994; the Asian Development Bank set up its Inspection Function in 1995; and the European Bank for Reconstruction and Development approved an Independent Recourse Mechanism in April 2003. As discussed in previous Mining Ombudsman reports, many Australian industries already have independent complaints mechanisms, including the telecommunications, banking, financial, broadcasting and insurance industries. Given the large size and significant environmental and social impacts of the Australian mining industry, there is a pressing need for a complaints mechanism.

## 8. A complaints mechanism would not constitute cultural imperialism.

A complaints mechanism based on international human rights standards would not constitute cultural imperialism. Almost all countries where Australian mining companies operate have already committed to the basic human rights standards codified under the international human rights system. Yet as discussed above, limited resources and the economic pressures on many such countries limit their capacity to enforce these standards. An Australian mining industry complaints mechanism would ensure that Australian companies do not violate universally guaranteed standards when operating outside Australia. It would also ensure that Australian mining companies cannot leave a negative legacy for the host country to rectify, as has happened with rehabilitation that is required and compensation yet to be paid by Placer Dome in respect of Marinduque Island, and Esmeralda, in respect of the Baia Marie mine in Romania.

## 9. An Australian mining industry complaints mechanism would not cause companies to relocate their head offices away from Australia.

There are numerous reasons why the headquarters of hundreds of mining and associated companies are located in Australia; reasons related to location, efficiency and even lifestyle.

The Australian regulatory environment is already more stringent than many other countries in terms of most labour, environmental and OHS standards. Yet this has not deterred investment in the Australian mining sector. Over the past 100 years many regulatory changes have been enacted that were initially opposed on the basis that they would undermine the industry's efficiency. The eight-hour workday and the right of women to work in underground mining operations are good examples. Yet in every case, the change has occurred and the Australian mining industry has remained efficient and attractive location for mining investors.

*Above: A boy fishing in the Boac River, Marinduque Island the Philippines where in 1996 a concrete plug at the Marcopper/Placer Dome mine failed, releasing millions of tonnes of toxic mine waste into the river.  
Photo: David Sproule/Oxfam CAA*

*Right: Women wash their clothes, food and children using untreated water in communal company facilities shared by numerous families at the Vatukoula Gold Mine in Fiji.  
Photo: Ingrid Macdonald/Oxfam CAA*





# Appendix: Benchmarks for the mining industry

Oxfam Community Aid Abroad's approach to the mining industry is based on concern for the protection of the human rights of people affected by mining. The agency and the international confederation of which it is the Australian member condense the universal, inalienable, interdependent, indivisible and complementary<sup>64</sup> rights codified under the international human rights system into five 'basic rights':

1. We support people's **right to be heard**, for example to speak out to their governments or internationally, if their human rights are violated;
2. We support people's **right to a livelihood**, for example by helping them protect the rivers they fish in, or providing them with tools and seeds for sustainable farming;
3. We support people's **right to basic services**, by supplying clean water, education and health services, or supporting people to lobby their governments for such services;
4. We support people's **right to life and security** by bringing in emergency aid during disasters, helping people rebuild or helping them prepare for future catastrophes; and
5. We support people's **right to equity**, for example by ensuring that our programs benefit both women and men, and support the specific rights of indigenous and minority communities.

These provide the basis of the Oxfam International confederation's approach to its own work. This document outlines a set of 'benchmarks' that apply this approach to the mining industry. The Benchmarks were developed through independent research and the agency's experience working with communities affected by mining. They are a work in progress, developing as understandings of the impacts of mining evolve.

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The Benchmarks are intended to apply to all company operations – including their contractors, consultants, agents, subsidiaries and suppliers – wherever the company operates. Responsibility and liability for the performance of mining operations assessed against the Benchmarks should be borne by all company employees and management, including Boards of Directors.

