

Promotio Iustitiae

Governance of mineral resources: Challenges and responses

From Africa

Rigobert Minani, SJ
Ferdinand Muhigirwa, SJ

From Asia pacific

Julie Edwards
Antonio G. M. La Viña

From South Asia

Stanislaus Lourduswamy, SJ
Xavier Jeyaraj, SJ

From Europe

Emanuelle Devuyt y Josep F. Mària, SJ
George Gelber

From Latin America

Ismael Moreno, SJ
Sergio Coronado, SJ



**Social Justice and Ecology
Secretariat**

Editor: Patxi Álvarez, SJ

Publishing Coordinator: Concetta Negri

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Editorial

Patxi Álvarez, SJ

Human beings have been relentlessly extracting minerals from the ground since the Neolithic age. The industrial revolution produced a sharp increase in this activity in order to satisfy the demands of the markets. It also created the machinery needed to increase the scale of exploitation. The plentiful availability of minerals has made it possible for us to produce the great variety of sophisticated devices with which we are nowadays surrounded. We need such products for our modern lifestyle, and we depend on them for our health, transport, communication, education, home appliances, etc. Without them our present way of life would not be possible.

In the last few decades mining activity has increased more rapidly than ever. Never before in history has such a vast quantity of minerals been extracted from so many places on the planet. There is a frantic race to explore for new deposits and to extract their wealth. We are experiencing a historic boom in mining.

The mining industry requires huge investments on the part of large companies, many of which are transnational, but the profits from the mines are likewise huge. During the last fifteen years prices for minerals have remained high because of increased consumption in the emerging countries; China in particular has increased its demand considerably. This increase in demand has allowed many mineral-exporting nations to maintain sustained economic growth during these years, so that most governments welcome exploitation of their mineral resources and depend on it as a source of revenue.

Nevertheless, the damage to the environment caused by mining is significant. It takes the form of contamination of soil and water, transformation of the landscape, and expulsion of fauna. Some of this damage is directly linked to the mining activity itself, which is extremely aggressive. Other types of damage depend on how the mining is carried out since some methods are more destructive than others.

The expansion of mining operations means that more and more places are suffering their harmful effects. The operations affect many places that are inhabited by human communities, which subsequently experience deteriorating health, expropriation of their lands, and physical displacement, all of which give rise to numerous conflicts. Many of the affected communities are Native Peoples, and the companies' occupation of their territories threatens their way of life and their very subsistence. Some of the regions the Native Peoples inhabit are very remote, so that their suffering remains hidden. In certain areas the mineral resources become the fuel for war or for armed conflict between opposing factions. That is no question that today mining is a constant source of conflict.

For decades the Society of Jesus has been accompanying communities around the world that have been adversely affected by mining activity, and some Jesuits have been killed trying to defend these communities. An ongoing dialogue among Jesuits from diverse regions of the planet has made us aware that we are face to face with a global challenge. In 2008 the decision was taken to create the Global Ignatian Advocacy Network (GIAN) for the Governance of Natural and Mineral Resources (GNMR). The positions and the objectives of the network were presented in [Promotio Iustitiae 110](#) (2013). The very name of the network – with its mention of “governance” or good management – expresses the need to approach this reality through dialogue among the various interlocutors who should be taken into account in any mining operation. These include the local population, land owners, companies, environmentalists, government agencies, etc.

In this issue, which has been prepared by members of the GNMR network, we include ten articles from the different Conferences of the Society. The articles describe some of the situations that result from mining activity, including the conflicts and suffering experienced by the local populations and the damage done to the environment. Mention is also made of local and regional initiatives that are attempting to respond to these problems. While the collection as a whole presents a very disturbing panorama, it also motivates us to become involved in the defense of the affected communities and the environment, and it offers us possibilities for responding generously and creatively.

*Original Spanish
Translation Joseph Owens, SJ*



Governance of natural resources in Africa

Rigobert Minani Bihuzo, SJ

Social Coordinator in Africa and Madagascar, Nairobi, Kenya

Introduction

To say that the governance of mineral and natural resources in Africa today is an “existential” challenge would not be an exaggeration.¹ The balance sheet of the fifty years of independence² which more and more of the African countries have now reached reveals notable progress and brings to light great challenges for the future of the continent. In first place among these challenges figures **the question of the good governance of natural resources**.

One may recall that immediately after independence “development” was considered to be the continent’s major challenge. Among the factors which were thought to be slowing down Africa’s take off was the instability of the States which were leaving western colonialism and becoming corrupted by civil wars and coup d’état’s, which were often the consequences of the cold war and the political division between East and West in Europe.

At the end of the period of the cold war, Africa became engaged in the process of democratization. Between 1989 and 1994, out of 54 African countries, 38 held competitive elections.³ Since then, almost every country has organized elections at least once. Thus, after only a bit more than twenty five years from the beginnings of political pluralism, Africa has made remarkable progress, with regular elections in several countries now routine. The peaceful change of leadership also takes place much more frequently than before. It is become more and more difficult for leaders to evade this practice.

If it is true that the regular organization of elections and the alternating of power are signs of the health of a democracy, it is also necessary to admit that elections by themselves are not sufficient. Africa must also rid itself of electoral violence and untimely changes in its constitutions. But one can generally affirm that Africa today is committed long-term to the process of democratization and that this is an advance to be appreciated and consolidated. What is still most needed is the advancement of democracy on the continent, especially as concerns the good governance of natural resources, because **there is nothing better than democracy to favor transparency and the struggle against corruption**. Today throughout

¹ Rigobert Minani, SJ, *Governance of Minerals and Natural Resources, Mining, Oil, Forest and Land*, Nairobi, Saint Paul, 2014.

² See Rigobert Minani, S.J, *Assessment and Future of the Jesuit Social Apostolate in Africa, in View of 50 Years of Independence: The Role of Jesuit Centres of Studies and Action* (Report), Nairobi, 2012.

³ African Union, *Election-related Disputes and Political Violence. Strengthening the Role of African Union in Preventing, Managing and Resolving Conflict*, The African Union Series, Report of the Panel of the Wise. ed., International Peace Institute, July, 2010.

Africa, citizens are claiming the right to demand of their government an account of the management of natural resources.⁴

Again today, as it was shortly after independence, the major challenge for Africa remains the question of its development, how to get the millions of its population out of poverty, because, as it is known, the majority of the countries of Africa are classified by the World Bank among the last on the planet in terms of human development. To reverse this list, Africa can make **great use of its potential in natural and mineral resources.**

Economic growth and well-being of the populations

As regards the governance of natural resources, Africa still has a road to travel. For more than ten years now, while the West was in full economic crisis, Africa has seen an average growth of more than 5%, due principally to the exploitation of natural resources. Africa's petroleum, gas and mineral resources have attracted numerous foreign investments.

One would expect that this increase in riches would also lead to the improvement of life for Africans. But paradoxically, **the countries rich in natural resources are classed among the last in terms of human development by the World Bank.**⁵ Out of a total of 187 countries in 2013, Gabon is in the 106th position, Equatorial Guinea 136th, and the DRC, last at 187th. Nine of the twelve countries lowest on the human development list are rich in resources.

This situation is alarming because recent exploration on the continent has revealed even larger reserves. Many countries have joined the list of petroleum, mining or forestry nations.

The price for the majority of these products is favorable for the continent. In fact, the demand for natural resources in China and other emerging markets continues to boost the price of exports and this tendency shows no signs of fading in the foreseeable future.

Challenges for Africa

Consequences for the poor

The first among those who suffer today from the savage exploitation of natural resources are the poor. Their environment is ravaged, the lands of their ancestors are plundered by enterprises, and they are often not compensated by the States. They are forced to "delocalize," often to inhospitable lands where the ecosystem is perturbed and damaged. In order to escape, the young migrate either to the cities, or, because they are poor, they only find shelter in the shanty towns. In several places, the exploitation of resources has led to war and violence, wherein the victims are mainly the poor, women, children and infants.

The perverse effects of the exploitation of nature

The boom in mineral and natural exploitation in Africa provokes today a number of common perverse effects within the extractive industry in Africa⁶, which must rapidly and at all costs

⁴ Read in this regard: CEPAS, *Bonne gouvernance et ressources naturelles et minières de la RDC*, Kinshasa, éd. Cepas, 2006 ; *Révision des contrats miniers en RDC*, Kinshasa, éd. Cepas, 2008; *Les institutions financières internationales et la pratique de la corruption en RDC*, Kinshasa, éd. Cepas, 2008.

⁵ See Africa Progress Panel, *Equity in Extractives. Stewarding Africa's Natural Resources for All*, Africa progress report 2013, April, 2013.

⁶ Idem.

be stopped if there is to be any hope of addressing the challenges to development of the continent.

Above all, a dangerous gap is growing between the wealth produced by the resources and the well-being of the population. In effect, many countries do not distribute in a satisfactory manner the results of the growth among the diverse constituents of the society. Besides this, many of the petroleum and mineral enterprises in Africa hire few workers. They have limited ties with local enterprises because they function as enclaves outside the circuit of the national economy.

And as in the times of colonization, the raw minerals continue to be exported without any added value.

Worse yet, the profits generated by a good number of enterprises fail to generate any profit for the governments. The contracts are often disproportionate, granting excessive financial advantages to the enterprises.

The financial paradises and fiscal evasion

In this series of perverse effects yet another particular situation merits attention. This would be **the question of financial paradises, fiscal evasion, and the under-valuation of assets.**

Various reports on natural resources in Africa draw particular attention to this question.⁷ These reports denounce the fact that the majority of enterprises in Africa function in a secret environment manipulated by certain companies and African leaders. They note that too great a number of international investors turn to registered societies in financial paradises and off shore centers. These conduct the majority of their transactions with their own subsidiaries. This permits the hiding of much of their wealth.

Worse than the fiscal evasion, the illicit transfers of wealth and the sophisticated practices which set inequitable prices are sustained by **the international commercial and financial systems, which, though far away, are more powerful than the States.**

This massive recourse to offshore societies and fictitious companies prevent the African fiscal authorities from correctly evaluating the profits and assuring the assessment of taxes.

*"This alone, the falsification of the prices of commercial exchanges, cost Africa an average of 38 billion dollars each year between 2008 and 2010, and was more than what the region received in bilateral aid on the part of the lessors of funds of the OCDE."*⁸

From the economic point of view, the consequence of these practices is tragic. The companies are getting rich in a scandalous fashion and some are becoming richer than the States. In these conditions the room for negotiation on the part of the African economic and political leadership is very limited. Two cases among others can make explicit our affirmations:

The petroleum company Shell had in 2012 revenue of 467.2 billion, while Nigeria, where it operates, only totaled 224.0 billion as interior raw product, Angola 104.3 billion, and Gabon 17.1 billion. The mining company Glencore realized in 2012 revenue of 214.4 billion, compared to Zambia, where it operates, of 19.2 billion de PNB and the DRC with an annual budget of 7 billion in 2012.

⁷ Idem.

⁸ Idem., 19.

Actual trump cards in the domain of the management of natural and mineral resources

Amid the turbulences of the cold war, and by way of a democratic pilgrimage, Africa has still made some progress in the area of the management of natural and mineral resources. In effect, the management environment of natural resources in Africa has changed totally. During the period of the dictators, this question was a state secret. "Complex commercial transactions between governmental agents and foreign investors were sealed secret." Today, there are still secrets, but pressure from the civil society and from certain business milieu are gradually changing this environment. Little by little "the initiative for transparency of extractive industries" (ITIE) as well as the campaign "Make public what you pay", doubled in Africa by the "African Peer Review Mechanism" ([APRM](#)) are forcing one after another to jump over the bar of secret contracts.

Many governments today give in before the pressures of the World Bank and the International Monetary Fund. They make public certain mineral, forestry and petroleum contracts. Even authoritarian countries such as Equatorial Guinea or corrupt ones such as the DRC now have a website⁹ where one can find some contracts signed in recent years. Besides this, the larger, more well-known companies in these domains have begun to integrate norms of transparency and social responsibility (CSR)¹⁰ in their charters.

Priorities for the continent

With regard to this situation, the efficacious management of natural resources in Africa appears to be today the priority for everyone, because **the responsible, equitable, and efficacious management today of its resources is the way for the millions of Africans living in poverty to escape in the next ten years**, giving hope to future generations.¹¹ This can make available the revenues necessary for investment in agriculture, food security, employment, health, and education.

