

Comments on the Paper – Evaluating Certain Provisions of the 1995 Mining Law with Reference to the Framework for Responsible Mining

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General Comments

The paper seems to have drawn its framework from a research document “Framework for Responsible Mining: A guide to Evolving Standards” by Marta Miranda, David Chambers and Catherine Coumans. While the author recognizes that the framework for responsible mining is still evolving, as it really is in the global mining industry, he nevertheless tried to evaluate certain provisions of the 1995 Mining Law with the proposed framework and concluded that some provisions of the law may be improved in the implementing rules and regulations but others require a substantive amendment of the law or even a total overhaul or simply put, a repeal. Conclusions like this drawn on the basis of extremist viewpoints may not necessarily get the mining industry’s positive perspective as this connotes insincerity in really looking at gray areas in terms of policy or gaps in terms of administrative or regulatory process.

The author admits that the 1995 Mining Law is a fairly new legislation. The truth is, it has been barely implemented as its constitutionality was questioned in 1997 by NGOs. The Supreme Court decided with finality the constitutionality of the law only in early 2005 and since then, several implementing rules and regulations have been made by the executing agency in consonance with the law’s responsible mining framework.

The question concerning the adequacy of certain provisions of the law has previously been brought up when it was challenged before the Highest Court. This, in spite of the fact that it was signed by so many Congressmen and Senators in both Houses of Congress, and signed into law by then President Fidel Ramos. The directly affected stakeholder, the mining companies have said that it can live with it. The executive branch said it will be able to put substance into the Law’s objective of transforming minerals into wealth through responsible mining. It has since then made several implementing guidelines on environmental protection, social development and protection of IP rights. With the implementation of the law, some problems surfaced, in particular, the concern regarding the LGU share in excise taxes. The private sector lobbied hard in making possible the

payment of LGU's share in excise tax directly to them (which will now be a reality), and in endorsing transparency as a government mechanism in tracking the utilization of revenues particularly royalties and excise taxes that ought to benefit the Filipino people.

To begin with, it should be noted that contrary to what the author categorically says, there is no conflict among mining companies, the government and affected communities in terms of the law's provisions on revenue sharing, financial assurance, social development and management program and even in acquiring consent from LGUs and IPs. The private sector being the directly affected stakeholder follows rules and regulations and if there are gaps or grey areas, submits and justifies its position on said matters. Problems, however, actually arise in the implementation of the law as well as in monitoring.

The conflicts (arising from the law's provisions) that are the primary subject of the paper are being imposed into the three (3) direct stakeholders (mining company, government and mining communities) who may not see them as conflicts. From the private sector's perspective, these are issues of advocacy groups that cannot, until this time accept the constitutionality of the 1995 Mining Act. Making use of the three stakeholders as convenient scapegoat is manipulative, a clear manifestation of casting shadows to show that the conflicts are real. In spite of this, I will endeavor to comment on issues that I feel should be considered.

Specific Comments

Mining as Appropriate Land Use

Placing issues in their proper context is required here as the title seems to question the appropriateness of mining as a land use. It might be better to change the subject to "**Dealing with Environmentally Sensitive Areas**" as one of the thematic areas to better suit the intention. The fact that the Philippine Constitution recognizes mineralized areas and that minerals are owned by the State already defines mining as an appropriate land use.

It is a totally different thing when one is dealing with environmentally sensitive and protected areas as mining and other commercial activities are not allowed in these areas. All of us believe that biodiversity sustains human livelihood and life itself but we also have to recognize that economic and social development and poverty eradication are the first and overriding priorities of developing

countries like the Philippines. We tend to believe that the staunchest environmentalist and human rights advocate also recognize this priority as well as placing humans or the people at the heart of its endeavors.

Aside from environmental value, the author indicated areas where mining should not take place that should include the cultural value IPs attached to area; the negative impacts of mining on food production (although not explained) and small islands. The author also indicated that mining should not take place in conflict areas because the mine is used to extort resources to finance wars. This is why the free, prior, and informed consent (FPIC) process is very important. Communities should and are given the opportunity to decide whether their cultural values are indeed compromised by mining activities. Mining companies undergo FPIC and a lot of consultation. The main problem is, in so far as the NGO sector is concerned, no IP group would ever consider mining in their area if properly informed. It might therefore be more prudent for the NGOs, mining companies, and the IP communities to sit down and set the standard for FPIC and other consultation processes so as to avoid any accusation usually hurled against mining companies that they are railroading the process.

