



Indigenous Peoples and Corporate Accountability in the ASEAN



A Report of the Asia Indigenous Peoples Pact

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*A Report of the
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List of Abbreviations

ABCI – A. Brown Company, Inc.	IPRA - Indigenous Peoples Rights Act
ABERDI - A. Brown Energy Resources Development, Inc.	IRN - International Rivers Network
ADHOC - Cambodia Human Rights and Development Association	KCD - Khaou Chuly Group
AFP - Armed Forces of the Philippines	KMP - Kilusang Magbubukid ng Pilipinas (Philippine Peasant Movement)
AICHR - ASEAN Intergovernmental Commission on Human Rights	KOMNAS HAM – Komisi Nasional Hak Asasi Manusia (National Commission on Human Rights)
AIPP – The Asia Indigenous People’s Pact	KRAPASKAD - Kerukunan Petewawo Asli Karongsi’e Dongi
AMAN – Aliansi Masyarakat Adat Nusantara	LAC - Legal Aid of Cambodia
APC - Asian Peasant Coalition	LCCM - Lepanto Consolidated Mining Company
ASEAN - Association of South East Asian Nations	LCCM-LMD - Lepanto Consolidated Mining Company-Lepanto Mine Division
BFAR - Bureau of Fisheries and Aquatic Resources	LIDC - Lepanto Investment and Development Corporation
CADT - Certificate of Ancestral Domain Title	LIG – Lao-Indochina Group Company Ltd.
CALC - Certificate of Ancestral Domain Claim	MPSA - Mineral Production Sharing Agreement
CBA - Collective Bargaining Agreement	NDC - Nakeen Development Corporation
CBNC - Coral Bay Nickel Corporation	NCIP - National Commission on Indigenous Peoples
CLEC - Community Legal Education Centre	NCR – Native Customary Rights
CPA - Cordillera Peoples’ Alliance	NPA – National Protected Area
CSR – Corporate Social Responsibility	PAN-AP - Pesticide Action Network in Asia and the Pacific
CWE - China International Water and Electric Corporation	PAB - Palawan Council for Sustainable Development Adjudication Board
DDCP - Diamond Drilling Corporation of the Philippines	PCSD - Palawan Council for Sustainable Development
DENR-CENRO – Department of Environment and Natural Resources - Community Environment and Natural Resources Office	PNP - Philippine National Police
DENR-PENRO - Department of Environment and Natural Resources - Provincial Environment and Natural Resources Office	RMP-NMR - Rural Missionaries of the Philippines-Northern Mindanao Region
EDC – Export Development Canada	RMR - Resource Management and Research
ECC - Environmental Compliance Certificate	RSPO - Roundtable on Sustainable Palm Oil
EdL - Electricité du Laos	RTNMC - Rio Tuba Mining Corporation
EIM - Environmental Investigative Missions	SDMP - Social Development Management Plan
ELC – Economic Land Concessions	SIA – Social Impact Assessment
ESIA - Environmental and Social Impact Assessment	Socfin-KCD – SocFinal and Khao Chuly Group Collaboration
FBI - Field-Based Investigation	STARM – Save The Abra River Movement
Forum Asia - Asian Forum for Human Rights and Development	STEA - Science, Technology and Environment Agency
FPIC - Free, Prior and Informed Consent	TDS - Total Dissolved Solids
HCVA - High Conservation Value Assessment	TSS - Total Suspended Solids
HPP - Hydrometallurgical Processing Plant	UNDRIP - United Nations Declaration on the Rights of Indigenous Peoples
IFFM - International Fact-Finding Mission	
IHRI - International Human Rights Instruments	

Executive Summary

Indigenous peoples in Southeast Asia live in areas rich in natural resources. These areas have become targets of resource extraction and development projects by multinational companies. Indigenous communities are confronted with the adverse impacts of mining, logging, large-scale plantations and infrastructure programs.

These projects are generally implemented without the consultation and consent of affected communities. Massive displacement of indigenous peoples, the loss of their livelihood and the denigration of their culture and identity are just some of the adverse effects of these projects.

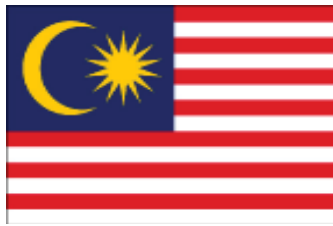
Due to the increasing and expanding operations of multinational corporations in indigenous peoples' territories, the Asia Indigenous Peoples Pact (AIPP) conducted this study on the business practices of these corporations in indigenous peoples' territories. The study focused on the operations involving rubber, cassava and oil palm plantations; hydropower dams; and mining in Cambodia, Indonesia, Laos, Malaysia and the Philippines.

The cases demonstrate the impacts of corporate activities in indigenous territories and the violations of indigenous peoples' rights. These include displacement and dislocation from their lands and territories with minimal or no compensation and without any plans for benefit-sharing; the non-compliance of corporations to the Free, Prior and Informed Consent (FPIC) as a requirement for conducting activities in indigenous peoples' lands,

territories and resources; the non-recognition and loss of traditional livelihoods of indigenous peoples living in the areas affected by the business operations; violations of their cultural rights especially the desecration and destruction of sacred sites; and exposure to hazards resultant to poisonous and dangerous materials used by the corporations. They also highlight the inability of the Association of South East Asian Nations (ASEAN) Member States to protect the rights of indigenous peoples and of the workers who slave for corporations operating in the ancestral lands of these peoples.

Given this situation and lack of corporate accountability, the AIPP calls on all ASEAN Member States to provide the legal framework for the recognition of indigenous peoples' rights. This includes recognition as distinct peoples with collective rights; right to their lands, territories and resources; and the right to the FPIC. These are just some of their rights guaranteed by International Human Rights Instruments including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The AIPP further calls on ASEAN Member States to enact laws and policies that would set binding standards for corporations to be accountable for their human rights abuses. This can be achieved by setting up grievance mechanisms. Furthermore, the AIPP calls for a moratorium on all corporate projects being opposed by indigenous peoples and for the resolution of conflicts arising from corporate projects in indigenous territories.



Introduction

This is a report on selected cases involving the business operations of multinational corporations in indigenous territories. These cases were prepared by indigenous peoples in two activities on the issue of “Indigenous Peoples and Corporate Social Responsibility in the ASEAN” in 2010 and 2011.

The first activity involved national consultations in Cambodia, Indonesia, Laos, Malaysia, and the Philippines organized by AIPP and the Asian Forum for Human Rights and Development (Forum Asia) with their members and partners.

The second activity was the “Public Forum on Corporate Social Responsibility” organized by AIPP, the South East Asian Committee for Advocacy, Institute for Essential Services Reform, and the SAPA Task Force on ASEAN and the Extractive Industries on 26 November 2011 in Bali, Indonesia.

These activities were held to consolidate inputs to be submitted to the ASEAN Intergovernmental Commission

on Human Rights (AICHR) to aid it in its mandate of preparing studies “on thematic issues of human rights in the ASEAN” as contained in its Terms of Reference.

During its Fifth Meeting on 25-29 April 2011, AICHR adopted the Terms of Reference to conduct a baseline study on Corporate Social Responsibility and Human Rights.

This publication contains the following:

Part 1 - an overview of indigenous peoples’ situation in the context of corporate operations in their areas.

Part 2 - case studies of different corporate operations in the ASEAN region.

Part 3 - an analysis of the environment that fosters abuse of indigenous peoples’ rights.

Part 4 - the recommendations of indigenous peoples to the ASEAN.



Part 1

Indigenous Peoples, Their Resources and Corporate Accountability

Indigenous peoples is a term that is well-established in international law. What it means today differs considerably from how it was used when it was coined in the late 19th century. The concept of indigenous peoples has evolved beyond the original meaning that is still found in dictionaries and how it is understood by many Asian governments especially over the past decades.

The ongoing discourse on who indigenous peoples are has come to a juncture where the demand for a universal definition must be dropped in order to take the highly diverse national contexts into account. The definition also has to accept and respect self-identification. Many groups across the region identify with the concept of “indigenous peoples” strongly and increasingly express their aspirations in line with the collective rights of indigenous peoples as affirmed by International Human Rights Instruments. While having many social, cultural or economic traits in common, indigenous peoples are however very heterogeneous. The same is true with their relationships with the dominant societies and the legal and policy frameworks of the countries they are part of.

The principle of self-identification by indigenous peoples is the bottom line in identifying indigenous peoples.

However, the existing definitions drawn up at the international level are still very useful. One of the most frequently cited definitions is by UN Special Rapporteur Jose Martinez Cobo:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories and their ethnic identity, the basis of their continued existence as peoples, in accordance with their cultural patterns, social institutions and legal systems. (1986, add 4, par. 379)

Indigenous Peoples and Corporate Accountability in the ASEAN

In Southeast Asia, various names are used by governments to refer to indigenous peoples collectively. These include “ethnic minorities”, “hill tribes”, “native people” and “indigenous cultural communities”.

Many of the names given to indigenous peoples by outsiders imply cultural inferiority, primitiveness or backwardness. Examples are *chuncheat* which means “ethnicity.” *Chuncheat* literally means “national people” in Cambodia. In Thailand, *sakai* is used for some hunter-gatherer groups and literally means “slave.” Indigenous peoples would rather use the names of their tribes passed on to them by their ancestors.

Based on rough estimates, the people who are generally identified as indigenous peoples in Asia number at least 100 million. This represents two-thirds of the estimated 370 million of the world’s indigenous peoples (IFAD, 2007, pp. 1-3).

Moreover, this represents only five percent of the total world population. Despite this, indigenous peoples “embody and nurture eighty percent of the world’s cultural and biological diversity, and occupy twenty percent of the world’s land surface” (University of Minnesota Human Rights Center, 2003).

Because of the richness of the lands, territories and resources where indigenous peoples live, they have become targets of resource extraction and development projects by multinational companies. Alexandra Xanthaki explains that:

Projects implemented by transnational corporations currently pose the main threat to indigenous land rights and continuing survival on these lands. Developing States generally welcome international corporations and are willing to cooperate with them, even at the expense of the environment and local populations, because they view further involvement with these corporations as a means to advance their own country’s economic development. In Asia, the negative effects of such projects are compounded by the complete lack of indigenous recognition and effective participation within such processes. Land use policies are designed to attract development projects and are frequently linked with the assimilation of indigenous communities into the general population. (2003, p. 2)

Professor James Anaya, the current United Nations Special Rapporteur on the Indigenous Peoples, remarks that indigenous peoples’ natural resources are regarded as “fungibles with cash” (Anaya, 2004, 38). He further comments that “even the most isolated indigenous groups are now threatened by encroaching commercial, government, or other interests motivated by prospects of accumulating wealth from the natural resources on indigenous lands (Anaya, 2004, 4).

Mr. Stavenhagen has said that “resources are being extracted and/or developed by other interests (oil, mining, logging, fisheries, etc.) with little or no benefits



for the indigenous communities that occupy the land. ... [I]n numerous instances the rights and needs of indigenous peoples are disregarded, making this one of the major human rights problems faced by them in recent decades” (January 2003, par. 56).

Earlier, he lamented that “indigenous peoples are said to bear disproportionately the costs of resource-intensive and resource-extractive industries, large dams and other infrastructure projects, logging and plantations, bio-prospecting, industrial fishing and farming, and also eco-tourism and imposed conservation projects” (January 2003, p. 21).

Corporate Social Responsibility, Corporate Accountability and Indigenous Peoples

To indigenous peoples, the concept, and more importantly, the observance of corporate social responsibility (CSR) are very critical and may make or unmake their peaceful co-existence with the environment and their development as distinct peoples.

Most definitions of corporate social responsibility describe it as a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. It requires corporations and business entities to “operate with a conscience,” encouraging them not to identify profit-making as their sole or primary objective (De Schutter, p. 421).

It calls on them to carry out their businesses by going beyond their legal obligations imposed by the states within which they operate. As De Schutter puts it, corporate social responsibility even has the capacity to interfere with the host countries’ trajectory of policies and “to facilitate a human rights-driven form of development” (p. 421).

In the context of business operations in indigenous territories, this means that development must respect indigenous peoples’ rights, including the right to maintain their distinct way of life.

In 2007, all ASEAN Member States voted in favor of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 26 provides the right to traditionally owned, occupied, used or acquired lands, territories and resources.

Article 10 stipulates that they shall not be forcibly deprived of these. If they so desire to be taken away from their lands and territories, it will only be under an FPIC process. Moreover, Article 28 asserts that they have the right to redress when these lands, territories and resources are confiscated, taken, occupied or damaged without their FPIC.

Likewise, in 2008, the United Nations Human Rights council approved “The UN Protect, Respect and Remedy Framework for Business and Human Rights” (Ruggie, 2008). This clarifies the roles and responsibilities of States, companies and other social actors in business and in the field of human rights. The framework states that

the responsibility of companies to respect rights “essentially means not to infringe on the rights of others. Simply put, it is to do no harm.”

In Southeast Asia, an ASEAN Corporate Social Responsibility Network was launched in 2011 by companies belonging to Corporate Social Responsibility Networks in Indonesia, Malaysia, the Philippines, Singapore, Thailand and the ASEAN Foundation. This network serves as an instrument of the ASEAN to “address issues of unequal economic development, poverty and socio-economic disparities” (The ASEAN Foundation).

