

## **The Situation of the Mining Industry in the Philippines**

*'We have seen the devastating effects of some of the mining operations: the spillages of mine tailings in Boac, Marinduque, in Sipalay and Hinobaan, in Negros Occidental, in Itogon, Benguet, and mudflows in Sibutad, Zamboanga del Norte. The adverse social impact on the affected communities, especially on our indigenous brothers and sisters, far outweigh the gains promised by large-scale mining corporations. Our people living in the mountains and along the affected shorelines can no longer avail of the bounty of nature.'* Statement of Catholic Bishops of the Philippines, 1998

The Philippines has abundant mineral wealth and has one of the leading global reserves in minerals such as gold, copper, nickel, chromite, iron, bauxite, marble and limestone, among many others and it is the fifth most mineralized country in the world, first in nickel and third in gold. There is an estimated \$840 B reserve in mineral deposits in the whole country according to the Mines and Geosciences Bureau and of its 30 million hectares in land area, 9 million or almost 1/3 has a high potential mineral reserve.

The mining industry in the Philippines is composed of large-scale metallic mining which is undertaken by large local and foreign corporations that employ sophisticated technology, small-scale mining practiced largely by marginalized local communities who employ labor-intensive traditional technology and non-metallic mining or quarrying of nonmetallic resources such as sand and gravel.

Large scale mining is capital intensive and highly mechanized. It can produce commercial quantities to satisfy the requirements of the export market and large industries on a regular basis. On the other hand, small-scale mining relies heavily on manual labor – ten times over that required by large scale mining -- and employs simple tools and methods.

There are, as of 2014, 46 large-scale mining projects in operation and 999 approved and registered mining agreements, covering nearly 900,000 hectares of land. In 2013, mining investment was US\$1.311 billion but their total export revenue is US\$3.42 billion since every US\$1.00 has a return investment of US\$2.61. Most of these areas are lands and communities owned by indigenous peoples, peasants and fisherfolk.

From 1997-2013 tax and shares from mining industry is only Php132.39 billion which is just 10% of the total production value of Php1.31 trillion of the same period. For every Php100.00 extracted from the Philippines only Php10.00 is returned to the government.

As to its contribution to the over-all employment rate in the country, the data for 2013 show that there was a decrease to 0.6% compared to 0.7% in 2012 and employed workers (most of whom are in small mining operations) decreased from 250,000 to 247,000 for the same period.

**Table 1: Data on the mining industry in the Philippines (from MGB-DENR. Mining Industry Statistics. 27 January 2014)**

	2011	2012	2013
Contribution to Employment	0.6%	0.7%	0.6%
Contribution to Exports	6.0%	4.9%	7.6%
Contribution to GDP	1%	0.7%	0.7%
Production of Metallic Minerals	Php122.98B	Php100.8B	Php45.9B

### ***Why has the mining industry not contributed to the development of the Philippines?***

Historically, the government has pushed for high levels of foreign investment and a more liberal mining industry, one that focuses on the extraction and export of raw materials, controlled by foreign and private entities and dependent on foreign capital and technology.

The laws most pertinent to the mining situation are: The Philippine Mining Act of 1995, the Indigenous Peoples Rights Act, and Executive Order 79.

#### Philippine Mining Act of 1995

On March 6, 1995 the government of the Philippines enacted Republic Act 7942, also known as the Philippine Mining Act of 1995 or An Act Instituting a New System of Mineral Resources Exploitation, Development, Utilization, and Conservation. It defined the government's intent to promote the "rational exploration, development, utilization and conservation" of the country's rich mineral resources through public-private partnerships. In the official view, the country's rich mineral resources were an underutilized source of economic growth. The provisions of RA 7942 purported to "enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities." However, this legislation allowed foreign control over the domestic mining operations and actually paved the way for even more foreign mining corporations to come into the Philippines and begin operations, with few roadblocks and massive opportunities for rewards for the corporations.

#### Indigenous Peoples Rights Act

The Indigenous Peoples Rights Act (IPRA) was enacted in the Philippines in 1997 as Republic Act 8371 in order to "recognize, protect, and promote the rights of indigenous cultural communities/indigenous peoples" (IPRA). It was originally seen as a very positive thing for indigenous communities, though over time there have been many loopholes identified that leave the communities open to exploitation and displacement.

