

NGOs, Coalition Building and the Campaign for a Minerals Management Policy in the Philippines*

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Abstract: *This article discusses how development NGOs form advocacy coalitions to influence policy-making. In particular, it looks at how two advocacy coalitions — Kalikasan People's Network for the Environment and Defend Patrimony! Alliance and the Alyansa Tigil Mina (ATM) — were formed and investigates their combined influence on mining policy. It traces the beginning of more than a decade of advocacy campaigning to repeal the Mining Act of 1995, looks at what has been achieved to date, and considers the prospects of the Act's repeal in the future. The author argues that though the Mining Act of 1995 has yet to be repealed, it can be said that these advocacy coalitions have influenced mining policy in terms of consolidating the advocacy campaign for a minerals management policy through the Dapitan Initiative, and providing an Alternative Mining Bill (AMB) or House Bill (HB) No. 6342 which was submitted to the 14th Congress in May 2009. The AMB was re-submitted to the 15th Congress as HB 206 in July 2010, and was filed in December 2010 as HB 3763, which is now known as the Minerals Management Bill (MMB). Moreover, these advocacy coalitions had a major role in influencing the Local Government Units (LGUs) to assert their autonomy in terms of resisting mining entry and operations in their jurisdictions.*

* This article is based on the author's continuing research on NGOs and policy advocacy focusing on the campaign to repeal the Mining Act of 1995. It presents the evolution of the campaign from the NGOs' call to repeal the Act in the 1990s to their continuing activities pressing for an alternative minerals management bill to be passed. The research began in the 1990s with the author's unpublished master's thesis entitled "A Class in Their Own: NGOs, Policy Advocacy and the Campaign Against the Liberalisation of the Philippine Mining Industry" submitted to the Universiteit van Amsterdam in 1998.

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However, it remains to be seen if there will be support from the Senate for the MMB to be passed into law in the 15th Congress to reverse the trend of large-scale exploitative mining.

Key words: *advocacy coalitions, policy advocacy, Mining Act of 1995, HB 6342 or Alternative Mining Bill (AMB), HB 3763 or the Minerals Management Bill (MMB)*

Introduction

With the recent change in government, development non-governmental organizations¹ (NGOs), together with their partner people's organizations² (POs), are calling on newly elected President Benigno C. Aquino III to indict former President Gloria Macapagal-Arroyo for massive corruption during her administration. These NGOs want Arroyo and her government to be held accountable for what they consider to be environmental crimes.³ Topping this crimes list is the so-called liberalizing mining policy of the Mining Act of 1995. This Act was passed under the government of former President Fidel V. Ramos, whose Philippines 2000 Medium Term Philippine Development Plan focused on privatization, liberalization and deregulation of the Philippine economy as a strategy to propel the country to NIC (Newly Industrializing Country) status. However, it was then Senator Arroyo who authored Senate Bill No. 1639 which, together with House Bill (HB) No. 108616, liberalized mining policy. When Arroyo became president, she continued support for the Mining Act of 1995 and the liberalization of mining, which was seen as the answer to the mining industry's fledgling state given the vast ore reserves in the Philippines. A number of NGOs have continued the campaign to repeal the Mining Act of 1995. Moreover, these NGOs have formed advocacy coalitions to push for an alternative minerals management policy by initially playing a part in creating and filing HB 6342, otherwise known as the Alternative Mining Bill (AMB),⁴ which they are pushing to be enacted into law.

The AMB filed in May 2009 to the 14th Congress is meant to scrap and replace the Mining Act of 1995 and introduce a new alternative



mining policy which is anchored on land and natural resources management and a human rights-based approach.⁵ The AMB aims to regulate the rational exploration, development, and utilization of mineral resources and to ensure the equitable sharing of benefits with the state, indigenous peoples and local communities while addressing the flaws of the Mining Act of 1995. In July 2010, HB 6342 or the AMB was re-submitted to the 15th Congress as HB 206, which now specifically bans open-pit mining. In December 2010, HB 206 was revised and filed as HB 3763 — now known as the Minerals Management Bill (MMB) — which features an alternative minerals management policy that aims to be better and intentionally human rights-based.⁶ This goes beyond merely attaching an “improved” label on the alternative policy intended in the AMB. The MMB also underscores the need for a state-led formulation of a Minerals Utilization Framework that will support national development based on principles of sustainable development, a policy direction lacking in the Mining Act of 1995.⁷

The advocacy campaign for the repeal of the Mining Act of 1995 started with the petitions of residents living in areas where the first applications for large-scale mining were approved by the government. The affected residents aimed to stop the explorations of the mining corporations.⁸ Residents living in other parts of the country with pending applications also petitioned against the approval of these applications.⁹ However, the turning point in the campaign came as a result of the Marcopper mining disaster¹⁰ that happened in Marinduque on 24 March 1996. The disaster focused attention on the issue and consequences of the liberalization policy in the mining industry, especially because Marcopper was 40% owned by Placer Dome, a Canadian partner. After the disaster, the campaign gained momentum all over the country.

To reverse the liberalization of mining policy, NGOs, in tandem with their partner POs, started regional advocacy campaigns against large-scale mining throughout the Philippines. One initiative to consolidate and bring the advocacy campaigns from the regional to the national level, and including other affected sectors such as the Catholic Church, came from Bagong Alyansang Makabayan (BAYAN or New Patriotic



Alliance) in 2001 when it formed the Kalikasan People's Network for the Environment (PNE) and Defend Patrimony! Alliance.¹¹ This advocacy coalition represents NGOs, POs, and sectoral representatives from organizations of peasants, fisherfolk, workers, women, indigenous peoples, urban poor, and concerned individuals in the Philippines calling for the repeal of the Mining Act of 1995 and nationalization of the mining policy. While Kalikasan-PNE and Defend Patrimony! Alliance were protesting against large-scale mining, the Legal Rights and Natural Resources Center, Inc.-Kasama sa Kalikasan/Friends of the Earth-Philippines (LRC-KsK/FoE-Phils.), a policy and legal research and advocacy institution for the protection of human rights and indigenous peoples' rights, filed a suit declaring the Mining Act of 1995 unconstitutional. In 2004, the Mining Act of 1995 was declared unconstitutional, only for the court to reverse its decision ten months later. Furthermore, former President Arroyo came out with Executive Order (EO) 270, entitled A National Policy Agenda on Revitalizing Mining in the Philippines and the National Minerals Action Plan (NMAP). In reaction to this, another initiative to form an advocacy coalition came from the anti-mining summit co-convened by the Philippine Partnership for the Development of Human Resources in Rural Areas (PHILDHRRRA), Haribon and LRC-KsK/FoE-Phils. in 2005. Thus, the Alyansa Tigil Mina (ATM) coalition was formed, made up of NGOs, POs, church groups and academic institutions. The ATM functions both as an advocacy group and a people's movement, working in solidarity with other groups, to protect communities and natural resources that are threatened by large-scale mining operations in the Philippines.¹² ATM not only called for repeal of the Mining Act of 1995 but also for the drafting of an alternative mining bill. Since then, Kalikasan-PNE, the Defend Patrimony! Alliance and ATM have opened lines of communication; they have held joint rallies and worked together with LRC-KsK/FoE-Phils. to reverse the trend of liberalization and large-scale exploitative mining, and push for an alternative policy anchored on better land and natural resources management and genuine respect for human rights.

Advocacy Coalition Framework¹³ and Research Methods

The influence of NGOs on public policy is assessed according to the advocacy coalition (AC) framework. The AC framework is a policy framework that emphasizes beliefs, policy learning, and preference formation in the policy-making process. According to Sabatier (1988), who developed the AC framework, policy formation and change is a function of competing advocacy coalitions within a policy subsystem. A policy subsystem consists of actors from public and private organizations who are actively concerned with a policy problem. The actors within a policy subsystem are grouped into a number of advocacy coalitions that consist of individuals who share a particular belief system,¹⁴ i.e., a set of basic values, causal assumptions, and problem perceptions, and who show a non-trivial degree of coordinated activity over time. Furthermore, Sabatier and Jenkins-Smith (1993) add that these advocacy coalitions attempt to realize a set of shared policy beliefs by influencing the behavior of multiple governmental institutions over time.

Unlike other policy frameworks that are grounded on instrumental rationality (i.e., individuals are assumed to act exclusively on the basis of their preferences that are fixed and exogenously determined), the AC framework assumes that individuals not only act on the basis of their preferences, but also on the basis of their beliefs which include moral values that change and are endogenously determined. The AC framework sees that preferences and beliefs change and are endogenously determined, and that information and learning play active and central roles. Information is filtered through belief systems and cognitive processes as an individual decides what information to accept, reject, or reinterpret. Furthermore, this information is used to improve strategies which may also result in changes in goals and beliefs, which in turn, could change policies.



