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Mining and Sustainable Development

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Introduction

The topic of this thematic section is on the potential contribution of mining to sustainable development. I would like to address this issue from the perspective of indigenous peoples and also from the UN Permanent Forum on Indigenous Issues.

I am an Igorot from the Cordillera Region in the Philippines. My region is where large scale gold, silver and copper mining has been taking place since the 1900s, during the American colonial period, and continues up to the present under the post-colonial governments. Until the early 1980s, almost 75 % of the exports of gold, silver and copper came from my region. The Igorot in Benguet Province are still suffering from the legacy of mining adverse environmental and social impacts. Since mining remains as one of the pillars of economic growth of the Philippine government, mining operations expanded to many parts of the country and in most cases, indigenous peoples are the ones most affected as it is in their territories where these minerals are found.

I was also the Chair of the UN Permanent Forum on Indigenous Issues from 2005-2009 and I am on my last term as a member this year. We just finished our two-week session last Friday, April 30. As it has been since the Forum started, issues related to mining were raised many times over during this session. Last year the Forum held an International Expert Group Meeting on Extractive Industries and the report of this can be found in E/C.19/2009/CRP. 8 dated 4 May 2009. The final report of this 8th Session contained several recommendations which I will talk about later. So much of what I will be talking about comes from my own experiences in my own country and other countries which I visited and the discussions which happened at the Forum in its 9 years of existence and also from the UN Working Group on Indigenous Populations which existed for more than 20 years under the Commission on Human Rights.

The need to differentiate mining activities

I have listened with interest to the opening comments of Member-States yesterday. There is a widespread agreement that mining is an essential element of a modern economy. It seems, that we cannot live without it's products-or at least some of them. It is hard to imagine that there is anyone who thinks the human need for gold jewelry outweighs the human need of poor indigenous farmers or hunters and fisherfolk to the means to provide food for their families.

Yet when we talk of mining we are carelessly doing it in a generalised way as if all mining had similar benefits and similar impacts. It most clearly does not. Iron ore and copper mining and some others do indeed provide key core raw materials for contemporary production and satisfaction of basic needs. Not I think that that would make any more acceptable the rights violations that are sometimes associated with these mines. However by contrast gold mining produces a metal with very limited productive uses and with a vast existing unused amounts stored in some central banks . Its extraction and processing is associated with some of the most problematic environmental dangers . Yet over the last 20 years exploration and mining for gold has, with some variations, attracted a disproportionately large amount of total mineral exploration expenditure globally . This currently can be seen as a response to the uncertainty of economic crisis and more generally because gold mining tends to show quicker returns on capital invested and lesser average levels of investment than for the base metals sector.

Uranium, as another example. Uranium mining is not in any sensible discourse – a credible contributor to sustainable development. Its two major uses are first in the production of nuclear weapons (clearly global destruction is not part of any sustainable development strategy.) |Its other use is in generating nuclear power. Here, from being a discredited and largely abandoned option, following the Three Mile Island and Chernobyl disasters, it has seen a recent resurgence as companies and govts are emboldened by the climate crisis to promote the nuclear option. However there are serious fundamental problems associated with uranium.

First, an estimated 70% of the world's uranium deposits are located on the lands of indigenous peoples. Uranium mines leave behind huge amounts of “tailings”, radioactive waste. The tailings, contain approximately 80% of the original radioactivity of the ore, with half lives up to 240.000 years. Surely this is the ultimate in unsustainability! Everlasting potentially deadly pollution. There is no means of safe disposal of the tailings which in most cases are left in the open. Exposed to wind and rain, and radioactive and poisonous materials are contaminating the surface water, groundwater aquifers, the soil, the air, plants and produce, livestock and wild animals, the air to breathe, and will continue to do so for thousands of years into the future.

The health impacts are serious leading to elevated rates of cancers. These heightened incidences are not just confined to workers but also affects communities nearby.

