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# Human Rights and the Mining Sector in Indonesia: A Baseline Study

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## **Notes To This Report**

1. This report has been prepared exclusively for, and at the request of, IIED's MMSD Project.
2. The information contained in this report, which has been prepared for IIED's MMSD project, is based in part, and in some instances exclusively, upon interviews with and information supplied by a variety of sources, only some of which are in the public domain.
3. The information so supplied to Chris Ballard, unless otherwise indicated, has not been completely verified independently and, therefore, Chris Ballard assumes no responsibility for its accuracy or completeness.
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# **I Introduction**

## **1.1 Terms of Reference**

This baseline study on human rights and the mining sector in Indonesia has been commissioned by the Mining, Minerals and Sustainable Development (MMSD) project.<sup>1</sup> The MMSD Project describes itself as ‘an independent process of participatory analysis with the objective of identifying how mining and minerals can best contribute to the global transition to sustainable development’ (MMSD 2000). The Project has been commissioned by the World Business Council for Sustainable Development and is being implemented by the International Institute for Environment and Development (IIED). Funding for the Project comes largely from the Global Mining Initiative (GMI), a consortium of the major global mining houses.

A proposal for this study, developed in consultation with the MMSD’s Coordinator for Stakeholder Engagement, Dr Frank McShane, describes the broad aims and objectives of the study in the following terms:

the aim of the Baseline Study is to provide a critical review of human rights and the mining sector in Indonesia, using a series of case studies to describe the key human rights issues relating to the mining industry, and to identify areas for improvement of industry performance.

A study and report-writing period of 20 days was allocated and research for the report was initiated on 3 August 2001. Limits on the time and resources available for this study have restricted research for the report to documentary materials. No scope was envisaged for either field visits or formal interviews, and the report is thus very much the result of a preliminary ‘desk-top’ study.

## **1.2 Research Aims and Methods**

Currently, there is no comprehensive review of human rights performance available for any individual mine in Indonesia, and no overall assessment of human rights issues in relation to the minerals industry in Indonesia (though the recent report by Bachriadi (1998) is a first step). While this report cannot pretend to be a substitute for the more thorough review that is required on the topic of human rights and mining in Indonesia, based on field investigation and interviews, it is possible to identify some of the key areas for further research and some of the directions in which the industry should seek to move.

This study supplements two other reports prepared for MMSD: a country-level review of the mining industry in Indonesia, and a global overview of human rights issues as these relate to the minerals industry. The present study thus aims to supply additional information on human rights aspects of the industry’s performance to the first of these reports, and relatively detailed case study material from a single country to the second report. Further details on individual mines and the mining sector generally in Indonesia can be found in the

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<sup>1</sup> For further details of the MMSD project and its objectives, consult the project’s website at [www.iied.org/mmsd](http://www.iied.org/mmsd)

MMSD's Baseline Study on the Indonesian Mining Industry.<sup>2</sup> The broader context for human rights issues in relation to the mining sector are reviewed in the MMSD's Report on Human Rights and the Minerals Industry, by Simon Handelsman.<sup>3</sup>

In the absence of detailed research and reporting on human rights in the minerals sector in Indonesia, it is often difficult to weigh the relative merits of allegations of abuses by national and international monitors and denials by industry and the state. This report attempts a balanced assessment of the often contradictory claims that have been put forward by the industry and its critics. Some of the best models for this approach come from studies of human rights issues in the context of the oil and gas industries. Specifically this report draws lessons, where appropriate, from two reports available on oil industry human rights performance in Nigeria, by Human Rights Watch, and in Ecuador, by the Center for Economic and Social Rights.<sup>4</sup> Both reports provide even-handed assessments of the human rights situations in these locations, with realistic proposals for the improvement of performance by the different parties involved, including the oil industry.

Although the literature on the social aspects of the mining industry in Indonesia is limited by comparison with the documentation available for neighbouring Papua New Guinea, for example, there is still sufficient material to generate a useful review of the main issues. The principal sources employed in the study consist of:

- Documents published by corporations, state and non-state agencies, researchers and activists
- Website material produced principally by corporations, non-state agencies and activists
- Unpublished reports in the author's collection

In the case of Indonesia, the principal reports on the topic of the mining industry and human rights are the various annual reports or updates by:

- Indonesian human rights monitors (including the Indonesian Commission for Human Rights and NGOs such as ELSAM)
- International human rights monitors (notably Human Rights Watch and the Amnesty International)
- Activist NGOs (such as WALHI, Mineral Policy Institute, Project Underground, and Down to Earth)
- Foreign government agencies (including the US Department of State and the Australian Department of Foreign Affairs)

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<sup>2</sup> The Baseline Study on the Indonesian Mining Industry was not sighted prior to the submission of this report.

<sup>3</sup> A draft of the Handelsman report became available only in the final stages of preparation of this report. Broader issues of corporate responsibility in relation to human rights are dealt with in much greater detail in the Handelsman report.

<sup>4</sup> Human Rights Watch 1999a, Center for Economic and Social Rights 1994.

In addition, a series of reports by NGOs have addressed human rights issues in the context of the mining industry in Indonesia, usually through the description of individual events or cases. NGOs involved in producing these reports include the following:

- Down to Earth (Marr 1993)
- Project Underground (1988)
- Community Aid Abroad (Atkinson 1998)
- Lembaga Studi dan Advokasi Masyarakat / ELSAM (Bachriadi 1998)
- Lembaga Alam Tropika Indonesia / LATIN (LATIN 1999)
- Mining Watch (Sangaji 2000) and
- the Catholic Church (Munninghoff 1995a, 1995b)

Where they are available, mining industry codes of conduct and press statements regarding human rights performance have also been consulted.

### **1.3 Report Outline**

Section 2 provides some of the context for the topic of human rights in the Indonesian mining industry, reviewing the recent worldwide emergence of new industry codes of conduct and practices, and identifying some of the drivers for change at this level. Some background is presented on the history of human rights and their abuse in Indonesia, and then a brief summary is provided of the nature and scale of the minerals sector in Indonesia.

Section 3 examines some of the available evidence for claims of human rights abuse at five different mining projects in Indonesia. The individual case studies provide a wide range of contrasts, in time depth, in regional location, and in the nature and extent of alleged human rights violations and industry responses.

Section 4 considers the material presented in the case studies and offers a preliminary analysis of the range of alleged abuses associated with the minerals sector in Indonesia, and the reasons for success or failure in industry responses. Some of the key gaps in knowledge about human rights and the minerals sector in Indonesia are described, and topics for further research and documentation are identified. A number of preliminary recommendations for action that might assist in improving industry performance on human rights in Indonesia are offered in conclusion.

A list of references employed in the study is given in Section 5. Website locations are given for material wherever possible, to facilitate access to original materials for those interested in pursuing further reading.

### **1.4 Acknowledgments**

This report was peer reviewed by Dr Glenn Banks (ADFA, University of New South Wales). Dr Kathryn Robinson (Australian National University) and Dr Christine Boulan-Smidt (Rio Tinto Foundation / Australian National University) provided advice and additional materials. Figure 1 was produced by Kay Dancey (Cartographic Services, Australian National University).

## **2 Human Rights and the Mining Sector in Indonesia**

### **– Contextual Issues**

#### **2.1 Human Rights and the Mining Industry**

*Respect for human rights is important for our business success.*

Leigh Clifford, Chief Executive for Rio Tinto, in a letter dated 16 May 2001 introducing the Group's 'Human Rights Guidance' document.<sup>5</sup>

An emerging consensus view holds that respect for human rights and the promotion of trade and industry are not inevitably in opposition but rather that they are closely linked; that, even if moral arguments are put to one side, a climate in which basic human rights are guaranteed and protected is also an environment in which trade can ultimately be conducted in a more sustainable manner.<sup>6</sup> Improvements in the human rights records of host nations are now linked to improvements in the overall attractiveness of local investment climates, and corporate performance and policies on human rights are increasingly scrutinized by potential shareholders.

These developments are historically recent. Critical studies of the minerals sector during the 1970s and much of the 1980s tended to focus either on the unequal relationship between transnational mining corporations and developing nation states, or the more local conflicts between mining management and labour. Only in the aftermath of the 1980s boom in exploration did attention begin to shift to a broader range of issues, many of them involving the social and environmental impacts of mining on local communities. The new model of critique in place by the late 1980s and early 1990s foregrounded the conflict between local, often indigenous communities on one hand and, on the other, repressive regimes operating closely with the mining industry in the name of national development. Environmental degradation and human rights abuses became the new yardsticks for assessment and criticism of the industry.

In many instances these criticisms were warranted, and the late 1990s have seen the introduction of a series of fairly dramatic changes in industry policy, often in response to external criticism. However, it is still too early to determine whether or not these new policies will successfully translate into practice on the ground. A recent Pricewaterhouse Coopers survey suggests that internal corporate resources are dedicated to human rights issues by only 48 percent of respondents, indicating a priority below that of environment (73 percent), health and safety (70 percent), socio-economic issues (66 percent), labour standards and working conditions (59 percent) and sustainable development (54 percent).

Factors promoting change in industry attitudes towards human rights include the following:

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<sup>5</sup> Quoted in Rio Tinto 2001.

<sup>6</sup> Industry interest in sustainable development, as a recent Pricewaterhouse Coopers survey conducted for MMSD reveals, is driven overwhelmingly by concern for enhanced shareholder value and for the survival of the business in the long term (Pricewaterhouse Coopers 2001: 11).

- Recognition that a truly global economy increases scrutiny of international operations by a ‘virtual human rights community’
- Technological developments which have revolutionized the speed and the reach of communication networks
- Increasing universal acceptance and impact of international legal and statutory regimes, the most significant of which include:
  - Universal Declaration of Human Rights (UDHR)
  - International Covenant on Civil and Political Rights (ICCPR)
  - International Covenant on Economic, Social, and Cultural Rights (ICESCR)
  - ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries (1989)
  - ILO Declaration on Fundamental Principles and Rights at Work
  - ILO Conventions on labour standards
  - Convention on the Elimination of all forms of Racial Discrimination (CERD)
  - Convention against Torture, and Other Cruel, Degrading Treatment or Punishment (Torture Convention)
- Increasing consumer awareness and public demand for corporate and government transparency
- A dramatic widening of the definition of stakeholder interests, with increasing numbers of NGOs forming to address specific topics and issues
- Extensive media coverage of key cases (e.g. Freeport in Indonesia, Shell in Nigeria)
- A focus on corporate legal responsibility, in recognition of the increasing economic and political power of corporations, and the relative inability of states in developing countries to regulate their activities
- An emerging perception that compliance with local human rights requirements is often inadequate for a global industry

On a global scale, some of the key consequences of this changing environment for human rights in a business context have included:

- The UN Secretary-General’s Global Compact, launched in 1999, which calls on industry to ‘support and respect the protection of internationally proclaimed human rights within their sphere of influence and make sure they are not complicit in human rights abuses’
- Multilateral agency guidelines, such as the OECD Guidelines for Multinational Corporations and Principles of Corporate Governance, and the World Bank Policy on Indigenous Peoples and Draft Policy on Involuntary Resettlement
- The joint UK-USA Voluntary Principles on Security and Human Rights (2000), which set out guidelines on matters of risk assessment, and security arrangements with public and private security agencies, for resource industries operating internationally



- Various stakeholder initiatives, such as Amnesty International's Human Rights Guidelines for Companies, the Global Sullivan Principles, the Australian Non-Government Organisations' Principles for the Conduct of Company Operations within the Minerals Industry, and the German NGO network's Principles for the Conduct of Company Operations within the Oil and Gas Industry

In the place of earlier strategies such as outright denial of the existence of human rights violations, avoidance of the knowledge of their occurrence, or acquiescence in abuses, corporations have begun to adopt more pro-active policies, often gathered under the rubric of Corporate Social Responsibility. These initiatives have generally taken the form of individual corporate codes of conduct on human rights matters. In a few instances, these codes have been developed into operational strategies and implemented as practice on the ground. These developments are so recent, however, that it remains to be seen whether they constitute genuine recognition of the importance of corporate integrity, or simply an extension of corporate public relations in the search for comparative advantage within the industry.

The field of human rights and business is highly fluid at present, and developing at a dramatic pace. Human rights issues have the capacity to entirely reconfigure the operating environment for the minerals sector in particular. Definitions of the scope of human rights that are engaged in the minerals sector, and of a corporation's sphere of influence (and thus of corporate social responsibility), are constantly evolving. The challenge for individual corporations, and for the industry as a whole, is to reconsider some of the fundamental precepts that have guided business strategy and that have created specific forms of relationship with domestic publics and with host states and communities.

Sources:

Akpan 2000, Bureau of Democracy, Human Rights, and Labor 2000, Forcese 1998, Human Rights Watch 1998, n.d., Jochnick 1999, Lippmann 1985, Spar 1998, UN High Commissioner for Human Rights 1999, Warhurst 1998.

