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### Indigenous peoples and non-ferrous metals mining in the Philippines

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# Indigenous peoples and non-ferrous metals mining in the Philippines

*William N. Holden*

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**Abstract** The Philippines is a developing country well endowed with mineral resources. In recent years, the government has made substantial efforts to encourage the exploitation of these resources. This mining-based development paradigm has come into conflict with the indigenous peoples of this nation. This conflict has entailed disputes between the mining industry and indigenous peoples about the validity of the Philippines indigenous peoples rights legislation and alleged human rights abuses on the behalf of the mining industry. The Philippines strong civil society has assisted the indigenous peoples in regard to this conflict. Possible solutions to this conflict are examined.

**Keywords** Philippines; mining; indigenous peoples; civil society; ethnodiversity; ethnosphere.

## Introduction

In recent years, as a corollary to the phenomena of globalization, many countries in the developing world have made a pronounced effort to attract foreign direct investment into the non-ferrous metals mining sectors of their economies. According to Bridge (2004: 407), 'since 1985 more than 90 states have adopted new mining laws or revised existing legal codes in an effort to increase (and in some cases, initiate) foreign investment in the mining sector of their economies.' Concomitant with this development, many mining projects have entered into remote and previously unexploited areas inhabited by indigenous peoples (Gedicks 2001). According to the Mining Minerals and Sustainable Development report, the Philippines is 'an example

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of a country with a significant mining history where the issues of indigenous land use have surfaced repeatedly in relationships between various actors in the mining sector' (Mining, Minerals, and Sustainable Development 2002: 154). This paper is a discussion of the politics of resource exploitation in the Philippines with a specific focus on the efforts of the government of the Philippines to encourage mining investment in that country and how mining has conflicted with the indigenous peoples of that nation.

### **Mineral resources of the Philippines**

The Philippines, being located on what geologists call the 'orogenic belt of the Pacific "rim of fire"' (United States Geological Survey 1997: x1) is well endowed with mineral resources particularly 'nonferrous metals' (metals other than iron) or, as they are often called, 'hardrock minerals' (the minerals are often found in consolidated rock of igneous origin) such as copper, gold, lead, nickel, silver and zinc (Environmental Science for Social Change 1999; Haggman 1997; Jimenez *et al.* 2002; Rovillos *et al.* 2003; United States Geological Survey 2000). In the Philippines there are some exceptionally large copper and gold deposits, and exploration over the last twenty years has 'identified several prospective sites of gold and copper mineralization' (Jimenez *et al.* 2002: 119).

### **Government attempts to encourage mining**

The Philippines has a long history of mining; according to Rovillos *et al.* (2003) by the third century AD Chinese traders were referring to the island of Luzon as *Lusong Dao* ('the island of gold') and in the fourteenth century crudely smelted copper was traded by the Chinese (Mines and Geosciences Bureau 2000). Industrialized mining began in earnest during the American colonial period, when a series of US statutes granted American investors ample access to the Philippine economy, and, by 1941, the Philippines was the world's fifth largest gold producer (Oliveros 2002). In 1980, forty-five operating mines were responsible for over 20 per cent of all export revenue (Rovillos *et al.* 2003).

By the late 1980s, however, the ability of the Philippine mining industry to act as a mechanism of facilitating economic growth began to become viewed as under-utilized. The Asian Development Bank, in 1994, argued that the investment climate in the Philippines was viewed by the global mining industry as negative and called for a liberalization of the nation's mining laws (Rovillos *et al.* 2003). The Asian Development Bank specifically took issue with the provision of Section 2 of Article XII of the Philippine Constitution of 1987 which limited the extent of foreign investment in mining projects to no more than 40 per cent of the total investment in the project (Rovillos *et al.* 2003).

The Philippine government acted upon the Asian Development Bank's advice in 1989 when officials from the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR)

participated, along with the World Bank, in a seminar organized by the United Nations Department of Technical Cooperation and Development (Rovillos *et al.* 2003). The seminar was entitled 'Prospects for the Mining Industry to the Year 2000' and it emphasized increasing foreign access to a nation's mineral resources as a method of enhancing foreign direct investment and, consequently, economic growth (Rovillos *et al.* 2003). In both 1991 and 1992 the Mines and Geosciences Bureau held a series of seminars in London, Manila, and Vancouver to encourage foreign mining companies to invest in the Philippines (United States Bureau of Mines 1991, 1992). Then, in March of 1995, President Ramos signed into law Republic Act 7942 (United States Geological Survey 1995). This statute, referred to as the Mining Act of 1995, had been sought by the Philippine mining industry through the Philippine Chamber of Mines for nearly a decade since ratification of the Philippine Constitution in 1987 (United States Geological Survey 1995). The previous mining 'legislation' (the term is being used loosely) in the Philippines were Executive Order No. 211 and Executive Order No. 279, which were issued by President Aquino in 1987; these Executive Orders called for the formal enactment of mining legislation by the Philippine Congress and facilitated the authorization of mining projects by foreign corporations on the precondition that the project involved no more than 40 per cent foreign ownership (Tujan and Guzman 2002). These Executive Orders, specifically their requirement for 60 per cent Filipino ownership, were unpopular among the firms of the non-ferrous metals mining industry; many mining companies were reluctant to invest their time and money without having the decision-making authority (United States Geological Survey 1996). The Mining Act of 1995 contained several incentives to encourage mining, such as a four-year income tax holiday; tax and duty-free capital equipment imports; value-added tax exemptions; income tax deductions where operations are posting losses; and accelerated depreciation (United States Geological Survey 1995). The statute also guaranteed the right of repatriation of the entire proceeds of the investment as well as freedom from expropriation (United States Geological Survey 1995). However, the most significant aspect of the Mining Act of 1995 was its creation of new types of production agreements that would govern the mineral deposit ownership requirements under which a foreign mining corporation would operate in the Philippines.

