



World Organisation Against Torture

P.O. Box 21 - 1211 Geneva 8

Switzerland

Tel.: 0041/22 809 49 39 / Fax: 0041/22 809 49 29

E-mail: [omct@omct.org](mailto:omct@omct.org) / Web: [www.omct.org](http://www.omct.org)

## **OMCT ACTION FILE (PHL 121207.ESCR)**

### **Addressing the economic, social and cultural root causes of violence**

#### *Your action is called for in the Sibuyan Island case*

#### **Mining activity on Sibuyan Island, Romblon Province, the Philippines, must be halted to prevent further killings and violence**

The peaceful opposition by local communities and indigenous people to mining that violates their rights and endangers their way of life on the Filipino Island of Sibuyan has been met with violence resulting in the killing of some 17 persons, including the recent fatal shooting of the leader of a protest movement by a security guard of the Sibuyan Nickel Properties Development Corporation on 3 October 2007.

Respect for the rights of local communities inscribed in Philippine law, notably the 1997 Indigenous Peoples' Rights Act, has been overridden by the application of the 1995 Mining Law designed to promote foreign investment. This has resulted in many illicit mining activities and increased opposition of the populations directly concerned.

To prevent further violence and killings, the International Secretariat of the World Organisation Against Torture (OMCT) calls on the *Government of the Philippines* to halt mining activities on Sibuyan Island and to establish an independent commission to review respect for the rights of the local population, to seek ways to protect their rights in the future. OMCT recommends calling on the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people to assist the independent commission.

OMCT also calls on *mining corporations* and their partners and owners to carry out their activities in strict respect for the human rights - economic, civil, cultural, political and social - of the populations affected by their activities and establish control mechanisms that ensure the respect for those rights and ongoing dialogue with the populations concerned.

OMCT further calls on the *European Union* to ensure human rights are respected in the implementation of the 2007-2013 EU-Philippines Country Strategy Paper.

This report has been prepared in close consultation with Philippine non-governmental organisations.

**Please see page 6 for requested action**

### **The mining situation on the island**

Sibuyan Island is an island in the Romblon Province, south of Manila, in the Philippines. The island enjoys global importance thanks to its flora and fauna, including the fact that 33 per cent of the island (44,500 hectares) is covered by forest and has been declared a national park. The island has a population of more than 50,000 inhabitants and is the home of the Sibuyanons Mangyan Tagabukid indigenous group of some 1,500 individuals living in two separated areas. Agriculture and fishing are crucial sources for their economic development.<sup>1</sup>

The first mining establishment on the island was approved in July 2006. Recently, the Australian company Pelican Resources (PRL),<sup>2</sup> under the guise of small-scale mining operations, established a large-scale nickel mining plant on the island.<sup>3</sup> The result is a joint venture with the Sibuyan Nickel Properties Development Corporation, a consortium of mining companies. Furthermore, one of the world's largest mining companies, BHP Billiton, has secured an agreement with the holders of the project that will supply 500,000 tones of laterite nickel per annum. The agreement will initially last for 5 years and with the possibility of a an extension of further 8 years.

The liberalization policy undertaken by the Government of the Philippines is aimed at increasingly attracting foreign investment and the 1995 Mining Code was conceived for this specific purpose.<sup>4</sup> Specifically, the Mining Code allows greater foreign ownership, and provides for repatriation of profits and tax breaks in favour of international mining companies. Indeed, it was described by the *Mining Journal* as "among the most favourable to mining to be found anywhere".<sup>5</sup> Foreign companies themselves were invited to help draft the law during a workshop held on the occasion of the 1993 Pan Asian Mining Congress.<sup>6</sup>

According to the Island's residents, up to 6 rivers would be affected by the new mining investments; in this respect, indigenous peoples in the island will be directly affected, although they hold a certificate of ancestral domain title covering almost 20 per cent of the island.<sup>7</sup> Last year 8,000 people marched to the mining site to express their disagreement.<sup>8</sup>

The Sibuyanons Against Mining Movement also reports that a further 13 mining sites have been planned on the island.<sup>9</sup> Many of the residents of the island are opposing the projects.<sup>10</sup> A report of a fact finding mission conducted in August 2006 and led by the British Member of Parliament and former Minister, Ms. Clare Short,<sup>11</sup> highlighted