## **2.2 Human Rights in Indonesia**

Indonesia features prominently in global reviews of human rights abuse. The U.S. State Department recently singled out Indonesia as one of three countries (along with Colombia and Nigeria) in which human rights in the corporate sphere are most obviously endangered. Between 1965 and 1998, the authoritarian New Order regime of President Suharto exerted control over Indonesian civil society through an undemocratic political structure, a corrupt judiciary, and a ruthless military. The cataclysmic events of 1965, which resulted in nationwide massacres of hundreds of thousands of suspected Communists, institutionalized terror as a fundamental mechanism in the relationship between Indonesian citizens and their state. Under the New Order regime, the Indonesian army explicitly shifted its focus from combating potential external enemies to the control by force of internal threats to the regime. Human rights violations flourished under these conditions, yet international donors and investors proved remarkably reluctant to censure or criticise the regime.

Numerous basic rights were severely curtailed under the New Order regime, including, but by no means limited to:

- Routine extrajudicial killing, torture, arbitrary arrest, intimidation and disappearance of political opponents and critics
- Refusal to investigate, or permit the investigation of, human rights abuses
- A corrupt judiciary, subservient to the executive branch
- Legal discrimination against women
- Limitations on political participation, and on free and fair electoral processes
- Limitations on freedom of religious expression and participation
- Limitations on freedom of assembly and association (including unionization)
- Severe restrictions on press freedom

Some of the key social and political issues that have created the conditions for human rights abuse included:

- The Basic Agrarian Law (BAL) of 1960, which asserted the priority of national interest over traditional forms of land ownership
- A lack of official recognition of indigenous status for rural communities, which were classed instead as “remote”, but given no recognition in terms of their ties to territory
- Separatist struggles in Aceh and Papua, and the war in East Timor, which enabled the armed forces to declare these provinces to be designated as Regions of Military Operations (Daerah Operasi Militer or DOM), effectively ruled under emergency powers
- The financial dependence on private business of the state’s military and other security forces, which has the effect of placing their interests in competition with those of other Indonesian citizens

The involvement of state security forces in gross violations perpetrated against unarmed civilians has been documented in numerous cases, including:

- Massacres of Muslim protestors at Tanjung Priok in 1984 and Lampung in 1989
- The so-called ‘Petrus’ killings of the 1980s – mysterious, savage gangland-style executions by government security forces operating undercover, which initially targeted underworld figures, but gradually extended to other sectors of society. Over 5000 people were reportedly killed in an operation approved directly by President Suharto
- Massacres of independence activists (most famously the Santa Cruz or Dili massacre of November 1991 in East Timor)
- The torture and execution of labour activists such as Marsinah in 1993

This history of human rights abuse on a massive scale culminated in the exposure before the world’s media of Indonesian military brutality and terror tactics in the process of East Timor’s acquisition of independence in 1999. There have been no legal proceedings within

Indonesia against senior military figures involved in planning or executing the East Timor massacres, and the current military campaign being waged against separatists in Aceh suggests that there has been no substantial cultural change since within the Indonesian military.

The Indonesian state and its army routinely deny either the existence or knowledge of human rights violations, and violations reported internationally are often dismissed as the fabrications of foreign provocateurs and NGOs. Under increasing pressure, both domestically and internationally, in 1993 former President Suharto acceded to calls for a national body charged with the investigation of alleged human rights abuses – the National Human Rights Commission or Komnas-HAM. Under-resourced and under intense pressure not to embarrass the New Order regime or its military, the activities of Komnas-HAM were severely limited in scope. Weakened to the point of being ineffectual, it was only in the final years of the New Order regime that the Commission was able to secure some minor prosecutions against low-ranking military personnel.

Monitoring of human rights abuses in Indonesia has been conducted by both national and international bodies. Other than Komnas-HAM, the principal body within Indonesia to have assumed the responsibility of reporting violations has been the Institute for Policy Research and Advocacy, or ELSAM (Lembaga Studi dan Advokasi Masyarakat), a Jakarta-based NGO. Smaller NGOs affiliated to ELSAM operate at a provincial level, such as IHRSTAD in the province of Irian Jaya. Internationally, much of the dissemination of reports on human rights issues in Indonesia has been undertaken by NGOs such as Amnesty International, Human Rights Watch / Asia and TAPOL, amongst others. In addition, foreign government agencies routinely report on human rights issues in Indonesia. The most widely available of these reports is the annual report by the U.S. State Department's Bureau of Democracy, Human Rights, and Labor.

Although numerous restrictions have been lifted since the fall of the New Order regime in 1998, and the gradual emergence of a genuine democratic process, certain structural elements of the New Order have persisted, including:

A strongly centralized state (which is reluctantly in the process of yielding a measure of autonomy to regional governments)

The pervasive presence and influence of the security forces in civil society, politics and business

Corruption at all levels of the judiciary. One consequence of this situation is that plaintiffs are more likely to pursue TNCs in their countries of origin (see the list of current cases of 'long-distance liability' involving the minerals industry in Handelsman 2001)

The continued failure of Komnas-HAM to operate free of political pressure, to investigate alleged abuses, and to secure prosecutions. Indonesian human rights NGOs have recently called for Komnas-HAM to be disbanded

The use of violence by entrenched elites against their political opponents (including the assassination of senior judges and NGO critics, and the deliberate instigation of unrest in outer provinces).

Gross violations of human rights have been prosecuted under Indonesia's criminal code (KUHP – Kitab Undang-Undang Hukum Pidana), but court corruption, intimidation of

witnesses, the role of senior officials of state in directing certain abuses of human rights, and the tendency for military personnel to be tried in military courts, have rendered such prosecutions largely ineffective. The recent process of constitutional amendment which sought to introduce a Law on Human Rights Courts met with strong resistance from the military and senior officials of the former New Order regime. The Law on Human Rights (Law No. 39/1999) lists the internationally recognised human rights accepted by Indonesia as national law. A subsequent Bill on Human Rights Courts, drafted in response to international pressure for justice over the East Timor referendum massacres was passed, after several revisions, in November 2000 (as Law No. 26/2000). The new Law contains tough provisions for future violations, including the introduction of the notion of ‘crimes of omission’, which render military and police commanders, for example, responsible for failure to prevent gross violations committed by their troops. Controversially, however, the Law listed, as one of the amending sub-clauses to its definition of basic human rights, the ‘right not to be prosecuted on the basis of a retroactive law’, preventing Indonesian courts from trying military officers involved in the East Timor massacres on the basis of human rights. To some extent, the resolution of past abuses is addressed through the provision for ad hoc human rights courts established by presidential decree on the recommendation of the Parliament (DPR), and the establishment of a Truth and Reconciliation Commission through enactment of a further law. The transition from President Wahid to President Soekarnoputri during 2001 has delayed, and may seriously imperil, further legal developments.

Ultimately, a nation in which fundamental human rights are routinely abused provides a poor human rights climate for an industry that relies on the state to secure and protect its title to land. Much of the conflict and abuse of human rights in the context of mining projects has its origins in issues of land appropriation, the failure to recognize traditional land rights, and inadequate compensation for land and livelihoods. There are no indications that Indonesia’s fundamental problems with its unrepentant and intransigent military, or its venal judiciary, are likely to be resolved in the short to medium term future.

Sources:

Bourchier 1990, Bureau of Democracy, Human Rights, and Labor 2000, ELSAM 2000, Human Rights Watch 2001, International Crisis Group 2001, Robinson 1998, Siegel 1998.

### **2.3 The Mining Industry in Indonesia**

A detailed description of the past and current state of mining industry in Indonesia is contained in the MMSD’s Baseline Study of the Mining Industry in Indonesia. The brief account provided here is restricted largely to comments on the implications of the nature of the industry for human rights conditions.

Although alluvial miners had been producing gold and silver in Java before 700 AD, the origins of industrial mining in Indonesia date to 1710, when tin was first mined on Bangka Island. Tin, coal and manganese were all mined by Indonesia’s Dutch colonial rulers during the 19<sup>th</sup> century, principally on Java (see Section 3.2 below), but the early 20<sup>th</sup> century saw the development mining for nickel in Sulawesi, for rock asphalt on Buton Island, and for bauxite on Bintan Island. Exploration prior to World War II was limited and only five

percent of Indonesia had been mapped geologically by 1942. The post-war nationalization of the industry in a newly independent Indonesia further restricted foreign investment until the advent of the New Order regime in 1965. In 1968, most of the individual state-owned mining companies were merged into two national enterprises, PT Tambang Timah and PT Aneka Tambang.

The 1967 Foreign Capital Investment Law opened the door to foreign investment in minerals and, in 1967, Freeport Sulphur signed the first Contract of Work (COW) with the Indonesian government, to mine copper in West Irian (see Section 3.4 below). Indonesia's mining Contracts of Work essentially designate foreign firms as contractors working for the government and paying corporate income tax on profits in addition to royalties and other taxes. A second 'generation' of COWs, signed on slightly less generous terms than the Freeport contract, saw fifteen foreign mining enterprises initiate exploration in Indonesia between 1968 and 1971, including INCO, which developed a nickel mine at Soroako in Sulawesi (see Section 3.3 below). During seven different COW generations, 268 contracts were issued, of which only 12 have achieved production status (all from the first four generations). Coal contracts operate under separate arrangements instituted in 1981, the Cooperation Contract for Coal (CC): 12 of the 106 CCs signed under the conditions of three different generations are currently producing.

The mining boom of the late 1980s and early 1990s saw the development of the majority of the existing hard rock mineral projects in Indonesia, most of them located in the western half of the archipelago, on the islands of Sumatra, Kalimantan and Java (e.g. Rio Tinto's gold mine at Kelian on Kalimantan, see Section 3.5). Only with the introduction of new taxation legislation and incentives in 1991, in step with the 5<sup>th</sup> generation of COWs (dubbed the "Frontier Contract"), was the industry encouraged to explore in the eastern provinces, boosted by Freeport's 1988 announcement of the discovery of the giant Grasberg orebody in Irian Jaya (see Section 3.4). The result has been a dramatic increase in projects currently producing or under development in these "outer" provinces (e.g. Newmont's Batu Hijau mine, discussed in Section 3.6).

Since the Asian Economic Crisis of 1997-98, the Indonesian economy has suffered a severe downturn. The national currency, the rupiah, lost 80 percent of its value, the economy contracted by between 10 and 15 percent, and inflation rose by over 60 percent. Investment in exploration was sharply reduced, following a peak of activity during 1996 at the height of enthusiasm over the supposed discovery of a massive gold deposit by Canadian minor, Bre-X, at Busang in Kalimantan. Large numbers of 7<sup>th</sup> Generation COWs were suspended or postponed during 1998, and exploration has not picked up since. Although mining stocks with Indonesian associations have suffered from a perception of political instability and financial insecurity in the country, the overall value of the industry to Indonesia has increased dramatically due to the depreciation of the rupiah, almost trebling between 1997 and 1998.

The continuing economic crisis in Indonesia has posed problems both for the industry and for the management of mining impacts. These problems vary significantly according to the scale of the operation, from the more tightly regulated large-scale mines, to the medium-scale coal operations, and the largely unregulated small-scale or artisanal mining (ASM) operations.

Environmental performance varies according to the scale of the operation and the degree of regulation. The larger operations, such as Freeport's Grasberg mine, obviously have the potential for the broadest impacts on environment and on community health. However these are also the most heavily regulated operations, even though standards are often well below those in force in developed countries. The national environmental impact assessment system (AMDAL) is consistent with international standards, but is unwieldy and often poorly or inappropriately implemented. Under the current conditions of national economic crisis, the Government of Indonesia is seeking to stimulate investment through the relaxation of controls on environmental performance, and by providing for increased access to nature reserve areas.

Medium-scale mines, such as the state-owned coal mining enterprises, are seldom as tightly regulated or monitored as the large-scale mines, with the consequence that the scope for environmental impacts is often extensive. The small-scale or alluvial (ASM) sector appears to have experienced considerable growth in Indonesia in the aftermath of the Asian Economic Crisis. However it is almost entirely unregulated, and poses some of the most widespread threats to environmental and health safety, in particular through its impact on water quality.<sup>7</sup>

The social impacts of mining are even less well catered for than the environmental impacts. There are no processes for social impact assessment equivalent to those addressed by the environmental AMDAL assessments, other than general statements requiring operators to 'recognise' local land rights. In this, the Indonesian government would appear to have abdicated its role in negotiating land access without offering clear guidelines about procedure.

The negotiation of land access has been perhaps the most critical issue in terms of social impact. Past procedures have greatly favoured mining operations with COWs authorized by the state. The legislation relevant to mineral development in Indonesia is underpinned by the 1945 Constitution, Article 33 of which states that the nation's natural resources are to be exploited under state control for the maximum benefit of the people of Indonesia. The Basic Agrarian Law (BAL) of 1960 was intended originally to redress the excesses of individual land parcelling under the colonial Dutch administration. In its conception, the BAL was 'not primarily aimed at economic development',<sup>8</sup> but the fact that the BAL overruled traditional (*adat*) land rights permitted successive governments to interpret the law to the considerable advantage of the state's industrial contractors.<sup>9</sup>

The denial of a basic right to self-determination on the part of local landowning communities is common to all three scales of mining in Indonesia. Traditional land rights, forms of representation and social organisation are all essentially denied by the current provisions for land access. The appropriation of land, often accompanied by either the threat

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<sup>7</sup> See McMahon and Subdibjo 2000 for a review of the environmental impacts of ASM mining in Indonesia, and their Appendix I for a case study of illegal mechanized mining in Kalimantan.

