



17th February 2010

ARE-JOSTEIN NORHEIM
OECD-NCP, Norway
UTENRIKSDEPARTEMENTET
Oslo, Norway

Dear Mr. Norheim,

We would like to submit our comments on the investigation report conducted by the Norwegian Ambassador to the Philippines, Knut Solem, regarding the complaint filed against Intex Resources ASA for violation of OECD Guidelines on Multinational Enterprises.

This submission is made in behalf of Dr Robert Goodland the former Senior Environmental Adviser to the World Bank and Clive Wicks, a Vice Chair of IUCN-CEESP the IUCN Commission on Environment, Economic and Social Policy. We are co authors of “*Philippines - Mining or Food?*” and also members of the London Working Group on Mining in the Philippines (WGMP). We would like to thank you for giving us the opportunity of responding to the Embassy report.

We have to start by saying how appalled we are to hear about the murder on the 10th of February of Ricardo Ganad, the President of the Association of Barangay Captains in Victoria Mindoro. We send our sympathy to his family and many friends. He was one of the supporters of the anti-mining group in the municipal council. It is reported that he was shot dead at point blank range in front of his house. Although there is no evidence that the killing is mining-related, the situation is tense and people opposing the mining are intimidated.

We are not accusing any one, that is a matter for the police, but it is well known that mining is often surrounded by violence in the Philippines. A number of anti mining activists have been murdered while we worked on the book quoted above. Over 1,300 extra judicial killings (murders) have taken place since the current President came to power in 2001 and have been subject to reports by international bodies including UN Special Rapporteur on Human Rights.

Summary

We do not consider that INTEX has complied with the OECD guidelines on the Environment a brief summary of which is attached in appendix B. Basically INTEX is not respecting the laws designed to protect the environment and Human Rights or the right of Provincial Governments to protect their environment by passing local laws.

We do not understand how INTEX can possibly claim that they are not mining in a critical water catchment when it is obvious and documented that it is a critical water catchment. If it was not so important why did NORAD spend so much money helping to develop a flood control master plan for the Bucayao and Mag-asawang Tubig Rivers?

It is our view that “***Mining is likely to damage the island’s (Mindoro’s) important food production capacity, its fisheries and its eco-tourism potential and is clearly inconsistent with its sustainable development plan. In the light of other factors, including seismic and climatic conditions, the proposed Intex Nickel project has the potential to cause massive damage for the water catchment area, impacting up to 40,000 hectares of rice producing lands and exasperating flooding of towns and villages.***” (“*Philippines - Mining or Food?*”)

If INTEX is allowed to operate then it will be followed by many other mining companies and the cumulative impact of all the mines on the last remaining forests protecting water catchments will severely damage the sustainable development of Mindoro. The Human Rights of the people of Mindoro may also be further violated. These include:

- Violations of the right to life, freedom from death threats or other threats of violence and the right to swift fulfilment of justice.

- Violations of the right to an adequate standard of living, including the right to food – which will be severely impacted by mine pollution, siltation and environmental damage of agriculture and fisheries, which are the main sources of food for the people of Mindoro.
- Violations of the right to gain a living through work – also as a consequence of wide spread damage to agriculture and fisheries, because these are also the main sources of livelihood for many people in Mindoro.
- Violations of the right to water – which occur when mine tailings, siltation and mine waste, pollute water used for agriculture, fish ponds, drinking and other domestic purposes.
- Violations of the right to health – which arise from failure to secure the underlying determinants of health, including a healthy environment, compounded by the failure to enforce laws to protect Human Rights and the environment.
- Failure to consult and provide all affected communities with adequate information on the impacts of mining operations on their human rights necessary for them to make informed decisions about mining.

All of the above are breaches of OECD Guidelines.

We have both worked with Norwegian experts in many countries and we have generally been most impressed with Norway's role as an International leader on Environmental Protection, Sustainable Development and Human Rights.

