

WHAT AILS THE PHILIPPINE MINERALS INDUSTRY?

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Environmental concern versus development, large business interests versus those of the *masa* (common folk), state ownership of mineral resources versus the rights of indigenous peoples, large and medium-scale mining companies versus small-scale miners - nowadays, these appear to be conflicting and irreconcilable issues. Mining (with its concomitant issue of environmental conservation) is a currently controversial and hotly debated issue. The question in the minds of many seems to be - Is mining of any benefit to society today? Or are its gains far outweighed by its negative effects on the environment as well as on the welfare of the indigenous groups on whose lands so many of the mineral deposits are to be found?

THE WOES OF THE PHILIPPINE MINERALS INDUSTRY

Historically, the minerals industry has been a major contributor to Philippine economy. Over the last two decades, however, the decline in the Philippine minerals industry has been considerable. In 1980, its contribution to the total exports of

the country was 21.7%, declining to 8.8% by 1990 and dropping to only 1.7% in 2000 (TPMIRW, 2002). The number of large and medium scale metallic mines in operation also dropped from fifty-eight (58) in the early 1980s to only nine (9) by October 2001. Many foreign investors engaged in mineral exploration and advanced development in the country for several years have since left without a single world-class mine to show for their efforts, despite some mild success in discovering potential metal mines (MMAJ, 2001).

Laws and Policies Governing the Philippine Minerals Industry

The management of the country's mineral resources is based on constitutional provisions, laws and policies that the Philippine government had committed to over the last 100 years or so (TPMIRW, 2002). Included in these policies are international agreements entered into by the government. Sections 1 and 2, Article XII of the Philippine Constitution declare the governing policy of the state as the promotion of "industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets" (TPMIRW, 2002). Section 2 likewise defines the Regalian Doctrine which gives the state full control and supervision of the exploration, development and utilization of natural resources including metals and other minerals.

The Philippine Mining Act provides clear modes of entry in the development of mineral resources through several types of agreements with the government. The Financial or Technical Assistance Agreement (FTAA) and the Mineral Production Sharing Agreement (MPSA) are two of the more common venues by which an investor can engage in the development of the country's mineral resources. Two praiseworthy aspects of the Mining Act are provisions for environmental and social programs for the host communities of mines - comparable to any found in more developed mining countries like the USA, Canada and Australia. In addition, the Act also provided for a workable fiscal regime.

The Philippine Mining Act of 1995 was initially met with enthusiasm by both local and foreign mining investors while being opposed by non-government organizations (NGOs) and some members of the clergy shortly after its enactment. During

the time of former President Estrada, the news reported moves for the repeal of the Philippine Mining Act of 1995 because of unspecified flaws (Cabacungan, 1999).

Later laws like the Indigenous People's Rights Act (IPRA) of 1997 undermined the strengths of the Mining Act. Among its more progressive provisions is the protection for the country's indigenous peoples through the system of "free and prior informed consent" or FPIC before any "harvesting, extraction, development or exploitation of any natural resources" can proceed within their ancestral domains. FPIC protects the rights of indigenous peoples or "*lumads*" to their intelligent participation in the formulation and implementation of any project affecting ancestral domains "free from any external manipulation, interference and coercion...in a language and process understandable to the community (R.A. 8371, 1997).

The IPRA law contains provisions which are inconsistent with the Mining Act, creating the present state of confusion in our regulating agencies. The IPRA invokes the Constitution's recognition of ancestral domains, thus effectively giving indigenous peoples control over large tracts of land (TPMIRW, 2002). This has led some indigenous groups as well as NGOs which work with them to interpret such a right to include ownership of the mineral resources within their ancestral lands, contrary to the provisions in the Regalian Doctrine.

As a result of this major unresolved conflict between the Mining Act and the IPRA Law, among other things, the Philippine minerals industry has fallen into virtual stagnation. Thus, seven (7) years after some sixty (60) FTAA applications were filed with the Mines and Geosciences Bureau (MGB), only two (2) FTAA applications have been approved. Worse, most of the multinational investor companies who applied for FTAA's and MPSA's following the enactment of the Mining Act have lost interest and left the country because of frustrating bureaucratic delays and numerous legal challenges.

