



MINDORO CAMPAIGN: Protecting Island Ecology Defending People's Rights



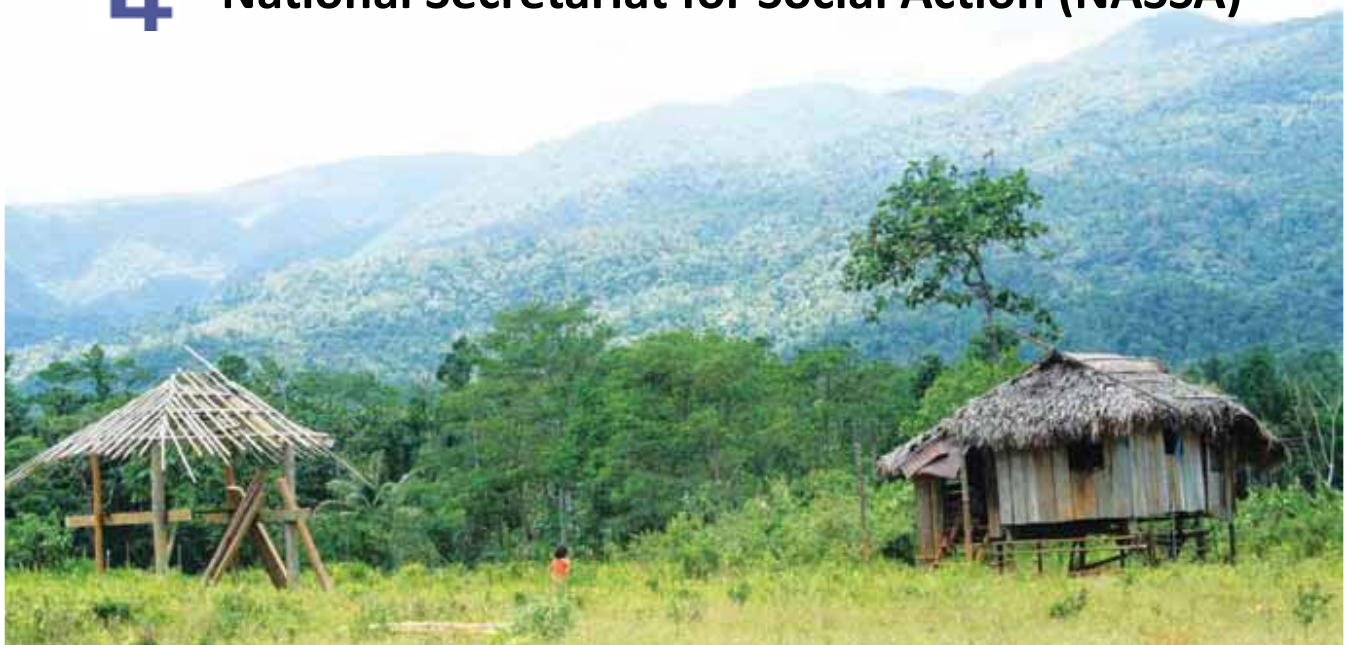
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INTRODUCTION

For more than a decade since 1998, the people of Mindoro had long been opposing the entry of large-scale mining of Mindoro Nickel Project (MNP), currently owned by Norwegian Intex Resources and its local subsidiaries.

Mindoro Nickel Project threatens the food security and ecological integrity of Mindoro since the mining concession covers one of the Oriental Mindoro's major watershed areas, while the bigger part of the mining concession is encroaching the forest of Sablayan in Occidental Mindoro. The mining concession is also within the ancestral domain claim of the Alangan and Tadyawan indigenous Mangyan communities. Consequently, the mining operation will result to economic and cultural displacement of the Mangyan communities. Moreover, mining threatens the extremely rich biodiversity of the province, considered as the 7th most important biogeographic zones in the world. The 2002 Final Report on Philippine Biodiversity Conservation identified Mindoro, particularly the MNP concession site, as extremely high conservation priority areas for plants and birds and terrestrial animals.

The rate of degradation of the forest in the island of Mindoro is alarming. From the 967,400 hectares of forest in the 1950s, the remaining forest cover at present is only about 50,000 hectares. The significant forest lost of 95% contributed to the instability of the environment both in the upland and lowland areas. But instead of restoring the balance, the forest ecosystems are now even more in danger of being denuded due to the threats posed by more than 92 mining applications all over the island of Mindoro.

The MNP is a test case whether mining could find entry, with all the aggressive support and incentives being provided by the national government. But the people of Mindoro successfully repulsed the attempt of the mining companies to force their way in.

This compendium of reports is but a glimpse of the continuing story of the peoples struggle. In an attempt to document significant landmark victories in advocacy work, and in view of sharing our peoples journey, this publication is made possible through the partnership of Alyansa Tigil Mina (ATM), National Secretariat for Social Action (NASSA) and the local anti-mining coalition in Oriental Mindoro, ALAMIN.

The environmental campaign of the Mindorenos serves as an exemplary strategy on how to effectively bring about a concerted multi-stakeholder partnership, even involving local government units and the Church, in sustaining a successful campaign in all fronts – local, national and international level.

The materials contained in this booklet reflects the output of the painstaking collaboration of the affected sectors and communities in their endeavor to lobby, to come up with research studies and to bring the issues to the proper fora, using appropriate mechanisms for engagement and to effect political pressure for policy change.

The first part presents the over-all context and situationer about the mining project including the arguments and issues being raised to show why large-scale mining should not be allowed in island ecology and in the ancestral domains of the Mangyan indigenous peoples.

The second section is a reproduction of the earlier case study on mining in Mindoro conducted by Robert Goodland and Clive Wicks of the Working Group on Mining in the Philippines (WGMP),

culled from the book “Philippines: Mining or Food?” The case study on Mindoro was done in close collaboration with ALAMIN, extensively exploring the mining proposal and its socio-economic and environmental impacts.

The third section is another case study focusing on the community organizing approach of Alyansa Laban sa Mina (ALAMIN) in defending the island paradise from the threat of large-scale mining. This study was commissioned by CODE-NGO as part of its project to document good practices of community organizing in different fronts. ALAMIN, as a social movement spearheading the campaign, was able to embark on effective and creative strategies to solidify the coalition and ultimately to stop the entry of the company through a series of protest actions culminating in the hunger strike before the Department of Environment and Natural Resources (DENR) in November 2009. As of this writing, the MNP permit is temporarily revoked.

The fourth section is the actual verbatim report of the National Contact Point (NCP) of Norway on the complaint lodged against Intex Resources for violating the OECD Guidelines for Multinational Enterprise. The complaint was submitted by the Norwegian NGO, Future in Our Hands (FIOH), in conjunction with PIPLinks (Philippine Indigenous Peoples Links) and Middlesex University Department of Law in the UK, and ALAMIN (Alyansa Laban sa Mina) in Oriental Mindoro. The NCP found out that mining firm Intex Resources had obtained a Free, Prior, Informed Consent (FPIC) from the affected indigenous peoples through questionable procedures. The report pointed out that there was also a glaring defect regarding undue influence and lack of transparency in issues regarding fund donations. There is also a failure in adequately assessing environmental risks of the project and the lack of compliance to the required disclosure to the stakeholders. The report was released in November 2011.

The final section is a reproduction of the report by the Investigation Team tasked by the DENR to investigate the questionable issuance of ECC to Intex Resources. The creation of the Investigation Team was a result of the agreement reached during the hunger strike in November 2009. Due to lack of resources in doing the investigation, the report was completed and released only in December 2011.

As already affirmed in the case study, Mindoro’s social movement could claim victory for the quality of collective actions it pursued - the extensive conscientization campaign and the effective protest actions that it was able to launch and sustain. Such collective actions empowered the participant sectors, in terms of harnessing the process of engagement, and in realizing the full potential of the social movement’s capacity for people power mobilization.

However, the victory is only half-won, more challenges await the stakeholder communities for the threat of large-scale mining still persists. In the Philippines, the policy of trade liberalization in the Mining Act of 1995 had already set the direction for continuing plunder of the country’s mineral resources by the transnational corporations. The trend of aggressive promotion of large-scale mining by the national government has not significantly changed. In this context, the local victory cannot be considered decisive and final. And the struggle to save the fragile ecology continues!

FR. EDWIN A. GARIGUEZ

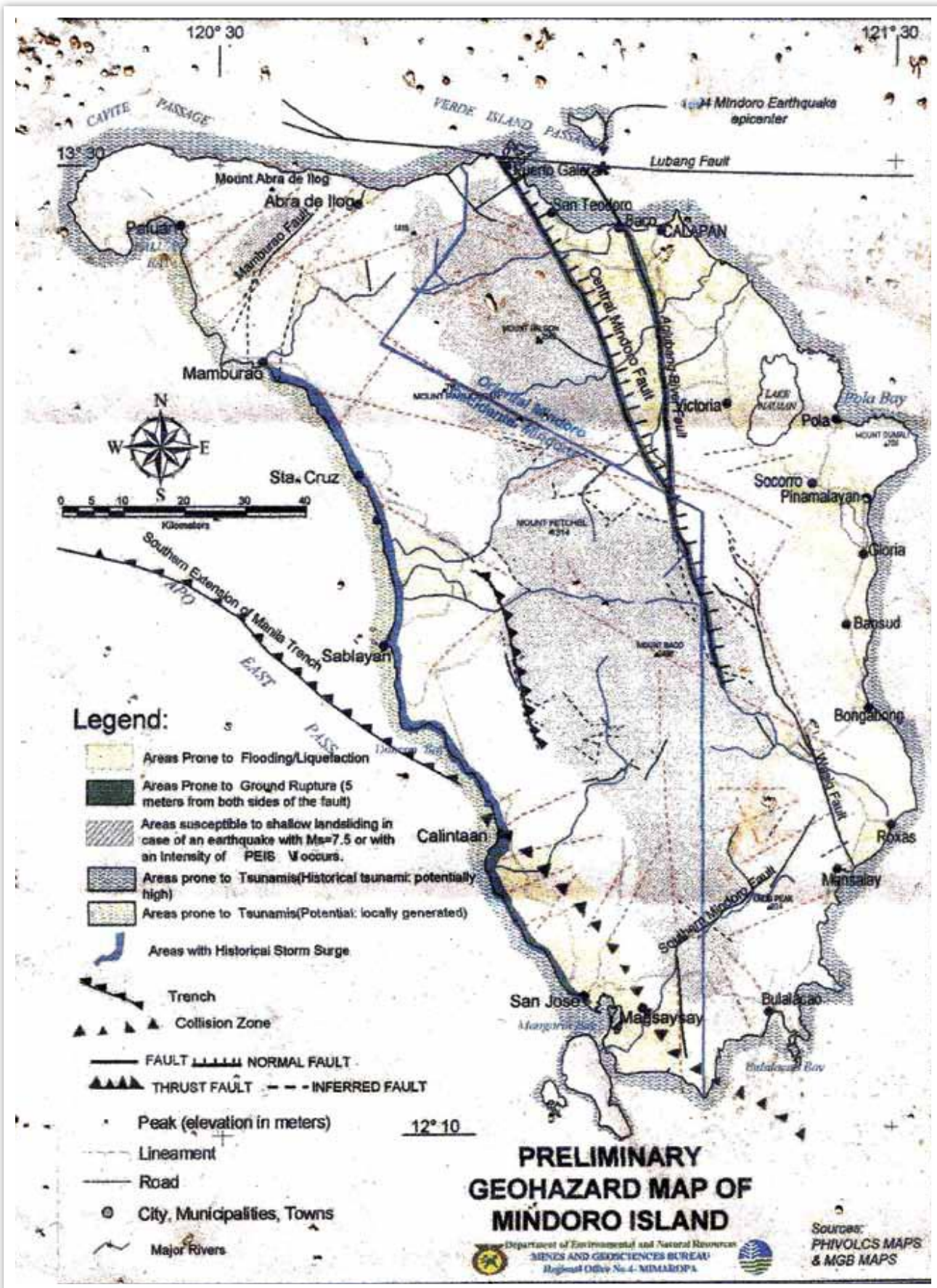
Executive Secretary

CBCP-NASSA

(Founding Member of ALAMIN)

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INVESTIGATION REPORT ON THE QUESTIONABLE ISSUANCE OF ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC) TO INTEX RESOURCES

This report was released in December 2011, after the investigation was concluded pursuant to the mandate given by DENR Special Order 2009-921, creating a team of experts, representatives from civil society organizations and federation of indigenous peoples, tasked to investigate issues and concerns relative to the questionable issuance of Environmental Compliance Certificate (ECC) to Intex Resources

EXECUTIVE SUMMARY

1.1 Background

On 27 November 2009, then Department of Environment and Natural Resources (DENR) Secretary Joselito Atienza issued Special Order 2009-921 temporarily revoking ECC-CO-0904-007-2721 of Intex Resources Philippines, Inc., for the proposed Mindoro Nickel Project located in the municipalities of Victoria, Pola, and Socorro in Oriental Mindoro and the municipality of Sablayan, Occidental Mindoro.

The Order also provides for the creation of the Investigation Team to be composed of independent experts chosen by the Provincial Governments of Oriental Mindoro and Occidental Mindoro and the DENR. The Team shall also include representatives from the civil society organizations and indigenous peoples' federations based in the two provinces.

