

Rejoinder by the Working Group on Mining in the Philippines to SMI's response to its concerns about SMI's Tampakan Project

In February 2009, the Working Group on Mining in the Philippines published a report, "Mining in the Philippines: Mining or Food?" The full report, along with case study summaries, is available here: <http://www.eccr.org.uk/module-htmlpages-display-pid-52.html>

Business & Human Rights Resource Centre invited all the companies named in the report to respond to the concerns raised. SMI is one of the companies that responded, on 24 March 2009 (all of the responses are available here: <http://www.business-humanrights.org/Documents/MiningorFood>)

The following is the Working Group's rejoinder to the comments by SMI.

23 August 2009

Joanne Bauer
Business and Human Rights Resource Center

Dear Ms Bauer,

The Working Group on Mining in the Philippines acknowledges the letter of Mark Williams, General Manager – SMI (dated 24th March 2009) responding to the concerns we raised about the company's Tampakan project in our report "*Philippines: Mining or Food?*"

We welcome the clarifications on some of the points raised, and are pleased to note that SMI has committed itself to embark on an Environmental and Social Impact Assessment (ESIA) process with "an independent review in line with international best practice." We hope that the company will open up all of the data in this review to truly independent scrutiny, and would welcome the opportunity to appraise the independence of this review with regard to process and participation.

We do not wish for a repetitive correspondence on this issue. Therefore we will not respond to all of the statements made in a long letter. However, we do wish to assert that, notwithstanding the points made, we stand by the findings within our report, and we wish to make clarifications on some of the points raised, namely:-

Point 3 – With regard to the unstable topography in the area, we accept that the mapping of geo-hazards has technologically improved, and that "numerous large mining and other civil engineering projects exist in seismically active parts of the world and have been designed with appropriate factors of safety." However, there are also numerous examples where modern designs in similar circumstances have failed (a good example being Freeport MacMoRan's Grasberg mine pit wall collapse on 9th October 2003, which cost the lives of eight workers).

Point 4 – With regard to the FTAA overlapping with protected areas, SMI notes with regard to the local Indigenous Peoples that a new Free Prior Informed Consent (FPIC) process is being conducted. The report clearly illustrates concerns around the practice of FPIC processes. We contend that far from being a good thing, the company

“coordinating with the NCIP for the conversion of the B’laan indigenous ancestral Claims to Titles” prior to their consent being given, actually constitutes an indirect form of bribery, and is contrary to the rules under which FPIC should be sought.

Point 5 – We note SMI’s statement that they are “deeply concerned by the unsubstantiated allegations or suggestions implicating SMI in militarizing our project area.” However, the facts on this issue are clear. Without the presence of the proposed project there would not be the need for increased militarisation. The reason that “host communities [are] requesting protection” (assuming they are, because so far it is the company rather than the communities that armed rebels have targeted) is fundamentally because of the presence of the company. Also by seeking the protection of the government/company in a civil war area, they further increase the risk of becoming a target. Even Xstrata itself has acknowledged at least partial opposition of host communities, and as the report clearly demonstrates militarisation of communities accompanies large-scale projects (at which point freely determining a social license to operate becomes virtually impossible).

Point 7 – With regard to the legal background, although it is arguable whether the new mining law “is considered to be one of the most socially and environmentally-sensitive legislations in the world”, the report is clearly more concerned about problems on implementation. The will or the ability of the Philippine Government to apply the law is seriously in question. A good example is that the first mine opened under the 1995 Mining Act, and referred to as a ‘flag-ship’ project of the new legislation, was eventually closed after at least two cyanide spills. The Australian company involved, Lafayette Mining, made similar promises to those made in SMI’s letter. Is it any wonder that local communities and many people in civil society are still suspicious? The company went bankrupt, and is now just re-constituting itself, but the local people are still living with the consequences, including a re-opened mine.

In conclusion, the letter in general either implicitly or explicitly agrees that there are potential problems. Xstrata have even highlighted some of these issues, in a statement to shareholders as part of a struggle for ownership of the project with Indophil. However, whenever a problem is mentioned some form of mitigation is proposed that is being, or will be, undertaken. It frequently contends that SMI (with the assistance of Xstrata) are the people in the best position to do this, working to a number of best practices. However, we contend that in reality - in modern, as well as historical, mining within the Philippines and by reference to some of Xstrata’s global operations – this ‘best practice’ either doesn’t happen or isn’t good enough to deal with serious environmental or social situations on the ground. (Indeed, as recently as 27th July, there was another murder of a worker, allegedly by communist rebels, on the site). No amount of mitigation nor CSR work will compensate for the loss of livelihood, nor the risk of serious disaster, that a project such as the Tampakan project will bring.

As such we stand by our assessment that large-scale open cast mining should not take place within the area covered by the FTAA of Sagittarius Mines Inc. It poses too great a risk to the food security of the region which is the main concern of our report, *“Philippines: Mining or Food?”*

On behalf of the Working Group

