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Outline

Executive Summary

I Introduction

1. Locating the project in terms of its sectoral context
 - Bank's Complimentary Financing Scheme (CFS)
 - Economic development and sustainable use
2. Locating the project in terms of its situation specific to the country
 - Contributions from mining
 - Recent developments in Philippine Mining Policy
 - Philippine Environment Policy transitions:

II Project Description

1. From its origins to status quo (history, planning, implementation)
 - The United Nations expert assessment mission
 - Conflict and agreement with ADB team report

- Recent developments:
2. Concerns
 - Community demands:
 - Issues raised by the PRRM:
 3. Actions taken and results of actions by affected people and NGOs

III Project Monitoring

1. Review of project against ADB's Environment Policy Provisions
2. Review of project against desirable environmental standards
 - Individual Indicators
 - Project Stakeholders and their Interests
3. Key principles
 - Principles on environmentally sound design
 - Access to environmental information, environmental decision-making and environmental justice:
4. Monitoring against other ADB Policies

Executive Summary

Marcopper's operations in the Philippines began in the late 1960s, at a time when precursors of the 2002 ADB Environment Policy were already in place. Later, Marcopper expanded operations, and the ADB provided a loan through its Complimentary Financing Scheme (CFS). Years later, disaster struck: a dam containing run off (known as tailings) from mining activities collapsed. Previously, issues were being raised about the mining operations by the communities, especially in other sites of operation.

This case study focuses on the new ADB Environment Policy and its interface with the ADB Complimentary Financing Scheme and the En-

vironmental Policy system of the Philippines in the context of the Marcopper disaster. Recent developments on the Philippine EIA System and Philippine mining policy are also mentioned.

The Author approaches this study from a human rights perspective, including the right to a clean and ecologically healthy environment. The case pays special attention to the strengths and weaknesses of institutions (organizations, policies and norms included). The ADB's approach to CFS is highlighted as a challenge area that needs to pay particular attention to the implementation of ADB and host country policies. The distancing of the ADB from the project is an unintended effect of the co-financing scheme is illustrated.

Introduction

The Project in General

The Marcopper Mining Corporation (MMC or Marcopper) began operating in the late 1960s. At that time the precursors of the 2002 ADB Environment Policy were already being used¹, though the current Philippine EIA system was not yet in place². Furthermore, the discourse on safeguards and human rights was not yet well established, and a dictator came to power who later declared martial law.

The case is included for a number of reasons. First, it is significant from a human rights perspective. It was one of the more difficult projects financed by the ADB. It was included to illustrate the case of projects that are co-financed. The case also presents many opportunities for learning

from hindsight. Such hindsight can illuminate other issues that are not yet being addressed by the new ADB Environment Policy and the case presents the need for such projects to make the transition towards compliance.

1 Apparently this was in the form of a monograph entitled: Integrating Social and Environmental Considerations in Development Projects. There were also other OMs.

2 The current version already includes a policy on programmatic EIA. As early as 1996 there was already a very well elaborated Department (of Environment and Natural Resources) Administrative Order 96-37, which was revised and updated in 2000. Prior to this the Presidential Decree 1586 defining the Philippine EIA System was issued in 1978. Its basis was Presidential Decree 1151, issued the year before, also known as the Philippine Environment Policy. Proclamation 2146, of 1981, defined environmentally critical areas and projects that are within the scope of the EIA system.

Locating The Project in Terms of its Sectoral Context

The ADB does not have an environment sector but it has an industry and a minerals non-fuel sector, and an infrastructure sector that covers roads, bridges, dams and the like. All these sectors have significant impacts on the environment, hence the question arises of how to manage the environment concerns in each of these sectors. The project was chosen in part because of its failures, but more importantly because of the possibility of drawing lessons from it.

If it is any indication, the ADB does not have any further investment in mining after Marcopper. It does however have investments to rehabilitate coral reefs, affected by mining and over fishing, in poverty stricken coastal communities in Indonesia. It was reportedly willing to fund the clean up of a former uranium mine site in Kyrgstan, premised on a commitment not to mine uranium anymore.¹

Bank's Complimentary Financing Scheme (CFS)

As of 2002, the ADB has 61 member countries, of which 37 are devel-

oping countries — these are the eligible borrowers. Lending in 2003 was US\$5.7 billion, comprising 89 loans, of which: the private sector share was US\$145 million, comprising 4 loans, representing a mere 2.54% of the portfolio. Of US\$5.7 billion there was US\$35 million of equity investments, and US\$178 million of grant financing (covering 27 projects). Again of the US\$5.7 billion, US\$2.7 billion was mobilized by co-financiers.²

The Complementary Financing Scheme³ (CFS) is a participation modality under which the Bank, in addition to the loan from its own resources, makes a complementary loan on market-based terms, funded entirely by participations from market institutions without recourse to the Bank. As such, the Bank becomes the lender of record and administers the complementary loan. In return for the privileges accorded, the participating institutions offer better terms than otherwise.

From the 1970s to 1994 the bank's co-financed portfolio grew by about 2 to 3 orders of magnitude (see Appendix 1). Over the years, it has

come to a situation where practically 50% of the loans come from co-financing partners (official sources, commercial sources and export credits). While this sharing has shifted in various directions, the co-financing model remains a win-win solution for both the bank and the co-financing partner. The bank's burden to generate its own funds is reduced; it involves the private sector instead. Thus this reduces the involvement of the bank and therefore its direct risk.