The network “aims to provide opportunities for networking and exchange, to be a venue for discussing and addressing regional issues and concerns, and to be advocate and capacity builder for acceptance of international norms of CSR behavior” (CSR Policy Statement, par.2).

In its policy statement, the network encourages the commitment of businesses to “support and respect the protection of internationally proclaimed human rights” (Xanthaki, 2003, p. 2).

For indigenous peoples, it is the observance of corporate accountability that is more essential and necessary. Corporate accountability means that corporations are directly responsible for respecting and protecting human rights and the environment. In current international practice, CSR is a voluntary initiative from corporations. There is no mechanism to monitor violations and demand accountability for their transgressions.

Therefore, it is more meaningful to demand accountability from corporations in order for them to concretely respect human rights where they and their agents operate.



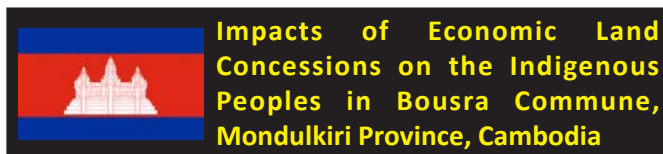


Part 2

Case Studies

The following case studies manifest the impact of various businesses operating in specific territories to indigenous peoples.

1. PLANTATIONS



I. Background¹

The government of Cambodia granted three Economic Land Concessions (ELCs) to the Khaou Chuly Group (KCD), a prominent Cambodian construction company. With these ELCs, they became licensed to exploit industrial rubber plantations.

II. Profile of Indigenous Peoples in the Affected Area

In the Bousra Commune, PechChreada District, Monduliri Province, 90 percent of the population are the Bunong

indigenous peoples. The Bunong practice shifting cultivation. This is dependent on rotating fields and regenerating forest soil fertility. Their livelihood relies on the gathering of non-timber forest products. The Bunong follow an animist religious belief system that involves the protection of spirit forests and burial grounds of their ancestors.

III. Project Description

In 2007, a European company known as Socfinal began a joint venture with the Khaou Chuly Group (KCD), a prominent Cambodian construction company. Their collaboration became known as “Socfin-KCD”. In total, three ELCs to exploit industrial rubber plantations were granted to Socfin-KCD by the Cambodian government. These ELCs are valid for 70 years. The first one was effective in 2008. The investment is projected to be paid off by 2022. To maximize the ELCs the company intends to generate US\$2.1 million in profits per year.

¹ If not indicated otherwise, all following information is derived from United Nations Committee on the Elimination of Racial Discrimination, 76th Session (February 2010). *The Rights of Indigenous Peoples in Cambodia*. (Online), Available: www2.ohchr.org/english/bodies/cerd/docs/ngos/NGO_Forum_Cambodia76.pdf and *Dossier: Public Hearing on ASEAN and CSR* (May 2, 2011): (Online), Available: <http://www.shwe.org/wp-content/uploads/2011/08/CSR-Dossier-V2-1.pdf>

While Cambodian law requires the submission of an Environmental and Social Impact Assessment (ESIA) before approving a concession, only partial ESIA's were required for the two concessions to be granted.

Furthermore, Articles 23 to 28 of the 2001 *Land Law* grant indigenous peoples the right to collective ownership (The Rights of Indigenous Peoples in Cambodia).²

However, the local, provincial and national authorities clearly chose to neglect the rights of the indigenous peoples. Because the implementation of existing regulations was haphazardly carried out, communities in Bousra were deprived of opportunities to properly register as indigenous communities to obtain collective land ownership.

IV. Impacts to Indigenous Peoples

The ELCs affect over 300 families in about 7 villages in the Bousra Commune. In 2008, land clearing started without prior notice to the villagers. Later on, the villagers were offered compensation for agricultural land affected by company operations. Compensation came in the form of money or an equivalent parcel of land. Most families opted for monetary compensation because there was no real choice. Villagers were not adequately informed about the compensation process. For instance, meetings were held in Khmer, and thus, not understood by many.³ The Bunong also had no guarantee for the promised resettlement. They knew neither the target date nor the location. They also faced the ever-present pressure from the company and the authorities. Both financial compensation and relocation to another plot prompted the Bunong's heavy disagreement. The amount of compensation was often short of the real value. For instance, numerous residents received parcels of replacement land that were smaller than what they had been promised. In August 2011, many families who opted for compensatory land were still waiting to receive their own parcels.

Numerous testimonies collected show the Bunong peoples' desire to pursue shifting cultivation, including rice production. They complained that rice fields and crops were destroyed. As a consequence, villagers did not have sufficient harvest to proceed with the sacrifices for their traditional practices. The loss of lands also affected the production of non-timber forest products which represent an important source of income for the Bunong people. Land loss affected many people in Bousra. Forest clearing has become a grave concern for more people as it implied the loss of food security.



In red: Distribution of Economic Land Concessions (ELCs) in Cambodia.

Villagers assert that the noise caused by the bulldozers has also affected the presence of animals in the area. The shift from subsistence farming to salaried work with a precarious status has led community members in Bousra to buy imported rice from the market. Thus, families have become dependent and vulnerable to the fluctuations of the market prices. The villagers also reported the demolition of sacred forests as well as the destruction of traditional burial sites. Tactically and strategically, the lack of access to land for the Bunong people and the absence of food security could be very detrimental to communities' livelihoods.

² Article 23 defines an indigenous community as "a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social and cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possessions according to customary rules of collective use". The Bunong, who practice collective decision-making, collective ownership, shifting cultivation and other traditional agricultural and spiritual practices, satisfy the requirements of the Land Law, as well as how the United Nations Declaration on the Rights of Indigenous Peoples describes indigenous peoples." – *Dossier: Public Hearing on ASEAN and CSR* (May 2, 2011). (Online), Available: www.shwe.org/wp-content/uploads/2011/08/CSR-Dossier-V2-1.pdf

³ The process was also characterized by an ignorance of the Bunong's oral traditions and a lack of respect to common contractual procedures. The Bunong is traditionally an oral language and did not have any written script until a few years back. In the end, families who agreed to a resettlement plan did so in a language most do not speak nor understand in its written form. – *Ibid.*

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Multiple factors have challenged the Bunong people's capacity to preserve their identity. This is further aggravated by the internal migration of Khmers between 2005 and 2008. Consequently, the said migration was favored by the encroachment of Socfin-KCD.

VI. Community Actions on the Project

Indigenous peoples in Bousra have consistently and continuously tried to have their lands recognized as collectively-owned under the Land Law of 2001. They have been rejected until now. In 2008, community leaders were detained for several days after the villagers gathered in a demonstration. In 2009, the company and the authorities had negotiations with a promise to exclude the indigenous lands from the concession. A technical working group was set up.

Consequently, the body forced the community to accept the land relocation/changing. The technical working group has become essentially useless. There have been no activities that have been agreed on between the company and the communities. A Tripartite Committee was set up by Socfin-KCD as a reaction to NGO pressure and as a follow-up to the 2010 ESIA. Unfortunately, this body remains a symbolic and largely ineffective structure.



Impacts of the Rubber Plantation on Indigenous Peoples in Pateh Commune, Ratanakiri Province, Cambodia

I. Background⁴

Illegal land grabbing by powerful Cambodian individuals⁵ affect indigenous communities in Pateh commune, O'Yadao district, Ratanakiri Province.

II. Profile of Indigenous Peoples in the Affected Area

The Jarai are the indigenous peoples who live in Kong Yu and Kong Thom. Both villages are in the Pateh Commune. They practice traditional swidden (rotating) agriculture and have family farms. The people are highly dependent on

access to land and natural resources for survival and socio-religious purposes. Very few villagers in Kong Yu or Kong Thom speak Khmer and even fewer are literate.

III. Project Description

The development plan involves the conversion of 500 hectares of indigenous land into a rubber plantation in the Pateh Commune. The company is owned by the sister of the Minister of Finance who also happens to be the wife of the Secretary of State in the Ministry of Land Management.



About 145 indigenous families are affected by the project in Kong Yu and Kong Thom villages.

In 2004, village and commune officials attempted to persuade Kong Yu villagers to sell their communal land to a buyer from Phnom Penh. The villagers refused and emphasized that they wanted to keep their land for farming. Later on, officials claimed that the land was state property and that the expropriation was necessary to provide land to disabled soldiers from Prime Minister Hun Sen's army. This fabricated story had the malicious intention of deceiving and threatening the villagers.

Meetings took on an increasingly hostile tone. The villagers were fearful and unfamiliar with government institutions and practices. Understanding that they had no choice but to give the land to the government, the villagers finally agreed to hand over approximately 50 hectares.

⁴ If not indicated otherwise, all following information is derived from: United Nations Committee on the Elimination of Discrimination (February 2010). *The rights of indigenous peoples of Cambodia*. [Online]; Available: www2.ohchr.org/english/bodies/cerd/docs/ngos/NGO_Forum_Cambodia76.pdf

⁵ In this case, the sister of the Minister of Economy and Finance (Keat Kolney), who is also the wife of a Secretary of State in the Ministry of Land Management.

In August 2004, officials organized a contract execution “party” and donated alcoholic drinks and food. After many of the villagers had become drunk during the party, the authorities had the people mark a piece of paper with their thumbprints. They also placed thumbprints on a piece of paper for those who were not present. None of the villagers read the contract. Since they can not read and understand Khmer script, it is not likely for them to review what they had signed for. They merely assumed that it was to facilitate the turnover of their land to the government. A few days later, the local authorities and the company head distributed gifts and money to the villagers. They again marked documents with their thumbprints before receiving the gifts. After the distribution of envelopes containing money, the village and commune chiefs took back all the envelopes. They ordered all villagers to say that the deal was done before 2001 and that the land sold was not forested land, but farmland. This event was video-taped by the company. The next day, commune authorities gave each family in the village US\$ 400. However, the villagers later learned that the deal allowed the company to possess the land. Further, the transaction involved 500 hectares of communal land and not the previous 50 hectares that was “agreed upon.”

IV. Impacts to Indigenous Peoples

The project covering 500 hectares of indigenous land affects about 145 families in two Jarai villages. The company cleared communal land, including graveyards and spirit forests. Company workers planted rubber trees in almost the entire area. Villagers explained that the spirit forests are very important for them. Their connection to the ancestors lies in the spirit forests. Unfortunately, the company did not give them the chance to remove the remains.

The clearing destroyed several crops planted by villagers, including cashew trees, cassava and banana trees. The villagers’ traditional shifting cultivation practice is also under pressure. As the land becomes smaller, it becomes more difficult to do this practice (Nette, 2008). Company

representatives prohibited the villagers from accessing the land for crops and cattle grazing.

Land grabbing in Cambodia has been aptly described as devastating to indigenous lives. According to reports from the online newspaper, Phom Penh Post, Kong Yu is the emblem of the worst of these cases. Coupled with

the fact that the Jarai communities’ culture and animist practices are embedded in their surrounding land and environment, land grabbing is certainly destructive for their social community. Moreover, this threatens their continued existence.

VI. Community Actions on the Project

In October 2004, representatives of Kong Yu village sought the assistance of Cambodia Human Rights and Development Association (ADHOC), a local human rights organization, in filing a complaint in court asking for the cancellation of the land sale contract. They also wanted to demand the return of the 500-hectare communal land. They further requested that the company stop bulldozing the land. Later on, village representatives filed a complaint in the local administrative office in Ratanakiri asking to dissolve their commune council.

In March 2006, villagers and the Legal Aid of Cambodia (LAC) filed a complaint with the cadastral commission. Unfortunately, no action has been taken. In February 2006, approximately 200 villagers gathered at the Pateh commune office to voice their concerns. Consequently, the authorities accused the villagers of causing problems. The next day, representatives in Kong Yu and Kong Thom were threatened imprisonment, especially if any further demonstrations were held. After that, villagers approached LAC for help. Several NGOs focusing on indigenous peoples’ rights have worked intensively to assist the villagers in understanding their rights under Cambodian law.

In mid-2006, the Community Legal Education Centre (CLEC) took legal action to assist the Kong Yu community.

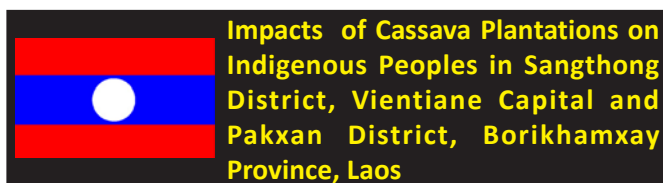


Indigenous Jarai people in front of the Ratanakiri Provincial Court.

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In January 2007, communities and their lawyers filed civil and criminal cases against the principals of the company. These cases demand the cancellation of the contract. These cases also aim to expose the illegal and corrupt activities of local officials whose intimidation and lies ultimately led to this divestment of indigenous lands.

As of February 2010, the case has not been heard in court. At this pace, no land has been returned and the intimidation continues.



A cassava plantation in Bolikhamxai province. The Lao-Indochina Group (LIG) owns huge cassava cultivations in three Laotian provinces.

I. Background⁶

The Lao-Indochina Group Company Ltd. (LIG) is a leading company in cassava production. It cultivates cassava in vast plantations in the three provinces of Laos - Vientiane Capital, Vientiane Province and Borlikhamxay Province.

