

Breaking promises, making profits

Mining in the Philippines



A Christian Aid and
PIPLinks report

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Foreword

Over the past eight years the authors have visited and listened to mine-affected communities, company representatives, government officials and groups from many different parts of the Philippines. They have visited communities in Siocon, Bayog, Sibutad, San Miguel, Midsalip, Pagadian, Leon Postigo, Sindangan and Iligan in western Mindanao; Mainit, Tubod, Placer and Claver in northeast Mindanao; and Toledo, Cebu, Palawan, Victoria, Pinamalayan Naujan and Calapan in Mindoro Oriental. They have also visited Aurora Province and the Cordillera region, including the communities of Itogon, Mankayan, Cervantes, Tadian, Quirino, Bontoc and Sagada, among many other areas.

Glossary

ADB	Asian Development Bank
Barangay	Village
CADT	Certificate of Ancestral Domain Title
CLC	Cordillera Labor Center
DCMI	DIOPIM Committee on Mining Issues
DENR	Department of Environment and Natural Resources
EIR	Extractive Industries Review
FPIC	Free Prior and Informed Consent
FSMA	Forest Stewardship Management Agreement
IPRA	Indigenous Peoples Rights Act
MAP	Mineral Action Plan
MMSD	Mines, Minerals and Sustainable Development Project
MOA	Memorandum of Agreement
MPSA	Mineral Production Sharing Agreement
NCIP	National Commission on Indigenous Peoples
SAPRIN	Structural Adjustment Participatory Review International Network
SCAA	Special CAFGU [Civilian] Armed Auxiliary
SSAI	Siocon Subanon Association Incorporated
SSWPM	Save Siocon Watershed Paradise Movement

Executive summary

*'We have seen the devastating effects of some of the mining operations: the spillages of mine tailings in Boac, Marinduque, in Sipalay and Hinobaan, in Negros Occidental, in Itogon, Benguet, and mudflows in Sibutad, Zamboanga del Norte. The adverse social impact on the affected communities, especially on our indigenous brothers and sisters, far outweigh the gains promised by large-scale mining corporations. Our people living in the mountains and along the affected shorelines can no longer avail of the bounty of nature.'*¹

Statement of Catholic Bishops of the Philippines, 1998

On 24 March 1996 a cement plug in the base of a tailings pit burst at the Marcopper mine on Marinduque Island in central Philippines. Poisonous waste began to pour into the nearby Boac River.² The leak took months to stop, by which time an estimated four million tonnes of grey, porridge-thick tailings had filled the river bed and caused widespread flooding and damage to property and rice fields. Five villages had to be evacuated and an estimated 20,000 villagers living along the river and its estuary were affected, according to a UN report.³ Today the river mouth and bed are still filled with waste and the metals in the silt are generating acids. The local economy and ecology have been devastated.⁴

But the 1996 disaster was by no means the only one to afflict the people of Marinduque. The Marcopper mine had been polluting the environment continuously since it was opened in 1969. Over a period of about 20 years up to 1991, it dumped around 200 million tonnes of mine waste into the nearby coastal fishing grounds of Calancan Bay,⁵ extending a 500-metre-wide causeway five kilometres into the sea, and devastating the livelihoods of local fishing communities. Analysis by the United States Geological Survey, the Philippines Department of Health and Oxfam Australia's Mining Ombudsman has shown very high levels of lead and other metals in children's blood and the local environment. Some children have died of metal poisoning.⁶

A Canadian multinational mining company, Placer Dome, was the largest single investor in the Marcopper mine with a 39.99 per cent holding (the most a foreign company is allowed to own). Although it has strenuously denied accountability for Marcopper's activities and the disaster in 1996, Placer has spent millions of dollars since cleaning up the Boac River. A Philippine government report shows that after seven years of contamination the river is slowly returning to normal⁷ and Placer says it is content it has behaved responsibly by paying for some of the clean up: 'We hope the current owner is going to do the right thing... We have fulfilled our responsibility,' said a spokesperson.

The company also claims that it was only a 'minority shareholder with very little ability to influence and certainly not control' operations.⁸ Placer Dome was, however, the only company with mining expertise involved in the Marcopper project. Staff who left Placer to run the Marcopper mine, and subsequently returned to Placer, were not described as 'secondments' but employees of Marcopper Mining.

But the company accepts no responsibility for the devastation caused in Calancan Bay and other areas polluted since 1969. As well as saying that it was not the operating company, it argues that the mine was operating legally. 'Submarine tailings disposal was the accepted and approved way to go in that part of the world at that time,' said a spokesperson.⁹ Asked whether Placer Dome had investigated reports of the damage, Keith Ferguson, vice-president for safety and sustainability, told Christian Aid, 'I haven't seen any studies or any evidence or anything.' There are many reports in the public domain describing the horrific state of Calancan Bay today.

In the same interview, Christian Aid was advised that, 'There are many parts of the world where these kind of things have occurred.'

The headline-grabbing disaster in 1996 alerted people all over the Philippines to the disastrous environmental impact that has so frequently been the legacy of large-scale mining in the Philippines.

Marcopper remains the worst, but by no means the only, environmental disaster in Philippine mining history. It happened just one year after a new law, the 1995 Mining Code – intended to boost investment in the industry – was passed. All the disaster boosted, however, was the widespread community opposition to mining that still remains today. The industry appears to have lost its social licence to operate.¹⁰

In researching this report over the past eight years, the authors have visited communities affected by mining from Luzon to Mindanao, and from Cebu to Palawan.

What they found was that while companies express their commitment to high environmental standards and good relations with their host communities, the communities themselves tell of the repeated violation of environmental standards and their human rights by companies and their employees. Given the negative experiences of the past, locals fear for the future: they express openly their lack of confidence that either mining companies or the government will do enough to protect them from mining's worst effects.

This report asks whether mining as currently practised benefits ordinary Filipinos, and looks at what changes are needed to address their concerns.

Foreign and domestic investment in mining has been encouraged by successive administrations, with the backing of influential international organisations such as the World Bank. But the Philippine government is following policies that are hurting some of its poorest citizens. Going beyond simple economic measures, this report looks more broadly at the environmental and social costs and benefits of mining.

Two case studies explore these issues in greater depth. Lepanto Consolidated Mining, a Philippine company, owns a copper and gold mine in Mankayan that has operated since 1936, making it the oldest working mine in Asia. The report examines its environmental legacy: its waste has polluted and clogged a major river, the Abra, causing environmental damage across four provinces. It is accused of causing subsidence in the local area. The report looks at the response of communities, long familiar with mining, to proposals for its continuation and expansion.

The second case study looks at a Canadian company, TVI Pacific, which is attempting to mine gold in Canatuan, Siocon, on the southern Philippine island of Mindanao. It looks at whether the rights of the indigenous Subanon¹¹ to make decisions about its land have been sacrificed for the sake of foreign capital. Local people who rely on clean and plentiful water for agriculture and fishing fear economic ruin because of pollution from the mine. The area has become heavily militarised as TVI seeks to protect its investment.

National governments, including that of the Philippines, continue to introduce legislation favouring big companies, to the detriment of ordinary people. This report calls for a more sustainable form of development instead, in line with the wishes of local communities. It also criticises influential lenders, such as the World Bank, which promote policy reforms designed to expand the mining industry. The Extractive Industries Review (EIR), commissioned by the World

Bank to assess its record in the sector and published in late 2003, agrees that mining projects, including many funded by the Bank, have too often entrenched rather than reduced poverty. The Bank has rejected its main recommendations.

Because the benefits to the national economy remain so unclear, with negative effects appearing to be at least as likely as positive ones, it is vital to focus on the local impact of mining. Here the picture is clear – people who live near mines in the Philippines are overwhelmingly being made worse off, because of environmental degradation, economic stagnation and human rights concerns. Only a small minority are benefiting from the few jobs available, and the occasional company-sponsored community programme.

If there is a role for mining in the Philippines, it must be within a context of human rights and truly sustainable development.

But if we are to change a system in which the long-term costs are borne by the environment, and the poorest, a strong framework of rights and precautionary law is urgently needed. The EIR argues that, at a minimum, clear conditions have to be in place prior to investment if that investment is going to benefit poor people. Domestic legislation to improve the accountability of companies based in prominent mining centres like the UK, Canada and Australia is critical.

Mining companies, financiers and international institutions must be compelled to comply with existing international law and emerging international and national standards. The rights of indigenous peoples to determine what development should take place on their lands, including the right to reject unacceptable development, must be respected in practice as in law.

Moreover, the numerous allegations of human rights violations associated with mining development should be investigated. Communities affected by a mining company should have a right of redress. They should be able to bring their grievances to an international or nationally-based regulatory body and pursue their case in the domestic courts of the countries where mining companies are based.

1. The laws on mining: colonialism continued?

'We are like Saudi Arabia, sitting on all that oil... Mining can be productive for all if it is properly shared at the community level, as well as local, provincial and national government level.'

Horacio Ramos, director, Mines and Geosciences Bureau¹²

The Philippines is brim-full of important metals. According to the London-based *Mining Journal*, the Philippine mineral endowment in 1991 was among the highest of any country in the world. It ranks second in the world for gold, third for copper and sixth for chromite, the only natural source of chromium.¹³ There are also substantial deposits of nickel, coal, limestone, iron ore, silver and uranium, among others. Though extensive, many of the mineral deposits in the Philippines are low grade. Only low wages and the application of new technology with high levels of mechanisation, and therefore even lower labour costs, makes many of these deposits commercially viable.

The shameful past

There is a long history of foreigners trying to exploit this wealth. Local miners have been extracting and trading their gold for at least 1,000 years and mining still plays a central role in the culture and economy of many indigenous people.¹⁴ And it was the presence of the rich gold deposits which attracted colonisers to the country. In the 16th century, Spanish colonisers began the systematic theft of gold and other resources that, some argue, has continued to this day.

In 1896, Philippine nationalist forces drove out the Spanish and declared a short-lived independence, only to be re-colonised by the US after the Spanish-American War in 1898. Even prior to this takeover, an American geological survey had identified mineral-rich areas in the country for possible development. While armed resistance to the American occupation persisted, the colonial government moved swiftly to register the mining claims of American citizens in the famous Baguio gold-mining district in the Cordillera.

Large-scale mining in the Philippines can be traced back to these claims and the establishment of the mining company known today as Benguet Corporation. The provisions of the 1905 Mining Act declared: 'All public land in the Philippines [is] to be free and open for exploration, occupation and purchase by citizens of the United States and the Philippines.' Indigenous lands, including mines in Benguet Province in the Cordillera, became open to acquisition by pioneer miners: the provisions of the 1905 Act allowed not only for mining leases, but for outright ownership. Even today, Benguet Corporation maintains its presence in the area as landlord, landowner and developer.

Mining, therefore, has a long history in the Philippines and has contributed both to personal fortunes and to the national treasury. It enjoyed a particular boom in the 1960s and 1970s when gold and copper prices reached an all-time high, at the same time as President Marcos' regime was controlling wages and suppressing unions which kept costs artificially low.

Marcos had a direct interest in the mining industry. About half of the Marcopper mine, for example, which was 39.99 per cent owned by Placer Development (later Placer Dome), has subsequently been revealed to have been owned by Marcos himself through a number of cover companies.¹⁵ Close collaboration with the dictatorship bought significant commercial advantages for Marcopper. Criticism of, and opposition to, the mine was suppressed. Controversial schemes –

such as the dumping of waste into Calancan Bay – were tolerated by the authorities, despite their obviously disastrous impact on the lives of the fishing communities.

Anthropologist Catherine Coumans says: ‘The company repeatedly defeated attempts by Philippine environmental authorities to halt surface disposal dumping into Calancan Bay by relying on intervention by then-President Ferdinand Marcos.’ When interviewed by Christian Aid, Keith Ferguson, vice-president for safety and sustainability at Placer Dome, denied any knowledge of Marcos’ role in the mine, saying, astonishingly, ‘I do not have any information on the identity of other investors in the mine.’¹⁶

Even after Marcos was overthrown, government support continued. President Cory Aquino intervened on behalf of the company to allow dumping into Calancan Bay to continue, in spite of a cease-and-desist order issued in 1988 by the country’s environmental regulatory agency.¹⁷

But in the 1980s, the mining sector fell into serious decline. Mineral exports accounted for 22 per cent of total exports between 1970 and 1974, while between 1986 and 1995 they accounted for only seven per cent.¹⁸ In 1988, the Philippines was still the world’s seventh-largest gold producer and tenth-largest copper producer. By 1997 it had dropped to 17th place and 22nd place respectively.¹⁹ Copper production fell by 90 per cent and, in 2000, chromite production was only five per cent of its 1980 levels.²⁰

The decline of mining in the Philippines since the 1980s could be due to a number of factors, including the extraction of the best ore during the boom years without reinvesting in exploration, so that only lower-grade deposits are now left. Local community protests also served to persuade investors to focus their attentions elsewhere.²¹

In response to this trend, successive Philippine governments have set about encouraging new foreign investment in mining with a range of incentives. These have included:

- liberalisation of legal frameworks, leading to less restrictive regulation
- assurances of government support
- lower duties and tariffs
- tax breaks and holidays.

The World Bank, whose influence over Philippine economic policy has been extensive since the country’s serious external debt problems emerged during the 1980s, encouraged these measures.²² At that time, the Bank’s message everywhere was that transnational mining companies needed reassurance and incentives to invest in mining in developing countries.²³

In the Philippines, the United Nations Development Program and the Asian Development Bank (ADB) joined the World Bank in a programme of research and promotion aimed at increasing foreign investment in mining. In 1989 London’s *Financial Times* claimed: ‘The Philippines is far more densely mineralised than Australia, the tonnages are bigger and the terrain is largely unexplored. The place is wide open.’²⁴

In consultation with the World Bank and international mining companies, the Philippine government created a new legal framework. But while this led to increased levels of foreign investment in mining – although not as much as the government had wanted – it failed to adequately protect the rights of Filipinos.

The new Mining Code

The new Mining Code was passed in March 1995.²⁵ It was proposed in the Senate by Gloria Macapagal-Arroyo, now the Philippine president, and has been strongly backed by each successive administration. The measures in the Code follow those suggested by the World Bank, which, over the past 20 years, have been replicated by 110 countries around the world.²⁶

The Code sought to attract increased foreign investment by allowing greater foreign ownership, repatriation of profits and tax breaks for international mining companies. It was hailed by the *Mining Journal* as 'among the most favourable to mining to be found anywhere'.²⁷ This is not surprising given that foreign companies had been invited to help draft the law: the Philippine government invited companies to attend and take part in the drafting process at a workshop during the 1993 Pan Asian Mining Congress.²⁸

Some of the provisions of the Mining Code²⁹

- 100 per cent foreign ownership of mining projects is now allowed (previously foreign companies were restricted to a maximum 40 per cent).
- A foreign company can lay claim to an area of up to 81,000 hectares onshore or 324,000 hectares offshore. Philippine-based companies are by contrast restricted to 8,000 hectares in one province and 16,000 hectares within the country.
- Companies can repatriate all profits, equipment and investment.
- Companies are guaranteed against expropriation by the state.
- Excise duties have been cut from five per cent to two per cent, and tax holidays and deferred payment are allowed until all costs are recovered.
- Losses can be carried forward against income tax.
- The government commits itself to ensuring the removal of all 'obstacles' to mining, including settlements and farms.
- Companies are promised priority access to water resources within their concession.
- Companies are given the right to sell gold directly onto the international market without intervention from the Central Bank.
- Mining leases last 25 years with an option of a 25-year extension.

A rush of applications to explore or mine in the Philippines followed this liberalisation package and many of the world's major international companies have entered the country, including some which have a history of bad relations with indigenous communities.³⁰ Although the changes in ownership laws specified in the Code are directed at attracting foreign firms, they also offer local companies the prospect of developing their existing rights, or selling them.

The companies which benefited from the Mining Code include TVI, a Canadian firm examined later in this report. It acquired rights to explore more than one million hectares, roughly three per cent of Philippine land area. Its 1994 annual report comments:

The [Philippine Mining Code] is very important for the future of the mining industry in general in the Philippines and to the future of TVI in particular. Among other things it provides for 100 per cent foreign ownership of mineral properties; guarantees repatriation of earnings, capital and loan payments to foreign entities; reduces government royalty on gold to 2 per cent; and has various positive tax implications, including accelerated depreciation of fixed assets and carry forward losses.³¹

Today, projects based in less-developed areas are also eligible for tax breaks of up to six years, providing they are in priority industries, which includes mining. Non-fiscal investment incentives include the right to employ foreign nationals in supervisory, technical or advisory positions for five years from the date of registration.³²

For some companies even these benefits are not enough. Both the Philippines Chamber of Mines and international companies, backed by the International Chamber of Commerce, demanded further laws to prioritise mining.³³ They have gained these in repeated revisions of the implementing rules for the Mining Code and other laws, and more recently through the formulation of the 2003 National Minerals Policy and the 2004 Mineral Action Plan. Executive Order 270, issued by the president in January 2004, confirmed the trend from tolerance of mining to its active exploitation.³⁴

The National Minerals Policy

Despite the rush of applications to mine, the expectation that the new Code would attract industry leaders and cutting-edge technology was not realised. In fact, the companies that benefited most from the Code have been a number of small, speculative foreign companies as well as some local firms.

