

**Why it's time for  
BHP Billiton to let  
communities in the  
Philippines have  
their say**

# Kept in the dark

## EXECUTIVE SUMMARY

**The global mining industry is booming. In 2007, the revenues of the world's top 40 mining companies grew by 40 per cent as Chinese demand for metals generated record profits for the industry.<sup>1</sup> This boom is driving mining to new frontiers. Conflict zones, poorly-governed regions, indigenous lands and pristine environments are being opened up for exploration and exploitation.**

While mining companies and investors profit like never before, mining can have devastating and long-lasting consequences for communities. It can bring social division; displace people from their homes and lands; pollute rivers and seas with waste and cause irreversible loss of biodiversity.

Facing these realities head-on is the community of Macambol on the island of Mindanao in the Philippines, where most people rely on fishing and farming to survive. BHP Billiton is planning to develop a nickel mine and processing plant here worth US\$22.7 billion. Known as the Hallmark project, BHP Billiton is putting US\$1.5–3.0 billion (£0.8–1.7 billion) into the development and has partnered with Philippine company AMCOR. Production is expected to begin around 2014.<sup>3</sup>

The arrival of mining has created deep division and unease in this formerly close-knit community. Many people in Macambol and neighbouring areas fear that the risks it poses are too great and advocate for alternative development. They doubt whether mining can lead to sustainable development for Macambol and indeed for the Philippines as a whole.<sup>4</sup>

As the world's biggest mining company, BHP Billiton should be a leader in responsible mining. However, CAFOD believes that BHP Billiton and AMCOR have not listened to the concerns of local communities and failed to live up to sufficiently high standards of corporate behaviour in their operations. This raises fundamental questions about the basis of BHP Billiton's 'social licence' to operate in Macambol and could have potentially dire consequences for local communities and the environment.



**"The benefits to the community are only small change compared to the profits the mining company makes. We are the ones who suffer the consequences."**

Victor Aying,  
community leader<sup>2</sup>



**Above:** Like many open-cast mines in the Philippines, this mine, operated by TVI in Zamboanga, has caused controversy and led to the displacement of some indigenous people.

“Since the very start of the development of mining [in the Philippines] we still don’t have any success stories that show the living condition of the people in the area engaged with mining has improved [...] It’s always the foreign companies who get most of the benefit, not the people.”

Local support group leader<sup>5</sup>

## **This report provides evidence to show:**

### **1. Flaws in the community consent process<sup>6</sup>**

The process between 2001/08 to secure approval for the project from Macambol’s indigenous peoples, as required under Philippine law, was so seriously flawed that it cannot be considered valid.

- The authority of the indigenous leader who gave consent for mining is in question.
- This indigenous leader was allegedly on the payroll of AMCOR, BHP Billiton’s joint venture partner.
- Individuals were prevented from speaking out and some indigenous groups known to oppose mining were deliberately excluded from the process.

### **2. Bribery by AMCOR and government officials<sup>7</sup>**

AMCOR and Philippine government officials allegedly offered bribes to community leaders to buy support for the project and to silence opposition to mining. BHP Billiton’s code of business conduct, which applies to all of its joint venture partners, strictly prohibits bribery. CAFOD has no evidence to suggest the BHP Billiton staff were involved, but believes that the company has a responsibility to ensure partners and contractors it has chosen to work with do not partake in bribery or corruption. On the basis of this research, CAFOD believes that BHP Billiton has applied insufficient due diligence over its joint venture partner AMCOR.

### **3. Lack of transparency and information sharing<sup>8</sup>**

BHP Billiton has failed to give people sufficient information about the project and all of its potential impacts.

- The community is not well informed and has not had access to independent analysis of the social and environmental impacts of mining. This has limited people’s ability to make an informed decision.
- The reality of life below the poverty line has left people easily swayed by hope of work and promises of community development assistance from BHP Billiton, without evaluating the longer-term impacts of mining on their future livelihoods and the environment that supports them.

### **4. Potential dangers to the environment and to local livelihoods**

The Hallmark project falls between two nationally-designated protected areas: Pujada Bay and the Mount Hamiguitan wildlife sanctuary.

- Mining development in this area of rare and endangered species, including the Philippine Eagle, could lead to irreversible loss of biodiversity.
- Mining could lead to increased soil erosion, landslides and flash-floods.
- Pollution from mine waste or chemicals could endanger the livelihoods of the 65,000 people from communities that border Pujada Bay.
- The Philippine government agencies responsible for monitoring the environmental impacts of mining are under-resourced and lack independence.