Cassava production in the three provinces has affected the surrounding communities and their environment.

II. Profile of Indigenous Peoples in the Affected Areas

The majority of the affected indigenous peoples in the area are the Lao Lum people. They depend on agriculture and natural resources for their survival.

Accordingly, the government is encouraging increased agricultural production. The area has been traditionally used by indigenous peoples for shifting cultivation.

III. Project Description

LIG now has 7,689 hectares under cassava cultivation.⁷ This provides employment opportunities for over 2,713 families in 171 villages (Vietstock FI English, January 2011). Besides

that, the Lao-Indochina Tapioca Factory, a cassava processing factory, was officially opened. This newly opened company commenced producing tapioca in Nashawn Village, Pakngum District, Vientiane Capital in 2008.⁸

Some 90 percent of the factory's output is exported to China while the rest is sold locally (Vietstock FI English, January 2011). According to its online company profile, the company has registered a total of 100 billion kip (\$12.5 million in assets). Currently, the factory has two production lines and can produce 320 tons of tapioca from 1,200 tons of cassava each day.⁹

In 2012, the company has asked the government to give it an additional land concession of 15,000 hectares to boost tapioca production.

Currently, land is being cleared to make way for the company's additional factory in Borikhamxay province.¹⁰

The LIG cassava plantation project aims to develop agricultural production. It also aims to improve living standards by eradicating poverty in the areas of Sangthong District, Vientiane Capital and Pakxan District and Borikhamxay province. Notably, plantations of the crop have significantly expanded in Pakxan district.

⁶ If not indicated otherwise, all following information is derived from: *Dossier: Public Hearing on ASEAN and CSR*. (May 2, 2011): [Online]; Available: <http://www.shwe.org/wp-content/uploads/2011/08/CSR-Dossier-V2-1.pdf>

⁷ Cassava is one crop that is widely grown throughout Laos for both human consumption and animal feed. Nationally, cassava plantations have increased rapidly in recent years, from 2,000 hectares in 2000 to 8,000 hectares in 2005. – *Dossier: Public Hearing on ASEAN and CSR*. (May 2, 2011): [Online]; Available: www.shwe.org/wp-content/uploads/2011/08/CSR-Dossier-V2-1.pdf

⁸ http://lao-indochina.com/company/Com_profile.html

⁹ It currently produces 250 to 300 tonnes per day, due to a lack of raw materials. – Vientiane Times (February 13, 2012). Land Issues Working Group. Retrieved March 2012 from the World Wide Web: <http://www.laolandissues.org/2012/02/13/tapioca-maker-sees-sharp-increase-in-cassava-supply> and http://lao-indochina.com/news/news_Lao%20Indochina%20replenish.html

IV. Impacts to Indigenous Peoples

Based on a villagers' report in 2011, 30 villages with more than 3000 families are affected by this project. Each family has an average of about 2-3 hectares of land (Global Association for People and Environment).

In December 2010, villagers in Sangthong District reported that in 2008, the Lao-Indochina Company promised to purchase their cassava production for 500,000 kip (about US\$ 122) per ton. In 2009, the villagers allowed the company to their cassava produce. However, the company was only willing to pay 250,000 kip (US \$61) per ton. Additionally, the burden of transporting the cassava from the fields to the factory was placed on the shoulders of the villagers.

Furthermore, reports indicate that the Lao-Indochina Tapioca Factory has affected the villages within its vicinity. This includes thousands of residents in Pak Ngum district. The villagers expressed their worries about the contaminated liquid that has been discharged from the factory into the Nong-Hanh lake at Ban Na Tham, Pak Ngum district. The villagers and local authorities in Ban Na Tham stated that in May 2009, thousands of fishes and other aquatic animals perished due to the release of toxic liquids by the Lao-Indochina Tapioca Factory. The chemical contamination has strongly affected the villages because many people in the area rely on the Nong-Hanh Lake for their livelihood.

In May 2009, a particular water and environmental organization and the Ministry of Industry and Commerce corroborated the reports that the water in the pond was putrid and unclean and that a large number of fish and aquatic animals had died. It was found that the factory drained dirty water into the Nong-Hanh pond. The factory promised to resolve this problem as soon as possible.

The company announced that efforts have been made to compensate the villagers by paying 10,000 kip (approximately US\$ 1.2) for the delivery of one kilogram of dead fish. Since then, the company has built 12 water reservoirs to treat the plants' waste water before releasing it back to the river.

In 2011, the LIG and local authorities in Pakngum district released 500,000 fish fingerlings into the Nonghan marsh in Natham village. The company has been supporting fish releases for three years now. Nevertheless, the fact remains that the factory has killed thousands of fish and aquatic animals from Nong-Hanh in the past years.



A local newspaper report on the large fish kill caused by company wastewater.

The company has also signed a contract with Nanyobai Bank allowing the villagers in the cassava plantations to file for loans.¹¹ In 2011, the high costs of land clearing (5.5 million kip per hectare) and the delays in land clearing resulted to low cassava production. Consequently, many villagers became heavily indebted. The debts have become a burden to the villagers. At present,

Nanyobai Bank requires villagers to pay back their loans including the interest. Then again, the villagers have nothing because of their losses in terms of their investments (Global Association for People and Environment, 2011).

The villagers complained about other unfair regulations and practices of LIG. As the company doesn't buy the cassava two days after its harvest, daily delivery to the factory is required. However, there are only a few transportation trucks covering the long distance between the fields and the factory. This is not enough to meet the villagers' needs. Villagers reported that the company also promised to buy their cassava trees for 200 kips (0.8 Baht) per tree. However, the company didn't buy any trees at all. LIG

¹⁰ The Lao Indochina Group Public Company Tapioca Factory expects cassava plantations and the number of its member farmers to increase by up to three times its initial target for this year. Source: "Government calls on tapioca maker to ensure healthy cassava crop" in <http://en.baomoi.com/Info/Govt-calls-on-tapioca-maker-to-ensure-healthy-cassava-crop/3/225626.epi> and Land Issues Working Group in <http://www.laolandissues.org/2012/02/13/tapioca-maker-sees-sharp-increase-in-cassava-supply/>

¹¹ As borrowers, the villagers must have a contract with the Company to get a loan. For example, the company promised to provide seeds and technical assistance to the villagers. But the villagers were made to pay for the seeds at 500 kip (2 Baht) per cassava tree (1-1.2 meters high). Villagers who could not pay would settle their debts when they sell their products to the company.

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claimed that cassava production will yield up to 40-50 tons per hectare and that company will provide technical assistance for the villagers.

In reality, the company did not provide any technical staff to assist the villagers with their plantations. As a result, villagers were only able to harvest around 10 to 15 tons per hectare.

Since they do not have harvesters they cannot fulfil the contract's requirement that states that produce should be sent to the company within one to two days after harvesting (Global Association for People and Environment).

VI. Community Actions on the Project

The communities affected by the cassava plantations complained to the LIG offices. They asked the company to keep its promises. For instance, they haven't purchased the cassava trees yet, despite giving their word to do so. They community also asked the company to find adequate solutions to the problems that have emerged.

Most of the community members in Sangthong District are frustrated about the situation because they did not get any benefits from the company. Instead, they incurred losses in the transactions.

Besides that, the communities around the NongHanh compound had legitimate qualms against the fish kill and requested the company and stakeholders to find a sustainable solution to the problem. The villagers expressed their concerns about fish consumption because of the extensive use of chemicals in the factory.

According to interviews in 2011, government and local authorities know about the villagers' debts and inability to pay back the loans to the bank. The villagers made suggestions to the village chief, the government official at the district level and to the company. To date, not even a plan of action to help the indigenous peoples has been formulated (Global Association for People and Environment, 2011).



I. Background¹²

The plantation giant IOI Corporation Berhad is involved in a long-running land conflict with the Kayan and Kenyah indigenous communities in Long Teran Kanan, Sarawak, Malaysia.

In March 2010, the communities won the case over the disputed land in the High Court of Miri, recognizing their native customary rights to their land. Despite the court ruling, IOI Pelita Plantation continues to trespass the community's native customary lands.

II. Profile of Indigenous Peoples in the Affected Area

The village of Long Teran Kanan is located along the Tinjar River in Baram, Miri Division, Sarawak. Since the 1960's, the indigenous communities of Kenyah and Kayan living in the area have been collectively called *Orang Ulu* or *Dayak* (*International Work Group for Indigenous Affairs, 2011*).

According to "Kenyah People Groups", it is a tradition for the Kenyah to cultivate dry rice as this is their main source of livelihood. This is supplemented by hunting, fishing and gathering. A common feature of their community is the practice of swidden rice agriculture.

The Kayan traditionally uphold a subsistence economy based on shifting cultivation, with hill rice grown on clearings in the rainforest. Fishing, hunting and gathering of forest products are their other main economic activities (Encyclopedia Britannica Online).

The current Long Teran Kanan residents have a lawful and legitimate Native Customary Right (NCR) over the territory as the settlement was done through traditional customs and later on ratified in official government records.

¹² If not indicated otherwise, the information is taken from Grassroots for POMI. (November 2, 2010). *Industry Oppresses Indigenous Peoples: Case Study of IOI Pelita Plantations operations and practices, and its impact upon the community of Long Teran Kanan, Tinjar, Baram, Sarawak, Malaysia*. [Online]; Available: [www.wildasia.org/downloads/Industry_Oppresses_IPs\(2\).pdf](http://www.wildasia.org/downloads/Industry_Oppresses_IPs(2).pdf)

III. Project Description

IOI Pelita Plantation Sdn Bhd was formerly known as Rinwood Pelita Plantation SdnBhd (Bloomberg Businessweek). IOI Plantation is a subsidiary of IOI Corporation Bhd, one of the biggest business corporations in Malaysia and a leading palm oil company with business operations stretching from primary planting of oil palms to refinery and processing.

In 2009, the IOI's oil palm estate plantations covered 172,980 hectares in 82 states. Approximately, 68 percent of IOI's plantations are based in East Malaysia, 31 percent in Peninsular Malaysia and the remaining 1 percent in Indonesia.

In that same year, IOI Corporation generated revenues of RM 14,600 million (US\$ 4,124 million), operating profits of RM 2,432 million (US\$ 687 million) and profits after tax of RM 1,063 million (US\$ 300). All of the company's oil palm activities including plantation and manufacturing operations accounted for 81 percent of its operating profits (IOI Corporation, 2009). IOI also claims to be a founding member of the Roundtable on Sustainable Palm Oil (RSPO¹³) and thus, publicizes its

strong CSR track record in its marketing and publication materials.

IV. Impacts to Indigenous Peoples

Despite the 2010 court ruling, IOI continued its activities on the disputed land. In that same year, a case study showed that there are still tremendous impacts on the indigenous communities in the area. At that time, the community still had limited or no access to community land due to the continued presence of IOI. Villagers complained that their traditionally cultivated and owned land was cleared by IOI and planted with oil palms. Land clearing in the disputed area was done without consulting the communities through a Social Impact Assessment (SIA) or a High Conservation Value Assessment (HCVA).

Moreover, the IOI planted oil palms even in the only water catchment area of Long Teran Kanan. Evidence shows that the water resources of the village have been jeopardised by the application of weed killers and other agrochemicals. The water intake point has been compromised due to increased siltation from land clearing and other disturbances. Furthermore, the study revealed the company's poor maintenance of riverine areas, including the lack of buffers between rivers and plants and some neglected culverts.

For the community members, these poor practices have contributed to the deteriorating water quality and flooding in the area. The study showed a haphazard and unsafe use of agrochemicals. In addition to environmental pollution, the study expressed concerns on the potential impact of irresponsible waste disposal to human health. Water disposed of carelessly creates the perfect breeding ground for mosquitoes which carry diseases like dengue or malaria. The roads have been severely damaged from the frequent passage of the company's heavy machinery and trucks. Thus, repairing the village roads has become an urgent need.



Entry point to an IOI palm oil plantation within the Native Customary Land of the Long Teran Kanan.

¹³ Because of the dubious reputation gained by the palm oil industry, the Round Table on Sustainable Palm Oil (RSPO) was formed. Its expressed objective is promoting the production and use of sustainable palm oil through a global certification process and the engagement of stakeholders.

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V. Community Actions on the Project

The indigenous community has been engaged in a legal battle over their native customary land for more than 12 years. The IOI group inherited the court case in 2006 when they took over the Rinwood Pelita Plantation.

In November 2009, several meetings took place between IOI, the community and stakeholders. The key outcome was that IOI promised the villagers not to file an appeal should it lose in court. Additionally, it agreed to carry out important measures to improve relations, including acting on road maintenance and compensating for the losses of the community.



IOI announcement that says the use of pesticides and fertilizers in the watershed is prohibited (left). Evidence of chemical use within the watershed (right).

In March 2010, the community won the legal case against the company in court. The court decision basically recognized the Native Customary Rights (NCR) of the community. IOI was given the responsibility to compensate the community accordingly or to leave the disputed land.

However, the company continued its operations on the native customary land. Despite the promises, it also filed an appeal in April 2010 after the Miri High Court declared that the company's provisional land leases issued by the state null and void.

