

20 February 2023

MEMORANDUM

For : **The Regional Executive Director**
Department of environment and Natural Resources
MIMAROPA Region
1515 DENR Bldg., Roxas Blvd., Ermita, Manila

From : **The Regional Director**
This Office

SUBJECT : **Comments on the House Bill Nos. 3891 and 6219 which seeks to declare the Island of Mindoro as Mining-Free Zone**

This respectfully refers to the email of Atty. Carla Malupeng on 17 February 2022 requesting this Office for comments/recommendations for the forthcoming deliberation on **House Bill (HB) Nos. 3891 and 6219** titled "AN ACT DECLARING THE ISLAND OF MINDORO A MINING-FREE ZONE AND PROVIDING PENALTIES THEREFOR" and "AN ACT DECLARING THE ISLAND OF MINDORO AS A MINING-FREE ZONE, AND PROVIDING PENALTIES FOR VIOLATION THEREOF" authored by Reps. Arnan C. Panaligan, 1st District, Oriental Mindoro and Alfonso V. Umali, Jr., 2nd District, Oriental Mindoro, respectively.

Hereunder are our comments:

1. HB Nos. 3891 and 6219 are premised under Article II, Section 16 of the 1987 Philippine Constitution which states that "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

Article II (Declaration of Principles and State Policies), however, are not self-executing provisions¹. Our present state of jurisprudence, considers the provisions in Article II as mere legislative guides, which, absent enabling legislation, do not embody judicially enforceable constitutional rights², such as "the right of the State to

¹ Kilosbayan, Inc. et al. vs. Morato, et al., G. R. No. 118910, July 17, 1995

² Magallona, et al. vs. Ermita, et al., G.R. No. 187167 August 16, 2011

directly undertake exploration, development and utilization of natural resources, or enter into co-production, joint venture or production sharing agreement with Filipino citizens, or corporations or associations at least sixty (60) per centum of whose capital is owned by such citizens," as embodied under Article XII, Section 2 of the Philippine Constitution.

Article II provisions serve as guide in formulating and interpreting implementing legislation, as well as in interpreting executory provisions of the Constitution³. Although *Oposa vs. Factoran*⁴ treated the right to a healthful and balanced ecology under Section 16 of Article II as an exception, the present HBs lacks sufficient basis to substantiate their enactment into law.

2. HB Nos. 3891 and 6219 will render the right of the State under Article XII, Section 2 of the Philippine Constitution nugatory, repeal the Philippine Mining Act of 1995 and amend/modify other mining laws⁵.

It undermines the Philippine sovereignty and the right of the State to enter into valid mineral agreements with qualified applicants, contravening the basic policy of the State to assure the availability, sustainability and equitable distribution of the country's natural resources, in violation of relevant Constitutional provisions.

3. HB Nos. 3891 and 6219 prejudices qualified mining applicants who are capable of undertaking responsible mining as well as compliant mining companies/operators who have spent millions of pesos for social development and rehabilitation activities.

Likewise, it prejudices the right of the local government to a just share in the taxes paid by the mining companies and to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas⁶.

This Office seeks to provide a holistic perspective on mining operations. The strict implementation of mining and environmental laws ensures that mining operations give high regard to economic growth, environmental protection, and social development in adherence to the principles of sustainable development.

³ See note 2

⁴ G.R. No. 101083, July 30, 1993

⁵ Sections 6, 7 and 8 of HB Nos. 3891 and 6219

⁶ Section 3(d), RA 7160, otherwise known as the "Local Government Code of 1991"

Existing mining laws, rules and regulations provide sufficient safeguards to ensure the promotion of rational exploration, development, utilization and conservation through the combined efforts of the Government and private sector in order to enhance national growth in a way that effectively protects the environment and the rights of the affected communities.⁷

To support MGB's position on HB Nos. 3891 and 6219, listed hereunder are major scientific and technical data:

