Philippines

Mining or Food?

Case Study 3: Tampakan, South Cotabato - Mindanao Island
Philippines: Mining or Food?
Case Study 3: Copper and Gold Mining in Tampakan, South Cotabato – Mindanao Island

by

Robert Goodland and Clive Wicks

for

The Working Group on Mining in the Philippines

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs

The Brundtland Report, Our Common Future, UN World Commission on Environment and Development, 1987

In a world overflowing with riches, it is an outrageous scandal that more than 826 million people suffer hunger and malnutrition and that every year over 36 million die of starvation and related causes. We must take urgent action now.

Jean Ziegler
UN Special Rapporteur on the Right to Food, April 2001

DEDICATION

The Working Group on Mining in the Philippines and the authors respectfully dedicate this report to all the courageous and dignified people who have been killed while protecting the environment and upholding human rights in the Philippine archipelago.

Disclaimer

The views expressed in this report are those of the authors and not necessarily those of the participating or supporting organizations. The authors have, however, done their utmost to reflect the views of the many people they met in the Philippines and the views and reports of the people and organizations who have commented on earlier drafts if this report.
The Working Group on Mining in the Philippines
The Working Group on Mining in the Philippines was established in 2007, after the publication in January that year of the report, *Mining in the Philippines: Concerns and Conflicts*. Based in Britain and chaired by the Right Honorable Clare Short MP, UK’s former Minister of International Development it includes representatives from the Columban Missionary Society, the Ecumenical Council for Corporate Responsibility, Philippine Indigenous Peoples’ Links and IUCN-CEESP.

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However, in view of the vast number of extrajudicial killings that have taken place since 2001, now believed to be over 1,000, including a Bishop of the Independent Church, the authors are reluctant to name people or organisations in the Philippines. The authors admire the many other people, including lawyers, some of whom have also lost their lives while trying to protect their people from mining industry abuses.

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The best help the authors could provide was to apply their long years of experience and professional knowledge of the extractive industry around the world and their knowledge of environmental and human rights ‘best practise’, laws and conventions in an impartial and professional way.

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From The Working Group on Mining in the Philippines (WGMP):

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Case Study 3: Copper and Gold Mining in Tampakan, South Cotabato – Mindanao Island

Table of Contents

Background 106
Threat of a huge open-pit copper and gold mine 108
Uncertainty Raising Fears 113
Visit to South Cotabato 118
South Cotabo Conclusion, Recommendation and Map 121

ANNEX: Table of Contents for Entire Report Including Case Studies 126
Map of the Philippine Archipelago

Report and Case Studies available in individual documents at:
http://www.piplinks.org/miningorfood
MAPS associated with these 6 Case Studies
are available at http://www.piplinks.org/maps
Provincial Map of the Philippines

1 Source Wikipedia
Case Study 3: Copper and Gold Mining in Tampakan, South Cotabato – Mindanao Island

Background

Tampakan is a municipality in the province of South Cotabato on Mindanao Island. First impressions are of an agricultural paradise with fertile and well-watered soils. The region is extremely diverse agriculturally: durians, citrus of all kinds, rubber, bamboo, bananas, rice, coffee, maize, jackfruit and many other crops grow in profusion. Interspersed amid the heterogeneity are vast (10,000 hectares) export crop plantations of monoculture pineapples for Dole Corporation, asparagus and ornamental plants. South Cotabato is one of the finest agricultural areas in the country and one of its major sources of food, supplying Manila and the rest of the Philippines. Indeed, South Cotabato is known as the food basket of Mindanao. There are also fuel wood and timber plantations, interspersed with small- and large-scale irrigated rice farms, fishponds and the raising of ducks, cattle, sheep, pigs and poultry.

The agricultural lands are all enhanced and supported by the 2,285 meter high Mount Matutum and the densely-forested Matutum National Park that provides moisture all year round for agriculture lower down the watersheds and has been designated a Key Biodiversity Area\(^2\) and a protected landscape.\(^3\)

\(^2\) The following are the relevant Key Biodiversity Areas (KBAs): No.143. Mt. Apo Natural Park (Proc # 882 / RA 9237), municipalities of Bansalan, Digos, Sta. Cruz, Davao City; Arakan, Magpet, Kidapawan, Makilala, in the provinces of Davao del Sur and North Cotabato with 99,091 hectares. KBA No. 144. Ligawasan Marsh, municipalities of Pikit, M’ Lang, Tulunan; Pagalungan, Gen. Santos, K. Pendatun, Sultan sa Barongis; Don Mariano Marcos in North Cotabato, Maguindanao, and Sultan Kudarat covering 39,424 hectares. KBA No. 145. South Cotabato/Sultan Kudarat Mt. Daguma Ampatuan, municipalities of Esperanza, Isulan, Bagumbayan in Maguindanao and Sultan Kudarat covering 32,360 hectares. KBA No. 146. Mt. Matutum Protected Landscape (Proc # 552), municipalities of Polomolok, Tupi, Tampakan, Malungon in South Cotabato and Sarangani covering 15,600 hectares. KBA No. 148 Mt. Busa-Kiamba, municipalities of Lake Sebu, Surallah, T’boli, Maasin, Kiamba, Maitum in South Cotabato, Sarangani covering 114,144 hectares. KBA No. 151. Mt. Latian Complex, (Sarangani Mountains) municipalities Malungon, Alabel, Malapatan, Glan; Jose Abad, Santos, Don Marcelino, Malita in Sarangani, and Davao del Sur covering 95,077 hectares.

\(^3\) Mt. Matutum Protected Landscape (Proc # 552) and Key Biodiversity Area (KBA 146) includes the municipalities of Polomolok, Tupi, Tampakan; Malungon, in the provinces of South Cotabato and Sarangani, with an area of 15,600 hectares.
Five major rivers – Buayan, Taplan, Padada, Alip and Mateo – flow through the region and to the Davao Gulf. The Padada River alone is a primary water source for over 33,000 hectares of irrigated lowland farms.