<sup>1</sup> <http://www.cmln-sea.org/nations.php?id=21>

<sup>2</sup> <http://investing.businessweek.com/research/stocks/snapshot/snapshot.asp?symbol=PEL.AX>

<sup>3</sup> [http://www.manilastandardtoday.com/?page=felMaragay\\_oct29\\_2007](http://www.manilastandardtoday.com/?page=felMaragay_oct29_2007)

<sup>4</sup> <http://www.austrade.gov.au/Mining-to-the-Philippines/default.aspx>

<sup>5</sup> <http://www.newint.org/issue299/light.htm>

<sup>6</sup> [http://www.piplinks.org/indigenous\\_rights/indigenous\\_rights.htm](http://www.piplinks.org/indigenous_rights/indigenous_rights.htm)

<sup>7</sup> "Mining in the Philippines : Concerns and Conflicts (Report of the Fact Finding Mission, July-August 2006)" [http://www.iucn.org/themes/ceesp/Wkg\\_grp/Seaprise/Mining%20in%20the%20Philippines%20-%20Concerns%20and%20Conflicts.pdf](http://www.iucn.org/themes/ceesp/Wkg_grp/Seaprise/Mining%20in%20the%20Philippines%20-%20Concerns%20and%20Conflicts.pdf)

<sup>8</sup> [http://www.alyansatigilmina.org/index.php?option=com\\_content&task=view&id=185&Itemid=37](http://www.alyansatigilmina.org/index.php?option=com_content&task=view&id=185&Itemid=37)

<sup>9</sup> <http://www.minesandcommunities.org/Action/press1670.htm>

<sup>10</sup> [http://www.manilastandardtoday.com/?page=felMaragay\\_oct29\\_2007](http://www.manilastandardtoday.com/?page=felMaragay_oct29_2007)

<sup>11</sup> The Fact Finding mission was organized by: CEESP (Commission on Environmental, Economic and Social Policy), the Irish Centre for Human Rights, the Society of St. Columban, and PIPLinks (Philippines Indigenous Peoples Links). On 25 January 2007, the former UK Minister for International

that provincial government and the companies involved are ignoring the needs of local communities. The mission pointed out that the mining projects are taking place with little or no public consultation, and despite the protests and the opposition of the majority of the Island's inhabitants to such projects.<sup>12</sup>

Following the recent violent events, including the case in question, residents of Sibuyan Island and other groups are now demanding the withdrawal of mining operations and the removal of all permits to explore and mine on Sibuyan. The people of Sibuyan are afraid that private security guards will use force and violence again in the future.<sup>13</sup> Indeed, as reported by the Filipino NGO Kalikasan and mentioned above, so far 17 killings related to the people's opposition to mining projects in their respective areas have taken place.<sup>14</sup>

### **The killing of the anti-mining activist**

OMCT has learned that on 3 October 2007, hundreds of anti-mining activists were protesting in Sitio Olango in Barangay España, San Fernando, Sibuyan Island. The protest was aimed at opposing the mining activities in the area; during the demonstrations Armin Marin, one of the activists, was killed by a gunshot. Marin, 42 years old, was a former member of the environment group WWF-Philippines and a municipal councillor of San Fernando town in Romblon.

Reportedly, Mario Kingo, a member of the private security guards of Sibuyan Nickel Properties Development Corporation, was inside the company jeep holding a gun. Following a heated confrontation with the security guards, Marin, who was leading the protest, was shot in front of the temporary office of the mining firm.<sup>15</sup>

The dynamics of the killing are tainted by contradictions and conflicting versions. Police filed a murder case against Mario Kingo; according to this report, Kingo claimed self defence, explaining that when driving the firm's jeep, the path was obstructed by the rally held by Marin and other protesters. The gun used by Kingo - a 38 caliber - was then sequestered, and it was subsequently found that two bullets had been used. Witnesses say that they heard three gunshots.<sup>16</sup> According to the version of the events advanced by the Sibuyan Nickel Properties, Marin died accidentally, and Kingo was attacked by the rally's participants. Conversely, WWF, quoting witnesses, stated that "the jeep driver held Armin with his left hand, while he pointed a gun at the councilor's mouth with his right hand".<sup>17</sup> The police regional director, Louie

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Development, Clare Short, currently Member of the UK Parliament, has launched a critical report on the destructive mining practices in the Philippines, following a fact-finding mission, led by the UK MP, in the Philippines, in July -August 2006.