The two major types of production agreements under the Mining Act of 1995 are the Mineral Production Sharing Agreement (MPSA) and the Financial Technical Assistance Agreement (FTAA). The Mineral Production Sharing Agreement is a production agreement which can last for up to twenty five years, is approved by the Department of Environment and Natural Resources, and (in a manner similar to Executive Order No. 211 and Executive Order No. 279) requires that no more than 40 per cent of the mineral project be owned by a foreign corporation (Environmental Science for Social Change 1999; United States Geological Survey 1995). The Financial Technical Assistance Agreement is a production agreement that

can last for up to twenty-five years, is approved by the President of the Philippines, and (in stark contrast to the Mineral Production Sharing Agreement) allows 100 per cent foreign ownership of the mining property (Environmental Science for Social Change 1999; United States Geological Survey 1995).

The Financial Technical Assistance Agreement became popular with the firms of the non-ferrous metals mining industry; the number of foreign mining companies represented in the country *increased by 400 per cent* between the end of 1994 and the end of 1996 (United States Geological Survey 1996). Indeed, by 1997, the United States Geological Survey went so far as to call the Mining Act of 1995 'one of the most modern in Southeast Asia' (United States Geological Survey 1997: x1). By the mid to late 1990s the government of the Philippines seemed to be bent upon a development strategy led by mineral resource extraction.

### **Indigenous peoples of the Philippines**

The Mining Minerals and Sustainable Development report defines, 'indigenous peoples' as those peoples who have 'a historical continuity with pre-invasion and pre-colonial societies that developed on their territories and that consider themselves distinct from other sectors of the societies now prevailing in those territories or in parts of them' (Mining, Minerals, and Sustainable Development 2002: 152). In the Philippines, the indigenous peoples are those who have a historical continuity with the pre-Islamic and pre-Hispanic society of that country (Rood 1998). These peoples constitute approximately 15 to 20 per cent of the population, approximately two-thirds of which live on the island of Mindanao, where they are referred to as 'Lumads', while the remaining one-third of them live in the Cordillera of the island of Luzon, where they are referred to as 'Igorots' (Hilhorst 2003; Rood 1998; Stavenhagen 2003). These peoples live primarily in rural areas and engage in subsistence agriculture and fishing (Stavenhagen 2003).

Throughout the late twentieth century the Philippine state engaged in a number of programs of varying degrees of quality to accommodate the existence of the indigenous peoples within the framework of Philippine society. The specific nature of these programs was a reconciliation of the traditional lifestyles of these peoples as forest inhabitants with the 'Regalian Doctrine' which stated that the Philippine state has the right to all land that is not privately owned (Rood 1998).

In the 1970s, the Bureau of Forest Development initiated a number of programs designed to settle indigenous peoples on their current landholdings while simultaneously enlisting their cooperation in adopting agroforestry and other soil and water conservation measures (Eder 1994). After 1972, these programs were reorganized into an Integrated Social Forestry Program that operated under the control of the Department of Environment and Natural Resources; the thrust of this program was to secure access for

indigenous peoples to forest resources under the control of the state (Eder 1994).

Then, in December of 1986, the Philippine Supreme Court invoked Section 48 of the Public Land Act of 1936 and held that land occupied for thirty years or more by members of unhispanicized ethnic groups (cultural minorities) is not only ancestral but also private (Lynch and Talbott 1988). This Supreme Court decision provided a legal precedent for a policy of recognizing the rights of indigenous peoples to the lands that they occupy (Lynch and Talbott 1988). Soon after this court case the 1987 Constitution of the Philippines provided, in Section 5 of Article XII, that the Philippine state shall protect the rights of indigenous peoples. As Section 5 of Article XII stated:

The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

In the 1990s the Philippine state began to act upon this constitutional pledge to provide indigenous peoples rights to their ancestral lands when it implemented a Department of Environment and Natural Resources Administrative Order (AO) in 1991 that authorized the granting of Certificates of Ancestral Land Claims (CALCs); this was followed up by another Administrative Order in 1993 that facilitated the issuance of Certificates of Ancestral Domain Claims (CADCs) (Eder 1994; Gutierrez and Borrás 2004). While the Certificates of Ancestral Land Claims and Certificates of Ancestral Domain Claims programs allowed indigenous peoples to make *claims* with respect to their ancestral lands they did not facilitate the acquisition of *ownership* to ancestral lands and, consequently, they came to be viewed by indigenous peoples as inadequate halfway measures (Eder 1994).

Finally, on 29 October 1997, the Philippine Congress passed the Indigenous Peoples Rights Act (IPRA). The Indigenous Peoples Rights Act is a powerful statute that provides for a wide range of indigenous peoples' rights such as the right to ancestral domain, the right to self-governance and the right to cultural integrity (Gutierrez and Borrás 2004; Leonen and Ballesteros 2001; Stavenhagen 2003). The Indigenous Peoples Rights Act also created the National Commission on Indigenous Peoples (NCIP), and on 28 June 1998 this issued the Implementing Rules and Regulations (IRRs) for the statute in NCIP AO No. 98-1. The Implementing Rules and Regulations contain a number of provisions that facilitated the control over the lands occupied by indigenous peoples. Specifically, indigenous cultural communities were given the right to control, manage, develop, protect, conserve and sustainably use land, air, water and mineral resources. Indigenous communities were also entitled to determine, for themselves, what policies, development programs, projects and plans would be implemented to meet their identified priority needs and concerns. Most significantly, particularly

insofar as the mining industry is concerned, the Indigenous Peoples Rights Act Implementing Rules and Regulations required that the free prior informed consent of all members of an indigenous cultural community be acquired as a precondition for the exploration, development, exploitation and utilization of natural resources within those lands that are the ancestral domain of an indigenous community. While this requirement for free prior informed consent has been referred to by some as the 'heart and soul' of the entire law (Environmental Science for Social Change 1999: 33), the mining industry began to quickly view the Indigenous Peoples Rights Act, in general, and the requirement for free prior informed consent, in particular, as an impediment to its operations.