## Social mapping

Any proposed exploration or mining activity should be preceded by an independent social mapping exercise, including a social impact study, a human rights impact assessment and a gender impact assessment. Appropriately qualified and independent groups familiar with the local communities and environment should undertake this exercise. Local stakeholders – not appointed by the company – including local civil society organisations should verify the study's findings to ensure rigour and accuracy. The results should be presented to all community women and men in an appropriate language and culturally-sensitive manner. Communities should be provided with sufficient resources and time to enable them to participate in all aspects of this process, and to have final say on the appointment and use of all consultants and groups involved in the process. The mapping process should be ongoing throughout the life of the project to ensure that impacts on communities are understood and addressed effectively by the company.

- Mining companies should commission independent baseline studies before engaging with any community. A fundamental task of such studies should be assessing whether a company can and will uphold universally-accepted human rights standards in any planned activities.
- Companies should not proceed if baseline studies suggest that their activities may violate such standards, even if human rights are not upheld by national laws or practice.
- Community women and men should fully participate in all aspects of baseline studies and impact assessments, including the selection, appointment and use of consultants and the development of the studies terms of reference.

## 1. The right to be heard

### Access to information

Women and men have a legitimate right to determine their own future. Companies must respect the right of local community women and men to give or withhold free, prior informed consent to mining activities that might impact on them. This right is especially relevant to Indigenous peoples. Unless exploration and mining projects have full community support from the beginning,

they will be plagued with continual problems and conflict causing both suffering for communities, and increased costs for companies. All communities that might potentially be affected by a project have the right to proper access to full information about that project, and to participate in negotiations. This is the case whether the communities are located in the area that of the proposed project site, near it, or for example, downstream communities or on adjacent islands.

- Mining companies should respect the right of all community women and men who might be impacted by a proposed project to give or withhold free, prior informed consent to exploration and mining projects. This is particularly relevant for Indigenous peoples.
- Sufficient, accurate, and detailed information about a proposed project should be provided to both women and men in any potentially affected communities. It should be in an appropriate manner and language, enabling all community members to give or withhold informed consent to any mining activity or exploration. It 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 should be able to seek information from sources other than the mining company about potential impacts of the proposed exploration and mine. Where possible, this should include facilitating both women and men from all relevant communities to visit operations of a similar nature and scale elsewhere, to freely discuss their impacts with local people.
- Community women and men should have access to independent technical and legal advisors to help them interpret information.
- Community women and men should 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, Australia) provides an example of how negotiation processes can be timed.
- Community women and men should have access to full information about the identities and policies of financiers and shareholders of the proposed project. This information should be updated throughout the life of the project as required.
- Community women and men 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 to ensure transparency and accountability in the use of extractives revenues and combat corruption and misappropriation of funds.

### Decision making

Companies should carry out open and transparent consultations with both women and men in affected communities from the outset of any proposed exploration or mining, and use decision-making processes that are participatory, representative, and fair. All community members have the right to participate in negotiations and decision making about project proposals and ongoing operations.

- Companies should take a cautious approach to negotiations with community women and men about exploration or mining with regard to representation and internal decision-making processes. The following factors should be considered:

- Companies should not under any circumstances attempt to impose arbitrary timelines and project-driven decision-making processes.
- Different kinds of decision-making processes may be needed for different communities, depending on their customary governance structures and the degree of diversity in the communities affected. However, companies should ensure that decision-making processes respect the rights of all community members, and do not further marginalise men, women, young people, the elderly and groups that may traditionally be denied social power due to ethnicity, religion, class or caste.

Where women or other groups are being excluded from decision-making processes, advice should be sought through consultation with local women or relevant groups about appropriate ways of ensuring that their views are heard and their rights protected. Companies should always seek gender equity in decision-making processes.

- 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 address this by ensuring that community women and men have access to independent technical and legal advisers selected and appointed by the communities in conjunction with civil society support organisations.
- Decision-making processes should include all community women and men who might be affected by any proposed operation, not just those with recognised land ownership in the proposed project area. For example, downstream community women and men who might be affected by a proposed 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.