1.2 Context

ECC-CO-0904-007-2721 of the Mindoro Nickel Project of Intex Resources Philippines, Inc. (Intex) / Aglubang Mining Corporation was issued on 14 October 2009. The project covers about 11,000 hectares between the municipalities of Sablayan, Occidental Mindoro Victoria, and Oriental Mindoro. The project also includes conveyor transport system of mine ores from the mining site passing through the municipality of Socorro, Oriental Mindoro down to the processing site, which is proposed to be located at the Municipality of Pola, Oriental Mindoro. The ECC was issued on the basis of the Environmental Impact Statement (EIS) dated September 2009 submitted by the Intex Resources Philippines, Inc.

After ten days of Hunger Strike by residents of Oriental and Occidental Mindoro and their supporters demanding the cancellation of the questioned ECC and after a dialogue between officials from the two provinces, Secretary Atienza, and other DENR officials, Special Order 2009-921 was issued and the ECC was temporarily revoked.

The Investigation Team was ordered to look into the following allegations attendant to the issuance of the ECC to the Intex Resources Philippines, Inc., for the Mindoro Nickel Project :

- a. That the mining project lacks social acceptability ;
- b. That the environmental compliance certificate (ECC) issued and the environmental impact assessment (EIA) did not follow the proper procedures/laws as expressed in the EIA Review Committee Report which recommended denial of the ECC ;
- c. That the proposed mining project falls within the watershed of Mag-asawang Tubig River; and ,
- d. That the mining project lacks the free, prior and informed consent (FPIC) of all the affected indigenous peoples' communities in the project area.

Since the ECC was already issued albeit temporarily revoked and the order was for a thorough and impartial investigation of all allegations attendant to the issuance of the ECC, the Investigation Team focused on the above issues by reviewing the EIA process and the submitted EIS report and concentrated on the validity of the foregoing allegations.

The Investigation Team takes a positive outlook on the directive of the DENR Secretary for a thorough and impartial probe on all the allegations attendant to the issuance of the ECC to Intex Resources Philippines, Inc., as:

- a. a demonstration of a sense of fairness and justice on the part of DENR ;
- b. a part of the feedback mechanism in the conduct of the EIA process ; and ,
- c. an opportunity to rectify deficiencies and infirmities in the DENR issuances and process followed by the DENR and the Proponent.

1.3 Conclusions

1.3.1 *The mining project lacks social acceptability.*

Highlights

- a. Public consultation and prior approval by the sanggunian concerned is required under Sections 26 and 27 of the Local Government Code of 1991. Section 70 of the Philippine Mining Act of 1995 stipulates that the EIA shall follow procedures under the Philippine Environmental Impact Statement System including Sections 26 and 27 of the Local Government Code.

Supporting Statements

While the Mining Act of 1995 authorizes the government to enter into a Mineral Production Sharing Agreement (MPSA) or a Financial or Technical Assistance Agreement (FTAA) with a contractor, the Local Government Code of 1991 and the Mining Act of 1995 require prior consultation and approval by the Sanggunian concerned before a mining project is implemented on the ground.

In the conduct of its EIA, Intex Resources and its preparers have adopted the policies and procedures contained in a) Administrative Order No. 42, issued to rationalize the implementation of the Philippine Environmental Impact Statement System and for other purposes, b) DENR Administrative Order No. 2003-30, which is the Implementing Rules and Regulations for the Philippine Environmental Impact Statement System, and the c) supplemental Procedural Manual of 2007 and EIA Review Manual. **However, the three issuances failed to incorporate the provisions of Section 70 of the Philippine Mining Act of 1995 and of Section 27 of the Local Government Code of 1991, and therefore, are not consistent with the said provisions of existing laws.**

In addition, the mining project lacks the social acceptability as expressed in the 25- year mining moratorium ordinances of the Province of Oriental Mindoro and the Municipality of Sablayan, Occidental Mindoro, and subsequently, of the Province of Occidental Mindoro and other municipalities therein. On several occasions, the Provincial Government of Oriental Mindoro issued cease and desist orders against activities relevant to the Mindoro Nickel Project i.e. public scoping, public consultations and hearings. These are clear expression and manifestation of rejection of the mining project by the people of Oriental Mindoro.

1.3.2 *The EIA Review Committee (EIARC) recommended the denial of the ECC to the Intex Resources Philippines, Inc., for the Mindoro Nickel Project.*

Highlights

- a. The EIARC, on a vote of 4:3, recommended the denial of the ECC due to the following reasons (EIA Review Committee Report, Rollon, 18 November 2009) :

- “lack of baseline information particularly on the terrestrial flora and fauna of the conveyor route, the processing plant, the Residue Storage Facility, and the township, considering that Mindoro Island is a unique biogeographic region;
- poor delineation of impact areas and supporting discussion on hydrology is not thorough; and,
- overall, the integration among modules has been very poor, making inference of possible major impacts vague and extremely difficult to evaluate.”
 - b. The Investigation Team did not find any document justifying the reversal or setting aside of the decision and recommendation of the EIA Review Committee.

1.3.3 *The environmental impact assessment (EIA) did not follow the proper procedure.*

Highlights

- a. The EIA process proceeded despite the failed scoping in Villa Cerveza, Victoria, Oriental Mindoro, the aborted public hearing at Pola, Oriental Mindoro, and the questionable consultation at Mamburao, Occidental Mindoro.
- b. Rules and method on the identification of members of the EIARC are loose which can determine the outcome of the EIARC decision and recommendation.
- c. While the EIARC recognized the moratorium ordinance, EMB-DENR did not take into account the 25-year moratorium on large-scale mining, cease-and-desist orders issued by the Provincial Government of Oriental Mindoro, and strong opposition from the civil society during the EIA process.
- d. EMB-DENR allowed the opposing priorities in development and contradictory positions between the national and local government to linger at the expense of the Mindorens and allowing the proponent to take a huge risk, both financially and of the project being rejected by the local population. DENR even went to the extent of issuing an ECC despite a recommendation of denial from the EIA Review Committee.
- e. Following a procedural manual does not exempt EMB or the Proponent from abiding by the provisions of other existing laws such as Section 70 of the Philippine Mining Act of 1995 and Section 27 of the Local Government of 1991.
- f. Pushing through with mining in Mindoro is leading to division and civil disturbance as exemplified by the aborted public hearing in Pola, Oriental Mindoro and in the questionable consultation in Mamburao, Occidental Mindoro.

Supporting Statements

Following DAO 2003-30, first and the second level scoping aims to gather public sentiments and valid technical and social issues related to the project. With these, the latitude of the EIA study is finalized from the output of the site scoping. The EIS document included the scoping matrix that bears the issues identified both during the first and second level scoping. This indicates accomplishment of the procedure as indicated by DAO 2003-30. Minutes of the Scoping Session facilitated by the EIA Review Committee showed that the Site Scoping on 20 October 2008 was declared FAILED. The declaration by the EIARC Chairman Dr. Edgardo David was due to a Cease-

and-Desist Order served by the Provincial Government of Oriental Mindoro before the mandated program of activities (based on DAO 2003-30) was concluded. The EMB still convened the members for the review committee even as the site scoping was declared a failure by EIARC.

On 14 May 2009, the public hearing scheduled in Pola, Oriental Mindoro was aborted after a tense and long discussion between pro and anti-mining advocates. Another public hearing scheduled in Victoria, Oriental Mindoro the following week was also postponed indefinitely.

EMB and the Proponent held a public consultation in Mamburao on 27 May 2009 in violation of DAO 2003-30 since Mamburao is not a stakeholder as far as the EIS is concerned and the Sangguniang Panlalawigan of Occidental Mindoro passed a resolution objecting to the conduct of the said consultation. Despite the legal and procedural questions, the EIA process proceeded.

While the EIARC recommended denial of ECC, then DENR Secretary Lito Atienza disregarded the EIARC recommendation and issued the ECC to MNP on 14 October 2009. Section 9.2.C. of DAO 2003-30 states that "the deciding authority must cite strong and compelling reasons, bases and/or justifications whenever reversing or overturning the recommendations of the review parties". No such strong and compelling reasons were given.

1.3.4 The proposed mining site is within the watershed of Mag-asawang Tubig River.

Highlights

- a. The geographic coordinates specify the exact location of the mining area, the maps spatially indicate the project area showing also the Mag-asawang Tubig River and its tributaries, and the project description clearly states that the Project Area is located within the watershed of Mag-asawang Tubig River.
- b.
- c. The Mag-asawang Tubig River Watershed is a natural geographic feature and does not need to be "proclaimed" as a watershed to be protected. A watershed is a natural life support ecosystem.
- d. The watershed of Mag-asawang Tubig River is an environmentally critical area and a critical watershed.
- e. The damage due to mining operations is irreversible with long term effects and the costs of the damage and its effects are not included in the project feasibility study nor in the Environmental Impact Statement.

Supporting Statements

The mining site falls within the critical Mag-asawang Tubig Watershed. It is located in an area drained by two rivers forming one of the largest rivers in Oriental Mindoro. In the EIS submitted by the project proponent, the geographic coordinates specify the exact location of the mining area, the maps spatially indicate the project area showing also the Mag-asawang Tubig River and its tributaries, and the project description clearly states that the Project Area is located within the watershed of Mag-asawang Tubig River.

Mag-asawang Tubig River flows through the towns of Victoria and Naujan before it discharges to the sea. Panggalaan River branches out from Mag-asawang Tubig and joins Bucayao River, another major river in Oriental Mindoro which flows through Calapan City before it discharges to Calapan Bay.

There are about 47,300 hectares of rice areas in the towns of Victoria and Naujan and city of Calapan at the downstream of the Mag-asawang Tubig River producing about 188,000 metric tons per year. About 37,500 hectares are irrigated. Victoria, Naujan, and Calapan contribute about 52 % in rice areas and in annual rice production of the province of Oriental Mindoro (Briefing Kit 2005, PPDO, Provincial Government of Oriental Mindoro), These rice areas are located in the flood plains of Mag-asawang Tubig and Bucayao Rivers. Two national irrigation systems diverting water from the Mag-asawang Tubig and Bucayao Rivers, with dams respectively located at Pinagsabangan and Mulawin both in Naujan, have a total combined service area of 8,000 hectares (Annual Report 2011, NIA-Calapan, MIMARO-IMO Office). Actual irrigation service areas from the two NIA systems are now reduced to about 57 % and to as low as 18 % in one system because of siltation and changing river course due to increased siltation and heavier runoff. The watershed of Mag-asawang Tubig River is an environmentally critical area based on Proclamation 2146 and is a critical watershed as defined by PD 705.

On 16 July 2001, DENR Secretary Alvarez issued a Notice of Cancellation/ Termination wherein he informed Aglubang Mining Corporation that MPSA No. 167-2000-IV had been cancelled on the stated ground that the area it covers falls within an important watershed area requiring the protection of the DENR.

EMB-DENR and the Proponent had been reasoning out during public forums and IEC campaigns that Mag-asawang Tubig Watershed is not a proclaimed watershed and, is therefore, open to mining. Section 19f of the Philippine Mining Act of 1995 (RA 7942) states that mineral agreement or financial or technical assistance agreement applications shall not be allowed in military and other government reservations, ..., old growth or virgin forests, proclaimed watershed forest reserves, wilderness area, etc. It should be pointed out that what RA 7942 specifies is “proclaimed watershed forest reserves” and not simply “proclaimed watershed”. What needs to be proclaimed are the forest reserves in a watershed, where the word watershed is a descriptor of the main subject which is forest reserves. The Mag-asawang Tubig watershed is a watershed and does not need to be proclaimed as one because a watershed is a hydrologic and geographic feature that naturally performs its functional role according to hydraulic laws and the hydrologic, with or without a proclamation.

With the justification coming from the EMB-DENR and the Proponent that the watershed of Mag-asawang Tubig is NOT a “proclaimed watershed”, the EIA process proceeded without sufficiently and seriously considering the significance and implications of the watershed in the determination of stakeholders and affected communities, in the choice of locations of public consultations and public hearings, in identifying relevant issues and problems, in the formulation of mitigating measures, and in the write up of the components/ modules of the EIS Report.

Protection is a matter of necessity and action in the Declaration of Policy of the NIPAS Act; whilst, proclamation is for the establishment and management of a system of protected areas for the purposes of planning and effective administration of the said areas.

Mining operations do not only compromise the environment; mining operations remove and destroy the watershed itself leaving behind voluminous mining wastes, as the mineral specifically nickel is only about 1 % of the ore (EIS, Section 3, page 3-40, Table 3-9). This can also be viewed as transferring the mountain into the processing area and creating a mountain of mining wastes. An objective assessment of the environmental impact of mining operations will prove the irreversible damage to the watershed and the negation of its functional role as a natural life support ecosystem.

When a natural formation or a natural geologic feature like a watershed is removed or destroyed, specifically when the mountain itself which constitutes the upper watershed area, is removed and destroyed, then it is an irreversible disturbance and destruction. There is no way to repair nor restore a mined mountain or a damaged watershed after the subsurface layers are dug and the ores are processed.

The cost and benefit analysis in the financial feasibility study of the project does not value and consider the costs of damages to the watershed itself, to the environment, to people's health, and to infrastructures. Neither does it value and consider the effects of flooding to agriculture in general and loss of crops among farmers in particular. Nor can the analysis put value on the possible loss of a single life due to flooding or chemical pollution as a result of mining.

The responsibility of DENR focuses on conservation, management, development, and proper use of mineral resources. Under existing laws of the country, mining as a project or program or business enterprise needs to go through a process of environmental impact assessment and prior approval by the Sanggunian concerned before implementation on the ground. Just because minerals are present, normally in minute quantity, does not mean they are to be mined.