<sup>8</sup> Soemardjan 1962: 25.

<sup>9</sup> See Fitzpatrick 1997 for a detailed analysis of the incompatibility of rights to land under *adat* law and under the BAL.

or the actual use of force, and forced resettlement of residents, often with inadequate consultation or compensation, are commonplace. The resultant loss of livelihood is further compounded by inadequate provisions for training and employment for these communities, excluding them from an equal opportunity of employment. This problem is particularly evident in the more remote and less developed provinces of eastern Indonesia.

In the past, abuse of the scope for equity in foreign-owned mining operations has created a situation in which senior government figures have strong financial interests in the industry. The 1996 Busang fiasco clearly exposed this conflict of interest, as different members of President Suharto's family, in alliance with different elements of the bureaucracy, competed for control of the operation. The subsequent use of the state apparatus, and of its armed forces in particular, to enforce government decisions on land access represents the key to most of the violent abuses of human rights associated with the mining industry in Indonesia.

Recent modifications to Indonesian legislation may represent the most significant changes to the environment for mining and mining communities since 1967. These changes relate to the broader process of decentralization and to the operating permits for mining. The Regional Autonomy Law (Law No. 22/99) and the Fiscal Decentralization Law (Law No. 25/99) place much more control over financial and resource matters in the hands of provincial and local governments. While the central government in Jakarta will retain control over security and other issues impinging on national sovereignty, provincial and local governments will receive up to 80 percent of mineral revenues (oil, gas and mining), and will gain the authority to issue mining permits. Aceh and Irian Jaya / Papua, as the two provinces in which separatist sentiment is strongest, have recently received 'special autonomy' status, though in the case of Irian Jaya, ironically, this has meant a reduction from 80 percent to 70 percent of the share of mining royalties. The implementation of this decentralization program will not be an easy process, and there exists the potential for considerable uncertainty and corruption in the issuing of licenses. The decentralization laws include provisions for improved environmental protection standards and an increase in the permit holder's responsibility for local community development. The regulations governing the implementation of these modifications, which have not yet been elaborated, will obviously be crucial to their success.

Operating permits for national and international investors will now be streamlined into a new system of Mining Operation Permits and Mining Operation Agreements for large-scale and small-scale projects, and People's Mining Permits for artisanal miners. A new Hazardous Waste Law (Law No. 18/99) originally made no exception for mining waste until it was amended by Partial Revisions Law No. PP 85/99. A new Mining Bill is currently under consideration by the National Parliament, and has been the subject of intense lobbying from industry and NGOs. Some of the key concerns for industry hinge upon the classification of mining waste as hazardous, and on winding back existing restrictions on exploration and mine development in areas designated as protected forest.

Indonesia represents a crucial test case for the global mining industry's engagement with concerns over human rights issues. The country is currently at a historic crossroads, with considerable scope for reforms to legislation and to implementing agencies. In mining terms, Indonesia remains highly prospective, with exceptional potential for gold, copper, bauxite, tin, nickel, and coal (in addition to petroleum and natural gas). Its current economic

predicament, as a nation vitally in need of export dollars, renders Indonesia particularly susceptible to arguments for lowered standards on environmental and social issues. Under these conditions, the industry's own codes of conduct may prove to be more stringent than national legislation.

Sources:

Atkinson 1998, Bachriadi 1998, Beals and Gillis 1980, Down to Earth 50 (2001), Embassy of the United States of America 2001a, 2001b, Marr 1993, Pricewaterhouse Coopers 1999, McMahon and Subdibjo 2000, Pui-Kwan 1999, Sigit 1973, Soesastro and Sudarsono 1988, Ter Braake 1944.



## 3 Human Rights and the Mining Sector in Indonesia

### – Case Studies

#### 3.1 Introduction

The following case studies of human rights performance at five individual mining projects across Indonesia provide a cross-section of some of the issues at stake:

- Case Study 1, on the Ombilin mine in West Sumatra, describes the long history of labour conditions at a colonial coal mine, and the nature of changes in labour relations under national management in the newly independent Indonesia.
- Case Study 2, on Inco's nickel mine and smelter at Soroako in South Sulawesi introduces the problems of land acquisition under the New Order regime, and the continuing legacy of earlier practices relating to environmental and social impacts on local communities.
- Case Study 3 addresses the mining project most commonly linked to allegations of gross human rights abuse in Indonesia, Freeport's Grasberg mine in the province of Irian Jaya/Papua. This long-running project has been beset by claims of abuse since its inception, and has provoked vigorous international debate.
- Case Study 4, on the Rio Tinto-owned gold mine at Kelian in East Kalimantan, returns to the issue of land and compensation. Kelian is due to close in 2004, and will thus offer one of the first modern Indonesian examples of a major mine to have run to its full term, inviting post-operation assessments on the long-term positive and negative impacts of mining. In addition, Rio Tinto's recently declared human rights policies provide high standards against which performance on the ground can be judged.
- Case Study 5 examines a recently initiated project, Newmont's Batu Hijau copper-gold mine on the island of Sumbawa in the eastern province of Nusa Tenggara Barat, to consider the extent to which industry practices have evolved and have taken account of the problems encountered at earlier mining projects in Indonesia.

The case studies are necessarily brief, but aim to highlight the role of local conditions and constraints, the influence of individual corporate cultures, the nature and scope of allegations of human rights abuse, and details of corporate responses and initiatives.

Common to all of the case studies is a lack of basic evidence with which to judge the claims being made for abuses of human rights. The adoption of human rights reporting policies is very recent in the mining sector in Indonesia. Corporate reporting on human rights issues is thus still considerably outweighed by the volume of allegations and reports of violations emanating from community groups, NGOs, activists and others. However, the detail and consistency contained in many of these NGO reports of human rights violations, while not conclusive, certainly warrants more detailed investigation.

It should also be noted that the case studies in this report all involve major mines, four of which are majority-owned by foreign corporations. The case studies have been selected in

part because they illustrate different aspects of the human rights issues under discussion, but also because they are the cases with the best of the limited documentation available. Our knowledge of human rights issues at most other projects is extremely fragmentary, and this is particularly true for nationally owned projects, for medium-scale mines, and for artisanal or small-scale mining (ASM) operations.

The category of ASM covers an enormous range of largely unregulated operations, from traditional gold-panning communities for whom small-scale mining has long been the principal source of household income, through gold rushes to much larger mechanised operations. These larger illegal mining operations are often focused on coal and gold deposits, and are financed by leading figures in Indonesian society and protected by state security. The estimated number of people who earn their living from illegal mining in Indonesia (57,000) is currently almost double that of the legal mining workforce (30,000).

In terms of their impact on landowning communities, through loss of land and livelihood, and negative health impacts, and of the use of violence to assert and maintain control over production, the larger illegal operations present a grave threat to human rights. ASM can also threaten the sustainability of the legal mining industry: Aurora Gold is considering abandoning its AUS\$60m investment at Toka Tindung in North Sulawesi due to the predations of up to 3000 ‘illegal’ miners. While the focus of this report is on the human rights performance of the legal, large-scale mines in Indonesia, activities in the wider ASM field should not go unremarked and deserve closer scrutiny.

### **3.2 Case Study I – Ombilin (West Sumatra)**

The Ombilin coal mine is one of the longest continually operating mines in Indonesia. It is currently operated by the state-owned enterprise, PT Tambang Batubara Bukit Asam (PTBA), and contains reserves of 109 mt.

Rich deposits of coal were discovered by Dutch geologists at Ombilin-Sawahlunto, in West Sumatra, in 1868, though production did not commence till 1891. Negotiations for the land at the mine, and for the railway line which serviced the mine, were conducted between the Dutch government and local village heads. Although relatively large sums of compensation were paid for the land, the failure on the part of the colonial officials to understand the complexities of West Sumatran land tenure systems resulted in the exclusion of many people with valid claims. Significantly, these grievances have not been extinguished despite the passage of more than a century, and protests against the unjust settlement of the land compensation are still being made today. This suggests that grievances over land and compensation at mining projects elsewhere in Indonesia may well persist long beyond the life of most mines.

The mine’s exceptionally long history, from 1891 to the present, can be divided into several periods, which characterize labour relations with successive colonial and then Indonesian managements and governments. The first period, from 1892 to 1920, was marked by the use of convict labour and a brutal mine culture of physical violence. Labour was coerced through the institution of regular flogging, and conflict amongst labourers along ethnic lines, and between labourers and managers, was an almost constant occurrence.

The obvious inefficiency of this violent use of convict labour forced a change in management from about 1920. Decent conditions were put in place for a professional labour force, leading to a considerable reduction in everyday violence on all sides. However, unionization of an increasingly educated labour force resulted in strikes, culminating in a worker's uprising in 1926-27, which was ruthlessly suppressed. The harsh economic conditions of the Depression led to an accommodation between miners and managers which was sustained until the outbreak of the Pacific war in 1942.

The Japanese occupation from 1942 to 1945 saw a return to the violence of the first phase, as the managing Hokkaido Steamship Company re-imposed the conditions of convict labour on its workforce. Output dropped dramatically during the Indonesian Revolution (1945-49), rising briefly under Dutch control between 1948 and independence in 1949.

During the period of Sukarno's rule, from 1950 to 1965, the mine was nationalized, coming under the supervision of PT Bukit Asam. The mining workforce became increasingly politicized, with competing party and union allegiances, and conflict along ethnic lines. Under a relatively weak and poorly centralized state, the miners were able to press for improvements in their living standards.

However, the rise of Suharto after 30 September 1965 introduced a new phase in labour relations, under the New Order regime. Unified military support for a strongly centralized state saw the effective denial of basic rights of association to the miners, the only choice on offer being membership of the government's Golkar party and its various branches. A politics of labour resistance persisted, but far less openly than in previous periods.

The long history of labour relations at the Ombilin mine provides a sense of the dramatic transformations in management practice that have occurred in the past, from the use of convict labour, to the rise and then repression of unionized labour. Labour conditions at Ombilin have reflected both local issues, such as ethnicity, and national issues, such as changes in government, as well as the role of global markets. Under appropriate pressure, management at Ombilin has clearly been capable of major shifts in policy and practice. The unresolved claims for land compensation at Ombilin indicate both the long history of disregard for local land rights in Indonesia generally, and in the mining industry in particular, and the willingness of local communities to persevere with their claims.

Environmental conditions at state-owned operations such as Ombilin have not been subjected to rigorous environmental controls or monitoring. A recent review of medium-scale coal-mining operations in Indonesia described significant environmental impacts, including acid rock drainage (ARD), poor design of coal preparation plants, sediment ponds and catchment areas resulting in regular loss of coal fine particulates and sediments into the environment. Presumably these impacts are registered in the health of local communities, but no detailed studies of such impacts have come to light.

Sources:

Erwiza 1999, McMahon and Subdibjo 2000.

### 3.3 Case Study 2 – PT Inco at Soroako (South Sulawesi)

*...we explained we were on a mission to develop the area for the sake of the local people, and so on.*

Inco exploration geologist Benny Wahyu (now Chairman of the Indonesian Mining Association) describing his presentation to the district head at Soroako in 1966.<sup>10</sup>

PT Inco, which is majority-owned by Inco Canada Ltd, operates a nickel mine and smelter near Lake Matano in the Soroako area of South Sulawesi. Exploration at Soroako began in 1968, under the terms of a “second generation” Contract of Work. Project development was initiated in 1973, and full production began in 1978. Under a second Contract of Work, issued in 1996, PT Inco gained exploration rights to additional zones in South, Southeast and Central Sulawesi. Major reserves have been identified in the Bahumatefe and Bahudopi (Central Sulawesi) and Pomala (South Sulawesi) areas, and are likely to proceed to development. An expansion project at the mine’s smelter to boost output by 50 percent was completed in 2000.

As elsewhere in Indonesia, the primary grievance voiced in relation to the Soroako project has to do with the loss of land and livelihood. Much of the agricultural land adjacent to the village of Soroako, on the shores of Lake Matano, was requisitioned for the mine’s infrastructure, including the townsite, an airport, a sports oval and a golf course. In selecting the lakeshore, Inco apparently ignored the advice of its own professional town planning consultant which noted the limited room for expansion in the intensively settled lake shore area and the scope for pollution of the lake.

Under the terms of the Contract of Work, no royalties were paid to the community, while the regency government received royalties only for sand and gravel used in construction, with the rest going to Jakarta. Land negotiations were restricted to the local government and Inco, and local communities were excluded from all decision-making. Compensation for the land at Soroako was regarded by the community as inadequate, being paid simply at the local government-fixed rate. In 1974, the total land bill was fixed at US\$100,000. To place this figure in some context, Inco’s total investment in the project was worth approximately US\$850m. The land sale made no provisions for loss of livelihood and incorporated only paltry costs for standing crops and commercial trees. Although an additional payment of US\$80,000 was made in 1977 in an attempt to head off rising discontent, by as late as 1981, 75 percent of the community had still refused to accept the original compensation payments. Meanwhile much of the original compensation fund, handed over by Inco to the local regency government, had been misappropriated. In 1999, under more democratic post-Suharto conditions, demonstrations were staged by the Soroako community seeking direct participation in a re-negotiation of the original land sale. As recently as May 2001, members of the Soroako community were still protesting over compensation and calling for community involvement in a re-negotiation of the company’s contract of work. Much of the community’s sense of grievance at Soroako apparently stems from the perception that non-

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<sup>10</sup> Quoted by Robinson 1986: 98.

cash forms of compensation held to have been promised by the company (such as roads, and education and training opportunities) have not been forthcoming.