- Communities 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 actual 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 should recognise that women and men 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 to ensure that they fully understand their rights and any contractual arrangements they may enter into.
- A joint monitoring committee should be established to monitor the company's operation and its compliance with the terms and conditions of all agreements throughout the life of the project. This should not be appointed by the company, and should comprise government, affected community women and men, independent experts and organisations and civil society.
- Company representatives would play a vital role servicing the committee's information needs and implementing its recommendations. However it is inappropriate for them to be on the committee as it is the company's actions that are being verified and monitored. If it is absolutely necessary for company representatives to be represented on the committee, they should be a definite minority. The committee should be required to report to the community in an appropriate manner and language, and to publicly release all findings and reports. The inclusion of government officials on the committee is not a substitute for their critical role as regulators.

## 2. The right to a 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, both community women and men, and vulnerable groups, are in a better economic 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 community women and men to avoid the boom/bust syndrome that is the legacy of many mining operations.

### Resettlement

Resettlement of communities due to mining is a serious threat to community livelihoods. Therefore mining operations should be designed to minimise or avoid resettlement wherever possible. Where relocation and resettlement is freely agreed to by community women and men, they should be guaranteed a standard of living higher than prior to resettlement.

- All members of communities must be given the choice of whether or not to relocate. They must not be forcibly removed or resettled.
- If people do choose to be resettled, they must have the right to negotiate how the resettlement and subsequent rehabilitation is to be carried out. It must not proceed until and unless an agreement is reached that is acceptable to all sides. Where people choose to be resettled, resettlement plans:
  - should be developed with full consultation and active participation of all affected peoples and groups, including women and men.
  - should take into account alternative plans or sites proposed by community members.
  - should take into account that women and men often use land and other resources differently, and may have different needs and interests regarding resettlement. Companies must ensure that both women and men are fully considered; and
  - should recognise that resettlement may exacerbate already weak social structures or tensions, resulting in vulnerable groups being further marginalised. As a result, companies must maximise opportunities to assist community women and men to address issues such as HIV/AIDS education and gender equity.
- No resettlement should take place until policies and facilities are in place allowing resettled people to preserve or increase their standard of living. Therefore:
  - Community women and men should have sufficient lead-time to rebuild lost or damaged agricultural resources or other forms of livelihood at the resettlement site before moving, with full support from 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 community women and men are kept together and if this is impossible, community members should be resettled as close as possible to the rest of the community.
- Relocated community women and men should receive legal land title – either collective or individual depending on the wishes of community – for their resettlement land, 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 be considered.
- Steps should be taken to ensure that resettled people are integrated socially and economically into the host communities at the resettlement sites, so that adverse effects on both community women and men in both the resettled communities and host communities are minimised and the potential for conflict is reduced.
- Resettlement plans should include agreements developed in consultation with the community women and men as to what will happen to land vacated to enable 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 result of mining operations must receive compensation from the mining company. Included are:
  - those who lose land, crops, trees, houses, mining equipment or other property;
  - those whose land or property is damaged by mining operations;
  - those who lost 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 are 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 households when assessing compensation.
- Compensation should be determined through a fair process of negotiation between all affected parties and the company as discussed above.



- Government authorities should be involved with companies and communities in compensation negotiations, however the company must ensure that there is no intimidation of claimants by those authorities, the police, or armed forces.
- Compensation should be sufficient for those who receive it to sustainably retain or improve their former standard of living.
- Compensation should be assessed according to the actual full costs to people and communities, as defined by those people and communities.
- An accessible local independent dispute resolution mechanism should be in place so that any who feel they have not been fairly compensated can take their complaint to this mechanism for a fair hearing. Both women and men have the right to access complaint processes, and should have adequate information and support to do so.
- Compensation should be based on recognition that according to traditional ownership structures, everything below the ground lands owned by communities or individual women and men belongs to them. It should include payment of a share in the value of minerals extracted from those lands. 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 should be accurate and transparent, and royalties should reflect the true value of 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, to be held in trust by an independent body on behalf of the company and communities. These would cover any unexpected or unforeseen rehabilitation, mitigation or remediation costs resulting from the project.
- Companies should produce mine closure plans in consultation with local community women and men that identify any compensation required for future losses, especially related to environmental degradation. These plans should be revisited bi-annually to ensure that they are consistent with changing circumstances.