Non-ferrous metals, such as copper, gold, lead, nickel, silver and zinc, are, from a geologic perspective rare (Skinner 1976). This means that the probability of finding a deposit of these minerals in a concentration rich enough to justify profitable extraction is low. For perspective on this, consider that, according to the Japanese Ministry of International Trade and Industry, at the end of 1996 there were 320 exploration projects world-wide involving Japanese firms. Of these 320 projects, 297 failed to discover an economically viable ore deposit while 23 proceeded to the next stage of development – a failure rate of almost 93 per cent (Masuda 1999). Accordingly, to find an economically viable concentration of ore, the mining industry requires as much access to land as possible (Masuda 1999).

A mining company also requires access to land as a way of replenishing its asset base. As Bridge (2004: 407) states:

as extractors of nonrenewable resources, mining firms necessarily consume their resource base during production so that, over time, ore grades in established mining regions become degraded. Acquiring the rights to new land (for exploration) and to new resource deposits (for mine development) is one of the principal means by which mining firms renew their resource base and establish their competitive position.

If the mining industry requires access to as much land as possible, any possible denial to land, coming from an intransigent indigenous community that withholds consent, becomes a serious impediment to the activities of that industry in the Philippines. It is estimated that half of all areas identified in mining applications in the Philippines are in areas subject to indigenous land claims (Lynch and Talbott 1988; Mining, Minerals, and Sustainable Development 2002). In view of this, the provisions of the Indigenous Peoples Rights Act, and its Implementing Rules and Regulations, quickly drew the ire of the non-ferrous metals mining industry (IBON 2002; Mining, Minerals and Sustainable Development 2002). Attention now turns to conflict between the Philippine state's implementation of a mining-based development paradigm and the indigenous peoples of the archipelago.

### **The conflict between the mining industry and indigenous peoples**

Conflict between indigenous people and mining is not necessarily a new development in the Philippines. In 1668, indigenous people refused to show the Spanish the location of gold and copper deposits; in 1850, indigenous people refused to work in Spanish-controlled mines; and in the 1920s residents of Suyoc, on the island of Luzon, filed a protest with the US colonial authorities regarding mining claims (Ballesteros 1997). In the late 1990s, however, as the Indigenous Peoples Rights Act was being formulated in the Philippine Congress, this conflict began to intensify. Specifically, the mining industry objected to the requirement of acquiring free prior informed consent from indigenous peoples. On one occasion, mineworkers, financed by their employers, picketed a national consultation of indigenous groups (Coumans and Nettleton 2000). Then, in 1996, Henry Agupitan, the Philippines exploration manager of Rio Tinto Zinc, wrote a letter to Horacio Ramos, the MGB director, complaining about the restrictions placed upon mining by the Subanen Cultural Community of Mindanao. As Agupitan's letter stated:

In opening an ancestral land for mining operations, the consent of the Subanen Cultural Community (SCC) should not be unreasonably withheld. The government plays a major role in securing the prior consent of the SCC before opening the ancestral land for mining operation for the State, not the SCC, is the owner of all the country's minerals and other natural resources as enshrined in the Philippine Constitution.

(Nettleton 1997: 38)

When the Indigenous Peoples Rights Act was passed in 1997 it was 'considered a blow to the mining industry' (Mining, Minerals, and Sustainable Development 2002: 154). Consequently, in 1998, Isagani Cruz, a retired Supreme Court Justice, and Cesar Europa, a lawyer based in Davao, made a petition to the Philippine Supreme Court impugning the statute as being in violation of the 1987 Constitution by virtue of the fact that Section 2 of Article XII gives the Philippine state the property rights to all natural resources (Leonen and Ballesteros 2001). It was unclear as to why a retired Supreme Court Justice and a lawyer should find this Act so objectionable but it was 'surmised that the two represented the interests of the large-scale commercial mining industry' (Leonen and Ballesteros 2001: 5). On 6 December 2000 the Philippine Supreme Court, in the case of *Isagani Cruz and Cesar Europa v. Secretary of Environment and Natural Resources et al.* (G.R. No. 135385), issued a split decision wherein seven of the fourteen Justices said the Indigenous Peoples Rights Act was indeed unconstitutional while the remaining seven of the Justices said that it was constitutional. Since the clear majority that was needed to declare a statute unconstitutional under the Philippine Rules of Court was not obtained, it was deemed constitutional (Alternative Law Groups 2004; Leonen and Ballesteros 2001). On 22 December 2000, the



petitioners applied for a reconsideration of their petition by the Supreme Court but the justices did not grant their petition for reconsideration on 16 September 2001 and the Indigenous Peoples Rights Act remains constitutional and is in full force and effect (Bravante 2004, pers. comm.; Gutierrez and Borrás 2004; Leonen and Ballesteros 2001).