In order to achieve this objective, Africa must improve its governance of natural and mineral resources. It cannot continue to be **a service for others and not for Africans themselves**. The States must develop their own vision of the utilization of natural resources. Their exploitation should be at the service of durable growth and human development, that is to say, at the service of Africans today, for tomorrow, and for future generations. Those living today should know that they are not the **last ones to occupy this continent. We cannot do with it what we like**. The exploitation of resources in Africa should be wedded to the local economy. It should create employment, promote local competence, and participate in the diversification of the economy in order to help the continent to escape short term from dependence upon **the products of extraction because by definition they are not eternal**. Wealth produced today should be distributed equitably and participate in the struggle against poverty. Economic growth should be inclusive and profitable for the population. The resources generated should be oriented towards investments in health, education, and the necessary social protection, as well as towards the infrastructures required to sustain dynamic growth.

⁹ www.droit-afrique.com; www.mines-rdc.cd/fr.

¹⁰ See JASCNET, *Report on a workshop on societal responsibility of enterprises (RSE) in Africa 2014*, in www.jesamsocialapostolate.org.

¹¹ Africa Progress Panel, *Equity in Extractives. Stewarding Africa's natural resources for all*, Africa progress report 2013, April, 2013.

Conclusion

It can be seen that the task that awaits us is enormous. But the potential for this task is also available. In 2025, Africa will have a population of 1.2 billion. Sensitized, equipped with competences and opportunities regarding these issues, the population of Africa, in majority young, could become a powerful force for change. If on the other hand, the current generation refuses to invert the curve and realize fully its potential, the children of today will be a lost generation and all will have to pay the price for the bad current government. This is why the governance of natural and mineral resources is today **a priority among priorities, an existential question for the future of the continent. Squandering the opportunity** of this unprecedented economic growth offered Africa today **would be** for its current leadership **catastrophic, unpardonable, and inexcusable.**

*Original French
Translation Robert Hurd, SJ*



Governance of the mining sector in the Democratic Republic of Congo

Ferdinand Muhigirwa Rusembuka, SJ

Lubumbashi, Katanga, DR Congo

In our globalized world, the governance of natural resources is considered as one of the major economic, social and environmental challenges for integral human development. The DRC is regarded as one of the potentially richest countries in the world. It is endowed with 155 million hectares of tropical forest in the world, with agriculture resource estimated at 80 million hectares of arable land; with hydroelectricity Inga power capacity of approximately 100,000 MW, with 55 percent of Africa's reserves of fresh water and with a very rich abundance of around 1,100 different minerals (World Bank 2008). How can we overcome the paradox of resource wealth amid human poverty? How can we promote a better management of the DRC's abundant natural resources to reduce poverty and improve the quality of life of the people? In this paper, I will examine, first, the main feature of DRC's economy; second, second, the environmental and social impact of the mining sector and third, the roles and strategies of the stakeholders (government, the private sector and the Catholic Church).

Main features of DRC's economy

The DRC is the third largest country in Africa and the largest among the member nations of the Southern Africa Development Community (SADC). The country received about 8 billion Dollars in investment during 2009-2012 (KPMG Global Mining Institute 2014, 2) with the majority being invested in the mining sector. According to Mupepele Monti (2012, 290-292), the Democratic Republic of Congo is the world leader with three quarter of global cobalt reserves, the 3rd largest global iron reserves, the 2nd largest global copper reserves, the world leader in industrial diamonds, holds the 3rd place for pyrochlore, 4th place for copper, 5th place for coltan, 7th place for gold and 8th place for tungsten. Within Africa, the DRC ranks as 2nd largest for coal, 5th for gas methane and 6th for oil.

Despite its abundant resource wealth, the majority of the population remains desperately poor, with an estimated GDP per capita of just 241 Dollars in 2013 according to the IMF's most recent estimates (October 2013). According to the 2014 UNDP Human Development Index, the DRC ranks second to last, 186 out of 187 countries. The World Bank's Doing Business 2014 report ranks DRC at the 183rd position out of 189 countries. The Ibrahim Index of Africa Governance ranks DRC 47th out of 52 countries.

A positive economic indicator is a growth in GDP of 7.2 percent in 2012 which reached 8.1 percent in 2013, thanks to mining, trade, construction and agriculture. Growth performance has reached 8.5 percent in 2014 and will be driven mainly by mining production (copper,

cobalt and gold), the (re-)construction of roads and the energy infrastructure as well as the impact of the agricultural campaign launched in 2012" (African Development Bank, 2014).

There are approximately 300 mining companies (in exploration and in production) in the DRC. The major mining companies like Freeport McMoran, Glencore, Lundin Mining, China Railway Group, Eurasian Natural Resource Corporation, Anvil Mining Congo and African Minerals are listed on the stock exchanges in London, Toronto, Hong Kong and New York. There is an increase in mining production: in 2012, DRC was the largest global cobalt producer, the 3rd tantalum produce globally, the 7th tin producer globally, the 8th copper producer globally and the 10th highest gold reserve globally. The mining sector is still considered to be the engine of the Congolese economy. In 2010, it constituted 12 percent of GDP and 50 percent of export revenues. Despite this major contribution to GDP, the mining sector's contribution to growth and to the national budget remains low, taking into account the increase in mining production and the tax potential.

Environmental and social impacts of the mining sector

Environmental governance can be defined as a set of processes, rules, practices and institutions that contribute to the protection, management, conservation and use of biodiversity, ecosystems and various kinds of renewable and nonrenewable natural resources in a way that reconciles sustainable development and poverty reduction. Mining still is a high risk activity for the environment and the livelihood of the local population living in the area where the mining activities are taking place. In the DRC the 2011 Act on the environment has set up basic principles and policies for the protection, management and conservation of the environment.

The July Congolese Mining Code of 2002 and the Regulations of 2003 stipulate environmental obligations to be fulfilled by mining industries in order to respect and protect the environment. The industrial mining sector also has a number of negative impacts at the socio-cultural level, such as the exploitation of man by man, family imbalance, immorality, pollution of the environment, water, air, rivers as well as the relocation of many villages and cemeteries. A study conducted by a group of local researchers in 2012, organized by the Carter Center, analyzed the impacts of two mining investments on the quality of life of the local communities in Lubumbashi: those of Chemaf and Ruashi Mining (Carter Center, 2012). The study identified general trends linked to a lack of consultation, information and access to justice for people living in Lubumbashi. In the case of the Chemaf mining company, there were serious problems relating to the pollution of water, soil and plants.

In DRC, like in many African countries, the environmental impact assessment and social impact assessment are poorly done. For this reason, "the Yale 2010 Environmental Performance Index listed SubSaharan Africa as the weakest region by far in terms of its environmental management capacity, with countries from the region accounting for 30 of the bottom 50 spots in the list; and for every one of the last six places" ([Africa Progress Panel 2013](#), 87).

Roles and strategies of the Congolese state

In this section dealing with the roles and strategies of the Congolese state, I will put an emphasis on the role and the strategies of the Congolese state. I will then examine the policies, the legislation and administration of the DRC's government in relation to the governance of

the mining sector. In DRC, different stakeholders like the Government, the private sector and civil society play a major role in the governance of the mining sector.

The exploitation of natural resources in DRC is a major national issue. The number of new mining companies and local communities affected by the exploitation of resources in the DRC continues to rise. In theory, all of the different stakeholders should act in accordance with Article 58 of the DRC Constitution of 18 February 2006, according to which “all Congolese have the right to enjoy the wealth of the nation. The State has the duty to redistribute the wealth of the nation equitably and to guarantee the right to development”.

Government Policy

The DRC Government Program for 2012-2016 set the following objectives: to continue and finalize institutional reforms in order to strengthen the effectiveness of the state; to consolidate the stability of the macroeconomic framework and to boost growth and the creation of employment; to continue the construction and modernization of basic infrastructure (communication channels, schools and hospitals); to improve the living conditions of the population; to strengthen human capital and turn Congolese civil society into a pool of new citizenship; and to strengthen diplomacy and development cooperation.

At the conference on good governance and transparency in the DRC’s mining sector held on 30 January 2013 in Lubumbashi (Katanga), the Congolese Prime Minister declared that “the main objective of the government will be to stimulate mining production. Existing businesses or to start up production with a view to supporting growth and employment.” In fact, growth in the Congolese mining production is already evidenced given that copper production increased from 10,000 tons in 2003 to around 940,000 tons. The Government’s program for 2012-2016 aims at increasing the contribution of the mining sector to the national budget from 9 percent in 2010 to 25 percent in 2016, and the contribution to GDP from 12 percent in 2010 to 20 percent in 2016.

These efforts are facing the reality of fraud, corruption and tax evasion that must be fought in order to promote transparency and accountability in the mining sector. “With some of the world’s richest mineral resources, the DRC appears to be losing out because state companies are systematically undervaluing assets. Concessions have been sold on terms that appear to generate large profits for foreign investors, most of them registered in offshore centers, with commensurate losses for public finance” (Africa Progress Panel 2013, 55).

Private Sector

There are two main organizations coordinating the private sector in the DRC: the Federation of the Congolese Companies (FEC) and the Chamber of Mines. The FEC is a patronal union and a non-profit organization. It coordinates all the companies involved in trade, industry, agriculture and crafts. The Chamber of Mines is the main minerals industry association. It represents the collective interests of companies involved in mineral exploration.

The private sector is a key player in the good governance of mineral resources, essential to promoting peace, reducing poverty, and combating corruption and impunity. By implementing a genuine policy of social responsibility, companies will contribute to the social, environmental and economic development of the state and the population. Economically and socially, the mining code defines the appropriate role of mining companies. They thus have the obligation to “improve the well-being of local communities in implementing economic and

social development programs and to compensate people when moving their place of residence" (Article 452).

Catholic Church commitment

In front of the mismanagement of DRC natural resources, the Catholic bishops of the National Conference of Congo (CENCO) have created in July 2007, an episcopal commission for natural resources. In one of the Messages, the bishops affirm that "instead of contributing to the development of our country, mines, oil and forest are have become the main causes of our curse" (CENCO, n. 11).

De 2006 à 2012, le Centre d'Etudes pour l'Action Sociale (CEPAS) a publié, 12 ouvrages brochures sur la question des ressources minières en RDC. The Department of governance of natural resources of Arrupe Research Center¹, via research, publications, training and advocacy, promotes transparency, accountability, equitable sharing of revenues flowing from mining and assistance to mining companies to deliver on their social responsibilities regarding the economic and social development of local communities and respecting human rights and the environment.

Conclusion

To conclude, the establishment of good governance in the DRC's mining sector, the following recommendations are required:

- To protect the dignity of each human person and the rights of communities affected by extractive industry investments, and to respect the environment by assessing the potential social and environmental impacts of extractive industry activities, with an emphasis on the improvement of the quality of life of the people and the communities.
- To ensure that finance generated by the development of minerals is directed towards the investments in health, education and social protection needed to expand opportunity, and towards the infrastructure needed to sustain dynamic growth" (Africa Progress Panel 2013, 93).
- To build on transparency and accountability as the twin pillars of good governance. "Taken together, they are the foundation for trust in government and effective management of natural resources - and that foundation needs to be strengthened" (ibid., 54). Extractive industries could become a dynamic source of growth for the national economy. What is missing, in DRC, is a regulatory institutional environment that attracts investment, protects human rights, respects environmental obligations and promotes health and education.

In our globalized world, as requested by the General Congregation 35th, Arrupe Research and Training Center is engaged to "promote corporate social responsibility of companies, the the creation of a culture of a climate of affairs more open to the compassion and to the initiatives of the economic development of the poor" (GC 35, d. 3, n. 28).

Original English

¹ The author is the director of this center.



Governance of mineral resources and marginalisation

Julie Edwards

Leader of the Network on Governance of Natural and Mineral Resources (GNMR), Australia

In calling for us to renew efforts to establish right relationships with one another, General Congregation 35 (GC 35) noted the complexity of the many problems our globalised world faces. This included the intensified exclusion of people living on the margins and the transnational interests that were exploiting the resources of the poor. This globalization of marginalisation and injustice is evident in issues around the governance of natural and mineral resources, and has prompted action from different Jesuit institutions.

In relatively wealthy countries like Australia, mining forms a significant part of our economy. Over the past decade, a drastic expansion of exports of iron ore, coal and gas to emerging economies throughout the Asia-Pacific region has made a significant contribution to Australia's rising material prosperity. In addition to exporting minerals from Australia, mining companies based in Australia are increasingly taking their business models, capital, and technical expertise to mining projects in countries across Africa, Latin America, South Asia, and the Asia-Pacific region.

The ecological injustices that are associated with mining are well known and are matters of concern for many Australians. Where social injustices arise as a result of mining activity within our own country, well established systems of governance, representative democracy, and a commitment to the rule of law provide some means for redress.