The Rise of Anti-Mining Groups

Haribon Foundation, Inc. released several commercials accusing "unchecked mining" of playing a major role in the destruction of the environment. This is only one example of the strong public antipathy towards mining companies in the last

decade. Mining accidents like that of the Marcopper tailings dam spill in 1996 reflected negatively on the minerals industry as a whole (Coumans, 2002; Malanes^a, 2002; Malanes^b, 2002). However, the minerals industry includes not only the operating metal mines but also non-metallic quarries, small-scale mines and the building stone industry as well as ornamental and decorative stones and gemstones; all of these other parts have been viewed with the same negative attitude by media and various cause-oriented organizations with an environmentalist orientation. By association, other sub-sectors such as the cement, aggregates and building stone industries have suffered collateral damage as a result of attacks by anti-mining groups against large metal mines. The small-scale gold mines, while largely escaping the attacks sustained by the large metal mines inflicted in the media, are troubled by technical and legal problems of their own (Canuday, 2000; Curameng, 2000; Escovilla et al, 2000). These groups have reported that there is strong foreign support for these anti-mining attacks. For instance, the Mindanao Association for Mineral Industries, Inc. has found substantial financial support from the Ford Foundation to leading pro-environmental, anti-mining groups such as the Institute of Environmental Science for Social Change Inc. and the Legal Rights and Natural Resources Center Inc. (TPMIRW, 2002)

CAUSES OF THE PROBLEMS

Several factors have been cited for the decline of the minerals industry. These include the following: (1) the unfavorable provisions of laws, (2) the recurring inconsistent implementation of government policies, rules and regulations, (3) lack of clear government support, (4) red tape in the bureaucracy, and (5) lack of information and dialogue among stakeholders and anti-mining groups.

Unfavorable Laws

Former Supreme Court Justice Isagani Cruz filed a petition challenging the constitutionality of the IPRA Law. In December 2000, the Supreme Court ruled en banc, by a 7-7 vote, to dismiss the petition, upholding the constitutionality of the IPRA. At the same time, the Supreme Court upheld the Regalian Doctrine

which gives ownership and full control of natural resources wherever they may be found to the government. A motion for reconsideration was filed by former Justice Cruz. Again, the Court maintained a 7-7 vote, rejecting the motion in September 2001. The Court further declared that owners of ancestral domains do not have ownership rights over natural resources, clarifying that the IPRA Law grants indigenous peoples priority rights or the right of first preference or consideration in the award of privileges provided by existing laws.

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Other provisions in the Philippine Mining Act have also been challenged before the courts. For instance, the FTAA and the MPSA provisions have been questioned before the Supreme Court by an NGO which alleged that an FTAA allows foreign corporations to develop mineral resources, contrary to the provision in the Constitution. The petition is still pending as of this writing.

Inconsistent implementation of government policies

A major concern among stakeholders is the lack of consistency in government policies and their implementation. The MPSA was intended to legalize the partnership between government and investors in mining activities. This has been interpreted by the industry to mean that the MPSA and the FTAA are joint undertakings with the government. Since the government is a partner in developing mineral resources, its support is expected for a venture to be successful. This is why investors were shocked when Sec. Heherson Alvarez of the Department of Environment and Natural Resources cancelled an approved MPSA between the government and Agrubang Corp. in 2001 (Villanueva, 2001).

The inconsistency in the implementation of minerals policies extends even to the local government units (LGUs). Several LGUs have passed resolutions banning mining activities in their provinces, citing the powers given to them by the Local Government Code as support for such action. Some provincial boards such as those in Negros Occidental, Mindoro Oriental, Capiz and Iloilo have even passed resolutions banning large scale mining activities and the processing of mining appli-

cations, including exploration permits (Gomez, 1999). In several other instances, additional requirements have been imposed by some local governments beyond those required by national government. Others charge excessive clearance fees beyond those required by the Mining Act. Such practices have led many in the mining industry to conclude that there is no clear coordination between national and local governments in the management and support of the minerals industry.

Lack of Government Support

The minerals industry has not received full endorsement nor strong public support from the national government. Government officials seem unable to voice their support for the minerals industry because of their fear of incurring political costs. Apparently, open support for the minerals industry is perceived to be politically dangerous, earning as it does the wrath of some civil society groups.

The Australia and New Zealand Chamber of Mines (ANZCHAM) and the Philippine Mineral Exploration Association (PMEA), an organization of mineral exploration companies in the country, declared in their position paper that:

“THERE IS NOT A CLEAR MESSAGE OF GOVERNMENT SUPPORT.... Presidential visits (to other countries) and trade missions have invited companies to invest in the country but when these companies arrive, they find there is not the clear level of support that is found in other countries”.

-ANZCHAM AND PMEAS (Mason, 2000)

The concept of social acceptability of a minerals project in the country has been abused by several sectors of society. Some groups have blocked efforts by mining groups and potential investors to involve the communities that will be directly impacted by projects from participating in discussions regarding the nature of proposed projects as well as the benefits and disadvantages of such, thereby making their own informed decisions on these projects. Investors have openly criticized the government over questionable delays utilized by determined anti-mining groups. The number of foreign investment applications which have not been acted

on for the past seven years and the revocation of several awarded permits of foreign investors seem to indicate that the government bureaucracy is wary of arousing the attention and anger of anti-mining groups.

