



Philippine Mining It can Play a Positive Role

December 2003

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Business Forum, Inc.**

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GLOSSARY

AEPEP	Annual Environmental Protection and Enhancement Program
BOI	Board of Investments
CADCs	Certificates of Ancestral Land and Domain Claims
CADT	Certificates of Ancestral Land and Domain Title
CBCP	Catholic Bishops Conference of the Philippines
CLRF	Contingent Liability and Rehabilitation Fund
CMP	Chamber of Mines of the Philippines
CSDP	Community sustainable development plan
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
ECC	Environmental Clearance Certificate
EIS	Environmental Impact Statement
EP	Exploration Permit
ESSC	Environment Science for Social Change
FPIC	Free and prior informed consent
FTAA	Financial or Technical Assistance Agreement
ICC	Indigenous cultural communities
IEC	Information and educational campaign
IIA	Integrated Impact Assessment
ILO	International Labor Organization
IPP	Investment Priorities Plan
IPRA	Indigenous Peoples Rights Act
IPs	Indigenous peoples
LGU	Local government unit
MAB	Mines Adjudication Board
MGB	Mines and Geosciences Bureau
MINA	Mindanao Association for Mineral Industries
MMSD	Minerals, Mining and Sustainable Development
MPSA	Mineral Production Sharing Agreement
MRF	Mine Rehabilitation Fund
MWTFRF	Mine Waste Tailings Fee Reserve Fund
NAPC	National Anti-Poverty Commission
NCIP	National Commission for Indigenous Peoples
NGOs	Non-government organizations
NIPAS	National Integrated Protected Areas System
NRDC	Natural Resource Development Corporation
ODA	Official development assistance
SC	Supreme Court

PHILIPPINE MINING: IT CAN PLAY A POSITIVE ROLE

Executive Summary

The bottomline of our research is that mining, if it's responsibly done, can lift a community out of poverty, and provide income on a sustainable basis. And, in the main, the public and the local communities support responsible mining.

But almost all (although not all) the mining that has been done in the Philippines has not been done responsibly, and the environmental damage has been seen to more than offset any benefits.

So there is, understandably, considerable opposition to mining. Some of that has been from internationally supported non-government organizations (NGOs) with an overly purist vision of the world. And little appreciation of the social/economic needs of the Philippines. Some of it has been from senior members of the Catholic Church who have seen the ecological damage irresponsible mining companies have done, and have little faith in the government's ability to control the excesses.

And, in this regard, they are right. Government has been unable to control the bad practices of the local mining industry.

But instead of offering to help develop responsible mining they have sought to ban it altogether. It's rather like wanting to close down the airline industry because a plane crashes. Rather than improve the safety of planes.

What could help to change their minds is to take some key influential Church leaders in the company of the top government-mining officials to visit a world-class open pit mine that is being responsibly managed in, if possible, a Catholic developing country.

What came through clearly was that stronger local control is necessary, but local officials need to be trained in professional governance. And supported through an active national program of resource development in a responsible manner. And that national program should fall under a to-be-created **Department of Natural Resources** whose primary task is to develop and support the use of the country's natural resources. The Department of Environment and Natural Resources (DENR) would then become the Department of Environment, responsible for ensuring the environment is properly protected in all endeavours. This would eliminate the current conflict of interest of having the two disparate functions within the same group.

As an interim measure until a law can be passed, it is suggested an undersecretary be tasked with managing natural resource development within the DENR. Separated from the environmental functions.

The key to successfully developing the mining industry is to ensure that mining companies act responsibly and assist local communities to develop alternative income-producing activities that can continue after the mine has ceased operation. This is called "*sustainable development*".

Mines have a limited life, typically 20 to 30 years. That means two things: 1) they provide, and they do provide tremendous economic benefit to the local communities, but only do so for the life of the mine, hence the need for alternative economic activities; and 2) they most adversely affect the environment for that period. After which the land can be rehabilitated and redeveloped for other productive uses.

A forest cut down, for example, can be replanted. In fact, in a number of examples around the world the site can be put into better economic shape than before the mining operation. This is something oppositors to mining fail to recognize: the transitory nature of the operation.

There is also a great deal of confusion in understanding the difference between exploration and exploitation, particularly at the local community level. Local people think exploration is mining. So they think it despoils the environment (it has negligible impact – a few, random holes) and, that community development funded by the mining company should start immediately.

Yet exploration is a pure expense (no income) and in limited amounts – generally between US\$1 million and US\$10 million. So funds expended outside the operation just add to this expense.

When mining begins, the ability to help the local communities becomes more feasible, and affordable as revenues come in. But only up to a point. It is not a mining company's responsibility to develop a community, it is the government's.

But government has failed at this task – despite that 21% of the taxes paid are mandated by law to revert to the local communities. They don't remit as mandated. So the companies pick up the task. Unfortunately a mendicant attitude then arises that demands often beyond what is reasonable.

If non-mining costs become too excessive the company loses financial viability. Or, if yet to start, decides to invest in other countries where such demand does not apply.

Government also needs to review the complex approval process toward dramatic reduction in the process and toward much faster processing. Especially of permits for exploration – which should be simple. And it needs to straighten out the problem of overlapping mining claims.

Also needed is an authoritative mapping of indigenous peoples and their claim to lands, before any mining activity starts.

All of these reinforces the need for a top-level leader devoted solely to responsible mining development. Government has just been too weak throughout the system.

What is also missing is sufficient dialogue, both formally and, particularly, informally amongst the key stakeholders. A better coordination and rapport is particularly needed between national officials and local ones.

Also critically important is that mining companies research well and choose carefully the local people who will assist them in interacting with the local officials and communities. And it is essential that they do get such assistance.

Bad mining legacies – abandoned mines that continue to pose environmental and health hazards – need to be addressed to reduce public opposition to in the industry. But with no past record of effective rehabilitation efforts and no clear consensus on how to deal with the problem, stakeholder dialogues are being encouraged so that creative and broadly acceptable solutions can be identified, and undertaken. Efforts to find solutions should not stall the initiatives at reviving the mining industry in a responsible manner.

The Report hopes to contribute to the efforts of the national leadership to revitalize the mining sector by suggesting some measures for achieving this objective. Support to mining doesn't mean indiscriminate approval of mining projects, but a more judicious selection of, and consequently all-out assistance to, projects that have the best chance of promoting sustainable development. This principle guided the research work.

A SUMMARY OF KEY RECOMMENDATIONS

Mining development process

- The national leadership should assist local governments in their endorsement/approval of meritorious projects.
- Mining projects should be integrated into the provincial and regional development, land use and natural resource use plans.
- Funds must be provided for cultural mapping, with an independent group to do the mapping.
- The National Commission on Indigenous Peoples (NCIP) should set clear, measurable standards for what constitutes "*free and prior informed consent*" (FPIC).
- The issuance of the Certification Precondition by the NCIP should only be ministerial, as the Indigenous Peoples Rights Act (IPRA) requires.
- The Mines and Adjudication Board (MAB) needs to resolve overlapping mining claims more expeditiously.
- The social and cultural impact assessment should be integrated into the environmental impact statement (IES).
- Encourage more exploration by making it easy to get exploration permits (EPs).
- The mining permit approval process needs streamlining and simplifying.
- The government should assist companies in getting the procedures and their documentation right.
- The government should explore the possibility of setting up a "*one-stop shop*" for the processing of mining applications, with a "*special fast lane*" for large-scale projects with potential for demonstrating best practice operations. Particularly important given the low level of foreign investment today, and the urgent need to create jobs.
- The Administration should request the Supreme Court to rule on the constitutionality of the Mining Act, pending in court now for almost seven years.

Institutional aspects

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR)/
MINES AND GEOSCIENCES BUREAU (MGB)

- For greater efficiency, the DENR/MGB central office should focus on policy-making, development of guidelines and, supervision of the regional offices; while the regional offices should evaluate proposed mining projects and address day-to-day operating issues affecting mining activities within their jurisdiction.

- The agency should lead in the enhancement of the country's competitive advantage in mining. This can be done by the development of a reasonably comprehensive mineral mapping of the country; and coordinating with all concerned agencies and local governments to create an environment conducive to investments in "*mineralized provinces*."
- Establish the position of Undersecretary of Mineral Resources Development at the DENR, until such time as a separate Department of Natural Resources devoted to the development of mining can be enacted into law.
- Strictly enforce mining and environmental laws in a fair and equitable manner.

NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP)

- There is a need to choose NCIP Commissioners and officials more carefully
- The Commission should focus more on cultural mapping and issuance of the Certificates of Ancestral Domain Claim (CADCs)
- The Commission should facilitate the FPIC process more effectively

LOCAL GOVERNMENT UNITS (LGUS)

- Develop a transparent system of accounting for and allocation of their share in mining revenues
- Facilitate the identification of programs and projects for the mining communities
- Deliver basic services, in coordination with the national government, to the communities

LOCAL COMMUNITIES

- With support from other stakeholders (government, NGOs, mining companies, international agencies, etc.) the capacity of mining communities must be strengthened, particularly in the areas of:
 - Organizing the community for maximum participation in the internal decision-making process
 - Improving their capability to identify sustainable projects, rather than projects that are simply "dole-outs" or "cost centers"
 - Making the community gradually less dependent on outside help in initiating projects and managing their own affairs.
- Encourage community participation in stakeholder dialogues

MINING COMPANIES

- Local companies should adopt new, best practice models – e.g., minimising the environmental impact and rehabilitating the land when operations cease, and developing alternative sources of income for the local people that can replace income from mining once the mine closes
- Foreign mining companies should choose their local partners, consultants, etc. carefully and well.

Other suggestions

- Identify potential “*winners*” (large-scale mining projects where sustainable development can also be undertaken) and provide full government support to these “*winners*”
- Establish local trilateral stakeholder dialogues to discuss key issues on mining projects, formulate community sustainable development plans (CSDPs), and monitor and revise/update the CSDPs
- Conduct National dialogues to understand the views of the relevant sectors of society on mining, which could serve as input to the development of codes of conduct, benchmarks and standards, best practice models, IECs, etc.
- Some indigenous people organizations and key leaders of the church have visited mine sites in Canda two years ago to assess the benefits mining can bring. Such visits need to be continued with emphasis on officials from local communities where a mine is proposed. And on the more active oppositors.
- Mobilize NGO’s, in alliance with international institutions like Transparency International, as a watchdog of the mining industry. Encourage them to help in ensuring mining is done responsibly, not just oppose it totally.
- Conduct a continuing dialogue among key stakeholders that includes possible solutions to unfortunate mining legacies, striking a balance between rebuilding goodwill to affected communities and the public, and ensuring the viability of the industry.
- The government should compel mining companies that have abandoned mines to take responsibility for the environmental mess they left behind.
- Prioritize the rehabilitation of the various abandoned mines, taking into consideration the mines’ continuing threat to the environment and health, and the rehabilitation’s impact on employment generation, skills building and livelihood creation.
- Take concrete steps to address the continuing environmental and other problems created by abandoned mines, as a showcase of the commitment of key stakeholders —government, mining industry, relevant civil society groups, funding agencies, etc. —towards responsible mining.

1.0 PHILIPPINE MINING OVERVIEW

1.1 History

The fact that mining has been sustained for over five centuries, with its full potential remaining untapped, confirms that it is one of the “natural advantages” of the country.

The Philippines has a long history of mining.

Tribal communities in Cordillera, Masbate, and Camarines Norte dug for gold as a way of life and for their livelihood, trading the precious metal for their household needs with Chinese merchants long before the Spaniards came¹.

The Spaniards failed to develop mining in the country, but left behind one of the basic building blocks of the present-day mining laws – the Regalian Doctrine².

The Americans brought in large-scale mining, and successfully raised gold production up to a level higher than Alaska and second to California at one point³. They also opened up the commercial possibilities for copper, iron, nickel, chromite, mercury and coal. In 1938, there were at least 40 large-scale mining projects operated by 30 foreign companies (mostly American).

World War II devastated most of the major mining facilities, and it took almost a decade for full recovery to be achieved. But the industry emerged even stronger. There were almost 50 mining corporations in the 1950's, at least 40 of those Filipino controlled⁴. And although gold performed poorly in the world market, this was more than offset by the strong performance of copper⁵.

It created a new law that fast-tracked the processing

The Marcos government pursued mining as “*the industry of the 70's*.”⁶ It created a new law that fast-tracked the processing of claims and the development of mining projects; guaranteed foreign loans taken out by local investors in minerals; and developed five-year, 10-year and long-term blueprints for the mining industry⁷. Hence, mining posted a high rate of growth from 1971 to 1981 with 45 mines operating that contributed 21% to the country's total export earnings in 1980⁸. But as the Marcos regime faded, so did mining, saddled by heavy debts due to the “*inadequate concern for [the industry's] competitiveness... and [the state-owned banks] inadequate appraisal capabilities*.”⁹

¹ Lopez, Salvador P. (1992) “*Isles of Gold: A History of Mining in the Philippines*,” pp. 3-13

² *Ibid*, pp. 19-42

³ *Ibid*, pp. 50-114

⁴ *Ibid*, p. 189

⁵ *Ibid*, pp. 214-215

⁶ *Ibid*, p. 264

⁷ Strongman, John E. (1987) “*Philippines: Mining Sector Review*,” *Executive Summary*, p. 13.

⁸ Cabalda, M. V., et al. (2002) “*Sustainable Development in the Philippine Minerals Industry: A Baseline Study*,” p. 7

⁹ Strongman (1987), p. 13.

Except for a brief boom in 1988-89, the mining industry struggled from the mid-80's through the 1990's. The Mining Law of 1995 was put in place to revive it, creating a more favorable climate (e.g., mode of entry options, enhanced incentives, etc.) for investments into the industry. But subsequent events (e.g., the Marcopper mine tailings spill (see page 48), the passage of (Indigenous Peoples' Rights Act) IPRA, challenges to the Mining Act, etc.) and the increasing complexity of issues facing the industry (emergence of advocacy groups, decentralization of government functions, etc.) prevented a fresh start.

Diwalwal is controlled by three groups

Small-scale miners succeeded where the large scale ones failed. Mining for gold flourished in abandoned mines of the Baguio district and Camarines Norte, but it was in the Diwalwal gold rush area in Monkayo, Compostela Valley where it gained prominence.¹⁰ From negligible amounts in 1983, gold production of small-scale miners accounted for at least 50% of the total by 1999 (Table 1-1). And almost certainly a lot more as most of the gold was smuggled out of the country. And in Diwalwal it is no longer small-scale but controlled by three groups. (see page 24)

Table 1-1. PHILIPPINE GOLD PRODUCTION
(Kilograms)

YEAR	TOTAL	SMALL-SCALE	LARGE-SCALE
1983	25,397	136	25,261
1984	25,727	1,254	24,473
1985	33,063	8,085	24,978
1986	35,427	11,440	23,987
1987	32,780	8,047	24,733
1988	30,492	7,292	23,200
1989	30,046	8,698	21,348
1990	24,591	5,510	19,081
1991	25,952	9,204	16,748
1992	25,609	7,852	17,757
1993	24,917	9,491	15,426
1994	27,307	12,413	14,895
1995	27,023	14,493	12,530
1996	28,234	15,656	12,578
1997	31,199	14,062	17,137
1998	34,038	19,859	14,179
1999	31,050	17,045	14,005

Source: Mines and Geosciences Bureau (MGB)

It is one of the "natural advantages" of the country

The fact that mining has been sustained for over five centuries, with its full potential remaining untapped (according to the Philippine Mineral Exploration Association, "the Philippines, by international standards, is under-mined" and can look forward to '25 new economic discoveries' over the next 10 years¹¹), confirms that it is one of the "natural advantages" of the country that can bring wealth to the country.

¹⁰ Lopez, Salvador P. (1992), pp. 339-340

¹¹ Luib, Romulo T. (18 November 1998). "Mining Sector Seen Booming in the Next Millennium," Businessworld Internet Edition, available at <http://codex1/bworld/articles/98/98111819.htm>

As the experience of the 1980's showed, mining will thrive, and continue to attract fortune-seekers even if the government chooses not to support it. So, if the government fails to take control, this could mean haphazard development, with adverse consequences to the environment, the health and safety of the miners, the social uplift of the mining communities, and government revenues – as Diwalwal has so clearly demonstrated. In essence, the country will squander the opportunity for marshalling this natural resource to maximize its contribution to overall economic development.

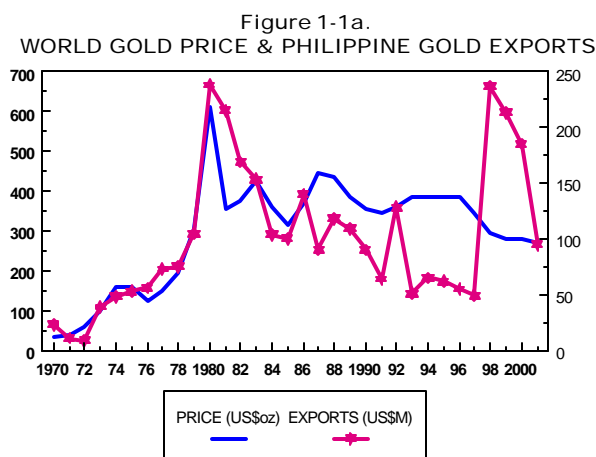
1.2 Performance

The country's metallic mineral output is mostly exported.¹² Even the copper ore processed at PASAR eventually finds its way into the global marketplace. Hence, mining's performance is essentially dictated by demand in the world market.

Philippine copper and gold exports (almost 70% of the country's mineral exports) generally tracked the volatility of prices abroad.

Philippine copper and gold exports (almost 70% of the country's mineral exports) generally tracked the volatility of prices abroad (*Figure 1-1a* and *Figure 1-1b*), although there were some years when other factors – policy, supply conditions of major mining firms – came into play. This was the case for gold in 1999 and 2000 when some companies shifted from copper to gold production because the high cost of production made it unprofitable to mine copper when prices fell sharply.

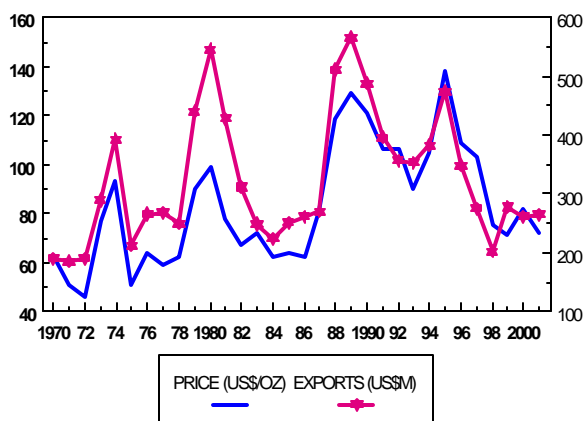
Total mineral exports, however, were able to hold up in dollar terms as a fall in the price of one commodity was offset by a rise in the price of the other. This also happened in 1987-89 and 1993-95.



Source: World Metal Statistics, National Statistics Office (NSO)

¹² Strongman, John E. (1987), p. 2

Figure 1-1b.
WORLD COPPER PRICE & PHILIPPINE COPPER EXPORTS

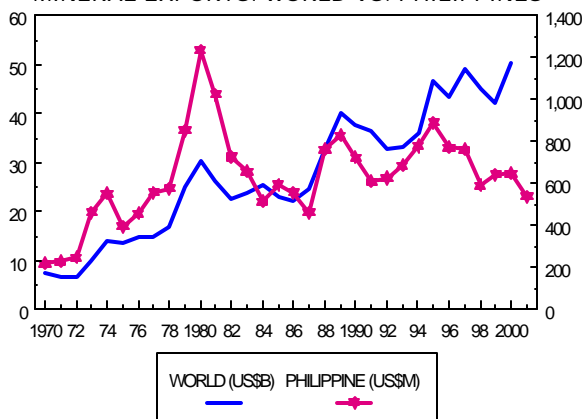


Source: World Metal Statistical, National Statistics Office (NSO)

While Philippine mineral exports were on a downtrend, world mineral exports were on an uptrend in the last two decades (*Figure 1-2*) due to the high cost of production coupled with a lack of foreign mining interest in the country.

While Philippine mineral exports were on a downtrend, world mineral exports were on an uptrend in the last two decades due to the high cost of production coupled with a lack of foreign mining interest in the country.

Figure 1-2.
MINERAL EXPORTS: WORLD VS. PHILIPPINES

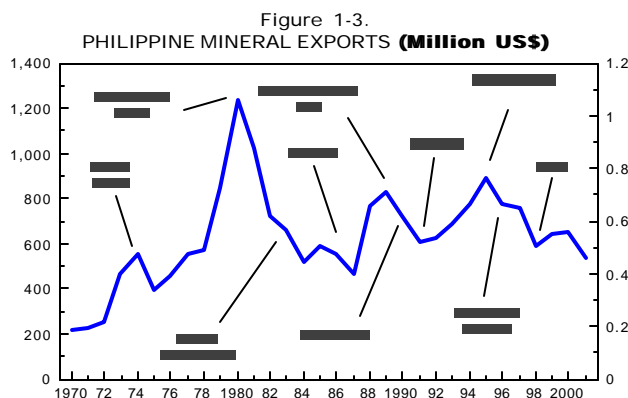


Sources: U.N. World Trade Statistics; National Statistics Office (NSO)

As already mentioned, there were some years when export performance didn't follow the global price trends. Government policy or domestic supply factors seem to have accounted for this anomaly. It should also be noted that gold isn't entirely exported; the central bank is also a major buyer. And some of the exports is unrecorded as a substantial part of the output of small-scale miners is smuggled out. So the buying pattern of the central bank and smuggling can affect the "fit" between exports and world prices.

The government's efforts to aggressively promote mining in 1974 worked.

The government's efforts to aggressively promote mining in 1974 worked, and led to a break in the export trend (i.e., a sudden jump) after 1972 (*Figure 1-3*). The government's ambivalence after the first EDSA revolt in 1986, however, put the fate of the industry back entirely to world prices. The passage of the new Mining Act in 1995 attracted over 20 mining companies but, in the end, didn't have much impact, because the project approval process became more tedious. And the law was challenged in court. Almost all of the companies left.



Source: National Statistics Office (NSO)

In 1990, a major earthquake struck the mining areas of the Baguio district rendering Benguet Consolidated out of commission. This showed up in adverse export numbers. The following year, the eruption of Mt. Pinatubo buried Dizon mines in Zambales with ash falls and mudflows. Exports dropped further.

Then a mine tailings spill led to Marcopper mine's closure in 1996. The industry lost its largest producer, and exports fell. In 2001, the number of large mines was down to two, with Maricalum and Philex's projects, both in Negros Occidental, among those that also closed. Medium-sized mines were down to five. This resulted in the worst performance of mineral exports (US\$537 million) in 14 years.