Mineral Resources of Mindoro Island

1. Various kinds of mineral showings were observed in Mindoro Island. The metallic ore deposits include nickel and chromite deposits associated with ultramafic rocks, contact metasomatic-type iron deposits, vein-type copper deposits and placer gold. The non-metallic ore deposits include those of barite, jade, marble, coal as well as sand and gravel estimated at more than 550M wet metric tons. Alongside with this rich mineralization are significant developments in exploration programs of private mining companies, and establishment of major mining projects such as the Mindoro Nickel Project.
2. Currently, there are six large-scale mining tenements in Mindoro Island comprising five Mineral Production Sharing Agreements, and one Financial and Technical Assistance Agreement covering a total of 58,882.25 hectares or about 5.75% of the approximate total land area of Mindoro Island covering 1,024,405.7 hectares.

There is great potential for further discovery of mineral deposits in Mindoro Island. Rational exploration, development and utilization of these mineral resources may be pursued in order to enhance national growth in a way that effectively safeguards the environment and protects the rights of affected communities.

Source of Raw Materials for Infrastructure Projects

Local government units have seen an increase in applications for river quarrying, and an even greater increase in the production of aggregates in order to meet the local market demand.

The Province of Occidental Mindoro has a total estimated sand and gravel volume of 136,583,419.00 cubic meters with a tonnage of 327,800,204.00 tons. The province has, by far, the largest sand and gravel

⁷ Section 2, DAO No. n2010-21 or the Revised Implementing Rules and Regulations of RA 7942, otherwise known as the "Philippine Mining Act of 1995"

resource in MIMAROPA. Meanwhile, the Province of Oriental Mindoro has a total estimated sand and gravel volume of 93,789,621.37 cubic meters with a tonnage of 225,095,091.28 tons.

Mindoro Island is endowed with an abundant source of aggregates which can adequately provide raw materials for infrastructure projects as well as generate additional revenue for both Mindoro provinces.

The Philippine Mining Act of 1995

Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995, and its Revised Implementing Rules and Regulations as embodied under DENR Administrative Order (DAO) No. 2010-21, as amended, addresses the petitioner's concerns, and provides adequate measures with regard to safety and health as well as the protection of the environment and nature's ecosystem vis-à-vis utilization and exploitation of the country's mineral resources.

The Mining Act provides that prior to mine development/utilization, the mining Contractor/Permittee is required to secure an Environmental Clearance Certificate (ECC) based on environmental impact assessment and procedures under the Philippine Environmental Impact Assessment (EIA) System including Sections 26 and 27 of R.A. 7160, the Local Government Code of 1991, which mandate national agencies to maintain ecological balance, and requires the project proponent to conduct prior consultation with the local government units, non-governmental and people's organizations and other stakeholders of the community. All projects such as mining, among others, must undergo comprehensive review and evaluation which are being undertaken by the EIA Review Committee (EIARC) prior to issuance of the ECC.

To address mining concerns of various stakeholders, the DENR, through the MGB, adheres to the policy that mining shall be undertaken in a technically, scientifically, and environmentally responsible manner to promote the general welfare and well-being of all stakeholders. As such, it requires the submission of programs, i.e., Environmental Work Program, Community Development Program, Environmental Protection and Enhancement Program, Social Development Management Program, and Final Mine Rehabilitation and/or Decommissioning Plan (FMR/DP) that will address exploration, development, utilization and rehabilitation, such as regeneration, re-vegetation and reforestation, slope stabilization of mined-out areas, waste-dumps, water conservation, and socio-economic development, mine closure, etc. Strict regular monitoring, every quarter or more frequently, of the activities stipulated in the EPEP to check on siltation, water quality, air quality, noise, slope stability, benching, dumpsites, stockpiles, embankment stability, tree planting, community development

assistance projects, safety and housekeeping are undertaken by the Multipartite Monitoring Team.