Also within the region is the 4.954-hectare Lake Buluan, which drains into the Liguasan Marsh, an area that is important for biodiversity, environmental buffering, and migratory birds. The total wetland area, including reed beds and marshes, exceeds 8,000 hectares. Both the lake and the marshes are economically, environmentally and socially critical for surrounding communities. The lake supports 42,000 jobs in 27,000 households with fish, such as tilapia, milk fish, big head carp, and eel, being raised in pens and cages. Fish raising is so productive that no feed needs to be added; enough nutrients come from algal growth (productivity did decline during the decades of deforestation, but this has now stabilized).

There are 33,000 people in the municipality of Tampakan, including the La Bugal B’laan Indigenous Peoples who used to be hunter-gatherers and fishers. They tended not to have land titles; and any deeds for the land that were owned were held in common. As settlers moved into the area, they were gradually pushed from the lowland plains, lake and wetlands into the uplands and beyond the mountain watershed, many becoming swidden farmers. (Illegal logging from the 1950s-1980s threatened their livelihoods.)
They have been trying for some years now to claim back their lands as their traditional ancestral domain territory. Both settlers and mining companies dispute their land claims. Neither the state nor its security forces have shown much enthusiasm for settling disputes over land and resources peacefully by negotiation around a table. Some lowlanders and Indigenous Peoples joined armed dissidents, Communist or Moro militants (such as the New People’s Army or the Moro Islamic Liberation Front), seeking refuge from paramilitaries and other fanatics claimed by some to be directed by the Armed Forces of the Philippines.

After the overthrow of President Marcos in 1986, legislators framing the 1987 Philippine Constitution acknowledged the rights of Indigenous Peoples to their culture, languages, traditions, and lands. Just under a decade later, however, those who wanted the minerals that lay below the forests (or what was left of them after logging) overruled these rights by passing the Mining Act of 1995. Some mining companies even pre-empted this law by signing agreements with the Government prior to its enactment in an attempt to gain exemptions from the Act’s implementing rules and regulations. Holders of Financial and Technical Assistance Agreements (FTAA) and Mineral Production Sharing Agreements (MPSA) claim Indigenous Peoples’ lands as their own on the strength of what they believe to be their rights gained either from the 1995 Mining Act or from agreements signed before the Act came into force. The Indigenous Peoples Rights Act, however, was passed in 1997, and conflicts with the Mining Act vis-a-vis rights of ownership and traditional rights. These conflicting legal rights are now being resolved, but at present to the advantage of miners rather than Indigenous Peoples.

**Threat of a huge open-pit copper and gold mine**

Besides its agricultural resources, Tampakan also has one of the biggest undeveloped copper deposits in Southeast Asia, estimated at 12.8 million tons of contained copper (together with 15.2 million ounces of contained gold). The Tampakan Copper Project is situated some 50 kilometers north of General Santos City in South Cotabato province, home to six tribal communities, including the B’laan, Kalagan, Ubo, Manobo, Tasaday and T’boli. The current mining sites are situated in the tribal ancestral territory of the B’laans. It is claimed that project is the seventh largest undeveloped copper mine in the world.
The Tampakan Copper Project (previously known as the “Columbio FTAA” after another of the municipalities targeted) was the second Financial and Technical Assistance Agreement (FTAA) (No. 002-95-XI) to be approved after the 1995 Mining Act became law. It was awarded on 22nd March 1995 to Western Mining Corporation Philippines (WMCP), a subsidiary of the Australian company, Western Mining Corporation (WMC). The FTAA was transferred on 10th January 2001 to Sagitarius Mines Inc, but the Project has been managed since March 2007 by Xstrata Copper. Xstrata Copper, headquartered in Switzerland and listed on the London Stock Exchange, is the world's fourth largest producer of copper and its major shareholder is Glencore.

Exploration permits were granted in May 1995, without any Free and Prior Informed Consent being obtained. The original FTAA covered 99,387 hectares, overlapping the five provinces of Sultan Kudarat, South Cotabato, North Cotabato, Davao del Sur and Maguindanao. The area of the current project, however, has been reduced to 27,945 hectares after relinquishment, and is situated on the boundary of three provinces – South Cotabato, Sultan Kudarat and Davao Del Sur. A gold deposit is located only in Tampakan in South Cotabato province. The FTAA contract is for 50 years (an initial 25 years renewable for another 25 years) for which the mining company had to invest $50 million.

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5 http://en.wikipedia.org/wiki/Xstrata Glencore have a 40% shareholding in Xstrata.

6 Stavenhagen (2003) questions the legitimacy of the signed documents supposedly giving consent to the project since it was signed in 1995, a month after the issuance of a mining permit and the signing of the FTAA. The law stipulates that “free and prior informed consent” is required before granting a mining permit.

7 Under the law, the party to the FTAA has to relinquish 10% of the exploration area each year unless and until it finds a good deposit (Para 4.5 Relinquishment of Contract Area, p.15.)
In January 2001, the Australian WMC sold all its shares in WMCP to Sagittarius Mines, Inc., a Philippine-incorporated company whose equity was 60% owned by Filipino citizens or Filipino-owned corporations, and 40% by another Australian company, Indophil Resources, NL. Because of the sale and transfer of WMCP shares, the DENR Secretary approved the transfer and registration of the subject of the FTAA from WMCP to Sagittarius on 10th January 2001.

But then on 30th March 2007, Xstrata Copper (owned by the huge Anglo-Swiss Xstrata) gained 62.5% of the Tampakan project, leaving Indophil with 37.5%. Shortly afterwards, Xstrata Copper assumed management control of the Tampakan Copper Project, via Sagittarius Mines Inc.