While the mining industry did not succeed in its attempt to have the Indigenous Peoples Rights Act judicially invalidated, it did, however, have some success against it when it convinced the National Commission on Indigenous Peoples to weaken the free prior informed consent provisions of the Implementing Rules and Regulations with NCIP AO No. 98-3. This Administrative Order stated that mining firms with concessions that were approved prior to the implementation of the Indigenous Peoples Rights Act (29 October 1997) did not need to obtain the free prior informed consent of an indigenous community (Environmental Science for Social Change 1999). This weakening of the Indigenous Peoples Rights Act in 1998 meant that all of the Mineral Production Sharing Agreements and Financial Technical Assistance Agreements acquired by mining companies between March 1995 and October 1997 would be exempt from obtaining the consent of the indigenous peoples claiming the land where the mining project would be located (Environmental Science for Social Change 1999; Leonen and Ballesteros 2001; Stavenhagen 2003).

The next source of conflict between the mining industry and indigenous peoples concerns the potential environmental effects of non-ferrous metals mining. Hardrock mining is an activity with a unique, and substantial, potential for environmental degradation. 'Few, if any, forms of economic development present the array of potential environmental, social, and economic problems of the mining industry' (Pring *et al.* 1999: 45). This *potential* for environmental harm became *actualized* with the Marcopper tailings spill incident of 1996. The Marcopper mine was located in the north central highlands of the island of Marinduque (Plumlee *et al.*, 2000). It was owned by the Marcopper Mining Corporation, which was, in turn, owned (40 per cent) by the Canadian mining company Placer Dome and (60 per cent) by the Philippine government (Plumlee *et al.* 2000). Copper began to be extracted from the Tapian pit in 1969 and copper was taken from this pit until 1991 when production switched to the San Antonio pit several kilometers to the north (Plumlee *et al.* 2000). In 1991, the mined-out Tapian pit had its dewatering drain plugged with concrete and it began to be used as a receptacle for the fine-grained wastes (known as 'tailings') from the newer San Antonio pit (Mines and Geosciences Bureau 2004; Plumlee *et al.* 2000); by December 1995 a total of 32, 476, 841 metric tonnes of tailings were impounded in the Tapian pit (Mines and Geosciences Bureau 2004). On 24 March 1996 the plug at the bottom of the Tapian pit failed and there was a release of acidic tailings into the Boac river (Mines and Geosciences Bureau 2004; Plumlee *et al.* 2000). The actual amount of tailings that was released is a matter of controversy; low-end estimates put the amount at 1.6 million

cubic meters (David 2002, 2003; Mines and Geosciences Bureau 2004) while the investigative team sent by the United States Geological Survey and the United States Armed Forces Institute of Pathology put the estimate at between 1.5 million and 3 million cubic meters (Plumlee *et al.* 2000). While the actual amount of tailings that was released may be a matter of contention, its effects were dramatic. A month later, a UN team declared the river 'biologically dead' (Mining, Minerals, and Sustainable Development 2002: 208). When the investigative team sent by the United States Geological Survey and the United States Armed Forces Institute of Pathology visited Marinduque in May 2000 (four years after the tailings release) they reported that there were 'still extensive tailings deposits visible in many places along the Boac River streambed' (Plumlee *et al.* 2000: 22); their conclusion was that 'the mining-environmental impacts on some parts of Marinduque have been substantial and pose significant long-term challenges for remediation, both from a technological and monetary standpoint' (Plumlee *et al.* 2000: 41).

Perhaps the most significant, and enduring, aspect of the tailings spill at the Marcopper mine was its psychological effect. While the Philippine government prefers to refer to the tailings spill as 'an incident' (Cabalda 2004: pers. comm.), others have referred to it as 'the infamous tailings spill incident' (Rovillos *et al.* 2003: 202) or as a 'disaster' (Gedicks 2001: 26; Tujan 2001: 154; Tujan and Guzman 2002: 204). Indeed, Chris Hinde, the Editorial Director of the London-based *Mining Journal* (a mining industry publication) went so far as to call the Marcopper tailings spill 'an environmental disaster' (Hinde 2004: 1). The tailings release generated a substantial amount of fear and concern among the Philippine people about the environmental effects of non-ferrous metals mining. According to Tujan (2001: 154) 'the Marcopper accident shocked and traumatized the Philippine nation.' Michael Cabalda, the Chief of the MGB's Mining Environment and Safety Division, acknowledged that whenever mining is discussed 'it is always Marcopper that is talked about' (Cabalda 2004: pers. comm.).

The accident at Marcopper has led to a fear of mining in the Philippines. The simple act of mineral exploration will generate consternation among indigenous communities that they will be living nearby another Marcopper. According to Environmental Science for Social Change (1999: 79) 'when a mining company just explores an area, people in the local communities already feel threatened.' Tujan (2001: 159) and Tujan and Guzman (2002: 217) refer to this apprehension about mining as the 'fear of the new white man in helicopters.'

One important dimension of the consternation about mining expressed by many indigenous communities in the Philippines is an informational asymmetry existing between mining project proponents and indigenous peoples. Given the potential environmental effects of a non-ferrous metals mining project, the granting of consent by an indigenous community would be well served if that community were to be provided with information pertaining to

the likely consequences of a mining project. The Indigenous Peoples Rights Act's Implementing Rules and Regulations require that anyone seeking the free prior informed consent of an indigenous community must provide that community with an Environmental and Socio-Cultural Impact Statement that details all the possible impacts of the policy, program or activity upon the community; this document is to clearly state how adverse impacts can be avoided or mitigated. This requirement does go a long way towards endowing the community with information that can assist them in their decision pertaining to consent but it is, however, somewhat problematic in that it does not require the indigenous community to receive the same information that is being given to the Philippine government.

