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Against the Hallmark Nickel Project (Philippines)

Information about destructive mining project in
Mati, Davao, Philippines

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Act defines prior consent as referring to “prior, informed consent” obtained, as far as practicable, in accordance with the customary laws of the indigenous peoples concerned. The law also requires that consent endeavour to be informed through public notices or public consultations wherein the contractor fully discloses the details of the operation. The process of arriving at an informed consent should be free from fraud, external influence and manipulations”. The DENR-MGB has trumpeted as significant this requirement of prior informed consent. The provision, according to the agency, strengthens government’s cognizance of indigenous peoples’ rights to their land and their desire for a more active involvement in decision-making processes.

Indigenous peoples and their advocates, however, are critical. While they concede that the provisions gives indigenous peoples the wherewithal to approved or reject a mining application in their communities, they also ask whether, in conditions of deprivation and in the absence of genuine development alternatives, they are being given any option at all.

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filed by Filipino mining company Benguet Corp. which is nonetheless partly foreign-owned. It is also interesting to note that of these FTAA applications, 52 were filed before the approval of the Mining Act, while 14 were submitted before the Implementing Rules and Regulations of the Act were finalized on August 15, 1995. The total areas of the application cover approximately 12.2 million hectares of the land area of the Philippines. If all FTAA applications and MPSAs were approved, 40.65 percent of the country's total land area will be covered by mining claims.

The DENR-MGB, however, quickly points out that not all applications will be approved and that the grant of 81,000 hectares for mineral exploration is subject to a progressive reduction or relinquishment where the mining contractor returns to the government areas that low mineral potential. The DENR-MGB stresses that the law allows a contractor a maximum of only 5,000 hectares for actual mining and commercial production that will commence after the sixth year of the contract period. NGO's and indigenous communities points out that while relinquishment does significantly reduce the land area open to mining activities, 5,000 hectares is still a huge land area, especially in a country where landlessness remains perennial problems.

Indigenous people and environmental groups also raise concern over the potential environmental effects of more large-scale mining activities should these be allowed to commence. With the 1996 Marcopper mining disaster in Marinduque and the ravages of open pit mining in Benguet as the examples of the potential impact, these groups believe that mining operations of the FTAA scale could wreck havoc on the country's environment.

Another key feature of the Mining Act pertains to the issue of ancestral lands of indigenous communities. The Act deems ancestral land as closed to mining operations without the prior consent of the indigenous cultural community concerned. The

which is either technical or financial. They assert that the Constitution does not allow foreign corporations to actually control, manage or engage in full mining operations. They interpret the Constitutional provision on financial or technical assistance agreements as in itself restrictive of the participation of foreign-owned corporations in exploiting the country's mineral resources.

Aside from the generous contract terms above, the law also provides auxiliary rights that will ensure that the mining rights are exercised unhampered. These auxiliary rights include the right to enter private lands, the right to build necessary infrastructure on private lands as well as water and timber rights within the mining area as necessitated by the mining operations.

Furthermore, the law provides a host of fiscal incentives that will guarantee returned investments and profitability to the mining contractor. These includes a 100 percent repatriation of investment in dollars, a 100% remittance of earnings in dollars, freedom from expropriation, and double acceleration of depreciation costs, among others. Additionally, the collection of government's share in the financial or technical assistance agreement, consisting of corporate income tax, excise tax, and other duties and fees, shall commence only after the mining operator has fully recovered its pre-operating expenses. When the mining contractor starts commercial production, a revenue sharing scheme begins wherein the government will receive 60% of the net profit from the operation while the contractor receives 40%. However, all corporate taxes, excise taxes, duties and fees, payable by the corporation will be counted against the government's 60 percent share.

As of December 1996, 100 FTAA applications and 1,454 MPSA applications have been filed before the Department of Environmental and Natural Resources- Mines and Geosciences Bureau (DENR-MGB). Of the FTAA applications, 99 were filed by foreign-owned mining corporations and only one was

From anarchists in Philippines involved in resistance:

Autonomous resistance against eco-destruction and social turmoil carried out by capital needs to develop unbounded and analyzed upon creating a revolutionary plight in reclaiming direct control towards freedom – liberatory space and unconstrained desire and capacity beyond the bondages of imagination to put into action – without compromise. The struggle against domination, the enemy – state, capital and religion acquiring and exploiting the earth landscape as extractable resources manifests the ever-growing contagious outbreak of various oppositional elements and social conventions concealed within the legal framework and morality of lobbying, servitude and pacifism until natural life is mechanically being reduced and controlled into the hands of conservation experts, scientists and sustainable management schemes as a means of reaction to such atrocious events. Ideological dogma, reformism and centralized administrative structures often becomes the product of deeds and academic indoctrination consequently suppressing the burning rage of defiance and revolt against the social order and ecological havoc maintained by the ruling forces. Such logic is inflicting coercion over other life forms – a totalitarian mindset taking place within the driving stages and development of social experimentation and control.

