

Case 1 – Didipio



Resource:	Gold and copper
Location:	Barangay Didipio, Kasibu Municipality, Nueva Vizcaya Province, North-central Luzon, Philippines.
Affected communities:	Ifugao, Kalanguya, Ibaloi, Tagalog, Ilocano and other Visavan settlers
Community groups:	DESAMA – Didipio Earth Savers Movement
Community support groups:	Diocesan Social Action Center (DSAC) Task Force Detainees of the Philippines (TFDP) Legal Rights and Natural Resources Center-Kasama sa kalikasan (LRC-KSK) (Friends of the Earth Philippines) http://www.lrcksk.org/
Mine operator:	Climax Mining Ltd – Climax Arimco Mining Co (CAMC)

Chronology of events

1989:	Climax Mining begins sampling in the Didipio Valley.
1992:	Climax Mining begins exploration activities in the Didipio Valley.
3/1994:	Climax Mining announces discovery of gold and copper.
6/1994:	President Ramos grants the first Financial or Technical Assistance Agreement (FTAA) in the Philippines to Climax Mining. The company gains the right to explore for up to 50 years' and potential 100 per cent foreign ownership.
28/4/1999:	The Barangay (District) Council of Didipio enters into a Memorandum of Agreement (MOA) with Climax Mining under contested circumstances.
16/7/1999:	The local community establishes the Didipio Earth Savers' Movement (DESAMA), a group opposed to mining in Didipio, and begins the 'Didipio Initiative' in order to obtain a referendum on the proposed mining activities.
8/1999:	The Department of Energy and Natural Resources (DENR) issues an Environmental Compliance Certificate (ECC) to Climax Mining.
19/10/1999:	DESAMA collects 109 signatures for a 'Peoples Initiative' petition asking the Commission of Elections to hold a referendum among the people as to whether they are in favour of the mine or not.
27/8/2000:	The Regional Development Council (RDC) denies a Climax Mining request to certify that the project conforms to the Regional Physical Framework plan of Region II.
27/10/2000:	The Department of Environment and Natural Resources declares the project 'closed to any form of mining' ¹²
11/10/2001:	The Department of Environment and Natural Resources suspends the FTAA, stating that the project is not socially acceptable. ³ However, Climax Mining maintains a presence at the mine camp.
17/12/2001:	The second MOA is signed under contested circumstances.

Members of the Didipio community perform a traditional war dance at a festival celebrating the citrus industry in their locality. Photo: Ingrid Macdonald/OxfamCAA



Request

During the Philippine National Conference on Mining held in May 2002, the Mining Ombudsman met with representatives of the affected communities of Didipio.⁴ Following this meeting, on 12 June 2002 DESAMA requested that the Mining Ombudsman undertake a formal case investigation and take up the case with Climax Mining in Australia.

In September 2002, the Mining Ombudsman travelled to Didipio to conduct a Mining Ombudsman investigation. This investigation included a comprehensive set of interviews and meetings with the community, municipality, and mine staff, as well as site visits.

Background

The Barangay (District) Didipio is located in a remote and mountainous area of Nueva Vizcaya, which is an agricultural province in the Cagayan Valley, in North Luzon. Didipio sits at a high point in the Addalam River watershed area, which encompasses large components of the Nueva Vizcaya Province and parts of the adjacent Quirino Province. Barangay Didipio is made up of nine sitios (smaller villages) – Dinauyan (Upper and Lower), Ancabo, Verona, Waterfalls, Dagupan, Bacbacan, Surong, Camgat and Didipio proper.⁵

Climax Mining is a publicly listed Australian firm that has been active in Didipio since 1989. In 1994 the company was granted the first Financial or Technical Assistance Agreement (FTAA) in the Philippines for a 37,000 hectare area located in the Nueva Vizcaya and Quirino provinces.⁶ The FTAA is a contract for 50 years and