Further ownership developments took place in September 2008 (after the authors’ visit to the area) when a wholly owned Australian subsidiary of Xstrata plc, Xstrata Queensland Limited, purchased a 17.83% stake in Indophil Resources NL from its largest shareholder, Lion Selection Limited. Xstrata’s purchase of Indophil shares enhances Xstrata’s ability to sell all the copper production from Tampakan, which could be up to 460,000 tonnes a year.

The Tampakan FTAA has been the subject of a ground breaking and controversial legal case brought by the La Bugal-B’laan Indigenous Peoples on 10th January 1997 against WMCP and the Philippine Government in the Supreme Court. The legal points focused on the profit-sharing arrangements in the FTAA and MPSA agreements – or rather the lack of them. The FTAA signed between the Government and WMCP was, under the terms of the 1987 Philippine Constitution as the Mining Act of 1995 had not yet been enacted. A Supreme Court case was taken by the La Bugaal-B’laan Indigneous People, on whose land the FTAA was given, challenging the terms of the agreement between the Government and WMC.

At the heart of the case filed by the La Bugaal-B’laan peoples was the contention that the 100% foreign ownership provision of the 1995 Mining Act (as contained in FTAA provisions), was unconstitutional as it allows foreign contractors to manage mining operations and to have 100% ownership of the land and minerals. This violates

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8 Indophil has a 34.23% interest in the Tampakan Copper Project, with a right to acquire an additional 3.27%. Indophil Resources NL publicised in September 2008 that it had received an offer from Alsons Corp. for its 34.23% stake in the Tampakan copper-gold project in the Philippines. The Australian Stanhill consortium made a similar offer to Indophil Resources NL. 
provisions in Article XII Constitution concerning “national economy and patrimony”, which state that:

- all the country’s natural resources are owned by the state;
- exploration, development, and utilization of natural resources “shall be under the full control and supervision of the State”; and
- the capital of a corporation or association with which the State enters a co-production, joint venture, or production-sharing agreement to explore, develop and utilize the resources must be at least 60% owned by Filipino citizens.9

The Supreme Court found in favour of the La Bugal-B’laan Indigenous Peoples on 27th January 2004.10 It declared as “unconstitutional and void” significant provisions of the 1995 Mining Act, along with Implementing Rules and Regulations (IRR) that the Department of Environment and Natural Resources (DENR) had issued in August 1995. The Supreme Court en banc11 decision also declared the Financial and Technical Assistance Agreement between the Government and WMCP to be unconstitutional and void.

9 Article XII, The 1987 Constitution of the Republic of the Philippines “Section 2. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all sources of potential energy, fisheries, forests, timber, wildlife, flora and fauna and other natural resources are owned by the state. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. “Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos. “In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.” “The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.” “Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.” See: http://www.chanrobles.com/article12.htm

10 La Bugal-B’laan Tribal Assn. v Ramos: G.R. No. 127882. 27th January 2004: http://119.111.101.4/judjuris/juri2004/jan2004/gr_127882_2004.html The Court hereby declares unconstitutional and void: (1) The following provisions of Republic Act No. 7942: (a) The proviso in Section 3 (aq), (b) Section 23, (c) Section 33 to 41, (d) Section 56, (e) The second and third paragraphs of Section 81, and (f) Section 90. (2) All provisions of Department of Environment and Natural Resources Administrative Order 96-40, s. 1996 which are not in conformity with this Decision, and (3) The Financial and Technical Assistance Agreement between the Government of the Republic of the Philippines and WMC Philippines, Inc.

11 En banc, meaning “in the bench” or “full bench”, refers to a session in which the entire membership of the court participated in the decision.
But then at the end of that year, on 10th December 2004, allegedly under political pressure, the Supreme Court reversed and set aside its January decision. It finally, and irrevocably denied the legal points in the petition of the indigenous La B’laan against the FTAA on their land in Tampakan. It declared that the 1995 Mining Act was constitutional after all, as were all the DENR’s implementing rules and regulations relating to FTAA and MPSAs, and the Tampakan FTAA. The Supreme Court did, however, invalidate Sections 7.8 and 7.9 of this FTAA concerning the profit-sharing, ruling them contrary to public policy and grossly disadvantageous to the Government. The conditions of the contact are not entirely clear and relationships seem to change frequently however it appears that the Philippine people get little from the deal.

Although it is the 1995 Mining Act (officially Republic Act No. 7942) that, in providing for an FTAA allowing for 100% foreign ownership, that is unconstitutional and should be amended, the mining industry and its supporters are trying to open up the 1987 Constitution for amendments. Joint Foreign Chambers of Commerce are specifically pushing for changes in Article 12 of the Constitution, in particular to the per centum of foreign ownership allowed for mining and all utilities and businesses.

The Court decision should surely not be retrospective but abide by the original contract with WMCP in this regard. But the Supreme Court should also see that, in trying to avoid the regulation that the Mining Act was to impose, WMCP failed to respect the intent of the 1987 Constitution.

12 Political pressure as cited by De Venecia at a London investors’ meeting: http://www.minesandcommunities.org//article.php?a=3603 Mr. De Venecia said he was Speaker of Congress when the Mining Act of 1995 was passed and felt insulted when it was declared unconstitutional. "We decided to mount a strong campaign to get the Supreme Court to reverse itself. It was a difficult task, to get 15 proud men and women of the Supreme Court to reverse themselves but we succeeded. Finally the law was declared constitutional and this was the signal for the captain[s] of industry in America, Australia, and in Europe, in New Zealand, in Canada, in France, in England and the European community, in the international community [to] go back to the Philippines and take a good strong second look at our mining potential…”

13 G.R. No. 127882. 10th December 2004; www.supremecourt.gov.ph/jurisprudence/2004/dec2004/127882.htm The Supreme Court decided to Reverse and Set Aside its decision of January 27, 2004; issuing a new judgment declaring constitutional (1) Republic Act No. 7942 (the Philippine Mining Law), (2) its Implementing Rules and Regulations contained in DENR Administrative Order (DAO) No. 9640 -- insofar as they relate to Financial and Technical Assistance Agreements referred to in paragraph 4 of Section 2 of Article XII of the Constitution; and (3) the Financial and Technical Assistance Agreement (FTAA) dated March 30, 1995 executed by the government and Western Mining Corporation Philippines Inc.(WMCP), except Sections 7.8 and 7.9 of the subject FTAA which are hereby invalidated for being contrary to public policy and for being grossly disadvantageous to the government.
Uncertainty Raising Fears

As of early 2008, the copper and gold mine was still in its exploration, pre-feasibility stage; because of a lack of studies or publicly-available information, uncertainty abounds as to what the companies might be proposing.