The laws of nature and hydraulics dictate that the favor and priority should be given to environmental protection, and less to short-term economic benefits, and more to the benefit of present and future generations. Unless man thinks and moves and acts according to this priority, then man is on his way to self-destruction.

1.3.5 *The mining project lacks the free, prior and informed consent of all the affected indigenous peoples' communities in the area.*

Highlights

- a. *Consultation with SADAKI and KABIOLOGAN members as residents of Villa Cerveza is within the jurisdiction of the local government unit and covered by Section 70 of RA 7942 and Section 27 of RA 7160. Consent that might come from SADAKI and KABIOLOGAN cannot represent the local government units much more be viewed as approval from the concerned sanggunian.*
- b. *In compliance with the requirements of IPRA of 1997, consultations should have been done with all IP communities duly represented by SANAMA, SASSAMA and KAMTI whose ancestral domains are impacted by the proposed mining project.*

Supporting Statements

The mining area and the area covered by the MPSA are within the ancestral domain claims of the Alangan and Tadyawan Mangyan tribes. Based on the EIS, the consultations were limited to the members of the Alangan/Tadyawan tribe represented by SADAKI and the members of the alleged Bangon/Ruang tribe represented by KABIOLOGAN. Incidentally, members of these two organizations reside in Barangay Villa Cerveza in the town of Victoria, Oriental Mindoro. Moreover the SADAKI group does not represent the Alangan and/or Tadyawan tribes. Likewise, the legitimacy of the new Bangon/Ruang tribe is being contested by the organizations of the original Mangyan tribes belonging to the Alangan and Bangon.

If the indigenous peoples organizations, SADAKI and KABIOLOGAN, were considered as mere members of the barangay where they reside, the consultation in general is governed by Section 70 of RA 7942 and Section 27 of RA 7160 which both require consultation and prior approval by

the Sanggunian concerned. The proposed mine site although within an ancestral domain claim, is within the jurisdiction of the local government units. The proof of consultation with the IP residents of Villa Cerveza cannot be a substitute to consent and approval of the sanggunian concerned.

On the other hand, if the consultations were conducted in compliance with the provisions of IPRA of 1997, the Team looked at these consultations as questionable, if not void, because it denied participation from legitimate holders of CADCs, in this case SANAMA and SASAMA of Alangan tribe and KAMTI of Tadyawan tribe. In a case where a project is within the ancestral domain claim, consultations should be done with all IP communities and not with a limited group in a community. All IP communities are the ones who should decide over activities within their ancestral domains.

1.4 *Summary of Recommendations*

Based on the findings of the investigation, the Team is recommending the following actions:

1. Cancel ECC-CO-0904-007-2721 ECC issued to Intex Resources Philippines, Inc., for the Mindoro Nickel Project because
 - The project lacks social acceptability;
 - EIA process is not consistent with Section 70 of the Philippine Mining Act of 1995 and Section 27 of the Local Government Code of 1991;
 - EIA Review Committee recommended denial of the ECC;
 - Consultation in the ancestral domain area was limited only to the SADAKI and KABIOLOGAN Mangyan organizations and not from the organizations of Alangan and Tadyawan Mangyan tribe; and,
 - Implication and ramification of the location of the Mindoro Nickel Project, an environmentally critical project in a critical watershed area, were not adequately considered during the EIA process.
2. Revoke the MPSA of the Mindoro Nickel Project because the project is located in the critical watershed area of Mag-asawang Tubig River and mining will result to the irreversible destruction of the watershed and loss of ninety-nine percent of ore as mining wastes.
3. Rationalize and harmonize application and enforcement of existing laws by incorporating Section 70 of the Mining Act of 1995 and Section 27 of the Local Government Code of 1991 in the Administrative Order No. 42, the DENR Administrative Order No. 2003-30, and in the supplemental Procedural Manual of 2007 and EIA Review Manual.
4. Respect and strictly implement Section 70 of the Philippine Mining Act of 1995 and Section 27 of the Local Government Code of 1991 by requiring prior consultation and approval by all sanggunian concerned before the issuance of the ECC.
5. Provide mechanism for a transparent and comprehensive review of the EIS by requiring fair valuation and full public disclosure of both positive and negative impacts of the projects.
6. Implement the provisions of IPRA to make the FPIC process inclusive of all the direct and indirect IP stakeholders and communities.
7. Consider the flawed FPIC inoperative and non-binding.

1 INTRODUCTION

The Investigation Team, tasked to investigate the allegations attendant to the ECC-CO-0904-007-2721, dated 14 October 2009, issued to Intex Resources Philippines, Inc., for the Mindoro Nickel Project (MNP), was created under Department of Environment and Natural Resources Special Order (DENR SO) 2009-921 dated 27 November 2009. Pending completion of this investigation, the said Environmental Compliance Certificate (ECC) was temporarily revoked.

As provided in the Department's Order, the Investigation Team is to be composed of representatives from the Civil Society and Indigenous Peoples' Federation from Oriental and Occidental Mindoro together with selected experts chosen and appointed by both Provincial Governments and the DENR.

The fundamental issues that need to be resolved and identified to be the focal subject matters for this investigation are the following :

1. **SOCIAL ACCEPTABILITY AND MINING MORATORIUM.** Section 70 of the Mining Act prescribes that ECC issuance should follow EIA procedures, which include compliance to Sections 26 and 27 of the Local Government Code of 1991, requiring social acceptability for the project, specifically for the prior approval of the Sanggunian concerned. The Environmental Impact Assessment (EIA) process and issuance of the ECC are deemed to have contravened Section 70 of the Mining Act of 1995 and Section 27 of the Local Government Code of 1991, and did not consider the expressed opposition of the people of Mindoro as they respect the 25-year Mining Moratorium ordinances of the Province of Oriental Mindoro and Municipality of Sablayan enacted in January 2002 and December 2007, respectively, and more recently in November 2009, of the Province of Occidental Mindoro.
2. **FREE AND PRIOR INFORMED CONSENT (FPIC) FROM THE IPs OF MINDORO (THE MANGYANS).** On 26 February 1996, prior to the granting of the exploration permit to Mindex (now Intex), Certificate of Ancestral Domain Claim (CADC) No. R4-CADC-024 was approved for the Samahan ng mga Nagkakaisang Mangyan Alangan, Inc. (SANAMA). Similarly, the Mangyan Tadyawan, through their organization, Kapyan Agpaysarigan Mangyan Tadyawan Inc. (KAMTI), had been issued an approved application for CADC No. R4-CADC-085. It is alleged that portions of their land are being encroached by the mining application without their free, and prior informed consent. In 2001 the former Secretary of the DENR, Heherson Alvarez, cancelled the MPSA, quoting Section 4c of IPRA 1997 IRRs and declaring that "*Aglubang has not secured such consent (referring to the FPIC)*" from CADC claimants namely, SANAMA, SASSAMA, and KAMTI.

The Team eventually decided to focus on consultation with the IPs (the Mangyans) because the EIA process conducted for the Mindoro Nickel Project did not include the FPIC and the issue needs a separate and more in-depth investigation. The FPIC is a provision of the Indigenous Peoples Rights Acts of 1997 (IPRA) required for any project within an ancestral domain, a requirement similar and parallel to the approval by Sanggunian concerned under the Local Government Code of 1991 before any project or program is implemented.
3. **OBSERVANCE OF PROPER PROCEDURES IN THE CONDUCT OF EIA AND ISSUANCE OF ECC.** The issuance of ECC was deemed highly irregular and questionable because the EIA study conducted for the Mindoro Nickel Project (MNP) did not pass the technical scrutiny of the EIA Review Committee (EIARC), which voted not to give definitive endorsement for the project. The lack of transparency and observance of applicable procedures in the conduct of the ECC issuance was also raised and requested to be subjected to this investigation.

4. THE PROPOSED MINDORO NICKEL PROJECT IS WITHIN A WATERSHED. It was alleged by the local government units, the Church and the civil society organizations that the project is located within a critical and classified watershed as declared and identified in its Provincial Physical Framework Plan (PPFP). The mining site is reported to have encroached on the Magasawang Tubig Watershed, the largest source of irrigation water for the 40,000 hectares of rice lands in Calapan City, and the towns of Naujan, Baco and Victoria, in Oriental Mindoro. If the ECC for environmentally critical project is issued for a critical watershed area, this issue truly warrants due investigation.

On 20 January 2010, in a meeting held with DENR officials in Calapan City, with the Office of the Governor of Oriental Mindoro and Occidental Mindoro, as well as with other LGU representatives, a consensus was threshed out as to the composition of the Investigation Team following the DENR SO No. 2009-921. The Investigation Team shall be composed of three nominees each from the Provinces of Oriental Mindoro & Occidental Mindoro and the DENR, plus representatives from the civil society organizations and indigenous peoples' federations based in the two provinces, totalling to thirteen (13) members.

The Investigation Team was not immediately convened after the order for its creation was promulgated and after the agreement was reached in January 2010 as to its membership. There were problems in finalizing the actual composition of the Team because on 23 May 2010, then Secretary Horacio Ramos appointed members of the Team in addition to the three DENR nominees from the from Forest Management Bureau (FMB), National Water Resources Board (NWRB), and National Institute of Geological Sciences (NIGS), without the knowledge of the Provincial Governments of Oriental and Occidental Mindoro and without the necessary qualifications as required and stipulated in the original directive [Annex V]. The agreement specified only three nominees each from the DENR and from the Provincial Governments of Oriental and Occidental Mindoro plus representatives from the civil society organizations and indigenous people's federations based in the two provinces. On 27 July 2010, Secretary Ramon Paje issued another DENR Special Order 2010-557 specifying additional members of the Investigation Team.

A joint letter from the two Governors of the provinces of Oriental and Occidental Mindoro dated 24 August 2010, was sent to the Office of the DENR Secretary registering a clarificatory non-concurrence to the additional members of the Investigation Team mentioned in the DENR Special Orders, Series of 2010 in excess of thirteen members as originally agreed upon [Annex VII]. There was a follow-up letter from Governor Umali dated 24 November 2010

The Investigation Team was eventually convened and had its meeting on 05 November 2010, whose members comprised of representatives from civil society, indigenous peoples' federation and selected experts from both provinces of Oriental and Occidental Mindoro. DENR nominees from Forest Management Bureau, National Water Resources Board, and U.P National Institute of Geological Sciences were later identified from previous minutes of coordination meetings among representatives from EMB, the LGUs, the civil society organizations, and indigenous peoples (the Mangyans). The DENR nominees from FMB, NWRB, and NIGS were eventually invited but only the two representatives, FMB and NWRB, responded to the task and joined the Team in the succeeding meetings.

During the course of the investigation, it was decided during a formal meeting to write the DENR Secretary, the Governors of Oriental and Occidental Mindoro so that the three officials could clarify and decide on the final membership as it was beyond the jurisdiction of the Investigation Team to do so [Annex IX]. Meanwhile, the Investigation Team proceeded with twelve members since the representative

from NIGS did not attend any meeting and did not participate in the deliberation despite formal notices. However, the awaited clarification and decision from the three officials did not materialize.

The Investigation Team painstakingly tried to do its mandate even with very little logistical support (Annex X shows the Minutes of the Meetings of the Investigation Team together with the Attendance Sheets.). Technical expertise were contributed pro bono by members knowledgeable in their respective professions: two lawyers, experts in Hydrology, Anthropology, and Biodiversity, while the rest are designated representatives from the LGUs and IP Federations.

The Investigation Team probed into the documentary materials relative to the above-mentioned issues particularly the EIS Report of September 2009 and the EIARC Report, and deliberated on the veracity and validity of the information subjected to scrutiny, including the procedures followed during the EIA and the eventual issuance of the ECC to the Intex Resources Philippines, Inc., for the MNP. As a general rule, the investigation considered documents and information included in the EIS review by the EIARC and officially received by the EMB-DENR.

Interviews were also conducted among the stakeholder communities and officials of the local government units. Members of the EIARC were also interviewed by the Investigation Team. Despite a written request, visits and phone calls to the offices of the Environmental Impact Assessment Management Division (EIAMD) and the Executive Director of the Environmental Management Bureau (EMB), the Investigation Team was not granted the opportunity for an interview to gather more information from the EMB-DENR side.

Since the DENR Special Order was for a thorough and impartial investigation of all allegations attendant to the issuance of the ECC to Intex Resources Philippines, Inc., the Investigation Team focused on the above issues and concentrated on the aspects and reasons why the ECC should not have been issued looking from the different angles using other lenses.

Finally, the report is completed after long and tedious study done in collaboration among the committed members of the Investigation Team. But the work is not over yet, as we await the final decision on the issue, or as we hang on to our expectation that this work will merit serious consideration by the very agency from which the Investigation Team received its mandate.

The recommendations contained in this report cannot but be conclusive because it is explicitly provided in the DENR Special Order that: **“The report and conclusion of the Investigation Team shall be the basis in resolving the issues surrounding the ECC.”**

The Team positively takes the directive of the DENR Secretary for a thorough and impartial investigation of all allegations attendant to the issuance of ECC in October 2009 to the Intex Resources Philippines, Inc., for the Mindoro Nickel Project, as a demonstration of a sense of justice and fairness on the part of DENR, as a part of the feedback mechanism in the conduct of the EIA process, and as an opportunity to rectify deficiencies and infirmities in DENR’s issuances and Procedural Manuals which did not incorporate and consider Section 70 of the Philippine Mining Act of 1995 and Section 27 of the Local Government Code of 1991.