However, if the AC framework is to be qualified as a general theory of policy, it must relate beliefs to action. In order to do this, the theory of Institutional Analysis and Development (IAD) is integrated into the AC framework. In particular, the IAD framework created by Elinor Ostrom



(1990) can explain how beliefs are translated into action. While beliefs promote cooperation, IAD holds that there are also other additional factors that affect the degree and longevity of cooperation. Integrating IAD into the AC framework shows that, in addition to shared beliefs, factors such as agreeing upon a common definition of a shared problem and the policies to address that problem, help develop a minimal level of cooperation and coordination. Furthermore, if greater levels of coordination are to be achieved, additional and related collective action problems — such as what strategies to pursue — must be resolved. Some strategies, like forming a peak association, are more costly than others, such as deciding upon a lobbying strategy to influence government decision makers. The former is more costly because it involves addressing and integrating the interests of its members, engaging in policy research and development, and monitoring the actions of its members; but it also means greater levels of coordination. Presumably, according to Coleman and Skogstad (1990), the more structured the coordination, the greater the influence coalitions will have on policy-making.

In their advocacy role, NGOs serve as a peak association. NGOs link like-minded POs, forming horizontal linkages. They also link POs vertically to sympathetic key players in Congress, the judiciary, different relevant government departments, church, media and international organizations. These horizontal and vertical linkages formed by NGOs in coalition-building qualify as an advocacy coalition, which, according to Sabatier and Jenkins-Smith, “consists of elected and agency officials, interest group leaders, journalists and other actors who share a particular belief system and who rely on political arguments as much as on scientific expertise to justify political choices” (Peterson 1995: 79). Furthermore, according to Sabatier and Jenkins-Smith, advocacy coalitions “...may be dedicated to defending national interests, broad political programs...or issue-oriented action...” and “...seek primarily to influence ‘policy brokers’ who do *not* share a coalition’s belief system” (*Ibid.*).

An advocacy coalition can effectively influence policy even as different stages in policy formation require different interventions. In some stages,



backdoor lobbying would be the most effective intervention. In some other stages, a technical intervention is needed; and still in others, mobilization. In an advocacy coalition that is composed of influential individuals, NGOs and POs, these different interventions are made possible. In general, influential individuals are relied upon for backdoor lobbying, NGOs for technical aspects, and POs for mobilizations. However, the formation and maintenance of an advocacy coalition takes more than shared beliefs among these influential individuals, NGOs and POs. They must also be able to overcome collective action problems such as agreeing on the policy goals and strategies.



Using the AC framework that explains policy formation and change as a function of competing advocacy coalitions within a policy subsystem, the author intends to evaluate the extent of the two coalitions' influence based on (1) the repeal of the Mining Act of 1995 and the gains towards enactment of the MMB; (2) their role in changing legal practice and judicial outcomes; (3) their participation in policy-making bodies, including local government structures or gatherings; and (4) their enhanced organizational capabilities for policy advocacy.

In order to determine whether the advocacy work of NGOs has made any decisive influence on mining policy in the Philippines, a case study was done on the formation of Kalikasan-PNE and Defend Patrimony! Alliance and ATM advocacy coalitions and their resulting combined influence on mining policy. This was done by studying the advocacy campaigns of NGOs since 1997 to repeal the Mining Act of 1995 and its result on the Act itself and its Implementing Rules and Regulations (IRR); and, to date, the campaign calling for the enactment of the MMB into law. These two advocacy coalitions were chosen because they consolidated the advocacy campaign on a national level. On the other hand, the LRC-KsK/FoE-Phils. may be fairly categorized as being at the "frontline" of the campaign which filed suit declaring the Mining Act of 1995 unconstitutional and continues pushing for the passage of the MMB with the support of Kalikasan-PNE and Defend Patrimony! Alliance and ATM.

For first hand information about the beginning of the advocacy campaign, the author went to Tampakan, South Cotabato, Mindanao (one of the first places where mining exploration was conducted following the approval of Western Mining Corporation's [WMC] application for large-scale mining) in 1997 to see the effects of ongoing exploration on the people there and get their reactions.¹⁵ While there, the author interviewed members of the Alliance for Genuine Development (AGD), the NGO which led the advocacy campaign against the liberalization of mining in Mindanao; Tampakan People's Crusade for Environmental Protection (TAPCEP), the coalition of POs in the area which advocated for a stop to the explorations of WMC; and people from different sectors of the local community. The author also visited the WMC base camp to see the level of mining operations done at that time and to find out the consequent environmental impact. To determine how the advocacy campaigns progressed in the different regions and how these were consolidated at the national level under Kalikasan-PNE and Defend Patrimony! Alliance and ATM from 1997 to the present, the researcher also conducted key informant interviews (KIIs) with the coordinators from these two coalitions. For second hand information on the advocacy campaign for the repeal of the Mining Act of 1995 and the passing of HB 3763 or the MMB, the researcher read various media articles in newspapers and magazines, flyers, protest and propaganda materials, brochures, environmental updates, and case studies.

Paradox of Large-scale Mining

Seen as the answer to the mining industry's fledgling state despite vast ore reserves in the Philippines, Republic Act (RA) No. 7942 or the Mining Act of 1995 was approved on 3 March 1995. The Act made it possible for transnational mining companies to apply for Financial or Technical Assistance Agreements (FTAA) for large-scale mining in the Philippines.¹⁶ An FTAA is an agreement between the Philippine government and a transnational mining corporation, where the latter puts up the capital and technology and in return is allowed to lease an area of 100,000 hectares¹⁷ to mine for 25 years, renewable for another 25 years. Other features of the FTAA include: 100% foreign ownership



of the corporation operating in the Philippines, as opposed to the 60% Filipino-40% foreign equity stated in the Philippine Constitution; five years tax holiday for the mining corporation which can be extended for another five years and tax free importation of equipment and machinery; investment incentives such as repatriation of investments, remittance of earnings, remittance of foreign loans and obligations from contracts; freedom from expropriation, freedom from requisition of investment and confidentiality; and auxiliary mining rights such as timber rights, water rights, easement rights, right to possess explosives, entry into private lands and concession areas. In exchange, the government's share in the FTAA consists of the taxes that the government is requiring a corporation to pay, regardless if it finds deposits or not. In the event that it does, the collection of the government's share (60%) shall commence after the contractor has fully recovered its pre-operating expenses, exploration, and development expenditures.



The first two FTAA applications approved were those of ARIMCO and Western Mining Corporation Philippines Inc. (WMCP). These were considered as test cases for the approval of the other pending applications. At the outset, pending applications of FTAA's already totaled 112. If all were approved (with an average of 100,000 hectares per application), this would have totaled 11,200,000 hectares of land or 37.33 % of the Philippines' total land area. The NGOs argued that this huge area — over one-third of the entire country — will be in the hands of foreign mining firms and subjected to large-scale mining and its environmentally damaging effects, such as deforestation, destruction and poisoning of water bodies, and destruction of cropland ecosystems. Residents, including indigenous peoples in the areas with approved and pending FTAA's, feared the harmful effects of large-scale mining on their lives and their environment. They naturally wanted to see the Mining Act of 1995 repealed. NGOs took up their cause and focused their advocacy work on campaigning to repeal the Mining Act of 1995.

How could the previous government see the Mining Act of 1995 as a boon to the fledgling mining industry, while, at the same time, it is seen as a bane to development by NGOs? Bautista's paper on the

economics of mining explains this paradox. According to Bautista (2009), spurred by globalization and finding a niche in the global market place, “the Medium Term Development Plan of the Arroyo government identified metallic minerals as a strategic commodity and mineral commodity production as a priority economic activity.” However, the volatility of the global market in minerals, the enclave character of the metallic mineral industry and its intensive capital needs, the small income shares for labor, the ill effects on indigenous peoples and the environment, the greater share of rent fully remitted out of the country without contributing to domestic capital accumulation, the strategy of “niche-ing” via mineral production — all of these have been collectively recognized as a threat to sustainable development, while preventing any significant economic growth (*Ibid*). Furthermore, according to Bautista, “accounting for a small fraction of GDP, at most 1.2%, the metallic mineral industry has historically been extractive and continues to be so.” In addition to this, for Bautista, the government’s measures and funding programs with mining contractors to address the negative effects of large-scale mining do not fully mitigate the negative impacts or provide adequate compensation for the adverse economic and social costs, thus making the whole situation unsustainable. He concludes that if this practice continues and the policy is not altered, the government and the mining industry will aggravate the state of the country’s environmental degradation and increase poverty (*Ibid.*).

