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Talk on the Alternative Mining Bill (HB 6342)
to Kontra Mina

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I'm happy to see so many of you take time off from Facebook and Twitter for a while to discuss a very important issue. Though if I know anything about you young people it's that you're good at multitasking, so you can still make updates, with the condition that you have to say "I heart the Alternative Mining Bill" at least once.

The first thing that we need to know about mining is that it is much more than just an environmental issue. It is big business concerning state property. *Kasama na palagi diyang mga usapin ukol sa trade at economics.*

At the same time, the way that business is conducted implicates social issues. Human rights, indigenous people's rights. So, while the business of mining is primarily concerned with a natural resource, it gives birth to a lot of issues that are beyond the environmental.

Ang batas natin sa pagmimina ay sakop ng RA 7942, or the Mining Act of 1995.

A little history about the law. During the 1990s, we were experiencing a slump in the mining industry. 'Nung 70s, malakas pa ang kita. During the 80s, medyo nagkakaproblema na, but in 1988, the Philippines was still the sixth largest producer of chromium in the world; we were ninth in gold production, and tenth in copper production. The industry was contributing around 3% of our GDP in 1980; but by 1990 it was contributing just half that, at 1.5% of our GDP. The 1990s saw that mining operations could not cope with transitions in our policy—there were labor disputes, the workers wanted higher wages—and operations were also suffering serious setbacks from the usual typhoons, earthquakes, *tapos uso pa yung brownout*. A lot of mining companies left and we got a bad rep for being a difficult place to invest in. *Tinatanggal na tayo nung mga investors from their 'Friends' list*.

We also began receiving pressure from the World Bank to liberalize our national mining policy. So we did. *Hindi tayo makapiyok kasi ang laki ng utang natin*, and we were also trying to join the WTO—which would also turn out to be a massive disaster, but that's another story.

President Arroyo, when she was just senator, sponsored this law—coincidentally enough, or not. The philosophy behind it was that we

needed investors and we were willing to make concessions for them. A **lot** of concessions. I want you to imagine a McDonald's with a sign outside that says: "FREE PSP WITH HAPPY MEAL."

And what did our Happy Meal Contain? Tax cuts. 100% foreign ownership of mining companies. Perks. Incentives. Easy money. We made it as mining-friendly as possible, by basically guaranteeing the investment. *Pag hindi sila kumita, hindi rin tayo kikita.* If the company suffers a loss, for example, they can just take that out of their income tax.

This is not to say that the law specifically intended itself to be a bad one. It uses all the rights words; it makes attractive promises. *Ma-engganyo ka talaga sa packaging.* For example, Section 2 of the Mining Act provides:

It shall be the responsibility of the State to promote the rational exploration, development, utilization and conservation of mineral resources through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.

Ang ganda pakinggan hindi ba? But this is the way it translates to reality:

“As long as mining companies pay the government (“combined efforts of government and the private sector”, check) even a little in taxes (“enhance national growth”, check), they can dig around for minerals and then take them out simply by getting an Environmental Compliance Certificate (“safeguard the environment”, check) and doing everything they can to keep the people quiet (“protect the rights of affected communities”, check).”

Never mind that environmental compliance certificates are often obtained with fraudulent representations, or that they get the communities’ consent by not telling them about what will really happen to their land. *Basta may substantial compliance, okay na.*

But wait, we say, there is still the part that says “conservation of resources”! To which pro-mining interests reply: “But you said we can ‘use’! How do we ‘conserve’ what we’re already ‘using’!?! Ano ba *talaga?* Make up your mind!”

In the meantime, while we try to figure out how to deal with this serious inconsistency in our policy, the mining goes on operating under systemic flaws.

In practice, then, the Mining Act has certainly been faithful to its goals of 'exploration', 'development' and 'utilization.' But how did the law treat conservation? *Ayun, bahala na raw si Batman, binilin pa niya kay Joker.*

The result is that we have a law that looks great on paper, but in reality is a great big disaster.

It was not long after the Mining Act was passed when we were given a devastating demonstration of the effects of a flawed policy that coddles irresponsible mining.

In 1996, a mine tailings pit of the Marcopper mine in Marinduque burst, and poured 3 millions tons of toxic waste onto one of the surrounding rivers, the Boac. We now call that incident the Marcopper Mining Disaster, the biggest and worst we've ever had.

There were enough loopholes in the law so that the company that owned the majority stake in that mine, Placer Dome, was able to just take all its investments back and leave without doing anything about the damage.

