

Towards a People's Mining Policy

I. Introduction

The Philippines is endowed with rich mineral resources. We count among the world's great mineral producers of copper, nickel, chrome, zinc, gold and silver.

We have about 7.1 billion metric tons (BMT) of metallic mineral reserves and 51 BMT of non-metallic deposits. As government claims, the country's mineral wealth, valued to be from \$840 billion to \$1 trillion, is about ten times our GDP and 14-17 times our external debt.

Astounding as our mineral wealth may seem, there is little reason to believe that the government, under its program to liberalize the industry, can ever realize its dream. This is, mainly because the utilization of this endowment has been geared to supply neither the basic needs of our people nor the need to address the economy's backward, agrarian and pre-industrial state.

For over a century now, our mineral resources have been extracted largely for export, for the benefit of colonial masters and developed nations and for the profit of foreign and local mining corporations. Meanwhile, our country persists in underdevelopment. Our people are deprived of the benefits of their national patrimony, their rights violated, while they suffer the consequences of a ravaged environment.

Our mining industry and the current "Revitalization of the Mineral Industry Program" will not reverse this trend. The Philippine Mining Act of 1995 and other liberalization policies and programs that the government now implements will only worsen the long term crisis plaguing the industry.

For one, the government has yet to show the people a national economic program that wisely exploits, develops and uses our mineral wealth to raise the production level of our basically backward agrarian economy and pursue the course of genuine national and sustainable development.

At this juncture, the richness of our natural resources give us hope that our country, impoverished as it may be now, can rise above this plight, feed its hungry people and truly develop. However, these mineral resources will soon run out at the rapacity that foreign corporations race to control every significant mineral vein in the country, to leave behind an environment spoiled, and a people robbed of its continuing source of livelihood, and its future. Hence, to quote a Chief Justice who once stood up for his people, "we must at this time decide once and for all that our natural resources must be reserved only to Filipino citizens."

We believe that mining and a prosperous minerals industry play a significant role in the attainment of a progressive, independent and self-reliant economy. The Filipino people with its rich natural resources can bring this about.

This premise provides the basis for calling for the immediate scrapping of the Philippine Mining Act of 1995 as well as pressing for an alternative mining policy. We call on our people to contribute and support the development of a policy on mining that is anchored on time-tested principles of social justice, respect for people's rights and welfare, environmental conservation, defense of our national sovereignty and patrimony and national industrialization.

II. Mining Liberalization in the Philippines

In accordance with the International Monetary Fund (IMF)'s structural adjustment program, the Ramos administration battled for the full liberalization of the mining industry. It passed the Republic Act 7942 in 1995. This law, otherwise known as the Philippine Mining Act of 1995, allowed foreign access and control in every aspect of the local mining activity from exploration, development to utilization.

The Ramos Administration believed that foreign investments will jumpstart and "revitalize" the ailing industry. The government thus gave mining TNCs larger economic and political rights and privileges over their mining operations and investments in the Philippines. The centerpiece of the Act is the Financial or Technical Assistance Agreement (FTAA), which gives 100% foreign-owned mining corporations ownership and control over our mineral lands.

After almost a decade since the liberalization policy was passed, it has all but failed to turn the mining crisis around. More mining corporations have closed down, while tens of thousands of mine workers were laid-off. Meanwhile, the remaining mining TNCs have wreaked greater havoc on the people and the environment as they increased production and expanded operation.

Still the foreign direct investments the government expected did not come. Though this is largely due to the low price of metals in the world market owing to both the glut and slow economic growth among countries, the government heaped the blame on the government's conflicting laws and pressed for the immediate resolution of the constitutionality question of the mining law as well as the harmonization of the laws which ran counter to the interest of foreign investors. These laws include provisions of the IPRA, Local Government Code, the EIS, and NIPAS, which NGOs and people's organizations have invariably used to oppose mining in their respective communities.

