

THE ROYAL NORWEGIAN EMBASSY IN MANILA  
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To: Section for Economic and Commercial Affairs

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The Norwegian company Intex Resources has been granted a licence and is planning to undertake nickel mining operations on the Philippine island of Mindoro. This mining project is disputed. There is strong resistance from the Catholic Church in the Philippines, from the regional authorities and from various NGOs, including international organizations. On the other hand, strong support has also been expressed by, for example, the local indigenous population and the federal authorities, who see this as one of their priority mining projects. The population in the area appears to be divided.

In a letter to the Ministry Of Foreign Affairs dated 26 January 2009, the Norwegian NGO "The Future in Our Hands" (FIOH) has lodged a complaint against Intex Resources for violation of the OECD's guidelines for multinational corporations. In a meeting at the Norwegian contact point for the OECD's guidelines that took place on 4 June 2009, it was decided to request that the Norwegian embassy in Manila undertake preliminary studies to better enable the contact point to determine whether FIOH's complaint should be processed. In addition to the general complaint relating to violation of the guidelines, FIOH suspects Intex of having violated the guidelines for the publication of information, for practising bribery and/or having violated the guidelines concerning environmental considerations. An important part of FIOH's complaint concerns the process: who should have been consulted and what areas are affected as a consequence of Intex Resource's project?

The embassy (represented by Knut Solem, the ambassador, and Ture Lundh, embassy secretary) visited Mindoro on 13 - 15 December 2009 to hold a meeting with opponents and adherents by speaking with the respective groups that have headed the opposition and the support for the project. (Entering the area where the mining operation is planned was not possible. If this had been desirable, there is currently not much to see, and issues relating to environmental consequences must necessarily be assessed by experts, in this case the Philippine Ministry of the Environment). The embassy arranged more than ten meetings with more than one hundred persons, a number of relevant and involved stakeholders with differing interests under the planned mine project, including private individuals, politicians, church leaders, representatives of various local NGOs and local representatives of the Intex Resources company (hereinafter referred to as Intex or the company).

\* It can be confirmed that the company has conducted comprehensive consultation processes and is actively informing the various stakeholders about the project. Undoubtedly it is possible that that further consultations should/could have been undertaken in relation to other groups, but whether this is the case is now under assessment by the Philippine Ministry of the Environment. Dissatisfaction that has been voiced as to the lack of information and consultation primarily appears to stem from opponents of the project who state that they do not wish to have contact or dialogue with the company.

\* The embassy has found no reason to suspect the company of being involved in corruption. None of those the embassy has met with accused or even suspected the company of having acted in a reprehensible way. At all the meetings – whether with opponents or supporters – the embassy had

the clear and unambiguous impression that the company is considered to be "clean".

\* The embassy has no information suggesting that the company has violated Philippine legislation. Rather the opposite is true; there is much that indicates that the company is focused on complying with international and Philippine guidelines, rules and legislation.

\* There is comprehensive and widespread poverty in the Philippines, including in Mindoro. There is a great need for development and aid on the island. Whether one is opposed to or in favour of the project thus largely appears to hinge on what one can gain from the project financially, materially, and if one can prosper from the project. Resistance to the project primarily appears to be found among those who are not directly touched or affected by the project.

\* FIOH's cooperation partners in the Philippines do not appear to be representative of the elements of the local population that will be directly concerned by the project. On the other hand, they have allies in the Catholic Church, which is a strong opponent on principle grounds.

\* It is difficult for the embassy to judge the legitimacy of the political processes that have occurred.

\* 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 wishes to assume social responsibility in connection with its commitment to health and education programmes.

\* The company appears to have a good relationship to the segment of the local population that will be affected by the mining project if it receives the go ahead. Intex Resources has carried out questionnaire studies and collected signatures that demonstrate strong support for the project. These studies have been conducted with independent observers in attendance, and also in different ways depending on language skills etc. For example, one opinion poll had the indigenous population choosing between white or black stones to show support or opposition to the project.

\* When it comes to the effects on the environment from the mining activities, it is difficult for the embassy to assess what is correct, as here it is word against word. The opponents of the project claim that the mining operations will have a ruinous effect on the area as a whole. The supporters of the project reject this.

\* The watershed issue is complicated. Here too the claims contradict each other. Environmental risk consequence analyses suggest that the mining project is reasonable, and that the mine area itself is not on a critical watershed. However, there are other statements and votes where the majority (4-3) says there is a critical watershed where the project is planned. The company has close contact with the authorities and is awaiting developments in relation to approval and an environmental permit. This is now in for a new round of processing at the Ministry of the Environment. Among the opponents, trust in the Ministry is low, and according to what appeared in the meetings, this resistance will continue, even if such a permit should be granted "contrary to all expectations". They will also attempt to take the matter to court.