No, wait, I think I'm being a little harsh. They **did** do something. They paid \$1 million dollars to the people in the community because in their lifetime they can never fish or plant in that area again. You see, by the time the disaster happened, the company had already turned the main body of water in the area, the Calanacan Bay, into its own personal garbage can. 200 million tons of mine tailings were dumped in that bay. That killed off the fish and corals, and polluted two other rivers on top of that.

So paying the \$1 million, that was at least something that Placer did, a bit like saying "I am sorry your entire ecological system is now dead, so here's a million dollars. Bye." Mind you, this is from a company that made \$1 Billion from the entire operation. They must have had a really hard time parting with their money, which is strange because they were not even Ilocanos, they were Canadians.

The other thing that Placer did was bring snow to Marinduque. On windy days, all that mine waste in the Boac River is blown off onto rice fields and water wells all over the surrounding areas. Ang tawag ng mga taga-Marinduque dun "Snow from Canada."

What's happening in Marinduque now? Fourteen years later, their rivers are still dead, and every time it rains, those deposits of mine

wastes still run onto the rivers. The people have lost their livelihoods, and developed deadly diseases from heavy metal poisoning. Marinduque is now one of our poorest provinces.

The local government is still trying to make Placer pay up, but it hasn't been easy. *Nakarating na sila hanggang sa Estados Unidos, dun na nila sinampahan ng kaso ang kompanya.* Placer is based in the state of Nevada, where Las Vegas is. *Malamang pinapanood nung mga opisyal ng Placer yung mga laban ni Manny Pacquiao, iniisip nila, "Buti na lang di tayo nag-operate sa General Santos!"*

Marinduque is sadly not an isolated case. Another mining operation caused a cyanide spill in Rapu-rapu, Albay, where they have since experienced five fish kills over the last four years.

Those cases made us see how the law was being used against itself, *nagagamit na ang batas para gawin kung ano yung ipinagbabawal niya.*

For example, I was in a meeting of the Committee on Natural Resources just last week, which was investigating the DENR's issuance of an environmental compliance certificate to a mining company which wanted to operate in Mindoro. What happened was that the provincial government did not want them there; they could not get the people's consent. So the company maneuvered

to go over the heads of the local officials and residents by going to the DENR. *Sabi ng local officials sa DENR, "hindi talaga puede and minahan doon sa proposed site kasi critical area 'yun, at ipinagbabawal ng batas and paglagay ng minahan sa watershed."* Heto naman ang abogado ng DENR, sinasabi na, "*ay hindi, ang ipinagbabawal lang naman ng batas ay ang pagmina sa **proclaimed watershed** (meaning a watershed proclaimed under the NIPAS law), kaya technically puede yun."*

If you follow that reasoning, it does not matter **why** the law prohibits mining in watersheds in the first place. It does not matter that mining over watersheds essentially deprives the communities of drinking water and irrigation for their crops. *Basta hindi pa proclaimed ang watershed, ok lang.*

This is an illustration of how grey areas in the Mining Act are being taken advantage of and used to defeat its ends.

What are the lessons we have learned from these incidents, as far as our law is concerned?

First off, we really need to get rid of the big sign on the law that says "**Poor country. Will trade environment for investment.**" We simply can no longer support such a position, especially when recent research has revealed that mining has a direct impact on the ecological

factors that go into food production. If it comes down to it, when given a choice between a pot of gold and a pot of rice, rice wins.

We need to place a higher value on our natural resources, and change the prevailing thought that we can profit from our natural resources without care. Mind you, this is the same thought that drove us to deplete 85% of our forests. Until we stop looking at our natural resources as platinum credit cards with no limits, then we will continue to extract and use them irresponsibly.

Second, we need to develop a more accurate calculation of what constitute “costs” and “benefits” in the cost-benefit analysis of a mining operation. Under “costs” we have to take into account the ecological disruption that is unavoidable in this sort of extractive activity. We also have to factor in the losses on the agriculture and fisheries sectors, as well as the effects on food security, communal livelihoods and sustainable development.

Then we have to add the social costs. The costs of displacing indigenous tribes from their ancestral domain. The costs of taking away a means of livelihood. The costs of having an entire community become dependent on a single industry, as often happens in mining communities.

