OceanaGold in the Philippines

Ten Violations that Should Prompt Its Removal

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Cover photo of OceanaGold’s Didipio mine, by Catherine Coumans, MiningWatch Canada.
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Introduction and Recommendations

OceanaGold Corporation (OceanaGold), an Australian-Canadian company,\(^1\) is one of dozens of transnational mining companies in the Philippines that have been reaping profits by mining gold, silver, copper, and other minerals. Its underground Didipio Gold and Copper Mine (Didipio mine)\(^2\) in the Northern Luzon province of Nueva Vizcaya started open-pit commercial production in 2013. It continues to operate despite a suspension order\(^3\) issued on February 14, 2017 by then-Philippine Secretary of Environment and Natural Resources (DENR), Gina Lopez.\(^4\) The agreement that allowed OceanaGold to start mining is a 25-year Financial and Technical Assistance Agreement (FTAA).\(^5\) The FTAA is set to expire in June 2019, but can be renewed by the Philippine government for another 25 years.

The authors of this report—researchers from the United States, Canada, and the Philippines—have studied OceanaGold’s operations in the Philippines and other countries. Among us, we have visited the Didipio mine on fact-finding missions four times since 2013. We have studied numerous reports and other fact-finding missions on OceanaGold’s record in the Philippines. We have carefully reviewed the multitude of complaints about the mine from the local community and provincial authorities dating back to when construction began.

This report lays out the results of our investigation, including our finding of numerous violations by OceanaGold of its FTAA and of national and provincial laws and decrees. **The authors conclude that this mine has significant negative impacts on water, forests, land,**

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\(^1\) OceanaGold Corporation is the Canadian-based parent company of numerous wholly-owned subsidiaries. The company is currently listed on the TSX and ASX exchanges, is headquartered in Melbourne, Australia with a corporate office in British Columbia, Canada.

\(^2\) OceanaGold’s predecessor, Oceana Gold Ltd, acquired the Didipio Project in the Philippines in 2006 through a merger with Climax Mining. OceanaGold operates the project through wholly-owned subsidiaries in Singapore, the Netherlands and the Philippines. OceanaGold subsidiary OceanaGold (Philippines), Inc. (“OGPI”) owns 92% of Didipio FTAA Didipio Mine with the remaining 8% in the hands of a Philippine claim owner syndicate under an Addendum Agreement to the mine’s FTAA. The mine has a remaining estimated lifespan of more than 15 years.

\(^3\) The authors do not have a copy of this suspension order but, according to OceanaGold, it contains “various allegations citing ‘... petition of the Local Government of Nueva Vizcaya for the cancellation of the FTAA; alleged damages to houses caused by the blasting operation; and the potential adverse impact to the agricultural areas of the Province...’” (OceanaGold 2018: 79).

\(^4\) OceanaGold filed an appeal with the Office of the President which stayed the execution of the suspension order and allowed the company to continue operating (OceanaGold 2018: 26).

\(^5\) Financial and Technical Assistance Agreements are contracts entered into by a Contractor and the President of the Philippines, on behalf of the Government of the Philippines, upon recommendation of the DENR Secretary, for the purposes of large-scale exploration, development and utilization of minerals, such as gold, copper, nickel, chromite, lead, zinc but excluding marble, granite and quarry aggregates. The Contractor in these agreements may be 100% foreign-owned. The Didipio Mine’s FTAA was the first such contract and was granted on June 20, 1994, anticipating but prior to the implementation of the Philippines Mining Act 1995. As a result, OceanaGold maintains that “FTAAs awarded after the implementation of the Mining Act are governed by the Mining Act, which has a separate regime to the Didipio FTAA” (OceanaGold 2018: 28).
indigenous peoples, human rights, biodiversity, and workers’ rights. Hence, the authors support directly affected indigenous peoples and community members, as well as municipal, provincial and national stakeholders, who maintain that the FTAA should not be renewed and the mine should be closed. Given its track record, OceanaGold should also be considered ineligible for the additional exploration permits it has requested for areas around the Didipio mine.

The report reviews ten areas where there is strong evidence that OceanaGold is either violating the requirements of its FTAA, is in violation of national and provincial laws or agreements, and/or is otherwise violating internationally-recognized human rights. The report draws, among others, from a 2011 Philippine Commission on Human Rights report, a November 2016 joint monitoring report by the company and the provincial government, a 2017 report by the Nueva Vizcaya Provincial Government, a 2014 report by Kalikasan and AGHAM, July 2013 and July 2017 investigative visits to the mine by U.S. researchers Robin Broad and John Cavanagh, and July 2015 and September 2017 visits to the mine, mining-affected communities and municipal and provincial stakeholders by Canadian researcher Catherine Coumans. Broad and Cavanagh requested a tour of the mine from OceanaGold and were turned down, despite OceanaGold’s claim that they are open to anyone touring the mine.

