

***The Impact of Investment Liberalization and the Mining Act of 1995 on
Indigenous Peoples, Upland Communities and the Rural Poor,
and on the Environment:
A summary report***

Destroying Communities for the Love of Minerals

CASA Philippines decided to address the liberalization of the mining industry as a major policy issue particularly with regards its impact on indigenous peoples (IPs), upland communities and rural poor, and the environment. Accordingly, a thematic working group on indigenous peoples and the environment was convened during the CASA National Opening Forum in July 1999. The thematic working group identified the theme, investment liberalization, particularly the liberalization of the Philippine mining industry and its attendant social and ecological impacts, as the focus of the study.

This research was divided into two phases:

1. A review of primary and secondary sources to come up with a background paper on investment liberalization and the Philippine Mining Act of 1995; and,
2. An empirical study on the social and ecological impacts of mining projects in two geographical areas, one in Eastern Samar and another in Nueva Vizcaya.

The first phase of this study establishes the links between SAPs (as mandated by multilateral finance institutions or MFIs) and Republic Act (R.A.) 7942, also known as the Mining Act of 1995. Moreover, it identifies the factors, both external (recommendations from MFIs and international mining corporations) and internal (push from local business and technocrats), that served as impetus to liberalize the Philippine mining industry, and eventually prompting the drafting and passage of a mining act.

The second phase of the research drew from backound research to provide baseline data on the Philippine mining industry and the communities affected by the Mining Act; and, field research to determine the social and ecological costs borne by IPs, upland and rural poor communities. The research documented the following:

- Experiences of communities affected by the mining projects implemented under the new mining code—specifically in relation to the issues of social acceptability and acquisition of free and prior informed consent (FPIC), best practices (in mining technology) and social/community development components of the mining project;
- The social and ecological impacts (costs and benefits); and
- The responses and initiatives of the people in the affected communities, either for or against mining.

Bgy. Didipio, Kasibu town in the Northern Luzon province of Nueva Vizcaya, where the Climax-ARIMCO (CAMC) Gold and Copper Project is located, and Manicani Island, Eastern Samar, site of the nickel mining project of Hinatuan Mining Corporation (HMC), were selected on the basis of the following criteria:

1. The mining area is covered by the Mining Act of 1995;
2. The extent of operation of mining companies is at a level significant enough to identify impact; and,
3. The presence of partner people's organizations (POs) and non-government organizations (NGOs) in the area that could help in the implementation of the research.

Preliminary research activities began in October 1999, followed by fieldwork in August 2000. A thematic working group composed of six resource persons helped with the drafting of the research design and framework. Research validation activities for the two areas were conducted from December 2000 to January 2001.

MFIs' Role in the Liberalization of the Mining Industry

The liberalization of the Philippine mining industry is part of a series of structural adjustment programs began by the World Bank and the International Monetary Fund (IMF) in 1980. From that year till the present, structural adjustment has followed three phases:

- Phase 1, from 1980 to 1983, which emphasized trade liberalization;
- Phase 2, from 1983 to 1992, which focused on stabilization and debt repayment; and,
- Phase 3, from 1992 to the present, which is characterized by the push for "all-sided free market transformation marked by rapid deregulation, privatization and trade and investment liberalization."

The process of liberalizing the mining industry began in Phase 3, with RA 7942 already in place by March 1995.

Mining has long been a major contributor to the Philippine economy. The country ranks among the world's top 10 countries in the production of gold, copper, nickel and chromite. As for mineral endowment, the Philippines is ranked second to South Africa in gold ore deposits, and ranks third in the world in terms of copper resources. In 1974 and 1980, mining accounted for 20.37 and 21.34 percent of the country's total export receipts, respectively. For the period 1980-1993, mining contributed about P 4.3 billion in tax revenues.¹ With the liberalization of the mining industry, based on predictions made in 1998, the Philippines expects to attract about US \$3.5 billion in initial investments for new mining projects in the next ten years, from 1998 to 2008.²

RA 7942, passed on March 6, 1995, is the enabling law that has made possible the liberalization of the Philippine mining industry. It is consistent with the World Bank's and the Asian Development Bank's (ADB) agenda for trade and investment liberalization in the Philippines and thus faithful to the spirit of these MFIs' agenda of neo-liberal economics.

The IMF, in a 1990 staff report, took issue with what it perceived as the Philippines "relatively restrictive laws and regulations governing foreign investment in key sectors and called for foreign investment reforms...." Subsequent developments lent credence to the perception that the Mining Act of 1995 is a response to the IMF and the World Bank's pressure

to implement policy reforms in order to create “a more favorable investment climate,” especially for foreign companies.

One of the Bank’s recommendation that was tied to a proposed loan by the Philippines for an Economic Integration program in 1992 was for the government to exert efforts to attract more foreign investors and to expand the coverage of foreign participation in various industries, including mining.

The World Bank has been explicit in its stand and recommendations for mining sector reform for Africa, Latin America, the Caribbean, South Asia and East Asia—that of liberalizing the sector to “attract explorations and investments much needed by the under-performing mining sector.” Various Bank policy papers also suggest that RA 7942 is consistent with the MFI’s unequivocal prescriptions liberalized mining in other regions such as Africa, and Latin America and the Caribbean (LAC).

The technical reports for strategies in mining in Africa and the LAC are most revealing of what is at the core of the World Bank’s strategy for mineral sector reform. Specifically, it recommends legislation that addresses the following:

- Reducing risk and uncertainty for potential investors;
- Ensuring easy access to exploration permits and mining concessions;
- Providing additional guarantees in investment agreements to protect the investor from unwarranted government interference; and
- Adding safeguards to ensure that investors will live up to their obligations.³

For its part, the ADB has directly influenced the directions of the mining sector in the Philippines along the same lines set by the World bank and RA 7942 reflects this influence. Similarly, a 1993/94 ADB study⁴ stresses the importance of encouraging a “friendlier business climate for foreign investments,” in order to rejuvenate the Philippine mining industry,⁵ especially with the Philippines still enjoying excellent resource potential.