The respective Contingent Liability and Rehabilitation Fund (CLRF), in the form of Mine Rehabilitation Fund (MRF); Mine Waste and Tailings Fee (MWTf) and the Final Mine Rehabilitation and Decommissioning Fund (FMRDF), is established by the mining Contractors to assure just compensation for damages and progressive rehabilitation of the area adversely affected by mining operation or related activity. The MRF must be established and maintained by each operating contractor and permit holder as a reasonable environmental deposit to ensure availability of funds for the satisfactory compliance with the commitments and performance of the activities stipulated in the EPEP. MWT fees are collected biannually from each operating contractor and permit holder based on the amounts of mine waste and mill tailings it generated for the said period to be used for payment of compensation for damages caused by any mining operations. The FMRDF must be established by each operating contractor or permit holder to ensure that the full cost of the approved FMRDF, based on the submitted FMR/DP, is accrued before the end of the operating life of the mine. The Final Mine Rehabilitation and/or Decommissioning Plan (FMR/DP) is prepared by mining companies prior to the commencement of their mining operations, the aim of which is to ensure, from the beginning of their operations, that the post-mining landscape is environmentally, socially and economically sustainable. It is now the edict of the Philippine mineral industry that mine closure planning must start from inception and that the plan must be reviewed and updated throughout the entire life of the mine.

People's organizations and nongovernmental organizations, as stakeholders, are allowed and encouraged to participate in ensuring that mining Contractors/Permittees/Permit Holders observe/comply all the requirements of environmental protection. All stakeholders, particularly the concerned local government and the host community, shall be well-participated in monitoring the compliance of all phases of mining starting from the acquisition of mining rights to exploration, development, and utilization of mineral resources and finally, rehabilitation of mined-out, tailings covered and disturbed areas for another land use.

To assure compliance, the mining act requires regular monitoring by the MGB, Multi-Partite Monitoring Team (which includes People's Organization, the community, and other stakeholders), third party audits, as well as ISO 14001-2015 audits in all mining and/or exploration areas.

On the Geologic Hazards

Areas may be threatened by natural geologic hazards even without mining operations. The onus of proving that the hazards may be economically and soundly mitigated should rest upon the Mining Applicant and not with DENR or MGB. The proper legal instrument for this is the Environmental Impact Assessment (EIS), which will be reviewed by a panel of experts.

As for in-stream mining or river quarrying, there have been major problems associated with riverine flooding in the Island of Mindoro which calls for quarrying and dredging demand to remove river deposits from heavily silted stream channels. Regulated extraction of excessive sediments may significantly improve river stability and could help alleviate flood hazards in exposed communities. This removal of fluvial deposits, however, is not a stand-alone flood mitigation solution and must be paired with appropriate engineering measures. Moreover, activities related to in-stream quarrying and dredging are preferably done in aggrading river channels where the deposition rate of sediment load is higher than erosion. This extraction process increases the capacity of the rivers to transport water making it effective for flood control mitigation in low lying areas.

On the Critical Watersheds

The term "critical watersheds" must refer to the river systems in Mindoro Island and not to any proclaimed or declared watershed boundaries with technical description for which there is none in the area. Such critical watersheds must have appropriate barangay/municipal/city/provincial *Sanggunian* ordinance specifying therein the location and specific boundary of the concerned area as per Section 15.a.3. of DAO No. 2010-21.

Hence, the issue is technical pertaining to the environmental impact of the Project, which shall be addressed in the event that this Project will reach the Environmental Impact Assessment (EIA) Process.

Economic Contribution of Mining

Environmental protection and economic development are often seen in conflict with each other. This is particularly evident in the mining industry, where environmentalists and the general populace are especially sensitive. However, with the advent of modern and sustainable mining techniques, it is now possible to achieve a balance and pursue an efficient mining project that minimizes the negative impacts to the environment.

Examples of the above are the six (6) large-scale mining and mineral processing companies currently operating in MIMAROPA. On average, these companies generated a total of 5,223 jobs for the host and peripheral communities of Bataraza, Narra, Sofronio Española, and Quezon from 2019 to 2021. A detailed breakdown is shown in Figure 1.

