Philippines Indigenous Peoples Engagement with International Mechanisms & Networks
Philippines Engagement with International Mechanisms

• Engagement with international complaint mechanisms
  – CERD Early Warning Urgent Action Procedure
  – CERD Government shadow report
  – Organization for Economic Cooperation & Development
  – Communications with UN Special Rapporteurs

• Alliances with international networks and groups
  – Working Group on Mining in the Philippines
  – Mines and Communities / London Mining Network
CERD invoked its Early Warning Urgent Action Procedure in August 2007. There letters were issued requesting information regarding:

- recognition accorded to non representative bodies,
- acts of violence & attacks on property by paramilitary forces
- destruction of Sacred Mountain, Mt Canatuan
- failure to obtain the Subanon ‘FPIC in line with their traditional forms of decision making’ and
- FPIC guidelines that impose ‘restrictions on timeframe and process…which are not in conformity with the customs laws and traditional practices’ of indigenous communities

CERD also expressed its concern that:

- ‘the situation of the Subanon of Mt Canatuan is not an isolated case, but that it is rather indicative of similar situations faced by other indigenous communities’
CERD Shadow Report – Process and Structure

• Subanon complaint triggered demand for overdue national report

• Consortium of organizations and indigenous networks

• Regional consultations involving 45 communities
  – 15 of these had major issues in relation to mining
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<td>Ifugao, Didipio</td>
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<td>Self Determination</td>
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<td>FPIC process, Potential Impact of Mining on Watershed, Payment for Environmental Services., processing of CADT, FPIC Creation of new IP groups</td>
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<td>Pananuman, Tubo, Abra</td>
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<td>Manobo-Mamanwa, Barangay Tagmamarkay, Municipality of Tubay, Agusan del Norte</td>
<td>NPIC non recognition of IPs, small-scale mining pretending to be large-scale, HRVs, women leaders</td>
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<td>Mindanao</td>
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<td>Mass displacement, leaders under threat, death due to starvation during evacuation, hydro, mining applications, access to justice - long running case</td>
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<td>Visayas</td>
<td>Tumanduk tribes, Capiz and Iloilo provinces</td>
<td>Military reservation (non-recognition of prior rights); harassment, inc. minors; divestment of properties; overlapping land use (mining applications)</td>
<td>Land Rights</td>
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<td>Luzon</td>
<td>IPs of Mankayan, Benguet</td>
<td>Mining expansion, FPIC, health, livelihoods</td>
<td>Self Determination</td>
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A common theme that emerged in all Mining Impacted communities was the violation of their right to FPIC and to say no to projects.
OECD Guidelines and Complaint Mechanism

- Organization for Economic Cooperation and Development (OECD) complaint mechanism consists of a National Contact Point (NCP)
  - Performance is very much dependant on NCP
    - Norway and Holland have good reputations
    - US and Canada not so good reputations

- OECD Guidelines for TNC’s are voluntary and include sections on Human Rights, Environment and Bribery.

- NCPs attempt to reach an agreement through dialogue. If not successful issues a statement.
  - Non binding and no legal force but maybe persuasive
  - Can influence investors and shareholders
OECD Complaint – Mangyan of Mindoro

• “Enterprise should take fully into account established policies in the countries in which they operate” and “respect the human rights of those affected by their activities consistent with the host government’s international obligations”
  – Main Issue: Representation of the Mangyan in FPIC Processes – reference to CERD Urgent Action procedure

• “Enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage.”
  – Financial donations prior to FPIC and ESIA processes

• “Enterprises should conduct “collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities”
  – Inadequate information provision on environmental & social impacts

• Changing companies and lack of Institutional Memory
  – Corporations cannot disown responsibility for past questionable acts while simultaneously benefiting from the outcomes of these same acts
International Alliances

Members of WGMP:- Chair, Hon. Clare Short MP; Miles Litvinoff, ECCR; Geoff Nettleton, PipLinks; Frank Nally SSC, Columbans; Ellen Teague, Vocation for Justice, Columbans; Clive Wicks, IUCN-CEESP ; Andy Whitmore, PipLinks; Cathal Doyle, Irish Centre for Human Rights
WHY IS LONDON IMPORTANT?

1. CENTRE OF FINANCE & INSURANCE FOR MINING COMPANIES

1. MAJOR MINERAL TRADING MARKET – LONDON METALS EXCHANGE

1. HEAD QUARTERS FOR MANY MAJOR MINING COMPANIES e.g.
   – RIO TINTO
   – BHP BILLITON
   – XSTRATA
   – ANGLO AMERICAN
Mining in the Philippines
Concerns and conflicts

Fact Finding Mission to the Philippines Report

Philippines
Mining or Food?

