



**Citizens Assessment of Structural Adjustment (CASA)
Philippines
Thematic Group Workshop**

**Investment Liberalization, Republic Act (RA) 7942
(Mining Act of 1995) and Its Impacts on Indigenous Peoples (IPs),
Upland Communities and Rural Poor, and on the Environment:
The Case of Didipio, Kasibu, Nueva Vizcaya
and Manicani Island in Eastern Samar**

Introduction

This research on investment liberalization, the Philippine Mining Act of 1995 (RA 7942) and its social and ecological impacts is part of the larger efforts to conduct a critical review of structural adjustment programs (SAPs) being undertaken by the Citizens Assessment of Structural Adjustment or CASA. The CASA, which is being undertaken in the Philippines and Mexico, is a parallel review process of the Structural Adjustment Participatory Review Initiative (SAPRI) Network. The SAPRI Network, which consists of representatives from civil society, national governments and the World Bank, is conducting a trilateral review project of SAPs in ten countries deemed representative of different regions and types of economies. The Freedom from Debt Coalition, Inc., (FDC Inc.), an organization addressing economics and economic development issues serves as the convenor/secretariat for CASA Philippines.

The *Investment Liberalization, Republic Act 7942 (or the Mining Act of 1995) and the Impact on Indigenous Peoples (IPs), Upland Communities and Rural Poor, and on the Environment*, is one of the policy issues being addressed by CASA Philippines. The policy issue being studied was determined during the CASA National Opening forum held in July 1999. In the said forum, a thematic working group on indigenous peoples and the environment was convened. The thematic working group identified the theme investment liberalization, particularly the liberalization of the Philippine mining industry and the attendant social and ecological impacts to be the focus of the study.

The research is divided into two phases: (a) a review of primary and secondary sources to come up with a background paper on investment liberalization and the Philippine Mining Act of 1995; and (b) an empirical study on the social and ecological impacts of mining projects in two geographical areas, one in Eastern Samar and another in Nueva Vizcaya.

The first phase is a background research establishing the links between SAPs (as mandated by multilateral finance institutions) and R.A. 7942 (Mining Act of 1995). This would attempt to identify/establish the factors, both external (recommendations from MFIs and international mining corporations) and internal (push from local business and technocrats), that served as impetus to liberalize

the Philippine mining industry thus prompting the drafting and passage of a mining act.

The second phase of the research is a combination of the following: background research to provide baseline data on the Philippine mining industry and the communities to be studied as affected by the Mining Act; and field research to determine the effects/impact on indigenous peoples, upland communities and rural poor communities, and on the environment, i.e. social and ecological costs. The research documented the following:

- (a) Experiences of the host communities with the mining projects implemented under the new mining code—specifically in relation to the issues of social acceptability and acquisition of free and prior informed consent (FPIC), best practices (in mining technology) and social/community development components of the mining project;
- (b) The social and ecological impacts (costs and benefits); and
- (c) The responses and initiatives of the people in the affected communities, either for or against mining.

The research evaluated the impacts of the mining projects in the two research sites in terms of the economic, ecological, and socio-cultural benefits and costs within the framework of sustainable development. This research integrates the parameters of economic/ecological viability and sustainability, social equity, gender and cultural sensitivity. It hopes to be able to make a modest contribution to the growing discourse on sustainable development.

The study sites Didipio, Kasibu Nueva Vizcaya where the Climax-ARIMCO Gold and Copper Project is located, and the nickel mining project of Hinatuan Mining Corporation in Manicani Island, Eastern Samar were selected on the basis of the following criteria: (1) mining area should be covered by the Mining Act of 1995; (2) extent of operation of mining companies should be at a level significant enough to identify impact; and (3) presence of partner POs and NGOs in the area that could help in the implementation of the research.

The field research made use of qualitative research methods consistent with the data needs that were identified during the CASA workshops on indigenous peoples and the environment. This research employed the key informant approach, focus group discussions and secondary data analysis. Data collection through the key informant approach and focus group discussions made use of interview guides covering the topics of socio-economic profile of the community and of the resource person/s, and the economic, ecological and socio-cultural benefits and costs of the mining project in their community.

Purposeful selection methodology was employed in identifying the resource persons. It was a deliberate decision to include resource persons

coming from different barangays or sitios, engaged in different livelihood activities, as well as political stance either for or against mining operations in the community.

Preliminary research activities began in October 1999 while fieldwork started in August 2000. A thematic working group composed of six resource persons helped with the drafting of the research design and framework. Research validation activities for the two areas were conducted from December 2000 to January 2001.

Structural Adjustment and the Liberalization of the Philippine Mining Industry via Republic Act 7942

The World Bank (WB) and the International Monetary Fund (IMF) inaugurated Structural Adjustment in the Philippines in 1980 to accelerate the liberalization of the economy. Structural adjustment proceeded in three phases: the first phase was from 1980 to 1983, which can be characterized by the emphasis on trade liberalization; the second phase was from 1983 to 1992, with the focus on stabilization and debt repayment; and phase three, from 1992 until the present, which is characterized by the push for “all-sided free market transformation marked by rapid deregulation, privatization and trade and investment liberalization.” Analysts have pointed out that the implementation of structural adjustment being pushed by the WB and the IMF was helped by the ‘neo-classification’ or ‘neo-classical revolution’ of the Philippine technocracy, i.e., bureaucracy came into the hands of free-market oriented policy makers from the academe, government and business.¹ This ‘neo-classification’ was described as having been completed and was at its height during the term of office of President Fidel Ramos. It is said that there was a ‘confluence of policy direction’—there was external pressure from the WB and the IMF coupled with the firm belief on free-market economics by the mainstream decision-makers, e.g. technocracy and policymakers.² Then Senator Gloria Macapagal-Arroyo, who is now the President of the Republic of the Philippines, was quoted as saying, “It’s the dominant sector. It’s the President; it’s his chief economic advisers, both formal and informal; the House of Representatives; the Senate—the mainstream. The mainstream is pushing for liberalization.”³ There is also that perception of an “emergence of a broader ‘consensus’ among the elite and the middle class around free market reform.”⁴ In pursuit of its dream of the Philippines achieving NIC-hood status and thus joining the ranks of the ‘Asian tigers,’ the Ramos government then proceeded to fast-track liberalization. The Ramos government proceeded by creating the ‘appropriate policy environment.’

As part of the policy reforms towards liberalization, key sectors, like water services, and profitable government corporations were privatized, e.g. Petron, which is considered the state’s ‘crown jewel.’ In the area of financial liberalization, the Philippine government pushed to create “one of the most foreign-capital friendly systems in the region,” with the following measures:

almost full liberalization of capital account—lifting most foreign exchange restrictions and making the peso virtually fully convertible; full and immediate repatriation of profits, dividends and capital; and the free utilization of currency accounts. Nationality restrictions on foreign investment were loosened considerably. The government discarded the 60:40 provision on foreign equity and allowed 100 percent foreign equity in all sectors except for a few, which were on its ‘negative list.’⁵ In March 1996, the Congress approved legislation that did away with the ‘Negative List C’ and reduced the minimum paid-in capital requirement for foreign companies from \$500,000 to \$200,000. Under the Mining Act of 1995, foreign corporations are given various incentives in exchange for a minimum investment of US\$50 million.

In 1993, the Philippines re-entered the international bond market and successfully floated about US\$ 1.3 billion during that first year. The Philippines was described as “on its way to becoming a darling of foreign portfolio investors,” at least before the bubble burst during the 1997 financial crisis. The Philippine treasury bills with their relative high yields were attractive to portfolio investors. Portfolio investments between 1993 and 1997, about US\$ 19.4 billion worth of net portfolio flowed into the country.⁶ Portfolio investment inflows, estimated at 75 to 90 percent of total investment, dwarfed the foreign direct investments.⁷ The liberalization of capital account, which facilitated the quick entry and withdrawal of massive amounts of ‘hot capital,’ proved to be disastrous as what we have experienced during the crisis in 1997.

One sector of the economy that was affected by these efforts toward liberalization was mining. Mining has long been considered as one of the major sectors of our economy. The Philippines is among the world’s top ten countries in the production of gold, copper, nickel and chromite. In terms of mineral endowment, the Philippines is ranked second to South Africa in gold ore deposits, and ranks third in the world in terms of copper resources. In 1974 and 1980, mining accounted for 20.37 and 21.34 percent of the country’s total export receipts, respectively. For the period 1980-1993, mining contributed about P 4.3 billion in tax revenues.⁸ With the liberalization of the mining industry, based on predictions made in 1998, the Philippines expects to attract about US \$3.5 billion in initial investments for new mining projects in the next ten years, from 1998 to 2008.⁹

The Philippine mining industry is being vaunted as a crucial element in promoting development at the national and local levels. And because of the vast potentials of the Philippine mining sector, it was among the industries hitched to the bandwagon of liberalization. Republic Act (RA) 7729 mandated the reduction of excise tax on minerals and RA 7942 liberalized the Philippine mining industry. RA 7942 is lauded by some sectors e.g. the national government, government agencies like the Department of Environment and Natural Resources, and the Philippine Chamber of Mines as a boon to the mining industry. It has been referred to as the ‘needed boost’ to revitalize the ailing Philippine mining industry.

RA 7942 has almost fully liberalized the mining sector that the Philippines has been singled out, as having “the most foreign friendly mining policy,” from among 70 countries that implemented mineral sector reforms to accommodate foreign investors.¹⁰

RA 7942 and The World Bank (WB) and the Asian Development Bank (ADB)

The Philippine Mining Act was passed into law as RA 7942 in March 1995. This new mining code that was passed into law is the Senate version of the bill filed by then Senator Gloria Macapagal-Arroyo who is now President of the Republic of the Philippines, then Senator Heherson Alvarez who is now the Secretary of the Department of Environment and Natural Resources (DENR) and Francisco Tatad. The liberalization of the Philippine mining industry through RA 7942 is consistent with the World Bank’s (WB) and the Asian Development Bank’s (ADB) agenda for trade and investment liberalization in the Philippines and thus faithful to the spirit of the MFI’s agenda of neo-liberal economics.

The IMF, in a 1990 staff report, took issue with what it perceived as the Philippines “relatively restrictive laws and regulations governing foreign investment in key sector and called for foreign investment reforms....” There is widespread perception that the Mining Act of 1995 is a response to the IMF-WB pressure to implement policy reforms in order to create “a more favorable investment climate,” especially for foreign companies.

The World Bank’s agenda in relation to the Philippine mining industry can be gleaned from the Bank’s recommendation tied to a proposed loan by the Philippines for an Economic Integration program in 1992. Among the Bank’s foremost prescriptions is to undertake efforts to attract more foreign investors and to expand the coverage of foreign participation in various industries, including mining.

The WB has been explicit in its stand and recommendations for mining sector reform for Africa, Latin America, the Caribbean, South Asia and East Asia—that of liberalizing the sector to “attract explorations and investments much needed by the under-performing mining sector.” Various WB policy papers suggest that RA 7942 is consistent with the World Bank’s unequivocal prescriptions for reforms for liberalized mining sector in other regions such as Africa, and Latin America and the Caribbean (LAC).

The provisions contained in RA 7942 are consistent with the WB’s prescriptions for the liberalization of the mining industry as outlined in the technical reports for strategies in mining in Africa and the LAC. Perhaps the most revealing and is at the core of the WB’s strategy for mineral sector reform is its recommendation for a mining legislation that addresses the following:

- Reduce risk and uncertainty for potential investors;

- Ensure easy access to exploration permits and mining concessions;
- investment agreements should provide additional guarantees to protect the investor from unwarranted government interference; and
- Provide additional safeguards to ensure that investors will live up to their obligations.¹¹

The ADB has had a direct role in influencing the directions of the mining sector in the Philippines. A concrete manifestation of this interest and influence on Philippine mining sector is the ADB's commissioned study to come up with recommendations on mining liberalization. RA 7942 is deemed to be in compliance with the Asian Development Bank's policy recommendations for the Philippine mineral sector reform. The 1993/94 ADB study¹² stressed the importance of encouraging a "friendlier business climate for foreign investments," in order to rejuvenate the Philippine mining industry.¹³ The correspondence between the recommendations of the ADB research on the Philippine mineral sector¹⁴ and the provisions of RA 7942 is deemed very uncanny to be merely coincidental, prompting some sectors to regard RA 7942 as a response to the ADB research's policy recommendations.

The findings of the ADB study suggest that the Philippines remains to have an excellent resource potential. A comprehensive resource assessment was conducted (using a Terrane/Deposit model methodology and the Delphi estimation) and the findings suggest that aside from the rich resources of gold and copper, the Philippines also has a rich deposit of chromite, nickel, iron, manganese, and zinc. However, the report laments the fact that this resource potential does not translate into its expected output as manifested in the decline in the mineral production and the overall 'weakened' state of the Philippine mineral sector.¹⁵

One of the factors identified as responsible for the decline of the Philippine mining industry is the absence of the favorable and proper investment climate required to attract foreign investors. According to the ADB study, the future of the Philippine mining industry is dependent on the development of new projects, rather than on restoring the existing mining operations. Rejuvenating the mining industry, the report states, would require addressing the problems related to deficiency of domestic capital, the need for new exploration technology and large-scale expertise required to implement major new mining projects. The solution or cure to the 'ailing mining sector,' according to the ADB study, is premised on the entry of foreign companies, which would infuse capital investments and bring in new technology.¹⁶

The same ADB study claims that another major obstacle to the realization of the full potential of the Philippine mineral sector i.e., via the entry of foreign investors, is the lack of a 'coherent' and integrated mining act. While mineral

production sharing agreements (MPSAs) and financial and technical assistance agreements (FTAAs) were already in existence prior to RA 7942, they were deemed inefficient or ineffective by the ADB since they claim that certain provisions, especially in the case of MPSAs, can be considered biased against foreign ownership.¹⁷ The findings of the ADB study found the 5-year tax holiday provision of the existing FTAAs and MPSAs as insufficient since it only provides a marginal incentive to foreign investors to develop a mineral project. Moreover, the ADB study states that quicker write-offs are generally more preferable than the offered tax holidays.¹⁸

According to the ADB report, the Philippine mining and foreign investment legislations are “highly complex, ambiguous and difficult to comprehend.” Thus there is a need to improve the foreign investment climate in the Philippine mining industry. The ADB study underscored the need to address the issues related to long-term investment security, political and economic security for the investors’ field workers as well as transparency on the legal framework of the host-government.¹⁹ Moreover, the ADB study called on the Philippine government to craft and implement an effective and integrated foreign investment management system.

The recommendations of the ADB study were divided into two parts consisting of “recommendations for immediate action” and the so-called “intermediate recommendations.” Recommendations for immediate action include the following:

- (a) The enactment of a new mining code;
- (b) The removal of divestment clause from the FTAAs through the enactment of a new mining law or implementing guidelines; the divestment clause is considered to be the greatest disincentive for foreign investment in mining;
- (c) The removal of the income tax holiday within the MPSAs and FTAAs; foreign mining companies prefer write-off instead of tax holidays
- (d) The establishment of new guidelines for MPSAs and FTAAs, to clarify and define the “areas that are negotiable and areas that are governed by the mining code and are non-negotiable;”
- (e) The integration of the Omnibus Investment Code and the Foreign Investment Act which is deemed ‘essential to establishing a single statute covering all major provisions governing the rights and obligations of foreign investors in the Philippines;’
- (f) The reassessment of the distribution of natural wealth allocation through correcting the errors committed in the drafting of the Local Government Code; reassessment of the allocation to the barangay level of 35 percent of natural Wealth Funds; and the

- formation of a Local Government Trust rather than direct allocation procedure;
- (g) The strengthening of the Mines and Geosciences Bureau (MGB) by developing the Mine Title System in the local and national levels, and the development of skilled multi-sectoral analytical group to support and supervise mineral development more effectively such as providing financial and economic analysis of proposed MPSAs and FTAAAs;
 - (h) Institutionalize the Environmental Guarantee Fund by making it a law to define the requirements of environmental monitoring, pollution compensation, and site rehabilitation for the mining industry;
 - (i) To improve the MPSA and FTAA negotiations to ensure a strong and constant multi-sector involvement in the national and local levels; and
 - (j) The promotion of a conducive mineral investment climate to attract foreign investment in the industry through a mining code that removes the 60:40 Filipino-Foreign Ownership provisions in FTAAAs.²⁰

The Intermediate Term Recommendations being proposed by the study are further divided into the following sub-topics: (a) general recommendations for the mineral sector particularly on the government's limited role and policy formulation on the mineral sector; (b) recommendations concerning the negotiations of the MPSAs and FTAAAs; (c) environmental concerns; (d) the decentralization of national government function vis-à-vis that of the local government; (e) the promotion of the mineral sector; (f) changes in the fiscal regime; and (g) the strengthening of the Mines and Geosciences Bureau. These sets of recommendations, according to the ADB report, require the government's careful consideration to enable it to revive the Philippine mineral industry.²¹

The Philippine Mining Act of 1995 also known as RA 7942 is believed to be a direct consequence of the ADB study on the country's mineral sector. Environmentalist groups and some sectors of political activists have compared the two documents and they have come to the conclusion that most if not all of the recommendations of the ADB study were included in the provisions of RA 7942.