In the Philippines, mining project proponents are required to prepare, and submit to the Department of Environment and Natural Resources, an Environmental Impact Statement that sets out the likely environmental consequences of the project and the mitigation measure that can be implemented to lessen, or eliminate, these environmental effects (Naito *et al.* 2001). However, DENR AO 97-24 states, in Section 3.1.5:

data or information submitted by the DENR clientele concerning their applications/proposals for ENR management and other DENR activities shall be classified as confidential data. Disclosure of such information rests on the discretion of the Secretary or his/her designated officer, or upon order of higher official or the courts.

When indigenous communities in the Zamboanga peninsula, on the island of Mindanao, asked for the release of public documents related to mining operations in their area, Mines and Geosciences Bureau Director Horacio Ramos told them that the requested documents could not be released without the consent of the mining firms (Ballesteros 1998). This means that while the indigenous community is, by virtue of the Indigenous Peoples Rights Act, being provided with 'some information' about the project there still is 'other information' that they are not being provided with. If the members of the community are denied some of the information about the risks of the project they are being asked to consent on they are being asked to make a decision that involves a degree of uncertainty; couple this *lack of knowledge* about the proposed project with the *given knowledge* about what happened at Marcopper and the 'fear of mining' becomes imminently understandable. As the Mining, Minerals, and Sustainable Development report stated, 'secrecy does not build trust' (Mining, Minerals, and Sustainable Development 2002: 293).

There are reports of situations in the Philippines where indigenous peoples have been displaced from their lands by mining (Gutierrez and Borrás 2004; Rovillos *et al.* 2003; Stavenhagen 2003). In Taganito, in the province of Surigao del Norte on the island of Mindanao, thirty families of the Mamanwa tribe, displaced by mining activities, live without adequate shelter (Dano

2004, pers. comm.; Stavenhagen 2003). Once displaced by mining, and other resource extractive activities, indigenous peoples end up as poor urban migrants where they live in poor conditions lacking adequate shelter, jobs or basic services (Stavenhagen 2003). In Baguio City in the *cordillera* of Luzon, for example, over half of the population consists of displaced Igorots; approximately 65 per cent of these people suffer from extreme poverty (Stavenhagen 2003).

Perhaps the most problematic aspect of the conflict between mining and indigenous peoples in the Philippines is the widespread allegations of violence and human rights abuses that circulate in the literature pertaining to this topic (Coumans and Nettleton 2000; Nettleton 1997; Rovillos *et al.* 2003; Stavenhagen 2003). Given the apprehension many indigenous peoples of the Philippines have about mining, some of them have engaged in protest actions against proposed mining projects. There are reports of these protests being suppressed by violence. According to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (in a report prepared for the United Nations Commission on Human Rights 59th Session) there are reports of:

arbitrary detentions, persecutions and even killings of community representatives, of mass evacuations, hostage taking, destruction of property, summary executions, forced disappearances, coercion, and also of rape by armed forces, the police or so-called paramilitaries.  
(Stavenhagen 2003: 19)

Much has been written about the use of paramilitary Civilian Armed Forces Geographical Units (CAFGUs) as a vehicle for suppressing the dissent of Philippine indigenous peoples to Timber License Agreements (TLAs) and Industrial Forestry Management Agreements (IFMAs) during the 1990s (Girouard 1996); it is alleged that the same process is continuing with respect to mining projects in the nascent years of the twenty-first century. Consider the Subanen of the Zamboanga peninsula of Mindanao. These people have been protesting the activities of Canadian mining company Toronto Ventures Incorporated (TVI) in developing a gold mine on what they see as their ancestral homeland (Coumans and Nettleton 2000; Nettleton 1997; Stavenhagen 2003). Toronto Ventures Incorporated is reported to have developed close liaison with the military and has developed its own security forces that have been armed and trained by the military (Nettleton 1997). It has also been reported that:

the company's presence on their ancestral land has caused militarization and acts of violence, by the company's security guards and other armed units, such as rape, the establishment of checkpoints and the maintenance of blockades, barring of food and essential commodities, blocking health services and religious practices, desecration

of the sacred sites and breaking the ritual requirements of the sacred ground.

(Stavenhagen 2003: 15)

Similar allegations exist about the activities of a paramilitary unit implemented to suppress the opposition of the Ifugao people to the activities of the Australian mining corporation Climax Arimco Mining Corporation (CAMC) in the barangay of Didipio in the province of Nueva Vizcaya on the island of Luzon (Rovillos *et al.* 2003).

One dynamic that has exacerbated the involvement of the military in the conflict between mining and indigenous peoples in the Philippines is the security situation in that country. Many parts of the Philippines, particularly on the island of Mindanao, are subject to acts of armed violence by the Maoist New Peoples Army (NPA), the Muslim Moro Islamic Liberation Front (MILF) and another Muslim group called Abu Sayyaf. To provide security for development projects, such as mining, the Philippine army will conduct security operations in the vicinity of the project in advance of its development. These security operations sometimes result in indigenous peoples who have articulated opposition to mining being accused of belonging to the NPA and being prosecuted for terrorist activity simply because of their involvement in legitimate social protest and the defence of their rights (Rovillos *et al.* 2003; Stavenhagen 2003).