For instance, neither Western Mining Corporation Philippines (WMCP) nor Sagittarius Mining Inc. had decided if the open pit, block-caving or tunneling methods would be used to mine the copper and gold. Sagittarius shareholder Indophil Resources NL had concluded that the most viable mining option from its perspective was open-pit mining but some local officials, environmental activists, and Catholic Church leaders are strongly opposed to this. The company has now ruled out submarine tailings disposal and the use of mercury to extract the gold from the ore, both of which were once proposed, but it is still considering using cyanide to do so.¹⁴

It is assumed that the mining project would cover at least five villages in the municipalities of Tampakan in South Cotabato, Columbio in Sultan Kudarat and Kiblawan in Davao del Sur. If full-scale operations begin, at least five indigenous communities may be impacted.

An estimated 20,000 hectares of sustainable farmlands would be threatened by the environmental impacts of the mining, jeopardizing the food security of the region. The main areas at risk include South Cotabato’s capital Koronadal City (also known as Marbel, which has a population of 133,800 people); Tantang also in South Cotabato; Lutayan in Sultan Kudarat; and Buluan in Maguindanao. The towns of Lutayan and Buluan depend on Lake Buluan’s thriving fish-pen industry. A groundwater study in 2003 by Fortunato Sj. Milanes, supervising geologist of DENR’s Mines and Geosciences Bureau, showed that much of the water from the Koronadal Valley drains into Lake Buluan. Officials in Buluan have passed a resolution opposing the Sagittarius project, expressing “fears that it would destroy the livelihood of thousands of residents dependent on Lake Buluan”.¹⁵

¹⁴ To dissolve the gold, a weak solution of sodium cyanide (0.015%) is percolated over crushed ore. The leach solutions are carefully buffered with an alkali (usually lime) to prevent the possible generation of hazardous hydrogen cyanide gas. The gold bearing solution is then collected, the gold removed, and the leaching solution is reused. The whole process should take place on top of an impermeable, double or triple layered liner to collect all the gold and prevent any cyanide escape. See www.nwmtgoldprospectors.com/downloads/cyanide.pdf

Exploration is still ongoing, but depending on the outcome of negotiations and permits, the company might develop the area in 2010, looking to launch actual extraction and production in 2013, with an annual output of 200,000 tons of copper and 200,000 ounces of gold.

It is not known how the mine tailings would be disposed of, although it seems they would be deposited near the mine and thus transportation trucks would not be needed. It is not known what tonnages are anticipated, even to the nearest order of magnitude. To transport the ore to a port (the site of which has still to be selected), the company is evaluating a conveyor belt or a slurry pipeline, (which would involve releasing slurry water at some point with potential negative impacts).

If the mine goes ahead, all five major river systems would be affected by erosion, siltation, and possibly toxicity, depending on what transportation and separation process is finally adopted. The Padada River alone is a primary water source for over 33,000 hectares of irrigated lowland farms. Downstream, the river ecosystem could be irreversibly degraded if the waters are polluted with silt and contaminated with toxic tailings, which could in turn deplete the fish and marine resources along the coasts of the Davao Gulf. Moreover, Lake Buluan is directly downstream from the main Tampakan concession.
Copper Mining in North America

Copper mines similar to that proposed at Tampakan have very damaging environmental and health records. Butte, Montana, in the United States, has the largest and most expensive toxic waste sites in the country’s history because of its copper mines. Cancer rates in the surrounding areas are off the charts. Over the border in Canada, the copper mine at nearby Mount Washington in British Columbia wiped out all five species of salmon in the Tsolum River, which were the mainstay of the local Indigenous Peoples’ livelihoods.

A huge copper mine is now proposed for Clayoquot Sound near Vancouver. Selkirk Metals wants to test drill for copper on Catface Mountain, home of the Ahousaht First Nation (Indigenous Peoples), most of which is inside a Biosphere Reserve. At Catface, the water flowing from one of the exploratory drill sites contains copper at concentrations 21 times greater than that considered safe for humans. Other testing has revealed copper and arsenic at levels 60 times above the safe limit. How this controversy develops may have lessons for Tampakan as there are similarities between the two sites and proposals.

The FTAA Contract

The Financial and Technical Assistance Agreement (FTTA) was signed by Andrew Culum on behalf WMC on the 22nd March 1995. It is difficult to read who signed on behalf of the President of the Republic of the Philippines, but it was recommended by Angel C. Alcala, the Secretary of the Department of Environmental and Natural Resources (DENR). Someone also signed the contract on behalf of Tampakan Mining Corporation, Southcot Mining Corporation and Sagittarius Mines Inc, the Philippines affiliate of Indophil Resources NL.

Indophil Resources NL and Sagittarius Mines Inc carried out a pre-feasibility study, which was completed in September 2006. After Xstrata Copper had taken over management control of the Tampakan Copper on 30th March 2007, it published in December 2007 an upgraded Measured, Indicated and Inferred Resource for Tampakan of 2.2 billion tonnes at a grade of 0.6% copper and 0.2 grams per tonne gold, containing 12.8 million tonnes of copper and 15.2 million ounces of gold using a 0.3% copper cut-off grade.
The FTAA Contract contd.