This practice allows focus and resource pooling; resulting in the sharing of risks and benefits. It achieves scale, which is not possible if smaller institutions, the bank, or the co-financiers acted individually. However, there are specific challenges to such an arrangement. An example from the ADB's strategic strengths analysis is its decision to focus on agriculture and rural development and similar sectors, acknowledging that it has not done very well in manufacturing. It was silent on its performance in mining and industry⁴. The silence was really about the risk presented by the co-financing scheme on the environment, human welfare, and the bank's image.

Until the early 1990s, the ADB's assistance to the private sector covered numerous sectors⁵ with no specific prioritization. The 1995 PSO strategy sharpened the sector focus, prioritizing infrastructure and financial sector projects⁶ and downplaying

projects in manufacturing, agriculture and mining sectors. With constrained resources, it had limited ability to assess manufacturing, agriculture and mining projects and modest capability to add value to them. Most of its manufacturing projects turned out to be problematic. The 1995 strategy also continued to give priority to financial sector projects (including capital market institutions, financial intermediaries and investment funds), which had been important planks in PSO from the start. With this strategic decision the ADB was able to direct its PSO to the challenges faced by DMCs in infrastructure and capital market development to achieve sustained growth. During 1995-2000, the share of infrastructure in the total PSO portfolio increased substantially from 27 percent to 47 percent. This increase was matched by a decline in the share of manufacturing and other sectors from 27 percent to 16 percent⁷.

Economic development and sustainable use

The Bank asserts that the key to economic development is ensuring a balance between economic development and the sustainable use of natural resources. The Bank underscores its commitment to promoting environmentally sound economic activities.⁸ The basis for this OM includes a declaration signed by multilateral development institu-

tions⁹, and an ADB working paper¹⁰ among others. In recent times, the Bank has been more elaborate and to a large extent specific in its requirements. For example it now has a specific OM for private sector projects that elaborates on a process and lead-time for submission to the Bank's Board for review¹¹.

1 See: <http://www.nti.org/db/nisprofs/kyrgyz/mining.htm> (access date: 2003 Nov 26).

2 Overview of Asian Development Bank (ADB) Safeguard Policies Meeting for Development Finance Institutions Brussels – June 2003

3 "The Bank encourages co-financing with private sector institutions to enhance mobilization of private sector capital for the purpose of developing a viable private sector in the Bank's DMCs. The Bank may extend financial support to a private enterprise together with other bilateral or multilateral agencies, commercial banks, and/or other financing sources. Such co-financing could be in the form of parallel financing, joint financing, or participation in the Bank's complementary financing scheme. The Bank may also participate in syndicated financing. To facilitate participation of commercial co-lenders, the Bank may finance later maturities, or it may weight the repayment schedule of the Bank loan towards later maturities to achieve a reasonable debt-service burden." <http://www.adb.org/Documents/Manuals/Operations/om07.asp?p=aadb>

4 See: <http://www.adb.org/Documents/Policies/PSO/default.asp>: Private Sector Operations: Strategic Directions and Review: II. Assessment of Past Performance

5 Including manufacturing, agriculture

mining, infrastructure, and financial sector.

6 Supplemented by organization-wide expertise in infrastructure development.

²<http://www.adb.org/Documents/Policies/PSO/strategic201.asp> and <http://www.adb.org/Documents/Policies/PSO/strategic202.asp>

8 The applicable version of the policy for this project at the time when the ADB became involved in it is the February 1988 version of the Operations Manual Section 21: Environmental Considerations in Bank Operations.

9 Multilateral Development Institutions: Declaration of Environmental Policies and Procedures Relating to Economic Development, adopted by ADB, Arab Bank for Economic Development in Africa, AFDB, World Bank, EEC (Commission), OAS, UNDP, and UNEP, 1 February 1980, 19 ILM 524 (1980).

10 Working Paper 6-79, Environmental Considerations in Bank Operations, dated 14 December 1979

11 The Bank's concern over the environmental impact of assisted projects also extends to those in the private sector. Accordingly, this aspect will be considered as early as possible during the processing cycle. Generally, the Bank will require adherence to the Bank's and the government's environmental guidelines or regulations, including any project-specific requirements, as well as suitable environmental monitoring during the implementation and operation phases. Whenever appropriate, the Bank may also recommend or require an environmental impact assessment as well as such modifications in the project concept or the installation of such safeguards as are necessary to minimize possible environmental damage. In such cases, a summary environmental impact assessment report is required to be submitted (sic) to the Board at least 120 days prior to Board consideration. <http://www.adb.org/Documents/Manuals/Operations/om07.asp?p=aadb>

Locating the Project in Terms of its Situation Specific to the Country

The Philippines has fairly advanced environment policies. It is among top borrowers from ADB.

Contributions from mining

Mining has a Gross Value Added to Philippine Gross National Product contribution starting at 1.47% (1970) peaking at 2.14% (1985), lowest at 1.00% (1999) and was last reported at 1.05% (2000). Mining exports started at 20.76% (1970) were highest at 24.56% (1973) and was lowest and last reported at 5.12% (2000) following an almost steady decline. Employment in mining and quarrying (in thousands) was officially placed at about 50 (0.45% of total employment, 1970), peaking at about 160 (0.74%, 1987-1999) and was last reported at 110 (0.34%, 2000). From 1980 to 2000, while copper production in the Philippines has been declining steadily from 1.124 MMT to

0.130 MMT, gold has seen a steady rise from 20 MT to 34 MT Cabalda et al. (2002).

Recent developments in Philippine Mining Policy

Civil society organizations (CSOs) were almost in a state of panic recently because of an alleged event wherein the President was supposed to sign the draft National Minerals Policy Act and its accompanying Executive Order. The policy liberalizes access to mineral resources in the Philippines. After much clarification it was established that the urgent meeting called by the NEDA, as secretariat of the PCSD, was to consult CSOs. Whether this was the real intention or not, there have been a number of last-minute policy decisions and approvals; sometimes even railroading months of consultative work. In this case, decisions may

have been made by the DENR, the ESSC, and various civil society groups.