We had high hopes that the Embassy would protect Norway's International reputation particularly after Norway's decision to withdraw all its investments, about \$800 million, in Rio Tinto because of the Environmental damage that the Grasberg mine was causing to the Environment in West Papua. The Ambassador was provided with maps and our detailed report "*Philippines - Mining or Food?*" prior to his visit to Mindoro. We are very disappointed that there was no mention of this publication, the maps or other objective reports which are numerous were referred to in the Embassy report.

We are Independent Consultants and we wanted to help the poor in the Philippines. Before writing the report "*Philippines - Mining or Food?*" we provided assistance offering an independent view for the government and local people.

We totally support the Ambassador's view that "***There is comprehensive and widespread poverty in the Philippines, including in Mindoro. There is a great need for development and aid on the island***".

The poor need all the help they can get. First and foremost they need help to protect their agricultural base and their lives from disasters such as floods. People who can grow rice are less poor than those who can not. Their ability to grow rice is seriously threatened by the legal and illegal logging that has taken place and now by the proposed mining operations in water catchments. As the report states ***the record of mining in the Philippines is poor*** and some of the people who live in the area are refugees from the Marinduque mine disaster and know what damage mines can cause. The Marinduque mine is just across the bay from Mindoro.

Less than 6% of the natural tropical forest which existed on the island in the 1900's exists today. The destruction of the natural forest has brought havoc to the island and we have appealed to all development agencies to reforest the catchment areas to protect peoples' lives and agricultural production particularly irrigated rice, fish ponds and inshore marine fisheries.

Water catchment

We are concerned that the report says that the Embassy team could not judge if the proposed mine will be in a critical watercatchment. You don't need to be an expert to judge if an area is a watercatchment. It is pretty obvious in most cases. In this case even the company itself provides the proof, see the INTEX and AMC pictures below. The proposed INTEX Mine is clearly within and embracing the watercatchments as the pictures below demonstrates.

We do not understand why the Embassy team did not visit the site or at least get as close to it as possible. Surely this was critical. If the team had visited the area they would have seen the

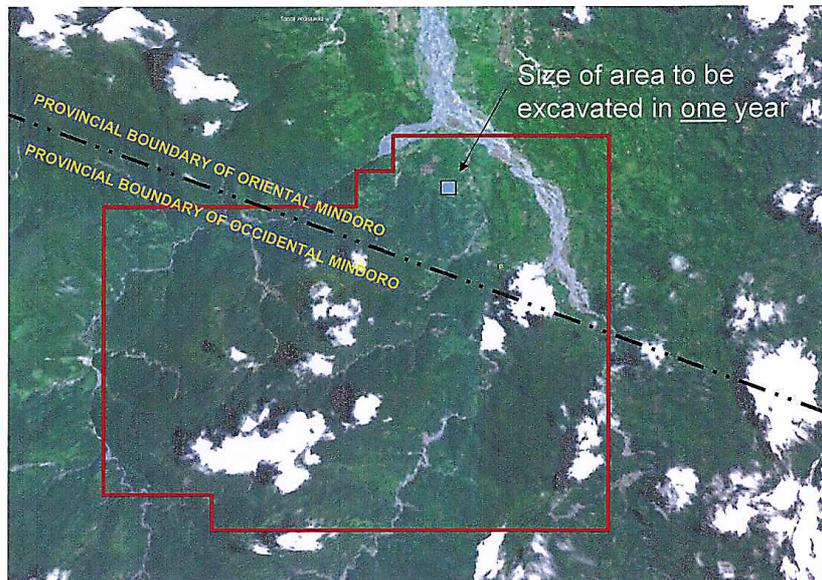
extent of the watercatchments and they would also have seen the area which is affected by the floods coming from the area where INTEX wants to operate see picture below. Over 50% of Mindoro's rice comes from this area.