We are not alone in recommending the closure of this mine. Affected community groups in Nueva Vizcaya have long protested the impacts from this mine and called for its closure. They have sent numerous petitions to the government protesting the mine’s operations and most recently, on April 6, 2018 prepared a petition strongly opposing steps taken by regulatory authorities related to requests by OceanaGold for extension and expansion of its operations. On October 2, 2018, a petition was hand-delivered to DENR Secretary Roy Cimatu that was prepared by the newly elected village Captain Ereneo Bobola and elected officials of Didipio, strongly urging Cimatu to suspend the operations of OceanaGold. The Provincial Government of Nueva Vizcaya has also called for the closing of the mine noting “[a]ffected communities oppose the presence of OceanaGold’s operations in the province since the exploration stage because of its many negative impacts.” The Provincial Government of Nueva Vizcaya has

7 Authors have a copy of April 6, 2018 petition.
8 Authors have a copy of this petition. There is also a clip in a recent GMA News show in which the Barangay captain explains why villagers don’t want any expansion or renewal of the OceanaGold contract: Monsod, Winnie, host. “Mining: Benepisyo o Perwisyo?, “ Bawal ang Pasaway TV show, GMA News TV, https://media-meter.net/client/#/media-single/video/98c730ffcc83db24cbb4b7fca7c818/1>
9 Incoming Nueva Vizcaya governor Carlos Padilla made clear his opposition to the mine in a June
also called for the closing of the mine noting “[a]ffected communities oppose the presence of OceanaGold’s operations in the province since the exploration stage because of its many negative impacts.”

A September 21, 2018 Water Summit of multi-sectoral stakeholders from Nueva Vizcaya and neighboring provinces “agreed to reject the extension of large-scale mining operations in Nueva Vizcaya, including the approval of new application for mining rights.”

The Philippine Commission on Human Rights laid out a range of issues after a careful investigation in its 2011 report, recommending that the government investigate the human rights abuses and “consider the probable withdrawal of the FTAA.”

We remind the public and the government that this mine stands at the headwaters of a river that flows into the longest river system in the entire Philippines as it flows through four provinces, past millions of homes, and becomes the mighty Cagayan River before emptying into the Pacific Ocean on the northern end of Luzon. The same waters flow through irrigation facilities that sustain agriculture and through hydro-electric dams that provide power to the Luzon Grid. Presidential Decree 705 designates a critical watershed as one that supplies water to vital infrastructure facilities such as power and irrigation.

Contaminants that come from the mine could potentially put at risk millions of livelihoods and critical ecosystems.

We recommend that the Philippine government study these issues carefully as it reviews the application of OceanaGold to renew its FTAA. We are confident that if it does so, it will conclude that there is sufficient evidence to turn down OceanaGold’s application for a renewal, and to shut down the mine.

Here are five excerpts from the 1994 FTAA where our research and the other sources from which we draw find OceanaGold in violation of its FTAA with the government of the Philippines. The FTAA stipulates that the mining company will:


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Incoming Nueva Vizcaya governor Carlos Padilla made clear his opposition to the mine in a June 8, 2016 statement released in his final days as member of the House of Representatives. Carlos M. Padilla, “OceanaGold Unjustly Benefitting from Philippines Mines at the Expense of the People and Environment,” statement released by Padilla from his House of Representatives Office, June 8, 2016. [Hard copy with authors.] See also Raymon Dullana, “Nueva Vizcaya officials vow to block renewal of OceanaGold mining permit,” Rappler, March 6, 2018.

11  

Nueva Vizcaya Water Summit, “The Nueva Vizcaya Declaration on Water,” declaration from Nueva Vizcaya Water Summit, an assembly of multi-sectoral stakeholders from Nueva Vizcaya and neighboring provinces and regions, final copy signed by Governor Carlos Padilla among others, September 21, 2018, Nueva Vizcaya Convention Center. [Hard copy of draft declaration with authors.]

12  

Ibid.

13  

In March 2016, OceanaGold was granted a 5-year extension of the exploration period of the FTAA, but the 25-year FTAA, which allows it to mine, still expires in June 2019.
• “Conform to laws and regulations regarding, among others, labor, safety, demarcation of the Exploration Contract Area, and non-interference with the rights of other mining operators.”

• “Recognize and respect the rights, customs and traditions of indigenous tribal communities over their ancestral lands.”

• “To the extent reasonably possible, control of pollution and the transformation of the mined-out areas or materials into economically and socially productive forms must be done simultaneously with mining.”

• “Contribute to national development by helping develop the host and neighboring communities of the Contract Area, local geo-science and mining technology, and mitigating environmental effects of Mining Operations.”

• “The CONTRACTOR shall help create self-sustaining, income-generating activities, such as but not limited to, reforestation and production of goods and services needed by the mine.”

As will be documented throughout this report, OceanaGold has not met the basic commitments it made in its FTAA and should not be rewarded with an extension of the FTAA.
The Ten Violations

In each of the ten sections below, we lay out the record of OceanaGold, followed by the relevant law that the company is required to follow. We lay out the evidence in each of the ten areas of OceanaGold’s violations.

1. Water

OceanaGold is depleting and contaminating water around the mine, and damaging the watershed downstream leading into the Cagayan River.

Several independent researchers have found: contamination of waterways near the mine impacting water quality and flora and fauna of these waterways; degradation of agricultural land in surrounding communities; impacts on human health; impacts on downstream waterways leading to the Cagayan Valley. Additionally, the mine’s operations are depleting groundwater with negative impacts on agriculture, human health and economic viability of local communities.14 Some of these findings are further supported in a monitoring report by a 2016 Multi-partite Monitoring Team (MMT) that includes input from OceanaGold.15