### **Opposition to the Hallmark project<sup>9</sup>**

Local opposition has grown as people feel their voices are not being heard. This is particularly so for the indigenous peoples, who make up 25 per cent of the population in Macambol and have a legal right to give or withhold their consent for the project. An ongoing dispute between BHP Billiton and AMCOR, and the actions taken by each company to shore up support for itself, has also added to local tensions. Although there is some community backing for the Hallmark project in Macambol, CAFOD does not believe people there have yet been able to assess the benefits and risks and make an informed decision about the type of development they want.

CAFOD's Unearth Justice campaign, launched in 2006, highlights the hidden harm caused by mining and questions who actually benefits from the industry. Working with partner organisations it seeks to ensure that communities like Macambol can secure a fair deal from mining and better protect their land and livelihoods.

## Recommendations

CAFOD is calling for a new consent process, one in which the Macambol community can have faith, so that they can make decisions based on independent information. If this does not take place, then the Hallmark mining project should not go ahead.

CAFOD also urges BHP Billiton to change its company policy so that wherever they operate, communities must give free, prior and informed consent before mining can begin. The company must show how it will prevent environmental damage in this area, and change its company policy on biodiversity.

The Philippine government must play its part by addressing the weaknesses of the body responsible for enabling indigenous people to give their consent, the National Commission for Indigenous Peoples, and amending the guidelines for the consent process.

This is a critical time for the Hallmark project as mine production has not yet begun. It is not too late for company and government officials to address the recommendations below. Failure to do so could pose significant material risks to the Hallmark project and have lasting consequences for communities and the environment in Macambol and beyond.

### To BHP Billiton and AMCOR:

- Conduct a new Free Prior and Informed Consent (FPIC) process for the Hallmark project jointly with the National Commission on Indigenous Peoples. This should involve participation by civil society and be independently monitored and verified. If the process does not adhere to the principles of a genuine FPIC, as defined in the Indigenous Peoples' Rights Act, then mining should not go ahead at the Hallmark project.
- Respect the right of all communities to give or withhold their consent for mining projects by changing their corporate policies on community engagement, in line with international human rights standards for indigenous peoples and the recommendations of the 2003 World Bank Group's Extractive Industries Review, to include:
  - the requirement of FPIC for indigenous communities;
  - demonstrable and independently verified community agreement based on genuine and participatory information sharing and consultation;
  - an effective grievance mechanism for redress.
- Ensure that their employees, contractors, suppliers and joint venture partners are not involved in corrupt practices and call for an independent investigation into the allegations of bribery outlined in this report.
- BHP Billiton must ensure that employees, contractors, suppliers and joint venture partners adhere to its code of business conduct and sustainability policies and have adequate systems in place to regularly monitor compliance. AMCOR must publish a statement outlining its position on bribery.
- Publish, and make readily available to all communities affected by the Hallmark project, full information about the project and its potential social and environmental impacts, including contracts, in an appropriate, timely and accessible manner. This should be done as part of obtaining community members' Free Prior and Informed Consent.

“The land that will be mined is an inheritance from our forefathers and I see our lands as our legacy for future generations. We are now the caretakers of this land and it's our duty to protect it for our children.”