Foreign investment in mining increased by more than 50 per cent between 1995 and 2001, from US\$980 million to US\$1.5 billion (P55.2 billion to P84.5 billion), but production is still well below what it was two decades ago.³⁵ Assessments by both the industry and the government, presented at the Mining Philippines 2001 conference, concluded that the Mining Code had failed to deliver the promised upturn in investment.³⁶

The Philippine government responded to this poor performance by developing the National Minerals Policy (NMP). This policy borrows from the language of international efforts to reposition mining as ‘sustainable development’, such as the World Summit on Sustainable Development’s Plan of Implementation,³⁷ by highlighting the supposed best practice of the major companies and prioritising a concern for social and environmental protection. The NMP was designed to unite the country behind a programme to reinvigorate the mining industry by attracting more foreign investment, and developing a ‘world-class’ industry, according to Leo Jasareno, chief of the tenements division of the Mines and Geosciences Bureau, a government agency.³⁸

Civil society reaction

But the NMP has been heavily criticised. According to Catalino Corpuz, who works for Tebtebba Foundation, a leading indigenous peoples’ organisation, the NMP is a ‘tool to fool the people through statements like “paradigm shift”, “sustainable development”, and “responsible mining”.’³⁹

Corpuz says that the NMP fails to properly address the environmental impacts of mining. For example, rather than revoking the licences of companies who allow the unauthorised release of contaminated waste, it allows them to pay just 50 pesos (US\$0.89) per tonne of waste in compensation for property damage and to rehabilitate land.⁴⁰

The risk is that companies just see this as a cost-effective way to deal with pollution.

The NMP consultation process, funded by the World Bank, has also been severely criticised by civil society for its uncritical acceptance of the benefits from mining. The draft NMP asserts that there has been a ‘paradigm shift from traditional mining to a new regime of a pro-people, pro-environment minerals industry’.⁴¹

But while it appears to adopt the inclusive language of consensus building, the implication of the government's desire for 'dialogue' is clear. The draft NMP states that: 'Considering the number of hard-line environmental advocates/NGOs, [the] Government recognises the necessity of building an ICE [information, communication and education] army for the mining industry to counter negative perception.'⁴²

It continues: 'It is understood that the public makes decisions based on emotions and intuition as well as rationality. Accordingly, an informed public can make informed decisions. The public therefore must be made to understand the value of mining.'⁴³

The government appears to believe that civil society needs only to be educated to overcome its emotional resistance to mining.

To suggest that local people resist mining because of emotion and ignorance demonstrates a hubristic lack of understanding. Such an attitude has meant that the 'information' component of the process is failing to provide a rounded picture. The World Bank invited two experts from Peru and Colombia to the regional consultation meetings, and a further five international experts to address a national conference in December 2003.⁴⁴ Despite the controversy that surrounds mining development in their countries, the speakers chose to paint positive images of the effect of mining on community development.

Furthermore, only selected participants were invited to join the process. Given this approach it is unsurprising that the dialogue has failed to gain credibility. An earlier round of consultations had already collapsed under the weight of civil society criticism.

The NMP process has sought to marry two attitudes that may simply be incompatible. On the one hand, it has sought to bring at least some critics on board with promises of greater inclusiveness. On the other, the proposed policy seeks to appeal to the industry by offering a mining-friendly regime of self-regulation and fast-track processing of extraction claims. It even promises to consider companies' applications to dispose of waste at sea, a practice almost universally criticised by experts,⁴⁵ and even by the mining industry itself.⁴⁶

The Mineral Action Plan

Two community organisations that Christian Aid and PIPLinks work with in the Philippines are refusing to take part in the Philippine government's consultations on its draft Mineral Action Plan (MAP), which fleshes out the vision of the NMP, because it ignores the realities and rights of local people. The DIOPIM Committee on Mining Issues (DCMI)⁴⁷ and the Legal Rights and Natural Resources Center criticise the draft MAP because: 'It centralises critical decisions on the siting of commercial mining, not in the hands of local communities but in national and local government bodies [and] undercuts legal procedures for processing local community consent.'⁴⁸

In a joint statement on the MAP, they add that: 'So many consultations have been participated in by local communities and advocacy groups such as DCMI and LRC. We had hoped that somehow our impassioned pleas for a shift in frameworks should have made a dent in government thinking about commercial mining.'⁴⁹

Despite the opposition of a large number of civil society groups and communities affected by mines, the Mineral Action Plan has been signed into law by President Arroyo.

The Indigenous Peoples Rights Act

Up to 15 per cent of the Philippine population – about ten million people – belong to distinct indigenous communities and retain a close link with their traditions. They avoided Hispanisation during Spain's 350-year colonisation of the Philippines. Over the past 25 years, indigenous people all over the world have been demanding the recognition of their rights to maintain and develop their cultural heritage and, more particularly, their land. In 1987, after the fall of the Marcos regime, a revised Philippine Constitution recognised the ancestral land rights of indigenous people, and ten years later, in 1997, those rights finally became law.

Much of the land targeted for mineral exploration is the ancestral home of indigenous groups. Because of the successful defence and management of this land in the past, today it contains a disproportionately high percentage of the country's total remaining forest. According to the Mining Communities Development Center, mining claims since 1995 cover more than 30 per cent of the remaining forest land of the Philippines. Mining this land would therefore have a disproportionately high environmental impact, stripping key forested watersheds and polluting areas downstream, including coastal waters. It would deprive many of the poorest people in the country of their existing lands and livelihoods.

British NGO Survival International described the 1995 Mining Code as 'the major current threat to the future of tribal people in the Philippines'.⁵⁰

The 1997 Indigenous Peoples' Rights Act (IPRA) is modelled on the provisions of the UN Draft Declaration on Indigenous Peoples' Rights. One of its main concerns is companies using ancestral land: it says that before exploration and extraction rights are granted, the whole community must be informed and agree to the decision. This is known jargonistically as free prior informed consent (see box, below).

Free prior and informed consent

The theory

The Indigenous Peoples' Rights Act (IPRA) defines free prior and informed consent (FPIC) as the 'consensus of all members of the indigenous peoples to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.'⁵¹ It asserts that in the absence of such a clear level of consent, a project cannot proceed.

The reality

Both the Mining Code and the IPRA talk about the importance of FPIC to affected communities. But evidence to date suggests that the agencies in charge of these areas (in particular the Mines and Geosciences Bureau and the National Commission on Indigenous Peoples) have failed to effectively apply the law. This is due to:

- severely limited resources to enforce the legal provisions, both in terms of budget and the considerable expertise required to deal with complex matters of consent in indigenous communities. The large number of applications from mining companies makes their task particularly difficult
- lack of political clout. Cases are repeatedly decided in favour of mining companies to the detriment of those communities whose consent is legally required.

Offers by companies to take an active role in directly reporting their own activities have been welcomed by an under-resourced civil service. Although there are provisions in the law for communities to refute the companies' claims that they have gained consent, few indigenous communities know about this. In any case, they frequently lack the legal skills to launch effective complaints. Often they do not even know who the companies are.

One government agency that is supposed to have a degree of expertise on indigenous issues is the National Commission on Indigenous Peoples (NCIP). The creation of the NCIP appeared a positive step, but lack of political clout and resources have prevented it from fulfilling its potential. In some cases, NCIP officials have even worked against the interests of indigenous people. NCIP officials report they have no budget to inform communities properly of proposed corporate plans, and no capacity to independently monitor the consultation processes. NCIP officials often depend on finance or transport provided by the company when they visit relevant areas, and are therefore frequently seen as biased towards the company's interests.

According to a report written under the auspices of the Structural Adjustment Participatory Review International Network (SAPRIN) investigations, 'Department of Environment and Natural Resources [DENR] regional office and field personnel have been found to be actively and aggressively helping mining company personnel in convincing the people to accept the mining project.'⁵²

The dates of the relevant laws have given an absurd legal advantage to some companies. Because the Mining Code came into force in 1995, two years before the IPRA, many companies were able to lodge claims under the Code before the local communities could lodge their claims under the IPRA, effectively giving the companies prior legal rights to the land.

Dwight Dunuan, a consultant legal advisor to the Philippines mining industry interviewed for this report, sums up the effect of the new laws: 'The new provisions of the Mining Code won't prevent any mines being developed but they will make it more expensive for the companies to secure permits because there are now more permits needed and more officials to deal with.'⁵³

In numerous cases companies and government agencies have claimed the free prior and informed consent of indigenous people, only for later investigations to reveal that a substantial section of the population of the affected areas, usually the majority, are deeply opposed to the mine. Although this information is relatively easy to gather by visiting the community, government agencies consistently fail to register or record such conflicting accounts.

Australian multinational Western Mining Corporation (WMC) was one of the first mining companies to develop a written policy for relating to indigenous people, but its practices fall well short of its rhetoric.

Tampakan, its copper and gold mine in South Cotabato on Mindanao, was honoured as a best practice company by the World Bank.⁵⁴ But it has been claimed that Tampakan was anything but an example of best practice. WMC allegedly tried to persuade leaders of the B'laan people of Tampakan to endorse its mine by giving them gifts, building tribal halls, employing relatives and taking them on trips where they received lavish entertainment.⁵⁵

Despite this, some community elders refused to agree to the mine, with one leader withdrawing his consent after visiting an existing mine and seeing its environmental impact. On one occasion, as part of its negotiations with the B'laan, a joint team from WMC and the Office of Southern Cultural Communities (OSCC – NCIP's predecessor) presented a 75-page Memorandum of Agreement to the community in English. The OSCC lawyer explained the content of the agreement to community leaders in rough oral translation and advised them to sign. The whole negotiation was completed in a one-day session.⁵⁶

Bribery

Councillor Peter Duyapat of Didipio, Nueva Vizcaya, is among several indigenous leaders who make claims of attempted bribery. In exchange for stopping his vocal opposition to the entry of Climax Arimco, a mining firm, he says he was 'offered by the company a 20-hectare farm in Bayombong, in Nueva Vizcaya, a sum of money that I could not spend in my lifetime, a house and lot, and a Pajero land cruiser'.⁵⁷

Misreporting

In Pagadian, on Zamboanga del Sur, international mining company Rio Tinto called a meeting to talk about its mining applications in the region. The consultation took place in the provincial capital, far from indigenous communities, and less than one week's notice was given. However, assisted by civil society groups, more than 300 Subanon did attend to register their strong and unanimous opposition to the plans. Despite this hostile response, the local Rio Tinto manager told the Philippine government that the company had fulfilled its obligation to consult, and that the meeting had been 'very successful'.⁵⁸ Rio Tinto says that though some Subanon did oppose mining, others welcomed the company. 'An eminent anthropologist and expert on the Subanen, Professor Charles Frake visited the region on our behalf and confirmed that, if approached sensitively, there would be no community obstacles to our continuing exploration in the area,' it says.⁵⁹

Setting up rival organisations

In Mindoro, the Norwegian company Mindex – now part of UK-based Crew Development Corporation – cooperated with regional NCIP officials to establish a new indigenous organisation, Kabilogan, within their claim area.⁶⁰ There were, however, already two other indigenous organisations which held prior, officially registered, ancestral domain claims to the land covered by the concession claim of Mindex. Despite strong and repeated protest from local organisations and elected officials, the NCIP regional office chose to recognise and deal only with the newly formed Kabilogan. The project was endorsed as having gained consensual free prior informed consent, and a licence was granted. However, this licence was later revoked following an unprecedented level of local protest.⁶¹

There is a high degree of scepticism as to whether the government has either the resources or the will to effectively police the provisions of the IPRA. The 1995 Mining Code itself contains measures strengthening environmental and social protection, including a requirement that the mining company should secure free prior informed consent. It also stipulates that indigenous communities must receive royalties from mining projects, and that the mining company has to protect the environment and clean up its sites.⁶²

But according to numerous sources, in practice mining companies only need to secure a signed endorsement from a single government official or community leader, who are thereby exposed to the risk of bribery or intimidation. It is against the law to bribe government officials, but there are

no legal provisions to prevent companies from offering gifts in cash or kind to decision-makers in indigenous communities prior to, or during, negotiations.

Nor is there a process or budget to allow communities to access independent information. Most communities have to rely on information from the company concerned, and even this is sometimes not provided. Under later revisions of the IPRA guidelines, the timeframe for lodging complaints, already tight, was reduced still further to 90 days. In effect, the consent-seeking process works to expedite company claims and deprive communities of the protections they thought they were to enjoy under the Mining Code and IPRA. It also tends to encourage and reward companies which act in secrecy.

Despite its apparently pro-corporate implementation, the IPRA remains a concern for mining companies. In September 1998, a legal challenge to its constitutionality was filed in the Philippine Supreme Court. The petition claimed that: 'The IPRA's provisions on ancestral lands and domains are unconstitutional, insofar as they conflict with... state ownership of all lands of the public domain and natural resources.'⁶³ In December 2000, the Supreme Court was split in half on the issue and dismissed the challenge. However the nature of the decision means that the IPRA could become the subject of a further challenge if and when pro-mining groups perceive a change in the balance of the Supreme Court in their favour.

The lodging of the challenge provided an excuse for the then secretary of the DENR, Antonio Cerilles, to freeze all pending and proposed applications for recognition of ancestral lands for almost two years, including those in areas with no known mineral deposits.

Overall, while Philippine law does provide some protection to vulnerable groups and the environment, there is a lack of political will to enforce it. Many in mine-affected communities believe that on top of the financial incentives introduced to attract foreign investment, the Philippine government has made an implicit commitment not to enforce costly social and environmental minimum standards, justifying the costs to people and the environment by focusing on the supposed long-term gains.

2. Mining in the Philippines – who benefits and who pays?

It would be natural to assume that the Philippines' rich endowment of mineral wealth would have translated into increased prosperity for all. It is clear that the Philippine government believes that this has been the case. It says that mining companies have provided employment, either directly or indirectly, and that some of the most remote regions have benefited economically, citing direct or indirect employment and the economic stimulation of some remote regions.⁶⁴ However, the evidence is mounting that mineral development is not only far less beneficial than previously thought – it can actually damage a country's economy.

Mining and the national economy

According to a 2002 World Bank report: 'Natural resources-based activities can lead growth for long periods of time. This is patently evident in the development history of natural-resource-rich developed countries, such as Australia, Finland, Sweden and the United States. Mining was the main driver of growth and industrialisation in Australia and the United States over more than a century.'⁶⁵

This argument is common. But in its report *Fuelling Poverty: Oil, War and Corruption*, Christian Aid examined the existence of a so-called natural-resource curse by which exploitation of oil, gas and minerals often leads to lower-than-expected levels of national economic growth. The theory of the curse also suggests that natural resource extraction can exacerbate conflict, corruption, weak governance and poverty.

This theory, known as Dutch Disease, is well documented. In Oxfam's report *Digging for Development*, Thomas Michael Power shows how even in Canada, the United States and Australia, mining has been relatively unimportant as an engine for growth.⁶⁶ He notes how in the last 20 years – with increased globalisation leading to cheaper transportation prices and more volatile markets – mineral-dependent countries are faring worse than in the past.

Other studies support Power's findings. Michael Ross, chair of international development studies at the University of California in Los Angeles, used econometric analysis to show that mineral dependence correlates strongly with higher poverty rates; higher rates of child mortality and child malnutrition; low healthcare spending; low enrolment rates in primary and secondary schools; and low rates of adult literacy.⁶⁷ A study by Lancaster University in the UK found that mineral-reliant, resource-rich countries were among the poorest economic performers between 1960 and 1993.⁶⁸ The proportion of people living on less than US\$1 a day in mineral-exporting countries has actually risen, not fallen, in the last 20 years, from 61 per cent in 1981 to 82 per cent in 1999.⁶⁹

The Philippine government has pinned much hope on mining to dig the country out of debt and poverty.⁷⁰ But this strategy could be deeply flawed:

- Legislation allowing extended tax holidays for companies and full repatriation of profits – policies urged on the Philippine government by the Asian Development Bank – ⁷¹ has meant that tax revenue has fallen.
- According to Catalino Corpuz of the Tebtebba Foundation: 'Offering [Philippine] mineral resources for full exploitation by foreign companies is not the best way to attract investors. An effective way is to get rid of corruption; the Philippines currently ranks 11th out of 102 countries for corruption. Another way is for the government to have the political will to collect taxes from big corporations in order to have the necessary budget to fund various development projects.'⁷²

Corruption and poor governance are two of the main reasons why mineral exploration so seldom leads to poverty reduction, as the World Bank's Extractive Industries Review (EIR) so clearly confirmed in its recent report (see box).

