

# Alternative Minerals Management Bill

*(A Reader)*

## Working Papers on the AMMB



*Prepared by*



**SOS – Yamang Bayan Network**



## SOS-Yamang Bayan Network

*is convened by:*



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# SOS – Yamang Bayan Network

## Position on the AMMB

The SOS-Yamang Bayan Network is a national, multi-sectoral movement composed of mining-affected communities, national peoples alliances, environmental organizations and networks, church-based organizations, human rights organizations, national NGOs, sectoral organizations from the indigenous peoples, youth, women, farmers, Congressional representatives, known leaders and personalities advocating for the repeal of the Mining Act of 1995 and the enactment of a new minerals management framework.

SOS-Yamang Bayan Network calls for a reform in the existing flawed mining policy. Currently, the network is lobbying in Congress for House Bills 206 and 3763, both pushing for a new minerals management law that “regulates the rational exploration, development, and utilization of mineral resources, and to ensure the equitable sharing of benefits for the state, indigenous peoples and local communities.”

We believe that there is a need for a minerals management bill, which is focused on the management of our mineral resources in general rather than just the mining sector.

Despite recognizing the role that minerals play in national industrialization, it is believed that the current policy on mining in the Philippines is biased towards the industry, and does not consider several concerns, as follows:

1. We believe that the idea of mining as the driver of Philippine economic growth is misleading. Despite the targets by mining companies and even the government’s own development plans, it seems that mining industry contributes very little to our economy (at an annual Gross Domestic Product contribution of 1.5-2% only), at the expense of our environment and people. There seems to be an economic disadvantage when mining is promoted more than and most of the time detrimental to agriculture and fisheries, which contributes an average of 16% to our GDP.

As a water-intensive industry, mining will further aggravate problems of water insecurity, and eventually food insecurity.





2. Cases of human rights abuses have been automatically found in mining-affected communities. Its mere presence also affects social conflicts, especially in indigenous communities. We have also recorded cases of killings, militarization and abuse of women and children. A testament to this, the Commission on Human Rights (CHR), an independent constitutional body mandated to spearhead the protection and promotion of human rights in the country, has found OcenaGold, an Australian mining company, for grossly violating human rights of indigenous peoples in Didipio, Nueva Vizcaya and is calling for a revocation of the mining company's FTAA.

3. Mining negatively impacts indigenous Peoples as the caregivers of our forests, their ancestral domains. 1/3 of mining tenements are found in ancestral lands, and despite the safeguards provided by the Indigenous Peoples Rights Acts, we find that IPs are marginalized and violated by mining companies. Flaws in processes of acquiring free, prior and informed consent (FPIC) are also well documented.

There are many cases of misinformation, bribery and tokenism, intimidation and human rights violation, that even royalty payments are negotiated, it seems there is no assurance of just sharing of benefits.

4. Mining is an extractive industry that has irreversible impacts to the Philippine ecology. Mining operations encroach in forestlands, literally allows the cutting of old growth trees, affecting key biodiversity areas, watersheds and agriculture lands, especially in lowland communities.

Moreover, mining activities also impact fragile small island ecosystems significantly, (i.e. Mining in Palawan, Mindoro, Marinduque, Sibuyan (Romblon)).

5. More than its environmental impacts, mining activities further makes upland and lowland communities susceptible to geo-hazards such as landslides, mudslides, even breakage of mine tailing ponds.

Further, large-scale mining, as a contributor to deforestation and green house gas emissions, will definitely aggravate the impacts of climate change. We will be more prone to disasters and environmental problems.

Therefore, we believe that the Mining Act of 1995 is inherently flawed and some of these flaws are as follows:

1. It promotes the exportation of raw minerals without maximizing the benefits of such resources for the Filipino people;
2. It fails to take into consideration externalities or negative impacts, thus leaving the masses and the local government units to bear the brunt of such impacts;

3. It prioritizes exploration, development and utilization of resources over and above human rights, food security and environmental conservation;
4. It grants too much power for decision-making to the President, when resources are the only heritage of the Filipino people, meanwhile disempowering local communities through lack of participatory mechanisms;
5. The law is not consistent with sustainable development;
6. It grants too many incentives for investments, including confidentiality of information, return of investments, tax-breaks, etc.;
7. It lacks systems that would ensure payment and compensation of affected communities and local government units;
8. It fails to provide for punishment and accountability on social impacts, including human rights violations;
9. It fails to provide a rational and comprehensive benefit-sharing among the stakeholders;
10. It fails to consider the physical characteristics of the Philippines that is not conducive to industries like these, despite claims that the Philippines has a rich mineral resource, when the country in fact is also a rich agricultural country; and
11. It allows 100% ownership and control of natural resources to foreigners



Thus we lobby for a new minerals management law bearing the very principles undermined in the Philippine Mining Act of 1995. We want a bill that:

- a. Guarantees that the exploration, development and utilization of mineral resources are primarily for the benefit of the Filipino people;
- b. Prioritizes more viable and more sustainable livelihood choices for communities, giving utmost importance to food security and livable conditions to the peoples;
- c. Ensures that the gains from the mining industry would be maximized while preventing or mitigating its adverse effects of the same;
- d. Recognizes that the issue of local environments and prioritize local participation in decision making surrounding mining; and
- e. Protects human rights of communities and individuals and impose corresponding penalties for the violations thereof.

Considering the many ongoing mining explorations and operations that may increase the number of human rights cases, environmental tragedies and continuous depletion of our mineral resources, we believe that there is an urgent need to put a moratorium on mining, repeal the current mining policy and make way for the passage of the Philippine Mineral Resources Act.

Submitted for the Congressional Hearing on mining bills, this 24<sup>th</sup> of August 2011.

SOS-YAMANG BAYAN NETWORK

— AUGUST 24, 2011

***1st Hearing on the Mining Bills, 24 August 2011***  
***House of Representatives, Committee on Natural Resources***  
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**Deputy Speaker Lorenzo R. Tañada III:**  
**Introduction to House Bill 206**

Mr. Chair, dear colleagues in the Committee on Natural Resources, magandang hapon po.

I am heartened that the Alternative Mining Bill is finally being considered by the committee, and I would like to express my thanks and congratulations to the Chair, and the secretariat as well, for daring to take on a bill that was almost totally shunned last Congress. It is high time that we begin a serious consideration of reforming our policy on mining, and I am confident that our work here will give me the answers I need for a deeper understanding on how to do that.

Understanding, you see, inevitably leads to new paths, new conceptions of the way forward, and that is what I think our policy needs most of all.

HB 206 seeks to repeal RA 7942, and replace it with a people-centered, development-friendly law that can adequately regulate the mining industry. The many ways that RA 7942 has failed to fulfill its mandate of balancing the interests of the people with that of the industry are, by now, well-known to us all. I will not go into the failures of the past anymore. What is important to me now is the future. Given all the ways that the current law has fallen short, what are we to do next? This bill is my humble proposal as the next step.

The essential thing that I want this bill to express is that it is not meant to stop mining altogether. If that were my goal, I would not have bothered with submitting this measure. Such a portrayal of my bill would be unjust, and extremely myopic. This bills puts forward a rational alternative to mining as we do it now, but with better safeguards and a more holistic perspective that is borne of the bitter lessons we learned from the deficiencies of the current law. It is a product of the changing discourse on the place of extractive industries within a new theory of development that includes environmental sustainability, human rights, and social responsibility.

I recently hosted a roundtable discussion with the members of the Working Group on Mining in the Philippines. There I pointed out that the debate on how to fix the ills of the mining industry has been framed in a way that is extremely limiting: we either continue mining--and in the process, allow the destruction of our natural resources, or we stop it





completely, and give up the promise of revenues.

The question there is: to mine or not to mine. The question that should be asked, rather, is: "How do we mine correctly?" Any industry that a government participates in should not pit revenues against people, money against the good of everything and everyone else. Doing so would mean that the concept of government participation in industry would be self-defeating. The policy debate should never be expressed as 'Gold vs Rice' or 'Forests vs Jobs' or 'Nickel vs Water'. If we maintain that framing, we might as well give up now. To my mind, an intelligent assessment of any government undertaking should always begin with the sober acceptance of the relative importance of the different costs involved. Once we have that, we can begin to conceive of what it will take for policy to effect the balancing act that is so crucial for any industry's success.

It is easy to say that mining is an environmental issue, or an economic issue, or a human rights issue. The fact is, it casts a long shadow over each of those concerns. But its cross-cutting nature makes it a governance issue for me. It reflects an obvious gap in the law that manifests itself in poor enforcement, inadequate compliance, and patent unresponsiveness. It is therefore incumbent upon us to address this deficiency in our law and policy, and I hope you consider HB 206 as the answer.

Maraming salamat po.





***1st Hearing on the Mining Bills, 24 August 2011***  
***House of Representatives, Committee on Natural Resources***  
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**Rep. Kaka J. Bag-ao, AKBAYAN Partylist:**  
**On House Bill No. 3763**

Magandang Hapon po Mr. Chair, at Members of the Committee!

It was 7:15 pm of September 29 1993, when House Bill No. 10816, entitled "AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION AND CONSERVATION" was under consideration in the plenary of the 9th Congress. The Honorable Renato A. Yap, Chairman of the Committee on Natural Resources began his sponsorship speech,

*"Mr. Speaker, allow me to convince my colleagues today, that we are a rich country whose wealth remains buried under its grounds. The author of the Miner's Praise in Job 28 of the Holy Bible may have had the Philippines in mind: There is a mine for silver and a place where gold is refined. Iron is taken from Earth and copper is smelted from ore."*

The Honorable Yap was correct. Indeed, we are a rich country. *"Third in gold, fourth in copper, fifth in Nickel, sixth in Chromite."* But such is not the wealth which is our most important resource. Mr. Chair and members of the Committee, if there is any wealth which Filipinos should be proud of, it is the Philippine biodiversity.

Our country is one of the "17 Megadiversity Countries" which claims two-thirds of the entire earth's biological diversity, home to more than 20,000 endemic species of plants and animals. Biodiversity provides us with a range of food and nutrient sources. According to Goodland and Wicks, authors of *Philippines, Mining or Food?*, it is biodiversity which provides an agriculture gene pool that will produce food amidst climate variations. It cannot be gainsaid that biodiversity is a valuable resource because it is crucial to food security. In essence, Philippine Biodiversity is the lactating mother who breastfeeds us.

So it then begs the question, why are Filipinos hungry?

Mr. Chair and members of the Committee, a case in point is mining in Mount Hilong-hilong in Cantilan, Surigao del Sur. Declared as one of the nine (9) Key Biodiversity Areas in the Philippines by the Department of Environment and Natural Resources (DENR), a Water





Forest Reserve pursuant to Presidential Proclamation 1747, protected by one of the only two Temporary Environmental Protection Order (TEPO) issued in this country, home to five (5) major water systems and the few remaining old growth and primary forest, but still hauled, bulldozed, dug by the Marcventures Mining and Development Corporation.

In Tampakan, South Cotabato, 20,000 hectares of sustainable farmlands are under the mercy of Western Mining Corporation and Sagittarius Mining, Inc. Five major rivers, including the Padada River alone which irrigates 33,000 hectares of lowland farms would be polluted. Also to be affected, is the 4,954-hectare Lake Buluan whose tilapia, milk fish, big head carp and eel feed 27, 000 households.