The results of a comprehensive resource assessment suggested that aside from the rich resources of gold and copper, the Philippines also has a rich deposit of chromite, nickel, iron, manganese, and zinc. However, the report laments that this resource potential did not translate into its expected output as evidenced by the decline of mineral production and the overall ‘weakened’ state of the Philippine mineral sector.⁶

The ADB study further pointed out that the future of the Philippine mining industry rested on the development of new projects rather than the continued pursuit of existing mining operations. Rejuvenating the mining industry, the study states, would require addressing the problems related to deficiency of domestic capital, the need for new exploration technology and large-scale expertise needed to implement major new mining projects. The solution or cure to the “ailing mining sector,” the ADB study proposed, rode on the entry of foreign companies, which would infuse capital investments and bring in new technology.⁷

The same ADB study named the lack of a ‘coherent’ and integrated mining act as another major obstacle to realizing the full potentials of the Philippine mineral sector, i.e., through the entry of more foreign investors. Mineral production sharing agreements (MPSAs) and financial

and technical assistance agreements (FTAAs) abounded prior to RA 7942 but these were deemed inefficient or ineffective by the ADB because certain provisions, especially in the case of MPSAs, militated against foreign ownership.⁸ The ADB study also found the five-year tax holiday provision of the existing FTAAs and MPSAs as insufficient as it only provided a marginal incentive to foreign investors to develop mineral projects. Moreover, the ADB study stated a preference for quicker write-offs over the proffered tax holidays.⁹

ADB's "recommendations for immediate action" included:

- The enactment of a new mining code;
- The removal of the divestment clause from the FTAAs through the enactment of a new mining law or implementing guidelines (the divestment clause is considered as the greatest disincentive for foreign investment in mining);
- The removal of the income tax holiday within the MPSAs and FTAAs as foreign mining companies prefer write-offs instead of tax holidays
- The establishment of new guidelines for MPSAs and FTAAs, to clarify and define the "areas that are negotiable and areas that are governed by the mining code and are non-negotiable";
- The integration of the Omnibus Investment Code and the Foreign Investment Act, which is deemed "essential to establishing a single statute covering all major provisions governing the rights and obligations of foreign investors in the Philippines";
- The reassessment of the distribution of natural wealth allocation to be done by correcting errors in the drafting of the Local Government Code; reassessment of the allocation to the barangay level of 35 percent of natural Wealth Funds; and the formation of a Local Government Trust rather than direct allocation procedure;
- The strengthening of the Mines and Geosciences Bureau (MGB) by developing the Mine Title System in the local and national levels, and the development of skilled multi-sectoral analytical group to support and supervise mineral development more effectively such as providing financial and economic analysis of proposed MPSAs and FTAAs;
- Institutionalization of the Environmental Guarantee Fund through legislation to define the requirements of environmental monitoring, pollution compensation, and site rehabilitation for the mining industry;
- Improving the MPSA and FTAA negotiations to ensure a strong and constant multi-sector involvement in the national and local levels; and
- Promotion of a conducive mineral investment climate to attract foreign investment in the industry through a mining code that removes the 60:40 Filipino-Foreign Ownership provisions in FTAAs.¹⁰

Another set called "Intermediate Term Recommendations" touched on:

- Government's limited role and policy formulation on the mineral sector;
- Negotiations of the MPSAs and FTAAs;
- Environmental concerns;
- The decentralization of national government functions vis-à-vis that of the local government;

- The promotion of the mineral sector;
- Changes in the fiscal regime; and,
- The strengthening of the Mines and Geosciences Bureau.

The government's careful consideration of these recommendations, added the study, would be required to enable it to revive the Philippine mineral industry.¹¹

It is not difficult to recognize RA 7942 as a direct consequence of the ADB study on the country's mineral sector. A comparison of the two documents shows that most, if not all, of the recommendations of the ADB study were included in the provisions of RA 7942. As critics feared, the Mining Act turned out to be a package of incentives for foreign firms investing at least US\$50 million. Designed to entice foreign investors to bring in new money and revive the industry, RA 7942 promptly removed the 60:40 Filipino-Foreign Ownership provisions of the previously implemented FTAA's. This liberalization of the 40 percent maximum foreign equity requirement prescribed by the Philippine Constitution has had precedents in investment laws passed by the Congress. RA 7042 or the Foreign Investments Act of 1991 declared the removal of restrictions on the extent of foreign ownership of export enterprises, enabling foreigners to invest and control as much as 100 percent equity in domestic market enterprises. But RA 7942 was to have the sole distinction of being singled out as "the most foreign-friendly mining policy" from among 70 countries that implemented mineral sector reforms to accommodate foreign investors."

Aside from removing the limit on 40 percent foreign equity, RA 7942 changed the mode of disposition of mineral lands, shifting from that of a leasehold system into either MPSA, or co-production agreement (CA) or joint-venture agreement (JVA).

Production sharing, as embodied in the Mineral Production Sharing Agreement (MPSA), enables the government to award the contractor the "exclusive right to conduct mining operations within a contract area and shares in the production" while the contractor provides the required financing, technology, management or personnel.¹² Meanwhile, the CA is a contract between the government and the contractor whereby the former provides inputs other than mineral resources such as technology, management or personnel. The JVA, on the other hand, is a contract between the government and the contractor to jointly establish a new company that will exploit the identified resources. In the JVA, both the government and the contractor have equity stakes and the government is allowed shares in the gross output as well as earnings in equity.¹³

While all agreements pertain to the exploration, operation and development of mineral resources of the Philippines under the new mining law, each agreement is a stand-alone provision separate from the other. The EP comprises Chapter 4 of the Philippine Mining Act of 1995 while the FTAA is covered in Chapter 6 of the same law. On the other hand, the MPSA is contained in Chapter 5 of RA 7942 under the heading of Mineral Agreements.¹⁴

An EP grants the holder the "right to conduct exploration for all minerals in specified areas" for a limited period of two years but does not give the grantee the right to conduct mining operations. The EP holder, after successful mineral exploration activities, must apply for an MPSA or an FTAA. The provision on the FTAA contains the eligibility clause of any person

with financial and technological capacity to carry out large-scale exploration, development and use of mineral resources.¹⁵

The President of the Republic of the Philippines approves the FTAA's but the Mines and Geosciences Bureau (MGB) grants the applications for EPs. The term clause of EPs is two years and is subject to annual review but EP awardees may still apply for other MPSAs and FTAA's. Contractors with MPSA and FTAA can also withdraw from the agreement and terminate mineral exploration and exploitation by simply informing the Secretary of the Department of Environment and natural resources (DENR) that mining operations are no longer practicable.¹⁶