Advocacy Campaigns at the Local and Regional Levels

As mentioned above, the advocacy campaign began in Tampakan, South Cotabato, Mindanao, where the FTAA of WMC had been approved and explorations were already being conducted. The NGO which led the advocacy campaign against the liberalization of mining was the AGD. The coalition of POs and the people from different sectors of the local community who opposed the explorations were banded together in the TAPCEP. AGD, a Mindanao-wide alliance of advocates for the embattled indigenous peoples and for the endangered environment there held forums, symposia and educational campaigns on the effects of large-scale mining promoted by the Mining Act of 1995. Working also with AGD was Solidarity Action Group for Indigenous People (SAGIP), an





NGO for the protection of indigenous peoples' rights in Mindanao. This forged a partnership with the Program Unit on Ecology and Environmental Protection (PUEEP) of the National Council of Churches in the Philippines (NCCP) and produced sound-slides and a video documentary on the plight of the Lumad¹⁸ which was shown in schools, churches and among other interested groups, according to the publication PARAGAS (1996). Moreover, SAGIP was part of 400 participants who were gathered for the Southern Mindanao Summit of Indigenous People's and Advocates on 8-9 October 1996. Participants included nine Lumad organizations, seven tribes, and advocates from the church, academe, NGOs and POs. Outputs of the Summit included the Declaration of Unity by Lumad organizations against development aggression and a signature campaign launched by the Southern Mindanao People's Petition to repeal repressive and exploitative land laws, decrees, policies and programs, PARAGAS (1996) further reported.

In the Visayan region, the campaign was led by the People's Coalition for the Protection of the Environment (PCPE) and it included an investigative mission to southern Negros that exposed the serious dangers posed by Maricalum and Philex mining corporations which operated open-pit mines (Espina 1996). The mission participants, along with the social action centers of the Bacolod and Kabankalan dioceses, called for a stop to all mining in Negros and the repeal of the Mining Act of 1995 (*Ibid.*). On the 28th of June 1996, a rally attended by about 15,000 was staged to demand a stop to all mining operations and the abolition of the Mining Act of 1995 under which two foreign firms (Australia's WMC and Canada's International Pursuit) had begun exploring the vast concessions they earlier applied for (Corpuz 1996b:16). On 4-6 September, the National Council of Churches in the Philippines (NCCP) sponsored a Visayas-wide conference which also called for the rejection of the new mining law (Corpuz 1996b:16). Finally, residents of Sipalay town in Negros, where mine tailings and waste water from Maricalum Mining Corporation rushed into some 500 hectares of rice fields after two of the company's tailing dams overflowed on 1 and 2 November due to typhoons, demanded that Maricalum leave the town (Langit 1996a).

In the Cordilleras, the people's resistance was consolidated at the regional level during the Cordillera People's Regional Mining Conference, 22-23 April 1996, sponsored by Cordillera People's Alliance (CPA) (Corpuz 1996b:16). The conference produced a declaration signed by the delegates protesting against the country's different mining laws, particularly the Mining Act of 1995 (*Ibid.*). The CPA Education Commission also came out with a Resource Kit on the issue of mining and specifically on the New Mining Act of 1995. This Resource Kit was meant to be used by community organizers in furthering their education work in the communities and was part of CPA's Defense of Land, Life and Resources campaign.¹⁹ On 15-18 May 1996, three Catholic dioceses of Bayombong, Urdaneta and Baguio-Benguet held a convention to discuss how to address through their various apostolates the implications of the Mining Act of 1995 and to devise strategies to build networks for a strong national lobby (Golote 1996). On 2-4 October, in Nueva Vizcaya, people from affected areas came to a conference and discussed the impact of ARIMCO's operations (Corpuz, 1996b:16). Moreover, church leaders and militant groups in Baguio led a "re-invasion" campaign of the Benguet Corporation on 12 October 1996 (Lobien 1996). The "invasion" aimed to educate the people in the community on the hazards of open-pit mining and the negative effects of the Mining Act of 1995. Finally, indigenous peoples staged a mass action in front of DENR to protest operations of four big mining companies in the region and demand protection from militarization by local police forces. The protestors staged a war dance to show their indignation and carried placards that read "Stop Open-pit Mining and Uphold and Defend Our Rights Over Ancestral Land from Imperialist Intrusion."

Advocacy Campaigns at the National Level



BAYAN took up the issue of mining after the Marcopper tragedy and raised it to the national and multi-sectoral level.²⁰ For BAYAN, liberalization of the mining industry is a national and multi-sectoral issue because it touches on national patrimony and the sovereignty of all Filipino people (not only particular sectors), and its implications are not



only in a particular community or region but nationwide. The national campaign consisted of mass propaganda and education, and locally and nationally coordinated mobilizations on appropriate occasions. It called for the repeal of the Mining Act of 1995 and cancellation of FTAA's granted to ARIMCO and WMC; scrapping of all pending FTAA's; rehabilitation, indemnification and justice for all victims of destruction by large-scale mining; and to make accountable all those criminally responsible. BAYAN sponsored a National Mining Conference held in Baguio, Benguet on 21-23 April 1996 as part of its national campaign.

The other NGOs which raised the issue at the national level were LRC-KsK/FoE-Phils., Center for Environmental Concerns (CEC), Tebtebba Foundation (Indigenous Peoples International Center for Policy Research and Education), Tunay na Alyansa ng Bayan Alay sa Katutubo (TABAK), and Mining Communities Development Center, Inc. (MCDC). LRC-KsK/FoE-Phils. called on the government to reject all FTAA applications and recall all mining permits. CEC, together with other NGOs, demanded adequate disaster reduction measures from the government to be implemented in the affected areas in the case of the Marcopper disaster (Langit 1996b). Tebtebba Foundation released an exposé on Marcopper entitled, "Marcopper Toxic Mine Spillings, Biggest Industrial Accident in the Philippines," to highlight the issue of mining and demand the rejection of large-scale mining. TABAK came out with an Action Alert Bulletin monitoring and reporting the situation on the different areas where FTAA applications have been approved, such as in South Cotabato, Mindanao, where WMC was starting explorations after the approval of its FTAA, and demanded a stop to the explorations.

MCDC took the issue further at the international level when its executive director, engineer Catalino L. Corpuz Jr., participated in the Mining and Indigenous People's Consultation in London on 6-16 May 1996. Regarded as one of the country's most militant advocates of indigenous people's rights, he presented to the conference a paper entitled, "The Liberalization of the Mining Industry: A Continuing Policy of National Oppression of Indigenous Peoples in the Philippines." Here, he cited the experience of the people in Bougainville who were victimized



by the number one mining company in the world, Conzinc-Rio Tinto Australia - Rio Tinto Zinc (CRA-RTZ). He even went as far as saying that a call to review and amend the Mining Act of 1995 is not enough, and that no less than a civil war might be needed to stop large-scale mining. The conference had 46 participants representing organizations, communities and nations of indigenous peoples from 24 countries. According to a paper on the conference:

The participants were able to pass 17 resolutions, which essentially sought each others support for their particular struggles. The Philippine delegation sponsored 2 resolutions which gained the unanimous support of the participants. The body supported the resolution rejecting the Philippine Mining Act of 1995.²¹

The mining issue, a multi-sectoral concern which was also a sovereignty issue due to liberalization of the industry, attracted the attention of NGOs which had exemplified a variety of approaches in terms of organization and strategy. Environmental NGOs, human rights NGOs (specifically for indigenous peoples' rights) and development NGOs were all involved in the advocacy campaign for the repeal of the Mining Act of 1995. Some, like LRC-KsK/FoE-Phils., CEC and TABAK, are organized at the national level; CPA, PCPE, AGD, SAGIP and MCDC are organized at the regional level; while others are part of federations like BAYAN, which can claim relevance at the regional, national and international levels. LRC-KsK/FoE-Phils. and CEC, being environmental NGOs, are not a part of any federation and have more specific goals primarily concerning the protection of indigenous peoples' rights and the environment. BAYAN, CPA, PCPE, and AGD, which are alliances of different groups, have more broad developmental goals, where the protection of the rights of indigenous peoples and the environment are included. Finally, TABAK, SAGIP and MCDC, human rights NGOs which are also allied to federations, have more specific goals for the protection of indigenous peoples' rights. These differences in organization influenced the strategy of these NGOs. LRC-KsK/FoE-Phils., compared

with all the rest of the NGOs involved, favors formal advocacy over lobbying; but when it does engage in lobbying, it uses more conservative methods, for example, issuing statements. Meanwhile, other NGOs that favored lobbying were using methods with varying degrees of militancy — from mass propaganda to mass demonstrations. At this point, conditions were not yet favorable for the formation of advocacy coalitions. For although the NGOs all believed that the liberalization policy in mining should be resisted, there was as yet no common strategy to consolidate the people’s resistance to this. Still, the various strategies of the NGOs mentioned above resulted in the following developments at that time in the campaign against the State’s liberalization policy in the mining industry.