5/2002:	The Mining Ombudsman attends the National Meeting of Mine Affected Communities in Baguio City, the Philippines.
12/6/2002:	The affected communities of Didipio formally invite Oxfam Community Aid Abroad to conduct a Mining Ombudsman investigation.
6/8/2002:	Didipio Barangay village elections result in the election of five anti-mining councillors out of seven. All 30 Barangay Captains (head councillors) representing 30 different electorates in the Neuva Viscaya region formally express their opposition to the mine.
9/9/2002:	The Mining Ombudsman travels to Didipio to undertake a case investigation. A public meeting is convened with over 70 community members.
10/9/2002:	The Mining Ombudsman meets with Didipio Barangay Captains before visiting the mine site. She meets with community relations officials and community members working for Climax Mining.
4/11/2002:	Oxfam Community Aid Abroad's Mining Ombudsman Annual Report 2002 is published with a preliminary report on the Didipio case.
11/11/2002:	Resolution No. 156, S 2002. The current municipal council of Kasibu formally denies the petition for the endorsement of mining activities by the former council.
18/12/2002:	The Mining Ombudsman writes to Climax Mining with the findings of the case investigation. To date there has been no reply.
5/3/2003:	The Mining Ombudsman writes to Climax Mining for a second time and there is no reply.
16/4/2003:	Climax Mining appoints a new Managing Director and Chief Executive Officer.
6/5/2003:	DESAMA joins together with other civil society groups in filing a petition to the Supreme Court seeking the Philippine Mining Act of 1995 and the implementing rules and regulations regarding the issuing of FTAA's to be declared unconstitutional. The petition also challenges the legality of Climax Mining's FTAA for Didipio and calls for its cancellation.
16/6/2003:	The Mining Ombudsman writes to the new Chief Executive Officer of Climax Mining, Mr Jim Askew to request a response to the findings of the case investigation and the concerns of the communities. To date there has been no reply.



Kagawad Tolention Inlab. In mid 2002, five out of seven of Didipio's councillors (Kagawad) were elected on an anti-mining platform.
Photo: Ingrid Macdonald/Oxfam CAA

includes a gold and copper discovery at Didipio, referred to as 'Dinkidi' by Climax Mining. While this prospect appears to be the company's principal focus of operations to date,⁷ the company has been unable to convert it into an operational mine for various reasons including fluctuating mineral prices, political change and community opposition.⁸ Climax Mining does not appear to be planning to operate the mine itself; as stated in its 2002 Annual Report, 'the Company is... actively seeking equity partners, a potential operator and financing... [and] Climax Mining is seeking to farm out the property to an international mining group.'⁹

Communities from both the Kasibu area and neighbouring Quirino Province have expressed their concern about the potential harmful environmental impacts from the proposed mine site on their Addalam River watershed.¹⁰ However, an Environmental Compliance Certificate (ECC) was granted to Climax Mining on 11 August 1999 by the then Secretary of the Department of Environment and Natural Resources (DENR), Antonio H. Cerrilles. It was amended on 12 January 2000 upon request of Climax Mining. It contains 40 general conditions covering the various stages of proposed mine operations. The ECC was suspended by the DENR, with the suspension of the FTAA in October 2001. A precondition of the ECC is social acceptability, which was the stated reason why the FTAA was suspended. Questions have also been raised as to whether the initial ECC applies to a new extraction method that has been proposed by Climax Mining.

In 2003 DESAMA, the Didipio communities' representative body, together with other Philippine civil society groups, filed a petition with the Philippine Supreme Court challenging the constitutionality of the Philippine Mining Act of 1995 and seeking the cancellation of the Climax Mining FTAA for Didipio. If successful, this petition will result in the activities of Climax Mining being deemed illegal and prevent any further operations at Didipio.

To date the Didipio project has not been permitted to develop beyond the exploration stage.