By 2011, IOI still hasn't paid the compensation for the damages caused on the villagers' land as accorded by the court (Indigenous People's Issues and Resources, March 16, 2011). In March of the same year, the communities erected a blockade against IOI to stop their continuing operations. The villagers also lodged two police reports against the company's intrusion after the High Court's ruling. However, the police did not take any action. . The community also occupied the plantation and started harvesting and selling the fruit to a nearby palm oil mill (Mongabay.com, March 31, 2011).

Months later, the company was suspended from the RSPO. RSPO explained that IOI breached "two core membership mandates and obligations" on land conflict and conversion of high conservation forest into oil palm plantations (Mongabay.com, April 6, 2011). After that, IOI made a number of commitments in order to resolve the dispute. It promised to actively engage with the Long Teran Kanan communities. RSPO assigned a mediator to start a two-part dispute resolution process in the end of 2011. This included conflict assessment aside from mediation itself ("Dispute between IOI Pelita Plantations and Community of Long Teran Kanan, Sarawak").

The first round of mediated negotiations between IOI and Long Teran Kanan community stopped in December 2011. The complainants have since awaited RSPO to initiate consultations to discuss the next steps. IOI revived its court injunction against seven villagers for alleged illegal fruit harvesting in March 2012. In its formal correspondence to the RSPO on April 18, 2012, IOI has requested the Court of Appeal to fix a new hearing date for the case because "mediation is unfortunately not being able to proceed further."



I. Background

The Nakeen Development Corporation is a subsidiary of the Philippine oil palm plantation company, A Brown Inc. The said corporation forcefully grabbed indigenous land and displaced indigenous communities in the villages of

Bagocboc and Tingalan in Opol, Misamis Oriental in Mindanao, Southern Philippines.

II. Profile of Indigenous Peoples in the Affected Area

Since the pre-Spanish colonization era, the central and northern parts of Mindanao have been inhabited by the indigenous Higaonon. Traditionally, the Higaonon hunt animals and gather honey in the forests. They occasionally rely on agriculture. The tribe's name can be translated as "people of the living mountains". The indigenous Higaonon tribe consists of eight clans located around eight main rivers in five provinces. They follow their own customary laws that uphold peace and unity among the community members.

In Opol, the Higaonon look back at a long history of land grabbing and displacement that started in 1951. However, in 2008, the Department of Environment and Natural Resources - Provincial Environment and Natural Resources Office (DENR-PENRO) assured the community that the government recognizes their right to cultivate the land.

III. Project Description

The A Brown Company, Inc. (ABCI) is a large corporation owned by the Filipino-American businesspeople Walter W. Brown and Annabelle Brown. It is engaged in trading, energy, mining, quarrying and real estate development.¹⁴

Nakeen Development Corporation (Nakeen) and A Brown Energy Resources Development, Inc. (ABERDI), both 99.99 percent-owned subsidiaries of ABCI, are engaged in palm oil plantation development and production.

Since 2002, ABERDI has operated a palm oil plantation and mill covering almost 800 hectares in the municipalities of Dalirig, Kalabugao and Impasugong in the province of Bukidnon, the neighbouring province of Misamis Oriental.

In Opol, the company is targeting a total expansion area of 2,000 hectares to boost its crude palm oil production. According to its *Annual Report*, majority of the crude palm oil produced by A Brown is distributed to local refineries in the cities of Manila, Cagayan de Oro, Butuan and Malaybalay (2010). A significant percentage of A Brown's products is allegedly exported to Malaysia (Villanueva, 2011).

IV. Impacts to Indigenous Peoples

The Philippine government facilitated the entry of Nakeen and ABERDI – both A Brown subsidiary companies for palm oil investment – into the areas of the Northern Mindanao region in 2010. There were consultations between the DENR-Community Environment and Natural Resources Office (CENRO) and A Brown before the commencement of the operations. Unfortunately, community leaders were not given a voice during the consultations. Instead, the company promised the community a hospital, educational scholarships and other social services. A. Brown also promised not to force those who did not want to relinquish their lands to do so.

In the long run, the company did not keep any of its promises. A. Brown instead committed various human rights violations against members of the indigenous Higaonon.



Rows of palm oil seedlings waiting to be transplanted in Opol, Misamis Oriental.

In 2012, an International Fact-Finding Mission (IFFM) co-organized by the Rural Missionaries of the Philippines-Northern Mindanao Region (RMP-NMR), Asian Peasant Coalition (APC), Kalumbay Regional Lumad Organization, Sentro Kitanglad, Pesticide Action Network in Asia and the Pacific (PAN-AP) and the Kilusang Magbubukid ng Pilipinas (KMP or the Philippine Peasant Movement) discovered incidents of harassment, assault and violence against the indigenous peoples who did not agree to give up their lands.

¹⁴ The company originally was incorporated in 1966 as Bendaña, Brown, Pizarro & Associates, Inc.

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Among the violations against the indigenous peoples rights included destruction of crops, burning of houses, arrests, imprisonment, shootings, death threats and the desecration of sacred sites. These transgressions were committed by A Brown after it began its operations.

The IFFM confirmed that A. Brown has been illegally operating in the area for the last two years. Furthermore, adverse health and environmental effects were reported.

been slowly dying since the plantation's operations started. The adverse effects of the plantation are seen only to worsen over time as corporate monocropping rapidly replaces indigenous and traditional farming practices.

Additionally, around 100 villagers are employed in the plantation as agricultural laborers. They are given a daily wage of Php 247 (approximately US\$ 5.70). This is less than



A sacred hilltop of the Higaonons, a the burial ground of their ancestors, was bulldozed by A. Brown for road construction.

These were due to pesticide use in the palm oil plantation. In Opol, residents have observed the outbreak of diseases including cough, colds and skin disorders that they attribute to A. Brown's chemical use.¹⁵

The plantation workers have either insufficient or no protective equipment at all. They are also uninformed about the effects of pesticide application. If the palm plantation's operations continued and expanded, there would be an increased use of these harmful chemicals, thus threatening the balance of the ecosystem in a wider area.

The indigenous peoples have been heavily reliant on coconut and banana trees for their livelihood. These have been afflicted with pests and diseases and have

the minimum wage in the region. Many were also given only contractual work or made to work on a piece rate basis, contrary to the company's promise of giving regular employment.

A. Brown also reportedly used "divide and rule tactics" and bribery among the indigenous communities and community leaders in the municipality of Impasugong in adjacent Bukidnon. The communities in Bukidnon were also encouraged by A. Brown and the local government to plant palm oil through capital lending from Quedancor, a government-owned and controlled corporation. However, lending from Quedancor stopped in 2006. This led to the farmers being bankrupt, leaving them with untended palm oil seedlings.

¹⁵ Villagers mentioned the plantation's use of carbofuran (trade name: Furadan), a highly toxic carbamate pesticide that has already been banned by the U.S. Environmental Protection Agency. The IFFM was also discovered traces of glyphosate, a herbicide known to be toxic to humans and animals.



(Top) With tears in his eyes, Rubenson Batuto recalls human rights violations in his community experienced in the first two years of A Brown's palm oil operations. (Bottom) Raul Magpulong remains traumatised after a life-threatening assault by A Brown guards and NBI forces in 2011.

V. Community Actions on the project

Members of the indigenous communities are determined to continue the fight for their rights and against the plantation's operations despite the ongoing death threats. Part of this struggle is the collaboration between the villagers and the IFFM.

The investigation team closely interacted with the villagers through focus group discussions and individual interviews. They also paid particular attention to the issues of land grabbing, human rights violations and health and environmental impacts.

After the publication of the IFFM's key findings, A. Brown contested the villagers' findings of harassment in the media. The company also claimed that the plantation was approved by the DENR, people's organisations and the local government.

Further, A. Brown alleged that the plantation had various benefits for the people on site (Manlupig, May 17, 2012). This contradicts the IFFM's findings of increased hunger and poverty since the company started operations in the area.

2. HYDROPOWER DAMS



I. Background

The Nam Mang 3 Hydropower Project is in the Phou Khao Khouay National Protected Area (NPA) 80 kilometers northeast of Vientiane. This area has a relatively high population density. Most of its inhabitants are the Hmong indigenous peoples. The project has been planned, approved and financed in a non-transparent manner (International Rivers Network, May 2004).

II. Profile of the Indigenous Peoples in the Affected Area

The Hmong indigenous peoples are known for practicing pioneer swidden cultivation by clearing forest areas. They are heavily reliant on swidden cultivation due to the lack of accessible land in lowland areas although recently, they have taken up paddy cultivation where land is available.

All Hmong villages have relatively many buffaloes, cattle and large areas for vegetable gardens and orchards. Cemeteries are typically located in elevated forest lands and in the outskirts of the village.

The Hmong are not permitted to hunt or extract forest products from their cemeteries. They avoid approaching it for fear of disturbing the ancestral spirits (Asian Development Bank, 2006).

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III. Project Description

The Nam Mang 3 Hydropower Project has an estimated cost of US\$63 million. Twenty percent of this is financed by the Government of Laos and 80 percent is financed by a China Export-Import Bank loan.

It will be owned and operated by Electricité du Laos (EdL), a state-owned utility. The construction contract was awarded to China International Water and Electric Corporation (CWE) (International Rivers Network, May 2003).¹⁶

The Nam Mang 3 Hydropower Project includes a 22-meter high dam as well as a 10-square kilometer reservoir on the Nam Nyang River with an installed capacity of 40 megawatts.

The power is expected to be used domestically and exported to Thailand. Nam Mang 3 is also supposed to irrigate 2,900 hectares in the Nam Ngum plain.

It is expected to generate annual revenues of US\$6 million. The World Bank, International Monetary Fund and Asian Development Bank have expressed concerns about the implementation of the project (International Rivers Network, May 2003).¹⁷

According to the World Bank, Nam Mang 3 is not economically viable. It seems that the project will increase the debt of the already heavily-indebted Lao government.¹⁸ The project's own environmental management and social action plan identifies the lack of adequate financial resources and problems with institutional capacity as stumbling blocks to the successful mitigation of the impacts of Nam Mang 3. Thailand will pay very low prices for the power generated by the plant and the Lao government will receive little economic benefit in return (International Rivers Network, May 2003).

IV. Impacts to Indigenous Peoples

Nam Mang 3 will potentially disrupt the lives and livelihood of about 15,000 people. Below are the parts of Vientiane and Bolikhamsay that will directly experience the negative impacts of Nam Mang 3:

Table 1. Impact of Nam Mang 3 on Communities in Vientiane and Bolikhamsay

Location	Number of People Affected	Potential Impacts
Reservoir and catchment area	2,745 people or 374 households in 3 villages	<ul style="list-style-type: none">• Loss of houses, land, graves and agricultural production areas• Possible forced resettlement to lowland areas yet to be developed for agriculture
Nam Nyang (Donor River)	<ul style="list-style-type: none">• At least 6,000 people or 900 households in 6 villages along Nam Leuk and Nam Mang rivers• Unknown number of villagers who depend on the Nam Nyang and its resources during the dry season	<ul style="list-style-type: none">• Impacts to livelihoods due to declines in fisheries, poor water quality• Possible decline in non-timber forest products along riverbanks
Nam Ngam (Recipient River)	6,800 people or 1,136 households in 7 villages	Impacts to livelihoods due to increased flows, erosion, sedimentation, flooding, decline in fisheries
Transmission line	Undetermined	Loss of land and homes

¹⁶ CWE was the main contractor for the ADB-financed Nam Leuk Hydropower Project (International Rivers Network, May 2003).

¹⁷ According to the British consulting company Resource Management & Research (RMR), construction was temporarily halted during the 2002 rainy season after these institutions expressed concerns about the project approval process and procurement procedures. They reportedly urged the government to halt construction for at least a year until the required social and environmental studies could be completed. However, construction resumed after a short work stoppage (International Rivers Network, May 2003)

¹⁸ It is being financed with a non-concessionary loan from China. The World Bank and IMF are concerned that Nam Mang 3 is undermining the Lao government's efforts to improve the transparency, accountability and fiscal health of its financial sector. Some observers believe the World Bank's real concern is that poor implementation of Nam Mang 3 will cast serious doubts on the Lao government's capacity to implement the controversial \$1.1 billion Nam Theun 2 Hydropower Project, which the Bank is planning to finance. International Rivers Network, 2003 Source: International Rivers Network. (Revised May 2003) *New Lao Dam Embroiled in Controversy: Report from a Fact-Finding Mission to the Nam Mang 3 Hydropower Project*. [Online], Available: www.internationalrivers.org/files/attached-files/052003.nm3report.pdf

In 2003, the International Rivers Network (IRN) expressed its concern about the resettlement plans for the 2,700 residents of Ban Phou Khao Khouay, Ban Vang Hua and Ban Phou Khao Keo villages that would be impacted by inundation for the Nam Mang 3 reservoir. Many will lose their homes, rice paddies, fruit trees, plantations, fish ponds, grazing lands and gravesites. Despite government reports that state the contrary, people living in two of



Site of the Nam Mang 3 Hydropower Development Project, the first large project undertaken by CWE.

these Hmong villages did not want to relocate to the lowlands. They preferred a compensation package that would allow them to buy land in the open market and adequately cover their loss of land and property.

The affected people were frustrated by the project's lack of transparency. They were not informed of the relocation and compensation plans. It seems that they were just taken for granted and perceived as individuals who are at the bottom of a top-down decision-making process (International Rivers Network, May 2003).