<sup>12</sup> "Mining in the Philippines : Concerns and Conflicts" (Report of the Fact Finding Mission, July-August 2006)

[http://www.iucn.org/themes/ceesp/Wkg\\_grp/Seaprise/Mining%20in%20the%20Philippines%20-%20Concerns%20and%20Conflicts.pdf](http://www.iucn.org/themes/ceesp/Wkg_grp/Seaprise/Mining%20in%20the%20Philippines%20-%20Concerns%20and%20Conflicts.pdf)

<sup>13</sup> "Murder in paradise: green groups in arms". The Inquirer, 6 October 2007

<sup>14</sup> <http://bulatlat.com/2007/10/green-groups-condemn-killing-anti-mining-advocate-romblon>

<sup>15</sup> <http://www.infomine.com/news/headline/welcome.asp?NewsID=69339>

<sup>16</sup> [http://www.alyansatigilmina.org/index.php?option=com\\_content&task=view&id=185&Itemid=37](http://www.alyansatigilmina.org/index.php?option=com_content&task=view&id=185&Itemid=37)

<sup>17</sup> [http://newsinfo.inquirer.net/inquirerheadlines/nation/view\\_article.php?article\\_id=92896](http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=92896)

Palmera, stated that Kingo was also charged with contravening the gun ban that had been established by the Commission on Election.<sup>18</sup>

Irrespective of the exact dynamics of the event, OMCT expresses its serious concern that an individual engaged in a legitimate and peaceful protest was killed by a firearm, all the more since the killing occurred during the above mentioned gun ban.

### **Legal context**

Indigenous peoples' rights are protected and guaranteed by the Filipino law. Indeed the 1997 Philippines' Indigenous Peoples' Rights Act (IPRA), is shaped on the provisions of the draft of what is now the UN Declaration on Indigenous Peoples' Rights. Undeniably, on paper, IPRA provides for the free, prior and informed consent of indigenous peoples; furthermore, it foresees mechanisms to halt projects that do not have the explicit consent of the communities they affect. However, in concrete terms, these provisions are systematically undermined by, *inter alia*, the 1995 Mining Code, which in many cases offers mining permits on those indigenous lands in theory protected under the IPRA. Indeed, the Mining Code hinders the proper application of the IPRA.

The British NGO Survival International described the 1995 Mining Code as “the major current threat to the future of tribal people in the Philippines”. Mining activities not only have a high environmental impact, but also represent, for the poorest people of the country, a threat to their livelihood and lands.<sup>19</sup> OMCT wishes to draw the attention to the provisions of the Mining Code that are of particular concern in this respect:<sup>20</sup>

- 100% of the foreign ownership is allowed (previously there was a limitation up to 40%).
- A corporation may claim an area up to 200 Blocks (1 block = 81 hectares) onshore and up to 400 block offshore, while individuals face the restriction of 20 blocks in one province and 40 within the country.
- Companies can repatriate all profits and are guaranteed against expropriation by the State. Tax holidays are allowed.
- The Government commits itself to ensure the removal of all obstacles to mining, including settlements and farms.

The implementation of the Mining Code is also in contradiction with Section 16 of Article II of the 1987 Constitution of the Philippines; “The State shall protect and advance the right of the people to a balanced and healthy ecology in accord with rhythm and harmony of nature”.

Indigenous peoples communities and organisations have been struggling for their socio-economic rights for many years. However, due to the lack of political influence, as well as the failure of the competent agencies to apply the law, cases are repeatedly decided in favour of mining companies. In addition, not all communities are aware of

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<sup>18</sup> The Commission for the Elections established a gun ban in view of the Synchronized Barangay (village) and Sangguniang Kabataan (youth council) elections on the forthcoming 29 October 2007. The Philippine National Police (PNP) is the competent authority for the implementation of the ban. [http://www.comelec.gov.ph/announcements/resolutions/2007/res\\_8298.html](http://www.comelec.gov.ph/announcements/resolutions/2007/res_8298.html)

<sup>19</sup> [http://www.piplinks.org/development\\_issues/philippines\\_report.pdf](http://www.piplinks.org/development_issues/philippines_report.pdf)