Grievances

The Mining Ombudsman recorded the following grievances in interviews conducted with over 50 community members and in a public meeting with over 70 community attendees during her visit to Didipio in September 2002. The Mining Ombudsman also collected documentation substantiating the community testimonies. The grievances have also been confirmed during investigations by MiningWatch Asia Pacific and the Legal Rights and Natural Resources Centre (LRC-KSK) in 2003.¹¹

Informed consent

Two Memoranda of Agreement (MOA) were signed by some Didipio Barangay Council representatives and the company, authorising pre-mining activities to occur at Didipio. The first agreement was signed on April 28, 1999 and the second, known as the pre-development MOA was signed on December 17, 2001. Most of the community members interviewed said they had not provided their informed consent to the signing of the MOAs.¹²

Many community members believe Climax Mining had not adequately consulted with them about the impacts of the proposed mine project. The reasons given by the communities were:

1. The company did not present all of the available information in meetings, and where information was given, it was not presented in an appropriate language or manner.
2. The community does not have adequate technical and legal representation to understand presentations made by Climax Mining.
3. The company provided education on mining activities after the activities had begun. For example, sampling activity began in 1989, however education was not provided on this activity until the late 1990s.

Community members described how they were required to sign attendance forms in order to attend meetings. They later reported that these attendance forms were used to illegitimately demonstrate their consent for the project and the MOA.

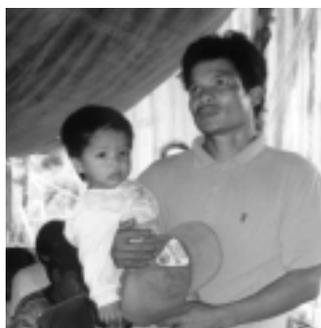
"We have been cheated. The company called for meetings in different communities. At the beginning of a meeting, they would butcher a pig [a local custom that attracted high levels of attendance at meetings]. Then they would ask people to sign a sheet for their attendance. But when the company went to Court in Manila, we found out that the attendance sheets had actually been approval forms for mining. The company used the sheets to back up their project. All those that signed the attendance forms were really cheated." Lorenzo Pulido

Community members also stated how they had signed attendance forms with large gaps at the top of the page and no headings. They informed the Mining Ombudsman that false headings were later added stating that they were in favour of the MOA. Similarly, people described how they were asked to sign a document that was supposed to be a request for a hanging bridge. Community members state that the final version of this document had additional text stating that all signatories were in favour of the mine. In yet another instance, people believed they were signing a document to authorise improvements to the local school, however, according to community members, the form was actually an endorsement of the mine.

It was also alleged that the Barangay councillors who endorsed the first MOA, were being paid salaries by Climax Mining.¹³ Many community members said that the councillors were initially against the mine. However, all but one of them are reported by community members to have suddenly changed this anti-mining position to endorsing the mine after a visit to the mine site. One Barangay official alleged that company officials had offered him money, land, a car and a house if he supported the mine and signed the MOA. Community members claimed the previous Barangay Council did not acknowledge their opposition to the MOA during and after a community assembly on the first MOA. During the assembly, some community members asserted that they had objected to the MOA, but when they saw the completed MOA it stated that no one had objected.

Right: Alonzo Ananayo: "The company is insisting we give them permission to go ahead. Some people depend on the company want it to go on, but we believe that we can only go on through our agricultural activity." Photo: Ingrid Macdonald/OxfamCAA

Far right: Local leader, Kagawad Peter Duyapat: "Climax Mining has offered to relocate people to a site that the community has never heard of or seen... people do not want to leave their lifestyle in Didipio." Photo: Ingrid Macdonald/OxfamCAA



A group of local people visited communities impacted by the Banguet mine, in the neighbouring Cordillera Region of the Philippines. The communities learnt about the potential negative impacts from the proposed mine, which had not been communicated to them by Climax Mining.

A number of people were also anxious that Climax Mining might pursue a 'slap suit,' which would involve the company suing the community for its lost investment given that the previous Council entered into the MOA with the company. This is reported to have occurred in other parts of the Philippines as a way to coerce communities into 'consenting' to projects.

"My father's generation discovered this land and took good care of it. We, their children are not taking care of it – I should not let this happen. I am opposed to the mine not just for now, but for the sake of coming generations." name withheld

Given the numerous community complaints, it is surprising to note that on completion of an audit of the Didipio project by the International Finance Corporation (the private sector funding arm of the World Bank Group), the audit consultant stated that the '... acceptance of the development plan represented the best case of prior informed consent he had ever witnessed.'¹⁴ It is unclear how the consultant could have reached this conclusion given the concerns expressed very openly and publicly by many members of the Didipio communities over the lack of free, prior and informed consent for this project.