This supports the observation that indeed the WB and the ADB and other MFIs wield tremendous influence and control over legislative initiatives and other political activities in 'developing' countries. According to Friends of the Earth (2000: 10), the case of the Philippines "illustrates how national laws can be altered to encourage a certain model of economic development that exacerbates environmental degradation and jeopardizes the communities' quality of life." For example, the pressure exerted by the IMF on the Philippines to increase its foreign exchange reserves through increasing exports is believed to have

prompted the proposal to lift the ban on the export of logs. Fortunately, strong opposition from the local NGOs thwarted the move to lift the ban on the export of logs.²² In times of crises, the problem is exacerbated when governments of 'developing' countries are forced enact policies to be able to attract foreign investments, earn revenues and avail of loans from MFIs at the expense of the natural resources and the environment.

Structural adjustment, aside from dictating policy reforms that opened up hitherto isolated ancestral lands, forests, upland communities, and protected areas, is responsible for deep and widespread poverty, which in turn resulted in increased strain on resources and on the environment. There is a strong correlation between structural adjustment and environmental destruction. The Philippines provides one of the best-documented studies establishing the correlation between environmental destruction and structural adjustment with the study conducted by Repetto and Cruz.²³ The "now famous study" referred to as the 'Repetto study' concluded that,

Structural adjustment created so much unemployment that migration patterns changed drastically. The large migration flows to Manila declined, and most migrants could turn only to open access forests, watersheds and artisanal fisheries. Thus the major environmental effect of the economic crisis was over-exploitation of these vulnerable resources.²⁴

RA 7942: Liberalization of the Philippine Mining Industry

The liberal mining act was passed into law on March 6, 1995. The Mining Act provides a host of incentives by which the government expects to entice foreign investors to infuse capital into and thus revive the industry. An important provision of RA 7942 is the removal of the 60:40 Filipino-Foreign Ownership provisions of the previously implemented FTAA's. This liberalization of the 40 percent maximum foreign equity requirement prescribed by the Philippine Constitution has had precedents in investment laws passed by the Congress. R.A 7042 or the Foreign Investments Act of 1991 declared the removal of restrictions on the extent of foreign ownership of export enterprises, enabling foreigners to invest and control as much as 100 percent equity in domestic market enterprises.

Aside from removing the limit on 40 percent foreign equity, RA 7942 changed the mode of disposition of mineral lands. There is a shift from that of a leasehold system into either that of mineral production sharing (MPSA), or co-production agreement (CA) or joint-venture agreements (JVA).

Production sharing, as embodied in the Mineral Production Sharing Agreement (MPSA), pertains to an agreement wherein the government awards the contractor the "exclusive right to conduct mining operations within a contract

area and shares in the production” while the contractor provides the required financing, technology, management or personnel.²⁵

The Co-production Agreement (CA) is a contract between the government and the contractor wherein the government provides inputs other than mineral resources such as technology, management or personnel. The Joint Venture Agreement (JVA), on the other hand, is a contract between the government and the contractor who jointly establish a new company, which will exploit the identified resources. In the JVA, both the government and the contractor have shares in the company and the government shall be allowed to share in the gross output as well as earnings in equity.²⁶

Under the new mining law, although all agreements pertain to the exploration, operation and development of mineral resources of the Philippines, each agreement is a separate provision from the other. The Exploration Permit (EP) comprises Chapter 4 of the Philippine Mining Act of 1995 while the Financial and Technical Assistance Agreement (FTAA) is covered in Chapter 6 of the same law. On the other hand, the Mineral Production Sharing Agreement (MPSA) is in Chapter 5 of R.A. 7942 under the heading of Mineral Agreements.²⁷

An Exploration Permit (EP) grants the permittee the “right to conduct exploration for all minerals in specified areas” for a limited period of two years but does not give the grantee the right to conduct mining operations. The EP holder, after successful mineral exploration activities must apply for an MPSA or an FTAA. The provision on FTAA contains the eligibility clause of any person with financial and technological capacity to carry out large-scale exploration, development, and use of mineral resources.²⁸

The President of the Republic of the Philippines approves the FTAA's but the Mines and Geosciences Bureau (MGB) grants the applications for EPs. The term clause of EPs is 2 years and is subject to annual review. Those granted with EPs may still apply for other MPSAs and FTAA's. Contractors with MPSA and FTAA can also withdraw their commitment from the agreement. This is provided for in the mining act. In the cases of Mineral Agreement and FTAA's, the contractor could terminate mineral exploration and exploitation by informing the DENR Secretary that mining operations are no longer practicable.²⁹

The Mining Act spells out the conditions for the compliance of a permit or a contract of agreement. In the case of an EP, the permittee is to discuss the extent and the manner of his/her entry, occupation and exploration in the area/community if public or private individuals are affected. The provision for Mining Agreements does not specify the rights and obligations of an Agreement grantee while the FTAA provision cites 15 terms and conditions instituted in the FTAA. Notable points of the conditions are proofs of technological, financial and managerial capabilities of the applicant as a prospective grantee, transparency in

its financial activities, and preference for the use of local goods and services, and the obligation to give preference to Filipinos in terms of employment.³⁰

RA 7942 Opens the Mining Industry to Greater Foreign Control and Exposes Vast Tracts of Lands, Resources and Communities to Exploitation

Discussions of this mineral sector reform is usually limited to topics such as favorable investment climate, 'favorable conditions' for increased foreign investments, increased profits, more favorable taxation schemes, changes in the mode of disposition of mineral lands, encouragement of employment of best practices, etc. Other sectors, i.e. civil society, unmask RA 7942 as nothing but part of the structural adjustment towards 'free market transformation through rapid deregulation, privatization and trade and investment liberalization.' RA 7942 is widely criticized as inimical to genuine and substantive social development. The thrust towards the liberalization of the mining industry as exemplified by RA 7942 is expected to result in exacerbating the existing inequities in local areas on access, control and use of resources by the people.

It is widely acknowledged that indigenous and forest peoples, upland communities and the rural poor are the sectors most affected by the liberalization of mining. The areas targeted for mining exploration/exploitation are usually those in remote areas inhabited by the various ethno-linguistic groups classified as belonging to the category of indigenous peoples, forest peoples, upland communities, and the rural poor consisted of farmers/tenants and fisher folks. These groups of people also suffer from government neglect, not having even the basic social services such as education and health, and basic amenities and lack of extension services from the government.

The term indigenous peoples or IPs is used to describe social groups with a social and cultural identity distinct from the dominant society that which makes them vulnerable to being disadvantaged in the development process.³¹

The history of these indigenous peoples, including upland communities and forest peoples, is marked by disenfranchisement and the undermining of their traditional culture. From being the original inhabitants and stewards of the land, they were disenfranchised and reduced to squatters in their own ancestral lands or forest, fishing and agricultural lands. This was effected through the following:

- (a) Imposition of alien political system which undermined the indigenous political institutions developed through the generations;
- (b) Imposition of a series of land laws that engendered and enshrined a private property system which runs counter to the indigenous concept of land and property – private property

- system was put in place through a series of land laws, which legitimated the appropriation of the lands and resources;
- (c) The entry of big commercial interests such as private mining and logging concessions, and large-scale commercial agricultural enterprises;
 - (d) Imposition of 'inappropriate' development paradigms and programs – mega development projects.

The indigenous peoples have central claims on the following: (a) right to the ownership and control of their territory; (b) right to self-determination; and (c) right to represent themselves through their own institutions.³² Indigenous peoples' rights are recognized and enshrined in national and international instruments.

These indigenous peoples' rights are enshrined in international law. IP ancestral land rights are recognized in Article 11 of ILO Convention 169. The IP right to self-determination is recognized in the International Covenants of Civil and Political Rights and of Economic, Social and Cultural Rights. Their right to be represented through their own institutions is recognized in Article 2 of ILO Convention 169.³³

Despite the recognition of these indigenous peoples rights (IPRA) and the acknowledgement of the bases of these rights in international law, the IPs continue to suffer from disenfranchisement and oppression. In many countries, the IPs find themselves subjected to the following conditions:

- (a) Government policy discriminate against IPs;
- (b) Deeply entrenched/held prejudices underpin the disenfranchising policies of the government; and
- (c) Denial and non-recognition of the rights to ancestral domain which stems from the conflict between customary law and ancestral domain rights on the one hand and state laws and private property rights system on the other.³⁴

Also despite the Comprehensive Agrarian Reform Program, tenurial arrangements in the rural areas remain unfavorable for the development of the rural poor. Subsequently, unfavorable tenurial arrangements reduced the people's role to mere producers, undermining the people's stakeholdership over the development process.

Analysts point out that behind the discussions on financial and technical agreements (FTAAs) and investments and profits are the more important issues—the ecological, economic and socio-cultural costs engendered by such moves to liberalize the mining industry; the consequences on the lives of indigenous peoples, upland forest communities, rural poor, and on the environment. The Philippine Mining Act of 1995 is expected to further worsen

the social costs and ecological degradation and fuel further unrests especially from among the indigenous, upland and forest peoples, and rural poor.

The liberalization of the Philippine mining industry through R.A. 7942 allows total ownership of equity and control of mineral mining projects through Financial or Technical Assistance Agreements (FTAAs) thus opening up the mining industry to greater control by foreign companies. Vast tracts of land and resources are opened up and communities are made more vulnerable to exploitation. Large foreign mining companies are allowed to explore/mine a maximum area of 81,000 hectares for a period of 25 to 50 years in exchange for a minimum investment of US\$ 50 million into the country's mining industry.³⁵ Auxiliary rights and incentives are granted, thus allowing unhampered mining operations and ensuring increased profitability.³⁶

Even before R.A. 7942 took effect 2 FTAAs has been awarded – one, to Climax Arimco in Nueva Vizcaya, and two, to the Australian firm Western Mining in the quadri-boundary of Sultan Kudarat, North Cotabato, South Cotabato and Davao del Sur covering an area of 72,737 hectares.³⁷

With the institution of the Mining Act of 1995, the number of FTAA applications has grown to 115 in October 1997. The FTAA applicants are predominantly Australian, Canadian and American corporations. In 1998, the third FTAA was signed for mining activities to begin in Leyte.³⁸

In 1998, approximately 71 of the pending applications, including those that were approved, cover indigenous people's ancestral lands and in some cases ecologically critical areas. By mid-1999 there were 408 pending applications. As of June 30, 1999 there were 138 approved MPSAs while there were 51 EPs approved as of July 31, 1999.³⁹

According to the MGB (1999), the total land area covered by MPSAs is more than 200,000 hectares. The data on MPSA breakdown per region is as follows: (a) the Mindanao Group has the biggest with 109,073.84 hectares covered by 50 MPSAs; (b) Region IV in Luzon (CALABARZON, Mindoro, Palawan, Aurora, Marinduque, and Romblon) with 12,606.23 hectares; (c) Region VII - Cebu, Negros Oriental, Bohol, and Siquijor with 17,251.14 hectares; and (d) Region XIII - CARAGA Administrative Region, Butuan, Surigao City, Agusan del Sur and del Norte, and Surigao del Sur and del Norte with 62,267.91.⁴⁰

As regards Exploration Permits (EP), there are a total of 51 EP's issued the total land area covered by EP's is 392,462.52 hectares. The breakdown of issued exploration permits per region is as follows: the largest land area covered is Region II (Batanes, Cagayan Valley, Isabel, Nueva Vizcaya, and Quirino provinces) with 148,900 hectares; followed by Region XIII (CARAGA

Administrative Region, Butuan, Surigao City, Agusan del Sur and del Norte, and Surigao del Sur and del Norte) with 80,22.90 hectares.⁴¹

In Kasibu, Nueva Vizcaya there are EPs, MPSA and FTAA, either approved or pending approval, submitted by six mining companies namely: Climax-Arimco; Dalton Pacific Resources; Red earth Mining; Lasseter Mining; St. Patrick Mining and Development; and Oro Philippines (Walpole, 1999).⁴²

The areas covered by these EPs, MPSA and FTAA overlap or are within the following classification of areas: watershed reservation; part of a watershed project; being claimed under the certificate of ancestral domain claim (CADC); integrated social forestry; pasture lease agreement; proposed reforestation project; and proposed community forestry programs.⁴³

The Mining Act of 1995 is being hailed as a progressive law compared to previous mining laws, mainly for the following reasons: (1) the provision requiring social acceptability and 'free, prior and informed consent' (FPIC) would ensure consultative and democratic processes with the people to be affected by mining; (2) belief that it would encourage the implementation of the best practices in mining; and (3) provisions instituting social development and safety nets components, e.g., social and community development plans and programs, and rehabilitation funds.

On Social Acceptability

The Philippine Mining Act of 1995 and its revised implementing rules and regulations (IRR) contain provisions that require "prior informed consent" from the communities, prior to the approval of any mineral agreements, Financial and Technical Assistance Agreements (FTAAs) or mining permits.

Section 16 of DENR DAO No 96-40 on ancestral lands provides that no mineral agreements, FTAAs or mining permits will be granted in areas that are the subject of Certificates of Ancestral Domains/Ancestral Land Claims (CADC/CALC) unless "prior informed consent" is secured from the indigenous cultural communities occupying these areas. The process of getting "prior informed consent" entails public notice through the media, public assemblies and consultations and other various means to inform the public regarding the proposed mining project. This is to enable the concerned communities to make informed decisions and thus to arrive at said "prior informed consent." The revised IRR further provides that "the process of arriving at an informed consent should be free from fraud, external influence and manipulations."⁴⁴

Likewise, Section 10 of DENR AO 34 (series 1999)⁴⁵ on Prior Approval of the Sanggunian states that,

“prior approval or endorsement by any two (2) of the concerned Sanggunian (Panlalawigan, Bayan and Barangay) shall be required in support of mining applications intended for development and/or utilization purposes. In the case of a mining applications intended for exploration, a proof of consultation with project representation to any two (2) of the concerned Sanggunian shall be required.

In either case, the proof of prior approval, endorsement consultation and/or project presentation shall be in the form of a formal Resolution or Certification by the concerned Sanggunian.

Article V of DENR AO No. 05 (Series 2000)⁴⁶ on public participation and social acceptability contains the following provisions:

- All information about the proposed project or program shall be presented by the proponent to the public in a language and manner that are easily understood;
- A notice of the submission of the EIS for programmatic compliance shall be posted by the proponent in the barangay and municipal halls and other conspicuous places in the affected community, together with a summary of the proposed project or undertaking (Section 1);
- Proponents of projects or undertakings required to undergo an EIA shall initiate the conduct of public consultations to ensure that the public's concerns are fully integrated into the EIA process (Section 2);
- A notice of public hearing shall be published once a week for two (2) consecutive weeks in any newspaper of general circulation and in the area(s) of the project or activity at least fifteen (15) calendar days prior to a scheduled hearing. Notices shall likewise be posted in conspicuous places in the municipality or barangays where the project or projects are to be located. Expenses for the notices shall be borne by the proponent (Section 5.3.1); and
- DENR shall guarantee that the EIA process shall be open, transparent and accessible. The proponent shall be principally responsible for initiating these meetings and consultations called for by social acceptability, and shall attach to its EIS copies of minutes or other appropriate documentation of such meetings and consultations as a demonstration of its responsibility to promote wide public understanding of its project or program (Section 4.0).

This research looked into the structures and processes involved in the acquisition of “prior informed consent” as contained in the revised IRR and other relevant DENR AOs as implemented by the mining corporations and concerned

government agencies like the DENR and MGB. The analysis centered on the issues of representation, and of the democratic and substantive participation of stakeholders.

The topics explored include the following:

- Who has control over the decision making bodies/structure;
- The nature and content of the decision making process;
- Processes and strategies implemented in the acquisition of prior informed consent;
- How do these processes and strategies contribute to ensuring that the acquisition of prior informed consent was indeed free from coercion, undue influence or manipulation.

The provision requiring social acceptability and establishing prior informed consent is considered by some as progressive/positive because of the possibility of being used by indigenous peoples and other host communities as a bargaining tool against the mining corporation. However, there are issues raised in relation to the feasibility of the provisions on social acceptability and acquisition of prior informed consent, being used as leverage by the would-be host mining communities.

One area of concern is the process of acquiring prior informed consent and establishing the social acceptability of the mining project. The Implementing Rules and Regulations of RA 7942 requires the conduct of public information campaign to inform the host communities of the proposed mining project and thereby obtain the community's consent. The acquisition of prior informed consent is supposed to be "free from fraud, external influence and manipulations."

However, the findings suggest that the acquisition of "prior informed consent" is beset with irregularities. In some cases, mining corporations do not even bother to comply with the requirement of public information campaigns such as conducting public dialogues to inform the community and get their consent to mining project. Confronted with strong public protests, some mining companies eventually conduct public dialogues but they resort to tactics that would influence the public opinion in their favor and thus help ensure the community's consent to the project. They employ strategies such as restricting attendance to the public dialogue to those who are known to be in favor of the proposed mining project and/or preventing those opposing the mining project from presenting their arguments against the mining project. Other mining company's resort to using money, liquor and women to bribe local officials and residents to allow mining companies into their area.

In the workshops on mining and the environment during the CASA Opening Forum it was learned that gift giving to community residents and hiring

local residents and barangay officials appear to be a common practice employed by mining companies. There are also reports that mining companies use money, liquor and women to bribe local officials and residents to allow mining projects into their area. The mining corporations still depend on the old and dependable divide and rule tactics and the cooptation of local leaders through bribery and coercion. Studies suggest that the novel ways e.g., government and TNCs hiring community liaison officers and community organizers have been proven in some cases to be effective in getting the consent of the local population.