Environment and Social Impacts

The paragraphs protecting the environment [page 33, para (iii)] are extremely weak. Sub para (1) states:

“The contractor shall submit an Environmental Impact Statement prepared in the form required by the Secretary with any mining feasibility. In preparing such Environmental Impact statement the Contractor shall seek to minimise as far as practicable any damage to the environment caused by the Mining Operation”

Sub para (2) continues:

“To the extent possible, pollution shall be controlled and mined out areas or material from the Mining Operations shall be rehabilitated, revegetated or transformed in an economically and socially responsible manner”

The points highlighted would not be acceptable in a normal Environmental and Social Impact Assessment (ESIA), which would require proof that the contractor will not damage the environment and public acceptance of the Environmental Impact Statement (EIS) after an independent review.

Note: It was reported that a certificate of exemption to the standard ESIA procedures was issued to WMC by the Department of the Environment and Natural Resources (DENR) in 1993 (no copy was made available to the authors).

Exploration is defined on page 7 as follows:

“Exploration means the examination and investigation of lands prospective for Minerals, including but not limited to drilling, trenching shaft sinking, tunnelling, test pitting and other means for the purpose of probing the presence of Mineral deposits and the extent thereof.

“Development” refers to steps necessarily taken to reach an ore body or mineral deposit and develop a mine including the construction of production, treatment and processing facilities and other necessary facilities including expansions and further development occurring after the Commencement of Commercial Production.”

The descriptions of the feasibility stage and production stage seem to run straight into each other with no clear break or pause for permits to be granted or denied. The contract does not say that the ESIA has to be publicly discussed in draft and approved before production can start. The contract simply states that the Mining Feasibility Study has to be approved.
The FTAA Contract contd.

Rights of the Contractor

The rights of the contractor are extensive and include (page 35, Para 10.2)

Sub Para (c) The right to determine the mining and treatment processes to be utilised during the Development Operating Period and the project facilitates to be constructed during the Development and Construction Period.

Sub Para (d) have the right of possession of the contract area with full right of if ingress and egress and the right to occupy the same, subject to the provisions of the Presidential decree No 512 (if applicable) and not be prevented from entry into private lands by surface owners and or occupants therefore when prospecting, exploring and exploiting minerals therein

Sub Para (e) have the right to require the government at the Contractors own cost to purchase or acquire surface areas for or on behalf of the Contractor at such price and terms as may be acceptable to the Contractor. At the termination of this Agreement such areas shall be sold by public auction or tender and the Contractor shall be entitled to reimbursement of the costs of acquisition and maintenance adjusted for inflation from the proceeds of the sale”

Sub Para (h) enjoy subject to pertinent laws, rules and regulations and the rights of third parties easement rights and the use of timber, sand, clay, stone, water and other mineral resources in the contract areas without costs for the purpose of the mining operations.

Sub Para (f) to provide security within the Contract Area with a fully effective security force having full powers of search and exclusion.

Costs of exploring and development

The company is “allowed all costs of setting up the mine including offshore costs. Interest charges etc and in addition a 15% investment allowance based on any expenditure on new assess acquired/constructed during the relevant Fiscal years. Assets means mine development, property, plant equipment and infrastructure including engineering design work”.

The contract seems constructed to undermine the effectiveness of other Government agencies to carry out their mandates to protect agriculture, fisheries and tourism; such agencies might well be concerned about the effects of mining operations on their portfolios.

Page 39 less taxes: Sub Para (e) The government shall assist the Contractors in obtaining and shall support the Contractor’s application for the tax exemptions and investment incentives offered to pioneer to prefer non pioneer enterprises pursuant to the Omnibus Investment Code of 1987 and successor legislation.

Sub Para (d) ensure that no government agency interferes in the peaceful and timely prosecution of the Mining Operations and will use best efforts to ensure the timely issuance of necessary permits and similar authorising documents and lifting of impending regulations or reservations for the use of surface of the contract area.

It is not clear whether or not this includes the Indigenous Peoples’ claims for Certificate of Ancestral Domain Claim (CADC) or Certificate of Ancestral Domain Title (CADT), but many Indigenous People are concerned that it will undermine their rights.
Visit to South Cotabato

The authors visited South Cotabato in February 2008. They met with the Bishop Dinualdo D. Gutierrez and several priests, the Governor of South Cotabato Province, Daisy Avance Fuentes, the Vice Mayor, councillors and staff in Tampakan municipality, local people and with Xstrata staff/Sagittarius officials in their office in Makati, Metro Manila.

During discussions with the governor, vice mayor and councillors, it became apparent that many people were extremely worried about the potential damage to their lands and property if the huge mining project was to go ahead. They were also concerned that, as mining is a government priority, potentially impacted people would have little choice but to accept the mine if it was pushed through against their wishes. The deputy Mayor and council of Tampakan were concerned about the potential impact of the Xstrata mine, and had not, at that time, been fully informed about a substantial number of the other mining applications.

Governor Fuentes told the authors that she had requested a Government-led technical study to determine the proposed mining project’s effects on water catchments, river systems and siltation as they could pose problems for the irrigation infrastructure vital for the 85,000 farms and 200,000 hectares under cultivation in at least three provinces. Although the company wants to start mining after 2011, the Governor, municipalities or potentially impacted people do not have any study on its impacts. But the Governor also stressed her concerns that her staff and the environmental department do not have the capacity to understand and critically review any Environment and Social Impact Assessment (ESIA) on which their views may be sought.

Governor Fuentes had also expressed her concerns to local journalists. “If they eventually open up our mountains, we really don't know how it will affect our environmental landscape and river systems – from Tampakan to Koronadal, Tantangan, Lutayan and the Buluan Lake and all the way to the Rio Grande river system,” she said. “The provincial government wants to know the effects of the mining operation to our irrigation resources and supplies and other natural resources in the area. Even in the exploration stage, SMI is mandated to comply with our environmental laws and complete their environmental assessment,” she said.

