

Challenges in the Philippine mining industry

Eligia D. Clemente

The Philippine Mining Act (PMA) is premised on the doctrine that all mineral lands are owned by the state but are open to contractors on the basis of revenue sharing. With this in place, a company interested in mining operations can enter into an agreement with the government to exploit and develop the land. The revenues from the mining operations can then be shared not only with the national government but also with the local government units (LGUs) and the barangays in the host and neighboring communities.

Aside from the provisions on mining agreements, the law also lays down various measures to protect the environment and the stakeholders of the mining sector and defines areas where mining can be allowed. Particularly protected are indigenous peoples (IP), who hold certificates of ancestral domain titles (CADT) on lands inside the planned mining concession.

Despite such provisions of PMA, however, audits conducted by the Department of Environment and Natural Resources (DENR) in 2016 found that several mine areas were lacking proper environmental plans, with denuded forests and silted rivers as evidence of

such uncontrolled degradation (De Vera-Ruiz 2017). The partner-agencies of DENR in the implementation of PMA, such as the National Commission on Indigenous Peoples (NCIP), are also reported to be suffering from institutional issues that affect the performance of their role in the mining sector.

This *Policy Note* looks at the causes of such problems and reviews the legal framework to come up with policy recommendation to address the issues. In particular, it reviews laws and department and executive orders and presents the results of the key informant interviews (KIIs) involving representatives from the Chamber of Mines of the Philippines and the public sector, specifically those from DENR and the local government.

The Philippine mining context

In the 2018 State of the Nation Address of President Duterte on July 23, he urged the mining industry “to do its part in ensuring the nation’s sustainable development”, and that the mining management should change because he will be imposing “restrictive policies”. He also reminded concerned agencies and LGUs to “uphold the concept of intergenerational



The Philippine Mining Act is premised on the doctrine that all mineral lands are owned by the state but are open to contractors on the basis of revenue sharing. While it has already equipped the government agencies concerned with the regulatory basis for putting in rules and regulations to push the policies forward, various issues regarding mining in the Philippines still persist. For instance, audits conducted by the Department of Environment and Natural Resources in 2016 found that several mine areas were lacking proper environmental plans, with denuded forests and silted rivers as evidence of such uncontrolled degradation. Photo: Molly / Flickr

responsibility and utilization of our mineral wealth, the protection and preservation of our biodiversity, anchored on the right to a balanced and healthy ecology” (PCOO 2018).

The PMA has already equipped the government agencies concerned with the regulatory basis for putting in rules and regulations to push the policies forward. The initial implementing rules and regulations crafted identified all the agencies with significant roles in the implementation of the PMA.

As the lead agency in this endeavor, DENR has created line bureaus for this purpose. The Mines and Geosciences Bureau (MGB) is responsible for the administration and control of mining operations. Meanwhile, the Environmental Management Bureau (EMB) is tasked to monitor and control environmental conditions and the Forestry Management Bureau to oversee the management of the forests under

the mining concessions issued. NCIP has also been instituted to identify, monitor, and ensure that IPs and their communities are protected and given their rightful share of the revenues from the concessions. LGUs concerned are also given the mandate to approve or disapprove any mining project prior to the issuance of permits by the MGB.

With all these agencies in place, one would think that all mining operations are working well and that the environment and the IPs are fully taken care of. Interestingly, various issues emerged during the KIIs and the review of related laws and programs.

Issues in the implementation of mining laws

Circumvention of permits

The mixing of agencies assigned to handle mining concerns results in overlapping functions. This creates a venue for cracks, which, interestingly, are filled in

by enterprising government employees through illegal means.

As an example, a mining company in one region insists that the permit to operate a mining concession released by MGB is enough proof that trees can be cut to build access roads to the mining site. However, DENR insists that tree-cutting permits need to be secured for this. The stalemate has caused alleged requests for facilitation fees from employees of the concerned bureau. Because the company did not want to accede to the request, this eventually led to the application of a novel but destructive way to circumvent the requirement. The activity was commenced in the areas devoid of trees, with the occasional tree allowed to exist amid the operation. Eventually, the tree died and a permit for removing dead trees was secured, which took lesser time to process. This type of practice admittedly is more destructive since the cut tree is no longer listed as part of the number of trees to be replaced.

Interfacing with LGUs

The PMA allows for a mineral production sharing agreement (MPSA) between the mining contractor and the Philippine government through the MGB. On the other hand, the Local Government Code has devolved to the LGU the powers and functions needed to ensure the protection of the environment and maintain sustainability of its constituents. This has resulted in contradicting decisions on approvals of MPSA. Although the Code specifies that national laws have preference over local ordinances, the breadth of power LGUs need still to be delineated.