Of a much more problematic nature is the activities of Australian based mining companies overseas, as injustices associated with these activities have often in the past been lost in the shadows of ignorance. History is littered with examples of the activities of our mining companies impacting on poor, rural, and often indigenous communities in countries like Papua New Guinea and the Philippines. People and communities in Australia remain unaware of, or unaffected by, the fact that employment opportunities, returns on investment, and government tax takings can rest on the backs of these unjust activities in faraway places.

The GNMR Network has provided an opportunity for those in the Australian Jesuit Province, as members of the Asia-Pacific Conference, to confront the ignorance or indifference that allows the overseas mining activities of Australian companies to proceed unchallenged. Heeding the call of GC 35, we have sought to build bridges between rich and poor on the issue of transnational extractive industries. The GNMR Network has provided a means through which to build relationships, share information, and ultimately collaborate with different Jesuit institutions worldwide. In particular, we have had the opportunity to support the work

of Jesuit Institutions in South Asia where communities are affected by the activities of Australian-based mining companies.

Injustices flowing from mining projects that we have observed through our collaboration with others in the Jesuit community include environmental degradation (deforestation, destruction of productive agricultural lands, water contamination/depletion/disruption and associated impact on wildlife), loss of livelihood, forced displacement, inadequate compensation and lack of meaningful consultation with locals. In addition there have been cases of violence, coercion and oppression towards those who objected to mining operations.

From the outset of our advocacy work we have been attentive to the need to live out the principles of participation and subsidiarity that are fundamental to Catholic Social Teaching and the GNMR Network. People in communities affected by foreign mining companies are not simply victims in need of our protection. Instead they have rich range of capabilities and often have struggled to preserve their rights and livelihoods against unjust mining. These struggles are long and often dangerous. At the heart of our approach has been respect for the self-determination and rights of these groups and their ongoing struggle. Here the relationships built and strengthened through the GNMR Network have been critical. Our advocacy seeks to complement and support the struggles of communities not supplant them. Our main focus has been on expanding the possible avenues of advocacy to include the companies and communities in our own country who have the most to gain from these mining developments.

We are also aware of the complex nature of achieving change on these issues. The challenges facing the communities affected by mining were made clear by a friend of the Network who wrote, "It is a really tough issue that you are tackling since it is big companies with power and money impacting on powerless people who are living in poverty. There is endless compromise and money being passed around. The company has good construction techniques and will be introducing a regime of large machinery and skilled but fewer jobs to a country that needs more efficient mining to feed its growing energy needs". Again proceeding from a foundation of right relationships is critical as achieving progress can be challenging and incredibly slow. The complex nature of this issue has also meant that we have had to show the ingenuity and flexibility that are hallmarks of the Ignatian tradition. As we have proceeded, situations have changed, and we have had to adapt and alter our approaches to reflect these realities.

To date we have undertaken a range of advocacy activity to confront the ignorance and indifference around mining activities by Australian companies that impact upon communities abroad. This has included building broader awareness in the community as well as direct engagement with stakeholders including companies themselves.

With the assistance of intermediaries, including other NGOs, we have sought to make contact and have constructive dialogue with companies involved in mining. This direct engagement has mainly been through exchanges of correspondence. Our aim at the outset was to convey the concerns of the community directly to senior managers of companies and to encourage them to respond to these concerns. The response from companies was polite, but it refused to accept or respond to the fundamental issues that concerned the local communities, including right to consent and adequacy of livelihood replacement. A challenge we encountered is that when it comes to transnational activity, the perspectives and understandings of situations held by those in power differ markedly from the reality experienced by people on the ground. Reality appears to be distorted or lost through various levels of "middle management".

Further attempts to engage companies directly on these issues did not elicit meaningful responses.

While direct engagement did not produce tangible outcomes, it remains an important activity. At the very least it raised awareness within the company that there are people and groups aware of their activity and willing to hold them to account. The increasing importance that communities and companies place on businesses being good social citizens, while not yet leading to universal change in practice, has at least heightened companies' sensitivity to issues that may impact on reputation or give the impression of hypocrisy in their claims of good corporate citizenship.

Broader awareness was raised within the Australian public of the struggles of communities in South Asia for justice through partnership with other NGO's and stories in the media. We found the media a powerful means through which to raise awareness, to inform views, and to keep pressure on companies to address injustices. Activity here included making contact with journalists, briefing them on the situation, and arranging interviews and visits to the affected communities. As a result a range of stories was published.

A major challenge with media interactions is that it risks undermining communities' capability to tell their own stories. Indeed, in our own experience we have found that the concerns and issues that media choose to focus on (high level corruption for example) may be different from those that are priorities for the community, such as the human impacts of development. In our work this has become a question of balance as media provides a means through which to raise awareness of issues but vigilance is needed to ensure that this includes the issues that are of concern to communities.

A further challenge lies with the security risk that sometimes accompanies speaking out against power and money. We were aware that while publicity in Australia might have a constructive influence on corporate behaviour and investor awareness, it could also translate to retribution towards activists in affected communities, where violence had already played a part in attempts to silence dissent. But we also learned that it is in these situations, particularly, that an external voice such as our own might be helpful. We were able to raise and discuss issues separately from those people linked more intimately with the mining project and who might be concerned over personal safety.

A final area of action has been engaging with investors and shareholders with an interest in the companies. In the Australian context this includes banks, investment funds, individual investors, and the groups that advise them. We have become aware that "*following the money*" is often one and the same as following the power. In doing so, we learnt and drew strength from existing work of the Church and Jesuits around ethical investment, particularly in North America where the *Interfaith Centre on Corporate Responsibility* and *National Jesuit Committee on Investment Responsibility* have demonstrated the power of seeing investors as agents who can bring about social change.

Our work involved attempts to contact and brief investors and other stakeholders, although these meetings met with mixed results. Many of the organisations that advise investors were open to being provided with information directly from the community on the situation. Of greater difficulty was directly engaging with institutional and individual investors. A major challenge here is the process of establishing the identity of investors in these companies. In Australia some of this information must be published, but often details of proxies are made public while the true identity of investors remains undisclosed. Where we were able to identify specific institutions that held investments, an additional challenge was navigating the

often large bureaucracy within these institutions to find the people responsible for these investments. These tasks were time consuming and required technical expertise and strong networks of contacts across institutions.

A further issue once investors and other stakeholders are identified is the process of engaging them, communicating the concerns of the community and applying pressure for change. A key learning here was the significance of risk to investors. By conveying that the concerns of the community raised both moral and material risks, we were able to frame these issues in terms that investors could understand and see the need to take action on. A final challenge arose in terms of applying pressure for action. While we could inform and raise awareness about the concerns of the community among investors in Australian mining companies, further action to place pressure them was often required. We have explored, but not yet had the opportunity to proceed with actions to put these issues on the agenda at the Annual General Meetings of companies. This process is possible, and is something that several other advocacy groups have long sought to undertake in Australia. However significant procedural hurdles must be overcome in order to move forward with action in this area. Advance planning is crucial to ensure a sufficient parcel of shares is held ahead of a forthcoming AGM, and that the process for putting questions to the meeting is adhered to. We have identified a need to build capacity and expertise in navigating these hurdles.

Advocacy through the GNMR Network to support communities affected by transnational mining will not always transform the situation for these communities on the ground. The struggles of communities for social and environmental justice often stretch out across generations and setbacks are common. However this work remains a vital expression of a faith that does justice and the mission of the Society of Jesus to build relationships of solidarity across religious, cultural, national, and social divides. The significance of this work is aptly described in this excerpt from Albert Camus, *The Plague*:

“He knew that the tale he had to tell could not be one of a final victory. It could be only the record of what had had to be done, and what assuredly would have to be done again in the never ending fight against terror and its relentless onslaughts.... by all who, while unable to be saints but refusing to bow down to pestilences, strive the utmost to be healers”.

In this role as healers, we draw strength from our faith as well as the signs of progress in raising awareness across communities and building pressure for social change. We can see this in the support for the ongoing struggles of those at the margins, as well as in emerging networks like GNMR and institutions that focus on promoting ethical investment. The globalization of marginalisation and injustice remains an immense challenge, but we are learning new ways of responding that give hope for the future.

Original English



Mining in the Philippines: Is a golden mean possible?

Antonio G. M. La Viña

Ateneo School of Government, Manila, Philippines

The Philippines is a country rich in mineral resources. We are also full of people as well as rich in other living or non-living resources that sustain economic activities such as farming, eco-tourism, and fishing. Mining operations necessarily involve the alteration of the land or seabed, such that people who use the land or sea for settlement and/or livelihood are likely to be displaced by mining operations. The lands where mineral resources are located may also have cultural or ecological values not easily measured in monetary terms. The benefits derived from mining must therefore balance its costs on people and the environment. Compensation for losses must be provided on top of the rightful share of the country and local people of the income from mineral wealth.

Minerals are non-renewable resources. Therefore, mining operations have a limited lifespan. The scale of alteration or disturbance resulting from mining operations (spatial and temporal) depends on the type of minerals, size of deposit, type of technology used, economic feasibility, and similar factors. The impacts on the environment and people, at any scale, depend on unique local factors: customary traditions and practices, uniqueness of natural ecosystems, risk of accidents brought by natural disasters, availability of livelihood alternatives, or the general ability of people and ecosystems to adjust to the scale of alteration or disturbance.

The extent of alteration or disturbance resulting from mining operations may be limited to the period of operations and controlled to minimize its adverse impacts. However, the impacts on the environment and on people generally last longer than the mining operations, and may or may not be reversible. The impacts of mining operations in the Philippines are magnified because their scale is large compared to the total area and population affected (often in small islands, with many communities living in the area intended for mining, with high risk of natural disasters). This is in contrast to the impact of mining operations in continental settings (e.g., Australia, Canada, and the United States) where the size of mining operations is small compared to the vastness of the continent, with a sparse population and less diverse natural ecosystems. It is no different in the Philippines.

Indeed, while we are a highly mineralized country, with substantial mineral deposits that are still unexploited, the country is both densely populated and environmentally stressed. The Philippines has a lot of people, over 100 million now, in overstretched critical ecosystems and with depleted natural resources. Because of this, any mining decision will always be in the context of land use conflicts that is then expressed politically, sometimes violently.

Because of this, mining cannot and never will be an easy nor fast decision in the Philippines.

The conflicts in mining generally relate to the following questions: Should mining prevail over current land-uses? Are the benefits from mining sufficient and fairly distributed? Are the social and environmental costs fully considered and compensated? Are the risks of adverse impacts reduced to a minimum and socially acceptable to those who bear them? When local stakeholders decide that the risks are unacceptable, can the national government override that decision based on broader criteria?

For each of these issues, the fundamental questions are: Who has the right to decide? How are decisions made, and on what basis? Unfortunately, the dynamics of “who decides” keep changing as policies change. When decisions and decision-making are inconsistent or unstable because of the lack of empirical bases, stakeholders tend to appeal to the highest power that can enforce a decision in their favor. This opens up venues for arbitrary decision-making based on factors other than facts. The net effect is the absence of stability and consistency in decision-making. Conflicts persist. Where there is convergence of mineral resources, people, and richness of biological and natural life, complicated further by social inequity and bad governance, you have understandably an explosive situation. This is the state and challenge of mining in the Philippines.

Is responsible mining possible?

The situation in our country is far from ideal for responsible mining to be achieved. Weak governance institutions and corruption compromise mining governance, with environmental, safety, and human rights regulations frequently ignored. Our mining claims system is also antiquated, allowing companies and individuals to lay mineral claims on large swaths of Philippine territory unnecessarily giving the impression that all of the country is open for mining.

Mining and similar natural resources issues are best seen and resolved through the prism of environmental and social justice. Mining that is environmentally destructive and a mining governance system that does not distribute benefits properly must be opposed. The latter is more important because if we solve the inequity of revenue distribution in mining, we can ensure that enough resources are set aside to minimize its negative environmental and social impacts. This is true for both small-scale (which, while more equitable, have huge environmental impacts and safety risks) and large-scale mining.

The most important reform in mining governance is the proper distribution of powers, responsibilities, and income from the extraction of mineral resources. Thus, indigenous peoples and local communities must have a voice in the mining decisions and a big share of the revenue. Similarly, local governments should have a major say on whether or not mining should be allowed within their territory and must have a just share of the revenues. The present system is too lopsided in favor of the national agencies, the Department of Environment and Natural Resources (DENR) and the Mining and Geosciences Bureau (MGB). In my view, where there is conflict between national government and local governments, mediation is the only recourse.

Many in the industry will acknowledge the bad environmental legacy of mining. But they argue that responsible mining is now possible. They point to global best practices in

environmental management and addressing social impacts which when employed properly makes mining consistent with sustainable development. They are right. However, there are places where mining should not be allowed, where the risk to important biological, environmental and cultural resources are too serious and cannot be mitigated adequately. Palawan Island, for example, given its unique biological diversity and its potential for ecotourism, is such a place.