According to IPRA, "the State shall protect the rights of ICCs (Indigenous Cultural Community)/IPs (Indigenous People) to their ancestral domains to ensure their economic, social and cultural well-being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain" (IPRA). When defining Ancestral Domains in the same document, it is said that "all areas

generally belonging to ICCs/IPs comprising land, inland waters, coastal areas, and natural resources therein” are owned by the indigenous peoples who traditionally lived upon them, even if they no longer occupy said land (Section 56).

It is even specifically said that if indigenous people are removed from their land “as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations,” the land will remain under the ownership of the indigenous groups. Unfortunately, this has proved untrue in almost all circumstances involving indigenous communities and mining corporations, even though the IPRA is supposedly legally binding. Indigenous communities are continually forced out of their ancestral lands because of mining activities, and their legal authority over the land is disregarded. They are not compensated for the changes to their culture, environment, and livelihood.

The language used in the Act is very strong and clear, giving the impression that indigenous people will have the authority over their land, yet, that is not the case. These communities are legally required to give their free, prior, and informed consent (FPIC) before anyone can operate within their territories. This regulation should give indigenous communities the control over the activities within their ancestral domain, but more often than not this regulation is bypassed altogether or the FPIC is gained through manipulation or bribery.

According to the Supreme Court of the Philippines, there is nothing in IPRA that specifically gives the indigenous communities the control over the natural resources found within their domain, even if they have control over the domain itself. It was concluded that the natural resources within these lands belong to the State and must serve to benefit the majority of Filipinos instead of one specific group. This would be an adequate principle if the resources were in fact going to benefit the majority of Filipinos, but they are instead solely benefiting one specific group, and that group is the mining companies. Even though the Supreme Court said they own the land, at the end of the day the indigenous communities are still being forced to leave or share their land with mining corporations, even if they are completely opposed to the operations.

### Executive Order 79

Executive Order 79 was created by President Benigno Aquino III to override the authority of local governments and give the national government full control of land use. It was passed with the premise that the current mining situation and environmental provisions have problems, but it does not accomplish much in terms of further protecting the country from the dangers of mining. However, Executive Order 79 reinforced the Mining Act of 1995 and decreased the power of local governments to oppose mining and act unilaterally within their domains. National law will prevail in any clash, thus further marginalizing local peoples even though they are the ones impacted by the mining operations. To make matters worse, Executive Order 79 does not mention doing anything about the vast human rights and environmental violations that are taking place because of the mining industry.

With these laws, the mining industry has remained export-oriented, dominated by transnational corporations and local elite, limited to extraction and export of ores, dependent on foreign capital, expertise and technologies.

Large-scale mining has directly caused community displacements, loss of livelihood, and human rights violations, especially among indigenous peoples (IP).

Indigenous peoples and peasants in many communities have resisted this wide-scale encroachment of mining corporations on their ancestral domain. They have also been actively supported by church groups, human rights and environmental activists.

This resistance has been met by different forms of human rights violations from the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). Paramilitary groups trained and protected by the AFP and composed of indigenous people now abound in Mindanao. Together with the Civilian Armed Forces Geographical Unit (CAFGU), the Special Civilian Armed Auxiliary (SCAA) and the Investment Defense Force (the IDF was created by former president Gloria Arroyo and allows state enforcement agencies -- military, Philippine National Police and paramilitary forces -- to be activated to defend investments in communication, power and the extractive industries), the paramilitary groups serve as force multipliers for the AFP in protecting big business intruding into the lands of peasants and indigenous peoples.

**Human rights violations** against communities of indigenous peoples, human rights defenders and environmental activists included the following:

