

A Comprehensive Research Study on Certain Provisions of RA7942 Towards Responsible Mining and Sustainable Development

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Abstract: Mining is prevalent in the Philippines even before our colonization. The concept of Mining is always an issue not only in the Philippines but also in other places around the globe which lead to massive destruction of our natural resources. But, little did we know that we utilize these extracted mineral resources in our daily lives. This research seeks to identify the provisions which are part of RA 7942 which will hinder the over exploitation of the mineral resources in the Philippines as well as present certain ideas for its amendment such as the utilization of nanotechnology, bioremediation, and the like as a means of mine rehabilitation procedure which shall be in addition to section 71 of RA 7942 . As a conclusion, mining in the Philippines cannot be stopped since we need its products in our everyday lives, but we can control it by strictly abiding on the provisions under RA 7942 which is geared towards responsible mining and sustainable development.

Keywords: mining, sustainable development, minerals, mining law.

I. INTRODUCTION

When a person hears the word “mining”, that person will only focus on the negative impacts of it without identifying its benefits to humanity. Industrial minerals as mining products serve numerous benefits to Filipinos like providing raw materials for certain products such as tiles, cars, and jewelleryes sold in the market. There’s no need to stop the mining of industrial minerals in the Philippines since if mining ceases, there would be a scarcity of raw materials which are needed for most of the important products that could be seen in the market today. Say for instance, a newspaper contains certain minerals such as lime, Na₂SO₄, soda ash, and limestone while a toothpaste contains fluorite, limestone, CaCO₃, and Na₂CO₃ which are also industrial minerals. Attapulgit is a mineral which is used to make some antacids. The electronic tubes of your computers contain lanthanides. Even your make- up contains talc, mica, and clay. Unfortunately, the concept of Filipinos with respect to mining is focused only on the extraction of minerals such as diamond, amethyst, opal, garnet, silver, and aquamarine which will be utilized on the creation of jewelleryes. But, if you want to mining in the entire Philippines, then stop using toothpaste, make-up, lipstick, computer, laptop, cellular phone, plate, car, cleaners, electric light and stop eating cakes and toast as well as stop reading the newspaper because all of these products utilize industrial minerals which are extracted from mining. There are a lot of products that are sold in the market which contains industrial minerals in it. The main concern here are illegal miners and not the mining practices itself. On this concept paper, the issue of whether or not the mining practices here in the Philippines abide by the provisions under the “Philippine Mining Act of 1995” (RA 7942) and the issue of whether or not the certain provisions under RA 7942 are geared towards responsible mining and sustainable development.

A. RESPONSIBLE MINING

Responsible mining is a kind of mining which is commonly characterized with the duty and the obligation of the miners and/or the mining stakeholders not only to extract mineral resources but also to take charge of the environmental impact that goes with it. Due to the modernization of technologies, there are certain scientists who are working on some experiments which proves to be an effective way of cleaning contaminated mining waters as part of the rehabilitation process after each mining activity. The term “responsible mining” is not stated under RA 7942 but if you read between the lines, some of the provisions which are included in the scope of RA 7942 lies the inclusion of the idea of responsible mining. Environmental Protection (Section 69), Environmental Impact Assessment (Section 70), and Rehabilitation (Section 71) are some of the scopes under RA 7942 which are related to responsible mining. Let’s focus on section 71 which states that:

Section 71. Rehabilitation. *Contractors and permittees shall technically and biologically rehabilitate the excavated, mined-out, tailings covered and disturbed areas to the condition of environmental safety, as may be provided in the implementing rules and regulations of this Act. A mine rehabilitation fund shall be created, based on the contractor's approved work program, and shall be deposited as a trust fund in a government depository bank and used for physical and social rehabilitation of areas and communities affected by mining activities and for research on the social, technical and preventive aspects of rehabilitation. Failure to fulfill the above obligation shall mean immediate suspension or closure of the mining activities of the contractor/permittee concerned.*

Because of this, the legislators may opt to create an environmental tax law aside from the mine wastes and tailing fees as follows:

Section 85. Mine Wastes and Tailings Fees. *A semi-annual fee to be known as mine wastes and tailings fee is hereby imposed on all operating mining companies in accordance with the implementing rules and regulations. The mine wastes and tailings fee shall accrue to a reserve fund to be used exclusively for payment for damages to: a. Lives and personal safety; b. Lands, agricultural crops and forest products, marine life and aquatic resources, cultural resources; and c. Infrastructure and the revegetation and rehabilitation of silted farm lands and other areas devoted to agriculture and fishing caused by mining pollution. This is in addition to the suspension or closure of the activities of the contractor at any time and the penal sanctions imposed upon the same. The Secretary is authorized to increase mine wastes and tailings fees, when public interest so requires, upon the recommendation of the Director.*