The economics of mining

Mining operations bring jobs and infuse money into the local economy, and the mining sector contributes to economic growth in general. Even so, is any positive number in terms of job generation and economic growth always a good thing? How much incentive does the government give to the mining sector, which should be deducted from the net benefits to the country and local people? How much more (or less) can the government get if it considers alternative uses of the land? In other words, are Filipinos (as a people) really better off with mining, and is the government getting the best deal for its people? These are tough questions to answer due to the lack of data and a framework to analyze benefits as a whole. But there are known facts that can help in this analysis.

For example, we have an estimate of the contribution of mining sector to employment generation. According to the Mines and Geosciences Bureau (MGB), the mining (and quarrying) sector's contribution to national total employment has always been below 1 percent (1%). Recent data has shown that it has been 0.5% since 2008 until 2010. So far, for the first half of 2011, contribution has been reported as 0.6% (in contrast to agriculture at 33% in 2011). All over the world, extractive mining is known as a low-employment generating activity. The Tampakan project, in South Cotabato, with expected investments of \$5.9 billion, will provide only 2,000 permanent jobs.

At the macro level, according to government figures, the contribution of mining to GDP has remained in the single digits. As of 2010, it only contributed 1.0%, compared to the agricultural sector's contribution of 12% in 2010. As for its contribution to total exports, export of minerals and mineral products has averaged 4.5% in the last four years and reporting 4.3% for the first half of 2011. Total exports of non-metallic minerals' share are even lower, hovering around 0.4% for the past 4 years compared to agriculture at 8% for 2011. The manufacturing and service sector has always been the main driver of economic growth for the country comprising of over 50% of GDP.

As to revenue from mining, the tax holiday for Financial and Technical Assistance Agreements (FTAAs) and the 2% limit of government (excise) tax on Mineral Production and Sharing Agreements (MPSAs) translate to almost zero revenue for government. Ateneo economist Dr. Germelino Bautista has estimated that 19.60% to 29.74% of mining revenue accrues to government tax collection while the group Action for Economic Reforms (AER) calculated only a 7.5% effective tax rate in the industry. AER also cited that the government loses an average of 32% of revenues annually (1999-2004) because of incentive laws. Compared to other countries, the Philippines' effective tax rate is low. Deutsche Bank for example has reported that effective tax rate for minerals in other countries are as follows: US (40%), Australia (38%), Brazil (38%), and Canada (23%).

As to the benefits that local people can derive from mining, mining companies rightly claim that there are huge economic and social benefits during mining operations. Indeed a mining operation can result in new roads and access to transportation, increased trade of goods and

services supplied to the mining operations, and even improved access to health centers and schools.

Unfortunately, we have no independent studies that give us accurate estimates of these benefits and that weigh them against the environmental and social impacts of such operations.

To conclude, the contribution of mining to the overall economy seems small. The Philippine government does not appear to be getting the best deal for the people, especially compared to other countries with mining industries, and most of the benefits go to a very narrow set of beneficiaries. If we are to enable responsible mining, changing the economics of the sector is therefore a very high priority.

The Catholic Church and the Jesuits on Philippine mining

As early as 1998, the Catholic Bishops Conference of the Philippines (CBCP) already articulated concerns about. Indeed, even at that early stage, the Bishops called for the repeal of the Mining Act and for the stoppage of specific mining operations in several places in the Philippines. In 2006, the CBCP was even more emphatic:

“We believe that the Mining Act destroys life. The right to life of people is inseparable from their right to sources of food and livelihood. Allowing the interests of big mining corporations to prevail over people’s right to these sources amounts to violating their right to life. Furthermore, mining threatens people’s health and environmental safety through the wanton dumping of waste and tailings in rivers and seas,” CBCP 2006, A Statement on Mining Issues and Concerns.

Many Jesuit institutions have also been involved in the mining issue. The Environmental Science for Social Change (ESSC) is recognized for its pioneering work mapping mining sites and convening dialogues on the issue. All the Ateneo universities (Manila, Naga, Davao, Zamboanga and Cagayan de Oro) have individually and collaboratively conducted research and advocacy activities on mining. While the Jesuit institutions have diverse views on the issue, they came together in 2012 to draft what became informally known as the Jesuit paper on mining.

That paper – entitled *The Golden Mean in Mining: Talking Points* – was drafted and released by the Society of Jesus Social Apostolate (SJSA), a network composed of nearly 30 development organizations, research institutes, student social formation offices, and other social and political advocacy groups. In that paper, the SJSA applied following ethical principles from Catholic social teaching to mining: stewardship; precautionary principle; common good; subsidiarity; preferential option for the poor; dignity of labor; association; and, respect for human life. The SJSA, within and among its institutions, encouraged critical thinking, academic freedom, transparency, and intellectual leadership in mining issues. It called on all its members to keep its objectivity and independence, even if that meant if Jesuit institutions had to ask hard questions about their financial and other relationships with mining companies, environmental organizations and others who have a strong stake in mining issues.

Conclusion

Aristotle once wrote: “Virtue is concerned with passions and actions, in which excess is a form of failure, and so is defect, while the intermediate is praised and is a form of success; and being

praised and being successful are both characteristics of virtue. Therefore virtue is a kind of mean, since, as we have seen, it aims at what is intermediate.”

Is a golden mean possible in mining? Yes, but not before radical reforms in governance are implemented.

If bad decisions are made, the rich mineral resources of the Philippines, a country compromised by corruption and insufficient governance, can only result in woe, distorted justice, and avarice. Just as steel must be tempered to achieve its full strength and flexibility, mining governance requires important reforms before the mining industry can be entrusted with the national treasure chest. When we achieve mining's golden mean, being endowed with mineral resources will no longer be a curse causing conflict and environmental destruction but, finally, becomes, as it should be, blessing and bounty from our Earth.

Original English



Red carpet for Corporates to mine in Indigenous land

Stanislaus Lourduwamy, SJ
Bagaicha, Jharkhand, India

Ram Dayal Munda, a much loved Jharkhandi Adivasi ideologue, decries the development projects that have been destroying tribal economy and environment and promoting urbanization, leading to bankruptcy and other evils. In his poem “Vikash Ka Dard” (“The Pain of Development,”), he writes:

*I have become a vulture
Have been running towards the city
Before the death.
A big tree has been torn apart I was told
It was for the development of the nation.*

In the above stanza he explains the effects of displacement. It is important to see how adivasi languages and cultural practices suffer once the people migrate and live in slums. Their languages die, as do their cultural practices and they become corrupted by the urban ugliness.

Here are some constitutional, legal and judicial provisions to safeguard the power of the *Gram Sabha*¹ in Scheduled Areas:

- **Forest Rights Act (FRA), 2006:** Section 5(d) empowers the holders of forest rights, the *Gram Sabha* and the village level institutions, to protect wildlife, forests, water catchment areas, biodiversity and the cultural and natural heritage of forest dwellers and to ensure that the decisions taken in the *Gram Sabha* to regulate access to community forest resources...
- **PESA Act 1996** enacts that consultation with *Panchayats* (community councils) is a necessary pre-condition for alienation of any land in Scheduled Areas for development projects.
- **Land Acquisition Act 2013** requires consent of the *Gram Sabha* for acquisition of land in Scheduled Areas for development.
- **The Supreme Court in April 2013 affirmed the central role of *Gram Sabha*** in entertaining and determining upon community or individual forest rights. At para 59

¹ Traditional village governing system.

of the judgment, the SC states that “the *Gram Sabha* is also free to consider all the community, individual as well as cultural and religious claims... State Government as well as the Ministry of Tribal Affairs would assist the *Gram Sabha* for settling of individual as well as community claims.”

- Taking all these facts into consideration, the Director of **Ministry of Tribal Affairs** sent a circular to all the Chief Secretaries of all States/Union Territories on 7 March 2014 cancelling all previous communications of the Ministry of Environment & Forests during 2013-14 as being against the directions of the SC. Hence compliance to FRA is a mandatory requirement before forest land can be diverted. Failure to do so would be a violation of law.

In spite of the above very positive and helpful provisions, no positive outcome is to be seen at the ground level. The main culprit is none other than the Prime Minister’s Office (PMO) itself which all through 2012-2013 has been directing all ministries to pull out all stops to weaken forest, environmental norms for industrial projects. The aim was to fast-track industrial projects. The PMO instructed that regulations and norms had to be diluted or done away with. This included the UPA’s much spoken about pro-tribal law *The Forest Rights Act, 2006*.

Sometimes some of these changes were ordered on the direct instructions of the Prime Minister himself. The PMO recommended that the requirement of environmental clearance for projects worth up to Rs. 500 crores be done away with entirely. Projects worth up to Rs. 1000 crores should be evaluated only at State level and should not come to Union Govt for clearance. The PMO also asked that all buildings, real estate projects and Special Economic Zones be taken out of the purview of environmental clearance. It asked that expansion of capacity up to 25% for mining projects be done automatically without any public hearing.

On forest clearances, the PMO asked that projects requiring up to 40 hectare of forests, instead of the then existing limit of four hectare, be handled by regional offices of the Ministry. It demanded that the handing back of rights over forests to tribals under Forest Rights Act be not verified before transferring forestland to industries. Let it be borne in mind that as per FRA the forest rights of tribals must be settled before any alteration can be made. The dilution meant exemption from environmental clearance National Highways Authority of India (NHAI) and other road expansion projects up a width of 60 metres 200 kms.

Through an office memorandum the Environment Ministry ordered that public hearings for individual projects within the SEZs be done away with. A committee was set up to look at various issues the PMO had raised and it delivered the results as demanded, leading the Ministry to dilute the norms. (*The Hindu*, 27-2-2014).

When the main gate has been opened in terms of dilution of all constitutional, legal and judicial safeguards in favour of industries, it takes no special effort on the part of local govt administration to open other windows and doors so that the prescribed regulations and norms for transfer of tribal land to non-tribal entities can not only be diluted but also done away with.

Two most important safeguards are (1) getting the consent of *Gram Sabha*, and (2) obtaining the approval of affected people through Public Hearings for environmental clearance. These are looked upon as cumbersome formalities that must somehow be shown as having been completed.

As for the consent of *Gram Sabha*, most of the representations made by respective Gram Sabhas to District-level authorities are either ignored or rejected. Nor do the officials take the trouble

to inform and convene Gram Sabha meetings as per prescribed norms. As for obtaining the approval of affected people through Public Hearings, they are an eye-wash to say the least. For one thing, people are informed at the eleventh hour, and the venue of the public hearing which as per norms should be close to the affected communities is often in distant district headquarters or in exclusive facilities of the company seeking clearance. All those in favour of the project are accommodated first and those who are against the project are heckled and ridiculed and are not given an opportunity to explain their position. Added to this is the tense atmosphere created by the goondas hired by the company and numerous police with their batons and para-military personnel with their rifles. Most victimizing and humiliating experience for those opposed to the project. And these are mostly Indigenous Adivasi people whose only source of sustenance are *jal (water)*, *jangal (forest)*, *jamin (land)*.

To conclude, may we say the govt has become the guardian of corporate industrialists and is ready to sacrifice the poorest of the poor on the altar of “economic growth through industrialisation”.

Original English



Mining and preferential option for tribals

Xavier Jeyaraj, SJ

Kolkata, India

Mining in India, like in many other countries, has become a contentious and a controversial issue. There are some who believe that mining improves the economy of the country; brings employment, development and growth to the nation reducing the level of poverty. But there are others who are of the opinion that mining destroys the environment, the local economy and the culture of the local indigenous people; helps in concentration of wealth in a few hands; and thus increases the gap between the rich and the poor. The Church, particularly the Jesuits in Central India – where majority of the mines are situated and where majority of the indigenous or adivasis/tribals live – have remained with the adivasis mobilizing and opposing strongly the way their resources, *jal, jungle, jameen* (water, forest and land), have been polluted, exploited and destroyed while they themselves get completely displaced from their natural habitat.

Situation of mining in India

Globally mining industry is in its boom time. World prices of minerals, ores and metals have soared to record levels, a trend that began in 2002 with unprecedented demand from China. From then on, the hunt for minerals began all over the world at a rapid pace and the Chinese mining companies particularly went all out to take over mines all over the world and accumulate the minerals as quickly as possible. In 2006 alone, global prices of all minerals skyrocketed up by 48%. Between 2002 and 2005, price of iron ore increased by 118%; copper up by 136%; lead by 116%; and aluminum by 41%¹. If Chinese goods are found everywhere, mining and mineral exploitation surely has got something to do with it.

