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Submission to the Joint Committee on Human Rights - Call for Evidence on Business and Human Rights

The impact of UK-based mining companies on the Philippines, particularly focusing on the right to food

Submitted by Working Group on Mining in the Philippines (WGMP)

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1. Introduction and background

This submission focuses on the way existing and proposed mining by global companies in the Philippines poses a threat to human rights, particularly the human right to food of local communities.¹ Its findings build on the WGMP's recent publication *Philippines: Mining or Food?*², focusing on the impact of UK companies, with pertinent recommendations on how to address these.

The Philippines is one of the world's most biodiverse countries, but its natural resource base has declined alarmingly, leading to increasing proneness to fatal disasters. Past wilful ignorance of the connection between natural resources management and food security has meant that the country has lost most of its forests and much of its fisheries. Forest loss has led to a decline in rice production, the Philippines' staple food, by affecting climate and water supply; and, with the destruction of fisheries, has severely undermined long-term sustainable livelihoods for poor people.

There is strong evidence, where mining has taken place, that the extraction process damages rice production, often permanently. Mining is universally acknowledged to be a high-risk activity, especially precarious in areas of high rainfall, seismic activity, steep slopes downstream of deforestation, and dense population – conditions common in the Philippines. Mining is particularly risky in agricultural areas, especially above irrigation and fishpond zones. In comparison to agriculture, fisheries or tourism, mining creates fewer jobs per unit of money invested and contributes least to poverty reduction and sustainable development. On the contrary, it often increases poverty.

Profits of mining are privatised by companies, while costs are externalised to Filipino communities, the legacy remaining long after the mining corporation has left the country. Once costs of

¹ Human right to food: Committee on Economic, Social and Cultural Rights, *Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12, The Right to Adequate Food*, UN Economic and Social Council, E/C.12/1999/5. See also <http://www2.ohchr.org/english/issues/food/index.htm>

² *Philippines: Mining or Food?*, written by Dr Robert Goodland and Clive Wicks, published by the Working Group on Mining in the Philippines, London, 2009. Available at www.piplinks.org/miningorfood and the previous report, *Mining in the Philippines: Concerns and Conflicts* (London 2007) Available at http://www.iucn.org/about/union/commissions/ceesp/ceesp_alerts/mining_philippines.cfm

environmental and social damage, decommissioning, rehabilitation and restoration are included, the net benefit figure is negative. Mining is also frequently associated with generating or exacerbating conflicts, militarisation human rights abuse and corruption in the Philippines.

This is because mining is occurring in a context where by access to justice is rendered impossible for impacted communities. According to the European Commission corruption is traditionally notorious in the Philippine mining sector and the government has taken no measures to curb it.³ Those opposing mining operations or seeking redress for violations of their rights face intimidation, harassment, violence or even death. It is estimated that there have been in the region of 1,000 extra-judicial killings and enforced disappearances since 2001. Over 20 of these were involved in opposing mining projects. Another 100 plus were indigenous leaders attempting to uphold their rights to lands and resources. Court cases are regularly dismissed or go unheard for years on end. As a result communities have turned to international mechanisms only to realize that these mechanisms do not have enforcement powers over transnational companies necessary to ensure redress for wrongs committed.

2. Case studies

The brief case studies below are based on visits by members of the WGMP in 2006 and 2008 and illustrate the negative impacts of global mining companies', activities on food security in the Philippines. All have a UK connection,

a. Midsalip, Zamboanga del Sur, Mindanao

Company: History of Rio Tinto (UK/Australia) applications in the area

In 1996 the municipality of Midsalip was covered by a number of Rio Tinto applications. Operating under the name Tropical Exploration Philippines Inc., Rio Tinto withdrew from the area in 1999 following strong local and international opposition to the project. In June 2001, US mining company Phelps Dodge, together with a Philippine partner, also applied for an exploration permit in Midsalip, but they too withdraw their application because of community opposition. Despite their withdrawing from the area, the status of these Rio Tinto claims remains unclear. Nine current applications in the municipality will ultimately rely on joint venture partners.

Mining and irrigated rice and fish farming are incompatible in an area that produces valuable agricultural and marine food supplies. The extraction or exploitation of iron ore and other minerals will severely damage the water catchment services of Midsalip, affecting water quality and supply to all three provinces in the peninsula, reduce agricultural production and diminish the ability of future generations to survive.