The Extractive Industries Review

The World Bank has been severely criticised by affected communities, academics and civil society organisations in the Philippines – and around the world – for its active promotion of the oil, gas and mining industries.⁷³ In response, the Bank's president, James Wolfensohn, initiated the Extractive Industries Review (EIR) in 2001 to consider whether its involvement in extractive industries was consistent with its stated objective of achieving poverty alleviation through sustainable development.

In Wolfensohn's initial announcement he suggested the EIR would follow the model of a review of dams, also funded by the Bank, known as the World Commission on Dams (WCD).⁷⁴ The WCD used a range of expert commissioners representing various groups within industry, government, affected populations, and NGOs, resulting in a report everyone considered to be truly independent. The WCD was hailed by many as an inclusive process, although the final set of recommendations was not accepted by the Bank.

However the EIR did not follow this model. Dr Emil Salim, the former environment minister of Indonesia, was selected unilaterally by the Bank to conduct the review.

The EIR's final report *Striking A Better Balance*, was published in December 2003.⁷⁵

In spite of its procedural shortcomings, the EIR report was highly critical of the World Bank. In particular, it criticised the Bank's poor record on helping local communities and indigenous people develop sustainably. It identified three main conditions that must exist in a country before the Bank should consider supporting extractive projects:

- transparent pro-poor governance, based on the rule of law. This includes the notion that an equitable share of a project's revenues should go to the local community
- respect for human rights, including labour rights, women's rights and indigenous peoples' rights to their land and resources
- a revision of the Bank's own policies to ensure they promote social and environmental policies, including banning involuntary resettlement and destructive practices such as the disposal of tailings in rivers. Mining companies' obligation to gain the free prior and informed consent of affected communities would also be enshrined.

The report concluded that the Bank should only invest its limited funds where such investment will clearly contribute to poverty reduction and sustainable development. It asserted that indigenous people and other affected parties must have the right to participate in decisions affecting them and to give their consent at each phase of a project cycle. Such consent should be seen as the principal determinant of whether there is a social licence to operate, and whether the project would be sustainable in developmental terms.

In August 2004, the Bank officially rejected the EIR's findings. It did make certain commitments, such as reiterating its support for the Extractive Industries Transparency Initiative – an attempt led by the UK government to encourage companies to publish all of their accounts in order to reduce corruption – and expressing its willingness to consider achieving broad community acceptance of projects as a prerequisite of Bank involvement.

Overall, however, the demands made by the EIR were rejected or diluted. For example, the Bank says companies must engage in free prior informed consultation rather than receive free prior informed consent: the latter recognises the right of a community to reject an unwelcome or damaging project, while merely allowing consultation does not.⁷⁶

Another reason is that mining generally fails to create substantial numbers of jobs. The number of people employed in mining as a percentage of the Philippine workforce has been declining since the mid-1980s, particularly in large-scale operations, partly as a result of new technology. In 1997, the Philippine mining industry employed 134,000 workers, only 0.5 per cent of the total workforce.⁷⁷ In 2004 this was down to 112,000, according to the Mines and Geosciences Bureau.⁷⁸

Worse, the presence of mining can damage other industries including farming, fishing and tourism, which tend to offer more sustainable jobs.

Despite government hopes, large-scale mining in the Philippines has not led to significant development of local processing plants and associated manufacturing industries. The mining industry still imports almost all of its capital equipment and inputs such as fuel, vehicles, drills, generators and explosives.⁷⁹

There is virtually no evidence to support the assertion that increased mining has led to overall poverty reduction in the Philippines. In the absence of such evidence, the local impact of mining becomes the crucial factor.

Local impacts

Those who live nearest to a mine ought to benefit significantly from its presence, since they are the ones most affected by it.

Evidence from around the world, included in the EIR, suggests, however, that these are the very people who suffer most.⁸⁰ Poverty has persisted in many historic mining regions. In the Philippines, the Mankayan mine, which has been operating for nearly 70 years, has brought few tangible benefits to the area, but has caused environmental destruction and social upheaval (see chapter 4). Little wonder that in various parts of the country, communities are fighting against the introduction of large-scale mining on their land.

Environmental degradation

Through its Chamber of Mines, a business lobby group, the Philippine mining industry has claimed that the industry's environmental standards and safeguards have never been higher.⁸¹ But the reality is that things have hardly changed since a 1994 report commissioned by the Philippine government on the prospects for future mining development stated bluntly, 'We have never seen a mining industry with a poorer environmental record.'⁸²

Many of the remaining mineral deposits in the Philippines, though extensive, are low grade. Only the application of new technology – with high levels of mechanisation and therefore reduced labour costs – makes these deposits commercially viable for large-scale production. New technology often means open-pit mining will be used,⁸³ as well as the continued use of cyanide to separate gold, both of which carry a higher risk of serious environmental damage.

Generally, the larger the pit, the cheaper the mine, and with one tonne of gold ore producing just over two grams of gold, pits need to be very big – sometimes more than 2.5 kilometres long. Roughly three tonnes of waste is produced per gold wedding ring, according to experts.⁸⁴ In order to dig these giant holes, huge amounts of earth need to be moved, forests cleared, drainage systems diverted, and large amounts of dust let loose. Underground mines – although less obviously damaging – have their own particular environmental troubles, not least subsidence, which can cause damage to buildings and agricultural land.⁸⁵

Waste disposal

The improper disposal of mine waste, motivated by the desire to cut costs, affects farmers and fishermen, and has plagued the industry since the 1950s. An estimated 160,000 tonnes of mine tailings find their way into rivers, lakes and irrigation systems in the Philippines every day,⁸⁶ and an increasing number of companies are applying to dump their waste straight into the sea.⁸⁷

Water deprivation and pollution

Mining can deprive farming communities of much-needed water. The industry requires large volumes of water for mining, milling and waste disposal. Tunnelling often leads to a long-term lowering of the water table. Accidents, such as leaks, put further pressure on scarce water resources. Pollution of this kind can continue long after a mine is closed or abandoned, and the water that leaches into the ecosystem is frequently acidic, killing rivers and posing health risks to local communities.⁸⁸

Decommissioning mines

Abandoned mine sites are common in the Philippines. They have long-term damaging impacts on rivers and their surrounding fields. Old mines need to be managed to prevent the build up of acidic mine water. Problems can emerge years after mine closure, and years after the company responsible has dissolved, and can continue for centuries.

According to the Benguet Corporation, 'Any open-pit mining operation, by the very nature of its method, would necessarily strip away the top soil and vegetation of the land, as in the case of the Grand Antamok Project. However, integral to any mining method used is an approved Environmental Compliance Certificate (ECC) issued by the government whose terms and conditions include mitigating measures to address the socio-economic and ecological concerns.' It says the mined-out open pit in Antamok is being converted into a water reservoir.⁸⁹

Health costs

Contamination of water and food, as well as soil and air, contributes to increased toxic build-up in people's bodies. Asthma and other respiratory problems often affect local communities as well as mine workers. The old and the young are particularly vulnerable.

Most Filipinos depend on the land to earn a living, and all of these environmental impacts have serious effects on their livelihoods. The large amount of land and water lost to and polluted by open-pit mining mean declining farm yields and fish stocks, according to farmers interviewed for this report. When people's health deteriorates, their ability to earn money is reduced even further. In spite of these costs, advocates for mining argue that it brings jobs and infrastructure to underdeveloped communities.

Jobs

One in ten Filipinos is unemployed, and a further 17 per cent are underemployed.⁹⁰ Large-scale mining is seen by some as a lucrative source of jobs. But in reality the arrival of commercial mining can often cut the numbers working, as small-scale miners are displaced, and farming land and fisheries are polluted.

As corporate mining declined in the 1980s and 1990s, the number of small-scale, often indigenous, miners rose.⁹¹ A study financed by the Asian Development Bank estimates that in 1993, there were 300,000 small-scale miners throughout the country contributing significantly to the rural economy.

Another study shows that subsistence farmers count for at least 30 per cent of the country's annual gold output.⁹²

Correspondingly, the loss of small-scale mining making way for large mines can hit indigenous communities particularly hard, especially where small-scale mining is a source of employment for women.⁹³ Horacio Ramos, director of the Mines and Geosciences Bureau, has recognised the efficiency of the small-scale sector when it is properly regulated.⁹⁴

Rather than creating jobs, the adoption of large-scale mining has led to job losses.

For example, Itogon in Benguet has been the centre of the gold mining economy of the Igorot peoples for centuries. Until the 1980s, traditional indigenous mining combined with agriculture was the subsistence base for up to 24,000 people. While indigenous people mined surface deposits separately, the Benguet Corporation employed more than 5,000 people in its deep mine operations.⁹⁵ There were conflicts between the two, but also some degree of mutual coexistence. Benguet has been operating since the early 20th century, and stable communities grew up around the mine, providing not only direct employment, but also a school, shops, churches and other facilities.

After the introduction of open-pit mining – using the latest technology – in the late 1980s, employment in large-scale mining in Itogon fell to just over 500 people. These were almost exclusively drivers of large trucks and bulldozers.⁹⁶

The nearby community of Antamok, with its houses, schools and churches, was bulldozed and replaced with a gold-extracting cyanide plant. Land that had sustained a small-scale mining economy for centuries was virtually mined out in seven years. All remaining jobs were lost apart from a handful of security positions. The former mining community of Antamok has been destroyed, its previously prosperous small-scale mining operations are now severely reduced, and the area has become yet another centre of emigration.

Benguet Corporation explains that, 'Open-pit mining involves the mechanical extraction of low-grade near-surface ore and generally results in high productivity, low operating costs and good safety conditions, as compared to the mining of deep seated relatively higher grade ore by a labor intensive underground stoping method. Thus, it is expected that there will be less workers in open-pit mining.' It says that a Memorandum of Agreement it has with miners' associations in the region, including small scale-miners, has ensured that the 'socio-economic and environmental concerns' of affected communities are dealt with via a rehabilitation cash fund.⁹⁷

Employment in mining can be highly unstable because mineral commodity prices tend to be volatile, and because of the relatively short lifespan of most mines. The work is also hazardous, due to accidents, industrial illnesses and one-off disasters. The minimum wage is still the most constantly violated labour standard in the industry.⁹⁸ There is a tendency for the higher paid jobs to go to non-Filipinos, or at least to people outside the immediate vicinity of a mine. For all these reasons, the job-creating capacity of the mining industry must be seriously questioned.

Infrastructure

Mining is often credited with the creation of infrastructure, such as roads and energy supply. Where companies have improved local infrastructure, economies have often benefited. But relying on short-term private investors to provide infrastructural development can bring problems:

- Projects are very often heavily subsidised by the government and can mean money being diverted from other areas.
- The facilities are frequently controlled by the company and not for everyone's use: often access to roads or facilities is denied to local people.
- Infrastructure can decay when the company leaves.
- Existing infrastructure can be stretched or damaged by mining companies, for example, mining lorries damaging roads or bridges.
- Construction of roads and bridges can encourage unregulated immigration, resulting in land-grabbing from local communities and uncontrolled deforestation.

Revenue allocation

Philippine law stipulates that 40 per cent of the excise tax on royalties should go to local government, as far down as *barangay* (village) level. Companies are also officially required to create a social development plan where one per cent of operating costs goes to the community. But there are often serious delays between the time the money is collected by the national government and its delivery to local councils, a problem accepted by Horatio Ramos, director of the Mines and Geosciences Bureau.⁹⁹

Social impact

Mining necessarily depletes the mineral deposits it extracts, assuring a limited and often relatively short lifespan for any given project. The creation and abandonment of company towns can have severe effects on indigenous communities. Mining has historically relied on migrant, male workforces whose arrival can be associated with drunkenness and prostitution.¹⁰⁰ This can be followed by the slow abandonment of an area due to high unemployment.

Corruption and division

According to the EIR, there is an established link between mining and corruption at both the national and local level.¹⁰¹ This is compounded by the tactics adopted by some companies to gain the consent of communities, which can include drawing up fake documents, encouraging outsiders to join local communities, and establishing pro-mining councils and NGOs, as documented by the Tebtebba Foundation.¹⁰²

Militarisation

Large-scale mines in the Philippines often mean an increase in military presence, frequently in places where there is already armed resistance to the government. Many such areas are mountainous and remote, and lack social services and governing institutions. Historically, government forces have been present largely to protect private business interests. Mining companies can request an increased military presence, and they often pay for armed protection, too. As a result, anti-mining activists frequently end up confronting armed groups.

Rodolfo Stavenhagen, UN special rapporteur for the human rights of indigenous peoples, has called the militarisation of indigenous areas in the Philippines a grave human rights problem. 'Members of indigenous communities are sometimes accused of rebellion or engaging in "terrorist" activity. In the context of the armed conflict that still prevails in the countryside, indigenous communities and organisations are often victimised and their human rights abused,' he says.¹⁰³

Women

The social costs of mining frequently fall most harshly upon women:

- What jobs commercial mining does create tend to go to men, while the family subsistence farms, often tended by women, are degraded by the large mines.
- If compensation is paid it tends to be in cash and goes most often to men, although it is the women whose livelihoods are most often affected.
- A study by the Women Workers Programme, a community organisation based in Baguio, shows that families living in overcrowded company bunkhouses are more likely to break up, with increased infidelity and violence against women.¹⁰⁴

Indigenous people

Mining often leads to a direct assault upon the culture of indigenous people. Although on paper Philippine law protects the land rights of indigenous peoples as well or better than many other countries, in reality their land is still under threat, as many mineral deposits are in indigenous territory and the pressure to allow mining is great.¹⁰⁵

When Stavenhagen visited the Philippines in December 2002 he reported on his grave concerns about the effects of mining on indigenous people:

Of particular concern are the long-term devastating effects of mining operations on the livelihood of indigenous peoples and their environment. These activities are often carried out without their prior, free and informed consent, as the law stipulates. Communities resist development projects that destroy their traditional economy, community structures and cultural values, a process described as “development aggression”. Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape, and forced recruitment by the armed forces, the police or the so-called paramilitaries.¹⁰⁶

3. Mankayan – a devastating legacy

'We are opposed to the mining industry here. We feel the problems are because of Lepanto. If they stay open what will become of us? Our clean river water will be continually polluted. Our livelihoods will be lost.'

Pastor Gawaen, Malideg Village, Quirino

A big sign greets visitors to the town of Mankayan: 'Yonder is a gold mine called Victoria' – this is truly a mining town. Mankayan, a municipality of 35,000 mainly indigenous Kankanaeys and other Igorots, in Benguet province, on Luzon, has been known as a copper source for hundreds of years.

During a mining boom in the 1930s, a group of prospectors formed the Lepanto Consolidated Mining Company and opened the Mankayan mine, producing copper, with gold and silver as by-products. It is the longest-serving mine in Asia. Lepanto owns 309 mining claims covering 4,212 hectares of land. Much of this land was expropriated from the local indigenous people by American colonial laws. Lepanto confirms that the 'acquisition was based on Philippine laws in place at the time'.¹⁰⁷

In 1995, the company discovered the high-grade Victoria Gold deposit, which it started mining in March 1997. Within ten months this had earned the company 342 million pesos (US\$6 million), making it Lepanto's most profitable year to date.¹⁰⁸ The company is expanding into a second ore body, called Victoria Gold II, which could last anything from ten to 20 years according to estimates.¹⁰⁹ In August 2004, Lepanto discovered more gold, the Teresa Ore body which could add another 15 years to its operations in the region.¹¹⁰

Although Lepanto is a Philippine company, many of its investors are based abroad, in the world's major mining centres.¹¹¹ But while Lepanto and its investors are making profits and looking forward to expansion, what has been the experience of the people who are affected by the mine? And why are they opposing any further expansion so vociferously?¹¹² Lepanto says it is a responsible company which respects and helps the local community. There is an urgent need for the situation to be investigated.