1.3 Contribution to the economy

1.3.1 Economic benefits of mining

Mining contributes to the economy in terms of increased employment, foreign exchange earnings and, tax revenues.

Mining contributes to the economy in terms of increased employment, foreign exchange earnings and, tax revenues.

The jobs mining creates are not only those directly employed in the mines, but also in other economic activities that depend on the mining industry. There is no up-to-date data on the multiplier effects of the mining industry. But based on old (1970-72) data, "for every direct employee of the mining industry, there were approximately 2.3 other workers in the Philippines in what can be considered as jobs supported by the mining industry."¹³ In leading mining countries, the multiplier effect can be as high as 14, although at worst it cannot be lower than one outsourced job per one direct employment in mining.¹⁴

¹³ Lopez, Salvador (1992), p. 368

¹⁴ Remy, Felix and Gary McMahon (2002). "Large Mines and Local Communities: Forging Partnerships, Building Sustainability," p. 5

Mining can help alleviate poverty

Mining can also help alleviate poverty. According to Walpole, *"the income of mining households are [sic] well above the poverty line and in fact 40% more than the wage rate prescribed by the government in the locality and 15% more than in the National Capital Region (NCR)."*¹⁵

And because almost all of the mines are located in remote areas, proponents have to invest in infrastructure and build self-contained towns, benefiting not just the mining community but also the neighboring villages. Mining built Baguio into one of the country's premier cities.¹⁶ The once sleepy town of Toledo in Cebu became a chartered city with the operations of Atlas Consolidated.¹⁷ This experience was replicated in other areas with large-scale mining projects.

Today, mining's contribution can only be discussed in terms of its past.

But today, mining's contribution can only be discussed in terms of its past.

Mining used to account for 2% of GDP in the mid-80's and almost 20% of exports in the early 80's. It directly employed at least 160,000 workers and paid an average of P700 million annually in excise taxes in the late 80's (Table 1-2).

But the industry has deteriorated steadily since the 1990's. By 2001, it was just 1% of GDP, hardly 2% of exports, employing only slightly above 100,000 and contributing taxes that barely exceeded P100 million annually.

As explained in Section 1.2, the decline of the industry was due largely to the low recovery rate (inefficiency) of most existing mines, making it difficult to cope with falling prices, and the series of natural disasters and accidents that led to the closure of a significant number of large mining projects. As debts piled up and with more capital needed, the chances for upgrading and re-opening the mines – at least those with remaining productive life – became remote. The mines remained closed.

The benefits of mining argue for its revival. But in order to thrive, the industry needs to be more competitive, and this can only be achieved if foreign mining firms come in with their funds and introduce new technology.

The benefits of mining argue for its revival. But in order to thrive, the industry needs to be more competitive, and this can only be achieved if foreign mining firms come in with their funds and introduce new technology.

A few new major mines were opened in the 1990's – e.g., Philex's Bulawan Project in Negros Occidental and Manila Mining's project in Placer, Surigao del Norte – but operated only briefly because of massive financial losses.

Mining is probably one of the few industries where local companies actually cry out for foreign investments.

¹⁵ Walpole, Pedro (1999), p. 45

¹⁶ Lopez, Salvador (1992), pp. 76-78

¹⁷ Ibid, p. 374

Table 1-2.
MINING'S CONTRIBUTION TO THE ECONOMY

YEAR	REAL GVA		EXPORTS		EMPLOYMENT		TAXES PAID (PM)*
	MILLION PESOS	% OF GDP	MILLION US\$	% OF TOTAL	'000	% OF TOTAL	
1970	4,955	1.5	220	20.8	51	0.4	—
1970	5,395	1.5	227	20.1	56	0.4	—
1972	5,409	1.4	249	22.5	58	0.4	—
1973	5,668	1.4	463	24.6	62	0.5	—
1974	5,544	1.3	555	20.4	44	0.3	—
1975	5,738	1.3	397	17.3	54	0.4	—
1976	5,886	1.2	459	17.8	56	0.4	—
1977	7,065	1.4	558	17.7	52	0.4	—
1978	7,318	1.3	576	16.8	61	0.4	—
1979	8,249	1.4	851	18.5	96	0.6	—
1980	9,128	1.5	1,235	21.3	130	0.8	86
1981	9,350	1.5	1,025	17.9	91	0.5	130
1982	9,165	1.4	727	14.5	78	0.4	162
1983	9,244	1.4	660	13.2	141	0.7	135
1984	8,959	1.5	516	9.6	133	0.7	124
1985	11,893	2.1	594	12.8	129	0.6	172
1986	12,313	2.1	557	11.5	152	0.7	128
1987	11,232	1.8	462	8.1	161	0.8	338
1988	11,704	1.8	764	10.8	160	0.7	500
1989	11,389	1.6	829	10.6	168	0.8	690
1990	11,091	1.5	723	8.8	139	0.6	730
1991	10,770	1.5	610	6.9	140	0.6	811
1992	11,495	1.6	627	6.4	147	0.6	202
1993	11,571	1.5	686	6.0	135	0.5	97
1994	10,763	1.4	780	5.8	111	0.4	81
1995	10,681	1.3	893	5.1	107	0.4	175
1996	10,522	1.2	772	3.8	113	0.4	58
1997	10,183	1.2	764	3.0	129	0.5	115
1998	10,624	1.2	592	2.0	119	0.4	124
1999	9,736	1.1	645	1.8	100	0.3	241
2000	10,708	1.1	649	1.7	110	0.3	243
2001	10,002	1.0	537	1.7	104	0.3	130

* No data prior to 1980

Sources: National Statistical Coordination Board (NSCB); Bangko Sentral ng Pilipinas (BSP); Department of Labor and Employment (DOLE); Bureau of Internal Revenue (BIR)

The full implementation of the Mining Act of 1995 could bring this about, as foreign firms help develop “*world class mines*.” These are mines that use “*best mining practice*”, are socially and environmentally responsible, and are technologically advanced.

One world class copper-gold mine (presumably large-scale) can generate almost US\$800 million in investment, US\$400 million in annual exports, and US\$80 million in annual tax revenues (*Table 1-3*). In addition, the mine pays US\$4 million yearly in royalty to indigenous people and spends around US\$1 million a year for community development, as mandated by the Mining Act.

Five “world class” mines could generate a total of US\$4 billion in investments, US\$2 billion in annual exports and US\$400 million in taxes. They could directly employ at least tens of thousands workers that earn well above the minimum wage.

The Supreme Court needs to resolve the case against the Mining Act

The Mines and Geosciences Bureau (MGB) sees the emergence of a ‘lean but mean’ mineral industry with 10 world class mining operations having an average commercial life of 20 years.¹⁸ Gerard H. Brimo, President of Philex Mining Corp., projected a conservative five world class mines with an average life of 28 years.¹⁹ These five mines alone could generate a total of US\$4 billion in investments, US\$2 billion in annual exports and US\$400 million in taxes. They could also directly employ at least tens of thousands workers that earn well above the minimum wage.

But in order to attain this vision, the Supreme Court needs to first resolve the case against the Mining Act of 1995 and the Financial or Technical Assistance Agreement (FTAA).

Table 1-3.
BENEFITS OF ONE “WORLD CLASS” COPPER-GOLD MINE
(Million US dollars annually, except investment)

BENEFIT	MGB	BRIMO	CORONEL (CTPMP)
Investment	740	800	740
Exports	400	400	390
Tax revenues	78.2	80	64.6
Salaries and wages	14.3	-	14.3
Royalty to indigenous peoples	3.8	-	3.9
Community development	0.9	0.6	1.2
Environmental protection measures	-	3.9	-

Sources: Cabalda, et al (2002); Caoile (2001) “Philippine Mining: Are You Part of the Solution or Part of the Problem?”; Coronel (2001), “Economics and Social Costs of the Constitutionality Issue of the FTAA and the Mining Act

1.3.2 The contrary view

Sachs and Warner concluded that “economies with abundant natural resources tended to grow less rapidly than natural resource-scarce economies,” while Ross pointed out that “higher oil and mineral dependence tended to reduce the country’s overall rate of growth” and also meant higher poverty rates and lower overall living standards.

New ideas have emerged recently challenging the thesis that mining is beneficial. The more influential works were done by Sachs and Warner (1997), who concluded that “economies with abundant natural resources tended to grow less rapidly than natural resource-scarce economies,”²⁰ and Ross (2001), who pointed out that “higher oil and mineral dependence tended to reduce the country’s overall rate of growth,”²¹ and also meant higher poverty rates and lower overall living standards. Ross blamed this on the long-term decline in mineral prices, the boom and bust nature of extractive industries, corruption associated with mineral wealth exploitation, the failure of the economy to diversify as a result of concentration of resources to the more lucrative mineral development, and the weak domestic linkage of mining.²²

¹⁸ Cabalda, Michael, et al (2002), p. 16

¹⁹ Caoile, Partick B. (2001). “Philippine Mining: Are You Part of the Solution or Part of the Problem?” pp. 14-15

²⁰ Sachs, Jeffrey and Andrew M. Warner (1995). “Natural Resource Abundance and Economic Growth.”

²¹ Ross, Michael (2001). “Extractive Sectors and the Poor,” p. 10.

²² Ibid, pp 10-15

Other researchers dispute these findings. The decline in prices of minerals could be due more to the improvement in mining technology. There is no evidence of any country suffering from over-concentration of resources on mining. Mining may be an enclave industry, but this is how it can be made efficient. The weakness of the government, rather than mining, should be blamed for most of the industry's failure to contribute to the economy.²³

On the issue of poverty, it could be the other way around: Poor countries plagued by civil wars, corruption and lack of government effectiveness have an economic structure based on primary (natural resource-based) production rather than manufacturing, because this is the best, often almost the only, thing that these economies can do.²⁴

But even the critics of mining agree that there are exceptional success stories (Sudan, Botswana, Cuba, Chile, Namibia, etc.), and that mining can be made beneficial under certain conditions.

Moreover, even the critics of mining agree that there are exceptional success stories (Sudan, Botswana, Cuba, Chile, Namibia, etc.²⁵), and that mining can be made beneficial under certain conditions. Ross identified these conditions as having a diversified export base, transparency and good governance, and a democratic and pro-poor government.²⁶

The World Bank, in fact, noted that:

*"Good performance [in mining] appears to be associated mostly with institutional stability and overall good economic management, particularly that relating to the management of revenues from the mining sector and the management of the sector itself."*²⁷

Unfortunately, some advocacy groups have taken only the negative aspects of these adverse views, and have led campaigns in developing countries to discourage large-scale mining. They disregard the fact that those whose ideas they adopt also said mining can work if certain conditions exist.

Global opposition is through a well-funded movement

Global opposition to large-scale mining has reached the Philippines through a well-funded movement exposing the ills of the industry. They have mainly focused on the destruction of the environment; displacement of families and deprivation of their livelihood; disregard for the rights of indigenous peoples; and, human rights violations. Some of these groups cite specific, field level cases of "misdeeds".

²³ Davis, Graham A. and John E. Tilton (2002). "Should Developing Countries Renounce Mining? A Perspective on the Debate," pp. 9-13.

²⁴ Ibid, p. 30.

²⁵ Ross (2002). "Comments on 'Treasure or Trouble? Mining in Developing Countries',"

²⁶ Ross (2001), p. 16

²⁷ Weber-Fahr, Monika (2002). "Treasure or Trouble? Mining in Developing Countries," p. v; Ross, Michael (26 July 2002). Comments on "Treasure or Trouble? Mining in Developing Countries," www.eireview.org/eir/eirhome.nsf

Presuming that the past will repeat itself, anti-mining groups have tried to block new mining projects with foreign participation.

“Many people outside the mining industry are definitely in favor of developing mining in the Philippines provided it is properly regulated and supervised.”

Nine out of ten host communities would favor a project

The mining firms recognize the potential havoc mines can create to the ecosystem, and the problems caused by abandoned mines. And the adverse impact to the community of the closure of mines. That’s why many of them are now promoting sustainable development.

Among these cases were Atlas Consolidated operations in Toledo, Cebu (pollution of a river system, dislocation of 200 families, destruction of fertile flatlands, etc.²⁸ – Lopez, however, countered that Atlas developed “one of the largest and most efficient mine tailings in the world,... promoted reforestation... and transformed Toledo from a sleepy third-class municipality into a chartered city.”²⁹). They also blamed Lepanto for the collapse of the mountain along Kennon Road in 1994 (Lepanto denied this); Marcopper for the serious impact of its mine tailings spill on Makulanpit and Boac rivers; Maricolum for the overflow of its tailings pond in 1982, 1983 and 1996; and many more.³⁰ Palawan Quick Silver Mines, a project that operated and closed long before ecology became an issue – i.e., from the 1950’s to the mid-70’s – was denounced for poisoning coastal areas in Palawan with mercury.

Presuming that the past will repeat itself, these groups have tried to block new mining projects with foreign participation, including TVI in Zamboanga del Norte and Western Mining in Tampakan, South Cotabato, weaving stories of tribal peoples’ struggle against big mining companies. They rejoiced in the decline of mining in the 1990’s and onwards, and claimed that the court challenge to the Mining Act reflected the broad opposition to large-scale mining³¹, that there was a “national outrage” following the Marcopper accident³².

Mining companies, however, cited an independent survey that revealed nine out of ten host communities would favor a project for as long as they know what is to be done and that the operation is undertaken responsibly.³³ Walpole (1999) noted that opposition to mining is confined to Benguet, Kalinga/Abra, Cebu, Negros Occidental, Zamboanga del Norte and Zamboanga del Sur.³⁴ He confirmed that:

“Many people outside the mining industry are definitely in favor of developing mining in the Philippines provided it is properly regulated and supervised.”³⁵

Even the mining firms recognize the potential havoc mines can create to the ecosystem, and the problems caused by abandoned mines. And the adverse impact to the community of the closure of mines, as happened to Basay, Negros Oriental with the stoppage of operations of CDCP Mining, and to Nonoc with the closure of Maricalum Mining, and many others.³⁶

That’s why many firms are now promoting sustainable development³⁷ (See Box A for *Principles of Sustainable Development*). The industry believes that allowing global mining companies to set up operations in the country would lead to responsible mining and sustainable development.

²⁸ McAndrew, John P. (1983). “The Impact of Corporate Mining on Local Philippine Communities”

²⁹ Lopez, Salvador (1999), pp. 373-374

³⁰ Tujan, Antonio and Rosario Bella Guzman (2002). “Globalizing Philippine Mining,” pp. 120-149

³¹ Ibid, pp. 160-161

³² Ibid, pp. 203-223

³³ Diaz, Conrado M. (18 October 2002) “Mining firms, allies buck move to kill mineral respond” *Philippine Star*.

³⁴ Walpole (1999), p. xi

³⁵ Ibid, p. 54

³⁶ Lopez, Salvador (1992), p. 371

³⁷ Sustainable development is defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (Brundtland Commission; from Mining, Minerals and Sustainable Development [MMSD] Project, “Breaking New Ground,” May 2002)

The Mining Act of 1995 has stringent environmental rules

The Mining Act of 1995 was meant to address these concerns, ironically the very same law some advocacy groups are trying to strike down for the incorporation of the Financial or Technical Assistance Agreement (FTAA) into the law. It has stringent environmental rules. It mandates the setting aside of funds for the community and for mine rehabilitation.

BOX A. PRINCIPLES OF SUSTAINABLE DEVELOPMENT

The goal of sustainable development is to maximize the well-being of the current generation whilst also providing the ability for future generations to meet their own needs. The Mining, Minerals and Sustainable Development (MMSD, 2002) project provides a framework for sustainable development based on a set of agreed principles, which were grouped into four areas.

Economic sphere

- Maximize human well being
- Ensure efficient use of all resources, natural and otherwise, by maximizing rents
- Seek to identify and internalize environmental and social costs
- Maintain and enhance the conditions for viable enterprises

Social sphere

- Ensure a fair distribution of the costs and benefits of development for all those alive today
- Respect and reinforce the fundamental rights of human beings, including civil and political liberties, cultural autonomy, social and economic freedoms, and personal security
- Seek to sustain improvement over time; ensure that depletion of natural resources will not deprive future generations through replacement with other forms of capital

Environment sphere

- Promote responsible stewardship of natural resources and the environment, including remediation of past damage
- Minimize waste and environmental damage along the whole of the supply chain
- Exercise prudence where impacts are unknown or uncertain
- Operate within ecological limits and protect critical natural capital

Governance sphere

- Support representative democracy, including participatory decision-making
- Encourage free enterprise within a system of clear and fair rules and incentives
- Avoid excessive concentration of power through appropriate checks and balances
- Ensure transparency through providing all stakeholders with access to relevant and accurate information
- Ensure accountability for decisions and actions, which are based on comprehensive and reliable analysis
- Encourage cooperation in order to build trust and shared goals and values
- Ensure that decisions are made at the appropriate level, adhering to the principle of subsidiarity where possible

Source: International Institute for the Environment and Development, Breaking New Ground, MMSD Final Report (2002)

2.0 LEGAL FRAMEWORK

2.1 The Mining Act of 1995

The Mining Act balances the need to encourage foreign investments with safeguarding the environment, mining communities and indigenous peoples.

The Philippine Mining Act of 1995 (Republic Act 7942) is a landmark piece of legislation designed to revitalize the mining industry through a system of incentives and more liberalized modes of entry. It also explicitly addresses the issues of environmental protection, mine closure, indigenous peoples, and equitable sharing of the benefits of mining among the major stakeholders.

The salient features of the Mining Act are found in *Table 2-1*. Among the major ones (not found in previous mining laws) are:

- The incorporation of the FTAA into the law, making it one of the three modes of obtaining mining rights defined by the Act. A fourth one, joint venture agreement, is not being offered to potential contractors.
- The permanent inclusion of mining activities in the Investment Priorities Plan (IPP) of the Board of Investments (BOI). The IPP, which annually revises the list of activities to be given fiscal incentives under the omnibus investment code, now automatically includes mining each year.
- Two new major incentives – a 10-year net operating loss carryover, and accelerated depreciation.
- Several specific environment-related provisions – e.g., a Contingent Liability and Rehabilitation Fund (CLRF), to ensure a firm's compliance with its environmental commitments; a trust fund to pay for damage caused by mine waste and tailings; a Final Mine Rehabilitation and Decommissioning Plan.

In essence, the Mining Act balances the need to encourage foreign investments with safeguarding the environment, mining communities and indigenous peoples (IP's). It is one of the few countries in the world with a mining law that requires "*prior informed consent*" of IP's³⁸ (modified in the IPRA into "*free and informed prior consent*," see Section 2.3).

The second generation incorporates some solutions to the issue of the environment, management for sustainable development, land rights, revenue sharing, access to information and public participation as its key features.

The Mining Act moves the Philippines towards what the MMSD Project considers the "*second generation of reform of the legal ... structure in the minerals sector*." The second generation incorporates some solutions to the issue of the environment, management for sustainable development, land rights, revenue sharing, access to information and public participation as its key features.³⁹ The first generation mainly focused on the opening up (globalization) of the mineral sector.

³⁸ Cabalda, et al (2002), p.20.

³⁹ IIED (2002). "Breaking New Ground," *The Report of the Mining, Minerals and Sustainable Development (MMSD) Project*, pp. 344-347

Table 2-1. KEY FEATURES OF THE MINING ACT OF 1995

Modes of mining rights	<p>Exploration permit (EP) – grants the right to conduct exploration for all minerals in specified areas. Maximum area: 32,000 hectares onshore, 81,000 hectares offshore. Term: 2 years, renewable to a maximum of 8 years. (Sections 20, 21 & 22)</p> <p>Mineral production sharing agreement (MPSA) – government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. Maximum area: 16,200 hectares onshore, 40,000 hectares offshore. Term: 25 years, renewable for another 25 years. Open exclusively for Filipinos. (Sections 26a, 28 & 32)</p> <p>Financial or technical assistance agreement (FTAA) – a contract involving financial or technical assistance for large scale exploration, development and utilization of mineral resources. Maximum area: 81,000 hectares onshore, 324,000 hectares offshore. Term: 25 years, renewable for another 25 years. Open for Filipinos and foreigners (up to 100% foreign equity). (Sections 33, 34 & 38)</p>
Production sharing	<p>MPSA: 40% company, 60% government. Government share = excise taxes + other taxes and fees (Section 80)</p> <p>FTAA: 40% company, 60% government. Government share = excise taxes + share in either net revenues, net cash flow or net profit (Section 81)</p>
Key environmental provisions	<p>Progressive rehabilitation through an Annual Environmental Protection and Enhancement Program (AEPEP) equivalent to 3-5% of the annual direct mining and milling costs. (Section 171 of DAO 96-40)</p> <p>Establishment of the Contingent Liability and Rehabilitation Fund (CLRf) incorporating the Mine Rehabilitation Fund (MRF) and Mine Waste Tailings Fee Reserve Fund (MWTFRF). (Section 71 of the Act; Section 180 of DAO 96-40)</p> <p>Formulation of Final Mine Rehabilitation/Decommissioning Plan (Section 187 of DAO 96-40)</p> <p>Allocation of at least 10% of initial capital expenditure to environmental management program. (Section 169 of DAO 96-40)</p>
Social provisions	<p>1% of annual direct mining and milling costs for the development of mining communities, science and mining technology. (Section 57 of the Act; Section 134 of DAO 96-40)</p> <p>Prior informed consent of the indigenous cultural community with royalty placed at 1% of gross output. (Sections 16 & 17)</p>
Incentives	<p>Mining to be permanently included in the Investment Priorities Plan. (Section 90)</p> <p>Net operating loss carryover – losses in first 10 years deductible for next 5 years (Section 92)</p> <p>Accelerated depreciation (Section 93)</p>
Auxiliary rights	<p>Timber rights – right to cut trees with the contractor's mining area (Section 72)</p> <p>Water rights – for mining operations (Section 73)</p> <p>Right to possess explosives for mining operations (Section 74)</p> <p>Easement rights – when it is necessary to build infrastructure for more convenient mining operations (Section 75)</p> <p>Entry into private lands and concession areas – surface owners or occupants, if prior notified, can't prevent holders of mining rights from entry into these private lands when conducting mining operations. (Section 76)</p>

According to Walpole⁴⁰:

"While the 1995 Mining Act is frequently attacked, it is a relatively good piece of legislation... but good law is not the problem; the problem is poor implementation..."

It is difficult to fault the act from a technical point of view; it is a good act and says all the right things. The 1995 Mining Act sets out to promote sustainable mining and to ensure that any use of mineral wealth shall be pro-environment and pro-people; it aims at sustaining wealth creation and at improving the quality of life.

