



Republika ng Pilipinas
Komisyon ng Karapatang Pantao ng Pilipinas
(Commission on Human Rights of the Philippines)

**IN RE: DISPLACEMENT
COMPLAINT OF RESIDENTS OF
DIDIPIO, KASIBU, NUEVA
VIZCAYA. [CHR-H-2008-0055
(SPL. REPORT)]**

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**RESOLUTION
CHR (IV) No. A2011-004**

The ultimate goal of economic development is to raise the quality of life of *all* people. To this end, the State promotes the full and efficient use of its human and natural resources by encouraging private entities to invest in key industries and business enterprises. However, when private entities violate the fundamental rights and entitlements of the people in the name of economic development, they not only lose their moral legitimacy — they also defeat the very purpose for which they were given authority to conduct business. The present case is a classic and lamentable example of how economic aggression denigrates the most basic of human rights.

This case is about the alarming human rights situation in Barangay Didipio, Kasibu, Nueva Vizcaya. At the center of the controversy are the mining operations of Oceana Gold Philippines, Inc. (OGPI), a foreign-owned corporation, with which the national government of the Philippines has entered into a Financial and Technical Assistance Agreement (FTAA). Several residents of Didipio object to the large-scale mining in their area on account of perceived adverse economic and environmental impact that such activity would cause to their community. Majority of the residents in Didipio are indigenous peoples although they are originally from other places and thus cannot directly claim ancestral domain over Didipio. Reports and complaints reached the Commission on Human Rights (Commission for brevity) alleging widespread and systematic violations of human rights committed by OGPI and the security sector against residents opposed to large-scale mining. The tense situation in the area has not abated and seems to be only getting worse.

In furtherance of its commitment to protect and promote human rights, and pursuant to its mandate to investigate violations thereof as well

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as monitor compliance therewith, the Commission took cognizance of this case. After a thorough review of all the information and documents gathered, the Commission finds that, indeed, human rights violations were committed against the indigenous peoples inhabiting Didipio.

THE RELEVANT FACTS

On 24 June 1994, President Fidel V. Ramos entered into a FTAA with Arimco Mining Corporation (AMC) for the exploration, development and utilization of minerals located in about 37,000 hectares of land situated in the provinces of Nueva Vizcaya and Quirino. Included in this area is Barangay Didipio in Kasibu, Nueva Vizcaya.

On 03 March 1995, President Ramos signed into law Republic Act No. 7942 otherwise known as the Philippine Mining Act of 1995. Some of the provisions of said law which are most relevant to this case are the following:

Sec. 75 Easement Rights. When mining areas are so situated that for purposes of more convenient mining operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructure as roads, railroads, mills, waste dump sites, tailings ponds, warehouses, staging or storage areas and port facilities, tramways, runways, airports, electric transmission, telephone or telegraph lines, dams and their normal flood and catchment areas, sites for water wells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels, or mills, the contractor, upon payment of just compensation, shall be entitled to enter and occupy said mining areas or lands.

Sec. 76 Entry into Private Lands and Concession Areas. Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein: Provided, That any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be properly compensated as may be provided for in the implementing rules and regulations: Provided, further, That to guarantee such compensation, the person authorized to conduct mining operation shall, prior thereto, post a bond with the regional director based on the type of properties, the prevailing prices in and around the area where the mining operations are to be conducted, with surety or sureties satisfactory to the regional director.

On 15 August 1995, the Department of Environment and Natural Resources (DENR) issued the Implementing Rules and Regulations (IRR) of R.A. No. 7942 through Department Administrative Order (DAO) No. 23, series of 1995. This was superseded by DAO No. 96-40, series of 1996. Pertinent to this case are the following provisions of said IRR:

Section 106. Voluntary Agreement

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A voluntary agreement between a surface owner, occupant or concessionaire thereof permitting holders of mining rights to enter into and use its land for mining purposes shall be registered with the concerned Regional Office. The said agreement shall be binding upon the parties, their heirs, successors-in-interest and assigns.

Section 107. Compensation of the Surface Owner and Occupant

Any damage done to the property of the surface owner, occupant or concessionaire thereof as a consequence of the mining operations or as result of the construction or installation of the infrastructure mentioned in Section 104 above shall be property and justly compensated. Such compensation shall be based on the agreement entered into between the holder of mining rights and the surface owner, occupant or concessionaire thereof or, where appropriate, in accordance with P.D.512. In case of disagreement or in the absence of an agreement, the matter shall be brought before the Panel of Arbitrators for proper disposition.

In late 1995, AMC consolidated with Climax Mining Limited to form a single company named Climax-Arimco Mining Corporation (CAMC). In December 1996, CAMC transferred all its rights to the FTAA to Australasian Philippine Mining, Incorporated (APMI), which transfer was approved by the DENR nine years after in December 2004.

On 11 October 2005, the DENR issued an Order approving the Partial Declaration of Mining Project Feasibility for the Didipio Gold/Copper Project. Said project is covered by the FTAA held by APMI. In December of the same year, APMI launched a "Surface Rights Acquisition" (SRA) Program to enter the lands within the Project area.