More recently, in part as a result of this miscue by NEDA and the reaction of civil society organizations the Philippine government used a different tack. A draft version was released Nov 24, 2003 entitled National Policy Agenda for Revitalizing Mining in the Philippines which was on track to be signed by the President once finalized as an Executive Order. Apparently there is now better elbowroom for civil society organizations to negotiate given this development. There was also a forum sponsored by the World Bank that allowed various sectors to raise their concerns about mining. This created some space for dialogue that could possibly begin to address the situation of mining in the Philippines.

Philippine Environment Policy transitions

The Philippines set up an environment framework law as early as 1977. It also responded very promptly to

the Rio Convention of 1992 by setting up the Philippine Council for Sustainable Development and crafting the Philippine Agenda 21. The Civil Society groups had very good participation in this process. There was even an Asian Nations Conference on Sustainable Development organized sometime in 1991. The Business Sector feeling left out of this process and wanting to keep abreast with these developments also drafted a response known as Business Agenda 21. Environment and Natural Resources Accounting is finding inroads in the country as a result of intervention from various groups, the ADB included. Projects have been financed also by the (EEPSEA) specifically Bennagen's (1998) estimate of the environmental damage from the spill of Marcopper.

While so, it is also important to acknowledge the relative weakness of the enforcement of Environment Policy in many Asian countries, so that the Environment Assessment system tends to be abused. At the same time, there is a shift towards more stringent policies in the region.

Project Description

Below are some important project details available from the Mining Ombudsman Report¹.

Resource	Copper (with gold and silver by-products)
Mine locations	Marinduque Island, Philippines
Mining method	Open-pit. Two pits now closed - Tapian Pit and the San Antonio Pit
Affected communities	Marinduque Island communities Calancan Bay, Mogpog, Boac, Mine Site Community
Community support groups	Social Action Commission Marinduque Council for Environmental Concerns (MACEC)
NGOs	Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK) (Friends of the Earth Philippines) (National Office) - http://www.info.com.ph/~lrcksk
Mine operator/s	(1967 - 1997) Marcopper Mining Corporation (Placer Dome) (1997-present) Marcopper Mining Corporation
Ownership:	(1967 - 1994) Philippine Government: 49% Placer Dome: 39.9%Philippine Public Shares: 11%(1994) Philippine Government sells its shares in Marcopper to F Holdings (a Philippine company).(1997) Placer Dome divests from Marcopper Mining Corporation, leaving a subsidiary, Placer Dome Technical Services (PDTS), to handle Mine reclamation, rehabilitation and compensation issues(2001) F Holdings takes over PDTS's job of handling reclamation, rehabilitation and compensation issues(see chronology).

¹ See <http://www.minesandcommunities.org/Country/aus3.htm>

From its Origin to Status Quo (History, Planning, Implementation)

The Marcopper Mining Corporation (MMC) is managed and owned by Placer Dome Inc. (PDI) Pacific, an Australian subsidiary of the Canadian mining multinational PDI. It is the third largest mining company in the country. It started its operations in the Tapian ore body in Marinduque in 1969 producing 30,000 tons of copper daily. After depleting the Tapian mineral reserve, it moved to the San Antonio ore body and used the Tapian mines as a waste disposal pit. For 16 years (1975-1991), MMC dumped its mine tailings from the Tapian pit into Calancan Bay. Then in 1991 MMC built the Maguila-guila Dam in Mogpog Marinduque.

PDI ranks among the world's top gold and copper producers. Its track record for social acceptability and environmental safety however, is far from impressive. Its records include being charged with cyanide leaching at the Golden Sunlight Mine in

Montana, USA, the pollution of Lagaip River for tailings dumping at Porgera, Papua New Guinea, and the acid mine drainage problems at Backhorn mine in Nevada, USA.

The United Nations expert assessment mission

Following the spill of tailings into the Makulapnit and Boac Rivers from the Marcopper mine, the DENR requested, through the UNDP Resident Representative in Manila, that the United Nations provide an independent assessment mission to the site of the mine tailings spill on Marinduque Island. The Mission was subsequently organized by the Joint United Nations Environment Programme/Department of Humanitarian Affairs (UNEP/DHA) Environment Unit. The Mission was organized in close cooperation with UNDP and the Government of the Philippines.

The objectives of the U.N. Mission included the following: assessing the

impact of the mine tailings on human health and the environment; assessing the cause of the failure of the tailings dam; provide advise on long term and short term actions; and to arrive at some consensus on these concerns given the disagreement among stakeholders.