The IRN visited Nam Mang 3 and the resettlement sites in 2006 and discovered that the people's standard of living has remained in the same desolate state since the implementation of the projects.

Villagers at the new Ban Phou Khao Kouay resettlement site were suffering from shortages of fresh water and cultivatable land. Even if the affected people were provided with compensation, they could not find any land to purchase in the lowlands. They survived by renting land or working for other people (Sysamouth, September 11, 2006).

IRN expects thousands more living along the Nam Nyang

and Nam Ngam Rivers to face the adverse impacts of the Nam Mang 3 Project. The diversion of water from the Nam Nyang River will dramatically lower the downstream water levels of the dam, thereby reducing fish populations, drying up riverbank gardens and damaging domestic water supply (International Rivers Network, March 1, 2004).

Nam Mang 3 will affect fisheries in the Nam Nyang area, compounding the hardships of the people living along the lower Nam Mang and Nam Leuk rivers who have seriously suffered from the Nam Leuk Hydropower Project. Besides that, Nam Mang 3 will divert water from the Nam Nyang River to the Nam Ngam River. At least 1,100 households in seven villages depend on the Nam Ngam River for their livelihood. These families will bear the adverse effects of this.

The additional inflow of water to the Nam Ngam is expected to be environmentally and economically damaging to downstream users. Altered water quality and temperatures are also likely to cause changes in lower food web diversity and availability of food (International Rivers Network, May 2003).



Nam Nyang River, the donor river, is endangered by the construction of Nam Mang 3. Potential impacts to livelihood include a decline in fisheries and poor water quality.

In 2006, villagers along the Nam Nyam River who were affected by the higher water levels that resulted from the dam construction informed IRN that they have experienced more frequent flooding than usual. In some areas the river has eroded the riverbanks, resulting in people losing land. Additionally, villagers who used water

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from the regulating pond for dry season rice irrigation lost their crop in the previous year. The apparent cause was a leak in the said pond. Even though the irrigation system was a supposed benefit the project, no compensation was given to the villagers for any of their losses (Sysamouth, September 11, 2006).

The construction of roads, tunnels and other project infrastructure as well as the potential expansion of cultivated areas by relocated villagers are also likely to increase erosion in the watershed. Greater erosion may lead to increased flooding, sedimentation and severe ecological changes to the downstream areas.

Nam Mang 3 is supposed to help conserve and protect the Phou Khao Khouay NPA. However, two of the rivers that support Phou Khao Khouay's biodiversity will be severely altered. The reservoir, roads and other project infrastructure will further destroy and fragment wildlife habitat.

The Nam Leuk Hydropower Project, which was also built in the Phou Khao Khouay NPA has negative effects on the environment despite the mitigation measures similar to those of Nam Mang 3.

It was plagued by cost overruns, poor construction work, inadequate project studies and serious detriment to peoples' livelihoods, which have yet to be addressed.

Likewise, the Theun-Hinboun Hydropower Project, financed by the ADB and the Norwegian government, also suffered from poor implementation and impacted the livelihoods of thousands of villagers, majority of whom are still waiting for compensation.

The Nam Mang 3 Hydropower Project has violated Lao regulations. Construction began in late 2001 despite the fact that the project design was not yet finalized.

Moreover, studies required under Lao PDR's Environmental Protection Laws and Regulations for Environmental Assessment have not been conducted.

The World Bank requested Electricité du Laos to carry out the required studies. As a result, CWE hired Resource Management and Research (RMR) to prepare an environmental impact assessment, social action plan and environmental management plan in March 2002.



The construction of roads for the hydropower project is likely to negatively affect the ecosystem and wildlife diversity.

All of these have to be carried out in four and a half months. This is an inadequate period of time to conduct comprehensive studies for a complex project. Nevertheless, the studies were approved by the Science, Technology and Environment Agency (STEA) under the supervision of the Lao Prime Minister's Office (International Rivers Network, May 2003).

V. Community Actions on the Project

In November 2002, ethnic Hmong men from Ban Phou Khao Khouay protested at the site of the Nam Mang 3 Hydropower Project. The villagers were infuriated that they have received no information about the relocation and compensation plans while they were being threatened eviction from their lands.

Two days later, a large contingent of military personnel and trucks carrying artillery and arms streamed into Ban Phou Khao Khouay with the purpose of intimidating the villagers. No one was arrested in the incident but it halted the construction for five days and prompted CWE to write a letter to EdL informing them of the incident. A series of meetings with district authorities ensued (International Rivers Network, May 2003).

This was the first protest that was led by villagers against a dam in Lao PDR. It is also the first time that a protest stopped the construction of a dam project in the country. The villagers who protested took great risks by voicing their concerns in a country where political freedoms are restricted and opposition is repressed (International Rivers Network, May 2003).

Prior to the November protest, Hmong people living in the affected villages of Ban Vang Hua and Ban Phou Khao Khouay actively protested against relocation from the reservoir area. They wrote letters to district authorities and demanded answers to their questions. The IRN has received anonymous reports on the social, economic and environmental problems brought about by Nam Mang 3 (International Rivers Network, May 2003).

VI. Recommendations

The World Bank, International Monetary Fund and ADB should urge the Lao government to halt the project until the outstanding problems outlined in this report are resolved. These institutions reportedly pressured the Lao government to stop the construction of Nam Mang 3 in 2002.

Furthermore, international financial institutions should not support the construction of any other dams in Laos as long as its government does not have the institutional capacity and political will to implement such projects according to international standards. To do otherwise will only harm local communities, the population and environment of Laos. The local communities, its residents, and biodiversity will ultimately bear the long-term costs of projects that are implemented haphazardly (International Rivers Network, May 2003).

3. MINING



I. Background

PT Vale Indonesia Tbk, a mining company, has been operating an open-pit nickel mine near Sorowako in South Sulawesi. The Indonesian government permitted land grabbing, robbing the Karonsi'e Dongi indigenous group of their land.

¹⁹ PT Inco reportedly made its first profit in 1987, a total of US\$1 million. PT Inco's profits then skyrocketed to US\$174 million in 1988 and US\$182 million in 1989. In the following years, PT Inco continued to turn in handsome in the multi-million dollar range. Source: NGO Working Group on the EDC. (January 2003). Seven Deadly Secrets: What the Export Development Canada does not want you to know.

II. Profile of Indigenous Peoples in the Affected Area

The project currently affects 38 families or 250 to 300 individuals who belong to the Karonsi'e Dongi indigenous people. Before the mining operations started, Sorowako's land was fertile. It provided livelihoods for growers of rice and a variety of fruit and vegetables (Glynn, May 3, 2007).

Sorowakans utilized shifting cultivation to produce various crops and collected minor forest products such as rattan and bamboo (International Women and Mining Network, March 2010).

III. Project Description

In its online company profile, PT Vale Indonesia Tbk (Vale Indonesia) used to be called PT International Nickel Indonesia. The Canadian nickel mining company, Inco Ltd. owns a 58.73 percent of the firm. In 1968, Inco Ltd. signed a 30-year working contract with the Indonesian government. In this working contract, PT Inco/Vale Inco's work area covers 218,528.99 hectares. This spans the three provinces of South, Southeast and Central Sulawesi (Glynn and *Sulawesi Communities Reject Inco*).

The extracted nickel is sold to factories in Japan, South Korea, Taiwan and China (Sangadji, July 18, 2002). PT Inco has gained great profits from its operations in Sulawesi as well (NGO Working Group on Export Development Canada or EDC, January 2003).¹⁹ At the government level, the Ministry of Energy and Mineral Resources, the district government of Luwu Timur regency, the provincial government of South Sulawesi as well as the central government of Indonesia are involved in the mining project (Aliansi Masyarakat Adat Nusantara, 2009).

IV. Impacts to Indigenous Peoples

The Karonsi'e Dongi indigenous group was forced to escape from their traditional homeland in Dongi Baru during the unrest in the 1950s. They returned in the 1970s only to find out that PT Inco was in control of their land. Their villages, rice fields, forests and graveyards had been bulldozed. Their cultivated land was converted into a company golf course (Mananta, May-June 2002). To

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survive as a community, some built their houses at the border of the golf course. Others in Wasupondo, Central Sulawesi, and other areas were forced to integrate with neighbouring communities (Kerukunan Petewawo Asli Karonsi'e Dongi, February 10, 2003). Until now, the Karonsi'e Dongi have not obtained a sustainable solution to their plight. According to an unpublished document by Aliansi Masyarakat Adat Nusantara (AMAN) (2009), PT Inco/Vale Inco has offered them relocation but this has not been accepted.

The Karonsi'e Dongi's ancestral domain was given as a mining concession without the people's free, prior and informed consent. They were totally excluded from the negotiations for the land since these were done only between the government and PT Inco/Vale Inco.



**A traditional house of the Karonsi'e Dongi.
Karonsi'e means the leg pillar of the barn.**

Witamorini, now called Karonsi'e in Sorowako undeniably belongs to the Karonsi'e Dongi. As *masyarakat adat*, they are entitled to the land based on adat law and adat governance (NGO Working Group on the EDC, January 2003).

PT Inco's mining town built on the ancestral land of the Karonsi'e Dongi was fitted with the amenities of a resort. The indigenous families have tried to occupy the land around the company but they have been consistently intimidated and driven away to this day (Indonesian NGO Alternative Report ICERD, 2007). In MiningWatch Canada's website (August 12, 2005), reports indicate that the project has caused a large number of ecological problems since its operations started.

Freshwater fish comes from the Larona River and the Matano Lake ecosystem. These have been heavily polluted causing the degradation of the landscape, soil pollution and air pollution. PT Inco/Vale Inco has left boreholes which have destroyed cashew plantations and agricultural crops. Vale Inco has also quickly ruined vast forest resources that produce raw materials for local trade items like medicinal herbs and rattan (NGO Working Group on the EDC, January 2003).

Striking differences between the standards of living of the area's original inhabitants and employees of PT Inco/Vale Inco have been reported. Provisions for social services like housing, electricity, clean water, and access to education are higher for those employed by PT Inco/Vale Inco. Promises of free health care, education, and priority in employment have never been fulfilled. The Karonsi'e community's health has deteriorated from the dust and smoke emitted by the PT Inco plants but the company-run health center has dismissed their problems (NGO Working Group on the EDC, January 2003).

The children of the Karonsi'e community have no access to education because the schools in the area are owned by the companies and are only intended for families of the company's employees (Indonesian NGO Alternative Report ICERD, 2007).

PT Inco/Vale Inco has adamantly denied the indigenous peoples the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. The company has also managed to cover up the community's protests against the desecration of ancestral graves in Sorowako, particularly for the Karonsi'e Dongi since the golf course sits over their ancestral graveyard.

Some Karonsi'e Dongi who attempted to build their houses in their ancestral domain and those who gathered forest products were arrested for trespassing in a conservation area (NGO Working Group on the EDC, January 2003).

In an open letter signed by fifty NGO's (December 12, 2003), it was acknowledged that the Karonsi'e Dongi community members feel that their lives are threatened because of the intimidation and violence perpetrated by PT Inco/Vale Inco and security forces.

Academic studies have shown that the workload of women in villages has become heavier with the existence of PT Inco/Vale Inco. Women have taken on the role of



The Karonsi'e Dongi, ancestral domain holders of Witamorini, have organized several demonstrations and blockades against PT Inco.

wives to company employees. Worse, some have turned to prostitution in the mining town. More incidents of rape and other forms of violence against women have been reported. Further, the locality has seen the rise of teenage pregnancy (NGO Working Group on the EDC, January 2003).

The company's operations also neglect Indonesian legislation. For instance, Article 1, Paragraph 31 of UU No. 32/2009 on Environmental Protection and Management defines a customary law community as a group of people who have lived in a given geographic area because of ancestral relationship.

Further, this community has both a strong relationship with the environment and a strong value system that determines economic, social, and legal institutions. Clearly, the Karongsi'e Dongi are covered by the abovementioned stipulations.

UUD 45 Article 18B Paragraph 2 of the Constitution (Second Amendment, 2000), specifies the obligation of the state to recognize and respect customary law community units and their traditional rights as long as these are in accordance with national development and the principle of the Unitary State of Republic of Indonesia. UUD 45 Article 28I in the paragraph that follows states that, "Cultural identities and rights of customary peoples are respected in accordance with the development of times and civilization."

TAP MPR No. XVII/MPR/1998 on Basic Human Rights asserts the protection of the cultural identities of traditional peoples including the rights to customary land (Basic Human Rights Charter, Article 41).

The encroachment of this company to their ancestral lands and the inaction of the government are violations to these provisions. Aliansi Masyarakat Adat Nusantara (AMAN) also identifies UU No. 39 of 1999 on Basic Human Rights, as well as the People's Consultation Assembly Decree No. 9/2001 on Agrarian Reform and Natural Resource Management (Article 4) as laws that haven't been followed. For instance, Article 4 in the latter states that: "The implementation of agrarian reform and natural resource management shall be based on the (j) 'recognising, respecting, and protecting the rights of the customary law societies and the diversity of the national culture with respect to agrarian resources/natural resources.'" Clearly, the people of the community have become victims and not beneficiaries of the utilization of these natural resources.