In Niger, according to reports from indigenous peoples, uranium mining has already contaminated the groundwater (the level of uranium in the drinking water are 10 - 110 times as high as the WHO standards), depleted fossil water aquifers which will neer be replenished, and the mining company announced officially that their planned new mine will have depleted the local fossil water aquifer about the same time that the uranium deposit will be exhausted. This leaves the Touareg people from those communities with nothing to survive on. We have had several Touareg representatives coming to the Permanent Forum presenting the problems they face with uranium mining.

Uranium mining companies have not found any means to solve these problems and to store their wastes in any adequately responsible way. Many uranium and other mining companies have followed a common strategy and gone bankrupt after the deposits were depleted - leaving their aftermath to the States to clean up.

In my view the only way forward is a global ban on uranium mining and ensure that the uranium and nuclear industry, monitored by the international community, clean up their aftermath, pay compensation to the victims of their activities and allow for a continued monitoring of the sites in question. And similar efforts are probably the essential minimum if mining is to regain its social licence to operate.

The case of the nuclear industry raises other issues. As I hope we all know in the past and up to the present, indigenous peoples lands and waters have been extensively used as nuclear test sites without regard or in some cases even warning to the traditional owners. These have led to catastrophic consequences such as cancers, blindness, stillbirths and what is now known as jellyfish babies, among others. Within the US, indigenous lands are sometimes chosen as sites for the most dangerous and toxic of industries including nuclear weapon manufacture within the US.

Now some indigenous peoples living in remote areas are obliged, even when they have recognition of their rights, to “welcome” such dangerous and polluting industries and dumps because of their absolute poverty and lack of other cash earning opportunities. So some consent to host such facilities and some may even allow mines. If and where this is done consciously clearly it is an exercising of their right to control developments within their own territories. However I think we should all be deeply disturbed by the implications of the toxic materials and poisonous wastes generated by rich industrial societies being dumped upon the poor and marginal whether these be indigenous or not or whether they “consent” to such discriminatory actions. Because such “consent” is clearly in large part an acknowledgement that their acceptance of the toxic waste is based on the desperation of their poverty.

So when we speak of mining then we need to be more differentiating in our assessment. Are we speaking of open pit copper mining, underground mining, mining for iron or for gold or diamonds.

Environmental and Social Impacts

Yesterday I also heard Member-States expressing their grave concern that the environmental and social impacts are regrettable and disturbing. But my question to us all is what are we going to do about the clear documented and continuing evidence of the association of some mining activities with grave human rights violations including, the disregard for already adopted international minimum standards for the dignity and welfare of indigenous peoples, such as the UN Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169?

As I mentioned earlier, in my capacity as Chair of the UN Permanent Forum on Indigenous Issues from 2005-2008 and as a member this year, I have heard numerous and most serious presentations on the impacts of mining on indigenous peoples. Some involving violent dispersal, killings, destruction of homes, desecration of sacred sites,

the destruction of subsistence economies constituting a threat to life and culture and many more. Without naming names these complaints identify companies small and large including members of the ICMM which is an alliance, as we heard yesterday, of industry leaders promoting best practice.

The Mining Industry has an appalling record for environmental and social impacts going back over a long period. Deeply negative impacts from mining have been felt on every continent (so far with the exception of Antarctica). Both past and present mining has generated environmental impacts that include the devastation of river systems and valley peoples like the Ok Tedi and Fly rivers in Papua New Guinea. The impacts of pumping mine waste into these rivers started by BHP (currently the world's largest mining company) are predicted by scientists to generate pollution of the river system and the poisoning of adjacent forests that are not only killing fish and other lifeforms in the river but causing die back in surrounding forests that is predicted to grow worse and continue to spread for hundreds of years into the future. Even ancient mining activities can generate lasting negative environmental impacts that persist long after the demise of the people and corporations that caused them.

Aluminium, copper and steel production alone account for more than 7% of global energy consumption. Bauxite is often mined over extensive areas resulting again in the stripping of surface vegetation disruption and pollution of water courses and the common range of both environmental and social impacts. However in addition bauxite processing on average requires 15 kilowatt hours of electricity for each kilo of aluminium produced. Recycling of aluminium however on average requires only approx 5% the energy input of primary production. Recycling of aluminium currently accounts for approximately 1/3 of production. Yet large amounts of recyclable aluminium and other minerals are still lost in landfill. Other recycling efforts also remain underdeveloped.