2 SOCIAL ACCEPTABILITY

Social acceptability had been defined as the “acceptability of a project by affected communities based on a timely and informed participation in the Environmental Impact Assessment process particularly with

regard to environmental impacts that are of concern to them” (DAO 2003-30 – IRR for the Philippine EIS System, Sec. 3-ff). Whether the MNP had social acceptability would be dealt with in this section.

Environmental Impact Assessment (EIA) is the “process that involves evaluating and predicting the likely impacts of a project, including cumulative impacts, on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate preventive, mitigating, and enhancement measures addressing these consequences to protect the environment and the community’s welfare. The process is undertaken by, among others, the project and/or EIA Consultant, EMB, a Review Committee, affected communities and other stakeholders” (DAO 2003-30 – IRR for the Philippine EIS System, Sec. 3-h).

I. FINDINGS

A. FACTS AND LEGAL FRAMEWORK (in chronological order)

1. Presidential Decree 1586, signed by President Marcos on 11 June 1978, established an EIS System including the other environmental management related measures and for other purposes in the pursuit of a comprehensive and integrated environmental protection program whereby the exigencies of socio-economic undertakings can be reconciled with the requirements of environmental quality.
2. Republic Act No. 7160 (RA 7160), also known as the Local Government Code of 1991, provides for the local government code and a local government structure through a system of decentralization, local autonomy, and devolution of powers to the lower local government unit.
3. RA 7160 (Local Government Code of 1991) **Section 2(c)**. *Declaration of Policy*. - It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people’s organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.
4. RA 7160 (Local Government Code of 1991) **Section 26**. *Duty of National Government Agencies in the Maintenance of Ecological Balance*.- It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.
5. RA 7160 (Local Government Code of 1991) **Section 27**. *Prior Consultations Required*. - No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.
6. Republic Act No. 7942 (RA 7942), also known as the Philippine Mining Act of 1995, institutes a new system of mineral resources exploration, development, utilization and conservation.

7. RA 7942 (Philippine Mining Act of 1995), **Section 70** .*Environmental Impact Assessment* (EIA) - Except during the exploration period of a mineral agreement or financial or technical assistance agreement or an exploration permit, an environmental clearance certificate shall be required based on an environmental impact assessment and procedures under the Philippine Environmental Impact Assessment System including Sections 26 and 27 of the Local Government Code of 1991 which require national agencies to maintain ecological balance, and prior consultation with the local government units, nongovernmental and people’s organizations and other concerned sectors of the community: Provided, That a completed ecological profile of the proposed mining area shall also constitute part of the environmental impact assessment. People’s organizations and nongovernmental organizations shall be allowed and encouraged to participate in ensuring that contractors/permittees shall observe all the requirements of environmental protection.
8. Administrative Order No. 42, signed by President Gloria Macapagal-Arroyo on 02 November 2002, rationalizes the implementation of the Philippine Environmental Impact Statement (EIS) system and gives authority, in addition to the Secretary of the Department of Environment and Natural Resources (DENR), to the Director and Regional Directors of the Environmental Management Bureau (EMB) to grant or deny the issuance of Environmental Compliance Certificates (ECC).
9. DENR Administrative Order No. 2003-30 (DAO 2003-30), signed by Secretary Elisea G. Gozun on 30 June 2003, lays down the Implementing Rules and Regulations (IRR) for the Philippine Environmental Impact Statement System.

B. DISCUSSION OF FINDINGS

1. Section 27 of RA 7160 (Local Government Code of 1991), as also provided in Section 70 on the Environmental Impact Assessment in RA 7942 (Philippine Mining Act of 1995) , is the missing link in the rationalized and harmonized implementation of applicable laws/ordinances relevant to a mining project and local mining operations in a specific area.

The facts and legal framework above show that PD 1586, which established the EIA system, was signed into law in 1978 ; the Administrative Order No. 42, which rationalizes the implementation of the Philippine EIA system, was signed in 2002 ; and its IRR (DENR AO No. 2003-30) was signed in 2003. Between the establishment of the Philippine EIA system in 1978 and the rationalization of its implementation in 2002 and issuance of its IRR in 2003, the Local Government Code of 1991 (RA 7160) and the Philippine Mining Act of 1995 (RA 7942) were passed into laws.

Major mining and quarrying projects, which include the Mindoro Nickel Project (MNP), as resource extractive heavy industries, are classified as environmentally critical projects (Presidential Proclamation 2146 signed on 14 December 1981). By virtue of the features described in the same proclamation, the Mag-asawang Tubig Watershed, where the MNP is located, satisfactorily qualifies as an environmentally critical area. [Please also refer to the module on the watershed issue.] As an environmentally critical project located in an environmentally critical watershed area, the MNP requires the conduct of the EIA and the application for the ECC.

The ECC is a “document issued by the DENR/EMB after a positive review of an ECC application, certifying that based on the representations of the proponent, the proposed project or undertaking will not cause significant negative environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC contains specific measures and conditions

that the project proponent has to undertake before and during the operation of the project, and in some cases, during the project's abandonment phase to mitigate identified environmental impacts" (DAO 2003-30 – IRR for the Philippine EIS System, Sec. 3-d).

Section 70 on Environmental Impact Assessment of the Philippine Mining Act of 1995 requires "an environmental clearance certificate based on an environmental impact assessment and procedures under the Philippine Environmental Impact Assessment System including Sections 26 and 27 of the Local Government Code of 1991 which require national agencies to maintain ecological balance, and prior consultation with the local government units, nongovernmental and people's organizations and other concerned sectors of the community". Sections 2c, 26 and 27 of the Local Government Code of 1991 stipulate that, in the maintenance of ecological balance, it is the duty of the national government agencies or government-owned or controlled corporation "to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof" and to obtain prior approval of the sanggunian concerned "before any project or program is implemented in their respective jurisdictions"

Section 27 of the Local Government Code, as also included and required in Section 70 on the EIA of the Philippine Mining Act of 1995, is not incorporated nor considered in the Administrative Order No. 42 from the Office of the President and, likewise, in the DENR AO No. 2003-30 and its IRR, and in the corresponding 2007 Revised Procedural Manual for DAO 2003-30 and Memorandum Circular No. 001-2007 (MC 001-2007-EIA Review Manual). The Environmental Impact Statement Report merely requires the proof of consultation with stakeholders ((DAO 2003-30 – IRR for the Philippine EIS System, Sec. 5.2.1-h) instead of the approval by the sanggunian concerned as provided in Section 70 of the Philippine Mining Act and Section 27 of the Local Government Code. Therefore, the conduct of the EIA specifically during scoping, public consultations and public hearings; the review of the EIS Report; and the issuance of the ECC utterly disregarded Section 27 of the Local Government Code of 1991 as also provided in Section 70 of the Philippine Mining Act. The exclusion and non-consideration of Section 27 of the Local Government Code of 1991 in the administrative orders from the Offices of the President and the DENR Secretary, and in the supplementing IRR and procedural manuals, are not consistent with the specific provisions of the Philippine Mining Act of 1995 (RA 7942) and the Local Government Code of 1991 (RA 7160).

DAO 2003-30 – IRR for the Philippine EIS System, Sec. 5.4.2-d stipulates that "at a minimum, the EIARC report should contain ... key issues/concerns and the proponent's response to these including social acceptability measures", among other bases of the EIA review. The EIA process presented in the EIS report requires only the proof of consultation, identification of environmental impacts with the preventive/mitigating/enhancement measures, including the social acceptability measures, but it does not require the approval of the sanggunian concerned. It does not also provide a mechanism for rejection of a project on the part of the affected communities and local population according to the principle and essence of public consultation and meaningful public participation. Thus, the requirement of the EIA process makes the EIA, when conducted, a mere tool to justify a project and makes the EIS a mere attachment to the ECC application. This weakness in the EIA process is accentuated when DENR issued an ECC despite the recommendation of the EIA Review Committee to deny the ECC of the Mindoro Nickel Project, as discussed in another module of this Investigation Report.

2. What are the implications and ramifications of Section 70 of the Philippine Mining Act of 1995 (RA 7942) and Section 27 of the Local Government Code of 1991 (RA 7160) in the approval of mineral agreements, in the conduct of the EIA process, and in the application for ECC for a mining project?

While Section 8 of RA 7942 provides that “The Secretary shall have the authority to enter into mineral agreements on behalf of the Government upon the recommendation of the Director, promulgate such rules and regulations as may be necessary to implement the intent and provisions of this Act”, Section 70 of RA 7942 and Sections 2c, 26, and 27 of RA 7160 require prior consultation and approval by the sanggunian concerned before any mining project is implemented in a particular locality. While the government can enter into a Mineral Production Sharing Agreement (MPSA) or a Financial or Technical Assistance Agreement (FTAA) with a contractor, approval by the sanggunian concerned is required before a mining project is implemented on the ground pursuant to Section 27 of the Local Government Code of 1991 and as also required by Section 70 of the Philippine Mining Act of 1995. Consultation and approval by the sanggunian concerned are applicable requirements during the conduct of EIA (scoping, public consultation/hearing), review of the EIS, and issuance of the ECC.

Before any project or program is implemented, it requires free and meaningful public consultation/participation and prior approval by the sanggunian concerned according to Sections 2c, 26, and 27 of the Local Government Code of 1991. Mining, as an environmentally critical project in particular, requires public consultation and prior approval by the Sanggunian concerned according to Section 70 of the Philippine Mining Act of 1995, consistent with Section 27 of the Local Government Code of 1991.

3. Provincial/Municipal Ordinances promulgating moratorium on large-scale mining were enacted and the Cease-and-Desist orders (CDO) were issued by the Provincial Government of Oriental Mindoro against scoping and public hearing during the conduct of EIA for the Mindoro Nickel Project.

Pursuant to the provisions of the Local Government Code of 1991, Provincial Ordinance 001-2002 was enacted by the Sangguniang Panlalawigan of Oriental Mindoro on 28 January 2002 and was signed by Governor Bartolome L. Marasigan, Sr. on 01 March 2002, declaring a twenty-five year moratorium on all forms of mining in the province of Oriental Mindoro and provides exceptions and penalties [Annex XI]. The whereas clauses of the said provincial ordinance and of the Sanggunian Resolution, passed on 10 March 2008 supporting the ordinance, justify the action of the Provincial Government of Oriental Mindoro. Likewise, Sablayan in Occidental Mindoro also passed an ordinance on a 25-year mining moratorium on 10 December 2007. In 2009, the province of Occidental Mindoro passed a similar ordinance.

Local ordinances are enacted by the Sanggunian which is composed of members elected by the people. Public hearings are conducted before bills are passed into ordinances/laws. An ordinance is an expression of the will of the people. The 25-year Moratorium on mining is an expression of rejection of the Mindoro Nickel Project and of large-scale mining in the province of Oriental Mindoro and in Sablayan, Occidental Mindoro in the next twenty-five (25) years. These ordinances cover the Mindoro Nickel Project because the project and its components are located in Sablayan Occidental Mindoro and in the municipalities of Victoria, Socorro, and Pola in Oriental Mindoro.

A cease-and-desist order (CDO) was issued by the Provincial Government of Oriental Mindoro against the scoping activity at Villa Cerveza, Victoria, on 20 October 2008 (EIS, Section Two, page

2-61; Annex XV). The CDO was addressed to Mr. Jake Foronda, Project Manager of Alag-ag Mining, Inc. Another CDO was issued by the Provincial Government of Oriental Mindoro on 11 May 2009 against the conduct of public hearing at Pola on 14 May 2009 (EIS, Section Two, page 2-62; Annex XVI). The latter CDO was addressed to Director Julian Amador of the Environmental Management Bureau. The public hearing in Victoria, Oriental Mindoro, scheduled on the following week, was also cancelled.

It should be pointed out that the Mayor of Pola, the Legal Counsel of Intex, and representatives of EMB were present during the scheduled public at Pola indicating the participation of the local chief executive. The CDO was served by the Provincial Legal Officer of Oriental Mindoro together with the Vice Governor of Oriental Mindoro.

“On 27 May 2009, a public consultation was held in Mamburao Municipal Gymnasium in Occidental Mindoro. The project Proponent presented the project Description and the EIS Preparer presented the results of the EIA conducted” (EIS, Section Two, page 2-62). Mamburao is, however, outside the project area of the Mindoro Nickel Project and outside the watershed of the Mag-asawang Tubig River. During its regular session on 25 May 2009, the Sangguniang Panlalawigan of Occidental Mindoro passed and approved Resolution No. 63, Series of 2009 [Annex XVII] “expressing the objection of the Sangguniang Panlalawigan of Occidental Mindoro to the public consultation of the Mindoro Nickel Project scheduled on 27 May 2009 in Mamburao, Occidental Mindoro.

The ordinances on a 25-year mining moratorium and the issuance of CDOs are expressions of disapproval of large-scale mining in the next 25 years. The moratorium and the CDOs were honored by the EIA Review Committee. However, the Proponent and EMB proceeded with the conduct of EIA in utter disregard of lawful orders and existing applicable laws. This complication or confusion or violation can also be the result of “the exclusion and non-consideration of Section 70 of the Philippine Mining Act of 1995 and Section 27 of the Local Government Code of 1991 in the administrative orders from the Offices of the President and the DENR Secretary, and in the supplementing IRR and procedural manuals, not consistent with the specific provision of the Philippine Mining Act of 1995 (RA 7942) and the Local Government Code of 1991 (RA 7160)” mentioned in the immediately preceding section.