Cafod
just one world

Trocáire
Working for a Just World

Piplinks
Philippine Indonesia People's Links

PAFID
Philippine Indonesian People's Links

IUCN
International Union for Conservation of Nature

CERSP
Catholic Earth School and Research Project

Paul K. Feyerabend
Foundation

ECCR
Endorsed Council for Corporate Responsibility

National University of Ireland, Galway

Theological Centre for Justice and Peace

Catholic Faith and Justice

Working Group on Mining in the Philippines

Working Group on Mining in the Philippines
Obstacles to indigenous peoples’ enjoyment of their right to food

• Main obstacles to indigenous peoples’ enjoyment of their right to food (UN Special Rapporteur on the Right to Food):

  - Lack of access to justice
  - Lack of recognition of rights to land & resources
  - Lack of control over development projects

  All of these obstacles, together with the use of paramilitary forces (e.g. the Investment Defence Force), are prevalent in the Philippines in the context of mining projects.
Sustainable Development and Mining Industry in Zamboanga Peninsula, Philippines

Potential threats to sustainable development from mining activities

The Philippine government has identified Luzon and Mindanao as its food baskets but states that: "The soil toxicity of Mindanao’s soil is high, which is why it has some of the highest hunger in our nation. It has large areas of high productivity, yet also some of our ten poorest provinces." (Statement - State of the Nation Address 2008)

The Zamboanga Peninsula in western Mindanao, with a current population of 1,320,984 (estimated at 2.5 million by 2030), is vital for food production. In spite of being badly damaged by logging, the forests in the mountains sustain critical watersheds necessary for agriculture and fish farming. Numerous rivers and shallow coastal waters provide ideal breeding grounds for fish but these are easily damaged by pollution particularly acid drainage and siltation from mines and deforestation.

Experts commissioned by the Working Group on Mining in the Philippines visited Mindanao in February 2006. Their report, "Mining, Agriculture, and the Environment," helped produce this map which indicates the potential negative impacts of mining on forests, agriculture and marine resources as well as on indigenous peoples’ ancestral lands.

The experts concluded that mining is not compatible with irrigated agriculture, notable rice or fish production, and is inappropriate in areas such as the Zamboanga Peninsula.

The experts strongly recommended that the Government stop mining in critical water catchments, and prioritized the immediate protection of the environment including reforestation, food security and the Human Rights for present and future generations.
Sustainable Development and Mining Industry in Midsalip, Zamboanga del Sur, Philippines

Potential threats to sustainable development from mining activities

Protected Areas

Mining is home to many indigenous, forest-dwelling peoples who depend on this landscape for their livelihoods. In the past, mining activities have directly impacted local communities and ecosystems. However, with growing concerns about sustainable development, efforts are being made to address these issues.

Ancestral Domains

The ancestral domains of the indigenous peoples are an integral part of the region's natural heritage. These domains are home to numerous species of plants and animals, and their protection is crucial for maintaining biodiversity.

Irrigated Rice Lands and Fish Farms

Efforts to develop irrigation systems and fish farms in the area have been made in recent years. These initiatives aim to improve food security and economic opportunities for local communities.

Agriculture and Watersheds

The region is rich in agricultural potential, with fertile land and suitable climate conditions. However, effective management of water resources is essential for sustainable agricultural practices.

Mining Industry

The mining industry plays a significant role in the region's economy. However, concerns about environmental impact and social justice have raised questions about the sustainability of mining activities.

DRAFT FOR COMMENTS

The draft document outlines potential measures to address the challenges posed by mining activities. It emphasizes the need for consultation and participation of local communities in decision-making processes.

The document also highlights the importance of integrating environmental, social, and economic considerations in the planning and implementation of mining projects. It calls for a balanced approach that ensures the protection of natural resources while fostering economic development.

The draft is intended for public comment, and stakeholders are encouraged to provide feedback on the proposed measures and strategies.
Closing Points

• Limited capacity of CERD and other UN Mechanisms
  – Subanon case has national resonance as includes many of the issues faced by other communities
  – Use Shadow reports to illustrate extent of violations
  – Has triggered some response from Government but follow up will be important

• Use of complementary mechanisms and materials to support arguments
  – E.g. to expose company complicity with government structures
  – Involvement of high profile individual in host country

• Possible future options
  – International Labour Organization Convention 111 Discrimination in Respect of Employment and Occupation
  – International Convention on Civil and Political Rights Optional Protocol, Article 27: Right to Culture
Philippines Overview

- WATER
- 7000 ISLANDS
- MINDANAO
- MINDORO
- SIBUYAN

Case Study Locations

1. MIDSALIP
2. LIBAY SIBUTAD
3. TAMPAKAN SAGITTARIUS COPPER & GOLD
4. MATI DAVAO ORIENTAL PUJADA BAY
5. MINDORO NICKEL PROJECT
6. SIBUYAN ISLAND
Right to Food – Philippines Obligations under International Human Rights Law

**Accessibility:**
- economic accessibility & physical accessibility.
- Resource constraints are **not an excuse** for failing to uphold right to food, particularly for vulnerable groups.