The act stipulates that the best practices in environmental management shall guide mining activities with the aim of protecting the environment in an efficient and effective manner.

The act stipulates that the best practices in environmental management shall guide mining activities with the aim of reducing any harmful impact and of protecting the environment in an efficient and effective manner.

It points out that mining is a temporary use of land for the purpose of creating wealth and will lead to the optimum land use in the post mining stage. During the mining operations, the wealth that will accrue to the government and the communities should lead to the creation of other wealth-generating opportunities for people. According to the act, mining operations shall place due and equal emphasis on economic and environmental considerations, as well as on health, safety, social and cultural concerns."

But he also mentioned some problems with the Mining Act. Among these were⁴¹:

- DENR's transparency and monitoring capability;
- The status of MGB;
- Concerns over how "free and prior informed consent" (FPIC) is actually obtained (some claimed they were obtained from bogus tribes or through deceit);
- The impact of mining on watersheds;
- The "emphasis" on open pit mining, a method of mining opposed by environmentalists; and
- The auxiliary rights granted by the Act.

2.2 Legal challenge to the Mining Act

In February 1997, the Legal Rights and Natural Resources Center, Inc., together with other anti-mining NGO's claiming to speak for affected indigenous tribes, filed a case before the Supreme Court challenging the constitutionality of the Mining Act, especially its provisions on FTAA's. They also questioned the FTAA granted by the government to Western Mining Corp.

⁴⁰ Walpole (1999), p. ix; pp. 25-26

⁴¹ Ibid, p. 31

Among the arguments of the petitioners were as follows:

- The Constitution prohibits more than 40% foreign participation in all stages of mining (so allowing 100%-foreign owned companies under an FTAA is a violation of this provision).
- The Mining Act allows the taking of private property without the determination of public use and for just compensation.
- The Act is a piece of “*class legislation*” that favors foreigners over Filipinos in mining.
- FTAA's are service contracts that have been abolished under the Constitution.
- The “*Financial or Technical Assistance Agreements*” under the Constitution limits foreign participation to either the provision of financial resources or the transfer of technology/management skills, but not both.
- The FTAA allows the inequitable sharing of wealth.

The respondent, the Philippine government, countered that:

- The petitioners have no legal standing – they don't have any right or interest to protect nor are they suffering direct injury from the Act.
- The FTAA may be both technical and financial assistance, not just an option of either financial or technical assistance.
- The Constitution does not prohibit service contracts but has incorporated them in the FTAA, in recognition of its potential benefits to the country.
- There is no taking of private property – the state, not the surface owners, owns the minerals found underneath the land
- The Mining Act doesn't violate due process and equal protection (hence, not “*class legislation*”) because it has provisions on the indigenous people's rights and both Filipino and/or foreign corporations can apply for FTAA's.

The Court has yet to decide on the case. This indecision has created uncertainty, depriving the country of billions of dollars of investments and exports and hundreds of thousands of jobs that could have been mobilized by now.

The Court has yet to decide on the case. This indecision has created uncertainty, depriving the country of billions of dollars of investments and exports and hundreds of thousands of jobs that could have been mobilized by now. A report by AYC Consultants Inc. (October 2001) emphatically expressed the situation⁴²:

⁴² Wallace, Peter (2001). “Mining Policy as an Investment and Anti-Poverty Strategy,” p. 4.

The Mining Act of 1995 is a clear improvement over the law that preceded it. Repealing the Act is a step backward, as it would mean returning to this old law, which provides less protection for the environment, IP's, surface owners and host communities.

"The enactment of the Mining Act in 1995 saw an influx of foreign firms into the country. Following ... the continuing indecision of the court on the mining law, all but three of these mining firms have given up their exploration plans.

Most unfortunately, the legal obstacles came at a time when exploration funds going to mineralized countries in Latin America and Southeast Asia were on an uptrend. For instance, a study conducted by a mining group in Canada estimated that major mining companies could spend around US\$400 million just in exploration projects in Southeast Asia in 1997...

It must be emphasized that these are investments and export earnings that would directly benefit the country's poor. The very ones, the Macapagal-Arroyo administration has promised to help.

...Most mining projects are located in the country's less developed regions... Semiconductor plants locate in industrial estates in the Calabarzon area and employ high school and college graduates. Mining projects are in the country's remotest regions and employ the rural poor (including indigenous peoples), who otherwise face very limited employment opportunities."

The Court needs to rule on the petition – either way – soon

The Court needs to rule on the petition – either way – soon. If it decides to strike down the Mining Act, the law can go back to Congress for the necessary revisions. And a better, more acceptable law would emerge, a route similar to that taken by the Oil Industry Deregulation Law.

It is difficult to understand the excessive delay in the review of the constitutionality of the 1995 Mining Act by the Supreme Court. As of February 2003, six years have elapsed since the challenge to its constitutionality, yet the SC is still to act.

In discussions with the Court, they seem well aware of its importance, although not perhaps in sufficient detail, but say they need an affected party to petition for speedier deliberation. (Why they would need this is not at all clear as there seems to be no inhibitor to them acting now should they wish to.)

The Mining Act of 1995 is a clear improvement over the law that preceded it. Repealing the Act is a step backward, as it would mean returning to this old law, which provides less protection for the environment, IP's, surface owners and host communities.

Ironically, they claim to have the support of the public-at-large, yet opinion polls have shown that the public has consistently rejected most of the stands they have taken on national issues.

As neutral observers have said, the Mining Act of 1995 is a clear improvement over the law that preceded it. Repealing the Act is a step backward, as it would mean returning to this old law, which provides less protection for the environment, IP's, surface owners and host communities.⁴³ So if the petitioners are sustained, the urgent business of the day would be the speedy drawing up of a new mining law (even improving on the 1995 version). But given Congress' performance to date this is not a very attractive option.

President Gloria Macapagal-Arroyo has already declared her support for mining.⁴⁴ In the spirit of cooperation, the Supreme Court should now quickly resolve the case against the Mining Act.

The indecision favors the anti-mining groups as foreign mining companies adopt a "wait and see" attitude – and invest elsewhere. These groups hail the "continued decline in the mineral ore production of the Philippines" as they said the Filipinos "only know too well the consequences of corporate mining."⁴⁵

They have launched and continue to launch aggressive campaigns against the Mining Act, foreign mining companies and large-scale mining. During an anti-mining conference in Baguio City in May 2002, they declared that there can be no "sustainable development" with an "export-oriented and import-dependent" economic policy, and "where large-scale extraction of mining is merely geared for exports and to satisfy mainly the needs of the international market."⁴⁶ Their main resolution was a call to "scrap the Philippine Mining Act of 1995."

The so-called Dapitan Initiative in October 2002 reaffirmed the same position, but with some alternatives that indicated that they were only against large-scale corporate mining. They recognized the importance of minerals, but preferred these to be mined by small-scale miners exclusively for domestic use. (See Box B).⁴⁷

Although these groups raised some valid technical points, their bottom line especially on their objection to the Mining Act, is grounded on ideology. They are against globalization, and the Act abets the influx of foreign mining companies into the country. Ironically, they claim to have the support of the public-at-large, yet opinion polls have shown that the public has consistently rejected most of the stands they have taken on national issues (e.g., the Philippine-U.S. military exercises, sidewalk vendors in Metro Manila, etc.)

⁴³ Walpole, Pedro (1999), pp. 18-19

⁴⁴ Gloria Macapagal-Arroyo (10 January 2003), "Speech during the Signing of the Special Purpose Vehicle Act and the Government Procurement Reform Law."

⁴⁵ Tujan, Antonio and Rosario Bella Guzman (2002), p. 219

⁴⁶ Philippine National Conference on Mining (6-8 May 2002). "Report on the Philippine National Conference on Mining."

⁴⁷ "The Dapitan Initiative," (October 2002), www.lrcksk.org/campaign/dapitandec.htm.

BOX B. THE DAPITAN INITIATIVE

On October 11, 2002, anti-mining advocates and environmentalists launched a nationwide signature campaign against large-scale mining and existing mining laws and policies. Dubbed as the “Dapitan Initiative”, in reference to its launching in the historic City of Dapitan in Mindanao, the campaign started with the issuance of the “Dapitan Declaration” signed by a core of 25 advocates, that included a popular local movie actress, a media personality and activist, bishops, parish priests and various NGO leaders.

The Declaration specifically calls for the following:

- Immediate cancellation of all existing FTAA's, MPSA's, EP's and other mining agreements;
- Nullification of the Mining Act of 1995;
- A 100-year moratorium on the issuance of large-scale mining permits;
- Rehabilitation of mining areas with mining companies made accountable for the damage they have done to the environment; and
- Prohibition of state and privately sponsored armed groups in areas where there are current and prospective exploration and mining activities.

Opposing the Mining Act, particularly a provision allowing 100% foreign participation in the mineral sector, the initiative proposed the enactment of a new law that would lay down the framework for “wise stewardship” not only of minerals but of other natural resources as well. It was also suggested that the new law be formulated based on the following principles:

- Food security, livelihood protection, ecological balance, equity, and social justice should be given priority when utilizing natural resources.
- Everyone is responsible in satisfying his resource needs primarily by re-using and recycling existing mineral products.
- Natural resources should only be utilized for domestic use and national industrialization.
- Filipinos should employ and develop their own human resources and technology for the extraction and utilization of natural resources.
- Community-based-and-initiated organizations should be given priority in the stewardship of natural resources.

The initiative was organized by the Legal Rights and Natural Resources Center – Kasama sa Kalikasan (LRC-KSK) and the DIOPIM (Dipolog, Iligan, Ozamiz, Pagadian, Ipil and Marawi) Committee on Mining Issues (DCMI).

LRC-KSK, a legal and policy research and advocacy organization, is the local affiliate of the international environmentalist organization Friends of the Earth. It has been actively opposing foreign participation in the mining sector. Other issues LRC-KSK is raising are the non-consultation of affected communities by the mining companies, threats of displacement, human rights violations, and non-resolution of court cases against mining firms filed by indigenous people communities.

The DCMI, on the other hand, is an organization of Catholic dioceses in six cities in Mindanao. It has been actively involved in issues concerning the protection of indigenous peoples' rights and the repeal of the Mining Act.

2.3 The Indigenous Peoples Rights Act of 1997 (IPRA)

The passage of the IPRA created a cloud of uncertainty over planned investments in mining.

The passage of the IPRA in 1997 (Republic Act 8371) created a cloud of uncertainty over planned investments in mining. The industry saw it as another blow in the same year.⁴⁸ Invoking the Constitution's recognition of ancestral domains, it gave indigenous peoples control over considerable tracts of land (see *Table 2-2 for salient features of the law*). Among the contentious features of the law and its implementing rules were:

- The right of IPs/ICCs to suspend or terminate any project or activity that is shown to have violated the process of securing "*free and prior informed consent*" (FPIC), or to have violated the terms and conditions of a previously granted FPIC.
- The right of IPs/ICCs to "*self-delineation*" of ancestral domains – this could be open to abuse as the industry said the law provided "inadequate" standards to carry this out.⁴⁹
- The ancestral domains also included traditional access for communities' subsistence and traditional activities. This means consent is still needed even outside of the ancestral domain land if the area provides access to the tribe's traditional livelihood activities.
- The IPRA considers ancestral domain lands as private and non-disposable, when it should be community-based.

53% of areas with mining applications are in areas covered by CADCs.

A mapping prepared by the Environmental Science for Social Change (ESSC) estimated that 1.2 million hectares or 53% of areas with mining applications are found in areas covered by Certificates of Ancestral Land and Domain Claims (CADCs).

There are also some conflicting provisions between the IPRA and Mining Law. An IP's right to benefit and share the profits from the utilization of natural resources in their ancestral domain vs. the Mining Act's royalty of a fixed 1% of gross output to IP's is one example. The authority to approve mining projects – whether it rests with the MGB or with the IP's through the National Commission for Indigenous Peoples (NCIP) is another. This has led to some NGO's taking the position that the IPRA has repealed any contradicting provisions of the Mining Act.⁵⁰ The mining industry, however, sees IPRA as a piece of class legislation.

In December 1998, a former Supreme Court justice and a lawyer questioned

⁴⁸ Wallace, Peter (2001), p. 3

⁴⁹ Luib, Romulo T. (15 May 1998) "Mining Industry Against Self-delineation on Ancestral Lands," *BusinessWorld Internet Edition* available at <http://codex1/bworldonline.com/articles/98/98051510.htm>.; Castillo, Earl Warren (12 August 1998). "Major Roadblock Thrown in Mining Industry's Path," *BusinessWorld Internet Edition* available at <http://codex1/bworldonline.com/articles/98/98081159.htm>

⁵⁰ Cabalda, et al (2002), pp. 53-54

Table 2-2. KEY FEATURES OF THE INDIGENOUS PEOPLES RIGHTS ACT RELEVANT TO MINING

ITEM	PROVISION
Rights to ancestral domains	<p>Right of ownership not just over land, but also over bodies of water, scared places and traditional hunting and fishing grounds. (Section 7(a))</p> <p>Right to develop, control and use lands and territories; to manage and conserve their natural resources; to share the profits from the use of natural resources; to negotiate the terms and conditions for the exploration of natural resources; the right to an informed and intelligent participation in the implementation of any project affecting the ancestral domains, and to receive just and fair compensation for any damage resulting from the project... (Section 7(b))</p> <p>The right to stay in the territory, and not be relocated without “free and prior informed consent,” and with guaranteed right to return. If return is not possible, ICCs/IPs shall be provided with lands of quality and legal status equal to that of the land they previously occupy. (Section 7(c))</p> <p>The right to regulate the entry of migrant settlers and organizations (Section 7(e))</p>
Recognition of ancestral domain rights	Rights recognized through a Native Title. Formal recognition of the rights through a Certificate of Ancestral Domain Title (CADT), if solicited by ICCs/IPs. (Section 11)
Right to self-governance and empowerment	<p>The right to use their own justice systems and conflict resolution institutions (Section 15)</p> <p>The right to participate... in matters that may affect their rights, lives and destinies... (Section 16)</p> <p>The right to determine and decide their own priorities for development (Section 17)</p>
National Commission on Indigenous Peoples (NCIP)	The NCIP shall protect and promote the interest and well-being of ICCs/IPs... [it] shall be the primary agency for the formulation of policies, plans and programs to promote the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains and their rights thereto. (Sections 38 and 39)
Delineation and recognition of ancestral domains	<p>Self-delineation shall be the guiding principle – the Sworn Statement of Elders ... will be essential to the determination of traditional territories. The right of ICCs/IPs to the land they no longer occupy but to which they have traditional access for their subsistence and traditions must be safeguarded. (Section 51)</p> <p>Ancestral domains delineated prior to IPRA may be issued a CADT without going through the processes outlined in Section 52 (Section 52(a))</p> <p>Delineation may be initiated by the NCIP with the consent of the concerned ICC/IP, or through a Petition for Delineation filed with the NCIP by a majority of members of the ICCs/IPs. (Section 52(b))</p> <p>Proof of Ancestral Domain Claims shall include the testimony of elders or community under oath, and any one of the following: written accounts of the customs and traditions; written accounts of political structure and institution; pictures showing long-term occupation; historical accounts; survey plans and sketch maps; anthropological data; genealogical surveys; pictures and descriptive histories of traditional communal forests and hunting grounds; pictures and descriptive histories of traditional landmarks; write-ups of names and places derived from the native dialect of the community. (Section 52(d))</p> <p>ICCs/IPs whose ancestral domains have officially been delineated shall be issued a CADT. (Section 52(j))</p>
Communal rights	Areas within the ancestral domains are presumed to be communally held, but not construed as co-ownership as defined in the Civil Code. (Section 55)
Natural resources within ancestral domains	The ICCs/IPs have priority rights in the harvesting, extraction, development and exploitation of any natural resources within the ancestral domains. Outsiders may be allowed to develop and utilize the natural resources for 25 years, renewable for another 25 years, if the ICCs/IPs formally agree to such an arrangement. (Section 57)
Certification precondition	The NCIP must first issue a certification to government agencies that the area affected by the latter's grant of concession, license or lease does not overlap any ancestral domain before the grant is made. The NCIP, however, cannot issue a certification without the free and prior informed written consent of the ICCs/IPs. The ICCs/IPs have the right to stop or suspend any project that has not satisfied this requirement. (Section 59)

the constitutionality of the IPRA before the Supreme Court. The petitioners argued that the IPRA violated the Regalian Doctrine enshrined in the Constitution. They also alleged that subsequent property rights granted by the government through Torrens Titles and mining rights are threatened; the right to “self-delineation” is subject to abuse; and the powers of the NCIP constitute an undue delegation of authority.

In December 2000, the Supreme Court voted 7-7 on the case. Under court rules, a deadlock on questions of constitutionality means the status quo is maintained – till an affected party again petitions the court. In September 2001, the court finally declared that the “... *IPRA is constitutional... ancestral lands do not constitute part of the public domain and that the IPRA merely grants to indigenous peoples certain rights but not ownership over natural resources in these ancestral domains.*”

The IPRA does not grant absolute ownership to indigenous peoples, only “priority rights” or preference in the award of privileges under existing laws.

A separate opinion clarified that IPRA does not grant absolute ownership to IP’s, only “*priority rights*” or preference in the award of privileges under existing laws. The State still owns the natural resources in ancestral domains, so non-indigenous people can undertake activities within these areas provided they get authority from appropriate government agencies – and the IP’s give their consent.

The IPRA is actually consistent with international conventions recognizing the rights of indigenous peoples, especially the UN Draft Declaration on the Rights of Indigenous People (“*IP’s have the right to remain on their lands*”) and Convention 169 of the International Labor Organization (ILO). The ILO Convention states that:

“The rights of the peoples concerned to the natural resources pertaining to their lands shall be especially safeguarded... In cases in which the state retains the ownership of mineral or subsurface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands.”

There will be some indigenous communities that do not want mines on their lands; this should, as much as possible, be respected.

MMSD suggested that, as part of sustainable development efforts, indigenous peoples need to be consulted, give consent to and participate in resource development in traditional lands.⁵¹ Mining companies are unlikely to succeed where there is serious conflict between national government and indigenous groups.⁵² While negotiations with IP’s are both time-consuming and expensive, these costs must be seen as part of the new business environment.⁵³ Also, there will be some indigenous communities that do not want mines on their lands; this should, as much as possible, be respected.⁵⁴ But national interest must be the overriding consideration.

⁵¹ IIED (2002), p. 302

⁵² *Ibid.*, p. 157

⁵³ *Ibid.*, p. 156

⁵⁴ *Ibid.*, p. 152

As part of sustainable development efforts, indigenous peoples need to be consulted, give consent to and participate in resource development in traditional lands.

The IPRA can be a step towards empowerment of ICC's. It gives them some status of equality in stakeholder negotiations. But this is just the start. It is a long process that needs support from government, civil society, and even mining companies. They must be given what's due them under the law – financing, skills, technology transfer, etc. – to be able to develop their capacity to plan and participate in their own development.⁵⁵ As mining companies themselves aver, the relationship with an empowered community is smoother and more stable.⁵⁶

2.4 The Small Scale Mining Act of 1991

The Small Scale Mining Act of 1991 (Republic Act No. 7076), and other laws that preceded or complemented it, was meant to regulate small scale mining that gained national prominence (and notoriety) with the Diwalwal gold rush. The main features of the 1991 Act include:

- Identification and setting aside of certain mineral lands for small-scale mining
- Granting a mining permit to cooperatives rather than to individuals
- Local government boards grant the permits
- Priority is given to cultural minorities in the exploration, development and use of mineral resources within their ancestral lands
- Collection of government revenues equivalent to 1-½% of gross revenues for metallic minerals and 1% for non-metallic. Of these revenues, 15% is to go to a People's Small Scale Mining and Protection Fund —the Fund to be used for education and information dissemination, training in health and safety and environmental protection, and the establishment of mine rescue teams.

RA 7076 didn't repeal Presidential Decree No. 1899, which grants a small-scale mining permit for a maximum area of five hectares and for a period of two years, renewable once for another two years.

⁵⁵ Walpole, Pedro (1999), pp.37-38

⁵⁶ See, for example, Francisco, Victor A., et al (2001), "Building Community Partnerships: The Processes Involved and the Advantages of Starting Early," on Philex Anglo American's experience in Tubod, Surigao del Norte.

The problems associated with small-scale mining have not been solved by the 1991 Act mainly because the law wasn't ever effectively enforced.

The enactment of the Local Government Code of 1991 fully devolved the regulation of small-scale mining operations to the local government units under the supervision of the Department of Environment and Natural Resources (DENR).

The problems associated with small-scale mining have not been solved by the 1991 Act mainly because the law wasn't ever effectively enforced. Conflicts over mining rights, violent in a number of instances, continued. Mining practices are unsafe, leading to numerous deaths and injuries. Mining operations led to wastage of non-renewable resources and wanton disregard for the environment. Mercury is used to recover gold, a practice disallowed internationally. The gold rush communities are cramped and unsanitary, making the residents vulnerable to diseases. The education of children is neglected, and child labor accounts for 5-10% of mining employment.

The miners don't pay taxes, and are shortchanged by the traders who smuggle the minerals out of the country.

The law is being ignored.

In short, the law is being ignored, in fact violated, and the local governments are weak in enforcing it.

Walpole pointed out that "*small-scale mining is certainly not small-scale when it comes to damaging the environment,*" exploitation is commonplace, with the mine workers and their families the victims, yet the NGO's and the Church have chosen to remain silent on these issues.⁵⁷

Government must control it.

The MGB, taking the same stance as MMSD, views small-scale mining as a transitional phase, driven by poverty and lack of economic alternatives.⁵⁸ It is likely to either disappear if progress towards sustainable development is made, or if some will become medium-scale or even large-scale mines. But small-scale mining – if properly managed and regulated – can be beneficial to the country as it is labor-intensive, requires cheap, simple tools and has short lead time. But government must control it.

The takeover of Diwalwal was meant to show what government can do to compel small-scale miners to act more responsibly. But as much of the mining in Diwalwal is not small-scale, but controlled by just 3 groups, it's hard to see how this can succeed without a draconian crackdown by government, using (legal) force if necessary.

In August 2002, following a series of violent incidents, the national government declared Diwalwal a mineral reservation, clearing the way for its control of the area (See Box C). Service contracts have been granted to mining cooperatives and associations, with strict conditions (including environmental) for compliance of the terms of the contract. The MGB said its takeover was meant to show what government can do to compel small-scale miners to act more responsibly. But as much of the mining in Diwalwal is not small-scale, but controlled by just 3 groups, it's hard to see how this can succeed without a draconian crackdown by government, using (legal) force if necessary. The Diwalwal of the past showed what government can't do.