In Didipio, Nueva Vizcaya, the Oceana Gold Project needs to divert 3.8 Billion liters of freshwater to extract gold and copper while the same amount of water is needed to produce 1,538, 592 kg of rice.

These are only three cases, Mr. Chair and Members of the committee. According to the Mines and Geosciences Bureau (MGB), there are currently 482 approved mining applications covering more than one million hectares in the country.

While the Philippine Mining Act of 1995 continues to believe in the mythical nexus between mining and development, the ironies of hunger are becoming patent: while more than 60% of the Philippine rice production is irrigated, that is second in Asia, we were number one rice importer in 2008. While we have 78 river systems, 50 are biological dead due to pollution. While an agricultural country, rice is planted only in 30% of the total arable area and we allow mining companies to encroach our farmlands, watersheds and forests, instead of using them for food production. Only to realize that while we cannot eat gold, copper or nickel, we spent more than \$ 2 Billion for rice importation in 2008, and received only about \$ 1 Billion for exportation of these mineral resources.

Mr. Chair and members of the Committee, it is no doubt that after sixteen years, mining has not given us the economic development that maybe Hon. Yap and members of the 9th Congress envisioned. The Philippine Mining Act of 1995 is indeed a failure.

Today, Akbayan presents for the committee's consideration, HB 3763, a new minerals management policy which puts premium in the ecological value of our country's resources, shifting the land use priority towards sustainable development and food security.

Mr. Chair, members of the Committee, our current mining policy has exacerbated the Filipinos' hunger. I disagree, with all due respect, to Cong. Yap. The wealth of our country is not buried under our grounds, it is what we can plow from our lands and drink from our rivers. It is with this vision that the immediate passage of the Philippine Mineral Resources Act of 2011 is earnestly sought.

***1st Hearing on the Mining Bills, 24 August 2011***  
***House of Representatives, Committee on Natural Resources***  
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**Rep. Teddy Brawner - Baguilat:**  
**Mining and its impact on Indigenous Communities**

Seventeen million indigenous peoples (IPs) from more than 110 ethno-linguistic groups in the country comprise 15-17 percent of our 100-million estimate population. Up to present, there are still no accurate data on the population of indigenous peoples in the country due to lack of disaggregated data on indigenous peoples in formal censuses.

Indigenous peoples in the country are characterized by their close attachment to their land. They live in different ethnographic areas, and different groups vary in social cultural, political and linguistic features. The history of their resistance against development aggression is rooted to their defense of their lands, territories and resources.

Up to present, indigenous peoples remain to be part of the most discriminated and marginalized sectors of the society. Due to development aggression (i.e. dam construction, logging, mining activities), they were subjected to exclusions, loss of ancestral lands, displacement, and loss of identity and culture.

The passage of Republic Act No 8371 or the Indigenous Peoples Rights Act of 1997 (IPRA) is a milestone legislation as it embodies the collective rights of indigenous peoples which includes their right to self determination and to their lands, territories and resources. It also recognized their right to manage their ancestral domain and define their Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) that will allow them to manage and utilize the natural resources within their traditional territories. As owners and stewards of ancestral lands since time immemorial, indigenous cultural communities were also empowered by IPRA to allow or reject activities in their territories by the giving or withholding of consent to projects through the Free Prior and Informed Consent (FPIC) requirement.

The adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 by the General Assembly adds to the milestones on the recognition and respect of the rights of indigenous peoples. The Philippines is one of the initial 144 States who voted in favour for the adoption of this Declaration.

However, even with the IPRA and the UNDRIP, indigenous peoples up to present continue to fight for their right to their lands, territories





and resources and the implementation of policies protecting the rights of indigenous peoples in the country is quite weak. Conflicting laws and policies and the priority economic development strategy of the government are among the many hindrances to the full enjoyment of the indigenous peoples of their rights due them.

The liberalization of the mining industry led to the increased displacement of indigenous communities and various human rights violations against indigenous peoples which includes the manipulation of the requirement for Free Prior and Informed Consent (FPIC) in favor of mining companies. Resistance from indigenous peoples against mining and other destructive projects were countered with militarization, harassment and threats.

In 2002, Rodolfo Stavenhagen, United Nations special rapporteur for the human rights and fundamental freedoms of indigenous peoples visited the Philippines and reported:

“Of particular concern are the long-term devastating effects of mining operations on the livelihood of indigenous peoples and their environment. These activities are often carried out without their prior, free and informed consent, as the law stipulates. Communities resist development projects that destroy their traditional economy, community structures and cultural values, a process described as —development aggression. Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape, and forced recruitment by the armed forces, the police or the so-called paramilitaries.”

The Committee on National Cultural Communities of the 15th Congress is one of the very active committees in the lower house and has been conducting congressional and on site hearings on alleged violations against the rights of indigenous peoples in the country. Majority of the complaints received by the committee are on the manipulation or flawed implementation of the requirement for the Free Prior and Informed Consent (FPIC) of indigenous communities in favor of mining applications affecting the said communities. In almost all the cases handled by the committee on mining, there is a general observation that the entry of mining in indigenous territories had adversely impacted not only the natural resources that had been traditionally managed by indigenous peoples in the area but had also affected their strong communal ties. Bribery and cooptation of tribal leaders and creation of a council of leaders not recognized by the community to counter the leaders of the community who are against the project are just some of the methods employed to push mining projects in the ancestral domains of indigenous peoples.

In indigenous communities, the mining operations resulted in the following;

- Loss of ownership, control & management of land & resources (the material base of the peoples' identity, culture and survival), and denial of the peoples' resource management systems

- Massive loss of livelihood & destruction of local economies causing threats to food security
- Dislocation of settlements, villages and weakening of socio-cultural systems
- Destruction of bio-diversity, pollution, and degradation of the environment
- Loss of traditional knowledge & systems of resource management

A concrete example of the above mentioned violations to the collective rights of indigenous peoples is the long running operations of the Lepanto Mining Company in the province of Benguet that had caused massive environmental destruction in the area and numerous violations to the civil and political rights and collective rights of the affected indigenous peoples.



Mining likewise violates the right to self determination, manifested in:

- Manipulations of the right to Free Prior and Informed Consent (FPIC)
- Disruption of culture and socio-political systems including weakening of unity & mutual cooperation

The entry of mining projects in indigenous communities has not only been causing environmental destruction but also numerous human rights violations. Militarization, threats, harassments and extrajudicial killings are just some of the many violations documented. Again in the 2003 report of Prof. Rodolfo Stavenhagen he pointed the direct link of between militarization and destructive projects: Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape, and forced recruitment by the armed forces, the police or the so-called paramilitaries, such as Civilian Armed Forces Geographical Units (CAFGUs).

**Call for Action: To the Aquino Cabinet and members of the Congress**

1. Include the following in the No Go Zones to any mining operations:
  - a. Sacred grounds and burial sites of indigenous communities
  - b. Areas inhabited and utilized by indigenous peoples for their subsistence

- c. Communal forests of indigenous communities
  - d. Watershed areas
  - e. Identified international and local heritage sites
  - f. Indigenous communities with existing boundary disputes so as not to aggravate the conflict
2. Ensure that the provisions of the IPRA are upheld. In particular, the requirement for the acquisition of Free Prior and Informed Consent of affected communities should be observed by all government agencies and business entities. The sincere implementation of the new FPIC guideline which is currently being drafted jointly by the NCC Committee and NCIP should also be ensured.
  3. Passage of a new mining law that would ensure conservation and optimal utilization of mineral resources and respects and protects the rights of the people should be part of the priority measure of the current administration. The deliberation of the three mining bills – Minerals Management Bill, Peoples Mining Bill, and the Alternative Mining Bill – should already be started in the lower house.
  4. There should be recognition of the flaws of the current policy on mining, not just the Philippine Mining Act of 1995, but also Executive Order 270-A of 2004 that revitalizes and promotes mining as a priority industry in the country. These policies should be revoked and repealed, such that adoption of a more rational development is done.
  5. Conduct of a thorough investigation on the human rights violations committed in relation to mining. Those found guilty should be held accountable.
  6. Issuance of an executive order calling for the moratorium on mining while the review of mining policies and the investigation on the many issues surrounding the mining industry are being conducted.



***1st Hearing on the Mining Bills, 24 August 2011***  
***House of Representatives, Committee on Natural Resources***  
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**Judith A. Pasimio, *Executive Director,***  
**Legal Rights and Natural Resources Center – Kasama sa Kalikasan:**  
**Position Paper on House Bill Nos. 206 and 3763**

The Legal Rights and Natural Resources Center is a legal and policy research and advocacy organization that has been working for over twenty years now with indigenous and upland rural poor communities, in support of their struggle for the recognition of their rights to their ancestral domains and self-determination.

Our organization strongly advocates for the passage of the Alternative Minerals Management Bills. It is our position that a complete redesign of the current mining regime is urgent and long overdue. We believe that RA 7942 or the Philippine Mining Act of 1995 has fostered environmental degradation, human rights violations, and social unrest in communities where mining promised development and increased standards of living.

The Alternative Minerals Management Bills address the current policy gaps and statutory inadequacies pertaining to three major aspects of the mining industry: the economics of the benefits from mining, the environmental protection, and the socio-cultural concerns including human rights, free prior informed consent and food security.

HB 206 and 3763 embody principles that would make mining a viable industry in the Philippines. These bills maximize the benefits of the mining industry by first identifying strategic mineral resources which can impel the country's industrialization without sacrificing the economic benefits from other natural resources, thus the mining sector's contribution to the Gross Domestic Product is no longer limited to the export of raw materials.

These Alternative Minerals Management Bills ensure the economic returns from mining operations, with minimized negative environmental impacts while guaranteeing participation of all rights-holders in decision-making processes, and the respect and recognition of community rights and human rights.

HB No. 206 and 3763 are therefore responsive to the present and future needs of the country, while addressing the negative impacts of mining to communities and to the environment.



## Maximizing Economic Benefits from Mining

Currently, all of the so-called fiscal benefits that government expects from mining investments come from taxes, thus, the government relinquishes the State's right to the economic value of land, forest, water and mineral resources in favour of the mining industry virtually for free. HB No. 206 and 3763 differentiate between taxes and income by clearly providing for sharing among rights-holders based on profit from engaging in the mining business.

Similarly, HB No. 206 and 3763 do away with the incentives that grossly favour foreign investments, and instead, maximize economic benefits from mining by establishing processes and mechanisms that assure Philippine industrialization. This addresses the fact that, between the period of 1997 to 2005, the share of the mining industry in the GDP averaged between 1.1% and 1.2% of total GDP, which mostly comes from exports of mineral resources.

HB No. 206 and 3763 more importantly recognize that other resources also have economic value. Mining as it is practiced now forecloses economic returns from the use of forest, land and water for agriculture, ecotourism, and services. For example, the citrus farms yielding export-quality fruits in Brgy. Papaya, Municipality of Kasibu, Nueva Vizcaya – a more sustainable and viable option for the local communities – are under threat from mining operations. In the municipalities of Midsalip, Labangan and Sindangan, and the Sibugay Province, all in the Zamboanga Peninsula, it is estimated that there will be loss amounting to a total of 2 Billion Pesos worth of annual crop value if the land is dedicated for mining operations.

Similarly, these Bills recognize the costs of externalities in a mining investment, or how the country, in the past and present, has spent more and lost more when we mine than not at all. In the case of the Bagacay mines in Samar, the World Bank will be funding the rehabilitation of the abandoned mine in the amount of 57 Million US Dollars in the span of five years. Meanwhile, the short-term rehabilitation of the Marinduque mines is estimated to cost 179 Million Pesos, while the long-term rehabilitation is estimated to cost 162 Million Pesos; while the local government units of Marinduque claim an estimated 51.7 Billion Pesos from Marcopper Mining Corporation in unpaid taxes and damages.