Poor planning in relation to local communities has impacted severely on existing settlements in the Soroako area. The small population of approximately 1000 villagers at Soroako has been swamped by the mine workforce and by uncontrolled immigration. It has been estimated that indigenous people from the wider Soroako region now comprise less than a third of the local area's non-mine population. Inadequate urban and development planning has resulted in drastic overcrowding, and negative impacts on health (see below) and social cohesion.

Few details are available of general employment and labour conditions at Soroako, but training and employment opportunities for local Soroako communities were evidently limited during the mine's early years. Of the original construction force only 12 percent were from the local district, but this figure increased from 39 percent of the production phase workforce in 1978 to 58 percent by 1985 (although 22 percent of these were casual labourers). Circumstantial evidence suggests that Inco's contractors were substantially better at hiring locally than Inco itself. Labour relations at the Soroako mine and smelter have been strongly regulated by the government, through a house union for managers and workers together, and regional military commanders have intervened in certain labour disputes on the side of the company. Employment opportunities for Soroako women have been very limited. Concerns over the human rights of women, in particular, have also been raised at Soroako, where common mining practices such as "contract marriages" and a major increase in prostitution have been evident.

One of the more severe impacts on local human rights at Soroako has been the effect of environmental pollution on the right to a non-hazardous environment. Water quality was badly impacted during the 1970s, with processing waste deposited via an open channel into Lake Matano, along with the company town sewage, occasionally in untreated form. This resulted in acute pollution, particularly close to the lake's edge, where villagers washed and drew drinking water; villagers suffered skin and intestinal problems as a consequence. Villager livelihood has apparently been impacted through depletion of fish and shellfish stocks in the lake (including impacts on the very rare ikan butini fish species). From 1977, Inco installed standpipes in the settlements to resolve the problem of access to fresh water, but these were apparently insufficient in number for the population that depended on them. More recently, the company has estimated that it provides access to clean water to 94 percent of the residents at Soroako (which includes the main mining town), but only 68 percent at Wasuponda (the seat of the District Head) and 34 percent at Wawondula (a company settlement for unskilled workers).

Air quality at Soroako has also been negatively impacted. Dust emissions from the smelter stacks have created major environmental problems during the 1980s, lowering local agricultural productivity and apparently leading to an increase in respiratory illness in the local population. In addition to the loss of prime agricultural land, the Soroako community has also suffered the consequences of uncontrolled erosion due to the strip-mining process employed by Inco, with substantial deposition into Lake Matano.

Although Inco has responded to some of the problems at Soroako with community development programs, the pattern emerging over time is that these programs are amongst the first of the company's activities to be cut when nickel prices drop, indicating that community development is still seen as marginal to the company's key interests and activities. Inco appears to have made few if any statements on human rights in the context of its Indonesian operations. Perhaps significantly, the parent company's website contains virtually no reference to human rights issues, and there is no readily available statement on company policy. Enquiries made to the company about human rights content in company policy have drawn no response.

Particularly worrying is the apparent resurgence of older practices at Inco's new project in the Bahumatefe area, where existing government transmigration settlements are being displaced ahead of exploration and mine development. Recent reports from activists visiting the Bahumatefe area suggest that the process of relocating these settlements is being conducted with little or no regard for the claims of their inhabitants, repeating practices associated with Soroako in the 1970s.

Sources:

*Down to Earth* 31 (1996), 36 (1998), 50 (2001), Katili 1988, Marr 1993, Robinson 1985, 1986, 1991, 1999, Sangaji 2000.

### **3.4 Case Study 3 – Freeport at Grasberg (Irian Jaya)**

Freeport's Grasberg mine in Indonesia's easternmost province, Irian Jaya (also known as West Papua), is one of the world's richest mining operations. Recent estimates suggest that the mine has both the third largest reserves of copper, and the second largest reserves of gold, in the world. With much of the necessary infrastructure already in place, production costs are also unusually low. In addition, the unknown potential of the largest orebody, the Grasberg, where the base of the ore deposit has yet to be identified, and of several additional orebodies currently being explored, suggests that the mine's life could extend for at least another 30 years.

Human rights issues at Freeport are highly complex and have featured prominently in the international media. Together with the Bre-X fiasco at Busang, events at Freeport have dominated both domestic and international public perceptions of the mining industry in Indonesia. Accordingly, the Freeport case is dealt with at some length here, both because there is extensive documentation of allegations and denials of human rights abuse, and because the issues raised by Freeport's operations potentially illuminate problems that might be confronted by the industry more widely in the future.

The original orebody, the Ertsberg, was first identified in 1936 by a Dutch geologist on a mountaineering expedition; his published report of the find was the stimulus for a second expedition in 1960, conducted jointly by a Dutch mining company, Oost Borneo Maatschappij, and Freeport Sulphur, an American company then scouting for nickel prospects in Indonesia. The results of this second expedition were sufficiently promising for Freeport to pursue their option on the deposit, but the takeover of Dutch New Guinea by Indonesia in 1962 forced a delay in further development. Following the accession to power

of Suharto's New Order regime, Freeport was awarded the first mining Contract of Work in 1967. Development began on-site almost immediately and production commenced in 1972. After an initial profit windfall in the early 1970s, riding on the back of unexpectedly high copper prices, Freeport's Contract of Work was renegotiated on less generous terms in 1976. Copper prices promptly dived and by 1977-78 Freeport was experiencing difficulty meeting its debt service payments. Only when metal prices recovered at the end of the decade did Freeport begin to rise above the status of a marginal enterprise.

During the 1970s, a series of additional orebodies adjacent to the original Ertsberg find had extended initial estimates of the mine's life into the late 1980s, but it was the discovery of the massive Grasberg orebody in 1987, just as the Ertsberg approached exhaustion, that saw Freeport gain its current position as an industry giant. Freeport currently holds a 1991 extension to its Contract of Work that is valid for the next 50 years. Under the 1991 agreement, Freeport also secured a new exploration concession area of 4.8 million acres, known as "Block B" - the original "Block A", by comparison, covered a mere 24,700 acres. To finance the considerable cost of exploration over such a vast area, Freeport accepted a US\$1.7 billion offer from then-Rio Tinto Zinc (now Rio Tinto), which saw RTZ acquire just over 10 percent of Freeport Indonesia's parent company, Freeport McMoRan, together with a 40 percent beneficial interest in the Block B concession.

Changes in the volume of mill throughput are a useful index of developments in mining activity at Freeport. There has been an almost exponential increase in mill throughput following the discovery of Grasberg, from 7,500 metric tonnes/day in 1972, to 66,000 mt in 1993, and then to 220,000 mt in 1998. Mill waste is dumped directly into the Agabagong River, which discharges into the Aijkwa River and thence into the Arafura Sea. Freeport underwent a process of environmental evaluation, monitored by the government, that has now allowed for an increase in daily throughput to a maximum of 300,000 mt per day. In comparison, Ok Tedi, which is also a copper-gold project, has an average mill throughput of about 80,000 mt (2000) and the Porgera gold mine an average of only 17,000 mt (2000). Until 1995, what external scrutiny there was of Freeport's operations focused largely upon environmental impacts, particularly in the aftermath of a large overbank event at the Aijkwa River in 1990 which saw tailings discharged over a 30km<sup>2</sup> area of lowland forest.

The wealth of Freeport's Irian mine is reflected in the relationship between the company and the Indonesian government. Freeport, which is responsible for about two thirds of Indonesia's annual production of gold, is regularly amongst the largest corporate tax-payers in the country. However, its strategic importance to the state exceeds its monetary value. In recognition both of its wealth and its status as the first symbol of foreign investment confidence in the New Order government, the Freeport mine has been declared one of ten "national assets". Freeport is also the jewel in the crown of provincial development for Irian Jaya, accounting for 88 percent of the province's non-oil exports; however, there has been considerable resentment in Jayapura over the poor returns to the province from the royalties paid to Jakarta.

The extent to which the state is prepared to defend its interest in the mine is crucial, and there have been as many as 1,800 troops in the COW area, including a Kostrad (Strategic Reserve) unit whose sole purpose is the defence of the mine. In each of its Contracts of

Work with the government, Freeport has been obliged to house, supply and transport any government officials, including members of the security forces, within the COW area.

There are two principal indigenous communities in Freeport's principal COW area: the Amungme, in the highland areas around the Grasberg mine and the township of Tembagapura, and the Kamoro, on the coast and the lowland plain where the new towns of Kuala Kencana and Timika, the portsite at Amamapare, and the airport are located. In addition to these two indigenous communities there are almost 100,000 immigrants, the majority of whom have arrived since 1990. This growing population is composed of Papuans from other parts of Irian Jaya, transmigrants, and voluntary or economic migrants from other parts of Indonesia.

When Freeport received its initial Contract of Work in 1967 and began to establish camp sites on the coast and up at the Ertsberg, the immediate response of the Amungme community was to set up salib signs - crosses of wood that traditionally indicated that trespass beyond the point indicated was not permitted by the owner of the land. In other words, protests on the part of indigenous landowners against the establishment of the mine began as soon as they realised that the first work crews were there to stay and were not just passing through, as the 1960 expedition appeared to have done. Following the terms of the 1967 Contract of Work, Freeport paid no rent or royalties to the Amungme, other than the stipulated 'reasonable compensation for dwellings to local inhabitants and the cost of their resettlement'. The government undertook the process of land acquisition around the mine and the Tembagapura town site, apparently paying the Amungme with tobacco and goods, though the significance of these transactions was certainly not clear to Amungme leaders. As the mine infrastructure expanded, and the township of Tembagapura was constructed, the Amungme of the Wa Valley continued to protest what they saw as a constant process of encroachment on their land, without either consultation or adequate compensation.

There were strong protests in the adjacent Tsinga valley in 1973, when Freeport geologists began prospecting in the headwaters of the Tsingogong River. Unoccupied exploration camps were peacefully dismantled and ringed by salib crosses (see above). Amungme leaders declared that the Tsinga community had witnessed events since 1967 in the Wa Valley and had seen that there was no real recognition of the landowners, either initially or subsequently as Freeport's area of operations expanded. These and other protests finally forced some realisation on the part of Freeport that there would have to be a formal negotiation between the company and the community if the mine was to proceed peacefully.

This agreement, the "January Agreement" of 1974, was negotiated at Tembagapura between Freeport, civilian and military government officials and Amungme community leaders. Essentially, in return for constructing 19 buildings in the villages of Wa, Tsinga and Kwamki Lama and an offer to re-employ Amungme labourers, Freeport thought that it had gained community recognition of its rights to the COW area, already legally valid under the 1967 Contract of Work. Crucially, as the text of the Agreement was read out in both Indonesian and Amungme, it was held to have been understood and assented to by the Amungme representatives. Obviously, the Amungme leaders did not fully understand the implications of the Agreement; neither were they actually prepared to sign it, and most of the leaders still alive insist that they came to the meeting prepared to deny Freeport any further access, but were intimidated into signing the Agreement by the presence of military officers acting as



mediators. There are also claims that, immediately prior to the meeting, the military directly threatened both the older Amungme leaders and the younger Amungme intermediaries. As an indication to the Amungme of the apparent alliance between Freeport and the government, the January 1974 Agreement can probably be identified as a crucial moment in this history of failed relations.

As the implications of the 1974 agreement became apparent - with fresh expansion of the mine infrastructure and exclusion of Amungme from the mine-site and other areas - Amungme frustration quickly built up again, leading to a riot near Tembagapura in November 1976 and then an uprising in June 1977, when two policemen at the village of Akimuga were ejected by the villagers. In response, the army strafed the village with two Bronco ground attack aircraft. A few days later, the OPM (Organisasi Papua Merdeka) rebel or resistance movement retaliated by attacking Freeport facilities, attempting to disrupt the ore pipeline. The army responded even more severely that August, strafing Akimuga repeatedly and subsequently killing about 30 villagers. The Amungme settlements at Waa and at Timika, and the shanty town of huts along the perimeter of Tembagapura, were razed to the ground (at Waa, the army set up mortars and shelled the settlement from a distance).