“The social acceptability of a project is a result of meaningful public participation, which shall be assessed as part of the Environmental Compliance Certificate (ECC) application, based on concerns related to the project’s environmental impact” (DAO 2003-30 – IRR for the Philippine EIS System, Sec. 3-f). “The review of the EIS by EMB shall be guided by three general criteria : (1) that environmental considerations are integrated into the overall project planning, (2) that the assessment is technically sound and proposed environmental mitigation measures are effective, and (3) that social acceptability is based on informed public participation” (DAO 2003-30 – IRR for the Philippine EIS System, Sec. 1-d). These sections of DAO 2003-30 already set the entry point for the inclusion of the relevant Section 70 of the Philippine Mining Act and Sections 26 & 27 of the Local Government Code to address meaningful consultation & participation, social acceptability, and approval of project or program by the Sanggunian concerned.

Free and meaningful consultation and public participation are not possible in this situation where the national government promotes mining and the local government rejects. Consultation and participation in the EIA process is tantamount to consulting and convincing the Mindorens to violate an existing ordinance in the province. The contradictory positions of the national government on the promotion side of mining and local government units (Province of Oriental Mindoro, Sablayan, Occidental Mindoro, and the Province of Occidental Mindoro) on the moratorium side needs to be

settled. This difference is demonstrated and compounded when some municipalities and barangays issued statements and documents approving and disapproving the Mindoro Nickel Project.

If there is a legal question on the 25-mining moratorium or on the CDOs, then the legality should be settled by a competent authority. Meanwhile, the Mindoro Nickel Project, including the EIA process, should not proceed until and unless the legal improprieties/infirmities/questions are settled. The approval of a project cannot depend on the number of people mobilized nor on the volume of documents and signatures collected for or against the project.

The Team, however, maintains the view that there is no contradiction among relevant laws. What is needed is to harmonize AO No. 42, DAO 2003-30, and the related Procedural Manual and EIA Review Manual with PD 1586, the Local Government Code of 1991, and the Philippine Mining Act of 1995 by incorporating the approval of Sanggunian concerned as required in the Philippine Mining Act of 1995 and the Local Government Code of 1991.

4. The sanggunian concerned which are referred to in Section 70 of the Mining Act and Section 27 of the Local Government Code are the Sanggunian that have jurisdiction over the direct and indirect impact areas and on the affected communities and stakeholders in the Mindoro Nickel Project.

As discussed and shown in the watershed issue module, the Mindoro Nickel Project is located in the watershed of Mag-asawang Tubig River in Mindoro. "The Project, located in Mindoro Island, consists of two (2) approved Mineral Processing Sharing Agreement (MPSA) docketed as MPSA No. 167-2000-IVB and MPSA No. 277-2000-IVB and two (2) MPSA Applications which are designated as AMA No. IVB-97 and AMA No. IVB-101. The Project has five (5) main components, namely (1) the mine; (2) the ore transport by conveyor cable ; (3) the processing plant with energy generation component ; (4) the port facility including other infrastructures; and, (5) the residue storage facility and its appurtenant structures. These mine tenements comprising the Project site have a total land area of 11,216.6066 hectares (ha). MPSA No. 167-2000-IVB and AMA No. IVB-97 are in Barangay Villa Cerveza Victoria, Oriental Mindoro while MPSA No. 277-2000-IVB and AMA No. IVB-101 are in Barangays Pag-asa and San Agustin, Sablayan, Occidental Mindoro" (EIS, Project Fact Sheet, page 2).

"The Direct Impact Areas are those within the tenement area and processing facilities, while the Indirect Impact Areas are those outside the mining tenement but are within the vicinity and areas surrounding the processing facilities" (EIS, Project Fact Sheet, page 3). "Direct Impact Areas (DIAs) are areas directly affected by the mine/tenement, plant, Residue Storage Facility (RSF), and the conveyor cable. Sitios or barangays directly within the operations of these facilities are the direct impact areas" which include the following :

- a. Mine site – located in Oriental and Occidental Mindoro, the identified DIA include the whole MPSA areas. (Barangay Villa Cerveza in Victoria, Oriental Mindoro, and Barangays of Pag-asa & San Agustin in Sablayan, Occidental Mindoro).
- b. Plant site – the DIAs include the areas where the Processing Plant, pier and associated facilities, and the Residue Storage Facility are located. (Barangays of Calima, Campamento, Bakawan, and Buhay na Tubig in Pola, Oriental Mindoro)
- c. Cable conveyor route covers Villa Cerveza, Victoria, Or. Mindoro; Barangays Fortuna, Zone 3, Calocmoy, Catiningan, and Bayuin in Socorro, Or. Mindoro; and Barangays Campamento, Malibago, & Pula in Pola, Or. Mindoro (EIS, Section Two, page 2-43).

The mine sites are located in Victoria, Oriental Mindoro and in Sablayan, Occidental Mindoro covering two provinces. The processing plant, with the pier and associated facilities, and the residue storage facility are to be constructed in Pola, Oriental Mindoro. The conveyor route goes through the municipalities of Victoria, Socorro, and Pola in Oriental Mindoro covering three municipalities. The Project Area covers several barangays in four municipalities of two provinces taken as direct impact areas involving three levels of the local government units. By virtue of the location of the Mindoro Nickel Project and its components, the sanggunian concerned in the direct impact areas include the Sangguniang Barangay of the barangays mentioned above, the Sangguniang Bayan of Victoria, Socorro, and Pola all in Oriental Mindoro, and of Sablayan in Occidental Mindoro, and the two Sangguniang Panlalawigan of the two provinces of the island of Mindoro.

“Indirect Impact Areas (IIAs) – include those barangays located immediately outside the periphery of the DIAs on the tenement site and the stretch of the river outside the Project Area but draining the Project Site which can potentially transport suspended solids and other discharges from the Project Site towards downstream communities” (EIS, Section Two, page 2-43).

- a. For the mine site – the IIAs include Barangays Villa Cerveza (where the communities are located) and Alcate in Victoria, Oriental Mindoro
- b. For the Processing Plant, Pier, and RSF – the IIAs include the communities in Barangays of Campamento, Dayap, Calima, and Buhay na Tubig in Pola, Oriental Mindoro
- c. For the Cable Conveyor Route – include the other sitios in these barangays (EIS, Section Two, page 2-43).

Section 4.2.7 on Marine Biology of the EIS page 4-138 states that “This write-up is a description of the coastal profile of municipalities of Baco, Naujan and San Jose in Oriental Mindoro and Calapan City. The Mag-asawang Tubig River and other tributaries from the mountain which encompass the mine site of the proposed Mindoro Nickel Project drain into the coastal areas of these municipalities.”

Impact prediction using a dispersion model mentioned possible transport of trace materials, dissolved solids, leachate, particulate material, etc, to the coasts of Pola, Pinamalayan, and Gloria, if the content of the Residue Storage Facility spills to the coast (EIS, Section Four, page 4-118).

The delineation of the impact areas and the identification of affected communities and stakeholders did not consider the downstream watershed of the Mag-asawang Tubig River System and the flood-prone areas in Naujan and City of Calapan. The direct impact areas include only the sitios and barangays located within the operations of mine site and component facilities (processing plant, pier, RSF, conveyor route), and the indirect impact areas considered only “those barangays located immediately outside the periphery of the DIAs on the tenement site and the stretch of the river outside the Project area but draining the Project site which can potentially transport suspended solids and other discharges from the Project site towards downstream communities”. While the EIS report mentioned of baseline information and impact assessment and mitigation, the municipalities of Baco, Naujan, Pinamalayan, Gloria, and the City of Calapan were not considered as impact areas, which should involve the said municipalities and city in critical consultation and require approval of the Sanggunian concerned. The coastal areas and municipal waters of these municipalities and city are integral parts of the Verde Island Passage considered to be the center of the center of marine

biodiversity containing the highest number of marine shore fish per unit area in the whole world (Carpenter and Springer, 2005).

Immediately downstream of the confluence of Ibulo and Aglubang Rivers, also referred to as the Muyod area, where the two rivers join to form Mag-asawang Tubig River, there is a natural waterway flowing northeastwardly that diverts water to another major river, the Bucayao River. Likewise, about six kilometers downstream of the junction of Ibulo and Aglubang Rivers, Panggalaan River branches out northwardly from Mag-asawang Tubig River and eventually also joins Bucayao River. The Bucayao and Mag-asawang Tubig River System provides irrigation to thousands of hectares in Naujan and the City of Calapan. Floodwater from these two major rivers causes flooding and heavy damages to agriculture, infrastructures, properties and loss of lives in the low-lying areas of Naujan and the City of Calapan.

Seventy percent of the Mindorenos is engaged in agriculture and fisheries. Calapan, Naujan and Victoria produce about 50 percent of the total rice production in Oriental Mindoro (citation). Products from agriculture and fisheries are the main contribution of Mindoro in food sufficiency and the national economy.

Delineation of impact areas as described above and the identification & consultation of affected communities and stakeholders did not consider the rice growing-areas in the flood-prone municipality of Naujan and capital City of Calapan. The Sanggunian concerned include those of the affected barangays in Naujan and Calapan and their respective municipal/city councils.

The sanggunian of the barangays, municipalities/city, and the two provinces where the project and its components area located, that are within the flood-prone areas of the complex watersheds of Bucayao & Mag-asawang Tubig Rivers, and with jurisdiction over the affected communities and stakeholders, are the sanggunian concerned that are referred to in the Mining Act and in the Local Government Code.

Among the above-mentioned sanggunian concerned, the following have enacted 25-year moratorium ordinances on large-scale mining in their respective jurisdictions:

- a. Province of Oriental Mindoro through Provincial Ordinance 001-2002 enacted by the Sangguniang Panlalawigan of Oriental Mindoro on 28 January 2002 and was signed by Governor Bartolome L. Marasigan, Sr., on 01 March 2002, declaring a twenty-five year moratorium on all forms of mining in the province of Oriental Mindoro and provides exceptions and penalties.
- b. Municipality of Sablayan, Occidental Mindoro through General Ordinance 2007-GO03B, enacted by the Sangguniang Bayan and signed by Mayor Godofredo B. Mintu on 10 December 2007, declaring a 25-year moratorium on large-scale mining activities in the Municipality of Sablayan and prescribing exceptions and penalties thereof.
- c. Province of Occidental Mindoro through *Provincial Ordinance 34-09 enacted by the Sangguninang Panlalawigan of Occidental Mindoro on 23 November 2009 and was signed by Governor Josephine Y. Ramirez Sato on 27 November 2009, declaring a twenty-five (25) year moratorium on large-scale mining, its kinds and forms in the province of Occidental Mindoro, defining exceptions and imposing penalties for violations thereof.*

II. RECOMMENDATIONS

A. SUMMARY OF FINDINGS

1. Public consultation and prior approval by the sanggunian concerned, as required under Sections 26 & 27 of the Local Government Code of 1991, are applicable and supposed to be included in the procedures to be followed during the environmental impact assessment as stipulated in Section 70 of the Philippine Mining Act of 1995.
2. While the Mining Act of 1995 authorizes the government to enter into a Mineral Production Sharing Agreement (MPSA) or a Financial or Technical Assistance Agreement (FTAA) with a contractor, the Local Government Code of 1991 and the Mining Act of 1995 require prior consultation and approval by the sanggunian concerned before a mining project is implemented on the ground.
3. Provincial/municipal ordinances on 25-year moratorium on large-scale mining in Mindoro and issuance of cease-and-desist orders against scoping and public consultation/ hearing are clear expression and manifestation of rejection of mining in Mindoro in the next 25-years.
4. With the national government on the promotion side of the mining industry and the local government on the moratorium side, the lingering stark difference in development priorities has demonstrated inability of the government to put its acts together at the expense of the Mindorenos and jeopardizes the policy of ensuring “a rational balance between socio-economic development and environmental protection for the benefit of present and future generations” (PD 1586, Section 1; DAO 2003-30, Section 1) especially in a project where the socio-economic undertaking, like mining, is a negation of natural life support ecosystem and could hardly be reconciled with the requirements of environmental quality.
5. Pushing through with mining in Mindoro is leading to division and civil disturbance as exemplified by the aborted public hearing in Pola, Oriental Mindoro and in the consultation in Mamburao, Occidental Mindoro where a big number of pro-mining attendees was faced with an equally big number of anti-mining attendees.
6. Administrative Order No. 42, issued to rationalize the implementation of the Philippine Environmental Impact Statement system and for other purposes, and the DENR Administrative Order No. 2003-30, which is the Implementing Rules and Regulations for the Philippine Environmental Impact Statement System, and the supplemental Procedural Manual of 2007 and EIA Review Manual did not incorporate the provisions of Section 70 of the Philippine Mining Act of 1995 and of Section 27 of the Local Government Code of 1991, and therefore, are not consistent with the said provisions of existing laws.
7. While public consultation and public participation are prerequisites in the conduct of the EIA as presently implemented, there is no option nor mechanism for the local community to reject the project or program being presented since the EIS requires only the proof of consultation supported by signatures in attendance sheets and nothing is mentioned on consent and approval, among other requirements. This easily gives the impression that the EIA is merely a tool to justify the project or program and the EIS merely a requirement to be attached to the application for ECC.
8. The EIA Review Committee recognized the Provincial Ordinance on the 25-year mining moratorium and the cease-and-desist orders issued by the Provincial Government of Oriental Mindoro. However, the DENR-EMB and the Proponent conducted the EIA in utter disregard of the moratorium ordinances and the CDOs.