Host LGUs to mineral activities like mines also complain that the national government has not shared taxes from these mining operations in their locale with them as provided for in the Local Government Code. This then engenders a negative attitude towards the minerals industry among the people in the provinces, and may explain their lack of support.

Bureaucratic Red Tape

The Western Mining Corporation hastily abandoned its Tampacan Project in South Cotabato. It was ready to develop and operate a world-class copper gold discovery until its application to operate, called an Environmental Compliance Certificate (ECC), was delayed by the objections raised by the Legal Rights and Natural Resources Center, Inc (TPMIRW, 2002). Frustrated by these delays, the WMC gave up its plans despite the approval of its FTAA. The legal challenge to WMC before the Supreme Court prospered despite the corporation's receipt of an award for environmental awareness. No decision has yet been made by the Supreme Court on this matter.

Lack of information and dialogue

Exploration is the first stage in determining whether there is any mineral deposit in an area. Exploration does not always lead to mine development since the odds of finding an economic mineral deposit is estimated at 1000 to 1 (MED, 2001). Mineral exploration does not equate with environmental damage, as NGOs claim, since activities involve mainly geologic mapping, rock and stream sediment sampling and surveys using geophysical instruments. It excludes the cutting of timber and the use of chemicals, practices regarded as threats to the environment. This is contrary to the claim of anti-mining groups that ap-

Mineral exploration does not equate with environmental damage...

proval of exploration permits for large areas of land will necessarily impair the environment. There are also misleading claims by some journalists that award of an exploration permit to foreign companies is synonymous with the surrender of national sovereignty over wide areas of our land (Tujan et al, 1998).

The existing laws that allow mineral exploration in the Philippines are stringent enough. However, the lack of accurate information about the activities of the minerals industry fosters distrust for the industry among the public.

PROPOSED RECOMMENDATIONS

A number of recommendations calling for legal action are proposed to remedy the present state of the mining industry. These include the following:

- (1) Review and Revision of some government laws,
- (2) Reduction of red tape,
- (3) Transfer of the MGB from the Department of Environment and Natural Resources (DENR) to another development-oriented government department.

In addition, there is a need for all stakeholders in the mining industry to work together in the following areas:

- (1) Unification of the sub-sectors of the minerals industry,
- (2) Adoption of an information drive,
- (3) Institution of a pro-mining think tank, and
- (4) Work for clear government support.

Revision of Laws

Among the laws that need review and revision are the Mining Act, the IPRA Law and the Local Government Code. The government has worked hard to win the interest and investment of foreign groups in various areas and projects in the country. Mining is one such area. The Mining Act can be made more investor-friendly by enabling MPSA and FTAA permittees (mining companies) to assign such rights to banks and other financing institutions as a means of raising capital.

Extension of the term for the initial mineral processing permit is another way whereby more potential investors can be attracted to the industry. The present limit of five (5) years is too short a period, considering the many arduous tasks required.

There is also need to clarify and reconcile conflicting laws by amending the implementing rules and regulations of the IPRA Law, particularly the provision of “free and prior informed consent” (FPIC). The Local Government Code needs to review the provisions defining the extent of powers of local government units, including that of imposing ordinances running counter to constitutional guarantees to develop natural resources such as minerals and rocks.

Reduce Red Tape

The national government needs to remit the share of LGUs from taxes paid by mining companies in their areas on a regular basis. There is need to examine and do away with any impediments causing the unreasonable delay of such remittances. The government is also urged to further reduce any unnecessary procedures in the granting of exploration permits which only serve to discourage investors. One suggestion is to issue temporary prospecting permits for the reconnaissance exploration stage and another for the more detailed exploration stage.

Transfer the MGB to a development-oriented department

While the DENR is tasked to implement environmental laws, the MGB has the mandate to promote the minerals industry. But since the MGB is a line bureau of DENR, it must operate according to the larger body’s mandate of protecting the environment (TPMIRW, 2002). The strong regulatory nature of DENR is reflective of a growing environmental consciousness on the part of the larger society. Oftentimes, the MGB finds itself in the awkward and difficult position of having to regulate and to promote the minerals industry at the same time. This may be why most countries have separate government agencies to enforce environmental laws and to manage the country’s mineral resources. Since the MGB is a geoscience agency conversant with geology and the environment, it can attest to the fact that any environmental damage incurred in the process of undertaking prelimi-

nary or reconnaissance prospecting is minimal. This can be better done were the MGB to be transferred from the DENR to either the Department of Trade and Industry (DTI), the Department of Science and Technology (DOST), or to the Department of Energy (DoE).

PLANS OF ACTION

Unification of the various sub-sectors of the minerals industry

The various sub-sectors of the Philippine minerals industry must organize and unite into a single body, representing a critical mass of voting power. This may then force the government to become more responsive to its needs and more open to its various recommendations regarding the simplification of its decision making process.