Initial Results of the Advocacy Campaign

Influential events were borne out of the advocacy campaign. First was the move by the legislature to pass a law imposing a “green tax” on mining companies as payment for environmental destruction and requiring them to set aside a kind of fund as “environmental insurance” to underwrite the claims against environmental destruction (Cadacio 1996). Second, representative Orlando Fua of Siquijor, chairperson of the House Committee on Natural Resources, asked for a review of Environmental Compliance Certificates (ECCs) issued to all mining firms starting with Marcopper, as reported in *Today* (9 April 1996). Third, the Department of Environment and Natural Resources (DENR) started a campaign with various NGOs to make ‘social acceptability’ a formal criterion in ECCs and required mining companies to undergo Environmental Impact Assessments (EIAs); the DENR’s appealed for the immediate passage of the Revised Mining Code which provides for stricter rules and provisions against polluting activities (Ac-Ac 1996a). Lastly, Senator Orlando Mercado, then chairperson of the Senate Committee on Environment and Natural Resources, called in the Senate for “a careful re-evaluation” of the Mining Act of 1995 and, further, asked Negros Oriental representative Miguel Romero to file his own resolution in the House of Representatives to review the Act (Espina 1996b).

Furthermore, the DENR conducted four public consultations from August to September in Luzon (Baguio and Quezon Cities), Visayas (Cebu City) and Mindanao (Davao City) to thresh out the concerns of the mining sector, NGOs, local government units, people's groups and religious sectors to be able to implement the Mining Act of 1995 (Villa 1996). Among the issues tackled were monitoring and eligibility, mineral and quarry permits, FTAA, environmental protection and EIA, contingent liability, settlement of conflicts and ancestral lands (*Ibid.*). The public hearings resulted in the amendment of the Implementing Rules and Regulation (IRR) on 18 December 1996.

Highlights of the RA 7942 Amendments

Though the review or repeal of the Mining Act of 1995 was not approved by the government, at this point, it accepted the need for amendments to its implementation. DENR amended Department Administrative Order (DAO) 23 s. 1995, otherwise known as the Implementing Rules and Regulations of the Mining Act of 1995, and the revised rules and regulations were referred to DAO 40 s.1996. Views of NGOs on the amendment of the IRR were divided (Ibanez 1997). Some NGOs held the view that there is value in amending the rules in that it is the only politically feasible option at the moment. These NGOs concentrated on influencing the proposed amendments to ensure that the protection of communities and environment is enshrined in the new revised guidelines. Some NGOs, on the other hand, held the view that the amendment was unnecessary, manipulative and anti-people, because the Mining Act of 1995 itself was illegal and unconstitutional, and nothing less than a repeal was needed. The NGOs that called for repealing the Act did not participate in the amendment process. LRC-KsK/FoE-Phils., in particular, was critical of the amendment process and its results, since it was working for a repeal.

As a result of the amendment process, NGOs achieved some modest successes in closing certain areas to mining previously adopted in DAO 40; and in making DAO 40 stricter in terms of requirements and environmental records (*Ibid.*). DAO 40, stricter than the earlier DAO

23, requires the submission of community relations record, environmental compliance record, progress reports every six months (for FTAA holders), and background information checks on all mining applicants. Furthermore, the revised rules will recognize ancestral lands and domains even when they are not documented, and made “prior informed consent” which was “free from fraud, external influence and manipulation” a non-negotiable prerequisite. DAO 40 also increased compensation to the affected communities. Although these amendments are stricter in requirements and increased compensation, LRC-KsK/FoE-Phils. pointed out, however, that surface property owners are rendered defenseless against the entry of mining operations, so long as there is just compensation (*Ibid.*). Moreover, DAO 40 did not reflect the preference for mineral agreements²² over FTAA; the banning of open-pit mining and other forms of mineral extraction technologies that cause irreversible damages to lives and environment; the provision of simple monitoring mechanisms to enable communities to detect safety violations; and the inclusion of mechanisms that will allow transparency in FTAA negotiations.

Although the IRR amendment was deemed a failure, it showed that, if not a repeal, there was at least a need to review the Mining Act of 1995. This influenced Representative Ronald Cosalan to call for an outright amendment of the Mining Act itself because it marginalizes indigenous peoples. For him, ancestral lands or domain claims must be given first before mining firms are able to enter them. Even before the amended version of the IRR was signed, Cosalan had already filed a bill in Congress which sought “the recognition of prior and vested ancestral land and mining rights of indigenous cultural communities within patented mining claims and leases,” and ²³ and the prohibition of open-pit mining (Lobien 1997). In the Senate, Senator Orlando Mercado, then of the Senate Committee on Environment and Natural Resources, said that “the law must be reviewed now as more and more indigenous communities are being displaced and our land and rivers being poisoned,” and filed a Senate resolution directing the Committee to review the Mining Act of 1995 (Gorecho 1997). The Senate then was directed to conduct hearings to review the Mining Act of 1995 in the light of numerous protests from different sectors concerning the alleged



environmental violations committed by several foreign and local mining firms (*Ibid.*). Moreover, President Ramos, at that time, after his initial whole-hearted support became lukewarm towards the mining industry, understanding that the political costs of his blessing could more than outweigh the economic gains, as reported by Manila Times (5 May 1997). This was because the Mining Act of 1995 was frequently mentioned by activists as the main piece of evidence that his government intended to “sell the country to foreigners” and became one of the most unpopular laws in recent years, according to the Manila Times (5 May 1997).

LRC-KsK/FoE-Phils.’ Call for the Repeal of the Mining Act of 1995

The failure of the amendment process of the IRR of the Mining Act of 1995 reinforced the need for its repeal in the view of the LRC-KsK/FoE-Phils. In 1997, lawyer Marvic Leonen, whose clients included the La Bugal-B’laan Tribal Association, et al., questioned before the Supreme Court the government’s EDU (exploration, development and utilization) contract with the Western Mining Corp. Inc. (WMC), an affiliate of the Australian company, Western Mining Corporation Holdings Limited, among other issues (Rufo 2006). The contract, which was covered by an FTAA, involved the exploitation of mineral deposits in an area covering South Cotabato, Sultan Kudarat, Davao del Sur, and North Cotabato. Claiming that the contract constituted “service contracts” that “violated” the Constitution and allowed foreigners to exploit the country’s natural resources, the petitioners challenged the constitutionality of the Mining Act of 1995 upon which IRR and the FTAA with the WMC were based.

Kalikasan – People’s Network for the Environment and Defend Patrimony! Alliance

The failure of the amendment process of the IRR of the Mining Act of 1995, however, did not result only in the constitutional challenge from LRC-KsK/FoE-Phils., but also led to the formation of the advocacy coalition Kalikasan People’s Network for the Environment (Kalikasan-PNE) and Defend Patrimony! Alliance, which developed into a more



concerted effort towards the nationalization of mining policy. Among the groups mentioned above, BAYAN, CPA, SAGIP and AGD became part of Kalikasan-PNE and Defend Patrimony! Alliance. These organizations were united in the belief that the Mining Act of 1995 must be repealed and the nationalization of mining policy must be pursued. Looking at the members of Kalikasan-PNE and Defend Patrimony! Alliance, it was evident that they all concluded that the amendment of the IRR of the Mining Act of 1995 was a failure, and no less than a repeal of the Act itself was needed in order to eradicate all the ill-effects of large-scale mining. This led to the formation of Kalikasan-PNE Defend Patrimony! Alliance. The members of this Alliance agreed that a policy change was needed, and so they crafted a People's Mining Policy aimed at protecting the people's interests. It remains to be seen, however, whether Kalikasan-PNE and Defend Patrimony! Alliance can successfully have their People's Mining Policy submitted as a bill in Congress.