- Companies should publicly disclose all revenue and other payments made in respect of a project, to ensure transparency and accountability in the use of extractives revenues, and to combat corruption and misappropriation of funds.

### Employment

Companies should provide jobs, services, and other developmental benefits locally. These must maximise direct benefits to community women and men in affected areas. Original inhabitants should be given preference over newcomers and outsiders in the allocation of jobs.

- Every project should have a training plan aimed particularly at enabling local people to acquire relevant employment skills.
- Training and employment of community members should focus on the acquisition of long-term skills, not only solely associated with mining activities, so that after mine closure people have opportunities in non-mining industries.
- Companies should adopt a policy of maximising training and employment opportunities for women, and actively counter discrimination, harassment and potential backlash by men in the workplace. All planning in this area should be undertaken in consultation with local 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. Companies should adopt accountability and incentive mechanisms to encourage and enforce these policies and systems.
- 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 must ensure that it does not contribute to the spread of HIV/AIDS in any environment affected by its operations, 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 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/unions and independent organisations not selected by the company. They would investigate 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 should ensure that they have the 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 complaints mechanism, if one exists.
- In the case of workplace disputes, employees should be able to appeal to an independent complaints mechanism. This mechanism should investigate and report on complaints and suggest means of rectifying any problems. It should be accessible and operate confidentially.
- Both women and men employees should be entitled at a minimum to a living wage that not only provides themselves and their families with adequate shelter, food, clothing, education, healthcare and transport, but also includes a reasonable 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 should be honoured to the same or better standards by the any new purchaser or investor in a mining project, 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, in fact, mine operations) proceeding until a satisfactory method is agreed to by all parties.
- Australian mining companies should aim to operate in their overseas operations to at least the equivalent of Australian practices and standards of environmental management.
- The precautionary principle should apply in its most stringent form to all mining operations. Thus mining companies should bear the cost of using environmentally-sound technologies, and should 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. If this is impossible, mining should not proceed, given the permanent environmental impacts.
  - 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 listings.
- 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 if the monitoring reveals a problem. This system should include independent and rigorous verification mechanisms by government, community members, and civil society organisations not chosen by the company. All findings should be made publicly available to ensure transparency and accountability.
- If rivers or streams used by community women and men downstream are inadvertently polluted by a company's operations, the company 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 land-forms, 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 highest standards from both the company's home and host nation. These plans should be revisited bi-annually in order to ensure that they are consistent with changing circumstances.

## 3. The right to basic services

Companies should 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 government representatives 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 by those authorities, the police or armed forces. Companies must also ensure that they and governments do not act together as a 'majority' block against communities.

- Companies should provide local governments 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, including public reporting on the use of funding. Community members should be trained to run all such services for themselves and financial arrangements made to ensure services continue to operate sustainably after mine closure.
- Companies should recognise that their employees can pose considerable risks to the often marginalised, isolated and fragile communities they affect through their operation, for example by 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. The right to life and security

Everyone, including women and men living near a mine site, has the right to live free from the threat of violence. If 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.

- If a company does not have mechanisms in place to ensure they are aware of any such abuses, they should establish these.
- 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.

- Although companies have the right to protect their staff and property, they should not rely on police or military action to solve any problems in their relations with community women and men, including their own workers. They should actively discourage host governments from using such methods. Companies should always use negotiation, not force, to defuse and deal with conflict.
- Companies should not operate in areas where they require the use of military forces or excessive security to maintain their operation, as such situations are likely to result in human rights abuses. This includes situations in which there has been forced removal 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 benefits from their activities are being channelled into corrupt regimes. Mining companies should publicly disclose all payments they make to any government and all stakeholders.
- No mining company should undertake activities within countries where their activities are helping to perpetuate 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 community women and men affected by their 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 take all reasonable steps to dissuade government authorities from doing so.
- Companies should take responsibility for their own security personnel, to ensure 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.