9. The Environmental Impact Statement (EIS) Report did not consider the municipality of Naujan and the city of Calapan as impact areas which are located in the downstream watershed area of the complex river system of Mag-asawang Tubig and Bucayao. Likewise, Pinamalayan and Gloria were not included as impact areas during the conduct of the EIA when their coasts and municipal waters can be affected by the dissolved substances and transported sediments in case of spill from the Residue Storage Facility to be located in Pola.
10. EMB, as a line bureau under the DENR, did not seriously consider nor decisively act on relevant issues to “ensure a rational balance between socio-economic development and environmental protection for the benefit of present and future generations”. The issues include the location of the Mindoro Nickel Project in a watershed, the impending irreversible destruction of the watershed serving irrigated areas and a bustling population downstream, the existence of ordinances on 25-year mining moratorium on large-scale mining, clear enforcement of the ordinance through the issuance of CDOs by the provincial government of Oriental Mindoro, reliance of Mindoro on water for agriculture, comparative advantageous contribution of Mindoro to the economy through agriculture and fisheries, strong opposition from the Mindoreños, Being the bureau directly handling the EIA, EMB has allowed EIA to proceed unmindful of a provincial ordinance, cease-and-desist orders, and other highly relevant issues mentioned above while promoting the mining policy/program/industry.

B. RECOMMENDATIONS

1. Cancel ECC-CO-0904-007-2721 of the Mindoro Nickel Project because of lack of social acceptability as expressed in the moratorium ordinances & cease-and-desist orders and because the EIA process is not consistent with Section 70 of the Mining Act of 1995 and Section 27 of the Local Government Code of 1991 which require prior consultation and approval by the sanggunian concerned.
2. Revoke the MPSA of the Mindoro Nickel Project because the project is located in the critical watershed area of Mag-asawang Tubig River and the irreversible destruction of the watershed and the loss of ninety-nine percent of ore as mining wastes are not consistent with the policy of ensuring “a rational balance between socio-economic development and environmental protection” for the benefit of present and future generations (PD 1586, Section 1; DAO 2003-30, Section 1).
3. Rationalize and harmonize application and enforcement of existing laws by incorporating Section 70 of the Mining Act of 1995 and Section 27 of the Local Government Code of 1991 in the Administrative Order No. 42, the DENR Administrative Order No. 2003-30, and in the supplemental Procedural Manual of 2007 and EIA Review Manual.
4. Under existing laws and with 25-year mining moratorium ordinances in place, the rationalized and harmonized position is : while the national government can enter into an agreement or contract (MPSA, FTAA, etc), mining operations proceed only in areas where the LGU allows by way of the prior approval by the sanggunian concerned as provided for in Section 70 of the Philippine Mining Act of 1995 and Section 27 of the Local Government Code of 1991.
5. To put in place a mechanism for approval/ rejection of a project or program, on the part of the local communities that maybe affected, in the administrative orders and supporting procedural manuals covering the EIA both for those that require an ECC and those that are not covered by the ECC requirement in the spirit of free and meaningful public consultation and public participation.

3 EIARC RECOMMENDATION

I. FACTS

The Mindoro Nickel Project is an environmentally critical project in an environmentally critical area (Proclamation 2146). Therefore, the conduct of an EIA (Environmental Impact Assessment), by virtue of Presidential Decree 1586, is a requirement for the project.

With the conduct of the EIA, the EIS (Environmental Compliance Certificate) Report is prepared. This report is reviewed by the EIA Review Committee (EIARC), composed of “independent technical experts and professionals of known probity from various fields organized by the EMB to evaluate the EIS and other related documents and to make appropriate recommendations regarding the issuance or non-issuance of an ECC” (DAO 2003-30 – IRR for the Philippine EIS System, Sec. 3-j). The EIARC “is commissioned by EMB to do the independent review of the EIA Report” (MC 2007-001 on EIA Review Manual, 2007).

II. FINDINGS

The EIARC, on a vote of 4:3, recommended the denial of the ECC due to the following reasons [EIA Review Committee Report, Rollon, 18 November 2009:

- a. lack of baseline information particularly on the terrestrial flora and fauna of the conveyor route, the processing plant, the Residue Storage Facility, and the township, considering that Mindoro Island is a unique biogeographic region;
- b. poor delineation of impact areas and supporting discussion on hydrology is not thorough; and,
- c. “overall, the integration among modules has been very poor, making inference of possible major impacts vague and extremely difficult to evaluate.”

Reasons a and c are inadequacies of the EIS Report itself. However, reason letter b is directly related to the issue of the watershed which is an important consideration in identifying legitimate stakeholders for conduct of public consultation/hearing, in collating and analyzing the concerns, and in the formulation of the mitigating measures.

Considering that the Mindoro Nickel Project is an environmentally critical project in an environmentally critical watershed area thus requiring an EIA, it is a big question why EMB-DENR issued the ECC setting aside the recommendation of EMB-organized EIA Review Committee which is composed of experts in the fields of environmental science, environmental protection, and environmental laws. DAO 2003-30 emphasizes that the EIARC is a recommendatory body; however, on the event of reversal of the EIARC decision, justifications should be promptly provided. The Investigation Team did not find any document justifying the reversal or setting aside of the decision and recommendation of the EIA Review Committee.

III. RECOMMENDATIONS

1. Cancel ECC-CO-.0904-007-2721 as recommended by the EIARC because the EIS did not meet the basic information needed for a sound decision and because of poor delineation of impact areas.

2. Revise the issuances (DAO 2003-30, MC 2007-001, MC 2007-08, etc.) to conform to National Laws (particularly Section 70 of RA 7942 and Section 70 of RA 7160).
3. Provide mechanism for a more transparent review of the EIS.

4 PROCEDURES FOLLOWED IN THE CONDUCT OF THE EIA PROCESS

Preceding issues under probe dwell on facts that are contained in the Environmental Impact Statement (EIS) report. However, equally important to review is the process that was followed by DENR on the issuance of an Environmental Compliance Certificate (ECC) for the Mindoro Nickel Project (MNP). This investigation issue on procedures followed came into light because the ECC to the Mindoro Nickel Project was approved despite the full knowledge of the EMB, the Proponent, and the EIA Review Committee (EIARC) that there are existing Moratoria on large-scale mining in Mindoro, cease-and-desist orders were issued, big rallies against mining in Mindoro were conducted, and multi-sectoral opposition letters were sent to DENR. In addition, the EIARC recommended the denial of the ECC.

I. FACTS

The EIA process is a planning tool to provide the project proponent a grasp of the technical and social complexity of a proposed project (DAO 2003-30). Central to the EIA process is the Environmental Impact Statement (EIS) which provides the detailed account of environmental impacts and the mitigating measures that should be undertaken by the proponent in the event that the project is implemented. The MNP is classified as a Category A Project being an environmentally critical projects (ECP) within environmentally critical area (ECA), and is, thus required by DAO 2003-30 to undergo full EIA process and to submit the EIS document. The EIA process follows the steps detailed by DAO 2003-30:

- a. Preliminary Assessment
- b. Scoping
- c. EIA Study

The EIA study is essential for the proponent to identify potential problems related to the project. As the proponent decides to apply for an ECC, the following steps are taken:

- i. Scoping – The first level scoping is usually called technical scoping which involve the proponent, EIS preparers, the Case Handlers (EMB staff) and the identified members of the EIA Review Committee (EIARC). This gives an initial listing of the possible issues that should be addressed in the impact assessment.
- ii. Selection of the EIARC Committee Members - This step is usually done hand in hand with scoping as technical capacity of the EIARC members are further evaluated relative to the identified issues during the public scoping.
- iii. Conduct of site scoping by the EIARC members - This is the second level scoping which aims to gather public sentiments and valid technical and social issues related to the project. Together with the output of the first level scoping, the latitude of the EIA study is finalized from the output of the site scoping.
- iv. Post-scoping activities – submission of scoping documents to finalize the scope of the EIS

- d. Review – the review is a 2-step process: 1. Procedural review by EMB to determine whether the EIA document is complete upon which fees would be paid for step 2 to commence; 2. Substantive review by the EIARC. Part of the substantive review by the EIARC is the decision to have Public Hearing in cases stipulated by DAO 2003-30 Sec. 4.2.4.
- e. Decision making – Based on the substantive review of the EIARC, a report shall be submitted to the endorsing office (EMB) who shall prepare the recommendation report to the deciding office (Office of the Secretary). DAO 2003-30 states that in case the recommendation report reverses the decision of the EIARC, justification should be provided. On the same manner, Sec. 9.2.C. states “the deciding authority must cite strong and compelling reasons, bases and/or justifications whenever reversing or overturning the recommendations of the review parties”.

Together with the EIARC, a Review Process Report should also be prepared by the Case Handler. In the event that the case handler disagrees with the EIARC findings, a framework and/or supporting documents shall be provided to justify such reservations (DAO 2003-30 Manual).

f. Monitoring

The investigation on whether proper and lawful procedures were followed on the issuance of ECC would dwell with steps e-f of the EIA process.

II. FINDINGS

A. EIA Study

i. Scoping/Site Scoping

The EIS document included the scoping matrix that bears the issues identified both during the first and second level scoping. This indicates accomplishment of the procedure as indicated by DAO 2003-30. Minutes of the Scoping Session, however, showed that the Site Scoping was declared FAILED. The declaration by the EIARC Chairman Dr. Edgardo David was due to a Cease-and-Desist Order served before the mandated program of activities (based on DAO 2003-30) was concluded.

The failure of the Site Scoping process threw the EIARC into a legal confrontation with the Local Government. As a security mechanism, members of the EIARC asked the project proponent to present documents that will show that subsequent procedures to be done locally, such as the Public Hearing, are allowed by the LGU. However, despite the cognizance of the EIARC that the scoping failed, EMB still convened the members for the review.

ii. Selection of the EIARC Members

The final composition of the EIARC is determined after the full scope of the EIS had been drawn. For the MNP- EIS, the following members were included:

- Dr. Edgardo David – in charge of the review on Geology and Geomorphology
- Dr. Rene Rollon – in charge of the review on Marine Ecosystem
- Dr. Mary Ann Botengan – in charge of the review on Socio-Economic Module
- Dr. Lagrario- in charge of the review on Terrestrial Ecosystem
- Engr. Glen Noble – in charge of the review on engineering
- Engr. Tidalgo – in charge of the review on Mine Safety
- Engr. Uy – in charge of the review on Risk Assessment

The issue on flooding raised during the failed scoping process revised the scope of the EIS by including watershed as a technical issue to be reviewed. Team composition, however, showed there was no expert in watershed [Annex XVIII & IXX] but was tackled by Dr. Rollon by requesting sediment transport model to be included in the EIS (see full discussion on watershed issue and how it was tackled by the team on Section 1 of the report). Dr. David later on begged off to be included in the EIARC because of a prior commitment, whenceforth Dr. Rollon took over the Chairmanship, thus reducing the Team members to six (6). However, during the 3rd Team meeting, Atty. Osorio moved in as a member supposedly to tackle the Legal issues, considered *a surprising move* since the Chair wasn't even informed of an additional member of the EIARC. During the final meeting of the EIARC, Atty. Osorio voted in favor of the issuance of the ECC.

B. Review

i. Public consultation and public hearing

Cease-and-desist orders (CDO) were issued by the Provincial Government of Oriental Mindoro on a) 20 October 2008 against the Scoping Activity in Villa Cerveza, Municipality of Victoria, of Alag-ag Mining Inc. addressed to Project Manager Jake Foronda [Annex XV]; and b) on 11 May 2009 against the public hearings scheduled at the Municipalities of Pola and Victoria, to be conducted by the Environmental Management Bureau addressed to Director Julian D. Amador [Annex XVI]. The CDO in Pola was served by Vice Governor Estela Aceron and Provincial Legal Officer Loribelle Tanyag of Oriental Mindoro.

DAO 2003-30 requires prior publication of notice for public hearing. Formal notices of Public Hearings were posted in Pola, Oriental Mindoro and Victoria, Oriental Mindoro. A large public demonstration, supporting the serving of the CDO, also caused the Public Hearing in Pola on 14 May 2009 to be aborted, but only after a tense and long discussion between the Vice Governor and the Provincial Legal Officer of Oriental Mindoro on one side and the Mayor of Pola, Legal Counsel of Intex, and EMB Representative on the other side. The Public Hearing in Victoria, scheduled on the following week, was also postponed.

To comply with the requirement of DAO 2003-30, EMB passed off a consultation held in Mamburao on 27 May 2009 as the required public hearing for the project (EIS, Section Two, page 2-62); and interview with Dr. Rollon). Mamburao is not a stakeholder as far as the current EIS is concerned and the requirement for publication was not met. As mentioned in the discussion on Social Acceptability, the Sangguniang Panlalawigan of Occidental Mindoro passed and approved Resolution No. 63, Series of 2009 during its regular session on 25 May 2009, "expressing the objection of the Sangguniang Panlalawigan of Occidental Mindoro to the public consultation of the Mindoro Nickel Project scheduled on 27 May 2009 in Mamburao, Occidental Mindoro.

ii. EIS Review

While there are legal questions to the validity of the EIS document because of the failed site scoping, invalid public hearing, issuance of a CDO, and the recognition of existing local moratoria against mining, the EIARC 's mandate is to do a substantive technical review of the EIS. Review thus proceeded on the data provided by the proponent outside the context of all legal issues.