The Hallmark Nickel Project is one of the 23 priority mining projects that are part of the Philippines government's 2004 Minerals Action Plan. Spearheaded by President Arroyo, the plan aims to revitalize the Philippine mining industry

and encourage foreign investment as a driver for national development. Hallmark demonstrates the complexity of international mining projects and the challenges in ensuring sufficiently high social and environmental standards are met by international mining companies and their joint venture partners.

The Hallmark project comprises seven exploration permits covering an area of approximately 13,500 hectares-more than 100 times the size of London's Hyde Park – in Davao Oriental Province, south-eastern Mindanao. The permits were granted to seven Philippine companies, collectively represented by Asiaticus Management Corporation (AMCOR). On 21 March 2001 AMCOR signed a memorandum of understanding with BHP Billiton and in 2002 the 2 companies entered into a joint venture and shareholders agreement to form the Hallmark project. Approval for the mining permits was given by the government in 2004 and 2005.

BHP Billiton's capital costs for the project are US\$ 1.5–3.0 billion, making it a sizeable share of its stainless steel materials portfolio, under which nickel mining and production falls. The joint venture agreement is a 60:40 percent equity split between AMCOR and BHP Billiton respectively.

BHP Billiton and the Philippine government estimate the project's nickel resource to be around 150 million metric tonnes. In 2007, the government estimated its gross value at around US \$22.7 billion. The government also estimates that it will receive approximately US\$10 million in excise tax and US\$70 million in income tax per year.

BHP Billiton plans to develop a nickel processing plant and operate a mine for around 30 years. It says the plant will use the high-pressure acid-leach method, or hydrometallurgical technology, and is expected to have an annual capacity of 35–50,000 metric tonnes of nickel- the equivalent at least three times the weight of Eiffel tower- for export to countries such as China, Japan and Australia.

A mineral agreement grants the contractor the right to conduct mining operation within a specified contract area for a 25 years, renewable for another 25 years. There are three modes of mineral agreements: The Mineral Production Sharing Agreement (MPSA), the co-production agreement and the joint venture agreement. The three modes differ in the extent to which the government is involved in the mining operation. In the MPSA, the government merely grants the right to the mineral resources whereas the contractor provides the financing, technology, management and personnel for the implementation of the agreement. In a co-production agreement, the government contributes other resources in addition to the rights. A joint venture agreement requires the government and the contractor to organize a joint venture company in which both parties has equity shares. In all three cases, the mining contractor should be either a Filipino citizen or a corporation having at least 60% Filipino equity.

For large-scale mining operations, the government may opt to enter into a Financial or Technical Assistance Agreement (FTAA) with either financial or technical assistance for the large-scale exploration, development and utilization of mineral resources. As this provides foreign mining companies to have full equity and control of mining projects throughout the country, it has become the focus of opposition against the law. For the minimum investment of \$50 million (or its equivalent in peso for a Filipino corporation), the mining firm is granted 81,000 hectares of land for mineral exploitation for a period of 25 years per contract, renewable for a maximum of another 25 years.

Indigenous communities and non-governmental organizations (NGO's) have questioned the legality of the FTAA provision. According to them, the act and its implementing Rules and Regulations allow foreign companies not only both financial or technical assistance agreement with foreign owned-corporations, it is an agreement for mere assistance,

The parties are undergoing an international arbitration process in Singapore, to prevent AMCOR from rescinding its joint venture. At the time of writing, they had yet to reach agreement, although a preliminary judgment from the tribunal was in BHP Billiton's favour. Some recent media reports confirm BHP Billiton's commitment to the Hallmark project, hinting that the parties may be close to reaching a compromise agreement.

The Mining Act of 1995

Under the Mining Act, all public and private lands are open to mining operations. It states "all mineral resources in public or private lands, including timber or forestlands shall be open to mineral agreements or financial or technical assistance agreement applications." This provision has led to critics' contention that the law has virtually opened up the entire country to mining operations. The latter includes old growth forests, national parks, bird sanctuaries, and marine reserves among others. But upon the consent of the government or other concerned parties, areas barred from mining operations can still be mined. This area includes military reservations, areas covered by small scale mining and ancestral lands.