The Mining Act spells out the conditions for the compliance of a permit or a contract of agreement. In the case of an EP, the permit holder is required to discuss the extent and the manner of his/her entry, occupation and exploration in the area/community if public or private individuals are affected. The provision for Mining Agreements does not specify the rights and obligations of an Agreement grantee while the FTAA provision cites 15 terms and conditions instituted in the FTAA. Notable points of the conditions are proofs of technological, financial and managerial capabilities of the applicant as a prospective grantee, transparency in its financial activities, and preference for the use of local goods and services, and the obligation to give preference to Filipinos in terms of employment.¹⁷

Effects of Liberalization on Communities in Mining Areas

The areas targeted for mining exploration/exploitation are usually those in remote areas inhabited by the various ethno-linguistic groups classified as belonging to the category of indigenous peoples, forest peoples, upland communities, and the rural poor consisting of farmers/tenants and fisherfolk. Consequently, indigenous and forest peoples, upland communities and the rural poor have the hardest hit by the consequences of a liberalized mining industry. These groups of people also suffer from government neglect not having even the minimum basic social services such as education and health nor extension services from the government.

IPs refer to social groups with a social and cultural identity distinct from the dominant society.¹⁸ Already marginalized at the outset, the "different-ness" of these groups make them all the more vulnerable to any negative shock that development processes from which they have been excluded, may bring.

The history of IPs, including upland communities and forest peoples, has been marked by wanton disenfranchisement and cultural displacement. From being the original inhabitants and stewards of the land, IPs have been reduced to squatters in their own ancestral lands or forest, fishing and agricultural lands. Relentless and systematic, the historic process of marginalization was aided by This was effected through the following the:

- The imposition of an alien political system, which undermined the indigenous political institutions developed through the generations;
- The imposition of a series of land laws that engendered and enshrined a private property system which runs counter to the indigenous concept of land and property – private property system was put in place through a series of land laws, which legitimated the appropriation of the lands and resources;

- The entry of big commercial interests such as private mining and logging concessions, and large-scale commercial agricultural enterprises;
- The imposition of development paradigms and programs represented by mega development projects inappropriate to indigenous culture and socio-political systems and institutions.

IPs have central claims to:

- (a) The right to the ownership and control of their territory;
- (b) The right to self-determination; and,
- (c) The right to represent themselves through their own institutions.¹⁹

IP rights are recognized and enshrined in national and international instruments such as Article 11 of International Labor organization (ILO) Convention 169. The IP right to self-determination is also recognized by the International Covenants of Civil and Political Rights and of Economic, Social and Cultural Rights. Their right to be represented through their own institutions is recognized in Article 2 of ILO Convention 169.²⁰

Despite the recognition of these rights in international law, IPs remain at the receiving end of discriminatory government policies, and the denial and non-recognition of the rights to ancestral domain, which stem from the conflict between customary law and ancestral domain rights, on the one hand, and state laws and private property rights system, on the other.²¹

The Mining Act of 1995 forebodes the worsening of social costs and ecological degradation and with this, greater unrest especially among indigenous, upland and forest peoples, and rural poor. This is because RA 7942 allows total ownership of equity and control of mineral mining projects through Financial or Technical Assistance Agreements (FTAAs). Large foreign mining companies are allowed to explore/mine a maximum area of 81,000 hectares for a period of 25 to 50 years in exchange for a minimum investment of US\$50 million.²² Auxiliary rights and incentives are granted, thus allowing unhampered mining operations and ensuring increased profitability.²³ Such mining operations cover vast tracts of land, which IP and other upland peoples, majority of whom are poor, also inhabit.

Even before RA 7942 took effect, two FTAAs had been awarded – to Climax Arimco in Nueva Vizcaya, and to the Australian firm Western Mining in the quadri-boundary of Sultan Kudarat, North Cotabato, South Cotabato and Davao del Sur covering an area of 72,737 hectares.²⁴

With the Mining Act of 1995, the number of FTAA applications has grown to 115 as of October 1997. FTAA applicants are predominantly Australian, Canadian and American corporations. In 1998, the third FTAA was signed for mining activities to begin in Leyte.²⁵

In 1998, approximately 71 of the pending applications, including those that were approved, cover indigenous people's ancestral lands and in some cases ecologically critical areas. By mid-1999, there were 408 applications pending with the MGB. By June 30, 1999, 138 MPSAs had been approved. A month later, 51 EPs were released.²⁶

MGB's own 1999 data shows that MPSAs already cover more than 200,000 hectares. Breakdown per region is as follows:

REGION	AREAS (in hectares)
Mindanao Group (50 MPSAs)	109,073.84
Region IV (CALABARZON, Mindoro, Palawan, Aurora, Marinduque, and Romblon)	12,606.23
Region VII (Cebu, Negros Oriental, Bohol, and Siquijor)	17,251.14
Region XIII (CARAGA Administrative Region, Butuan, Surigao City, Agusan del Sur and del Norte, and Surigao del Sur and del Norte)	62,267.91 ²⁷

Another 392,462.52 hectares has been covered by 51 EPs. Breakdown is as follows:

REGION	AREA (in hectares)
Region II (Batanes, Cagayan Valley, Isabela, Nueva Vizcaya, and Quirino provinces)	148,900
Region XIII (CARAGA Administrative Region, Butuan, Surigao City, Agusan del Sur and del Norte, and Surigao del Sur and del Norte)	80,22.90 ²⁸

EPs, an MPSA and FTAA abound in Kasibu town, Nueva Vizcaya. Six mining companies, namely Climax-Arimco; Dalton Pacific Resources; Red Earth Mining; Lasseter Mining; St. Patrick Mining and Development; and Oro Philippines (Walpole, 1999)²⁹ have either had their applications cleared or awaiting approval.

The areas covered by these EPs, MPSA and FTAA overlap or are within the following classification of areas: watershed reservation; part of a watershed project; being claimed under the certificate of ancestral domain claim (CADC); integrated social forestry; pasture lease agreement; proposed reforestation project; and proposed community forestry programs.³⁰

The Mining Act of 1995 is being hailed as a progressive law compared to previous mining laws. For one, it is claimed that the provision requiring social acceptability and FPIC would ensure consultative and democratic processes with the people to be affected by mining. Best practices in mining would supposedly be encouraged by its implementation. Finally, provisions instituting social development and safety net components, e.g., social and community development plans and programs, and rehabilitation funds, would cushion or avert dislocations resulting from increased mining activities.