Through various maneuverings, then, President Gloria Arroyo and her Environmental Secretary passed executive and administrative orders, such as Executive Order 270 which brought forth the Mineral Action Plan (MAP) to strengthen the Mining Act. These have shortened the time of processing of mining applications, "harmonized" conflicting laws that contradict the Mining Act, and continue to subvert the people rights to oppose mining projects. The Arroyo government has recently used the fiscal crisis as one of the reasons to justify the Supreme Court's reversal of its earlier decision to declare the law unconstitutional.

Depriving people of access to land and other natural resources

Section 18 of RA 7942 says, "all mineral resources in public or private lands, including timber or forestlands..." shall be opened to mining operations. The right to mine is accorded not only to Filipino citizens or corporations but to foreign entities as well. Access and control to as much as 81,000 hectares onshore and 324,000 hectares offshore are accorded to each of these mining corporations. Such right is given along with timber, water, easement, ingress and egress rights and a host of fiscal incentives.

How this has been made possible in our country where majority of its largely rural population is landless and dispossessed is unthinkable. Yet this has been done and cases of community displacement of national minorities and upland settlers are increasing.

The communities, especially the national minorities and peasants, bear the brunt when mining TNCs begin exploration. People are displaced and forcefully evicted from their communities. The government

and mining TNCs use different kinds of deception and divide and rule tactics to instigate division and conflict within the community.

The government, especially the DENR, undermines its own laws such as NIPAS and IPRA whenever it wants to facilitate mining in the communities. Where there is strong unity and opposition from the community against mining TNCs, these TNCs and the Philippine government shift to more violent means and employ militarization to quell the people's resistance. These actions result to more human rights violations, as well as the displacement and loss of livelihood among the mining-affected people such as in the case of Climax-Arimco in Nueva Vizcaya and Toronto Ventures Inc., in Zamboanga del Norte.

Mining operations have further aggravated poverty in the country. Upon the entry of mining TNCs into their communities, people have been displaced not only physically but economically as well. The degradation of their local environment such as rivers, croplands and forests because of mining operations has led to income loss, food insecurity and health problems.

Perpetuating Export-Orientation and Import-Dependence

The local mining industry is still an export- oriented, import-dependent industry. It caters, not to domestic needs, but to the demand of the international market for minerals as raw materials. It similarly requires large importation of heavy equipment and machinery, and supplies in its operation that it has become dependent on foreign capital and technologies.

It is thus mired at the extractive stage of mineral development, with hardly a scheme to ensure substantial value adding and integration, as well as linking with the needs of developing our backward agricultural economy.

These characteristics of the mining industry are the reasons why in spite of the country's high level of mineral production, the benefits of the industry do not revert to the people and the local economy. Instead, only a few foreign transnational mining corporations (mining TNCs) and a handful of the local elite own and control the industry. They alone enjoy the benefits of the industry.

The movement of the prices of minerals in the international market dictates the phase and "development" of the local industry. Bankruptcies continue to plague the local industry whenever there is depressed demand in the international market for minerals.

The 1980s brought about a sharp drop in the prices of metals and minerals worldwide. The local mining industry was hit by bankruptcies and the shutdown of many mining companies. From 14 copper mines operating in 1970, only 3 remained operational by 1999. From 45 operating metallic mines in 1980, these were reduced to only 9 in 2000.

These are also the causes which make mining in the Philippines unsustainable and recklessly devastate our environment.

Widespread Environmental Destruction

The export-orientation in mineral production causes the large-scale extraction and exportation of more minerals than is actually necessary. In spite of gluts in the international market, notwithstanding the vast expanse of recyclable metals, mining TNCs have to successfully compete in order to reap superprofits in the chaotic international market. It needs to relentlessly extract more minerals, in the most cost-efficient way, in order to sell.

As social and environmental impacts do not normally factor in the profit equation, this is seen as added cost that eats up on the corporation's profit. Hence, not only are mineral resources being ravaged and our forest ecosystems destroyed, rehabilitation and damage compensation on affected or displaced communities are constantly neglected or ignored.

The larger volume of minerals extracted and exported abroad meant bigger profits for mining TNCs. During the period of the 70s to the 80s when there was a high price for high value minerals because of a high demand in the international market, mining caused widespread devastation to the environment in Cebu, Marinduque, Negros, Zambales and elsewhere.