Subsidence

In July 1999, Pablo Gomez, a villager, had been assisting after some worrying fractures appeared in Colalo Primary School in Mankayan, when suddenly he was swept away as 71 million cubic feet of earth gave way beneath him, eventually covering 14 hectares of farming land.¹¹³ Gomez's family were unable to recover his body. No children were in the school when it sank. Today all that remains is a sheer drop down to the ruins of the school building. There are also the remains of houses, their rooms now hanging over the edge of the precipice.

Behind the school ruins is Tailings Dam 5A, a man-made lake which stores the rust-coloured waste-water from Lepanto's gold mine. While there is no clear proof that Lepanto's activities are responsible for this landslide, or the many other cases of subsidence in the region as a whole, testimonies from locals and workers at the mine imply that quarrying, tunnelling and other company activities may be to blame.

An initial draft of a report by the National Institute of Geological Sciences at the University of the Philippines appears to support this view.¹¹⁴ The study determined that the Colalo sink was the result of both natural and man-made causes. The authors specifically highlighted the impact of quarrying activities and the adjacent tailings dam as having disturbed the water levels and the

geo-physical support for the hillside, resulting in the collapse of the land.

The company rejects these findings, accusing the authors of relying too much on local testimony. It points to subsequent investigations, including a later version of the report,¹¹⁵ that argue that the causes were overwhelmingly natural – but few of those affected believe it. It has told local people to go to court if they want to contest its decision, but going to court is beyond the means of the local community.

Eduardo Palitog, known locally as Waldo – a local councillor at the time of the interview – is in no doubt about who is to blame. ‘The company says it was an act of God, yet they are still willing to pay money. However they refuse to call it compensation, as that would admit responsibility, so they call it assistance instead,’ he says.

The villagers of Colalo are scathing about the level of assistance that has been given to the community, particularly to Gomez’s widow. The materials that were given for rebuilding were, they claim, ‘just junk’, and they report that as little as eight pesos (US\$0.15) per square metre was offered as ‘assistance’ for the productive rice-paddies that were lost in the landslide. They worry how the community will survive now that so much valuable farming land has been lost, both to the subsidence and to the tailings dam. ‘The farming before the dam was good, it was a good area to grow rice, and there was plenty of clean water and fishing. Now we have only got one rice terrace left and all we can do is gardening [ie growing vegetables on the slopes]’, says Palitog.¹¹⁶ Lepanto responds that despite having no legal liability, it gave eight families 150,000 pesos (US\$2,600) each and provided a new school for the community.¹¹⁷

Pollution

Standing above Colalo, the bright orange water is clearly visible as it runs from the front of the tailings dam, staining the rocks and boulders in its flow. Not far downstream, this opaque, rust-coloured water from the tailings lake mixes with the fresh, blue water of the Apaoan creek. This seems to contradict the company’s claim that it is the natural spring water, such as in the Apaoan creek, which contains significant amounts of iron and heavy metals that then stain the rocks.

Unsurprisingly for a mine with such a long history of production, there is an equally long history of environmental degradation. Pastor Gawaen, a 74-year-old ex-councillor from Malideg, a village on the banks of the Abra River, some distance from Mankayan, can remember the river before the mine. It was deep and narrow, just five metres wide, full of fish and surrounded by verdant rice paddies, he says.¹¹⁸ Now there is a wide gorge of barren land either side of the polluted river, useless to farmers and fishermen alike. Fruit trees and animals have died from the poisoned water and rice crops are stunted.

He blames the mine, but Lepanto describes these allegations as ‘completely baseless’, claiming that the silt in the River Abra is from other tributaries and arguing that the company would be in serious legal trouble if the allegations were true.¹¹⁹ However, individuals have tended to feel powerless and lack the finances to mount a legal challenge.

Downriver from Mankayan it is difficult to find anyone who sees the mine as beneficial. A report published in 2002, that led to the formation of the Save the Abra River Movement (STARM) highlights a host of complaints from local people along the Abra.¹²⁰ Lepanto disputes the contents of the report.

- Copper and arsenic in the soil are higher than the maximum limit set internationally.

- Health problems associated with acid mine drainage are reported.
- Decreased agricultural and fish yields, the death of domestic animals and the loss of biodiversity have led to significant falls in income.

Elfred Miguel, president of a local fishing association in nearby Cervantes, knows what this means in practical terms. 'I can see the water is very polluted. The water looks black. There is a pungent, acidic smell. It is painful to breathe in. The plants along the river will also die,' he says.¹²¹

He adds that the annual rains, and particularly typhoons, bring special problems with the river.¹²² When water rises, the fish ponds, which are generally fed by local spring water, get contaminated, and his fish die. He and other fish farmers have had to limit their activities to avoid disasters in the rainy season. He also reports abnormal fish deaths around typhoon time.

The importance of access to clean water for the rice farmers around and below the mine cannot be overstated. Lepanto claims that the colouring is natural and that all the water it discharges is above pH7, but according to a source inside the mine who wishes to remain anonymous, the rusty colour of the water escaping from the dam is a consequence of the company cutting costs by not adding enough lime to neutralise its acidity.¹²³

Alarmingly, water sampling by STARM in October 2004 at the company mill outlet and Tailings Dam 5A yielded lead, mercury and cyanide levels above the maximum safety levels set by both the Philippine Department of Environment and Natural Resources and the US Environmental Protection Agency. Jose Cassionan, head of a local farmers' organisation, has reported that since Lepanto built Tailings Dam 5A, he has had to rely on rainwater for irrigation, as the water supply was poisoned and diverted. Where he once had two rice harvests a year, now he only has one.¹²⁴

Dam failures

Prior to the construction of the first dam in the 1960s, waste was simply dumped straight into the river, a practice, as Lepanto points out, that was followed by 'practically all the mines prior to the issuance of relevant environmental laws'.¹²⁵ Now the project is on its fifth dam, two of the previous four having collapsed. Tailings Dam 3, for example, collapsed in 1986 during a strong typhoon, after warnings that it was being weakened by age and use.¹²⁶ Lepanto denies that it received any warnings.¹²⁷ Local farmers and fishermen further downriver, in the towns of Cervantes and Quirino, remember the catastrophic results of the collapse of both dams. Lepanto claims the current tailings dam is built to withstand a once in 650-year flood (even with the magnitude of tropical storms increasing).¹²⁸

Water use

Bulalacao is a village near the mine and has more than 2,000 inhabitants. Around one per cent of them work for the mine. The rest rely on agriculture for their living. Water is scarce, and in summer when there is barely any at all, farmers have to use a water pump, which is expensive. But the mine and ore-processing mill also need plenty of water to operate. Many farmers believe that Lepanto's mining operations are draining their water sources. Lepanto denies this, blaming forestry, a growing population and small-scale mining activities for any shortages: 'Our underground mine workings are relatively dry and even during the rainy season we do not see any increase in the amount of water coming out of a few water-bearing rock fissures'.¹²⁹ local people have responded with incredulity to this claim.

Denver Tonagacan, the *barangay* captain of Bulalacao, says: 'If they take all our water, how are we going to sustain our farmlands?'¹³⁰ But rather than respond to the grievances of local farmers, the Philippine government has granted five of eight perpetual water rights over river sources in north Benguet to Lepanto in order to satisfy the mine's growing thirst.

Air pollution

The mine is polluting more than just the water. From Colalo all the way down the Abra River to Malideg, communities are angry about a copper-ore dryer built in 1985.

Smoke from the dryer has withered crops and fruit, and has led to the deaths of domestic animals and an increase in respiratory diseases in humans, according to a report by the University of the Philippines College, Baguio.¹³¹ As the smoke pollution worsened, petitions and resolutions were drawn up by the council of elders, *barangay* representatives, and municipal and provincial councils. Lepanto points out that families of its employees, who lived nearest the dryer, did not complain to them, and that records in the hospital show no increase in respiratory diseases.¹³²

In 1990 an unknown group – believed to be members of the New People’s Army, a rebel organisation fighting the Philippine government and operating in the area – intervened in the dispute and closed the copper-ore dryer in an act of sabotage.

Costs and compensation

Some people say the mine has brought benefits to those who live near it. The former Mayor of Mankayan, Materno Luspian, acknowledges that the company brings money and jobs to the town. But he then catalogues the problems of subsidence as the old mine tunnels extend below the municipality. He points to the subsidence in the nearby schoolyard as a graphic depiction of the problem.

Others are dismissive when asked about any positive impact Lepanto has made. There is bitterness that the talk now is not of the potential benefits of the mine, but compensation for the damage it has caused:

- Pastor Gawaen still recalls when, in 1974, having asked for compensation in a municipal petition, the supposedly independent engineers arrived in a Lepanto vehicle. He saw this as a sign that his hopes for a fair and independent assessment were ill-founded. The people of Malideg are still hoping for compensation as the company denies any responsibility.
- Robert Harnois, vice mayor of Cervantes, laughs bitterly at the company’s contributions towards community projects. ‘We approached the company for compensation and they gave us worn water pipes and worn bridges. This is just an attempt to pacify those who are against them,’ he says.¹³³
- Further upstream, nearer the mine, municipal officials and fish farmers tell a similar story of pollution and the struggle for compensation. They note that although they did get compensation after Tailings Dam 3 collapsed in 1986, individual claims were limited and compensation was set way below the value of the losses.

Many local people are angry that the Memoranda of Agreement (MoA) with Lepanto, created to explain the mutual obligations of company and community, has not in their view been honoured. They complain that when compensation for damage is requested, it is Lepanto that decides if it is a valid claim or not. According to Luspian, ‘There is no transparency... they are only monitoring themselves.’ Lepanto says that ‘compensation claims are always negotiated’.¹³⁴

Another community member says: ‘The MoA sound good, but they never honour it. They do not follow the MoA unless we file a complaint. If tailings approach your crops you can go to the company and they will check it. If the company says it is not a fair claim then there is nothing you can do.’

Lepanto has been arguing with scientists and local people over the scale and source of the River Abra's problems. It denies responsibility for the problems in the valley, and claims that the current dam may actually help the river by catching silt. Lepanto told local people to go to court if they want to contest this denial. But going to court is beyond the means of the local community.¹³⁵

Meanwhile, repeated requests for compensation for financial loss after the death of animals and crops, apparently because of the polluted water, have frequently been met with the same answer – Lepanto is not responsible. The company says that it 'always takes responsibility for any accidental harm or damage we cause to our communities'.¹³⁶

In an attempt to be heard and to defend its rights the local community has established the Colalo Victims Association to defend its rights, and has joined forces with a growing number of similar groups throughout the region.

Community resistance

The sabotage of the copper-ore dryer was an extreme and violent manifestation of opposition to the company. But most forms of resistance are still peaceful. When Tongacan and his community at Bulalacao saw Lepanto workers preparing for a drilling operation on the road in 1999, they mobilised residents to barricade the intended drill site for many months. 'First there were 20 of us. Before night fell there were more than 500. We took turns manning the barricades,' he says.

In October 1999, a protest turned more violent when company drilling equipment was destroyed, and the military platoon was deployed to deal with the situation. Tongacan is one of three accused in a case Lepanto has filed for 'illegal obstruction to permittees or contractors defined [under] the Philippine Mining Code of 1995'.¹³⁷

The people of Colalo have also resisted mining, and have also experienced legal problems. When they attempted, unsuccessfully, to stop the building of Tailings Dam 5A, their leaders were taken to court and as a result signed promissory notes to end their protest or to face jail.

These clashes with company security, and the use of the army to restore order, are problems endemic to mining in the Philippines.¹³⁸ People who feel that all other means of protest are blocked to them are attempting peaceful direct action. They risk being labelled terrorists.

Professor Rodolfo Stavenhagen, the UN special rapporteur for the human rights of indigenous peoples, became a subject of military scrutiny himself while investigating claims made against Lepanto. He notes: '[It was] inappropriate that a regional police commander in the Cordillera can decide at the behest of a mining company... to monitor a public meeting within the framework of the Special Rapporteur's official mission.'¹³⁹ Lepanto says it had nothing to do with this decision.¹⁴⁰

National and local government response to the community protests has been mixed. The people on the barricades often feel let down by municipal officials who, in turn, complain of lack of support at the provincial level. A common allegation in the Philippines is that it is easy for a company to influence officials.

According to Robert Harnois, who was the Cervantes *barangay* captain at the time, all the local *barangay* officials signed a petition asking for the closure of the mine in November 2002. But following a number of visits by Lepanto officials, only Harnois and one other publicly criticised the company at a later meeting of *barangay* officials in May 2003. Lepanto denies any wrongdoing and says the officials may have changed their minds after seeing a presentation Lepanto made in the municipal plaza to 'correct misconceptions'.¹⁴¹

Alliance with mine workers

Considering the years of bitter struggle, many of the requests from the people of Mankayan are actually very restrained. There are those, like Harnois, who call for the complete and immediate closure of the mine. But many community representatives are only calling for a halt to further expansion, transparency in dealing with the community and adequate compensation for damage caused by the mine.

The decision not to call for the closure of the Mankayan mine has led to a surprising alliance. The local communities are now linking with the trade union at the mine. Local communities and mine workers often have conflicting priorities, particularly when communities call for the closure of mines, leaving workers at risk of losing their livelihoods. However, there are also similarities in their objectives, not least because many of the workers live close to the mine and thus suffer from pollution and other negative impacts just like everyone else.

Most importantly, both groups feel aggrieved that they have not done as well from the mine as the company. The average wage for a Lepanto miner, according to the company, is 370 pesos (US\$6.50) a day, along with benefits such as free healthcare and education. The Ibon Foundation, a respected research institution, estimates that the daily cost of living for a family of six in the Philippines is 424 pesos (US\$7.50).¹⁴² In 2002, Lepanto made profits of 177 million pesos (US\$3.1 million).¹⁴³ It says its miners are 'the highest paid workers in the country today'.¹⁴⁴

Work-related injuries are worryingly regular. A study of 88 mine workers found that 43 per cent had suffered lacerations, 17 per cent crushing injuries and 13 per cent fractures, usually involving rock or timber fall. Around 20 per cent of these cases required hospitalisation. Mineworkers also reported phlegm production (79 per cent), joint pain (78 per cent), eye irritation (67 per cent), headaches (55 per cent) and dizziness (36 per cent). The supply and use of personal protective equipment was identified as an area in which Lepanto needs to improve significantly.¹⁴⁵ Lepanto says it has invited the study's author, Dr Ana Leung, to 'work with us in validating her preliminary study' and addressing her concerns but that she has declined.¹⁴⁶ Dr Leung was surprised by this statement and denies ever receiving such an invitation from Lepanto.

In 2002 the 1,560-strong Lepanto Employees' Union called a strike over unfair labour practices, particularly being made to work on public holidays. Art Malacdan, of Cordillera Labor Center, a local NGO, says the strike was only successful because the people from the local community supported the striking workers by giving them food.¹⁴⁷ The two groups also joined for a combined march on the Mankayan mine. Lepanto says that Mankayan is 'the only mine in the world that shuts down every public holiday', and says they are following local law. It adds: 'If this is unfair labour practice, then every single mine in the world is guilty of this offence.'¹⁴⁸

The suffering continues

Stavenhagen visited Lepanto during his 2002 mission to the area. His report is categorical about the impact of large-scale mining in Mankayan:

The operations of the Lepanto Victoria gold mine in Mankayan, Benguet province (Luzon), have disrupted the lives of indigenous communities in the area, who complain about serious environmental deterioration, health hazards due to the discharge of toxic wastes and tailings, disregard for indigenous land resource rights, non-compliance with the principle of free and prior consent, and disruption of traditional lifestyles and livelihoods. Pollution of the river, rice-paddies, destruction of fruits and cattle, and potable water shortage for indigenous peoples in the area were also mentioned... The communities oppose the proposed expansion of the company's activities in their area, and complain that the Government and the existing

laws accord privileges to the mining enterprise instead of recognising the rights of the indigenous peoples set forth in IPRA.

He concludes:

While no doubt some community members have benefited from the mine's operation [those who work at the mine], others who attempt to maintain their traditional ways of life have indeed suffered. They despair of the fact that their needs and interests were not taken into account when mining operations were decided upon, and they fear the company's intention to expand its activities in the future. Those who have worked in the mine complain of low wages and sub-standard working conditions.¹⁴⁹

Lepanto dismisses these comments, saying that Stavenhagen spent less than an hour in the mine itself. 'His views, therefore, came from the indigenous people and from the LGUs [Local Government Units] and NGOs in the various Barangays in Mankayan. He did not investigate the allegations from these people. If he had only seen our operation, his conclusions would be different,' said the company in a letter to Christian Aid. However, one day of Professor Stavenhagen's ten-day mission was devoted exclusively to Mankayan where he met the resident manager and senior Lepanto staff, along with company workers and their families.