### **Civil society and indigenous peoples in the Philippines**

Something that has ameliorated the asymmetry of information (and, arguably, power) between indigenous peoples and mining project proponents in the Philippines is the strong civil society prevalent in the archipelago. The term 'civil society' is a frequently used term that describes 'the voluntary, rule-abiding, politically active sector of society, autonomous from the state' (Silliman and Noble 1998: 12). A frequently used definition is that 'civil society' is the range of institutions that exist between the family and the state. This can be seen in the definition of the term used by Blair (2000: 28) as being 'organizational activity between the individual (or the family) and the state'; similarly, this can be identified in the definition of the term used by Massam (2000: 109) that 'civil society' consists of a range of voluntary associations 'which fill the space between the family and the state'.

A substantial body of literature exists on the strength of civil society in the Philippines. The Australian Agency for International Development (2004: 10) has referred to Philippine civil society as being 'vocal and active'; Angeles (2003: 284) states that the Philippines 'is known for its vibrant social movements'; Broad (1994: 816) wrote that Philippine civil society exhibits a 'historical vibrancy' which creates 'what could be called a culture of empowerment'; and Chua (2002: 24) articulated the view that the Philippines has a 'strong assertive civil society'.

With respect to the discord between indigenous peoples and the mining-based development paradigm in the Philippines there are two salient dimensions of Filipino civil society that warrant attention: that country's non-governmental organization (NGO) movement and the Roman Catholic Church.

Filipino NGOs have acquired a reputation for being strong and well organized. Aldaba (2002: 179) wrote that the Philippines 'are known to have one of the most dynamic nongovernmental organization (NGO) communities in the world'. Silliman and Noble (1998: 3) articulated their view that 'to an extent greater than anywhere else in Southeast Asia, Philippine NGOs facilitate political participation and work to redress the inequities of society'. According to the Philippine NGO Environmental Science for Social Change, 'the NGO movement in the Philippines is well established and is probably one of the most active and vigorous in the world' (Environmental Science for Social Change 1999: 91). Indeed, Hilhorst (2003: 11) wrote that the Philippines has 'probably the largest NGO density in the world'.

A prominent Filipino NGO that is actively involved in representing indigenous peoples is the Quezon City-based Legal Rights and Natural Resources Center – *Kasama Kalikasan* (LRC). The LRC was originally formed in 1988 and it is 'staffed with some of the country's foremost young lawyers' (Broad and Cavanagh 1993: 150). The LRC, along with two other NGOs (the Ateneo Human Rights Center and *Tanggol Kalikasan*) assisted the public respondents and the indigenous peoples who were intervenors in the case of *Isagani Cruz and Cesar Europa v. Secretary of Environment and Natural Resources et al.*, wherein the constitutional validity of the Indigenous Peoples Rights Act was unsuccessfully challenged (Alternative Law Groups 2004). The LRC was also the lead NGO in a challenge initiated by the *Bla'an* indigenous peoples of Mindanao to the constitutionality of the Mining Act of 1995. On 27 January 2004, in an eight-to-five decision (there was one Justice abstaining) the Philippine Supreme Court in *La Bugal Tribal Association Inc., et al. v. Victor O. Ramos, Department of Environment and Natural Resources, et al.* (G.R. No. 127882) declared the Financial Technical Assistance Agreement provisions of the Mining Act of 1995 unconstitutional (Alternative Law Groups 2004).

This decision was a serious blow to the efforts of the Philippine government to encourage more mining investment in the country (Cabalda 2004: pers. comm.; Galiste 2004: pers. comm.). The Philippine government applied for a reconsideration of this decision and, on 28 June 2004, oral arguments were presented before the Philippine Supreme Court. Finally, on 1 December 2004, the Supreme Court reversed its decision of 27 January 2004. During the time period between the decisions, the centerpiece of the Philippine government's efforts to revitalize mining industry investment was rendered invalid and the entire mining-based development paradigm was placed on hold; had the decision not been reversed it would have been

difficult for the Philippine government to continue with its plans to encourage more mining investment.

According to Bass *et al.* (2004: 37) 'third parties – such as NGOs – can play an instrumental role in helping to level the power balance between communities and mining companies in the community consultation process'. The preponderance of strong, well-organized NGOs in the Philippines are a force that tends to 'level the playing field' between mining companies and the Philippine state, on the one hand, and the indigenous peoples, on the other.

The Roman Catholic Church is a profoundly important institution in the Philippines. According to Environmental Science for Social Change (1999: 95) the 'Church is a vitally important part of the life of and history of the Filipino nation; it is, in a sense, the soul of the nation; more than any other it has shaped the ethos of the nation'. Youngblood (1990) dates the Church's involvement in civil society to the early Spanish colonial era; the religious as early as the 1570s stood up for the rights of the native population (Youngblood, 1990). Throughout the Spanish colonial period the population remained staunchly Catholic and, in general, continued to believe and to expect that the Church would defend their rights and protect them (Youngblood 1990). After the second Vatican Council's commitment to social justice in 1965, the Philippine Catholic bishops have likewise spoken out in favor of the powerless and disadvantaged in a series of pastoral letters since the late 1960s on various aspects of social justice (Youngblood 1990). From 1966 on, every diocese in the country was given a social action center to implement social action projects aiming towards social justice (Youngblood 1990). The Church is an active and important institution in the Philippines and it has shown no shyness, or reluctance, to enter into the civil society realm.

The commitment of the Church to social justice has extended to indigenous peoples. In the 1970s, notwithstanding the oppressive climate of Marcos-era martial law, the Church was active on behalf of the indigenous peoples of Luzon who were affected by the proposed Chico river hydroelectric dam project (Hilhorst 2003; Sharma 2001a, 2001b; Youngblood 1990). This ecclesiastical involvement on the behalf of indigenous peoples has extended to the engagement of indigenous communities with the non-ferrous metals mining industry. On 26 October 2004 Bishop Manguiran (the Bishop of the Diocese of Dipolog in the province of Zamboanga del Norte on the island of Mindanao), citing the alleged infliction of human rights abuses upon the Subanen by the Canadian mining company Toronto Ventures Incorporated, called for the cancellation of the company's Mineral Production Sharing Agreement. As Bishop Manguiran stated in a pastoral letter:

With mining, the land is permanently damaged. Next come our rivers, and then our seas. Mining is such a short-term engagement while its adverse effects are long-term. There is no such thing as sustainable development with mining, more so with open-pit mining.