Threat to agricultural land

According to a Kalikasan report (2017) on OceanaGold in Didipio: “Local farmers in barangay Didipio observed that agricultural activity drastically reduced by as much as 30%. This is indicated by the low yield of agricultural products such as vegetable crops and citrus fruits from Didipio to Nueva Vizcaya Agricultural Trading. The farmers also attributed the low yield to the effects of air pollution, river pollution, and water shortage due to the large-scale mining operations in their barangay. There was also high incidence of plant diseases in their farms.”16 In July and September of 2017, farmers in Didipio and nearby barangays told the authors that use of contaminated surface water for irrigation had destroyed rich agricultural lands. Nueva Vizcaya is one of the fruit and vegetable capitals of Luzon. Most of the people in this area grow citrus, and other fruits and vegetables. Quite close to the mine is the Malabing Valley, a citrus center of the country. Much of this agricultural land depends on streams and rivers that come from or through the mining area. Hence, residents want the mine shut down and they do not want the mine to expand. High levels of turbidity, toxic substances and minerals

14 Winnie Monsod, host, “Mining: Benepisyo o Perwisyo?,” Bawal ang Pasaway TV show, GMA News TV, https://media-meter.net/client/#/media-single/video/98c730fccc83db24cbb4b7ffcf7c818/1>
have been measured in rivers around the mine. For instance, the November 2016 multi-partite monitoring team report (starting on p. 21) provides water quality readings from several rivers and streams nearby, showing relatively high levels of lead, manganese, cadmium, sulfates, iron, arsenic, selenium, and TSS (the document claims that the TSS is from small-scale miners). Note that the 915-page 2004 EIS (environmental impact statement) done for Climax-Arimco (previous owner of the site) suggests that the pre-mine (baseline) levels of lead were below levels that are considered dangerous.

**Toxicity of Water**

The Provincial Government of Nueva Vizcaya found that Didipio River has “twice the copper concentrate permitted for irrigation use and eight times the maximum level for the survival of organisms.”

From the Environmental Investigation Mission conducted by Kalikasan People’s Network for the Environment and AGHAM: “In Brgy. Didipio, increased copper concentration in both water and sediment samples in the impact area and the confluence were observed as compared to that of the non-impact area. The amount of copper in sediment samples at each of the three sampling sites exceeded the Severe Effect Level, indicating that the sediments are heavily polluted, which could negatively affect the health of benthic or sediment-dwelling organisms. The level of copper contamination in water samples from Didipio River exceeded the maximum level both for irrigation use and the survival of aquatic organisms…”

Independent water sampling found copper levels exceeding 0.02 mg/L in the Tailings Pond, the Suron River before the confluence with the Dinauyan River, the Didipio River right after the confluence with the Dinauyan and Suron Rivers, and downstream in the Didipio River. Japan’s Ministry of Agriculture, Forestry and Fisheries has guidelines indicating that water quality for growing rice in rice paddies should not have copper levels higher than 0.02mg/L.

**Depletion of groundwater—Failure to secure permit for dewatering activities**

According to the provincial government in 2017: “OGPI failed to secure Water Permit...”

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19 In addition to these findings copper levels were also found to be elevated in the Dinauyan River at 0.016mg/L compared to a base line from non-affected waters upstream of the Suron River which showed 0.009mg/L of copper. Samples were taken in 2017 by the Pacific Asia Resource Center (PARC) and analyzed by Junichi Ohnuma (Former Kinjo Gakuin University Lecturer, Former Chubu University Lecturer, Former Aichi Prefecture Environmental Research Center Chief Researcher) in Japan. Full report with authors.
for its dewatering activity at the open pit.” The open pit resembles a large well where ground water is continuously extracted. Presidential Decree (PD) No. 1067, otherwise known as The Water Code of the Philippines[,] regulates the extraction of ground water through the issuance of water permit. Article 13 of the Code as reiterated by Section 2 of its Amended Implementing Rules and Regulations duly promulgated by the National Water Resources Board (NWRB) prohibits the appropriation of water without a water right as evidenced by a water permit. Corollarily [sic], Section 73 of R.A. 7942, otherwise known as the Philippine Mining Act of 1995[,] mandates that mining companies shall file their application for water rights as provided for by existing laws, rules and regulations with the appropriate government agencies. The OGPI failed to secure a permit for its dewatering undertakings contrary to the requirements of law. Such omission may fall within the purview of Section 95, RA 7942 [Philippine Mining Act of 1995], quoted as follows: Section 95. Late or Non-Filing of Requirements. – Failure of the permittee or contractor to comply with any of the requirements provided in this Act or in its implementing rules and regulations, without a valid reason, shall be sufficient ground for the suspension of any permit or agreement provided under this act.”

**Threat to downstream watershed**

According to the findings of the Nueva Vizcaya government in 2017: “The Didipio mine is right at the headwaters of the Addalam River—a tributary of the mighty Cagayan River and the locus of the Addalam River Irrigation System.” It goes on to point out that “the Addalam River Irrigation Project (ARIP) is a crucial irrigation system constructed by the National Irrigation Administration (NIA) that seeks to provide adequate irrigation services to 5830 hectares of agricultural land in the municipalities of Saguday and Aglipay in Quirino, and Jones and Echague in Isabela benefitting 4,500 farmer-irrigators. […] Within the prism of a critical watershed, Didipio should have been shielded from any extractive economic activity that may impair its viability as a watershed haven supporting vital downstream enterprises. […] As a matter of state policy, the entire province of Nueva Vizcaya should have been spared from the entry of extractive industries as it is Cagayan Valley’s waterhaven shed. […] The contribution of Nueva Vizcaya as a watershed sanctuary is no small feat especially in sustaining Cagayan Valley as a consistent agricultural achiever. The region produced a total of 2.177 million metric tons of palay and 1.875 million of corn in 2012. On average, Region II provides 13 percent of the country’s palay and 22 percent of the national corn supply. Cagayan Valley contributed 1.77 percent to the country’s Gross Domestic Product, an increase of 5.37 percent from 2010—higher than the total GDP contribution of the entire Philippine mining sector (gross value added in mining averaged about 0.65 of GDP for 2012-2016).”