India, seeing the growth of Chinese mining companies, did not want to be left alone. India being a rich nation with more than 20,000 mineral deposits and recoverable reserves of around 90 minerals (fuel, metallic and non-metallic), and being on the top ranks for the production of coal, iron ore, chromite, limestone, copper, aluminium and bauxite, it wanted to intensify the export, Foreign Direct Investment (FDI) and Foreign Institutional Investment (FII). Wanting a faster exploitation of the minerals, compared to China, it began privatizing the sector using the slogan of “development and growth”. By 2012, of the 3,236 mines that were in operation, 2,467 were in the hands of private mining companies² and by June 2014 there were 63,395 mining clearances pending with various State governments.

¹ Centre for Science and Environment (CSE). *Rich lands poor people: Is sustainable mining possible?* New Delhi, 2008, 30.

² Ministry of Mining, Government of India, *Annual Report 2013*.

Quicker profit and accumulation of the minerals being the primary aim of private mining companies, it led to lots of corruption and corporate-political scams, the latest and largest being the *Coal-gate* (coal allotment scam), worth US\$ 33 billion. Even though the Supreme Court of India, seeing the scale of corruption cancelled 214 of the 218 mining leases that were allotted since 1993 to private as well as state-owned companies, the State has not stopped pushing privatization of the mining industry. It is giving a red carpet welcome to large foreign direct investors and multinational mining companies and is going all out to provide approvals for mining with environmental concessions, tax exemptions, cheaper land and other infrastructural facilities. Shockingly, the central government has gone even to the extent of setting aside the recently enacted land acquisition act (2013) that prohibited land acquisition without the consent of the local people. It has passed two ordinances, a) for easy acquisition of land from anyone without the consent of the people, and b) to allot the already cancelled illegal mines, both contrary to the judgments of the Supreme court of India and the international requirements of "Free, Prior, Informed Consent" (FPIC) of the local people.

In spite of the large claims of economic growth and development, the contribution of mining and quarrying sector to the GDP has stood between 2.2 - 2.5% in the last decade. Due to increasing mechanization, there is a progressive shift towards capital-intensive mining than labour-intensive ones. Thus, contrary to popular belief and claims, the employment has steadily been decreasing over the years even though the production has been increasing.

State of tribals and the environment in the mining areas

The phenomenon of natural "Resource Curse" or the paradox of plenty is clearly evident in most of the mining districts of the country. These mineral rich lands, particularly in central India, are largely inhabited by tribals, who have depended on these natural resources, *jal, jungle, jameen* (water, forest and land) for their survival. The three tribal dominated districts of Orissa, Chhatisgarh and Jharkhand account for 70% of India's coal reserves, 80% of iron ore, 60% of bauxite and almost all its chromite reserves. Today most of these resource rich lands are in the hands of mining corporates.

The most common problem associated with mining is the involuntary displacement of people. It is most often forced upon them for acquiring their mineral rich land leaving them worse off than before. Some of them even end up as beggars or rickshaw pullers in large cities. Fr. Walter Fernandes SJ, who has done extensive research on displacement, says that between 1947 and 2000 more than 60 million people were displaced of whom 40% were tribals and in the case of mining, more than 50% of the displaced belonged to the tribal communities. Normally when land is acquired, the companies and the State make hefty promises of resettlement and compensation. But unfortunately studies have shown that among the 60 million displaced, not even 20% were partially rehabilitated during the same 54-year period. Displacement without proper rehabilitation and livelihood options raises the question of equity and social justice.

Besides, the most immediately visible environmental problem associated with mining is the pollution of water, land, forest, and food crops due to dust emission, chemical processing, overburden waste leakages, transportation, tailings etc. Open cast mining, which has become the most normal way for mining in India, further aggravates and causes health problems such as silicosis, asbestosis, cataract, etc., among the tribals. It is important to recognize that mining in forests and mountaintops prove devastating, as there are changes in the topography and aesthetics and affect the local hydrology.

Mining has also fuelled conflicts, rather manufactured conflicts. When people unite and mobilize themselves to fight against the corporate take over of their resources, conflicts are manufactured by the vested interests. To divert the attention, the corporate run media and even the State project such people's assertion movements and struggles as naxalite (extreme group of Maoists) movements and try to eliminate the leadership, branding them as naxals. False cases are filed against them breaking their morale. For example, *Salwa juduam*, an armed militia, a creation of Madhya Pradesh State with a claim of removing naxalites, is nothing but a way of dividing and eliminating the tribals and tribal leadership with an ulterior plan of taking over the resource rich land. Even the so called communal violence in Kandhamal, in the State of Orissa in 2008, was nothing but a creation to take over the mineral rich Kandha hills where majority of the land was owned by the Christians. Conflicts, violence and killings seem to go hand in hand with mining activities.

Jesuits and their solidarity with and option for the tribals

Fr. Constant Lievens who started the Jesuit mission in central India in 1885, did not begin with the conversion of tribals, but as a lawyer, he began campaigning for the land rights of the tribals, empowering them through forming cooperatives and educating them.

Continuing that same tradition, the Jesuits in central India, besides providing education to a large number of tribals in the remote villages, they continue providing support to people's movements, through informal advice, drawing attention of community leaders to legal matters, gazette notifications, policy documents etc., raising awareness by conducting meetings in villages, coordinating the work of activists in different areas, printing and disseminating pamphlets and booklets on specific issues in the vernacular for eliciting people's support and so on.

Jesuits in central India try to be low on the radar, giving greater emphasis on local leadership and supporting the people's movements at local levels. Their effort has been to forge alliances and links with social activists and tribal communities offering intellectual analytical support and building unity among them on the basis of tribal identity. Some of their people's alliances include, Jharkhand Justice Forum, *Visthapan Virodhi Ekta Manch* (Anti-displacement unity forum), Jharkhand Mines Area Coordination Committee and Jharkhand Indigenous People's Forum etc. In the recent years, Jesuits have been quite active particularly on creating awareness among the tribals on the powers of *Gram Sabha*, a traditional village governing system, thus empowering them to protect the common property resources of land, water and forest of the tribals in their traditional habitat.

Another major achievement of the Jesuits has been to start a coordinating centre in Central India called Bagaicha, with the intention of building alliances with activists and people's movements and helping them develop strategies to tackle forced displacement of tribal people.

In the recent years hundreds of people's movements have emerged against displacement of tribals, through mining and other developmental projects, all over Jharkhand, Orissa and Chattisgarh. Some of the Jesuits in this area, risking even their own life, have accompanied the people wherever possible, not blindly to oppose any development project, but rather to empower the tribals to demand for their rights over land and other resources and claim for FPIC of the gram sabha, as prescribed by the law and the Supreme Court of India.

A few major people's movements where Jesuits have stood with the tribals and accompany them even today include:

- Koel Karo movement against the Hydel³ power project since 1977, which includes Tapkara police firing on tribals which killed 8 tribals and 27 wounded;
- Santhal People's movement in Banjhi since 1985, where Mr. Anthony Murmu (an ex-Jesuit) and 14 other Santhals were killed in a police firing on 19th April 1985; and
- People movement against Netrahat Field Firing Range since 1993, which has prevented the Indian army taking over and displacing 2,000,000 tribals from 245 villages.

Challenges before Jesuits and the Church in India

Historically, Jesuits have played an important role in changing the lives of the tribals through education, works of conscientization and activism. In today's globalized and communalized reality of the country and the world, the challenges before us are immense and they are far more complex and subtle. Hence, our response too cannot be simple and local but it has to be collective and well discerned and needs to become global using every possible means available.

As Christians and much more as Jesuits, we have the responsibility to be in solidarity with our priority communities, namely the tribals, dalits and other marginalized communities.

Some of the challenges we need to address boldly and squarely are:

- To stand with the marginalized tribals in spite of the danger of loosing some of our institutional and minority privileges, and even false accusations of conversion and political and corporate pressures;
- To withstand the danger of compromising with the powerful corporates and the political powers who are ready to doll out and support us through donations to our institutions, and sponsorship programs;
- To collectively remain in solidarity with the poor, particularly the tribals who are forced out of their land and their resources;
- To be prudent at every moment without risking and endangering one's life and long-term mission of bringing justice and equality;
- To join, support and build links and alliances with the people's struggles and movements enabling local leadership and mobilizing the people to act; and
- To use every resource available to empower people and to remain committed to our preferential option for the poor.

Conclusion

Mining and mining related activities have displaced tribals from their land and dispossessed them of their resources – *jal, jungle* and *jameen* – on which their lives and livelihood depended. This has left them with other no alternative except to fight for survival. The hundreds of people's movements that emerged all over India in the last 2 decades, in spite of state and

³ Hydroelectric power in Himachal Pradesh.

corporate sponsored repressions and killings, who once said, *jan deinge, jameen nahi deinge* (we will give our life but not our land) have begun to unite themselves under the slogan of, *jan nahi deinge, jameen bhi nahi deinge* (neither will we give our life nor our land). It looks as if the battlefield is set ready.

In the name of development and growth, are we going to end of digging out minerals while burying millions of tribals and indigenous people all over the world?

Original English



Industrial mining and local communities. An agenda

Emmanuelle Devuyt and Josep F. Mària, SJ

Jesuit European Social Center, Brussels, Belgium and ESADE, Barcelona, Spain

Introduction

The relationships between industrial mining and development has been defined as “ambiguous” because local populations and development professionals have a sense that *just maybe* mining could contribute more to development (Bebbington et al. 2008). In this direction, certain extractive activities have been included among those triggering the “resource curse” (Sachs and Warner 1995). At the limit, radical critics contend that “... the violation of [Human and Nature] rights is not a consequence, but a necessary condition to develop this kind of appropriation of natural resources.” (Gudynas 2013, 53)¹

While appreciating the contribution of such radical approaches, we contend that industrial mining produces different effects on the development of host communities depending of a wide variety of attitudes, strategies and actions fostered by different actors, from international institutions to local actors (Rajak 2011, Dashwood 2012). Particularly in developing countries, the role of firms is central (Palazzo and Scherer 2006), in the sense that mining companies have power and financial resources to design and implement -together with all the legitimate stakeholders- strategies to prevent damage and maximize development opportunities in the communities. The other side of this contribution to development is the legitimacy of the firm in the community, which reduces costs and facilitates the mining activity (Franks et al. 2014).

This document identifies the most relevant issues that define the agenda of relationships between industrial mining and local communities in the horizon of the development in such communities. In part I, it identifies the main interrelated activities between firm and community; in part II, it presents the conditions leading to a better management of such activities. At the end of every subsection we include questions to focus the debate around possible solutions to the discussed issues.

¹ In reference to the environmental dimension of mining, some authors contend that it is an essentially non sustainable activity (Rajak 2011, p.9). Others define sustainability in a more compatible way: “In the context of non-renewable mineral resources, sustainable development can be broadly understood as the efficient use of such resources, while encouraging environmental, social and economic preservation” (Dashwood 2012, p.10).

Part I. Interrelated firm-community activities

1. Land management

Mining contracts, in their complexity, provide:

- a. firms with the right –under certain social and environmental conditions– to use land for the different activities associated to mining;
- b. and governments –at national, provincial and local levels– with different types of revenue paid by firms.

Regarding these two areas of analysis, different issues are subject to discussion in the horizon of community development.

1.1 Uses of land

Mining contracts are subject to legal conditions established by national legislation (legal license to operate), but also to a free, prior and informed consent of the community (social license to operate). Three main problems arise in this area. *First*, the fact that many local land's owners or informal users lack legal registration documents of their ownership or land use. *Second*, regarding the community's consent, in certain cases the community lacks information on the debate around the specific legal conditions that will affect their use of land. And *third*, although there are international standards, the set of relocation conditions is not always fair or conveniently accepted by the community: either for the relocation of their houses, or for the preservation of their economic activity.

1.2 Firm's payments

National legislations set the bases for the negotiation of firm's payments. *First*, it is important to study the processes, contexts and contents of national Mining Codes, particularly in the articles related to taxes and other payments to governments². A *second* issue to consider is the transparency of firm's payments to governments, in order to maximize the financial resources available for the development of the host country. EITI is a praiseworthy initiative in this direction. *Third*, it is relevant to study how certain firms use mechanisms of transfer prices to avoid paying taxes in host countries. And *fourth*, there is an open debate about the different models of distribution by host governments of firm revenues: in fact, national governments, following a complex legislative and political process, decide if and how to remit such revenues to the different territories and communities. The participation of individuals and communities in different moments of this process of resource allocation can be a decisive factor in the attainment of development goals.

- *What are the worst and the best practices in the uses of land? Which stakeholders need to be incorporated in the debate about such practices?*
- *What are the main conflicts around the negotiation of firms' payments? How can the voices of the weak legitimate actors be heard during this negotiation?*

² Since the 1990s around 90 countries have rewritten mining and investment codes, under the influence of International Financial Institutions. In a neoliberal context, these modifications have not always favored the interest of host countries (Bebbington et al. 2008).