This calls to mind Walpole's (1999)⁴⁷ observation regarding the problem of lack of clear guidelines that distinguishes 'allowable' and 'non-allowable' strategies or tactics in obtaining prior informed consent to ensuring that community consent was obtained "free from fraud, external influence and manipulation." Gift giving, according to Walpole, can be construed as bribery especially when it is done before or during the process of obtaining prior informed consent. Walpole underscores the need for the involved communities to decide what constitutes "acceptable gifts" as distinguished from "non-allowable gifts that go beyond goodwill" which could elicit feelings of debt or gratitude. Moreover, there are reports from other areas that money, liquor and women are being used to bribe local officials and residents to allow the entry of mining companies into their area.

The findings suggest that the possibility of using social acceptability and prior informed consent as a bargaining instrument or leverage to obtain concessions and commitments from the mining corporations can be very limited on account of various social (structural) factors.

The option of exercising the right to prior informed consent is not very feasible given that the indigenous peoples are suffering from underdevelopment and subjected to national oppression, social and economic inequities. They are also suffering from government neglect in terms of inadequate or non-existent social services, infrastructure and public amenities. Given these conditions, it is understandable why some sectors of indigenous peoples have become more accommodating and open to mining projects and other development interventions despite the projected onerous impacts.

Even if all measures are employed to help ensure that the process of acquiring the community's consent is free from fraud, manipulation and external influence, there are structural factors that work against a "genuine free, prior informed consent." Leonen (1998) raised substantive issues in relation to the concept of prior informed consent. He points out that

...(L)iberal concepts such as free and prior informed consent (FPIC) will not work under conditions where the government is slowly abdicating its role in actively and immediately equalizing

economic opportunities...The political exercise of FPIC could not be divorced from the reality of economic inequities....”⁴⁸

In a situation wherein the government has abandoned its responsibilities of providing even the minimum basic social services, for some of the residents, the mining company has come to represent the only solution to their problems. When mining corporations provide employment to a few locals and make promises to provide social services and construct basic infrastructure such as roads and bridges, public waterworks and electricity in the locality, it is not surprising that the locals become more accommodating and open to mining projects and other development interventions despite the projected onerous impacts.

For these hitherto isolated communities, government (national government) is limited to a status of being merely titular or symbolic. The only dealings of the residents with government are occasions when the latter has targeted the area for mining development or as sites of mega-development projects such as dams. In these situations, government is virtually totally absent as evidenced by the lack of the most basic social services. Some indigenous peoples groups raise the question on the right of a government to open the communities to multinational mining prospectors while leaving the local populace with no protection whatsoever. In complying with impositions of multilateral trade regimes and finance institutions, and in the attempt to raise the much-needed investments and revenues to be earned, government leaves the communities at the mercy of multinational mining corporations as well as to local big mining interests.

Thus the concepts of social acceptability and prior informed consent become more paramount in these contexts. Prior informed consent or at least the idea that the affected community/people should be part of the approval and monitoring or regulatory process is indispensable. Given the weakness or virtual absence of government (national) in these areas, the provisions on social acceptability and prior informed consent are the only leverage, albeit the limitations, left to the affected communities. That is why the process of acquiring free and prior informed consent should be one that is truly “free from fraud, external influence and manipulations;” and which the community is comfortable with, that effectively empowers it, and is based on local culture and processes.

Another criticism being leveled against RA 7942 pertains to the lack of specific provisions on mechanisms and procedures, which empowers the local communities to reject or terminate mining grant. While RA 7942 stipulates that the mining corporation can withdraw from pursuing their mining grant/s there are no parallel provisions that stipulate the mechanisms and procedures, which gives power to the host communities to reject or terminate the mining grants, especially in cases of negative impacts and or the mining corporation’s non-compliance with requirements.

The other major issues with regard to acquiring prior informed consent and establishing the social acceptability of the mining project include the following:

- Issues regarding representation and substantive participation of members of the host community;
- Process of acquiring prior informed consent;
- Methods and process of conducting public information campaign to inform the community regarding the mining project;
- Strategies and tactics employed by the mining corporation in acquiring prior informed consent – allowable and non-allowable strategies;
- Proofs in establishing social acceptability of the mining project
- Substantive issues regarding feasibility of acquiring a genuinely “free and prior informed consent;”
- Social/community development plans and packages being proposed by the mining company – appropriateness of social development project components and the process of drafting of the development plans and specific projects; and
- Issues related to representation and substantive participation in the decision making-process and bodies.

On the Employment of “Best Practices” in Mining Technology

Proponents of RA 7942 extol the mining legislation ostensibly for encouraging and prescribing the employment of “best practices” in mining technology. The Revised Implementing Rules and Regulations (RIRR) of RA 7942 require the submission of an environmental impact assessment (EIA) and environmental impact study (EIS). The mining company is also required to submit and implement an environmental protection and enhancement program (EPEP) and an environmental work program (EWP). The revised IRR further stipulate the constitution of a multipartite monitoring team (MMT), which is tasked with ensuring and monitoring compliance with the approved EPEP. The expenses incurred by the monitoring activities are charged against the Monitoring Trust Fund (MTF) of the Mine Rehabilitation Fund (MRF). The establishment of the MTF and the MRF and other related provisions are contained in Chapter XVI of the revised IRR of RA 7942.

The research looked into the technology, in the extraction, processing, and mine waste disposal, being employed or to be employed by the mining corporations. To date all FTAA's and MPSA's applications will employ open pit mining or a combination of open pit and other methods of extraction.

Other topics explored are the representation and substantive participation in environmental decision-making process and management. Initial assessments

were made particularly regarding compliance in terms of mitigating adverse ecological impacts. The study also looked into the institutions, structures and processes aimed to assess suitability of these mitigating strategies, monitor compliance or non-compliance of mining companies with these strategies.

The study explored questions which include the following:

- composition and selection of representatives in the various monitoring and implementing structures/bodies;
- decision making process in these structures;
- nature and form of participation of the various stakeholders in the various structures/bodies;
- capabilities of various stakeholders and other parties to make competent assessment of highly technical documents such as EIA, EIS; and
- setting-up and implementation of mechanisms aimed towards providing the community residents with the services of impartial technical experts to advise them on technical matters such as adequacy and appropriateness of the mining technology being employed, mitigating strategies, compliance with environmental protection provisions, etc. at various stages of the project cycle such as before implementation until the stage of mine decommission and rehabilitation.

This research also investigated the actual and prospective ecological impacts, in addition to the mitigating strategies implemented or to be implemented by CAMC and by HMC in their particular area of mining operation.

On Provisions Related to Social Development

The Revised IRR of RA 7942 (Chapter XIV) stipulate that the mining “contractor/permit holder/lessee shall assist in the development of the host and neighboring communities and mine camp to promote the general welfare of the inhabitants....” Specific provisions include the following:

- (a) Coordinate with proper authorities in providing development plans for the host and neighboring communities;
- (b) Help create self-sustaining income-generating activities, and preserve or enhance traditional self-sustaining income generating activities, if there are any;
- (c) Give preference to community residents in the hiring of personnel for the mining operations;
- (d) Construction and maintenance of infrastructure such as community access roads, bridges, piers, wharves;
- (e) Provision and maintenance of social services and other amenities such as community schools, hospitals, churches,

- recreational facilities, communication services, waterworks, sewerage and electric power systems;
- (f) Establishment of training facilities for “manpower” development for mine employees as well as for the other members of the community; and
 - (g) Establishment of livelihood industries for dependents or mine employees as well as for other community members;

The contractor/permit holder/lessee is required to assist in developing mining technology and geosciences and the corresponding manpower training and development. The contractor/permit holder/lessee is also required to allot annually a minimum of one percent (1 %) of the direct mining and milling costs for the implementation of the development programs for the host and neighboring communities as well as for the implementation of the development assistance for mining technology and geosciences and the corresponding manpower training and development (Sec. 134).

This research specifically looked into the compliance or non-compliance of CAMC and of HMC with these pertinent provisions. With regard to community development plans, this research evaluated the structures and processes in the crafting and implementation (including monitoring and review) of the development plans and actual programs implemented. Questions were raised regarding the form and degree of participation of the community residents to determine whether the participation was substantive or mere tokenism.

This research provides an initial analysis of the content and components of the development plan in terms of appropriateness of plans and programs taking into consideration several criteria of sustainability, equity, and gender equality among others. For example, the manpower training and development activities, and the income generating projects were assessed using these criteria. Questions were raised regarding the appropriateness, viability, sustainability, gender and cultural sensitivity of programs and projects.

The research also looked into the compliance and implementation of the provision related to preference for locals in the hiring of personnel. The economic benefits such as the provision of employment and income were weighed vis-à-vis the economic costs such as dislocation from sources of subsistence as a result of the effect of the project on the local situation. The study also looked into the compensation packages of Climax-ARIMCO and HMC.

Economic and other social benefits such as the construction of infrastructure and provision of social services and living amenities as stipulated in the Revised IRR of RA 7942 are discussed in further detail in the EIS, ECC and the Memorandum of Agreement (MOA) between the parties i.e. contractor/permit holder/lessee and the community residents and/or government agencies, and presumably also in the community development plans. A comparison was made

between what is contained in the EIS/ECC/MOA and the people's perception of what is contained in the MOA. The study also explored the topic of the people's assessment of the process of the drafting of the MOA as well as other events relevant to the MOA. It is worth mentioning that these social/community development plans preclude development alternatives other than mining.

Findings

The Case of Didipio, Kasibu, Nueva Vizcaya (Didipio Gold-Copper Mining Project of Climax-Arimco Mining Corporation)

Background on CAMC's DIDIPIO Copper Project

Climax-Arimco Mining Corporation (CAMC) is a 100 percent owned Australian company. It has an approved FTAA covering over some 37,000 hectares located in Kasibu in Nueva Vizcaya and Quirino Province. Part of the area covered by CAMC's FTAA in Nueva Vizcaya and Quirino is home to the Ifugaos and Bugkalots, the indigenous peoples population in the area, and to various groups considered part of the Ilocano, Tagalog and Visaya ethnic groups.

Didipio, Kasibu, Nueva Vizcaya has a total land area of 8,500 hectares. The Didipio Gold-Copper Project of CAMC centers on the 729-hectare Dinkidi ore body located in Bacbacan, which is to be the site of the open pit mining. CAMC is expected to implement a 2.0 million tonnes per annum block cave operation or approximately 5,500 tonnes per day over an eight year period of operation. The mining operations is expected to generate

Aside from this open pit site, CAMC proposed the construction of an 800 meters-long diversion tunnel, which will directly affect Surong and Camgat. Approximate one and a half (1 ½) km of the Dinauyan River and valley will be filled with waste rock and tailings.

A mine tailings dam being proposed to be constructed in Dinauyan, could cover an area approximately 170 to 200 hectares. The tailings dam is expected to impound approximately 17 million tonnes of tailings over the period of the mine operation.

The FTAA of Climax Arimco for the Didipio Gold and Copper Mining Project was approved on June 20, 1994 but CAMC has been in Didipio since 1989. According to CAMC, they have undertaken the following activities:

- geological mapping in Nueva Vizcaya and Quirino;
- geochemical analysis of more than 25,000 samples of rocks, soil, stream sediments and drill core;

- over 40,000 meters of mineral core drilling and other exploration activities; and
- CAMC has established and maintains a Community Relations Office for its Didipio Project.

The first five years was supposed to be devoted to exploration and feasibility studies, after which, CAMC is supposed to make a minimum expenditure commitment for investment of US \$ 50 million. The revenue sharing will start after recovery of the pre-operating expenses incurred by the contractor. The Philippines will get sixty percent while the mining contractor will get forty percent. The expected investment of CAMC in the Didipio Project will total US \$150 million.

On Social Acceptability and Prior Informed Consent

Didipio is one of the most isolated areas of the municipality of Kasibu. To reach Didipio, you have to endure the approximately four-hour jeepney ride through rough roads, crossing several streams and rivers. After the jeepney ride, you start the trekking through the old logging road and foot trails connecting the various sitios. The locals cover the distance in approximately four hours, for “outsiders” and those not used to trekking long distances, it takes a minimum of six hours. Thus the Didipio farmers have a hard time transporting and marketing their agricultural produce. Because of the difficulty of carrying the goods to Didipio, salt, sugar and other cash goods are expensive in the area. It costs so much to transport goods to and from Didipio. There are no medical facilities in the area. The sick are carried in hammocks to the nearest village where they can get jeepney rides to the nearest town center, which has medical facilities.

The residents of Didipio have lost hope that the government would ever address their needs for basic social services such as health and education, as well as amenities such as roads, waterworks and electricity. In a situation where government is virtually absent and does not even provide the minimum basic social services, for some of the residents, the mining company has come to represent the only solution to their problems. When mining corporations provide employment to a few locals and make promises to provide social services and construct basic infrastructure such as roads and bridges, public waterworks and electricity in the locality, it is not surprising that the locals become more accommodating and open to mining projects and other development interventions despite the projected onerous impacts.

Strategies and Tactics Employed in Acquiring Free and Prior Informed Consent

In relation to the process of acquiring prior informed consent, it has been found out that gift giving to community residents and hiring local residents and barangay officials appear to be a common practice employed by mining companies. The mining corporations still depend on the old and dependable divide and rule tactics and the cooptation of local leaders through bribery and coercion. Studies suggest that the novel ways e.g., government and TNCs hiring community liaison officers and community organizers have been proven in some cases to be effective in getting the consent of the local population.

Walpole (1999) calls attention to the problem of lack of clear guidelines that distinguishes “allowable” and “non-allowable” strategies or tactics in obtaining prior informed consent, and ensuring that community consent was obtained “free from fraud, external influence and manipulation.” Gift giving, according to Walpole, can be construed (rightly or wrongly) as bribery especially when it is done before or during the process of obtaining prior informed consent. Walpole underscores the need for the involved community to decide what constitutes “acceptable gifts” as distinguished from “non-allowable gifts that go beyond goodwill” which could elicit feelings of debt of gratitude. Moreover, there are also reports using money, liquor and women to bribe local officials and residents to allow mining companies into their area.

In the case of Didipio, all the barangay officials became employees of CAMC prior to the proposal and signing of a Memorandum of Agreement between these two parties (i.e. CAMC and the Barangay Council). The barangay officials were given employment and reportedly receive monthly salaries not lower than five thousand pesos. The barangay captain is reported to be receiving a monthly salary of P10,500.00 while the other barangay council members get monthly salaries ranging from P 5,000.00 to P 7,500.00.

This raises serious questions on the process of establishing social acceptability of the mining project. The credibility of the barangay officials who executed the MOA and who are in the employ of CAMC are now being questioned. They are perceived to be beholden to CAMC and thus had no choice but to agree to the CAMC proposals. These barangay officials continue to be employed by CAMC, holding various positions at the Community Relations Office (CRO) being maintained by CAMC.

Issues of representation and substantive participation in the decision making-process and structures.

According to Hilario & Salazar (June 2000: 7)⁴⁹, participation of the Didipio residents was limited to “being informed, being consulted and making their voices heard.” The residents received information about the mining project, participated in the data gathering, and attended various public assemblies and consultations such as the scoping meetings, public hearings particularly on the EIS and voicing

their concerns in the dialogues that were conducted as well as through various petition letters. However, Hilario et al. assess these forms of public participation as “essentially reactive and substantively limited.”

The conduct of scoping activities is required under the new DENR AO 96-37. Scoping includes public consultation activities intended to:

- (a) Ensure that the EIA addresses the relevant issues and concerns;
- (b) Allows stakeholders to ventilate concerns about the mining project;
- (c) Establish agreement at the outset of the EIA among the proponent, DENR and stakeholders, on what issues and alternatives to be examined; and
- (d) Determine and agree on the process of dealing with issues related to social acceptability.

CAMC was assisted by consultant groups namely Maunsell Philippines Inc., Coffey Philippines Inc., and Gaia South in the conduct of four scoping meetings. CAMC cites attendance in these scoping activities as proofs of social acceptability of the project. While CAMC conducted the scoping activities, attendance in these meetings does not necessarily mean concurrence or acceptance of the mining project. Moreover, conducting consultation dialogues, which are actually what these scoping meetings were about, cannot necessarily be equated to substantive participation.

In the same study on indigenous people’s participation in EIA, Hilario and Salazar’s findings suggest that there is no substantive and meaningful community participation, in the particular case of the Didipio Gold-Copper Mining project. They stated that the host communities do not have a vote and representation to the body that recommends the granting or denial of ECC (as well as FTAAS, exploration permits and other mineral agreements) since there are no existing policies that provides for this kind of substantive community participation.

Hilario and Salazar’s investigation of the experiences of the residents of Didipio bears out the following observations and analyses. The residents do not have a substantive role in deciding key issues such as exploring alternatives to mining. The residents do not even have a say on the location of the various components of the mining project such as the tailings dam, diversion tunnels, etc. As to the conduct of activities for purposes of public participation, the residents had very little influence on the scheduling and conduct of said activities. Instead of contributing towards increased public participation in environmental decision-making and management, on the contrary, the residents expressed misgivings, and dissatisfaction with the conduct of the public consultation activities.