⁵⁷ Walpole, Pedro (1999), pp. 71-72

⁵⁸ Cabalda, et al (2002), p. 90; IIED (2002), p. 314

Proposed amendments to the Small Scale Mining Act are currently being discussed in Congress to address some of the shortcomings of the law. The amendments may include banning the use of mercury, establishing common processing areas, and installation of common pollution control facilities.

BOX C. SMALL-SCALE MINING IN DIWALWAL GOLD RUSH AREA

Diwalwal is the most active gold rush area in the Philippines. It is situated in Monkayo, Compostela Valley in Mindanao. It is considered the site of the richest and largest gold deposit in the Philippines and has been one of the major contributors to the total gold production of the country.

The accidental discovery of the gold vein in Diwalwal by two Mandaya tribesmen in 1982 led to the proliferation of small-scale gold mining in the area. Then President Marcos allowed small-scale mining in the area even without government concession or intercession as long as miners formed themselves into truly functioning cooperatives and avoided the use of blasting and heavy equipment.

But now only three groups control the area. Each group reportedly manages its own tunnels, uses mechanized rod mills and applies advanced milling and processing operations.

The illegal mining in Diwalwal has continued to be unregulated, leading to a number of social and environmental problems – conflicts have occurred (often violent) over access to gold deposits; tunnels collapsed resulting in, usually, unreported deaths; and frequent health problems have arisen as the use of mercury and cyanide in milling and processing gold has caused the contamination of land and water in the area. These problems persisted even after the passage of the Small Scale Mining Law during President Aquino's term.

Peace and order problems in Diwalwal worsened when the Department of Environment and Natural Resources granted Marcopper Mining Corp. an exploration permit on a 5,000-hectare mineralized parcel of land, which included the Diwalwal gold rush area. After the tailings spill in Marinduque, Marcopper assigned the rights to Southeast Mindanao Gold Mining Corp. (SEMGMC), which is reportedly owned and controlled by Marcopper's Filipino major stakeholder, Mr. Teodoro Bernardino. Small-scale miners violently rejected the entry of large-scale mining. To solve the conflict, the Mines Adjudication Board issued a ruling dividing the 5,000-hectare Diwalwal mining area between the small-scale miners and SEMGMC. The government allotted about 730 hectares for small-scale mining, but failed to stop illegal mining activities.

On August 12, 2002, President Macapagal-Arroyo declared an emergency situation in Diwalwal's gold rush area and ordered the shut down of all mining and mining processing operations. This was after the killing of a judge in Compostela Valley, alleged burning of tires and toxic chemicals in an underground mining area causing the suffocation and death of some workers, blockade of major roads in Davao and Compostela Valley, and worsening environmental and health problems caused by mercury contamination and serious siltation.

The gold rush area, covering about 8,000 hectares, was later on declared as a mineral reservation and an environmentally critical area. As such, all mining activities in the area are now under the government's management and regulation. About 25% of the mineral reservation area was allotted for small-scale mining cooperatives. The government, through the National Resource Development Corporation (NRDC), issued service contracts to qualified cooperatives. The NRDC, together with a multi-partite committee, was tasked to monitor compliance with the service contracts, including the payment of taxes. But government will have to act much more draconianly if it is to correct the serious abuses that currently abound there.

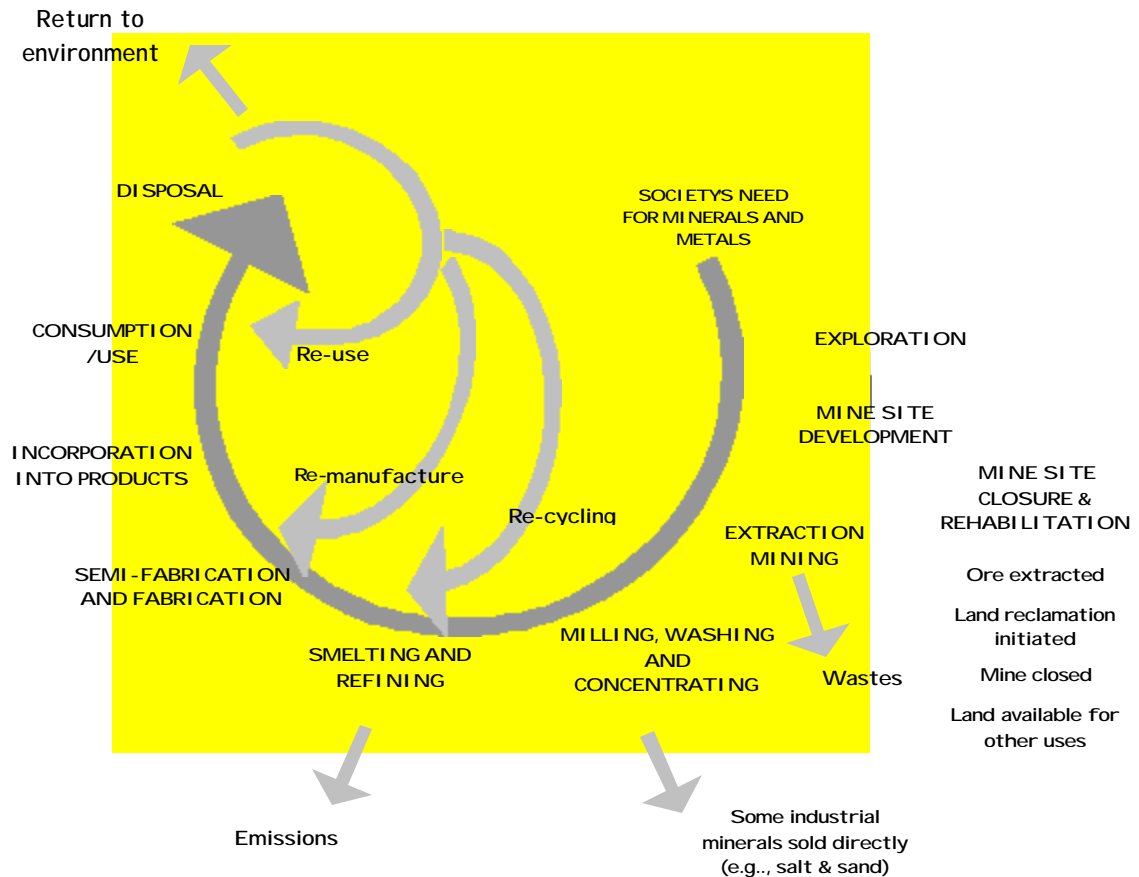
3.0 MINING DEVELOPMENT PROCESS

3.1 The minerals cycle: exploration, exploitation, recycling, etc.

The exploration stage isn't environmentally sensitive. No tree is felled, no land is leveled off, and no person is deprived of his home... and the success rate is only 1-2% of the area explored.

Figure 3-1 presents the minerals cycle – from exploration to extraction to the return of the minerals to the environment. As the figure shows, the exploration stage, and even the development stage to some extent, aren't environmentally sensitive. No tree is felled, no land is leveled off, and no person is deprived of his home. The MMSD Project did not find it necessary to dwell on the environmental impact of exploration, as there is none, and focused instead on mine operations (exploitation) and closure where the impact is heaviest.

Figure 3-1.
THE MINERALS CYCLE



Source: IIED, MMSD Project (2002)

Exploration is the stage where mining companies start to build a relationship with the communities. Encouraging more exploration also builds investor confidence and generates economic activity.

The rules for exploration should be the barest minimum

Exploration should be actively encouraged

Yet some sectors of society appear shocked when they hear or read that certain companies are exploring thousands of hectares for minerals. They presume that the same area will be mined, creating visions of environmental destruction on a grand scale. This is obviously a misconception. Most of the prospects turn out to be dud; the success rate is only about 1-2% of the area explored.⁵⁹ Even the Mining Act mandates that a contractor can retain only a maximum of 6% of the area at the end of the 6-8 year exploration period; and normally, only 20% is actually explored.⁶⁰

So the rules for exploration should be kept to the barest minimum, so the issuance of an exploration permit is faster. If the permits are issued quickly and simply, the greater will be the number of companies exploring, and the better the chances for success.

In fact, exploration should be actively encouraged as it is at this stage that mining companies start to build a relationship with the communities⁶¹, creating an opportunity for an effective information and educational campaign (IEC). Some IPs conceded that the IEC helped them to understand the benefits and how this could help their people. They agreed these campaigns could also help other communities better assess how mining could best benefit their villages. These people used to be against mining, as they had heard only one side of the story – the ‘evils’ of mining as expounded by some members of the clergy, the usual entry points of environmental advocates – years before mining firms came into the picture.

Encouraging more exploration also:

- Builds confidence – it sends the signal that the country supports mining, so more investors join the bandwagon.
- Generates economic activity. If prospectors spend at least US\$1 million for exploration (the spending could be anywhere between US\$1 million and US\$10 million), that's a huge sum for a poor, remote community. If 1,000 exploration licenses were issued (a realistic number), that would be US\$1 billion flowing into the country, a substantial portion of which would be spent within the project vicinity. Even though no minerals are yet being taken from the ground.

⁵⁹ Mindanao Association for Mineral Industries (no date). “Sustainable Development,” no page.

⁶⁰ Cabalda, et al (2002), p. 65

⁶¹ IIED (2002), pp. 200-201

It is in extraction where the environmental issues arise – overburden, waste rock, tailings, acid drainage, etc. The 1995 Mining Act contains safeguards for deterring and minimizing such incidents.

It is in extraction where the environmental issues arise – overburden, waste rock, tailings, acid drainage, etc. – and require mining companies, communities, and government to work closely to minimize the adverse impact.⁶²

The 1995 Mining Act contains safeguards for deterring and minimizing (no human activity is ever 100% safe) such incidents. And ensuring that funds are available to pay for any damage should it occur. This is an important reason for the Act to be put into effect as soon as possible. Existing environmental laws reinforce the Act – there are at least 21 such laws, rules and regulations, including the Environmental Impact Statement (EIS) System.⁶³

The issue, though, is not the existence of the necessary laws, but whether the government can enforce these rules.⁶⁴ Based on past experience, it can't. But in fairness, the previous mining law was lax in terms of environmental provisions. Firms could get away with serious damage with the lightest of penalty, and the funds mandated to be set aside for accidents weren't sufficient for cleaning up the mess. And most of the projects were established under a regime of dictatorship where protesters could be promptly silenced. At any rate, all of the alleged heavy polluters are no longer operating. Except for those in Diwalwal.

This leads to the next issue – mine closure. The world, the Philippines included, is replete with examples of legacies of mines gone bad. This has generated public distrust in mining.⁶⁵ The 1995 Mining Act has explicit measures to handle this. But not for those projects that were set up before the Act. And these are what people see and remember. A conversation on mining cannot occur without the tailings collapse at Marcopper being raised, and cited as a reason to ban mining. Yet no one suggests banning the airlines industry when a plane crashes —and kills people.

It is a false assumption to believe that recycling can stop mining.

Some groups have advocated recycling as an alternative to mining and, indeed it can help reduce ore extraction rates if done more efficiently. But it is a false assumption to believe that recycling can stop mining. Demand for metals and minerals continues to grow. Relying on the recovery of scrap materials would be insufficient to meet this growing demand, and the market would signal this through price increases that would hurt the consumers and put even more pressure to establish new mines. When the world has enough supply, prices fall, creating a disincentive for investments in mining. In short, economics dictates extraction. And provides the necessary balance to extract only what is needed. In fact, 85% of all copper ever mined is still in use today, while gold produced during the time of Cleopatra is said to be existing today.⁶⁶ And as recycling entails less use of energy than ore recovery and less capital, the preference will be to recycle where possible.

Economics dictates extraction

⁶² *Ibid.*, p. 234

⁶³ Cabalda, et al (2002), pp. 27-30; Walpole (1999), pp. 26-27

⁶⁴ Coronel, Ed (25 September 1998). "Advice to Bernie," *BusinessWorld Internet Edition*. Available at <http://codex1/bworldonline.com/articles/98/98092501.htm>

⁶⁵ *IIED* (2002), p. 389

⁶⁶ *Ibid.*, (2002) p. 41

Consuming less metal is as unrealistic a proposition as stopping mining. Substitution of materials is simply a matter of switching from one mineral to another, for example from steel to plastics (which is petroleum-based), or a shift from copper to fiber optics (which comes from a non-metallic mineral). And with the exponential growth in the use of PC's and cell phones, demand for minerals is as buoyant as ever. There are 31 metals in the standard PC,⁶⁷ more than 40 for a cell phone. A standard jet engine is 95% metal, a car is 70% made up of steel alloys. The rest mostly petroleum-based plastics.

3.2 Mining project approval process

The slow progress in obtaining mining permits was an added obstacle.

Mining applications grew by leaps and bounds after the passage of the Mining Act of 1995 (*Table 3-1*). The surge was notable in the FTAA's, which mostly involve foreign investors with projects at least 10 times larger than the MPSA's. Four years later, however, foreign interest started to wane, with most of the over 20 mining companies leaving the country.⁶⁸

Most of the over 20 mining companies leaving the country.

As if the court challenge to the Mining Act and the IPRA weren't enough of a problem, the slow progress in obtaining mining permits was an added obstacle. There were only a handful of approvals - 65 exploration permits (of which, only 44 are active), 169 MPSA's (but only 26 in production, and those mostly small-scale), and two FTAA's (none was approved under the Mining Act of 1995) as of 2001.

Table 3-1.
MINING PERMIT APPLICATIONS AND APPROVALS
Cumulative as of the year indicated

YEAR	MPSA		FTAA		EP	
	APPLICATION	APPROVAL	APPLICATION	APPROVAL	APPLICATION	APPROVAL
1995	1,544	37	83	2	22	4
1996	1,867	63	144	2	222	8
1997	2,477	103	151	2	453	44
1998	2,607	130	152	2	528	46
1999	2,705	149	152	2	636	53
2000	2,749	167	149	2	705	63
2001	2,967	169	155	2	792	65
2002	2,989*	184	155	2	815	74

* As of November 2002

Sources: Mines and Geosciences Bureau (MGB); Corpuz (1999), Mine Watch Asia Pacific. "National Situation: The Mining Industry in the Philippines."

Figure 3-2 shows the procedure for the issuance of a mining right. It's not as simple as it looks. Layers of barriers face investors, particularly in securing the approval of local governments, getting the consent of indigenous peoples, and resolving overlapping claims.

⁶⁷ *Ibid*, pp. 50-52

⁶⁸ Wallace, Peter (2001), p. 1

3.2.1 Local government endorsement/approval

The decentralization of certain functions of the national government to the local governments under the Local Government Code of 1991, as well as the sharing of revenues from mining, has rendered the process of putting up a mining project more complicated.

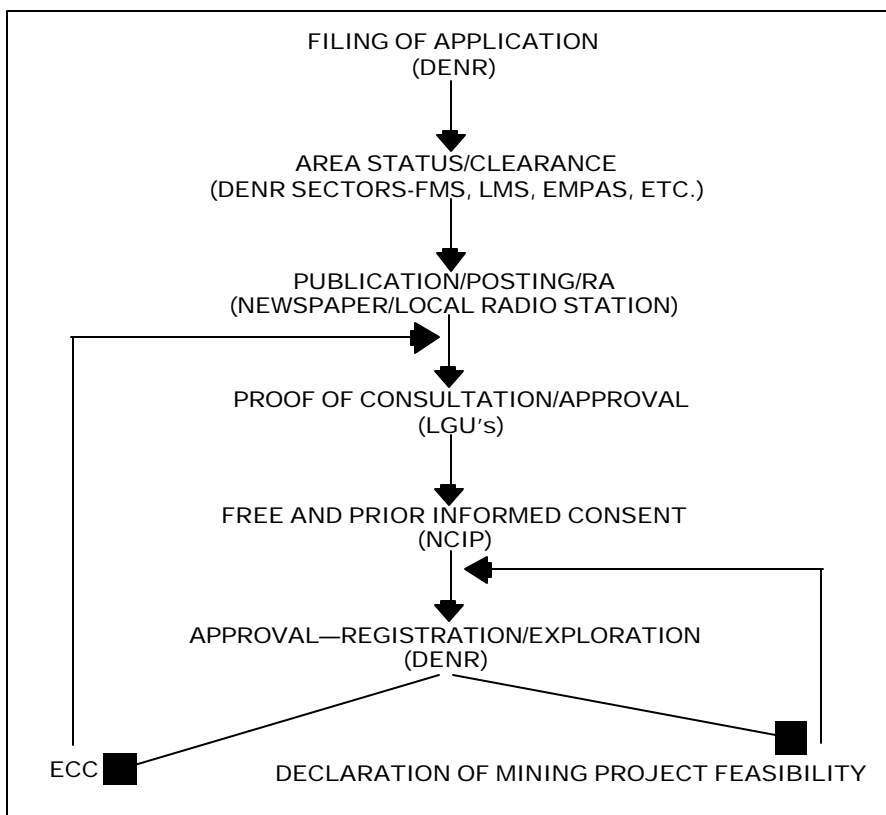
The role of the local government units in EP's is not a problem as no approval is required, only consultations with two out of three LGU's (barangay, municipal and/or provincial).

But for an MPSA or FTAA, DENR rules dictate that a proponent should get an endorsement from at least two of the three local government units. After which, the President approves the FTAA.

Negotiations are inherently lengthy as LGU's are overly concerned about the social acceptability of the project.

Negotiations are inherently lengthy as LGU's are overly concerned about the social acceptability of the project, the development program for the affected community, and the responsibility for implementing the program.⁶⁹

Figure 3-2.
GENERIC STEPS IN THE ISSUANCE OF MINING RIGHTS



Source: Mines & Geosciences Bureau

⁶⁹ Clark, Jennifer Cook (2001). "The Protection of Indigenous Peoples by Mining Concerns" p. 11

In a number of cases, local officials are swayed by the arguments of environmentalists and Church groups to withhold approval. But there have also been occasions when officials have reportedly used these protests as an excuse for extracting some “financial considerations”.

In a number of cases, local officials are swayed by the arguments of environmentalists and Church groups to withhold approval. But there have also been occasions when officials have reportedly used these protests as an excuse for extracting some “financial considerations.”⁷⁰

Early last year, the provincial government of Oriental Mindoro declared a 25-year moratorium on medium- and large-scale mining, creating a major setback for Aglubang/Crew Minerals, which had already secured an MPSA for a project in Victoria.⁷¹ Voting 10-3 in favor of the moratorium, the majority ruled that the Crew Minerals’ project threatens a nearby watershed area. Something Crew denies, as although the exploration area is near a water system, the actual mining site may not be. Again, this is a case of “*exploration* vs. *exploitation*,” and the fear created by the Marcopper incident that the tailings could accidentally spill into the river.

Two provincial governments also reportedly issued resolutions against Western Mining’s Tampakan project in South Cotabato,⁷² although President Ramos decided to award an FTAA to the company in 1994. Despite this the company left because in its global review of business, the project failed. This was partly the result of lack of visible government support, particularly in getting approvals.

Some local governments contradict the pro-mining position of the national government.

Refusal to endorse a project has also been done because of conflict of interest. Some local officials operate a mine, or make money from the small-scale miners illegally and are threatened by a company seeking to operate in the area.

The national leadership can exert its authority over local governments.

The result: Some local governments contradict the position of the national government. In the recent past, LGU’s were able to stop or delay the project because national officials were ambivalent about mining. But with the national leadership now expressing support to the sector, it can also sway local governments towards supporting some mining projects. One Mindanao provincial government, for example, after the President made her pro-mining announcement in early January 2003, has allowed a small-scale mining project to operate after sitting on its application for almost six months.

⁷⁰ Wallace, Peter (2001), p. 4

⁷¹ Virola, Donna (10 February 2002). “Mindoro Officials Approve 25-year Mining Moratorium,” *Philippine Daily Inquirer*

⁷² Walpole, Pedro (1999), p. 40

3.2.2 Free and prior informed consent

Another hurdle is getting “free and prior informed consent” (FPIC) from indigenous peoples. This involves a series of consultations with ICC’s/ IP’s, often involving a protracted information and education campaign (IEC) and agreeing on the package of benefits the proponent would give to the community (Table 3-2).

Table 3-2. STEPS IN OBTAINING AN FPIC

1.	Identification of tribal leaders – a report of findings must be submitted to the MGB.
2.	Applicant submits plans and programs for affected IPs for the approval of the NCIP – talking points to the tribe for its consideration and for further negotiation.
3.	Consultations with the IP by the proponent, facilitated by the NCIP
4.	Decision of the community regarding the FPIC
5.	Documentation of the FPIC – Certificate of FPIC issued by the tribal council; Memorandum of Agreement (MOA); and Certification Precondition issued by the NCIP

Source: National Commission for Indigenous Peoples (NCIP)

There are a few areas where the communities are genuinely and strongly opposed to mining or, in some cases, just large-scale mining. As it now stands, it would be very difficult for a company to be able to convince such communities to support a project.

In areas where a substantial majority of residents tend to favor mining, anti-mining groups have attempted to sabotage the FPIC process by disrupting community consultations. And when the community votes in favor of a project, anti-mining advocates develop an “alliance” with the losers and charge that consensus wasn’t genuinely obtained. This was the experience related by some Mindanao medium- and large-scale miners.

One result of allegations of “fictitious” consent given by tribal communities or consent given by “fictitious” tribes was the issuance of Administrative Order No.3 by the NCIP. AO 3 now requires a field investigation by the national office of the NCIP to verify the authenticity of an FPIC before issuing the Certification Precondition.

One result of allegations of “fictitious” consent given by tribal communities or consent given by “fictitious” tribes was the issuance of Administrative Order No.3 by the NCIP in April 2002. AO 3 now requires a field investigation by the national office of the NCIP to verify the authenticity of an FPIC before issuing the Certification Precondition. So what’s supposed to be a ministerial function under the IPRA has become some sort of an approval power.

It’s worse, because FPIC is required as early as the exploration stage. While both the MGB and some mining companies agree that FPIC is necessary during exploration, they believe that the procedure shouldn’t be too stringent. AO 3 makes it so. Whatever concerns there are on the FPIC could be addressed more thoroughly after the exploration yields successful results.

The problem stems from the difficulty of identifying who the real ICCs/IPs are in specific areas.

The problem stems from the difficulty of identifying who the real ICCs/IPs are in specific areas. In the case of Western Mining's project in Tampakan, four tribal groups approved, while one that the industry said resides outside of the mining site disapproved. In the case of TVI Pacific's project in Canatuan, Siocon, Zamboanga del Norte, non-resident Subanens reportedly entered the mining community and started small-scale operations. On the other hand, anti-mining protesters in Victoria, Oriental Mindoro charged that Crew Minerals got the consent of a tribe that they claimed to have resided in the area for only a few years.

