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Intex Resources' response to Case Study 5: Nickel Mining – Mindoro Island

Intex Resources is dedicated to the responsible development of the natural resources on Mindoro. We believe that private investment through modern mining, if done properly, can make a positive and long lasting difference to the people of Mindoro. Our company is already increasing the welfare of many through our community relations programs. We also have the opportunity to make a lasting victory in the fight against poverty if Mindoro Nickel proves to be technically, financially, environmentally and socially viable.

We have recently announced that Mindoro Nickel has been reconfigured to produce approximately 140,000 tonnes of Ammonium Sulphate annually, based on the production of 40,000 tonnes of nickel metal. Ammonium Sulphate is well suited to rice and sugar cane production, and the Philippines is one of the main importers of this fertiliser. The local production of this fertiliser will be a direct benefit to the agricultural sector of both Mindoro and the rest of the Philippines. This product will enable increased self sufficiency for this important agricultural input.

Legislation

The mining industry in the Philippines is heavily regulated today. In 1995 a new Mining Act was passed, and in 1997 the Indigenous Peoples' Rights Act (also known as the IPRA Law) was passed. A major provision of the IPRA Law was the creation of the National Commission on Indigenous Peoples (NCIP), one of whose principal tasks is to formalize the borders of ancestral domain for the different Indigenous Peoples (IP) tribes - a task deemed as a necessity in order to protect the legitimate claims of IPs nationally.

We consider the Mining Act of 1995 to be one of the most modern and all encompassing pieces of mining legislation in the world today. It directly ties social and environmental needs to the permitting process, and is designed to allow only projects that will have a positive impact on their host communities. The legality of this Act has been challenged up to, and upheld by, the Supreme Court of the Philippines, so we are confident that it is robust.

The IPRA Law of 1997 is in line with the international trend of self determination for IPs. In our context, it ensures that the IPs that are directly affected by mining projects also benefit from them. This legislation has also been challenged up to the Supreme Court of the Philippines, where its members voted 7 for and 7 against, its constitutionality. Since there was an even vote and under Philippine jurisprudence, the Philippine Congress acted regularly in enacting the law. The IPRA Law is presumed valid. Since 1998, there have also been rules and regulations regarding



the implementation of the IPRA, and these have been updated from time to time by the NCIP. However, the rules in securing the free and prior informed consent (FPIC) were not comprehensive in the early days and it was only in 2006 through NCIP Administrative order No.1, Series of 2006, that comprehensive and clearer rules evolved.

Indigenous Peoples

In addition to the comprehensive laws and institutions listed above, our treatment of those IPs that are directly affected by our activities has been scrutinized by a representative of the Norwegian Government.

In October 2007, the Norwegian Ambassador to the Philippines, Ståle T. Risa conducted an investigation into allegations against our activities in Mindoro. As part of his fact finding he conducted a meeting with the Mangyans who originally signed the MOA with Mindex in 1999. This meeting has been videotaped. In this meeting the leaders of Kabilogan, and Sadaki (most of its members were former Kabilogan who were signatories to the 1999 MOA), commented that they have been treated with respect by our company and that they understand the MOA that they signed in 1999.

In 2008 Kabilogan and Sadaki signed an MOA for the remaining part of the Mindoro Nickel concession. This is a repeated endorsement of the process for the Mindoro Nickel Project, and the involvement of Intex Resources.

Both the 1999 and 2008 MOAs were written in English and Tagalog, as mentioned earlier. Before imprinting their thumb marks on both the English and Tagalog versions of the MOA, the Mangyans were assisted by a Mangyan who translated the English version into both Tagalog and the Alangan-Mangyan dialect.

The 1999 MOA also had a written translation into Alangan-Mangyan as reflected in paragraph 15 of the MOA. The transparency of the 2008 process rendered it unnecessary to have a written translation into Alangan-Mangyan, as there was an oral translation and a written translation was not requested.

There are additional IP/Mangyan claimants/beneficiaries of CADC 024 but NCIP validation has shown that they are not within the portion of the ancestral domain affected by the Mindoro Nickel Project.

Mining Moratorium

Intex Resources ensures that all of its corporate activities are legal, transparent and beneficial to all the affected stakeholders of the Mindoro Nickel Project. As part of our transparency and governance, Intex Resources has been in correspondence with local government units on Mindoro Island.



We have specifically written a letter to Oriental Mindoro Governor Arnan Panaligan – who’s Provincial Council enacted the 25-year moratorium on mining activities – and informed him that Intex is mindful of the said Provincial Ordinance.