On 30 March 2006, the Supreme Court issued a decision on the case of Didipio Earth Savers' Multi-Purpose Association (DESAMA), *et al* vs. Gozun *et al.* upholding the constitutionality of the "taking" provisions of R.A. No. 7942 and its corresponding rules and regulations. The dispositive portion of the decision reads:

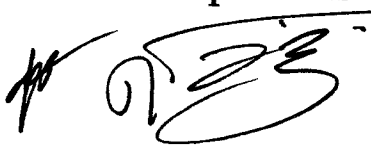
"WHEREFORE, the instant petition for prohibition and *mandamus* is hereby DISMISSED. Section 76 of Republic Act No. 7942 and Section 107 of DAO 96-40; Republic Act No. 7942 and its Implementing Rules and Regulations contained in DAO 96-40 – insofar as they relate to financial and technical assistance agreements referred to in paragraph 4 of Section 2 of Article XII of the Constitution are NOT UNCONSTITUTIONAL.

SO ORDERED."

On 1 June 2007 APMI changed its name to OGPI.

In June 2008, reports and complaints were filed with the CHR alleging that OGPI had illegally and violently demolished some 187 houses in Didipio. This was allegedly done despite failing to secure writs or special

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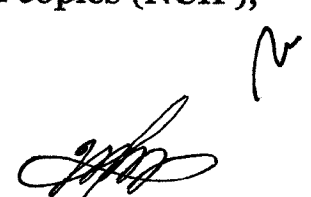
orders of demolition from the court, unaccompanied by the Sheriff, without payment of just compensation, and without providing alternative options for relocation and resettlement. These demolitions were reported to have been attended by unnecessary violence and destruction: residents who resisted and tried to save their homes had been beaten, including their neighbours who helped them; houses had been bulldozed off cliffs and set on fire. It was further alleged that OGPI fenced off large sections of the roads and pathways which community residents have relied upon for the past 30 years to transport produce from their farms to the market. It was also reported that OGPI has set up checkpoints around the Barangay, causing them difficulty in moving about, resulting in the unjust restriction of their social and economic activities. Moreover, it was alleged that the PNP-Regional Mobile Group serves as a "private security force" of OGPI, with their officers being stationed inside the facilities of the latter.

While the CHR was silently investigating and monitoring the matter, reports about alleged harassments and incidents of violence against those who strongly oppose the mining operations kept persisting. The situation reached a critical point on 02 October 2009 when, during an attempt to demolish several houses, more than one hundred members of the PNP allegedly used truncheons, shields and tear gas to disperse protesting residents from demolishing the houses of their neighbors. Reports said, the Mayor of Kasibu and the Barangay Chairperson of Didipio were included in those who were violently dispersed. This incident prompted the Commission to give priority to the settlement of human rights issues in Didipio.

On 05 November 2009, the Commission, led by no less than Chairperson Leila M. de Lima, together with Commissioner Jose Manuel S. Mamauag, Attorneys Robert Alcantara and Gemma Parojinog, and other officers from CHR Region 2 Office, conducted an ocular inspection of Didipio to see for themselves the condition in the area. Accompanied by the Mayor of Kasibu, Nueva Vizcaya, and other local officials of Barangay Didipio, the Commission took a three-hour drive from Solano, Nueva Vizcaya to the impact area. Upon arrival to Didipio, the Commission was at first refused entry by security officers who looked like soldiers. After the security officers finally got a go-signal from their radio, the security officers allowed the team to pass. Members of the team heard the security officers say, "*mga taga-munisipyo lang yan.*" When the team identified themselves as officers of the Commission on Human Rights, the security officers became more accommodating towards the team and even escorted them to the affected areas. The team then went to inspect the entire impact area, including the proposed site of dams for mining purposes feared to cause shortage of clean and safe water for domestic and irrigation purposes.

The next day, the team convened a Public Dialogue with the objective of understanding the controversy from all perspectives. Said Public Dialogue was attended by officers of OGPI, PNP officials, LGU officials, representatives of the National Commission on Indigenous Peoples (NCIP),

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and NGO and community leaders and members. During the Dialogue, OGPI was given all opportunity to address every allegation cast at them. Likewise, the police was allowed to explain its participation in the controversy, including the October 02 dispersal. The Commission requested from the participants all pertinent documents and records that would have a bearing in the determination of the human rights issues in Didipio. The stakeholders complied several days after the Public Dialogue, submitting voluminous records and documents to support their positions. Much of the documents came from OGPI and the NGOs.

THE HUMAN RIGHTS ISSUES

Various issues have muddled the controversy in Didipio. In fact, numerous criminal, civil and administrative cases have been filed left and right, all of which have for their root the mining operations in the area. In accordance with international norms, standards and principles, the Commission has resolved to address the following human rights issues:

- I. WHETHER OR NOT OGPI VIOLATED THE RIGHT TO ADEQUATE HOUSING AND PROPERTY RIGHTS OF SEVERAL RESIDENTS IN DIDIPIO;
- II. WHETHER OR NOT OGPI VIOLATED THE RIGHT TO FREEDOM OF MOVEMENT AND THE RIGHT NOT TO BE SUBJECTED TO ARBITRARY INTERFERENCE WITH THE HOME OF THE PEOPLE IN DIDIPIO;
- III. WHETHER OR NOT OGPI VIOLATED THE RIGHT TO SECURITY OF PERSON OF THE PEOPLE IN DIDIPIO;
- IV. WHETHER OR NOT OGPI VIOLATED THE INDIGENOUS COMMUNITY'S RIGHT TO MANIFEST THEIR CULTURE AND IDENTITY;
- V. WHETHER OR NOT OGPI VIOLATED THE RIGHT TO WATER OF THE PEOPLE IN DIDIPIO; and
- VI. WHETHER OR NOT THE PNP VIOLATED ITS OWN OPERATIONAL PROCEDURES DURING THE OCTOBER 2 INCIDENT.