<sup>20</sup> <http://www.mgb.gov.ph/policies/Republic%20Acts/RA%207942.htm>

their rights and their remedies; many of them lack legal means to file a complaint. In many cases companies and government bodies have claimed they met the requirement of free and prior consent, however, later investigations showed that the majority of the populations affected opposes the mining activities. In this respect, government's agencies continue to fail to register or record opposing positions and these consequently remain unacknowledged.<sup>21</sup>

### **Mining activities' impact on economic, social and cultural rights**

OMCT is concerned that, even though on paper, law in the Philippines defends indigenous peoples' economic, social and cultural rights, mining still represents a concrete threat to indigenous peoples' lands, since many mineral deposits lie on indigenous territories, and hence to their livelihoods and well being.

OMCT is also concerned that economic policies aimed at promoting investment in mineral extraction are frequently neither balanced with the human rights of communities involved, nor are in line with the right to basic necessities such as clean air, safe water and unpolluted soil. The absence of adequate protection leads communities to struggle for their rights. Indeed, communities resist development projects that destroy their traditional economy, community structures and cultural values. This, in turn, can provoke violent reactions by security forces hired by mine owners against the objecting communities, including harassment, ill-treatment, arbitrary arrest, torture and forced disappearances.

OMCT, in particular, expresses its deep concern at the killing of Armin Marin that took place in a general situation of insecurity, protest and discontent resulting from the poor implementation of mining policy in the Philippines. It is an example of the violent consequences of the mining policy of the Philippines and of the unscrupulous promotion of mining at the cost of the social, economic and cultural rights of people concerned.

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<sup>21</sup> "Breaking Promises, making profits" A Christian Aid and PIPLinks Report (2004)  
[http://www.piplinks.org/indigenous\\_rights/indigenous\\_rights.htm](http://www.piplinks.org/indigenous_rights/indigenous_rights.htm)

## **Requested action**

**Please write to the Philippine authorities (see addresses in A below) asking them:**

### **Regarding the killing of Armin Marin to:**

- Shed light on the circumstances of the event and start and complete a prompt and genuine investigation aimed at achieving accountability;
- Provide remedies and redress for the family of the victim;
- Take all necessary steps in order to prevent similar cases occurring in the future.

### **Regarding the situation on Sibuyan Island and in the Philippines in general to:**

- Halt immediately all mining activities on the island until procedures are in place to ensure respect for the human rights of those living on the island;
- Establish an independent commission to review respect for the rights of the local population in connection with mining projects and to seek ways to protect their rights in the future and consider calling on the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people to assist the independent commission;
- Stop issuing mining licenses until adequate and viable legislation, along with monitoring mechanisms to protect the environment and the economic, social and cultural rights of the indigenous peoples and others concerned have been established;
- Enforce the requirement of the free, prior and informed consent of affected communities, as provided by the IPRA, and investigate cases where this obligation has been violated, neglected or inadequately respected;
- Revise the 1995 Mining Act or draft alternative legislation on mining policy and prepare the revision or new legislation through a process that ensures the effective participation of the communities that will be affected, including indigenous peoples;
- Ensure that an equitable share of the revenues of mining projects go to the local communities concerned, once the community itself has expressed clear and unquestionable consent;
- Ensure respect for human rights, including labour rights, women's rights and property rights and ban the involuntary resettlement of people linked to mining operations.

**Please write to the mining corporations and their partners and owners and the Philippines mining association (see addresses in B below) asking them to:**

- Carry out their activities in strict respect for the human rights - economic, civil, cultural, political and social - of the populations affected by their activities, with particular concern for the rights of indigenous peoples as set forth in United Nations instruments;
- Establish mechanisms to ensure the respect for those rights that guarantee an ongoing and structured dialogue with the populations concerned;
- Publish periodic reports on measures taken to ensure respect and to promote dialogue with the concerned populations.

**Information on action taken and follow-up**

OMCT would appreciate receiving information on any action taken in relation to the matters dealt with in this Action File so that it might be shared with OMCT's network and others interested in these issues. Please refer to the code on the cover page in contacting us on this matter.

OMCT will be following-up and reporting on the responses to the recommendations contained in this Action File.