## Ensuring Environmental Protection

With HB No. 206 and 3763, in realizing that the country is faced with dwindling and finite resources, mineral resource utilization takes on a more holistic view, recognizing that there are other resources that are significantly affected. These bills see mining only as part of the entire scheme of natural resources management. These bills seek to correct the major flaw in the Mining Act of 1995 with regard to environmental management in that the latter pegs the value of mineral resources over and above other resources, such as land, water, flora and fauna – which are more necessary, sustainable and economically viable.

With this narrow-minded perspective on the exploration, development and utilization of mineral resources, the Mining Act of 1995 sacrifices environmental safeguards in the exploitation of land, water and forests.

HB No. 206 and 3763 also contend with modern day realities of climate change, resource competition and depletion, pollution, and food crisis, plus factoring the physical characteristics of the country, that is, it is archipelagic and susceptible to typhoons, earthquakes and volcanic eruptions.

Up to the present, the people of Marinduque have yet to be compensated from the mining disasters that hit the province at least three times. The waters and lands in Marinduque have yet to be rehabilitated. Meanwhile, Palawan, known as the 'Last Ecological Frontier' of the Philippines, is faced with 315 mining applications and 17 approved permits, despite the fact that Republic Act No. 7611 prohibits mining in the province. The Bills seek to address these issues and to prevent similar circumstances by establishing concrete and detailed environmental protection, disaster mitigation and risk prevention. It provides for environmental safeguards that could predict risks, while instituting bonds, rehabilitation guidelines, environmental insurance, appropriate fees and penalties. The Bills exact accountability where accountability should be demanded from.

Not only are the Bills providing for environmental protection, disaster mitigation and risk prevention, but these also seek to address the legacies of abandoned mines, acid-mine drainage, landslides, and poisoned waters, to name a few.

## Protect and Promote Human Rights and Community Rights

In accordance to international and constitutional law obligations, HB No. 206 and 3763 have also established provisions that mirror the State's obligations to its constituents. The rights of the people to life, liberty and property; a balanced and healthful ecology; and, a life with dignity, with adequate water and food are paramount under the Bills. The Bills also reinforces the recognition of the indigenous peoples rights to their ancestral domains, and their right to self-determination. Experiences of indigenous communities under the current mining law illustrate that the Free and Prior Informed Consent or FPIC has been commodified by the mining companies. HB No. 206 and 3763 articulate the principle of FPIC in a manner that affirms indigenous culture, customary practices and political structures.

Militarization, armed conflict and mining operations have been shown to have a direct correlation. No less than the Commission on Human Rights decried the violations by Oceania Gold Mining Corporation against the Ifugaos in Didipio, Nueva Vizcaya January this year. Then there is the current tense situation in Subanen communities in Bayog, Zamboanga del Sur; among the B'laans in Tampacan, South Cotabato; the Tibolis in Brgy. Ned, Lake Sebu. I can tell you many more of these stories from our partner communities.





But for now, allow me to emphasize the common thread of their narratives: that under the current legal and policy framework, historically marginalized peoples continue to suffer, even as they struggle, against abusive multi-billion enterprises.

HB No. 206 and 3763 give adequate penalties on violations of these human rights, while providing adequate protection for concerned individuals, communities and organizations.

The Bills create a political structure that provides the platform for the rural communities, and the indigenous peoples to be active and critical actors in the utilization and development of natural resources in ways that are beneficial to them and in a manner appropriate to their socio-cultural, political and topographical characteristics, and enhances their right to self-determination.

It is also the objective of both Bills to minimize delays and oppositions by establishing good governance mechanisms and processes that respect community rights and ensure equitable benefit sharing among communities, local government units and the State. The

Bills thus introduce a new system of natural resource governance that would address the distrust and discontentment of communities affected by mining operations. By genuinely recognizing the rights of indigenous peoples to their ancestral domains, the rights of local communities and local government units to direct participation in decision-making process, the right to transparency and access to information, benefits and responsibilities are rightfully shared among communities, local government units and the State.

### Governance by the People

We also endorse the AMMB since these bills properly reorient the way we view our mineral

resources. Whereas the Philippine Mining Act of 1995 sees minerals as the State's ticket to quick foreign direct investments, the Bills treat minerals as irreplaceable treasures owned by the entire Filipino nation.

Thus, the AMMB limit the exploitation of our mineral resources to Filipino-owned corporations, and primarily to meet the development needs of our country. This is the absolute minimum that we can do for our fellow Filipinos and for the generations of Filipinos to come. Actively encouraging foreign enterprises to exploit these limited and irreplaceable resources for the fulfillment of their own development needs is a moral miscalculation of our role as stewards of our national patrimony.



The Bills furthermore provide for the decentralization of functions in natural resource governance. We support the creation of Multisectoral Minerals Management Councils that are composed of the stakeholders and rights-holders directly impacted by the negative consequences of mining. Because right now, as we speak, decisions are being made and plans are being drafted by people in air-conditioned boardrooms hundreds of miles from sites where indigenous peoples' rights will be violated, where forests will fall, and where rivers will run dry.

With the HB No. 206 and 3763, the Mines and Geosciences Bureau, now made a specialized, strictly scientific and research government institution, would still have the regulatory functions overseeing the mining industry. But the Bureau has been separated from the Department of Environment and Natural Resources to address the contradicting mandate of the Department which has clearly contributed to distrust felt by the populace.

## A Time for Change

The policies embodied in House Bills No. 206 and 3763 present to us an opportunity to address the problems of the past and to initiate substantial changes in the mining industry that would truly benefit the country.

Ultimately, the Alternative Minerals Management Bills will not only redesign the mining industry, but more importantly, will shape our policies to the direction of a sustainable, economically viable, equitable and nurturing development, utilization and management of our natural resources.

In this juncture of our history, where fundamental changes in our policies, governance, and systems, should not just be promises but are imperatives, these bills should be passed now. This Congress can truly make its mark as the Congress who defied the tremendous pressure from multinational corporations and the politicians who benefit from them; and as the Congress who sided with the Filipino people, of this generation and thereafter.

The women and men of the Legal Rights and Natural Resources Center, Kasama sa Kalikasan/Friends of the Earth-Philippines therefore urge Congress to immediately enact House Bills No. 206 and 3763.

Thank you very much.



# **Saving the Last Bastions of Biodiversity in the Country: A Position on the Philippine Mineral Resources Act**

Biodiversity is crucial to our survival and therefore should never be compromised. Biodiversity, or the variety of all levels of life, provides our food, water, shelter, and livelihood. It is the basis for rural development and economic growth and provides a viable solution to poverty. The biodiversity of forests and other ecosystems also provides other vital ecological services such as climate regulation, flood control, recreation, and the basis of indigenous people's culture.

Biodiversity in the Philippines is one of the richest in the world. It is home to over 500 endemic species of birds, mammals, reptiles and amphibians, making the Philippines one of the 17 "megadiverse" countries in the world. At present, however, there is only 23% forest cover left in the country. In these forests remain Key Biodiversity Areas (KBAs) which serve as the last bastions for biodiversity in our country.

Mining adversely affects biodiversity. The Philippines' past experience on mining has seen many of our forests ravaged leaving very little trace of its original beauty and bounty. Mining in KBAs will strip the land of vegetation and the eroding topsoil from the rains will cause the surrounding lands to be unproductive. Deforestation that results from mining will further displace the already threatened wildlife from their habitats and drive them to extinction. Mining causes water pollution and coral reef degradation as a result of siltation and the release of heavy metals tailings in waterways that eventually find its way into the sea. Mining therefore not only negatively impacts the actual mining site; it affects the watershed continuum, from ridge to reef.

Loss of biodiversity leads to poverty. The impacts of mining are closely felt by those living near the mining sites that are mostly dependent on natural resources for their subsistence. Loss of biodiversity further drives them to abject poverty.

A valuation study of the Samar Island Natural Park released only last year shows that the net present value of mining in the park is only P105,000 per hectare compared to the P2.3 million value per hectare as protected area. A 1998 study of the same natural park estimated its value as a protected watershed to be worth US\$43 billion, or more than



double its then-estimated mineral worth of US\$21 billion, over 25 years. This only proves that the services provided by biodiversity are invaluable and that no mining company can ever compensate for it.

The current mining policy offers no protection for KBAs. The Mining Act of 1995 and the government's continued policy for the promotion and revitalization of the mining industry, fail to recognize the importance of forests and KBAs, especially the complex relationships across and between species and the environment.

President Benigno Aquino III issued Executive Order 23 which declares a nationwide moratorium on logging natural and residual forests, citing that "it is the obligation of the State to protect the remaining forest cover areas of the country not only to prevent flash floods and hazardous flooding but also to preserve biodiversity, protect threatened habitats and sanctuaries of endangered and rare species, and allow natural regeneration of residual forests and development of plantation forests."

It is for the same reasons that we urgently call on government to ban mining in key biodiversity areas since they represent the remaining critical habitats for threatened species and they provide the key element to ensure ecological balance and services necessary for humans to survive. We therefore call for the passage of the Philippine Mineral Resources Act, or House Bill No. 3763, which recognizes the importance of conserving biodiversity and its strong relationship with human beings and their environs, as well as the principles of equitable sharing, transparency, and genuine consent and participation.

We further urge government to also hasten the passage of the Forest Resources Bill and the National Land Use Management Act, both of which ban mining in KBAs and natural and restored forests, in order to better protect both our natural resources and our people's future.



***1st Hearing on the Mining Bills, 24 August 2011***  
***House of Representatives, Committee on Natural Resources***  
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**Jaybee Garganera, *National Coordinator,***  
**Alyansa Tigil Mina (ATM)**

I am Jaybee Garganera from Alyansa Tigil Mina or ATM. We are a coalition of more than 19 organizations who have decided to come together to challenge the development policy of the previous administrations on large-scale mining. My task is to present in broad strokes the rationale why the broad groups of civil society is supporting the move for a new mining law. We believe that the current mining policy fails to adequately address three major clusters of issues and given enough time, whether here in this hearing or in the future technical working group, we will be ready to share in detail through case studies, analytical reports, position statements and briefing papers, the justifications on these three clusters of issues.



We need a new mining law for three reasons.

First, the current Mining Act of 1995 fails to adequately address issues around the ownership governance and management of the minerals industry as a whole.

Second, contrary to the claims of the previous administration, the mining industry and some bureaus of the government, we firmly believe that the current mining act and its implementation actually retards economic growth because it pursues a defective system of financial and economic mechanisms to implement the law.

Third, we need a new mining law because the current Mining Act of 1995 fails to recognize and promote sustainable development, especially the values of ecological services, asset reform, social justice, climate change, disasters and human rights.

The next speakers will probably discuss the more detailed points of these three major clusters of issues. We are going to submit a detailed position paper in the next two days to the committee aside from the copies of national reports that our alliance has done. We are also more than ready to present maps and other technical reports to the committee that will justify our assertions.