Lepanto says it is 'a responsible miner who is committed to the protection and enhancement of the environment.' It dismisses those who oppose it as a minority, 'who are against all forms of development, including mining, multi-purpose dam, agribusiness projects and even road building.'¹⁵⁰ Yet those who oppose it frequently include elected officials who, like Robert Harnois, were voted in on an 'anti-mine expansion' manifesto. In late 2004 the Ilocos Sur provincial board and the Cervantes municipal board both made official resolutions opposing Lepanto's expansion.

It is clear that 70 years after the Mankayan mine opened, very many people have suffered on its account. It is tragic that while Mankayan is so rich in mineral wealth there has been so little improvement in the lives of the communities around it. As Luspian comments: 'I am opposing the extension [of the life of the mine], because I am having second thoughts. They are only interested in profit.'

And he has a message for Lepanto: 'You live in Mankayan, you work in Mankayan... What sort of legacy have you left?'

4. Canatuan – undermining consent

'[This land] contains places sacred to us. It is the last of our land. We have nowhere else to go... Our deepest desire [is] to secure and protect our remaining land. We hope for a secure place for our children.'

Subanon farmer

The indigenous Subanon have occupied the Zamboanga Peninsula, on the island of Mindanao, since long before the coming of colonisers or the creation of the Philippine state. Today they number around 325,000. The peninsula is a long finger of land, originally ridged down the middle with tropical forest-covered mountains, which points out into the South China Sea towards Malaysia.

The Subanon way of life has traditionally been peaceful and abundant. Most rely on agriculture and hunting for their livelihoods, as they have done for centuries. Their dependence on the land is absolute, although during the last 100 years they have been driven off their best lands and now live mainly in the mountainous interior. In the heart of the mountains is Mount Canatuan.

However, since 1994, the lives of the Subanon of Canatuan, a village found in the municipality of Siocon, Zamboanga del Norte, have been disrupted by proposals by TVI, a small Canadian mining company, to construct an open-pit gold mine in the heart of their land, including their sacred grove and their main settlement.

TVI says that it will bring enormous benefits such as employment, education, healthcare and income-generation projects to the community. But the many Subanon who oppose the mine fear environmental degradation and are outraged by what they see as TVI's lack of respect for traditional practices and human rights, and its slandering of community leaders. The tragic reality is that the exploitation of this region's natural mineral wealth has not improved the lives of local people, but instead has led only to division and bitterness.

Opposition to the mine from the majority of its neighbours, Subanon, Muslim and Christian, has been remarkably effective – so far the project is at least seven years behind its original schedule. But the first earth of the mine was dug up at the end of May 2004, and operations are accelerating.

After almost a decade of pressure from the company and the national government, some Subanon have given up hope. Poverty and frustration have led some to accept jobs at the company, or to sell their land. Nevertheless, despite division and hardship, many Subanon, including community leaders, and even some TVI employees, still oppose the mine.

They want to pursue an alternative and more sustainable form of development.

Agencies of the Philippine government, including the National Council for Indigenous People, the Commission on Human Rights, and the Mines and Geosciences Bureau, have either failed to protect the rights and livelihoods of the Subanon, or have actively supported the presence of TVI.

Brief history of exploitation

The recent history of the Subanon is one of exploitation. In the 1980s logging companies came and devastated forests rich with game. Timuay Macario Salacao is a leader in the local community:¹⁵¹

A logging company encroached our land, made a road to the forest area and heavily silted our rivers as a consequence. There are no longer trees in the forest. Mining will be worse – it will destroy our land... There have been no benefits from the logging company. We were arrested for illegal entry and gathering wood, and treated as squatters – they ‘owned’ the land. We have had lasting negative consequences.

During the 1990s several international mining companies entered the region, despite the overwhelming opposition of Subanon leaders throughout the peninsula. A petition signed by thousands of Subanon in October 1996 explained that, ‘Our ancestral land is the place prepared for us by God... He has given it to us to live on and to care for. This is central to the meaning of our life and culture as Subanon. It is difficult for a foreign mining company who are not part of this place to understand this.’¹⁵²

In 1989, realising the dangers of losing their land to logging and mining companies, and in accordance with the recognition of the land rights of the indigenous peoples of the Philippines, the Subanon of Canatuan submitted an application to the government for the right to manage their own forest to be recognised. The government granted them this right in 1991. This was converted into an Ancestral Domain Claim in 1993 and after a 14-year-long struggle, they finally succeeded in having the land recognised as their own in June 2003, when Jose Anoy, the hereditary chief of the Subanon of Canatuan, led a delegation of locals to meet Philippine President Gloria Arroyo. For Anoy, being granted a Certificate of Ancestral Domain Title (CADT) was the realisation of a dream.

‘I was honoured and happy to finally hold the papers in my hands. I thought now the empowerment can begin. We can have a chance to cleanse, heal and develop our community according to our customs and our wishes,’ he says.

Arrival of TVI

TVI began exploring the area in 1994 and acquired legal rights to mine the land around Canatuan soon afterwards. But the validity of its claim is the subject of serious dispute. TVI bought the mining rights from Benguet Corporation, which had in turn acquired the rights from a local small-scale miner, Ramon Bosque. It is the original Bosque transaction which is in doubt, with the small-scale mining community accusing Bosque of defrauding them by converting their communal claim into a personal claim on his own behalf. This has never been proved, but in any event TVI has stated that its right to mine was granted directly by the government of the Philippines and thus ‘superseded’ the Bosque claim, which, it says, now has no bearing on the validity of TVI’s claim. But lawyers in the Philippines question this, given that TVI’s claim stems originally from the Bosque claim.¹⁵³

Despite the inalienable rights of the Subanon who have lived on the land for centuries, and urgent complaints regarding the validity of the Bosque claim, the Philippine government has continually chosen to side with TVI rather than the local community. The government awarded TVI an Environmental Compliance Certificate in June 1997. The fact that the Subanon now hold the CADT appears to have made little difference to the power balance.

The decision to favour TVI, despite strong evidence against its claim, is part of a pattern of support for the company from Manila, apparently overriding the needs and wants of local people.

Timeline

1987	New constitution recognises ancestral land rights for the first time
1989	Siocon Subanon Association Inc (SSAI) formed to gain government recognition of land. SSAI applies for Forest Stewardship Management Agreement (FSMA)
1990	Bosque claim lodged – later bought by Benguet Corporation
1991	FSMA granted to SSAI recognising occupation of land
1993	Government passes administrative order allowing indigenous people to have ancestral land rights recognised. SSAI applies immediately
1994	TVI signs Exploration Agreement with Option to Purchase with Benguet Corporation
1996	Mineral Production Sharing Agreement (MPSA) awarded in the name of RV Bosque and Benguet Corporation
June 1997	Government issues TVI with Environmental Compliance Certificate (ECC)
Oct 1997	Certificate of Ancestral Domain Claim granted to Subanon of Canatuan
2002	TVI processes large volumes of the mine tailings of small-scale miners
2003	Certificate of Ancestral Domain Title (CADT) granted to Subanon of Canatuan
2004	TVI starts digging its open-pit mine ¹⁵⁴

Consent

As is so often the case, the question of whether or not a company has the free, prior and informed consent of the indigenous people is one of the vital issues in Canatuan. TVI claims that it does not require the consent of the people whose land it is mining.

In a briefing paper issued to refute the allegations raised here, the company says: ‘From a strictly legal point of view, under the Indigenous Peoples’ Rights Act, TVI was not required to seek the “free and prior informed consent” as defined by the Act, of the SSAI... TVI’s rights under the Mineral Production Sharing Agreement (MPSA) clearly predated any rights the SSAI may have had, associated with the CADC and CADT.’¹⁵⁵

Nevertheless, the MPSA agreed by TVI and the Department of Environment and Natural Resources (DENR) makes clear TVI’s obligation to ‘recognise and respect the rights, customs and traditions of indigenous tribal communities over their ancestral lands’.¹⁵⁶

TVI has failed to do this and to acquire the free, prior and informed consent of the people affected by its operations. On this basis its continued presence is unacceptable and may be illegal. Despite this, the Philippine government continues to allow TVI to operate.

Those affected, or potentially affected, by the TVI mine can be divided into two categories:

- downstream communities
- the Canatuan Subanon tribe, holders of the CADT, living near the mine site.

Downstream communities

Siocon is an extremely fertile coastal region with thriving agricultural and fishing industries, just a few kilometres downstream of Canatuan. Thousands of people depend on the two main rivers, one also called Siocon, and the Lituban, for their livelihoods. The source of the Lituban is Mount Canatuan and tributaries from the area flow into the Siocon. Because of the history of mining in the Philippines, the people of Siocon are fearful of the grave threat of increased sediment and chemical pollution to their livelihoods.

In recent months the opposition to the mine has become organised under the Save Siocon Watershed Paradise Movement (SSWPM). This represents thousands of local people including associations of farmers, fish farmers, millers, market vendors, churches and Muslim groups. A petition against the mine in January 2004 collected over a thousand signatures.¹⁵⁷

Rosendo Canlas is the head of the Siocon Fish Farmers' Association. He says: 'There are 85 fish farms in Siocon and all are members of the Association. We export prawns, crabs and shrimp to Japan, the US and Taiwan. Fish-farm operators are against mining as it affects our produce through siltation and water pollution – but we have never been asked our views.'

The worries of the fish farmers are echoed by Godofredo Galos, leader of the SSWPM.

'Despite TVI's claims about new technology we are scared it will not be able to prevent disastrous consequences for us. The Lituban River irrigates 780 hectares, and the Siocon 480. We rely heavily on rice but also grow watermelon, turnips, corn and egg plant, among others. In 2002 we started to notice smaller harvests and this continued last year. If my yield falls further I may not have enough money to pay for my children's education,' he says.

A government report in 2002 recorded six times the acceptable level of mercury in parts of the Siocon River, although it added that levels are 'not dangerous'.¹⁵⁸ TVI has been processing mine tailings from the small-scale miners since 1997, and local people believe it is responsible for this pollution. TVI says that small-scale mining activities are responsible and that TVI was given a clean bill of health as recently as December 2003.

TVI accepts that downstream communities fear the potential environmental impacts of its mine, but says that much of their fear stems from bad experiences in the past with small-scale mining operations. But current anti-mining protests are specifically against TVI. It also says that 2,000 people from three nearby municipalities attended an 'awareness rally' in August 2004 'in support of TVI's operations'¹⁵⁹ (though this rally took place in another municipality and many kilometres away from the mine and therefore not directly affected by it).

The local church, working through the DIOPIM Committee on Mining Issues (DCMI), has consistently supported the right of the Subanon to choose their own development path. Pickets and protests have become increasingly common in Siocon and the surrounding area, although TVI dismisses them as 'rent-a-crowds'.¹⁶⁰ According to Hadji Mudjala, a leader of a Muslim women's group, the campaign against TVI has brought the three main ethnic communities – Muslim, Christian and Subanon – together in a new way. 'There was such a good spirit at the picket. We didn't realise until we saw the equipment how big the mine was actually going to be,' she says.¹⁶¹

Elected officials

The Philippines' Local Government Code, meant to decentralise decision-making, states that the municipal government should be consulted on mining operations as it is responsible for the environmental well-being of its area. But Siocon municipal councillors complain that their

numerous resolutions calling for an end to TVI's operations have been ignored. The Mayor of Siocon, Cesar Soriano, was returned for a third term in May 2004 on an explicitly anti-TVI ticket.

Within the municipality of Siocon there are 26 *barangays*, or villages, of which one is *barangay* Tabayo, where Canatuan is situated. The elected officials of the 26 *barangays* are apparently overwhelmingly opposed to the mine, and have passed resolutions and signed petitions to that effect. In January 2004, 240 of the municipality's 286 *barangay* officials attended a mining and environmental forum initiated by the Siocon Municipal Interior Local Government Office. Of these, 186 signed a petition opposing TVI, with others having to leave before they got the chance, according to the organisers.¹⁶² TVI dismisses these figures saying that people were put under 'political pressure' to sign the petition, or that signatures were otherwise fraudulently obtained. It also claims that people have been lied to.

Faced with this apparently overwhelming opposition at municipality level, TVI needed to gain the consent of the key *barangay*, Tabayo, before it could receive a licence to operate. There is a resolution declaring the consent of the *barangay* council, and signed by the *barangay* captain. But nine of Tabayo's 11 elected officials were among those who later signed a separate declaration opposing the entry of large-scale mining.¹⁶³

The *barangay* captain, Bonifacio Patch, is employed by TVI. Moreover, two elected *barangay* officials have sworn affidavits that they were not present at the meeting at which the resolution was supposedly discussed. Patch claims that the two officials are mistaken as they signed the attendance sheet. TVI says it is unaware of any foul play, and that it is possible that people have changed their minds.

Despite the clear reasons to question whether consent was freely given, the Mines and Geosciences Bureau maintains that because the *barangay* has apparently consented, and the Province has not objected to the mine, this constitutes a majority of the relevant governmental bodies – at provincial, municipal and village level – sufficient to warrant consent to the mine.

The Subanon of Canatuan

Subanon from throughout the Zamboanga Peninsula and their organisations oppose TVI. But in the Canatuan locality itself, after a decade of cultural and economic turbulence resulting from conflict over the proposed mine, divisions have inevitably emerged.

Many local Subanon continue to hold out against the mine. Tiodoro Anoy farms corn, bananas, rice and other vegetables, and raises pigs and chickens near the mine site. 'Many of us oppose TVI. We do not rely on mining for our livelihoods. We plant and raise animals. We have no technical qualifications. We don't accept any destruction of our sacred mountain. Some even work for TVI but don't actually support it,' he says.¹⁶⁴

However some Subanon, including many not local to Canatuan, now support TVI. While TVI puts this down to their new appreciation of the long-term benefits that the mine could bring, Tiodoro Anoy ascribes it to the immediate need to raise their income by even the little offered by the company. 'Some work for TVI for sustenance purposes only... Some who work there still don't actually support TVI. Some won't work for TVI because they don't want their territory to be destroyed,' he says.¹⁶⁵

While the history of this case is mired in legal suits and affidavits, a salient fact emerges: the Subanon did not give their free prior informed consent by any meaningful definition of that term.

Divide and conquer

Because their traditional forms of leadership were not recognised by the Philippine state, the Subanon of Canatuan had to set up the Siocon Subanon Association Inc (SSAI) as an officially registered organisation. Led by Timuay Jose Anoy, the SSAI has consistently and strongly opposed the entry of mining operations into their lands.

In November 2001, a meeting took place at which a new leadership – one which gave TVI its full support – was elected to lead the SSAI. The company immediately recognised the new group and entered into agreement with it. Timuay Jose Anoy and the original leadership of the SSAI did not attend the meeting and have continued to protest its illegality. They assert that many who participated in the meeting were, although Subanon, from outside the ancestral domain area and so had no right to participate or seek election. The cultivation of rival leaderships is common when mining causes conflict in an area. Local people have dubbed the rival group ‘TVSSAI’.

In response to the resulting confusion, the Philippine government insisted on setting up a Council of Elders to be drawn from both the SSAI leadership and the TVI-backed group, despite having no right to do so.¹⁶⁶ This body has no traditional status in Subanon society.

The Council of Elders was imposed on the community and charged with representing its interests, even though some of its members were not from the area. But a resolution was passed in September 2002 opposing open-pit mining on Canatuan ancestral lands, in spite of the fact that some of the council’s members were TVI employees.¹⁶⁷ This meeting was held in front of the whole community as previous meetings had been.

This unanimous decision was overturned the following month in questionable circumstances. In October 2002, Ponciano Agbadan, a National Council for Indigenous People official, called a meeting in the Atilano Pension House hotel in Zamboanga City, a day’s journey from the ancestral territory and out of reach to most of the community, in breach of the guidelines issued by the NCIP itself on the implementation of the Indigenous Peoples’ Rights Act (IPRA).¹⁶⁸ Community elders say they were led to believe that the change was a courtesy to facilitate the participation of prominent public officials in a largely ceremonial meeting to swear in the members of the council.¹⁶⁹

At the meeting, Danilo Bason, a TVI employee, proposed a resolution supporting TVI’s mining operations.¹⁷⁰ Strong objections were raised on the grounds that it contradicted the conclusions of the previous meeting, that the meeting was taking place outside the ancestral domain and that there was no community participation. According to the Seven Rivers Council, the highest body of Subanon elders in the region, Bason is not a recognised traditional leader.¹⁷¹

Subanon custom and the IPRA require that such momentous decisions should be passed only with the consensus of all those affected. But even the participants in the meeting could not arrive at a consensus, let alone the whole community. The traditional SSAI leadership walked out of the meeting, with other Canatuan residents, when it became clear that a vote was to be taken.¹⁷²

Strong protests were published in the local press and presented to the government within days, but the clear history of division over this issue, and the breach of its own procedures, was not enough to prevent the Philippine government acting on this ‘community acceptance’ with uncharacteristic haste; within days it had issued TVI a partial license to operate. Despite a legal challenge to this licence and the filing of an appeal for a temporary injunction to halt the use of the gold-processing plant, the company has been allowed to press ahead.