The Dapitan Initiative

The failure of the amendment process underscored the need for NGOs to focus not only on the advocacy campaign to repeal the Mining Act of 1995, but also to offer an alternative mining bill embodying a new mining policy, which should be anchored on good land and natural resources management and firm respect for human rights. This led to the Dapitan Initiative that laid the blueprint for an alternative mining bill (Fabe 2009). In 2002, the LRC-KsK/FoE-Phils. and other opponents of the Mining Act of 1995 from all sides of the ideological spectrum, convened at the historic Rizal Shrine in Dapitan City to discuss issues concerning mining in the country. That discussion gave birth to the "Dapitan Initiative", a manifesto signed on 11 October 2002 expressing the policies and principles that should govern the mining industry. According to Fabe (2009), the Dapitan Initiative expressed that the mining industry must:

- (1) uphold indigenous people's rights and achieve a more ecologically sound, gender-fair, equitable system of resource management;
- (2) share in the burden of satisfying resource

needs primarily through re-using and recycling existing mineral products; (3) prioritise in land and water use, the concerns of food security, which includes food free from pollution, livelihood production, ecological balance, equity, and social justice; (4) utilise only resources that are necessary for domestic use and national industrialization and to develop 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; (5) not compromise on human rights, dignity and collective identities.

The following were also demanded by the advocates:

(1) immediate cancellation of all existing financial and technical assistance agreements (FTAAs), minerals production sharing agreements (MPSAs), exploration permits, and other mining agreements, licenses and other instruments because they are all based on a highly flawed system; (2) scrapping of RA 7942 (Philippine Mining Act of 1995), RA 7076 (Small-scale Mining Act); PD (Presidential Decree) 463 (Providing for a Modernised System of Administration and Disposition of Mineral Lands and to Promote and Encourage the Development and Exploitation thereof), and all related laws that are oppressive to the people; (3) moratorium on the issuance of large-scale mining permits, licenses, agreements and other instruments for one hundred years; (4) rehabilitation, restoration of mining areas and accountability of mining corporations for the destruction that they caused; (5) upholding workers' rights; and (6) prohibiting state and privately sponsored armed groups from areas where there are current and prospective mining operations. (Ibid.)

The Dapitan Initiative consolidated the advocacy campaign not only because it exposed the wrongs and failures of the Mining Act of 1995 but also because it led to a minerals management policy which is anchored on land and natural resources management and human rights-based

approach that had consensus from all sides of the ideological spectrum. The Dapitan Initiative, the formation of Kalikasan-PNE and Defend Patrimony! Alliance and the move of LRC-KsK/FoE-Phils. to challenge the constitutionality of the Mining Act of 1995 all contributed to put pressure on the Supreme Court to repeal the Mining Act of 1995.

Repeal of the Mining Act of 1995 and Judicial Reconsideration

In 27 January 2004, the Supreme Court voted 8-5-1 declaring the 1995 Mining Act and the IRR unconstitutional, citing that FTAA's are "clearly incompatible with the constitutional ideal of nationalisation of natural resources and, on a broader perspective, with Philippine sovereignty" (Rufo 2006). The ruling pointed out that an FTAA gives the foreign contractor management control of the mining operation, something that was not the intent of the Constitution. Such management control "in effect conveyed beneficial ownership over the nation's mineral resources to these contractors, leaving the State with nothing but bare title" (*Ibid.*). The ruling also noted that the Mining Act "permits a circumvention of the constitutionally ordained 60 percent to 40 percent capitalization for corporations engaged in the exploitation of Philippine natural resources" (*Ibid.*).

However, ten months later, on 1 December 2004, the Supreme Court, by a vote of 10 to 4 with one abstention, granted the Motions for Reconsideration filed by the government, Western Mining Corporation Philippines (WMCP), and Intervenor Chamber of Mines of the Philippines (CMP), in the case of La Bugal-B'laan Tribal Association, et al. versus Secretary Victor O. Ramos, et al. (G.R. No. 127882). In granting the Motions for Reconsideration, the Supreme Court reversed and set aside its decision made last 27 January 2004 and thus ruled that RA No. 7942, its IRR, and the WMCP FTAA were constitutional after all. (*Ibid.*) According to Rufo (2006) "In its second verdict, the court said that the original decision applied a restrictive interpretation of the law but that 'the Constitution should be read in broad, life-giving strokes,' and 'it should not be used to strangle economic growth or to serve narrow,

parochial interests. Rather, it should be construed to grant the President and Congress sufficient discretion and reasonable leeway to enable them to attract foreign investments and expertise as well as to secure for the people and their posterity.” Rufo (2006) concludes “for the petitioners, the Supreme Court’s reversal was totally unexpected. It had taken seven years for the justices to finally render a verdict on the case, from 1997 to 2004. But it took the court only 10 months to reverse that decision.” A study on the judicial reconsideration (Ciencia 2010) shows “new” significant facts that were introduced after the January ruling, namely, the government-acknowledged fiscal crisis/budget deficit problem of 2004 which was recognized by the majority in December as a matter of judicial notice, and National Economic Development Authority (NEDA) Director Romulo Neri’s assessment of the “untapped” potential of the Philippine mining industry largely favored the pro-Mining Act position and a reversal. Moreover, the study also showed the Mining Act ruling reversal was more the product of persuasion than pressure. Then House Speaker Jose de Venecia’s confession of the strong lobbying at the Supreme Court made by the mining industry to reverse the decision validates this finding that the reversal came as a result mainly of an opposing advocacy coalition made up of mining corporations and government officials who believed that gains from mining would solve the budget deficit.

Though the advocacy campaign still was not consolidated at this time, the author posits that the formation of Kalikasan-PNE and Defend Patrimony! Alliance, the Dapitan Initiative and LRC-KsK/FoE-Phils.’ case to declare the Mining Act of 1995 unconstitutional, influenced mining policy to the extent that it succeeded in influencing the Supreme Court to declare the Act unconstitutional even while this decision was reversed after only ten months. Rather than ask why the SC decided to over turn its original decision and uphold the Mining Act of 1995, which it did upon the strong lobby of pro-mining groups and individuals, the author thinks that the more important question to ask is why the SC declared the Mining Act of 1995 unconstitutional in the first place given the prevailing trend for liberalization. Given that LRC-KsK/FoE-Phils. had a strong case and the decision can be explained based on the merits of

the case,²⁴ the decision was still an aberration when seen in the light of the influence of neoliberal ideas prevailing at that time as can be seen in the explanation given for the judicial reconsideration. The decision to declare the Mining Act of 1995 unconstitutional in the first place can be explained therefore not only because of the merit of LRC-KsK/FoEP's case but also as a result of the growing influence of NGOs on mining policy to have an alternative minerals management policy.

ALYANSA TIGIL MINA (ATM)

In response to the continuing call to repeal the Mining Act of 1995 and for an alternative mining policy, former President Arroyo issued Executive Order (EO) No. 270 or the National Policy Agenda on Revitalizing Mining in the Philippines in January 2004 (amended in April 2004 and known as EO 270-A) and the National Minerals Action Plan (NMAP) for minerals development. EO 270-A and the NMAP were supposed to revitalize mining by presenting a responsible mining framework. The responsible mining framework drawn from 'best practices' of mining companies ensures the following elements: (abides by the) principles of sustainable development; (has) built-in protection for the indigenous peoples; (involves) sharing of the benefits of mining among the major stakeholders; and (has) strict environment and social provisions.²⁵ However, no large-scale mining operation has completed the whole cycle yet and in fact, it is a weak model because it relies on voluntary compliance of large-scale mining companies; highly depends on the ability of the government to enforce/implement the safeguards articulated in national laws and policies; doesn't address the issue of corporate and state graft and corruption, a scenario that is not totally insulated in the extractive industries; and there is token recognition of safeguards (participatory process, Free Prior and Informed Consent or FPIC, Environmental Impact Assessment or EIA, etc.). In fact, EO 270-A and NMAP confirmed the trend of a shift from tolerance of mining to its active exploitation in the Philippines and President Arroyo identified 23 priority mining projects in Rapu-Rapu, Albay, owned by Lafayette Mining Limited, as her flagship project according to the Mining Situationer (2008) produced by Kalikasan-PNE and Defend Patrimony! Alliance.



But as Oxfam Australia (2008) has reported, the flagship project was a failure as Lafayette Mining Limited and its partner ANZ bank prioritized profits over local communities' well-being and poor environmental safeguards led to cyanide-laden spillages and fish-kills within six months of operations.