The technical output of the review was concisely presented by the EIARC Chairman's Report [Annex XXV]:

- a. No baseline information for four of the six components of the project (conveyor belt, processing plant, residue storage facility/tailings dam, and housing/town site);
- b. Poor delineation of impact areas;
- c. Poor integration of modules making technical evaluation difficult.

As a result, the EIARC denied issuance of ECC to MNP.

iii. Decision making

Then DENR Secretary Lito Atienza reversed the EIARC findings and issued the ECC to MNP on 14 October 2009, 21 days after the last meeting of the EIARC. As stipulated by DAO 2003-30, justification on the reversal of the EIARC findings should be provided both by the recommending office and the approving office and by the Case Handler/s in case they disagree. The ECC signed by then Sec. Atienza and recommended by then EMB Chief Julian Amador, provided no justifications for the reversal of the EIARC recommendation to deny the issuance the ECC.

Efforts to clarify with EMB regarding the reversal of the EIARC decision/recommendation did not materialize because the offices of the EMB Director Cuna and of EIAMD Head Engr. Siador and Atty. Osorio did not find time for an interview with the Team despite repeated visits and phone calls to the EMB offices by the Chair of the Investigation Team.

To summarize:

- a. There was failure of scoping process and possible abuse of discretion on the part of EMB for convening the EIARC despite the questionable consultation meeting in Villa Cerveza.
- b. Rules and method on the identification of members of the EIARC are loose which can determine the outcome of the EIARC decision and recommendation.
- c. The recommendation of the EIA Review Committee was overturned without justification.
- d. While the EIARC recognized the moratorium ordinance, EMB-DENR did not take into account the 25-year moratorium on large-scale mining, cease-and-desist orders issued by the Provincial Government of Oriental Mindoro, and strong opposition from the civil society during the EIA process, and instead allow the opposing priorities in development and contradictory positions between the national and local government to linger at the expense of the Mindorens and allowing the proponent to take a huge risk, both financially and of the project being rejected by the local population. DENR even went to the extent of issuing an ECC despite a recommendation of denial from the EIA Review Committee.
- e. Following a procedural manual does not exempt EMB or the Proponent from abiding by the provisions of other existing laws and ordinances.
- f. Pushing through with mining in Mindoro is leading to division and civil disturbance as exemplified by the aborted public hearing in Pola, Oriental Mindoro and in the consultation in Mamburao, Occidental Mindoro where a big number of pro-mining attendees was faced with an equally big number of anti-mining attendees.

III. RECOMMENDATIONS

The Mindoro Nickel Project is promoted as one of the largest nickel deposit find in the world. As such, its world class scale should be paralleled with international standard on environmental compliance. The serious legal questions on the issued ECC for the MNP arose from improper EIA process followed born out of a manipulative effort to gather public support in a project area with an existing moratorium ordinance and to fast-track compliance and submission of the Proponent of the requirements of the ECC application. The strong opposition to the project, on the other hand, is born of the local knowledge of the environment and local support to the enforcement of the existing moratorium ordinance that the EIS failed to fully address. Both the legal deficiency and technical questions of the ECC mock the EIA system which is the very foundation of environmental protection that should be guarded by the DENR. The following are recommended:

1. Cancel ECC-CO-0904-007-2721 of the Mindoro Nickel Project given the legal and technical questions on the process followed.
2. Provide mechanism for a more transparent review of the EIS.

5 THE PROPOSED MINDORO NICKEL PROJECT IS WITHIN A WATERSHED

During the protest action and hunger strike in front of the DENR Office along Visayas Avenue in November 2009, former DENR Secretary Lito Atienza initially suspended ECC-CO-0904-007-2721 with the instruction that the issue on the location of the project area within a watershed be investigated [Annex XXVI]. The directive indicates that EMB-DENR had not seriously and sufficiently considered and emphasized the significance and implication of the watershed in the EIA process and in the issuance of the ECC since DENR is not yet in a position to tell whether the Mindoro Nickel Project is within or outside the watershed.

A few days thereafter, DENR Special Order No. 2009-921 was signed by former DENR Secretary Lito Atienza on 27 November 2009 which temporarily revoked ECC-CO-0904-007-2721 issued to Intex Resources for the Nickel Mining Project in the Provinces of Oriental and Occidental Mindoro “pending completion of a thorough and impartial investigation that will validate all the allegations”. The same DENR Special Order stipulates the creation of an Investigation Team “to be composed of independent experts chosen by the Provincial Governments of Oriental and Occidental Mindoro and the DENR”. The location of the Mining Nickel Project within a watershed is the first issue to be probed.

The extent of the watershed area of Mag-asawang Tubig River significantly directs the EIA process specifically the description of the project area, determination of affected communities and stakeholders, consultation and public hearing, and formulation of mitigation measures. (Please refer to discussion on watershed and its functional role under section on FACTS below). Consequently, the watershed issue is an important consideration in the different components of the EIS Report and in the eventual review of the EIS. The watershed issue likewise overlaps with the other issues to be probed in this investigation specifically the FPIC process, social acceptability, and the procedures followed in the issuance of the ECC.

I. FACTS

“Watershed is a land area drained by a stream or fixed body of water and its tributaries having a common outlet for surface run-off” (Presidential Decree 705, Section 3-m).

Critical watershed is a drainage area of a river system supporting existing and proposed hydro-electric power and irrigation works needing immediate rehabilitation as it is being subjected to a fast denudation causing accelerated erosion and destructive floods. It is closed from logging until it is fully rehabilitated" (Presidential Decree 705, Section 3-n).

A watershed is a topographic and geographic feature which is defined and delineated by a natural boundary composed of connected ridges surrounding an area. This area, circumscribed by the boundary, is called the watershed area. The watershed is drained by a river; and every river has a watershed which contributes water to the river flow or river discharge. Each watershed is delineated from another watershed by the natural boundary, also called the watershed divide. The watershed area is also called catchment area, or a drainage area. A river basin connotes an area composed of several sub-watersheds drained by tributaries emptying their discharges into the main river.

The watershed includes the upland area upstream of the river, or the mountain that we see with the forests and grasslands on the top soil, or ground surface as it is normally called, as well as the lowland watershed area at the downstream portion of the river. As integral part of the watershed, both the mountain features and the downstream areas include the subsurface layers, the groundwater aquifers, and the bedrock. The ground surface, more particularly the top soil, serves as the medium for the growth of trees and plants. This ground surface in the upland, or the mountain itself, is also where people live, the home of upland dwellers specifically our indigenous brothers and sisters.

The top soil and the subsurface layers below the ground are composed of tiny particles of clay, silt, sand, pebbles, and rocks of different sizes and structures. In between these soil materials and rocks are spaces which can contain air and/or water when rain penetrates the ground surface. When it rains, the mountain, or the watershed, absorbs as much rain that penetrates the ground. The rain that penetrates the ground contributes to the subsurface flow into the groundwater. Some evaporate, and others are absorbed and transpired by the plants and trees. Rain that does not infiltrate through the soil surface becomes the surface runoff and ends up as river flow or river discharge.

When there is no rainfall, especially during the dry season, the river discharge is basically composed of the groundwater that has been absorbed and stored in the spaces between the soil particles and rocks in the subsurface layers. This dry season base flow of the river is increased by the additional surface runoff from the watershed during a rainfall event following the hydraulic laws and according to the hydrologic cycle. The watershed area serves as a big storage for water in the spaces between soil particles and rocks underneath the ground surface.

As an ecosystem, the watershed possesses unique hydrologic and biological features to sustain life : it stores water during rainfall events and slowly releases the stored water during the dry months; it serves as medium for plant growth; it serves as habitat for wildlife; and it provides a place to live and to farm for upland dwellers. The watershed, an ecosystem in itself, is a natural life support ecosystem.

II. FINDINGS

1. Although the term "watershed" appears to be deliberately avoided in the EIS, the essence of the term echoes throughout the document:
 - a. *"The Project is drained by Mag-asawang Tubig River and three (3) river tributaries, the Aglubang, Ibolo and Kisluyan Rivers. The headwaters of Mag-asawang River originate in Mount Buraboy and Mount Pagong, in Occidental Mindoro"* (EIS, Project Fact Sheet, September 2009, page 2).

- b. *“The discharge of eroded sediments from the mining sites into Aglubang and Kisluyan and the adjacent coastal areas may affect aquatic and marine organisms including fishes if not properly handled. This is due to the reduced underwater light penetration “ (EIS, Project Fact Sheet, September 2009, page 3).*
 - c. *“The mine site is drained by Mag-asawang Tubig River, one of the major rivers of Oriental Mindoro, and its river tributaries” (EIS, Executive Summary, September 2009, page 8)*
2. The geographic coordinates specify the exact location of the mining area, the maps spatially indicate the project area showing also the Mag-asawang Tubig River and its tributaries, and the project description clearly states that the Project Area is located within the watershed of Mag-asawang Tubig River.

Please refer to the following sections in the EIS, September 2009 :

- (a) SECTION TWO - Description of the Project’s EIA Process, pages 2-22 & 2-23 which specify the geographic coordinates ;
- (b) SECTION TWO - Description of the Project’s EIA Process, Figures 2-4, 2-5, & 2-6, which show the development site, location map, and mine tenements of the Mindoro Nickel Project ;
- (c) SECTION THREE - Project Description, pages 3-3 & 3-4, which likewise, specify the geographic coordinates of the mining tenements ; and,
- (d) SECTION FOUR - Baseline Conditions, Impact Assessment & Mitigation, Figure 4-27 on page 4-75, which show the tenement area and headwaters of Aglubang River.

III. DISCUSSION OF RELATED ISSUES

1. The watershed of Mag-asawang Tubig River, where the proposed MNP is located, is an environmentally critical area based on Proclamation 2146. It is also a critical watershed based on PD 705.

That the proposed MNP area is located within a watershed could not be debated technically. It is located in an area drained by two rivers forming one of the largest rivers in Oriental Mindoro, the Mag-asawang Tubig River. What the EIS failed to consider and discuss is the extent of the Mag-asawang Tubig River and its watershed, the role of the river in the livelihood of Mindoreños and agricultural contribution of Oriental Mindoro in the national economy especially from its irrigated rice areas.

The watershed of Mag-asawang Tubig River is an environmentally critical area based on the features described in Proclamation 2146 : it is a recharge area that store and release water as part of the hydrologic cycle; it has critical slopes; it is traditionally occupied by cultural communities or tribes (the Mangyans); the mouth of Mag-asawang Tubig River, where Ibulo and Aglubang Rivers meet, is located right at the intersection of Central Mindoro Fault and Aglubang Fault; and, part of the watershed constitutes the habitat for endangered or threatened species of indigenous Philippine Wildlife like tamaraw (based on features in Proclamation 2146, signed on 14 December 1981).

Mag-asawang Tubig flows through the towns of Victoria and Naujan before it discharges to the sea. Panggalaan River branches from Mag-asawang Tubig and joins Bucayao River, another major river in Oriental Mindoro, which flows through Calapan, and discharges to Calapan Bay. Both major rivers connect to Tablas Strait and river discharges can affect the Verde Island Passage, “now more popularly

known as the center of the center of marine biodiversity – a place with the greatest concentration of marine species in the Indo-Malay-Philippine Archipelago”.

“Critical watershed is a drainage area of a river system supporting existing and proposed hydro-electric power and irrigation works needing immediate rehabilitation as it is being subjected to a fast denudation causing accelerated erosion and destructive floods. It is closed from logging until it is fully rehabilitated” (Presidential Decree 705, Section 3-n). This definition clearly demonstrates the following points : the role of a watershed as a natural life support ecosystem; denudation causes erosion and floods; and logging or cutting of trees negates the important role of a watershed a natural life support ecosystem and results to erosion and floods.

There are about 47,300 hectares of rice areas in the towns of Victoria and Naujan and city of Calapan at the downstream of the Mag-asawang Tubig River producing about 188,000 metric tons per year. About 37,500 hectares are irrigated. Victoria, Naujan, and Calapan contribute about 52 % in rice areas and in annual rice production of the province of Oriental Mindoro (Briefing Kit 2005, PPDO, Provincial Government of Oriental Mindoro), These rice areas are located in the flood plains of Mag-asawang Tubig and Bucayao Rivers. Two national irrigation systems diverting water from the Mag-asawang Tubig and Bucayao Rivers, with dams respectively located at Pinagsabangan and Mulawin, Naujan, have a total combined service area of 8,000 hectares (Annual Report 2011, NIA-Calapan, MIMARO-IMO Office). Actual irrigation service areas from the two NIA systems are now reduced to about 57 % and to as low as 18 % in one system because of siltation and changing river course due to increased siltation and heavier runoff. The watershed of Mag-asawang Tubig River is an environmentally critical area based on Proclamation 2146 and is a critical watershed as defined by PD 705.

The critical status and importance of the Mag-Asawang Tubig watershed, as classified under Proclamation 2146, could also be gleaned from development projects pushed by the government:

- a. Philippines for the Low-Income Upland Communities Project (LIUCP) funded by the Asian Development Bank (ADB) (\$ 32.0 million, 1989-2003)
- b. The Flood Control Master Plan for Bucayao-Mag-asawang Tubig River System in Oriental Mindoro is an LGU-initiated project utilizing a grant of NOK 3.81 million (\$ 500,000, 2007-2009).