Cultural mapping could provide the solution

Cultural mapping could provide the solution, but this is expensive and the NCIP's resources aren't sufficient to conduct the necessary survey. Moreover, surveyors need to exercise vigilance to ensure that the results aren't manipulated by other tribes (especially those with access to the local NCIP office, or are NCIP officials) out to claim areas that aren't theirs.

Conflicts also arise when a mining firm limits the benefits to the communities within the actual project area and forgets about the villages on the periphery. This is especially true when these outlying villages provide access to the mines, are potentially threatened by mine wastes, or used to be part of the exploration area and raised (false) hopes for these villagers that they also stood to benefit directly from the project. The excluded IPs thus become ripe for actions against the mining company.

Another problem is the lack of transparency and seeming arbitrariness in the process of arriving at a consensus.

Another problem is the lack of transparency and seeming arbitrariness in the process of arriving at a consensus. An IP leader interviewed who's blocking a mining project in Mindanao said the form of consent can vary from tribe to tribe – some by a simple majority, others by a substantial majority, still others by the collective decision of elders, etc. With the rules unclear, members who disagree with the decision of the tribe could switch to another set of rules at their convenience and claim that they had been cheated, that the proponent used “*divide and rule*” tactics, or that there was deceit in obtaining the FPIC. Some sore losers in Davao Oriental even threatened a tribal war, according to a 2002 media report.⁷³

Advocacy groups have exploited these weaknesses to prove that mining firms are not only anti-poor, but also act in bad faith.

Advocacy groups have exploited these weaknesses to prove that mining firms are not only anti-poor, but also act in bad faith. This line of attack has been used in almost all projects located in ancestral domain lands. True or not, FPIC has become a double-edged sword – through “*manipulation*” of tribal members, it can work to advance either the mining company's or anti-mining group's agenda.

⁷³ Zuasola, Ferdinand O. (02 April 2002). “Davao Tribes Fight Over Entry of Mining Firms,” *Philippine Daily Inquirer Internet Edition*. Available at <http://archive.inq7.net/archive/2002-p/reg/2002/apr/02/reg-1-1-p.htm>

3.2.3 Overlapping mining claims

Overlapping mining claims is another major source of delay. The overlaps are inevitable because of lack of adequate control in accepting applications, some received well before the 1995 Mining Act. There are also reports of dates of applications being faked. Moreover, permits for exploration, because it involves vast areas, often overlap, but are allowed for several corporations on the expectation that the actual development area will just be a small fraction of the exploration area. The problem occurs if the explorers identify the same area for development.

This requires the strengthening of the Mines Adjudication Board (MAB)

This requires the strengthening of the Mines Adjudication Board (MAB). This involves the hiring of more lawyers, developing their technical expertise in handling cases, and appointing a full-time person to head the Board. The MAB also needs to meet more often. Presently, it is headed by the DENR secretary whose responsibilities preclude him or her from devoting enough time to preside over MAB deliberations.

Decisions are challenged in court by the losing claimant.

Inevitably also, MAB decisions are challenged in court by the losing claimant. The ball is then tossed to the courts. But the courts need to expedite these cases, emulating the swift manner in which the Palace decided to award the Tampakan project left behind by Western Mining to Saguittarius Mines instead of Lepanto, and not the way the Supreme Court is deliberating on the Mining Act. The possibility of “*no-TRO*” on the operations of the winning claimant while the court case is in progress may also be considered. Should the courts reverse the MAB decision, the petitioner should be mandated to reimburse the MAB-designated claimant for the work done by the latter so far.

3.3 Beyond the permits

A “lean but mean” mineral industry means the operation of a few large-scale, world-class mines

There would be fewer mining permits issued when all the claims are “*rationalized*.” But this is exactly what the industry needs – more quality rather than quantity. Support to mining doesn’t mean an open season for mining. A “*lean but mean*” mineral industry means the operation of a few large-scale, world-class mines that can maximize the benefits from the country’s mineral resources. It should also include a handful of medium-scale mining projects from companies practicing sustainable development.

Holders of permits are likely to opt out anyway if they realize it’s too expensive to operate the mine. Only the most efficient would be able to absorb the cost of the environmental and social programs required by the law. Western Mining gave up in Tampakan, in part, because it cost too much compared to its projects elsewhere (it fell below the cut-off line for commercially and socially viable projects) and the mine still hasn’t taken off. Which should be a wake-up call to government to reassess its (lack of) support for the industry.

The government should at least help the company in getting the procedures and their documentation right.

The 1995 Mining Act has yet to produce any new mining projects as most proposals are stuck in either the permit approval process or the EIS loop. TVI's gold project in Siocon and Lafayette's polymetallic project in Rapu Rapu Island (Albay) could be the breakthrough, although both continue to face opposition from environmental lobbyists.

To expedite approvals, the government should provide more active support. The industry argues that it is the mining company that takes all the risks (and mining is a risky business⁷⁴); spends for the project; pays for the environmental, social and community programs; and, gives the government a share of the revenues. So, the government should at least help the company in getting the procedures and their documentation right.

Below are a few other suggestions:

- All agencies involved, including local governments, should coordinate their policies and programs (e.g., land use, anti-poverty agenda, local vs. national development priorities, etc.), and get their acts together. Even bilateral and multilateral agencies should coordinate their efforts. There were some instances where funding agencies promoted redundant or conflicting projects, or agricultural projects on lands with strong potential for mining.
- The mining project should be integrated into the regional and provincial development and physical framework plans. Mining per se isn't sustainable as the minerals do get exhausted. But it can be a catalyst to sustainable development if pursued in tandem with other key strengths of the area and support infrastructure is provided. Revenues from mining can then be channeled to projects that assure continued economic growth especially for the community long after the mine closes down.
- The government should streamline the permit approval process, pinpointing requirements that can be simplified or moved to a later stage when exploration is already completed. As mentioned previously, for example, the FPIC process must be tightened (i.e., set universally accepted benchmarks and rules of conduct).
- Principles for resolving multiple claims should be established.
- The government should consider integrating the social and cultural impact assessment into the EIS system, generating a single integrated impact assessment (IIA).
- The concept of a "one-stop shop" for processing of applications, preferably at the local level for highly mineralized areas, with a "special fast lane" for large-scale projects, should be explored.

⁷⁴ IIED (2002), p. 137

The government should streamline the permit approval process.

The MGB has listed down at least 13 medium- and large-scale metallic mining projects that could be implemented in the short-term (within the next 15 months) and over the medium-term (in two to five years) (*Table 3-3*). They present a good test case for the government's renewed commitment to the mining sector. Some appear to have social acceptability problems that need to be verified on the ground. Issues pertaining to these projects need to be quickly resolved either way.

Table 3-3. PLANNED MINING PROJECTS
IN THE SHORT- AND MEDIUM-TERM

PROPONENT	PROJECT & LOCATION	INVESTMENT (US\$M)	STATUS
LARGE-SCALE PROJECTS:			
Benguet Corp.	King King Copper-Gold, Compostela Valley	532	Needs ECC, feasibility study & LGU endorsement
Rio Tuba Mining & Corp	Rio Tuba HPAL, Palawan	150	Needs Mineral Processing Permit; MPSA for limestone; protest vs. import of sulfuric acid
Climax-Arimco Corp.	Didipio Copper-Gold, Nueva Vizcaya	133	Needs RDC endorsement, Mining resolution of COMELEC case on referendum to cancel FTAA, FS & LGU endorsement
Filminera Resources Corp.	Masbate Gold, Masbate	100	Needs a feasibility study and financing
Lafayette Phil., Inc.	Rapu Rapu Polymetallic, Albay	42	Land conversion by DAR, protest by a bishop
MEDIUM-SCALE PROJECTS:			
TVI Resources	Canatuan Gold, Zamboanga del Norte	30	Limited operation; NCIP & NAPC Dev't. Phils., Inc. support opposition to the project
Case Mining & Dev't Corp.	Adlay Project, Surigao del Norte	19	Needs approval of FS, LGU endorsement and ECC
Filminera Resources Corp.	Banahaw Gold, Agusan del Norte	11	Needs MPSA, ECC, FS & LGU endorsement; resolve case vs. PICOP
Alsons Dev't, Inc.	Manat Gold, Compostela Valley	11	Needs MPSA, ECC, FS & LGU endorsement
Various	Pantukan Cluster of Gold, Compostela Valley	11	Needs MPSA, ECC, FS & LGU endorsement
King Eagle Explo. & Mining Corp.	Boringot Gold, Compostela Valley	6	Needs approval of feasibility study, LGU endorsement and ECC
Hinatuan Mining Corp.	Manicani Nickel, Eastern Samar	4	Suspended exploration due to protest from diocese

Source: Mines and Geosciences Bureau (MGB)

4.0 MANAGING THE MINING SECTOR

4.1 Management of the minerals sector

Mining has become a complex issue. It is now about balancing the need to maximize the revenues and sharing them equitably among the key stakeholders, and the need to maintain environmental, social and cultural integrity. In essence, sustainable development has become the basic principle behind the pursuit of mining.

Each mine has its own historical, social, cultural characteristics that preclude the use of a one-size-fits all prescription.

The lessons: The first is to strengthen the capacity of each of the principal stakeholders; next is to improve the interaction between stakeholders, and ensure this is a continuing process.

Mining has become a complex issue. It is now about balancing the need to maximize the revenues out of the activity and sharing them equitably among the key stakeholders, and the need to maintain environmental, social and cultural integrity. It has become a dynamic activity, where mining is just a means to an end. In essence, sustainable development (even, and especially beyond the life of the mine) has become the basic principle behind the pursuit of mining.

This change in thinking is forcing a paradigm shift in the management of the minerals sector. One of its consequences is the realization that *“each mine has its own historical, social, cultural characteristics that preclude the use of a one-size-fits all prescription.”*⁷⁵ The experiences of countries that became rich with mining (e.g., the U.S. and Australia) can only be used to justify the promotion of the activity particularly in developing countries if adapted to suit the conditions of the latter.⁷⁶ Mining has had a mixed impact on countries – some good, some bad. The difference between the two lies in the management of the sector.⁷⁷

While the literature does not seem to prescribe broad solutions to the complex of issues on mining, it does suggest some lessons that could serve as a guide in managing the mining sector:

- The first is to strengthen the capacity of each of the principal stakeholders (government, local community, and the mining companies).⁷⁸ Walpole, for example, noted that mining companies *“prefer to work with empowered communities because it is easier to conduct a real dialogue with such communities”*⁷⁹ as they are more informed and can relate to the issues better. It is particularly important to strengthen local governments, because decentralization has entrusted in them greater responsibility.⁸⁰ They are now also supposed to provide basic infrastructure and social services to their localities.
- Next is to improve the interaction between stakeholders, and ensure this is a continuing process. This serves two main purposes: it tries to get the right people together to share information and make decisions; and, it ensures that there is joint ownership of any decisions reached.⁸¹ Given the complexity of issues, the need to master change (i.e., reduce uncertainty), and the limited knowledge of each participant, formal – and informal – interaction among the stakeholders is essential⁸² to resolve conflicts, reach common ground and move forward. Regular dialogue

⁷⁵ Remy, Felix, et al (2002), p. 18

⁷⁶ Power, Thomas Michael (2002). “Digging to Development?” pp. 27-31.

⁷⁷ Weber-Fahr, Monika (2002), pp. 10-12

⁷⁸ IIED (2002), p. 354

⁷⁹ Walpole (1999), p. 76

⁸⁰ Clark, Jennifer Cook (2001), p. 26

⁸¹ IIED (2002), p. 354

⁸² Kasper, Wolfgang and Manfred E. Streit (1998). “Institutional Economics: Social Order and Public Policy,” pp. 94-96.

Global best practices should also be explored for possible local adaptation.

can help. The decisions reached may not be totally acceptable to others, but they're more likely to abide by these decisions if they have been talked through together.⁸³ The stakeholder process also assures that solutions are area-specific, as they need to be. Broad principles of sustainable development – translated into local codes of conduct – should be the guide in facilitating the discussions.

- The multi-stakeholder process should also be established at the national level, but its primary purpose is to develop codes of conduct, benchmarks, standard measures of performance, best practice models, media campaigns, etc.⁸⁴ to guide dialogue at the local/project level. The participants are also different from those at the local level engagements – government, LGU's, civil society groups, mining organizations, even media. Again, the principle of sustainable development is essential in guiding the work at the national level. Global best practices should also be explored for possible local adaptation.

4.2 Who are the stakeholders?

The key stakeholders are the government, the mining company and the local community.

The research suggests that there are - or should be - only three major, direct stakeholders:

- The government – who regulates and supervises the mining industry, and implements national, regional and local development programs.
- The mining company – who invests in and operates the mine, and provides the other stakeholders their share of the mineral revenues as provided by the law.
- The local community – who hosts the project, and is directly affected by its environmental, social and cultural impact.

The government consists of the national government and local governments.

The national government comprises the agencies involved in enforcing laws related to mining, led by the DENR through the MGB, which is designated by the 1995 Mining Act as the overall manager of the mining sector. It is also their job to promote mining. Another crucial agency is the NCIP, which grants approval of projects implemented within ancestral domains. The agency's mandate is implemented through their regional/provincial offices. The national offices provide the policy guidelines and/or recommend the final approval of major projects to the President.

The local governments consist of the barangay, municipal and provincial governments. They are empowered under the Local Government Code to formulate and implement local development plans and programs, oversee

⁸³ IIED (2002), p. 354

⁸⁴ Coroneil, F. Kennedy (2001b). "A Proposal to Establish the Philippine Minerals Development Council," no page.

the welfare of the communities under their jurisdiction, and share in the revenues of the national government. The 1995 Mining Act also delegates the approval of small-scale mining projects to the provincial government, and requires that the local governments give their endorsement to all other mining projects. (The President, however, approves the FTAAAs, while the DENR approves the MPSAs.)

The identity of the mining company is clear – it is the company granted the mining contract – although in some cases it is not easily enforced, especially in areas where small-scale miners also operate (some illegally). But it is the medium- or the large-scale mining company with a bona fide permit that is considered the stakeholder, as it is the one that usually shares the benefits of the mining project with the government and the community.

The host community may either be indigenous peoples, non-indigenous peoples, or both. The IPRA accords IP's special treatment. They have "priority rights" over the natural resources on, or under the land they occupy, so outside proponents that intend to exploit these resources need the consent of the IP's.

The emerging wisdom today is that the community should own the process, that it must have the last word. Without their participation and support, there can be no sustainable development.

The emerging wisdom today is that the community should own the process⁸⁵, that it must have the last word.⁸⁶ Without their participation and support, there can be no sustainable development.⁸⁷ As Walpole succinctly puts it:

*"Communities need to define what is vital for their sustainability. They cannot afford to entrust this task to government... Communities, by defining what is vital for their sustainability and by acting in consort to protect it, hold the key to environmental restoration."*⁸⁸

The communities, however, need to be educated and, thereby empowered, and nobody can help them unless they also help themselves.⁸⁹ But at this stage, they do need support. The other stakeholders, especially the anti-poverty agencies of the government, developmental (as opposed to antagonistic) NGOs and international aid agencies should lend a hand in strengthening the capacity of the communities to better control their destiny.

The NGOs and civil society groups came into the picture because of the increasing concern over the negative impact of mining on the environment, as well as the possible loss of livelihood, physical displacement and threats to the culture of host communities. Even if only a perceived threat. They felt that the government wasn't acting decisively on these issues. Opposition increased with the consolidation of top global mining firms and the globalization of mining.

They are, however, not direct stakeholders. Hence, they shouldn't be directly involved in the multi-stakeholder process. Their role is, or should be, that

⁸⁵ IIED (2002), p. 224

⁸⁶ Remy, Felix (2002), p. 18

⁸⁷ Clark, Allen (2001). "Challenges Facing the Mining Industry," p. 14

⁸⁸ Walpole, Pedro (1999), p. 51

⁸⁹ Ibid, p. 37

of a watchdog, putting pressure on decision-makers to protect the environment, and ensure responsible behavior towards the community.

They can also help improve the capacity of IPs/communities for informed participation in plans and programs.

Unfortunately, these anti-mining groups have some influence on multilateral and bilateral agencies

There are NGOs that exist for ideological reasons. And there are others with a singular agenda of protecting the environment, period. It is inconceivable for these groups to participate constructively in joint efforts to promote large-scale mining, and they are unlikely to do so. Despite professing to be pro-people and pro-poor, they actually don't offer (nor fund) alternative livelihood or other development programs for the communities, as advocacy is both their means and end. While most NGO's that fund livelihood and social programs normally keep an open mind about mining.

These anti-mining groups have some influence on multilateral and bilateral agencies, private foundations (some, ironically, funded by companies heavily dependent on minerals) and some members of the Church. They are well organized and well funded.⁹⁰ But they have no accountability.

Another important group of "indirect" stakeholders are the financiers... investment bankers hesitate to finance projects because of the high "social risk"

Another important group of "indirect" stakeholders are the financiers. They have increasingly demanded that mining companies observe environmental standards and work for social acceptance, while ensuring commercial viability, before committing funds to the project. One foreign mining company interviewed said that while the Philippines is seen as richly endowed with mineral resources, investment bankers hesitate to finance projects because of the high "social risk" (and also high political risk). The company added that their project in the Philippines is very small, particularly when compared to that in China where such risk doesn't exist.

⁹⁰ The presumption that mining companies can have their way because they have "access to technical, financial, political and legal resources" is a misconception. Mining is a risky business, with an average return of just 5%, and banks wouldn't touch a project unless all sorts of risks are adequately addressed. This leaves little budget for IEC, unable to match the money spent by advocacy NGO's focused on the primary objective of destroying the public image of mining companies. According to the industry, it's good business for some of these groups to flog mining companies.

4.3 Strengthening the key stakeholders

4.3.1 Government

The mining industry is less concerned as to whether the law is good or bad (good laws that can't be enforced are useless anyway). They, particularly the large companies, are more concerned with the public as they must now face public pressure to act responsibly even if there are no laws compelling them to do so. What form government organizations assume is also of only minor consequence.

To them, the more important considerations that determine success or failure in pushing mining are people, politics and funds.

People who understand not only the theoretical but also the practical aspects of mining, and are dedicated to its promotion, are the ones needed in the bureaucracy.

Politics, especially at the local level, can break even a meritorious project that has already obtained community acceptance. And too often the politicians involved are corrupt.

Funds are needed to enable the government to carry out support projects for the promotion of mining. And effectively control it.

The over-reliance on personalities in the Philippines rather than on institutions indicates weakness in governance that needs correction...

The over-reliance on personalities in the Philippines rather than on institutions, however, indicates weakness in governance that needs correction. Particularly as it can lead to an unstable, and worse, unpredictable situation where when people are replaced, rules and priorities could change, and the agreements concluded with previous personalities may no longer hold. This uncertainty discourages investors.

And the fact that mining companies have to shoulder the entire cost of infrastructure, livelihood and social services reflects the failure of government to fulfill its task.

And the fact that mining companies have to shoulder the entire cost of infrastructure, livelihood and social services in the villages they intend to operate in reflects the failure of government to fulfill its task. This should be the role of government, not private corporations.

4.3.1.1 DENR/MGB. This organization is mandated by the Mining Act to manage the mining sector. Interviews indicated that the MGB is staffed with people of adequate expertise. The problems, according to those interviewed, are not with the existing people, but with the need to:

- Beef up the Mines Adjudication Board (MAB), so overlapping claims can be effectively and expeditiously resolved, as explained in Chapter 3.
- Better delineate the functions of the central office and the regional/local offices of the DENR/MGB. The central office should primarily handle policies, program designs, promotion strategies, high-level conflict resolution, etc., while the regional/local offices manage day-to-day

There are a number of other countries in the world competing for foreign investments.

operations. It's difficult for the central office to be on top of everything, as most of the mine sites are in remote areas where communication with Manila is next to impossible, precluding quick response to any critical field events that may arise. Plus there is a need to have local knowledge and relationships.

- Conduct a more comprehensive survey so it can come up with better mineral mapping of the country.
- Work harder to improve the competitive advantage of the country in mining. It should be stressed that there are a number of other countries in the world competing for foreign investments. Newmont, for example, is about to set up a US\$450 million gold mine in Ghana, one of the best-practice mining countries in the world.⁹¹ Being mineral-rich isn't enough; the country should be able to send the message that mining companies can operate with the minimum of hassle even in a "war-torn" area like Mindanao. Admittedly, this can't be done by the DENR/MGB alone. This needs the cooperation of all concerned agencies of the government, the local governments included, to show the world that things do get done in the country.

Ideas on the strengthening of the mining bureau as a promotion arm are mixed.

Work harder to improve the competitive advantage of the country in mining.

There is a suggestion that the MGB be transferred to the Department of Energy, consequently creating a Department of Energy and Mining, as there seems to be a natural fit between the two extractive sectors. What's left with the DENR becomes an organization that implements environmental rules.

The MGB, however, has expressed some reluctance to the suggestion, as this would make it harder for the bureau to coordinate and get clearances from the other bureaus, especially those responsible for identifying and protecting forests, watersheds, seacoasts, heritage sites, etc. One example cited was the plan of another bureau to declare a site in Eastern Samar, where MGB is promoting a bauxite mine, as part of a National Integrated Protected Areas System (NIPAS). Mining is banned in a NIPAS area. Being part of DENR, this plan immediately came to the attention of the MGB, and was nipped in the bud, at least for the area where the mine is located.

Another suggestion is to take the environmental protection function out of the DENR, and form a separate environmental protection agency similar to other countries in the world. In most countries having this set-up, however, the EPA formulates the environmental policies, while other agencies, including those for mining, implement them.

⁹¹ "Newmont steps up US\$450 million Ghana development." *MiningNews.net Newsletter* (20 January 2003)

At least in the interim, the DENR should create a position for an undersecretary of mineral resources development.

Alternatively, asking Congress to pass the necessary laws to create a separate Department of Natural Resources and a Department of the Environment so that sufficient focus at the highest levels can be given to mining is probably the best way to go.

Nonetheless, there seems to be a consensus that, at least in the interim, as reinforcement to the message that the President is serious in promoting mining, the DENR should create a position for an undersecretary of mineral resources development, separate from the regulatory functions. What to do with the MGB should be the subject of more intense discussions later on.