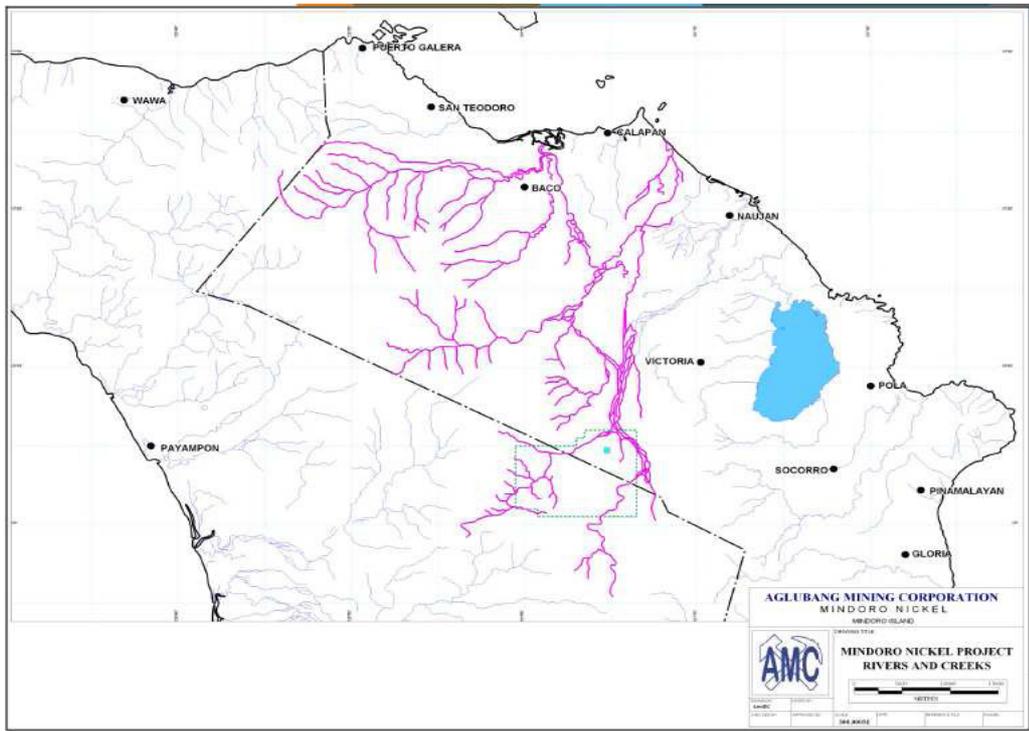
We have studied INTEX's plans and we do not accept their argument that there will be no impact on the water catchment. The area is subject to very severe earthquakes and that combined with heavy rain falls will cause tailings dams or other soil containment structures to collapse and soil to run off from any exposed surfaces including roads. It is basically not safe to strip the remaining forest cover in an area already severely damaged by logging and expose the upland soils whatever designation the water catchment has.

The situation has been made worse recently by the reported decision by INTEX to remove more than 2 meters of laterite to increase yield and profitability. Given the context of torrential rains and seismic activity there are also serious issues and risks relating to the transport of the laterite to the coastal processing plant even if a conveyor belt will operate 24 x 7.

INTEX claims that they can bio-engineer the rivers are not accepted by us. Many bio engineering projects have been disasters including that of the Mississippi river in the USA. Engineering projects can be badly affected in areas with high seismic activity and high rainfall. At least 16 major tailings dams have collapsed in recent years in the Philippines.

The Embassy report highlights the views of an INTEX company lawyer on the water catchment issue rather than those of the Provincial Governors, Provincial Planning Officers, a former Senior Environmental Advisor to the World Bank, a Vice Chair of an International Commission and a Filipino Hydro geologist who could all provide compelling evidence that the proposed mine is in a critical water catchment. We will send you separately a report on Mindoro extracted from *Philippines - Mining or Food?* that supports this view.





The photograph below shows what happens to the people of Mindoro when fragile and partially deforested watersheds cannot slow the rate of water discharge and serious floods occur.



Reforestation

We had high hopes that Norway would follow up the work NORAD did on the flood management plans, with a major reforestation and soil conservation programme, using the indigenous people as the main implementers of the plans. Investment in reforestation is what is really needed to support sustainable development not mining. Most Norwegian agronomists, foresters or hydro geologists would agree with us.

Corruption

The embassy report has found no reason to suspect the company of being involved in corruption. We don't wish to enter into the corruption debate except to say that corruption comes in many forms. The report mentions that a group of women support the project but then goes on to state that they had been given an Ambulance and medical equipment by INTEX.