Similar concerns have been expressed by Carlos Salazar of the National Irrigation Administration, who has said that the mine at Tampakan will “cause siltation problems even if there’s no study.” He has also said that “the water holding capacity of the mountains will be impaired due to forest destruction; trees will be cut down in order to develop the mining.” It was reported that Undersecretary Virgilio Leyretana, chair of the Mindanao Economic and Development Council, is another government official who has expressed fears about the project’s “massive environmental effects”. He believes it is essential to conduct technical studies to abate the apprehension and to establish measures that will address possible environmental problems. Undersecretary

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Leyretana has directed the regional National Economic and Development Authority to discuss the matter with the Department of Environment and Natural Resources (DENR).

The disposal of mine tailings is one of the most serious issues worrying Governor Fuentes. Carlos Salazar of National Irrigation Administration also emphasized the risk of devastating flash floods and landslides as soon as the proposed mining begins in an article in *MindaNews* on 27th February 2008. He said that the Anglo-Swiss Xstrata Copper and its Philippine subsidiary, Sagittarius Mines Incorporated, pose dangers to the area’s landscape, especially the water systems.

After discussions, the team visited Lake Buluan where they saw the excellent sustainable fish raising. Lake Buluan produces fish worth over $100,000 a week. The whole system would be very vulnerable to acid drainage and siltation.

The authors also visited the proposed mining area. On the way, they passed a village that had already been resettled by the mining company because it wanted land for a company base camp. At the mining area, the authors met local people, some of whom supported the mine, others of whom opposed it. They saw some of the company’s community work, including a Disaster Control Center that had been set up in Pulo Batu village, complete with a radio.

The authors were informed that it is public knowledge that Sagittarius has been providing one million pesos\(^{17}\) (US$ 20,850) to each of the barangays straddling the proposed project site. But a Sagittarius official told MindaNews reporters on 2\(^{nd}\) April 2008 that out of this amount will be taken money to train hundreds of local people as paramilitaries to supplement the company’s security forces. The Bishop of the Diocese of Marbel in South Cotabato, Dinualdo Gutierrez, has described this action as “not very good”. Other Sagittarius officials have denied that “the company was behind the moves to train the civilians,” saying that “village officials have the freedom to allocate the company’s financial assistance to whatever development initiatives they like”. South Cotabato Police Superintendent-Director Robert Kiunisala, however, confirmed that they are training people to become paramilitaries in at least three villages within Tampakan – Tablu, Danlag and Pula Bato – all within the Xstrata-Sagittarius’ mining concession area. (*MindaNews*)

The authors then visited the Xstrata base camp – or what was left of it. The camp is on top of one of the mountains in the Mount Matutum protected landscape ranges at 4,470 feet. It is sited in one of the few areas of significant forest that are the source of rivers and streams. The area is already highly unstable with landslides and moving land masses, aggravated by many seismic shocks and the extensive logging during the 1970-80s. The whole area is covered in logging roads. It is reported that the loggers paid virtually nothing for the timber, or as little as one peso per hectare.

The camp, however, had been attacked by the New People’s Army (NPA)\(^{18}\) on 1\(^{st}\) January 2008 while most of the guards were in the town of Tampakan celebrating

\(^{17}\) 1 US$ = 47.9600 PHP, http://www.xe.com/ucc/ 19 October 2008

\(^{18}\) The New People's Army (NPA) is the armed wing of the Communist Party of the Philippines. It was formed on 29th March 1969. Under the 2004 US Immigration and Nationality Act, it has been
New Year. Two major buildings were burnt to the ground. The company had sought the intervention of the Governor, who convened the Executive Committee of the Provincial Peace and Order Council. Given that it was the communist NPA involved, the Philippine Army should be the lead agency responding to the attack. Xstrata, however, voiced serious reservations about involving the military so actively, even as it urged the government official to accept responsibility for peace and order. The Philippine Army has estimated that to comprehensively address issues of peace and order in the area would cost at least PHP 6 million (US$125,104) year, an amount to which the company should at least contribute. Local people fear that the militarization could be used to force them to accept the mining project.

Since the New Year attack at the base camp, the company has evacuated all its personnel and equipment, except for a few vehicles and mechanics. It is slowly restoring some of the machine shops and maintenance hangars, but the camp was not functioning during our 22nd February 2008 visit.

The mining company still has the rights to use the remaining forest and may build houses and buildings which would destroy the remaining forest, harming the water catchments feeding the extensive rice lands all the way downstream to Lake Buluan and beyond. Xstrata would probably reforest some of the area with fast growing trees that they could cut for their own use or to sell. The remaining timber has become very valuable as seed sources for regeneration.

The risks to the irrigated area appear to be very high, as indicated in maps that we presented to Xstrata during our meeting.

At the 27th February 2008 meeting of the Mindanao Super Region Project, concern was expressed that the downstream areas of the mountainous tri-boundaries of South Cotabato, Sultan Kudarat and Davao del Sur provinces would all be at risk of devastating flash floods and landslides if the proposed Tampakan large-scale copper and gold mining project in the area begins.

designated as a foreign terrorist organization. The Philippine Government has declared that it will diminish its forces significantly by 2010.