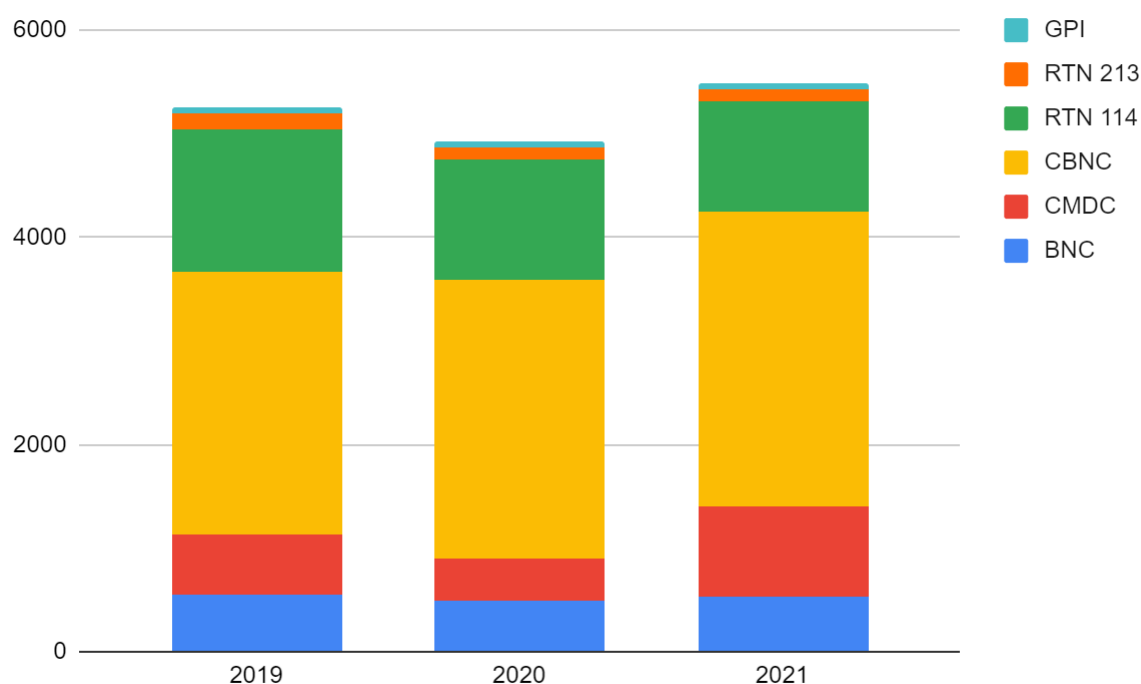


Figure 1. Average employment generated by mining and mineral processing companies operating in MIMAROPA, 2019-2021

However, development goes beyond the provision of jobs and income streams to the people. It involves uplifting and improving the quality of life of communities, which these companies should strive to provide until after the life of the mine.

Through their respective Social Development Management Program (SDMP), these companies have pledged their support in various sectors. Road construction and infrastructure building were among the first projects accomplished. Scholarships, school supplies, school infrastructure, as well as training and capacity building for teachers were in support of the education sector. Medical supplies and apparatus, over-the-counter medicine, and rehabilitation of medical buildings were likewise provided for the health and sanitation sector aside from the conduct of feeding programs and medical missions.

But more importantly, various livelihood projects for the community were also introduced. These projects are of utmost importance as it opens more opportunities to the community. Livelihood projects also target to

develop micro, small, and medium enterprises which can employ mine workers in the future once the mining project comes to a close.

Aside from these projects, Indigenous Peoples/Indigenous Cultural Communities receive a percentage of the mining companies' gross profit, in the form of royalty. Likewise, four (4) percent of the market value from the sale of the mineral commodity is collected as excise tax. In 2021 alone, the total local and national taxes collected from the six (6) companies amounted to PhP2.6 Billion. A detailed breakdown is shown in Figure 2.