\* A legal settlement may also be on the horizon when it comes to the moratorium. A moratorium has been implemented in Mindoro, but only after the company was granted its licence.

\* Finally this is a fight not only against Intex Resources. Strong groups are fighting against the mining industry and for new mining legislation, and the Norwegian company's project is seen as a benchmark case.

Mr. Valencia, a former governor in Mindoro and now Mindoro's representative in Congress, has been an outspoken opponent of the project (cf. the report from the embassy's previous visit). This time the picture was far more complicated. He stated that Intex and Erland Grimstad, the managing director, had provided good and informative presentations of the project. The company had also been consulting well with concerned parties and relevant stakeholders. He felt the project appeared to be professional. He believed that the company would operate in a socially good and appropriate manner. He nevertheless made it clear that the reputation of the mining industry in general was very poor, and that the project Intex had launched was being compared to previous projects and their ruinous consequences – even if this is unfair, he admitted. He believed that the poor reputation of

the industry in general is detrimental to a good company such as Intex. This is also the main reason behind the opposition in the population. He stated that his attitude was one of waiting with supporting the project in public. He felt that there would need to be greater acceptance in the population in general before he as a responsible politician (and a candidate in the upcoming elections – our remark) could front external support.

Ben delos Reyes, an attorney and a local representative and legal counsel for Intex Resources, gave an updated overview of the company's project and informed about the consultation processes, declarations of support through questionnaire studies and the work to realize the project through cooperation with the national and local authorities. He explained the rights the company had been granted a long time prior to the moratorium that was introduced, and made it clear that the moratorium was not relevant for the company's operations as the Act had no retroactive effect.

Seven of 15 concerned mayors support the project (with their signature on a support letter). He stated that there was very substantial support (majority) from the population in the three cities in Mindoro which will be directly affected by the project, Victoria (mine site), Pola (processing) and Zoccoro (transport corridor). In Victoria, there was full support from 17 of 32 barangays (small municipal units). He stated that the company is working intensively to communicate the project to all involved parties. He had great faith that the presentation of the project, and not least launching it, would turn opponents into adherents. Reyes also stated that the situation is far more complex than claimed by the opponents. There is great support among sections of the local population, particularly in the areas that will be touched by the project. Needless to say, he also sees resistance to the project, but he believes that this resistance is heaviest amongst those who live far away, and amongst those who believe they will not benefit directly from welfare goods, such as more workplaces, education programmes, health schemes and project ripple effects. He also made a comment that a number of politicians, such as the member of Congress Valencia mentioned above, were against the project when speaking to the people/their voters, but that they generally were positive to the project when in direct dialogue with the company and other stakeholders. Reyes made it clear that the area was not a critical watershed, and that he looked forward to having this confirmed by the expert authorities.

He also countered allegations that the local population would be forced to relocate. Nobody will be forced to do that, but some families will be relocated on a temporary basis, then will be given the offer to move back to the same location or accept new more modern housing in adjacent areas. Reyes states that there is full support among those who are concerned in this context. The indigenous population – the Mangyans – have according to Intex been given the opportunity to report support or opposition through an election. The election has been monitored by independent observers and has been held using interpreters, translators and the application of simple and comprehensible methods. Reyes believes that the Catholic Church is the principal participant that is undermining the project. It has been decided centrally and on the uppermost level that the Church is against any and all form of large-scale mining operations. The lower church echelons then follow orders blindly, according to Reyes. He also voiced criticism against the manner in which Father Edu (the Church's main lobbyist) had been sponsored by NGOs to "tour the world to spread propaganda against the project". "He is paid in dollars. We only use pesos". Reyes stated that income from the mining operations in general will go to the national authorities (60/40 authorities – company), and that the company has proposed that this be divided in a manner which will give the local authorities a larger proportion of the revenues.

The Mayor of Calapan City, the capital of Oriental Mindoro, the Honourable Paulino Salvador C. Leachon, stated that the people basically are very sceptical when it comes to mining operations. The company must present to us what is good for the population, how this project will benefit us. He added that it would be political suicide to support this project at the present time. "People would

accuse me of being bribed by Intex if I supported the project". He believed, moreover, that Intex should fund housing, schools and health measures for the population. If so he would support the project. He repeatedly stated that he would be open to supporting the project if the company would contribute welfare benefits for larger sections of the population. He also said that the current governor and vice governor are strongly against the project, and that they are not willing to listen to arguments supporting the project, nor from Intex. He believed that it would, for example, not matter how much the company considered the environment in the mining area. It would be financial support to people that might cause the opposition to relent. He found that the coming elections in May render it difficult for politicians to support the project at this time, as this is a political risk. According to the mayor, whatever the case, this would become a post-election issue, a matter politicians would deal with only after the election.