The findings of this research bear out a different picture.

Gold and copper mining in Ifugao and Bugkalot country

Climax-Arimco Mining Corporation (CAMC), a 100 percent-owned Australian company, wields an approved FTAA covering over 37,000 hectares located in Kasibu in Nueva Vizcaya and Quirino Province. Part of the area covered by CAMC's FTAA in Nueva Vizcaya and Quirino encroaches on the ancestral domain of Ifugaos and Bugkalots, the IP groups populating the area, and lands occupied by other groups such as the Ilocanos, Tagalogs and Visayans .

Didipio is a barangay of Kasibu town, Nueva Vizcaya province, with a total land area of 8,500 hectares. Within this can be found the 729-hectare Dinkidi ore body located in Bacbacan where the CAMC operate an open-pit mine for its gold-copper project. The company is expected to implement a 2.0 million tonnes per annum block cave operation or approximately 5,500 tonnes per day over an eight year period of operation.

Aside from this open pit site, CAMC has proposed the construction of an 800 meter-long diversion tunnel, which will directly affect Surong and Camgat. Approximately one-and-a-half kms of the Dinauyan River and valley will be filled with waste rock and tailings.

A mine tailings dam being proposed for construction in Dinauyan could cover an area approximately 170 to 200 hectares. Once built, the tailings dam could impound approximately 17 million tonnes of tailings over the period of the mine operation.

The FTAA for CAMC's Gold-Copper Mining Project was approved on June 20, 1994 but the company has been operating in Didipio since 1989. CAMC claims to have undertaken the following activities in the area:

- Geological mapping in the provinces of Nueva Vizcaya and Quirino;
- Geochemical analysis of more than 25,000 samples of rocks, soil, stream sediments and drill core;
- Over 40,000 meters of mineral core drilling and other exploration activities; and
- Establishment and maintenance of a community relations office for its Didipio Project.

The first five years was supposed to be devoted to exploration and feasibility studies, after which, CAMC would have to make a minimum expenditure commitment for investment of US\$50 million. The revenue sharing will start after recovery of the pre-operating expenses incurred by the contractor. The Philippine government gets 60 percent while the mining contractor will get 40 percent. Total investment of CAMC in the project is expected to reach US\$150 million.

Nickel mining on the edge of the Pacific

Hinatuan Mining Corporation (HMC) is owned by the Zamora brothers who are widely believed to control the Philippine nickel industry. Ronaldo Zamora used to be the chairman of the board of HMC as well as former director of Rio-Tuba Nickel Mining Corporation in Southern Palawan. His positions in these mining corporations are now held by his brothers and relatives. Manuel B. Zamora, Jr. is president of Rio-Tuba while Salvador B. Zamora II is listed as the president of HMC and president of Taganito Mining Corporation, which also has mining interests in Taganito, Claver in Surigao del Norte.

Ronaldo Zamora is described as a “skillful political operator.”³¹ He was one of the most powerful government officials during the Marcos era. Still influential after Marcos was deposed, he became assistant majority floor leader during the Eighth Congress under President Corazon Aquino’s term. He then moved on to take up the post of executive secretary during President Joseph Estrada’s, short-lived administration..

HMC’s MPSA was approved on October 28, 1992 and expires in October 2017. Being an open-pit mining operation, the company was required to get an environmental compliance certificate (ECC). This, it obtained on November 17, 1992, barely 19 days after the approval of its MPSA. The ease and haste with which this happened has raised serious questions about the Zamoras’ political power and influence and how this is being used to secure government permits, grants and agreements for HMC’s operation.

HMC’s nickel mining project covers more than 1,100 hectares, which is practically the entire land area of Manicani Island, Eastern Samar. The island is composed of four barangays— Buenavista, San Jose, Hamor-awon; and Banaag—, which is home to more than 3,000 people.

Summary of Impact Findings

Residents of Didipio and Manicani Island, IP groups, environmentalists and political activists, and various other stakeholders are divided on the issue of the Philippine Mining Act of 1995. Some groups are pushing for RA 7942’s repeal while others see it as a better law compared to the old mining code.

Those opposed to the law view it being essentially contradictory to the concept of ancestral domain rights for indigenous peoples. Others reject the law because it opens up vast tracts of lands to local big business and multinational ownership, a factor that has often meant ecological destruction and economic socio-cultural dislocation for IPs whose ancestral lands are lie in the of way of mining grants. Still others reject the law for its “overly” liberal provisions and incentives. These include wide area coverage (as much as 81,000 hectares); the long period of effectivity of FTAAAs and MPSAs (25 years renewable for another 25 years); tax holidays of from five to 10 years; tariff free importation of equipment and tools; investment guarantees such as full repatriation of investments, full remittance of earnings and freedom from expropriation.

On the other hand, those who support RA 7942 hail it as a progressive piece of legislation owing to some “positive” elements that could benefit communities in mining areas. These include provisions for social acceptability and the concept of FPIC; the employment of best practices in mining technology; and others related to social development and safety nets.

The research findings point to the need for a more intensive review of RA 7942 by the broadest possible spectrum of civil society. This, with the end in view of arriving at a consensus as to what to do with the law, given limitations and weaknesses particularly in the following areas:

Social Acceptability and Free and Prior Informed Consent

The Implementing Rules and Regulations (IRR) of RA 7942 requires the conduct of public information campaigns to get the consent of host communities for proposed mining

projects. According to the rules, FPIC should be obtained through a process that is “free from fraud, external influence and manipulations.”

Supporters of RA 7942 aver that the law’s social acceptability and FPIC provision can be used by IP and other stakeholders to get concessions and commitments favorable to their communities from mining corporations. This, opposers insist, cannot be done in the light of social and structural factors affecting IPs, which prevent them from using such provision for the purpose “bargaining”. Such factors include social underdevelopment, national oppression and government neglect, which put them at the mercy of more powerful forces like big business and multinational corporations.

Moreover, this research has established the FPIC process as being ridden with irregularities. As a rule, mining corporations do not bother to hold public dialogues that the law requires to get the consent of communities for mining projects. They do so only in the face of strong public protest and they resort to tactics that influence public opinion in favor of a proposed project. Such tactics include barring anti-mining members of host communities from public dialogues or limiting attendance to only those who favor a mining project. Some companies have even resorted to bribery, deception, and in certain cases, outright intimidation and violence.