As a guiding rule, all of Intex’s actions are guided by the legal opinions rendered by the appropriate Philippine national government agencies in the executive branch, all of which have consistently established the supremacy of national laws and policies over local ordinances. Our legal advisors have advised us that the 25-year moratorium is not legally binding since it was enacted after Intex Resources had entered into a partnership with the Philippine National Government.

A number of governmental authorities have furthermore disputed the legality of the 25-year moratorium since it is in conflict with Philippine national policies, although it remains a political issue. Some of the legal opinions rendered include:

- Department of Interior & Local Government (DILG) Opinion No. 39, Series of 2002;
- Department of Justice (DOJ) Opinion No. 8, Series of 2005;
- Department of Environment and Natural Resources Opinion dated May 20, 1999 on the Query of Hon. Demetrio Sonza; and
- Department of Environment and Natural Resources Opinion on the Agusan Petroleum FTAA dated October 8, 2008.

Intex Resources is a guest in the Philippines and more specifically on the island of Mindoro. Any final decision made by the relevant Philippine authority will be respected by the company. We respect and acknowledge political initiatives in various levels of the national and regional administrations. The said moratorium is considered controversial by some, and could be challenged. Our stand is that Intex Resources is acting in accordance with laws and regulations. We believe we are acting on good legal ground but also respect legal decisions and legislative requirements. The Mineral Production Sharing Agreement (MPSA) should be considered as establishing Intex as the contractor of the national government. The Intex counterpart – the national government – has explicitly stated that we are in line with the relevant legal framework.

Social Acceptability

With respect to the claim of Intex Resources’ inability to build confidence and mutual trust, it would be premature to even assume such a sweeping conclusion. The company has been conducting education and information campaigns before various stakeholder groups and this year, will move on to a campaign to enlist social acceptance for Mindoro Nickel Project.

To date, the Municipal Councils of two municipalities in Oriental Mindoro have signed a Memorandum of Agreement with Intex Resources, indicating their full



support for the project. This development directly belies the claim that the project does not have the support of local stakeholders.

Intex Resources recognizes that a lot more ground would be needed to raise the level of social acceptance for the Mindoro Nickel Project. Beyond doubt, there is today a growing wave of support as manifested by the documented MOAs with the municipalities of San Teodoro and Pola. Thus, it would be more accurate to state that Fr. Gariguez/Mangyan Mission are attempting to present the proponents for mining as less than they actually are today.

The Mangyan Mission's claimed representation of the interests of the affected IPs/Mangyans is ironic. The facts show that the affected Mangyans/IPs unanimously voted in favour of a Memorandum of Agreement with Intex Resources – a tribal decision which is incongruent with the anti-mining advocacy being pursued by the Mangyan Mission.

The direct conflict of interest of the Mangyan Mission versus the wish of Mangyans in the impact or affected areas to allow mining activities, has compelled the NCIP to recommend that NGOs wishing to represent IPs should be equally required to undertake an FPIC process before they can be accredited to undertake advocacy work for IPs.

Environmental Impact Assessment/Statement and Environmental Compliance Certificate

Intex is currently conducting environmental and social baseline studies within the Project area for its environmental database as a requisite to the preparation and submission of the Project's Environmental Impact Statement (EIS) and acquiring an Environmental Compliance Certificate (ECC).

The Department of Environment and Natural Resources (DENR) will still require a project proponent to undertake a public hearing prior to the final issuance of the ECC. The public hearing should cover all stakeholders. Any objection from the public or from the affected IPs will be considered for further study. The ECC will not be issued until the objections or issues are eventually resolved.

As a rule, the environmental database that will be generated from the studies shall be the baseline information for the preparation of the Project's EIS. The EIS is a document that contains the effects and impacts (positive and negative) of the project to the people and the environment. It also contains the Environmental Management Program and the Environmental Monitoring Program that will be implemented by Intex to address the negative impacts of the project.



Under the prevailing provisions of the Philippine EIS System, DAO 2003-30 of PD 1586, the consultation process must be conducted by the proponent Intex to all stakeholders in the Project's direct impact area to get the issues and concerns about the proposed project.

Since the early part of 1999, Intex Resources and its predecessors have conducted a series of consultations with the different stakeholders, including the indigenous peoples within the direct impact areas (as prescribed in the IPRA law and identified in the stakeholders list). In compliance with the provision of the IPRA law, Intex has had to secure a Certificate Pre-Condition (CP) from the directly affected IPs to be issued by the NCIP prior to the conduct of any activity inside the IP area. The permit to conduct environmental and social baseline studies can only be started after securing the CP from the directly affected IPs. This condition of the IPRA law has been observed by Intex.

