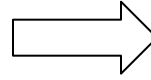


Alternative Mining Bill



Land and Natural Resources Management
 Shared Responsibility
 Benefit Sharing
 Environmental Safeguards
 Filipino Patrimony
Human Rights-based approach
 Human Rights
 Indigenous Peoples Rights
 Food Security
 Mining Industry Accountability



Why is there a need for an Alternative Mining Bill?

Since the passage of the Philippine Mining Act (RA 7942) on March 3, 1995, the revitalization of the Philippine mining industry was enforced shifting the government's policy from tolerance to aggressive promotion of large-scale mining. Its implication irrationally exploited our natural resources, retarded our national growth and compromised the lives of the Filipino people. Thus, the Mining Act of 1995 is inherently flawed and some of these flaws are as follows:

1. It promotes the exportation of raw minerals without maximizing the benefits of such resources for the Filipino people;
2. It fails to take into consideration externalities or negative impacts, thus leaving the masses and the local government units to bear the brunt of such impacts;
3. It prioritizes exploration, development and utilization of resources over and above human rights, food security and environmental conservation;
4. It grants too much power for decision-making to the President, when resources are the only heritage of the Filipino people, meanwhile disempowering local communities through lack of participatory mechanisms;
5. The law is not consistent with sustainable development;
6. It grants too many incentives for investments, including confidentiality of information, return of investments, tax-breaks, etc.;
7. It lacks systems that would ensure payment and compensation of affected communities and local government units;
8. It fails to provide for punishment and accountability on social impacts, including human rights violations;
9. It fails to provide a rational and comprehensive benefit-sharing among the stakeholders;
10. It fails to consider the physical characteristics of the Philippines that is not conducive to industries like these, despite claims that the Philippines has a rich mineral resource, when the country in fact is also a rich agricultural country; and
11. It allows 100% ownership and control of natural resources to foreigners

What is the Alternative Mining Bill (AMB)?

The Alternative Mining Bill (AMB), a.k.a. House Bill 6342 or "The Philippine Mineral Resources Act of 2009", is a proposed policy to **scrap the Mining Act of 1995 and introduce a new mining policy**, which is anchored on land and natural resources management and human rights-based approach.

The AMB aims to regulate the rational exploration, development and utilization of mineral resources and ensure the equitable sharing of benefits for the State, indigenous peoples and local communities and for other purposes. AMB covers ownership, management and governance of ore minerals onshore, as well as quarry resources, sand and gravel, guano, and gemstones excluding offshore mining and other resources such as petroleum and coal natural gas, radioactive materials, and geothermal energy, as these are resources, which require specific laws.

The AMB takes into consideration the decades-long issues, experiences and analyses of different individuals, organizations and communities affected by mining in the Philippines. It is a tool to elevate the marginalized and impoverished communities to the level of big businesses (in terms of political power) through the legal system to force government, transnational corporations, international finance corporations and other countries to face communities, to address the loopholes of the Mining Act of 1995 and stop unjust mining regime and practices in the Philippines.

The AMB is the result of extensive consultations with different mining affected communities nationwide since 2004. It aims to articulate the basic agreements during the **Dapitan Initiative** – a mass-based movement formed in 2002 to counter act the Government's creeping aggressive promotion of large-scale mining operations in the country. The policies and principles that should govern the mining industry expressed by advocates during the Dapitan Initiative were:

1. Uphold indigenous people's rights and achieve a more ecologically sound, gender-fair, equitable system of resource management;
2. Everyone should share in the burden of satisfying resource needs primarily through re-using and recycling existing mineral products;
3. In land and water use, the concerns of food security, which includes food free from pollution, livelihood production, ecological balance, equity, and social justice should always be the priority;
4. Only resources that are necessary for domestic use and national industrialization should be utilized. We should develop our own human resources and encourage the evolution of our own appropriate technologies. Priority should be given to community-based, community-initiated and community-owned stewardship of resources; and
5. There should be no compromise on human rights, dignity and collective identities.

The AMB was filed in Congress last May 13, 2009 and was introduced by House Representatives, Risa Hontiveros-Baraquel, Erin Tañada, Walden Bello, Rufus Rodriguez, and Carlos Padilla.