2. Mining activity

The industrial mining activity in developing countries has been defined as an *enclavé* activity, this is, an activity that cannot promote the development of host countries through horizontal linkages, because the majority of inputs are imported and the majority of outputs are exported with a minimum of local processing. This enclavé character stresses the importance for the host country's development of a fair amount of revenues paid by mining firms (OSISA et al. 2009). Nevertheless, in its mining activity the firm can contribute to the local development through two main channels: the hiring of local employees and the use of its procurement capacity to provide revenue to local suppliers. Finally, environmental aspects become central in the connection between mining activity and community.

2.1 Local Employees

Firms confront the decision to hire local or expatriate employees in order to cover the different positions in the plant and in the administration (miners, employees, staff, managers...). Financial considerations, the need to obtain the social license to operate, or talent availability (at the global or at the local level) are relevant aspects in these decisions. In many cases an effort is done to train local workers or to groom local middle managers in order to minimize the proportion of expatriate personnel. In this line, local top managers –if they resist ethnical pressures– have normally a higher ability to successfully manage the conflicts between (foreign) firms and local actors.

2.2 Supplier development

Firms have also an election to use local suppliers or external ones. In developing countries (particularly rural areas) local businesses lack the capacity to fulfill the minimum requirements set by the firm. In this situation, some firms invest –adopting a long term perspective– funds to develop business skills of such local candidates. These efforts have returns for the firm itself, but also positive external effects in the community and its business fabric.

2.3 Environmental issues

The mining activity affects especially the land (holes, erosion, stock of solid waste, use of explosives affecting buildings nearby), the water (liquid chemical spills, water consumption for mining activity) the air (dust, gas chemicals) and the use of energy. Firms have normally the capacity to preserve the environment in these areas, and also promote alternative uses of land after the mining activity (forestry, agriculture, etc.). But, despite of the environmental legal requirements present in all mining contracts, certain firms perform badly and contribute to the environmental degradation.

- *Which best and worst practices are there in the promotion of local employees?*
- *What are the key success factors in the promotion of local businesses?*
- *How can regulations and incentives be enforced in order to increase good practices of environmental management?*

3. Community Investment

Community investment (or corporate social investment, or community development projects) is the set of firm's investments in the community that do not support the firm's day-to-day

operations (Harrison and Coombs 2012). This activity can be either an occasion for the firm to buy a temporary peace by providing particular benefits to community leaders; or an opportunity to build a lasting peace based on justice by contributing to set spaces (or institutions) of community deliberation where development priorities are clarified and consequently funded by the firm.

- *Which examples of spaces of community deliberation are successful in promoting development at the local level?*

Part II. Conditions for a better management

The relationships between the different firm representatives and community actors on occasion of the activities presented in Part I are shaped by a constant interaction between actors and cultural or legal norms (North 1990). Therefore, in order to explore the potentiality for development of firm-community interactions, it is important to identify, for each specific activity described above:

- a. The interaction between firm representatives and
 - the culture and legal regulations of the host country;
 - the firm's country of origin norms and international regulations (soft and hard law) affecting mining activity;
- b. the interaction between local actors (local employees, Civil Society Organizations, government officials) and
 - the culture of the foreign mining company;
 - legal regulations of their own country and international regulations affecting the mining activity.

This constant interaction is particularly conflictive in firms from advanced industrialized economies operating in developing countries (Dashwood 2012, p.44), where the approaches to the contribution of the firm to the community might importantly differ. Therefore, on occasion of each activity presented in Part I, both groups of actors (firm's and community's) need to change their perceptions on their own contribution to such activities (Rodon et al. 2012; Dashwood 2012, p.43) in order to:

- a. accommodate them with the perceptions of the other stakeholders;
 - b. accept and internalize (in policies and practices) the objectives and values contained in national and international legal regulations³.
- *How are the international and national regulations (both binding and voluntary) framing the different activities described in part I in terms of objectives, values and incentives to change behaviors?*
 - *How is the interaction between the culture of a specific firm and the culture of a specific community affecting the effectiveness of development objectives, in the different activities described in part I?*

³ The skills needed for such processes of change in perception can be summarized in "deutero learning", or the ability to learn how to learn. "Grappling with CSR entails responding to shifting societal expectations, to the emergence of new issues, and to the shifting constellations of stakeholders... deutero learning requires interactive learning processes between organizations at the local, regional, national and international level" (Dashwood 2012, p.58).

- *What kind of platforms of dialogue or training activities can be created to enable the mutual cultural accommodation of perceptions and objectives, and the internalization of norms affecting the mining activity?*

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Original English



Advocacy initiatives promoted by European Social Centres

George Gelber

Consultant on Advocacy for Jesuit Missions, London

Introduction

Mining, the getting of ores, metals, gems, fuels, stone, clays and rare earths from the earth's crust, has been part of human history from time immemorial. Collectively they are known as extractive industries. Mining and the refining of metals has always been and is part of the advance of technology. This article focuses on mining for metals, just one of the extractive industries, and advocacy on issues raised by mining.

Jesuit organisations are working on mining as members of GNMR (Governance of Natural and Mineral Resources), one of the five networks of the GIAN, the Global Ignatian Advocacy Network. Three European organisations, the Jesuit European Social Centre (JESC) in Brussels, ALBOAN in Bilbao and Jesuit Missions in London, calling themselves GNMR-Europe, are focusing on the links between mining and conflict and are part of a campaign to persuade the European Union to adopt regulations that will help to stem the flow of resources from mining to armed groups and warlords in the Democratic Republic of Congo (DRC) and other high risk countries. JESC is a core member of the coalition of civil society organisations in Brussels seeking to strengthen the EU's proposed regulation. ALBOAN is urging supporters to lobby their own Members of the European Parliament and has launched a campaign - <http://www.tecnologialibredeconflicto.org> - to raise awareness about the links between the metals in our laptops and mobile phones and conflict in eastern DRC.

Mining and Economic Growth

Modern civilisation would be impossible without metals. Copper wiring conducts our electricity; steel beams hold up buildings; tin and aluminium cans preserve our food and drink; chromium and nickel are used to make stainless steel; and aluminium to build our airplanes - and our mobile phones contain tin, tungsten, tantalum and gold. The list is endless. Metals are so much part of our daily lives that few people stop to think about where they come from.

Mining feeds economic growth. Countries rich in natural resources are said to be 'fortunate' - though many now dispute this, speaking of the "resource curse". At the same time economic growth stimulates mining as industries call for more and more metals to transform into the goods and services which consumers crave. Mining may have been with us for centuries but it is the vertiginous economic growth of recent decades which has caused us to focus on the

critical consequences of mining and the dangers to come in future years to come. To give one example – for the 30 years up to 2011 average annual economic growth in China, the new workshop of the world, was 10.2%,¹ and other emerging economies also experienced strong growth. Miners, from the greatest global companies to the humblest artisanal workers, have responded by expanding old mines and redoubling their efforts to find new deposits, moving into ever more sensitive areas, socially and environmentally.

By the same token mining companies stop investing and cut back when demand from industry slows and contracts, as it is doing now. At the end of 2013 the market value of the top 40 mining companies was US\$958 billion, a decline of \$280 billion from the year before. Profits declined by US\$52 billion, 72%.²

Impacts of mining

Metals and the ore bodies from which they come are finite, non-renewable resources. The global mining industry may be experiencing a sharp downturn now, with smaller companies facing a genuine crisis, but we can be certain that in the long term demand will pick up and that there will be a renewed scramble for resources.

Mining also provides millions of livelihoods, for poor artisanal miners and for workers employed by giant multinational companies. Mines, both large and small, damage and pollute the environment. Ore deposits are finite resources and can be exhausted in a few short years. This means that mining companies will move on, often leaving behind contaminated land and polluted and poisonous water. Small scale miners are not necessarily better than large companies, taking few precautions to protect the environment or themselves. The photographs taken by Sebastião Salgado of the now abandoned Serra Pelada gold mine in Brazil vividly illustrate the infra-human conditions endured by workers in artisanal mines.³ Large companies have been known to compare themselves and their environmental records favourably to those of small scale miners.

Mining inevitably displaces people, disrupts lives and destroys livelihoods. Even well-managed mining, leaves lasting environmental legacies, and many mines have permanently contaminated water supplies. Since mines have a working life of only a few years, they may close with the company leaving the country before environmental damage can be documented and scientifically proven. Such problems are likely to get worse in years to come as mining companies seek to exploit new deposits in ever more sensitive environmental and social contexts. Communities seeking to preserve a precious environment and traditional way of life try to resist but often their efforts are in vain. Governments are seduced by the revenues promised by mining. Politicians in capital cities hundreds of kilometres from mine sites regard communities who oppose mining as backward peasants and obstacles to development. Irreplaceable national parks and world heritage sites appear to be no bar to oil and mineral exploitation.⁴

¹ Laura Lorenzetti, *China's growth rate is expected to slow sharply by the end of the decade*, Fortune Magazine, October 20, 2014, in <http://goo.gl/BEiOm2>, accessed April 2015.

² PwC, *Mine 2014 – Readjusting Expectations - review of global trends in the mining industry*, in <http://goo.gl/ffMDGA>, accessed in April 2015.

³ Salgado's photographs can be viewed at <http://goo.gl/kL810J> and <http://goo.gl/6HsAVw>, accessed in April 2015.

⁴ Paul Steyn, *Lower Zambesi National Park Mining Project is 'Fatally Flawed'*, 14 December 2015, in <http://goo.gl/Gmi5MT>, accessed in April 2015; S.D. Turner, *World Heritage Sites and the Extractive Industries*, IUCN, 20 June 2012, in <http://goo.gl/x3yc6B>, accessed in April 2015.

Conflict

Mining also fuels conflict. In unstable countries such as Burma, Colombia and the Democratic Republic of Congo (DRC) – especially in DRC – mining has provided armed groups with the resources they need to continue fighting long after any genuine popular support has faded away. “Blood diamonds” have a long and tragic history having financed armed groups and warlords in six African countries where conflict has cost millions of lives.

Advocacy on mining

Rich, industrialised countries form the main market for the products of mining. At the same time hundreds of mining companies, including the biggest in the world, are listed on the stock exchanges of London, New York, Toronto and Zurich. The products and the stock exchanges provide the links between some of poorest people in the world and the richest. And it is these links which enables us to advocate on their behalf.

One of the problems of advocacy on mining is that each mine is different, throwing up its own individual problems. Some issues, water quality and contamination, require costly scientific investigation which may well be unaffordable for affected communities and the organisations supporting them. The British Catholic development agency, CAFOD, was able to obtain the services of Newcastle University to sample and analyse acid mine drainage of the San Martín mine in Honduras, owned by the Canadian company, Goldcorp, to show that its closure plan was fundamentally flawed. The cost of this research work at commercial rates would have been prohibitive.⁵

Mining, or the prospect of mining, divides communities and companies often conduct opinion surveys to show that there is popular support for their plans, especially when they promise community facilities and employment. In 2008 CAFOD reported that the consent process by which the Hallmark nickel project in Mindanao in the Philippines was approved by the affected communities was flawed, with permission having been granted by an indigenous leader disowned by the community who allegedly received a generous salary from the mining company, a joint venture between BHP Billiton and its Filipino partner company, AMCOR.⁶ The principle at stake here is Free Prior Informed Consent (FPIC), a right which has yet to be achieved in practice by most communities affected by mining.⁷

In the course of his recent visit to the Philippines, Pope Francis was urged by the Filipino Bishops’ Conference to join them in calling for the repeal of the current Mining Act. The bishops repeated the appeal made in 2006, saying “allowing the interests of big mining corporations to prevail over people’s rights to these sources amounts to violating their right to life. Furthermore, mining threatens people’s health and environmental safety through

⁵ CAFOD, *Goldcorp staff face criminal charges over mine pollution after CAFOD investigation*, 16 August 2010, in <http://goo.gl/uHqfB5>, accessed in April 2015.

⁶ Sonya Maldar, *Kept in the Dark – why it’s time for BHP Billiton to let communities in the Philippines have their say*, CAFOD, London, 2009, pp 22-24.