The U.N. Mission final report contains an extensive ecotoxicological assessment, an evaluation of the impacts on human health and well-being, general discussion on the causes, as well as recommendations to avoid future disasters. The U.N. Mission team's conclusions were

- The Makulapnit and Boac River system has been so significantly degraded as to be considered an environmental disaster;
- The aquatic life, productivity and beneficial use of the rivers for domestic and agricultural purposes are totally lost as a result of the physical process of sedimentation;
- The coastal bottom communities adjacent to the mouth of the Boac River are also significantly degraded as a direct result of smothering by the mine tailings;
- There is no evidence of acute poisoning in the exposed population due to the mine tailings.
- There is an increased health and safety risk due to immersion and flooding as a result of the very large volume and physical properties of

the mine tailings, should they be mobilized during the wet season; and,

- Concentrations of trace metals in the mine tailings were not sufficiently high to represent an immediate toxicological threat.

Conflict and agreement with ADB team report

The ADB fielded its own team, which described the incident as an "accident" and absolved Marcopper of negligence and non-compliance with environmental requirements. The UN review on the other hand faulted the company for inadequate environmental management and found the environmental impact assessment process as deficient. According to the UN report "the failures of Marcopper to completely stem the flow of tailings from the tunnel five weeks after the incident reflects the lack of risk assessment and contingency planning". However, both ADB and UN report agreed on one thing: "the spillage exacted a major environmental and social toll on the island of Marinduque."¹ The ADB report is not available as a public document, as is the case with most other ADB documents. Most of which are internal bank documents pertaining to Marcopper; that are used for the Bank's decision making, classifying them as confidential.²

Recent developments

The DENR Secretary Elisea Gozun reported the following recently. The United States Geologic Survey (USGS) team has finished its initial assessment. The assessment covers three aspects - the environment, health and the technical side of mining. The output of the USGS study will provide a comprehensive and long-term solution to this problem and should be ready by early next year (2004).

An inception report was to be presented to the people in Marinduque. Damages amounting to P61M have been paid and an additional P40M was being processed.

While the USGS study is ongoing some specific actions are being taken on the ground. Some of the tailings had been bagged. The mouth of the river had been dredged to allow for more flow in and out of the sea. The plug on the pond was found to be sound and thus there are no further releases of tailings. With these initial measures, the water quality in the Boac-Makulapnit River has substantially improved. Acidity – alkalinity (ph) is now within the standard for class C water body. The people are using it again for washing their clothes. Some fish species have also come back, though they have yet to be tested for fitness for human consumption.

The Philippine Department of Environment and Natural Resources (DENR) is addressing other mining disasters. These include: the Mount Diwalwal, Maricalum and the Atlas Mining.

Yet even with this show of good faith by the DENR secretary, who happens to come from the ranks of civil society organizations, some groups remain skeptic. Citing for example that the pro-mining stance of the present government continues as follows: "As of July 30, 2003, the DENR has approved 188 Mineral Sharing Production Agreement (MPSA) covering a total of 314,462.31 hectares of land, 16 exploration permit (EP) covering a total of 70,538.40 hectares and 2 FTAA covering 51,955.00 hectares. It is expected that with this new policy, more hectares of land will surely be in the hands of mining TNCs and more people will be displaced."

1 Salazar (1998).

2 This was the reply of a Bank staff on repeated inquiry and request for Marcopper related documents. This has been the attitude since the ADB is no longer associated with the Marcopper Project. Officially this was marked by the payment of the outstanding loan of Marcopper to the ADB and the return of the Covenant (Letter of Agreement) after the mining accident.

Concerns

Community demands

Below is a list of the demands from the community put together in a publication by Oxfam¹. These community demands have remained largely unchanged. The following demands have been voiced on many occasions in the seven years since the mine was shut down in 1996.

Calanacan Bay

- Acknowledgement by Placer Dome that the tailing disposal into Calanacan Bay since 1975 had an immediate detrimental impact on the food security and livelihood of the communities derived from fishing through turbidity from surface disposal and progressive smothering of corals and sea-grasses that sustain fish. This damage has ongoing economic and health effects.²⁹
- Acknowledgement by Placer Dome that the tailings contain heavy metals that are still leaching into the bay. The Calanacan Bay Fisherfolks Association has consistently requested that Placer Dome fund an independent en-

vironmental and health investigation into the impacts of the tailings in the bay.

- Compensation for the fisher folk for the loss of livelihood since 1975 and sufficient funds to cover health-related expenses. Such demands are based on the findings of an independent environmental and health audit.
- Rehabilitation of the bay so it can once again be a productive eco-system.

Mogpog

- Compensation for the damages and losses suffered in the 1993 Maguila-Guila Dam burst and for Mogpog fisher folk who were affected by the Boac River spill.
- Decommissioning of the Maguila-Guila Dam and rehabilitation of the Mogpog River.
- Removal of the mine waste that has built up behind the dam (within the Maguila-Guila Creek) and removal of the mine waste in the San Antonio waste rock dump.
- Commissioning of independent environmental and health studies to determine the extent of the damage.

Boac

- Proper sealing of the tunnel in the Tapan pit.
- Rehabilitation of the Boac River and marine areas impacted by the 1996 spill.
- Compensation for all affected residents of Boac.

Mine Site

- A thorough independent hydro geochemical and engineering study of the mine site, focusing on environmental, health and safety risks.
- Stabilization and eventual decommissioning of all dams and waste structures including the Maguila-Guila Dam, upper and lower Makulapnit Dams, Bol River reservoir dam and all former drainage tunnels in the Tapan pit, especially the 310 tunnel.
- Proper closure of the mine site including complete rehabilitation of the mine site and affected areas around the mine site.