The reference to the mining and food report where it is claimed that mining is causing a drastic drop in food production is not a good argument to make to establish that indeed mining and food are antithetical. The report is contested and does not present solid evidence.

The mining industry is not the only industry subjected to extortion activities by armed groups to finance wars. This does not mean that other industries should stop pursuing their business interests. Being extorted money is one thing, and yielding to such activities is another. The industry knows that it is for its best interest not to succumb to such illegal activities.

Peace and development are two sides of the same coin. Mining is providing the opportunity to have both peace and development

Environmental Damage and Protection

So many discussions have been made about the environmental impacts of mining operations as well as how the various mechanisms ought to minimize them. The gaps indicated in the paper can be

considered by the regulating agency, the DENR but it also have to consider the views of the directly affected stakeholders or current and future mining investors.

The mining industry is hopeful that rather than being seen as supplying raw materials extracted from the earth, it should be seen as a materials supplier to a high-tech world with an extensive economic multipliers. Perhaps, a global material accounting information to indicate how much of the minerals extracted end up to diverse and wide-ranging uses should be undertaken. Recycled materials from metals and their uses should be included to close the entire mining-utilization loop or life cycle. A reverse promotion of mining and minerals from end use to extraction may be what is necessary for the public to better appreciate mining and minerals. The way forward they say for the global mining industry is to continue producing minerals and metals for humanity, avert global risks and being mindful of the implications of curtailed global minerals and metal production and how this would impact on current and future generations. The bottom line is mining is producing the metals required by global industrialization. The challenge is how we make industrialization and its attendant processes such as mining more environment-friendly and more responsive to today's environmental demands.

Social Impacts and Benefits

The issues cited with respect to social impacts and benefits seem to arise from the gaps being seen in the implementation of the social development management program (SDMP) by mining companies. SDMP has long been initiated by mining companies and was legalized later and made a requirement for Corporate Social Responsibility (CSR).

The government and CSOs have been saying that mining companies should do more than what the law provides in terms of CSR. Perhaps this is a novel idea but most companies would want clear cut standards for CSR, one where responsibilities between the companies and the LGUs are clearly delineated. This is a challenge for CSOs to help both government and the mining companies establish standards that companies would follow even when the commodities market tumbles and profitability suffers. The SDMP provision in the mining act should have been applauded for it is an opportunity to make mining truly beneficial to the impact communities. But sustainable development of impact communities cannot be left to mining

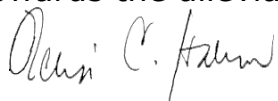
companies alone. It takes a convergence of efforts of all sectors and the challenge to CSOs is to facilitate such convergence. CSOs should be re-thinking the role it should play in mineral resource development. Being the sector that claims to be knowledgeable in identifying the development gaps, it should also be partnering with companies to show how sustainable development can be better pursued.

Other Considerations

The government is weak in terms of monitoring mining projects as well as the various programs being implemented by mining operators. This is where CSOs can be of help.

Incidentally, the author says that mining companies cannot and should not help local communities and local governments in building their capacities particularly in managing their windfall revenues. Is there a law preventing mining companies from partnering with local NGOs in building the capacity of LGUs and the communities? It maybe noteworthy to inform you that NCIP has recently requested the Chamber's assistance for capacity building as well as in helping their IP communities manage their royalties. Can we turn down such a request? Isn't it ironic that they are turning on us and our mining companies for assistance instead of requesting NGO or CSO's who were in the forefront of lobbying for their rights? Actually, some of our members have already partnered with local organizations on the ground in helping communities build their capacity.

Overall, there is a common ground towards responsible mining, but there is also a need for a constructive exchange of ideas about the mining industry that does not want to debate forever on recycled issues over and over again. As you know, this consumes a lot of time and effort that otherwise would have been spent in helping our government counter the effects of the global financial crisis and in helping companies affected cope with the current predicament. Nevertheless, what is important is that we know what we are aiming for and we also know what can be done to attain responsible mining towards the alleviation of poverty.



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