Moreover, the residents raised questions regarding the methods employed in several public consultation activities, specifically related to the public hearing on the EIS and the Community Development and Business Plan. Community members expressed discomfort with the spatial arrangement and conduct of the public hearing. The residents expressed discomfort that they had to squat on the ground while the 'outsiders' or 'VIPs' (i.e. representatives from the DENR, Review Committee, proponents, consultants, LGUs) were seated on stage. This contributed to the people's perception that these outsiders were not treating them as equals.

The residents also expressed dissatisfaction with the conduct of the hearing. They felt that the DENR/EMB personnel who presided over the hearing did not give them adequate time to express their views regarding the mining project while the proponent of the mining project were given sufficient time to present their side. The residents also registered their complaints that the EMB representative determined the issues discussed, who should speak, when, and for how long they could speak. They also felt that the half day devoted to the hearing was not enough to ventilate the numerous issues related to the project prompting them to request for another public hearing.

However, the EMB hearing officer informed them that there was no need for another hearing since based on his perception all the relevant issues were already covered during the just concluded hearing. The EMB personnel instead advised them to write the EMB for their questions on the project. There is also the question of language barrier between the residents, the project proponent and the other participants.

'Proofs' of Social Acceptability

With regard to social acceptability, the EIS report commissioned by CAMC offers several proofs of the social acceptability which include the following:

- attendance in scoping activities and the scoping reports signed by the different stakeholders;
- residents' involvement in the feasibility studies, field studies, perception survey, etc.;
- existence of a risk management and environmental management program, an environmental monitoring plan, community business development plan, memorandum of agreement; and
- participation in various activities and consultation meetings.

The residents question these proofs of evidence of social acceptability. The residents state that participation in public hearings and other consultations does not necessarily mean social acceptability. They in fact point out that they have consistently registered their opposition to the mining projects in these public

hearings, and in various initiatives like petition letters against the mining project. The residents also stated that they were given very short notice prior to the holding of the public hearing.

Hilario and Salazar's report states that the residents point out that their participation in these public hearings and consultations were very minimal, which is a far cry from their ideal concept of community involvement in their practice of *paki-uha*. *Paki-uha* involves the "members participation in a transparent process of decision-making by consensus, where information is open to all and where the community's welfare is a major consideration.

The residents also narrated experiences wherein they were asked to attend meetings or social activities and were asked to sign their name in the attendance sheets. They later found out that these attendance sheets were reportedly used as proofs of their acceptance of CAMC's mining project.

Another criticism being leveled against RA 7942 pertains to the lack of specific provisions on mechanisms and procedures, which empowers the local communities to reject or terminate mining grant. While RA 7942 stipulates that the mining corporation can withdraw from pursuing their mining grant/s there are no parallel provisions that stipulate the mechanisms and procedures, which gives power to the host communities to reject or terminate the mining grants, especially in cases of negative impacts and or the mining corporation's non-compliance with requirements.

On the Employment of Best Practices in Mining Technology

To date all FTAA's and MPSA's applications will employ open pit mining or a combination of open pit and other methods of extraction. Open pit mining is not considered 'best practice.' On the contrary, open pit mining has been banned since the 1970s and 1980s in countries like the US and Canada on account of the adverse ecological and social impacts. It is only allowed in unpopulated areas like deserts.

The Didipio Gold-Copper Project of CAMC will employ a combination of open pit mining and block caving underground operations. CAMC states that they will not use cyanide or mercury in mineral processing and will instead employ flotation and gravity processes. Aside from the technology of mineral extraction and processing, a very important area that should be given equal importance is the technology to be employed in mine waste disposal. The impact of the technology and process in the mineral production has far reaching effects given that the impact is not limited to the immediate or primary area of operation such as the mining site. Mine waste disposal affects the air, water and land resources of other geographical areas that may either be within the same or outside the administrative political units where the mine is located.

The residents have to monitor and ensure CAMC's compliance with the conditions contained in the ECC and their claims of not using mercury or cyanide in the processing as well as the implementation of mitigating strategies. The geologist consulted to evaluate the EIS report and other relevant CAMC documents stated that not using cyanide or mercury and relying on flotation and gravity processes lowers significantly the percentage of recovery. By employing these technologies in mineral processing, the percentage of recovery is small while the percentage of impurities increases and the processing time takes much longer. With low percentage of recovery, high levels or percentage of impurities and increased time for processing, and given the low world market price of gold and copper, this would mean lower profits for CAMC.

Given that a company's mining project would entail huge investments running in the hundreds of millions of dollars, the logical tendency is to maximize recovery of investments by using the most 'cost-efficient' technology in order to maximize profits. The geologist further states that a typical mining corporation would find it extremely difficult not to cut corners and not deviate from strictly employing purportedly more ecological-friendly mining technology. Thus, should CAMC's project push through, the geologist recommends that residents be extremely vigilant in monitoring CAMC's activities and strict compliance with the provisions in the EIS and the ECC.

Relevant to the encouragement of best practices in mining is the issue of the residents of the host community and other stakeholders' capability to make competent analysis of highly technical data such as those contained in the EIS, in the EPEP, EWP, etc. The questions raised regarding the composition of the MMT and the MRF Committee and on the issue of substantive participation possible within these decision-making bodies points to the need for more appropriate monitoring structures and mechanisms that would contribute to ensuring democratic participation of all the stakeholders. These bodies should be provided with the necessary logistics.

There is another substantive issue pertaining to the capability of the residents to make competent evaluation of highly technical data such as those contained in the EIS, in view of the observation that even the regional DENR and LGU personnel evidently lacked the technical expertise to analyze the EIS. The representative/s from the community residents, POs, NGOs, indigenous people's community should be able to engage the services or seek the assistance of impartial and credible technical experts who could assist them in making evaluations and assessments on technical matters related to the mining project.

The CAMC's FTAA covers 37,000 hectares located in Kasibu, Nueva Vizcaya and Cabarroguis, Quirino Province. The total land area of Didipio is 8,500 hectares. The Didipio Gold-Copper Project of CAMC centers on the 729-hectare Dinkidi ore body located in Bacbacan, which is to be the site of the open pit mining. Aside from this open pit site, CAMC proposed the construction of an

800 meters-long diversion tunnel which will directly affect Surong and Camgat, and a proposed mine tailings dam in Dinauyan that could cover an area approximately 170 to 200 hectares.

The EIS report states that deforestation will remain to be a problem in the area even without the mining project given the locals' practice of swidden agriculture. The EIS report puts the blame on the Ifugao farmers and their practice of swidden agriculture for the deforestation in the area. This statement is made without the benefit of an in-depth analysis of the swidden or shifting agriculture being practiced by the Ifugaos in the area. There are several arguments that could be raised against this 'unsubstantiated' statement.

For one, swidden or shifting agriculture should not be immediately dismissed as ecologically destructive. Findings of scientific and anthropological studies suggest that swidden agriculture or traditional *kaingin* farming is not necessarily destructive but on the contrary may even be contributing to the preservation of ecological balance. Studies of shifting cultivation reveal extreme variability and complexity; there are widely documented practices (in the tropics) suggest tendency to conserve resources, ability to restore soil fertility, mimic biodiversity and protect watersheds; studies of indigenous systems reveal the appropriateness of the technology and the very complex social institutions, which regulate water rights.⁵⁰

In the Gran Cordillera Central, the place of origin of the Ifugao residents in Didipio, the swidden farmer is usually a person who is knowledgeable and possesses "skill and precise evaluation of the micro-environmental and general climatic context to make certain that a thorough and even fertilizer layer is achieved and that adjacent forest and dwellings are not accidentally damaged...Burning among the traditional shifting cultivators is controlled burning."⁵¹

It would therefore not be surprising if it turns out that the Ifugao farmers in Didipio, in fact, practice complex and appropriate swidden agriculture technology, given the Ifugao/Igorot prowess in hydraulic engineering as evidenced by the endurance of the famous Ifugao rice terraces.

Moreover, investigation of the history of Didipio in the last two to three decades would suggest that it is probably not the swidden farmers who are responsible for the deforestation in the area. The logging roads that are often referred to in the EIS reports that the CAMC proposes to make improvements on were used by the logging trucks of Luzon Logging Inc. (LLI) identified with politicians like Junie Cua of Quirino Province who served as LLI's Vice-President in the 1980s and Former House Speaker Jose de Venecia who also served as LLI's President in the 1960s.⁵² Between traditional swidden farming and the logging activities of LLI, it is highly likely that it is the latter, which has contributed much to the problem of deforestation in Didipio, Kasibu.

With regard to the entry of large-scale corporate mining activity in the area, it could very well be that it is mining that destroys or alters the traditional and often ecologically compatible systems of shifting cultivation. The shifting cultivators were confined to small areas. Whereas with the entry of large-scale corporate mining, the periods of fallow could be reduced or even eliminated, leading to soil exhaustion, accelerated erosion, food insecurity and worsening poverty.

On Social Development Components

RA 7942 also stipulates the drafting and implementation of a Community Business Development Plan (CBDP). Social development components usually include the following:

- construction and maintenance of infrastructure;
- provision and maintenance of social services and other amenities;
- establishment of training facilities for “manpower” development for mine employees as well as for the other members of the community;
- giving preference to the members of the host communities in the hiring of personnel;
- establishment of livelihood industries;
- providing assistance in the creation of self-sustaining income-generating activities (IGA), and/or preservation and enhancement of traditional self-sustaining IGA;
- implementation of development assistance for mining technology and geosciences and the corresponding manpower training and development.

Based on FGDs (Focus Group Discussions), there is a palpable sense of helplessness and hopelessness among the residents. They firmly believe that the government will not do anything to develop Didipio and improve their living conditions. The pro-mining groups are therefore pinning their hopes on CAMC. The members of the anti-mining group, on the other hand, assert that the government must be taken to task in providing the basic social services. They add that they must not be made desperate as to agree to projects and ventures that would have negative impact just so they could avail of social services that should be provided by the government in the first place.

For the past 35 years since the Ifugao migrants settled in the area, the government has not provided basic social services. Then comes a mining company that promises roads, hospitals, electricity, jobs and scholarship grants for the children. The representatives of the company provided impressive presentations, armed with visual aids (e.g. video, slides and three dimensional

models) claiming that the technology they will use in the mining project would not in any way result in any damage to the environment. Placed in these similar circumstances, it is difficult to be judgmental and blame the people for believing and taking the only opportunity for social development that have come their way. Thus it is therefore reasonable to expect that promises of delivery of social services and amenities are temptations that are hard to resist, notwithstanding the probable negative social and ecological effects.

The members of the anti-mining group, on the other hand, assert that the government must be taken to task in providing the basic social services. They add that they must not be made desperate as to agree to projects and ventures that would have negative impact just so they could avail of social services that should be provided by the government in the first place.

Economic and other social benefits such as the construction of infrastructure and provision of social services and living amenities as stipulated in the Revised IRR of RA 7942 are discussed in further detail in the EIS, ECC and the Memorandum of Agreement (MOA) between the parties i.e. contractor/permit holder/lessee and the community residents and/or government agencies, and presumably also in the community development plans. A comparison was made between what is contained in the EIS/ECC/MOA and the people's perception of what is contained in the MOA. There appears to be a gap between the social development projects contained in the EIS and MOA and the people's perception of development projects to be implemented as contained in the EIS, MOA and other relevant documents.

A. Infrastructure Development

CAMC is committed to construct and maintain access roads from Didipio to Wangal in Nueva Vizcaya and Debibi in Quirino Province. There are no specifications as to the kind of these access roads. CAMC also intends to upgrade and maintain five kilometers of community roads that would link the various sitios of Didipio to the trunk road. The community roads will be all-weather gravel standard. In the key informant interviews, it appears that the residents are under the impression that the access road and community roads to be constructed are of concrete standard.

B. Employment Opportunities

CAMC's mining project is expected to generate 400 to 500 direct employment at the mine site, and some 1,000 indirect employment opportunities especially in service sectors providing goods and services to the mine employees. The direct employment to be generated includes positions of equipment operators, miners, drivers, helpers, engineers, secretary, accountant, etc.

Some of the key informants have expressed that the direct employment to be provided by CAMC exceed the work force of Didipio. Provided that CAMC hires the entire Didipio workforce, there would be job opportunities left for residents of the other barangays. While CAMC declared giving preference to Didipio residents in the hiring of personnel, CAMC did not give the guarantee of automatic hiring. Job applications would still be subject to the criteria used to measure eligibility and suitability of the applicants such as possession of relevant skills and capabilities. Given the low educational attainment and limited skills of the residents of Didipio, it might turn out that only a small number would be hired by CAMC, and most of them might be occupying the unskilled and low-paying positions.

C. Skills Training

CAMC also made the commitment to conduct the necessary skills training should there be a need. This is provided for in the provisions of the RIIR of the Mining Act of 1995. The specific provisions call for the implementation of development assistance for mining technology and geosciences and the corresponding manpower training and development and the establishment of training facilities for “manpower” development for mine employees as well as for the other members of the community. Other provisions stipulate the establishment of livelihood industries; providing assistance in the creation of self-sustaining income-generating activities (IGA), and/or preservation and enhancement of traditional self-sustaining IGA.

In response to the thrusts of ‘manpower’ training and skills development, CRO personnel stated that CAMC has implemented the following training and livelihood projects:

- training on driving and operating heavy equipment (e.g. pay loaders, backhoe and bulldozers);
- tilapia raising;
- mushroom culture;
- backyard gardening;
- cattle and goat breeding;
- and a pig dispersal project.
- There are proposals for the conduct of training on “beauty culture,” baking, food processing, etc.

However, residents against CAMC’s mining project state that contrary to the claims of the CRO, only two of the above-mentioned projects/activities were conducted, training on driving and operating heavy equipment vehicles and a pig dispersal project. These two projects were limited to those who were supporting CAMC’s mining project. The anti-mining group mentioned that while a training on driving and operating heavy equipment was conducted, there was a small number of participants and most of the participants were trained not as drivers

but as haulers and to assist the driver. A small-scale pig dispersal project was implemented, which studies have shown to be not economically viable.

CAMC has also conducted several seminars e.g., project proposal making, bookkeeping, accounting, organizing and business strategies, business and financial management training, a “how to invest your money” to help residents who have received compensation packages from CAMC. There are no available data on the assessment/evaluation of these skills training and seminars. There are also serious questions pertaining to CAMC’s credibility to provide guidance as regards “appropriate investments” given that CAMC itself has implemented a very small-scale pig dispersal project, which studies have shown to be not economically viable.

D. Community Development Plans and Programs

CAMC has identified Community Based Forest Management (CBFM) and Steep Agricultural Land Technology (SALT) as possible approaches that could be explored with government agencies like the DENR and the Department of Agriculture (DA). CAMC and Coffey Partners, Inc. have drafted a Community Business Development Plan. The Barangay Development Council (BDC) is targeted as one of the main actors to be involved in the implementation of the development plans.

These development plans, needless to say, are within the context of mining, i.e. revolves around the development of mining in the area, precluding development alternatives other than mining. There is a need to evaluate these development plans taking into consideration several criteria of sustainability, equity, and gender equality among others.

There are questions being raised regarding the appropriateness, viability, sustainability, gender and cultural-sensitivity of programs and projects. For example, anti-mining groups question the viability and sustainability of these projects after the ecological impact of the mining operations. There are also serious questions pertaining to CAMC’s credibility to provide guidance as regards “appropriate investments” given that CAMC itself has implemented a very small-scale pig dispersal project, which studies have shown to be not economically viable.

Moreover, while these may be of benefit to the residents, the question being raised is that how much development could one expect from such “social development projects. These so-called “social development” projects of the mining company have very minimal impact in terms of genuine and substantive community development and empowerment. Anti-mining advocates assert that if there is one positive result of the entry of the mining company, it is not the job employment or the development projects that the mining company allegedly

brought into the community. Rather, it is the increased level of awareness of the people as a result of the people's concerted struggle against the mining project.

There are also issues related to the drafting and implementation of the Community Business Development Plan. In 1997, CAMC commissioned Coffey Partners Incorporated to prepare the Community Business Development Plan. In March 1997, two consultants from Coffey discussed the community development plan with representatives from the CRO and three members of the Barangay Council. In the said consultation, the Barangay Council members shared the community's needs and aspirations with the Coffey consultants. Given that this is the process adopted in the crafting of the community development plan, questions are being raised regarding the participatory nature of the process. Specifically, there are questions related to the form and degree of participation of the community residents and whether this participation can be considered substantive or mere tokenism.

Those who are supporting the mining project always cite the MOA as having provided the solution or the provisions that would solve almost every question or concern regarding the mining operation. They view the MOA as almost totally comprehensive that it can answer all their problems. In a way, the MOA has come to be viewed by the pro-mining residents as a panacea and in some sense, the MOA has become a 'mantra'—the response to all the questions and concerns regarding issues related to CAMC's mining project.

Polarization

The entry of CAMC has fostered bitter conflicts among the residents. The community is highly polarized between the pro-mining and anti-mining camps. The pro-mining faction is mainly composed of those who are in the employ of CAMC and their families while the anti-mining faction are the members of the POs, which were organized within the context of the struggle against the mining project, and they are the ones identified with various socio-civic, church-based, and NGOs doing work on indigenous peoples and environment issues. The polarization has reached a point that it has generated several sibling-sibling and parent-child conflicts, with one party on one side (pro-mining) and another party on the other side (anti-mining).