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21 Bolded in original.
22 Emphasis added.
24 *Palay* is unhusked rice.
**Quantity of water used in the mine**

Prior to the opening of the mine in 2013, a 2011 Commission on Human Rights report warned: “OGPI must exercise great caution in exploiting the water resources of Didipio, possibly endangering the community’s fundamental Right to Access to Clean Water: In terms of quantity, given the immense volume of water required to process mineral ores, there is no certainty that an amount sufficient to sustain the communities in their day-to-day domestic and agricultural uses shall be left. The local communities could ill-afford a water resource-intensive industry such as mining competing with their domestic and agricultural uses, especially so in light of the severe and protracted drought (El Nino) the province has recently suffered from and is predicted to suffer more frequently in the future because of climate change. The Commission also notes that the province of Nueva Vizcaya was especially identified by the Department of Agriculture as being particularly “vulnerable” to the effects of El Nino. As such, clean water- scarce as it is- is bound to get much scarcer. In terms of quality, contaminated discharges from the mine processing plants and tailings ponds could seep into the river system in the area which could cause human, animal and environmental hazards that would eventually render the water unfit for any and all uses it has traditionally been used.”

In addition to what is mentioned above, in terms of OceanaGold not having secured relevant permitting, the concerns we have summarized constitute breaches of the Philippine Clean Water Act of 2004:

**Relevant Law:**

**Philippine Clean Water Act of 2004**

“SECTION 27. Prohibited Acts. - The following acts are hereby prohibited:

a) Discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water, where, the same shall be liable to be washed into such surface water, either by tide action or by storm, floods or otherwise, which could cause water pollution or impede natural flow in the water body;

b) Discharging, injecting or allowing to seep into the soil or sub-soil any substance in any form that would pollute groundwater…

c) Operating facilities that discharge regulated water pollutants without the valid required permit or after the permit was revoked for any violation of any condition therein;…”

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2. Forests

*OceanaGold has failed in its obligations around reforestation.* The 1995 Philippine Mining Act requires “reforestation” by mining companies. The Revised Forestry Code of the Philippines requires that: “Mine tailings and other pollutants affecting the health and safety of the people, water, fish, vegetation, animal life and other surface resources, shall be filtered in silt traps or other filtration devices and only clean exhausts and liquids shall be released therefrom.”

**Death of native trees**

The authors estimate that over 100 native hardwood trees have died in the effluent of the OceanaGold’s tailings impoundment, which is not isolated from the surrounding environment, and, possibly, as a result of unpermitted releases from the pond into nearby forest areas. OceanaGold appears not to have included these losses in its calculations of trees cut to build the mine.

**Failure to Reforest**

Broad and Cavanagh visited three reforestation sites of OceanaGold. In the authors’ analysis, none met the criteria for successful completion by OceanaGold of its obligations under its FTAA. Each of the three sites had its unique problems, but overall, we found nothing that could be termed a “successful” plantation, never mind reforestation. A majority of trees were either too small to survive or already dying. The height of the grass and competing vegetation indicate that OceanaGold is not meeting its obligations for 3 years of maintenance. In addition, there is the question of the species being planted by the company. While OceanaGold may be meeting the letter of the law regarding species, the fact that it has been allowed to cut down (or submerge) native hardwoods and replant with plantation species (such as mahogany, non-native rubber, gmelina, etc.) raises serious questions about its commitment to reforestation. Moreover, our reforestation site visits and expert interviews, while representing a small percent of OGPI’s reforestation hectarage, suggest that the company did not deserve awards for its reforestation efforts, even if one assesses success in terms of plantation trees.

We also note that, in April 2018, President Duterte warned that mining companies not complying with Philippine government reforestation requirements would be shut down: “I do not want to see bald mountains in the areas you have mined. I want to see trees as tall as me in 6 months. If I don’t see any in the area you destroyed, consider your permit revoked.” The on-the-ground evidence from the authors’ fieldwork provides evidence that OceanaGold is not meeting this stipulation and the FTAA should be revoked and certainly not extended.

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The dead trees in the tailings impoundment suggest that OceanaGold is not respecting the Revised Forestry Code.

**Relevant Law:**

**Revised Forestry Code of the Philippines**

“Mining operations in forest lands shall be regulated and conducted with due regard to protection, development and utilization of other surface resources. Location, prospecting, exploration, utilization or exploitation of mineral resources in forest reservations shall be governed by Mining laws, rules and regulations. No location, prospecting, exploration, utilization, or exploitation of mineral resources inside forest concessions shall be allowed unless proper notice has been served upon the licensees thereof and the prior approval of the Director, secured. Mine tailings and other pollutants affecting the health and safety of the people, water, fish, vegetation, animal life and other surface resources, shall be filtered in silt traps or other filtration devices and only clean exhausts and liquids shall be released therefrom. Surface-mined areas shall be restored to as near its former natural configuration or as approved by the Director prior to its abandonment by the mining concern.”
3. Land

_OceanaGold has disregarded the provincial land use plan, has committed illegal land conversion, and has operated in areas beyond its approved project area._

**Violation of provincial government’s land use plan**

From the 2017 provincial government report\(^{28}\): “The Provincial Comprehensive Land Use Plan (PCLUP), which serves as the General Land Use Plan of Nueva Vizcaya, did not identify a land use for mining within its territorial jurisdiction. The PCLUP was institutionalized through the enactment of Provincial Ordinance No. 90, Series of 1995. On the other hand, the PDPFP (Provincial Development and Physical Framework Plan), which was approved by the Housing and Land Use Regulatory Board (HLURB) under Board Resolution No. 870 on April 19, 2011 likewise did not identify land use for mining in the General Land Use Plan. Both the PLCUP and PDPFP are fundamental planning documents crafted and viewed in terms of their potential benefits—short-, medium-, and long-term— to the people. […] Both plans were crafted within the ambit of the mandates of the Local Government Code and in conformity with national land use policies, guidelines, rules and regulations.”