4.3.1.2 NCIP. NCIP's problems deal with funds and people.

The NCIP, by law, issues the Certificate of Ancestral Domain Claims (CADCs). But to go about this business, it must delineate the ancestral domain lands, in the process identifying the indigenous peoples legitimately occupying these lands. Unfortunately, as pointed out in Chapter 3, the Commission doesn't have an adequate budget or the expertise for cultural or genealogical mapping. This bogs down not only the process of obtaining "free and prior informed consent" in certain mining areas, but also the delivery of social services to indigenous cultural communities.

The Commission doesn't have an adequate budget or the expertise for cultural or genealogical mapping. This bogs down not only the process of obtaining "free and prior informed consent" in certain mining areas, but also the delivery of social services to indigenous cultural communities.

There was a time (1998-99) when the NCIP was reduced to a "white elephant" when the Office of the President suspended its budget, transferring its programs and activities to the DENR and the National Anti-Poverty Commission (NAPC).⁹² But these two offices couldn't move without the issuance of CADCs which had to be done by the NCIP. With the failure in the issuance of CADCs, some mining projects were stalled because it couldn't be identified who should give consent. Location-specific anti-poverty programs also couldn't be formulated and delivered as the target beneficiaries couldn't be pinpointed.

But even though cultural mapping is essential, there are concerns that with the funding and manpower weaknesses of the NCIP, the survey results might be tainted if forced. Indigenous peoples, or people pretending to be, and who are able to gain access to the activity, could distort the results for their own ends. This is particularly true in areas where the NCIP officials are also IPs with vested interests to protect.

The ideal set-up is for cultural mapping to be commissioned to a reputable third-party, independent organization. But this would require additional funding the government doesn't have. Perhaps an area an international aid agency could assist in.

⁹² Walpole, Pedro (1999), p. 38

The issuance of Administrative Order No. 3 only exacerbated matters.

The issuance of Administrative Order No. 3 only exacerbated matters. The mandatory field investigation by the national office of the NCIP of FPIC obtained by a project proponent prior to the issuance of Certification Precondition is seen by the mining industry as a “*delaying tactic*” with little practical benefit. Such investigations are an added financial burden to the NCIP, so it takes time to complete them.

The appointment of a non-IP as head of the NCIP has also become an issue.⁹³ It is generally accepted that the head of the Commission should come from the IP community. It should be pointed out, however, that there are hundreds of ICC’s in the country, each with different cultures. So if the purpose is to represent the collective aspirations of tribal communities, an IP head is only slightly better than a non-IP because he can only understand his own culture, not necessarily those of other IP’s.

What is important is that he, or she, effectively represents IPs and protects/promotes their interests. This should likely include support for responsible mineral development consistent with the law, national government policy, and poverty alleviation objectives in remote areas.

Their focus should be more on facilitating the FPIC process

An equally important issue is the composition of the NCIP itself. There are reports that a number of commissioners and NCIP officials in the regions are against mining, or support only small-scale mining as some members of the tribes these officials belong to could be illegal small-scale miners. Hence, there is a suspicion that they are a potential source of delay in the approval of major mining projects. To rid of this suspicion, NCIP officials should assume an impartial view on mining in ancestral domains. Their focus should be more on facilitating the FPIC process, allowing the ICCs to decide for themselves, and not to make the decisions for the ICCs.

NCIP shouldn’t meddle with mining projects as this is not its area of competence.

With the President’s support for mining, the NCIP can’t do the opposite. Its primary role is to delineate ancestral domain lands, identify who their occupants are, award CADCs and certify FPICs (If such has been granted by the ICCs/IPs). It shouldn’t meddle with mining projects as this is not its area of competence.

4.3.1.3 LOCAL GOVERNMENTS. LGUs can’t do much if the community is clearly against mining. Even if the national government supports mining as a matter of policy, sustainable development dictates that the desire for a mining project should emanate from the grassroots.

Fortunately, only a few areas cling to an anti-mining sentiment. In fact, in Davao Oriental, the residents in one barangay applied for a mining permit despite having no means to start the project. They were hoping that this move would attract investors who would then put up the funds to develop the mine.

⁹³ Lopez, Bernardo (24 December 1998). “Upshot: Mining Bloc Strangling IPRA,” *BusinessWorld Internet Edition*. Available at <http://codex1/bworldonline.com/articles/98/98122422.htm>.

And obviously where the community consents to a mining project, local governments should abide by the will of the community.

Politics oftentimes gets in the way.

But politics oftentimes gets in the way. A barangay, for example, may favor a mining project, but the municipal mayor can withhold endorsement if the barangay captain belongs to the opposition or if he is corrupt –or if the mayor is. Local governments just can't seem to overcome party politics. It was worse in the case of TVI, where the mayor even issued permits for small-scale miners on the nationally-approved concession area of the company. Even worse, 13 people associated with TVI have been killed in a recent ambush (the second in a year). The damage this does to the image of the Philippines as an investment site shouldn't be underestimated.

It would send a much better signal to investors if LGU's and the national government act as one on specific projects.

It would send a much better signal to investors if LGUs and the national government act as one on specific projects. This is something the national government can work on.

The following are some areas where the capability of LGU's needs strengthening:

- Developing a transparent system of accounting for their share in mining revenues. There should be a special account for these revenues, and proper disclosure of their usage. The funds should finance development projects, particularly in the mining community. Depositing the revenues in the "general fund" of LGU's and eventually spending them on salaries and operating expenses needs to be avoided.
- Identifying and implementing programs and projects that can be leveraged by these revenues for the development of the mining community, on the one hand, and the town or the province, on the other.
- Mobilizing the community for effective participation, i.e., reflecting their aspirations, in the local planning process.
- Developing a strong linkage with higher-level planning (e.g., meaningfully integrating the mining project into the municipal plan, and the municipal plan into the provincial plan, and so on) so the mining project becomes part of the region's overall development process.

Moreover, local governments need to get their share of the mining revenues, in a timely fashion, as specified by the law, to enable them to implement programs in their localities.

Corruption is more difficult to address. Mining creates wealth, which can too easily lead to corruption.

Corruption is more difficult to address, with the solutions perhaps beyond the scope of this research. Mining creates wealth, which can too easily lead to corruption. The result is a lopsided distribution of benefits to the detriment of the community and the nation. Civil society, in alliance with international organizations like Transparency International, could play the role of watchdogs. An effective multi-stakeholder process can in part also help accomplish this task.

4.3.1.4 TOWARDS A COORDINATIVE STRUCTURE. As the primary objective is the establishment of a few world-class mines, projects that can showcase responsible mining, the government should consider the creation of locally based inter-agency teams that will focus solely on a specific mining project. This way, resources are focused to ensure that the project gets through. The subsidiarity principle dictates that “*local issues*” must be solved locally.⁹⁴

4.3.2 Mining companies

Seventeen companies affiliated with the Chamber of Mines of the Philippines (CMP) adopted a Mining Code of Conduct patterned after Australia’s in 1997⁹⁵. This is a step in the right direction.

However, more work is needed if the industry is to move forward. CMP, for example, has more than 40 corporate members, but only 17 signed the Code of Conduct.

The industry must recognize and admit to “*past sins*,” resolving to do a better job at safeguarding the environment and assisting the communities. The research indicated that some firms are still not ready to do this, particularly, but not only, small- and medium-scale ones.

The industry must recognize and admit to “past sins,” resolving to do a better job at safeguarding the environment and assisting the communities.

There are also some people in the industry who do not fully understand the meaning of sustainable development. To them, mining can’t be sustainable because once the minerals are extracted, there can be no more mining. This is true, but mining can be developed in such a way as to generate alternative economic activities, increase the capacity of the community to plan for their future, and improve the education and skills of the succeeding generations of people in the community. So when the mine closes down, the economic condition of the community is hardly affected, or even improves. This is what sustainable development is all about. At least 25 years of responsible mining operations could accomplish this task.

Industry models of best practices that prevail in the country today also need to be reviewed.

Industry models of best practices that prevail in the country today also need to be reviewed. Philex’s Padcal operations, for instance, are laudable, but this is a concept developed 40 years ago. A foreign mining firm observed that most of the community projects of Philex are cost centers. This could create some problems for the community when the mine is gone. In fairness, the Philex-Anglo American’s strategy for their forthcoming project in Surigao del Norte adopts the new approach.

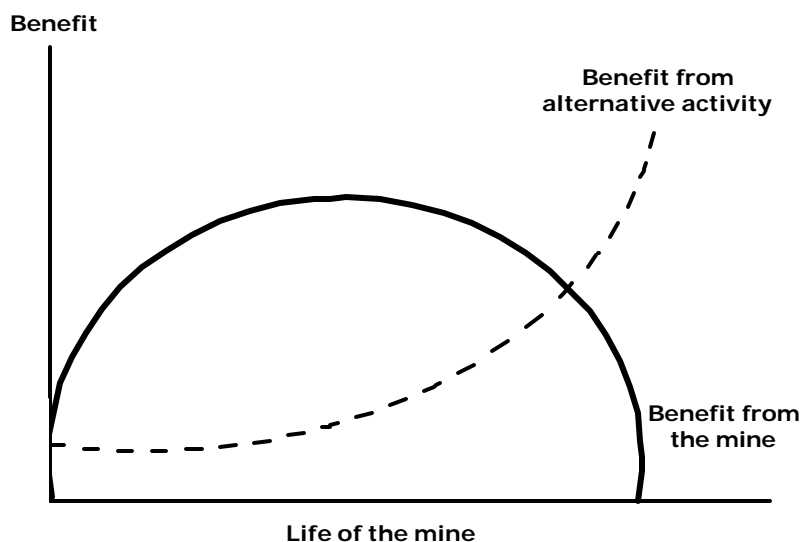
⁹⁴ IED (2002), p. xxiii

⁹⁵ Cabalda, Michael, et al (2002), p. 99

The mine serves as an instrument for the creation of new economic opportunities

Simply put, in the new model, the mine serves as an instrument for the creation of new economic opportunities (coffee-growing, in the case of TVI, with the harvests sold to Nestle; see *Box D for TVI's program for the local community*). The company provides seed capital, not dole-outs. Part of the mining revenues are channeled to these activities, so that as the revenues fall, reaching zero at the end of the mine's life, revenues from the alternate activities rise (*Figure 4-1*). When mining is over, the community remains economically secure.

Figure 4-1. COMMUNITY SUSTAINABLE DEVELOPMENT:
BENEFIT OF THE MINE vs. BENEFIT OF ALTERNATIVE ECONOMIC ACTIVITY



One of the emerging major stumbling blocks to mining investments is viability, as many of the costs that used to be externalized are now internalized to the industry.

One of the emerging major stumbling blocks to mining investments is viability. Many of the costs that used to be externalized (environmental, social, cultural and sustainability costs) are now internalized to the industry; it will require improved technology, efficiency and productivity to absorb these costs.⁹⁶ This means a huge amount of financing, which local companies might not be able to raise on their own.

All these issues argue for foreign investments in mining.

All these issues argue for foreign investments in mining. To experience sustainable mining, the government will need to invite global mining firms to develop major projects in the country.

As the World Bank notes:

*"Experience has shown that large international mining companies are generally better environmental citizens than smaller, domestically owned mines."*⁹⁷

⁹⁶ Clark, Allen (2001), p. 12-13

⁹⁷ Remy, Felix (2002), p. 1

BOX D. A NEW SUSTAINABLE DEVELOPMENT STRATEGY FOR THE MINING SECTOR: TVI EXAMPLE

TVI Pacific Inc., a junior mining company with an MPSA to explore, mine and process precious metals in a 4,755-hectare property in Canatuan (a barangay in the town of Siocon, Southern Zamboanga in Mindanao), has developed the Accelerated Area Integrated Development (AAID) model that it hopes would be applied by existing and potential mining firms in the country.

The AAID model was gradually developed as the company undertook specific steps that addressed the high poverty incidence in the region, the environmental problems caused by illegal small-mining activities, the negative perception of mining by the community, and the poor investment climate in the whole of the Mindanao region. The model involves programs that provide alternative non-mining sources of livelihood for those directly and indirectly affected by mining activities, integrate the development of all natural resources (mineral, forestry, and water resources), and initiate regional development planning.

TVI expects that the new model, if applied in other mining areas in Mindanao, would stimulate economic growth in the region, reversing the negative investment climate that the Abu Sayaff kidnappings and terrorist attacks have created in Mindanao, making financing available for exploration and mining development.

The foundation of TVI's success story in Canatuan is its strong community support, which was gained through an effective poverty alleviation program. In the traditional model of exploration and mining development, the burden of providing infrastructure, basic education and housing and medical services to win community and government support rests solely on the mining company. In TVI's model, this burden is shared among the mining industry stakeholders – the mining firm, the government and the community. Instead of incurring costs to build roads, hospitals and schools (that supports the poor's dole-out mentality), TVI provided jobs and seed capital for livelihood projects, mobilizing the community to be self-reliant and independent.

TVI's poverty alleviation program involves its partnership with the Cooperative Development Authority (CDA). The CDA assisted in the formation of the Canatuan Agro-Industrial Multi-purpose Cooperative (CAMC), a business organization owned by the residents of Canatuan including the indigenous peoples in the area – the Subanen. CDA representatives conducted information and education campaigns and skills training to equip CAMC members with the necessary skills to manage their cooperative and run their own business projects, which initially included vegetable and fruit production. CAMC used the seed capital provided by TVI and CDA to fund its projects. Aside from supplying TVI with fresh produce, the Cooperative also provides the labor pool and transportation services, and supplies carbon and lime for TVI's operations.

The success of CAMC's pilot farming project, which proved that high yield vegetable and fruit crops are commercially viable in Canatuan, has attracted the support of several groups. Land Bank of the Philippines extended additional financing to expand the business activities of the Cooperative, which now include poultry and hog raising. Nestle Corporation has signed an agreement for the development of a 100-hectare coffee plantation in Canatuan.

TVI has also initiated an innovative integrated natural resource and regional development plan to provide employment, and consequently stimulate economic growth not only in Canatuan, but in the entire region of Southern Zamboanga as well. Stakeholders are willing to pool their resources to build roads-to-market access throughout the region and establish a port in Siocon that will provide access to local and international markets. The Department of Environment and Natural Resources has expressed support for an aggressive reforestation program in the region involving the setting up of a three-hectare tree nursery that could also provide employment opportunities.

With the strong grass-roots support, and assistance of government departments at both local and national levels and international aid agencies, TVI was able to deal with the vehement opposition of anti-mining non-government and religious organizations, and illegal small miners (who sneaked into TVI's concession area, taking advantage of the closure of TVI's operations in 1998-2000 due to financing difficulties caused by poor economic conditions and peace and order problems). TVI mobilized people from the community to shut down about 200 small-scale mining (SSM) operations and dismantle 18 big cyanide plants. Small-scale miners used technologies that discharge toxic levels of mercury and cyanide into the environment, and contributed to the formation of a large black market (which results in an annual foregone tax revenue of P83 million from Canatuan). There were also allegations of child labor and abuse of the indigenous people.

Despite a series of attacks on TVI and TVI supporters (the most recent was in December 2002 when 13 people died, including TVI employees and members of the Subanen community), TVI's gold and silver processing plant has begun commercial production in January 2003 at 50 tonnes per day (tpd). TVI plans to increase production to about 250 tpd after eight to 12 months of successful operation, and then to 500 tpd at a later date. It has almost 20 years remaining on its MPSA term. Its MPSA was awarded in 1997.

Asked why they did it, a Placer Dome spokesman said: "We are concerned about our corporate image."

Take the case of Placer Dome. Despite being a minority shareholder, accounting for only 40% of Marcopper, and consequently not having much influence in the way the mine was operated (poorly as it turned out), it paid for the clean-up and compensation of affected families. (See Box E) Asked why they did it, a Placer Dome spokesman said: *"We are concerned about our corporate image."*⁹⁸

BOX E. THE MARCOPPER STORY

Marcopper Mining Corp. opened an open pit to mine for copper in Marinduque in 1969. Placer Dome Inc. (PDI) owned 40% of the mine. A Filipino shareholder had a 50% share and the rest was publicly held. When Marcopper's mining operations moved from Mt. Tapian to the San Antonio mine site in 1989, the drainage tunnel in the Tapian pit was plugged with concrete so that the pit could be used as a disposal pond for mine tailings.

On March 24, 1996, the drainage tunnel collapsed after an earthquake, spilling some 2.6 million cubic meters of tailings down the 27-kilometer stretch of the Makulapnit-Boac River. Five days after the incident, the Boac River was considered "biologically dead". A UN assessment mission considered the incident an "environmental disaster" as the tailings displaced river water, flooded low lying areas, destroyed crop farms, and clogged the irrigation systems.

The government ordered the closure of Marcopper's operation in Marinduque. Civil and criminal cases were filed against the mining firm. Its environmental clearance certificate was revoked by the Department of Environment and Natural Resources (DENR).

Marcopper claims that it was not negligent. The results of Asian Development Bank's (ADB) investigation supported this claim. ADB cleared Marcopper of allegations of negligence and non-compliance with environmental requirements.

Nevertheless, PDI took responsibility for the disaster. After the spill, it returned its shares to Marcopper, and formed a new company – Placer Dome Technical Services (PDTs) Philippines Inc. – which was responsible for the clean-up and rehabilitation of the Boac River, and compensation of affected families. PDTs spent \$10 million for the construction of two permanent plugs in the drainage tunnel of the Tapian pit and a dredge tunnel at the mouth of the Boac River to trap the tailings before they reached the sea. A total of \$70 million was paid as compensation for damages to almost 7,000 claimants. Other compensation claims are still being evaluated by a multi-stakeholder assessment team based in Marinduque.

PDTs also established the Barangay Enterprise and Sustainable Development Program to address the small-scale development needs of communities in the province of Marinduque. Some of its projects included: development of alternative high value crops, micro-finance facilities, training of cooperative leaders, a copra trading facility, and the Boac River electrification project. PDTs also sponsored a number of medical missions and financed well water projects.

To clean up the tailings, PDTs proposed deep-sea disposal. It claimed that there are studies proving that mine wastes disposed at deep levels of the ocean settle to the bottom and are incapable of reacting with seawater. The DENR rejected PDTs' proposed solution because of the consistent opposition from the directly affected stakeholders of Marinduque.

In 2000, four years after the tragic tailings spill, the community started using some parts of the Boac River for fishing, irrigation, washing clothes and water transport as the major unpolluted tributaries of the river and the typhoons that hit the region helped in diluting the tailings in the river channel that was seriously affected by the spill. But PDTs is not completely off the hook as there are still about 500,000 cubic meters of mine tailings remaining in some parts of the river. A preliminary study conducted by the U.S. Geology Survey (U.S.G.S.) suggests that there are still contaminants near the mine tailing causeways that could adversely affect plants and animals. The extent and severity of the contaminants are still being determined by the U.S.G.S.

PDTs re-applied for a deep-sea disposal permit during the final days of the Estrada government to clean up the remaining mine wastes, which then environment secretary Antonio Cerilles approved. Weeks later, the permit was cancelled under the new administration of President Gloria Macapagal-Arroyo.

In November 2001, PDTs left the Philippines but it set aside \$13 million in an escrow account for the completion of the clean-up and further compensation. An international fund management firm was hired to oversee the account and the completion of the clean-up work was passed on to Marcopper.

Discussions on the appropriate clean-up method continued to drag on. Aside from deep-sea disposal, other options considered were dumping the tailings in another landfill, and returning the mine wastes to Marcopper's main containment pit at Mt. Tapian. Until now, almost eight years after the tailing spill, the clean-up has not been completed due to disagreements among the stakeholders and strong opposition from anti-mining groups. In an attempt to solve the impasse, the DENR commissioned a third party group of consultants, composed of geologists and mine specialists from the U.S.G.S., the U.S. Armed Forces Institute of Pathology Scientists and the University of Arizona to assess the environmental impact of the proposed methods, identify the best option for cleaning up and rehabilitating the river, and devise a monitoring program that would prevent similar disasters in the future. Funded by President Macapagal-Arroyo's Social Fund, the study began in June 2003.

⁹⁸ Verbo-Velasco, Digna B (12 November 1996). "Uncertain Marcopper Assistance Imperils Makulapnit Dam Structure," *BusinessWorld Internet Edition*. Available at <http://codex1/bworldonline.com/articles/98/98111281.htm>

Aggrieved entities can also file for damage claims – in a number of cases successfully – against foreign mining companies in their home countries. In 2001, 7,500 South Africans got a £21 million out-of-court settlement after they claimed damages for personal injury against Case Plc, an asbestos mining company, in UK courts; Australian courts also received a petition against Ok Tedi mine in Papua New Guinea; US courts received complaints against mining operations in Irian Jaya and Colombia.⁹⁹

So, contrary to what the anti-mining groups want people to believe, foreign mining companies can actually set things right for the industry by example. And can be made to pay for whatever damage their activity may inflict on the environment or host community.

4.3.3 The local community

As discussed previously, the consent of the community and their participation in planning are essential for sustainable development.

They do know their aspirations – decent jobs, food on the table, and education for their children, at the very least. For IPs, the preservation of their culture and sacred grounds could be added.

But these are mostly poor folks with limited education and with little understanding of the long-term view. They lack skills for discerning from among the various economic alternatives and are suspicious of outsiders, especially those whom they feel could take advantage of them. On the other hand, they will tend to look for somebody they can “take advantage of” – the “dole-out” mentality.

The community often lacks the capacity to play the role of economic change agents in their locality. They need help to fulfill this role.

In short, the community often lacks capacity to play the role of economic change agents in their locality. They need help to fulfill this role.

Building community capacity should start ideally ahead of building the structures, and the capacity building should continue throughout the life of the mine.

Building community capacity should start ideally ahead of building the structures, and the capacity building should continue throughout the life of the mine. There is a mining company into exploration in Mindanao that built a hospital in a tribal village. The hospital barely had patients, but the medicines kept disappearing because the villagers sold them for cash. And yet the villagers themselves asked for the hospital. Another community needed seed capital, but had no system in place to manage it and disagreed among themselves how to use it. A member of one tribe asked a member of another why the latter's community chose to get a tricycle (motorbike with a sidecar) instead of a water pump.

There is an over-eager expectation within local communities that exploration is mining.

A problem that has to be overcome is the over-eager expectation within local communities that exploration is mining. And, hence, they expect explorers to expend large sums on community development. Despite that at this stage any expenditure is purely a cost to the company with no compensatory revenues.

⁹⁹ IIED (2002), p. 344

International agencies, NGOs and/or the government can provide help in community capacity building. But where none is forthcoming, or is inadequate, mining companies should do it themselves (by assigning full-time community organizers) or through a reliable NGO.

It should begin even before the onset of exploration, through a baseline study of the community.¹⁰⁰ During the exploration stage, IEC should be conducted even as the company starts to conceive a program for the development of the community. It's long and tedious, starting with the building of trust, progressing towards awareness and confidence, and finally development of capacity for self-management and for making informed decisions.