Would they have still supported the mine if they had been given an Ambulance and medical equipment by NORAD or another Development agency instead of INTEX?

The report also mentions that 1000 people have been given support by INTEX. How and why were they chosen and under what conditions were they and not others given support? There are also questions about the P2 million given to the discredited National Commission on the Indigenous Peoples (NCIP) and the P 10 million for a Dyke in Alcate Victoria. What were the objectives for giving this money and did they influence the way in which NCIP operated or what people thought about the project?

Resistance

“Resistance to the project primarily appears to be found among those who are not directly touched or affected by the project.”

We totally disagree with this statement. If the team had visited the area proposed for the mine, as the previous Norwegian Ambassador did, the team would have seen how many people could be affected by the mine. It is far more than the 2000 that is mentioned. Any increase in sedimentation would result in the bed of the river rising and more people being flooded. The stakeholders are comprised of thousands of inhabitants and are found from the mountains through the agricultural lands in the plains below and right to the sea and along the coast where pollution and siltation from the mine would also be spread by currents into fish breeding grounds.

The Embassy report fails to mention that the sea around Mindoro includes one of the 10 most bio diverse marine sites in the World and its biodiversity and productivity could be badly damaged by mine pollution. This is why we questioned, CREW then and INTEX now, about Submarine Tailings Disposal (STD) which they had originally proposed using. We proved with help from UNEP-WCMC that they were going to dump mine waste in a shallow sea. We understand CREW claimed it would be in a deep ocean trench. We would still have disagreed with dumping in Ocean trenches as they are also high in biodiversity.

We are also concerned at the disparaging way in which Dr Edwin Gariguez PhD, a highly respected priest and anthropologist and an expert on the Mangyan people, was treated in the report. We have seen how highly he is respected by the Mangyan people and civil society and we would have expected the Embassy staff to respect his knowledge and love of his island and people. INTEX has a vested interest and is dealing with a small splinter group of Mangyans who do not represent all the Mangyans and others who will be affected by the project.

Laws and Rules

The report states ***“Meetings with the company's local management indicate that the laws and rules are taken seriously, that they are particularly interested in complying with the guidelines for environmental measures and CSR (Corporate Social Responsibility).”***

The company has been operating against the legal Moratorium issued by the Regional Government of Oriental Mindoro and the Municipality of Victoria. It also wants to operate in a critical water catchment which is contrary to Philippine Law.

INTEX is undermining the right of the Provinces to protect their natural resources and we believe that the mine will cause increased poverty for current and future populations. If the INTEX application is approved it will open the way for many other mining applications being accepted in the water catchments. The cumulative impact will be very great and the lives of many people damaged. How can Norway be associated with that?

Strategic Environmental Assessment (SEA)

In a similar situation when so many mines are proposed on a small island like Mindoro we are sure that the Norwegian Government would call for an Independent Strategic Environmental Assessment (SEA) to be carried out.

In Norway this would be supervised by an Inter-Ministerial Committee and it would look at the potential cumulative impact of mines and other industrial activities before any mining licenses were considered just as Norway did with the Oil and Gas Industry in the Barent Sea. We actually use the Strategic Environmental Assessment of the Barent Sea as a model when we run training courses on SEAs for developing countries.

The report rightly states on page 6 under comments ***“the authorities in general have run over, not to say disregarded, all opposition in their endeavour to obtain foreign investments and revenue.”***

We totally agree with this statement as do the World Bank, the EC and many other development agencies in the Philippines. We are sure that the Ambassador and his staff are aware that the World Bank suggested that DENR should be separated from the function of selling extractive industry licenses and concentrate on environmental protection and sustainable development which is exactly what we proposed in *“Philippines - Mining or Food?”*

However in the last sentence the Embassy report states. ***“Environmental consequences in general and watershed issues in particular are core issues. We would rather not take a stand on this, and it must be up to the authorities and to them alone to undertake an expert evaluation and then make the necessary decisions”.***

We cannot understand how the Embassy can then propose that “the authorities” who ***“disregards all opposition in their endeavour to obtain foreign investment”*** and the main agency for the environment and natural resources with conflicting functions (DENR) should ***“alone undertake an expert evaluation and make the necessary decisions.”***

The report ends, “It is quite difficult for the embassy to take a stance on what the correct and erroneous claims are of these assertions and allegations. We have not gained insight into all the processes, nor do we have the expertise to assess the various environmentally related issues.” If that is the case why did the Embassy under take the mission without an Independent Natural Resources Advisor/Forester or Hydro geologist?