V. Community Actions on the Project

Since 2000, there have been various efforts including lobbying directly to PT Inco/Vale Inco and holding policy dialogues with the local government and North Luwu parliament. However, no solution to assure the survival of the community has been reached. Furthermore, the indigenous people have experienced greater government repression with increased police presence in the area



PT Inco did not fully install filters to clean its emissions. The increase of dust in the air is causing various respiratory diseases.

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(Kerukunan Petewawo Asli Karongsi'e Dongi or KRAPASKAD Wasuponda-Sorowako, October 2, 2003).

Several actions have been undertaken by the Karonsi'e Dongi indigenous people. Blockades, demonstrations, sit-ins and hunger strikes have been organized. CSR Asia (Indonesia: Protest Against INCO) has documented some mass actions



Community leaders who questioned the forced relocation and unfair compensation were jailed in order to suppress any form of criticism.

at the PT Inco/Vale Inco mine site and the Inco regional office in 2005. Some civil society organizations have actively supported the community's efforts. These include filing cases for mediation to the local government and sending the human rights violations report to the Human Rights National Commission. The case was also included in the Indonesian NGO Alternative Report ICERD in 2007. A report as well as a proposal for mediation to local government institutions was sent to the KOMNAS HAM as well.

In 2010, AMAN encouraged the efforts of the Karonsi'e Dongi to protect their rights by conducting consolidation activities in the sub-communities of Karonsi'e Dongi. These sub-communities are Matano Rahampuu, Ihinia Soroako, Padoe, Tambree/Landangi, Karonsie, Kawata/To Konde, Nuha/To Turea and Tokinadu/Angkon. Majority of the communities in eight Karonsi'e Dongi sub-communities complained about problems caused by PT Inco/Vale in their area (AMAN, 2009).

Internationally, they have presented the case at the National Roundtable on Corporate Social Responsibility and the Canadian Extractive Sector in Developing Countries in Montreal, Canada in 2006.



I. Background

The Lepanto Consolidated Mining Company (LCMC) is engaged in mining gold, silver and copper in Mankayan, a municipality in Benguet Province. Benguet is in the north of the Philippines.

The large-scale mining project is destructive to the indigenous peoples' environment, their culture and societies.

II. Profile of Indigenous Peoples in the Affected Areas

Mankayan is predominantly inhabited by the indigenous Kankanaey and Ibaloi peoples. In the past, the Ibaloi and the Kankanaey relied on wet and dry subsistence agriculture (ADB, 2002, 7). The town produced gold and copper. It was also heavily involved in trading. Mankayan has evolved to become an agricultural and mining community. While subsistence production still exists, production of vegetables for the needs of the market has become a major source of livelihood for the residents (Rovillos and Morales, 2002).

In its online company profile, Lepanto Consolidated Mining Company-Lepanto Mine Division (LCMC-LMD) has around 1,706 employees.²⁰

There is no available data on the ethnic profiles of these workers. However, the Cordillera Peoples' Alliance (CPA) estimates that an overwhelming majority of the workers belong to indigenous peoples from the Cordillera Region (DINTEG-Cordillera Indigenous Peoples' Legal Center, 2010).²¹

²⁰ Sixty nine percent are underground workers while thirty 31 percent are surface workers. This is an improvement from the 65%:35% ratio in the year 2008; <http://www.lepantomining.com>.

²¹ The information is culled from studies by the Cordillera Peoples Alliance, an alliance of more than 100 indigenous people's organizations in the Cordillera Region. See also: DINTEG-Cordillera Indigenous Peoples Legal Center (2010): Terminal Report on the National Consultation on "Indigenous Peoples and Corporate Social Responsibility," Baguio City, Philippines (unpublished report).

III. Project Description

In its Annual Corporate Report in 2009, LCMC claims to be the leading gold and copper producer in the Philippines.

Aside from being the leader in gold and copper production, LCMC is also the oldest mining company in the country. It pioneered underground mining in 1936 (CPA Philippines in Indigenous Portal, July 16, 2009).²²

According to the unpublished report by DINTEG-Cordillera Peoples Legal Center (2010), 60 percent of LCMC is Filipino-owned while 40 percent of its shares are owned by the Pacific Mining Limited, a company incorporated in the Cayman Islands.²³

In 2009, production was placed at 29,303 ounces of gold and 45,515 ounces of silver with total revenue of P1.46 billion. LCMC mines out 373,340 tons in a year or an average of 1 ton/day,²⁴ with gold recovery reaching average of 3.96g/ton.

Studies conducted by CPA indicate that the company sells its products to markets in Hong Kong, Canada, Peru and China (DINTEG-Cordillera Peoples Legal Center, 2010).

IV. Impacts to Indigenous communities

A 4,949-hectare area was acquired by LCMC under a mining patent during the American colonial government.

The mining operations caused a number of violations to indigenous peoples' rights.

For example, the mine began its operations in 1936 without any consent from the local community.



Mineworkers marched to express the their grievances toward the management of the Lepanto Consolidated Mining Company (LCMCo) and the Department of Labor and Employment (DoLE).

The large-scale corporate mining of LCMC has dislocated the indigenous Kankanaey and Ibaloi people from their ancestral lands and traditional sources of livelihood.

Mining patents granted by the government to mining companies have deprived indigenous communities of their rights to ownership and control over their ancestral lands and resources which are the basis of their continued existence and identity.

In terms of livelihood, mining concessions have taken over lands used by indigenous peoples for their traditional means of production - rice fields, vegetable gardens, swidden farming, hunting and grazing live stock. Garden cultivators have lost their crops to surface subsidence. Traditional small-scale miners have lost their pocket mines and gold panning sites to the big mines and dams (DINTEG-Cordillera Indigenous Peoples Legal Center, 2010).

The government has certified that free, prior and informed consent was not required. LCMC acquired prior property rights over the land, which under Section 56 of

²²As early as 1850, the colonial authorities in Manila started to examine the Igorot's copper mines in Mankayan. Cordillera Peoples Alliance; <http://www.indigenousportal.com/es/Industrias-minera-y-extractiva/Lepanto-Shattering-its-Own-Myth-of-Safe-and-Responsible-Mining.html>

²³Mr. Felipe Yap, its Board Chairman, also chairs the Board of Prime Orion Philippines and Pepsi Cola Products Philippines. From 1948 to 1996, LCMC was primarily a copper producer with gold and silver as by-products. The discovery in 1995 of the Victoria gold vein made LCMC primarily a gold producer. In its first 10 years of operation, the Victoria vein produced about 1.17 million oz. gold. In September 2010, LCMC closed a deal with New Zealand firm Gold Fields Ltd. for the latter to take up a 60% interest in its Far Southeast mining claim. LCMC operates three wholly-owned subsidiaries: Shipside, Inc., as support to the mining business such as handling products and supplies, timber, exploration, marketing, etc; Lepanto Investment and Development Corporation (LIDC) which is engaged in insurance, manufacture of diamond tools, marble cutting and construction business; and Diamond Drilling Corporation of the Philippines (DDCP) which handles Lepanto's drilling requirements. DINTEG-Cordillera Indigenous Peoples Legal Center (2010): Terminal Report on the National Consultation on "Indigenous Peoples and Corporate Social Responsibility," Baguio City, Philippines (unpublished document).

²⁴The figure was taken from the LCMC 2009 official report. There must have been technical error since the average ore output is 1,000 tons/day from the yearly mined out ore of 373,340.

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During the strike in 2005, all five main portals to the underground mines were manned in shifts by the workers, their wives, and the nearby communities.

the Indigenous People's Rights Act (IPRA), must be upheld over indigenous claims.²⁵

Additionally, the Lepanto mines have had huge detrimental effects to the environment. DINTEG-Cordillera Indigenous Peoples Legal Center (2010) has noted that the operations have caused landslides. Moreover, the land surface in populated areas is sinking, causing damage to buildings, farms and property. Some communities have lost entire mountainsides, burial sites and hunting grounds to ground collapse and deep open pits.

Besides that, operations have seriously jeopardized the Abra River with widespread erosion and siltation. Whatever water supply is available is unsafe for human consumption or use due to the pollution and heavy siltation of the Abra River and its adjacent lands. The same report documented that many of the natural water sources in It-ogon and Mankayan have been privatized by mining companies. To add to the burden, people from the affected areas have to either line up for hours in the few remaining natural water sources to fill up a one-gallon container or buy water for drinking or for domestic use. Now, there is a wide swath of infertile land on either side of the river. In as early as 2003, Save the Abra River Movement (STARM) reported that rice crops have become stunted and plants and animals have perished due to.

Environmental investigations such as Environmental Investigative Missions (EIM) have revealed that, *inter alia*, heavy metal content and other toxic substances were elevated in the soil and waters, causing the deterioration of aquatic life and loss of flora and fauna. To be more concrete, fish kills and shrimp kills have become more prevalent.

In a primer about the effects of corporate mining on the Abra River (September 2003), STARM discussed the concern on the high amount of Total Suspended Solids (TSS) and Total Dissolved Solids (TDS) found at various points of the Mankayan River downstream from Tailings Dam 5A.

Reports published in Manila Bulletin, a major national daily, also discuss the details of the degradation of water cleanliness. Water samples collected from Luba River yielded free cyanide levels of .064 and .072 mg/l



The workers picketed the DoLE in Baguio City to condemn the agency's decisions in favour of the company.

(milligrams per liter) free cyanide. This is way above the DENR limit of .05 mg/l. The Bureau of Fisheries and Aquatic Resources (BFAR) said that it is impossible for fish to survive in waters that have this level of free cyanide. Moreover, water collected from the mill of the mining company in February 8, 2006 exhibited dangerously high levels of free cyanide as the samples contained 26.4 mg/l of the harmful and toxic substance.

The loss of aquatic life is a major change in the life support system of the communities that rely on the river for daily

²⁵ Even the National Commission on Indigenous Peoples (NCIP), the government body mandated to implement the Indigenous Peoples Rights Act certified that there is no existing application for Certificate of Ancestral Domain Claim (CALC) or Certificate of Ancestral Domain Title (CADT). Under Section 56 of the IPRA, "Property rights within the ancestral domains already existing and/or vested upon its effectivity shall be recognized and respected." DINTEG- Cordillera Indigenous Peoples Legal Center (2010): Terminal Report on the National Consultation on "Indigenous Peoples and Corporate Social Responsibility", Baguio City, Philippines (unpublished document).

sustenance. Traditional fishing is no longer possible in polluted rivers. Not only are livelihood sources affected, the general biodiversity is also damaged. Once-common birds and tree species have disappeared (DINTEG-Cordillera Indigenous Peoples Legal Center, 2010).

Health impacts on the surrounding indigenous communities have been extensively documented in the Philippines Indigenous Peoples ICERD Shadow Report (August 2009).

Water, soil and air contamination contributes to the increasing toxic build-up in people's bodies. STARM has also recorded the prevalence of asthma and other respiratory problems in local communities and mine workers. Cancer has been a primary cause of mortality in some affected communities but further investigation on the matter is yet to be launched.

LCMC is also well-known for its labor law violations and unfair labour practices. The Philippine Labor Code guarantees the right of the workers to Collective Bargaining Agreement (CBA) and even has some provisions related to it. Sec. 3, Article XIII, 1987 Philippine Constitution states that: "The policy of the state is to assure the right of workers to security of tenure." Sec. 3, Article III identifies one aspect of social justice by defining security of tenure as: "...a right paramount value as recognized and guaranteed under the constitution. The State shall afford protection to labour, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The state shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work."

In reality, CBAs on workers' rights and benefits are routinely disregarded by LCMC. The extensive violations of the worker's rights encompass illegal dismissals, retrenchment and indefinite work suspensions for employees, as well as the unjustified reduction of working days.

Furthermore, LCMC failed to remit social security contributions and loan payments, thereby denying the workers access to social benefits such as retirement and medical services. As regular wages and benefits have often not been paid, the economic difficulties faced by employees have worsened.

Consequently, the families of the workers also bear the brunt of these unfair practices. For instance, many workers have been forced to take their children out of school. Further, LCMC has meddled in the selection of the workers' bargaining representative. The management has also engaged in union busting. Reports



The Lepanto Management, aside from its own security force, had State armed forces on its side, committing human rights violations against the workers and their families.

of DINTEG-Cordillera Indigenous Peoples Legal Center (2010) also highlight the discriminatory attitude of LCMC's management towards the indigenous peoples.

V. Community Actions on the Project

Since the project commenced operations, the workers have fought for their rights to just living wages and benefits, security of tenure and the right to self-organization. The conclusion of the workers' strike in 2005 was followed by a massive dismissal of employees. The worker's strikes in 2003 and 2005 culminated to militarization as LCMC employed state security forces in the guise of maintaining peace and order. Dubbed as "Task Force Lepanto", combined elements of the 54th Infantry Battalion of the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP) and paramilitary groups were deployed to the communities.

According to DINTEG-Cordillera Indigenous Peoples Legal Center (2010), the use of armed forces resulted to the violent dispersals of mass actions. Combined forces of the LCMC security, the state police and armed forces

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prevented the entry of food and medicines for striking workers and their families. Threats, illegal detention and other forms of harassment were experienced by the union leaders and members, including family members and advocates.