The reality

Since then, there has been little progress for the Subanon. The Seven Rivers Council maintains that the traditional and hereditary leadership of the Subanon people of the Canatuan area has been wrested away by a group of people many of whom are not from the area.¹⁷³ The pro-TVI leadership along with a TVI community-relations official, claimed in June 2004 that Timuay Jose Anoy does not have the ancestral background that he claims, and that he is not from the area.¹⁷⁴

This claim is also explicitly refuted by the Seven Rivers Council in its consideration of the legitimacy of claimants to leadership in Canatuan. In its published judgement (capitals in original) it says:

Jose 'Boy' Anoy is the present Timuay of Canatuan... Undeniably the Anoy family in Siocon are the legitimate traditional leaders in Siocon... the Council of Elders organised and constituted [in 2002] in gross violations of Subanon customs, traditions and practices is declared abolished. Furthermore, all acts entered into by said group of persons be declared NULL AND VOID... There was not FREE PRIOR and INFORMED CONSENT of the Subanon residents of Canatuan and there was a failure to first ascertain the legal status of the traditional leaders.¹⁷⁵

TVI says it has 'no first-hand information' about the Seven Rivers Council.¹⁷⁶ The legality of the disputed election and any subsequent agreements made by the new leadership on behalf of the Subanon of Canatuan has been formally challenged.¹⁷⁷ Moreover, despite the strong denials of the company, allegations are circulating that TVI has been prepared to offer money in return for support. For example, the *barangay* captain of Pisawak, a *barangay* on the Siocon-Canatuan road, has sworn an affidavit claiming that he was visited by TVI's chief of security in September 2003 and offered money in return for supporting a motion promoting TVI.¹⁷⁸

Dodong Tumangkis and Bernadino Anoy, members of the Council of Elders, reported being offered 5,000 pesos (US\$90) to support the pro-TVI resolution at the Atilano Pension House meeting in Zamboanga City in October 2002.¹⁷⁹ TVI denies both these allegations.

The Council of Elders are paid 6,000 pesos (US\$105) a month by TVI as an honorarium if they attend meetings. The company defends this payment on the grounds that it is offered to pro- and anti-TVI alike. But in Subanon culture, as elsewhere, to take money implies an acceptance of and even an obligation towards the giver. The only people who attend Council of Elders meetings, now that payments are offered, are pro-TVI members.

But in spite of the comprehensive opposition from communities down the river, and the division within the Subanon community living in the area, TVI claimed in 2001 to have secured local approval for its mine.

'TVI enjoys the support of the local Subanon of Canatuan, Barangay Tabayo Chairman and Council, the majority of illegal small-scale miners and processors, the former town mayor of Siocon and seven of the nine current councillors, the Sangguniang Bayan of Siocon, civic-socio-economic organisations in Siocon, several provincial supporters including the Provincial Governor of Zamboanga del Norte and the Co-operative Development Authority,' it claimed in correspondence with a Belgian NGO investigating the company.¹⁸⁰

In 2004 this claim is manifestly untrue. TVI is only supported by some of the local Subanon, while the majority of *barangay* Tabayo Council are on record as being against the mine. Small-scale miners have vehemently opposed their loss of livelihoods. The *sangguniang bayan* (or town council) of Siocon, the mayor of Siocon, and the majority of civil society organisations oppose TVI's project.

The Philippines Commission on Human Rights concluded after a visit in 1999 that whatever the legitimate minimum requirements of community acceptance, TVI has failed to meet them. 'This is a clear case of development aggression,' it said. 'TVI mining company failed to observe in good faith the requirements by law, that is, to obtain the "free informed and prior consent" of the people of Canatuan.'¹⁸¹

Militarisation

Since it arrived, TVI has employed security personnel to protect its operations and staff from attack, and to prevent the entry of items needed for small-scale mining on the basis that such mining is illegal.¹⁸² There have been numerous protests against TVI, and security staff have been the subject of reports of abuses in Canatuan, including those from the Philippines Human Rights Commission, Bishop José Manguiran of Dipolog (the diocese in which Siocon is located) and Siocon's mayor Cesar Soriano. The UN special rapporteur, Rodolfo Stavenhagen, who was denied access to the area by the government during his visit to the country in December 2002, also expressed his concerns about the situation in his report.¹⁸³

There are certainly serious threats to peace and order in the Zamboanga Peninsula. Presently, two armed anti-government groups occupy surrounding regions: the notorious Abu Sayyaf Group first emerged in 1995 when it torched the nearby town of Ipil, while the Moro Islamic Liberation Front is a regular threat. It attacked the municipal centre of Siocon in May 2003, killing 22 people and injuring many more. In December 2002, 13 people travelling in a TVI vehicle were killed in an ambush.

TVI has been accused of involvement in the payment of terrorist groups elsewhere in the Philippines. A June 2004 article in *Sierra Magazine* in the US alleged that the Kingking gold and copper mine made protection payments to Islamic terrorist groups operating in the vicinity in the late 1990s.¹⁸⁴ TVI owned a 25 per cent stake in the mine, and was represented on its board. We put this allegation to TVI, but so far have not received a response.

Under a special security arrangement with the Department of National Defense, the military has supplied a security force to protect TVI. Equipped with a range of firearms and fatigue uniforms, the Special Civilian Armed Auxiliary (SCAA) has been a source of fear for many local people who have accused it of targeting those who oppose the mine. TVI, which pays the SCAA, maintains that it has the support of local people who, it says, 'have told TVI personnel repeatedly that they feel considerably safer today than they did a few years ago.'¹⁸⁵

TVI has sought to protect its interests in two main ways: setting up checkpoints on the roads around Canatuan and establishing a private army. It is common in the Philippines for large private companies to hire armed security firms. Unfortunately, it is equally common for these groups to commit crimes against local people.¹⁸⁶ Allegations of this nature have been made against TVI. TVI has responded by saying it made a commitment to its employees and their neighbours that their security personnel will behave in a professional and disciplined manner, whether SCAA or private security. It says it will guarantee that any complaints of abuse, misconduct or excess will be investigated properly and infractions dealt with. Many local people have little faith in this promise.

Restricting freedom of movement

Checkpoints on roads have become a regular feature of Subanon life since TVI arrived.

While TVI argues that it has the legal right to prevent access to its contract area, it has also established checkpoints on Subanon land, kilometres away from the mine site. Staffed by the SCAA, they are designed to bar access to illegal goods and dangerous people. TVI says that it

has been given the authority to establish these controversial checkpoints by the '[TV]SSAI and the Council of Elders'.¹⁸⁷ These two bodies are unrepresentative of the Subanon of Canatuan and do not hold the ancestral domain title. Lawyers in the Philippines argue they have no right to give TVI the authority to establish checkpoints.

TVI says that its checkpoint staff look for unfamiliar faces and visitors to the area, and only stop people who are seeking to smuggle 'illegal' items, a category which includes equipment used by the small-scale miners. But in a formal statement of complaint to the UN Working Group on Indigenous Populations in 2001, a representative of the Subanon of Canatuan listed abuses including illegally refusing access, shootings, a blockade on and confiscation of essential goods including food, and placement of hidden barbed nails in trails used to bypass checkpoints.¹⁸⁸

Small-scale miners who have lived in the area for many years are angry at their treatment. On a number of occasions, arguments at checkpoints or with guards have led to shooting incidents. For example, a guard opened fire on local miner Johnson Lingala during an argument about whether Lingala was allowed to take crude oil to his home. Lingala was wounded in the knee and needed hospital treatment for what the hospital report described as a 'lacerated wound' to the tibia.¹⁸⁹ In correspondence with Christian Aid, TVI admits that a 'warning shot' was fired 'contrary to company policy' – the guard has since been disciplined. It says Lingala had only a 'small bruise' and that he has since retracted his accusations against the company.¹⁹⁰

Other people report being barred from their homes and farms. Crispin Gumanta, a Subanon farmer whose farm is near the mine, whose livelihood is based on farming maize, cassava, coconuts and bananas, says he is suffering because he is unable to regularly access his farmland. 'Even the *ex-barangay* captain has been refused access. 'How much more will I be stopped? As the breadwinner, I am scared of being hurt,' he says.

Timuay Macario Salacao, a community leader, adds: 'What kind of development are we being offered? It is not our culture to prevent access – it should be a free way to all, except when it is clear that harm will come.'

Those known to oppose the mine, including Ofelia Davi, DCMI worker and secretary at a neighbouring Subanon organisation, also claim to have been barred from entering the community by company guards.¹⁹¹

Apolonia Bulagao, a Canatuan resident and small-scale miner actively opposing the mine, claims she was refused access to her home by road because she was returning from an anti-TV I picket. She was forced to bypass the checkpoint by walking along a river many kilometres out of her way to reach her house.¹⁹²

In 1997, spikes were found hidden under leaves in surrounding footpaths, which mine opponents believe were laid by the SCAA to prevent people getting round the checkpoint. TVI says that they were placed there by its enemies to incriminate the company.

Christian Aid staff were held for two hours at a checkpoint some kilometres outside the area TVI is responsible for, along with their police escort. Eventually they were allowed through, although, astonishingly, the local police were not. The lack of unhindered access to their ancestral homes is a source of great concern for many Subanon. Onsino Mato, one of the local leaders, claims his house was surrounded by armed men and his door kicked in. His family relocated to a nearby town in May 2004 because of fear of further reprisals.

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Small-scale miners

When legal logging in the area ended in the late 1980s, redundant logging workers began to prospect for gold and finally located it at Canatuan.¹⁹³ A gold rush followed, which at its height attracted more than 8,000 people into what had once been hunting ground inhabited by small settlements of Subanon farmers. Using techniques such as tunnelling, the miners started to make a living from gold mining.

Although their activities often have negative environmental impacts, socially and culturally the miners built up working relationships with their Subanon hosts, respecting the prior rights of the Subanon and providing employment for many hundreds of local people. They also stimulated the local economy, investing in shops, vehicles, coffee bars, a pool hall and cinemas.

Despite continual attempts to gain legal recognition, these small-scale miners are still working without official permits. It is crucial for TVI's success to stop them operating, they say.

Apparently with the support of the government, company security guards – working in close cooperation with the army, regular company employees and some local government officials – have destroyed many small-scale mining operations. While some families have been persuaded to accept a small compensation package to leave of their own volition, many continue to protest their right to stay.

On some occasions, the manner of eviction has allegedly been brutal and unacceptable. For example, in June 2003, the SCAA and TVI demolished the rod-mill of Rodolfo Minao.

Minao had been renting the rod-mill, an expensive piece of ore-crushing equipment, and says he has no way to pay the monthly fees or return the capital. He says: 'My wife and 13-year-old daughter held onto the rod-mill. They cried and pleaded with them not to take it because it was so expensive and could not be replaced. The SCAA fired shots near his wife's feet and drove her away.'

Minao's wife tried to take a photograph of the team removing the equipment, but says she was slapped and the camera confiscated. Rodolfo Minao also reports being struck by a hammer in the kidneys, and with a piece of wood.¹⁹⁴ TVI says that, 'Not surprisingly, but unfortunately, a number of the rod-mill operators and their families physically resisted being removed from their unlawful activity'. It says that one person with the miners produced a weapon, but that despite this 'SCAA personnel conducted themselves with discipline and restraint.' Those who have complained of their treatment have, according to TVI, 'exaggerated or fabricated complaints of "police brutality"'.¹⁹⁵

By August 2003, TVI had succeeded in removing almost all the small-scale miners. Today Canatuan has many empty houses and dismantled small mills. After almost nine years of resistance, most of the miners surrendered their mine tailings – containing a significant quantity of gold – to the company for processing through the cyanide plant. Some local miners claim their tailings were taken without their consent. TVI deny allegations of theft and says that any force used was in proportion to the circumstances.

In a letter sent in November 2003, the regional director of the Mines and Geosciences Bureau expressed his concern that the mine tailings of small-scale miners in Canatuan were

being taken 'without their consent or any letter of intent agreed between them and the Company'.¹⁹⁶ In December 2003 a case of robbery was brought by some small-scale miners against senior TVI staff.¹⁹⁷

TVI justifies the removal of the small-scale miners on the grounds that their activity was unlawful, and that it had both the right and the duty to prevent them working. It points out that small-scale miners were fairly compensated for their illegal tailings. The Philippine government has so far supported TVI's case that the miners have been working illegally and should be removed.

TVI is creating a maximum of 450 jobs according to its feasibility study, but many require technical skills that the Subanon do not possess.¹⁹⁸ Currently 250 Subanon have jobs with TVI, but it is not clear how many of these are originally from Canatuan. Thousands of small-scale miners and their families have been uprooted from the communities that they have shared with the original residents – in relative harmony – for up to 15 years.

Across the Philippines, the small scale-mining sector provides livelihoods for many thousands of mainly landless Filipinos. Much of the capital made is reinvested locally. There are also many more people employed through small-scale mining – conservative estimates are around 300,000 – than large-scale.

Small-scale miners use methods that are a danger to the environment and to their own health. They need critical but sympathetic support to achieve higher levels of environmental protection and greater personal safety. In Canatuan, they say they are willing to invest in improved equipment and tighten safety standards. But they say that because they can only secure licences for two years and their property is vulnerable to attack, it does not make financial sense to spend this money. Large-scale mining operations, on the other hand, attract 25-year licences which are renewable.

Just as large-scale mining operations can be improved by scientific advances, so can small-scale mining. The World Summit for Sustainable Development's Plan of Implementation, signed by the Philippines, calls upon countries to, 'strengthen the contribution of industrial development to poverty eradication and sustainable natural resource management', by providing, 'financial and technological support, as appropriate, to rural communities of developing countries to enable them to benefit from safe and sustainable livelihood opportunities in small-scale mining ventures'.¹⁹⁹

But many small scale-miners argue that governments do not support them because they do not have the large sums of money so attractive to policymakers and civil servants. The experience of small-scale miners in Canatuan appears to support this conclusion. Commenting on a Department of Health recommendation that all small-scale mines be closed down because of the risk of mercury poisoning and burns to the eyes during the smelting process, Father Albert Bael, Chair of DCMI, said: 'There is no follow-up or training for the small-scale miners. The recommendation came with no suggestions for alternative livelihoods. Essentially, they said stop and let the big guys do it.'²⁰⁰

TVI says that any inappropriate use of force has been punished. 'In some cases they [TVI's opponents] have deliberately provoked confrontation and then laid charges over its consequences. In other cases they have exaggerated actual incidents,' the company claims.²⁰¹

Protests

In March 2004, a peaceful group of protestors attempting to bar TVI from taking its digging equipment up the road to Canatuan were shot at by TVI security. Four people were injured by shrapnel, including the leader of the SSWPM, and Timuay Macario Salacao, an old and respected Subanon chieftain and member of the Seven Rivers Council, who was grazed on the head.

TVI says the crowd rocked the car carrying TVI employees and threw a stone 'almost killing' the driver.²⁰² As a consequence armed men got out of the car and fired warning shots at the ground in front of the protestors. But this claim is refuted by protestors who say the violence was unprovoked.

Either way, it is wholly unacceptable for TVI staff to allow a situation to occur in which shots are fired amid unarmed protestors many kilometres away, from company land.

There are numerous other reports of human rights abuses by the SCAA, especially against small-scale miners. In September 1999, violence was used against a similar group of picketers at Canatuan. Picketers report being beaten with sticks, tied and dragged. In a meeting with Christian Aid in January 2004, a TVI spokesperson denied that any such violence had occurred. The company's 2000 annual report describes the protestors as 'paid picketers' from outside the area. However, the report on the incident by the Philippine Human Rights Commission included affidavits from known Canatuan residents who attest to the violence.²⁰³

TVI denies responsibility for the abuses allegedly committed by its employees. It says that the claims are exaggerated or made for personal gain. 'Neither TVI or any of its employees or security personnel have at any time used any violence, physical assault, prevented lawful entry to the property, arranged for food or economic blockades, or been involved with any illegal/warrantless arrests concerning indigenous peoples (Subanon), small scale miners or anyone else in the Canatuan area,' the company said.²⁰⁴

However, the allegations are widespread, and supported by many people. There is no doubt that serious abuses have taken place, nor that the presence of checkpoints and armed TVI personnel is a source of fear and resentment in Canatuan.