**Addresses**

**A. Philippine authorities**

H.E. Ms. Gloria Macapagal-Arroyo  
President of the Republic  
New Executive Building  
Malacanang Palace  
JP Laurel St., San Miguel  
Manila, Philippines  
Fax: +632 742-1641 / 929-3968  
E-mail: [corres@op.gov.ph](mailto:corres@op.gov.ph) / [opnet@ops.gov.ph](mailto:opnet@ops.gov.ph) / [kgma@yahogroups.com](mailto:kgma@yahogroups.com)

Mr. José de Venecia Jr.  
Speaker of the House of Representatives  
Rm. MB-2, House of Representatives  
Constitution Hills  
Quezon City, Philippines  
Tel: +632.9315001

Hon. Purificacion Valera Quisumbing  
Chair of the Commission on Human Rights  
SAAC Building,  
Commonwealth Avenue  
U.P. Complex  
Diliman, Quezon City, Philippines  
Fax: +632 929 01 02

Mr. Raul Gonzales  
Minister of Justice  
Department of Justice  
Building Padre Faura  
1004 Manila, Philippines  
Fax: +63 (2) 521 1614 ; Email: [sechbp@info.com.ph](mailto:sechbp@info.com.ph)

Ambassador Enrique A. Manalo  
Permanent Representative of the Philippines to the United Nations in Geneva  
47 Avenue Blanc  
1202 Geneva, Switzerland  
Fax: +41 22 716 19 32; Email: [mission.philippines@ties.itu.int](mailto:mission.philippines@ties.itu.int)

The Department of Environment and Natural Resources (DENR) Government  
of the Philippines  
Ms. Carolina Esquela, Oic-head executive assistant  
DENR Building  
Visayas Ave.  
Quezon City, Philippines  
E-mail; [hea@denr.gov.ph](mailto:hea@denr.gov.ph)- Special concern office: [sco@denr.gov.ph](mailto:sco@denr.gov.ph)

The Mines and Geosciences Bureau  
Government of the Philippines  
Mr. Horacio C. Ramos  
Director of The Office  
2/F J. Fernandez Bldg., MGB Comp.  
North Ave.Diliman Quezon City  
E-mail: [hcramos@mgb.gov.ph](mailto:hcramos@mgb.gov.ph), [central@mgb.gov.ph](mailto:central@mgb.gov.ph)

The Philippine Council for Industry and Energy Research and Development  
Mr. Raul Sabularse, Executive Director  
Rm. 303 DOST Bldg.  
DOST Complex,  
Gen. Santos Ave.  
Bicutan,, Taguig City  
Philippines, Zip Code: 1631  
E-mail: [raul@dost.gov.ph](mailto:raul@dost.gov.ph)

National Economic and Development Authority  
Mr. Augusto Santo, Director General  
E-mail: [absantos@neda.gov.ph](mailto:absantos@neda.gov.ph)

**B. Mining corporations and their partners and owners and the Philippines mining association**

Chamber of Mines of the Philippines<sup>22</sup>  
Ms. Nelia Halcon, Executive Vice President  
Room 809, Ortigas Building  
Ortigas Avenue  
Pasig City  
1605 Philippines  
E-mail: [comp@vaisa.com](mailto:comp@vaisa.com)

Philippine Mineral Exploration Association  
Indophil Resources Phil. Inc.  
Mr. Tony W. ROBBINS, President  
Level 3, L&F Building  
107 Aguirre Street  
Legaspi Village, Makati City  
Philippines 1229  
E-mail: [robbinst@indophil.com](mailto:robbinst@indophil.com)

Mr. John Palermo and Mr. John Hills  
Directors  
Pelican Resources Limited  
Ground Floor , 284 Oxford Street  
Leederville  
Western Australia 6007  
[jpalermo@pelicanresources.com.au](mailto:jpalermo@pelicanresources.com.au); [jhills@pelicanresources.com.au](mailto:jhills@pelicanresources.com.au)

Mr. Marius Kloppers  
Chief Executive Officer  
BHP Billiton Limited  
BHP Billiton Centre  
180 Lonsdale Street  
Melbourne Victoria 3000  
Australia  
[businessconduct@bhpbilliton.com](mailto:businessconduct@bhpbilliton.com)  
[hsec@bhpbilliton.com](mailto:hsec@bhpbilliton.com)

Please also write to the Embassy of the Philippines in your country.

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Geneva, 12 December 2007

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<sup>22</sup> Association of mining companies operating in the Philippines.