In her sixth “State of the Nation Address” (SONA) in July 2006, President Gloria Macapagal-Arroyo announced the creation of “super regions” in the Philippines, which would group selected regions or provinces together according to their economic strengths. The Mindanao Super Region is also known as the Agribusiness Mindanao Super Region.
South Cotabo Conclusion, Recommendation and Map

The authors recommend that mining in this area of important forests and water catchments, including the Tampakan Mine, should be banned. Mining will impact the lands of the Indigenous B’laan peoples and the downstream agricultural areas of South Cotabato, Sultan Kudarat and Davao Del Sur provinces. The Liguasan Marsh could also be victim. These areas would be at risk of pollution, erosion, siltation, and continuing devastating flash floods and landslides. Lake Buluan, with its superb sustainable fish production, may be damaged or even destroyed by flash floods, pollution and increased siltation which will gravely affect the largely Muslim population who depend upon it for survival. Also under threat would be the Liguasan Marsh, an extensive swamp region some 40 km long and 30 km wide, in central Mindanao. There are fertile rice-growing areas and mangrove forests in the marsh and a game refuge and bird sanctuary.

The area is highly unstable with frequent landslides and government geohazard mapping should corroborate this with their data of frequent and often intense earthquakes (See Annex E). Seismic shocks aggravate and amplify the dangers compounded by the damage of extensive logging in the recent past. Water catchment areas need urgent conservation and reforestation, not mining, to help sustain and increase sustainable food production.

The area is a centre of armed conflict because of ongoing political, cultural and economic issues. Mining in conflict areas has, and will most likely continue, to fuel the flames of armed conflict, continuing human rights abuses and internal displacement of vulnerable communities.
Statement by Catholic Clergy of the Diocese of Marbel, 4th June 2008
Large Scale Mining is Not Moral, Fair and Just

The Diocese of Marbel, once again, would like to reiterate that it is not against development. Like all other sectors, it aspires for a life of comfort for all members of society. In the same vein, the diocese is one with the rest that natural resources which are abundant in SOCSARGEN20 came from God for human development. Therefore, the diocese fully supports endeavors for a moral, fair, just and sustainable utilization of natural resources.

Having said the above, the clergy of the diocese of Marbel would like to pose some questions regarding the present government’s trend of natural resources’ utilization. Is large scale mining, especially the employment of open pit mining method, a moral, fair and just utilization in the inhabited, and agricultural area? Is to oppose large scale mining presence in SOCSARGEN for environmental, social and even long term economic reasons anti-development?

Global warming, climate change and food shortages are immediate threats to human existence. Large scale mining activities never address but rather aggravate these threats. It is not only ironic but highly immoral to aggressively pursue revitalizing the mining industry in the wake of global food shortage. It is grievously immoral to extract precious mineral deposits of a third world country like the Philippines, in the process inflicting injurious damage to the agricultural sector and aquatic resources of SOCSARGEN, to serve the metallic needs of highly developed countries like China and India.

Land use conversion of watershed, forestal and/or agricultural areas deprives thousands of farmers and fisher folk in SOCSARGEN of their sustainable source of livelihood.

As experienced in areas where mining has been done, it has depleted water supply, whether for residential or agricultural use. Toxic waste and dusts produced during processing of mineral ores cause havoc to marine and human lives. What lessons have we learned from Placer dome mining in Marinduque after it rendered two rivers dead and caused unaccounted cases of respiratory and skin illness to its residents, aside from mere verbal assurances from the government; the so-called “state of the art” mining technology in Rapu-Rapu that poisoned marine products?

Mining would not have been a hard pill to swallow for the poor communities in mining areas if history has shown these communities to have attained real development: peace and order maintained, communities economically secured and empowered and not mere subordinates of mining companies, human health robust and environment clean. Unfortunately, these never happened in Surigao, Benguet, Marinduque and Samar after years of mining history. Only the mining companies who run off with their profits benefited. At present, government records show that more than thirty mining sites have been abandoned by companies and need rehabilitation.

While the clergy of the diocese of Marbel recognize that the country is reeling from economic crisis, it is convinced that the government is not left with mining alone as the ONLY option for recovery. Vast agricultural land remains waiting to be tapped for its full potential towards food security and people’s sustainable economic benefits. The impressive natural landscapes, different bodies of water, rich marine resources and cultural heritage in the region offer vast potential for local and foreign ecotourism.

20 SOCSARGEN is a region of the Philippines, located in central Mindanao, and is part of Region XII. The name is an acronym that stands for the region’s three provinces and two cities: South Cotabato, Cotabato, Sarangani and General Santos City.
that offer more sustainable economic activity for all sectors. Large scale mining compromises ecological balance and invites many social ills while agriculture and ecotourism, aside from being truly sustainable and environmentally sound, secures the future generation of a healthy world and non-renewable mineral deposits to be tapped, when history has broken the curse of mining hazards.

The clergy will continue to be determined and united in its stand against any undertaking that promotes only corporate greed like large scale open pit mining, undermining environmental, social and economic justice, ecological balance and cultural legacy for the present and future generation.

Approved:

+DINUALDO D. GUTIERREZ, DD
Bishop of Marbel
6 June 2008
Sustainable Development and Mining Industry in
Tampakan, South Cotabato, Philippines

South Cotabato has rich soils; a typhoon free mild sub-tropical climate which produces evenly distributed annual rainfall. It is one of the most important agricultural provinces in the Philippines. There are approximately 85,000 farms with 200,000 hectares under cultivation. Annual crops include corn, rice, and vegetables. Perennial crops include pineapple, bananas, asparagus, robusta coffee, rubber and palm oil, some of which are grown by agribusiness. Irrigation water comes from water catchments in the Mount Matutum range.

Concerns about proposed mining plans were made clear during the 2008 Mindanao Super Region Project meeting. Governor Fuentes stated "If they eventually open up our mountains, we really don't know how it will affect our environmental landscape and river systems - from Tampakan to Koronadal, Tantangan, Lutayan and the Buluan Lake and all the way to the Rio Grande river system." She called for studies on likely impacts.

National and International experts commissioned by the WGM, visited the area and prepared a report "Philippines: Mining versus Food!" and this map. It shows that the proposed Mining concessions including the Tampakan Mine overlap critical water catchments and the lands of the Indigenous B’laan peoples. Their culture, traditions and livelihoods were negatively impacted in the past by inward migration from the northern islands and then badly affected by logging.