Some of the key issues that have confronted the Amungme since the 1977 uprising include:

1. The issue of employment with Freeport and its contractors. While relations were generally good with the construction contractors, Bechtel (who were also working at the Panguna mine on Bougainville at the time), Amungme identify the appearance of Freeport staff, once production was initiated, as the point at which those relations began to deteriorate. Between 40 and 200 Amungme were intermittently employed during the early 1970s, but after the 1977 uprising there was a distinct lack of trust between company and community.
2. Amungme settlements abutting the mining town of Tembagapura were repeatedly destroyed and their residents relocated by the company in order to discourage immigration to the town area. A more ambitious program of relocation was pursued by the government, particularly in the aftermath of 1977, when those Amungme who resided outside approved settlements were regarded as OPM. The government's preferred location for the Amungme was the lowland plains in the Timika area, along the road which runs from the port of Amamapare up to the mine site. Freeport policy on these long-distance relocations has varied from financial and logistical support for government initiatives to a more recent tendency to support the community's preference to remain in the highlands.
3. Compounding the issue of land and settlement in the Wa Valley has been the introduction of large numbers of other highlanders - principally Damal, Dani and Moni - from the large valleys to the north of the central range. Much as the Ipili of the Porgera Valley in Papua New Guinea have been swamped by Engans seeking work at the Porgera mine (Banks 2001), there has been a steady flow of immigrants to the Wa Valley since the early 1970s, swelling in the past few years to a flood. Dani and Damal soon outnumbered the Amungme in the Wa Valley and things came to a head in a war in February 1997, in which eight Dani and Damal were killed. With a limited degree of Amungme support, the government and Freeport then relocated most of the Dani and Damal to settlement sites in the lowlands near Timika.

4. In the hinterland of the mine area, open resistance to the government and to the presence of the mine has continued without a break since 1977. Many of the families that fled their settlements in 1977 remained in the forest until the late 1980s. For many Amungme communities, the 20 years since 1977 have been characterised by a sequence of flights to the forest, usually for one to two years at a time, before returning to rebuild their settlements and re-establish gardens.
5. Environmental degradation, loss of livelihood (nut pandanus groves, agricultural land, hunting areas etc) and the destruction of culturally significant sites (mountainous areas associated with male ancestors, and sacred groves and pools).

In May 1994, a fresh wave of defiance began in the Tsinga valley, where a group of some 200 OPM entered the village of Tsinga and raised the banned pro-independence Morning Star flag. The impetus for this revival of resistance appears to have been the granting of the large COW "B" exploration concession to Freeport, widely regarded by the indigenous Papuan residents of this extensive area as the first step in the process of land alienation already experienced in the Wa Valley. Several months after the raising of the Morning Star flag at Tsinga, troops were flown into Tsinga on Freeport helicopters, but the villagers had long fled to the forest.

In November 1994, two shooting incidents along the company road between Timika and Tembapapura resulted in the death of one Freeport employee and injuries to two others. Some doubt remains over the identity of the perpetrators of these two incidents, but the consequence was an increase in troop strength in the Freeport area, from about 200 to about 600. Timika-based relatives of known members of the OPM were arrested, and some of them then disappeared.

On the morning of Christmas Day 1994, a mixed group of Amungme and other indigenous Papuans raised the Morning Star flag on a small grassy hill above, and in full sight of, the mining town of Tembapapura. Some of what ensued has been described in two reports on human rights violations that were released the following year, in 1995. The first report was put out by the Australian Council for Overseas Aid (ACFOA) and the second under the name of Bishop Munninghoff of Jayapura. A number of unarmed people disappeared or were arbitrarily killed by the military and others (including many of the Amungme community leaders in the Wa Valley) were arrested and tortured. Additional interviews since the release of these reports suggest that the ACFOA and Munninghoff reports were substantially credible, though they probably under-reported the extent of the abuses.

When it was released in April 1995, the ACFOA report brought human rights issues at Freeport to international attention; the report was dismissed out of hand by the military. But the second report, backed by the weight of Monsignor Munninghoff, the Dutch-born Catholic Bishop of Irian Jaya, both supported the findings of the ACFOA report and documented a further massacre, in May 1995, of 11 men, women and children at a church service in the forest near Hoesa. This finally prompted a visit from Komnas-HAM, the National Commission for Human Rights, and led eventually to minor jail terms for four soldiers; however, most of the other findings of the Munninghoff report were not investigated, and subsequent visits to the region by Komnas-HAM have suggested a reluctance on the part of its members to press the security forces any further.

In March 1996 an injury to a Dani man hit by a Freeport vehicle quickly escalated to a riot in Tembagapura which targeted the unpopular security department; over the next few days, the riot spread to the lowland town of Timika, where Freeport facilities and the airport were attacked. The military flew in a large number of reinforcements and the riots ended as swiftly as they had begun. Some uncertainty remains over the role of external interests in promoting or creating the conditions for these riots, with some identifying Jakarta-based NGOs as responsible, and others elements of the government's security forces.

As a direct consequence of these riots, Freeport agreed to fund a major increase in troop numbers around the mine to just over 1800 troops, creating one of the densest concentrations of military force in Indonesia. Since 1996 troop levels have remained fairly constant, supported by units of the navy and airforce, and a unit of Panzer armoured personnel carriers.

Although there have been no reports of massacres on the scale of those experienced in 1977, or between 1994 and early 1997, there continue to be reports of more isolated instances of violent human rights abuse in the Freeport area. Disappearances of individuals, execution-style killings of people accepting lifts along roads, the violent suppression of non-violent pro-independence activities and an ongoing low-level war between the Indonesian army and local units of the OPM have contributed to a persistent climate of terror for communities living in the Freeport area.

Some of the categories of human rights abuse in the area of Freeport's operations are summarized below (details are contained in the various reports listed in the "Sources" section below). While very few of these cases have been individually established or proven legally, the weight of evidence suggests that most are credible and that, at the very least, further detailed investigation is warranted.

- The extrajudicial killing of as many as 200 people between 1975 and 1997, in and around the Freeport COW area, almost all of them unarmed civilians<sup>11</sup>
- Disappearance, arbitrary detention and torture
- Rape and other forms of sexual abuse
- Intimidation and harassment
- Loss of land and livelihood without negotiation and without adequate compensation
- Forced resettlement
- Environmental degradation resulting in an unsafe environment
- Destruction of ritually or culturally significant sites without consultation or compensation

A crucial question has been whether or not Freeport's private security officers have been involved in any way in the more violent abuses by the government's security forces. Although Freeport claims that its staff have been cleared of any direct involvement in these

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<sup>11</sup> The names of these individuals, together with the dates and circumstances of their deaths, are held on file by the Amungme Foundation, LEMASA.

abuses, none of the investigations that the company cites have been sufficiently detailed or lengthy in duration to dispel doubts amongst local or international observers.

Most government security officers operating in the wider Freeport area are supported logistically in numerous ways by the company. As Freeport's press releases have stated repeatedly, Freeport is required – under the terms of its 1967 Contract of Work – to provide for and meet the logistic needs of government officials. This provision has subsequently been interpreted rather generously to cover all government troops operating through Timika. Barracks and other facilities have been constructed by Freeport for all of the military and police units operating in the Timika region. More worryingly, there are also reports that troops accompany Freeport exploration teams to certain regions on Freeport transport to 'secure' locations in advance of the geologists.

The presence of large numbers of troops at Freeport appears to have exacerbated, rather than resolved, local conflict. In addition to the mysterious killings and disappearances, which are a trademark of military operations elsewhere in the Indonesian archipelago, there have been numerous violent clashes between different military and police units competing for the same lucrative economic opportunities in the Timika area. Most of these business interests involve access to Freeport materiel or to land which the indigenous communities regard as theirs, with the consequence that Freeport staff and local communities are potential casualties in the cross-fire. A reliable estimate of troop casualties in the Freeport area shows that far more soldiers and police have been killed by other government troops than by armed Papuan resistance (or OPM).

The continued presence of units that have perpetrated human rights abuses in the past also hinders reconciliation between the company and the community. Very credible reports are available to suggest that the landscape at Freeport is saturated with locations where bodies have been disposed of – along the road between Timika and Tembagapura, and in the vicinity of various army and police posts, most of them constructed by Freeport or its contractors. The security forces are understandably reluctant to have these locations properly investigated. As long as historical cases of disappearance or the removal of corpses remain unsolved, a real reconciliation between Freeport and the Amungme and other Papuan communities of the area remains a distant prospect.

The question of Freeport's 'sphere of influence' is an important one. Many of the more violent abuses have occurred beyond the immediate vicinity of the mine or its infrastructure. However critics observe that the presence of troops in the area, and the fact of protest on the part of the local communities, are both direct consequences of the presence of the mine. From this perspective, Freeport thus bears a certain degree of responsibility for abuses that occur within its 'wider' sphere of influence.

In the aftermath of the December 1994 events military operations in the region surrounding Freeport's mine resulted in further massacres of unarmed civilians, most notably at Hoesa in May 1995. In 1996, in direct retaliation for some of these deaths, the OPM took hostage a number of foreign and national scientists working in the Lorentz National Park, resulting in a another wave of military repression across the region, and several more massacres of civilians. Throughout these events, Freeport facilities were used as bases for military operations.

Freeport's willingness to confront claims of human rights abuse was initially very poor. During the 1970s and 1980s, the company tended to side almost invariably with the security forces, on whom they depended for protection. Freeport's decision to largely fund a major increase in troop strength for the Timika area in 1996 has been widely seen as another instance of the company aligning itself with the government's security forces over the interests of local communities. Local communities commonly refer to the security forces as 'Freeport's savage dogs' ('anjing galak dari Freeport'), and make little or no distinction between government and company security forces. The response of the government to reports of massacres and other human rights abuses, which has resulted only in brief and very limited investigations by the National Commission for Human Rights (Komnas-HAM) and the subsequent trial of four lower-ranked soldiers, has been totally inadequate. The leading resolution of a 1998 Convention of Amungme representatives called for complete investigation of the entire history of human rights abuse in the Freeport area.

Although the direct involvement of Freeport staff in cases of violent human rights abuse has not been clearly established, Freeport staff do appear to have been involved in attempts to suborn the community by funding and promoting community organizations in opposition to established community representative bodies. The "Amungkal Foundation", a supposedly representative Amungme organisation, was created by Freeport in 1996 in order to receive 1 percent funding on behalf of the Amungme. However Amungkal enjoyed no real support amongst Amungme, who aligned themselves instead with the LEMASA Foundation, which was opposed to receiving Freeport money until fundamental issues of the recognition of human rights and land rights had been addressed. Until recently, LEMASA officials were subjected routinely to surveillance, harassment and intimidation. Freeport has since attempted to extricate itself from its relationship with the principals of the Amungkal Foundation.

There have also been troubling signs recently of a process of militarization within Freeport itself, including the hiring as staff of ex-army personnel (both national and foreign), even in sensitive community relations positions. The company has also made a considerable (and undisclosed) investment in internal security and expensive intelligence-gathering procedures and technology. While this should permit the company to document human rights abuses in some detail, Freeport has not generally reported openly on its findings.

Equally dismaying is the failure of Freeport's consultants to report on or raise human rights issues. A widely reported 'social audit' of Freeport's operations completed by Labat-Anderson in 1997 (to match the 1996 environmental audit undertaken by Dames and Moore) made no mention of human rights abuses. The March 1996 riots were referred to in this report as an 'especially disruptive outbreak of violence', but without any explanation of the history of clashes which might have provided a context for understanding (and thus remedying) the underlying problems.<sup>12</sup> Although a repeat audit of Freeport's environmental

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<sup>12</sup> The prominence in corporate accounts of Freeport's problems of the March 1996 riots continues to dwarf any of the human rights violations perpetrated by security forces. A recent review of environmental and social problems in the mining industry in Indonesia thus makes no reference to the history of conflict, but lists, 'Violence by Irianese... toward other Indonesians and Westerners (March 1996)' as a key social problem (McMahon and Subdibjo 2000: Table 5).

performance was recently conducted by Montgomery-Watson in 1999, no plans for a corresponding repeat audit of its social performance have been announced by the company. Environmental impacts on community health and livelihoods have been a persistent problem in the area of the Freeport mine. Deposition of mine tailings directly into the Aijkwa River led to a flood in 1991 which eliminated a large area of lowland forest and continues to threaten the township of Timika. Dumping of mine overburden into Lake Wanagong has resulted in two floods, the most recent involving the deaths of company workers, and ongoing concerns about the longterm viability of Amungme settlements below the lake. Claims of acid rock drainage (ARD) impacts which threaten to contaminate local water supplies in watersheds adjacent to Freeport operations, and of increases in the uptake of copper in lowland marine fauna, have yet to be adequately refuted by Freeport.

The Amungme community, in particular, has also charged Freeport with the destruction of sites of considerable traditional ritual significance. These include a major sacred site in the area of the Tembapapura township, sacred pandanus groves in the upper Wa Valley, pools and lakes such as Lake Wanagong, and the actual mountain peaks of Ertsberg and Grasberg, which are identified by Amungme as the residences of key ancestral spirits. Ignorance, rather than malice on the part of Freeport, appears to have been at the heart of this process of destruction, but there has been little company sympathy for Amungme claims. The company has repeatedly denied the ritual significance of the mountain area where the Ertsberg and Grasberg orebodies are located, insinuating that these claims had been fabricated, despite the fact that these beliefs had been documented by Catholic missionaries prior to Freeport's arrival in 1960.