So with the lessons we have learned, the new law I am proposing, House Bill 6342, proceeds from an entirely different set of assumptions. We call it the **Alternative Mining** Bill, because it is born from the recognition that even if we have a new law, but we stick to the old ways of mining, the new law will be as useless as the old one.

The first thing the law does is admit that there is no such thing as “sustainable mining.” There can be no “conservation” involved because when we dig up minerals, we can’t put them back. They also don’t **grow** back. And we cannot mine forever. So there is nothing ‘sustainable’ about the whole thing.

I believe, though, as do many others, that it is possible for us to take our natural resources and **use them rationally and wisely.** **‘Sustainable mining’ may be a myth, but responsible mining is not.** Responsible mining is possible and completely within our reach.

How does the Alternative Mining Bill propose to do this?

Well, first, we’re going to take away the Happy Meals. Our country is no longer going to be treated as a fast food chain of natural resources; we want to be an exclusive, members-only club where miners are going to have to prove they are cool enough to get in.

Hindi na puede sa proseso 'yung "invite Philippines as a friend" at "approve" lang. Sa invitation pa lang, may requirements na.

They will have to show us their track records. Did they mine in other countries? If so, what happened there? If they caused any damage, or were irresponsible in any way, they can forget about joining our club. Permanently.

The bill will give a fair share of the revenues to the local governments and the indigenous people.

If the mining is on an ancestral domain, the affected tribe will get a minimum of a 10% royalty on the operation. They can negotiate for more if they want to. This is revolutionary in that it is a final recognition that OWNERSHIP of minerals found in ancestral domains rightly belongs to these indigenous cultural communities. There will be a presumption that the area is part of the ancestral domain even without formal recognition, if the indigenous people have historic rights and self-delineation as the basis for a claim. So if a tribe has always lived in a particular area, we cannot just go in there without their permission. We have to explain to them carefully and clearly just what mining means, and we will leave them to decide according to their own decision-making processes. If they say yes, we will give them part of the proceeds.

The same goes for the local governments affected. They will get a share of the net revenues of the operation, subject to adjustments according to how the LGU is ranked—whether it is first class or second or fourth—and its level of development measured by the Human Development Index.

This is just our way of showing respect to the people who really suffer the most from mining, especially because our national government enjoys most of the proceeds from mining activities. It is easy for us to approve mining applications because it is not Metro Manila that is being turned upside down. We have to at least compensate these communities for their contribution to our national development.

The bill also strengthens our monitoring mechanisms. *Hindi lang sa una tinitingnan ang compliance*, because naturally, these companies initially make themselves look really good on paper to get the concession. What we are going to do, aside from setting up a monitoring team that will regularly police the mining activities, is make periodic reassessments of the mining permits that we issue. *Pag nakita natin na hindi na maayos ang operasyon—meron tayong nararanasang effect na hindi na-foresee, o kaya nagbago ang mga kondisyon sa komunidad, ititigil natin kaagad.*

We are also going to require mining companies to put their money where their mouth is. It will not be enough that they comply with all

our initial requirements. They will have to put up bonds and fees that guarantee that they will perform according to how they promised they would.

So for example, they have to take out an international **environmental insurance contract**. The insurance is for each source of pollution or disaster, relative to a formulation of the costs of a "worst case scenario". If an area is prone to landslides, they have to take out insurance for that. If the area is prone to landslides **and** flashfloods, they will have to insure against both. *Para kung may mangyaring katulad ng sa Marinduque, may panghahawakan tayo. Kung tumakas man sila, forfeit naman nila ang pera nila.*

The contractor is also required to deposit Php10 Million every year in the **Calamity and Human Rights Protection Fund**. But this does not reduce liability in case the operations cause damage. If they cause damage that is worth, let's say, 20 million pesos, *hindi nila puede i-offset at sabihing ten million na lang ibabayad nila.*

We also require a **Performance Bond** equivalent to **50% of the projected cost for rehabilitation of the area**. If the contractor leaves without repairing the destruction it caused, at least we will not be left high and dry and we will have money to spend to do the clean-up ourselves.

The bill sets up a MINE REHABILITATION FUND and the contractor has to contribute a value based on its work program. This is a trust fund in a government depository bank that we will use for research on how to rehabilitate mined areas. *Kulang pa kasi ang research dito, kahit na ang tagal na nating nagmimina.* For example, we still do not have a cure for acid mine drainage, one of the common effects of mining. If we want to keep mining, it's high time that we start to find out how to counter the inevitable results.