In the case of HMC in Manicani Island, Eastern Samar, the company’s efforts to obtain FPIC for its nickel mining project has been beset by irregularities like preventing “anti-mining” advocates from entering a room where a public dialogue was being held; providing short notice of dialogue (a day before) apparently to discourage attendance especially by anti-mining advocates living far from the dialogue site; and, deliberately snubbing a dialogue they knew would be attended by anti-mining advocates;

In the case of CAMC in Nueva Vizcaya, the company hired members of the Didipio barangay council as community liaison officers, paying them salaries ranging from P5,000 to P7,000 for ordinary council members to as much as P10,500 for the barangay captain. A clear case of bribery, CAMC’s placement of the barangay government under its employ ensured the community’s consent for the company’s project enshrined in a memorandum of agreement that council members promptly signed.

Best Practices in Mining

To date, all FTAA and MPSA applications call for the use of open pit mining or a combination of open pit and other methods of extraction. Open pit mining is not considered “best practice”. In fact, it has been banned since the 1970s and 1980s in countries like the US and Canada on account of its adverse ecological and social impacts. It is only allowed in unpopulated areas like deserts. FTAA’s and MPSA’s thus are in direct contravention of RA 7942’s own provision for the employment of best practices in mining.

Social/Community Development

The IRR of RA 7942 require mining companies to implement training programs and establish training facilities for mine employees as well as other members of the community. They also stipulate the establishment of livelihood industries; the provision of assistance in the

creation of self-sustaining income-generating activities (IGA), and/or the preservation and enhancement of traditional self-sustaining IGA.

CAMC claims to have implemented the following training and livelihood projects as part of its compliance to RA 7942's requirement for manpower skills training and livelihood development:

- Training on driving and operating heavy equipment (e.g. pay loaders, backhoe and bulldozers);
- Tilapia-raising;
- Mushroom culture;
- Backyard gardening;
- Cattle and goat breeding;
- Pig dispersal;
- Training on "beauty culture," baking, food processing, etc.

CAMC is supposed to have also conducted several training seminars on project proposal-making, bookkeeping, accounting, business development, investment and financial management for further assist residents of the host community who have received compensation packages from the company. There is no available data on the how these training seminars have been conducted. Questions have been raised about CAMC's credibility in counseling residents about "appropriate investments" in light of an unsuccessful small-scale pig dispersal project that it has implemented.

There is a need to remind the community that CAMC is not these social/community development projects out of the goodness of its corporate heart. The cost of implementing these programs and projects are negligible compared to the hundreds of millions of dollars they expect to earn from the mining venture. Moreover, the expenses for these social development components are deductible from the gross earnings and will therefore affect the computations of the shares in the earnings that would accrue to the community as well as to the government.

CAMC has expressed its desire to explore Community-Based Forest Management (CBFM) and Steep Agricultural Land Technology (SALT) with government agencies like the DENR and the Department of Agriculture (DA) as possible approaches to developing businesses for the host community. It has commissioned a multinational consulting firm called Coffey Partners, Inc. to draft a Community Business Development Plan (CBDP) integrating such approaches. The plan, as drafted, calls for programs and projects is now being questioned as to its appropriateness, viability, sustainability, gender and cultural-sensitivity.

Anti-mining advocates doubt the viability and sustainability of programs and projects contained in CAMC's CBDP in light of the ecological impact of the company's mining operations. In the first place, such projects are designed with the development of mining in the area in mind, thus precluding other development alternatives.

The way the Community Business Development Plan was processed with the community is also in question. CAMC commissioned Coffey Partners to prepare the CB DP in 1997. In March of that year, two Coffey consultants met with representatives of CAMC's community relations office and three members of the Didipio barangay council to get to know the

community's needs and aspirations. This was shared by the three council members, a fact denounced by critics as mere tokenism since participatory planning, which the drafting of community development plans requires, calls for substantive involvement by community residents. This, particularly if the planning involves decisions relating to the disposal and management of environmental resources.

That CAMC was able to conduct a consultation process of such low public participation as the one implemented by the company's development planning consultants in Didipio highlights a basic infirmity of RA 7942: it does not provide major stakeholders like indigenous and forest peoples communities and other host communities the right to vote and to be represented in the body that recommends the granting or denial of ECCs as well as FTAAs, EPs and other mining permits). Under the law, it is the President of the Republic of the Philippines who approves FTAA applications. And it is the DENR Secretary and the directors of the EMB, the MGB and other government line agencies who grants ECCs, EPs and other mining permits.

A progressive mining code should engender increased public participation in environmental decision-making and management. It should be consistent with the spirit of DENR'S Department Administrative Order (DAO) 37 (series of 1996), which defines public participation as:

a transparent, gender-sensitive, community-based process involving the broadest range of stakeholders, commencing at the earliest stage of the project design and development, and continuing until post assessment and monitoring which aims to ensure the social acceptability of the project or undertaking.

There is also the need to ensure that the best or most appropriate methods are employed in the conduct of public consultation activities so as to maximize genuine and substantive community participation. This may be difficult to accomplish given the pressures from multilateral development and finance institutions and international trade regimes controlled by entities whose interests are premised on liberalization. Moreover, the vast resources of multinational mining corporations are used to lobby senators and congressional representatives to enact mining legislation favorable to the mining companies. The situation becomes even more complex when there are politicians and high government officials that have vested interests in mining.

A more in-depth study on graft and corruption and the environment, specifically in relation to mining, is also in order. Mining, being a very lucrative economic activity, is prone to graft and corrupt practices. It has also made the DENR, the government agency under which direct supervision mining as an economic activity falls, one of the most graft-ridden in the Philippines. The Philippine Center for Investigative Journalism (PCIJ, 2000) has done investigative reports on "irregularities that arise from flawed policies, ineffective implementation of policies, the political influence wielded by powerful officials, or the lobbying of corrupt officials within the DENR."

Meanwhile, at the local level, DENR regional office and field personnel have been found to be actively and aggressively helping mining company personnel in convincing the people to accept the mining project. Assuming no wrongdoing on the part of these DENR personnel, the

practice further disadvantages host community residents, usually indigenous/forest peoples, who have limited substantive participation in the decision-making processes.

An additional social/community development concern is the need for host community residents to be provided with environment-friendly livelihood alternatives that wean them from destructive practices that worsen the ecological impact of mining operations. In the case of Manicani Island, residents have to be informed and educated about fishing methods like blast and cyanide fishing that further destroy an environment already compromised by mining activities. For Didipio, Kasibu, Nueva Vizcaya, environment-friendly agricultural technology such as organic farming might be a suitable alternative that could go a long way in easing the production and economic problems of residents.