**Illegal Conversion**

The provincial government also concluded in 2017\(^{29}\): “The area covered by the FTAA granted to OGPI [OceanaGold Philippine Islands] 12,864 hectares of which 975 hectares comprised the PDMF area. […] What is apparent in OGPI’s land tenure summary is that it was able to acquire alienable and disposable land within the PDMF area and utilize the same for purposes other than agricultural—a wanton contempt of the above cited SC decision requiring the process of land conversion before an alienable and disposable land can be used for other purposes, i.e. industrial in the case of mining. […] The reality as we ascertain at present attests to the incontrovertible fact that alienable and disposable lands totaling to more than 140 hectares sit within the PDMF area, a fact the company admits in its own documents and yet no Order of Conversion was ever issued by DAR authorizing the same.”

**Expansion beyond approved project area**

From the Provincial Government in 2017\(^{30}\): “Upon examination of the project map as laid out within given coordinates on the Google Earth, it becomes apparent that OGPI has encroached on areas beyond the extent of the approved project area as determined in the existing ECC, albeit within the FTAA tenement. This is a wanton infraction of the ECC and a probable ground for the cancellation or suspension of the same. Any modification or expansion of the project

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\(^{29}\) Ibid.

\(^{30}\) Ibid.
area requires the application of a new ECC subject to an Environmental Impact Study (EIS).”

**Relevant Laws:**

In addition to the provincial plans and provisions mentioned above, the relevant national law and Local Government Code that OceanaGold has disregarded are as follows:

**Comprehensive Agrarian Reform Program Extension with Reforms Law**

“SECTION 22. Section 65 of Republic Act No. 6657, as amended, is hereby further amended to read as follows: SEC. 65. Conversion of Lands. — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner with respect only to his/her retained area which is tenant, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: Provided, That if the applicant is a beneficiary under agrarian laws and the land sought to be converted is the land awarded to him/her or any portion thereof, the applicant, after the conversion is granted, shall invest at least ten percent (10%) of the proceeds coming from the conversion in government securities: Provided, further, That the applicant upon conversion shall fully pay the price of the land: Provided, furthermore, That irrigated and irrigable lands, shall not be subject to conversion: Provided, finally, That the National Irrigation Administration shall submit a consolidated data on the location nationwide of all irrigable lands within one (1) year from the effectivity of this Act.

Failure to implement the conversion plan within five (5) years from the approval of such conversion plan or any violation of the conditions of the conversion order due to the fault of the applicant shall cause the land to automatically be covered by CARP.”

**Local Government Code of 1991**

“(c) The local government units shall, in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant bases for the future use of land resources: Provided. That the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.”\(^{31}\)

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4. Chemicals

The Philippines has strict laws governing toxic chemicals (see below). OceanaGold has stated that it does not use the toxic chemical, cyanide, at the Didipio mine. However, no one in the Didipio community to whom we spoke and none of the government officials to whom we spoke knew with certainty what processing chemicals it was using. The damage to trees in the tailings pond and impacts on water quality and biota downstream suggests that chemicals used in, or released through processing, are dangerous to the health of surface waters as well as potentially to groundwater.

Opaqueness regarding chemicals used

Officials of OceanaGold join provincial officials and non-governmental organization staff in a joint monitoring team which issues periodic detailed monitoring reviews on the mine. On p. 16 of the November 2016 Monitoring report, it reports OceanaGold’s “use of cleaner technology for processing of ore (e.g. no use of cyanide or mercury),” and that “flotation and gravitational recovery of gold is being utilized.” But no one to whom we spoke in Nueva Vizcaya knew what chemicals the company was using. The authors were able to access a 2017 OceanaGold document that lists “consumables” and “flotation reagents” that the company reported using. It is unclear whether these chemicals or chemicals released in processing the ore are causing the downstream impacts. Related, the November 2016 Monitoring report (p. 15) talks about “hazardous waste generation,” but does not tell us what hazardous wastes are being generated at the site and only says that it is being “hauled and treated by the DENR-EMB accredited treaters and transporters.” OceanaGold provides no further information on who are these accredited treaters and transporters. According to one interviewee, OGPI claims that it is not responsible for the hazardous wastes once they are in the hands of these contractors/subcontractors. On p. 16 of the November 2016 Monitoring report, it tells us that there is “proper storage of chemicals,” but does not say which chemicals nor does it provide specifics about the storage. We believe that it should be standard procedure for a mining company to release this information to the public. Mining companies should be required to post publicly all chemicals being used (consumables) and details about all waste being generated, including with regard to volume and chemical composition of tailings and volume of waste rock, and all measures taken to ensure these do not contaminate soils, air, surface and ground water.

