



LEGAL AND POLICY ISSUES in relation to MINING

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RA 7942: Philippine Mining Act of 1995

- Declares that all Philippine mineral resources are owned by the State, which is responsible for the “rational exploration, development, utilization and conservation [of mineral resources] through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities”

Stages in Mining

1. Exploration – determining feasibility
2. Development – preparatory activities; construction
3. Utilization – actual extraction
4. Processing – converting mineral ores into marketable products
5. Decommissioning – processes undertaken to wind-up operations

RA 7942

- Mandates several environmental and social work programs
 - Environmental Work Program
 - Environmental Protection and Enhancement Program
 - Final Mine Rehabilitation/Decommissioning Plan
 - Social Development and Management Program)
- Financial Assurances
 - Contingent Liability and Rehabilitation Fund
 - Mine Rehabilitation Fund
 - Mine Wastes and Tailings Reserve Fund

Policy Issues

- Mining policy is structured to fulfill the foreign market, catering to the need of the global extractive industry players; Export-oriented and Dependent on foreign capital
- Government prioritizes the revitalization of the mining industry. EO 270-A on the revitalization of the mining industry continues to be effective.

EO 270 - *Mineral Action Plan*

- *Does not provide for an overview or general profile of the country's mineral resources from the techno-economic and/or socio-historical perspectives in order to examine and evaluate the real problems, constraints and challenges of the mining industry and its subsidiary concerns*
- *Caters to the direct investments of transnational mining firms*
- *Silent on the need to apply stringent measures against abusive or notoriously undesirable foreign and local mining firms and to provide ample protection to locally-based vulnerable groups and the environment*
- *Critical decisions are based on the siting of commercial mining and not on the concerns of local communities*

Mining revitalization: Government is selling our national patrimony

- Mining Incentives under 1987 Omnibus Investment Code
 - Fiscal incentives: tax exemptions, tax credit on raw materials and supplies, additional deductions from taxable income
 - Non-fiscal incentives: employment of foreign nationals, simplified import procedures, 10-year imports of consigned equipment

Mining revitalization: Government is selling our national patrimony

- Mining Incentives under Mining Act of 1995
 - Incentives of the Omnibus Investment Code of 1987
 - Investment Guarantees
 - *Repatriation of Capital*
 - *Freedom from Expropriation*
 - *Remittance from earnings and interest on foreign loans*
 - *Freedom from requisition of properties*
 - *Confidentiality of Information*

Incentives under Philippine Mining Act

- ❑ Tax Holiday during recovery of pre-operating expenses for a maximum of 5 years from commercial production (FTAA)
- ❑ Income Tax carry forward of losses
- ❑ Income Tax accelerated depreciation of fixed assets
- ❑ Exemption from payment of real property taxes on pollution control devices

Legal Issues

- Overgenerous fiscal incentives or benefits to mining corporations in the use of our mineral and other resources
- Unclear rules and regulations on the implementation of the 1% royalty share for the affected Indigenous Peoples/Communities
- Non-compliance with environmental laws, safety standards and permit requirements
- Institutional: Weak regulatory mechanisms; weak Implementation of existing laws

Existing Mining law gives more benefits to mining corporations in the use of our natural resources

- (i) preference of “mining rights” over “surface rights”
- (ii) provision of “income tax holiday” under the Omnibus Investment Code o EO 226 and other “tax incentives” under the Special Economic Zone Act o RA 7916
- (iii) Provision of ancillary rights like “timber rights, water rights, easement rights”

Consent and Acceptability Issues

- Effect of Moratorium Ordinances
- Effect of Free, Prior and Informed Consent (FPIC) under the Indigenous Peoples' Rights Act (IPRA, RA 8371)
- Social Acceptability processes

Other Legal Issues

- **Allowing “*open pit mining*”** (cheap, fast and easy to do but destructive to the environment) which has been prohibited in some areas in the US and Canada



Weak Implementation

- Mining activities have been allowed in watersheds, protected areas and core zones
 - Violation of RA 7611 or *Strategic Environmental Plan for Palawan (SEP)*, which provides that all natural forests (*old-growth or residual forests*) are areas of maximum protection (Section 9, RA 7611)
- Allowing large-scale corporations to apply for small-scale mining permits while their large-scale mining permits or MPSAs (mineral production sharing agreements) are being processed and pending approval

Weak implementation

- Small scale mining has been allowed in areas where no small-scale mining reservations (*minahang bayan*) were established



Small Scale Mining Permits issued in areas without small scale mining reservations (*minahang bayan*)

**NON-COMPLIANCE WITH SAFETY
AND ENVIRONMENTAL MEASURES**

Accidents



Mining Accident

- March 1, 2011 (about 11 o'clock in the evening), a barge owned by the Rio Tuba Nickel Mining Corporation (RTNMC) capsized at a distance of about 3 to 4 kilometers from the pier of Barangay Rio Tuba, Municipality of Bataraza, due to bad weather. The barge, which had a capacity of 250 metric tons, had a load of 188 wet metric tons of low grade nickel ore which was supposed to be shipped to China.
- The load of 188 tons of low grade nickel ore fell into the sea. To date, no marine resource assessment has been undertaken to determine the impact of this pollution. The mining corporation claimed that the area where the nickel ores were deposited had no corals, and has not seen any urgency in retrieving the 188 tons of nickel ore from the sea.

Mining Accident

- May 11, 2011 - a Chinese ship engaged by the Citinickel Mining Corporation, loaded with nickel ore to be shipped to China, ran aground and destroyed almost 1000 square meters of coral reef areas in Barangay San Isidro, Municipality of Narra
- Incident was not reported by the mining corporation nor by the owner of the Chinese vessel
- Incident was discovered by a concerned citizen who texted the Philippine Coast Guard (PCG) on May 13, 2011
- PCG allowed the Chinese ship to leave the area after checking the absence of any oil spill

2005: siltation of communal dam, river and farm lands



Pollution of Intake dam of CISA – Calategas (June 2008)



Abandoned pit during exploration



NEW MINING POLICY NEEDED

Proposal of Ateneo School of Government

- Evidence-based and grounded on national consensus and a balancing of stakeholder interests
- Accurately accounts for benefits and costs in order to make rational decisions
 - Currently, we are not able to accurately measure benefits and costs, and this is so fundamental
 - Environmental and social costs are high but can be mitigated if done properly.
 - Extractive Industries Transparency Initiative
 - Environmental and Social Impact Assessment (ESIA)
 - Critical island ecosystems need to be closed off to mining (i.e. NIPAS, SEP)

Alternative: Minerals Management Bill (Pending in Congress)

- Perspective:
 - Conservation of non-renewable mineral resources
 - for the benefit of the present and future generations of Filipinos
 - adopting a sustainable, rational, needs-based minerals management
 - towards effective utilization of mineral resources for national industrialization and modernization of agriculture

Minerals Management Bill

- Multisectoral Minerals Councils
- Prohibit open-pit mining
- No-Go zones for Mining
- Mineral agreements reserved for Filipino citizens and corporations (area: 500 to 750 hectares for a maximum of 15 years)
- Establish corporate transparency and accountability