RA 7942 also needs to be reviewed in the light of the following impacts of mining projects approved under this law, to wit:

A. Impact on the Environment

HMC's mining operation has adversely affected biodiversity in Manicani Island, which is part of Guiuan, Eastern Samar, the town declared in 1994 as a protected seascape and landscape under Presidential Proclamation No. 469. Specific negative effects include:

- Decreasing volume and variety of marine life in Manicani Island, considered one of the main breeding grounds in the region of numerous fish varieties. Tortoises, various kinds of shellfishes and sea cucumbers also abound in waters surrounding the island.
- Loss of materials like *tikog* and *bariw* used in mat-making, once a leading cottage industry in the area;
- Contamination of the island's potable water sources, including springs, which abound in the area;
- Loss of topsoil due to the bulldozing of mountains inherent in the open-pit method of mineral extraction; consequently, this has affected the fertility of the agricultural land;
- Pollution of water bodies, which used to be leisure and recreation sites of residents;
- Increased vulnerability to landslides and flashfloods especially during typhoons; given that Samar is part of the typhoon belt; and
- Increased competition among fisherfolk for the area's dwindling marine resources (due to laterite pollution and overfishing), forcing many of them to resort to destructive practices like blast and cyanide fishing.

In the case of Didipio, CAMC's gold and copper mining is located at the center of the Addalam River Watershed Area and thus constitutes a serious threat to neighboring ecosystems of Nueva Vizcaya and Quirino provinces.

B. Impact on Sources of Livelihood and Subsistence

HMC's mining operation in Manicani Island has deprived its residents of sources of subsistence and livelihood. Specific effects include:

- Loss of forest materials, e.g., wood, bamboo, used to make fishpens and for firewood and house construction due to mining-related forest denudation;
- Loss of marine sources of food and livelihood due to laterite pollution coming from HMC's siltation ponds; marine-based economic activities that have been severely affected include:
 - a) Sea cucumber-gathering, which used to be a lucrative activity for residents with the marine creature fetching a market price of P800 per kilo;
 - b) Seashell-gathering, an important income source for local women who use the shells to make ornamental items for sale to tourists; laterite poisoning has led to a decline in the seashell population of Manicani Island's seashore;
 - c) Seaweed farming, with the destruction of seaweed farms due to laterite overflow from HMC's siltation ponds;
 - d) Swidden agriculture, with the destruction by bulldozing or burning of farms devoted to crops for domestic consumption such as sweet potato, pineapple, jackfruit and vegetables; residents are now discouraged from farmings because mining has not only destroyed their farms but has also affected the fertility of the soil in the area.

C. Impact on Health

HMC's mining operations and its attendant pollution has caused a sudden rise in the incidence of cough and colds, and other respiratory diseases, especially among the youth of Manicani Island. At the height of the mining operations, which involved massive earth movement—open pit diggings, hauling and shipment of soil and the traffic of truck and heavy equipment vehicles—almost all the children in the affected communities suffered from respiratory diseases.

D. Impact on Gender

The loss of nearby sources of potable water and firewood has made the lives of the people more difficult. It has been especially difficult for women who now have to spend more time fetching water and gathering firewood, time which could have been devoted to livelihood activities or afforded the women a brief rest period. Being the primary caregivers and homemakers or home managers, they are also the ones responsible for caring for the sick, especially during the outbreak of mining-related respiratory diseases. The loss of sources and

means of livelihood and subsistence for both the men and the women has made the latter's task of managing the home and caring for the family more difficult.

One positive thing that has happened is that the anti-mining campaign has provided the women of Manicani with opportunities to take a more active role in decision-making processes. Several of Manicani womenfolk have taken on leadership roles in community organizations.

E. Impact on Social Unity

The entry of HMC in Manicani Island, Eastern Samar and CAMC in Didipio, Kasibu, Nueva Vizcaya has contributed to social disorganization. Social solidarity and cohesion has been greatly undermined by conflicts engendered by issues surrounding the mining projects. Neighbors have clashed against neighbors, kin against kin. No amount from the Environmental Guarantee Fund can rebuild social relationships that have been severely damaged.

In Manicani Island, the conflict has become very intense that it resulted in the death of an HMC engineer during a violent confrontation between anti-mining and pro-mining groups. Pro-mining elements had, on several occasions, threatened the life of parish priest and anti-mining leader Fr. Dan Ganas, forcing him to flee the area.

It will take a long time for the social wounds inflicted by mining operations on the people of Didipio, Kasibu, Nueva Vizcaya and Manicani Island, Eastern Samar to heal. The wounds will stay long after the mining companies have left the area.

Recommendations

A. On Developing an Alternative to RA 7942

RA 7942 was clearly crafted with the end of liberalization and structural adjustment in mind. But if only for its provisions on social acceptability and FPIC, the law is better than its predecessors. Nevertheless, development of a unified critique and set of advocacy points is needed to form the basis for an alternative mining code. This can be done through the conduct of a more intensive review participated in by the broadest spectrum of stakeholders. The review could also be the basis for the development of a broader-based movement to fight and hopefully put a stop to liberalization and beyond this, to all destructive mining operations in the country.

There is need for a policy instrument incorporating the critique and advocacy points relating to an alternative, more progressive mining code. This policy instrument, not RA 7942, should be made the basis for crafting the alternative code. RA 7942 is clearly foreign company-oriented and if used as a framework of the alternative code, will only lead to a repeat of existing code's infirmities. Besides, using RA 7942 as basis will defeat a call that may eventually have to be made for the repeal of this law.

Repeal of RA 7942 can be pursued on grounds of unconstitutionality or illegality based on provisions of other laws. The constitutional provisions on the rights of indigenous peoples to their ancestral domain and to self-determination represents one excellent opportunity for discrediting RA 7942. A scanning of the policy environment for existing laws that could serve such a purpose, e.g., the laws on protected areas, local governanc and indigenous peoples' rights,

and agrarian reform, needs to be done. Likewise with the need for research on other existing laws that could be used to strengthen or support RA 7942. Examples are former DENR Secretary Cerilles' Executive Orders (EOs) on liberalizing ECCs and former Pres. Estrada's EOs barring the lower courts from issuing TROs on so-called "national priority projects," which includes infrastructure and mining projects.