As an extension to the mine waste and tailing fees, the environmental tax would be issued to Filipinos in order to address not only the negative impacts of mining on our environment, but also as a way of rehabilitating the Philippine’s destroyed environment. This could also address the concerns involving illegal miners who would tend to leave the quarry site dirty and unrehabilitated. Through this environmental tax, the government under the supervision of the Mines and Geosciences Bureau along with the Environmental Management Bureau will be having enough funds for the rehabilitation of that contaminated and unrehabilitated mining areas. The rehabilitation could be done by our Filipino scientists through certain procedures like bioremediation and/or nanotechnology. Aside from the environmental tax, the government should also impose a strict punishment and/or penalty upon illegal miners. Hence, a slight revision from certain provisions under RA 7942 would enable it to make it as a responsible mining practice in the Philippines.

B. SUSTAINABLE DEVELOPMENT

The concept of sustainable development focuses on meeting the needs of the present times which will not compromise the needs of the next generation. The Sustainable development seeks to have an over exploitation of natural resources. The Sustainable Development Goals presents 5 keys for sustainability which are: 1. planet, 2. partnership, 3. prosperity, 4. people, and 5. Peace. First is the planet which is the earth where we live in. This particular planet is endowed with natural resources that are utilized by man. But the problem is that as time goes by, the flora, fauna, and the solid earth gets destroyed due to over industrialization as well as illegal exploitation of resources. This would lead to uncertain incidences like the global warming which has a bouncing effect that may have an effect on human lives. The second key among the 5 Ps would be partnership which should be present among companies and the government institution that protects the environment. On this case, the responsibility of rehabilitating the mining site lies with the mining companies. Next is prosperity which is focused enabling Filipinos to live a life with good fortune, but there must be proper allocation or resources that shall be enjoyed by everyone. Then, the people who shall serve as the steward of God’s creation that’s why, the mining companies shall be responsible for their own actions and last but not the least, is peace which involves the agreement that binds mining

companies, the government, the people, and the environment. Hence, mining is not just for profitability, but it is geared on meeting the needs of the present generation and future generation and the avoidance of the scarcity of mineral resources without placing the environment at stake.

C. DEFINITION OF TERMS

- **Ancestral Lands** are the lands inherited by indigenous people from their ancestors which they own and use.
- **Approved Mining Permits and Contracts** are valid evidences that those who want to mine should possess for them to be allowed to mine on a specific area or location on Philippine land.
- **Contractor** is an individual or any group of persons who contracted another in order to offer certain resources or work for the accomplishment of certain task.
- **Environmental Compliance Certificate (ECC)** is a file given by the government to the miners to ensure that they will abide by the provisions under the environmental impact statement system and to note that the mining activity will not bring a negative effect to the environment.
- **Exploration** is the act of finding minerals on Philippine lands.
- **Financial or Technical Assistance Agreement (FTAA)** is a contract in order to give the large-scale miners financial and/or technical assistance for them to be able to mine mineral resources.
- **Indigenous Cultural Community** is a community comprised of indigenous persons who are residing in the Philippines.
- **Large-scale Mining** is a process of wide scale exploration of mineral resources that involves a large group or a company of miners who are carrying with them mining equipment for easy mineral extraction. Large-scale miners should abide by the provisions of RA 7942.
- **Mineral Processing** is a process of converting minerals into products which are marketable.
- **Minerals** are inorganic elements or compounds which tends to be naturally occurring having physical properties that are part of the materials utilized by man on their day to day lives. There are different sample minerals such as feldspar, quartz, mica, kaolinite, smectite, calcite, and fluoride.
- **Mining** is the process of extracting mineral resources from a specific area of land
- **Ore** is a rock or other sediment that have minerals in it.
- **Quarry** is a certain location where mineral resources such as marble can be extracted from the earth's crust.
- **Small-scale Mining** is a kind of mineral extraction process on a smaller area of land. Small-scale mining is more destructive than large-scale mining since most illegal miners are small-scale miners. All small-scale miners should abide by the provisions of RA 7076 and Administrative Order No. 2015-03.
- **Sustainable Development** is something done in order to meet the needs of the present which will not have an effect on the needs of the future generation.