On pp. 33 and 34 of the Monitoring Report, OceanaGold reports on hazardous waste management. OGPI claims that large amounts of used solvents and organics were

transported out of the site, and likewise a large amount of “contaminated containers.” OceanaGold never provides the details. On p. 39, there are photos of large drums of hazardous wastes, but no details on what they are. On p. 48, it writes: “Environmental incidents were investigated, i.e. minor spills.” But again, no details. OceanaGold provides no specifics on when the spills where and of what. OceanaGold does not provide criteria on what allows the company to term them “minor.” Nor does it provide the steps it has taken to ensure such spills are not repeated? There should be great concern that any such spills have happened in the past (and we fear that, if OceanaGold is terming them “minor” in this report, then the situation could indeed have been more serious).

**Tailings pond and nearby waterways**

In our field work, the authors report noting that the effluent in the tailings pond was a milky bluish/white color during our visits to the site in 2017. This same color is also evident in nearby waterways. OceanaGold has never revealed what chemicals render the large tailings dam and nearby waterways this color. This color is also evident at other mine sites where copper is mined or significantly present in the ore body. Independent water sampling has confirmed high copper levels in the tailings impoundment and elevated copper levels in nearby waterways. Japan’s Ministry of Agriculture, Forestry and Fisheries has guidelines indicating that ideal water quality for growing rice in rice paddies should not have copper levels higher than 0.02mg/L. (see section on Chemicals above).

The water-level of the tailings pond is high enough so that even were the pond wall not breached, these milky bluish/white waters could overtop lower sections of the impoundment impacting surface water in Didipio in a typhoon with heavy rains and winds. On p. 16 of the November 2016 Monitoring report, it says that the water treatment plant is “also used to discharge water from TSF [tailings storage facility] toward Dinauyan River in case of increased precipitation that would compromise dam stability.” OceanaGold needs to provide detailed information on exactly what the treatment plant does to water from the TSF that is released into the environment, and what the quality is of the water released, particularly with respect to such things as pH, total suspended solids, total dissolved solids, and chemical composition, including copper.

On p. 19 of the November 2016 Monitoring report, it states that to prevent ground water pollution, there is a “clay lining at TSF [Tailings Storage Facility]” and that the mine I is monitoring groundwater quality. However, as the Tailings Impoundment is not isolated from the environment by engineered walls on all sides, and as there are dead and dying trees inside the perimeter of the Tailings Impoundment, it is clear that the clay lining is not impermeable.

34 Multi-partite Monitoring Team (MMT), Compliance Monitoring and Validation Report (CMVR) Form for Mining Industries, OceanaGold Philippines, Inc. – Didipio Mine, November 22-26, 2016.
It is clear that certain chemicals are having an impact on the rivers and agricultural lands around the mine.

It is important for the Philippine government to examine whether OceanaGold is violating the following law. The above evidence suggests that it is.

**Relevant Law:**

**Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990 (Republic Act No. 6969)**

“Section 13. Prohibited Acts. – The following acts and omissions shall be considered unlawful:

a) Knowingly use a chemical substance or mixture which is imported, manufactured, processed or distributed in violation of this Act or implementing rules and regulations or orders;

b) Failure or refusal to submit reports, notices or other information, access to records, as required by this Act, or permit inspection of establishment where chemicals are manufactured, processed, stored or otherwise held;

c) Failure or refusal to comply with the pre-manufacture and pre-importation requirements;

and

d) Cause, aid or facilitate, directly or indirectly, in the storage, importation, or bringing into Philippines territory, including its maritime economic zones, even in transit, either by means of land, air or sea transportation or otherwise keeping in storage any amount of hazardous and nuclear wastes in any part of the Philippines.”
5. Human Rights

There have been numerous violations of human rights since the beginning of construction of the mine.

The 2011 Commission on Human Rights (CHR) reportaccused OceanaGold of committing the following violations (what follows are quotations from the report):

“OGPI violated the Right to Residence, the Right to Adequate Housing and Property Rights of several Didipio residents: In June 2008, reports and complaints were filed with the CHR alleging that OGPI had illegally and violently demolished some 187 houses in Didipio. This was allegedly done despite failing to secure writs or special payment of just compensation and without providing alternative options for relocation and resettlement. These demolitions were reported to have been attended by unnecessary, violence and destruction: residents who resisted and tried to save their homes had been beaten, including their neighbors who helped them; houses had been bulldozed off cliffs and set on fire. It was further alleged that OGPI fenced off large sections of the roads and pathways which community residents have relied upon for the past 30 years to transport produce from theirs farms to the market. It was also reported that OGPI has set up checkpoints around the Barangay, causing them difficulty in moving about, resulting in the unjust restriction of their social and economic activities. Moreover, it was alleged that the PNP-Regional Mobile Group serves as a ‘private security force’ of OGPI, with their officers being stationed inside the facilities of the latter.”

“OGPI violated the Right to Freedom of Movement and the Right not to be Subjected to Arbitrary Interference with the Home[s] of the people of Didipio: OGPI violated these rights of the people in Didipio when they introduced perimeter fences around the Project Area and set up checkpoints at their chosen entry and exit points. These perimeter fences blocked off the roads which have been customarily used by the residents as pathways for their easy ingress and egress to the community. Furthermore, the checkpoints cause arbitrary interference to the full use and enjoyment of the houses by the residents.” […] “The Commission also observes that the perimeter fences were introduced in conscious disregard of the rights of the residents of Didipio. No genuine consultation of the residents was ever had as to the construction of said fences, much less as to its location. At the very least, OGPI should have observed the basic principles of participation and transparency if it really intended to respect the rights of the residents in Didipio.”