When crisis hit the industry in the 1980s, mining companies employed modern but more destructive technologies such as the open-pit method and submarine mine waste disposal. These resulted to more serious destruction of the environment and the displacement of communities. To date, none of the mining companies that operate in the country have owned up for the responsibility and effectively rehabilitated the devastated environment.

People's Resistance and the Scrapping of Mining Act of 1995

The adverse impacts of large-scale commercial mining on the people and environment have inflamed a broad resistance against the plunder of mining TNCs. Since the Mining Act was passed, a nationwide campaign was launched to call for the scrapping of the Act. Protest actions against the entry and operation of mining TNCs continue from the local up to the national level.

Even local government units such as the provincial governments of Mindoro Oriental, Iloilo, Capiz and Samar have declared opposition to large-scale mining projects that the national government is pushing. Last December 2003, the Arroyo Administration was forced to shelve its anti-people and anti-environment National Mining Policy because of strong opposition from the people. In 27 January 2004 the Supreme Court in its ruling on the FTAA further exposed the Mining Act as a policy that favors the interest of foreign corporations and directly assaults our national sovereignty and patrimony.

Coupled with the recurrent crisis in the international market, mining TNCs had found it difficult to open new and expand existing mines from the late 90s up to 2002.

These are significant victories brought about by the people's strong unity against the plunder perpetuated by mining TNCs and their cohorts. In the middle of all these, however, the Arroyo administration remained firm and hell-bent in implementing mining liberalization. Even after nine years of failure of the Mining Act of 1995 to bail the mining industry out of the crisis, the government still believes that its dependence on foreign mining TNCs and their investments will save and develop the industry and usher in economic development in the country.

To this end, the Arroyo government has issued since 2004 an invitation to the open plunder of the country's mineral resources, through the Supreme Court's reversal of its earlier ruling on the constitutionality of the FTAA, the expansion of powers of the regional DENR units in relation to the issuance of ECCs for mining-related investments and special uses of forest lands (DAO 59), and the downgrading of the powers of the National Commission on Indigenous Peoples that effectively threatens the land rights of indigenous peoples vis-à-vis mining applications (EO 2004-346).

III. Framework and Basic Principles of Pro-people and Pro-Environment Mining Policy

Mining has always played a crucial role in the development of human societies. How this has not been realized in the Philippines, in spite of decades of mining while enduring the devastation of ecosystems, the compromises to peoples' lives, health, culture and livelihood, as well as the sharpening conflicts among the stakeholders, is what the alliance DEFEND PATRIMONY seeks to address through this initiative.

We are not against mining. We are for the wise development and judicious use of our mineral resources, as a requisite to developing a strong, self-reliant and progressive economy founded on a healthy balance between agriculture and industrialization to break the cycle of underdevelopment. As mining involves the exploitation of non-renewable resources of the country's national patrimony, we dare forward the following principles which are anchored on a government that gives premium to the cause of the nation, its people and the environment, over foreign or selfish interest.

This is thus, premised on a government with a clear strategic vision of ensuring social justice, respect for people's rights and welfare, a sound environment, the defense of our national sovereignty and patrimony, and the tireless pursuit of genuine national development. This government has to be clean, independent and free of vested interests, other than the plight of its impoverished people, especially the mining-affected communities.

1. Mining is important in nation building. The mineral industry plays an essential role in establishing a progressive, independent and self reliant economy.

Mining has been part of the historical development of societies. In the experience of industrialized nations, a prosperous mining industry is needed to supply the minerals needed by industries and to support the production and flow of basic goods and services. The Philippines has a reliable base of minerals vital to industrialization. We can therefore achieve genuine development by wisely utilizing our mineral resources and developing our mining industry as an aspect of an alternative program for economic development, in order to secure the livelihood of the people, satisfy their basic needs, ensure sustainable economic growth, and thereby become independent from foreign domination and control.