Additionally according to Citigroup "At higher latitudes, high rainfall may require some operational adjustments, with the integrity of tailings dams being an issue for consideration, and the potential for consequential environmental damage." The analysts also asserted that "Critical infrastructure such as ports may be at risk from small sea level rises particularly if combined with storm events. "

Other forms of tailings containment may also require a rethink or a ban. Unpredictable weather shifts may also require additional safety measures and expenses in arid and semi arid regions. In high mountain areas there have been some recent attempts to store mine wastes including potentially toxic materials in glaciers. However in the Andes and Central Asia global warming has exposed the short-sightedness and irresponsibility of such claims. Melting glaciers are already posing problems of containment of potential serious pollution.

Despite increased reference to industry best practice, clearly unacceptable and widely banned practices including Riverine and Marine dumping are still continuing. Such practices have resulted in the choking of rivers and inshore waters including corals. Marine dumping has been a source of great controversy and is banned in many states. Companies nonetheless advocate the increased use of marine dumping of mine waste. This despite the fact that we remain unclear about the full role of the sea in maintaining a balance in global climate. Research, however, points to a vital role for

small marine organisms as potential absorbers of carbon. Yet large scale pollution of waterways and direct marine dumping are adding to marine pollution and putting marine ecosystems under increased pressure. Marine mining and further dumping is now also developing.

Clean water is a precious and increasingly scarce resource yet it is used in vast quantities in mining even in semi arid and arid regions. Mining in these regions and seasonally dry areas has always posed severe problems. Mining is a massive user of water. The Citigroup analysis of climate change risks to mining suggest "availability of fresh water is critical to most mining and processing operations." In the USA between 1964 and 2005 Peabody coal has drawn millions of gallons from aquifers under the deserts of the South West that are a main source of drinking water for Navaho people and their stock. This vital lifegiving water was used by Peabody Energy to pump coal in a mixture of gasoline and water in a slurry pipeline operation to transport extracted coal to the Mohave electricity Generating Station in Laughlin Nevada .

The report of the DESA for this Session which is entitled “ Trends in Sustainable Development: Chemicals, Transport, Mining and Waste Management” states that “approximately 10 per cent of active mines and 20 per cent of exploratory sites are located in areas of high conservation value, while nearly 30 per cent of active mines are located in water-stressed areas .The increasing consumption of resources (mostly energy and water) needed to extract metals as well as the pollution generated by the extraction process are main constraints to sustainability of mining”.

Pollution problems due to mining are exacerbating in most mining areas. Direct dumping into rivers is still practiced by major companies. The Grasberg mine in West Papua, Indonesia for example produces up to 300,000 tons of waste per day. Which dwarfs the problem of a city even like New York that produces up to 15,000 tonnes per day. Dumping into the ocean has been and is practiced despite our lack of knowledge of its full consequences on marine organisms. Depositing on the land is also practiced mostly in arid and semi arid zones. But in this time of climate change and unpredictability this may prove problematic also. Tailings dams are common and numerous but are subject to collapse and breaches. Over past 25 years Philippine mines alone have experienced on average more than 1 serious incident every 2 years. These have included several incidents resulting in deaths from the slides and lasting environmental and economic consequences inundating fields, poisoning rivers etc This is not including the many small spills.

All such waste disposal systems are also confronted by new threats from climate change. Again in the Philippines our best tailings pond (lake better describes it) were built to withstand a 1-500 year event. However in the last 10 years the Philippines has recorded an increase in the number and the intensity of typhoons last year two major typhoons hit the northern Philippines within 10 days causing tremendous devastation . Dams were protected by releasing as much material as possible before and during the typhoon .We are increasingly concerned that climate change will make the impacts of mining more severe and the lives of those downstream less secure.