The entry of the mining corporations in the community has contributed to social disorganization. Social solidarity and cohesion has been greatly undermined by the conflicts related to the issue of the mining project. No amount of Environmental Guarantee Fund can help rebuild social relationships that have been severely damaged. Regardless whether the CAMC project would push through or not, the residents of Didipio have to contend with the problem of resolving the conflicts, rebuilding relationships and restoring the social solidarity that has been undermined with the conflicts spawned by the mining projects in their community.

People's Responses

The residents opposing CAMC's mining project have filed a petition entitled "Petition for the Adoption of a Resolution Denying Concurrence to the Memorandum of Agreement Between Bgy. Didipio and Climax-Arimco Mining Company Preventing the Sangguniang Barangay from Entering into any and all Contracts with Climax-Arimco, and Denying Concurrence to the Construction of a Tailings Pond/Dam, Diversion Tunnel, Open Canal and Drainage Tunnel in Bgy. Didipio, Nueva Vizcaya." The anti-mining residents have also formed the Didipio Earth Savers Movement, Inc. (DESAMA Inc.), an advocacy group campaigning against large scale mines.

Aside from the above-mentioned petition, the various stakeholders in Nueva Vizcaya have conducted several actions and campaigns. These include the following:

- The residents of Dinauyan, Didipio, Kasibu, Nueva Vizcaya sent a petition letter (dated December 1, 1998) to DENR Sect. Cerilles expressing their opposition against the proposed construction of a tailings dam of CAMC in Dinauyan. The petition letter also requested the denial of the issuance of an ECC;
- The Sangguniang Bayan of Kasibu, Nueva Vizcaya passed Resolution No. 050 Series of 1999, supporting and endorsing Resolution No. 4 Series of 1998 which supports the residents and stakeholders of Dinauyan petitioning against the construction of a mine tailings dam;
- The residents of Purok Bae, Bgy. Didipio sent a letter to DENR Secretary Cerilles (dated January 20, 1999) supporting the petition of the residents of Purok Dinauyan opposing the proposed construction of the mine tailings dam. The reasons cited are economic dislocation and environmental degradation;
- The residents of Sitio Tubo, Dingasan, Cabarroguis, Quirino Province wrote a letter to DENR Secretary Antonio Cerilles (dated April 5, 1999) expressing their strong opposition CAMC's proposal to construct a drainage tunnel which would affect farmlands in their sitio. Reasons they cited for their opposition include anticipated adverse impacts on their livelihood activities, on the ecosystems, on health, undermining of traditional culture, and social disunity;
- The residents of Barangay Papaya, Kasibu, Nueva Vizcaya wrote a petition letter (dated May 8, 1999) expressing their objection to the conduct of mining activities in Bgy. Papaya;
- The Regional Development Council of Region 2 on October 27, 2000 promulgated Resolution No. 02-34-2000 entitled Rejecting

the proposal of Climax Arimco Mining Corporation to Operate the Didipio Gold/Copper Mining project. The resolution states that the said mining project is located in the center of the Addalam River Watershed Area and that the harmful effects of the project to the environmental integrity of project areas in the Provinces of Quirino and Nueva Vizcaya and other rivers and watershed areas in Region 2 outweigh the projected economic and social benefits to be derived from the mining project;

- The Alliance of Community Development Advocates (ACDA) passed Resolution No. 1 Series of 2000 supporting the RDC Resolution No. 02-34-2000 which rejects the proposal of CAMC to operate the Didipio Gold/Copper Mining Project;
- The Federation of Upland Farmers Association wrote a letter to Gov. Rodolfo Agbayani (dated January 29, 2001) supporting the RDC Resolution No. 02-34-2000 which rejects the proposal of CAMC to operate the Didipio Gold/Copper Mining Project; and
- The Sangguniang Bayan of the Municipality of Kasibu, Nueva Vizcaya passed Resolution No. 010 S-2001 on February 14, 2001, in support of support RDC's (of Region 2) Resolution No. 02-34-2000 which rejects the proposal of CAMC to operate the Didipio Gold/Copper Mining Project.

The Case of Manicani Island, Eastern Samar Hinatuan Mining Corporation's Nickel Mining Project

Background on the Hinatuan Mining Company's (HMC) Nickel Mining Project in Manicani Island, Eastern Samar

Hinatuan Mining Corporation is owned by the Zamora brothers, who are widely believed to have control over the Philippine nickel industry. Ronaldo Zamora used to be the Chairman of the Board of HMC as well as former Director of Rio-Tuba Nickel Mining Corporation in Southern Palawan. His positions in these mining corporations are now held by his brothers and relatives. Manuel B. Zamora, Jr. is president of Rio-Tuba. Salvador B. Zamora II is listed as the president of Hinatuan Mining Corporation and president of Taganito Mining Corporation, which has mining interests in Bo. Taganito, Claver (Surigao del Norte).

Ronaldo Zamora is described as a "skillful political operator."⁵³ He is considered one of the most powerful officials during the Marcos years. He remained influential after Marcos was deposed. He was assistant majority floor leader during the Eight Congress during the term of President Corazon Aquino. He was Executive Secretary to ousted President Joseph Estrada.

HMC's Mineral Production Sharing Agreement (MPSA) was approved in October 28, 1992 and expires in October 2017. The ECC was granted in November 17, 1992, barely 19 days after the approval of the MPSA. HMC employed the open pit mining technology of extraction. Serious questions are being raised regarding the relationship between Zamora's political power and influence and the extraordinary ease with which HMC was and is able to obtain mining permits, grants and agreements from the government.

Hinatuan Mining Corporation's nickel mining project area of coverage is equivalent to more than 1,100 hectares, covering the entire land area of Manicani Island in Eastern Samar. The MPSA affects the more than 3,000 population of all the four barangays of Manicani Island, namely, (a) Buenavista; (b) San Jose; (c) Hamor-awon; and (d) Banaag.

On Social Acceptability

Hinatuan Mining Corporation applied for Mineral Production Sharing Agreement (MPSA) on May 16, 1991. The Memorandum of Agreement for the development and utilization of nickel in Manicani Island was executed between HMC and the Philippine Government on August 13, 1992. The MPSA was approved on October 28, 1992 and the Environmental Compliance Certificate was granted on November 17, 1992. The MOA was executed between HMC and the Republic of the Philippines as represented by the MGB. Exploration activities began in 1989. HMC's nickel mining project in Manicani operated from 1991 to 1993 despite opposition from residents of Manicani Island. HMC stopped their operations in 1995 due to the depressed prices of nickel in the international market.

Serious questions are being raised regarding the relative ease by which HMC is able to obtain mining permits, grants and mineral agreements. The following events tend to support the observation that HMC seems to have an easy time getting government bureaucracies to act swiftly on their applications.

- Hinatuan Mining Corporation began exploration activities in Manicani in 1989;
- On May 16, 1991, HMC applied for a Mineral production Sharing Agreement (MPSA);
- On August 8, 1991, HMC applied for a special permit to extract and dispose of nickel for commercial smelting and metallurgical testing;
- On August 20, 1991, the special permit was granted, only 12 days after they submitted the application;
- On August 13, 1992, HMC and the Philippine Government (represented by the MGB) signed the Memorandum of Agreement (MOA) for the development and utilization of nickel in Manicani Island;

- On October 28, 1992, the MPSA was approved; the MPSA expires in October 2017;
- On November 17, 1992, the Environmental Compliance Certificate (ECC) was immediately granted at what must have been an unusual quick record time of 19 days;
- On November 18, 1992, HMC was granted a Road Right of Way;

The Manicani residents who are against the mining operation questions how HMC was able to start the operations of the nickel mine in 1991 when the MPSA and ECC were granted only in 1992. HMC's nickel mine project in Manicani Island was operational from 1991 until 1994. The almost four years of operation of HMC's nickel mining project has resulted in serious ecological, economic and social costs. A substantial percentage of the residents of Manicani are against HMC's nickel mining project in Manicani.

From 1994 until 1996, HMC temporarily suspended the mining operations reportedly due to the low price of nickel in the world market. In 1993, meanwhile, Presidential Proclamation No. 469 declares the area of Guiuan, which includes Manicani Island, as among the protected seascapes and landscapes in the Philippines. This entails possible implementation of strict protection or establishment of core zones to protect critical habitats or natural attractions found in the area. While HMC temporarily stopped its mining operation, Republic Act 7942 (or the Philippine Mining Act of 1995) was passed into law.

In 1996, HMC attempted to resume its mining operations despite widespread protests of the residents of Manicani Island and nearby islands. The following are the bases for the residents' protests against mining operations in Manicani Island:

- (a) On October 6, 1993, Presidential Proclamation No. 469 was enacted declaring Guiuan (including Manicani Island) Eastern Samar as one of the protected seascapes and landscapes of the Philippines; and
- (b) The Manicani residents' negative experiences with HMC in relation to social, economic and ecological impact of the mining operations.

In 1996, HMC made known their intention to resume its mining operations. The plan to resume mining operations was met with widespread people's protests. In December 1996, the DENR-CENRO of Borongan, Samar called for an inspection and verification report on the operations of HMC to determine HMC's compliance with the preliminary requirements contained in the ECC, before HMC is allowed to resume its operations.

Recommendations of the Inspection Team include the following:

- HMC to conduct public hearing/s in all four barangays to determine the people's sentiments regarding the resumption of mining operations; and
- HMC to strictly follow the Safety, Environmental and Rehabilitation Program provided for in RA 7942;
- local residents should be the priority in the hiring of personnel;
- establishment of MRF (Mine Rehabilitation Fund) and the creation of MRP Committee with a representative from the affected community; and
- provision of social services e.g. establishment of school buildings, recreational facilities, electrical power distribution system, etc.

On February 7, 1997, CENR Officer Talavera wrote a letter of recommendation to the Regional Executive Director of Region 8 containing the following:

- setting in place of an Environmental Guarantee Fund (EGF)
- the DENR/CENRO be provided with other pertinent documents related to the operations of the HMC and other mining corporations that may operate within Borongan, Samar, for reference and monitoring purposes;
- recommend for the suspension or cancellation of HMC's ECC and/or a fine of P50,000 for non-compliance with the condition as stipulated in the ECC.

It would appear that the recommendation for the suspension and/or fine was not pursued, despite HMC's failure to implement the EMB requirements and other recommendations of the CENRO specifically the setting up of an EGF; the creation of a multipartite monitoring team (MMT) through an MOA; and the conduct of an EIC campaign.

Public Dialogue

A serious offense committed by HMC is the failure to conduct public dialogues or failure to ensure wide representation in dialogues conducted to elicit the sentiments of the people regarding the resumption of mining. The people's experiences with HMC's attempts to conduct the public dialogues provide insights on HMC's attitude regarding the acquisition of the people's 'prior informed consent.'

On one occasion, Engr. Karingal, HMC's Vice-President for operations, assured some of the residents that they would first conduct public dialogues before they would pursue plans to resume mining operation in 1997. In late 1996, however, the residents were surprised to find that HMC has in fact

resumed their operations. Not only were they not informed about the quick turn of events, they were also surprised to find out that another entity (Philmeco) has entered the picture. After insistent queries on the part of the residents, HMC personnel informed them that another firm, Philmeco, is now working with them in the Manicani operations.

To appease the residents, Governor Ambil informed them that public assemblies would be conducted in all the barangays to discuss the people's views regarding the resumption of the mining operation. The members of the "anti-mining" group stated that they were willing to participate in the dialogue and coordinate with the "pro-mining" group.

- **HMC Restricts Attendance in Public Dialogue to Pro-mining Groups**

A public dialogue was held in May 1997 but the members of the 'anti-mining' group assert those identified to be belonging to the 'anti-mining' group were prevented from entering the room where the dialogue was being held. Only those who were in favor of the resumption of mining were allowed to enter the room. Two Manicani residents who age against the mining operation managed to enter the room where the 'public dialogue' was being conducted but they were not allowed to speak. Fr. Picardal, a priest who attended the dialogue, read a resolution by the residents of Manicani stating their opposition to the resumption of HMC mining operation. A 'pro-mining' resident recommended that the petition be ignored.

To comply with the recommendations of the Inspection Team dispatched by the DENR-CENRO, HMC scheduled another public dialogue on October 14, 1997. However, there was a "failure of dialogue" because of poor attendance. The residents questioned the selection of the venue of the dialogue and complained that they were given a very short notice regarding the schedule of the dialogue. The dialogue was supposed to be held inside the compound of HMC and they were informed about the dialogue the day before the scheduled date. The residents asked to reschedule the dialogue to take place at 'a more neutral venue' and that they be given sufficient notice prior to the day of the dialogue. The residents, members of the Protected Area Management Board (PAMB) and HMC as represented by Carlos Escano, agreed to move the schedule of the dialogue on October 22, 1997 to be held at the public plaza of Bgy. Buenavista.

HMC did not attend the said public dialogue (on the proposed resumption of HMC's operations) despite their knowledge and concurrence with the schedule and venue of the dialogue, and despite repeated efforts of the PAMB to fetch HMC's representatives from their mining company's quarters.

During the public dialogue, various stakeholders presented ten manifestos and two resolutions to the CENRO. The manifestoes and resolutions declare the

residents' strong opposition to the resumption of HMC's mining operations citing ecological destruction as the major basis for their opposition. These were noted by CENR Officer Talavera in his letter to the DENR Regional Executive Director for Region VIII. In the same letter, Talavera recommended that HMC "cease and desist" operations until questions on environmental and social acceptability aspects have been adequately addressed.

The minutes of the dialogue on October 22, 1997 reflects PENR Officer Jaca's statements regarding HMC's non-compliance with the three requirements set by the EMB which include (a) setting up of an EGF; (b) creation of the MMT through an MOA; and (c) the conduct of IEC campaign. A glaring violation of the third requirement is HMC's non-attendance in the public dialogue.

During the same public dialogue, a Board member of the Sangguniang Panlalawigan expressed his observation that they could not do anything to stop HMC's mining operations. Board Member Lugay informed the body that the MOA was executed between the HMC and DENR Central Office. Lugay stated his observations that the Sangguniang Panlalawigan's endorsement of the people's resolutions and protests against HMC's mining operations had been endorsed and relayed to the proper bodies, to no avail. He recommended that the residents concentrate their efforts at proper bodies at the Central Offices of the concerned government agencies.

On November 11, 1997, Director Horacio C. Ramos wrote the HMC inquiring about actions being undertaken to address issues being raised against Manicani operations. Enclosed in the letter is the Fr. Dan Ganas' (a parish priest in Manicani Island) letter to then President Fidel Ramos endorsing resolutions signed by residents of the four barangays against the mining operations of HMC.

But before the issues on social acceptability could be resolved, HMC on May 16, 2000, sends heavy equipment to the mining site and attempted to load soil for shipment to Japan. The residents interpreted these moves by HMC as transgressions of the democratic consultation processes. The arrival of additional heavy equipment of HMC in the island prompted the residents to set up a barricade, which continued until the early months of 2001. HMC filed cases against the residents for allegedly setting-up illegal barricades.

On October 12, 2000, Hinatuan Mining Corporation loaded sacks of soil for shipment to Hinatuan and Japan, despite not having settled the issues regarding social acceptability and non-compliance with the ECC requirements.

In March 2001, the 'anti-mining' group was forced to dismantle the barricade. On March 21, 2001, HMC resumes its mining operation amidst the people's opposition and despite not having settled the questions on social acceptability and prior informed consent and other issues.

On Social Development Components

One of the major factors influencing the social acceptability and the granting of prior informed consent is the social development component in mining project proposals. Social development components usually include infrastructure construction, provision of basic social services and other amenities, establishment of training centers and conduct of humanpower development, establishment of livelihood activities and prioritizing the local residents in the hiring or personnel.

A. Employment Opportunities and Prioritizing Local Residents in the Hiring of Personnel

Hinatuan Mining Corporation provides employment to some 200 residents of Manicani on a rotation basis. One-half of which are hired for a period of two weeks in a month, while the other half are hired for the remainder of the period. This hiring on a “rotation system,” is believed to be aimed at spreading the work to as many people thus maximizing the number of people hired and enjoying wages from HMC. However, this could also be interpreted as a means for maximizing support for HMC’s mining operations. The greater the number of people employed, even on a rotation or part-time basis, could help widen mass support for HMC.

Because of the low educational attainment of the residents, they are found occupying the lowest positions in the company. The Manicani residents are hired as driller, spotter, ore breaker, driver and utility personnel (in charge of cooking and laundry). They get salaries consistent with the prevailing minimum wage rates in the region. In 1993, the workers earned the minimum daily wage of P 99.00, P 126.00 in 1996 and P 159.00 in 2000. Some workers enjoy benefits such as SSS, Medicare and Pag-ibig while some do not. The workers narrated enjoying fifty percent of their 13th month pay since the other workers who work half their shift or workload get the other fifty percent of the 13th month pay. HMC conducted a training on driving participated in by twenty residents of Manicani. The trainees were given a daily allowance of P 50.00 while undergoing the training.

The findings point out that those who are in favor of the operations of the HMC are those who are employed by HMC or have relatives employed by HMC. Their economic difficulties and the lack of basic social services in the community have the effect of making some sectors of the population become pro-mining advocates. Given the very limited livelihood opportunities in the region, the employment being provided by HMC to the locals, albeit short term, becomes attractive and viewed as the only means to fulfill their dream of sending the children to school.