Land acquisition

"Climax Mining has offered to relocate people to a site that the community has never heard of or seen. But the people do not want to leave their lifestyle in Didipio. They are not effected by pollution like in the lowlands, they have abundant water and the land is very fertile and good for agriculture. They do not want to be relocated." Kagawad Peter Duyapat, Didipio Barangay Council

Some members of the community complained that they had not received the jobs that they had been promised in return for selling their land to Climax Mining. They described how they now have no money, are landless and have to work for their neighbours.

They spoke of their shame at having lobbied their neighbours to trust Climax Mining, and their sense of responsibility for placing the entire community in the position of conflict by giving Climax Mining a foothold in the area.

Some of mine workers expressed it was better before they sold their land to the company and took up employment. They described how they had previously always had something to eat from their land, but now that they have a small salary and do not have sufficient cash for food.

A number of the community members asserted that Climax Mining had previously used force to access land for exploration activities without gaining the permission of the landowner. They also allege that exploration drilling caused springs to dry up or become polluted.

Teachers' salaries

All of the community members interviewed were very concerned that the salaries of some teachers, a nurse and a health worker had not been paid by Climax Mining since the new predominantly anti-mining Barangay Council was elected in June 2002.¹⁶ Many community members felt that unless the new Council agrees to the MOA, the company would not fund the salaries. The Didipio community places great importance on education, so the uncertainty over teachers' salaries has placed considerable pressure on the community and the Council to support the mine project.

Community division

All people interviewed were very distressed about community divisions between pro-mining and anti-mining advocates that had arisen since the arrival of Climax Mining in Didipio.¹⁷ Whether the people interviewed supported the mine or not, most spoke of the disharmony caused by the mine activities. Many were very emotional, with some unable to complete their testimonies because they were so upset with the conflict within their community and even within families. The DENR fact-finding mission found that, '... (a)rriving at a consensus on the mining project among the members of Didipio community must not be allowed to further polarize them.'¹⁸

Figure 7.1.1: Fact-finding investigation

The Department of Environment and Natural Resources (DENR) conducted an independent fact-finding mission in 2002, prompted by complaints from DESAMA regarding the methods used to collect community signatures for the MOA. The fact-finding mission found anomalies with the methods

of collection and that of the community members interviewed:

1. There were some who retracted their signatures on the endorsement.
2. There were some who were neutral.
3. There were some who claimed that they were not the one who signed.

4. There were some who were below 15 years old.

The mission also found that many of the residents of Didipio and the surrounding communities did not possess the knowledge or expertise to understand the presentations by the representatives of the project, who were mining engineers, geologists, or experts in their field. The

presentations were also in English or Tagalog, which are not the first languages of the communities.¹⁵

The DENR has since recommended that a plebiscite be conducted, in order to determine whether the people of Didipio want the mine to proceed and if Climax Mining can provide 'socially responsible mining.'

One Barangay official alleged that company officials had offered him money, land, a car and a house if he supported the mine and signed the MOA.

"I wish the mining activity would stop, because it is creating disunity in the community. People who are pro-mining say they will not have a job if there isn't a mine. But the rest of the community is developing citrus crops and the mining activity will destroy the citrus planting program. The mining is making our children hate each other." Cesar Mariano

In 1994 a Canadian geologist was accidentally killed by a community member who allegedly shot at a flying helicopter that kept landing on his property without permission.¹⁹ As a result, a military detachment was deployed to the mine site. Community members described how these soldiers stole their chickens and ducks and harassed them. When they reported this to the Climax Mining officials, the soldiers were removed and were replaced by a deputised civilian military force recruited from the pro-mining sections of the community. This military force appears to have only heightened tensions between pro and anti-mining segments of the community.