“OGPI violated the Right to Security of Person of the people of Didipio: Local residents of Didipio, however, report that instead of fulfilling its mandate to maintain peace and order in the community, said members of the PNP-RMG act as if they were the private security for OGPI, in abrogation of their sworn duty to serve the people in trust. Likewise, the unlawful demolitions at the instance of OGPI were also mired with violence. For example, during the

demolition conducted on 22 March 2008, local resident Emilio Pumihic was shot when he tried to stop the demolition crew from dismantling the house of his neighbor Manuel Bidang. Bidang was then taking a nap inside said house. Accounts from neighbors who witnessed the shooting incident state that Emilio Pumihic was restrained by two of OGPI’s security personnel, while a third- later identified as Whitney Dongiahon- shot Pumihic at close range while Pumihic was trying to free himself. […] The shooting incident occurred in plain view of members of the Philippine National Police. Despite this, said Whitney Dongiahon was not apprehended. These facts were attested to by Mr. Pumihic himself, and several others who witnessed the events. Other members of the community who strongly oppose large scale mining operations are constantly threatened by violent demolition. Meanwhile, leaders of the oppositions were criminally charged with violations of the Forestry Code.”

**Relevant Laws:**

The above findings suggest a breach of the following articles of the Constitution, as well as the Urban Development and Housing Act of 1992.

**Article XIII, Section 10 of 1987 Constitution**

“Section 10. Urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.”

**Article III, Section 6 of the 1987 Constitution**

“Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court.”

**The Urban Development and Housing Act of 1992**

“In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

(1) Notice upon the effected persons or entities at least thirty (30) days prior to the date of eviction or demolition;

(2) Adequate consultations on the matter of settlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated; […]

(8) Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-
five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned."  

Water being pumped back into Tailings Impoundment, not lined and not isolated from the natural environment but rather abutting to it

Malabing Valley protest sign
Photos
Taken by Catherine Coumans, MiningWatch Canada

OceanaGold’s commitments physically falling

The OceanaGold mine at night
6. Indigenous Rights

The company violated local indigenous peoples’ right to manifest their culture and identity. A significant number of the inhabitants of Didipio are Ifugao, indigenous peoples who settled in the area over the past two generations from nearby provinces.

Failure to obtain free, prior, and informed consent

A 2007 Oxfam Australia report on Didipio found that: “The company has failed to obtain the community’s free, prior, and informed consent in accordance to both indigenous practices and local decision-making processes. Community members alleged that the company and/or its representatives have:

• forced the community members by intimidation and harassment to provide the mining company access to or sell their land at prices dictated by the company; inappropriately sought to gain approval for the proposed mine from political officials through misrepresentation and offering material incentives to the officials;

• failed to provide full information and likely impacts of the proposed mine to the community in a document they understand;

• failed to provide information about proposed relocations;

• sought to avoid established regulatory informed consent requirements that prioritize the need for the consent of barangay Didipio. The barangay council of Didipio has opposed the proposed mine project since 2002; and

• misrepresented publicly the level of support to the project and the company attained from the community.”

From the 2011 CHR Report

“OGPI violated the Indigenous Community’s Right to Manifest their Culture and Identity … Since December 2007, OGPI has caused the demolition of at least one hundred and eighty-seven (187) houses in Didipio. Over and above the illegality of such conduct, this demolition resulted in the forced displacement of at least one hundred eighty-seven (187) families who consider these houses their home. Majority of whom were forced to leave Didipio for good and abandon their indigenous community, customs, traditions and way of life. […] Demolition and the attendant displacement of indigenous peoples effectively deny said peoples the right to enjoy and manifest their Ifugao culture in community with other members of their indigenous group. It means the dislocation and displacement of women,

37 Oxfam Australia, 2007, Mining Ombudsman case report: Didipio gold and copper mine.
men and children. It means the destruction of life and a way of life intimately connected with the land they nurtured, with a view to leaving a legacy for their children and their kin that will come after. […] In demolishing the houses of indigenous peoples in Didipio, OGPI effectively precluded them of the right to enjoy, manifest and celebrate their culture in community with their indigenous group.”

**Relevant Laws:**

The evidence above suggests that OceanaGold is not complying with the following laws:

**Article II, Section 22 of the 1987 Constitution**

“Section 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.”

**The Indigenous Peoples Rights Act of 1997**

“The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well-being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.”
7. Biodiversity

There is evidence that the mine is threatening the rich biodiversity of the area.

**Didipio’s Biodiversity and Vulnerability**

The 2017 report from the Provincial Government of Nueva Vizcaya\(^39\) notes that: “The Philippine Biodiversity Conversation Priorities Final Report, which was jointly prepared by the DENR, the Conservation International and the University of Philippines through its Biodiversity Conservation Program- UP Center for Integrative Development Studies (BCP-UPCIDS), puts Didipio, which is situated within the Caraballo-Palali Mountain range, under the following classifications:

- Very High Biological Importance for Terrestrial and Inland Water Areas…
- Very High as Conservation Priority Areas for Terrestrial and Inland Water Area…
- Part of the Terrestrial Biodeversity Corridors…
- Research Priority Areas for Anthropods…
- Extremely High Conservation Priority Areas for Amphibians and Reptiles…
- Very High Conservation Priority Areas for Terrestrial Mammals…”

The Provincial Government of Nueva Vizcaya report\(^40\) also states that: “The degraded state of Didipio and its peripheral localities’ environment and natural resources due to mining will be most intensely felt by the poor, especially given the rural nature of the affected communities where almost the entire populace depend on these resources for their primary source of living. Kasibu’s forests ecosystem, inland water bodies and caves are home to a wide variety of flora and fauna The OGPI mining enterprise, likewise threaten the viability of the Capisaan Cave System which is a unique, natural and non-renewable resource with important scientific, economic, educational, cultural, historical and aesthetic values.”