Meanwhile, the anti-mining segments of the population calls attention to their situation prior to the pollution caused by the nickel mining operations wherein laterite was released in the air and the bodies of water. Before the mining operations, fishing and farming activities afforded them incomes that afforded them to send their children to school and provide enough food for the needs of the family. The pro-mining cites the decline in the fish catch and agricultural harvests as one of the bases for their agreement to HMC's mining operations. The anti-mining groups, on the other hand, are quick to point out that part of the reason for the decline in agricultural productivity and fish catch, are the pollution caused by HMC's nickel mining operations and their inability to continue with their agricultural activities in farmlands now being mined by HMC or have been adversely affected by the laterite.

Moreover, prior to the mining operations, the residents reported that they had enough swidden gardens and farms devoted to sweet potato and various crops such as fruits and vegetables, which provided for the needs of the family. With the mining operations and the air and water pollution, they were deprived of their sources of agricultural produce for domestic consumption. Whereas before, they only made use of fishing rods near the shore and they are assured of a good amount of fish catch. They remember spending only a small amount of time gathering sea cucumber and shellfishes and the family would have enough to eat with plenty to spare, which they could sell in the markets in the neighboring major islands. They now have to exert extra-ordinary effort and means to earn a living to be able to provide for the needs of the family.

Another factor affecting the tremendous decline in fish catch is the employment of ecologically destructive and illegal fishing technology such as dynamite fishing, fishing using cyanide, sodium and other harmful chemicals, and making use of finely-woven fish nets trapping the small fishes. There is a need to curb the employment of ecologically destructive and illegal fishing methods.

Aside from these, HMC's mining operations is also being perceived as causing the problems in the shortage of water and firewood. Prior to the mining operations, the residents had ample supply of potable water and firewood. With the entry of HMC, for the first time, they find themselves experiencing having to walk great distances to look for firewood and sources of potable water since the nearest water sources have dried up. The water shortage prompted the residents to undertake several drilling experiments to locate water sources and sites for new water wells.

Hinatuan Mining Corporation has implemented a pig dispersal project farming out some eighty piglets to the residents. All those who availed of the project were pro-mining residents since the anti-mining residents refused the livelihood assistance. The resistance is based on their fear that acceptance of the piglets would be taken to mean compromising their position against HMC's

mining operations. As previously mentioned, such small-scale pig-raising activities have been proven as not economically viable.

B. Infrastructure Development and Provision of Basic Social Services

In terms of construction of infrastructure and provision of basic social services and other amenities, HMC provided assistance in the construction of water-sealed toilets in the school by providing the construction materials. HMC also provides ferrying services to the schoolchildren. Pump boats operated by HMC ferry the children who go to school in Guiuan on Monday mornings and fetch them on Friday afternoons. Instead of providing assistance in infrastructure construction such as bridges and barangay roads, residents complain that the trucks and heavy equipment of HMC are responsible for the deterioration of the existing infrastructure in Manicani. The residents have requested fifty sacks of cement as assistance for road repair works. HMC refused and later on provided twenty sacks of cement (instead of the fifty sacks being requested). In 1995, HMC also refused the barangay officials request for assistance to donate water pipes stored at the mining site to the community to be used in improving the community waterworks system. Again, HMC refused saying that they are not extending any assistance at the moment since they have suspended their mining operations. The HMC representative advised the barangay officials to come back when HMC has resumed its operations. These cast doubts on the sincerity of HMC to help Manicani residents in the community development efforts.

On the Employment of Best Practices in Mining Technology

Hinatuan Mining Corporation employs the open pit mining technology of extraction. Open pit mining technology is widely recognized as having tremendous negative ecological impacts and to be among the more ecologically destructive technology for mineral extraction. As previously mentioned, open pit mining has been banned in some countries in the North like the US and Canada.

HMC constructed settlement ponds and siltation ponds/dams intended to minimize the adverse economic, social and ecological effects of the mining operations, especially the pollution caused by laterite. There are no appropriate bodies that would evaluate and assess the adequacy of mitigating strategies and monitor compliance or non-compliance with the provisions contained in the EIS and ECC.

In Manicani, the Community Management Council of Manicani Island (CMCI) was organized. The CMCI is the body intended to address community development and environmental monitoring concerns and activities. The rationale behind the establishment of multipartite monitoring teams is to enhance and encourage substantive and meaningful community/public participation in environmental decision-making and management. However, the fact that CMCI was organized by HMC raises doubts on the independence and impartiality of the

CMCI and thus on its contribution to ensuring substantive and meaningful community participation. Relevant to the encouragement of best practices in mining is the issue of ensuring that the residents of the host community and other stakeholders' have the capability to make competent analysis of highly technical data such as those contained in the EIS, in the EPEP, EWP, ECC requirements etc.

Ecological, Economic and Socio-cultural Impacts

A. Impact on the Environment

The nickel mining operation of HMC is believed to have caused environmental problems such as adversely affecting the soil-geo-chemistry and the flora and fauna in the area.

Manicani Island is considered one of the main breeding grounds in the region of numerous varieties of fishes as well as tortoises; various kinds of shellfishes and sea cucumbers can also be found in the waters surrounding Manicani Island. With the entry of HMC, the residents noticed a tremendous decrease in the volume and varieties of marine life in the area.

The fishes were so abundant that Manicani residents obtain big volumes of fish catch despite employing simple fishing technology and implements such as bow and arrow, spears, fishing rods, nets and later by building fish pens. They also did not have to go far out to sea since the fishes could be found near the shore. Many varieties of shellfishes, seaweeds and sea cucumbers could be gathered on the shores.

Prior to HMC's mining operation, there was abundant supply of materials that were used to make mats. The denudation of the forest as a result of the bulldozing and burning of the forested areas by HMC deprived the people of their sources of free wood and bamboo used to make fish pens, for firewood, house construction and other domestic needs/uses.

The mining operation is perceived to have adversely affected the island's sources of potable water. Manicani Island has several water springs that enabled them to be self-sufficient in terms of potable water supply. With the entry of the mining operation they began to experienced problems with their water sources. Loss of nearby sources of potable water and firewood have made the lives of the people more difficult. They, especially the women, now spend more time fetching water and gathering firewood, time which could have been devoted to livelihood activities or afforded the women a brief rest period.

Mining activities, which entailed bulldozing the mountains, have resulted in the loss of topsoil and thus affecting the fertility of the agricultural land. The water pollution deprived the residents of bodies of water, which were the sites for

their leisure and recreation activities. The mining operation is feared by the residents as possible contributing to the island's vulnerability to landslides, flashfloods and other accidents; this problem is deemed serious by the residents given that Samar is part of the typhoon belt.

HMC's continued mining operation is expected to adversely affect and contribute to the loss of biodiversity, given that Guiuan Eastern Samar (including Manicani Island) was declared in 1994 as a protected seascapes and landscapes of the Philippines by virtue of Presidential Proclamation No. 469.

B. Impact on Sources of Livelihood and Subsistence: Economic Dislocation

The marine life around the Manicani Island area is so rich and abundant that the people only needed to spend a short time catching fishes and other marine life and it would be enough to provide for their domestic consumption with plenty to spare to be sold in the market in the neighboring islands.

HMC's mining operations and the resulting pollution (laterite) adversely affected marine life in the area. The laterite clung to the nets and fish pens, which seemed to have driven the fishes away, killed the corals and resulted in the scarcity of shellfishes, sea cucumbers and other marine life. Thus depriving the residents with their ready source of subsistence and livelihood.

Aside from fishing, the residents engage in gathering sea cucumbers, which could easily be found on the shore and fetches as high as P 800.00 per kilo when sold in the neighboring islands. With the entry of HMC, it was becoming more difficult to find sea cucumbers and shellfishes.

The women also gather seashells, which they string together and make into curtains, earrings and other novelty items. These items are also sold in the other major islands near Manicani. HMC's mining operations is also believed to have caused or contributed to the tremendous decline in the quantity of seashells which used to be found in great abundance on the seashores of Manicani Island, again depriving the women with their source of income.

In recent years, some families ventured into seaweed farming but these were destroyed by the laterite flooding, which came from the HMC's siltation ponds that overflowed. With the destruction of the seaweed farms, the families also lost their income and capital.

Intense competition among the fisher folks, over fishing of the waters and the laterite pollution may have contributed and aggravated the problem of employing harmful fishing methods such as dynamite and cyanide fishing. There is a need to address this serious problem of dynamite and cyanide fishing. The dwindling fish catch and agricultural harvests contributed to

pushing the people to engage in ecologically destructive fishing technology. Moreover, some are beginning to view mining (i.e. being employed by HMC) as a viable economic alternative. There may be a need to remind the residents about the connection between fishing and mining and the adverse impact of mining to further environmental degradation which in turn results in further economic dislocation. Mining and employing ecologically harmful technology such as dynamite and cyanide fishing would only result in more negative consequences on the environment and lead to further economic dislocation.

The residents report that most of the fields have been bulldozed or burned destroying all the crops. HMC did not even ask the permission nor inform the residents that they will conduct burning of the fields to give way to the mining operations. The residents were deprived of their agricultural farms and swidden gardens, which were their sources for crops for domestic consumption such as sweet potato, fruits such as pineapple, jackfruit and vegetables.

After the start of the mining operation of HMC, and the consequent exposure of laterite, the residents noticed that the fields and crops were covered with they red earth during summer and red mud during the rainy season. The dusts from the nickel mines settled on the crops. The residents observed that it was during the operations of the mines that they first noticed that the growth of the crops appeared to be stunted thus severely affecting the harvest. For the first time, there was no harvest of sweet potato and coconuts, when they used to be in great abundance prior to the mining operation. The farmers feel that agricultural work is useless and a waste of their time since the fields will be bulldozed anyway or the crops will be exposed to laterite, thereby limiting the growth of the crops.

The bulldozing and burning of the mountains conducted related to open pit mining, also deprived the residents, especially the women, of their sources of raw materials, *tikog* and *bariw*, used for weaving mats, Thus depriving them of a source of supplemental income.

The residents also report accidents involving the cows falling into the deep open pits of HMC resulting in loss of beasts of burden, domestic animals and loss in incomes from these animals. The residents fear that the accidents could later involve not just cows and domestic animals, but could also involve children falling into the deep pits/trenches of HMC.

C. Health

The mining operations and the attendant pollution were perceived as causing the sudden rise in the incidence of cough and colds, and other respiratory diseases, especially among the young population. At the height of the mining operations, which involved massive earth movement—open pit diggings, hauling and shipment of soil and the traffic of truck and heavy equipment vehicles—almost all the children in the communities suffered from respiratory ailment.

Gendered Impact: Increased Burden on the Women

The loss of nearby sources of potable water and firewood, have made the lives of the people more difficult. They, especially the women, now spend more time fetching water and gathering firewood, time which could have been devoted to livelihood activities or afforded the women a brief rest period. Being the primary caregivers and homemakers or home managers, they are also the ones who carry the burden of caring for the sick, especially during the outbreak of respiratory diseases in Manicani, which is attributed to the mining operation of Hinatuan Mining Corporation. The loss in the means of subsistence and livelihood for both the men and the women, have made the task of managing the home and caring for the family more difficult.

In terms of decision-making, the political campaigns in the struggles related to the issue of mining provided the women with opportunities to take a more active role in the decision-making processes, with some of them even taking on leadership roles in the community organizations.

Polarization

The mining operations caused deep divisions among the residents pitting neighbors against neighbors and kin against kin. The conflict has become very intense that it resulted in the death of an engineer, Engr. Ariarte, employed by HMC, during a violent confrontation between anti-mining and pro-mining groups. The parish priest, Fr. Dan Ganas, has since been reassigned after several incidents of harassment and threats from people believed to be affiliated with the 'pro-mining' group.

People's Initiatives Against the Mining Operations of HMC

The following are some of the protest actions and other initiatives of the residents of Manicani Island:

- The San Lorenzo Parish Pastoral Council of Buenavista, Guiuan, Eastern Samar, promulgated Resolution Number 01, S-97 which states the residents' opposition to the resumption of HMC's mining operations;

- On July 28, 1997, the Southern Samar Advocacy Forum released a resolution endorsing and supporting the above-mentioned resolution (Res. No. 01, S-97);
- On August 19, 1997, the Presbyterium of the Diocese of Borongan adopted a resolution, endorsing Res. No. 01, S-97, urging the National Government through its instrumentalities to revoke the license and permit granted to the HMC;
- October 20, 1997, the Bgy. Officials and Members of the PAMB and the inhabitants of Bgy. San Antonio in Tubabao Island, Guiuan, Eastern Samar signed a Manifesto expressing their unequivocal and collective opposition to the resumption of HMC's operations citing ecological degradation, economic dislocation and negative impacts on health as bases;
- April 22, 2000, some 421 Residents (breakdown: 128 in Bgy. San Jose, 125 in Buenavista, 84 in Bgy. Banaag and 84 in Bgy. Hamorawon) of Manicani, Island released a manifesto opposing the resumption of operations of HMC;
- May 12, 2000, the Governor of Eastern Samar, Ruperto Ambil, Jr., initiated a dialogue between Manicani residents and HMC, which resulted in coming up with an agreement that no mining activity shall take place until such time that "the residents express their approval on May 19, 2000." (May 19, 2000 is the schedule of Sangguniang Bayan consultation-meeting regarding the social acceptability of HMC's mining operations)
- On May 16, 2000, HMC pre-empts the scheduled consultation-meeting on social acceptability, by sending heavy equipment to the mining site; this was interpreted by the residents as a transgression of democratic processes and thus casts doubts on the sincerity of HMC;
- In May 2000, Manicani residents (anti-mining) set up a barricade to prevent the resumption of operation of HMC; this was in response to HMC's deployment of additional heavy equipment in the island (the barricade continued until the early months of 2001);
- On May 18, 2000, a letter of protest from the Social Action Commission was sent to Mr. Federico Ganigan, VP for Operations of HMC. The letter strongly protests recent actions of field officers of HMC, which the residents consider as violations of the consensus reached during the May 12, 2000 dialogue in Bgy. San Jose;
- On May 19, 2000, the Sangguniang Bayan unanimously disapproved the resumption of mining operations of HMC. Of the 62 members of the Association of Barangay Captains (ABC) present, only one Bgy. Captain voted for the approval of resumption of HMC's mining operations;

- On October 8, 2000, a police detachment was set up near the site of the barricade; the police detachment is located some 100 meters away overlooking the barricade site;
- On October 12, 2000, despite not having settled the issues regarding social acceptability and non-compliance with the ECC requirements, Hinatuan Mining Corporation loaded sacks of soil for shipment to Japan; and
- On October 13, 2000, confrontations between pro-mining and anti-mining groups at the demo farms resulted in the death of Mining Engineer Ariarte.

SUMMARY OF FINDINGS and CONCLUSION

Residents of host mining communities, indigenous peoples groups, various stakeholders, environmentalists and political activists are divided on the issue of the Philippine Mining Act of 1995. Some groups are pushing for the repeal of RA 7942, while others are of the opinion that it is a better law compared to the old mining code.

On the one hand, some IP groups and IP rights advocates assert blanket rejection of RA 7942 on the basis that the “spirit” or intent and provisions of RA 7942 contradicts the concept of ancestral domain rights of the indigenous peoples. Others reject RA 7942 because it opens up vast tracts of lands to local and multinational mining corporations thus contributing to the further dispossession and disenfranchisement of the disadvantaged lower classes and indigenous peoples, whose ancestral lands are usually the objects of applications for mining grants. Some groups reject the liberal mining code on account of the expected negative ecological, economic and socio-cultural impacts. While others reject RA 7942 because of its “overly” liberal provisions and incentives being offered, such as: the wide area of coverage (as much as 81,000 hectares); the length of time of the effectivity of FTAA and MPSAs (25 years effectivity and renewable for another 25 years); tax holidays for five (5) to ten (10) years; tariff free importation of equipment and tools; investment guarantees such as full repatriation of investments, full remittance of earnings and freedom of expropriation.

On the other hand, there are some sectors that hail RA 7942 (Philippine Mining Act of 1995) as a progressive piece of legislation. According to them, it contains some “positive” elements, among which are provisions on social acceptability and the concept of prior informed consent; the encouragement of the employment of best practices in mining technology; and provisions related to social development and safety nets.

The research findings point to the need for a more intensive review of RA 7942 to be participated in by the broadest possible spectrum of civil society. The

review being proposed is aimed towards forging a consensus on the issue of the Philippine Mining Act of 1995. It is further suggested that the review process take into consideration the issues on the limitations and weaknesses of RA 7942 raised in this study.

On Social Acceptability and Free and Prior Informed Consent

The Implementing Rules and Regulations of RA 7942 requires the conduct of public information campaign to inform the host communities of the proposed mining project and thereby obtain the community's consent. The acquisition of prior informed consent is supposed to be "free from fraud, external influence and manipulations."

The provision requiring social acceptability and establishing prior informed consent is considered by some as progressive/positive because of the possibility of being used by indigenous peoples and other host communities as a bargaining tool against the mining corporation. However, there are issues raised in relation to the feasibility of the provisions on social acceptability and acquisition of prior informed consent, being used as leverage by the would-be host mining communities.

The findings suggest that the possibility of using social acceptability and prior informed consent as a bargaining instrument or leverage to obtain concessions and commitments from the mining corporations can be very limited on account of various social (structural) factors. The option of exercising the right to prior informed consent is not very feasible given that the indigenous peoples are suffering from underdevelopment and subjected to national oppression, social and economic inequities, and government neglect.