**Availability:**
- the possibility to feed oneself from the land or other natural resources, or the existence of a food supply chain that meets demands.
- acceptability within a given culture

**Sustainability:**
- adequacy of food for present and future generations - this is intrinsically linked to the notion of food security. Imposes an **obligation to protect people's resource base for food**

**Right to Adequate Food & Water**

CESCR General Comment No 12 1999
Available at: http://www2.ohchr.org/english/bodies/cescr/comments.htm
Towards a Definition of “Responsible Mining”

“Responsible Mining” is where:
- (a) Social and environmental impacts are effectively absent (e.g., in deserts) or very low and can be mitigated.
- (b) Fully informed agreement of impacted communities to proceed is obtained through the FPIC of indigenous communities & the broad community support of all other impacted communities.
- (c) Benefits and compensation for the impacted people are negotiated and are high and long term. They must unambiguously outweigh possible impacts.
- (d) Effective monitoring and grievance mechanisms must be in place.

The Extractive Industry Review (eir.org) “Striking a Better Balance” amplifies the definition of responsible mining and is the standard which should be adhered to. Frameworkforresponsiblemining.org is also richly comprehensive.
LOCAL IMPACTS OF MINING

• FORESTS DESTROYED
• WATERCATCHMENTS DAMAGED
• FOOD PRODUCTION REDUCED
• FISH PONDS DESTROYED OR DAMAGED
• IRRIGATION CANNELS DAMAGED OR DESTROYED
• RIVERS AND STREAMS SILTED UP
• POPULATIONS DISPLACED
• CONFLICT INCREASED
• HUMAN RIGHTS AFFECTED
• ABILITY OF FUTURE GENERATIONS TO SURVIVE REDUCED
Human Rights Context
Civil & Political Rights

- Prof Alston UN Special Rapporteur on Extrajudical Killings concluded following his 2007 visit to the Philippines that:
  - “[Killings and enforced disappearances in the Philippines] eliminated civil society leaders, including human rights defenders… &…narrowed the country’s political discourse”
  - James Balao disappeared September 08

- “The priorities of the criminal justice system have also been distorted, and it has increasingly focused on prosecuting civil society leaders rather than their killers.”
  - SLAPP case against teachers in Sibuyan Island
Indigenous Peoples Rights
Mining, Indigenous Peoples and the Right to Food

18 out of 23 of Governments original priority projects were on IP lands

Profound Spiritual link with land

Subsistence livelihoods

Mining Tenements overlap 60 – 70% of Indigenous Peoples Ancestral Domains
Potential Positive & Negative Impacts of Mining on Right to Food & other human rights

- Under **current conditions** potential negative impacts of mining plans on right to food and food security appear to **far outweigh** potential positive impacts.

**POTENTIAL POSITIVE IMPACTS**
- Short term employment
- Promises of Community Development Projects
- 1% Royalty

**POTENTIAL NEGATIVE IMPACTS**
- Displacement of long term livelihoods in agriculture and fisheries
- Irreparable environmental damage to biodiversity and endemism
- Accidents, floods, damaging land and marine resources
- Risk of increased/induced seismic activity
- Division of communities, undermining of self governance and right to self determination
- Militarization and human rights abuses
- Exposure to market fluxations
- Destabilization of communities, conflicts, health risks, damage to livelihoods
- Bribery
- Denial of and Ownership and Priority Rights
- Damage to sacred areas and burial sites

Under current conditions, potential negative impacts of mining plans on right to food and food security appear to far outweigh potential positive impacts.
Philippines
Extractive Industry and Indigenous Peoples
Implementation of the Right to Food

• Adopt National Strategy and framework law for Right to Food with active involvement of civil society
  – verifiable benchmarks and mechanisms for national and international monitoring

• Ministries, regional and local authorities should coordinate to ensure that related policies & administrative decisions are in compliance with the right to food

• Requires full compliance with principles of accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary

• There is no constitutional or legislative protection for the right to food, nor is there a strategy to implement it, in the Philippines.
Violations of the Right to Adequate Food