Dear Mr. Chairperson and members of this committee, we take heart and inspiration from the statement earlier of Congressman Erin Tanada that while our name is Alyansa Tigil



Mina, we still recognize the value that minerals play in our industrialization. And if we are so hardheaded and if we had been totally against mining per se, we would not have committed and invested so much time and effort from our alliance to study, propose and work with several members of Congress to actually produce this bill right in this committee. However, it is our position that the current Mining Act has too many loopholes. By its enforcement, we are looking at too many costs, there are too many risks, and it produces too many conflicts in mining affected sites.

In the last six years, given the revitalization of the mining industry policy of the previous administration, the hype of responsible mining was being played up by the Chamber of Mines of the Philippines, supported by the DENR in the previous administration. We do not believe that there is responsible mining as long as the Philippine Mining Act of 1995 is in effect. We are putting on the table our interpretation and our proposal for responsible mining and these are embodied in the proposed bills that you have right now. Anything less than these proposed bills will only promote irresponsible, irrational and dirty mining, and we believe that this will not be a contribution to the sustainable development path of the Philippines.

Thank you very much.



***1st Hearing on the Mining Bills, 24 August 2011***  
***House of Representatives, Committee on Natural Resources***  
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**Ms. Arze Glipo, *Executive Director,***  
**Integrated Rural Development Foundation/**  
**Task Force Food Sovereignty**

I represent the Task Force Food Sovereignty, it's a coalition of NGOs and farmer organizations and movements advocating for food self-sufficiency and food sovereignty. We support the passage of an alternative minerals bill, in view of the fact that the existing Mining Act of 1995 have affected rural livelihood and threatened food security in many parts of the country where mining firms have operated and kept behind a scale of huge environmental losses as well as displacement of farming communities and indigenous peoples.



We take concern with how we can achieve – the new administration's goal of achieving rice self-sufficiency by 2013 up to 2016 if we continue with the same path of promoting more investments in the minerals sector especially under the context of the Mining Act which provides and facilitates control of huge agricultural land and forest land by foreign mining companies.

I will cite for example, the case that Hon. Bag-ao mentioned, Tampakan, because our NGO, the Integrated Rural Development Foundation is also operating in North Cotabato and in Sultan Kudarat, and these are areas which will be affected by the operation of the Tampakan project. According to reports from the international mining community, the Tampakan Copper and Gold Project, if conditions will allow it, it will start operations by 2016 and it will be harvesting or producing an annual production of 375,000 tons of copper and 350,000 ounces of gold. Producing 350,000 ounces of gold would actually require 11.52 billion liters of water. So in this case, if we would like to produce more palay, because at present our production is at 17 million metric tonnes of palay, and if we are to be rice-sufficient by 2013, we should be producing around 2 million metric tonnes more of palay. However, in the context for example of mining companies, operating, like in the case in South Cotabato, (South Cotabato is touted as the food basket of Mindanao) displacing 11.52 billion liters of water that will be needed by 30,000 hectares of rice farms, irrigated rice farms would result to drastic reduction of palay production. And fourth is the \_\_\_ mining projects like in Didipio, and other parts of the country which are promoting FTAA's, mining companies, I don't think, TFFS believes that we cannot achieve rice self-sufficiency by 2013. So in this light, we are asking the committee to take into account other goals, particularly,



the more fundamental goal of our government which is food security of our population because we are the fifth biggest rice importer in the world and we have imported for the past three years with the food crisis that happened in 2008 from 1.5 – 2 million metric tonnes of rice. I think the urgent need now is to reduce the importation and also exacting too much from our resources because we are actually borrowing more in order to import for the security of our people.



So I do believe that the present mining policy is actually hindering the achievement of our goal of rice self-sufficiency or food self-sufficiency in general.

We were invited last minute so we haven't prepared a comprehensive position paper. But in the next few days, we will prepare our position on how our country will be impacted especially the livelihood of our countrymen, over and above securing the profits for global companies who are actually competing for more areas of mining in the context of the global crisis now.

I think we have to consider for example, the Tampakan, the company involved here is Xstrata, which is a leading mining company, which is also in Glencore, a big trading company that profited much from the speculation commodity - trading that happened in 2008. Glencore is a major stockholder in the Xstrata. If we are to continue with this kind of model that is dependent on mineral extraction, then we are actually helping these companies to profit more but we are destroying, in the process, the livelihood of our poor.

Mostly our constituents are poor people who rely on agriculture for their livelihood, for their survival. We have to be sure that the rights of these people, the right to their land; the right to their water: to their livelihood should be protected over and above all these. Development can only happen when we have secured the right of our people, the right to food, a very fundamental right, the right to their land, culture and identity.

So thank you for the opportunity and we hope to provide you with a more comprehensive position paper.

***1st Hearing on the Mining Bills, 24 August 2011***  
***House of Representatives, Committee on Natural Resources***  
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**Fr. Edwin Gariguez, *Executive Secretary,***  
**CBCP-NASSA**

Good afternoon members of the committee and Mr. Chair.

I take this opportunity to also express the official and unanimous position of the church regarding this issue. This position was promulgated during the plenary session of the CBCP where almost all the bishops are present at the plenary conference.

As early as in 1998, the CBCP-NASSA has already issued a position critiquing the Mining Act of 1995. The Bishops are unanimous in saying that the government policy on mining is tantamount to offering our lives to foreigners with no conditions when our people continue to grow in poverty. The statement of the Church is that the adverse impacts of mining on the affected communities far outweigh the gains promised by their transnational mining corporations. Also, the statement forewarned that the implementation of Mining Act 1995 will certainly destroy environment and the people and will lead to national unrest.

Also in 2006, Catholic Bishops reaffirmed their position, their call to repeal the Mining Act of 1995 for the same reason that the Bishops believe that the Mining Act is flawed, and our experiences with environmental tragedy and incidents with the big mining transnational corporations is far behind the sustainable and responsible mining that the government is claiming.



We also noted that the promised economic benefits of mining by mining transnational corporations are outweighed by the dislocation of communities especially our indigenous brothers and sisters, and also the risk to livelihood and possible environmental damage.

For all these reasons, Your Honors, the Catholic Bishop's Conference of the Philippines and the National Secretariat for Social Action-Justice and Peace declare its support for the alternative mining bill or the minerals management bill as proposed in House Bills 206, 3763 also 4315.

Thank you, Your Honor.

***1st Hearing on the Mining Bills, 24 August 2011***  
***House of Representatives, Committee on Natural Resources***  
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**Maita Gomez, National Coordinator,  
Bantay Kita**



I would like to beg the indulgence of your committee, your Honor, because we do not have a prepared position paper at this point. We would, however, like to be able to submit one in the near future on incentives for mining companies from the government's share and on regulatory capture of the mining regime.

In the meantime, I would just like to share with you a research on mining. One of the problems of our mining data, Your Honor, is that they are regulated by different arms of government and it is very hard for the government to evaluate the contributions, the problems and potentials of each mining sector. The large scale mining, the small scale, and the non- metallic mining.

The yellow is the small scale mining, and almost conclusively throughout the decade, have greater production share than largescale mining. so there is no disaggregated data on these indicators and so it is hard when, let's say, Chamber of Mines provide data of their contribution to GDP but actually that is not the contribution of large scale mining. It is the contribution of the three mining sectors. This point is describing the exports are, in this case, of non-metallic mining are the blue lines which means that there is some domestic consumption. As for metallic mining, the exports are greater than the value of production.

Now this is really describing how is it possible for us to export what we did not produce. So it means that we are undervaluing our production. And of course this indicates very ineffective regulation. All or the entire mining industry is subject to excise tax including quarry and this is only at the peak of the last decade – 1.7% of excise taxes, not of BIR collections.

On top of that, if you multiply the declared value of production by 2 percent, you will have that red area but the actual taxes collected are only the green area. So there's a very very big gap in excise tax collection.

It is our position that the Mining law, the current mining law actually encourage entry into the industry but it does not ensure our fair share for the country. The revenue effort of the mining industry which is all that has been paid by the industry divided by the value they produced is one half of the Philippine average. And for every use, take note, Representative Baguilat, it is less than 1 percent. The striking thing here is, at the beginning of the decade, it was at the four percent range but as mining increased, it decreased.

So there are these bills being filed because we believe that the fees charged for environmental protection are ridiculously low and inadequate and that the procedure to effect environmental procedure is such that it promotes regulatory capture. When you ask the person/entity to be regulated to pay for the monitoring, you are not able to effectively monitor that entity.

***Technical Working Group Meeting October 3, 2011***  
***House of Representatives***  
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**Dr. Nymia Simbulan, *Executive Director*,  
Philippine Human Rights Information Center (Philrights)**

On behalf of the human rights community, we would like to express our full support to the three bills, House Bill 206, 3763 and HB 4315 addressing the many issues of the mining industry currently. We are fully supporting these three bills on the basis of the following grounds:

The bills are consistent with human rights norms and standards, particularly the right to environment and the right of indigenous peoples.

Currently, there are many human rights violations, abuses and issues confronting indigenous peoples communities and rural communities confronting mining activities.

Also, we are expressing our support because it promotes environmental protection and environmental conservation which is very much needed under the current situation.

Also, we would like to express that we believe that the three bills are currently addressing many of the issues confronting mining communities which would include violation of free, prior, and informed consent, violation of the right to access of information of our peoples, violation of civil and political rights, including extra-judicial killings, tortures and enforced disappearances, and illegal arrest and detention of people who are vigilantly opposing and standing for their rights in mining communities.

We believe that the current bills would help in promoting the rights of our people, particularly the indigenous peoples and their communities, and is definitely consistent with the commitment made by the Philippine state to international human rights instruments and that would include International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Indigenous Peoples Rights, as well as other human rights instruments affecting women and children.

So, we would be looking forward to the consolidation of the three bills, and eventually the passage of the consolidate bill, so that our country would truly be able to promote human rights of people in the affected mining communities.



***Technical Working Group Meeting October 3, 2011***  
***House of Representatives***  
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**Jessie Alcaraz**  
**League of Provinces of the Philippines (LPP)**



Your honor, looking at several bills, there is one consideration that we saw, specifically House Bill 206 your honor, is the establishment of the multi-sectoral council for mining, according to that provision, that council is given the decision to determine whether or not mining operations shall be allowed in each locality or watershed system where the mining operation is to be initiated and conducted. Our concern your honor, with regards to this provision, is it gives the local government a better say on whether or not mining operations shall be conducted in their locality and this is the advocacy of the league of provinces where in the local government should be able to determine, given the opportunity, to decide for themselves if mining is indeed needed and if they deem it necessary and important to their locality to be conducted your honor. So with regards to House Bill 206, we are supportive of this, of that section your honor, because it provides the local government powers with respect to the responsibility given to them, which is in light with the spirit of the Local Government Code and also the constitution your honor. Thank you.

***Technical Working Group Meeting October 3, 2011***  
***House of Representatives***  
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**Atty. Arthur Herman**  
**National Commission on the Indigenous Peoples (NCIP)**



Good Afternoon!

So far as HB 206 and 3763 are concerned, the NCIP is fully supportive of the passage of these bills. We can see that these are legislative mechanisms to further enhance and strengthen the existing provisions of Republic Act 8371 or the IPRA. We are pushing for these bills your honor, considering that it will benefit the interest and welfare of indigenous peoples all over the country.

Thank you your honor.