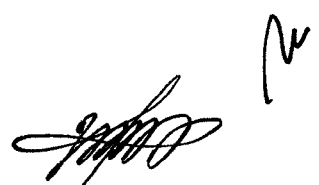
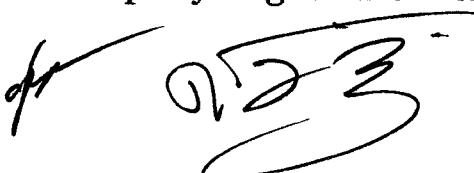
These issues shall be addressed in *seriatim*.

THE FINDINGS

- I. OGPI VIOLATED THE RIGHT TO RESIDENCE, THE RIGHT TO ADEQUATE HOUSING AND PROPERTY RIGHTS OF SEVERAL RESIDENTS IN DIDIPIO.

The Right to Residence, Right to Adequate Housing and Protection of Property Rights are well recognized in both international and domestic

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laws. Article 13 (1) of the Universal Declaration of Human Rights (UDHR) states that “everyone has the right to freedom of movement and residence within the borders of each State.” This declaration of the Right to Residence and Freedom of Movement is reiterated in Article 12 (1) of the International Covenant on Civil and Political Rights (ICCPR) which provides: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”

While many international documents¹ recognize the Right to Adequate Housing, Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights (ESCR) is considered to be the most relevant and most comprehensive provision.² Said provision reads:

“The States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including *adequate* food, clothing and **housing**, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the international co-operation based on free consent (*emphasis added.*)”

The Committee on Economic, Social and Cultural Rights (CESCR) issued General Comment No. 4 on Adequate Housing and General Comment No. 7 on Forced Evictions, elaborating on the normative contents of the Right to Adequate Housing. According to the CESCR, the Right to Adequate Housing should not be interpreted narrowly to mean having a roof on one’s head. Rather, it should be seen as the right to live somewhere in security, peace and dignity, in conformity with the inherent dignity of the human person.³ It can be gleaned from the aforementioned General Comments that the Right to Adequate Housing contains several freedoms and entitlements. These freedoms include: protection against forced evictions and the arbitrary destruction and demolition of one’s home; the right to be free from arbitrary interference with one’s home, privacy and family. On the other hand, the entitlements include: security of tenure; housing, land and property restitution, equal and non-discriminatory access to adequate housing; and participation in housing-related decision-making at the national and community levels.⁴

The right to property, on the other hand, is well entrenched in our Constitution. Article III, Section 1 of the 1987 Constitution unequivocally states that “[n]o person shall be deprived of his life, liberty or property without due process of law x x x” (*emphasis added*). Likewise, the Civil

¹ As indicated in CESCR General Comment No. 4, See article 25 (1) of the Universal Declaration on Human Rights, article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women, article 27 (3) of the Convention on the Rights of the Child, article 10 of the Declaration on Social Progress and Development, section III (8) of the Vancouver Declaration on Human Settlements, 1976 (Report of Habitat: United Nations Conference on Human Settlements (United Nations publication, Sales No. E.76.IV.7 and corrigendum), chap. I), article 8 (1) of the Declaration on the Right to Development and the ILO Recommendation Concerning Workers' Housing, 1961 (No. 115).

² CESCR General Comment No. 4, Paragraph 3.

³ CESCR General Comment No. 4, Paragraph 7.

⁴ See generally CESCR General Comment No. 4 and General Comment No. 7; OHCHR, The Right to Adequate Housing, Fact Sheet No. 21/Rev.1 (2009).

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Code of the Philippines and Rules of Court provide for other important legal framework that guarantees and protects the Right to Property.

OGPI violated these rights pertaining to several of Didipio's residents when it forcefully evicted them in contravention of existing laws, rules and regulations.

Evidence obtained by the Commission indicate that OGPI has caused the demolition of at least one hundred and eighty-seven (187) houses of the indigenous residents in Didipio. Said demolitions were done *without* a court order and *without* provision for adequate relocation, as required by law. This was readily and categorically admitted by Mr. Ramoncito Gozar, OGPI's Vice President for Communications and External Affairs.

In defense, OGPI claims that its conduct is lawful. It interposes its (1) right of immediate entry and (2) right to exercise the power of eminent domain granted unto it as an FTAA holder, under Section 75 on Easement Rights and Section 76 on Entry into Private Lands Areas of the Philippine Mining Act of 1995, in relation to Section 104, Section 105, Section 107 and Section 108 of its IRR. This right, OGPI claims, was recognized by the Supreme Court in *DESAMA vs. Gozun*.