- Forced evacuation in communities: in 2014 alone, there were 12 documented incidents of forcible evacuation in 39 Lumad communities, affecting more than 1112 families with over 4735 women, men and children. At present, about 700 Lumads (indigenous people of Mindanao) are in the grounds of the United Church of Christ in the Philippines in Davao City in Mindanao that has served as a sanctuary for them since they left their militarized communities in May of this year. Last July 23, the sanctuary area was forcibly entered by about 50 policemen and paramilitary troops to force the evacuees to return to their communities.
- Schools in Lumad communities have also become camps of the military justified by the AFP Guidelines/Letter Directive #25 and the Department of Education's Memorandum no. 221 series of 2013 that allowed the military to use the schools/educational institutions for military purposes, in the guide of civil-military operations. School activities have been disrupted since these were used as sleeping and cooking quarters by the military, pupils and teachers were threatened and even homes near the schools were forcibly entered by the soldiers. Indiscriminate firing on the community and illegal arrest have also occurred.
- Killings, frustrated killings and enforced disappearances: From July 2010 (since Benigno Aquino III became president) to December 2014, there are 7 environmentalists and 55 indigenous people killed and 1 indigenous person has been abducted and reported missing. Most of these were resisting the planned entry of mining and other business enterprises into their communities.
- As previously mentioned, paramilitary groups composed of some members of the affected communities have increased. These paramilitary groups not only sow terror but also divide the communities and are an affront to indigenous culture since the AFP go as far as

“baptizing” members of the tribe they coopted or coerced and some AFP officers as “datu” which breaks the customary laws on the selection of tribal leaders.

In Northeastern Mindanao, the actions of the paramilitary groups against the communities stemmed from the refusal of 16 datu (tribal chieftains) to sign a Memorandum of Agreement (MOA) with Malampay Mining in October 2013 since the chieftains knew that this would damage the environment and seriously affect their sources of livelihood. Since then, the villagers, their organization and the schools operated by the Rural Missionaries of the Philippines were tagged as “hindrance to the development of Lumad”.

- More than 500 leaders and members of people’s organizations and community members have also been falsely charged with criminal offenses. They are hunted down by state forces for speaking out against plunder and repression.
- Environmental activists are being subjected to legal harassment through Strategic Legal Actions against Public Participation (SLAPPs) which limits freedom of speech and the right to seek redress of grievances.

## **People’s Response**

The people are defending their communities in many forms – organizing into different organizations, lobbying in various government agencies and even to the UN bodies, through rallies and demonstrations. Some have taken other forms of defense such as waging the traditional tribal war.

The most recent action was that led by the Coalition for the Preservation of the Verde Island Passage that includes the Archdiocese of Lipa and its archbishop Ramon Arguelles. Verde Island Passage is the center of the center of the world’s marine biodiversity and has the highest concentration of marine life which houses various species of fish, corals, dolphins, sea turtles, humphead wrasses, giant groupers, giant clams, flying fish and luminous plankton.

According to the Coalition, the area which stretches through the coasts of Batangas, Mindoro, Romblon and Marinduque, is currently facing threats from upcoming mining activities and possible coal-fired power plant operations in Lobo, Batangas because Lobo’s current Vice Mayor, together with the Municipal Council and 10 barangay captains, recently endorsed a mineral production sharing agreement (MPSA) to Mindoro Resources Limited-Egerton without public consultation.

Several local governments have supported the calls of people’s organizations to oppose development aggression, many against mining projects. From 1999 – 2012, ten provincial governments have imposed mining moratoriums ranging from 25 to 50 years and banned open-pit mining. In an island province in South Luzon, Romblon, the provincial government issued an indefinite moratorium on metallic mining.

The latest is the moratorium issued by the local council of the largest city in the world, Davao City last May 2015. The ordinance disallows any entity to engage in any business involving mining within Davao City. Section 5 of the ordinance states that “no approval shall be granted or issued by the city through its Sangguniang Panlalawigan (Provincial Board) to any person, natural or

juridical, to undertake any and all forms of mining operation in any area within the territorial jurisdiction of Davao City, except rocks and mineral substances classified under the quarry resources.”

A Writ of Kalikasan (Writ of Environment) which is a legal remedy to protect the right to ecology was proposed by the Philippine Supreme Court in its Rules and Procedures on Environmental Cases in April 2010. This has been tested by many citizens who have filed petitions for a Writ of Kalikasan in response to various environmental issues, including illegal mining operations in Northeast Mindanao.

Finally, a People’s Mining Bill or an *Act Re-orienting the Philippine Mining Industry, Ensuring the Highest Industry Development Standards, and for Other Purposes* seeks to reorient the current policy on the ownership, management and governance of metallic and non-metallic minerals, quarry resources, and gemstones towards a rational manner for national industrialization and local development.

The bill upholds the Filipino people’s constitutional right to appropriately use, manage, and enjoy the benefits of the country’s mineral resources, considering these as national patrimony and as irreplaceable and non-renewable wealth.