The shift from tolerance of mining to its active exploitation reinforced the need once again to not only repeal the Mining Act of 1995 but pass an alternative mining bill. In January 2005, in a summit co-convened by PHILDRAA, Haribon and LRC-KsK/FoE-Phils. for mining and indigenous peoples, the blueprint for an alternative mining bill was presented and the advocacy coalition ALYANSA TIGIL MINA (ATM) was formed.²⁶ ATM is composed of NGOs, POs, church-based organizations and academic institutions, which in mid-2004 decided to disengage from a series of consultations on EO 270-A convened by the DENR regarding the revitalization of the mining industry. ATM is not against mining per se but against large-scale mining and has the following goals: (1) scrapping of the Mining Act of 1995 and passage of an alternative mineral management policy into law; (2) revocation of EO 270-A and the rejection of the National Minerals Action Plan; and (3) a nationwide moratorium on large-scale mining operations.

The member organizations of ATM formed a common view against the Mining Act of 1995. They reasoned that former President Arroyo's EO 270-A and the NMAP confirmed what they regarded as a shift from mere tolerance of mining to active exploitation of mineral resources in the Philippines. ATM asserted that this gave more reason for the Mining Act of 1995 to be repealed and for EO 270-A to be revoked. The ATM members thus came to the conclusion that a policy change was needed through an alternative minerals management policy enacted into law.

Consolidation of the Advocacy Campaign²⁷

In 2007, Kalikasan-PNE and Defend Patrimony! Alliance and ATM respectively agreed to call for the repeal of the Mining Act of 1995 and support LRC-KsK/FoE-Phils. (which both coalitions work with) and its





drafting of an alternative mining bill in 2008. In 2009, the draft bill was presented to 20 plus communities affected by mining as well as experts in a series of consultations to form a multi-sectoral support group. After the consultations, in the first quarter of 2009, the draft bill was written and on 13 May 2009 was filed in the 14th Congress as HB 6342, also known as the AMB or “The Philippine Mineral Resources Act of 2009.” Though the members of both coalitions have different stands on mining (some are against mining per se, some support small-scale mining, and some support large-scale mining but under the state), all have agreed to either support HB 6342 or at least not contest it (the latter especially was the stance of Kalikasan-PNE and Defend Patrimony! Alliance which also came up with its own People’s Mining Policy). This agreement was made to consolidate the advocacy campaign, to generate reaction from government, and to show seriousness in repealing the Mining Act of 1995.

HB 6342 or AMB 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 is hinged on a human rights-based approach.²⁸ 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. It also addresses the flaws of the Mining Act of 1995. In July 2010, HB 6342 or the AMB was re-submitted to the 15th Congress as House Bill 206, banning specifically open-pit mining in this bill. In December 2010, HB 206 was revised and filed as HB 3763, known as the Minerals Management Bill (MMB), to reflect better the call for an alternative minerals management policy in law and which takes into consideration the different positions on mining.²⁹

The MMB underscores the need for a formulation of a Minerals Utilization Framework by the state that will support national development based on the principles of sustainable development and will address the main flaw of the Mining Act of 1995 which is its inconsistency in relation with sustainable development.

Prospects for the Passing of HB 3763 or the MMB

Jaybee Garganera, national coordinator of ATM, expects the advocacy campaign to be long and arduous and one Congress is not enough to see the MMB pass. As yet, ATM is still lobbying Senators to sponsor the bill. To broaden support for the MMB, ATM decided to come up with three documents for policy intervention. These policy papers are on Small Scale Mining, Climate Change and No Go Zones (NGZ) for Mining. The first two have been finished and the policy paper on NGZ is expected to be finished in March 2011. The NGZ policy paper on Mining aims to identify areas which can or cannot be mined and to minimize impact as much as possible in mining and other extractive industries.³⁰ The impetus for the NGZ policy paper came from consultations between the International Union for Conservation of Nature (IUCN) and International Council on Mining and Metals (ICMM) on areas to be closed from mining. These consultations did not result in anything concrete but they nevertheless pointed to the need for the advocacy coalitions to come up with their own definition and criteria for NGZ.

The NGZ policy paper supports the MMB which is against aggressive mining and calls for a development of a Minerals Management Framework and until then have a moratorium on mining. The goal of the NGZ policy paper is to define what is a NGZ precisely (absolute no-go, conditional no-go) and have a set of criteria both moral and legal that communities can refer to to prevent mining in sites of struggles (SOS). The five criteria being considered that can be used by communities to declare SOS as NGZ for mining are: (1) Multilateral Environmental Agreements; (2) Free Prior Informed Consent (FPIC) or genuine community consent; (3) Local Government Unit (LGU) autonomy, (4) National Laws on protected areas: RA 7586 National Integrated Protected Areas System Act (NIPAS), RA 8371 Indigenous People's Rights Act (IPRA) and RA 10066 National Cultural Heritage Act of 2009; and (5) Chapter 4 Section 40 of the MMB on restricted areas. The NGZ policy paper will

help in the advocacy for MMB to be passed but at the same time can be used by LGUs who are open to the criteria for NGZ to resist mining while MMB has not yet been passed.

Erwin Quiñones, communications and networking officer of LRC-KsK/FoE-Phils., sees sectoral and community support for the MMB to be positive³¹ but there is a need to continue to stir public debate on the merits of an alternative minerals management policy as the government and mining corporations still uphold the viability of the Mining Act of 1995.³² According to him, experts' views will also be tapped for the MMB committee hearings. Rolando Peña, former Regional Director of Mines and Geosciences Bureau, thinks the bill has to be recrafted, taking into considerations inputs from discussions with stakeholders.³³ For one, according to him, the MMB also tasks the MGB with the function of doing exploration which is already part of the function of the Bureau, for the purpose of defining areas as mineral reservations. However, to conduct exploration on a nation-wide scale entails a lot of costs and personnel, especially if exploration includes drilling which is not allowed by the bill. But to be able to determine the viability of a mining project, drilling has to be done and there are international standards for resource estimation based on drilling; otherwise, the investors might be taking a lot of risks in going into a project. The bill does not allow drilling since it is regarded as invasive, but drilling a 5-inch diameter hole is not really that invasive. He also thinks that closing geohazard areas to mining should be reconsidered in the bill since practically the whole country is prone to geohazards, and there will be hardly any area left for resource extraction. A geohazard assessment can be required in the bill which is already being done for mining projects, as well as many other projects, for obtaining Environmental Compliance Certificates. He also questions the stipulation in the bill that management of indigenous peoples of mineral resources shall build on indigenous systems and practices and its viability. This is feasible for small scale mining (which uses mercury for gold mining), but for medium scale or large scale mining, this is not enough or appropriate; scientific practices, modern technology and equipment have to be brought in to make a project viable.

Results of the Campaign to Date

Faced with hostile and active opposition, and a difficult investment climate, some large companies who entered the Philippines after the Mining Act of 1995 came into force have left. WMC was eventually obliged to abandon the mine at Tampakan in South Cotabato³⁴ and Rio Tinto announced its withdrawal from the Philippines in 1999 following a strong campaign by Subanon and church groups in the Zamboanga provinces (Piplinks 2004:43). Furthermore, there is now preference for a Mineral Production Sharing Agreement (MPSA) rather than FTAA for large-scale mining.³⁵



Moreover, since the Mining Act of 1995 came to force, only five FTAA applications have been approved.³⁶ In addition, mining companies need to have approved exploration permits as added measure.³⁷ Moreover, provincial governments have become active in resisting mining entry and operations in their jurisdictions. Currently, seven provincial governments have declared a moratorium on large-scale mining within their domain: Capiz, Mindoro Oriental, Marinduque, Samar, Western Samar, Northern Samar, and North Cotabato as reported in the Mining Situationer (2008) produced by Kalikasan-PNE and Defend Patrimony! Alliance. In addition, open pit mining is now forbidden in South Cotabato on the basis of a recently passed environmental code by the provincial government.

Though Kalikasan-PNE and Defend Patrimony! Alliance and ATM together with LRC-KsK/FoEP have yet to repeal the Mining Act of 1995 and pass HB 3763 or the MMB as a result of their advocacy campaigns, they have influenced policy in terms of having the SC declare the Act unconstitutional for 10 months, and despite the judicial reconsideration, this has led to preference for MPSAs and limited the number of FTAA applications approved to five. This number is not likely to increase with the decision of President Aquino in February this year to suspend all large-scale mining applications while the government reviews pending and inactive mining claims (Porcalla 2011). Furthermore, LGUs are asserting their autonomy

against large-scale mining as a result of their advocacy campaign.³⁸ Most importantly, Kalikasan-PNE and Defend Patrimony! Alliance and ATM together with LRC-KsK/FoE-Phils have consolidated the advocacy campaign at the national level to repeal the Mining Act of 1995 and to replace it with an alternative minerals management policy through HB 3763 or the MMB. The MMB, which is anchored on land and natural resources management and human rights-based approach, underscores the need for a formulation of a Minerals Utilization Framework by the state that will support national development based on the principles of sustainable development and will address the main flaw of the Mining Act of 1995, i.e. it is not consistent with sustainable development. Lastly, the NGZ policy paper has set out to identify areas closed to mining based on moral and legal criteria which can be used by communities in SOS to refuse explorations until the Mining Act of 1995 is repealed.