Precisely, in *DESAMA et al vs. Gozun et al*, the Supreme Court classified Section 75 and Section 76 of the Philippine Mining Act as "taking" provisions, justified by State's power of eminent domain. While such power may be invoked and effectively exercised by private parties (i.e. holder of mining contracts such as OGPI), in cooperation with the State, the remedy is *still* to file expropriation proceedings and secure the necessary court order. OGPI may not demolish and "take" the residents' properties, without first complying with the requirements of law and due process. It cannot be gainsaid that under our laws, demolitions must be done pursuant to a court order. There being none, OGPI's conduct is patently unlawful and in violation of the residents' right to property and due process.

A closer examination of the DESAMA Decision will reveal that indeed, expropriation proceedings are the proper remedy in case a resident refuses to enter into a voluntary agreement with a mining contractor. The Supreme Court said:

"An examination of the foregoing provisions gives no indication that the courts are excluded from taking cognizance of expropriation cases under the mining law. The disagreement referred to in Section 107 does not involve the exercise of eminent domain, rather it contemplates of a situation wherein the permit holders are allowed by the surface owners entry into the latters' lands and disagreement ensues as regarding the proper compensation for the allowed entry and use of the private lands. Noticeably, the provision points to a voluntary sale or transaction, but not to an involuntary sale.⁵"

⁵ *DESAMA et al vs. Gozun et al*, G.R. No. 157882, 30 March 2006.

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This pronouncement of the Supreme Court means that Section 107 of the IRR, in relation to Section 76 of the Philippine Mining Act of 1995, only applies when the surface owners have already entered into an agreement with the permit holder, the only controversy being the amount to be paid as just compensation. It does not apply in cases where the surface owners do not agree to allow permit holders entry to their lands. In such cases, the proper remedy would be for the permit holder, by itself or with the assistance of the State, to institute an expropriation proceeding in the appropriate court, as provided under Rule 67 of the Rules of Court and relevant jurisprudence.

Further, the Commission takes particular note of OGPI's apparent scheme of "demolish now, negotiate later." This scheme is problematic, to say the least, as it pushes residents up against the wall. Those whose houses were demolished without their consent – some even against their express will – are now forced to take the petty sum OGPI offers in exchange for their homes and their lives in Didipio. The residents were reduced to accepting OGPI's offer and succumbing to the latter's unlawful ploy. Worse, a number of residents were never compensated at all.

While it may be true that about seventy-five (75%) of the residents in Didipio have already entered into a voluntary agreement with OGPI, there is still a considerable number of residents that has not entered into such agreements. OGPI posits that much of these people are not really owners of the land they occupy. Assuming, without conceding, that these people were in fact illegal settlers, this does not give license to anyone, much less a foreign-owned corporation, to mistreat others, in violation of the dignity that inheres in every human.

Even in those instances where eviction and demolition are justified, international human right norms require that they be "carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality."⁶ "Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights."⁷

As this Commission has advised previously, demolitions must be conducted in a just and humane manner. Certainly, in some instances, demolitions may be legally justified. However, *in no instance*, legally or otherwise, can the deprivation of one's shelter be done in a manner that robs a person of his dignity.⁸

FTAAs grant unto its holder the State's blessing to undertake mining and other extractive ventures, and all its necessary incidents, within its

⁶ CESCR General Comment No. 7, Paragraph 14.

⁷ *Id.*, Paragraph 16

⁸ Commission on Human Rights, Advisory on the Conduct of Forced Evictions and House Demolitions (06 May 2008).

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patrimony. It is not *carte blanche* for the wholesale denigration of human rights of people who stand to be affected by said undertakings.

II. OGPI VIOLATED THE RIGHT TO FREEDOM OF MOVEMENT AND THE RIGHT NOT TO BE SUBJECTED TO ARBITRARY INTERFERENCE WITH THE HOME OF THE PEOPLE IN DIDIPIO.

Closely related to the abovementioned rights are the Right to Freedom of Movement and the Right Not to be Subjected to Arbitrary Interference with One's Home.

The UDHR expressly declares these rights in the following manner:

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.

The ICCPR reiterates these provisions, to wit:

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

In its General Comment No. 27 on Freedom of Movement, the Human Rights Committee (HRC) clarifies that Article 12 (1) of the ICCPR entitles persons to move from one place to another and to establish themselves in a place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason and any restrictions thereof must be in strict conformity with law.⁹ Moreover, the HRC pointed out the obligation of States to ensure the protection of the Right to Movement not only from public but also from private interference.¹⁰ The HRC also stated that right to reside in a place of one's choice within the territory includes protection against all forms of forced

⁹ HRC General Comment No. 27, Paragraph 5.

¹⁰ *Id.*, Paragraph 6.

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internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory.¹¹

On the other hand, the HRC elaborated on the Right Not to be subjected to Arbitrary Interference with One's Home through General Comment No. 16. According to the HRC, this right is required to be guaranteed against all unlawful and arbitrary interferences whether they emanate from State authorities or from natural or legal persons.¹² Furthermore, the HRC stated that the prohibition on arbitrary interference is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.¹³

The bundle of property rights guaranteed by domestic law also finds relevance on this instance. Article 428 of the New Civil Cod states that "the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law." The right of ownership necessarily includes, among others, *jus utendi* (right to use the property), *jus fruendi* (right to enjoy the property) and *jus disponendi* (right to dispose of the property in whichever way the owner sees fit). Homeowners have dominion over their houses which they have a right to enjoy and to do as they please, even to spoil or destroy it as far as the law permits.¹⁴

OGPI violated these rights of the people in Didipio when they introduced perimeter fences around the Project Area and set up checkpoints at their chosen entry and exit points. These perimeter fences blocked off the roads which have been customarily used by the residents as pathways for their easy ingress and egress to the community. Furthermore, the checkpoints cause arbitrary interference to the full use and enjoyment of the houses by the residents.