B. On Social Acceptability and FPIC

The liberal concept of FPIC assumes equal footing between the negotiating parties, i.e., mining companies and host communities. This is, however not possible given existing structural inequities that place host communities at a disadvantage. Such a formula can work only if a community is highly politicized or have a certain degree of political consciousness.

Since the areas opened up for mining explorations are the areas most neglected by government in terms of social services, there is a need to bring in the issue of governance. The role of government must be included in the analytical framework. Basic social services must be given in the community to minimize undue advantage or the leverage of mining corporations, which wield huge resources that can be used to provide social services. The role of civil society organizations (CSOs) is crucial in pressuring government to do its work for the welfare of the people.

FPIC or at least, the idea that the affected community or people must have a part in the approval and monitoring or regulatory process, is indispensable. Given the weakness or virtual absence of the national government in these areas, the provisions on social acceptability and FPIC, albeit with limitations, are all that the affected communities have in terms of obtaining "equal footing" vis-à-vis the mining companies. That is why the process should be one that is truly "free from fraud, external influence and manipulations;" and which the community is comfortable with because it effectively empowers them, and is based on their local culture and processes.

Given these contexts, the need to institutionalize "social acceptability" becomes a priority concern. The review should explore the possibility and work towards the institutionalization of social acceptability, not just in the alternative mining code to be drafted but also as a separate law.

The review of RA 7942 should also be a venue for the formulation of clear guidelines to ensure that the process of obtaining FPIC is truly "free from fraud, external influence and manipulation." The guidelines should be like a "checklist of the DOs and DONTs and HOW TOs of social acceptability". The guidelines should:

- Identify who should be involved in the acquisition of social acceptability and free and prior informed consent;
- Pinpoint appropriate mechanisms and processes for establishing social acceptability;
- Identify appropriate indicators or measures of social acceptability;
- Identify valid proofs of social acceptability, including those that indicate the best or most appropriate methods in the conduct of public consultation activities because they encourage and maximize genuine and substantive community participation.

The review should also lead to the establishment of mechanisms and procedures that would enable local communities to reject or terminate mining grants and ECCs, especially given negative impacts and/or the mining corporation's non-compliance with requirements, such as what had been experienced in Manicani Island, Eastern Samar.

It is recommended that civil society come up with its own technical group that would serve as a counterpart and a foil to environmental consulting firms hired by mining companies to develop and implement strategies for obtaining social acceptability and FPIC. Gaia South, a firm headed by former DENR Secretary Fulgencio Factoran, Jr. was one such consulting firm hired by CAMC to recruit and train liaison personnel from the host community. The civil society technical group would specialize on technical matters (social sciences and physical sciences), as well as on legal matters, for use in providing assistance to the community. Four members of the CASA workshop group on IPs and Environment have volunteered to be part of the Technical Pool. These participants have backgrounds in metallurgical engineering, geology and biology.

C. On Best Practices in Mining

Aside from utilizing open-pit mining technology, CAMC claims it does not use mercury or cyanide in processing the minerals. Such a claim needs to be investigated especially in the face of the fact that gold and copper cannot be processed without cyanide and mercury. There is also a need to follow up results of inquiries regarding the reagents that CAMC is using in its flotation and gravity method of purifying extracted minerals.

Granting that CAMC can indeed process gold and copper without using cyanide and mercury, the community should strictly monitor the company's compliance. Given that a company's mining project would entail huge investments running in the hundreds of millions of dollars, the logical tendency is to maximize recovery of investments and profits by using the most "cost-efficient" technology. The host communities should guard against the possibility of the company cutting corners in this area. Monitoring the mining company's strict compliance with the provisions of the environmental impact study and the ECC is an imperative. CAMC's track record in other countries should also be checked. Civil society contacts and networks in Australia can help in this.

There is a need for more appropriate monitoring structures and mechanisms for ensuring democratic participation of all the stakeholders. Relevant to the encouragement of best practices in mining is the issue of the residents of the host community and other stakeholders' capability to make competent analysis of highly technical data such as those contained in the EIS, in the EPEP, EWP, etc. These bodies should be provided with the necessary logistics to enable community residents and other stakeholders to engage the services or seek the assistance of impartial and credible technical expert/s who could help them in making evaluations and assessments on technical matters related to the mining project. It is in this area that the technical group to be constituted would be extremely helpful.

The composition of the MMT and the MRF Committee should also be reviewed for proper stakeholder representation in these decision-making bodies. Mining companies have been known to stack these bodies with members who are in favor of mining.

D. On the Need for Additional Research

Research findings point to the need for a more in-depth study on graft and corruption and environment, specifically in relation to mining. More investigative reports such as those done by PCIJ on “irregularities that arise from flawed policies, ineffective implementation of policies, the political influence wielded by powerful officials, or the lobbying of corrupt officials within the DENR” should be encouraged and supported. Additional research must also be done on mining-related graft and corruption at the local level to expose the reported practice of many DENR regional and field personnel in actively campaign for community support of mining projects. This has placed community residents in a more disadvantaged position in decision-making about such projects.

Action Points on Behalf of the Didipio and Manicani Island Communities

A. Networking

Efforts should be exerted to establish a network that will conduct and oversee campaigns against mining projects in Didipio, Kasibu, Nueva Vizcaya and Manicani Island in Eastern Samar. The network could eventually be transformed into a task force on mining, not limited to issues to the two geographic areas. The network could then conduct multi-pronged advocacy such as legal, technical, investigative, and media work to project the issue at the national and international levels.

Several organizations have already signified their intention to join the network. These include: Task Force Detainees (TFD); Philippine Rural Reconstruction Movement (PRRM); Cooperatives Foundation of the Philippines, Inc. (CFPI); and Institute for Studies in Asian Church and Culture (ISACC), Freedom from Debt Coalition (FDC) and Legal Rights and Natural Resources Center-Kasama sa Kalikasan (LRC-KSK). From this initial offer of participation, it appears that the campaign will have legal and advocacy components.

A Technical Support Group should also be constituted to assist the residents of communities targeted for mining exploration. As of the last thematic workshop, initial volunteers to this group were Ian Rivera (TFD) and Mon Padilla (CFPI) who have backgrounds in metallurgical engineering, Doy Orozco (PRRM) who is a biologist and Ezra Martinez (ISACC) who is a geologist. Other volunteers will be invited to become part of the technical support group. The group was scheduled to initially meet and plan activities in conjunction with the observance of International Earth Day in April 2001.