As a case in point, prior to the start of operations, a mine contractor needs to secure a free, prior, and informed consent (FPIC) document from the communities inside the intended area of operation. The procedure requires the company to present to

the communities their intention of starting a mine operation and discusses the positive and negative effects on the lives of the dwellers. This meeting is attended by all stakeholders, including representatives of EMB, MGB, LGUs, church, nongovernment organizations, and other interested parties. In cases where the LGU does not want the mining activity to be in their area, they will delay the signing of the FPIC and will prevent other bodies opposing their decision from attending the meeting.

Furthermore, the Local Government Code allows the LGUs to create their own revenue sources. In the case of one region, although the Internal Revenue Code specifies that business taxes can be set at 1 to 2 percent of gross revenues, the local council still managed to pass an ordinance approving an increase of business taxes from 1 percent to 2 percent, which the businesses objected to. The companies deemed the prior rate as the legitimate one and only paid such amount. In response to this, the LGU decided to sue these companies for nonpayment of taxes.

Delays in the declaration of IP claims

Part of the inclusions in the PMA was a provision for the funding of the Social Development Management Program of the communities in the area covered by the mining contract. Any IP in the area benefits through the royalty payments of the company. The NCIP's role in determining the validity of an IP's claim to the area is a contentious issue.

Becoming a mine contractor does not happen overnight. With the serious intention to become one, the process starts with securing a mineral agreement under MGB and consent from the affected community. In line with this, FPIC must be given by an IP community following the guidelines and procedure set by NCIP. This is initiated by a stakeholder meeting where the company presents the intention

for development alongside benefits and effects of the project to the community. IPs are usually represented by a council of elders, the highest decisionmaking body in the community. Field personnel of the NCIP are also present during consultation to facilitate the discussion between the company and the elders. Supposedly, the proposal of the company must be in line with the Ancestral Domain Sustainable Development Program Plan (ADSDPP). However, NCIP usually lacks the human resource and the technical knowledge to assist the community in creating the document.

For non-IP communities, the stakeholders include representatives from nongovernment organizations and religious groups, and government representatives from NCIP, EMB, and MGB. All members of the community are required to vote through a show of hands, where majority rule prevails. In other regions, such as Cagayan Valley and Caraga, a unanimous vote from the community is required. In this case, some members who are opposed to the idea are sometimes discouraged from attending the meeting. There are also some anecdotal references to the community leaders pitching in for support to the mining project, particularly in Central Luzon.

Obtaining the FPIC is a critical stage in the permitting process, considering that it is also required by EMB in the provision of environmental certificate compliance to the approved company. The consent allows the IP to have a say in the utilization of the resources situated in their ancestral domains. The Indigenous Peoples Rights Act (IPRA) declared that IPs have the right to self-governance and cultural rights. Bound by culture, some tribal leaders or council of elders have the sole authority to decide for the whole community. The prevailing decision cannot be changed by the people or the NCIP. Thus, tribal leaders tend to abuse the power and responsibility granted to them. In some cases, there were talks that the decision is done

even before the stakeholders' meeting takes place and that the meeting is just for formality.

When the FPIC is secured, NCIP takes a back seat and does not intervene in any other matters except to see to it that the IP receives its fair share of the royalties paid by the company. The royalty is given in cash directly to the recognized tribal leader. The use and disposition of this fund is solely the decision of the tribal leader. Whether the funds are used for the benefit of the clan or not, NCIP cannot interfere. Most NCIP regional directors have expressed dismay on how the funds have been managed in the absence of a functional ADSDPP.

Institutional issues of NCIP

NCIP has a huge hole to fill particularly on the issue of poverty alleviation for these IP communities. With the current inadequacies in logistics support from the government, this institution does not have enough personnel to echo the mandated organizational setup in all regions. Multiple tasks are assigned to personnel with no mentors or higher-ups as supervisors. Inadequacies in competencies are evident and cause delays in the processing of necessary papers.

One of the main functions of NCIP is to assign CADT to register the IP's ancestral domain. The process was observed to be lengthy, which starts from the verification of claim, survey and delineation of areas, and inventory of IPs. A licensed geodetic engineer is usually tasked to do these surveys, but only one region had a plantilla position for this. Moreover, nonlawyers are tasked to take on the role of legal personnel in arbitration cases. One NCIP regional director even also acts as secretary and treasurer, as well as director for one of the offices under the NCIP. These personnel issues need to be resolved immediately to efficiently deliver needed services, which comprise the first stage



One of the primary stakeholders of the mining industry is the indigenous peoples (IPs), who hold certificates of ancestral domain titles on lands inside the planned mining concession. While the Philippine Mining Act already lays down measures to protect them against the interests of big mining companies, this study found that their consent to the conduct of mining operations has been relegated more as a formality rather than a critical requirement for the development of a project in their domain. Photo: ILO in Asia and the Pacific/Flickr

of the permitting process. At this point, no further progress on the permitting can be expected until such time that the land ownership issues are resolved.