Conclusion

Many environmental, human rights (specifically for the protection of indigenous peoples' rights) and developmental NGOs differing in ideology, organization and strategy are involved in the advocacy campaign for the repeal of the Mining Act of 1995. Applying the AC framework, it can be seen that despite their differences, their common belief that the liberalization of mining policy is a threat to sustainable development has, in fact, led to the formation of advocacy coalitions, in particular, the Kalikasan-PNE and Defend Patrimony! Alliance and ATM, to repeal the Mining Act of 1995. Furthermore, to maintain these advocacy coalitions and increase their influence on policy formation, the members of these groups have agreed to support a common strategy of passing HB 3763 or the MMB. Though the Mining Act of 1995 has yet to be repealed and HB 3763 has yet to become a law, Kalikasan-PNE and Defend Patrimony! Alliance and ATM, together with LRC-KsK/FoE-Phils., have already significantly influenced mining policy, most importantly, in terms of consolidating the advocacy campaign on the national level to reverse the trend of tolerating large-scale mining and to call for an alternative minerals management policy through the MMB



anchored on land and natural resources management and respect for human rights. The MMB underscores the need for a formulation of a Minerals Utilization Framework by the State that will support national development based on the principles of sustainable development. Meanwhile, the NGZ policy paper still has to be finalized with regard to the moral and legal criteria to be considered which can later be used by communities in SOS to refuse explorations until the Mining Act of 1995 is repealed.

These findings support the assumptions of the AC framework integrating collective action theories of policy formation adopted by this paper. The idea is that beliefs must be related to action to be able to influence policy formation through the formation of advocacy coalitions. However, it takes more than groups having common beliefs to form and maintain advocacy coalitions to influence policy. Groups must be able as well to agree on the strategy to be used to influence policy. Only when groups are able to translate their common beliefs to action by forming advocacy coalitions and agreeing on strategy are they able to increase their influence on policy formation. It was not until the formation of the Kalikasan-PNE and Defend Patrimony! Alliance and ATM advocacy coalitions which supported the strategy of LRC-KsK/FoE-Phils. to repeal the Mining Act of 1995 and replace it with HB 3763 or the MMB did the advocacy campaign become consolidated, thus increasing the influence of NGOs in policy formation through the formulation of the MMB. It remains to be seen, however, if there will be support from the Senate for the MMB to be passed into law in the 15th Congress to reverse the trend of large-scale exploitative mining. To broaden support for the MMB, ATM is drafting the NGZ paper for policy intervention. The NGZ policy paper will help in the advocacy for MMB to be passed but at the same time can be used by LGUs who are open to the criteria for NGZ to resist mining.

The AC framework is useful in explaining how beliefs must be related to action to be able to influence policy through the formation of advocacy coalitions and the need to agree on the strategy. However, the challenge

for civil society goes beyond agreeing on what strategy to use. According to Encarnacion-Tadem (2010:47), the challenge for civil society is "to take advantage of political opportunities which will define the strategy they will take...[and] they will also have to create the political opportunities for strategies which they believe would work the best beyond the combination of engagement and confrontation which they have currently undertaken." ❖

Notes

¹ DJANGOs (development, justice and advocacy NGOs) more commonly called development NGOs. According to Constantino-David (1997), they perform a mixture of direct and support service functions with and for GUAPOS (genuine, autonomous people's organizations). Development NGOs are considered structural alternatives and transformative action organizations (SATAO).

² GUAPOS (genuine, autonomous people's organizations). The GUAPOS, according to Constantino-David (1997), have organized themselves beyond the community and/or workplace through the sectoral and geological alliances. POs are considered structural alternatives and transformative action organizations (SATAO).

³ Center for Environmental Concerns (CEC) and Kalikasan People's Network for the Environment organized a forum titled "Arroyo's Legacy, Aquino's Burden?" on 23 July 2010 at Balay Kalinaw to discuss the previous government's lack of environmental accountability which was attended by the author.

⁴ The Catholic Bishops Conference of the Philippines' National Secretariat of Social Action (CBCP-NASSA) calls House Bill No. 6342 as the Natural Resources Management and Stewardship Act (NaRMS).

⁵ For features of the AMB see Alternative Mining Bill: In Brief http://www.alyansatigilmina.net/files/AMB_in%20brief.pdf.

⁶ Interview with Erwin Quiñones, Communications and Networking Officer, Legal Rights and Natural Resources Center, Inc., Kasama sa Kalikasan/Friends of the Earth-Phils. (LRC-KsK/FoE-Phils.), 13 December 2010.

⁷ For the Mining Act of 1995, HB 6342 or AMB and HB 3763 or MMB, in brief regarding issues of ownership and governance of lands open to mining, benefits from mining, kinds of agreements and environmental protection see Appendix.

⁸ Interview with residents of Tampakan, South Cotabato in Mindanao where Western Mining Corporation (WMC), one of the first multi-national corporations whose application for large-scale mining was approved under the Mining Act of 1995, 12 July 1997.

⁹ One such petition that was documented according to Picana (1996) was the petition of the residents of Balbalan, Kalinga led by a former mayor Edward G. Calumnag against the approval of two applications of Newcrest Exploration (Phils.) Inc. The formal petition was duly notarized and docketed in the office of the Geosciences of the Regional Executive Director (RED) of the DENR-CAR (Cordillera Autonomous Region) in Baguio City. The reasons given by the residents were the land covered by the application is within ancestral domains, the Balbasang Balbalan National Park and common watershed areas shared by Kalinga and Abra.

¹⁰ Marcopper mine tailings from Tapian pit tunnel near the Maculapit dam ruptured and spewed toxic elements into the Boac river in Marinduque displacing thousands of residents in several towns and damaging at least 4 million pesos worth of marine resources according to Langit and Caparas (1996).

¹¹ Interview with Clemente "Enteng" Bautista, Jr., National Coordinator, Kalikasan-PNE Defend Patrimony! Alliance 14 July 2010.

¹² Interview with Jaybee Garganera, National Coordinator, Alyansa Tigil Mina, 26 July 2010.

¹³ My main authority for the discussion of the advocacy coalition framework is Edalla Schlager (1995). Her work develops further the AC framework developed by Sabatier (1988) and Sabatier and Jenkins-Smith (1993) by incorporating within it the theories of collective action of institutional analysis and development (IAD) and structural choice to explain the role beliefs play and how these beliefs are translated into action to influence the policy making process.

¹⁴ According to Sabatier, a belief system consists of three structural elements, a deep core, a policy core, and secondary aspects, with the deep core least subject and the secondary aspects most subject to change. The deep core contains fundamental normative and ontological axioms which define a person's underlying personal philosophy, such as the emphasis an individual places on the importance of efficiency versus equality. The policy core consists of the basic strategies and policy positions for achieving deep core beliefs such as policy instruments based on coercion versus those based on inducements. Secondary aspects involve a multitude of instrumental decisions and information searches necessary to implement the policy core such as the budget that should be devoted toward implementing a policy instrument.

¹⁵ Data collected circa 1990s from fieldwork by the author is from an unpublished Master's thesis titled "A Class in Their Own: NGOs, Policy Advocacy and the Campaign Against the Liberalisation of the Philippine Mining Industry" submitted to the Universiteit van Amsterdam in 1998.

¹⁶ For the features of the FTAA, see the *Official Gazette Republic of the Philippines* 1995, 91: 25.

¹⁷ According to Gaborni (1996), the Department of Environment and Natural Resources (DENR) afterwards limited the size to 81,000 hectares per company.

¹⁸ Indigenous peoples of Mindanao

¹⁹ Cordillera Women's Education and Resource Center Inc. with permission from CPA, *Resource Kit on Mining*, August 1996.

²⁰ For more information on BAYAN's advocacy campaign, see *BAYAN National Campaign Program on Mining*, approved in a National Planning Conference of BAYAN, 26-28 April 1997, Baguio City.

²¹ A paper entitled "The Mining and Indigenous People's Consultation London, England on 6-16 May 1996" and presented during the Mining and Indigenous Peoples Forum Amsterdam, the Netherlands, 20 May 1996.