Acid mine drainage and other damages to rivers resulting in their death, skin lesions and other health problems for people, fish, livestock caused by downstream pollution of mines, air pollution by dust from the mining operations and many others

In the 21st century I say frankly that in a time of review and policy recommendations for a sustainable future we have to be more forthright in terms of identifying what the real problems are and make recommendations on how these can be addressed. Majority of the UN member-states have obligations under International Human Rights Law and under Multilateral Environmental Agreements which they should meet and compliance with these obligations is one of the steps in addressing issues of human rights violations and adverse environmental and social impacts of mining. Within the framework of CSD, we cannot turn a blind eye to these bad consequences because we are hooked on mining providing a cheap, too cheap perhaps, supply of raw materials.

At the last year's 8th Session of the Permanent Forum we came up with a recommendation which supported the framework which John Ruggie, the Special Representative of the Secretary General on the issue of Human Rights and Transnational Corporations and other Business Enterprises, developed on Human Rights and Business. This recommendations states;

12. The Permanent Forum supports the conceptual and policy framework proposed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. This framework rests on three pillars: first, the duty of the State to protect against human rights abuses by third parties, including transnational corporations and other business enterprises, through appropriate policies, regulation and adjudication; second, the corporate responsibility to respect human rights, which means acting with due diligence on all matters to avoid infringing on the rights of others; and third, greater access for victims to effective remedies, both judicial and non-judicial. (**E/2009/43 E/C.19/2009/14**)

I hope the CSD 18th Session and the member-states will reiterate this framework and further elaborate on it as it applies to the mining industry. There are other Special Rapporteurs who also made comments on mining and how this affects the right to food and subsistence, housing, freedom of religion, among others. The past and present Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, (Rodolfo Stavenhagen and James Anaya), also made several references on their annual reports on mining and indigenous peoples.

There are clear signs that the mining industry is moving on in important areas. We would acknowledge that some companies –including in Australia have made welcome advances in the employment of Aborigines. These have been conscious policies resulting in significant improvements and benefits for local people. Companies like Rio Tinto and others conduct some trainings on Human Rights for their staff. This is most welcome as a start and if it could be roled out elsewhere I think it would be widely welcomed and would contribute positively.

However in the area of respect for basic human rights, the recognition of basic rights like the need to secure the Free Prior and Informed Consent of indigenous peoples before operating on their lands, despite discussions and explanations this is not, as I understand FPIC is not yet endorsed to by the ICMM. And the Intergovernmental Forum on Mining and Sustainable Development has had no interaction with the UNPFII nor with UN Special Rapporteur on Indigenous Peoples Rights. Even if this

is an intergovernmental forum it should not remain as an exclusive intergovernmental body. The CSD is an example of inclusiveness and this practice should be followed by the IGF.

Some companies have taken the welcome step of announcing their individual commitment to human rights standards and I can quote from the Rio Tinto Annual report for 2009 as one example. It says “Rio Tinto operates in a manner consistent with the UN Declaration on Indigenous Peoples and sovereign obligations. We respect the land connection of indigenous communities and work with them on their land in a spirit of reciprocity, transparency and recognition of their culture.....”

Now there are indigenous brothers and sisters of mine who would dispute if in fact Rio Tinto does fully operate in such a manner and there is a problem we face generally of the absence of credible independent monitoring of corporate behaviour which means such claims remain unconfirmed. However I am sure that such commitments are a welcome development in so far as they go and can be, if supported by actions and independent verification the foundation for reductions in conflict and greater mutual respect

The Rio summit nearly 20 years ago and Agenda 21 which will soon to be remembered and built on, popularised and inspired millions with its call for sustainable development. The situation was so serious then that there was a willingness to contemplate new and different approaches. For indigenous peoples we were hailed for our sustainable living our walking gently on the earth which is both the philosophy and practice of indigenous societies throughout the world. We were hailed and acknowledged in those documents as a model for the future no longer consigned as so often before into being remnants from the past.

However there is often a gap, a time lag, between words and actions. At the time indigenous peoples were already suffering great hardship as the result of the insatiable and unsustainable demands of the global economy. Through logging, mining, industrial fishing and other assaults our praised models of sustainable living were and remain under a severe attack. Indigenous peoples who have contributed the least to the generation of this current global economic and ecological crises, are however the first to suffer its impacts and most of the times, left with no recourse or redress. This is because most of us live closely with and depend on nature. Our regard of earth as our mother, which always was the source of our security, now becomes the source of our greater vulnerability as the earth strikes back.