II. DISCUSSIONS

Mining activities are rampant in the Philippines. Most of the people who mine in our country are foreigners who somewhat take advantage of our natural resources since they have the capacity to provide a capital for mining exploration. But there are miners who take responsibility for the rehabilitation of the mining site which is under the provisions of RA 7942. An example is the rehabilitation of Rio Tuba, Benguet Corporation, Philex Mining Corporation, and Atlas Mining Corporation. But there are certain mining areas Mogpog, Marinduque which were not rehabilitated. This is the reason why, the government needs to create the environmental tax law wherein its proceeds would enable the government to have enough funds for the rehabilitation of the unrehabilitated mining sites. Through this environmental tax law, a piece of jewelry that people would buy in the Philippine market would have an impact because it contains a piece of concern to the environment which would be more valuable. Through this environmental tax law, Filipino scientists would have a chance of working in the government in order to utilize their knowledge in research, bioremediation, and nanotechnology in order to fix the unrehabilitated mining area and restore it to its original state. Also, through the environmental tax law, there is no need for

the government to remind the miners again and again to rehabilitate the area. If miners don't want to follow section 71 of RA 7942, there is a need to impose an environmental tax on them so that the government and the Filipino scientists will do the rehabilitation work for them. It would be difficult to rehabilitate an area due to lack of funds that's why several miners just abandon the mining site. If miners will not comply to the payment of the environmental tax, then sanctions and penalties must be given to them.

Most mining companies are also not allowed to mine in National Integrated Protected Areas System (NIPAS) under RA 7586. Wherein if a person or group of persons will be caught violating the provisions of RA 7586, certain penalties will be imposed as follows:

Section 21. Penalties. – *Whoever violates this Act or any rules and regulations issued by the Department pursuant to this Act or whoever is found guilty by a competent court of justice of any of the offenses in the preceding section shall be fined in the amount of not less than Five thousand pesos (P5,000) nor more than Five hundred thousand pesos (P500,000), exclusive of the value of the thing damaged or imprisonment for not less than one (1) year but not more than six (6) years, or both, as determined by the court: Provided, that, if the area requires rehabilitation or restoration as determined by the court, the offender shall be required to restore or compensate for the restoration to the damages: Provided, further, that court shall order the eviction of the offender from the land and the forfeiture in favor of the Government of all minerals, timber or any species collected or removed including all equipment, devices and firearms used in connection therewith, and any construction or improvement made thereon by the offender. If the offender is an association or corporation, the president or manager shall be directly responsible for the act of his employees and laborers: Provided, finally, that the DENR may impose administrative fines and penalties consistent with this Act.*

Based from the case of *PICOP Resources, Inc. vs. Base Metals Mineral Resources Corporation* (G.R. No. 163509, December 6, 2006), the Mineral Production Sharing Agreements (MPSA) was applied by the Banahaw mining as a substitute for its mining claims which is located at Agusan Del Sur. Banahaw Mining was able to sell its rights to Base Metals Mineral Resources Corporation (BMMRC) with the recognition of Central Mindanao Mining and Development Corporation (CMMCI) despite the fact that the MPSA was still pending. Then, the PICOP Resources, Inc. (PICOP) emphasized to the Mines Geo-Sciences Bureau (MGB) that the approval of the MPSA of the BMMRC would cause the violation of the mandate of the constitution and would damage the contract's obligations. Also, the location which was indicated on the MPSA is considered as a reserved area and because of that reason, mining shall be prohibited. The court held that mining on a specific location which is under the scope of the provisions of DAO 96-40 may be permitted provided that there would be a clearance from the government agency concerned which has the reservation authority over that particular area. RA 7942 does not prohibit mining mineral resources in forest reserves but establishes a ban in mining on watershed forest reserves or NIPAS areas under the scope of RA 7586. Also, mining on preserved areas have limitations under the supervision of the DENR and the provisions of RA 7942, section 6 as stated below:

Section 6. Other Reservations. *Mining operations in reserved lands other than mineral reservations may be undertaken by the Department, subject to limitations as herein provided. In the event that the Department cannot undertake such activities, they may be undertaken by a qualified person in accordance with the rules and regulations promulgated by the Secretary. The right to develop and utilize the minerals found therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary: Provided, That the party who undertook the exploration of said reservation shall be given priority. The mineral land so awarded shall be automatically excluded from the reservation during the term of the agreement: Provided, further, That the right of the lessee of a valid mining contract existing within the reservation at the time of its establishment shall not be prejudiced or impaired.*