Former employees and indirect employment

- Payment of back-pay and lost benefits to former employees of Marcopper who were locked out in a 1994 labor strike.
- Payment of back-pay and compensation for loss of livelihoods to community members who lost their jobs because of the disaster in 1996.³⁰

Issues raised by the PRRM

Concerns have been raised by the affected communities and by the Philippine Rural Reconstruction Movement (PRRM). Specific issues raised by PRRM in an open letter to the DENR Secretary and the Philippine President were the following:

- Full payment of damage compensation of affected families through the Environmental Guarantee Fund (EGF) of the MMC.
- Immediate clean up by MMC and PDI of the Boac and Mogpog Rivers and Calancan Bay through socially acceptable options and not the Submarine Tailings Disposal (STD) proposal of MMC and PDI.
- Complete rehabilitation by MMC and PDI of the affected communities and environment not only in Boac but also in the Mogpog and Sta. Cruz.
- Establishment by MMC and PDI of a Health Trust Fund to address the effects of heavy metal contamination and similar cases that would arise in the future in Boac, Mogpog and Sta. Cruz.
- Permanent closure of MMC in Marinduque and conduct of a study for the conversion of the mine site into economic employment opportunities for the Marinduqueños.

³⁰ Verbatim from: Macdonald, I., and Ross, B., (2002), Mining Ombudsman Annual Report 2001-2002, Oxfam Community Aid Abroad, p.54. <<http://www.minesandcommunities.org/Country/aus3.htm>>

Actions Taken & Results of Actions of Affected People and NGOs

Efforts by the local communities included: amplifying their desired remedial work; even the mayor presented a study for a clean up and rehabilitation plan. For example, attempts at litigation ran into difficulties because of inability to pay legal expenses. A senator also issued a resolution to bring the disaster into national focus. There were also efforts to file a case with the local courts with the aid of an NGO (Tanggol Kalikasan) to allow the residents of Calancan Bay to participate. MacDonald and Ross (2001) also noted the case that was filed with the regional trial court.

In March 2001, PRRM Marinduque wrote an open letter to the then DENR Secretary Alvarez and President Arroyo urging them to heed the call of the Marinduqueños to address the MMC issue considering its national significance. Similarly the community organizations approached

the Mining Ombudsman of Oxfam¹ for assistance.

A Memorandum of Agreement between Marinduque and the DENR was signed in 2001. It stipulated hiring an independent consultant to study the situation in the Boac River. The MOA excluded the Mogpog River and Calancan Bay even with the lobbying by the Provincial Councilor. By March 2002, it was clear that the USGS was hired as the independent consultant. The USGS was the first choice of the project affect peoples. The DENR gave an assurance that they will provide the funding. The DENR committed to signing a contract with the USGS. These discussions between the DENR and USGS became an issue to congress so that it was actually tackled in some congressional hearing. According to the DENR congress wanted to exercise oversight on the Terms of Reference of the contract.

Apparently there were repeated efforts on the part of the provincial board to include the Mogpog River and Calancan Bay in the discussions and in the contract, to no avail. The reason for the exclusion was not clear even to a provincial councilor who was actively involved in the efforts.

The results of the efforts of the communities were as follows: The letter sent to President Arroyo and then Secretary of the DENR did not get a response. The engagement of Oxfam's Mining Ombudsman contributed significantly in mapping out the demands of the community and the people. The court case did not progress much.

Representative Reyes of Marinduque, in an interview, emphasized that they will do everything within their means to correct the situation and that the Philippine government is committed to the welfare of the public. It has committed funds to finance the cost of site characterization that will form the basis for the mitigation activities. Recently the USGS returned for the second data gathering. However, the media, NGOs and POs are being excluded in the meetings with the USGS team. "At least for now", so says Congress-

man Reyes. Apparently there is worry that facts will again be misinterpreted and taken out of context or blown out of proportion.

Review of primary documents and key informant interviews indicate the following: Compensation has been very limited: only a few months worth of lost opportunity was paid for, totally disregarding the capital notion of the resources and the continuing lost opportunity for the succeeding years (since 1997 to the present). The Tapian Pit discharge has slowed down. Engineering work was done to control the discharge and address other physical concerns. However, the affected communities are very disappointed and frustrated with the progress of the case. Very few of the demands have been met. To this end, eleven (11) municipal councilors of Boac have sought representation with the DENR Secretary Gozun to plead for their case.

¹ The Oxfam Mining Ombudsman serves as a conduit between affected communities, government and mining firms to communicate effectively what is happening on the ground and to facilitate the resolution of conflicts. It is not intended to serve as a magistrate, although it can help gather data about a case. For further details visit: <http://www.minesandcommunities.org>

Project Monitoring

A review of the events and goings on were evaluated based on the draft Monitoring and Evaluation Guide specifically against the Desirable Environmental Standards and this OM Section 21 version.

Review of Project Against ADB's Environmental Policy Provisions

The applicable version of the policy for this project at the time when the ADB became involved in the project is the February 1988 version of the OM 21: Environmental Considerations in Bank Operations. It is not possible to comment on proper project classification, completeness and implementation of plans as project documents were not available. The documents were no longer available because the borrower already returned the borrowed money and also the loan covenant. Hence, the ADB closed the project and all documents pertaining to it are no longer accessible. The ADB Environment Policy requires the following document components as part of the EIA document. Comments on their availability are also provided:

Document Component	Availability and Comments
Environmental Management Plan	No access to document.
Project Monitoring and Evaluation Plan and Schedule	No access to document.
Tripartite Environmental Monitoring Team Organization Plan	A Multipartite monitoring team was formed, although late into the project. No access to document.