Harrassment?

TVI has repeatedly accused Jose Anoy and Onsino Mato, the senior Subanon leaders opposing the mine, of being motivated at least in part by financial self-interest, claiming that they owned small-scale mines or processing plants themselves.²⁰⁵ In its most recent letter to Christian Aid, TVI describes Anoy and Mato, who are the traditional leaders of the Subanon of Canatuan, as 'spokesmen' for small-scale miners, who have been 'deeply involved in the morally corrupting small-scale mining activity'.²⁰⁶ However, Christian Aid and PIPLinks have found no evidence to support these claims and TVI has been unable to provide any. TVI says its accusations are based on the 'repeated testimony of relatives and residents',²⁰⁷ but even the leaders of the pro-TV group, who have most reason to oppose Anoy and Mato, say that neither has ever operated small-scale mines or processing plants.²⁰⁸

In December 2002, Anoy, Mato and Fernando Mudai, chairman of the neighbouring Western Zamboanga Peninsula Subanon Association and a sectoral representative on the National

Anti Poverty Commission, were accused by some of the bereaved families of involvement in the 2002 ambush of a TVI truck in which 13 people were killed. TVI has reported this allegation in a number of documents, while always noting that the company is not party to the legal proceedings. In September 2004 regional prosecutors in Zamboanga City dismissed the case.

It was not the first time anti-TVI campaigners had faced legal suits. In a separate incident, charges were filed against Mato for child abuse when a child at a peaceful protest was struck on the head by a security officer, but were dropped before a trial took place. Accusations of this nature are common in many parts of the Philippines, prompting many local people to believe that they represent deliberate harassment.²⁰⁹

The struggle continues

If Canatuan is a test case of what happens when a community commits itself to working through the official channels to protect indigenous rights and community wishes, then communities elsewhere should have the gravest concern. Mining has caused terrible political divisions in this community and raised questions that desperately need answered as to whether it is abusing its position and exploiting the local people. Although there is evidence that TVI personnel have committed abuses and misrepresented local opinion, the company has been allowed to continue to develop a mine, with the apparent complicity of the Philippine government.

It is a sad but inevitable result of such pressures that the community is now riven with division and conflict. This is compounded by the context of armed conflict that affects the whole region. It seems unlikely that a gold-mining project of the type proposed could ever provide widespread benefits under such circumstances.

Given the history of TVI's involvement in the area a suspension of operations and withdrawal of the company's militia is urgently needed.

TVI says that the company itself is the victim of 'an unscrupulous campaign by vested interests and political agendas to undermine the company's reputation and to block its legitimate business interests'. It blames 'illegal business and rural politics' and accuses campaigning organisations, including international NGOs, of 'using' the Subanon community.²¹⁰

In its letter to Christian Aid of 22 October 2004, TVI says that Christian Aid's research process has 'at best been profoundly flawed, and at worst profoundly biased and tendentious.'²¹¹

Onsino Mato addressed the United Nations in Geneva in 2001. He said:

I deeply believe that our future generation has all the capacity and potential to bring peace, freedom, justice and equality to all people in our territory but this is currently being prevented by the presence of outside greed and violence. The Subanon are known in the Philippines as a peace-loving people and we do not want to transgress the teachings of our foreparents. We have tried all we know to resolve these problems in peace, confident of our rights to our land. We welcome visitors who want to know the truth.²¹²

5. Corporate, government and international social responsibility for mining

The mining industry entered the 21st century with its legacy of exploitation and destruction still hanging around its neck. The world is dependent on mineral extraction and yet mining continues to impact heavily on the environment. While more environmentally friendly technologies are emerging, they mostly remain prohibitively expensive at current market prices for metals.

The desire of companies and governments to extract minerals needs to be weighed against the human rights of people directly or indirectly affected, as well as the rights of future generations to basic necessities such as clean air, safe water and unpolluted soils.

Sustained pressure has brought about important changes in some companies, as well as attempts to clean up the industry through self-regulation. But for many of Christian Aid's partners around the world little appears to have changed. If anything, the enormous changes in the industry over the past two decades have made things worse. The shift away from underground to open-cast mining has removed some of its social benefits, such as the large-scale employment of low-skilled workers, and introduced much greater environmental damage.

Lepanto has been operating a mine in Mankayan for many decades. But the benefits appear to have accrued overwhelmingly to private investors or the state, while local communities and the environment carry the bulk of the costs. The livelihoods of local people have been jeopardised by pollution and subsidence.

The case of TVI in Canatuan demonstrates the divide between promises of corporate responsibility and the reality of a community which is being torn apart. For the Subanon and their neighbours, mining has meant pollution and social upheaval.

This report has focused on two cases where the promise of mining as a source of development for poor people remains unfulfilled. It could have looked at many others. It has shown that for many Filipinos, the impact of the mining industry is as bad as ever. While we welcome the improvements that have been made by some large multinational corporations, they have not done nearly enough.

Arguably an even greater danger comes from the smaller companies, both national and international, which may not see the business case for improving their social and environmental impacts.

The Philippine government is failing in its duty to protect its citizens, particularly indigenous people, from what many Filipinos call 'development aggression'. The negative impacts of large-scale mines – social and environmental, economic and political – outweigh any potential benefits. This has led to conflict as communities stand up for their rights in the absence of adequate protection from the state.

The regulatory framework within which mining operates in the Philippines is insufficient to ensure that its impacts are positive, or even that those damaged by mining have a means of redress.

Community frustration and response

'These mining operations will destroy our source of livelihood, like farming and small-scale mining... destroy our rice fields and rivers, burial grounds will be desecrated... our customs and traditions will be subverted... Let this petition be a warning to those who are trying to intrude in our ancestral lands. Blood will be the answer.'

Petition signed in July by the people of Mainit, Mountain Province, Philippines against the attempted entry into their lands by mining companies.

Faced with a reality in which community wishes are ignored and legal provisions fail to make a difference, local communities have actively resisted moves to take their land. Following an attempt by Manila Mining Corporation, a Lepanto subsidiary, to break through a picket line in Anislagan, Surigao del Norte, company drilling equipment was burned. In Sadanga, Mountain Province, mine-survey helicopters working for Newcrest mining were shot at by tribal people.

Once the full implications of the proposed national mining expansion became clear in the mid-1990s, campaigners and NGOs moved quickly to support the threatened communities. They rallied for the repeal of the 1995 Mining Code and its replacement by a more socially and environmentally precautionary law. Those calling for the repeal of the Code include both the Catholic Bishops' Conference and the Protestant National Council of Churches.

A series of conferences, statements and petitions have expressed the widespread opposition to the expansion of mining. Prominent among them is the Dapitan Initiative which was launched as a petition written by individuals from a wide range of organisations in Philippine society. It calls not only for the reversal of the mining expansion, but also for an alternative vision of sustainable development.

A national conference held in Baguio City in May 2002 reiterated the call to scrap the Mining Code and began to develop a new precautionary regulatory framework. Involving mines-affected communities, and church, environmental and campaign groups, it called for an immediate moratorium on all new mining, a block on expansion of existing mines, and reparations and justice for the victims of past mining practices, including victims of the Marcopper disaster of 1996.²¹³

Local and regional authorities have also taken steps to bar mining from their territories. For example, Capiz Province in Western Visayas has passed an ordinance banning large-scale mining, while a 25-year moratorium on mining development in Mindoro Oriental is supported by the provincial governor, provincial board and mayors' league. They argue that such mining threatens farming, fisheries and eco-tourism.

These diverse forms of resistance have had a significant impact. Faced with hostile and active opposition, and a difficult investment climate, some large companies who entered the Philippines after the Mining Code came into force in 1995 have subsequently left:

- Western Mining Corporation, the company most active in the promotion of the Philippine Mining Code, was eventually obliged to abandon the mine at Tampakan in South Cotabato.
- Rio Tinto announced its withdrawal from the Philippines in 1999 following a strong campaign by Subanon and church groups in the Zamboanga provinces. The company also cites the country's legal and fiscal regime as a reason for pulling out, and that any mining activity should return reasonable benefits to local communities.

The mining industry: notorious past, questionable future

For at least a decade, securing new finances for mining has been increasingly difficult. Investors have become reluctant to put money into projects that are so frequently associated with human rights abuses and environmental disaster. They are particularly concerned by the growing capacity and inclination of affected communities to bring cases to court for current and past damage. Because the long-term impacts of mining are so profound, and are now better understood, there is a growing possibility that companies may become liable for the health effects on workers or communities near their mines, even years after they have been closed.

In 1998, for example, the London-based Commonwealth Development Corporation (CDC) withdrew its planned investment in TVI's mine at Canatuan, following representations by Subanon concerning the high level of opposition in the local community and the presence and abuses of the SCAA.²¹⁴ TVI says that the CDC withdrew solely because metal prices had fallen.

Led by its biggest companies, the industry has responded by embarking on the unenviable task of trying to improve its image.

Today virtually all companies, large and small, have developed written codes of conduct and environmental standards. An increasing number have also undertaken environmental audits. Companies are signed up to a plethora of agreements and standards within the industry and with third parties. The International Council of Mines and Minerals has initiated dialogue with a number of large international NGOs and is working with the Global Reporting Initiative to develop non-binding standards.

Dialogue or monologue?

Dialogue is today's buzzword. The mining industry has moved in the space of a decade from being one of the forces most resistant to dialogue with critics, to being a leader in the rhetoric of inclusiveness. The Philippines Chamber of Mines has closely followed international initiatives aimed at improving mining's image and has partially embraced the new dialogue techniques.

But too often companies have seen dialogue as a means of hanging on to their licence to operate without actually taking on board the most important part of the process – listening.

One of the most ambitious international initiatives the mining industry has undertaken to date has been the Mines, Minerals and Sustainable Development Project (MMSD). Its objective was to examine the contribution of mining to sustainable development and, it was claimed, to generate constructive dialogue.²¹⁵

The companies that backed the MMSD included a number that have recently been active in exploration or production activities in the Philippines, including Rio Tinto, WMC, Anglo American, BHP Billiton, Freeport McMoRan and Newmont.²¹⁶ Observers were also critical that most of the MMSD's US\$7 million budget for administration and research came from the mining industry. Governmental support came from the UK, Canada, Australia and the US, all of whom have a strong vested interest in promoting mining.

The MMSD's framework, objectives and structure were tailored to the industry's aspiration to associate mining with sustainable development in the run up to the World Summit on Sustainable Development. There were complaints from concerned NGOs, but the organisers failed to make significant changes.²¹⁷

Predictably, the MMSD failed to gain the trust or participation of many of those affected by mining – it was widely criticised and boycotted by many indigenous peoples' organisations, NGOs with expertise on the issue and mine-affected communities.²¹⁸ Such groups were left with a deepened mistrust of dialogue initiatives that claim to be committed to a new, respectful type of interaction, but fail to deliver in practice.

The conclusions of its final report, *Breaking New Ground*, notes lack of trust as an important limiting factor in its work and a concern for the future of the industry.

Some institutions, including the World Bank, have exacerbated this mistrust by accepting the MMSD uncritically and continuing to misrepresent it as a credible multi-stakeholder process. Industry representatives used the MMSD's outcomes to feed into the World Summit on Sustainable Development in Johannesburg in 2002, winning the industry a strategic success by getting the controversial concept of 'sustainable mining' recognised. This concept is now being promoted around the world, including in the National Minerals Policy of the Philippines.

The shift in the rhetoric of the mining industry is a recognition of the failures of the past and the need for a new approach. But continued bad practice around the world has so far undermined the credibility of this apparent change of direction. The mining industry has learned to talk the talk. But can it walk the walk?

The initiatives of leading companies in bringing about this change in approach should not be underestimated and it is a welcome step towards acknowledging and addressing the historic problems of the industry as a whole.

But experts remain sceptical about the efficacy of voluntary measures, most of which have the same limitations: they are non-binding, they lack effective and credible independent monitoring, there are no mechanisms for redress, and there is an absence of any regime of sanctions for violators, however serious the violations.

In *Behind the Mask, The Real Face of Corporate Social Responsibility*, Christian Aid argued that the main achievements of what has become a corporate social responsibility industry are measured not in improvements in standards of environmental care or human rights, but in the superficial credibility, and therefore the investment rating, of mining companies.²¹⁹

Like most mining companies today, TVI boasts of its social and environmental credentials on its website. 'Our [environmental and social] policy not only subscribes to accepted industry-wide principles, but provides us with the opportunity to exceed these standards and be an environmental leader in the Philippine mining community,' it says.²²⁰

The research in this report shows, however, that TVI has fallen short of the standards expected of modern companies.

Christian Aid and PIPLinks believe that corporate social responsibility manifested through the

voluntary adoption of minimum standards has a role to play in enhancing the quality of life of affected communities. However, even in countries which have a strong and enforced regulatory framework, abuses continue to occur. Where such regulatory frameworks are not in place, as is the case in the Philippines, voluntarism cannot be expected to safeguard the human rights of poor people.

Closely associated with the emphasis on voluntary measures has been a marked aversion to adopting legally binding standards or sanctions for violators. It is the clear strategy of sections of the industry to support the development of voluntary codes as means of avoiding more stringent regulation.

Governments in Canada, Australia and the US, among others, have opposed the disposal of mine waste in the sea. Yet companies from those countries have proposed it in the Philippines. Why should marine and riverine dumping of mine waste be allowed in the Philippines and not in rich countries? In locations where it has been used, including in the Philippines and in nearby Papua New Guinea and Indonesia, it has been associated with pollution and damage to fisheries and human health.²²¹

Recommendations to mining companies

- Companies should support improved regulation at both national and international level. Companies that operate ethically will benefit from minimum standards that prevent other companies undercutting them by following poor practice.
- The mining industry cannot disown its historical responsibilities. Communities live with the consequence of mining many years after a mining company has gone. Where mining has negatively impacted communities, those responsible should make full reparations.
- As a matter of policy, mining companies should desist from the use of paramilitary troops.
- Mining companies should recognise and respect the right to free, prior informed consent and the right of communities to say no to a mining project.

The credible threat of sanctions should be an important factor in preventing negative social and environmental consequences. In countries where corporate practice is poor, it is overwhelmingly the failure to implement and enforce regulation that is at the heart of the problem. This is the case in the Philippines.

The Philippines government: failing its people

As shown in Chapter 1, Philippine legislation over the protection of people and the environment from poor corporate practices has been contradictory. In certain areas, clear progress is being made. The Mining Code, the Indigenous Peoples' Rights Act, and the Local Government Code include provisions that, if they were upheld, would strengthen the protection of communities in the path of mining development.

The recognition of the legal rights of indigenous people, especially to land, has been important. It has moved from preliminary recognition in the Philippines' 1987 Constitution to a situation today where a National Commission for Indigenous People is charged with verifying hundreds of claims for ancestral land rights. Progressive environmental measures have also been adopted into law. But any progress on protective measures has been stunted by the pressure to attract foreign investment. Contradictions in the written law between the protection of the rights of people and the environment and offering incentives to companies have, in too many cases, been interpreted

by the Philippine government in favour of the corporate sector and to the detriment of ordinary Filipinos.

In January 2004, the Supreme Court stated that certain aspects of the 1995 Mining Code contradict basic provisions within the Constitution.²²² In order to attract foreign investment, the government is making law that is illegal according to its own constitution. Along with many developing countries, the Philippines has allowed its reputation for not strictly enforcing environmental standards or protecting indigenous rights to act as an unstated selling point to potential investors.

The case of Canatuan is an example of this. TVI was granted a Mineral Production Sharing Agreement in 1996, a year before the Subanon ancestral claim to the land was finally recognised. TVI claims that it is not legally required to gain the consent of the local people (see Chapter 5) but the idea that Subanon rights in Canatuan that predate even the existence of the Philippine state, let alone the recent presence of a foreign company, can be overridden in this way is absurd. Rodolfo Stavenhagen comments on this in his 2003 report:

The Special Rapporteur is of the view that priority should be accorded to the rights of indigenous peoples, as stipulated in IPRA, and as recognized in both long-standing indigenous occupation and government practice and legal precedent. The legislative intent of IPRA regarding the rights of indigenous peoples to ancestral lands and natural resources found therein is surely of more substantial primacy than the concessions that private businesses obtained from previous governments without regard to indigenous rights.²²³

Contradictions are also evident in the definition of consensus. The IPRA requires that decisions are taken by communities in accordance with traditional customs. However, TVI was only required to get a simple majority of the – illegitimate – Council of Elders.