If you ever get around to reading the Alternative mining Bill (you can find a copy in my website), I hope you won't be put off by how long it is. Actually, if you read it through, it is very simple. It just wants the mining contractor to do three specific things: respect no-go zones, respect people's consent, take accountability for its operations. On the part of our government, the law just wants one thing: subject mining operations to good governance.

What do these things mean?

First, respecting no-go zones. This is just saying to mining companies: **“NO-GO MEANS DO NOT GO”!!!** If the proposed site covers a watershed, a critical habitat, or an old growth forest, don't bother applying there. *Huwag nang ipilit. Huwag na ring subukang ikutin ang batas at sabihing ‘hindi naman proclaimed yung watershed’ o*

di kaya 'matanda na naman yung gubat, wala nang nakikinabang.' Basta hindi puede, 'yun na 'yun. End of story.

Respecting people's consent means that the communities have to know **exactly** what they are agreeing to. The "consent" we are talking about must be **FREE PRIOR INFORMED CONSENT**. *Kailangang alam nila kung ano talaga ang mangyayari kapag pumayag sila.* One of the biggest problems we are experiencing under the current law is that the affected communities give their consent to mining operations because all they hear from contractors are promises of jobs and an easier life. *Kapag andiyan na yung pagmimina, nagprotesta na sila. Ang karaniwang daing: "Hindi naman nila sinabing bubungkalin pala nila yung bundok namin, na hindi na pala namin puedeng inumin 'yung tubig galing sa ilog, at mamamatay pala yung mga hayop at wala na kaming makakain."*

They are not made aware of what will exactly happens with large-scale mining. We want to put an end to impaired consent because this has become a source of a lot of destabilization and violence.

When the community feels like it has been cheated into agreeing, the people naturally resort to all available means to punish those who took advantage of their ignorance. Not all the means they use are peaceful; they go as far as sabotage and even openly arming themselves. Now, the mining companies also fight back, *natural lang*

din dahil naka-invest din sila, may shareholders din ang kompaniya na kailangan nilang panagutan. Ang nangyayari tuloy: human rights abuses, bribery, coercion. General chaos. This has to stop. If we cannot mine without getting rid of these effects, then never mind, we are better off not mining at all.

Last, we want accountability from these mining companies. Responsible mining entails having accountable mining operators. Of course, mining is still a business, so you can bet these contractors will try and exact any advantage they can. This is what all the bonds and fees are for: to **force** them into being accountable. We like to think that these companies are not inherently evil; they just need a nudge in the right direction. In this case, we nudge them by holding hostage the thing that they hold nearest and dearest: their money.

If we can do all these things, we will have achieved good governance. This proceeds from the premise that the government has to be able to balance competing interests if it wants to undertake a particular industry for a protracted period of time.

How do we operationalize this? By funding research; by making the process of obtaining consent fair and free from interference and respecting the ability of communities to make decisions for themselves; by distributing the benefits among all the stakeholders; and by keeping the operation in line with our development goals.

This is the absolute minimum that we can ask of a responsible government.

We have to keep in mind that the law is meant to be a corrective to natural imbalances. The world, if left alone, is not always perfectly fair, and ideals do not always translate seamlessly to reality. The law is there precisely to tip the scales in favor of the weak when they need protection, and to reign in forces of destruction wherever they pose a threat too great to be countenanced.

There are times, though, when the law itself becomes a tool for the very injustice it is meant to prevent. This is where my job as a lawmaker comes in: to ferret out those instances when the law veers off the path to the good, and to put it back on course. Sometimes that involves amending parts of a law, and other times it calls for a drastic change.

The Mining Act of 1995 is one those laws I refer to, which now seems to be a vehicle for widespread destruction and injustice. It no longer reflects the goals of our citizens and instead has run counter to the interests of our people and our natural environment. This is the reason why I filed the Alternative Mining Bill, to correct a situation where the law, rather than protecting us, places us at a disadvantage.

I would like to thank you all for taking the time to gain some knowledge about mining here in the Philippines. I am heartened that young people are not afraid to take on big issues like this. A short time from now, we will be making a very big decision about our country, and whether that decision will result in a real change or not will be all up to you. 99% of making a good decision really just involves information, as much information as you can get. In this sense your generation is light years ahead of ours, because you are used to getting information with the click of a button. But I hope you remember to share that information, to pass it on. If I have said anything today that you can use in a status update or a tweet, I'll consider this a job well done.

Thank you.