The international attention focused since 1995 on human rights issues in the area of the Freeport mine has earned the company an unenviable media profile that rivals that of Shell in Nigeria. Ill feeling between the company and the Amungme community resulted in two high-profile law-suits being lodged against Freeport in 1996 by Amungme community leaders, Tom Beanal and Josepha Alomang. The protracted process of these suits assisted neither Freeport's reputation nor relations between the company and community. The lawsuits, both of which were ultimately dismissed, appear to have been contested largely at the level of legal interpretation, and failed to generate any clearer understanding of actual human rights conditions on the ground.

In the absence of reliable reporting of human rights issues by the company or its consultants, industry critics, drawing on the available evidence of the various church and NGO reports have been able to speculate widely on the scope and scale of human rights abuses in the Freeport area. The claims contained in the publications of industry critics are often wildly exaggerated (e.g. the World Development Movement's 1996 report "Protests and Profits: mining in West Papua", which claims that 900 Amungme were killed by the military in 1977). However, Freeport and the government of Indonesia together lack either the domestic or international credibility to contest such claims.

Since 1996, Freeport has adopted several initiatives that indicate some willingness to address human rights concerns:

- A significant increase in funding for community development was announced in 1996, though the effect of this funding has been somewhat derailed by the heightening of tension and intra-community politics since the 1996 riots. Revisions in company policies on indigenous employment opportunities, more formalised (though still troubled) processes of recognition for land releases, and the appointment of Amungme leader Tom Beanal to the Freeport Indonesia board indicate a will on the part of the company to tackle some of the problems that have plagued its relations with local communities.<sup>13</sup>
- In 1999, Freeport McMoRan announced a Social and Human Rights Policy which sets out guidelines for staff conduct, requires annual compliance reports, and mandates regular training for its staff.<sup>14</sup> Crucially, the policy states that:
 

It is the company's policy to immediately report any credible accusation of a human rights violation to the appropriate government authorities, to provide the company's full cooperation with any responsible human rights investigation and to support appropriate punishment for any proven violations.
- In 2000, Freeport McMoRan and Rio Tinto signed the UK-USA Voluntary Statement of Principles on Human Rights and Security.
- The appointment of Judge Gabrielle Kirk McDonald, formerly a judge at the International Criminal Tribunal for the Former Yugoslavia in The Hague, as a member of the Board of Directors and Special Counsel to the Chairman on Human Rights. Judge McDonald has been quoted as saying that, 'Those [incidents of the past] have been investigated, but there isn't really any closure to it yet. Let's end it. And whatever shows up, let it show up'.<sup>15</sup>
- In a recent development, Freeport has denied use of its helicopters to the military, risking the wrath of the government but citing the problems associated with use of Freeport facilities as a base in the 1996 Lorentz Park hostage crisis.<sup>16</sup>

With a history of over 30 years, and an exceptionally broad range of stakeholders, the Freeport case is extremely complex. Given the richness of the remaining deposit, the prospect of further discoveries and project development in the area, and the estimated 40-year life of the Grasberg mine, the manner in which human rights issues are addressed at Freeport is of significance on a national and even international scale. As, effectively, a single-mine company, Freeport has not benefited fully in the past from the through-flow of ideas and experiences from mining operations in other countries. There is thus considerable scope at Freeport's Irian Jaya mine for engagement and exchange with national and global industry bodies.

Sources:

ACFOA 1995, Amnesty International 1995, 1996, Atkinson 1998, ELSHAM 1999, GKII, Catholic Church and Christian Evangelical Church 1998, Labat-Anderson 1997, LEMASA

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<sup>13</sup> Details of Freeport's community development initiatives are available at [www.fcx.com/esp/](http://www.fcx.com/esp/)

<sup>14</sup> The text of this policy is available at [www.fcx.com/esp/socpolicy.html](http://www.fcx.com/esp/socpolicy.html)

<sup>15</sup> Laurent Belise, 'At the intersection of business and human rights', *Christian Science Monitor*.

<sup>16</sup> 'Military moves in Irian Jaya to retake Ilaga from separatists.' *Jakarta Post* 1 October 2001.

1998, Marr 1993, Munninghoff 1995a, 1995b, RFK Memorial Center for Human Rights and IHRSTAD 1999, UABS 1998. A number of other protected sources have been employed in the preparation of this section. An extensive on-line bibliography on the Freeport mine is also available at [rspas.anu.edu.au/rmap/Pages/Textonline/biblio-ij.html](http://rspas.anu.edu.au/rmap/Pages/Textonline/biblio-ij.html)

### **3.5 Case Study 4 – Rio Tinto at Kelian (East Kalimantan)**

Rio Tinto, as the world's largest mining house, has historically been the focus of considerable international attention and criticism on social and environmental grounds. Perhaps, in part, as a result of this attention, Rio Tinto has more recently emerged as one of the industry leaders, at least in terms of its stated policies, on matters such as community relations and human rights.<sup>17</sup> In the coming years, as it prepares for closure in 2004, Rio Tinto's Kelian gold mine will provide an interesting test of the depth and quality of the company's commitment to these statements.

Following the 1976 discovery by CRA of significant gold deposits at Kelian, 210 km from the coast in the interior of East Kalimantan, a Contract of Work for the project was signed in 1985. Construction commenced in 1990, and mine operation under the Rio Tinto majority-owned subsidiary, PT Kelian Equatorial Mining (PT KEM) began in 1992. The mine's life was extended by diverting the Kelian River, in a major project that lasted from 1995 till 1997, without significant long-term environmental impact according to the company. Ownership of PT KEM is divided between Rio Tinto (90 percent) and an Indonesian investor, Harita Jayaraya (10 percent).<sup>18</sup> The open pit mine produces an average of about 12 tonnes of gold and 10 tonnes of silver per year, and employs approximately 1000 staff with the support of an additional 500 contractors.

The Kelian mine site contract of work area, 1285 ha in extent, is located within a Limited Production Forest zone, administered by the Department of Forestry which has issued the mine with a separate land use permit. Although the mine is located in a fairly remote interior region of East Kalimantan, it appears likely that indigenous Dayak communities, together with other more recent immigrants, could fairly claim to have exercised traditional land ownership or land use rights prior to the construction of the mine. There is surprisingly little documentation from Kelian about Dayak land claims, as distinguished from those of other former residents, which suggests that the particular claims of indigenous communities have largely been disregarded.

Loss of land and, in many cases, of livelihood has posed a significant problem for former occupants of the Kelian COW area. Former sources of income and livelihood, such as alluvial mining and subsistence gardens with the COW area, were severely curtailed by the advent of the mine. Dayak miners had been present at the Loa Tepu settlement, where the

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<sup>17</sup> It is interesting to speculate that Rio Tinto's involvement in the Freeport mine (3.4 above), where the company's investment saw it linked to Freeport's human rights problems, may have played a significant role in the development of corporate policy, at least within an Indonesian context at Kelian.

<sup>18</sup> Rio Tinto also has majority ownership of another mining operation in East Kalimantan, Kaltim Prima Coal (KPC).



mine is now located, since as early as 1948 or 1949. By 1980, approximately 2000 small-scale alluvial miners were operating in the Kelian area, in addition to an estimated further 2000 residents. In 1980 the residents of Loa Tepu, by then a considerably larger settlement, were informed that they would eventually be relocated. The 'community' in the Kelian area is composed of a mixture of different indigenous Dayak communities, Buginese from South Sulawesi, Banajarese from South Kalimantan and Javanese transmigrants. The 1990-91 relocation of 444 families from Loa Tepu and five other settlements to a new settlement at Tutung was conducted by the police Mobile Brigade (Brimob), who acted in some instances with force and intimidation: bullets were fired through the walls of inhabited houses, and homes and possessions were destroyed. Complaints from many of the former residents over inadequate compensation culminated in demonstrations in 1992. These complaints were referred by the company to the government, which approved payments to some 25 percent of the claimants in 1994 and 1995.

The 1994/95 payments failed to settle the issue of compensation, however, and continuing protests forced PT KEM into negotiations with the community in 1998. Following an agreement signed on 30 June 1998, PT KEM paid compensation to the 444 relocated families for land promised to them under the initial terms of relocation and provided a diesel generator to supply electricity. A process of investigation and verification of outstanding compensation claims for lands taken up by the mine site, the access road and the company's port site was completed in 1999, as a prelude to completing outstanding compensation payments. However delays in implementing the agreement following the departure of senior company staff involved in the 1998 negotiations led to rising frustration on the part of the community and, from April 2000, a campaign of road blockades by community members which seriously impinged on mine production.

Much of the current difficulty in the relationship between the company and community at Kelian appears to stem from the longstanding disputes over recognition of land rights and compensation. Blocked by the company's tactic of referring problems to government officials, from whom the community can usually expect little response, community leaders have turned to support from NGOs such as WALHI, the national umbrella organisation for environmental groups. In a tactic that echoes similar moves at Freeport (see 3.4 above), PT KEM also appears to have attempted to 'short-circuit' the lengthy process of negotiations with the community by bypassing the nominated community representatives (LKMTL) in favour of other 'representatives' more amenable to swift settlement. At Kelian, a new group of community 'representatives' (identified as 'Tim Murni') was established in 2000 at a meeting at PT KEM's Prampus base camp which included the local Regent (or Bupati) and the Deputy Chief of Police. It is probably no coincidence that, at the same time, LKMTL negotiators were detained by police on apparently trumped-up charges. PT KEM then decided to proceed with compensation payments to the 500 individuals signed up to the 'Tim Murni' group, at a rate lower than that sought by the LKMTL representatives. This unfortunate decision matched closely Freeport's disastrous attempt to channel payments to the Amungme community through a company-sponsored representative body, rather than those representatives identified by the vast majority of the community (see 3.4 above). At both Freeport and Kelian, the 'alternative' representatives proved to have close links to government security forces, placing the long-term sustainability of company-community relations in jeopardy, and risking the wrath of police and/or army units should the company

seek to go back on these new arrangements. During 2001, PT KEM has reportedly resumed negotiations with LKMTL.

As with all major mines in Indonesia, Kelian's environmental performance complies with national standards, implemented through government-approved management and monitoring plans. In 1999 PT KEM commissioned an additional independent environmental audit by KMH consultants.

Post processing, mine tailings at Kelian are pumped to a storage area, where they are treated in a polishing pond before being discharged into the river system. PT KEM claims that excess acid, together with most of the cyanide used in the gold recovery process, is removed from the released water through this treatment process. The treatment area itself, however, is apparently too badly affected for the company to contemplate reclamation during or after mine closure.

Potential problems with water quality include acid rock drainage (ARD) and the proportion of suspended solids in the water discharged from the mine (the latter probably a consequence of the diversion of the Mahakam River). A major incident occurred in 1992, when over 600 used drums that had contained caustic soda and hydrochloric acid were swept into the Mahakam River – a tributary of the Kelian River – by heavy rains. Thirteen people were affected downriver, suffering from toxic burns. Persistent complaints over this incident suggest that the investigation of the accident and its subsequent settlement were probably not conducted in a manner that was sufficiently transparent to pre-empt further ill-feeling. Company and community perceptions of water quality continue to contradict one another: the company asserts that monitoring has produced no evidence for impacts on aquatic life, and that the generation of acid by mine waste is now under control; the community, however, insists that fish stocks have been drastically depleted, and that the river is no longer suitable for bathing as people develop skin and eye infections. The unregulated development of mechanised small-scale mining along the Kelian River, unrelated to the activities of PT KEM, undoubtedly contributes to local environmental problems and their consequences for community health in the wider Kelian area.

One of the major environmental issues at Kelian, at least in terms of local health and safety, is that of air quality. Dust raised from unsealed roads had been a longstanding subject of complaints from the community; in 2000, the company finally responded to these complaints by asphaltting sections of the roads where they pass through settlements.

As part of the mid-1990s 'boom' in increased awareness of community rights in the minerals industry, the Rio Tinto Foundation (Yayasan Rio Tinto) was founded in 1996. The Foundation, operating with a relatively small staff, serves as the hub for a series of community development projects in the Kelian area, including education and training (a Farmer Training Center and an Education Program), health (Pest Management and Tuberculosis Control projects, Interplast Reconstructive Surgery and a School Health Education Program) and culture (a Culture Program).<sup>19</sup> The Foundation's projects are designed to outlive the mine, and judgement on success or failure of these projects will ultimately hinge on their post-closure performance. Since 1998, PT KEM has also consulted

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<sup>19</sup> Details of these projects are provided in Rio Tinto Foundation (2000).

with community leaders in the surrounding area in establishing priorities for development projects.

PT KEM is currently preparing for mine closure. The mine is due to close in 2003, the mill in 2004, and the entire site in 2007. Detailed plans for the closure process have been drawn up, in which PT KEM will seek to rehabilitate the land and forests of the COW area, and attempt to settle outstanding community issues. The draft plan lays out a series of principles for closure, describes positive and negative perceptions of the company's operations and the social and environmental risks involved in closure, and identifies stakeholders with direct and indirect interests at Kelian (including national and international NGOs). In its attention to these issues and its emphasis on stakeholder consultation, the Kelian closure plan is in many respects a model blueprint for the initial negotiation of a mining operation.