# **Why is there a need for a Minerals Management Bill? Because Mining in the Philippines is Unsustainable, Irresponsible, Toxic and Inequitable**

**December 14, 2010**

## **1. Mining: A Questionable Development Model**

To communities immediately impacted by a mining project, mining companies “claim that they bring into the community roads, schools, health services, many of the amenities of modern living, that they create jobs, and inject a lot of money into the local economy”. To look upon mining companies as agents of development is however problematic. Many problems are encountered when countries pursue development strategies through encouraging private investment. Mining companies are not, by nature, altruistic; they are in business to make a profit and if they do not make a profit, they do not stay in business for very long. In fact the “private sector can address sustainable development concerns as long as adequate profits can be maintained.” Mining companies “exist to make profits not to help communities”.

## **2. Mining also imposes many costs**

Problems inherent in a mining-based development paradigm can be summarized as follows: If mining were ‘just another industry’ with positive and negative characteristics similar to most other economic activities, proposals to focus international development assistance on mining projects in developing countries would not be controversial. However mining has characteristics that raise concerns about its social costs. Mining intensively uses land and environmental resources often leading to significant and enduring environmental degradation. Because mineral commodity prices tend to be volatile, income and employment in mining can also be unstable. Mining projects necessarily deplete the mineral deposits they extract, assuring a limited and often relatively short life span for any given project. Of the costs imposed by mining, the environmental costs are perhaps the most challenging. Mines have finite lifetimes; the ore deposit is discovered, it is mined, and then the mine is closed. The economic benefits of a mine only last throughout the lifetime of a mine. The costs of a mine, however, can be high and they may exist in perpetuity (e.g. Acid Mine Drainage).

### 3. The Disaster Vulnerability of the Philippines

Another important topic in any discussion of mining in the Philippines is the unique vulnerability of an archipelagic nation to natural disasters. Being vulnerable to earthquakes, typhoons, and droughts, the Philippines is considered by many to be one of the most disaster prone countries in the world. The propensity of these events further exacerbates the potential environmental effects of metallic and gold mining projects; it is an extant contingency to have a mine site requiring perpetual care and attention, it is a substantially more complicated contingency to have a minesite requiring perpetual care in a situation where a torrential rain storm, from a typhoon, causes a tailings dam to overflow or where an earthquake causes a catastrophic tailings impoundment failure. Couple the intrinsic geographical vulnerability of the Philippines to natural disasters with the economic vulnerability of many Filipino communities and one begins to gain a further dimension of the strong opposition to metallic and gold mining. Moreover many communities in the archipelago are communities of subsistence farmers or subsistence fisherfolk; who live a very precarious existence at the best of time.

### 4. Mining and Corruption

In view of the potential for adverse environmental effects inherent in mining, it is imperative that mining be subject to a thorough regulatory framework. There are many citizens in Philippine society, however, who are of the view that the Philippines suffers from a degree of corruption so high as to render such a regulatory framework, effectively, untenable. There is a substantial body of literature documenting the extent of corruption in the archipelago. This corruption is so pervasive, many view it as being an impediment to the implementation of responsible mining in the Philippines.

### 5. Mining and Conflict

A particularly troublesome dimension of metallic and gold mining is conflict. Many parts of the Philippines are subject to acts of armed aggression by the armed revolutionary movements of the Communist Party of the Philippines-New People's Army-National Democratic Front of the Philippines (CPP-NPA-NDFP), the Moro Islamic Liberation Front (MILF), and another armed group called the Abu Sayyaf, in encounters with Armed Forces of the Philippines (AFP). The NPA are active nationwide in the Philippines, while the latter two groups are active on the mineral-rich Island of Mindanao. To provide security for development projects, such as mining, the (AFP) conducts security operations in the vicinity of projects in advance of their development. Armed violence is an extant reality in the Philippines. In 2007, for example, there were 64 encounters between the NPA and the AFP resulting in 126 deaths (IBON 2007).



## 6. Mining and Indigenous People

The government's mining based development paradigm has immense potential to displace indigenous peoples (intense fighting broke out in August 2008 in the southern region of Mindanao leading to the displacement of an estimated 600,000 people). The 23 priority mining projects outlined by the Government encroach on 60% of already declared protected areas and another 53% of ancestral domains. Notwithstanding the successful defence of IPRA, many indigenous peoples worry about this overlap between mineralization and ancestral domain and the consequences this could have upon indigenous cultural communities. In the Philippines, indigenous peoples are considered to be "among the more marginalized of the marginalized". If there is conflict between the multinational firms of the mining industry and indigenous people, the latter will not be in a good position to seek a favourable outcome.

## 7. Mining: A Sale of National Patrimony

An important aspect of Philippine opposition to the use of metallic and gold mining as a vehicle for economic development is the colonization factor experienced by Filipino people. Many Filipinos view the Mining Act of 1995, particularly the Financial or Technical Assistance Agreement (FTAA) provisions of it, as being an invitation to new colonial masters from Australia (in the case of OceanGold or CGA Masbate Gold) or Canada (in the case of Crew





Minerals, now Intex Resources or Placer Dome). Many, particularly after the involvement of Canada's Placer Dome in the Marcopper tailings spill, view foreign mining companies as being insensitive, or unconcerned, with issues of environmental protection. Ultimately, many affected communities view foreign investment in mineral resource extraction to be a disposal of the nation's patrimony or even a loss of national sovereignty. This desire to truly control the long-run future of their nation and its resources, in a sustainable manner, is perhaps the overriding impetus to Filipino opposition to metallic mining.

Pope Benedict XVI criticized the impacts of mineral exploitation and other projects that harm the environment. "There are also scars which mark the surface of our earth, erosion, deforestation, the squandering of the world's mineral and ocean resources in order to fuel an insatiable consumption," he declared to 150,000 pilgrims who participated in World Youth Day activities held in Sydney, Australia. (July 17, 2008)

His Holiness called on them to "protect the environment and manage the goods of the Earth in a responsible manner," thus confirming the Catholic Church's concern with the serious environmental deterioration that the planet is suffering due to an irrational exploitation of natural resources, which is propelled by an economic model that favours the accumulation of wealth over the life and dignity of human beings.

The CBCP through its Diocesan Social Action Centres continues to exhort its message of concern on the state of the Philippine environment. It continues to fulfil its prophetic role in questioning mining activities in the sites of struggles (SoS). The likes of Bishop Evangelista of Marinduque, Bishop Bastes of Bicol, Bishop Gutierrez of Cotabato, Bishop Villena of Nueva Viscaya and Bishop Arigo of Palawan have been key prelates in voicing the concern of the church which heralds the upholding of the integrity of creation.

The religious members of the AMRSP and its Mission Partners continue to support and compliment the efforts of the CBCP and civil society networks through the Justice, Peace and Integrity of Creation Commission to care for and consolidate efforts in the promotion of the integrity of creation.

We support the filing of "An Act to Regulate the Rational Exploration, Development and Utilization of Mineral Resources and to Ensure the Equitable Sharing of Benefits for the State, Indigenous Peoples and Local Communities, and For Other Purposes"



# KASAPI Statement on the Minerals Management Bill

**December 5, 2010**

The Koalisyon Ng Katutubo at Samahan Ng Pilipinas (KASAPI) Inc. supports the re-filing of the [Minerals management bill or Minerals Act Bill], a milestone in the effort to reverse the unmitigated extraction of resources and continued destruction of the environment.

The Bill seeks to "Regulate The Rational Exploration, Development and Utilization of Mineral Resources and To Ensure the Equitable sharing of Benefits for the State, Indigenous Peoples and Local Communities and for other Purposes"

This is a product of unprecedented cooperation and analysis of different individuals, organizations and communities affected by mining in the Philippines and taking into consideration the decades-long issues and concerns raised by indigenous peoples. We assert our conviction that indigenous peoples can't go through yet another decade of plunder of our country's remaining forests, the bulk of which mostly are ancestral domains. Indigenous peoples have forged strong consensus to protect ancestral lands and domains.

Significantly, the bill prohibits the use of paramilitary forces or to contract the services of the military for the private use of mining corporations.



It also prohibits against direct support by the State to the private security of mining corporations. This is only proper. The government has not only been giving away lands and resources to the market in utter failure to protect the greater people's interest. It implements a national strategy of deploying military detachments in indigenous peoples' territories. The purpose of these military detachments, which are manned by paramilitary forces under the command of regular army officers, is to quell legitimate dissent. This practice of embedding paramilitary forces within or in proximity to indigenous communities are common in areas targeted for mineral resource extraction. In the Cordillera for instance, the Lepanto Consolidated Mining Company (LCMC) supported the creation of military-led Task Force Lepanto ostensibly to ensure that legitimate dissent by mining-affected communities are branded as insurgents.

Not only are the impacts of "military bases" in mining sites known locally. They are also known internationally as 'a grave human rights problem'. In 2007, UN Special Rapporteur Rodolfo Stavenhagen witnessed first-hand the degree of influence which mining companies exert over the military and how the military and paramilitary units become the mining company's security forces. In earlier visits he made in mining sites, he pointed the direct link between militarization of indigenous communities and development aggression, noting that: 'Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape, and forced recruitment by the armed forces, the police or the so-called paramilitaries, such as Civilian Armed Forces Geographical Units (CAFGUs).' That is the common Government response when Indigenous Peoples' concept of development comes into conflict with predefined model of national development. Rather than respect our rights, obey and honor State laws including the principle of Free Prior and Informed Consent (FPIC), the Government instead uses military intimidation as a means to suppress legitimate community dissent against the pollution of rivers and destruction of their livelihood. In short, government is making itself the biggest recruiter of insurgency.

Furthermore, the bill also seeks to protect and promote the right to health of the people.

Health impacts of mining operations are a major concern of indigenous communities. An Environmental Investigatory Mission (EIM) conducted by the Save the Abra River Movement (STARM) including health professionals and the University of the Philippines academics identified major adverse effects of large-scale mining on human and animal health.

The study found that the inhabitants of Paalaban and Batbato in Mankayan, a mining site of Lepanto Mining:

"are exposed regularly to mining waste waters. Coughing (48.5 percent), irritation of the nasal membrane (31.6 percent), skin irritations like rashes, itchiness or cauterization (31.6 percent), irritation of the eyes (16.5 percent) and vomiting (10.5 percent) are the symptoms most often diagnosed resulting from contact with the waste waters. Randomly obtained

blood samples have shown that these people have higher concentrations of cyanide, lead, and copper in comparison to people without contact to mining waste waters...Workers' occupational health and safety is also a grave concern"

The study also found that there was a significant loss of biodiversity including aquatic, plant and bird life. Evidence of elevated heavy metals content in water, associated with acid mine drainage (AMD), was found in waters and soil downstream from the mining operations. Livelihoods were impacted as a result of decreased fishery and agricultural yields.

Despite these findings, no Government sponsored studies have been conducted to determine the potential health impacts of mining projects.

Mining has not brought development to indigenous communities. Rather, mining affected communities have experienced dislocation from their territories, suffered harassment and abuse, and the degradation of their ecosystems. In Palawan, the Palaw'an tribe has not benefited from over thirty years of nickel mining on the island, which has seen millions of tons of nickel ore shipped to Japan and hundreds of millions of dollars in revenues. Instead, promises made to the tribe have not been kept and they continue to bear the impacts of the destruction of their physical environment.

Even as we support the chairman of the House Committee on National Cultural Communities, the Hon. Congressman Teddy Baguilat's call for a moratorium on large-scale mining, we call on the government to exclude indigenous people's ancestral domains and its sacred sites from mining, revamp that tottering-bumbling agency called National Commission on Indigenous Peoples (NCIP), require mining companies to respect FPIC and rehabilitate mined out areas pending the passage of an minerals management bill.