In defense, OGPI claims to have introduced the perimeter fences merely to protect its Project Area from unlawful elements and illegal settlers. It further asserts that it has been authorized by the Barangay Council of Didipio as well as by the DENR to establish the checkpoints to guard against contrabands.

The authorization given to OGPI by the Barangay Council of Didipio only relates to the liquor ban. On the other hand, the authority coming from the DENR is only in respect of arresting illegal logging and illegal mining. Certainly, OGPI cannot use these authorizations to justify its arbitrary interference to the enjoyment of the rights of the residents of Didipio. OGPI should have devised a mechanism that avoids unnecessary inconvenience to the residence at the same time that it serves the purpose of prohibiting illegal activities.

¹¹ *Id.*, Paragraph 7.

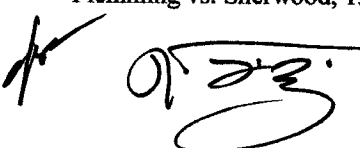
¹² HRC General Comment No. 16, Paragraph 1.

¹³ *Id.*, Paragraph 4.

¹⁴ *Flemming vs. Sherwood*, 139 N.W. 101, *Johnson vs. Crookshanks*, 29 Pac. 78.

Concededly, OGPI has introduced perimeter fences

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The Commission also observes that the perimeter fences were introduced in conscious disregard of the rights of the residents of Didipio. No genuine consultation of the residents was ever had as to the construction of said fences, much less as to its location. At the very least, OGPI should have observed the basic principles of participation and transparency if it really intended to respect the rights of the residents in Didipio.

III. OGPI VIOLATED THE RIGHT TO SECURITY OF PERSON OF THE PEOPLE IN DIDIPIO.

The security checkpoints situated along Didipio's main road and around the perimeter of the Project Area are manned by OGPI's private security personnel openly carrying arms, thereby threatening members of the community.

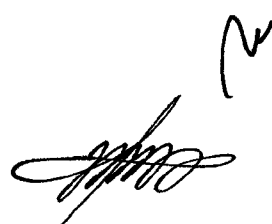
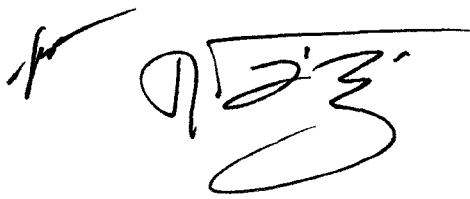
Members of the Philippine National Police-Regional Mobile Group (PNP-RMG) of Nueva Vizcaya and Quirino were also detailed in Didipio. Local residents of Didipio, however, report that instead of fulfilling its mandate to maintain peace and order in the community, said members of the PNP-RMG act as if they were the private security for OGPI, in abrogation of their sworn duty to serve the people in trust.

Likewise, the unlawful demolitions at the instance of OGPI were also mired with violence. For example, during the demolition conducted on 22 March 2008, local resident Emilio Pumihic was shot when he tried to stop the demolition crew from dismantling the house of his neighbor Manuel Bidang. Bidang was then taking a nap inside said house. Accounts from neighbors who witnessed the shooting incident state that Emilio Pumihic was restrained by two (2) of OGPI's security personnel, while a third – later identified as Whitney Dongiahon – shot Pumihic at close range while Pumihic was trying to free himself. The bullet pierced his upper right arm and exited through the upper right part of his back. The shooting incident occurred in plain view of members of the Philippine National Police. Despite this, said Whitney Dongiahon was not apprehended. These facts were attested to by Mr. Pumihic himself, and several others who witnessed the incident.

Other members of the community who strongly oppose large-scale mining operations are constantly threatened by violent demolition. Meanwhile, leaders of the oppositionists were criminally charged with violations of the Forestry Code.

This state of affairs in Didipio constitutes a continuing threat to the security of persons of the people in Didipio. It exposes them to constant uncertainty – to an incessant fear that something untoward might happen to them, their family or their properties. Rightly so, the local government

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units in the area expressed grave concerns that the situation would lead to breakdown of peace and order in the province.

OGPI is largely responsible for the continuing threats to security of persons, given that it controls and supervises the actions of its security forces, and that the unlawful demolitions were conducted at its behest.

IV. OGPI VIOLATED THE INDIGENOUS COMMUNITY'S RIGHT TO MANIFEST THEIR CULTURE AND IDENTITY.

Since December 2007, OGPI has caused the demolition of at least one hundred and eighty-seven (187) houses in Didipio. Over and above the illegality of such conduct, this demolition resulted in the forced displacement of at least one hundred eighty-seven (187) families who consider these houses their home. Majority of whom were forced to leave Didipio for good, and abandon their indigenous community, customs, traditions and way of life.