Human rights are evidently regarded by Rio Tinto as an area in which the company can seek to establish best practice and to gain some comparative advantage over the rest of the industry. Of the mining companies associated with the case studies of this report, Rio Tinto provides the clearest and most fully elaborated guidelines on community policy, business practices, and human rights codes of conduct. By 1997, RTZ-CRA (as it was then) had published a statement on 'Communities Policy Guidelines' which sought to ensure best practice standards across the mining Group's various units, each of which was charged with developing five-year community plans. This preliminary statement was then incorporated within a broader statement of business practice, released by Rio Tinto in 1998 under the title 'The Way We Work'. Covering transparency, corporate governance, internal financial standards, health, safety and environment issues, matters relating to employees, business integrity, and political involvement, the statement also addresses mining communities and human rights. Grounding its position explicitly on the UN's Universal Declaration of Human Rights, Rio Tinto takes a strong stance in asserting that 'the Group is guided by the values of the international community that human rights should be protected and promoted everywhere' and that 'Infringements of [community] rights by others will be opposed, through dialogue and, where it will be helpful, in public'. This position is further developed through recognition that:

...in some parts of the world, there exist in addition to land rights enshrined in national law other claims to land such as those based on ancestral or indigenous title. In such cases operations seek to establish the fullest possible understanding of the issues involved including the ways in which the wishes of those communities claiming such rights are accommodated.

A supplementary statement providing guidance to RT operations on the implementation of these policies was issued in April 2001. This document provides for internal and external reporting on human rights and community issues, and foreshadows the use of external auditors to monitor group performance. The guidelines, which are also intended as a checklist for operations managers, detail the actions to be taken in relation to communities, employees, security and 'difficult issues'. Some of the stronger positions adopted include the policy that, 'No-one who has been credibly implicated in rights abuses or who has a criminal record should be hired [for internal security]'. Managers are also encouraged to:

- Raise human rights concerns with local diplomatic posts, high-level government officials and politicians, drawing their attention to the company's new policies

- Provide assistance to local human rights groups
- Take steps to ensure that company property, financing and training are not used to violate human rights.

Statements on conduct by individual Rio Tinto Group operations focus on areas deemed to be of particular local significance. PT KEM, for example, has issued a ‘Code of Business Conduct’ (n.d.) and a ‘Code of Conduct’ (2001) in both English and Indonesian in which the focus is firmly on practices designed to reduce corruption, and to regulate the flow of payments and favours between local government officials and mine staff. Another emphasis at PT KEM is the premium placed on worksite safety and occupational health, with independent external monitoring through the NOSA safety system which involves an annual external audit.

However, despite the high standards for human rights recently set out by Rio Tinto for its Group operations, in the case of PT KEM there does appear to be an enduring reluctance to clearly address or openly report on the findings relating to allegations of transgressions. A lengthy investigation completed in February 2000 supported claims of a long history, between 1987 and 1997, of sexual harassment and rape involving senior staff at PT KEM, and alleged that payments and threats had been made to community members to maintain silence on these matters. Two deaths under suspicious circumstances involving government security forces were also investigated. Critics have observed that Rio Tinto’s failure to disclose these allegations or to report on the results of its own investigations casts serious doubts on the company’s commitment to transparency, and on the value of the voluntary audits of its social and human rights performance, which have failed to raise these issues.

The Kelian case is of comparative interest principally due to its impending closure, and the scope this will allow for a final calculus of positive and negative impacts on basic human rights of a completed mining project. Rio Tinto’s relatively high standards on human rights policy have set the pace for the mining industry, but the difficulties encountered on the ground at its operations in Kelian, Kaltim Prima and Freeport are indicative of the problems that mining companies in Indonesia are likely to experience with the implementation of such policies.

Sources:

Atkinson 1998, Atkinson, Brown and Ensor 2001, Bachriadi 1998, Burton 2000, Down to Earth 50 (2001), Hafid 2000, ICEM 1998, Kelian Equatorial Mining 1998, 2000, 2001, n.d., Kennedy 2001, Kunanayagam 1995, Kunanayagam and Young 1998, Marr 1993, Marshman et al 1998, Rio Tinto 1998, 2001, Rio Tinto Foundation 2000, RTZ / CRA n.d..

### **3.6 Case Study 5 – Newmont at Batu Hijau (Sumbawa, Nusa Tenggara Barat)**

Through its local subsidiary, PT Newmont Nusa Tenggara (NNT), Newmont has recently established a copper/gold mine at Batu Hijau, on the island of Sumbawa, in the eastern Indonesian province of Nusa Tenggara. Discovered in 1990 after a Contract of Work approving exploration was signed in 1986, mine construction began in 1997, and full

operation at Batu Hijau began in September 1999. The project has an expected life of 20 to 25 years. Ownership at Batu Hijau is divided between Newmont (45 percent), a Japanese consortium led by Sumitomo Corporation (34 percent) and a private Indonesian company, PT Pukuafu Indah (20 percent). With an estimated 5.3 million tons of copper and 15 million ounces of gold, Batu Hijau is ranked the second-largest gold producer in Indonesia (after Freeport).

The main concerns aired thus far by critics have addressed the mine's environmental impacts. With an estimated 1.6 billion tons of overburden, and an additional 1 billion tons of ore-bearing deposit to be processed, and mill throughput rising from 120,000 tons/day in 2000 to an anticipated 160,000 tons/day in 2001, NNT faces significant challenges in terms of waste rock and tailings disposal, and water quality. The option selected by NNT for tailings disposal has been the controversial Submarine Tailings Disposal (STD) method, in which tailings pass via a 13-km pipeline to the coast, where they are then piped a further 3.2km into the Indian Ocean, before being disgorged into the sea at a depth of 100m.<sup>20</sup> All reports available indicate a general lack of consultation and transparency in the Environmental Impact Assessment process for this decision.

NNT admits to disruption of drinking water supplies during the construction phase, a problem partially alleviated by the company's supply of additional water to affected villages. Post-construction, drinking water supplies have apparently returned to their pre-construction quality, though the company maintains an ongoing program of monitoring. Potential problems with Acid Rock Drainage (ARD) at Batu Hijau are also being monitored, with runoff being treated to meet both national and international water quality standards.

Two environmental accidents have been reported – the first a leak from the tailings disposal pipeline, and the second the collapse of a dam holding drilling waste. NNT responded to the second incident by stating that the flow of mud from the dam was a controlled and deliberate event, and that the material released met pollution control standards. High levels of heavy metals detected in the sea near the tailings disposal pipe have not yet been definitely assigned to the tailings, as they may instead be the product of waste from passing tankers. Additional concerns have been voiced locally over dust pollution but few details are available to judge either the quality of the claims or the nature of NNT's response.

Equally difficult to substantiate are reports of claims about the impact on local communities of loss of land and livelihoods and inadequate compensation for these losses. A small pre-mine population of approximately 500 indigenous Sumbawans, resident in the villages of Maluk, Tongo and Sekongkang, had already begun to resent the loss of land to government-sponsored transmigration schemes from more populated western islands such as Java. Following what is increasingly common industry practice, NNT has been relatively quick to establish local community development foundations, such as Yayasan Pembangunan Ekonomi Sumbawa Barat (West Sumbawa Economic Development Foundation) and Yayasan Olat Perigi, and to initiate infrastructure, community health and business development projects.

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<sup>20</sup> Submarine Tailings "Placement" is the term preferred by NNT, implying a degree of control to the disposal of tailings.

Security is potentially a problem at Batu Hijau, where NNT has elected to place mine security in the hands of a subcontractor, “911”. The conduct of 911 staff is not always scrutinized by NNT, and the company runs the risk of being associated by the community with abuses perpetrated by its subcontractor. The police force in the vicinity of the mine is regarded by the community, and tends to regard itself, as primarily occupied with the security of the mine and its staff. In the absence of adequate policing of law and order in the fast-expanding settlements around the mine, a community militia, AMPHIBI, has assumed many of the security functions of the police – a position that is open to future abuses. As at Freeport, NNT’s response has been to develop police capacity by providing facilities and infrastructure for the relevant government agencies. The presence of multiple, and potentially competing, security units at Batu Hijau has the potential to create substantial problems for future relations between the company and community.

Although the Batu Hijau project is obviously still in its infancy, some observations can be advanced even at this early stage. More recent mining operations in Indonesia such as NNT appear to have developed technical responses to some of the environmental problems experienced at earlier mines, particularly where these problems have impacted negatively on local communities. Development projects with a strong engineering or business angle, and particularly those with tangible, visible results (e.g. the construction of schools or health posts, the initial funding of local businesses), are favoured. But there is often less progress on the more difficult matters of community consultation or transparent processes of negotiation for land release. Often, as a consequence of the tension generated by disputes arising from these issues, the company’s security requirements then open the door to the potential for (further) abuses of human rights.

Sources:

Down to Earth 32 (1997), 34 (1997), 44 (2000), 47 (2000), 48 (2001), van Klinken 1997.

## **4 Human Rights and the Mining Sector in Indonesia**

### **– Industry Performance**

#### **4.1 Industry Performance on Human Rights in Indonesia**

The available evidence, limited as it is, suggests that the mining industry's performance on human rights in Indonesia has been poor. The Indonesian operations of Freeport and ExxonMobil are regularly featured in global reviews of human rights abuses associated with resource development, and are cited along with similarly prominent cases such as Shell in Nigeria, British Petroleum in Colombia, and Texaco in Ecuador. Operating in a country with a particularly poor human rights record, the mining industry has too often been prepared to take advantage of the New Order regime's notorious willingness to sacrifice human rights in the name of development. The industry appears to have made few attempts to ameliorate human rights conditions in circumstances that are exacerbated by the presence of mining projects. The industry has also been unwilling to withdraw or abstain from exploration in areas where human rights are particularly endangered, as in the cases of Aceh and Irian Jaya.

The comparison with the Bougainville Copper (BCL) operation at Panguna, in Bougainville, Papua New Guinea, is instructive. Panguna is now associated with the Bougainville rebellion and the protests which terminated operation of the mine. However, at its inception, during the same period in which Freeport and Inco were developing their Ertsberg and Soroako projects in Irian Jaya and Sulawesi, BCL undertook to pay compensation for loss of cultivated and uncultivated lands, standing crops, impacts to fishing and clean water, and hardships resulting from relocation, in addition to comprehensive training and hiring schemes for local communities. None of these initiatives were matched by Freeport or Inco during this period, suggesting that the industry was willing to adapt to and exploit local political conditions in Indonesia. It is also possible to speculate that Panguna would probably not have been closed had it been located in Indonesia, given the Indonesian state's willingness to deploy its security forces to defend what it deems to be national assets.

Some of the principal areas of human rights violation relating to the mineral industry in Indonesia are:

1. Land acquisition and compensation

Most of the more violent abuses of human rights flow directly or indirectly from protests over perceived injustices in relation to the acquisition of land for mining, and to the often inadequate forms and rates of compensation deemed appropriate by government agencies. The failure to negotiate land access fairly and in a manner that encourages community participation in the design of the project effectively negates all future attempts at community relations or development. A long-term but highly effective element in the process of compensation and participation has been to provide local communities with the necessary training that then allows them to compete for employment in the project.

## 2. Relocation and Rehabilitation

While relocation of resident communities is often necessary for a project to proceed, the manner in which it is negotiated and conducted is critical to future relationships between communities and mining projects. The recourse to violence, or the threat of force, is an obvious signal of failure in this respect (see the case studies in sections 3.3, 3.4 and 3.5 above). Where communities are not encouraged to participate in the planning and execution of relocation, the process of rehabilitation of these communities is inevitably protracted.

## 3. Security, Public and Private

Companies need to be able to guarantee the security of their staff and their operations. However, the manner in which that security has been guaranteed in the past has tended to result in further insecurity. Inadequate supervision and control over company security has allowed flagrant abuses of human rights, to the point where local communities can seldom distinguish between state security forces and company security. The involvement of military and paramilitary police units (such as Brimob) in security arrangements for mining projects has almost invariably been disastrous, for local communities, as well as for the security and reputation of the industry.

## 4. Environmental Impacts and Health

Poor environmental performance in the past has created numerous problems for project sustainability and for the health of local communities (including project staff). Large, relatively regulated projects and small unregulated operations alike contribute to these problems. A general lack of interest in the living conditions of adjacent communities, combined with an absence of frameworks for community negotiation and participation has resulted in an ignorance on the part of the industry of the effects of projects on the right to a life free of environmental hazards. Most attempts at rehabilitation of community environments have been reactive, responding to failure and criticism, rather than proactive. The link increasingly being established in countries such as Nigeria and Ecuador between environmental impact and human rights violation requires that all decisions involving environmental impacts must now also incorporate some consideration of impacts on local communities.

## 5. Political Environments

Indonesia's unique political history has produced areas in which human rights violations are notably more widespread and frequent, such as the military-controlled provinces of Aceh and Irian Jaya. Resource operations in these areas are those linked most commonly, in public and international perception, to human rights violations. There is no indication that the presence of mining projects in such areas alleviates the problems that give rise to human rights abuse. More often, it would appear that mining projects exacerbate these problems. The decision to proceed with a project in an area where a climate of abuse prevails must be accompanied by a considerably enhanced commitment to vigilance on human rights issues.