## 5. The right to equity

There are a range of social problems often associated with the impacts of mining projects, including excessive gambling and drinking, prostitution, sexually transmitted diseases, rape and other forms of violence against women.

The impacts from mining are not gender neutral, and women experience the direct and indirect consequences of mining in different and more severe ways than men. As a result, all stakeholders should proactively pursue gender equity and women's empowerment in all their activities. This includes governments, mining companies, the World Bank Group and other multilaterals, non-government organisations and communities. Women have the right to live free of discrimination and harassment. The special relationship that Indigenous peoples have to their land must also be recognised and respected.

- Companies should be responsible for the social impact of their employees on 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 and preventing HIV/AIDS and other STIs. This should be supported by staff training, including cross-cultural and gender training, and fostering of political will at all levels of 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 to obtain the necessary information, advice, training and support to 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 arising from their spiritual and cultural relationships to land and waterways including sacred sites. These connections may not be easily understood or measured in material, financial or legal terms familiar to companies, however they are critical to the lives, culture and identity of Indigenous peoples and thus to their continued wellbeing.

- Companies should recognise the right of Indigenous peoples to participate in all negotiations and decision-making concerning the land and natural resources to which they are connected, and concerning their right to development and self-determination.
- Companies should work towards ensuring gender equity in all aspects of their operations and influence, and not contribute to the oppression or marginalisation of women or any other group within communities.
- Women should be involved in all elements of decision-making. Companies should empower women to define for themselves what is appropriate development and participation.
- Companies and projects should not only consider the practical gender needs of women – such as the provision of food and water – but also women's strategic interests, for example ensuring that women and men have equal control and access over the resources and benefits from a project.



# End notes

Right: Children play on one of the fishing boats in Calancan Bay, Marinduque Island, the Philippines where from 1975-1991 the Marcopper/Placer Dome mine pumped over 200 million tonnes of toxic mine waste into the Bay. Medical professionals have found unacceptable levels of heavy metals in the blood of children living in the area. Photo: David Sproule/Oxfam CAA