• Occur through the direct action of States or other entities insufficiently regulated by States:
  – failure to regulate activities of the private sector to ensure that they are in conformity with the right to food
    • framework for their conduct should be agreed with civil society.
  – adoption of legislation or policies which are incompatible with legal obligations relating to the right to food.
  – the failure to take into account its international legal obligations regarding the right to food when entering into agreements with States or international organizations.
ALL SEA AREAS INCLUDING CORAL REEFS AND DEEP RIFTS CAN BE DAMAGED BADLY BY MINE POLLUTION
Local Level Impacts:
- Loss of forest habitat - erosion and sediment yield
- Likely effects on surface and groundwater supply
- Emissions related to the operation of nickel processing plant

Regional Level Impact
- Risks of degradation of fishery resources
- Risks of degradation of agriculturally productive land downstream
- Air quality issues
- Land-use issues
Company Response

• Paints a picture of a ‘robust’ 1995 Mining Act capable of ‘allow[ing] only projects that will have a positive impact on their host communities’ and describes the current FPIC guidelines and the institutions in place to uphold indigenous peoples rights as ‘comprehensive’ and ‘clear’.

• It ignored
  – Strong and on-going opposition to the 1995 Mining Act by Indigenous Peoples
  – CERD concerns in relation to widespread violations of IP rights in the context of mining projects and guidelines that are not ‘in conformity with the customs, laws and traditional practices of these communities’
  – Context of killings and enforced disappearances
  – The fact that corruption is traditionally notorious in the context of mining in the Philippines
CUMULATIVE RISKS

RING OF FIRE

MOUNTAINS

+ HIGH RAINFALL

+ LOSS OF FOREST COVER

+ SEISMIC ACTIVITY

+ OPEN CAST MINING

+ INDUCED SEISMIC ACTIVITY

CAN = DEATH AND DESTRUCTION

NEED STRATEGIC ENVIRONMENTAL ASSESSMENTS (SEAs)
National Context

- **Company Position**
  - Paints a picture of a ‘robust’ 1995 Mining Act capable of ‘allow[ing] only projects that will have a positive impact on their host communities’ and describes the current FPIC guidelines and the institutions in place to uphold indigenous peoples rights as ‘comprehensive’ and ‘clear’

- **Reality**
  - Strong and on-going opposition to the 1995 Mining Act by Indigenous Peoples
  
  - CERD concerns in relation to widespread violations of IP rights in the context of mining projects and guidelines that are not ‘in conformity with the customs, laws and traditional practices of these communities’
  
  - Context of killings and enforced disappearances
  
  - The fact that corruption is traditionally notorious in the context of mining in the Philippines
Enterprise should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders” and “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments”

- Intex claim’s that all of the impacted Mangyans were consulted and their consent obtained
  - Intex admits that they only entered into an agreement with a newly organized group called KABILOGAN.
  - Intex claim that Mindex were not obliged to get the consent of the other Mangyan in the Ancestral Domain and their already existing Ancestral Domain Claim holder organizations, SANAMA and KAMTI, as “they did not reside in the affected area.”
- the consensus of all members of the ICCs/IPs [Indigenous Cultural Communities / Indigenous Peoples]
  - communal claims as referring ‘to claims on land, resources and rights thereon, belonging to the whole community within a defined territory’.
  - covering two or more ancestral domains, the consent of all affected ICCs/IP communities shall be secured
Mindoro OECD Complaint

- Original FPIC process did not adhere to the mandatory procedural steps stipulated in IPRA’s FPIC implementing guidelines.
  - Representation and failure not achieve required ‘consensus of all’.
  - As a result the MOA signed with the Kabilogan organization is illegitimate.

- FPIC for expansion area
  - Similar breaches of process relating to validation of leaders, provision of information regarding impacts, participation of NGO’s and PO’s.
  - Company and NCIP have ignored the cease and desist order issued by the Provincial Legal Officer of Oriental Mindoro.
  - Recognition by Ambassador that Intex ‘may have substantial difficulty obtaining the ECC to obtain due to the massive local resistance not least from the Mangyan’
• Mindex’s mining claim crossed the Ancestral Domain Claim of the SANAMA and KAMTI organizations and therefore the FPIC of all of the Mangyan in these ancestral domains should have been obtained.

• Department of Environment and Natural Resources cancelled the MPSA and quoted the aforementioned Section 4 c of IPRA 1998 IRRs and stated that “Aglubang has not secured such consent”
• 2007 investigation of the Norwegian Ambassador to the Philippines

• ‘With regards to the Mangyan peoples, the vast majority is strongly opposed to any form of mining in their areas - and there is substantial discontent with Crew Minerals.’
Nickel, Gold and Rice Prices

Nickel Price

Rice Price