Representatives from the civilian society (nine + two participants, including church leader Father Edu) believed that the mining operations would threaten farming because the area would be increasingly subjected to flooding. They also felt that the project should be stopped because of the strong popular opposition. They believed that it was unacceptable that parts of the indigenous population would have to be relocated. They also mentioned that biodiversity would be imperilled and that the diversity of plant and animal life would be threatened. They also claimed that "everyone in Mindoro – the civil society, politicians, the people -" was strongly against the project. They explained that the governor was not interested in speaking with Intex, with the rhetorical statement "What's the point?" The group accused Intex of not responding to questions. The dialogue has now dried up. They admitted that this had happened even though Intex continues to wish to meet the group and inform all the parties on a running basis, including them. Father Edu stated that they were preparing to bring the matter to court to illuminate Intex's lies and half truths. Edu also referred to Intex's claim that there had been questionnaire studies in Pola, while he is convinced that these have not taken place. Edu accuses Intex of presenting support they do not have. Edu asserted that 5000 individuals would be forcibly relocated if the mining project was realized. He also believes that the area would be far more vulnerable to flooding. When asked directly, Edu confirmed that the opposition against Intex is a benchmark case. The main objective is to obtain new mining legislation.

The political consultant for Mayor Apollo Feraren from San Teodoro (an alternative area for a processing facility), stated that a committee would be convened to examine social acceptability. He also stated that seven of eight barangays already support the project. San Teodoro, according to Feraren, was willing to cooperate and responded positively to the operations planned by Intex. Intex had informed and consulted well. It was hoped that the project would create as many as 7000 jobs in total in Mindoro, and perhaps as many as 2500 in San Teodoro. A total of 82 per cent voted for the project, a real election with good methods. He was very frustrated that the Church rejected the project: "They say nothing about the positive aspects of the project, only the negative things". Consultation and information from the company have been good. A number of politicians and also others in San Teodoro have been accused of having allowed themselves to be bribed by Intex Resources. This is not correct.

Representatives of the Woman's Organisation of Victoria (13 persons), including Ms Elena Evora, President, were all barangay counsellors and also presidents of their respective barangays/village women's organizations. Additionally, three so-called barangay counsellors participated. They were all uniformly in favour of the mining project. They made it clear that "mining operations would mean the same as sorely needed development for Mindoro". "We need workplaces. We want mining operations." They related that Intex already have helped them and the people, for example by providing an ambulance and medical equipment to the women's organization. Almost one thousand people had been helped in this way. They were dejected by political opposition to the project, and felt that this was in part motivated by populist motives and in part based on the industry's poor historical reputation. They also saw as negative that politicians did not wish to enter into dialogue

with the company. In addition to the mayor and vice mayor of Victoria, seven of ten counsellors were also against the project. The opponents also had support from the Catholic Church in the area. The three who supported the project participated at the meeting. The president of the women's organization stated that correct questionnaire interviews had been carried out documenting a clear majority in favour of the project. They were able to document this if desired. Around 12 000 of 17 000 votes were in favour of mining operations. The opponents reject the correctness of the result, but also refuse to undertake studies tied to the structure and implementation of the study. The leaders of the church claim, moreover, that they have undertaken their own examinations which show strong opposition against the project, but the church allegedly does not wish to publish these. The leaders of these women's organizations were frustrated by Church propaganda. They confirmed that they had not heard about corruption linked to the project, nor did they believe there was. They claimed that 24 of 32 barangays in there area were in favour. They were sorry that the opponents were allowed to dominate such as the case was, and urged Intex to retaliate to create greater understanding of the project. They were not optimistic in relation to a pending breakthrough or progress prior to the election in May. The barangay counsellors believed that the area was not a critical watershed. They believe that environmental certificates (ECC) would not be a problem and that the company would get them again, but perhaps only after the election. The project will not harm the environment, and flooding is a problem regardless the project, a very involved group of women claimed.

The indigenous population, leaders of the Mangyan groups Kabilogan and Mangyan, Inc. & SADAKE, were angry with and frustrated by other sections of the Mindoro indigenous population, who live far from the areas to be affected and who pretend to represent the entire Mindoro indigenous population. It was asserted that these erroneously claim that "everyone" is against the project. The leaders of the Mangyans have also had meetings with the central authorities in Manila (the Minister of the Environment) to express their support for the project, and also report their annoyance at being misrepresented by others. They claim that around 300 individuals will probably have to be relocated on a temporary basis, but they are also generally positive to this. They feel that the popular opinion in general will change in a positive direction over time, and that people become more in favour of the project the more they are informed about it and its positive consequences. They consider the Catholic priests to be the greatest problem: "They spread propaganda to their members even if they scarcely know anything about the project". To the extent that the indigenous population voiced criticism against the project, this concerned their worry that Intex is not hiring sufficient numbers of local employees. They made it clear that the company needed a better local profile in relation to hiring and employment, also for the project to become more efficient. "Social acceptability" would be created by employing local residents.