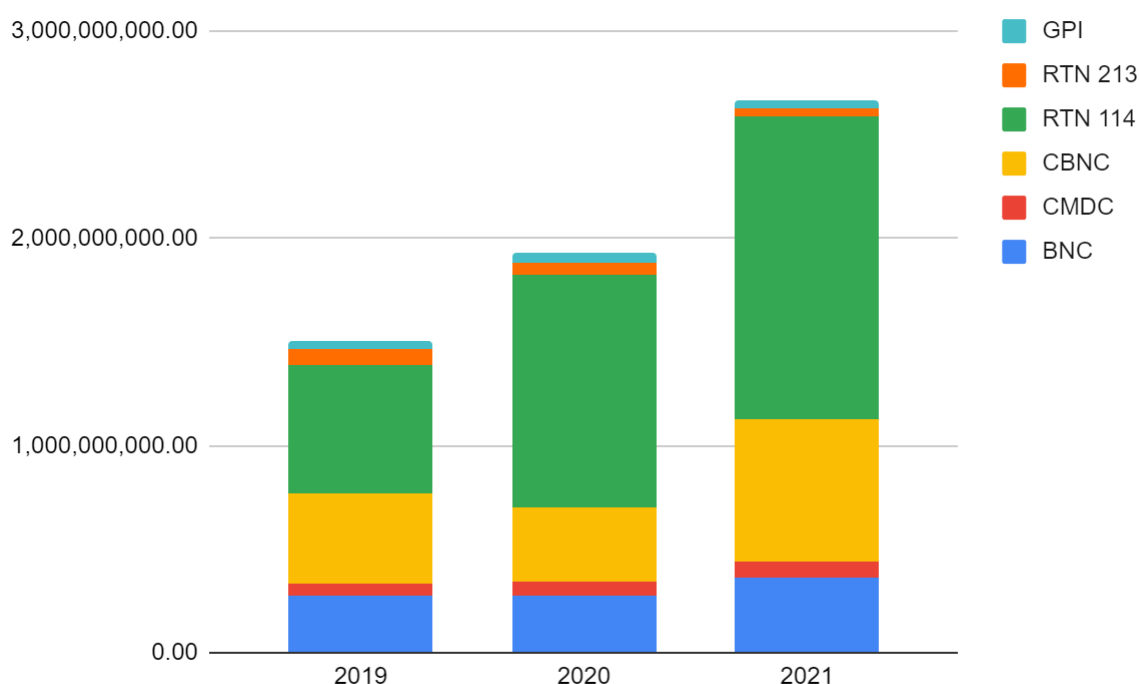


Figure 2. National and local taxes paid by mining and mineral processing companies operating in MIMAROPA, 2019-2021

As one of the mineral-rich countries in the world, the mining sector is of great value to the country's socio-economic development, and the sector's performance and sustainability still rests on the balance of proper enforcement of existing environmental laws and sound economic guidance of the government. The declaration of Mindoro Island as a mining-free zone forgoes the opportunity to maximize the use of their mineral resources and realize the economic development that comes with it.

Role of the Concerned Sanggunian

Finally, Section 5 of the DENR Administrative Order No. 2d004-09 states that:

"Mining applicants/Contractors/Permittees/Permit Holders shall consult with all the Sangguniang Panlalawigan/ Bayan/Panlungsod/Barangay concerned in support of mining applications and/or in the implementation of mining projects: Provided, that in case of a mining application intended for exploration thru an EP, MA or FTAA, the proof of consultation and/or project presentation shall be in the form of the following:

- a. Copies of the pertinent Exploration and Environmental Work Programs duly received by the Secretary of all of the Sanggunian concerned or Office of all the Vice-Governor/ Vice-Mayor concerned; or
- b. A certification of project presentation by all the Provincial Governor, Vice-Governor, Municipal/City Mayor or Vice-Mayor concerned, or the Secretary of all the Sanggunian concerned.

Provided, further, that prior approval or endorsement in the form of a Resolution or Certification by at least the majority of the Sanggunian concerned shall be required in support of mining applications for immediate development and/or utilization activities and of applications for approval of Declaration of Mining Project Feasibility under the Development and Construction/Operating Periods of MAs and FTAA's."

For the Regional Executive Director's consideration.

GLENN MARCELO C. NOBLE