Mining will also affect the significant investment of the international community in reforestation, pollute and cause erosion and siltation of rivers, and exacerbate geohazard and landslide problems. There will be a risk of flooding and pollution of fresh water supplies and of the main fish farming and fish breeding grounds. There is also likely to be flooding of lowland communities, which the forest and water catchment currently protect, all of which will affect food security. The Indigenous Subanen community will be particularly impacted if mining proceeds.

b. Tampakan, South Cotabato, Mindanao

Companies: Xstrata Copper (UK/Switzerland), Indophil Resources (Australia)

This project of Sagittarius Mines has been managed since 2007 by Xstrata, the world's fourth largest producer of copper, whose major shareholder is the private company Glencore (Switzerland).

Mining in this area of important forests and water catchments, including the proposed Tampakan

³ <http://www.delph.ec.europa.eu/docs/cep%20Philippines.pdf>: European Commission, 2005. Philippines country environmental profile. Makati City, Delegation of the European Commission to the Philippines

mine, should not be permitted. Mining will impact the lands of the Indigenous B'laan peoples and the downstream agricultural areas of the provinces of South Cotabato, Sultan Kudarat and Davao del Sur. These areas would be at risk from mining pollution, erosion, siltation and continuing devastating flash floods and landslides. Lake Buluan, with its superb sustainable fish production capacity, may be damaged or destroyed by flash floods, toxic pollution and increased siltation, which will gravely affect the largely Muslim population who depend on it for survival. The Liguasan Marsh could also fall victim, and there are fertile rice-growing areas and mangrove forests in the marsh.

The area is geologically unstable with frequent landslides, and fault lines. Water catchment areas need urgent protection, conservation and reforestation, not mining, to help sustain and increase sustainable food production. The area is also a centre of armed conflict because of political, cultural and economic issues. Mining in conflict areas has fuelled, and will most likely continue to fuel, armed conflict, exacerbating human rights abuses and internal displacement of vulnerable communities. On 9th March 2009, a notable anti-mining critic, Eliezer "Boy" Billanes, was shot dead by two unidentified gunmen. Although there is an on-going investigation, it is being widely reported that he was killed for his work opposing this project.

c. Pujada Bay, Mati, Davao Oriental

Company: BHP Billiton (Australia/UK)

The joint venture between Asiaticus Management Corporation (AMCOR) and BHP Billiton over the Hallmark Project involved a 60-40% equity split. However, disputes have arisen between AMCOR and BHP Billiton, with AMCOR being granted a restraining order and preliminary injunction against BHP Billiton in May 2008.

Mining claims - mainly nickel and cobalt - in this area cover approximately 17,573 hectares. Mining pollution, erosion and siltation will severely damage biodiversity, water catchments, agricultural and marine resources and erode the area's potential as an ecotourism attraction. The human rights of the Mandaya will be further affected by mining on their ancestral domain. Coastal communities who depend on fisheries are likely to be displaced, and fish stocks, the main protein diet of the coastal communities and nearby cities, will likely be adversely affected in both the short and long term. Exploration and mining within this fault line, which flanks the watershed on the southwest and southeast, will increase risks and may induce additional seismic activity.

d. Mindoro nickel project, Mindoro Island

Company: Intex Resources (Norway)- parent company UK-registered Crew Development Corporation

After a chequered history of company takeovers and name changes, Mindex Resources Development was acquired by UK-registered Crew Development Corporation in 2000, with Crew subsequently in 2007 creating Intex Resources, listed as a separate company with the Mindoro nickel project as its main asset. Over this ten-year period, mining permissions were granted, revoked and reinstated, with claims of deception. The project, currently under the control of Intex, is between pre-feasibility and feasibility stage.

Intex and other mining companies should comply with the Provincial mining moratoria and immediately cease all activities. Mining is likely to damage the island's important food production capacity, its fisheries and its ecotourism potential and is considered inconsistent with the provincial sustainable development plan. In the light of other factors, including seismic and climatic conditions, the proposed Intex nickel project has the potential to cause massive damage to the water catchment area, impacting up to 40,000 hectares of rice producing lands and exacerbating flooding of towns and villages. The Intex nickel project, and the other 91 mining applications being considered for the tropical island, would damage most of the water catchment area and the possibility of sustainable food production in the foreseeable future on Mindoro.

e. Sibuyan Island, Romblon Province,
Company: BHP Billiton (Australia/UK)

In 2007 Pelican Resources (an Australian company) announced a memorandum of agreement under which BHP Billiton would be the sole financier of the exploration and drilling programme of the Romblon nickel project and have exclusive rights to purchase the laterite nickel.

In October 2008, Armin Marin, a former WWF employee, and local councillor was shot and killed by a mine security guard while leading a peaceful protest against the mining operations. The mine guard has since been arraigned for murder. However, in what is a clear distortion of the justice system the mining company is taking a case against the local schoolteachers for their role in organising the legitimate protest to protect the environment. Similar strategic lawsuits against public participation ('SLAPPs') are common throughout the Philippines as a way to deter opposition to mining operations.