The industry's response to changing social conditions and increasing scrutiny and protest has varied over time and from one operation to the next. Initially the most common response was to initiate community development projects, often with a focus on the technical or the 'monumental' (clinic facilities, schools, roads, bridges etc), an understandable use of existing expertise and material from a company perspective. On their own, however, community development projects have not provided a real substitute for the fundamental lack of engagement and sense of partnership between companies and communities. As the need for local human resource development has become apparent (education as well as classrooms, training as well as roads, etc), the emphasis slowly shifted during the mid-1990s towards the building of relationships, with communities as well as with government agencies.

The current period of industry 'pro-activity' on human rights issues is partial, in that only some of the international companies operating in Indonesia appear to have developed or attempted to implement human rights policies. It has also come about largely as a consequence of intense external pressure during the early 1990s from national and international NGOs, shareholders, the threat of legal suits, and the exemplary nature of failures such as the Panguna mine. There is still considerable scepticism in local communities and amongst international observers that these moves represent anything more than a public relations exercise. In this respect, the closure of large mines like Kelian is likely to be a litmus test for the sector as a whole.

Those few companies that have adopted a stronger stance on human rights issues during the late 1990s have clearly recognised the changing international climate for mining operations. The case of the Ombilin mine (Section 3.2) illustrates how the industry has historically experienced dramatic shifts in operating conditions and in demands for basic rights for workers. Appeals to local sovereignty are no longer an acceptable means of evading fundamental human rights responsibilities, and international companies will increasingly find themselves expected to conform with international standards, even where these exceed local requirements. The fact that Freeport and Rio Tinto have commissioned additional audits of environmental and/or social performance at their Indonesian operations suggests that both companies are aware of the limited standards for performance in these areas required by Indonesian legislation.

In the absence of adequate legal guidelines, companies such as Rio Tinto and Freeport have developed procedural obligations in the form of voluntary codes of conduct, a necessary and significant step.<sup>21</sup> The challenge for the industry now is to create a culture of human rights compliance that will enable the implementation of real changes in attitude and practice on the ground. An important element in the generation of this new culture is a transparency in the process of monitoring and reporting on human rights compliance. An early problem identified in recent 'independent' audits has been the credibility of the auditing agencies, often selected without external consultation and usually funded entirely by the mining company. The failure of consultants to expose human rights problems at projects such as Freeport underlines the value of using truly independent agencies or composite teams for audits.

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<sup>21</sup> Jochnick, for example, identifies 'procedural obligations [as] the most effective starting point for advocacy' (1999: 78).

The commitment of the industry to the new codes of conduct and statements on human rights is still largely untested by events in Indonesia, but another form of test will be the willingness of the industry to address claims concerning the history of past abuses. For those communities that have suffered long histories of human rights violations, such as the Amungme people in the vicinity of Freeport's Irian Jaya mine, recognition of past injustices remains a fundamental and non-negotiable demand. The industry will have to facilitate a transparent process of documentation of these abuses and to make the necessary reparations for substantiated claims if it is finally to retrieve some of the credibility that it has lost under the New Order.

## **4.2 Gap Analysis**

The field of human rights and mining in Indonesia is sorely under-researched and insufficiently documented. Much of the debate thus far has been conducted in the media and through public relations campaigns between corporations and NGOs, usually in the absence of clear evidence.

What is required is nothing less than a nation-wide baseline review of human rights issues in the context of mining operations, along the lines of similar reviews such as Human Rights Watch's recent report (1999a) on human rights and the oil industry in Nigeria. The World Bank's recent review of mining and the environment in Indonesia provides another appropriate model in terms of the breadth of its scope and the access evidently granted to its authors (McMahon and Subdibjo 2000).

Drawing on detailed interviews with state, corporate, NGO and community stakeholders, and specialist advice on areas such as Indonesian law, the future role of the state's security forces, and Indonesia's environmental management practices, this baseline review should seek to expand on some of the following issues raised in a preliminary manner in this report:

1. Statements on human rights policy and codes of conduct across the industry in Indonesia, and mechanisms for monitoring and reporting human rights performance.
2. The status of human rights in relation to medium-scale mining operations, most of which are operated by state-owned enterprises, few of which attract international or even national scrutiny.
3. Human rights issues in relation to unlicensed mechanized small-scale mining operations, which escape almost all forms of regulation and scrutiny.
4. A comparison of the relative performance on human rights of mining projects involving majority foreign or national ownership.
5. An analysis of the impact of the involvement of government security forces, rather than private security, at mining projects.
6. A strong emphasis on the largely unconsidered impact of mining on the human rights of women, who bear the brunt of the social impacts of mining through loss of land, increased demands on their labour (which is increasingly socially marginalised), and male absenteeism.

7. A review of current international standards for human rights compliance in the mining industry as the basis for a code of conduct for the Indonesian industry.

The review should probably not be undertaken within the framework of the MMSD Project, as the Project is not regarded as sufficiently neutral to guarantee the confidence of many of the key NGOs involved in Indonesia. Nevertheless, MMSD could assist in identifying possible donors and sponsors for such a review, facilitate initial discussion amongst potential contributors, encourage industry participation, and lobby the Indonesian government for support for the review.

### **4.3 Beyond Compliance: Improving Industry Performance on Human Rights in Indonesia**

I do not subscribe to the view that companies do not have influence with governments, or if they do, do not exercise it. The business sector has, quite rightly, always argued its corner... It is appropriate for companies to point out to governments the impact of social or environmental policies on commerce, just as it is appropriate for companies to point out the impact of fiscal policies on commerce.

Peter D. Sutherland, Chairman of British Petroleum, 1997<sup>22</sup>

The mining industry in Indonesia is confronted with numerous uncertainties about the future in the current period of political transition and reformation. The role of the military in civilian affairs, business and politics, and the resurgence of Indonesian nationalism cloud the prospects for change in the observation of basic human rights. Under these conditions, what role should the industry play in promoting a culture of human rights awareness and compliance? To address this question, a distinction needs to be drawn between a company's sphere of operations and its sphere of influence.

Most of the proximate causes of human rights abuse relate to a company's sphere of operations, within the immediate vicinity of a mining project. These include the environmental and social impacts of the mining operation, protest from communities over loss of land and resources, inadequate compensation or relocation, and the actions of public or private security forces in response to these protests. All of these proximate causes are related directly to the presence of the mine, and are thus properly the responsibility of the company (as well as the state).

The long-term causes of human rights abuse relate to the broader social and political climate in Indonesia, which sets the terms for human rights observance. The nature of the Indonesian state and its willingness to employ military force against its own citizens to secure its objectives, the structure of national legislation relating to human rights and traditional forms of self-determination, and the role of the military all contribute to this

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<sup>22</sup> Quoted in Atkinson 1999.

climate of tolerance for human rights abuse. However, if the industry is to be successful in its promotion of a culture of human rights compliance within the spheres of operations of individual companies, it must address the wider question of advocacy at a national level, within its broader sphere of influence.

Through the activities of both individual companies and the peak industry body, the Indonesian Mining Association (IMA), the mining industry in Indonesia is capable of exerting considerable influence on public policy and practices. On questions of corporate social responsibility (CSR) such as business ethics, financial probity, labour practices, or worker health and safety, the mining industry has often been able to adopt positions that are exemplary on a national scale. The ‘demonstration effect’ of these CSR practices is registered both locally, among contractors, and nationally, beyond the confines of the industry. The IMA has also demonstrated its ability to directly exert an influence on matters relating to taxation or resource management policy at a national level.

The scope exists, therefore, for an industry-wide promotion of human rights compliance within its wider, national sphere of influence. An obvious point of departure would be for the IMA to develop a national code of conduct or best practice relating to human rights, and for individual companies to actively promote this code within both their spheres of operations and their spheres of influence. Support for this initiative is already available, through appeal to existing international standards such as the UN Secretary-General’s Global Compact and the joint UK-USA Voluntary Principles on Security and Human Rights. Given that ‘industry performance is judged by the actions of the worst company’,<sup>23</sup> the IMA would appear to be the appropriate body to develop and promote a national code.

A report as brief in its preparation as this can only point in the general direction of gaps, and issue the broadest of conclusions and recommendations. There are already sufficient international guidelines on best practice available (see Section 2.1, and Handelsman 2001) and excellent industry codes of conduct to serve as models (e.g. Rio Tinto 1998, 2001). This report thus restricts its recommendations to matters relating specifically to conditions in Indonesia.

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<sup>23</sup> Handelsman 2001.

## **Recommendations**

These recommendations are addressed jointly to the MMSD Project, in the preparation of its final report, and to the Indonesian Mining Association.

1. Develop a National Code of Best Practice, with sections dealing specifically with human rights issues, for companies operating in Indonesia, building on similar codes under development in Australia, Canada and elsewhere.
2. Promote and facilitate further investigation of the gaps in knowledge identified in Section 4.2 above.
3. Promote and facilitate Human Rights Audits for existing major mining operations.
4. Promote and facilitate Human Rights Impact Assessments (HRIAs), as a component of Social Impact Assessments (SIAs), for all new mining exploration, expansion and development projects.
5. Promote and facilitate a National Assessment of Human Rights Violations at medium to small-scale mining operations, legal and illegal.
6. Restrict industry reliance on armed security forces by removing clauses from mining Contracts of Work which stipulate industry support for all government personnel. Replace military units with civil (not paramilitary) police, and fund specialised human rights training for company and non-company security. Run checks on applicants to ensure that they do not have a history of association with human rights abuses.
7. Assist in the independent preparation of a primer on human rights for local communities in the vicinity of resource projects.

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## Websites

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Inco Indonesia – [www.inco.com](http://www.inco.com)

Indonesian Department of Mining and Energy – [www.setjen.dpe.go.id](http://www.setjen.dpe.go.id)

Indonesian Mining Association – [www.miningindo.com](http://www.miningindo.com)

Kelian Equatorial Mining – [www.keliangold.com](http://www.keliangold.com)

Newmont Pacific Nusantara – [www.newmont-indonesiaoperations.com/html](http://www.newmont-indonesiaoperations.com/html)

Rio Tinto – [www.riotinto.com](http://www.riotinto.com)

### Industry Critics

Australian Council for Overseas Aid (ACFOA) – [www.acfoa.asn.au](http://www.acfoa.asn.au)

Community Aid Abroad (CAA) – [www.caa.org.au](http://www.caa.org.au)

Down to Earth (DtE) – [www.gn.apc.org](http://www.gn.apc.org)

Jaringan Advokasi Tambang (JATAM) – [www.jatam.org](http://www.jatam.org)

Lembaga Alam Tropika Indonesia (LATIN) – [www.latin.or.id](http://www.latin.or.id)

Mineral Policy Institute (MPI) – [www.mpi.org.au](http://www.mpi.org.au)

Mines and Communities (MAC) – [www.minesandcommunities.org](http://www.minesandcommunities.org)

Project Underground – [www.moles.org](http://www.moles.org)

Wahana Lingkungan Hidup Indonesia (WALHI) – [www.walhi.or.id](http://www.walhi.or.id)

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## Acronyms

|            |   |
|------------|---|
| ACFOA      | Australian Council for Overseas Aid   |
| ARD        | Acid Rock Drainage  |
| ASM        | Artisanal and Small-scale Mining  |
| BAL        | Basic Agrarian Law (1960)   |
| BCL        | Bougainville Copper Limited   |
| Brimob     | Police Mobile Brigade   |
| COW        | Contract of Work  |
| DOM        | Region of Military Operations   |
| ELSAM      | Institute for Policy Research and Advocacy, Jakarta (Lembaga Studi dan Advokasi Masyarakat)                   |
| ELSHAM     | Institute for Policy Study and Human Rights Advocacy, Jayapura (Lembaga Studi dan Advokasi Hak Asasi Manusia) |
| GMI        | Global Mining Initiative  |
| HRIA       | Human Rights Impact Assessment  |
| IHRSTAD    | Institute for Human Rights Studies and Advocacy, Jayapura   |
| IIED       | International Institute for Environment and Development, London   |
| IMA        | Indonesian Mining Association, Jakarta  |
| JATAM      | Mining Advocacy Network, Jakarta (Jaringan Advokasi Tambang)  |
| Komnas-HAM | National Human Rights Commission, Jakarta (Komisi Nasional Hak Asasi Manusia)                                 |
| Kostrad    | Army Strategic Reserve Command  |
| KUHP       | Indonesia's Criminal Code (Kitab Undang-Undang Hukum Pidana)  |
| LEMASA     | Traditional Consultative Assembly of the Amungme Tribe, Timika (Lembaga Musyawarah Adat Suku Amungme)         |
| MMSD       | Mining, Minerals and Sustainable Development Project  |
| NGO        | Non-government organization   |
| NNT        | PT Newmont Nusa Tenggara  |
| OPM        | Free Papua Movement (Organisasi Papua Merdeka)  |
| PT KEM     | PT Kelian Equatorial Mining   |
| RT         | Rio Tinto (formerly RTZ)  |
| RTZ        | Rio Tinto Zinc  |
| TAPOL      | The Indonesia Human Rights Campaign, London   |
| TNI        | Indonesian Army (Tentara Nasional Indonesia)  |
| WALHI      | Indonesian Environmental Forum (Wahana Lingkungan Hidup Indonesia)  |

Figure 1