Moreover, the findings suggest that the acquisition of 'prior informed consent' is beset with irregularities. In some cases, mining corporations do not even bother to comply with the requirement of public information campaigns such as conducting public dialogues to inform the community and get their consent to mining project. Confronted with strong public protests, some mining companies eventually conduct public dialogues but they resort to tactics that would influence the public opinion in their favor and thus help ensure the community's consent to the project. They employ strategies such as restricting attendance to the public dialogue to those who are known to be in favor of the proposed mining project and/or preventing those opposing the mining project from presenting their arguments against the mining project. The mining corporations also resort to bribery, deception, manipulation and even in some cases intimidation and violence.

In the case of nickel mining project in Manicani Island, Eastern Samar, Hinatuan Mining Corporation (HMC) restricted the attendance to a public dialogue to those who are in favor of their mining project. "Anti-mining"

advocates were not allowed to enter the room where the public dialogue was being held. On another occasion, HMC provided short notice of dialogue to the group known to be opposed to mining. HMC informed the “anti-mining group” of the dialogue the day before the scheduled date for the dialogue. On another occasion, HMC representatives did not attend a public dialogue attended by groups known to be against the mining project, despite their knowledge of and mutual agreement to the schedule of the dialogue. Moreover, HMC personnel ignored the summons and attempts to fetch them from the mining camp to the barangay plaza where the dialogue was to be held.

In the case of the gold-copper project in Didipio, Kasibu, Nueva Vizcaya, CAMC (Climax Arimco Mining Corporation) resorted to hiring all the barangay officials to serve as community liaison personnel or in various positions prior to the execution of a memorandum of agreement between CAMC and the barangay council granting consent to CAMC open pit mining operations. The barangay officials of Didipio who were given employment reportedly received monthly salaries not lower than five thousand pesos. It was found out that the barangay chairperson receives a monthly salary of P 10,500.00 while the other members of the barangay council receive salaries ranging from P 5,000.00 to 7,500.00. This raises serious questions on the process of establishing social acceptability of the mining project. The credibility of the barangay officials who executed the MOA and who were in the employ of HMC is now being questioned. They are perceived to be beholden to CAMC.

On Best Practices

To date all FTAA and MPSA applications will employ open pit mining or a combination of open pit and other methods of extraction. Open pit mining is not considered ‘best practice.’ On the contrary, open pit mining has been banned since the 1970s and 1980s in countries like the US and Canada on account of the adverse ecological and social impacts. It is only allowed in unpopulated areas like deserts. This belies the claim that RA 7942 indeed encourages the employment of best practices.

On Social Community Development

The provisions of the RIIR of the Mining Act of 1995 require the conduct of skill development training should there be a need for it. The specific provisions call for the implementation of development assistance for mining technology and geosciences and the corresponding manpower training and development and the establishment of training facilities for “manpower” development for mine employees as well as for the other members of the community. Other provisions stipulate the establishment of livelihood industries; providing assistance in the creation of self-sustaining income-generating activities (IGA), and/or preservation and enhancement of traditional self-sustaining IGA.

CAMC made the commitment to conduct the necessary skills training for prospective employees from the local community should there be a need. In response to the thrusts of “manpower” training and skills development, CRO personnel claim that CAMC had implemented the following training and livelihood projects:

- training on driving and operating heavy equipment (e.g. pay loaders, backhoe and bulldozers);
- tilapia raising;
- mushroom culture;
- backyard gardening;
- cattle and goat breeding;
- and a pig dispersal project.
- There are proposals for the conduct of training on ‘beauty culture,’ baking, food processing, etc.

CAMC has also conducted several seminars e.g., project proposal making, bookkeeping, accounting, organizing and business strategies, business and financial management training, a “how to invest your money” to help residents who have received compensation packages from CAMC. There are no available data on the assessment/evaluation of these skills training and seminars. There are also serious questions pertaining to CAMC’s credibility to provide guidance as regards “appropriate investments” given that CAMC itself has implemented a very small-scale pig dispersal project, which studies have shown to be not economically viable.

There is a need to remind the community that the implementation of these social/community development projects does not stem from the generosity of the mining corporations. The costs entailed in implementing these programs and projects are negligible compared to the hundreds of millions of dollars they expect to earn from the mining venture. Moreover, the expenses for these social development components are deductible from the gross earnings and will therefore affect the computations of the shares in the earnings that would accrue to the community as well as to the government.

CAMC has identified Community Based Forest Management (CBFM) and Steep Agricultural Land Technology (SALT) as possible approaches that could be explored with government agencies like the DENR and the Department of Agriculture (DA). CAMC commissioned Coffey Partners, Inc. to draft the Community Business Development Plan.

There are questions being raised regarding the appropriateness, viability, sustainability, gender and cultural-sensitivity of programs, projects and of the Community Business Development Plan. For example, anti-mining groups question the viability and sustainability of these projects after the ecological impact of the mining operations. These development plans, needless to say, are

within the context of mining, i.e. revolves around the development of mining in the area, precluding development alternatives other than mining. There is a need to evaluate these development plans taking into consideration several criteria of ecological sustainability, equity, and gender equality among others.

There are also issues related to the process of the drafting and implementation of the Community Business Development Plan. In 1997, CAMC commissioned Coffey Partners Incorporated to prepare the Community Business Development Plan. In March 1997, two consultants from Coffey discussed the community development plan with representatives from the CRO and three members of the Barangay Council. In the said consultation, the Barangay Council members shared the community's needs and aspirations with the Coffey consultants. Given that this is the process adopted in the crafting of the community development plan, questions are being raised regarding the participatory nature of the process. Specifically, there are questions related to the form and degree of participation of the community residents and whether this participation can be considered substantive or mere tokenism.

One major issue that needs to be addressed is in relation to substantive participation in environmental management and decision-making process. Among the major issues that need to be addressed is the question of who has the power or authority over the various structures and processes in decision-making. Under the present mining code, it is the President of the Republic of the Philippines who approves FTAA applications. It is the DENR Secretary and Directors of the EMB, MGB and other government line agencies, which play the decisive roles in granting ECCs, exploration permits and other mining agreements. Under the existing mining code, major stakeholders as indigenous and forest peoples communities and other host communities do not have a vote and representation to the body that recommends the granting or denial of ECC (as well as FTAAS, exploration permits and other mineral agreements).

A progressive mining code should engender increased public participation in environmental decision-making and management. These principles are the same spirit behind DAO 37 (series of 1996). DAO 37 defines public participation as:

a transparent, gender-sensitive, community based process involving the broadest range of stakeholders, commencing at the earliest stage of the project design and development, and continuing until post assessment and monitoring which aims to ensure the social acceptability of the project or undertaking.

There is also the need to ensure that the best or most appropriate methods are employed in the conduct of public consultation activities so as to maximize genuine and substantive community participation.

This may be difficult to accomplish given the pressures from multilateral development and finance institutions and international trade regimes controlled by entities whose interests are premised on liberalization. Moreover, the vast resources of multinational mining corporations are used to lobby senators and congressional representatives to enact mining legislation favorable to the mining companies. The situation becomes even more complex when you have politicians and appointed officials in high government positions that have vested interests in mining.

Research findings points to the need for a more in-depth study on graft and corruption and environment, specifically in relation to mining. The DENR ranks high in the list of graft-ridden agency. Mining, being one of the very lucrative sub-sectors, is prone to graft and corrupt practices. Investigative reports on corruption by the Philippine Center for Investigative Journalism (PCIJ, 2000) found out that many of the cases of corruption in the DENR revolve around the issues of “irregularities that arise from flawed policies, ineffective implementation of policies, the political influence wielded by powerful officials, or the lobbying of corrupt officials within the DENR.”

At the local level, DENR personnel at the regional offices and field personnel, together with personnel of the mining companies, are reported to be taking active and aggressive roles in convincing the people to accept the mining project. Granting that the DENR officials and employees are not engaged in any wrongdoings, an examination of the decision-making structures and processes establishes that the community residents are at a disadvantage. The residents of host communities, usually indigenous/forest peoples, who are the most affected from among the different stakeholders, have limited substantive participation in the decision-making processes.

For Manicani Island, there is an urgent need to address the problem of employment of illegal and ecologically destructive fishing methods such as dynamite and cyanide fishing. The employment of these methods contribute in environmental degradation which in turn cause the decline in the fish catch and income of the residents of Manicani Island who depend on the sea for their livelihood and survival. For Didipio, Kasibu, Nueva Vizcaya, there might be a need to explore agricultural technology that are more environment friendly such as organic farming.

Socio-Economic and Ecological Impacts

A. Impact on the Environment

HMC's continued mining operation is expected to adversely affect and contribute to the loss of biodiversity, given that Guiuan Eastern Samar (including Manicani Island) was declared in 1994 as a protected seascapes and landscapes of the Philippines by virtue of Presidential Proclamation No. 469.

- The nickel mining operation of HMC is believed to have caused environmental problems such as adversely affecting the soil-geo-chemistry and the flora and fauna in the area
 - Manicani Island is considered one of the main breeding grounds in the region of numerous varieties of fishes as well as tortoises; various kinds of shellfishes and sea cucumbers can also be found in the waters surrounding Manicani Island. With the entry of HMC, there was a tremendous decrease in the volume and varieties of marine life in the area;
 - Prior to HMC's mining operation, there was abundant supply of local materials such as the *tikog* and bariw that were used to make mats;
 - The mining operation is perceived to have adversely affected the island's sources of potable water. Manicani Island has several water springs that enabled them to be self-sufficient in terms of potable water supply. With the entry of the mining operation they began to experienced problems with their water sources;
 - Mining activities, which entailed bulldozing the mountains, have resulted in the loss of topsoil and thus affecting the fertility of the agricultural land;
 - The water pollution deprived the residents of bodies of water, which were the sites for their leisure and recreation activities;
 - The mining operation is feared by the residents as possible contributing to the island's vulnerability to landslides, flashfloods and other accidents; this problem is deemed serious by the residents given that Samar is part of the typhoon belt; and
 - The dwindling fish catch and agricultural harvests contributed to pushing the people to engage in ecologically destructive fishing technology. Intense competition among the fisher folks, over fishing of the waters and the laterite pollution may have contributed and aggravated the problem of employing harmful fishing methods such as dynamite and cyanide fishing. There is a need to address this serious problem of dynamite and cyanide fishing.

For Didipio, the proposed Gold/copper mining project of CAMC is located at the center of the Addalam River Watershed Area thereby posing threats to the ecosystems of the areas in the Provinces of Nueva Vizcaya and Quirino, which are to be affected by the mining project.

B. Impact on Sources of Livelihood and Subsistence

The residents of Manicani Island in Eastern Samar were deprived of their sources of subsistence and livelihood.

- The denudation of the forest in Manicani Island as a result of the bulldozing and burning of the forested areas by HMC deprived the people of their sources of free wood and bamboo used to make fish pens, for firewood, house construction and other domestic needs/uses;
- HMC's mining operations and the resulting pollution (laterite) adversely affected marine life in the area. The laterite clung to the nets and fish pens, which seemed to have driven the fishes away, killed the corals and resulted in the scarcity of shellfishes, sea cucumbers and other marine life. Thus depriving the residents with their ready source of subsistence and livelihood;
- the residents engage in gathering sea cucumbers, which could easily be found on the shore and fetches as high as P 800.00 per kilo when sold in the neighboring islands. With the entry of HMC, it was becoming more difficult to find sea cucumbers and shellfishes;
- HMC's mining operations is also believed to have caused or contributed to the tremendous decline in the quantity of seashells which used to be found in great abundance on the seashores of Manicani Island, again depriving the women with their source of income. The women gather seashells, which they string together and make into curtains, earrings and other novelty items. These items are also sold in the other major islands near Manicani;
- some families ventured into seaweed farming but these were destroyed by the laterite flooding, which came from the HMC's siltation ponds that overflowed. With the destruction of the seaweed farms, the families also lost their income and capital.
- The residents report that most of the fields have been bulldozed or burned by HMC destroying all the crops. The residents were deprived of their agricultural farms and swidden gardens, which were their sources for crops for domestic consumption such as sweet potato, fruits such as pineapple, jackfruit and vegetables;

- The residents observed that it was during the operations of the mines that they first noticed that the growth of the crops appeared to be stunted thus severely affecting the harvest. For the first time, there was no harvest of sweet potato and coconuts, when they used to be in great abundance prior to the mining operation. The farmers feel that agricultural work is useless and a waste of their time since the fields will be bulldozed anyway or the crops will be exposed to laterite, thereby limiting the growth of the crops.

C. Impact on Health

The mining operations and the attendant pollution were perceived as causing the sudden rise in the incidence of cough and colds, and other respiratory diseases, especially among the young population. At the height of the mining operations, which involved massive earth movement—open pit diggings, hauling and shipment of soil and the traffic of truck and heavy equipment vehicles—almost all the children in the communities suffered from respiratory ailment.

Gendered Impact: Increased Burden on the Women

The loss of nearby sources of potable water and firewood, have made the lives of the people more difficult. They, especially the women, now spend more time fetching water and gathering firewood, time which could have been devoted to livelihood activities or afforded the women a brief rest period. Being the primary caregivers and homemakers or home managers, they are also the ones who carry the burden of caring for the sick, especially during the outbreak of respiratory diseases in Manicani, which is attributed to the mining operation of Hinatuan Mining Corporation. The loss in the means of subsistence and livelihood for both the men and the women, have made the task of managing the home and caring for the family more difficult.

In terms of decision-making, the political campaigns in the struggles related to the issue of mining provided the women with opportunities to take a more active role in the decision-making processes, with some of them even taking on leadership roles in the community organizations.

Polarization

The entry of the mining corporations in the community has contributed to social disorganization. Social solidarity and cohesion has been greatly undermined by the conflicts related to the issue of the mining project. The mining operations caused deep divisions among the residents pitting neighbors against neighbors and kin against kin. No amount of Environmental Guarantee Fund can help rebuild social relationships that have been severely damaged.

In Manicani Island, the conflict has become very intense that it resulted in the death of an engineer, Engr. Ariarte, employed by HMC, during a violent confrontation between anti-mining and pro-mining groups. The parish priest, Fr. Dan Ganas, has since been reassigned after several incidents of harassment and threats from people believed to be affiliated with the 'pro-mining' group.

The local residents both in Didipio, Kasibu, Nueva Vizcaya and Manicani Island, Eastern Samar have to contend with the problem of resolving the conflicts, rebuilding relationships and restoring the social solidarity that has been undermined by the conflicts spawned by the mining projects in the community. Beyond the research cycle and the advocacy campaigns, and maybe even after the departure of the mining company, the community members are left behind to deal with the wounds inflicted by the social conflict and struggles brought about by the entry of mining.

RECOMMENDATIONS

A. Position on RA 7942

The participants to the CASA Thematic Workshop on IPs and Environment reject RA 7942 on the basis that it is within the premise of liberalization and structural adjustment. However, there is acknowledgement that RA 7942 is a 'better' mining code than the previous ones, mainly on the basis of provisions in the area social acceptability and free and prior informed consent. The participants support the recommendation for a more intensive review of RA 7942 aimed towards building a wide consensus. It was suggested that the review process should draw out issues and themes, which are critical in crafting/drafting the alternative mining code. It was pointed out that the critique of the law and the advocacy points should be in the form of a policy instrument which could be the basis of an alternative mining code. It was suggested that the conduct of the policy review should also serve as a venue for establishing consensus on the critique of the mining code and on the advocacy points. Moreover, the participants took note of the need of developing a broad front movement propelled by the issues of mining and liberalization.

It was pointed out that there are disadvantages in using RA 7942 in drafting an alternative and genuinely progressive mining code. Working within the framework of RA 7942 might be counter-productive or self-defeating in the eventuality of calling for its repeal and proposing an alternative mining code. It was noted that the RA 7942 was designed having in mind the interests of the (foreign) mining corporations and not the welfare of the would-be host mining communities. Thus there is the danger of not being able to escape the 'traps' and loopholes of RA 7942.

Instead of immediately making an outright stand or call for either the repeal or amendment of RA 7942, there was a suggestion that the review process be a venue to explore recommendations for a new mining code or for specific provisions that should be included in an alternative mining code. It was further suggested that perhaps the best strategy to be employed is to use other laws to circumvent or undermine the Mining Act, e.g. constitutional provisions on the rights of indigenous peoples to their ancestral domain and to self-determination. There is a need to conduct a scanning of the policy environment; review related laws that could be used against RA 7942, e.g. NIPAS, provisions in the Local Government Code, articles in the Philippine Constitution, Indigenous peoples Rights Act (IPRA), the Comprehensive Agrarian Reform Program (CARP). There is also a need to look into other laws that could be used to strengthen or support 7942, e.g. former DENR Secretary Cerilles' Executive Orders (EOs) on liberalizing ECCs and former Pres. Estrada's EOs barring the lower courts from issuing TROs on so-called 'national priority projects,' which includes infrastructure and mining projects.

B. On Social Acceptability and Free and prior Informed Consent

The liberal concept of (free) prior informed consent assumes that the negotiating parties are on equal footing. Given the structural inequities, the provisions on social acceptability will only work under certain conditions—e.g. the community is highly politicized or must have a certain degree of political consciousness.

Since the areas opened up for mining explorations are the areas most neglected by government in terms of social services, there is a need to bring in the issue of governance. The role of government must be included in the analytical framework. Basic social services must be a given in the community to minimize undue advantage or the leverage of the mining corporation (huge resources that can be used to provide social services). Thus civil society organization's (CSO) role is crucial in advocating that government perform its work for the welfare of the people.