The Philex Anglo-American experience in its Silangan Mindanao exploration project in Surigao del Norte can be a useful guide. The company is implementing a strategy that forges a partnership with the community in integrating socio-economic interventions with wise use of the community's resources. The strategy has two stages¹⁰¹:

- First stage – community organizing (see *box F*): This involved the formation of a people's organization, the encouragement of active and meaningful participation, and self-reliance (self-management, financial responsibility and accountability).
- Second stage – community-based resource management: Community participation in sustainable resource utilization and management, to help address poverty and retard environmental degradation.

Community organizing was meant to make the company the community's "*neighbor of choice*." To become a "*neighbor of choice*," Three key elements were necessary – relationship-building, in which Philex's community organizers lived with the residents of the community and gained their trust; designing community programs, which apart from establishing a people's organization, the company also initiated projects to meet the needs of the community (educational assistance, vegetable gardens, water system, improvement of buildings and roads and health assistance); and identifying and monitoring community concerns and issues, which were addressed with an IEC program and community visits to the Padcal mine.¹⁰²

¹⁰⁰ Remy, Felix (2002), p. 1

¹⁰¹ Francisco, Victor (2001), pp. 2-3

¹⁰² Ibid, pp. 4-12

BOX F. PHILEX-ANGLO AMERICAN'S COMMUNITY ORGANIZING STRATEGIES

- **Community immersion.** Silangan Mindanao Exploration Company Inc. (SMECI), a joint venture between Philex Gold Philippines and Anglo American Exploration (Philippines), hired three full time community organizers to live with different families in the community to gather information, and understand the people's problems, attitudes, and perception of mining. The company also established its community relations office in the host communities.
- **Formation of people's organization.** The community organizers assisted the community in the formation of people's organizations (POs). SMECI provided managerial training and financial assistance to the POs. Income generating projects were also organized.
- **Exposure trips.** Both anti- and pro-mining community members were brought to the Philex Padcal Mine in Tuba, Benguet and the Anglo-American exploration office in Baguio City to show what responsible mining can do to the host community, and allay fears that exploration and mining development could adversely affect the environment and lead to the dislocation of communities.
- **Information education communication program.** The company's environmental and social development policy was presented to the barangay and municipal leaders, and people's organizations. Focused group discussions, house-to-house visits, and informal consultations were regularly conducted to discuss issues and concerns regarding SMEC's exploration project.
- **Community Technical Working Group.** This is a multi-sectoral group composed of representatives from SMECI, the Mines and Geosciences Bureau- Region XIII, municipal and barangay local government, people's organizations, sectoral groups, and regional government agencies such as the Department of Health, Department of Agriculture and Department of Education, Culture and Sports. The group is tasked with regularly monitoring the company's compliance with an agreed environmental management program, addressing the concerns of host communities related to the company's activities, and coming up with recommendations on how to improve the company's environmental management and social development projects.
- **Community development projects.** SMECI's projects include a full scholarship program for elementary students; setting up of tree nurseries and vegetable gardens in schools and backyards; rehabilitation and construction of water systems; repair and improvement of buildings; construction of community roads; donation of medical equipment; and establishment of herbal gardens.

4.4 Stakeholder engagement

Given the increasing complexity of issues in mining, a trilateral dialogue conducted at the local level is necessary for effective problem solving.

Given the increasing complexity of issues in mining, a trilateral (government, mining company, community) dialogue is necessary for effective problem solving.¹⁰³ The dialogue should be conducted at the local level, and preferably initiated by independent parties.¹⁰⁴

The MMSD Project prescribes the appropriate roles and responsibilities of each of the stakeholders to ensure that the engagement is productive¹⁰⁵:

- Community – Must own the process
- Company – Commit to the process and contribute funds
- Government – Establish regulatory framework and requirements for the process, and contribute funds
- Local governments – Help companies in the region to develop common strategies for interventions; request community participation; ensure the national-level framework reflects the expectations of community

The enumeration excluded donors, which the MMSD presumes would come in with funds, if national government can't.

The community must own the process.

For the engagement to be effective, however, a stakeholder must not be perceived by others as having undue advantage.¹⁰⁶ The community won't see the dialogue as fair, for example, if it suspects collusion between the government and the mining company, so the process is likely to fail. Unfortunately, the lack of capacity of the community normally creates that suspicion. Hence, as mentioned in the previous section, the community needs to be given assistance to strengthen their capacity. Nonetheless, the MMSD project maintains that a continuing dialogue can be a means and an opportunity for facilitating community awareness, capacity building, and involvement.¹⁰⁷ As shown by the experience of some members of Mindanao Association for Mineral Industries (MINA), a series of genuine consultations between the companies and the communities can go a long way in building trust and understanding between the stakeholders. It has also helped build the confidence of the community in negotiations with the firms and the local governments.

The lack of capacity of the community normally creates suspicion

The other criteria for success are¹⁰⁸:

- Generality – the process shouldn't be discriminatory
- Certainty – there is transparency, and the rules of engagement are clear
- Openness – agreements should be flexible enough to respond to changes in circumstances. That's why it's important to have continuous and regular dialogues.

¹⁰³ Remy, Felix (2002), p. 4, p. 15; IIED (2002), p. 224

¹⁰⁴ IIED (2002), p. 209

¹⁰⁵ Ibid, p. 224

¹⁰⁶ Kasper, Wolfgang (1998), p. 122

¹⁰⁷ IIED (2002), p. xx

¹⁰⁸ Kasper, Wolfgang (1998), pp. 122–123

The most important task is the formulation of a community sustainable development plan (CSDP) that is integrated with higher-level plans (i.e., municipal, provincial, regional) and addresses the concerns raised in the integrated (social, cultural, environmental) impact assessment.

The issues that can be taken up in the dialogue should be those that affect all the participants, such as¹⁰⁹:

- Provision of micro-credit
- Assistance to the “unemployed” arising from in-migration
- Impact of land allocation on the development of other economic activities
- Support vocational training schools
- Bringing in NGO’s and bilateral support to provide a portion of the social cultural safety net
- Coordination of ODA-funded infrastructure projects
- Women and children related programs

But the most important task is the formulation of a community sustainable development plan (CSDP) that is integrated or can be linked with higher-level plans (i.e., municipal, provincial, regional). The CSDP is also designed to address the concerns raised in the integrated (social, cultural, environmental) impact assessment. The CSDP, however, should be viewed as work-in-progress, adapting to changes in circumstances as needed.

¹⁰⁹ Clark, Jennifer Cook (2001), p. 27

5.0 MINING, POVERTY AND THE CHURCH

5.1 Poverty and mining

Most potential mine sites in the Philippines are found in places where the poor live, and they are mostly indigenous peoples. These are often in now “denuded forest areas, although some areas have better forest situations like Cordillera, Mindoro, Zamboanga and Davao.”¹¹⁰

These poor communities have few economic alternatives and generally survive on subsistence farming. Most of the residents understand this activity will never get them out of poverty, but also understand that the wealth underneath their land, if properly harnessed, can give them the chance to break out. According to Brimo:

“Impoverished communities generally welcome any and all forms of development for as long as they understand what is to be done and it is responsibly undertaken...”

*“Impoverished communities generally welcome any and all forms of development for as long as they understand what is to be done and is responsibly undertaken. It is also an established fact that most forces of agitation against a mining project come from individuals/organizations located outside of the host community.”*¹¹¹

Most have embraced mining.

Table 5-1 confirms that “identified mineralized”¹¹² provinces are, with a few exceptions, generally poor (poverty incidence well above the national average of 32%) and sparsely populated (population density well below the 226 per square kilometer national average, excluding Metro Manila). The low population density also highlights that these are inaccessible areas and with few economic opportunities. Most have embraced mining.

There are some “mineralized provinces” that have opposed plans to put up mining projects. One thing in common among these provinces is their relatively low poverty incidence, indicating that there are other economic alternatives besides mining in these areas.

However, there are some “mineralized provinces” that have opposed plans to put up mining projects. These include Nueva Vizcaya (conducted a referendum that reportedly resulted in an overwhelming rejection of Climax-Arimco’s project in Didipio) and Mindoro Oriental (which declared a 25-year ban on mining). One thing in common among these provinces is their relatively low poverty incidence, indicating that there are other economic alternatives besides mining in these areas (although probably not as lucrative as mining, but less environmentally controversial).

On the other hand, Benguet, with a low poverty incidence (23.6%), favors mining because it was mining that actually led to the reduction of poverty in the province. The two surviving large mines in the country – Philex and Lepanto – are found in Benguet.

¹¹⁰ Coronel, F. Kennedy (2001a). “Economic and Social Costs of the Constitutionality Issue of the FTAA and the Mining Act,” no page

¹¹¹ Brimo, Gerard (23 July 2001). “A Case for Mining,” *Philippine Daily Inquirer Internet Edition*. Available at http://archive.inq7.net/2001-p/bus/2001/Jul/23/bus_20-1-p.htm

¹¹² The location and extent of mineral deposits cannot be known until explored. The term “identified mineralized” provinces refer to provinces where there are at least exploration activities that have initially estimated a substantial amount of deposits in these areas.

According to mining firms in Mindanao, one difference between the communities in the North (Luzon) and those in the South (Mindanao) is that the North has other alternatives and hence can afford to repudiate mining, while in the South, there's hardly any opportunity so most support mining.

Programs like reforestation and upland farming are fine. But why immediately reforest a denuded, mineralized area and wait for a decade to get the pay-off when large-scale mining done by a responsible company can give that pay-off as early as the exploration stage. And the land can still be reforested, but after the mine has earned income for the community, and is closed down. Upland farming is generally undertaken in areas where the soil is nearly barren and the residents have no tradition of farming. So when the funding to get these farming projects going is gone – in two to three years – the implementers leave and the programs generally fail. And how many of these programs can be set up in remote places, when the government can't even provide basic services like schools and health centers.

Mining is a long-term proposition, but with some immediate returns – seed capital, livelihood, etc.

Mining, on the other hand, is a long-term proposition, but with some immediate returns – seed capital, livelihood, etc. And runs for 25 years, on average, providing enough opportunity and resources to formulate and implement a meaningful development program for the community, including planning what to do when the mine closes down.

One foreign mining company official said people shouldn't look at the mine as 10 years of environmental destruction, but look at it as 50 years of productive undertaking, rehabilitation and rejuvenation of the land into other productive uses. The first 25 years devoted to mining, next 25 years to rehabilitation and emergence of new industries or forest growth. Oppositors maintain that this is easy to say, but the country has never had this kind of experience with mines that have come and gone, so what assurance is there that new mining companies will do this. Poor communities, with no other alternative, are willing to take that gamble. The government should be determined to make it a reality.

A Mandaya Lumad tribal leader said they have "accepted mining because it will uplift their economic life... and achieve the aspirations of their people for education, health and jobs."

A Mandaya Lumad tribal leader, speaking on behalf of his community and fellow Lumads from other villages, said they have "accepted mining because it will uplift their economic life... and achieve the aspirations of their people for education, health and jobs." He added: "It is important to implement the mines now, for the sake of the tribal communities." Tribal leaders from three other Lumad villages who were present as a show of support agreed.

Table 5-1. SELECTED MINERALIZED PROVINCES, POVERTY INCIDENCE AN POPULATION DENSITY

PROVINCE	MINERAL	STATUS OF MINING ACTIVITIES (as of December 2002)	POVERTY INCIDENCE, 1997 (%)	POP'N DENSITY, 2000 (/sqkm)
Agusan del Sur	Gold	Operating small-scale mines	54.5	62
Surigao del Norte	Chromite, gold, nickel	A mix of exploration and mines that have stopped operations	52.1	176
Albay	Copper, nickel	With abandoned mines, but Lafayette's Rapu Rapu project may start soon	50.7	427
Davao Oriental	Gold, nickel	Exploration stage	50.7	86
Kalinga	Copper	Exploration stage; one mine stopped operations	50.5	56
Surigao del Sur	Nickel	Exploration stage	49.8	110
Camarines Norte	Gold	Exploration stage; one mine stopped operations	47.2	217
Palawan	Nickel	Rio Tuba mine is operating	45.9	51
Compostela Valley	Gold	Diwalwal gold rush area is operating (small-scale)	42.8	140
Negros Occidental	Copper, gold	All large mines have stopped operations	41.6	275
Zamboanga del Sur	Gold	TVI to start operations; small-scale mining exists	37.5	176
Mindoro Oriental	Nickel	Declared a 25-year moratorium on mining	36.1	156
Benguet	Copper, gold	The only large mines (2) in the country that are still operating	23.6	124
Nueva Vizcaya	Copper, gold	Opposition to Climax-Arimco's FTAA	21.9	94
Zambales	Chromite	Mines stopped operations	19.3	350
PHILIPPINES			31.8	260
Ex. M Manila			32.05	226

Sources: National Statistical Coordination Board; Mines and Geosciences Bureau; National Statistics Office

There could be exceptions – communities that are “*happy to be poor*” –as one lawyer expressed it– or residents in some areas that had mines before but didn’t benefit from them or where the mine has recklessly destroyed their environment.

But the general rule, it would seem, is that poor provinces with remote villages welcome mining provided they can trust the proponent to assist them to bring their community into the mainstream of economic progress.

5.2 The Church and the poor

"We are here to help the poor," a TVI official told a bishop, as he was leaving the latter's residence.

The bishop shot back: *"Helping the poor is not your business."*

Perhaps, and hopefully, what the bishop must have meant was business' primary role is to seek profits, not look after the welfare of the people. For mining companies it's worse, as there's a broad perception that they not only seek profits but also pose a risk to the environment and the host community.

The bishop must have also been aware that environmentalists and their allies have accused TVI of forcibly ousting small-scale miners from the company's concession area as they were operating illegally and encroaching on the company's MPSA area. Even TVI's critics admitted that the company had a valid mining permit. But what probably mattered to the Church was that the miners lost their livelihood. And ignored the fact that the miners destroyed a river with their discharge of mercury-laden tailings. And didn't seem to have anything to say about the killing of 13 tribal members (mostly women and children) supporting the company in December 2002.

The Catholic Church (the bishops, most especially) could well be the most formidable challenge mining companies face in trying to prove themselves capable of being pro-poor.

The Catholic Church (the bishops, most especially) could well be the most formidable challenge mining companies face in trying to prove themselves capable of being pro-poor.

In 1998, the Catholic Bishops Conference of the Philippines (CBCP) issued a *"Statement of Concern on the Mining Act of 1995,"* calling for the repeal of the Philippine Mining Act of 1995, the recall of approved FTAA's, the closure of specified local mining firms and the stoppage of activities of foreign mining companies. It was said that the decision to issue the statement wasn't unanimous, but all the bishops signed it anyway.

Curiously, they were silent about the environmental destruction caused by small-scale miners, particularly in Diwalwal, which has led to several deaths – something that hardly occurred in large-scale mines (in the Marcopper accident, for example, nobody died).

The bishops admit no expertise in economic management and mining technology, but they do lay claim to the Christian belief that:

"Everything we have received is a gift from God, whether this be ability, talent, property, or wealth. Those who possess wealth and ability have an obligation to use these gifts to create employment and to develop the country in such a way that it serves the common good..."

"Mining... [should] serve and promote the economic good and the dignity of the peoples who make up this national community... We are stewards, administrators, caretakers of creation..."

“The hierarchy feels that the way mining... is being developed poses a serious threat to the environment...”

“Issues such as mining and the environment are social issues and as such they have a moral dimension. The bishops address these moral dimensions and make a moral judgment about economic and social matters ‘when the fundamental rights of the person or the salvation of souls requires it.’”¹¹³

The Mayor of a town, who got pleas for 2,000 jobs but could only give 200, and is supportive of mining in his town, remarked in exasperation that he couldn’t understand *“why the parish priest wants the people to remain poor.”* That’s not what he was taught by priests in school, referring to Jesuit-run Ateneo. The community shares his view on mining.

Not all of the clergy, however, are anti-mining. But they can’t openly support mining either because they have only Philex Padcal to show as an example of responsible mining, while there are 30 or so with records of past misdeeds.

Not all of the clergy, however, are anti-mining. But they can’t openly support mining either because they have only Philex Padcal to show as an example of responsible mining, while there are 30 or so with records of past misdeeds. They risk defending an industry that they perceive to still be uncertain of behaving responsibly in the future, despite the promises given.

The bishop in Surigao del Norte, voicing the call of affected communities and the seeming failure of the government to take a more decisive action, asked Manila Mining to account for the technical deficiency of its open pit mine, and the damage caused by accidents on its tailings ponds. He was branded a subversive. The province supported mining (even the diocese was said to be supportive) – until the Manila Mining disaster came along. Because of what they perceived as irresponsible behavior on the part of the company, the residents are said to be having some second thoughts about the industry.

The Manila Mining disaster is just the kind of incident that can disrupt years of effort by the mining industry to rebuild its image.

This is just the kind of incident that can disrupt years of effort by the mining industry to rebuild its image. It also tends to confirm the Church’s doubts about the industry’s ability to change for the better.

5.3 What to do

The complaint about the abuses of the past is valid. But the answer is to stop those abuses, not stop mining altogether.

It is hard to understand the opposition of the Church. The complaint about the abuses of the past is valid. But the answer is to stop those abuses, not stop mining altogether. What they could have done, and still could, was not to make a public stand against mining, but remain vigilant over the mining activities in the parishes – small-, medium- or large-scale – and expose wrongdoings publicly. They could also put pressure on the government to strictly enforce mining and environmental laws, no matter who gets hurt.

¹¹³ Walpole, Pedro (1999), pp. 62-65

A more reasonable approach for the Church to take might be to accept mining PROVIDED it devolves to demonstrable benefits to the local people and community generally. And PROVIDED any damage to the environment is minimized, controlled and rehabilitated at the end of the mine's life. Given the Church's dominant influence, it could be a partner in doing this.

One suggestion is to invite key, influential Church leaders to some best practice mines in the world. It will make them aware that mining can be done responsibly, and decent foreign companies have a greater chance of making this happen.

The Holy Father issued a letter expressing concern about the environment, the “*excessive and disordered way... people consume the resources of the earth,*” and the use of resources to benefit a privileged few.¹¹⁴ But nowhere did he say that mining should be repudiated. Instead, he reminded the people to use the resources wisely.

No one denies that protecting the environment is important. But no one would have thought that putting this above providing a better quality of life/standard of living for people would be considered the higher priority.

A more reasonable approach for the Church to take might be to accept mining PROVIDED it devolves to demonstrable benefits to the local people and community generally. And PROVIDED any damage to the environment is minimized, controlled and rehabilitated at the end of the mine's life.

Given the Church's dominant influence, it could be a partner in doing this. And given the importance of mining to bringing people out of poverty, it is important that ways be found to address the Church's concerns and convince it of the desirability of mining for the people's sake.

One suggestion, if resources permit (this should be sponsored by an international agency, not mining companies), is to invite key, influential Church leaders to some best practice mines in the world. They should see for themselves that mines can transform communities and mining firms, especially foreign, can be good environmental citizens.

The projects to be visited must be best-practice open pit mines, as it is in this type of mining that opposition is strongest. The countries to be visited should preferably be predominantly Catholic developing nations, so the Church leaders can talk to their counterparts in the host countries. They should also be allowed to freely talk to the residents of the mining communities.

Although this is not a guarantee that the Church will change its mind about mining, it will make them aware that mining can be done responsibly, and decent foreign companies have a greater chance of making this happen.

Key senior government officials that are in a position to take action subsequently should accompany the Church leaders.

There could be exceptions – communities that are “*happy to be poor,*” or residents in some areas that had mines before but didn't benefit from them or where the mine has recklessly destroyed their environment.

But the general rule, it would seem, is that poor provinces with remote villages welcome mining provided they can trust the proponent to assist them to bring their community into the mainstream of economic progress.

¹¹⁴ *Ibid*, pp. 62-63

6.0 LEGACY ISSUES

6.1 The root of mistrust

A discussion on mining wouldn't be complete without touching on the issue of abandoned and closed mines that continue to create environmental and health problems for their surrounding communities.

Much of the public mistrust about mining today stems from the visibly sad shape of areas that used to be bustling mine sites before.

Much of the public mistrust about mining today stems from the visibly sad shape of areas that used to be bustling mine sites before. They were left behind by their owners due to nearly depleted deposits, uneconomic rate of recovery or heavy financial losses. A number of these sites continue to pose hazards to health and well being. For every one good practice mine, there seem to be at least 30 bad practices for everyone to see.

Deep, lunar-like craters that have become lakes of toxic chemicals; tailings ponds that continue to spill wastes and acids into their surroundings; polluted rivers and water systems (although riverine disposal had been banned years ago, and most pollution hasn't been entirely caused by mining¹¹⁵); lands rendered infertile for agriculture; and booming areas that have become ghost towns. These are images that give mining a bad name. (See Table 6-1 for some examples of mining legacies gone bad.)

Table 6-1. PHILIPPINES: SOME MINING LEGACIES

Mining Project	Location	Details
Atlas Consolidated Mining & Dev't Corp.	Toledo, Cebu	Closed in 1993, one open pit released 5.7 million cubic meters of acidic waste into a nearby river and the sea in 1999.
Hixbar Mining Co.	Rapu Rapu Island, Albay	Contaminated 3 of 4 rivers, left a huge open pit, and rendered the land barren.
Philippine Iron Mining Corp.	Larap, Camrines Norte	After 41 years of operation, the open pit was abandoned in 1975, leaving 180- foot deep lagoons filled with contaminated greenish water.
Maricalum Mining	Sipalay, Negros Occidental	Finally closed in 1996, after 3 tailings spills (1982, 1983 and 1996) that damaged 300-400 hectares of farms and rendered water in a nearby river unpotable.
Palawan Quicksilver Mines	Palawan	Even though it was closed down in 1975, some residents in the coastal areas continue to show manifestations of mercury poisoning.

Sources: De Leon (2001); Tujan (2002); Cabalda (2002)

¹¹⁵ Cabalda, Michael, et al (2002), p. 92

These visible manifestations of past misdeeds are what keep environmental activists in business. And help them to convince some people to see the situation from their point of view, including the Church. It is said that the archdiocese of Cebu was willing to keep an open mind about mining, but subsequent environmental accidents in Atlas' abandoned mine site in Toledo seemed to have closed the door to that possibility.

6.2 Practical difficulties in addressing the issue

The industry has no record to show of any success story. Abandoned mines are literally abandoned.