I would like to conclude by reiterating some of the recommendations presented by the indigenous peoples' major group statement yesterday.

1. The respect for human rights and aspiration for social justice is an essential pillar of our shared striving and vision for sustainable development. It was and is for indigenous peoples and us all the foundation of their engagement with this multistakeholder process.
2. I call on mining corporations both transnational and national, as well as investors for mining (whether institutional or individual) to endorse the UN Declaration on the Rights of Indigenous Peoples. I recommend that mining

corporations and their associations such as the ICMM and the IGF work with indigenous peoples to elaborate operational guidelines on how to use the UNDRIP in their day to day operations and how to monitor and promote its implementation.

3. Whatever good or best practices there are, in the main, mining is such an unsustainable destructive activity which is why I strongly recommend that stronger regulations in different areas should be done. Voluntarism is not enough given the seriousness of the economic, environmental, social, cultural and spiritual impacts for indigenous peoples. Mining legislation which allows for the unfettered operations of mines should be repealed and revised.
4. One lesson from the financial crisis of great importance is not allowing speculative hot money to force an artificial acceleration of the exhaustion of our natural non-renewable resources in mining. Derivatives trading and other speculation against metal ore stocks may damage both the environment and the mining industry.
5. Indigenous peoples and others deeply affected by mining have raised their complaints in many arenas, whether in the judicial or non-judicial systems. Still there is a limited capacity to respond to such complaints. I strongly recommend that information on channels and mechanisms for complaint, justice and redress at all levels from the local to the global level, be disseminated widely to indigenous peoples and these should be made more accessible to them. Relevant capacity-building activities should be done with the support from bilateral donors, intergovernmental bodies and the States.
6. The mining industry and Governments have established an intergovernmental panel on mining and sustainable development. However, indigenous and other affected communities are excluded from this body and other bodies like the ICMM. The threats to and opportunities for sustainable development posed by the mining industry require a more balanced standing body representing all concerned sectors to work with independent monitoring structures to present and disseminate in a transparent manner more information on the serious issues concerning mining extraction.
7. The World Bank Group and other international financial institutions should continue to monitor and review their operational directives and safeguard policies pertaining to indigenous peoples in conjunction with existing international standards, especially the right to free, prior and informed consent as required under the United Nations Declaration on the Rights of Indigenous Peoples. The Bank should also implement the recommendations of its own Extractive Industries Review. Likewise, other multilateral lending institutions should include the requirement to obtain free, prior and informed consent in their safeguard policies on indigenous peoples' environments and other concerns.
8. With the changing patterns in sustainable production and consumption, and with consideration of the principle of common but differentiated responsibilities and the ecosystems-based approach, all sectors, especially

Governments, should actively promote more sustainable ways of life, including those practised by indigenous peoples for generations including small-scale mining. Respect for their traditional knowledge, practices and innovations, and their customary governance systems and laws on extraction of natural resources should be ensured. States, corporations and society at large should work to reduce and promote the reuse, recycling and substitution of metals and minerals help minimize mining and related processing activities which result into toxic wastes. I also recommend that the specific roles and contributions of indigenous women in developing more widespread sustainable production and consumption should be strongly supported.

9. The CSD, corporations and States should operationalize the framework on human rights and business developed by John Ruggie which rests on three pillars: first, the duty of the State to protect against human rights abuses by third parties, including transnational corporations and other business enterprises, through appropriate policies, regulation and adjudication; second, the corporate responsibility to respect human rights, which means acting with due diligence on all matters to avoid infringing on the rights of others; and third, greater access for victims to effective remedies, both judicial and non-judicial.
10. Finally, I reiterate the proposal of the UNPFII which calls on the ICMM to invite the members of the Forum, the affected communities and indigenous experts to visit 10 of their sites which they claim are doing best practice, so they can see and make their own evaluation of these. Then they can use the experience to craft more relevant recommendations for the Policy year in 2011.

Thank you very much.

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