The mandate of NCIP is not limited to the preparation of CADTs. It also performs any other task to assist the IPs in upholding their rights to the land and preserve their culture (Bangsoy 2017). With the lack of human resource, work focus has been concentrated on the former, leaving a lackluster performance in other tasks. One of these tasks is to assist in the planning for the proper use of funds received from mining companies. However, as stated earlier, NCIP's role is only up to the delivery of royalty to the heads of communities. Part of the memorandum order issued by NCIP is for the regional office to assist in the planning for the responsible use of the funds received. This, however, cannot be done properly with the lack of informed personnel from NCIP. Given that these IPs are aware of their right to self-governance, some leaders are adamant in pushing their

independence on the use of the funds (Tauli-Corpuz 2018). Despite the huge amount of money allotted to communities,¹ they have not yet elevated their status from their original position as among the poorest communities in the country (Ragos 2016). No proper audit functions have been assigned to NCIP for this.

A policy review also revealed that PMA was passed in 1995, two years earlier than the IPRA. Prior to PMA were presidential decrees that also supported the mining industry. However, no policy existed then for the IPs who were also establishing their ancestral domains at the time. Moreover, IPRA only provided for the recognition of the rights the IPs have, but it was not able to set guidelines and processes for the community's consent. The manual for FPIC process was only released in 2012, more than a decade later than the national laws. Consent has been relegated more as

¹ According to the data of the Mines and Geosciences Bureau (2017), mining firms committed at least PHP 13.15 billion for the development of mining communities under the former's approved Social Development and Management Programs as of August 2016.

a formality rather than a critical requirement for the development of a project in their domain. The delay in the guidelines accompanied by the late processing of CADTs do not leave much room for IPs to stand against the proposals of big companies.

Recommendations

Government agencies must review the implications of policies and procedures being implemented to find solutions acceptable to all concerned offices rather than for specific regional offices only. Further, given that the same policy is being implemented across the Philippines, regional differences in the implementation of rules and regulations should be discouraged. Issuances of agencies under department administrative orders have given too much leeway to regional directors to provide their system of implementation, thus causing varying results. It would be good to discuss such issues and come up with a common implementing guideline for all offices to eliminate personal tendencies to relax rules.

Sufficient human resource should also be supplied to NCIP offices for them to carry out their tasks timely and efficiently. Delayed policy approvals have also caused delays in the receipt of benefits by IPs and should thus be avoided. Meanwhile, with the backlog in personnel, issuances from NCIP can be harmonized, such that a single protocol for permitting can be followed and duplication of requirements can be minimized.

On the matter of audit for finances received, proper preparation and guidance should be given prior to the release of funds such that even without a formal audit, disbursements can be tracked and funds properly accounted for. The planning exercise can be introduced as a guidance seminar without telling them that sticking to the plan is mandatory. But with a plan in place, more likely than not, the leaders will be more than willing to work on it. 📄

References:

- Bangsoy, K. D. 2017. Indigenous Peoples in the time of Duterte. The Guidon. September 13.
- De Vera – Ruiz. 2017. “Kalikasan” environmental protection group backs DENR, calls for new mining policy. Manila Bulletin. February 16.
- Mines and Geosciences Bureau (MGB). 2017. Mining facts and figures. Quezon City, Philippines: MGB. <http://www.mgb.gov.ph/images/homepage-images/mining-facts-and-figures-----updated-January-2017.pdf> (accessed on August 18, 2018).
- Presidential Communications Operations Office (PCOO). 2018. State of the Nation Address of Rodrigo Roa Duterte, President of the Philippines, to the Congress of the Philippines. <https://pcoo.gov.ph/wp-content/uploads/2018/07/2018-State-of-the-Nation-Address-of-Duterte.pdf> (accessed on July 30, 2018).
- Ragos, A.M. 2016. Mining communities and social development: Assessing the Philippine Social Development and Management Program. Quezon City, Philippines: Bantay Kita. https://www.bantaykita.ph/uploads/2/9/9/2/29922649/mining_communities_and_social_development.pdf (accessed on August 18, 2018).
- Tauli-Corpus, V. 2018. Statement of Indigenous Peoples calling for the adoption of the IP policy. Presented during the 19th meeting of the board of the Green Climate Fund. February 6–March 1, GCF Headquarters Songdo, Incheon, South Korea.

Contact us

Address: Research Information Department
Philippine Institute for Development Studies
18/F Three Cyberpod Centris - North Tower
EDSA corner Quezon Avenue, Quezon City

Telephone: (+63-2) 372-1291 to 92

Email: publications@mail.pids.gov.ph

Website: www.pids.gov.ph

PIDS Policy Notes are analyses written by PIDS researchers on certain policy issues. The treatise is holistic in approach and aims to provide useful inputs for decisionmaking.

The author is a consultant at PIDS. She is a professor and currently the Mining Engineering Program coordinator for the Department of Mining, Metallurgical, and Materials Engineering at the University of the Philippines Diliman. The views expressed are those of the author and do not necessarily reflect those of the PIDS or any of the study's sponsors.