To achieve genuine development, the mineral industry must be nationalized. Genuine national industrialization is premised on the (a) accumulation and reinvestment of capital within the country against profit repatriation by corporations, (b) control over the utilization of available natural resources, (c) harnessing of benefits from modern technology for the country's own technological advancement, founded on the strong aspects of local knowledge systems, (d) job generation and human resource upgrading. The development of the minerals industry must be geared toward these directions.

Mining as part of the basic industry has to be owned and controlled by the State and the Filipino people. As the state is mainly responsible for formulating and implementing the strategic economic development plan of the country, it should control the direction and phase of the development of an integrated mining industry.

The country's mineral resources, including mineral energy (oil, natural gas, coal), should not be alienated. The development and utilization of our mineral resources must be limited to Filipinos, their associations or corporations.

The State must provide support and protection to Filipino corporations to further their development and increase their participation in the industry. All investments should be mutually beneficial and help achieve the specific target and goals of the national industrialization program. To harness the large capital requirement for mining, the State must use local sources in the form of re-channeled

government budget allocation for foreign debt payments and military expenditures, government subsidy, and the granting of incentives and financial aids to local private sector investors.

In exceptional cases, foreign corporations may be allowed to invest in the mineral industry. Based on the strategic economic plan, a comprehensive national industrialization program and the country's capability and capacity, the government must identify the investment areas where foreigners can help and invest.

Foreign investments in mining must be rigorously screened and strictly regulated. The participation of foreign companies in the critical stages of minerals extraction and processing should be in accordance with a defined program for technology transfer and equity share that does not exceed 40% of the full capital requirements.

Capital accumulation and reinvestment within the country must be encouraged over profit repatriation by foreign companies. Foreign mining corporations that have a bad track record in the Philippines must not be allowed to invest in the country.

The current liberalization program in the mining industry must immediately stop. Steps must be undertaken to reverse the current export-oriented and import dependent characteristics of the mining industry. The mining industry, guided by the framework of national industrialization, must be built for the production of raw materials such as base metals, basic chemicals and petrochemicals needed by the basic heavy and medium industries to produce as much consumer, intermediate and capital goods, as may be economically and practically possible, given the country's stock of mineral and non-mineral industrial raw materials as well as human resources.

2. Mineral production and development should help in modernizing agriculture within the framework of genuine agrarian reform.

The underdevelopment of the Philippines is rooted in its backward, agrarian and pre-industrial economy, as a legacy of 380 years of a colonial and feudal past followed by 50 years of a neocolonial experience. The only correct path to solve this problem is to break the cycle of export-oriented, import-dependent agriculture, industry and trade which sustains and aggravates widespread poverty and landlessness while catering to the requirements of imperialist globalization.

Tenancy exists in at least 35% of farms (in 1996) while forest occupants count more than 25% of the population (in 2000). Poor agricultural productivity, labor contractualization and out migration, land conversion for destructive mining and logging, are just a few results of the serious agrarian problem, not the drivers in the dismal state of our national income accounts.

Genuine agrarian reform and a comprehensive program of rural development is fundamental in solving the age-old problem of landlessness and rural poverty, to render social justice and democracy to the majority in Philippine society and serve as a strong base for national industrialization and progress. Through genuine agrarian reform, the purchasing power of the rural poor will be boosted up, so as to provide a strong market for industries. In turn, industry can play a leading role in advancing the productive capacities of agriculture.

A national mining industry must therefore promote rural industrialization to support the pursuit of agrarian reform in the whole country. The development of the mining industry should enhance the

capacity to produce food and achieve food security and self-sufficiency in the country. Minerals to be supplied to the different industries should ensure the production of farm machineries, tools and infrastructure materials needed by the agriculture sector for increased efficiency in farming as well as reduced strain on human labor, especially the burden on women and children.

In furtherance of genuine agrarian reform, prime agricultural lands and areas specified for food production must not be classified as mineral lands. Mining must be prohibited in these areas. Off-site effects of mining must not have disadvantageous effects on downstream areas.