⁷ The UN Declaration on the Rights of Indigenous Peoples (2007) obliges states to “... consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” Communities not designated officially as indigenous have no such rights under international law.

wanton dumping of waste and tailings in rivers and seas.”⁸ In September 2013 the CEOs of the world’s biggest mining companies gathered at the Vatican. They were greeted with a statement from Cardinal Bertone, on behalf of Pope Francis, which told them, “Mining, like many other industrial activities, has ecological and social consequences which go well beyond national borders and pass from one generation to the next ... decisions today cannot be taken solely from geological perspectives or the possible economic benefits for investors and for the states in which the companies are based ... workers [should] be assured of all their economic and social rights ... [and] extraction activities [should] respect international standards for the protection of the environment.”⁹

The issue at stake, the parties involved and the context determine the choices and places for advocacy. In the case of ‘conflict minerals’ the arena in which civil society organisations, including Jesuit institutions, are pursuing one specific advocacy objective is the institutions of the European Union – the Commission, the Council and the European Parliament.

Decree 4 of GC32 contains clear guidance for advocacy:

“We have to... overcome the reluctance, fear and apathy which block us from truly comprehending the social, economic and political problems which exist in our countries and on the inter-national scene... We cannot be excused from making the most rigorous possible political and social analysis of our situation... From analysis and discernment will come committed action; from the experience of action will come insight into how to proceed further.” (n. 43 & 44, abbreviated).

“If we have the patience and the humility and the courage to walk with the poor, we will learn from what they have to teach us and what we can do to help them. But without this arduous journey our efforts for the poor will have an effect just the opposite from what we intend; we will only hinder them from getting a hearing for their real want.” (n. 50)

These paragraphs indicate how we should approach those in power who do not want change or who want us to settle for cosmetic change only. In the 1980s and 1990s when civil society organisations took on the World Bank staff on issues of debt and structural adjustment, these were their responses over the long years of their advocacy.¹⁰

1. You are wrong – your facts are wrong.
2. Your facts may be right, but your analysis is wrong; you are drawing the wrong conclusions.
3. Your facts may be right, your analysis of the problem may be sound; but the policies you advocate don’t follow and won’t produce the result you want.
4. You are right, but we don’t do that anymore.
5. You are right, but you should be talking to your government, not to us.

⁸ Independent Catholic News, *Philippines: bishops urge Pope to speak about harmful impact of mining on environment*, 16 January 2015, in <http://goo.gl/Lly9S6>, accessed in April 2015.

⁹ *Pope Francis' Greeting to Mining Industry Representatives for Day of Reflection*, in <http://goo.gl/STmS7o>, accessed in April 2015.

¹⁰ It is important to remember that the debt crisis burst upon the world in August 1982 when Mexico declared that it would not be able to meet its debt repayment obligations to US banks but it was only in 2010 that the bulk debt owed by the poorest countries was cancelled.

Conflict minerals

Conflict minerals, direct descendants of conflict diamonds, are minerals which fuel conflict, enabling the militia groups and armies which control mining and trade to buy the supplies, ammunition and weapons they need to dominate and terrorise populations. DRC, especially the mineral-rich eastern part of the country, has been wracked by conflict since 1996 which has resulted in the deaths of over 5 million people. These shocking figures led US legislators seeking to regulate Wall Street in the aftermath of the financial crisis to include provisions in their bill requiring that companies be able to trace to their source any 'conflict minerals' (defined as tantalum, tin and tungsten – the three Ts – and gold, originating in DRC or any of its nine neighbouring countries) used in products imported into the United States. Reports submitted by companies must set out the measures taken to determine the source and chain of custody of the conflict minerals to show whether the minerals they use are 'conflict free'. There are just two sections relating to extractive industries mining – 1502 and 1504 – at the end of the 848 page act, with official title of the "Dodd-Frank Act to reform Wall Street Reform and Consumer Protection Act". The purpose of these sections in Dodd-Frank is to cut off the flow of resources (estimated to be as much as US\$185 million a year in 2008)¹¹ to armed groups, which have been using forced labour, including child labour, and extorting money from small scale miners in eastern DRC.

Tantalum, tin, tungsten and gold are essential to the manufacture of electronic devices, including mobile phones. For example, a 2 kilogramme laptop contains 10 grams of tin, 0.6 grams of tantalum, 0.3 grams of gold and 0.0009 grams of tungsten.¹² Companies have responded swiftly and are keen to show that their shiny and expensive products are 'conflict free'. Intel, Apple and HP have all published reports which purport to show that their products are conflict free or almost conflict free. A recent *Enough Campaign*¹³ investigation found that the income of armed groups derived from the three Ts had shrunk dramatically.¹⁴ Artisanally mined gold, however, remains problematic because gold can be refined locally with the use of mercury to an almost pure state, and is then easily smuggled out of the country whereas the extraction of tin, tungsten and tantalum from their ores is an industrial smelting process. United Nations researchers estimate that up to 98 per cent of DRC's gold production is smuggled out of the country.¹⁵ A more recent UN report confirms that gold smuggled out from rebel areas is sold to traders in Uganda and then exported to Dubai. The report says that "gold smuggled into Uganda in the past year included metal from mines controlled by rebel groups such as NDC, headed by Ntabo Ntaberi Sheka who is wanted for crimes against humanity, and the Democratic Forces for the Liberation of Rwanda (FDLR), a group linked to Rwanda's 1994 genocide."¹⁶

Europe lags behind the United States. In March 2014 the European Commission published draft legislation on the "responsible sourcing of minerals". This is now being debated in European Parliament which has to approve the bill before it can become law. Civil society

¹¹ Fidel Bafilemba, Timo Mueller, Sasha Lezhnev, *The Impact of Dodd-Frank and Conflict Minerals Reforms on Eastern Congo's Conflict*, June 2014, in <http://goo.gl/204IFr>, accessed in April 2015.

¹² Hewlett Packard, *HP 2013 – Living Progress Report*, 44, in <http://goo.gl/sXHnfq>, accessed in April 2015.

¹³ The Enough Project, set up in the US in 2006, campaigns to end genocide and crimes against humanity. Conflict minerals and DRC are a major part of their work. See <http://goo.gl/O8Dya>, accessed in April 2015.

¹⁴ Fidel Bafilemba et al., *op. cit.*

¹⁵ Alexis Arieff, *Democratic Republic of Congo and U.S. Policy*; Congressional Research Service, 24 February, 2014, 12, in <http://goo.gl/Cz8TIU>, accessed in April 2015.

¹⁶ Global Witness press release, *Conflict gold sold on international markets despite sector clean up efforts says new UN report*, 20 January 2015, in <http://goo.gl/sG8sxK>, accessed in April 2015.

groups working on conflict minerals, however, believe that the draft legislation as it stands will have little impact because it is a voluntary code of conduct, with importers self-certifying themselves as responsible, and covers only minerals imported directly into the European Union. Metals contained in imported, finished products, such as smart phones, are not covered. Unlike the Dodd Frank Act in the US, though, the European legislation is not limited to DRC and surrounding countries, and could be applied to any high risk or conflict-prone country.

According to the European Commission's own impact assessment on the proposed regulation minerals from conflict zones "represent a cheap source in a very competitive market offered at a discount of estimated at 30-40% of normal value."¹⁷ At the same time the impact assessment reported that relatively few European companies undertake the recommended due diligence. Only 12% of companies listed on EU stock exchanges not directly subject to the US legislation refer to conflict minerals on their websites.¹⁸ There appear to be no sanctions for failure to undertake due diligence. At the same time the costs of compliance by companies with the proposed voluntary scheme – and there is no reason to suppose that a mandatory scheme would have higher costs – are tiny, estimated by the European Commission at 0.014 per cent of average turnover initially and thereafter at 0.011 per cent annually.¹⁹

This is an uphill campaign because so far no member state of the European Union has been willing to champion mandatory regulation. A handful of Members of the European Parliament are willing to press for this. The Commission and member states argue that mandatory regulation would encourage companies to source their minerals elsewhere thereby encouraging contraband and undermining the livelihoods of the miners of eastern DRC. The burden of ethical persuasion is placed on customers. We think this amounts to an evasion of responsibility and failure to grapple with the challenge of improving corporate social responsibility.

Original English

¹⁷ European Commission, *Commission Staff Working Document – Impact Assessment*, 5.3.2014, pp.5, 47 and 53, in <http://goo.gl/jnVS7r>, accessed in April 2015.

¹⁸ *Ibid.*, 23.

¹⁹ *Ibid.*, 43.



Governance of the mining industry, human rights, and construction of peace in Colombia

Sergio Coronado Delgado
CINEP, Colombia

Introduction

Social struggles linked with extractive activities have increased during the last decade in Colombia. In the period between 2010 and 2013, the percentage of protests related to extractive activities rose to 7.61 of the total number of social struggles in the country, while between 1975 and 2009 these represented only 0.31% (CINEP/PPP, 2014.)

This increase in social conflict is an indicator of the deep problems of governance within the extractive sector in Colombia, many of these originating in the design of the public policies, in the precarious participation of citizens in the same, and in the absence of a focus on respecting human rights. Additionally, due to the enormous effect which the armed conflict has had in the social, political and economic dimensions of life, the poor governance of natural resources and extractive processes has ended up linked to the dynamics of the armed conflict, with grave consequences regarding the human rights of the population.

In this article, I am going to present several factors which demonstrate the poor mining governance in Colombia. I will point out several problems in the design of public mining policies. Secondly, I will demonstrate the lack of governmental response to citizens' demands. Thirdly, I will report some of the failures of the extractive projects to guarantee respect for human rights. Finally, I present several improvements which have been implemented as a result of our work of political advocacy.

Politics of mining is not favorable to responsible governance of natural resources

In general terms, the Colombian mining policies find themselves far from the recognized guidelines of responsible governance of mining and natural resources.¹ This affirmation is supported not only by the emergence of social conflicts involving communities affected by mineral extraction, but also by the precarious participation of the State in the implementation of the policies, the low collection of funds by the State and the alarming situation of poverty which is experienced in the regions in which the extraction occurs.

¹ The principles of the governance of mining and natural resources is understood according to the position document of the Global Ignatian Advocacy Networks: promotion of peace and human dignity, justice and equality, solidarity, care for future generations, the search for the common good, the promotion of the precautionary principle, participation, dignity of work and living conditions and accountability.

The changes in the public mining policy which occurred during the last two decades limited the capacity of the State and its institutions to exert control over extractive activities. The State stopped playing an active role in the management and extraction of natural resources, and instead assumed a role of facilitating the mining activity pursued by private agents. A clear example of this situation is the procedure for the concession of mineral rights. In 1973 a norm was established assigning concession rights according to which the first one who requested the mining concession for a region acquired a prevailing right over other interested private actors (Pardo, 2013.) With this model the capacity of the State to administer the mining resources according to criteria of efficiency and of optimization of benefits was diminished. Thus, the State has lost the capacity to negotiate the processes of title assignment with the private investors interested in realizing the extraction of the resources and thereby obtain more favorable conditions in terms of payments. Additionally, this model tends to generate social conflicts linked with the extraction of the resources, as this institutional design does not recognize the rights of the communities over the lands and territories of the communities in which the extraction is being proposed. The mining titles are requested and granted far from the territories in which the extraction takes place, diminishing the participation and the control of the society over the concession contracts.

An additional problem in the mining policy is that it facilitates the concentration of riches generated from the natural resources. The institutional design does not permit an equitable distribution of the rights of extraction, but rather the practice permits the most powerful actors to concentrate most of the mineral rights in their favor. The greatest part of the area conceded for mineral exploitation is concentrated in few companies and persons: to the 1.15% of the larger owners of mineral rights has been granted 56.5% of the total area (Chaparro 2014.) According to official data, just one mining company, AngloGold Ashanti, controls 725,435 hectares of mineral rights. The concentration of wealth and of the rights of mineral extraction in such few subjects is an indicator of poor mining governance, as it weakens the capacity for negotiation by the State in relation to the obtaining of guaranties and of a fair share of the profits which the companies should realize.

Finally, the environmental frameworks have also been weakened. In December 2014, the national government drew up a new regulation which facilitated the granting of environmental licenses. Said norm has been strongly criticized by the environmental sectors, not only because they restrict the participation of the communities affected by the projects, but also because they shorten the times for the granting of the license. In general terms, due to the loosening of restrictions and the lack of citizen participation, the Colombian mining policy does not promote a good governance of the mineral resources.

Unfulfilled citizen demands

Two or three decades ago, some communities celebrated the arrival of extractive projects in their territories because they believed in the promises of development, which these brought. In 1995 the people of El Boquerón, a rural community located in the Colombian Caribbean region, celebrated the arrival of the Drummond Company and the inauguration of the coal mines. They expressed sentiments such as: "We were happy because we thought that having a mine near us was the solution to our problems." Today their thoughts have changed: "We were not expecting that the exploitation of coal would lead to our expulsion from that land" (Escárraga 2013.)