B. Development of IEC and Advocacy Materials

It is recommended that an information kit for the national campaign be developed. This would contain the CASA statement, a more popular version of the research findings, which could come in the form of stories on the cases of Didipio and Manicani Island, as well as the story of the successful campaign against the mining operations of Rio Tinto Zinc and Toronto Ventures, Inc. in Western Mindanao. The information kit could also include fact sheets, petition letters and statements of the residents in the communities targeted for mining exploration. Preparation of an information kit, which is periodically updated, is envisioned to facilitate the exchange of information among the would-be mining communities. Didipio, Manicani Island and DIOPIM

could exchange their stories among themselves so each community can learn from the others' experience, especially in how to successfully struggle against a foreign mining company.

C. Campaigns

A concerted campaign to halt mining operations in both Didipio and Manicani Island will be implemented with the following thrusts and components:

- Creation of national and international pressure on the mining firms concerned;
- Popularization of the CASA research findings on the issue (i.e., telling the story of the two communities), which could help generate support for the campaign against the mining projects;
- Conduct of an international campaign to provide information to potential investment partners of the mining corporations and discourage them from participating in mining ventures in the Philippines; in the case of CAMC's Didipio Gold/Copper mining project, this is timely since CAMC has finished its exploration stage and is seeking potential investors to finance its mining operations;
- Issuance of a statement or petition against the mining projects containing the CASA position on RA 7942 and the two communities' plight and resistance. DESAMA (Didipio Earth Savers' Movement Association) has already prepared a statement. It is recommended that this be broadened to include the Manicani Island situation. LRC and ELAC (Environmental Legal Assistance Center) could assist in the drafting of the statement or position paper. It was also suggested that the said statement/petition be submitted to the newly appointed DENR Secretary Heherson Alvarez, who is one of the authors of the mining code, to serve as test case on how he would take a position on the issue;
- The CASA network would assist DESAMA and Save Manicani Movement (SMM) in media liaison work—how to tap media to project the plight of the two communities to generate public opinion and public support;
- Holding of a Focal Activity on Earth Day (April 22, 2001). In Didipio, DESAMA would mobilize for a four-day rally, from April 17 to 20, 2001, in Cauayan, Isabela related to the Earth Day commemoration/celebration and the coal mining operations in the area. Another suggestion was the holding of a rally at the DENR, where participants would bring mud at the gates of the DENR to symbolize the destruction caused by mining operations. There was also a suggestion to coordinate with other environmental groups for the Earth Day Celebrations and other environmental campaigns; other creative activities and campaigns would be conducted in order to maximize media coverage and thus project the anti-mining campaign;
- In Manicani Island, there is an urgent need for specific intervention to put a stop to HMC's mining operations, which has resumed on March 19, 2001; HMC is reportedly operating even without a new ECC; there is a need to mitigate the environmental damages brought about by HMC's nickel mining project, before the ecosystems become irreparably damaged.

¹ Landingin, Anna Lorraine, A Compendium on the Philippine Mining Act of 1995 and Human Rights, Task Force Detainees of the Philippines. June 1998.

² Philippine Mining Conference 1997, as cited in Walpole, 1999.

³ Ibid.

⁴ *Mineral Policy Program, Program on Resources: Energy and Minerals*, East-West Center, Honolulu, Hawaii. The Philippine Mineral Sector to 2010: Policy and Recommendations, Dr. Allen Clark, Project Director. Asian Development Bank, Mineral Sector Study, T.A. No. 1894 PHI, October 10, 1994.

⁵ Ibid. p. xxxiv.

⁶ Ibid. pp. xxix-xxx.

⁷ Ibid. p. xxix.

⁸ Ibid. p. xxxiv.

⁹ Ibid. p. xliii.

¹⁰ Ibid. pp. xlvii-xlviii.

¹¹ Ibid. pp. xlix-l.

¹² RA 7942, Chapter V Sec. 26 (a).

¹³ Ibid. Sec. 26 (b) & (c).

¹⁴ Ibid. RA 7942, Chapter IV and VI.

¹⁵ RA 7942, Chapter IV, Sec. 20.

¹⁶ Ibid. Sec. 24.

¹⁷ Ibid. Sec. 23.

¹⁸ World Bank Op. Manual, Operational Directive 4.20 on IPs

¹⁹ Colchester, Marcus, Forest Peoples and Sustainability in The Struggle for Land, pp. 61-95.

²⁰ Ibid.

²¹ Ibid.

²² Ibid. Chapter VI, Sec. 34.

In March 1996, the Congress approved legislation that did away with the Negative List C and reduced the minimum paid-in capital requirement for foreign companies from \$500,000 to \$200,000.

²³ Ibid. Chapter XII and Chapter XVI.

²⁴ Mines and Geosciences Bureau, June 30, 1999.

²⁵ Ibid.

²⁶ Ibid. July 31, 1999.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Walpole loc. cit. p. 59.

³⁰ Ibid.

³¹ Ronaldo B. Zamora is considered a “skillful political operator” because of his ability to remain influential even with the changes in national leadership. He was considered one of the most powerful officials during the Marcos years and was a member of the “executive committee” which was considered Marcos’ de facto political junta. After Marcos was deposed and exiled in Hawaii, he remained to wield tremendous power as a member of the Eight Congress during the term of then President Corazon Aquino. During this time, he rallied 23 members of Congress to support Ramon Mitra’s (who was identified with Aquino’s political camp) successful bid for Speakership of the House of Representative and he was named Assistant Majority Floor Leader. He served as a key adviser in Mitra’s presidential campaign in 1992. When Mitra lost the presidential elections to Ramos, Zamora organized and led a group of members of Congress to support De Venecia’s election to be the Speaker of the House. Zamora then became majority floor leader; from Eric Gutierrez’ *The Ties that Bind*. Ronaldo Zamora served as President Joseph Estrada’s Executive Secretary. A few weeks before the ouster of President Estrada, he resigned his position giving the reason that he had to resign on account of his intentions to run in the May 2001 elections. He then became noticeably absent in Estrada’s circle and went to the U.S. reportedly for a medical check-up, during the last few weeks and days before Estrada was ousted from power. Political analysts are closely watching events and awaiting Zamora’s political moves in the merging political realignment and reconfiguration.