No Strategic Environmental Assessment (SEA) has been carried out to manifest the cumulative impacts of the proposed mines targeting the island, which will be a disaster for this up-to-now remote island. Mining applications cover 42% of the island and overlap 32% of the management area of the National Park, including 14 sq km of the Protected Area, 32% of mangrove, primary lowland and secondary lowland forests, 45% of rice lands, 56% of coconut lands and 43% of the Sibuyan Mangyan Tagabukid ancestral domain. Mining on the island will undermine its ability to feed itself or develop its eco-tourism potential.

3. Conclusions and recommendations

On the issue of the right to food, mining reduces options for future generations. The Philippine population of approximately 90 million is due to rise to 136 million by 2030. Feeding the current population means that the country has to import more than a quarter of the 12 million tonnes of rice needed annually. World market prices have almost tripled in recent years, placing imported rice out of reach of the county's poor - about half the population. The Philippines used to be self-sufficient in rice but is now the world's largest rice importer.

Mining in the scale planned in the Philippines and under current conditions poses a serious threat to indigenous ancestral domains, watersheds and other areas environmentally critical for agricultural and marine food security. The stark choice is between a few years of mining and thousands of years of sustainable irrigated rice and fisheries production. As such the WGMP supports the widespread call from civil society, Indigenous Peoples and the religious leaders that a moratorium on mining should be declared in the Philippines and a credible independent body should be established to review all existing contentious mining operations. A human rights impact assessment methodology is recommended for all projects.⁴

All of the cases above illustrate issues of where the activities of UK-based mining companies have been detrimental to human rights. Although it has focussed on the right to food, the report also investigates the inextricable link between mining and militarisation, and the intimidation and high number of extra-judicial killings and disappearances among civil society opponents of the Government's mining policies.⁵ This would argue that even assuming the best intentions of companies it is not possible to operate to the highest international standards on human rights in remote locations where conflict and impunity for abuse exists. The report records many instances of where the rights of Indigenous Peoples, particularly the right to Free, Prior, Informed Consent over mining projects which is enshrined in Philippines law, is constantly abused. Companies operating in such a context where national legislation and international obligations are being violated are complicit in this abuse.

⁴ See e.g. Business & Human Rights Resource Centre, 'Human rights impact and compliance assessments', <http://www.business-humanrights.org/Documents/Impactassessment> [accessed 31-Mar-09].

⁵ Figures from Kalikasan PNE note there have been 24 killings of environmental activists and leaders since the current President took office in December 2001, along with two enforced disappearances and an attempted assassination.

A key concern of communities impacted by these violations, is the lack of access to justice in the Philippines. Various community leaders have lodged complaints with UN processes, most notably a submission under the Early Warning Urgent Action mechanism of the Committee on the Elimination of all forms of Racial Discrimination. However these mechanisms are slow and lack the capacity and enforcement power to address the extent of the issues at hand. Community representatives have travelled to the UK, to directly lobby the headquarters of the mining companies, and to seek redress, but have found this to be of little avail. Impacted communities see the complaint mechanism available under the OECD Guidelines for Multinational Enterprises as incapable of addressing their issues. In addition to its administrative limitations, the OECD complaint mechanisms only recourse is to facilitate a dialogue with the companies who have abused the community's rights. This is an inadequate process for most communities, as past dialogues with companies have not resolved abuses committed.

Communities are therefore looking for redress within a legal framework in which companies can be held to account for violations of their rights. To this end the WGMP recommends the establishment of a UK roundtable⁶ process involving government, NGOs, companies, and impacted communities to investigate the role of British mining companies overseas and how they can be held to account for violations of communities and individual rights, leading to:

- 1) The establishment of a UK parliamentary committee (in aid of enacting legislation) to review the actions of British companies overseas and with the power to hear testimony from communities.
- 2) The enactment of extraterritorial legislation to hold British mining companies to account.
- 3) The creation of a UK Ombudsman on mining with powers to examine overseas operations.

4. Basis of submission

This submission is based on the findings of *Philippines: Mining or Food?*, written by Dr Robert Goodland and Clive Wicks, published by the WGMP, London, 2009⁷ and the 2007 report *Mining in Philippines: Concerns and Conflicts*⁸

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⁶ See 'An Important Step Forward: The Final Report of the National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries', 2007, www.miningwatch.ca/index.php?/92/CNCA_statement

⁷ Available at www.piplinks.org/miningorfood

⁸ Available at http://www.epolitix.com/fileadmin/epolitix/mpsites/MininginthePhilippines_Report.pdf