One of the weaknesses of the country's (and for most other countries as well) policy and legal framework is its lack of provision for mining legacies. As noted by Cabalda (2002), "... *mine rehabilitation as an integral part of a mining operation appears to be a new concept in the Philippine mining industry – the industry has no record to show of any success story. Abandoned mines are literally abandoned...*"¹¹⁶

The Mining Act of 1995 tries to remedy this weakness, requiring firms to have a Final Mine Rehabilitation/Decommissioning Plan and establishing the Mine Rehabilitation Fund (MRF). The Act even incorporates the past record of a mining company in communities where they used to operate as one of the criteria for approving a mining permit application. But all these new features are forward-looking. The Act does not provide for the clean-up of the mess left behind by past projects.

Most owners of these projects have already walked away, and are unlikely to address these misdeeds. And even if they do accept these 'sins', they may no longer have the means to finance rehabilitation. Nor does the government have the funds to undertake this exercise.

Placer Dome's efforts to rid Boac River of waste from Marcopper's tailings are laudable, in fact the river is beginning to show some signs of revival. But there are still concerns that the accumulated tailings from the abandoned mine site remain a threat, and Placer Dome is no longer there to help in case the threat becomes a reality, as the company has already sold its shares in Marcopper. Many believe the local owner has neither the technical nor financial capability to contain the damage should another spill occur.

Shifting the responsibility to new mining ventures would be impractical. The new investors have nothing to do with the damage (unless they owned the abandoned mines, in which case they might, and should, face difficulty getting approval for new projects if the MGB strictly enforces the Mining Act). Moreover, '*Internalizing*' these costs would be an added burden to investors who also have to set aside funds for various environmental and social measures under the Mining Act.

¹¹⁶ *Ibid.*, p. 95

The issues, however, remain complex, needing to strike a balance between rebuilding goodwill to affected communities and the public, and ensuring the viability of the industry.

According to Clark (1994), "... the difficulty [of having a national rehabilitation fund for abandoned mines financed by mining investors] is the need to impose a higher financial burden on new projects to offset the anticipated shortfall due to the limited life of mines already in operation. Such a burden may mean that some new projects are not viable and never developed..."¹¹⁷

This is not to say that legacy issues couldn't, and shouldn't be addressed. By all means they should be. The government can continue to force erring mine owners to take responsibility, starting with companies that recently closed or abandoned their mines but still retain the rights to the mines. If they do nothing about it, the mines should not be allowed to re-open and the owners should not be allowed to pursue new mining ventures.

But the critical thing is that government must act more forthrightly than it has in the past. This is one of the key points of NGOs: The reality that despite laws to protect, government has been ineffective in enforcing those laws. And if it has been in the past what's to say it won't still be in the future. This government must address.

The issues, however, remain complex, needing to strike a balance between rebuilding goodwill to affected communities and the public, and ensuring the viability of the industry. Genuine dialogue among the stakeholders (including development-oriented NGOs, mine rehabilitation experts, financial experts, etc.) could provide insights that could lead to creative solutions acceptable to all. But all stakeholders must be prepared to listen to the views of the others. With the goal of how to develop mining responsibly. Not: How to prevent mining at all. This latter is not a solution, it is a "cop out" that denies the need to uplift the poor out of poverty.

6.3 Possible approaches

Even at the global level, initiatives at addressing the legacy issues are still in their early stages of discussion. Many agree, though, that they are a major concern, and must be resolved, so the dialogues are continuing.

Dealing with the worst environmental problems at abandoned mine sites could create benefits, as these sites are effectively advertising against the industry.

The MMSD Project (2002), where various stakeholders contributed several constructive ideas, established a number of perspectives for developing approaches to how to manage mine legacies. Firstly, it was suggested that dealing with the worst environmental problems at abandoned mine sites could create benefits, as these sites are effectively advertising against the industry. So, it might be that a dollar spent in reducing the amount of this kind of bad advertising about the industry might be more effective than one spent on promoting corporate image.¹¹⁸ Secondly, consumers, mostly in the industrial world, have not paid the full costs of using mineral commodities; the failure to internalize costs (e.g., of rehabilitation) in the past means that consumers in wealthier countries have been subsidized, paying lower prices for minerals they have used than they reasonably should.¹¹⁹

¹¹⁷ Mineral Policy Program, East-West Center (Hawaii), "The Philippine Mineral Sector to 2010: Policy and Recommendations," An Asian Development Bank Mineral Sector Study, 1994, pp. 54 to 55.

¹¹⁸ IIED (2002), p. 246

¹¹⁹ Ibid, pp. 389 and 405

The issues then translate into who will pay and, inasmuch as the costs involved will be tremendous, which sites would be considered as the priority for rehabilitation.

Table 6-2 reproduces the matrix of responsibility proposed by the MMSD Project. But, as already mentioned in Section 6.2, it might be difficult to compel local companies to take responsibility, although the government should continue to try to force them to.

Assistance to mining countries by major consuming countries should be considered

One alternative that should be explored, but would require a global effort, is for major consuming countries to provide assistance to mining countries, on the presumption that consumers have enjoyed “subsidized” prices for mineral products in the past. This could be complemented by available international environmental financing facilities, as well as some contribution from a group of mining companies, provided governments of mining countries also commit a specified share of counterpart financing, to create an enlarged funding base. An international agency like the World Bank could perhaps manage this fund.

Table 6-2. POSSIBLE ALLOCATION OF RESPONSIBILITY FOR DEALING WITH MINE LEGACIES

Scenario	Responsibility
Ancient mine workings	Rehabilitation with public funds
Historic mine with no identifiable owners	Rehabilitation with public funds
Mine closed and former operator can be identified, but no longer owns the site	Former owner could be liable, or rehabilitation could be a public responsibility
Mine closed but former owner still owns the site	Owner/operator is responsible for preventing damage to neighboring property and controlling hazards
Mine is still operating	Owner/operator is responsible through an agreed closure plan
Operating mine early in project life	Owner/operator is responsible through an agreed closure plan
Permits granted but no operations have yet started	Costs fully internalized to the extent current scientific and technical understanding permit
Mine has not yet received necessary permits	Costs fully internalized to the extent current scientific and technical understanding permit

Source: IIED (2002), p. 247

Grants allowed under this proposed fund go to the government, which means they will support the rehabilitation of “orphaned mines” – abandoned mines with no clear owners, as suggested in Table 6-2. These grants should be used to determine priority mines for rehabilitation, and to develop project proposals that could then be funded.

High priority should be accorded to sites that pose a clear threat to public health and safety, or with impact on important water resources – in short, in areas with demonstrable social and environmental benefits for a relatively

small investment.¹²⁰ Another set of considerations for determining priority is where there can be employment generation, skill building, and the creation of livelihood by the rehabilitation itself.¹²¹

A joint effort among the government, the industry, relevant civil society groups and funding agencies can be explored to identify which closed and abandoned mines need to be prioritized for assessment of their continuing adverse environmental impact. A few showcase projects can be considered as a start. A technical group proceeds to determine the specific ecological problems of these mines, then make recommendations on how to address these problems. The stakeholders subsequently identify who would be responsible for cleaning up the mess. If concrete steps are taken by those responsible, it is likely for the mining industry to regain the trust of the public, and it would be easier to sell a mining project to host communities.

Mine rehabilitation, although difficult and costly, could actually create economic opportunities. According to MGB-DENR:

“Current international practices have successfully shown that mine closure signifies a new beginning... Recent strides in developing technologies to mitigate the environmental effects of mining, reinforced by regulatory standards gave rise to successes in mine rehabilitation and transformation of closed mines into a wide range of productive uses – as focus of industrial archeology and social history, as museums of mining history, tourist attractions or resorts, as industrial/manufacturing zones or for scientific/technical purposes.”¹²²

But critical as it may be, mining legacies should not stall efforts at promoting responsible mining. It's not about focusing on abandoned mines first, then developing new mines later. As even the past has shown, an operating mine can generate the much-needed economic activity that can help alleviate poverty in a remote area. Something that is urgently needed. The framework for avoiding the mistakes of the past, particularly in mine closures, is already in place under the Mining Act of 1995 (hence the need to pressure the Supreme Court to decide upon its constitutionality in the soonest possible time). So the revitalization of the mineral sector should not be immobilized while the debate on how to deal with mining legacies goes on.

¹²⁰ Ibid, p. 407

¹²¹ Ibid, p. 408

¹²² Department of Environment and Natural Resources, Mines and Geosciences Bureau (MGB-DENR, 2002), “The National Minerals Policy: Promoting Sustainability through Responsible Mining,” p. 30.

7.0 RECOMMENDATIONS

7.1 The research premises

Globalization has forced countries to redirect their efforts towards their key strengths. In the Philippines, one of its strengths is mining. It is among the world's most richly endowed in copper, gold, nickel and chromite in terms of mineral deposit to land area ratio. Unlike other activities like manufacturing, investors can't locate their facilities elsewhere but have to go to the country to extract the minerals.

But numerous barriers have been placed in the way of harnessing mining's rightful role in economic development. Decades of environmental damage and neglect of people living within the mining communities have led to a poor public image of the industry, an image reinforced by well-funded organizations with a singular purpose of putting mining companies in a bad light. Even the leaders of the Church have put up a stand against mining because of this.

But it seems that the biggest barrier has been the government itself. It stood by almost helpless as unscrupulous mining activities ravaged villages, and was even perceived to be acting as "*accomplices*" in some instances as it allowed projects with doubtful social acceptability and let off unrepentant perpetrators of misdeeds lightly. This must have further fueled the public's worst fears about mining – the perception that government can't do its job in policing the industry.

This must, too, have influenced the present national leadership's initial reluctance to support mining.

The authors of this Report, however, believe that mining is still one of the most viable paths the country should take if it is to succeed in the global marketplace and if it is to bring development to the countryside. It fits well into the anti-poverty agenda of the present administration. But to move forward, the mining industry has to show a better record of managing the environmental and social issues than its past suggests. Fortunately, several models have emerged recently, and are being practiced worldwide, that demonstrate that mining can lead to sustainable development in a responsible manner. And thereby be a major contributor to the well-being of the people, and the wealth of the country. These models can be adapted to suit the conditions of the country.

The research for this Report proceeded initially on the premise that its output should serve to help convince the national leadership to support mining. Midway through the research, however, the President announced her support to mining, so the approach was re-oriented towards identifying issues that hamper the growth of the mineral sector and suggesting ways to deal with these issues. It is hoped that this can help point out some of the measures needed to revitalize the mining sector that if understood could help stimulate the economy.

Essentially, the research premises are as follows:

- Mining can be beneficial.
- Mining should be done responsibly.
- Foreign direct investments (FDIs) are a key to responsible/sustainable mining.
- A substantial majority of the public and local communities support mining as long as it is done responsibly.
- The national leadership has given its support to mining.

7.2 The key recommendations

7.2.1 Mining development process

- Encourage more exploration. This can be done by making it easy for prospectors to get exploration permits (EPs). Exploration isn't environmentally destructive. The area that will likely be mined will just be about 1-2% of the area explored. Even at this early stage of the process, the host locality already benefits from the amount spent on the activity. It is also at this stage that mining firms are able to establish relationships with the communities.
- The national leadership must assist local governments on their endorsement/approval of meritorious projects. Some local governments tend to withhold or delay the endorsement of major projects, even though they are technically and socially viable, because of vested interests, pressure from anti-mining groups and other unclear reasons. If the LGUs continue to demonstrate lack of political will, the leadership must show them the way. Final approval of the financial or technical assistance agreement (FTAA) and mineral production sharing agreement (MPSA) rests with the President. She can expedite that approval.
- Funds must be provided for cultural or genealogical mapping. The mapping should contain sufficient detail as to identify which particular tribe (and families) is the rightful occupant of a specific ancestral domain land. Having such a map can not only help minimize disputes about who should give consent to a particular mining project, but also speed up the processing of certificates of ancestral domain claims (CADCs). Care, however, must be exercised in drawing up the map, as the result might be "*tainted*" by tribes who have access to the mapping process. An independent group to do the mapping should be considered.

- The National Commission on Indigenous Peoples (NCIP) should strive to set clear, measurable standards for what constitutes “*free and prior informed consent*” (FPIC). Tribal leaders claim that consent varies from tribe to tribe, but it seems that even in one particular tribe, it could vary at the convenience of certain leaders. This makes the FPIC process vulnerable to attacks even by losing members of the tribe.
- The issuance of the Certification Precondition by the national office of the NCIP should only be ministerial, as the Indigenous Peoples Rights Act (IPRA) requires. This should help reduce the delay in the FPIC process, and reaffirm where the consent should emanate from – the IPs, and not the NCIP.
- The Mines Adjudication Board (MAB) must resolve overlapping mining claims more expeditiously. For this purpose, the government should consider appointing a full-time individual to head the Board (instead of the DENR secretary), hiring more adjudicators, holding MAB sessions more often, and setting deadlines for decisions.
- Streamline the permit approval process. The DENR, through the Mines and Geosciences Bureau (MGB), should convene all concerned agencies of the government to identify bottlenecks and areas where the process can be simplified.
- One of the areas for rationalization being suggested is in the integration of the social and cultural impact assessment into the environmental impact statement (EIS) system. One implication of this suggestion is some of the more difficult and time-consuming requirements in the approval process can be moved to a later stage when the exploration has already been successfully completed and the proponent is ready to develop the mine. The integration should also eliminate duplicating steps and ensure an assessment that better appreciates the relationships among the environmental, social and cultural issues.
- The government, as “*partner*” in mineral development, should assist companies in getting the procedures and documentation right. As the mining companies spend for everything, including community projects, this is the least that government can provide to them.
- The government should explore the possibility of setting up a “*one-stop shop*” for the processing of applications. This must be set up at the regional level. Companies need to be spared the cost, inconvenience and delay of continuously shuttling between Manila and the (remote) project sites just to complete their documentation. It is also suggested that within this one-stop set-up, a “*special fast lane*” with project-dedicated personnel established for large-scale projects that can potentially demonstrate best practices.

- Sustainability dictates that mining projects be integrated into the provincial and regional development, land use and natural resource use plans. This will help avoid conflicts in the use of land and natural resources, define the role of mining in regional/provincial development, and enable the formulation of a forward-looking plan for the mining communities that assures their continued growth even after the mine is gone. This will require coordination among concerned local planning authorities, and even among international funding agencies with involvement in the area, on local programs and projects.

7.2.2 Institutional aspects

DENR/MGB

- For greater efficiency, the agency must consider “*specialization*” of tasks. The head office should focus on policy-making, development of guidelines and supervision of the regional offices. The regional offices should play a more direct hand in evaluating proposed mining projects and in addressing day-to-day operating issues affecting mining activities within their jurisdiction.
- The agency should lead in the enhancement of the country’s competitive advantage in mining. Simply relying on the fact that the country is richly endowed with certain minerals may not be sufficient to attract investors faced with the higher cost of incorporating environmental and social measures into their business plans, particularly as other mineralized countries are competing for these investments. Two of the concrete measures being suggested are:
 - The development of a reasonably comprehensive mineral mapping of the country, which should be made available to investors at minimal cost; and
 - Coordinating with all concerned agencies and local governments to create an environment conducive to investments in mineralized provinces. The message that the government should send abroad is it is business as usual even in “*war-torn*” Mindanao; so a foreign company can say “*we’re in Mindanao and we’re glad we are.*”
- Establish an Undersecretary of Mineral Resources Development position at the DENR to reinforce the President’s support for mining. And eventually consider a separate Department of Natural Resources devoted to their development.
- Strictly enforce mining and environmental laws. This is the best way to assure the public that the government is serious in its pursuit of responsible mining. It will also help create some momentum towards greater public support to the industry. Enforcement is an area where government has been traditionally weak. Now is the time to prove it no longer is.

NCIP

- There is a need to choose NCIP Commissioners and officials more carefully. They should follow the law, act consistently with the policy of the national leadership, and should not just represent the interest of a particular tribe or some members of the tribe.
- The Commission should accord priority on cultural mapping and issuance of CADCs.
- The Commission should facilitate the FPIC process more effectively, which is consistent with the spirit of the law of giving the local indigenous peoples more authority as specified by NCIP's Administrative Order No. 3. Instead of investigating FPICs which is not within their mandate.

Local governments

- Develop a transparent system of accounting for and allocation of shares in mining revenues. The share should be subject to a separate, identifiable account and should be clearly earmarked for development projects for the localities, not for the LGU's salaries and wages as has happened in some major mining areas in the past when the revenues go into the *'common fund'* of the LGU.
- Facilitate the identification of programs and projects for the mining communities. This means the relevant local governments should develop technical skill in project identification and in mobilizing community participation in this activity.
- It is also the task of LGUs, in coordination with the national government, to deliver basic services – roads, schools, health centers, potable water, etc. – to the communities. This they need to start doing, not rely so heavily on the mining companies.

Mining companies

- Local companies should adapt to new, best practice models. Philex's Padcal operations are commendable, but it was a concept developed 40 years ago. However, Philex Anglo American's approach to its project in Surigao del Norte looks promising and should be studied more closely. The new model includes dealing with developing alternative sources of income (using revenues from the mine) to replace mining once the mine closes.
- Foreign mining companies should choose their local partners, consultants, etc. carefully and well. And listen to their advice. They should also be more aware of the cultural and social dynamics of the target communities, and adapt to the way business is being conducted in the localities, and the country in general.

Mining communities

- NGOs, mining companies, government and/or international agencies should help strengthen the capacity of mining communities. The priority areas for strengthening include:
 - Organizing the community in such a way as to maximize participation, put decision-making truly in the hands of the entire community rather than on a few members, and make the decision-making process more transparent.
 - Improving the capacity of the community to identify projects that are sustainable, rather than projects that are simply “*dole-outs*” or “*cost centers*”
 - Making the community become gradually less dependent on outside help, able to initiate projects and managing their affairs on their own, as well as developing a system of accountability for the management of these projects.
- Community participation in dialogues with local government and mining company should be encouraged, as this could help them articulate their needs and concerns. This could also serve as a venue for developing their capability to organize, identify sustainable projects, and effectively manage their own affairs.

7.2.3 Other suggestions

- Identify potential “*winners*,” i.e., large-scale mining projects that are likely to support sustainable development, and create locally-based, quick-response inter-agency task forces focusing on these “*winners*” to ensure that they get all the assistance they need to proceed with their project. Given the limited resources of the government, this could be the most cost-effective way of getting the concept of responsible mining off the ground. Anyway, there would only be a few of these high quality projects so this should enable the government to give its full focus to them.
- Local trilateral stakeholder regular formal and informal dialogues should be established to:
 - Discuss key issues of mining projects affecting all the stakeholders
 - Formulate community sustainable development plans (CSDP)
 - Monitor the progress of implementation and possible update/revision of the CSDP, if needed

- National dialogues should also be conducted to understand the views of each of the relevant sectors of society (mining companies, government, NGO's, the Church, media, international agencies, etc.) that could serve as inputs to the development of codes of conduct, benchmarks and standards, best practice models, effective information and education campaigns, etc. The participants should be encouraged to also commit themselves to supporting responsible mining and to ensuring that mining operations abide by this principle.
- Invite key leaders of the Church to visit selected best practice mines in the world. It doesn't guarantee that they will change their minds about mining, but it will help raise their awareness that responsible mining exists. Key senior government officials with the power to effect change should accompany them. This should be done by international agencies, not by mining companies.
 - The focus must be on best-practice open-pit mines, as it is in this kind of mining that opposition is strongest as it is said to be the most environmentally destructive type of operation.
 - It should preferably be in a catholic developing country, so they can share ideas with the members of the church in that country
 - They should be allowed to talk freely with the residents of the mining community
- On improving governance in the mining sector, the suggestion is to mobilize NGO's, in alliance with reputable international institutions like Transparency International, as a watchdog of the mining industry. Continuous dialogue at the local and national levels should also help instill a sense of responsibility among the key stakeholders of the mining sector.
- Finally, the Supreme Court must resolve the case against the 1995 Mining Act and the FTAA. Foreign mining companies are unlikely to venture into large-scale projects if the status of FTAA's is unsure. If this uncertainty continues, the country won't have a world class mine. The SC must decide either way, so if the Court rejects it, Congress can do its job crafting a new mining law. It should similarly act on the Indigenous Peoples Rights Act.

7.2.4 Mining legacies

While efforts at the global scale will be needed to deal with these issues, particularly the creation of an enlarged funding base for the rehabilitation of high priority abandoned mines, certain things can be done at the national level. Foremost of these is a continuing dialogue among key stakeholders that include possible solutions to unfortunate mining legacies that strike a balance between rebuilding goodwill to affected communities and the public, and ensuring the viability of the industry. Some of the more specific suggestions include:

- Compelling mining companies to clean-up the mess on the mine sites, they have abandoned but still own, withholding approval of the companies' permits on new mining projects till the mess is reasonably addressed;
- Identifying abandoned mines that are high priority for rehabilitation, on the basis of their threat to the environment and health, and the contribution of the rehabilitation itself to employment generation, skills building and livelihood creation. Public trust in the mining industry can be regained if concrete steps are showcased to address the problems created by a few abandoned mines.
- Establishing the needed government counterpart financing for rehabilitation projects that international funding agencies may agree on should global financing facilities for such projects are eventually put in place.

7.3 The vision

The promotion of mining does not mean an open season for mining. Approving projects indiscriminately can create a brief spurt but, as happened in the 1970's, is doomed to fail. At any rate, this cannot happen under the present conditions, with the increasing vigilance over the practices of mining firms, and the increased cost of operations as a result of the inclusion of environmental and social development measures.

The better approach, it is felt, is to be selective, allowing only those projects that can best demonstrate what responsible mining should be.

The *"lean but mean mining industry"* strategy of the MGB is an appropriate course of action. This avoids the diffusion of resources in managing the mineral sector and makes it less difficult to monitor an industry that has only a few projects, especially if the industry is largely made up of companies that practice sustainable development. This also reduces the tension in localities that absolutely do not want to have a mining project, as the government won't force them to have one.

Moreover, as the estimates suggest, a handful of world class and medium-scale mines would be sufficient to deliver billions of dollars of investment and exports, and hundreds of thousands of jobs.

The long-term vision, therefore, is for the country to have:

- 5-10 world-class mines showcasing the world's best practices
- 5-10 medium-scale mines that operate responsibly
- Small-scale mines:
 - In abandoned large mines
 - In areas where large-scale mines can't operate efficiently
 - That are environmentally conscious
 - That preserve the mining culture of indigenous peoples
 - That operates within the mandates of the law, including the payment of taxes

But even this rationalized set-up demands a strengthening of government institutions. And an ability to enforce or in implement rules, regulations and laws. Otherwise, the system will become too dependent on personalities, and will continue to be unstable – rules changing as faces change. This would make it difficult to attract the right kind of investors.

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