The Constitutionality of RA 7586, DENR Administrative Order No. [DAO] 96-40, and the FTAA were also challenged by the concerned petitioners on the case of *La Bugal-B'laan Tribal Association, Inc. vs. Ramos* (G.R. No. 127882, December 1, 2004). The aforementioned petitioners contend that RA 7586, DENR Administrative Order No. [DAO] 96-40, and the FTAA are unconstitutional since the FTAA are considered as "service contracts" which is prohibited under Article XII, section 2, of the 1987 Philippine constitution (Regalian Doctrine) which states that:

Section 2. *All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake*

such activities, or it may enter into co- production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens. The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays, and lagoons. The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

On this particular case, the court held that RA 7942 is unconstitutional since there are certain provisions in it which permits “service contracts” which enables foreigners to mine in the Philippines and benefit from our natural resources. The long case of *La Bugal-B'laan Tribal Association, Inc. vs. Ramos* gives a priority to Filipinos as the owner and protector of the Philippines which includes the natural resources in it. Laws and statutes of the Philippines should not be created in favor of the foreigners since Filipinos become poor and foreigners become rich, but foreigners use the mineral resources which is the property of the Philippines for them to prosper. Let the foreigners mine on their own lands. Over exploitation of mineral resources by foreigners would place the needs of the future generation at stake which is against the principle of sustainability. The Philippines is a “poor man sitting on a pot of jewels”. Only few Filipinos benefit from the natural resources of the Philippines. But, maybe someday the legislature will have a realization of creating a Mining Law that would be constitutional. bearing in mind the concepts of responsible mining and sustainable development towards the protection of mineral resources which is the property of Filipinos. This rightful action will definitely pave a way for this country to prosper.

III. SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

A. SUMMARY

The “Philippine Mining act of 1995” or RA 7942 was created in order to address the certain challenges that is related to the extraction of mineral resources in the Philippines. Without this mining law, the foreigners would take advantage of the exploitation mineral resources which are owned by the Filipinos. Each and every provision of RA 7942 presents responsible mining practices in the Philippines based from the intent of the legislators to preserve, conserve, and rehabilitate our environment amidst illegal mining practices. Since some of the provisions of RA 7942 was declared unconstitutional, despite the fact that DAO 2005-15 was created for its amendments, there's a need to create a better mining law. The Philippines is the land of the Filipinos and if the unconstitutional provisions under RA 7942 shall be modified, the provisions under it should be in favor of the Filipinos and not the foreign investors who over exploit the Philippine's Natural Resources only for their own gains.

B. CONCLUSIONS

Based from the presented facts on this concept paper, the following conclusions are made:

1. Mining industrial mineral resources is important in our daily lives since it serves as a raw material for most of the products which are sold in the market.
2. Certain provisions of RA 7942 are considered to be abiding by the principle of responsible mining.
3. RA 7942 is in favor of foreign owned and controlled corporations to legally mine in the Philippines.
4. Mining in NIPAS area is prohibited under RA 7586 and the violators of its provisions shall be imposed with certain penalties.
5. Certain provisions of RA 7942 are geared towards sustainable development except the FTAA's which allows foreigners to engage in “service contracts” and may exploit our natural resources which is prohibited under Article XII, section 2 of the 1987 constitution making RA 7942 as unconstitutional.

C. RECOMMENDATIONS

Based from the aforementioned concepts, the following recommendations are presented:

1. A revision should be done on certain provisions of RA 7942 which should be focused on how it will allow either small-scale or large-scale miners to practice responsible mining. Additional provisions should be added in order for RA 7942 to be geared towards sustainable development.
2. An environmental tax law should be created in order to address the dilemma on mining rehabilitation.
3. Mining activity control should be done by small-scale or large-scale miners in order to have a regulation of the over exploitation of mineral resources.
4. A strict implementation of RA 7942 should be done so that there would be an avoidance of illegal mining. Also, there is a need to impose a stricter penalty on the violators and/or illegal miners and under the table transactions because if everything is lenient, the miners will take advantage and mine as many industrial minerals as they want.
5. Strict Penalties should be under the provisions of RA 7942 for non-compliance of the rehabilitation requirement on each mining site.
6. Clearly specify the penalties for non-compliance of the provisions under RA 7942.
7. Since RA 7942 is considered as unconstitutional based from the case of *La Bugal-B'laan Tribal Association, Inc. vs. Ramos*, there's a need for the legislators to repeal RA 7942 and create a new and better mining law. This can be done through the revision of some of the provisions under the RA 7942 which are considered as unconstitutional.

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