Prior informed consent or at least the idea that the affected community/people should be part of the approval and monitoring or regulatory process is indispensable. Given the weakness or virtual absence of government (national government) in these areas, the provisions on social acceptability and prior informed consent, albeit the limitations, are the only leverage left to the affected communities. That is why the process should be one that is truly "free from fraud, external influence and manipulations;" and which the community is comfortable with, that effectively empowers it, and is based on local culture and processes.

Given these contexts, the need to institutionalize 'social acceptability' becomes priority agenda. The review will explore the possibility and work

towards the institutionalization of 'social acceptability,' not just in the alternative mining code to be drafted but also as a separate law on social acceptability.

There is a need for a set of clear guidelines for 'allowable' and 'non-allowable' strategies or tactics in obtaining prior informed consent to ensuring that community consent was obtained "free from fraud, external influence and manipulation." The review (of RA 7942) should come up with a clear set of guidelines on social acceptability and free and prior informed consent. The set of guidelines is like a 'checklist of the DOs and DONTs and HOW TOs of social acceptability.' The guideline should address the following issues: (a) who should be involved in the acquisition of social acceptability and free and prior informed consent; (b) appropriate mechanisms and processes for establishing social acceptability; (c) appropriate indicators or measures of social acceptability; (d) valid proofs of social acceptability, etc. There is also the need to ensure that the best or most appropriate methods are employed in the conduct of public consultation activities so as to maximize genuine and substantive community participation.

Another area to be addressed by the review is to come up with recommendations for provisions on mechanisms and procedures that would enable the local communities to have substantive powers to recommend for the rejection or termination of mining grants or cancellation of ECCs, especially in cases of negative impacts and or the mining corporation's non-compliance with requirements, such as the experience in Manicani Island in Samar.

It was noted that Gaia South, a firm headed by former DENR Secretary Fulgencio Factoran, Jr. was one of the consulting firms hired by CAMC. It was observed that liaison personnel who are from the community have undergone intensive training under these environmental consultancy firms. Given the vast resources at the disposal of the mining corporation to hire consultant groups there is a need to constitute a technical group (from the CSO) especially on technical matters (social sciences and physical sciences), as well as on legal matters, that would provide assistance to the community. Four members of the CASA workshop group on IPs and Environment have volunteered to be part of the Technical Pool. These participants have background on metallurgical engineering, geology and biology.

The review process is also expected to come up with recommendations on how CSO (from within and outside) can best provide assistance to the communities confronting these issues. It was also suggested that all possibilities be explored on how to maximize all factors and actors, e.g. regional development councils, local government units, etc. For example, it was pointed out that the Provincial Development Plan of Nueva Vizcaya explicitly banning large-scale mining in the province.

Open pit mining is not considered 'best practice' and has been banned in since the 1970s or 1980s in many countries like the US and Canada. Open pit is allowed only in unpopulated areas like deserts.

CAMC claims that it will not use mercury or cyanide in processing the minerals. There is a need to conduct further investigation if it is really possible to process gold and copper without using cyanide and mercury. There is also a need to follow up results of inquiries regarding the reagents to be used by CAMC in its flotation and gravity method. Granting that CAMC can indeed process the copper and gold without using cyanide and mercury, the community should strictly monitor CAMC's compliance. Given that a company's mining project would entail huge investments running in the hundreds of millions of dollars, the logical tendency is to maximize recovery of investments by using the most "cost-efficient" technology in order to maximize profits. The host communities should guard against the possibility of the company cutting-corners and not strictly employing the purportedly more ecological-friendly mining technology. Thus the need for vigilance on the part of the residents in monitoring the mining company's activities, and strict compliance with the provisions in the EIS and the ECC. There was a suggestion to investigate CAMC's track record in other countries. We can seek the help of CSO contacts and networks in Australia.

There is a need for more appropriate monitoring structures and mechanisms that would contribute to ensuring democratic participation of all the stakeholders. Relevant to the encouragement of best practices in mining is the issue of the residents of the host community and other stakeholders' capability to make competent analysis of highly technical data such as those contained in the EIS, in the EPEP, EWP, etc. These bodies should be provided with the necessary logistics. For example, the representative/s from the community residents, POs, NGOs, indigenous people's community should be able to engage the services or seek the assistance of impartial and credible technical expert/s who could help them in making evaluations and assessments on technical matters related to the mining project. It is in this area that the technical group to be constituted would be extremely helpful.

There are questions raised regarding the composition of the MMT and the MRF Committee and on the issue of substantive participation possible within these decision-making bodies. The residents in host mining communities report that mining corporations ensure that only those who are in favor of mining are appointed to the MMT and MRF.

For Manicani Island, there is an urgent need to address the problem of employment of illegal and ecologically destructive fishing methods such as dynamite and cyanide fishing. The employment of these methods contribute in environmental degradation which in turn cause the decline in the fish catch and income of the residents of Manicani Island who depend on the sea for their

livelihood and survival. For Didipio, Kasibu, Nueva Vizcaya, there might be a need to explore agricultural technology that are more environment friendly such as organic farming.

Recommendation for Further Research

Research findings points to the need for a more in-depth study on graft and corruption and environment, specifically in relation to mining. The DENR ranks high in the list of graft-ridden agency. Mining, being one of the very lucrative sub-sectors, is prone to graft and corrupt practices. Investigative reports on corruption by the Philippine Center for Investigative Journalism (PCIJ, 2000) found out that many of the cases of corruption in the DENR revolve around the issues of “irregularities that arise from flawed policies, ineffective implementation of policies, the political influence wielded by powerful officials, or the lobbying of corrupt officials within the DENR.”

At the local level, DENR personnel at the regional offices and field personnel, together with personnel of the mining companies, are reported to be taking active and aggressive roles in convincing the people to accept the mining project. Granting that the DENR officials and employees are not engaged in any wrongdoings, an examination of the decision-making structures and processes establishes that the community residents are at a disadvantage. The residents of host communities, usually indigenous/forest peoples, who are the most affected from among the different stakeholders, have limited substantive participation in the decision-making processes.

Concrete Responses to the Plight of the Two Communities of Didipio, Kasibu, Nueva Vizcaya and Manicani Island in Eastern Samar: Recommendations and Action Points

A. Networking

Efforts will be geared towards constituting a working group, hopefully at the national level, which will oversee the campaign against the mining projects in Didipio, Kasibu, Nueva Vizcaya and Manicani Island in Eastern Samar. The network to be formed could eventually be transformed in the future into a task force on mining, not limited to issues in the two geographic areas. The network could then conduct multi-pronged advocacy: legal, technical, investigative, and media work to project the issue at the national and international levels.

As of the last thematic workshop held on March 27, 2001, among the organizations which have signified intentions to assist the communities in various areas include: Task Force Detainees (TFD); Philippine Rural Reconstruction Movement (PRRM); Cooperatives Foundation of the Philippines, Inc. (CFPI); and

Institute for Studies in Asian Church and Culture (ISACC), Freedom from Debt Coalition (FDC) and Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK). From this initial offer of participation, it appears that the campaign to be launched would have legal and advocacy components. It was suggested that the initial campaign to be fleshed out by the network cover at least the period from May to December 2001. An initial meeting of the task force was scheduled to discuss the functions and structure of the task force. Part of the agenda of the initial meeting set on April 19, 2001 covers campaigns for the commemoration of Earth Day.

A Technical Support Group will also be constituted to assist the residents of communities targeted for mining exploration. As of the last thematic workshop, initial volunteers to this group were Ian Rivera (TFD) and Mon Padilla (CFPI) who have backgrounds on metallurgical engineering, Doy Orozco (PRRM) who is a biologist and Ezra Martinez (ISACC) who is a geologist. Other volunteers will be invited to become part of the technical support group. The function of the technical support group and its relationship to the task force on mining could be clarified during the groups initial meeting. It was suggested that the task force and technical working group meet together. A meeting was scheduled on April 19, 2001 at 9 am at the FDC office.

B. Development of IEC and Advocacy Materials

The task force will come up with an information kit for the campaign. The information kit would contain the CASA statement, a more popular version of the research findings, which could come in the form of stories of the cases of Didipio and Manicani Island, as well as the story of the successful campaign against the mining operations of Rio Tinto Zinc and Toronto Ventures, Inc. in Western Mindanao. The information kit could also include fact sheets, petition letters and statements of the residents in the communities targeted for mining exploration. Preparation of an information kit, which is periodically updated, is envisioned to facilitate the exchange of information among the would-be mining communities. Didipio, Manicani Island and DIOPIM could exchange their stories among themselves so each community can learn from the others' experience, especially in how to successfully struggle against a foreign mining company.

C. Campaigns

A concerted campaign will be conducted to halt mining operations in both Didipio and Manicani Island with the following thrusts and components:

- Creating national and international pressure on the mining firms concerned;
- Popularizing the CASA research findings on the issue (i.e., telling the story of the two communities), which could help generate support for the campaign against the mining projects;
- Engage in an international campaign to provide information to potential investment partners of the mining corporations to discourage them from participating in the mining venture in the Philippines; in the case of CAMC's Didipio Gold/Copper mining project, this is timely since CAMC has finished its exploration stage and seeking potential investors to finance its mining operations;
- A statement or petition against the mining projects would be issued containing the CASA position on RA 7942 and the two communities' plight and resistance. DESAMA (Didipio Earth Savers' Movement Association) has already prepared a statement, it was suggested that this be broadened to include the Manicani Island situation. LRC and ELAC could assist in the drafting of the statement or position paper. The statement or position paper is targeted to come out on April 19, 2001. It was also suggested that the said statement/petition be submitted to the newly appointed DENR Secretary Heherson Alvarez, who is one of the authors of the mining code, to serve as test case on how he would position on the issue;
- The CASA network would assist DESAMA and Save Manicani Movement (SMM) in media liaison work—how to tap media to project the plight of the two communities to generate public opinion and public support;
- Holding of a Focal Activity on Earth Day (April 22, 2001). In Didipio, DESAMA would mobilize for a four-day rally, from April 17 to 20, 2001, in Cauayan, Isabela related to the Earth Day commemoration/celebration and the coal mining operations in the area. Another suggestion was the holding of a rally at the DENR, where participants would bring mud at the gates of the DENR to symbolize the destruction caused by mining operations. There was also a suggestion to coordinate with other environmental groups for the Earth Day Celebrations and other environmental campaigns; other creative activities and campaigns would be conducted in order to maximize media coverage and thus project the anti-mining campaign;
- In Manicani Island, there is an urgent need for specific intervention to put a stop to HMC's mining operations, which has resumed on March 19, 2001; HMC is reportedly operating even without a new ECC; there is a need to mitigate the

environmental damages brought about by HMC's nickel mining project, before the ecosystems become irreparably damaged.

¹ Bello, Walden. *The Philippines The Making of a Neo-Classical Tragedy*, paper presented at the Conference *From Miracle to Meltdown*, 1999. Also in Walden Bello, *Addicted to Capital: The Ten-year High and Present-day Withdrawal Trauma of Southeast Asian Economies*, November 1997).

² Chavez-Malaluan 1996: 9, as cited in Bello: 1999.

³ Ibid.

⁴ Ibid.

⁵ Bello, loc cit., 246.

⁶ J. Esguerra, as cited in Bello, Figures provided by Esguerra, 1997.

⁷ Bondoy, 1997, as cited in Bello.

⁸ Landingin, Anna Lorraine, A Compendium on the Philippine Mining Act of 1995 and Human Rights, Task Force Detainees of the Philippines. June 1998.

⁹ Philippine Mining Conference 1997, as cited in Walpole, 1999.

¹⁰ Ibid.

¹¹ Ibid.

¹² ***Mineral Policy Program, Program on Resources: Energy and Minerals***, East-West Center, Honolulu, Hawaii. *The Philippine Mineral Sector to 2010: Policy and Recommendations*, Dr. Allen Clark, Project Director. Asian Development Bank, Mineral Sector Study, T.A. No. 1894 PHI, October 10, 1994.

¹³ Ibid. p. xxxiv.

¹⁴ The Asian Development Bank (ADB), 1994. ***The Philippine Mineral Sector to 2010: Policy and Recommendations***, Prepared by the Mineral Policy Program, Program on Resources: Energy and Minerals, East-West Center, Honolulu, Hawaii, Dr. Allen L. Clark, Project Director. ADB Mineral Sector Study, T.A. No. 1894-PHI, October 10, 1994.

¹⁵ Ibid. pp. xxix-xxx.

¹⁶ Ibid. p. xxix.

¹⁷ Ibid. p. xxxiv.

¹⁸ Ibid. p. xliii.

¹⁹ Ibid. pp. xxxix-xl.

²⁰ Ibid. pp. xlvii-xlviii.

²¹ Ibid. pp. xlix-l.

²² Friends of the Earth, ***The IMF: Selling the Environment Short***. Washington D.C. March 2000:10.

²³ Bello, 1999, loc. cit. 242.

²⁴ Cruz and Repetto 1992; Broad and Cavanaugh 1993, as cited in Bello 1999, loc. cit 243.

²⁵ RA 7942, Chapter V Sec. 26 (a).

²⁶ Ibid. Sec. 26 (b) & (c).

²⁷ Ibid. RA 7942, Chapter IV and VI.

²⁸ RA 7942, Chapter IV, Sec. 20.

²⁹ Ibid. Sec. 24.

³⁰ Ibid. Sec. 23.

³¹ World Bank Op. Manual, Operational Directive 4.20 on IPs

³² Colchester, Marcus, *Forest Peoples and Sustainability in The Struggle for Land*, pp. 61-95.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid. Chapter VI, Sec. 34.

In March 1996, the Congress approved legislation that did away with the Negative List C and reduced the minimum paid-in capital requirement for foreign companies from \$500,000 to \$200,000.

³⁶ Ibid. Chapter XII and Chapter XVI.

³⁷ Mines and Geosciences Bureau, June 30, 1999.

³⁸ Ibid.

³⁹ Ibid. July 31, 1999.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Walpole loc. cit. p. 59.

⁴³ Ibid.

⁴⁴ DENR Administrative Order No. 96-40 Section 16, Series of 1996.

⁴⁵ DENR AO 34 Series of 1999, Clarificatory Guidelines in the Implementation of DENR AO No. 96-40 or Revised Implementing Rules and Regulations of Republic Act 7942.

⁴⁶ DENR Administrative Order No. 2000-05 Revising DENR AO No. 94-11, Supplementing DAO No. 96-37 and Providing for Programmatic Compliance Procedures within the Environmental Impact Statement (EIS) System, Article V.

⁴⁷ Walpole, Peter. *Mining Revisited: Can an Understanding of Perspectives Help?* Environmental Science for Social Change and the Bishop-Businessmen's Conference, Ateneo de Manila, Quezon City, Philippines, 1999.

⁴⁸ Leonen, Marvic, *Philippine Natural Resources Law Journal*, September 1998.

⁴⁹ Hilario, Maricel P. and Salazar, Robert C. "Indigenous Peoples' Participation in Environmental Impact Assessment: An Ifugao Community in Nueva Vizcaya and the Didipio Gold-Copper Mining Project," Dela Salle University Social Development and Research Center, Manila, Philippines. June 2000.

⁵⁰ Conklin, 1954; Coward, 1985 in Marcus Colchester, *Forest Peoples and Sustainability in The Struggle for Land*.

⁵¹ Quotations from Harold Olofson (ed.), *Adoptive Strategies and Change in Philippine Swidden-based Societies*, Laguna: Forest Research Institute, 1981, as cited in *The Land and People of the Cordillera*, unpublished monograph, 1984; cited in *The Ilocos and Cordillera Provinces: A General Physical and Socio-economic Profile*, Romeo Cleto with Christoph Dehn and Hilario J. Padilla, KADUAMI – SIBAT National Secretariat, Manila, June 1986.

⁵² Gutierrez, Eric, *The Ties that Bind A Guide to Family, Business and Other Interests in the Ninth House of Representatives*, Philippine Center for Investigative Journalism and Institute for Popular Democracy, Pasig, Metro Manila Philippines, 1994.

⁵³ Ronaldo B. Zamora is considered a "skillful political operator" because of his ability to remain influential even with the changes in national leadership. He was considered one of the most powerful officials during the Marcos years and was a member of the "executive committee" which was considered Marcos' de facto political junta. After Marcos was deposed and exiled in Hawaii, he remained to wield tremendous power as a member of the Eight Congress during the term of then President Corazon Aquino. During this time, he rallied 23 members of Congress to support Ramon Mitra's (who was identified with Aquino's political camp) successful bid for Speakership of the House of Representative and he was named Assistant Majority Floor Leader. He served as a key adviser in Mitra's presidential campaign in 1992. When Mitra lost the presidential elections to Ramos, Zamora organized and led a group of members of Congress to support De Venecia's election to be the Speaker of the House. Zamora then became majority floor leader; from Eric Gutierrez' *The Ties that Bind*. Ronaldo Zamora served as President Joseph Estrada's Executive Secretary. A few weeks before the ouster of President Estrada, he resigned his position giving the reason that he had to resign on account of his intentions to run in the May 2001 elections. He then became noticeably absent in Estrada's circle and went to the U.S. reportedly for a medical check-up, during the last few weeks and days before Estrada was ousted from power. Political analysts are closely watching events and awaiting Zamora's political moves in the merging political realignment and reconfiguration.