These loopholes and contradictions in the law, of which there are many more examples, provide opportunities for companies and government officials to make decisions based on self-interest and political expediency rather than the established rights of indigenous people and others. In Canatuan, as in Mankayan, the present Philippine administration has so far sided with the company on major decisions.

A further legal obstacle to TVI obtaining an operating licence in Canatuan was the Local Government Code which states that the relevant local authorities should give their consent. The municipal mayor and council have repeatedly voiced their opposition to the mine. The national government, however, has interpreted the law as requiring the consent of only two out of the three tiers of local government (provincial, municipal and village). As the municipal authority unequivocally opposes the mine, the government is relying on the consent of the provincial government, which it claims has agreed to the mine, and the *barangay* council. As was demonstrated in the case study, the *barangay* resolution is the subject of a legal challenge. Again, that has not stopped the national government accepting it and giving TVI the go-ahead. TVI's position is that this is a 'question for the Philippines authorities'.²²⁴

In a national workshop on mining held in May 2002, community groups and NGOs from across the country documented the continued failure of government agencies to defend communities. Some reported the complicity of these agencies – including the military, the National Commission for Indigenous Peoples and the Department of Environment and Natural Resources (DENR) – in advancing mining company interests at the expense of community rights. According to the workshop, the level of mistrust between the government-supported mining industry and the people affected by it is at an all-time high.²²⁵

Why does the Philippine government consistently choose to support foreign multinationals against the wishes of its citizens? Why does it fail to defend its citizens against human rights violations? There are several answers:

- **Fiscal pressures.** An overriding concern for this, and all, Philippine administrations is the huge debt it owes to foreign lenders. In 2000, it owed almost 4.2 trillion pesos (US\$75 billion) to foreign creditors.²²⁶ In 2003, it spent 42 per cent of its tax revenue on debt service.²²⁷ In August 2004, President Arroyo declared a ‘fiscal crisis’, raising fears among creditors that the Philippines would default on its debt.²²⁸ It is an unfortunate reality that because of pressure to balance the fiscal deficit, including pressure from the World Bank and IMF, many governments choose forms of economic development that will lead to dollar earnings via tax revenue rather than positive development outcomes for poor people. Ironically, deregulation, in an attempt to attract foreign investment, has meant that revenues from mines have been very low.
- **Wrong economic theory.** Many in the Philippines administration genuinely believe providing incentives to encourage mining is vital for the pro-poor development of the country. Bernardo Villegas, senior vice president of the University of Asia and the Pacific, and economic advisor to Fernando Poe, presidential candidate in the recent elections, argued recently that: ‘The most serious challenge to the newly elected administration of the Philippines is to improve the climate for both domestic and foreign investments... The Philippines should do everything possible to significantly increase FDI [foreign direct investment] into the country.’²²⁹

People who campaign against mining are themselves sometimes accused of being anti-development. This view is supported by many economists in powerful organisations such as the World Bank, despite the Extractive Industries Review and other internal World Bank reports that reject such a position. Domestic and foreign investment can be vital to a country’s development, but only when they are the right investments, under the right conditions, and with appropriate safeguards to protect the rights of the poor and marginalised. Too often this is not the case.

- **Resources.** The lack of political will to hold the mining industry to account is shown by the meagre budgets made available to those government agencies that might have a role in doing so. As long as government agencies lack the resources to effectively monitor the implementation of laws and regulations, it is difficult to see how an industry whose operations are scattered in remote regions of the country will be held to account.
- **Corruption.** Corruption in the Philippines is a big problem. Joseph Estrada, President of the Philippines from 1998 to 2001, is estimated to have embezzled US\$100 million, while an estimated three million people were offered some form of payment in the 2002 *barangay* elections.²³⁰ The Philippine Center for Investigative Journalism has reported the lobbying of corrupt officials within the DENR, the government agency responsible for processing much of the documentation associated with mining.²³¹ According to one report, the DENR is one of the most ‘graft-ridden [corrupt] in the Philippines.’²³²

Recommendations to the Philippine government

The two case studies in this report illustrate a continuing trend in the Philippines. If its main concern is the welfare of its most vulnerable citizens, the Philippine government should urgently reconsider its current development path. The government should uphold the provisions of the Indigenous Peoples’ Rights Act which recognize indigenous peoples’ right to free prior informed consent, to their own path of development, and to occupy and make use of their land and resources.

- The presence of indigenous populations should be assumed unless proven and independently verified otherwise. Where indigenous people occupy an area, the full recognition of their rights should be given priority over negotiation with outside bodies over those rights.
- Companies and the government should respect the structure of decision making, and the leaders of the community recognised by the legitimate local population and by neighbouring communities.
- Where a mining proponent exists, clear procedures for public notification should be followed. Information about the project and consultation period should be posted widely and made available in local languages.
- Adequate time should be allowed to determine local opinion. This should be sufficient to allow for information dissemination and discussion – say six months.
- Information sharing and consultation with a community or indigenous people should be conducted and concluded in public, in an accessible place within the affected area.
- Where companies are found to have deliberately divided communities, this should be sufficient grounds for the denial or cancellation of a licence.
- A local decision to reject mining should stand for a significant minimum period, say five years. This would reduce the threat of persistent harassment.²³³
- The deployment of military or paramilitary forces in an area prior to or during consultation is unacceptable. It should constitute sufficient grounds for the termination of any negotiation or licence.
- To ensure that these provisions are satisfactorily complied with, a monitoring body which enjoys the confidence of all parties – especially the affected community – should report independently on the process. It is clearly unsatisfactory that the government agencies NCIP and DENR are the main arbiters in determining local opinion on controversial decisions in which central government has a clear vested interest.
- Any legal contests to the granting of a Certificate of Ancestral Domain Title should be secondary and should not cause the displacement of the indigenous community while the suit is pending.
- Government should decisively investigate and prosecute any reported human rights violations. As the UN Commission on Human Rights has no power to prosecute, a specific government agency should be given the power to do so in a permanent, rather than merely an ad-hoc, manner.
- The government should ensure that Strategic Lawsuits Against Public Participation – SLAPP Suits – lodged against community members opposing the entry of mining are quickly disposed of by the lower courts.
- It must ensure that environmentally critical areas – especially watershed areas – are closed to mining.
- It must ensure that food security is prioritised. Agricultural and fishing resources from which the community directly sources its food should be protected.

- It should pursue the findings and recommendations of UN special rapporteur Rodolfo Stavenhagen by making legal assistance and access to justice readily available to affected communities.

The World Bank: ignoring the evidence

Many of the initiatives to increase foreign mining investment result from the pressure and assistance of international institutions, most notably the World Bank. Over the last two decades the Bank has led the global trend to liberalise mining codes with the aim of increasing transnational mining company investment in developing countries.²³⁴

Bank investment in extractive industry projects, especially through the International Finance Corporation, has also risen substantially during this period. But it is the liberalisation measures, which the Bank itself identifies as its core role in the sector, that have had the greatest impact. Mining legislation has been reformed in 110 countries, including the Philippines, in close consultation with the companies.²³⁵

Bank-supported projects have to be screened for their effects on indigenous populations, among other 'safeguards'. Internal Bank studies, however, reveal that despite this requirement, there is a complete failure to monitor the impact on up to 50 per cent of projects.²³⁶

But even these flawed safeguard policies are not applied to policy-reform initiatives. The Bank's efforts to liberalise the Philippine Mining Code, and its subsequent promotion of the National Minerals Policy (NMP), have been pursued without assessing the likely impact on indigenous peoples and other poor communities. These impacts have been substantial and negative.

The inadequacies of the legal protection of indigenous rights, together with the strong promotion of mining, have resulted in numerous cases of land expropriation, loss of subsistence land, unwelcome corporate intervention leading to community divisions and conflict, physical displacement, and increased threats to environmental stability.

Not only has the Bank failed to monitor negative impacts, it has also actively pressed for the removal or watering-down of legal protection for indigenous people by its active involvement in the promotion of the National Mineral Policy (NMP) initiative.

During the NMP National Conference in December 2003, several Bank-sponsored speakers unanimously projected a positive image of further mining development. Professor James Otto of the Colorado School of Mines and Peter Van der Veen, manager of Mining and Policy Reform at the World Bank, highlighted the remaining barriers to attracting mining investment. In particular they mentioned the Indigenous Peoples' Rights Act (IPRA) and the constitutional challenge to the legality of the Mining Code made by B'laan communities and others supported by the Legal Rights and Natural Resources Center as two key obstacles to building investor confidence.

They urged the government to act swiftly to remove these barriers.

The Extractive Industries Review (EIR) found that liberalisation had had a grave impact and was implemented without safeguards. In 2002, long after it became clear that the Mining Code was resulting in strong pressures to develop mines on ancestral lands against the wishes of indigenous people, the Bank used its Country Assistance Strategy for 2003-2005 to press strongly for continued and increased mining investment.²³⁷

The World Bank, which itself commissioned the EIR to critically examine its impact as an institution, has rejected its most important recommendations. Rather than commit to free prior informed consent as its golden rule, the Bank has promised ‘free prior informed consultation’, although it has also said that there must be ‘broad community acceptance’ of a project before it can go ahead. Rather than insisting upon strict pro-poor criteria being in place before investment takes place, it has promised ongoing improvements. This course of action is specifically rejected by EIR author Emil Salim.

‘Based on our review, the Bank is not giving these governance issues enough priority – they cannot be addressed while large sums of money are simultaneously lent to countries with poor governance,’ he said.²³⁸

Recommendations to the World Bank

The Bank should urgently accept the recommendations of the Extractive Industries Review, which it commissioned itself. However, we shall also hold it to account for the following weaker commitments it has made. These include:

- consulting with affected communities and ensuring broad community acceptance exists for projects the Bank might support
- the introduction of more effective mechanisms to stop the Bank from pursuing policies that add to hardship and poverty rather than alleviating it
- shifting to greater transparency and inclusiveness in reviews of safeguard policies
- being liable for damage done to environments and communities by projects it funds.
Under current legislation, banks that lend money to third parties are not liable for the actions of their clients. But the World Bank is not an ordinary bank, nor is the Asian Development Bank. They both have a mission to promote development wherever they invest.

Home country governments: take responsibility!

‘Our mining industry needs to develop what I would call a social licence to conduct its activities... I expect our companies to operate to the same high standards abroad as they do in Canada.’

Ralph Goodale, Canadian Minister of Natural Resources²³⁹

Christian Aid and PIPLinks believe neither voluntary commitments nor national regulation alone can ensure adequately that the activities of companies benefit poor people, or at the very least don’t harm them. For this reason, we support the development of international mechanisms to regulate businesses, and in particular, transnational companies.

Christian Aid’s *Behind the Mask* report lays out in detail the reasons for our position and suggests two main forms of international regulation:

- Companies should operate to the same standards in other countries as they do in their home countries, except where host countries have higher standards – these should be respected. Home country governments should enforce these standards.

- International law should ensure that minimum environmental and social standards are made binding for all companies. This will prevent host countries lowering standards to attract investment.

In addition to these, a third factor is vital if investment is to be not only non-pernicious, but actually have a positive impact on poor people:

- There needs to be a radical shift in the investment regulation advice given to all developing countries. The international community, including the World Bank, is pressurising countries to reduce pro-poor regulations on foreign investment, such as legal requirements that foreign companies source goods and labour locally and reinvest a significant proportion of their profits. Individual countries find it very hard to resist this global trend.

Some northern governments regulate stringently at home. But even in developed countries the poor and marginalised often suffer serious abuses, and the environment is frequently harmed. When companies based in the North operate abroad, the home-country government often ignores the way that company operates, or even tacitly or openly supports it.

For example, despite receiving reports detailing concerns about TVI's activities, the Canadian government is actively supporting the company. Local Subanon were insulted Canadian ambassador Robert Collette visited Canatuan in April 2001, 'without informing or visiting us the ancestral domain holders. This was a disrespect and we fear it betrayed his true sentiments', Onsinio Mato, a local Subanon leader, told the UN Working Group on Indigenous Populations.²⁴⁰

Legally, it is perfectly possible for governments to be responsible for the international operations of companies from that country. A template is provided by the OECD Bribery Convention. According to this agreement, nationals can be taken to court in their home countries for bribery of public officials, wherever in the world that bribery has taken place.²⁴¹ At least 35 countries have now incorporated this into their domestic legislation.

The US also has existing legislation – called the Alien Torts Claims Act – which has in recent years allowed cases to be filed against some mining companies for alleged complicity in human rights abuses.

Recommendations to home countries

Christian Aid says that:

- Countries that are home to transnational companies should enact legislation that will require those companies to operate to the same standards wherever they operate in the world. Home countries whose nationals and corporate entities inflict damage in developing countries should suffer some form of penalty. A system in the home countries should be created to allow complaints to be filed by affected communities – the result of which can be the basis for the revocation of licences in the home country.

Binding international standards: the final piece in the jigsaw

All countries are keen to attract investment from foreign companies in the hope of earning foreign exchange from revenues. In order to lower costs for potential investors, they are often tempted to ignore regulations protecting indigenous people and the environment. To a certain extent, this is a sovereign choice each country has to make – there is always a balance between attracting investors and protecting labour and indigenous groups.

However, there should be minimum standards below which it is unacceptable to fall.

Environmental pollution continues to be a grave threat to the economic and cultural life of the Philippines, and the government is either unable or unwilling, or both, to deal with it appropriately. The situation in Mankayan, detailed in this report, has been repeated many times all over the Philippines.

Voluntary codes may be a first step, but there is little reason to believe that they are the whole solution. Companies respond most urgently to regulation and the credible threat of sanction, rather than vague notions of a 'business case' for ethical performance, based on future benefits of good community relations and investor-trust. All companies should be required to operate to the same minimum standards wherever in the world they work.

It is possible that this regime could be overseen at the UN, or by a specially convened body. Just as the World Trade Organisation can sanction the activities of states, and the developing International Criminal Court can make decisions about people from any country, this body would decide whether a company had breached minimum standards agreed by its member states.

Additional and strengthened international legislation on human, environmental and labour rights, offers a means of redress to people who have been harmed by the operations of companies. The threat of legal action alone provides a strong disincentive to companies to engage in damaging activities.

But preventing companies from doing harm is only half the battle. Ensuring that they have a positive impact where they work would require sensible policies on tax, profit reinvestment and repatriation, the hiring of local workers, and the use of nearby resources to stimulate the local economy. At present there is a trend away from insisting on these conditions as a basis of pro-poor investment, and towards allowing investment that is far less positive for development.

The 1995 Philippine Mining Code provided investors with an attractive environment, but did nothing to ensure the benefits of that investment went to poor people.

Recommendations to the international community

Christian Aid and PIPLinks understand the pressures on countries to attract foreign investment and believe that these can only be countered by a concerted effort at the international level to halt the trend towards deregulation. Similarly, an opposing trend must be established for countries to enforce stringent pro-poor conditions on foreign investment. International agreements stipulating minimum requirements could be a first step towards this:

- International norms exist regarding minimum labour, environmental and human rights standards. The international community should develop these norms into binding laws with effective monitoring and sanctions imposed on offending companies. The development of effective and credible monitoring is a vital component of such a regime. Free-trade agreements sometimes include clauses that make the lowest national standard the norm, but the opposite – the highest national standards – should apply. National and local governments should have the right to impose even higher environmental and social standards if they wish.
- Influential organisations, such as the World Bank and other donors, should stop putting pressure on client countries to attract investment by reducing protective regulation and offering incentives, thus encouraging a race-to-the-bottom. Rather they should persuade

developing-country governments that without certain conditions in place, investment in mining and similar sectors will not lead to poverty alleviation, as the EIR indicates.

Notes

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- 29 Full text at sunsite.nus.edu.sg/apcel/dbase/filipino/primary/phamin.html
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Christian Aid works in some of the world's poorest communities in more than 50 countries. We act where the need is greatest, regardless of religion, helping people to tackle the problems they face and build the life they deserve. At home and overseas, we campaign to change the structures that keep people poor, challenging inequality and injustice.

Philippine Indigenous Peoples Links (PIPLinks) supports indigenous peoples' organisations in their efforts to gain recognition and respect for basic rights and especially the rights of indigenous people to control their ancestral lands and determine their own future. We conduct research, education and a range of advocacy activities in our efforts to ensure that indigenous peoples' voices are heard and their views respected in decisions affecting their future.

Front cover picture: A small-scale miner in Sibutad, Philippines, holds some newly extracted gold. Small miners earn between 175 and 500 pesos (US\$3-9) per day

Photo: Christian Aid/Jon Challicom

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