Barangay captains, 39 representatives from Victoria and Barangay counsellors, in addition to a representative of Christian churches in Victoria (non-Catholic) amounted to a total of 58 persons who participated in the meeting. The group was in favour of the project, but deemed it important that the workplaces would benefit the local population. They were quite satisfied with the information from the company, and also with the consultation processes. They also believed that a Norwegian company would do things in the right manner and that this would generate development for all of. It would be good for the environment, good for welfare and good for doing away with poverty. They were nevertheless also anxious about following the company and observing their practice. They reported that there were great expectations placed on the company in relation to its culture and history. They believed that the company would also have to deliver on their promises (MoU) about health and education programmes. They repeatedly emphasized that the indigenous population that will be affected by the project are not against it, but that there obviously are opponents elsewhere on the island. They claimed that perhaps 300 families would be temporarily relocated, but that this was voluntarily and that they had consented as they had been promised more modern housing. They trusted that the watershed issue would be resolved satisfactorily due to modern technology, and

that mining operations would not detrimentally affect the environment. Around 1000 people live in the area. They repeated their frustration that "everybody else" is lobbying against the project even when those who are directly concerned are in favour of the project. The vicar who represented churches in Victoria asserted that 20 churches already supported the project and that a solid majority of members were in favour and had demonstrated this through signature campaigns and questionnaire studies. These churches encounter strong resistance from the Catholic Church representatives but nevertheless managed to resist this pressure.

It must be mentioned that the embassy had made several attempts to interview the Governor of Mindoro Oriental. As is known, he and his colleague in the neighbouring region have clearly stated their opposition. Regrettably, meetings that had been agreed in both Manila and in Calapan were cancelled. We must take it as a given that the Governor's stance has not changed, and only refer to the report prepared by Ambassador Risa earlier.

Moreover, it can be stated that the embassy also had a separate meeting with the Catholic Church leader and priest Father Edu Garigues in Manila. (Edu also assisted us in preparing our programme in Mindoro). He is held to be the main opponent of the project. Edu is in principle against large-scale mining operations, and would like to see new and far more restrictive mining legislation. This is the first project he and the Catholic Church are involved in as opponents.

The embassy has also had several meetings with the managing director of Intex, Erland Grimstad, who has informed the embassy on a continuous basis about the development of the company's activities. According to Grimstad, the company is complying with the highest ethical, social and environmental standards that are expected, not only in the Philippines and internationally, but also in Norway. Intex has been compelled to spend inordinately much time on various components regarding planning and project progress, precisely because they have intended to do everything right when it comes to environmental issues, social responsibility and also legal requirements pursuant to Philippine legislation and rules.

Comment:

There is no doubt that Intex Resources' planned nickel project in Mindoro is a contested issue, and that the fronts are uncompromising. It is, needless to say, regrettable that a Norwegian company, rightfully or not, comes in focus as the case is here, but we would also like to argue that the unrest, debate and the strong involvement in this case in many ways also have positive effects. This is not the least important in a country such as the Philippines, where the authorities in general have run over, not to say disregarded, all opposition in their endeavour to obtain foreign investments and revenue. This applies not least to the mining industry. Also, due to its many accidents, poor working conditions and scant benefits for the local communities, the mining industry has acquired a poor reputation. This undoubtedly represents an extra challenge for Intex, which beyond "selling" its project also represents a benchmark case for future mining operations in the Philippines. This was clearly confirmed during the visit.

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. As we see it, our primary task is to obtain points of view and then report these. If, however, we were to offer a brief summary of the various claims that have emerged, it would be as follows:

\* Corruption. No such allegations were raised at this time. Rather, there were politicians who asserted that if they turned around and supported the project, they would then be suspected or

accused of corruption. Moreover, several of them had requested assistance from Intex during the election campaign, but all requests had been turned down. Bearing in mind the extent of corruption in this country, one should be very careful in excluding anything at all, rather than just claiming that Norwegian companies "do not adapt to the situation", but the embassy has no reason to suspect Intex Resources of this. Such accusations were, as mentioned, rejected by project opponents and adherents during the visit. This was positive.

\* Consultations. What at any rate is clear is that comprehensive consultations have taken place. It might be that other groups should have been included, but this must be assessed by the Philippine authorities based on national rules and provisions. This will be done in connection with the new processing of the environmental approval. The company must at any rate follow up this. The company cannot be blamed for a lack of communication if further contact is rejected.

\* Openness. To put it simply, there is more transparency and discussion about this project than virtually anything else in the Philippines. The opponents have had ample access to decision makers, and not the least to the media, which on a continuous basis feature articles and reports on various aspects of the project.

\* 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.

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