"If the company does not stop, the community will never be united again. The unity of the people will never be again – our strong wish is that the company would stop and leave."
Barangay Kagawad Edwardo Ananayo

Sustainable livelihoods and environmental stewardship

Some community members believe that Climax Mining is a socially and environmentally responsible mining company, committed to sustainable development. They believe the positive economic spin-offs from mine development can be a driver for economic development in the community. They spoke of how they have either received work from the mine or directly benefited from Climax Mining's presence through leasing their land to the company. However, very few had any specific information about the potential social and environmental impacts of the proposed mining activities. Nor did they know that Climax Mining was actively seeking an operational partner for the mine.

Those in favour of the mine described how Climax Mining has provided infrastructure including dirt roads, a health clinic and improvements to the school. They believe that Climax Mining will spend more money on developing public utilities such as education, health care and public roads. However, others expressed concern about becoming dependent on a foreign company to provide these services, as they believe this is the role of the government.

This difference of opinion did not appear to be because some in the community want 'economic development' and some do not. Rather, it appeared to be a question of how the community should develop. The majority of the people expressed their desire for long-term sustainable economic development through citrus crop plantations. They asserted that the area has fertile soil that is conducive to citrus farming, as demonstrated by the already thriving citrus industry in the lowlands of the Kasibu region.

Those pursuing citrus development fear the mine will cause environmental damage and destroy their livelihood. They believe that in time citrus production will provide them with a non-polluting economically-viable industry that can be passed on to their children and grandchildren whereas the mine and its cash will be gone in a generation.

Many community members discussed their strong sense of respect and steward-ship for the land, and how it would be impossible to be compensated for its loss or contamination. During an interview with the Mining Ombudsman, Climax Mining's Didipio Community Relations officer advised that the proposed mine operations would have 'absolutely no negative impacts on the communities.' When the Mining Ombudsman requested proof of this assertion, the official assured her that he has faith in what the engineers have told him. However, most people expressed distrust that the company is providing accurate and full information regarding the potential environmental impacts of the mine,²⁰ particularly given the company's behaviour in respect of the MOA consent process.

"There have been a lot of lies by Climax. Through their alliance officer they told us that there are no bad effects from mining. There used to be portable water from a spring. Then the company drilled above the spring and the water disappeared – and yet they tell us that there is no effect from mining activity. The drinking water is no longer good and it is not longer potable." Name withheld



Community members are concerned about the impacts of the mine development on future generations. Photo: Ingrid Macdonald/OxfamCAA

Community members and representatives sit above the valley where the tailings dam is proposed to be built.
Photo: Ingrid Macdonald/OxfamCAA



Action taken

The community concerns over the proposed mine at Didipio were first publicly covered by Oxfam Community Aid Abroad as a preliminary case report in the *Mining Ombudsman Annual Report 2002*. The Mining Ombudsman conducted a field investigation in September 2002 and wrote several letters to Climax Mining, on 18 December 2002, 5 March 2003 and 16 June 2003 with the results of the investigation. To date, Climax Mining has not responded to the community grievances or case investigation.

The Mining Ombudsman also wrote to Climax Mining's largest shareholder, ANZ Nominees Ltd on 13 March 2003 in order to inform it of the community concerns with the Didipio project and the results of the Mining Ombudsman investigation. ANZ Nominees Ltd held 37.641 per cent of Climax Mining's share as at 3 October 2002.²¹ ANZ Bank responded to the Mining Ombudsman on 3 May 2003 with no reference to what it would do in respect of the community concerns or the Ombudsman investigation. Please refer to Section 6 for further elaboration about nominee companies and their relationship to the Climax Mining case.

Recommendations

Climax Mining has chosen not to respond to the Mining Ombudsman in respect of the concerns of the communities being impacted by its activities in Didipio. The following recommendations have been communicated to Climax Mining in each letter:

- > That Climax Mining suspend all pre-mine feasibility and exploration activities at Didipio and support an independent plebiscite on the future of the proposed mine project.
- > That Climax Mining respects the rights of the communities to prior, free and informed consent and therefore immediately recognises their right to determine whether the project proceeds to the next phase of development.
- > That Climax Mining recognises the rights of communities to determine their own path of development and, as such, respects their right to decide to pursue agricultural development.