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- 2 See ICMM, *Spreading the Wealth: The Role of the World Bank Group in Mining*, 11 December, available at [www.natural-resources.org/minerals/law/docs/pdf/EIR%20Submission%20-%20ICMM.pdf](http://www.natural-resources.org/minerals/law/docs/pdf/EIR%20Submission%20-%20ICMM.pdf) 2002 (accessed 7 July 2003).
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- 5 *Striking a Better Balance: The Extractive Industries Review Final Report*, Executive Summary page 1, 26 November 2003. Emphasis added.
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- 7 Langman, J *Investing in Destruction: The impacts of a WTO investment agreement on extractive industries in developing countries*, Oxfam America and Make Trade Fair, June 2003, page 6.
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- 13 See Macdonald, I and Rowland, C, (eds), *Tunnel Vision: Women, Mining and Communities*, Oxfam Community Aid Abroad, 2002, page 3.
- 14 *Universal Declaration of Human Rights*, adopted 10 December 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 date
- 15 International Council on Human Rights Policy, *Beyond Voluntarism: Human Rights and the developing international legal obligations of companies*, 9, 2002
- 16 Address of Kofi Annan, Secretary General of the United Nations, to the World Economic Forum, Davos, Switzerland, 28 January 2001, available at [www.weforum.org](http://www.weforum.org)
- 17 *Universal Declaration of Human Rights*, (1948), op cit, preamble.
- 18 Henkin, L, The Universal Declaration at 50 and the Challenge to Global Markets, *Brooklyn Journal of International Law*, 25:1 1999, page 25.
- 19 United Nations Norms on Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights (with commentary): E/CN.4/Sub.2/2003/38/Rev.2 (2203); UNESC CHR, Sub Commission on the Promotion and Protection of Human Rights, 55th session agenda item 4. date
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- 21 *ibid*, general obligations, 1.
- 22 *ibid*, B. commentary.
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- 25 *ibid*, Art. 5, 6, 7, 8, 9.
- 26 *ibid*, Art. 15, 16. date
- 27 *ibid*, Art. 15 and commentary.
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- 36 Orellana, MA, op cit
- 37 EIR Volume 1, page 52
- 38 Such a power is provided in the Australian Commonwealth Ombudsman which has the statutory power to compel provision of information and documents in and outside Australia. See [www.austlii.edu.au/au/legis/cth/consol\\_act/oa1976114/s36.html](http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/s36.html) and [www.austlii.edu.au/au/legis/cth/consol\\_act/oa1976114/s3a.html](http://www.austlii.edu.au/au/legis/cth/consol_act/oa1976114/s3a.html) (extraterritorial legislation is beyond the scope of this work).
- 39 Utting, P, *Business Responsibility for Sustainable Development*, United Nations Research Institute for Social Development, 2000. page
- 40 See Telecommunications Industry Ombudsman Annual Report 2000/01 available at [www.tio.com.au](http://www.tio.com.au)
- 41 Operational Guidelines for the office of the IFC/MIGA Compliance Advisor Ombudsman, page 11, [http://www.cao-ombudsman.org/file\\_download.php](http://www.cao-ombudsman.org/file_download.php) (Operational Guidelines)
- 42 See Macdonald, I, & Ross, B, *Mining Ombudsman Annual Report 2002*, Oxfam Community Aid Abroad, 2003 p 8.
- 43 OECD, *Voluntary Approaches for Environmental Policy: An Assessment*, 1999, see [www.oecd.org](http://www.oecd.org)
- 44 International Council on Human Rights Policy, *Beyond Voluntarism: Human rights and developing international legal obligations of companies*, 2002 page 7.
- 45 Reuters, Australian miner rejects cyanide disaster reports , 11 February, available at [www.planetark.org/dailynewsstory.cfm?newsid=5669](http://www.planetark.org/dailynewsstory.cfm?newsid=5669) 2000 (accessed 11 July 2003).
- 46 *ibid*
- 47 See Global Witness at [www.globalwitness.org/reports/show.php/en.00043.html](http://www.globalwitness.org/reports/show.php/en.00043.html); and Ross, M, *Extractive Sectors and the Poor*, Oxfam America, 2001, available at <http://www.oxfamamerica.org/publications/art2635.html> (accessed 23 June 2003).
- 48 *ibid*, page 15.
- 49 See Publish What You Pay date at [www.publishwhatyoupay.org](http://www.publishwhatyoupay.org)
- 50 The Indo Muro Kencana, Tolukuma and Tintaya cases show a steady growth in grievances about inadequate consent and land acquisition processes through to concerns over environmental pollution and human rights violations during the operational phases.
- 51 Minerals Policy Institute, *Corporate Code of Conduct Bill Mineral Policy Submission to Senate Inquiry*, 2000 page 8, available at: [www.natural-resources.org/minerals/generalforum/csr/docs/csr/MPI%20Submission%20-%20Corp%20Code%20Bill%202000.pdf](http://www.natural-resources.org/minerals/generalforum/csr/docs/csr/MPI%20Submission%20-%20Corp%20Code%20Bill%202000.pdf) (accessed 10 July, 2003).
- 52 McKinney, C, A Bill to require nationals of the United States who 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.
- 53 OECD, *The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications*, 31 October, available at [www.oecd.org/daf/investment/](http://www.oecd.org/daf/investment/) (accessed 27 April 2003), 2001 page 16.
- 54 *Vienna Declaration and Programme of Action — United Nations World Conference on Human Rights*, Vienna, 1993, 14 *Human Rights Law Journal* 352 (1993) 18: and *The Beijing Declaration and Platform for Action — Fourth World Conference on Women*, Beijing, (1995).









*Rose from Gaiva describes the negative social, economic, health and environmental impacts on local women that have arisen since the Tolukuma Gold Mine started operation in Papua New Guinea. Photo: Ingrid Macdonald/Oxfam CAA*

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