Certainly, the impact of OGPI's demolitions is irreducible to the physical dismantling of the residents' houses. Demolition and the attendant displacement of indigenous peoples effectively deny said peoples the right to enjoy and manifest their Ifugao culture in community with other members of their indigenous group. It means the dislocation and displacement of women, men and children. It means the destruction of life and *a way of life* intimately connected with the land they nurtured, with a view to leaving a legacy for their children and their kin that will come after.

Thus, the Commission finds that OGPI's demolition contravenes the rights of indigenous peoples under Article 27 of the Covenant on Civil and Political Rights, which guarantees indigenous peoples the right to manifest and enjoy their culture, both individually and *in community with other members of their group*. Article 1 of the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") further guarantees indigenous peoples the right to the full enjoyment of all human rights and fundamental freedoms, as individuals and *as a collective*. The corollary obligation thus consists in ensuring the survival and continued development of the cultural, religious and social identity of minority groups, thus enriching the fabric of society as a whole.¹⁵

In demolishing the houses of indigenous peoples in Didipio, OGPI effectively precluded them of the right to enjoy, manifest and celebrate their culture in community with their indigenous group. It irreparably impaired the conditions by which the Ifugaos of Didipio, in harmony with their land and each other, previously practiced Ifugao culture, traditions and way of life.

¹⁵ H.R. Comm., *General Comment No. 23* U.N. Doc CCPR/c/Rev.1/Add.5 (1994), Paragraph 9.

V. OGPI MUST EXERCISE GREAT CAUTION IN EXPLOITING THE WATER RESOURCE OF DIDIPIO, POSSIBLY ENDANGERING THE COMMUNITY'S FUNDAMENTAL RIGHT TO ACCESS TO CLEAN WATER.

The Right to Water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.¹⁶

The CESCR General Comment No. 15 is the first document that defined the right to water. In this document the Committee emphasized that while there is no explicit mention of a 'right to water' in the ICESCR, the right to water is indispensably linked to the right to adequate standard of living (Article 11) and the right to the highest attainable standard of health (Article 12). Furthermore, the Committee explained that the right to water is essential in the fulfillment of the right to life and human dignity. And while there is no explicit mention of the Right to Water in the UDHR, ICCPR and ICESCR, the same has already been recognized in many other treaties, declarations and international documents. For instance, Article 24(2) of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition "through the provision of adequate nutritious foods and clean drinking-water." On the other hand, Article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women states that women shall have the right to "enjoy adequate living conditions, particularly in relation to... water supply." The Geneva Conventions on International Humanitarian Law require combatants to provide drinking water to POWs and civilians stranded in the armed conflict (GC III Articles 20, 26, 29, 46; AP II Article 5 (1)), and even make the destruction of drinking water installations and irrigations punishable as war crimes (AP I Article 54 (2), AP II Article 14).¹⁷

All doubts as to the legal existence of the Right to Water were finally settled when the UN General Assembly adopted Resolution 64/L.63 on 26 July 2010 declaring "the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights." Thus, the Right to Water is now identified as a distinct human right.

Paragraph 11 of CESCR General Comment No. 15 emphasizes the broad scope of the Right to Water and puts in place a general standard by which to measure the fulfillment of such a right:

"The elements of the right to water must be *adequate* for human dignity, life and health, in accordance with Articles 11(1) and 12.

¹⁶ CESCR General Comment No. 15.

¹⁷ Other documents that refer to the right to water include the following: the Convention on the Rights of Persons with Disabilities; the African Charter on the Rights and Welfare of the Child; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; United Nations Economic Commission for Europe (UNECE) Protocol on Water and Health; Agenda 21, adopted at the United Nations Conference on Environment and Development (UNCED); the Mar del Plata Action Plan; the Programme of Action of the International Conference on Population and Development; The UN-Habitat Plan of Action; and the various Resolutions adopted by the United Nations General Assembly and the Commission on Human Rights, as well as other expert documents.

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The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable ensuring that the right can be realized for present and future generations.”¹⁸

Paragraph 12 further identifies the three common elements or factors that are said to apply universally in all circumstances: *availability, quality and accessibility*.¹⁹ The absence or diminution of any of these three elements translates into a violation of the right to water.

Availability means that there has to be a source where people can get sufficient quantity of water for their personal and domestic use. This includes water for drinking, personal hygiene, food preparation and cooking, washing of clothes, and household sanitation. Not only should there be enough water to meet basic daily needs, but the supply should also be continuous or regular.

Quality means that water must be safe – it must not threaten the health of those who use it. Thus, water must be free from microorganisms, chemical substances and radiological hazards that cause human diseases. Moreover, the water’s color, odor and taste have to be acceptable.

Accessibility means that water and water facilities and services should be available or accessible to anyone, without discrimination of any kind. It has four aspects: 1) Physical Accessibility; 2) Economic Accessibility; 3) Non-discrimination; and 4) Information Accessibility.

As for domestic law, PD 1067 also known as the Water Code of the Philippines gives priority to ensuring water security for domestic purposes. Article 22 of said law provides:

Art 22. Between two or more appropriators of water from the same sources of supply, priority in time of appropriation shall give the better right, except that *in times of emergency the use of water for domestic and municipal purposes shall have a better right over all other uses*; Provided, that where water shortage is recurrent and the appropriator for municipal use has a lower priority in time of appropriation, then it shall be his duty to find an alternative source of supply in accordance with conditions prescribed by the Council (*emphasis added*).