**Mining’s potential impact on biodiversity in Didipio**

The Kalikasan and Agham study\(^41\) reports that: “Upon consultation with local community leaders, three sampling locations were established in Barangay Didipio. Based on the community mapping conducted, the identified impact area of mining was Dinaoan River

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\(^{40}\) Ibid.

while the non-impact area was the Surong creek. [...] Fishes, dragonflies, butterflies, small crabs and snails were observed in Surong Creek, while in Dinaoyan River, the impact area, only water striders and a moth were observed in the sampling site. Using the Sequential Comparison Index, the biodiversity of Didipio can be classified as having a poor water quality. Surong creek, a non-impact site, has high degree of biodiversity based on the type and the number of species observed in the sampling site. Dinaoyan River had the least number of observed aquatic organisms indicating low biodiversity.”
8. Labor Rights

The Didipio mine has failed to significantly improve the welfare of its employees.

Based on interviews and group discussions with communities in the vicinity of the mine, the Kalikasan and Agham report\(^\text{42}\) found that: “Residents who were given jobs at the mining company said that there was no significant improvement in their lives despite the wages they earn from it. He [a resident] also said that local employees were given lesser wages than non-local workers. Basic social services such as health care and education did not improve. According to one of the residents, only one of the structures promised by the mining company was built since mining operations started and that is the elementary school. The hospital and the Rural Health Unit for the community were built in lands owned by OceanaGold. In effect, the residents do not have access to these facilities hospitals since they are hesitant to go inside the premises of the mining company.”

The above findings suggest that OceanaGold is not following the Philippine Constitution:

**Relevant Law:**

**Article XIII, Section 3 of the 1987 Constitution**

“Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.”

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\(^{42}\) Ibid.
9. Irresponsible Global Actor

*OceanaGold has acted irresponsibly elsewhere throughout the world. This is of relevance in assessing the company’s multiple violations of Philippine laws as well as the terms of its current FTAA.*

Beyond the strong evidence documented above from OceanaGold’s persistent pattern of non-compliance in the Philippines, it is important to note that OceanaGold is not considered a “responsible” company in other parts of the world. Indeed, it was not even granted a mining permit in El Salvador based on what was deemed an unacceptable Environmental Impact Statement.

In El Salvador: OceanaGold purchased a “junior” mining firm, Pacific Rim, in El Salvador in 2013. Pacific Rim had sued the Salvadoran government in 2009 in the biased “investor-state” tribunal at the World Bank Group and sought over $300 million from the government for not issuing the company a mining concession – even though the company had not met the legal requirements to get one. Beyond that, El Salvador demonstrates the company’s disdain for free prior and informed consent: the local communities in the relevant area, the wider public, and the federal government of El Salvador, supported the halting of mining as the negative environmental, social and economic impacts of mining became clearer. (This was in part thanks to a government-commissioned study of the environmental and economic impacts of mining on its fragile watersheds.) The tribunal ruled unanimously against OceanaGold in 2016 and ordered it to pay the Salvadoran government $8 million. Instead, the company refused to pay for months. Nor did the company ever acknowledge, or compensate for, the damage to land and water done during its exploration stage (for which it had a permit). Nor for the conflict catalyzed by its presence – at least three local residents were murdered. The Salvadoran National Assembly, in March 2017, passed the world’s first full ban on metals mining in the world, based in large part on the country’s negative experience with OceanaGold.43

In New Zealand: On November 2015, residents of Coromandel, New Zealand held an “unwelcome party” after OceanaGold bought out Newmont’s gold mining operations in New Zealand.44 They criticized OceanaGold for damaging the environment with its use of toxic chemicals. Moreover, residents say that landslides are a perpetual threat to the community due to the poor design and construction of the OceanaGold mine. After a landslide on April 2016, Green Party MP Catherine Delahunty said, “Our concern is the people of this community have so much uncertainty being left with literally an unstable situation right at the heart of their town.”45


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10. Viable Development Alternatives

In light of the Constitution and other laws, one also has to assess what is best for the local inhabitants. There is indeed a robust economy in Nueva Vizcaya, centered in agriculture, that is threatened by the mining industry.

The province of Nueva Vizcaya hosts a vibrant sustainable agriculture sector and a young but potentially thriving eco-tourism sector, both of which are guided by strong plans for a future that is not only environmentally sustainable but also that is more equitable, benefiting a wider swath of the population. Indeed, Nueva Vizcaya’s agriculture-based economy has provided the province with among the lowest poverty rates in the country. Nueva Vizcaya, including the areas not far from the mine, is one of the fruit and vegetable centers of Luzon. Its rivers and rich soil help its roughly half million inhabitants earn livelihoods which OceanaGold threatens.

The 2017 Provincial Government report46 makes clear that the company has failed to provide social services and infrastructure support throughout the years of the FTAA: “The provision of social infrastructure was among the commitments of the previous mining companies undertaking the Didipio gold-copper mine project and subsumed in the conditions stipulated in a series of Memoranda of Agreement between the Didipio community and the FTAA holding companies pursuant to RA 7942 and DAO 96-40 as amended by DAO 2004-54. The community was given the prospect of adequate social services and infrastructure support prior to the commencement of the commercial operations of the mine, only to be left with naught.”


Impacts-of-Large-Scale-Mining-in-Nueva-Vizcaya


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