3. *Mining development shall be programmed in accordance with the availability of resources, without sacrificing the capability and well being of the people.*

The level of mineral extraction and production should be based on the level of industrialization we wish to achieve, the needs of the agriculture sector, and needs for the production of consumer goods. This is also in consideration of the level of technology development we have, the availability of mineral reserves, acceptability by the people, and impact to the environment. Immediately, we will conduct a nationwide study that will systematically determine the status of our mineral industry, the country's mineral wealth and our actual needs for mineral products.

Mining operations at all times should be done only after the conduct of democratic consultation and with the consent of the people in mining-affected communities and other stakeholders.

The right of Moros, Lumads, Igorots and other indigenous peoples (IP) to self determination and ancestral domain must be recognized and their collective property rights must be guaranteed

In line with this, the state and mining corporations should at all times uphold the rights and ensure the full participation of IPs in decision making processes related to mining developments and operations in their ancestral domain and communities. Their customary laws and traditions will always be recognized and considered. They must be asked to participate in the determination of just and appropriate social compensation whenever mining operation has been agreed upon with them.

The right of the people to protect, harness and utilize their natural resources and environment for their livelihood and development should be guaranteed. And at the same time provide alternative and sustainable livelihoods to the mining-affected communities.

Job security, living wage, working benefits, and favorable and safe working condition for mine workers must always be ensured in state and privately owned mining corporations. Their right to organize and form their own associations, to collective bargaining and to strike should be upheld. The state will strictly prohibit forced and child labor in the industry.

In line with developing the mining industry within the framework of national industrialization, small-scale mining operations will be supported and regulated by the state. The state will encourage the formation of cooperatives among small-scale miners and provide financial and technical support to develop the labor-intensive and upgrade the backward technologies into a more efficient and less environmentally destructive mining process.

Whenever small-scale mining are stopped, alternative and sustainable livelihood shall be provided to the small-scale miners.

Militarization, at all times will not be used to ensure the entry and protection of mining operations.

4. Role of Research and Development (R&D) in advancing the mining industry

Research and development must focus on harnessing a mineral industry that is more economically efficient and less environmentally destructive. Advanced technologies from other countries that are proven to be appropriate locally must be adopted in the industry.

The direction of technology development in a nationalized mining industry must have a solid foundation in the basic and applied sciences, characterized by emphasis on operation, design and innovation as we learn from the most appropriate foreign technology, and supportive of indigenous technology. Hence, the utilization and upgrading of scale mining production shall be encouraged and supported, while upholding environmental sustainability, people's rights and welfare, and social justice.

All mining operations must be strictly regulated with the objective of ensuring the domestic processing of mineral ores up to the secondary and tertiary stages of industrial production. Developing our own basic and medium industries will ensure that we can sustain and sufficiently produce our needs for capital and consumer goods. This means that the negative impact of mining to the environment will be reduced and better controlled.

Recycling programs and substitution in the use of minerals must be incorporated in the overall plan of mining development. Development of new materials for mineral substitution, reduction of mine waste and pollution, and mining rehabilitation techniques must be among the foci of R&D.

Indigenous technologies that are relevant and appropriate, particularly with respect to the domestic processing of minerals must also be promoted, with a view to their harnessing, expanded use and upgrading.

Ecologically sound mining practices shall be promoted while mining technologies such as open-pit mining and submarine mine tailing disposal methods that are banned abroad and/or proven inappropriate in country like the Philippines, must all be banned.

5. Mining operation and development at all times must guarantee environmental protection and safety.

Mining will be done after it is evaluated to be the best option or use for an area. At all stages of mining, environmental protection and development shall be guaranteed. Only with sufficient provisions for environmental protection and recovery shall mining be undertaken.

Ecological considerations in mining development shall be given due emphasis and attention in order to counter or eliminate destructive effects that certain mining industrial processes might have on the people's health and the environment. Environmental standards shall be set to ensure the protection and efficient utilization of the country's mineral resource base. Monitoring mechanisms with strong participation from the local communities will be instituted. Areas affected by mining shall be rehabilitated.

Mining in high environmentally critical areas such as small island ecosystems, primary forests and watersheds shall be banned. Dumping of mine wastes and tailings to rivers, lakes and sea must be

prohibited. Violators must be strictly punished and made to pay heavy compensation to the state and affected people.