Basic Comparison between the Mining Act of 1995 and the Alternative Mining Bill

RA 7942	AMB
<p>Ownership & Governance - Highly concentrated on the decision of the President (upon recommendation of the DENR Secretary) and small opportunity to decide is given to the local government units (LGUs) and other stakeholders via public consultation</p> <p>In principle and policy, all areas are open to mining unless declared "closed" by the Government</p> <p>Definition of affected communities is limited to those areas found within the contract area</p>	<p>Decision-making will no longer be concentrated on the President but will be devolved to the Multi-Sectoral Mineral Council that will be composed of representatives of the national government (DENR and MGB), representatives from the affected Local Government Units (LGUs), non-government organizations (NGOs) and the local indigenous communities</p> <p>In principle, all areas are closed to mining unless declared "open" by the Council</p> <p>Definition of affected communities includes communities and LGUs determined in relation to the watershed system, which includes downstream communities that may be affected by mining.</p>
<p>Economics- Government share is limited to excise taxes of 2% required by law. No mandate on royalty fee or benefit sharing.</p> <p>The contractors in mineral agreements, and financial or technical assistance agreements were given too generous fiscal and non-fiscal incentives, which in the end does more harm than good for our economy. Incentives as provided for under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987 Including: Incentives for Pollution Control Devices; Income Tax-Carry Forward of Losses; Income Tax-Accelerated Depreciation; Investment Guarantees;</p> <p>The contractor is entitled to the basic rights and guarantees recognized by the government as enumerated: (a) Repatriation of investments, (b) Remittance of earnings, (c) Foreign loans and contracts, (d) Freedom from expropriation, (e) Requisition of investment and (f) Confidentiality</p>	<p>For areas outside the indigenous peoples' ancestral domain, there will be an imposition of royalty fee under the benefit sharing provision, in which the National government shall receive 10% of gross revenues taxes besides the excise taxes of 2% required by law; LGUs shall be entitled to share of the net revenues from mining operations paid directly to the provincial treasurer, taking into consideration the classification of local government; Vulnerability and Human development index. (Aside from the LGUs share from the Internal Revenue Allotment (IRA)).</p> <p>For areas within the IPs/ICCs ancestral domain, at least 10% of gross revenues as royalty shall be given to the ICCS/ IPs similar to government share.</p> <p>During this time of crisis, too much incentives are given to mining investments further hurts our nation's economy. AMB limits the incentives to only pollution control devices and equipment and on the establishment of downstream industries; Confidentiality provision will be removed for transparency and access to information</p>
<p>Mineral Agreements - No citizenship requirement and allows 100% foreign ownership is allowed under the Financial or Technical Assistance Agreement (FTAA)</p> <p>Maximum areas for mineral agreements is 16,200 hectares Maximum term for the contract is fifty (50) years</p> <p>Provides auxiliary rights to contractors/mining companies (timber, water, explosive, etc.), allows assignment and transfer of mineral agreements</p> <p>Grounds for cancellation revocation and termination are only limited to administrative grounds, which does not even recognize human rights violation of corporations as a ground for cancellation of permit.</p>	<p>Removal of the FTAA, Only Filipino citizen/s or corporation/s 60% of whose equity is owned or controlled by Filipino is allowed to mine</p> <p>Maximum areas for mineral agreements is 500 hectares, with maximum cumulative amount of 750 hectares within a particular watershed Maximum term for the contract is fifteen (15) years</p> <p>Removal of auxiliary rights and prohibits the assignment and transfer of agreements; Rational for this is, the trust given to the original proponent from the affected community based on consultation is non-transferable;</p> <p>Grounds for cancellation revocation and termination take into account human rights violations aside from administrative grounds: Violation of any provision of this Act; Human rights violations perpetrated by the contractor or any agent of the contractor; Non-payment of taxes, fees, obligations; Bribery (includes private persons that have influence in decision-making), use of force, intimidation, threat of public officials and communities; Vitiating of Free Prior Informed Consent; False statements; Abandonment; and Other analogous acts.</p>
<p>Environmental – based on the compliance with Environmental Impact Assessment (EIA), which is outdated and does not adequately address the complexity of mine operations.</p> <p>The chapter on Safety and Environmental Protection is lenient and inadequate.</p>	<p>Mandates contractors to secure international insurance and performance bonds for rehabilitation and response to disasters and risks; introduction of a water usage fee; imposition to reuse, recycle and remine; and the introduction of the Environmental and Social Impact Prevention and Mitigation Plan (ESIPMP) that will replace the EIA to comprehensively assess not just the environmental impacts of mining but as well as its economic socio-cultural impacts.</p>

Alternative Mining Bill: In brief

The Myth of Responsible Mining

The concept of "responsible mining", showcased by the Arroyo Administration and Philippine Chamber of Mines, presents the following key elements which:

- a) (abides by the) principles of sustainable development;
- b) (has) built-in protection for the indigenous peoples;
- c) (involves) sharing of the benefits of mining among the major stakeholders; and
- d) (has) strict environment and social provisions.

The framework of responsible mining is drawn from the so-called 'best practices' of various mining operations happening simultaneously in different countries BUT this model has not been successfully closed or "looped-in" in one single operation in a specific area. Moreover, no large-scale mining operation has completed the whole cycle of the model yet.

In our analysis, the concept of responsible mining is a weak model, because:

- a) It relies on voluntary compliance of large-scale mining companies;
- b) It highly depends on the ability of the government to enforce/implement the safeguards articulated in national laws and policies;
- c) It doesn't address the issue of corporate and state graft and corruption, a scenario that is not totally insulated in the extractive industries; and
- d) There is token recognition of safeguards (participatory process, Free Prior and Informed Consent, Environmental Impact Assessment, etc.)

Furthermore, the industry's track record has earned enormous social distrust, which does not adhere to the elements of 'responsible mining' proving that it does not exist in the Philippines.



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