I join our Subanen brothers and sisters and the people of Siocon, who are equally badly affected, in calling for the cancellation of TVI's MPSA. I add my voice in condemning human rights abuses on defenseless people, acts of deception and blatant lies. I urge you, my brothers and sisters to join us.

(Manguiran 2004)

This activist, and interventionist, Roman Catholic Church is also a factor that, like the NGO movement, plays a leveling role in what Bass *et al.* (2004: 37) would (again) call, 'helping to level the power imbalance between communities and mining companies in the community consultation process'.

### Discussion

Ultimately, however, one must discuss the importance of *allowing* indigenous peoples to consent, or object, to the location of mining projects within their jurisdictions. Mining presents communities with opportunities for economic and social development, as well as negative environmental and social impacts (Bass *et al.* 2004). The positive impacts of mining can include increased access to jobs, healthcare, education and sanitation (Bass *et al.* 2004). Mining companies can rightfully claim that they bring into the community roads, schools, health services, many of the amenities of modern living, that they create jobs, and that they inject money into the local economy (Environmental Science for Social Change, 1999). Mining also can have many negative impacts upon a community. As Bass *et al.* (2004: 2) wrote:

Mining can also result in devastating impacts on human health, local systems, social structures, production systems, and cultural traditions; physical displacement; demographic shifts due to influx of workers; and a rapid shift from subsistence farming and hunting to dependence on a cash-based economy.

If indigenous communities can approve of, or reject, the mining project they are placed in a situation where they can shape the development of the mining activity (Bass *et al.* 2004). This can, then, lead to a more sustainable form of development, in which the short-term mining interests do not compromise the community's longer-term needs for survival. The consent of indigenous peoples gives the mining company a 'social license' to operate; this allows the company to improve its relationship with the community and thereby lessen its risk of incurring costs due to conflict and delay (Bass *et al.* 2004).

There are some situations where the conflicts between mining and indigenous peoples appear to be somewhat ameliorated. At its Tampakan property, on the island of Mindanao, the Australian mining company Western Mining Corporation engaged in substantial efforts to gain the consent of



the *Bla'an* communities. First, the mining project proponent made efforts to engage the communities as early as possible when it began the process of mine development; then, the mining company hired ethnographers and archaeologists to document the traditions of the indigenous community and the extent of its territory; finally, Western Mining Corporation also engaged in efforts to improve the conditions of the *Bla'an* people by providing them with educational and medical facilities (Davis 1997). After Sagittarius Mines Inc. took over the property from Western Mining Corporation, in January 2003, it facilitated scholarships for approximately 700 *Bla'an* community members (Sarmiento 2005a). The efforts of Sagittarius Mines Inc. appear to be succeeding; by January 2005, the NGO South Cotabato, North Cotabato, Sultan Kudarat, Sarangani, General Santos City and Davao del Sur Alliance for Genuine Development (SOCCSKSARGEND-Agenda) indicated that Sagittarius Mines Inc. is obtaining the social acceptability of the affected indigenous communities (Sarmiento 2005b).

In terms of a prescription for success in dealing with affected communities, Labonne (1999) has articulated a number of steps to which mining project proponents should adhere. First, the mining company should view the local community as a source of valuable human, natural and physical assets that can be utilized when developing the property (Labonne 1999). Second, mining companies must make it clear to their shareholders that the imposition of costs on local communities is no longer acceptable; any expenses that are incurred in preventing the imposition of costs upon local communities pale in comparison to the remedial expenses that will be occasioned if a local community is adversely affected by the mining project (Labonne 1999). Third civil society organizations (of which the Philippines is so well-endowed) must be engaged as partners by mining companies (Labonne 1999). If these organizations are not engaged *proactively* in a *positive* relationship they may have to be engaged *retroactively* in a *negative* relationship when they challenge the social license of the mining company; this could make profitable development of the property difficult. Lastly, 'the community must be able to articulate its own development aspirations' (Labonne 1999: 320). 'Whatever social policy the company decides to introduce, with or without the government, it should be participatory and based on mutual commitment with the community' (Labonne 1999: 320). If social acceptability cannot be obtained, the mining company may have to accept the fact that this mine, no matter how well-endowed its ore deposit may be, may not be developed. As the American writer Saleem Ali stated:

Mining companies and governments have to realize that just as a mining deposit under New York City would certainly not mean that mining will go forward, the same may be true for other places as well. This is where environmental justice arguments may start to creep in, despite the geological determinism of mining in general.

(Ali 2003: 197)

The preceding 'prescription for success' does, however, have limitations. Mining companies are not aid agencies and the use of corporations as agents of development is, ultimately, limited by virtue of the fact that mining companies 'are in business to make profit and if they do not make profit, they do not stay in business for very long' (Environmental Science for Social Change 1999: 41). According to Fisher and Urich (2001: 17) reliance upon corporate investment as a method of development is limited by virtue of the difficulty inherent in 'marrying quantifiable economic objectives with equitable social and human development'. There still remains a role to be played by national and international development organizations in the provision of aid, and mining companies can never fully supplant these agencies (Davis 1997).