²² There can be three possible modes of mineral agreements according to Sec.26 of RA 7942. (a) A mineral production sharing agreement (MPSA), an agreement granting a contractor exclusive rights to conduct mining operations in a given area, but requires the latter to share with the government its gross income derived from mining operations. (b) A co-production agreement, an agreement between the Government and the contractor wherein the Government shall provide inputs to the mining operations other than the mineral resource. (c) A joint venture agreement, an agreement where a joint-venture company is organized by the government and the contractor with both parties having equity shares. And where aside from earnings in equity, the Government shall be entitled to a share in gross output.

²³ In October 1997, President Fidel V. Ramos signed Republic Act 8371 or the Indigenous Peoples Rights Act (IPRA).

²⁴ Interview with Erwin Quiñones, Communications and Networking Officer, Legal Rights and Natural Resources Center, Inc. Kasama sa Kalikasan/Friends of the Earth-Phils. (LRC-KsK.FoE-Phils.), 13 December 2010.

²⁵ See the Alternative Mining Bill: In Brief http://www.alyansatigilmina.net/files/AMB_in%20brief.pdf.

²⁶ Following data on formation of Alyansa Tigil Mina (ATM) is from an interview with Jaybee Garganera, National Coordinator, Alyansa Tigil Mina, 26 July 2010.

²⁷ Following data on the consolidation of the advocacy campaign is from an interview with Jaybee Garganera, National Coordinator, Alyansa Tigil Mina, 26 July 2010.

²⁸ See the Alternative Mining Bill: In Brief http://www.alyansatigilmina.net/files/AMB_in%20brief.pdf.

²⁹ Interview with Erwin Quiñones, Communications and Networking Officer, Legal Rights and Natural Resources Center, Inc. Kasama sa Kalikasan/Friends of the Earth-Phils. (LRC-KsK.FoE-Phils.), 13 December 2010.

³⁰ LRC-KsK/FoE-Phils. organized a Round Table Discussion on NGZ on 13 December 2010 for the drafting of the No-Go Zone for Mining policy paper which the author attended.

³¹ Aside from the members of ATM, LRC-KsK/FoE-Phils. is working with the Alternative Law Groups (ALG), The Catholic Bishops Conference of the Philippines National Secretariat of Social Action (CBCP-NASSA), Partido Kalikasan, and Philippine Movement for Climate Justice (PMCJ) under MMB Net.

³² Interview with Erwin Quiñones, Communications and Networking Officer, Legal Rights and Natural Resources Center, Inc. Kasama sa Kalikasan/Friends of the Earth-Phils. (LRC-KsK.FoE-Phils.), 13 December 2010.

³³ Interview with Rolando Peña, former Regional Director of Mines and Geosciences Bureau, 13 December 2010.

³⁴ However, in March 2007, the Tampakan copper and gold mining project (the country's largest mining project covering 27,945 hectares) reopened and now owned by Xstrata Queensland Limited through its local affiliate, Sagittarius Mines. This United Kingdom (UK)-Swiss company owns 62.5% and the remaining 34% is held by Australia's Indophil Resources.

³⁵ Interview with Rolando Peña, former Regional Director of Mines and Geosciences Bureau, 28 June 2010. According to Peña, there are 332 MPSAs as of March 2010.

³⁶ According to Peña, FTAA's were given to Oceanagold in Nueva Vizcaya and Quirino provinces; Sagittarius Mines, Inc. in South Cotabato, Sultan Kudarat and Davao del Sur; Agusan Petroleum and Mineral Corporation SDK in Abra de Ilog, Occidental Mindoro and San Teodoro, Oriental Mindoro; FCF Mining Corporation in Quezon, Nueva Vizcaya; and MBMI resources in Rizal, Bataraza and Narra in Palawan.

³⁷ According to Peña, existing Environmental Permits as of March 2010 total 64.

³⁸ See LRC-KsK/FoE-Phils., *Asserting Autonomy: LGUs' Right to Veto Mining*, Issue Paper 2009-01.

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Appendix

The Mining Act of 1995, the Alternative Mining Bill and the Minerals Management Bill In Brief

RA 7942	HB 6342	HB 3763
<p>Ownership & Governance</p> <ul style="list-style-type: none"> - Decision-making concentrated on the President, upon recommendation of the Department of Environment and Natural Resources (DENR) Secretary, and lacking in public consultation with local government units (LGUs) and other stakeholders - In principle and policy, all areas are open to mining unless declared "closed" by the Government 	<p>Ownership & Governance</p> <ul style="list-style-type: none"> - Decision-making will be devolved to the Multi-Sectoral Mineral Council that will be composed of representatives of the national government from DENR and Mines and Geosciences Bureau (MGB), LGUs, NGOs and indigenous peoples (IPs) -In principle, all areas are closed to mining unless declared "open" by the Council 	<p>Ownership & Governance</p> <ul style="list-style-type: none"> - Expounded on Minerals Utilisation Framework: the State shall formulate a Minerals Utilisation Framework that will support the national development based on the principles of sustainable development. This framework will define minerals to be extracted, volume to be extracted and when to be extracted. This shall be matched with the approved mining areas as identified by the Councils. These matched areas are eligible for mining operations

RA 7942	HB 6342	HB 3763
<p>Ownership & Governance</p> <p>- Definition of affected communities is limited to those areas found within the contract area</p>	<p>Ownership & Governance</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>Ownership & Governance</p> <p>- Added the following information on the inventory of mineral resources to identify whether the area is a key biodiversity area, or if it is a critical habitat</p> <p>-Added areas not open to mining development of the community concerned</p> <p>-Technically defined watershed continuum</p>
<p>Economics</p> <p>- Government share is limited to excise taxes of 2% required by law. No mandate on royalty fee or benefit sharing.</p> <p>- Incentives as provided for under Executive Order (EO) No. 226 or the Omnibus Investments Code of 1987 which include: Incentives for Pollution Control Devices; Income Tax-Carry Forward of Losses; Income Tax-Accelerated Depreciation; Investment Guarantees;</p>	<p>Economics</p> <p>-For areas outside the IPs 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>Economics</p> <p>-Expounded what constitutes returns from mining: The extraction of mineral resources shall only be allowed if the ecological and social benefits and cost of mining far outweigh ecological and social benefits and costs from other land uses</p>

RA 7942	HB 6342	HB 3763
<p>Economics</p> <p>- The contractor is entitled to the basic rights and guarantees recognized by the government as enumerated:</p> <p>(a) Repatriation of investments,</p> <p>(b) Remittance of earnings,</p> <p>(c) Foreign loans and contracts,</p> <p>(d) Freedom from expropriation,</p> <p>(e) Requisition of investment and</p> <p>(f) Confidentiality</p>	<p>Economics</p> <p>- For areas within the IPs ancestral domain, at least 10% of gross revenues as royalty shall be given to the IPs similar to government share.</p> <p>-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>Economics</p>
<p>Mineral Agreements</p> <p>- No citizenship requirement and allows 100% foreign ownership under the Financial or Technical Assistance Agreement (FTAA)</p> <p>-Maximum areas for mineral agreements is 16,200 hectares for a maximum term 50 years</p> <p>-Provides auxiliary rights to contractors/mining companies (timber, water, explosive, etc.), allows assignment and transfer of mineral agreements</p>	<p>Mineral Agreements</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 for a maximum term of 15 years</p> <p>-Removal of auxiliary rights and prohibits the assignment and transfer of agreements because the trust given to the original proponent from the affected community based on consultation is nontransferable;</p>	<p>Mineral Agreements</p> <p>- For small-scale mining added details on composition of the Provincial/City Mining Regulatory Board as provided in Section 2 of RA 7076 or People's Small-scale Mining Act of 1991 with addition of PO and IP representatives; requirement of Environmental Compliance Certificate (ECC); provision on Multisectoral Monitoring Team; and expounded on what is reasonable rates and quantities for buying gold from buying stations</p>

RA 7942	HB 6342	HB 3763
<p>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>Environmental</p> <p>- Requires an Environmental Impact Assessment (EIA)</p>	<p>Mineral Agreements</p> <p>- Grounds for cancellation revocation and termination take into account human rights violations aside from administrative grounds:</p> <p>Environmental</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>	<p>Mineral Agreements</p> <p>Environmental</p> <p>Expounded on what is required judicious stewardship of our mineral resources: The integrity of the environment is not compromised</p>

Sources: Official Gazette Republic of the Philippines 91 (25): 3925-47;
http://www.alyansatigilmina.net/files/AMB_in%20brief.pdf;
<http://www.scribd.com/doc/44452417/HB-3763-Minerals-Management-Bill>