We also ask why the report missed out the fact that the DENR Secretary promised to set up an Independent Commission in consultation with the Governors and key stakeholders to look into the complaints the Governors, the indigenous people, the church leaders and others made to him regarding the illegal issuance of the Environmental Certificate of Compliance in November 2009?

Finally we hope that Norway will stand by the statements made by Kristin Halvorsen, the Norwegian Minister of Finance when Norway withdrew nearly \$ 800 million in investments in Rio Tinto because of the environmental damage being caused by the Grasberg Mine in which Rio Tinto was a partner. See appendix “A” with extracts from the article in UK Times September 10, 2008.

Norway should not allow double standards in West Papua and the Philippines. We hope Norway will live up to its International reputation as a defender of the environment and Human Rights. It should not allow a Norwegian mining enterprise to damage the environment or the Human Rights of the poor on Mindoro. Norway and other governments should support sustainable development and good governance.

Yours sincerely



Clive Wicks
On behalf of Dr Robert Goodland and himself

--

Clive Montgomery Wicks
Vice Chair of IUCN-CEESP (IUCN Commission on Environmental, Economic & Social Policy)
Co-Chair of SEAPRISE (CEESP Theme on the Social and Environmental Accountability of the Private Sector)
Hare's Holt, Orestan Lane, Effingham, Surrey
KT24 5SN, UK
Tel No 00 44 (0) 1372 452258, Mobil + 44 07806064784

Appendix A

Norwegian wealth fund sells stake in Rio Tinto



The opencast Grasberg mine in West Papua, Indonesia, has been called one of the worst eyesores in the world

David Robertson, Business Correspondent

http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article4720040.ece

One of Rio Tinto's largest shareholders has sold its £500 million stake in the company over concerns about the Grasberg goldmine, which has been called one of the world's worst eyesores.

The \$375 billion (£213 billion) Norwegian sovereign wealth fund said on Tuesday that it had sold its shares after failing to persuade Rio to improve operations at the West Papua mine.

The Norwegian Finance Minister publicly shamed Rio in a statement that accused the company of “**severe environmental damage**”.

A spokesman for Rio Tinto said: “We work closely with Freeport and are comfortable with the work they have done at Grasberg. The tailing management system is the right one to use and the environmental damage that has been alleged is not the case.”

However, this was not a view shared by the Norwegian Government Pension Fund, which manages wealth generated by the country's North Sea oil.

Kristin Halvorsen, the Norwegian Finance Minister, said: “**There are no indications to the effect that the company's practices will be changed in future. The fund cannot hold ownership interests in such a company.**” (Extracts.)

APPENDIX B Extracts from OECD Guidelines



V. Environment

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should:

1. Establish and maintain a system of environmental management appropriate to the enterprise, including:

- a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities;
- b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance, including periodically reviewing the continuing relevance of these objectives; and
- c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets.

2. Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:

- a) provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance; and
- b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

3. Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.

4. Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.

5. Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.

6. Continually seek to improve corporate environmental performance, by encouraging, where appropriate, such activities as:

a) adoption of technologies and operating procedures in all parts of the enterprise that reflect standards concerning environmental performance in the best performing part of the enterprise;

b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use; are efficient in their consumption of energy and natural resources; can be reused, recycled, or disposed of safely;

c) promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise; and

d) research on ways of improving the environmental performance of the enterprise over the longer term.

7. Provide adequate education and training to employees in environmental health and safety matters, including the handling of hazardous materials and the prevention of environmental accidents, as well as more general environmental management areas, such as environmental impact assessment procedures, public relations, and environmental technologies.

8. Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.