*Campaign by the Students for Ecological and  
Economic Democracy (SEED) to Reform the  
Philippine Mining Policy and to Advance Climate Justice*

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## OUR FUTURE IS NOT FOR SALE!

Our future is not for sale!

This is the united position of our generation against all forms of environmental destruction. It is for our generation's interest to reject large-scale and unregulated mining, which, in our view, is the biggest form of environmental destruction in the country.

Being a country abundant in natural resources, mineral deposits, and endemic species, it is prudent for our government to carefully plan and manage these resources for the benefit of the Filipino people and for the preservation of our vulnerable environment.

But this has not been the case in the past two decades. Large-scale mining, mostly by multinational corporations, has caused the poisoning of biodiversity, water, and local residents near or within mining sites. The Marcopper mining disaster, for example, resulted to permanent damage to the once pristine waters and the once conducive environment in Marinduque.

Furthermore, large-scale mining has contributed to the denudation of forests and the weathering of mountain slopes resulting to landslides and the displacement of wildlife. Worse, the use of freshwater for mining is overextravagant and will certainly contribute to water shortage. (Create sidebar on how many hectares of forest land cleared by mining, and how many liters of water needed to process various minerals).

*They say that mining, together with farming, is the oldest industry in the world and is essential for our economy. We say that mining is the latest industry that has damaged our country physically.*

Indeed, the supposedly beneficial industry of mining has turned to the dark side, no thanks to inconsistent government policies on mining and the profit-hungry nature of multinational mining companies. Mining laws and policies centrally embodied in the Mining Act of 1995, which supposedly aim at national development and poverty alleviation, have pursued liberal market-oriented paths, allowing for the acquisitive overconsumption of our resources.

The government, which enacted the anti-environment and anti-people Mining Act, must immediately consider the ill effects of large-scale mining that were allowed under this law and immediately push for its abolition. Thus, we in SEED are pushing for the enactment of the Minerals Management Bill, which is currently filed in Congress, as the most immediate and viable alternative toward responsible mining. As we reject the current system of mining in the Philippines, we are strongly campaigning for the protection and preservation of our environment via responsible means of using and utilizing its resources.

*Ang kinabukasan ng kabataan ay nakasalalay sa kaniyang kalikasan. Labanan ang mga malalaki at mapagsamantalang kumpanya ng minahan. Tutulan ang Mining Act of 1995!*

# THE *SANLAKAS* POSITION ON THE ALTERNATIVE MINERALS MANAGEMENT BILLS



August 24, 2011

*SANLAKAS* fully commits itself to support the immediate and swift passage of the 'Alternative Minerals Management Bills' now pending before the Philippine House of Representatives. We likewise urgently demand that the Philippine Senate pass its own counterpart version in pursuit of establishing a new law governing minerals management by the Philippine state.

Furthermore, *SANLAKAS* calls on the Philippine Congress to instantly repeal the highly destructive National Mining Act of 1995. This law only wrought upon our country and masses even greater environmental degradation and harm, economic dependence, social damage, and even political repression (through human rights violations) sanctioned by the state.

Hence, we directly call on Congress to already pass House Bill Nos. 206 and 3763, through a consolidated bill, without any further delay. Both bills comprise the basic framework for an alternative and more sustainable minerals management law which, aims to, "regulate(s) the rational exploration, development and utilization of mineral resources, and to ensure the equitable sharing of benefits for the state, indigenous peoples and local communities."

The continuing absence of a progressively oriented minerals management law, while retaining the Mining Act of 1995, has only helped to maintain the reactionary nature of the Philippines as a backward and underdeveloped capitalist state. The essence of such an alternative minerals management law is to further ensure a progressively sustainable economic development paradigm for our country and people. This is in stark contrast to the existing mining law which is more focused on the total extraction of our country's raw and precious minerals and geared towards accumulating ever larger corporate profits for a few rich foreigners (through their local elite partners). This special arrangement is one major way in which the foreign-local elite-axis is able to ensure their further control over our national economic-social-political system which, only breeds and reinforces systemic social injustice and mass poverty.

*SANLAKAS* is a progressive multisectoral coalition pursuing national and local mass struggles to progressively advance the democratic and social liberation of our poor, oppressed and exploited masses. Our fundamental goal is the radical structural transformation of the Philippines' economic-social-political system in step with a similar systemic change at the global level.

We are a national organization actively advancing a 'platform of struggle' to uphold and defend the basic rights and welfare of our country's social majority. This is because the basic masses remain largely marginalized, ignored and disempowered in our elite-ruled society. As such, the SANLAKAS mass base comprises a wide range of peoples' organizations and individuals representing the workers, urban poor, peasants, fishers, women, youth/students, vendors, small businesspeople, including the Bangsamoro, Lumads, and Cordillerans. We are also supported by various faith-based groupings and the LGBT (lesbians, gays, bisexuals and trans-genders) community.

In principle, SANLAKAS fights for both primary and full democratic, economic, social and political justice. We do so through people-centered, rights-based and democratically-oriented reforms struggles in all levels and aspects of human society. And this definitely includes the urgent struggle for a more ecologically-sustainable planetary system based on climate justice here and now!



# Submission to the Committee on Ecology, House of Representatives During the Hearing on the Impacts of Mining in the Environment

Jaybee Garganera, *National Coordinator,*  
Alyansa Tigil Mina (ATM)



November 16, 2011

**Batasang Pambansa Complex, Quezon City**

Thank you Mr. Chair and your honors.

Alyansa Tigil Mina is a coalition of more than 90 organizations that is challenging the revitalization of mining policy of the government.

First, we would like to submit two documents to this committee – the first is titled “Legacy of Disasters: 2011 National Mining Situationer” and “ATM Policy Paper on the Continued Adoption of the Aquino Government on the Revitalization of the Philippine Mineral Industry”.

Second, we will be submitting to the committee by Monday next week, November 21, a critique of the Environmental Impact Statement (EIS) of the Tampakan Copper-Gold Project in South Cotabato, owned by Sagittarius Mines, Inc. (SMI), Xstrata and IndoPhil. This document contains comprehensive review points and questions directly related to issues on environment, social and political impacts of the mining project. We feel that these points will add clarifications to the issues raised by the Chair, as he stated in his Opening Remarks. We will also include case studies that deal on i) magnetite sand mining in Cagayan Valley; ii) forest destruction in protected areas in Cantilan, Surigao del Sur; and iii) fragile island ecologies including mining in Homonhon in Samar, Sibuyan Islands in Romblon and Marinduque.

For this hearing, ATM would like to focus on six points for consideration in its attempts to introduce remedial legislation. These will revolve around:

1. Inadequate cost-benefit analysis (CBA);
2. Land-use conflicts;

3. Failed implementation or even non-implementation of Sec. 15 of Republic Act No. 7942 or the Philippine Mining Act of 1995;
  4. Inadequacy of Environmental Protection and Enhancement Programs (EPEPs) and Final Decommissioning and Mine Rehabilitation Programs (FDMRPs)
  5. Deforestation and its implications to climate change and disaster risk reductions
  6. Some points about international standards, including the standards of the International Council on Mines and Minerals (ICMM)
1. We feel that the current practices of CBA in feasibility studies of mining projects are inadequate. Mining companies merely count the “cost of doing mining” – costs that are related to their exploration, production and operating expenses. The true costs of mining – those that include social, environmental and political costs – are not factored in. The “net (positive/negative) impacts” of the mining project is not clearly established. We are aware that the Philippine mining industry is allergic to this proposal, as they will contend that this is too complicated, difficult and lacks standards. Our response would be that then there is more reason to be more innovative, produce better tools and methods, and adhere to more rigorous systems. Truth be told, ATM finds it more desirable of the policy would be to conduct TEV or Total Environmental Valuation.
  2. Serious conflicts on land use where overlaps of protected areas against mining areas are clear. ATM members have prepared these maps and also include conflicts between mining vs. ancestral domains, mining vs. watersheds, and mining vs. forests. If the committee is interested, we are more than willing to provide these maps for your review and consumption. Aside from the potential environmental destruction posed by these threats, the resulting social and political conflicts are equally disturbing.
  3. We believe that DENR was re-miss in performing its function when it accepted mining applications in declared forest reserves. Sec 15 of RA 7942 or the Philippine Mining Act is very clear – “Areas Closed to Mining Applications”. It did not say, “Areas Closed to Mining”, in which case, our legal opinion is that applications could have been accepted. These areas closed to mining include areas declared as protected areas (PAs) under the National Integrated Protected Areas System (NIPAS) Law. Parts of these PAs are forest reserves declared by former President Ferdinand Marcos. Our contention is that DENR-MGB should not have accepted mining applications in these areas, as they are considered “absolute no-go zones” for mining. In effect, RA 7942 or the Philippine Mining Act has been granted special privileges over NIPAS, CARL/ CARPER, IPRA and the Fisheries Code.
  4. We believe that the current guidelines, models and best practices in Environmental Protection and Enhancement Programs (EPEPs) and Final Decommissioning and Mine

Rehabilitation Programs (FDMRPs) are inadequate and should be subjected to a serious evaluation for their effectivity, compliance or appropriateness (or lack thereof) towards social and environmental management.

For instance, a typical EPEP would always say reforestation in areas outside of the mining tenement. This becomes an easy-way out for them to justify cutting trees in forests within their tenement and then re-plant trees outside. On the other hand, we suspect that the allocation for FDMRPs is too little for full and complete rehabilitation. We should determine what is the average cost of rehabilitation in the best models in other countries (Europe, Canada, Australia, etc.), and those costs (including technologies and methods) must be applied here in the Philippines.

5. Mining will drive deforestation and will result in decreased capacity of forests to control floods, absorb and hold water, and capture carbon. In this light, we find that the current Mining Act is not in consonance with the Climate Change and the Disaster Risk Reduction and Management Law, two national policies that are directly related to the mandate of this committee.
6. Lastly, there are international standards that have been set and being promoted, and I would like to focus on the continuing dialogue between the International Council of Mines and Minerals (ICMM) and the International Union for Conservation of Nature (IUCN) to regarding “no-go zones for mining”. We also understand that the Chamber of Mines of the Philippines (CoMP) is not affiliated with ICMM, and they are not bound to adopt these standards. We are also not aware of their level of commitment to pursue a “no-go zone” policy, being consistent with their proposed framework for responsible mining. We have been made aware that the CoMP has produced a Manual or Guidebook on Corporate Social Responsibility (CSR). I have seen it in draft form, but I do not recall it making reference or intending to define, identify, recognize and respect “no-go zones”.

Finally, your honors, in behalf of our alliance, I appeal to the members of this committee to support the passage of the alternative minerals management bill (AMMB) currently being deliberated by the House Committee on Natural Resources.

## A POSITION PAPER

Re: House Bill # 206, House Bill 3763  
Alternative Minerals Management Bill

### • HISTORICAL AND LEGAL BASES

Evidences that the Philippines had long been settled territories of many tribes prior to the colonization by Spain and later by the U.S.A. are not wanting. The protected forests and watersheds, hunting grounds which always yields wild animals, traditional land usages which are still evident in the peripheral areas are but some of the indications that these tribe communities adhere to a traditional system of resource management that ensures sustainability of life. Perhaps, equally significant are the dances, songs, rituals, costume, beliefs, and languages of these tribes which they and their ancestors performed, sang, executed, wore and spoke.