Environmental Guarantee Fund Plan	No access to document , if any.
Environmental Monitoring Fund Plan	No access to document , if any.
Community Development Fund (and Plan)	Some small projects were mentioned by one respondent , but big picture was not known to them. No access to document .
Contingency Fund and Plan	Respondents have no knowledge of this. No access to document .

Other primary documents which were also required as part of project identification, design, and appraisal. Similarly, documents were not available.

Document	Availability and Comments
Project Appraisal Document (PAD)	No access to document .
Project Feasibility Study (FS)	No access to document .
Detailed Engineering Plan (DE)	No access to document .
Initial Environmental Examination (IEE)	No access to document .
Any economic appraisal document available	No access to document .

An interview with PRRM revealed that the delayed formation of the Multipartite Monitoring Team (MMT), lack of skills, capacity and equipment for monitoring may in themselves have contributed to the situation. "It is possible that given a better prepared MMT, that the impact of the Marcopper accident may have been minimized or the accident itself could have been prevented."

The Project Completion Report is supposed to be submitted to the ADB after the physical completion of the project as a factual report. Then, three years after the Post Evaluation Report or the Project Performance Assessment Report is submitted essentially saying that the project is now closed because it has been performing well for three years but which on the fourth year fails. The recourse is not clear under these circumstances. The policy fails to take into consideration the situation of Marcopper.

It was learned from interviews that the NGOs and POs did not engage the ADB for a number of reasons. The ADB was seen as too distant and a bad choice for the target of community led advocacy. The ADB's involvement in the project also seems distant in that it appears to have no culpability on the ground. So that it is the LGUs that are being engaged by civil society groups. The

sense is that the DENR-EMB should take the lead responsibility. However, in the course of requesting a meeting in Marinduque, the current EMB director denied the request – fearing possibly for his own safety or the surge in emotions of the people. A meeting request by provincial board members with the DENR secretary translated into a meeting with the EMB director. It became clear from that meeting that the EMB director was not clear on the nature of the environment guarantee fund, and the current state of the funds set aside by Marcopper for compensation.

Staff within PRRM or LRC-KSK do not seem to have a full handle of the literature (both policy and science) that may be readily available on the web for example. This illustrates the point that there is so much that needs to be done given dwindling resources.

The staff of NGOs as well as of the ADB face the same challenge of keeping their knowledge capital so that the present staff working on the issue or project are updated with what has already transpired. This is illustrated for the NGOs in the turn over of staff; for the ADB a case in point would be a senior staff who, when questioned, did not know what preceded the applicable OM for this project, or a clerical staff who was asking the senior staff if the older OMs should be disposed.

Review of Project Against Desirable Environmental Standards

Individual Indicators

Document Completeness

Access to information was a key difficulty to the case. Mainly because the case is controversial, complex and the documents are fairly old it is very difficult to obtain primary documents from government agencies. The ADB's standard response to request for documents is that they are no longer involved in the project.

Review of other similar projects

The practice of reviewing similar projects and projects in a similar site was not being done at the point when this project was put up. What is notable though is that other mining projects in the country are also problematic, and the ADB has since Marcopper veered away from mining.

Respect for standards, associated laws and treaties, local, national, international

At the point when the project began the notion of sustainable development and a rights based approach to development were not yet established. This includes the right to information, especially, at that time the Philippines was under authoritarian rule.

Awareness of Related Principles

The OM provided for a projection of possible impacts of the project, but apparently the possibility of a mining accident was not factored in. The institutional capacity to perform monitoring and evaluation activities was not addressed. The institutional capacity to implement compensation activities was not in place. There

was insufficient data available to begin with. Policy research indicated that there was significant difference between the research results and actual compensation. Individuals were also being excluded from being compensated due to the lack of awareness or lack of documents. In both cases it is a matter of providing information to the project affected peoples.

Another issue that was raised is that of how to rehabilitate damaged sites – mine sites in deforested areas. Along side this issue is the strategic alignment of ADB projects, on the one hand there is mining and on the other there is a reforestation project. It is not clear how these projects are being integrated at the ADB. What is clear though is that there have been three failed reforestation projects in the Philippines.

Capacity of Consultants

Apparently the consultants who prepared and reviewed the EIA document or its equivalent at the time were knowledgeable of existing policies and practices in environmental assessment. What was not addressed fully however is the disposal of mine tailings, particularly the lack

of social acceptability for the proposed submarine tailings disposal; and later the decision to reject the proposal pointed to the use of the Tapan Pit as the disposal means. Apparently, this option was not very well studied, as a weak earthquake was enough to trigger the mine tailings spill into the Boac River.

This failure may be explained by the following:

- in general, only one option is well studied so that the other options which may be less damaging get limited attention;
- knowledge about the risk of using the Tapan Pit as tailings disposal system may have been limited;
- stakeholders who wanted to use the Tapan Pit as the tailings disposal system may have done so with limited knowledge;
- stakeholders who new better may have succumbed to pressure from below, or decided to keep quiet; and

Whatever the case, stakeholders who agreed to use the Tapan as the tailings disposal system with full knowledge and consent should be held accountable.

Project Stakeholders and their Interests

Below is a list of the project stakeholders and their interests:

Stakeholders	Interests
Placer Dome	Profit, responsibility to shareholders
Government	In general, country development resulting from revenues from industry such as Marcopper
DENR	Issuer of ECCs. Role is to protect the environment and the natural resources of the country.
National Pollution Control Commission	Monitoring
Bureau of Mines and Geosciences	Monitors the compliance of industries with their ECC
Local government	Development, health, well being, safety, environmental concerns, source/loss of livelihood, compensation of those affected
Academe	Basis for decision making. Advancement of science (perhaps a better way of disposing mine tailings)
ADB	Move its funds. Develop a vibrant private sector.