I. Background

The Rio Tuba Mining Corporation, otherwise known as the Coral Bay Nickel Corporation, is engaged in the mining and production of nickel in the municipality of Bataraza in Palawan. The quarry site is within the ancestral domain of the Pala'wan indigenous community.

II. Profile of Indigenous Peoples in the Affected Area

The UNESCO declared the whole Province of Palawan a Man and Biosphere Reserve in 1990 (Impact: Asian Magazine for Human Transformation, 2011, p. 7). Bataraza is located in the southernmost part of mainland Palawan. Its twenty-two *barangays*²⁶ are populated by indigenous communities, the Pala'wan tribe and the Molbog.

The Pala'wan ethnic group inhabits the south. It is one of the three indigenous tribal peoples of Palawan. The Molbog reside in Balabac Island. According to an online profile written by Filipino Santos, the Molbog livelihood includes subsistence farming, fishing and occasional barter trading.

The Bulanjao 2010 Geo Tagged Report describes the Pala'wan as swidden cultivators with a sophisticated knowledge of intercropping techniques (2010). As shifting cultivators, they clear small areas of the forest to grow food on it before moving on and allowing the forest to regenerate (Survival International).

Resin, rattan canes and wild honey are collected for sale. For a very long time, the Bulanjao range has represented an important foraging and hunting ground for the surrounding Palawan communities. Agriculture is the main source of livelihood for the people in Bataraza.



The flora on the Bulanjao range consists of a very unique type of forest, growing on soils with high concentrations of chromium and nickel.

Among the major crops planted are rice, corn, coconut, banana and various fruit trees (The Bulanjao 2010 Geo Tagged Report, 2010 and SSMP Palawan Bataraza, October 2006).

III. Project Description

The Rio Tuba Mining Corporation (RTNMC), a Filipino-Japanese partnership, has been operating in Bataraza, Palawan since 1977. This company has been involved in the export of beneficiated nickel silicate ore to Japan. According to Impact, the RTNMC has a mining claim of 5,265 hectares, 353 hectares of which is currently operated on (2011, p. 7).

Coral Bay Nickel Corporation (CBNC) is a joint-venture company formed in July 2002. To be precise, Japan's Sumitomo Metal Mining Company Limited owns 54 percent of CBNC while Nissho Iwai-Nichimen Holdings Corporation has 18 percent.

Australia's Mitsui & Company (Australia) Pty. Limited controls about 18 percent of the company while Rio Tuba Mining Corporation has 10 percent of its shares. CBNC and RTNMC, which is a subsidiary, are the corporate operators of the project in Bataraza.

The Bulanjao 2010 Geo Tagged Report (2010) documents some of this company's activities. In 1996, an EIA was conducted for the modification of RTNMC's 110 nickel mining claims into a Mineral Production Sharing

²⁶ This is the smallest local government unit of the Philippines next to the municipality or city.

Agreement (MPSA) as well as for its continued operations. Despite the glaring unacceptability and environmental issues raised against RTNMC, an Environmental Compliance Certificate (ECC) for the MPSA was granted in 1997.

In 2000, RTNMC proposed the construction of a Hydrometallurgical Processing Plant (HPP) in Rio Tuba.

That same report goes on to describe the facility. It includes a hydrogen sulphide production plant, limestone



A Filipino-Japanese partnership, the Rio Tuba Mining Corporation has been operating in Palawan since 1977.

quarrying operations and support facilities such as a causeway and a coal power plant.

The limestone is quarried from Mt. Gotok in Barangay Iwahig. This lies within the ancestral domain of the Palawan indigenous community (2010).

In connection to this, RTNMC applied for a Mineral Production Sharing Agreement (MPSA) covering 84,5364 hectares for limestone quarry development in Gotok. Their application was approved in 2005.

Later, RTNMC and CBNC expanded their HPP project and constructed another HPP. The expansion is expected to increase the production of nickel from 10,000 MT to 20,000 MT per year (The Bulanjao 2010 Geo Tagged Report, 2010).²⁷

IV. Impacts to Indigenous Communities

The Free and Prior Informed Consent was secured by RTNMC and CBNC during the construction of the HPP. The process was tainted with irregularities and fraud. Many of the members of the indigenous community expressed that they did not understand the process. Further, no one even bothered to explain the idea of an FPIC.

The mining operations have caused damage to livelihood sources including forests, agricultural lands, mangrove and coastal areas. The said mining operations have caused the loss of wildlife habitat for ecologically important flora and fauna in the mined-out areas and the Gotok limestone quarry area.

There is also a marked decrease in the quantity and quality of water supply, adverse impacts on the irrigation systems and a decline in agricultural production. Flash floods have occurred and coastal resources are threatened by erosion, water and air pollution. There are also health impacts such as skin lesions (Anda and Galido, 2006, 27-66).

For the villagers, their way of life was better before the mining operations started. Life used to depend mostly



Rio Tuba Nickel Mining Corporation set up a Hydrometallurgical Processing Plant (HPP) in order to recover nickel and cobalt from low-grade ore from mine wastes.

²⁷ The SEP Clearance for the second HPP (referred to as Line 2 HPP) was approved by the PCSD on November 2006. Subsequently the ECC was granted on February 2007 (superseding the ECC issued for Line 1 HPP) and in 2008 Line 2 of the HPP became operational. The Bulanjao 2010 Geo Tagged Report, Mining Aggression in Core Zones and Ecologically Fragile Areas on Palawan Island (the Philippines). A joint field assessment of ALDAW (Ancestral Land/Domain Watch) and the Centre for Biocultural Diversity (CBCD) of the University of Kent (UK)



A child of the indigenous Pala'wan, an Austronesian speaking ethnic group inhabiting the southern region of Palawan Island, Philippines.

on farming and fishing and products from their farmlands were abundant. The mining operations made the soil less productive to the point that people had to engage in other means of livelihood to supplement their income.

Hawking goods at markets was one of the ways for them to survive. The detrimental impacts of mining operations and the HPP on livelihood created an unhealthy dependence between the mining companies and communities. Not only that, it also fostered conflict and divisiveness between and within indigenous peoples' communities and the non-IP communities (DINTEG-Cordillera Indigenous Peoples Legal Center, 2010).

Under the Philippine Mining Act of 1995 and its revised Implementing Rules and Regulations (IRR), a Social Development Management Plan (SDMP) was

institutionalized for the mining companies to implement plans, programs and projects that would improve the living standards of the mining project's host communities.

For the indigenous communities in Bataraza, benefits should include the provision of service vehicles as well as projects on infrastructure, health, social services, livelihood and education.

These projects are received and perceived negatively and cannot escape scathing criticisms that reveal the obvious inadequacy of services. SDMP projects also tend to be highly politicized. Projects are overpriced and equipment is of low quality.

Other community programs are scholarships for the private school inside the mine's town site, free medical consultations and hospitalization, and regular medical missions.

Some of the promised benefits were not given due to cost-cutting measures of the companies.

The positive effects of the SMDP projects on health are almost nil. It only attempted to intervene through medical missions which have been stopped. Free hospitalization programs were too selective and limited, despite the fact that the health hazards posed by the mining and HPP operations are very critical.

The promise of employment has not been fully fulfilled. The fact remains that only a limited number of people from the impacted *barangays* were employed. The generation of 586 jobs was one of the three main identified benefits of the HPP. On the contrary, employment data shows that only 281 jobs were created. Local communities complain that most of the employees are migrants. Other complaints are the low salaries and absence of benefits for the contractual and seasonal employees (Anda and Galido, 2006, 27-66).

V. Community Actions On the Project

Presently, there are several cases filed by the indigenous community. Anda and Galido (2010) have documented these cases. For example, in December 2002, the community filed a civil case before the Court of Appeals regarding the issuance of the ECC without the FPIC of the affected indigenous communities. When the court



Road construction causing environmental damage around the sources of the Sumbiling river.

dismissed the special civil action, the IP community, with the assistance of ELAC, filed an appeal in the Supreme Court. The High Tribunal affirmed the decision of the Court of Appeals although the decision was mainly focused on technical grounds.

The DENR recognized the first Field-Based Investigation (FBI) of the NCIP Abo-abo Field Office. Consequently, they recommended a favourable certification to the HPP project due to the absence of any pending Certificate of Ancestral Domain Title (CADT) application.

The second and third FBIs recognized the presence of indigenous communities within the quarry site in Gotok and the HPP site in Rio Tuba. Both FBIs recommended the company to secure their FPIC. However, the DENR has maintained their decision in favour of the HPP (Anda and Galido, 2010).

The communities and the NGOs aggressively pressed their case against the HPP.

In the end, the Palawan Council for Sustainable Development (PCSD) supported DENR's claim that the Gotok area could neither be ancestral domain nor old growth forest. This is so because the DENR has declared the area as alienable and disposable.

Furthermore, other administrative cases as well as formal petitions were filed by the indigenous peoples and NGOs, as documented by DINTEG-Cordillera Indigenous Peoples Legal Center (2010):

a. In October 2003, ELAC, on behalf of the local communities, filed a formal petition with the DENR Provincial Environment and Natural Resource Office (PENRO) in Palawan for the cancellation of the homestead patents in the limestone quarry area.

b. In 2009, another administrative case was filed against RTNMC before the Palawan Council for Sustainable Development Adjudication Board (PAB) in relation to their clearing activities in Mt. Bulanjao which is within the ancestral domain of the Pala'wan tribe. This case is still pending with the PAB at present.

c. A case against the erring local elected officials of the municipality of Bataraza is likewise pending before the Office of the Ombudsman. The case was filed following



Pala'wan elders report that newly-constructed checkpoints and restricted opening hours make them feel like being trapped in their own land.

the enactment of an ordinance by the Sangguniang Bayan of Bataraza declaring Mt. Bulanjao a mineral zone.

Currently, the indigenous peoples' community has lodged cases at the Department of Labor and Employment (DOLE) (Anda and Galido, 2006).



Part 3

Conclusion: the environment that fosters abuse of indigenous peoples' rights.

Violation of Indigenous Peoples Rights

This report on selected cases of corporate activities in indigenous peoples' territories clearly demonstrate the serious lack of human rights accountability of both States and corporations. There is a clear disconnect of development targets and human rights protection. While corporations are recognized by States and other development actors as key contributors to meeting the development targets of poor countries in the ASEAN, their serious record of human rights violations, environmental disasters, and conflicts in many parts of ASEAN continue to be ignored and tolerated.

This is contrary to the commitments and obligations of States under international Human Rights Instruments such as the UN Conventions on Civil and Political Rights, and Economic, Social and Cultural Rights, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Non-recognition as indigenous peoples with their distinct identities and entitlement to their collective rights

Despite all ASEAN member States having voted in favour of the UNDRIP, most States continue to deny recognition of the distinction of indigenous peoples

who are entitled to their collective rights. Except for the Philippines with its Indigenous Peoples Rights Act (IPRA), ASEAN member countries do not have laws explicitly recognising indigenous peoples and their collective rights. Many ASEAN governments still claim that they do not have indigenous peoples or that everybody is indigenous. This deprives indigenous peoples from being accorded their collective rights in achieving social justice, non-discrimination and equality. While the Philippines has the IPRA, its implementation remains problematic and even manipulated to disenfranchise indigenous peoples of their lands, territories and resources.

Violation of Right to Land, Territories and Resources

The UNDRIP recognizes the rights of indigenous peoples to land, territories and resources specifically Articles 10, 25, 26, 27 and 28. The said Articles state that indigenous people have the right to own, use, manage, develop and control their land, territories and resources. The state parties to the UNDRIP shall give legal recognition and protection, respect the customs, traditions and land tenure systems of the indigenous people. Consequently, the indigenous people have the right not to be subjected to forced assimilation, destruction of their culture and removal from their lands and territories.

In the cases from Cambodia, Indonesia, Malaysia, and the Philippines, the indigenous peoples' rights to their lands and territories are not clearly respected and protected.



Burial sites are an important part of the Bunong culture. Nevertheless, many of them have been cleared by the Socfin-KCD company.

In Cambodia, while the Land Law of 2001 recognizes the right of indigenous peoples to collective ownership of land, indigenous peoples find the process of recognition under this law tedious and bureaucratic. To date, only three communities have been granted collective land titles, thereby leaving the vast territories and lands of indigenous peoples vulnerable and unprotected from the entry of companies forging ELCs with the government. In a recent development, the government of Cambodia announced that it would stop issuing ELCs. However, it has not cancelled current ELCs that affect lands, territories and resources of indigenous peoples in Cambodia.

In Indonesia, the Karonsi'e Dongi indigenous peoples' ancestral domain has been given out as a concession to PT Inco for nickel mining without their knowledge while they were in a temporary relocation site due to national security issues. Attempts by the community to return to their ancestral lands have been met with denial of their right to re-occupy their territory and increased police presence.

In the States of Sabah and Sarawak in Malaysia, communal titles are recognized in Land Ordinances. But in both States, the governments still promote individual titles over communal titles and customary land rights have for many decades been simply ignored by the state when it grants concessions for large-scale logging and plantations. The Indonesian Constitution also recognises customary law communities.

The 1960 Basic Agrarian Law (BAL) provides for the recognition of individual rights to use and own lands and for business tenures as long term renewable leaseholds. The BAL also recognises the collective rights in land of customary law communities but treats these as weak usufructs on State lands subordinate to State plans and interests. In 2010, the High Court of Miri recognized the indigenous Kenyah and Kayan's native customary rights to their lands in Long Teran Kanan, Sarawak, Malaysia. Despite this ruling, the IOI Corporation Berhad continues to operate and utilize the contested lands for its oil palm production.