Currently, more and more communities are in opposition to the installation of extractive projects in their territories. The demands of the citizens concern the participation of

communities affected by the decisions made through the realization of extractive activities. The forms of participation are diverse: the ethnic communities demand the guarantee of prior, free, and informed consent; in the municipalities, popular consultations take place wherein the population can manifest its position on the installation of a mine. Others participate in protest actions against the installation of the mines; many other communities use mechanisms for participation foreseen in the environmental guidelines. In general terms, there is a call from the civil society to take part in the governance of the natural and mineral resources.

Nevertheless, this call is not being adequately responded to by the state institutions. In first place the possibilities for the citizens affected by the extractive projects to participate in the making of decisions on their political, environmental, and social viability have been limited. The central State has reserved to itself the final decision on any mining project. For example, Colombian justice refused to recognize the results of a popular consultation in which the citizens manifested themselves to be against a hydrocarbon extraction project. According to the judges this exercise of citizen participation went beyond “the constitutional norms which grant to the State the ownership of the subsoil and the exploitation of non-renewable natural resources.”

In second place, the public authorities have restricted the exercise of the right to consultation and prior, free and informed consent by the ethnic communities, restricting their right to consultation to the exploitation phase (and not to the earlier exploration phase,) even when this action has direct impact on the territories and on the life styles of the communities. With this orientation, the communities do not participate in the administrative procedures under which the mineral rights are granted. The precarious participation of the communities increases the social conflicts in relation to the extractive activities.

Mining and integral human rights

The human rights situation of the communities affected by mining is highly worrisome. In Colombia, in comparative terms, the inhabitants of the municipalities in which the extractive activity occurs live in worse conditions than those who live in municipalities in which other forms of economic activity occur. The causes of this situation are multiple: the small capacity of the public institutions, both local and national, to administer resources and to respond to social necessities, the environmental damages caused by the extractive activities, the precarious generation of work for the populations of mining communities, among other factors (Rudas & Espitia 2013.)

Additionally, the social leaders who oppose the installation of large-scale mining projects, along with those who denounce the illegal or criminal mining activities which occur in their territories, suffer constant threats against themselves. In December 2014, around forty black farm women marched from their territories more than 600 kilometers to Bogotá to denounce before the mining and environmental authorities the presence of illegal gold mines which are destroying their territories and the existence of more than 250 mining titles which were granted to private enterprises and to individuals without the women’s participation or consent. When they returned to their region, after having concluded a series of agreements with the government, they became the object of death threats and were labeled as “opponents of the development of the communities.” Between 2002 and 2013 at least 54 defenders of rights to the land and the environment were assassinated in Colombia (Global Witness 2014.) The construction of peace in the regions requires that the defenders of the territories and the social movements are able to express freely their position regarding these projects of extraction of natural resources.

By way of conclusion

Adapting the Colombian mining policy to the principles of good governance of natural resources is a task of prime importance. As we have been able to observe, this requires structural changes in the design of policies, among these improving the State's capacity for negotiation in its function of controller of mining and natural resources. Additionally, it implies putting in order the mineral extraction sector and defining, by means of a participative and democratic process, the environmental, social, and economic criteria which determine in which places natural resources are going to be extracted and in which they are not.

The responses of the State to these urgent demands have been prompt enough. The country is advancing in the progressive implementation of the standards of transparency of the Initiative for Transparency of the Extractive Industries (EITI). Although this is a favorable point, it is not sufficient to address the complex problems which have been laid out above. Besides promoting transparency, other elements of the governance of natural resources should also be promoted, particularly those regarding citizen participation, the protection of the environment, and concern for the rights of future generations.

Additionally, the communities affected by mining ought to be recognized as such and the State and the society ought to implement actions to repair the damages to their human rights. Restoring and dignifying those who have suffered the impacts of bad governance of natural resources is a necessary step towards the construction of a new model that is more just, humane, and democratic. In Colombia, the eventual signing of a peace accord with the guerillas, a process which we are following with great optimism, could bring about a setting of democratic improvement. These urgent issues could then be addressed, not only for current citizens, but also for future generations.

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*Original Spanish
Translation Robert Hurd SJ*



The increasing presence and threat of the mining industry in Central America

Ismael Moreno, SJ
ERIC, Honduras

Central America, supplier of raw materials

All data indicate a fast-growing increase in the demand for materials and energy on the part of the major economies of the world. This demand has imposed itself so strongly on Latin America that it is possible to speak of a veritable “invasion.” According to experts, at the end of the 20th century the region was responsible for about 12% of worldwide investment in mining. By the end of 2010 the level of investment had tripled.

Central America is a zone with considerable reserves of both precious and industrial minerals. As it has done throughout the course of its history, Central America conforms to the logic of the global economy by being a ready supplier of raw materials. What makes the present situation more problematic is that the increasing extraction of materials is being carried out more aggressively than has normally been done, and with serious social, political, and environmental consequences.

At the same time, there is increasing pressure that the intensified mining operations conform to international regulations and agreements. Various sectors of Central American civil society are becoming increasingly conscious of the need to protect the region’s natural resources as a means to defend both human rights and the integrity of the environment.

Corruption and impunity define the reality of the extractive industry

These developments have resulted in legislative reforms that oblige the mining companies to observe protocols and agreements that did not even exist before the year 2000. For example, the World Bank has promoted reforms which require companies to comply with the various bilateral and multilateral commercial treaties. According to environmentalist organizations, however, these reforms do little more than guarantee the juridical security of the investments and establish a regulatory framework in accord with international norms. As a result, the mineral exploitation is legalized, but there is no decrease in the violations of human rights related to social and environmental conflicts. Even in the best-case scenario, where mining legislation guarantees respect for the environment and human rights, the Central American experience of impunity and corruption of public officials and legislators indicates that no assurance can be given that national or international agreements and laws would be observed for the benefit of the environment, the communities, and the human rights of the persons directly and indirectly involved in the mining industry.

The case of Honduras is paradigmatic. The coup d'état of June 2009 provided a perfect opportunity for economic groups and conservative elites. Taking advantage of the political confusion and institutional weakness, they managed to get approval for a package of laws allowing for exploitation of rivers, water sources, and hydrocarbons. Also approved was a law permitting the creation of "Economic Development and Employment Zones," which were very beneficial to the mining companies. The zones, known as "Model Cities," possessed juridical qualities whose main purpose was to open doors to transnational capital and facilitate investment based mainly on the extractive industries.

With regard to mining legislation in Honduras, the Honduran Institute of Geology and Mines states that at the beginning of 2013 approval had been given for 97 gold- and silver-mining projects and 193 non-metallic mining projects; moreover, 320 new projects were being processed, and 233 requests for new projects had been submitted. Whenever communities have rejected mining projects and have organized to resist this onslaught, the government has allied with the mining companies to launch aggressive publicity campaigns aimed at showing the "benefits" of these investments and attacking the communities and their leaders as enemies of progress and development in the country.

This increased investment of the mining companies has aggravated the violence and insecurity deriving from drug trafficking and organized crime that already prevails in the northern triangle of Central America (Guatemala, El Salvador, and Honduras), making it one of the most violent and dangerous zones of the planet. To this are added new instances of human rights violations and environmental deterioration.

The resulting scenario is one where the most powerful economic and political groups control the security forces, the research units, and the judicial power. As a consequence, state agents and private actors (businesses) are able to commit crimes and human rights violations against the people and the social organizations of Honduras with absolute impunity.

Wealth for a few, misery for the many

In September 2013 a seminar was convoked by the Social Apostolate Commission of the Central American Province; those attending the seminar from the six countries of the region stated the following: "Mineral exploitation is based on the logic of unlimited consumption in a world of limited resources. Extracting mineral wealth creates human misery and environmental disaster in the communities located near the areas of exploitation, in contrast to the lives of luxury and extravagance enjoyed by the owners of the mining companies."

According to many studies and the experiences of various Central American countries, both mining and hydroelectric projects are based on the same model of exploitation; not only is the model predatory, consumerist, and contaminating, but it leads to unjust concentration of wealth and resources. The experience in each of the Central American countries shows a common pattern of communities that have suffered environmental deterioration and human distress that are almost always irreversible. Social and organizational ties are fractured and broken, and the communities' economic and productive conditions are made even more precarious than they were before. Most of the communities where mining operations have been carried out are precisely the ones that have seen the greatest emigration toward other parts of the country or to foreign countries, mostly the United States.

The mining industry operates at such advanced levels of technology that less and less local labor is required. Extraction proceeds at ever more rapid speeds, causing accelerated environmental disaster and destroying traditional forms of community life. It is not true at all,

at least in Central America, that the mining industry solves the unemployment problem in the communities. The overall demand for labor is decreasing, and what demand there is sporadic and limited to the cheapest forms of manual labor, mostly in the form of secondary services.

Mining operations encourage and stimulate division and corruption within community organizations and their leadership. The cultural texture of communities affected by mining operations tends to disintegrate, and the communities will never be the same as they were before.

The struggle of David against Goliath

In the mining industry there are two cosmovisions, two ways of viewing and relating to the world. One way is to see nature and the earth as a mother, as a source of life and a sacred gift for communities and peoples. The indigenous communities declare that “the earth is our mother, and the mining companies leave her destroyed. They have pierced her heart, and that is an assault on God.” The other way of seeing nature is that of the mining executives. The mountains and the earth, the water and the forests, are simply business, money, growth, development, economic progress. Everything must be converted into capital.

The mining industry is intimately connected with hydroelectric projects and the contamination produced by them. The often indiscriminate mining operations are provoking increased resistance from communities that have close ties with environmental and civic organizations. The mining companies respond by forming alliances with national entrepreneurs and government authorities and proceed to threaten, persecute, kidnap, and murder community leaders. At the same time they develop propaganda campaigns aimed at discrediting the value of the struggles organized by communities against mining.

The mining companies connive with the legislators to obtain approval for juridical measures designed to criminalize resistance struggles opposed to mining and water concessions. They have also formed alliances with the mass media in order to control the flow of information, defame resistance struggles, and portray the industry as “beneficial” for communities, government, and society. Since the communities and the environmental organizations are not allowed space on the mainstream media, they must rely instead on alternative media and social networks.

The mining companies have created a highly polarized setting rife with conflict. They have defined well their objective, which is to convert all natural wealth into capital. At the same time, the communities, the churches, the environmentalist organizations, and the people’s movements are seeking to remain faithful to the persons and sectors most affected by the mining industry. To do so, they are attempting to coordinate their diverse efforts and have united in the struggle for peace and life based on the defense and protection of their natural resources.

Chronicle of a tragedy foretold

A tragedy occurred in the southern part of Honduras midway through 2014. A group of miners were trapped inside a mine when it collapsed. Through enormous effort several of the workers managed to escape from the mine alive, but eight of them remain trapped. Neither the mining company nor the government had rescue plans or emergency systems in place to respond to such an event. The eight miners died, and their bodies were recovered five months

after the tragedy. Both the government and the mining firms attempt to show that what had happened was an exceptional case. Legislation was passed exempting the mining company from all legal responsibility, so that the families of the workers killed received only small and sporadic compensation.

This tragedy, which occurred in El Corpus, Choluteca, near the border with El Salvador and Nicaragua, revealed the raw reality of mining investments in Central America. Despite international agreements and treaties; despite the legislative reforms in each country; and despite mining laws that require due respect for the affected communities' environment, human rights, local history, and cultural patrimony, the mining industry in every Central America country is able to achieve its basic objectives because it can count on the backing of governments and local business groups, which are able to override the provisions of the law. As was observed before, impunity and corruption are daily realities which often neutralize any pressure exercised by the communities and environmentalist organizations demanding that laws be obeyed. The mining companies attain their objectives often enough by bribing officials or by conspiring with politicians, bureaucrats, or business leaders.

The paths toward resisting a model that threatens life

The Jesuits and lay people attending the previously mentioned Central American Seminar concluded their analyses and debates by issuing a declaration which, among other points, said the following: "We declare that our resistance struggles should be reinforced 1) by alliances with the other national and international sectors with which we share a commitment to defend our common and territorial riches, and 2) by strategies of alternative communication which succeed in breaking through the barriers erected by the mass media. If it is the very same mining corporations that are operating in all our countries, how can we wage a struggle so as to strengthen our identities and resist succumbing to the danger of letting ourselves be dazzled by the gold and the royalties of the mining companies? How can we reinforce our ethical commitments so that we are able to reject the temptations of bribes, the attractive offers to improve public services in our communities, and our fears in the face of threats and blackmail? How can we organize platforms or alliances that unite our national struggles with the struggles of Central America and all Latin America?"

*Original Spanish
Translation Joseph Owens SJ*

Social Justice and Ecology Secretariat

Borgo Santo Spirito, 4

00193 Roma

+39 06689 77380 (fax)

sjes@sjcuria.org