The government of the Philippine Islands about a century ago admitted that the people called Non-Christian tribes has never been under the control of the Spanish Conquerors and that laws promulgated by the colonizing Spaniards have never been implemented in these mountainous lands of the tribes. Hence, what Spain ceded to the U.S.A. in the Treaty of Paris are those areas where Spain had control. This has justified the claim of ownership by Mateo Cariño of what is now known as Camp John Hay in Baguio City, a claim based on native title. What is true for Mateo Cariño is true to all the tribes of the country.

Land to the tribes is our life. Land is not a commodity to us but a provider for our needs and food. What grows in our lands and what is under is also ours since time immemorial. Land to us is our Ancestral Domain that was passed from generation to generations. But to the Philippine government, Land is a commodity because of the Natural Resources found above and under.

#### **What is an Ancestral Land?**

The issue relating to ancestral lands dates "as far back as memory can go" – since time immemorial. If we were to base it solely on the 1909 landmark case of Cariño vs Insular Government<sup>1</sup>, where the "Cariño Doctrine" was enunciated, "Ancestral Land" would mean a land possessed by native inhabitants since time immemorial. Impliedly it means there can be no dates, no paper titles, nor any formal recorded claim.

DENR Administrative Order Number 2 (DAO2) defines it as "land occupied, possessed and utilized by individuals, families or clans who are members of the indigenous cultural communities since time immemorial by themselves or through their predecessors-in-interest, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit or stealth." The most recent definition comes from the Indigenous Peoples Rights Act (IPRA) of 1997, RA 8371, which was an improvement of the 1993 DAO 2, thus: ancestral land "refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots".



Therefore, ancestral land, in its purest sense has two elements: first, it has to be a land possessed and used by individuals, families, or clans belonging to the indigenous cultural communities; secondly, it has to be possessed since time immemorial.

#### **What is an ancestral domain?**

**Sec. #3 (a) Article II of RA 8371 states that:**

**Ancestral Domain** – Subject to Sec. 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burials grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.

To note, it is clear in this definition that all minerals found under our ancestral domains is owned by us since time immemorial. Ownership over all natural resources found including minerals has never been questioned before not until these destructive developments entered our ancestral domains such as Mining. Our peaceful life has never been the same since then.

#### **What is Customary Laws?**

Customary laws and Ancestral lands are inseparable subjects. To be ancestral, it has to be one of older times. We did not have the Revised Penal Code or the Rules Of Court way back then. what we have were norms, traditions, and customs which were immortalized as laws because of our recognition and practice for a long, long, long period of time. Ownership of lands necessarily depended upon our customary laws. Who ever said that indigenous peoples were uncivilized? We have had our own notions of governance and order and we respected it as a community, virtually all facets of our daily interactions are decided with applicable rules.

#### **What is a Native Title?**

It is noteworthy to define the concept of time immemorial as embodied in the Cariño Doctrine. Under the aforementioned case, the court decreed that a native inhabitant who has been in possession of land since time immemorial is entitled to be granted a title thereon. The phrase "time immemorial" was carried over to the present laws and was defined in DAO 2 as "a period of time where as far back as memory can go, a certain indigenous cultural community is known to have occupied, possessed, and utilized a definite territory devolved to them by operation of customary law or inherited from their ancestors in accordance with their customs and traditions." The IPRA adopted the same definition but went further by adding another concept which is in fact not new but nonetheless essential – the concept of a "Native Title". Under the IPRA, Native Title "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest."

#### **Sec. 3 (i) Article II of RA 8371 What is Natural Resources within Ads?**

**Natural Resources within Ancestral Domains** – The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-



*member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, that a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, that the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.*

Our traditional ways in the usage of our natural resources still exists until now and which will be passed on to our children and their children. We have the traditional ways of regulating the use of all found above and under our lands. Our ancestors taught us on how to use our traditional skills in protecting our forests and watersheds. It is very clear in this definition that we have the priority on the utilization of our natural resources, to explore our mineral resources and most importantly to decide how and who shall we allow to share in partaking of our resources.

• **AND FINALLY WE SAY:**

We the Indigenous Peoples of the country do exist. We own the land where we are settled since time immemorial through a native title which we call it our ANCESTRAL LAND/DOMAIN. We own all found above and under these ancestral land/domain through vested and prior rights since we were not part of what the Spanish sold to the Americans:

We have our special law given to us by the Government in 1997 which they call it the IPRA LAW. Embodied to this law are all our rights first as an IP, second as a Filipino and the most is as a Human Being. IPRA LAW IS FOR US TO USE AND NOT TO BE USED AGAINST US. IPRA corrects the injustices done to us in the past;

We do not adhere to destructive developments to our ancestral lands/domains. We have protected our forests since then. It is our forests that provide clean air to every living thing in the country. It is our forests that energizes our health, for where do the city people go when they want to rest? Isn't it in where clean air can be found? It is also our forests that protect us from erosion;


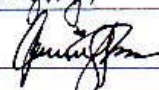
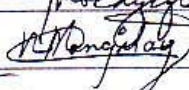


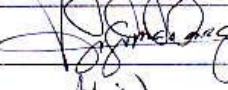
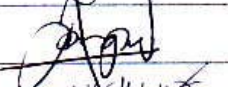


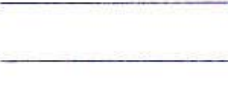
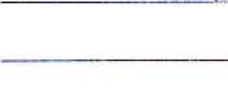
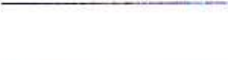
We do not believe in our country's campaign of a responsible and sustainable Mining. If this is true, then why is there an abandoned mined areas in the province of Benguet? What has the government done to run after these foreign mining companies and made them accountable on the abuses they had done to the lands of the Benguet people? All lands in Benguet are ancestral domains of the Ibalois, Kalanguyas and Kankanaey tribes. We wish that the Chamber of Mines and the Honorable Congressmen will take time to go around these abandoned mined areas of the Benguet people for you to understand;

We believe in sharing what we have, for when you need to showcase a unique presentation to your guests, we showcase our dances and rituals even if at times we violate some customary laws. It is because we do not want you to think that we are unkind;

We want you to talk to us and believe in our traditional ways and beliefs. For when you have no more ways in curing your sick, where do you turn to but to our forests where you can find the natural herbs.

**Our prayer,** we believe that in passing the **House Bill #206 and House Bill 3763 or the Alternative Minerals Management Bill** can cure the conflicts of your state laws with our laws, our IPRA and Customary Laws. The passage of this bill can strengthen us to put more efforts in protecting in all means the remaining undisturbed virgin forests, fresh water where our children and your children can enjoy and appreciate nature, where herbal medicines can be harvested, where fruit trees can be organically grown, where different kinds of birds can nest, where fresh and clean air can be inhaled, where rare flora and fauna can be viewed, where wild animals can freely hump and jump and many more beautiful things that forests can provide.

Signed this 28<sup>th</sup> day of October, 2011 by representatives of the State of the Indigenous Peoples Address (SIPA) delegates, done in Quezon City, Philippines

NAME	TRIBE	SIGNATURE
Judith P. Marana	Ibaki - Kalanguya	Imaray
Roldan A. Babelon	Aromanen - Menual	
Conchita C. Rigory	Alangan Mangyan	Chigong
WILMA A. TERO	Subanen	
Magdalene B. Caypa	Kalanguya, Kankasey	Subanayan
Nilda M. Mangilay	Subanen	
Jennifer P. Bat-ao	manabe	
RONNIE C. AMATORIO	EGONGOT (Ilangot)	
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Rocky D. Valderama, Jr.	Egongot (Ilangot)	
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Bayani D. Sumaang	Aeta Mag-Andsi	



## **Itaguyod ang Katiyakan sa Pagkain at Karapatan ng mga Katutubo**

### **Huwag Pahintulutan ang Tampakan Mining sa South Cotabato**

**September 14, 2011**

Ang kasabihang “AANUHIN pa ang DAMO Kung PATAY na ang KABAYO” ay angkop na pagsasalarawan sa posibleng epekto nang pinaplanong proyektong pagmimina sa Tampakan, South Cotabato.

Ang kabundukan ng Tampakan, South Cotabato ay isa sa may mayamang deposito ng nikel at tanso sa ating bansa. Dahil dito ang Sagittarius Mining Inc (SMI), isang transnational na dayuhang korporasyon na pag-aari ng Britanya, Swiso at Australyano ay nagbabalak bungkalin ito upang makuha ang bilyun-bilyong halaga ng nasabing mineral.

Ang planong pagmiminahan sa Tampakan ay nakapaloob mismo sa mahigit 10,000 ektaryang kagubatan na nagsisilbing watershed o sisidlan ng tubig hindi lamang para sa probinsya ng South Cotabato kundi maging sa lalawigan ng Sultan Kudarat, Davao del Sur at Saranggani. Sa ngalan ng bilyong tubo at baluktot na konsepto ng pag-unlad humaharap ngayon sa matinding banta nang pagkasira hindi lamang ng kabundukan at paninirahan at kultura ng mga kapatid na katutubo sa palibot ng Tampakan kundi maging ang usaping ng kasiguraduhan sa pagkain ng Mindanao.

Sa lalawigan ng South Cotabato pa lamang, ang pagtutuloy sa operasyon ng pagmimina sa Tampakan maglalagay na sa peligro sa tinatayang 200,000 ektaryang lupaing agrikultural na siyang bumubuhay sa mahigit 80,000 malilit na magsasaka at pesante ng lalawigan. Lalong higit ang epekto nito sa kabuhayan at kasiguraduhan sa pagkain sa buong rehiyon laluna’t ang mga karatig na probinsya nito ay pangunahing agrikultural at pangisdaan din ang ikinabubuhay.

Kapag pinayagang mag-operasyon ang SMI sa Tampakan paniyak na sisirain at lalasunin nito ang tubig mula sa Tampakan patungo sa 7 mayor na ilog sa rehiyon na tumatagos sa katubigan ng Karagatang Cotabato, Gulpo ng Davao at Baybay ng Saranggani. Hindi lamang panananim kundi maging ang pangisdaan ay tatamaan din ng lason mula sa planong pagmimina ito.



Ayon sa pag-aaral ang pagmiminang isasagawa ng SMI ay lilikha ng basura sa anyo ng waste rock at tailings na siyang makapamiminsala at lalason hindi lamang sa katubigan kundi maging sa lupang sakahan. Ito ang papatay sa ting sakahan at paniyak na lalason sa ting pangisdaan. Kung pahihitulutan ang operasyon ng SMI sa Tampakan mawawaldas din ang bilyong pisong inilaan ng gobyerno para sa irigasyon at pagpapaunlad ng agrikultura sa rehiyon. Isasakripisyon ng operasyon na ito ang programa ng pamahalaan para sa pag-abot ng Isama pa dito ang epekto ng tailing sa kalusugan hindi lamang ng mga mamamayan sa kasalukuyan kundi maging sa hinaharap. Malinaw pa ating alaala ang sinapit ng ating mga kababayan na naging biktima nito sa Marinduque at Albay dahil sa pagmimina.

Sa ganitong kalagayan, hindi tunay na kaunlaran ang hatid ng pagmimina sa Tampakan kundi pagkawasak at agresyon hindi lamang ng ating kagubatan, ancestral domain ng mga katutubo at kabuhayan ng mga maliliit na magsasaka, pesant at mangingisda. Hindi progreso kundi ibayong kahirapan at kagutuman ang magiging bukas hindi lamang ng mga mamamayan ng Tampakan kundi pati na rin ng mga karatig lalawigan nito.