In some of the cases, the operations of the companies have gone to the extent of massively displacing indigenous peoples without sufficient relocation and resettlement plans. In the Karonsi Dong'i Case, the indigenous peoples were forced to relocate and build their community at the border of their ancestral domain that the company has taken from them.

In the Philippines, the case of A. Brown Company's acquisition of the land in Opol, Misamis Oriental for an oil palm plantation shows the disregard of the indigenous Higaonon who consider the land as their ancestral domain. The company did not keep its promise not to force indigenous peoples who were not willing to sell their lands to the company. They subjected those who did not want to sell to harassment, assaults, and the destruction of crops and burning of their houses to force them to give up their lands.

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In the case of the Nam Mang 3 Hydropower Project, the resettlement site for indigenous peoples who were displaced did not have fresh water sources and cultivable lands. Those who were given money to be able to buy land elsewhere found no suitable lands to purchase. In Monduliri Province in Cambodia, resettlement areas were smaller than what was promised to those who opted for a resettlement package.

Violation of Free, Prior, and Informed Consent

Indigenous peoples have the right to free, prior, and informed consent as stipulated in Articles 10, 11, 19, 28, 29 and 32 of the UNDRIP. FPIC means that indigenous peoples have the right to accept or reject a project or any other form of intervention in their communities and territories, or that they define the conditions for the intervention based on their collective decision making processes. This decision must have been arrived at without coercion, intimidation or manipulation, in a time period that respects the pace of their decision-making processes and with full disclosure of information on the environmental, human rights, socio-cultural, economic and otherwise comprehensive impacts of such an intervention.

In most cases, there was no plan or attempt to get the FPIC of the affected indigenous peoples in relation to economic activities, administrative and legislative measures that affect them. Except for the case of the Rio Tuba mining project in Palawan, Philippines, all the cases show how the companies operated their businesses in indigenous peoples' territories without their FPIC. This also stems from the non-recognition of States of the right of indigenous peoples to their lands, territories and

resources, for which, the requirement for free, prior and informed consent is not deemed necessary.

Even in the case of Rio Tuba Mining in Palawan, Philippines which has obtained an FPIC to operate, the process of acquiring it has been clouded with irregularities and fraud with the indigenous peoples not understanding the whole concept and process of FPIC. This goes to show that the process of acquiring an FPIC can be manipulated and thus deprive indigenous peoples of the effective exercise of their collective right to self-determination.

Non-Recognition and Loss of Traditional Livelihoods of Indigenous Peoples and Unfair Labour Practices

Articles 3, 20, 21, 23, 29 and 32 in the UNDRIP refer to development. In sum, these articles provide that indigenous peoples have the right to maintain and develop their political, economic and social systems and institutions and to secure their own means of subsistence and development, including the freedom to engage in traditional and other economic activities.

Those deprived of such means are entitled to just and fair redress. They have the right to determine and

develop priorities and strategies for their own development and to be actively involved in health, housing and other economic and social programs which, to the extent possible, they will administer through their own institutions.

In all of the case studies, indigenous peoples are shown to be practicing their traditional livelihood such as shifting cultivation or traditional swidden (rotating) agriculture, gathering of non-timber forest products, rice cultivation, hunting and fishing for their subsistence. These traditional practices have however either been lost or changed with the entry of the companies into their lands.



With the lack of livelihood sources which have now been used for the business operations of the companies,



The palm oil company giant IOI promised road repairs to villagers in Long Teran Kanan, Malaysia. Until now road conditions remain very poor.

indigenous peoples in all the cases have resorted to other means of livelihood to sustain their families with some migrating from their territories to look for other sources of livelihood. While there are some indigenous peoples who have been absorbed in the operations of these companies, a lot of them lack the skills to be employed in the companies as in the case of the mining companies.

Even those employed have complained of unfair labour practices such as low wages, lack of benefits and union busting. In all the plantation case studies, indigenous peoples who have resorted to planting rubber, cassava or oil palm are being paid very low for their products. These alternative sources proved to be not enough to sustain their families and communities. Indigenous peoples have likewise expressed their desire to go back

to their traditional means of livelihood. Indigenous women are put in vulnerable situations as they are subjected to sexual harassment and violence brought by non-local peoples entering their communities with different gender perspectives.

Violation of Cultural Rights

The cultural rights of indigenous peoples are enunciated in Articles 11, 12 and 13 of the UNDRIP. Article 12 specifically States that “indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.”

Almost all the case studies revealed the disregard to the cultural practices of indigenous peoples. In a number of cases especially in Cambodia, Laos, and the Philippines, sacred sites such as forests and burial sites were not spared in the clearing operations of the companies for utilization. Since indigenous peoples’ cultural practices are closely related to their land and environment, the destruction and displacement caused by business operations condoned by the State threatens their cultural survival and their identity as indigenous peoples.

Health Hazards

Article 29 of the UNDRIP requires States to take effective programmes for the restoration of the health of indigenous peoples affected by poisonous or dangerous materials. The said programmes should be designed by the affected indigenous peoples.

The business operations of the companies in the study have posed great risks to the health of the indigenous peoples. The indigenous peoples in Mondulkiri Province, Cambodia have complained of the noise pollution from the bulldozers of Socfin KCD and its impact to animals in the area. In Malaysia, the IOI Company has been found to be using weed killers and agrochemicals that have affected the water resources of the village. In Misamis Oriental in the Philippines, the indigenous peoples have attributed the outbreak of diseases such as colds, coughs and skin diseases to A. Brown Company’s chemical use in their oil palm plantations. The heavy use of chemicals in the mineral processing plants of Lepanto in the

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Philippines has caused serious respiratory health problems among the indigenous peoples.

Environmental Impacts

The operations of the corporations in the case studies have likewise posed great risks for the environment. In Laos, the Lao-Indochina Tapioca Factory has been releasing toxic liquids which have caused fish kills and affected the lives of indigenous peoples who relied on fishing for their subsistence. In Laos, the construction of the Nam Mang 3 is projected to decrease the water levels downstream which would eventually lead to the depletion of fish population in the area and alter the food web diversity. In the Philippines, the decades of Lepanto mining operations have caused landslides; land subsidence that caused damages to buildings, farms and properties; and heavy siltation and fish kills that affected the agricultural production and livelihood of people living downstream.

Impacts to Indigenous Women

The case studies show that States have not provided the legal and policy environment to enable indigenous

peoples to enjoy their individual and collective rights. These rights allow them continued ownership, control and use of their lands, territories and resources wherein they derive their identity, culture and means of subsistence. The States have failed in their obligation to regulate corporations to respect the rights of indigenous peoples in their areas of operation. No effective redress mechanisms and just and fair procedures for the resolution of conflicts have been put in place to allow indigenous peoples access to effective remedies for all violations of their rights. The indigenous peoples themselves exert all efforts to assert their rights and seek justice where they can.

In all cases, the indigenous peoples did not participate in designing resettlement plans, determining compensation schemes, and other related matters when they were left with no choice but to accept the destruction of, or forced to leave their territories. These violate the provisions for just and fair redress for indigenous peoples deprived of their means of subsistence and development.

States have violated their commitment to UNDRIP to respect the right to self-determination of indigenous peoples to freely determine their political, economic, social and cultural development.



Indigenous women performing a traditional dance in support of the workers' struggle in Benguet, Northern Philippines.

All these negate the rights of the affected indigenous peoples to protect their integrity as distinct peoples and transmit their way of life to future generations.

Indigenous women face differentiated impacts of development-induced violence arising from corporate operations. Starting from their non-inclusion in the consent-seeking processes as a separate stakeholder in projects entering their communities, indigenous women are also absent in the conceptualization, planning, execution and evaluation of resettlement plans, compensation packages, benefit-sharing, and the like.



Worse, they also do not have access to grievance mechanisms when they want to raise issues. Many indigenous women are not literate in their respective national languages. When documents and conversations are not done in their language, the amount and quality of information that is filtered to is severely compromised.

On the other hand, the impact of the relocation, the change in lifestyles, livelihoods, and even the climate are more felt by indigenous women.

In many instances, the “work” that is offered to women in plantations, mines, dam sites and the like are related to their gender – as lower-paid daily wage earners, ‘karaoke’ girls, prostitutes and domestic workers. These are all new to indigenous women who often are relocated from cooler climes to the tropics which are often malaria-infested.

The impacts of all these on the indigenous women’s capacity to make informed choices and their right to live

in dignity are constrained by the fact they simply have to do something to survive.

Corporate Accountability

Despite the principles and frameworks on CSR and human rights in place, companies have been unfaithful in their responsibility to apply due diligence to respect human rights especially of indigenous peoples in areas where they operate.

This is due to the fact that CSR is voluntary and the main motivation is the generation of the greatest profit with the least cost.

Requirements for environment and social protection are perceived and considered by corporations as unnecessary cost burdens. Likewise, States have been remiss in their obligations to international standards on the fulfilment of human rights of indigenous peoples as stipulated in the UNDRIP.

Corporate social responsibility therefore has been rendered meaningless with the practice of companies in the region as reflected in the case studies. More so that the ASEAN is removing all social and environmental protective measures to attract foreign investment in the extractive industries as the way towards attaining economic growth.

Moreover, corporations have consistently refused regulation citing that it limits their innovations. The concept of corporate social responsibility is then offered as an alternative to minimum legal standards for corporate activities.

Corporate social responsibility is therefore a strategy of corporations to avoid regulation from States. This in effect leave corporations to define for themselves what is acceptable and unacceptable corporate behaviour. As can be seen in all the cases presented, the lack of minimum standards and regulation policies of States has allowed the disregard of the rights of indigenous peoples.

Further, corporate social responsibility has been more often than not limited to philanthropic activities such as making donations to charities and the like. It in effect hides the real issues and bad practices of companies in their projects. It is therefore more of a public relations

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stunt rather thereby avoiding accountability to the public and States in general.

Professor James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples captures the situation when he said “the absence of clarity with respect to corporate responsibility, especially transnational corporate responsibility, in relation to indigenous rights is the source



UN Special Rapporteur Rapporteur on the rights of indigenous peoples (UN-SRIP), S. James Anaya

of numerous abuses worldwide. The implementation of corporate activities without taking into account of those rights (of indigenous peoples), as they are recognized under international rules, has given rise to highly negative impacts on the environment, and the economic, social, cultural and spiritual life of indigenous peoples. Such irresponsible corporate activity sometimes abetted or simply ignored by the Governments concerned, continues to endanger serious social conflicts in areas where indigenous peoples live.”²⁸

²⁸ Anaya, James. “Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya” submitted pursuant to Human Rights Council resolution 6/12. UN Doc. A/HRC/15/37, par. 81



Part 4

Recommendations

Indigenous Peoples Recommendations to the ASEAN Member States

1. To declare and enforce a moratorium of corporate projects which are either opposed by affected indigenous communities or carried out without their consent and to establish effective mechanisms to resolve conflicts arising from these types of projects.
2. To immediately implement the requirements for the Free Prior and Informed Consent (FPIC) of indigenous communities especially in relation to the planning and implementation of development projects affecting their territories.
3. To establish accountability mechanisms for complaints against abuses and violation of rights of affected communities by corporations at the local, national and ASEAN level.
4. To conduct comprehensive impact assessments based on the human rights framework of the ASEAN economic integration and investment plan especially on its potential impacts to indigenous peoples.
5. To enact and enforce laws and policies requiring corporations and business enterprises to respect human rights throughout their operations especially in relation to development projects that affect indigenous peoples.
6. To implement the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.
7. To initiate dialogues with indigenous peoples’ representatives at the local, national and regional levels in order to address their legal recognition as distinct peoples with collective rights under international human rights standards.

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8. To review the national legal framework of each ASEAN member state and the ASEAN Human Rights Declaration with a view of incorporating the provisions of the UN Declaration on the Rights of Indigenous Peoples especially on the right to lands, territories and resources, to self-governance, and cultural integrity while at the same time repealing and revising laws and policies that violate these collective rights.

Indigenous Peoples Recommendations to Corporations and Business Enterprises

1. To stop the operations or the further implementation of projects that are being opposed by indigenous communities and to immediately establish grievance mechanisms to resolve the concerns of indigenous peoples at the project level.

2. To rehabilitate areas damaged by their project operations and to provide fair and equitable compensation and reparation to indigenous communities.

3. To respect the rights of indigenous peoples as enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as well as their individual rights under international human rights instruments. In line with respecting human rights, due diligence should be exercised thoroughly in all project affecting indigenous peoples.

4. To fully implement the requirement for the Free Prior and Informed Consent (FPIC) of indigenous peoples through clear corporate policies and guidelines.

5. To fully implement the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

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The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements. AIPP is committed to the cause of promoting and defending indigenous peoples' rights and human rights and articulating issues of relevance to indigenous peoples. At present, AIPP has 46 members from 14 countries in Asia with 11 indigenous peoples' national alliances/networks and 35 local and sub-national organizations. Of this number, 16 are ethnic based organizations, 5 are indigenous women's organizations and 4 are indigenous youth organizations.

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