Adoption of an information drive

The unrelenting and adverse criticisms of the mining industry by various sectors of society have given it a negative public image. The campaign of several civil society groups, radical NGOs, ardent anti-mining groups, some sectors of the media and even of the Catholic Church has consistently conveyed a distorted picture of the industry. Media has also been charged with many biased or uninformed reports that have contributed to the impression of an irresponsible mining industry. The Philippine minerals industry concedes that it is partly to blame for its bad image, citing a passive stance in the face of criticism. It has failed to develop an adequate agenda for an information dissemination campaign to counter the misperceptions and deliberate distortions about the industry and its activities.

While the MGB and the Chamber of Mines of the Philippines have tried to present a more balanced view of the industry, their efforts have clearly not been enough to counter the memory of past sins. The present minerals industry is still being judged on the basis of the poor environmental record of the old metal mines (early 1900-1970). The present laws with their strong protection for the environment were not yet in place.

There is therefore a need to undertake a vigorous information and education campaign (IEC) by the stakeholders in the minerals industry together with the relevant government agencies. Many issues and concerns leveled against the minerals industry may be traced to misinformation, misconceptions or simply the ignorance of decision makers in our society. IEC efforts must be directed to people in the higher echelons of government (lawmakers and cabinet members), other government officials, people living in the affected communities, media, NGOs, advocacy groups, the Catholic Church and anti-mining groups.

One suggestion is to use the electronic media in the IEC, as it is one that can be put together at a short notice. The IEC can also be jointly undertaken by government and the private sector. In addition, the Chamber of Mines could support an IEC on a national level while the various mining companies can do the same on the regional levels.

Institution of a pro-mining think tank or action group

Following a three-day “Workshop on the Revitalization of the Minerals Industry,” held in October 17-21, 2001 to analyze the plight of the mining industry, a post-workshop action group was created to oversee the realization of the participants’ recommendations. The action group will link and coordinate with other minerals industry-related organizations by organizing meetings and dialogues with government agencies and other entities for the effective implementation of the recommendations. An advocacy group is also being considered to undertake a proactive campaign in regions with a high mineral potential. Towards this end, there is a perceived need to plan for the establishment of a Philippine Minerals Development Inc. Foundation.

Work for clear government support

The national government should assert its authority over the LGUs concerning the proper implementation of the Mining Act. LGUs must be reminded that they cannot impose their own rules, over and above those stated in the law, regarding the conduct of mineral exploration and related activities of mineral contractors in

their respective areas. There must be a more even-handed official attitude and handling of the metal mines so that these may be treated in the same way as a natural gas project as the Malampaya gas project which was publicly praised by President Macapagal-Arroyo. The difference in the level of acceptance can be attributed to the excellent handling of the Department of Energy in promoting this kind of natural resource. A major copper mine can deliver similar benefits. Thus, the government must show consistency in its policies towards minerals and mining. But how to make the government more supportive remains a problem.

CONCLUSION

The woes of the Philippine minerals industry include an unfavorable investment climate exacerbated by conflicting laws, the government's lack of consistency in implementing pertinent policies, rules and regulations, the lack of government support beginning from the highest levels, frustrating red tape, and the lack of information and dialogue among the stakeholders in the various sectors of the minerals industry. The full support of government is critical in correcting these problems. Research and development must be given higher priority by both public and private sectors. The current relationship between the Department of Environment and Natural Resources (DENR) and the Mines and Geosciences Bureau (MGB) should be examined because of the perceived conflict in their official mandates. The DENR focuses on environmental issues while the MGB is presently more concerned with its environment-related regulatory functions to the detriment of its role in promoting the development of the country's mineral resources. The Mining Act itself and its implementing rules and regulations must be examined and amendments, where necessary, be undertaken to provide impetus to an industry with the potential to attract investments in poverty-stricken areas of the country. Such amendments can take the form of a more streamlined and efficient permitting process, thereby reducing unnecessary procedures in the application for mining permits. The urgent resolution of disputes must be done so that investor confidence in the mining industry, by all accounts in difficult circumstances, can be restored.

Note

1. The main points and recommendations in this article are the output of a Workshop on the Revitalization of the Minerals Industry which was held from October 17-21, 2001 at the Mapua Institute of Technology. The Convenors included representatives from the Philippine Society of Mining Engineers, the Geological Society of the Philippines and the Society of Metallurgical Engineers of the Philippines. A large number of participants also came from the National Institute of Geological Sciences (UP-Diliman), the School of Earth and Material Science and Engineering (Mapua Institute of Technology) and the Department of Mining, Geology and Ceramic Engineering (Adamson University) – the universities which produce the bulk of mining engineers, geologists, metallurgists and environmental managers that run the Philippine mining industry.

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