Hindi mamamayan ang makikinabang sa pagmimina sa Tampakan. Tanging mga kapitalista lamang ng Sagittarius Mining Inc. at mga kasabwat nito sa gobyerno ang magtatamasa sa sinasabing ganansya sa pagmimina habang ang mga mamamayan ay patuloy na malulubog sa kahirapan at kagutuman.

Ang lalong masaklap hindi kayang tabunan ng bilyun-bilyong kikitain sa pagmimina ng Tampakan ang magiging mapaminsalang epekto nito sa mamamayan, kapaligiran at kinabukasan kahit huminto man ito sa operasyon.

Kung kaya't ang ANIBAN ng MANGGAGAWA sa AGRIKULTURA (AMA) at TASKFORCE FOOD SOVEREIGNTY (TFFS) ay kaisa ng iba pang mga organisasyon at progresibong sektor sa pagtutol sa pagbubukas ng minahan sa Tampakan, South Cotabato at sa walang habas na pagbubuyangyang ng ating likas yaman sa pagmimina. Hindi kayang tumbasan nang anumang halaga ng salapi ang sisirain at kukunin nito sa kapaligiran at kabuhayan ng mamamayan. Ang laban ng Tampakan ay hindi lamang laban ng mga mamamayan sa kasalukuyan kundi laban din para sa kinabukasan at susunod na henerasyon.

Mariing kinukondena namin ang pagpipilit ng Sagittarius Mining Inc. na maisakatuparan ang kanilang planong pagmimina sa Tampakan, South Cotabato. Gayundin, nananawagan kami sa Gobyerno ni Pnoy na dinggin ang panawagan ng mamamayan na huwag payagan ang operasyon ng SMI sa Tampakan bago mahuli ang lahat.

Nananawagan din kami sa mga mambabatas ng ating bansa na isuspinde ang operasyon ng Mining Act at ipawalang bisa ang batas na ito sa ngalan ng kapaligiran at kinabukasan ng atin bansa at mamamayan.



# Alternative Law Groups' Statement on the Mineral Management Bill

**December 1, 2010**

We, the Alternative Law Groups, Inc. (ALG), a coalition of twenty (20) legal-resource non-government organizations, express our support for the passage into law of the Mineral Management Bill.

We are alarmed at the worsening state of mining practices in the country and the scale through which the government pushes for the revitalization of the mining industry.

We have witnessed the destructive effects of mining on human and other life forms – violations of peoples' rights, fish kill, environmental destruction, pollution, and effects on health including HIV and AIDS – which are glaringly illustrated in the cases of Canatuan in Zamboanga del Norte, in the communities in Benguet and in the wasted rivers of Marinduque;

We recognize that the destruction that mining causes do not only wreak havoc on our environment, but also cuts across the concerns of the various basic sectors whom we work with: the farmers, the fisherfolks, indigenous peoples, women and children, labor and the local governments;

We believe that there is a need to challenge the government's misrepresentations that mining is the solution to the economic and social woes of this country;

We believe that there is a need to challenge the government's misrepresentations regarding the benefits of mining, as well as the law and policy framework on which these premises were based.

We condemn and call for the scrapping of the oppressive Republic Act No. 7942 or the Philippine Mining Act that threatens to displace communities from their lands and ancestral domains and that virtually allows full foreign ownership and control of our natural resources.

We condemn and call for the scrapping of the policy of the government that seeks to facilitate the approval of all kinds of mining permit applications in the shortest time possible that threaten the human and resource tenure rights of the poor and marginalized communities we represent.

We commit to work for a democratic and consultative process to enact an alternative mining law that will work for and protect the interest of the poor and marginalized sectors that have long been ignored by the government.

We commit to contribute, as a coalition, what we can to uphold the rights of the poor and the marginalized, and achieve a more ecologically sound, gender-fair, equitable system of resource management in the country.

The ALG is a coalition of twenty (20) legal-resource non-government organizations that work for justice system reforms and the empowerment of the poor and marginalized sectors in the country. ALG members: Alternative Law Research and Development Center, Inc. (ALTERLAW), Ateneo Human Rights Center (AHRC), Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (BALAOD MINDANAW), Children's Legal Bureau (CLB), Educational Research and Development Assistance Group (ERDA), Environmental Legal Assistance Center (ELAC), EnGendeRights, Inc. (EnGendeRights), Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, Inc. (FREELAVA), Indigenous Peoples International Center for Policy Research and Education (TEBTEBBA), Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan (KAISAHAN), Kanlungan Center Foundation, Inc. (KANLUNGAN), Legal Rights and Natural Resources Center-Kasama sa Kalikasan-Friends of the Earth Philippines (LRC-KSK-FOE Phils.), Paglilingkod Batas Pangkapatiran Foundation, Inc. (PBPFF), Participatory Research Organization of Communities and Education Towards Struggle for Self-Reliance (PROCESS-PANAY), Pilipina Legal Resources Center (PLRC), Sentro ng Alternatibong Lingap Panligal (SALIGAN), Tanggapang Panligal ng Katutubong Pilipino (PANLIPI), Tanggol Kalikasan (TK), Women's Legal and Human Rights Bureau (WLB), Women's Legal Education, Advocacy and Defense Foundation, Inc. (WomenLEAD)



# Why Our Mining Laws are Ineffective

by Dr. Niceto S. Poblador

The Philippine Mining Act of 1995 (RA 7942) provides the legal basis for the regulation of the mining industry in the country. It is easily one of the most controversial laws on our statutes. In my opinion, it is also among the most flawed. It is an ill-conceived piece of legislation that is highly unlikely to achieve its intended purpose, which avowedly is “the enhancement of national growth... in a way that effectively safeguards the environment and protect (sic) the rights of affected communities.” It rests on the dubious premise that the “firm and forceful implementation” of this law will promote the economic benefits and prevent the environmental damage that are usually associated with mining.

In my earlier piece on the topic of mining (“Why Mining in this Country is Unsustainable,” PDI, December 12, 2011), I gave a number of reasons why I believe that mining fails to contribute to the sustained growth of the community and of society. I shall now elaborate on some of the points I raised with reference to some of the law’s most questionable provisions.

Sec. 2. Declaration of Policy. It shall be the responsibility of the State to promote rational exploration, development, utilization and conservation 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 (emphasis supplied).

To use a card game metaphor, this pretentious vision statement is like shooting the moon. As far as I know, this ideal state has never been achieved anywhere in the world and at anytime in history. To expect that mining can be made productive, safe and equitable in the context of Philippine society today is wistful thinking.

There is little hard science and dependable data to support the absurd claim that the mining industry can be controlled and regulated in a manner that will create long-run economic value for the community and society while at the same time putting in check the social, environmental and economic costs associated with it.

Even assuming for the sake of argument that the various provisions of the law are theoretically and empirically valid, it is cavalier to assume that these can be “firmly and forcefully” implemented. There are two major reasons for this grim observation.

First, it glosses over the very real conflicts of interests between profit-seeking mining companies and the communities where they operate, between government officials and the citizens of the land whom they are supposed to represent, and between the present and future generations of Filipinos. Coming up with a protocol that is acceptable to all is next to impossible for the simple reason that the interest of one group can only be achieved



at the expense of those of the others, a situation economists call a “zero-sum game.” A socially and economically acceptable political solution to the mining issue is therefore out of the question.

A more likely scenario is the emergence of an unholy alliance among particular stakeholders intended to further their mutual economic interests against those of others. While Section 2 of the Mining Act talks about “combined efforts between government and the private sector,” this collaboration is most likely to take the form of an insidious plot between unscrupulous public officials and equally unprincipled corporate managers to defraud an unsuspecting public of economic wealth that rightfully belongs to them. These arrangements typically involve one party looking the other way while the other pushes the envelope.

Second, the belief that the decision makers in the business sector and those in government who are entrusted by the law to serve as guardians of our mineral wealth are knowledgeable and enlightened people whose main concern is to serve the public interest is pure nonsense. A flourishing mining industry is patently in the interest of public officials who can count on their appreciative electorates to reward them with their votes. A profitable mining operation is clearly in the interest of mining executives who can count on their appreciative boards of directors for their fat salaries and bonuses. Left out in the cold are future generations of Filipinos whose material well-being will most certainly be adversely affected by mining operations. Nobody takes the cudgels for them except for a handful of well-meaning and enlightened citizens and equally concerned NGOs, all of whom are powerless as they line up against the entrenched bureaucracy and well-endowed business mining firms.

The intelligence and professionalism of those who are actively involved in the mining controversy, be they in the public or private sector or in civil society, can be gleaned from the level to which current debates on this contentious issue has descended, with the pros calling the antis “anti-development” and the antis labeling the pros as “greedy.” From what one can see from current debates, there is a dearth of substantive, dispassionate analysis of the relevant issues.

Sec. 63. “...all contractors and permittees (sic) shall strictly comply with all the mines (sic) safety rules and regulations as may be promulgated by the Secretary (of the Environment and Natural Resources) concerning the safe and sanitary upkeep of the mining operations and achieve (sic) waste free and efficient mine development.”

Once formally proclaimed and accepted by all concerned, these set of rules and regulations effectively becomes a social contract that commits all players in mining activities to adhere to certain prescribed acts and modes of behavior, and to avoid those that are prohibited. However, just like all contracts, this one is incomplete. There are so many situations and conditions that the framers of the law could have easily overlooked. These omissions provide ample opportunities to the various players to pursue their respective interests, regardless of the cost to society. Getting around the law is also made possible and more likely by the difficulty of outsiders in gaining access to relevant technical and operational

data. Consequently, complete compliance with the provisions of the law is all but impossible, especially so if enforcement is less than enthusiastic.

Sec. 69. "...every contractor shall undertake an environmental protection and enhancement program which shall include ... plans relative to ... rehabilitation, regeneration, revegetation (sic) and reforestation of mineralized areas, slope stabilization of mined out trailings (sic) ... and socioeconomic development."

Sec. 70. "...an environmental clearance certificate shall be required based on an environmental impact assessment and procedures... required... to maintain ecological balance. ...in prior consultation with local government units, non government and peoples' organizations and all other concerned sectors.

In the absence of extensive research and exhaustive scientific analysis using highly advanced methodologies and sophisticated computer software, its is impossible to determine whether and to what extent specific policy decisions or strategic moves will affect "ecological balance" (whatever that means!) or "socioeconomic development." So complex and so indeterminate are the relevant sets of interconnected variables that to expect that the "firm and forceful" implementation of the law will bring desirable results for society now and for all times is sheer folly!

Sec. 71. "... a mine rehabilitation fund shall be created, based on the contractor's approved work program, and shall be deposited as a trust fund in a government depository bank.

This provision of the law is an insult to anyone's intelligence. One cannot expect mining companies to set aside a sufficient amount of funds to ensure that the area they have ravaged will be returned to its original state, much less to be as economically productive as on the day the first earthmover rumbled into the mining site. Any token amount deposited in a government bank - if done at all!- will serve the purpose of compliance with the law. There is absolutely no incentive to invest a centavo more!

A favorite strategy for covering up the damage – literally – is by replanting new trees in the mined over area. While these initiatives are commendable, they barely scratch the surface of what arguably is one of the most serious developmental and environmental problems facing the country today.

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This article was reprinted with permission by the author Niceto Poblador, a knowledge management consultant and member of Management Association of the Philippines.

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# Save Our Sovereignty — Yamang Bayan Network

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