The collectivity of these norms establishes two key points: (1) a recognition of the right to water as a distinct human right; and (2) an acknowledgment of the State’s obligation to ensure the security and availability of safe and clean water supply for domestic purposes.

¹⁸ CESCR General Comment No. 15, Paragraph 11.

¹⁹ CESCR General Comment No. 15, Paragraph 12.

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Although there is as yet no breach of a right-duty correlative, it is with great caution that OGPI should proceed with its plan of diverting water flowing through the Tubo Creek and the Dinauyan River – the Didipio community's primary sources of water – to facilitate its mining operations, as the same poses a serious threat to the quantity and quality of the community's water resources.

In terms of *quantity*, given the immense volume of water required to process mineral ores, there is no certainty that an amount sufficient to sustain the communities in their day-to-day domestic and agricultural uses shall be left. The local communities could ill-afford a water resource-intensive industry such as mining competing with their domestic and agricultural uses, especially so in light of the severe and protracted drought (*El Nino*) the province has recently suffered from and is predicted to suffer more frequently in the future because of climate change. The Commission also notes that the province of Nueva Vizcaya was specifically identified by the Department of Agriculture as being particularly "vulnerable"²⁰ to the effects of *El Nino*.²¹ As such, clean water – scarce as it is – is bound to get much scarcer.²²

In terms of *quality*, contaminated discharges from the mine processing plants and tailings ponds could seep into the river systems in the area which could cause human, animal and environmental hazards that would eventually render the water unfit for any and all uses it has traditionally been used for.²³

OGPI is thus advised to exercise prudence and extraordinary diligence should it utilize the Didipio's water resources, lest it violate Didipio's indigenous community's human right to water.

VI. THE PNP VIOLATED ITS OWN OPERATIONAL PROCEDURES DURING THE OCTOBER 2 INCIDENT BY CARRYING HIGH-POWERED FIREARMS AND BY APPLYING UNNECESSARY AND UNREASONABLE FORCE.

The PNP Manual on Police Operational Procedures provides for standard operational conduct for the police in general and special procedures. Rule 19 thereof treats the standard procedure in Demolition

²⁰ To be "vulnerable" implies susceptibility to, but inability to cope with, certain adverse impacts (i.e. that of *El Nino*) [Fourth Quarterly Report of the Intergovernmental Panel on Climate Change].

²¹ DA Press Office, *DA Sets Aside P569-M for El Nino Mitigation Measures in Palay Sector* [article online], available at http://www.da.gov.ph/newindex2.php?pass=News_events/2010/feb/feb02_2010a.html.

²² According to the 4th *Quarterly Report of the Inter-governmental Panel on Climate Change (IPCC)*, Climate change is expected to exacerbate current stresses on water resources from population growth and economic and land-use change x x x Drought-affected areas are projected to increase in extent, with the potential for adverse impacts on multiple sectors, including agriculture, water supply, energy production and health. Regionally, large increases in irrigation water demand as a result of climate changes are projected. x x x

²³ Environmental and Social Impacts of Mining [article online], available at http://pdf.wri.org/mining_background_literature_review.pdf.

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Orders, Injunctions, and other Similar Orders. The relevant provisions thereof are directly quoted hereunder:

Sec. 1. Role of the PNP in the Enforcement of a Demolition Order –

a. Police assistance in the enforcement or implementation of a demolition or injunction order shall be granted only upon a written request of the Sherriff or authorized representative and accompanied by a valid order issued by a competent court and / or with written permission from the Presidential Commission for Urban Poor. Moreover, said police assistance shall be coordinated and cleared with the concerned mayor before its enforcement.

b. The duties of PNP personnel in any demolition activity shall be limited to the maintenance of peace and order, protection of life and property, enforcement of laws and legal orders of duly constituted authorities, and to perform specific functions prescribed by law.

c. PNP personnel tasked to provide police assistance shall be in proper uniform and will be led by an officer during the actual and legal relocation phase. *They shall be limited only to occupying the first line of law enforcement and civil disturbance control; shall not participate in the physical dismantling of any structure subject of eviction or demolition; and shall refrain from the use of unnecessary and unreasonable force (emphasis added).*

Rule 21 of the Operational Procedures deals with Civil Disturbance Management (CDM) Operations. Provisions applicable to this case are the following:

Sec. 2. Specific Guidelines –

x x x

2. The members of the PNP CDM contingent *shall not carry any kind of firearms* but may be equipped with baton or riot sticks, crash helmets with visor, gas masks, boots or ankle-high shoes with shin guards (*emphasis added*).

3. Tear gas, smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property.

x x x

Sec. 6. CDM Operational Approaches –

x x x

2. In selecting an operational approach to a civil disturbance situation, the Commander and his staff must adhere scrupulously to the “*minimum necessary force*” principle, for

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example, crowd control formations or riot control agents should not be used if saturation of area with manpower would suffice (*emphasis added*).

x x x

On October 2, 2009, at least 165 police men were deployed to Didipio to assist OGPI in the implementation of the writ of execution issued by the Panel of Arbitrators against the Heirs of Lawagan. Earlier that day, at about 3:00 to 4:00 in the morning, the house of Elmer Lawagan was burned by unidentified men, some of whom were suspected to be members of OGPI's security guards. Lawagan was also hit on his head by a hard wood from behind. When the residents saw later in the morning of that day that OGPI's demolition was readying to tear down Lawagan's other houses, complete with a multitude of police men carrying high-powered firearms escorting them, the people immediately formed a human barricade to prevent them from doing so. The police tried to break the barricade and that is when the situation became chaotic. The police then used tear gas and water canon to disperse the barricading people. The situation calmed down when the Regional Trial Court issued a Temporary Restraining Order enjoining the demolition of Lawagan's properties a few hours later.