Table for Stakeholder Analysis (Importance and Influence)

		Level of Importance for Project Success	
		Low	High
Level of Influence in Decision-Making	High	<ul style="list-style-type: none"> • Media • NGOs, Oxfam • Academe: UP, • AteneoUSGS, TAMU • NGO Forum • POs outside Marinduque 	<ul style="list-style-type: none"> • EIA Review Committee • DENR, EMB, ADB(decision) • Marcopper • Placer Dome
	Low	<ul style="list-style-type: none"> • Public at large 	<ul style="list-style-type: none"> Project affected people (vulnerable group) • Local groups

As a strategy for intervention it is important that the project affected people (the locals) be able to connect with civil society organizations, and the academe, as well as the media for various purposes including information dissemination, informa-

tion sharing, dialogue, education empowerment, and action taking. This will have to be done more systematically and strategically by the locals, PRRM, and LRC-FOE. Periodically the groups have to do some stocktaking.

Key Principles

This section is an analysis based on principles for environmentally sound project design and implementation. They have been derived from the standard principles for Strategic Environmental Assessment and Environmental Impact Assessment¹.

The documents around the Marcopper were difficult to access. Using various methods values were prepared on the descriptors for a good Strategic Environmental Assessment below (the headers indicate the principles).

Principles on environmentally sound design

Is integrated: Evidence indicates that the environmental assessment did not ensure the achievement of sustainable development. There was a very poor integration among bio-physical, social and economic aspects of the project. There was very weak linking to policies in the region, the project EIA and decision making.

Is sustainability-led: While the project paid attention to the contin-

ued risk to fishery resources resulting from waste dumping development options and alternative proposals that were more sustainable were not identified by the project.

Is focused: Information generated by the EIA was used mainly for the project and not to contribute to development planning and decision making. It did not tie in with key issues of sustainable development. There was insufficient data to comment on the following two points:

- The project is customized to the characteristics of the decision making process.
- The project is cost- and time-effective. The project is accountable: The lead agency, the DENR and EMB are taking responsibility for the rehabilitation and compensation but it is proceeding too slowly. So that it lacks professionalism, rigor, fairness, impartiality and balance. There are no independent checks and balance that would provide some security to vulnerable groups.

The project is participative: Project affected persons were not able to participate early on in defining the project and alternatives. There is also a lack of participation in the definition of the scope, process, criteria and conditions of compensation. There is also a lack of participation in defining post accident monitoring and evaluation work, specifically defining the scope of work of the consultant USGS team. Information requirements are not well understood which may also be due to insufficient access to all relevant information. An example would be the reported exclusion of claimants from being compensated.

The project is iterative: There is limited information available to respond to the two points below, which in itself is indicative of information availability.

- Ensures availability of the assessment results early enough to influence the decision making process and inspire future planning.
- Provides sufficient information on the actual impacts of implementing a strategic decision, to judge whether this decision should be amended and to provide a basis for future decisions.

Access to environmental information, environmental decision-making and environmental justice:

The existing set up of the ADB and the Philippine government are not very supportive of this right. It does not allow members of the public greater access to environmental information held by public authorities; thereby it does not result to increasing the transparency and accountability of government. The EIA documents are kept in the key offices of the government which are not readily accessible to the public. The language, content, form and process of the environmental impact assessment system are also not accessible to the public. The DENR has very limited capacity to provide environmental education interventions to communities. While it does provide an opportunity for people to express their opinions and concerns on environmental matters, it does not ensure that decision-makers take due account of these. The current system is not clear on the last pillar: Provide the public with access to review procedures when their rights to information and participation have been breached, and in some cases to challenge more general violations of environmental law. A key difficulty would be the access to the covenant signed between the ADB and the borrower, and the associated inter-

nal documents such as the Environment Management and Mitigation Plan and the internal assessment of the bank and its ultimate decision to finance the project.

Monitoring against other ADB Policies

The issues about access to information for this project is a critical one. Old documents prior to the involvement of the ADB will probably be very difficult to find given the transitions in the Philippine Government and the physical movement (relocation) of the EMB over the past ten

years to some three sites. The archival, retrieval and security system of documents is not in place. At the ADB on the other hand, even if the project documents were in ADB they would not be accessible for two reasons: the ADB is no longer involved in the project and the project is not covered by the 1994 information disclosure policy.

¹ <http://www.iaia.org>. The International Association for Impact Assessment defined key principles for SEA and EIA based on surveys and studies the organization conducted.