Eddie, member of local community group<sup>10</sup>



## Notes and references

- 1 'Mine: As good as it gets', *PricewaterhouseCoopers*, 2008
- 2 CAFOD interview, Macambol, 26 February 2006
- 3 DENR Mines and Geosciences Bureau (January 2007) *Philippine Mining and Development Projects Profile*; 'Philippine govt says Australia's BHP to invest US\$1.5bn in Davao nickel plant' in *AFX News Limited – Forbes*, Manila, 23 February 2007; 'Billiton investing US\$1.5bn' in *Manila Standard*, 24 February 2007
- 4 CAFOD interviews with community members, Macambol, 25 February 2008, Macambol, 2, 23 and 24 August 2008, Mati, 3 August 2008 and Letter from Macambol Multi-Sectoral Alliance for Integrated Development (MMSAID) to Mr. Don Argus, President BHP Billiton, 26 August 2007. See also Tesiorna, Ben O. 'Davao Oriental Mining Causes Row Among Lumads', *Sunstar*, 29 May 2008, Mallo, Carlo P. 'Rights office to step into Pujada mining row', *Sun Star Davao*, 15 August 2008, Palacio, Rose B. 'Philippines Mining/BHP Billiton - Mining must not be abused', Gov Malanyaon, PIA Press Release, 2 August 2008, 'Davao Oriental Folk: We Want Food, Not Mining', *Bulatlat*, Vol. VIII, No. 24, 20-26 July 2008 and 'Villagers oppose nickel processing plant in Mati', *GMA News*, 27 February 2008 and Arguillas, Carolyn O. 'Residents picket mining firm's office in Mati,' *MindaNews*, 5 March 2008
- 5 CAFOD interview, 25 August 2008
- 6 References for whole paragraph: CAFOD interview with Narcisio Salang, Macambol 25 February 2008 and meeting with Mandaya leaders, Mati, 3 and Macambol 25 August 2008 and CAFOD interview with Macambol barangay council officials, Barangay Hall, Macambol, 26 February 2008, and Arche, Ben D. 'Lumads organize unification council to resolve mining row,' *Manila Bulletin*, 13 August 2008 and 'Lumads form unifying council for mining tiff' *Sun Star Davao*, 11 August 2008
- 7 References for whole paragraph: CAFOD interviews with community members, Macambol, 25 and 26 February 2008, and 2, 3 and 22 August 2008.
- 8 References for whole paragraph: CAFOD interviews with community members, Macambol, 25 and 26 February, CAFOD interview with Macambol barangay council officials, Barangay Hall, Macambol, 26 February 2008.
- 9 References for whole paragraph: CAFOD interviews with community members, Macambol, 25 February 2008, Macambol, 2, 23 and 24 August 2008, Mati, 3 August 2008 and Letter from Macambol Multi-Sectoral Alliance for Integrated Development (MMSAID) to Mr. Don Argus, President BHP Billiton, 26 August 2007. See also Tesiorna, Ben O. 'Davao Oriental Mining Causes Row Among Lumads', *Sun Star*, 29 May 2008, Mallo, Carlo P. 'Rights office to step into Pujada mining row', *Sun Star Davao*, 15 August 2008, Palacio, Rose B. 'Philippines Mining/BHP Billiton - Mining must not be abused', Gov Malanyaon, PIA Press Release, 2 August 2008, 'Davao Oriental Folk: We Want Food, Not Mining', *Bulatlat*, Vol. VIII, No. 24, 20-26 July 2008 and 'Villagers oppose nickel processing plant in Mati,' *GMA News*, 27 February 2008 and Arguillas, Carolyn O. 'Residents picket mining firm's office in Mati,' *MindaNews*, 5 March 2008 and Foley, Brett and Javier, Luzi Ann 'BHP in Dispute with Partner Amcor over Philippines Nickel Mine', *Bloomberg*, 26 October 2007, Tesiorna, Ben O. 'Nickel mining firm barred from Pujada', *Sunstar*, 24 May 2008 and 'Australian Miner Accused Of Breaching Investment Promise For Nickel Project', *Business World*, Vol. XXI, No. 202, 15 May 2008 and Cayon, Manuel T. 'Mine firm seeks government support on its move to cut off ties with foreign partner,' *Business Mirror*, 20 May 2008
- 10 Name changed to protect identity, CAFOD interview, Macambol, 23 August 2008

- Ensure communities have the opportunity to access independent legal and technical advice at all stages of the mining project.
- Support independent social and environmental impact assessments at the Hallmark project.
- Set out publicly how they are going to ensure there is no environmental damage, no loss of biodiversity and no off-site impacts at the Hallmark project. If the risks are considered too great by independent experts, the community and the relevant government agencies, then mining should not go ahead.
- BHP Billiton must change its corporate policy on biodiversity to prohibit mining in all protected areas. AMCOR must adopt a corporate position on biodiversity to prohibit mining in all protected areas.

## To investors in BHP Billiton:

- Ensure that all of the above recommendations are swiftly implemented by the company.

## To the Philippine government:

- Carry out a new FPIC process for the Hallmark project, jointly with BHP Billiton, which should involve participation by civil society and be independently monitored and verified. If the process does not adhere to the principles of a genuine FPIC, as defined in the Indigenous Peoples' Rights Act, then mining should not go ahead at the Hallmark project.
- Ensure that all FPIC processes are independently monitored and verified by civil society and include an effective grievance mechanism for redress. Amend the FPIC implementing rules and regulations which impose restrictions on the time, manner and process of FPIC to better ensure they are in conformity with the customs, laws and traditional practices of indigenous communities.
- Carry out an independent investigation into the allegations of bribery outlined in this report and ensure that those responsible are held to account.
- Ensure transparency and disclosure of information about mining to the public in an appropriate, timely and accessible manner. This should include details of payments and contracts and social and environmental impacts.
- Provide independent technical and legal advice to communities and indigenous peoples at all stages of mining projects, from exploration to mine closure.
- Ensure Strategic Environmental Impact Assessments are carried out and verified by independent experts before mining permits can be issued.
- Create a separate national environment agency to independently enforce and monitor environmental laws and regulations and ensure it is adequately funded and resourced.
- Address the weaknesses of the National Commission on Indigenous Peoples: ensure it is fully independent and grant the commission sufficient financial and human resources with which to carry out its mandate. To ensure representation of indigenous peoples, key members of staff and commissioners of the NCIP must be chosen by indigenous peoples themselves, and not by the office of the President.

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