Regardless of who started the violence between the police men and the protesting people on October 02, 2009, it appears quite clearly that the police violated its own operational procedures in approaching demolition and CDM operations. It is expressly stated in the Police Manual that the police should not carry any firearm during a CDM operation, which is practically the role the PNP should take during an execution of a demolition order. Likewise, the police should have exercised maximum tolerance and used minimum and reasonable force in dealing with the protesters. It is quite obvious that the deployment of 165 police men – most of whom carried high-powered firearms to support the Sherriff in executing an apparent demolition from the POA – is but way beyond what is reasonably called for under the circumstances. Simply put, it was an overkill.

The police argues that only 45 police officers were directly engaged in CDM operations that day and that the 120 police officers who carried high-powered firearms were there to respond to intelligence reports that "communists/terrorists" (CTs) might sow violence on the same day. However, the police did not furnish the Commission a copy of any official intelligence report indicating threats of a CT attack in Didipio on October 02, 2009. But even assuming that there were such intelligence reports, why was it that, according to PNP Provincial Director Supt. Pedro Danguilan, only 60 police officers were deployed to areas in Didipio reportedly frequented by CTs? Where were the 60 other police officers who were also carrying high-powered firearms? In the absence of any reasonable explanation why 165 police officers were deployed in Didipio on that day, the inescapable conclusion is that they were deployed to assist the Sherriff and OGPI in carrying out the demolition of Lawagan's properties.

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The Commission also expresses its deep concern over reports that the police deployed in Didipio are taking the side of OGPI instead of protecting the general peace and order. For example, it was reported that during the demolition conducted on 22 March 2008, local resident Emilio Pumihic was shot when he tried to stop the demolition crew from dismantling the house of his neighbor Manuel Bidang. Bidang was then taking a nap inside said house. Accounts from neighbors who witnessed the shooting incident state that Emilio Pumihic was restrained by two (2) of OGPI's security personnel, while a third – later identified as Whitney Dongiahon – shot Pumihic at close range while Pumihic was trying to free himself. The bullet pierced his upper right arm and exited through the upper right part of his back. The shooting incident occurred in plain view of members of the PNP. Despite this, the police did not apprehend Whitney Dongiahon. In another incident, a member of PNP-RMG publicly disrespected a barangay official, Councilor Eduardo Ananayo. In the evening of 23 March 2008, the day after the demolition, Senior Police Officer 4 ("SPO4") Noel Valdez slapped Councilor Ananayo, accusing the latter of instigating the local residents to fire their guns at night to intimidate OGPI's staff. On top of all these, there are allegations that the PNP-RMG deployed in Didipio is keeping station at OGPI's premises.

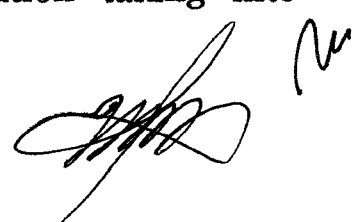
The Commission reminds the security sector, particularly the PNP-RMG in Didipio, that they are the protector of *all* people, not solely of the rich and the powerful.

CONCLUSION

In light of the foregoing, the Commission **RESOLVES UNANIMOUSLY** to:

1. Recommend to the government under the new administration to look into the issues presented herein and consider the probable withdrawal of the FTAA granted to the foreign company in view of the gross violations of human rights it has committed;
2. Require all concerned agencies, particularly the NCIP, the DENR-MGB, the PNP and the AFP, to submit reports to the Commission on Human Rights regarding concrete actions they have taken to respect, protect and fulfill the rights of the affected community in Didipio, within 30 days from receipt of this resolution;
3. Request the same agencies to continue monitoring the human rights situation in Didipio with the view in mind that all reports of violations be verified and acted upon;
4. Advise the OGPI to consider the findings above and conduct a policy re-orientation on the conduct of mining operation taking into

Concluded by P. Pasolun



conscious account the observance of human rights of the community involved;

5. Direct the CHR Region II office to actively advocate for the human rights of the affected community and to take every step possible to avoid the occurrence of further violence and oppression.

SO RESOLVED.

Done this 10th day of January 2011, Quezon City, Philippines.

Loretta Ann P. Rosales

LORETTA ANN P. ROSALES
Chairperson

(ON LEAVE)

CECILIA RACHEL V. QUISUMBING
Commissioner

Norberto Dela Cruz
NORBERTO DELA CRUZ
Commissioner

Victoria V. Cardona
MA. VICTORIA V. CARDONA
Commissioner

Jose Manuel S. Mamauag
JOSE MANUEL S. MAMAUAG
Commissioner

ATTESTED BY:

Maria Asuncion I. Mariano-Maravilla
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Commission Secretary