The Mining Act allowed three major kinds of mining rights that would govern access to mineral resources and for which an interested investor may apply. These are Exploration Permit (EP), the mineral agreement and the Financial or Technical Assistance Agreement (FTAA).

An exploration permit grants the right to explore a specified area for a period of two years. If a mineral deposit is found and has potential commercial viability, the permit holder has the right to enter into any type of mineral agreement or financial or technical agreement with the government.

The project is currently in the exploration phase with mine production anticipated to begin around 2014/15. However the Hallmark project has permits for exploration only and not production, so must now secure Philippine government approval before the mine can actually developed.

Macambol

Macambol is a coastal community on a narrow strip of land between two protected areas of rare natural beauty : the Hamiguitan range and Pujada Bay. The mining permits for the Hallmark project fall within the boundaries of Macambol and adjacent Cabuaya local government areas under Mati City in Davao Oriental Province. About 5,000 people live in Macambol, approximately 25 percent of whom are indigenous Mandaya people. Most of the people depend on the natural environment for survival, making a living by fishing and farming mango, coconut and root crops. Average family incomes are low, at around php 5000-8000 per quarter. 1 pound or less a day.

BHP Billiton

BHP Billiton is the world's largest mining company, engaged in the exploration and development of a wide range of metals and minerals, including aluminium, coal, copper, manganese, iron ore, uranium, nickel, silver, and titanium. BHP Billiton 2007/08 figures show that the company is the largest producer of metallurgical coal, the third largest producer of nickel and the sixth largest producer of aluminium. BHP Billiton also have substantial interests in oil, gas, liquefied natural gas and diamonds.

The company was formed in 2001 by the merger of two mining companies, Australia's BHP and UK's Billiton. BHP Billiton is a dual-listed company but is run as a single entity, with one

board of directors and management. Its head office is in London and Melbourne. BHP Billiton has primary listings on the London Stock Exchange and the Australian Stock Exchange, and secondary listings in Johannesburg and New York.

BHP Billiton had other interests in the Philippines aside from Hallmark Nickel project. It has ore-supply agreements, through its Philippine subsidiary Queensland Nickel Inc. to purchase nickel for its Yabulu refinery in Australia, from various mines and companies in the Philippines.

Who is AMCOR?

Very little is known about Asiaticus Management Corporation, BHP Billiton joint venture partner in the Hallmark project. Minimal information on the AMCOR website reveals that the company was organized in 1996 to provide management, investment and technical advice for mining entities and companies with mineral claims. It facilitates partnership or joint ventures between local and foreign mining entities and companies and markets mineral ore.

The people behind AMCOR, such as company president Pedro O. Tan, vice president and corporate secretary Lauriano A. Barrios, and former chairman Arthur L. Villaraza are well connected and have close links with the current government, Villaraza, and his Villaraza Cruz Marcelo and Angangco law firm was the private legal counsel of President Arroyo until 2005.

BHP Billiton and AMCOR Dispute

During 2007, details of a rift between BHP Billiton and AMCOR appeared in the media. While the exact nature of the dispute is unclear, the relationship between the two companies has seriously deteriorated over the past year and they are currently locked in a legal battle. This dispute has had a major

impact on the community in Macambol, creating uncertainty surrounding which company will be operating the project if it goes ahead.

Little information about the status of the dispute has been made available to the community and the actions of both companies have contributed to tensions within Macambol. Many believe that each company is using divisive and manipulative tactics to demonstrate they have community backing and that the other does not. According to press reports and company information, the dispute centres on the proposed start date for the Hallmark project. AMCOR would like to begin nickel production immediately and allege that BHP Billiton had failed to meet the obligations of their agreement. Ruben Tan, AMCOR's vice-president, has said his company was promised that BHP Billiton would begin mine production five years after signing the joint venture agreement. According to a company official, AMCOR "must earn money now" and so would like to begin exporting unprocessed nickel laterite ore to take advantage of the high nickel price. BHP Billiton maintain the timeline for exploration, feasibility studies and building the processing plant mean a start date of around 2014/15.

The dispute has become ever more public and murky over recent months ;according to an unknown source quoted in the media, a "wheeler and dealer" with close links to the Arroyo administration has tried to extort 200million pesos more from BHP Billiton than detailed in their exploration contract.

On 25 July 2007 AMCOR attempted to rescind the joint venture agreement with BHP Billiton, and according to AMCOR officials interviewed by Cafod, is filing a case against BHP Billiton for fraud at the Makati regional trial court in Manila. A series of legal actions led to a court injunction against BHP Billiton in May 2008 barring it from "using, occupying, exploring, developing, and exercising acts of ownership of mining right over the Pujada properties.