Another avenue available for resolving conflict between indigenous peoples and mining is the Indigenous Peoples Rights Act itself. This statute is 'often seen as a progressive state measure to recognize the rights of indigenous peoples over ancestral lands' (Gutierrez and Borrás 2004: 43). This piece of legislation is, however, limited in terms of effectiveness by 'foot-dragging on the part of weak state institutions in enforcing its provisions on ancestral domain claims' (Gutierrez and Borrás 2004: 43). If the Philippines government would allocate greater resources to the National Commission on Indigenous Peoples, and pay more attention to the provisions of the Indigenous Peoples Rights Act, some of the conflict described in this paper could be precluded (Gutierrez and Borrás 2004).

Similarly, an alleviation of the informational asymmetry that exists in the Philippine environmental impact assessment system could resolve some of the mistrust and suspicion that exists between indigenous peoples and mining companies. If an indigenous community was entitled to the same information that is being given to the Philippine government more transparency would be imparted into the mine development process and this increase in transparency would build more trust (Mining, Minerals, and Sustainable Development 2002).

Perhaps the ultimate topic in the discussion of the tension between the indigenous peoples of the Philippines and the Philippine state's mining-based development paradigm is the potential threat that mining poses to the *ethnodiversity* of that archipelago. In discussions of the environmental effects of extractive industries, such as mining, ample attention is paid to the effects of these industries upon the 'biosphere' (the area upon the Earth containing life) and upon 'biodiversity' (the diversity of life upon the Earth). In contrast, however, a paucity of attention is devoted to the 'ethnosphere' and to the Earth's 'ethnodiversity'.

According to Canadian anthropologist Wade Davis, 'the cultures of the world make up an intellectual and spiritual web of life, an *ethnosphere* that envelopes and insulates the planet, and is as vital to our collective well-being as is the biosphere' (Davis 2002: 57). Davis defines the ethnosphere as being 'the sum total of thoughts, beliefs, myths, and intuitions brought into being by the human imagination since the dawn of consciousness' (Davis 2002:

57). It is the contention of Davis that, just as the biosphere is being eroded, so is the ethnosphere – and at a much greater rate (Davis 2002).

In the Philippines the challenges, such as displacement, posed to indigenous peoples constitute a threat to Filipino ethnodiversity. The Igorots of Luzon and the Lumads of Mindanao represent unique cultures that have occupied their lands long before what Rood (1998) called the hispanization and islamization of the islands; these peoples represent cultures that have existed since time immemorial. Should these cultures cease to exist it will be a loss akin to the extinction of a species of flora or fauna.

In Davis's view, the principal threat to ethnodiversity is an imbalance of power. As Davis (2002: 60) wrote:

It is not change that threatens the integrity of the ethnosphere. It is power, the crude face of domination. The ultimate tragedy is not that archaic societies are disappearing but that dynamic living cultures are being forced out of existence by the specific political and economic decisions of powerful outside entities.

In the Philippines, as this paper has shown, there is an imbalance of power (albeit an imbalance augmented by the intervention of that nation's civil society) between the mining industry and the Philippine state, on the one hand, and by the indigenous communities affected by mining projects, on the other. This power imbalance, and its attendant consequences, threaten, if not the *physical* survival, then certainly the *cultural* survival of the Igorots and the Lumads. Once these cultures have ceased to exist they will be lost, not just to the Philippines, but to all of humanity; the Earth will have moved one more step 'towards a monochromatic world of monotony from a polychromatic world of diversity' (Davis 2002: 61).

### **Conclusion**

This paper is an examination of the efforts of the government of the Philippines to encourage mining investment in that country and how mining has conflicted with the indigenous peoples of that nation. The paper has discussed how the government of the Philippines has attempted to enhance the development of the country by encouraging the exploitation of that nation's mineral wealth. This mining-based development paradigm has come into conflict with the indigenous peoples of the Philippines.

The conflict between the mining industry and indigenous peoples is rooted in the mining industry's need for access to the maximum possible amount of land. The mining industry needs access to as much land as possible in order to find economically viable mineral deposits and to maintain a resource base. If a mining project proponent finds an ore deposit, but cannot obtain the consent of the indigenous community that lives above the deposit then that deposit, for all intents and purposes, may as well no longer exist.

The forces of Filipino civil society that have acted on behalf of indigenous peoples have exacerbated this conflict. The advocacy of NGOs has prevented the mining industry from invalidating the Indigenous Peoples Rights Act and the advocacy of NGOs (for essentially all of 2004) invalidated the Mining Act of 1995 – the centerpiece of the Philippine government's efforts to encourage more mining. These civil society actions are an example of what Hood (1995: 13) would call 'non-mineral actors' who wield 'the power to stop development'. According to Labonne (1999) mining companies must increasingly pay as much attention to the forces of civil society as they do to the government of the host country. As Labonne (1999: 321) wrote: 'the former government–corporation partnership should be enlarged to include civil society'.

Lastly, one should carefully reconsider the oft-articulated views that poor people are a source of environmental degradation and that the residents of less developed countries will immediately, and permanently, sacrifice the environment in which they live in exchange for even a temporary improvement in their material welfare. The indigenous peoples of the Philippines, who have so rigorously opposed hardrock mining, are people such as subsistence farmers or fisherfolk who live in a precarious existence at the best of times. These people oppose hardrock mining because they do not want another Marcopper to happen where they live, as that would move them into immediate destitution. Unless, and until, the mining industry, and the Philippine government, can convince these people that every new mine is 'not another Marcopper waiting to happen' it will continue to encounter the rigorous resistance it is currently encountering from the indigenous peoples of the Philippines.

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