- > That Climax Mining publicly and formally agrees not to pursue a 'slap-suit' against the community, if the Didipio Barangay decides not to endorse the mine.
- > That Climax Mining fully discloses the project objectives, impacts and options to all stakeholders from the Didipio community, including the realistic impacts on the environment, any required relocation and resettlement plans and whether Climax Mining will be operating the mine or whether this will be managed by another company.
- > That Climax Mining does not use company-funded community projects to advance its own agenda and immediately pays all out-standing salaries for health and education workers.
- > That Climax Mining recognises community division as an impact of its activities and takes measures to appropriately and sensitively compensate and/or assist the communities to reestablish harmonious relations with each other.
- > That independent social, gender and environmental impact assessments are conducted immediately to gauge real and potential issues arising from the proposed mine operation in Didipio, and that the results of these assessments be made available to all stakeholders and the general public.
- > That Climax Mining provides all information in a language and manner that is accessible to communities, with adequate funds to seek technical expertise to analyse this information independent of the company.
- > That Climax Mining ensures that its employees do not partake in corrupt practices, such as the bribery of community members in order to gain acceptance of the mine.
- > That Climax Mining ensures that community members are fully informed of what they are signing before they sign official documents of any type and that they have received adequate independent technical and legal assistance prior to signing.
- > That Climax Mining insists that the civilian/military detachment at the mine is disbanded and ensures that factions of the community are not being armed.

FOOTNOTES

¹ Climax Mining Ltd Website. Available at <http://www.climaxmining.com.au/html/projects.html> (accessed online 11 November 02) ² Gascon, Melvin (2001), 'Help Stop Vizcaya Mining, Bishop Appeals to Gloria', *Inquirer News Service*, 15 July. Available at <http://www.inq7net> (accessed 28 May 2002) ³ Brazas, Donna (2001), 'Philippines Suspends Mine Exploration Operations', *The Manila Times*, 17 October, Available at <http://www.minesandcommunities.org> (accessed 28 May 2002.) ⁴ See Tebtebba Foundation website at <http://www.tebtebba.org> for a copy of the Conference Statement and the report on the National Conference on Mining. ⁵ See Rovillos, Raymundo. Ramo, Salvador. Corpuz, Jr., Catalino. 'When the 'Isles of Gold' Turn into Isles of Dissent: A Case Study On The Philippine Mining Act of 1995' Tebtebba Foundation paper prepared for the World Bank Extractive Industries Review, p.18 ⁶ Aroco, A., Degyem, W. & Pinaroc, S. (2002), 'Fact-Finding Investigation Report', unpublished article of the Philippine government, July 8, p.7. ⁷ Climax Mining Ltd and its Controlled Entities (2002), *Directors' Report and Full Financial Report*, 30 June, p.2. Available online: <http://www.climaxmining.com.au> ⁸ Ibid. ⁹ Ibid. (Emphasis added) ¹⁰ See Rovillos, et al. Op Cit. ¹¹ Ibid. ¹² Rovillos et al. Op Cit., p.23 ¹³ See also Gobrin, G. and Andrin, A. 'Development Conflict: The Philippine Experience' *Minority Rights Group International*. Available online: <http://www.minorityrights.org/> ¹⁴ See Climax Mining Ltd, (2001) *Community Participation and Social Acceptability*, www.didipio.com/html/1.html (last accessed 29 July 2003). ¹⁵ Aroco, Atty. Alfonso, Degyem, William D. & Pinaroc, Samuel P. (2002), Op. Cit. ¹⁶ See also Gobrin, G. et al. Op Cit. ¹⁷ See also Rovillos, R. et al. Op Cit. p.23 ¹⁸ Aroco, Atty. Alfonso et al (2002) Op. Cit. ¹⁹ See also Gobrin, G. et al. Op Cit. ²⁰ See also Rovillos, R. et al. Op Cit. p.19 ²¹ Climax Mining Limited *Annual Report 2002*, p.32.