The company recognizes the importance of watershed development. With the understanding of the importance of the watershed, Intex Resources has unilaterally undertaken reforestation and rehabilitation of degraded mountain slopes even prior to the actual mining operation to enhance the water quantity and improve the water quality of the water sources in the area.

The Mindoro Nickel Project will provide a watershed development program to address and prevent illegal logging/tree cutting activities and present solutions to soil erosion and landslides that is causing the siltation of major river systems and waterways in the area. The siltation of rivers is causing the flooding of rice lands downstream. The application of bio-engineering technology can provide a lasting solution to the problem of massive soil erosion problem upstream of the Aglubang, Ibolo and the Mag-asawang Tubig rivers.

In support of its watershed development program, Intex Resources has established four forest nurseries strategically located in the communities near the proposed planting areas to provide the required planting materials. The result of the terrestrial flora and fauna studies will assist the Company in determining the appropriate species for its watershed development program. Likewise, forest rangers are hired to provide patrol and secure the tenement area from any illegal activities.

Negative impact is always associated with development projects such as mining. However, mitigating measures to avert the negative effect of mining operations on the environment can be developed and implemented. Details of the mitigating measures are provided in the EIS to be submitted for approval by DENR-EMB. These measures include the program on pollution prevention and



control. Intex policy is to abide by the provisions of applicable Philippine and International laws on the protection and enhancement of the environment and the people where it operates.

Under the Philippine EIS System, the consultation process does not stop until the project decommissioning stage has been completed. Consultation with all project stakeholders is a continuing process. It starts during the pre-development phase, development phase, operation phase, rehabilitation and project decommissioning phase. A public hearing to be initiated by the DENR - Environmental Management Bureau with all the stakeholders who have interest in the project are invited to attend and present their side about the project. For the convenience of all project stakeholders, this hearing will be held at the project site. Invitations will be announced and published in a newspaper with national circulation to inform all parties to attend. Therefore, the consultation in a wider scope is still to be announced.

In closing, Intex Resources steadfastly maintains a transparent stance with reference to plans for the placement of waste, consequences for the environment and mitigation of risks.

Even as baseline studies and an Environmental Impact Assessment (EIA) study are currently being undertaken, Intex Resources will continue to disclose in its public information campaigns the latest material information on environmental risks and mitigating measures with respect to the Mindoro Nickel Project.

The environmental baseline studies and the EIA are to be viewed as a work-in-progress and the Company's position is for prompt disclosure of the latest available facts to stakeholders as soon as the information becomes available.

As a concrete example and manifestation of the Company's sensitivity to stakeholder concerns, we take this opportunity to acknowledge that Intex Resources has provided different information on how deposits will be made – whether it will be marine or land-based.

In this regard, we would like to point out that the choice of whether to go marine or land hinges on two critical criteria:

- It should be socially acceptable
- It should be environmentally sustainable.

Essentially both marine and land-based deposits of process residue entail acceptable risks that, however, can be offset by mitigating measures.



Initially, the preference was for a marine-based deposit, which is environmentally sustainable. But because this mode was not socially acceptable, Intex Resources has deferred to the sentiments of its stakeholders and is now studying land-based deposit of mine waste.

Intex Resources recognizes that its stakeholders will raise more questions and more clarifications. The Company will address these concerns as they are received and will be part and parcel of the EIA.

Along this line, the Company wishes to stress that the consultation process with its stakeholders is similarly a continuing work-in-progress.

With the completion of the EIA in 2009, Intex Resources will once again undertake public hearings to apprise stakeholders of the detailed and comprehensive disclosure of the environmental consequences of the Mindoro Nickel Project, along with the mitigating measures to be undertaken. The public hearings will reach out to as many stakeholders as possible.

The Company expects further comments and questions to be generated at these future public hearings. Intex Resources reassures its stakeholders that it will take note and address such concerns. For it is only after satisfying and addressing stakeholder concerns that the DENR will issue an ECC.

Integrity, Compassion and Dedication

We hope that this document demonstrates our corporate values of Integrity, Compassion and Dedication. We are dedicated to the responsible development of the natural resources on Mindoro. We understand that many stakeholders have questions about our project, and we are following a well regulated process in order to determine whether Mindoro Nickel is technically, financially, environmentally and socially viable.