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Appendices

Appendix 1:

SUMMARY OF LOAN PROJECTS WITH COFINANCING, 1970-1994¹

Year	CO-FINANCING								Amount of Bank Loan for Co-Financed Projects (\$ Million)
	Official Sources		Export Credits		Commercial Source		TOTAL		
	No. of Projects	Amount	No. of Projects	Amount	No. of Projects	Amount	No. of Projects	Amount	
1970	4	96.08	0	0.00	0	0.00	4	96.08	40.57
1971	2	3.83	0	0.00	0	0.00	2	3.83	3.70
1972	1	3.15	0	0.00	0	0.00	1	3.15	8.00
1973	6	153.23	0	0.00	1	5.00	6	158.23	92.50
1974	2	1.82	0	0.00	0	0.00	2	1.82	32.55
1975	3	254.50	1	9.60	0	0.00	4	264.10	132.70
1976	5	95.08	1	25.31	2	13.00	7	133.39	202.26
1977	7	81.64	1	11.50	0	0.00	8	93.14	132.95
1978	15	373.19	0	0.00	1	3.06	15	376.25	384.08
1979	20	353.31	1	30.68	1	1.10	21	385.09	578.53
1980	21	398.09	1	31.62	2	16.25	22	445.96	542.32
1981	19	504.48	3	59.19	2	86.70	23	650.37	826.90
1982	16	392.64	1	15.00	7	222.60	23	630.24	808.87
1983	13	128.38	0	0.00	5	180.40	18	308.78	760.05
1984	19	749.06	3	202.15	5	229.85	23	1,181.06	1,389.60
1985	21	302.80	3	220.00	2	83.00	23	607.80	1,023.50

¹ <http://www.adb.org>

1986	20	380.92	3	103.79	0	0.00	22	484.71	727.72
1987	24	361.19	3	150.68	4	61.30	29	573.17	1,219.99
1988	12	445.86	1	21.29	2	71.60	14	538.75	486.31
1989	21	881.20	1	166.00	8	114.00	27	1,161.20	1,394.66
1990	22	967.15	3	154.50	5	145.00	26	1,266.65	1,782.63
1991	18	620.12	3	682.40	3	129.50	21	1,432.02	1,447.20
1992	18	2,006.25	3	728.90	3	272.00	21	3,007.15	2,564.20
1993	14	1,436.50	6	1,616.50	7	270.60	23	3,323.60	1,928.80
1994	15	1,234.11	2	94.00	6	301.30	18	1,629.41	1,641.91
TOTAL	338	12,224.57	39	4325.11	66	2,206.26	403	18,755.94	20,152.51

Appendix 2: Chronology of Events:

1956 – Placer Dome (formerly Placer Development Limited) became involved in an exploration project on the island of Marinduque, Philippines, undertaking extensive geological mapping and drilling.

1964 – Marcopper Mining Corporation (Marcopper) was established.

1969 – Marcopper started mining operations in Marinduque.

1971 – Island Copper in Placer Dome's home province in Canada and the Atlas Mine in the Philippines were using submerged marine dumping systems for mine tailings.

1975 – Placer Dome attempted a submerged system in shallow Calancan Bay but failed and reverted back to surface disposal, which was deemed unacceptable

by "best practice" standards by 1975.

1977 – PD 1151: Philippine Environment Policy

1978 — PD 1586: Philippine EIA System

1975 – Marcos government granted a blanket permit to Marcopper to operate. Most of the environmental regulations were suspended or were non-operative as far as Marcopper's operations were concerned. Placer Dome owned 39.9% of Marcopper while Marcos owned 49%.

1975 – 1991 – Placer Dome oversaw the dumping, via surface disposal, of more than 200 million tons of mine tailings directly into the shallow waters of Calancan Bay.

1980s – Canadian NGOs met with Placer Dome executives regularly over the issue of dumping.

1986 – ouster of President Ferdinand

Marcos. Corazon Aquino took over. November 1986 – National Pollution Control Commission issued an order to Marcopper to stop disposing of its tailings in the Calancan Bay

February 1988 – OM Section 21, Environmental Considerations in Bank Operations of ADB was in place.

April 1998 – a similar order to stop disposing of its tailings in the Calancan Bay was issued by Environment Secretary Fulgencio Factoran Jr followed by a telegram denying Marcopper its request for a "Permit to Operate."

May 1988 – President Aquino reversed the order of DENR Secretary Factoran in April 1988

April 1990 – DENR Undersecretary for Environment and Research Delfin Ganapin signed the ECC of Marcopper allowing it to operate for 10 years and to use the Tapian pit as its mine tailings dam.

1991 – Tapian pit was depleted. An earthen dam was built in the mountainous headwaters of Mogpog River to keep silt from the new San Antonio mine out of the Mogpog River. Marcopper got a loan from ADB.

1992 – Fidel V. Ramos became president after Corazon Aquino

1992 – DENR AO 21

1992 - the mined out Tapian pit was used as a storage place for tailings from the adjacent San Antonio mine.

1993 – the earthen dam built in 1991 burst.

1995 – Philippine Mining Act

August 1995 – Marcopper noticed the first seepage above the drain-

age tunnel near the Makulapnit River. A geotechnical consultant recommended drilling a series of holes to intercept the leakage and plugging the leaks.

October 1995 – a hole was again plugged after a minor leakage. No substantial measures were undertaken to ensure that leaks would not occur again

March 1996 – a massive tailings spill at the Marcopper mine filled the 26-km long Boac River

December 1996 – DENR AO 37 revising AO 21 of 1992.

April 1996 – Placer Dome made commitments through its then-CEO John Wilson to then-President Fidel Ramos to rehabilitate all areas impacted by the tailings flow and compensate residents of Marinduque who have suffered personal inconvenience and damage to their properties.

1997 – Placer Dome divested from Marcopper

1998 – Joseph Estrada became president after Fidel Ramos

1998 – the Philippine government declared a state of calamity for health reasons for Calancan Bay villages because of lead contamination.

2001 – Estrada was ousted from the presidency and Vice-President Gloria Macapagal Arroyo took over.

2001 – Klohn Crippen's report, commissioned by Placer Dome, concluded that five dams holding back thousands of tons of waste in the mountains on the island need immediate remediation.