The area is highly unstable with frequent landslides. This is aggravated by many seismic shocks and the extensive logging that took place during the 70s & 80s. Water catchments need urgent conservation/reforestation. Mining could impact the downstream agricultural areas of South Cotabato, Sultan Kudarat and Davao Del Sur provinces. These areas would be at risk of pollution, siltation, devastating flash floods and landslides. Lake Buluan with its superb sustainable fish production may be damaged or even destroyed by flash floods, pollution or siltation which will gravely affect the Muslim population who depend upon it for survival.

The area is a center of armed conflict. On 1st January 2008 NPA militants attacked the Xstrata mining base camp and burned buildings. Mining in conflict areas will most likely lead to an increase in armed conflict and human rights abuses.
ANNEX Entire Report Table of Contents

Foreword to Second Mining Report vii
Message from Senator Aquilino Pimentel Jr viii
Message from Bishop. Zacarias C. Jimenez, DD ix

EXECUTIVE SUMMARY AND RECOMMENDATIONS xi

Summary recommendations to the Philippine Government xvi
Summary recommendations to Mining Corporations xxi
Summary recommendations to Development Agencies, NGOs, World Bank xxiii
Summary recommendations to the Investor Community xxv
Summary recommendations to Mining-Impacted Communities xxvii

INTRODUCTION 1

Chapter 1: Mining and Food Security 4
1.1 The Importance of Rice 4
1.2 The 2008 Food Price Frenzy 5
1.3 Peak Oil, Peak Food, Peak Phosphate, Peak Water & Peak Stable Climate 7
1.4 Why Does the Philippines Import Rice? 8
1.5 Reasons for Decreased Domestic Rice Production 9

Chapter 2: Mining and Forests 11
2.1 Deforestation Harms Rice and Fisheries 11
2.2 The Need for Watershed Conservation 13
2.3 Deforestation Increases Poverty 13
2.4 Indigenous Peoples and Forests 13
2.5 Rainforestation 14

Chapter 3: Mining and Marine Resources 15
3.1 Mining and Fisheries 15
3.2 Pollution From Mining 15

Chapter 4: Flawed Government Policy 18
4.1 Scale of the Mining Problem 18
4.2 Conflict of Interest 20
4.3 DENR Promotes Mining and Demotes Environment 20
4.4 Corruption in Environmental Governance 22
4.5 Philippine Mining Act, 1995 23
4.6 Separate Exploration from Exploitation 29
4.7 Post-Mining Rehabilitation Must Be Enforced 29
4.8 Government and Society Split on the Benefits of Mining 32

Chapter 5: Indigenous Peoples 36
5.1 Indigenous Peoples and the National Commission on Indigenous Peoples 36
5.2 The Role of the National Commission on Indigenous Peoples 37
5.3 Rights of Ownership and Ancestral Domain 38
5.4 Right to Develop Lands and Natural Resources 38
5.5 The Right to Benefits 38
5.6 Protections Afforded by Indigenous Peoples’ Rights Act 39
5.7 Free and Prior Informed Consent 39
5.8 FPIC and ESIA 41
5.9 Indigenous Peoples need Environmental and Social Impact Assessments 42

Chapter 6: Human Rights, Militarization and Mining 44
6.1 Human Rights and Mining 44
6.2 Official Reports Documenting Human Rights Violations 45
6.3 Human Rights, Civil Society and the Catholic Church 47
6.4 The Human Security Act 48
6.4 Further Militarization of Mining Projects and Investment Defense Forces 49
6.5 The Relationship Between DENR and NCIP 51
6.6 DENR Engulfs NCIP 51

Chapter 7: Philippine Mining Economics 53
7.1 Deficiencies in Mining Economics 53
7.2 Internalizing Currently Externalized Costs 54
7.3 Policy Options for Internalization 54
7.4 Benefit Allocation 55
7.5 The Resource Curse 55
7.6 Impact-Benefit Agreements 57
7.7 Assessment of Cost Externalization in Philippine Mining 59
7.8 Mining is the wrong Engine for Growth 61

Chapter 8: The Position of the International Agencies 70
8.1 The World Bank Group 70
8.2 International Development Assistance to DENR 72

FIELD TRIP CASE STUDIES 73

Case Study 1: Iron Ore & other Minerals, Midsalip, Zamboanga del Sur - Mindanao Island 75
Background 75
Water, Food and Livelihoods 77
The Threat of Mining in Midsalip 79
Potential Impacts and Opposition 82
Midsalip Visit 84
Midsalip Conclusion, Recommendation and Map 85

Case Study 2: Copper and Gold Mining Zamboanga del Norte - Mindanao Island 94
Background 94
Mining damage 95
Future plans? 98
Sibutad and Libay Visit 99
Sibutad and Libay Conclusion, Recommendation and Map 100

Case Study 3: Copper and Gold Mining in Tampakan, South Cotabato – Mindanao Island 106
Background 106
Threat of a huge open-pit copper and gold mine 108
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.. Perhaps reluctantly we come to acknowledge that there are also scars which mark the surface of our earth: erosion, deforestation, the squandering of the world’s mineral and ocean resources in order to fuel an insatiable consumption. Some of you come from island nations whose very existence is threatened by rising water levels; others from nations suffering the effects of devastating drought. God’s wondrous creation is sometimes experienced as almost hostile to its stewards, even something dangerous. How can what is “good” appear so threatening? ..My dear friends, God’s creation is one and it is good. The concerns for non-violence, sustainable development, justice and peace, and care for our environment are of vital importance for humanity.

His Holiness Pope Benedict XVI, 23rd World Youth Day, Sydney, Australia, July 12-21, 2008

Photos if the fact-finding trip can be found on: http://workinggrouponmininginthephilippines.blogspot.com

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