On 16 July 2001, DENR Secretary Alvarez issued a Notice of Cancellation/ Termination wherein he informed Aglubang Mining Corporation that MPSA No. 167-2000-IV had been cancelled on the stated ground that the area it covers falls within an important watershed area requiring the protection of the DENR among other reasons (RESOLUTION of O.P. No. 01-H-058 signed by Manuel C. Domingo, Presidential Assistant, on 10 March 2004, with the authority of the President).

While the MPSA was reinstated later because of the lack of due process, that the Mindoro Nickel Project is located in an important watershed and, therefore, requires protection is, not negated. It remains to be a valid reason for the cancellation/ revocation of the MPSA. The critical role and importance of the Mag-asawang Tubig River watershed in the hydrologic cycle and in the hydrologic regime of the river in the areas of Victoria, Naujan, Baco, and City of Calapan, will always be a reason for the protection of both the river and its watershed.

When a natural formation or a natural geologic feature like a watershed is removed or destroyed, specifically when the mountain itself which constitutes the upper watershed area, is removed and destroyed, then it is an irreversible disturbance and destruction. There is no way to repair nor restore a mined mountain or a damaged watershed after the subsurface layers are dug and the ores are processed.

Man can plant a tree and build a house; but he can never ever plant a mountain nor build a watershed. Man should not destroy something that he cannot build or does not know to build. Mountains, the upper watershed areas, are naturally formed; they are part of our natural resources.

Below is an excerpt from the letter of Chief Seattle, Chief of Dwamish upon surrendering his land to Governor Isaac Steven in 1854 :

“This we know, the earth does not belong to man, man belongs to earth.

This we know, all things are connected, like the blood which unites one family.

All things are connected.

Whatever befalls the earth, befalls the sons of the earth.

Man did not weave the web of life, he is merely a strand in it.

Whatever he does to the web he does to himself.”

The earth is the mountain itself, the upland watershed where the indigenous peoples reside; the connection is the hydrologic cycle; the blood is the water that flows through the rivers; the web of life is the ecological system where man belongs.

Our indigenous brothers and sisters, the Indians and the Mangyans, have close affinity with and reliance on land and nature. They would seem to know better. Unless the present generation thinks and moves and acts according to the indigenous tenets that “the earth does not belong to man, man belongs to earth” and “if men spit upon the ground, they spit upon themselves”, then man is on his way to self-destruction. *Ayon sa sapot ng buhay : “Kung anong sinasapit ng Inang Kalikasan, siya ring sasapitin ng kanyang mga anak”.*

2. The Mag-asawang Tubig River Watershed is a natural geographic feature and does not need to be “proclaimed” as a watershed to be protected.

EMB-DENR and the Proponent had been reasoning out during public forums and Information and Education Campaigns (IEC) that Mag-asawang Tubig Watershed is not a proclaimed watershed and, is therefore, open to mining. To quote Section 19 of the Philippine Mining Act of 1995:

“Mineral agreement or financial or technical assistance agreement applications shall not be allowed:

- (a) In military and other government reservations, except upon prior written clearance by the government agency concerned;*
- (b) Near or under public or private buildings, cemeteries, archeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works including plantations or valuable crops, except upon written consent of the government agency or private entity concerned;*
- (c) In areas covered by valid and existing mining rights;*
- (d) In areas expressly prohibited by law;*
- (e) In areas covered by small-scale miners as defined by law unless with prior consent of the small-scale miners, in which case a royalty payment upon the utilization of minerals shall be agreed upon by the parties, said royalty forming a trust fund for the socioeconomic development of the community concerned; and*

- (f) *Old growth or virgin forests, proclaimed watershed forest reserves (highlighted for emphasis), wilderness area, mangrove forests, mossy forests, national parks, provincial/municipal forests, parks, greenbelts, game refuge and bird sanctuaries as defined by law and in areas expressly prohibited under the National Integrated Protected Area System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws.*"

It should be pointed out that what the Mining Act of 1995 specifies is "proclaimed watershed forest reserves" and not simply "proclaimed watershed". What needs to be proclaimed are the forest reserves in a watershed, where the word watershed is a descriptor of the main subject which is forest reserves. The Mag-asawang Tubig watershed is a watershed and does not need to be proclaimed as one because a watershed is a hydrologic and geographic feature that naturally performs its functional role according to hydraulic laws and the hydrologic cycle, with or without a proclamation.

NIPAS (National Protected Areas System) Act of 1992 (R.A. No. 7586) provides for the "establishment and management of national integrated protected areas system, defining its scope and coverage, and for other purposes". Under Section 2 of the Act, Declaration of Policy, the main purposes of the NIPAS Act are for **planning** and **effective administration** of the areas so "that the use and enjoyment of the protected areas must be consistent with the principles of biological biodiversity and sustainable development".

Section 2 of the NIPAS Act, Declaration of Policy, also states that "cognizant of the profound impact of man's activities on all components of the natural environment particularly the effect of increasing population, resources exploitation and industrial advancement and recognizing the critical importance of protecting and maintaining the natural biological and physical diversities of the environment notably on areas with biologically unique features to sustain human life and development, as well as plant and animal life, ...".

Basic in the Declaration of Policy of NIPAS Act is the recognition of "the critical importance of **protecting and maintaining** the natural biological and physical diversities of the environment notably on areas with **biologically unique features to sustain human life and development, as well as plant and animal life**".

Protection is a matter of necessity and action in the Declaration of Policy of the NIPAS Act; whilst, proclamation is for the establishment and management of a system of protected areas for the purposes of planning and effective administration of the said areas. Protection of areas with biologically unique features to sustain life is paramount and intrinsically primordial, and does not depend on nor require the proclamation or declaration of these areas as protected areas.

DENR mission is "to mobilize our citizenry in protecting, conserving and managing the environment and natural resources" and its mandate is "to stop environmental abuses, reverse ecological degradation, conserving remaining natural resources and ensure that they benefit our people" ([w w.denr.gov.ph](http://www.denr.gov.ph)). Its mission is focused on protection, conservation, and management and its mandate falls within this mission framework. The DENR Mission and the NIPAS Act are mutually consistent.

A more recent Executive Order No. 23 "declaring a moratorium on the cutting and harvesting of timber in the natural and residual forests and creating the anti-logging task force", which was signed on 01 February 2011 by President Benigno S. Aquino III, is another clear demonstration, through the whereas clauses of the E.O., that watersheds and river systems have to be protected because of their functional roles in the hydrologic cycle. EO No. 23 did not require the need for proclamation nor

declaration of watersheds and river systems as such. Again, this is consistent with the Declaration of Policy in the NIPAS Act of 1992 and with the mission of DENR. Proclamation of a watershed or river system as such is not a prerequisite to its protection. The watershed is a vital natural life support ecosystem.

With the justification coming from the EMB-DENR and the Proponent that the watershed of Mag-asawang Tubig is NOT a “proclaimed watershed”, the EIA process proceeded without sufficiently and seriously considering the significance and implications of the watershed in the determination of stakeholders and affected communities, in the choice of locations of public consultations and public hearings, in identifying relevant issues and problems, in the formulation of mitigating measures, and in the write up of the components/modules of the EIS Report.

Thus, when the EIA Review Committee voted 4-3 to recommend ECC DENIAL, the EIA RevCom Report dated 18 November 2009 through its Chair Dr. Rene N. Rollon, mentioned lack of baseline information, poor delineation of impact areas and discussion of hydrology has not been thorough, and additionally, the “integration among modules has been very poor, making inference of possible major impacts vague and extremely difficult to evaluate” as the main reasons for the denial of the ECC. While lack of baseline information and poor integration among modules are inadequacies of the report, assessments of poor delineation of impact areas and that the discussion of hydrology had not been thorough are directly related with the issue of the watershed, its extent, and its functional role as a natural life support ecosystem.

3. The damage due to mining operations is irreversible with long term effects and the costs of the damage and its effects are not included in the project feasibility study nor in the Environmental Impact Statement.

Mining operations are actually denuding activities by the use of machines. Mining operations include cutting of trees, excavating of subsurface materials, and transporting the ore to the processing plant. In effect, miners dig the subsurface materials of the upper watershed (or mountain itself), bring the ore in the processing area, where a new man-made mountain of mining wastes is created.

Mining as an environmentally critical socio-economic undertaking generally conducted in upper watershed areas, could hardly be reconciled with the requirements of environmental quality because mining operations remove subsurface materials and destroy the watershed itself. The functional role of the watershed in the hydrologic cycle and in the hydrologic regime of rivers is to serve as natural life support system especially for the resident population at the downstream section of the watershed. Mining operations do not only compromise the environment; mining operations remove and destroy the watershed itself leaving behind voluminous mining wastes, as the mineral specifically nickel is only about 1 % of the ore (EIS, Section 3, page 3-40, Table 3-9). This can also be viewed as transferring the mountain into the processing area and creating a mountain of mining wastes. An objective assessment of the environmental impact of mining operations will prove the irreversible damage to the watershed and the negation of its functional role as a natural life support ecosystem.

The cost and benefit analysis in the financial feasibility study of the project does not value and consider the costs of damages to the watershed itself, to the environment, to people’s health, and to infrastructures. Neither does it value and consider the effects of flooding to agriculture in general and loss of crops among farmers in particular. Nor can the analysis put value on the possible loss of a single life due to flooding or chemical pollution as a result of mining. Rather, these adverse environmental impacts are assessed during the EIA process, a process which is supposed to include “designing

appropriate preventive, mitigating, and enhancement measures addressing these consequences to protect the environment and the community's welfare". These preventive and mitigating measures are expected to address the possible adverse impacts of the project to protect the environment and the welfare of the community. The costs of the preventive and mitigating measures and other measures in the proposed Environmental Management Plan will be shouldered by the project. Since the keywords *prevent*, *mitigate*, and *proposed* do not always prevail, then the possibility of damage and negative impact becomes imminent. And the costs of the possible damages due to the project will be shouldered by the farmers, by the affected community, by the environment, and partly by the government,

The EIS of the Mindoro Nickel Project focused on and presented the preventive and mitigating measures. Valuation of the negative impacts and cost of possible damages were not included in the assessment. This can be considered as a deficiency or a weakness of the Philippine EIS System. In an EIA system where the valuation of the negative impacts are not presented and the preparers of the EIS are commissioned and paid by the Proponent, this easily gives the impression of possible partiality in favor of the project.

Mining is a business enterprise and its primary objective is profit. But the damage due to mining operations is irreversible and possible adverse effects due to processing are chemically debilitating; and both have long term effects. Mining is more of a profit-oriented activity and less a source of employment and social development funds. It is probably for reasons of substantial investment and revenues that the government is inclined to consider mining even in populated and environmentally critical areas. But the government should cautiously look into mining as an opportunity to address poverty and lack of employment because mining in populated areas is a short-term solution that brings more problems with long-term adverse effects. Other options and use of the watershed are more sustainable and Mindoro is presently enjoying the benefits of irrigation for agriculture, domestic water supply, and fisheries from the watershed of Mag-asawang Tubig River.

The laws of nature and hydraulics dictate that favor and priority should be given to environmental protection and more to the advantage of present and future generations, and less to short-term economic benefits. Unless man thinks and moves and acts according to this priority, then man is on his way to self-destruction.

"This we know, the earth does not belong to man, man belongs to earth.

This we know, all things are connected, like the blood which unites one family.

All things are connected.

Whatever befalls the earth, befalls the sons of the earth.

Man did not weave the web of life, he is merely a strand in it.

Whatever he does to the web he does to himself."

IV. SUMMARY OF FINDINGS

1. The geographic coordinates specify the exact location of the mining area, the maps spatially indicate the project area showing also the Mag-asawang Tubig River and its tributaries, and the project description clearly states that the Project Area is located within the watershed of Mag-asawang Tubig River.

2. The watershed possesses unique hydrologic and biological features to sustain life and performs as a natural life support ecosystem because : it stores water during rainfall events and slowly releases the stored water during the dry months; it serves as medium for plant growth; it serves as habitat for wildlife; and it provides a place to live and to farm for upland dwellers.
3. As a natural life support ecosystem, the Mag-asawang Tubig watershed is an important watershed, it is an environmentally critical area, and it requires protection without the need for proclamation because a watershed is a topographic and geographic feature delineated and defined by a natural boundary.
4. The destruction of the watershed, after the subsurface materials are removed and the ores are processed, causes irreversible damage and an irreversible loss of the bulk of subsurface materials as mining wastes.
5. The EIA process proceeded without sufficiently and seriously considering the significance and implications of the watershed in the determination of stakeholders and affected communities, in the choice of locations of public consultations and public hearings, in identifying relevant issues and problems, in the formulation of mitigating measures, and in the write up of the components & modules of the EIS Report.

V. RECOMMENDATIONS

Mining in a watershed will disrupt the functional role of the watershed as a natural life support ecosystem where water is absorbed during rainfall events and water is released during the dry months. The destruction of the upper watershed in the thickly inhabited towns of Baco, Victoria, Naujan, and city of Calapan, located along the major river systems of Bucayao and Mag-asawang Tubig, is irreversible and could hardly be reconciled with “the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature”.

The Team recommends the following:

1. Cancel the ECC because the implication and ramification of the location of the Mindoro Nickel Project, an environmentally critical project in a critical watershed area, were not seriously considered during the EIA process.
2. Revoke the MPSA for the Mindoro Nickel Project because the project is located in the critical watershed of Mag-asawang Tubig River and it will result to irreversible destruction of the watershed and loss of nine-nine percent (99%) of the ore as mining wastes.
3. Provide a more independent mechanism of assessment and valuation of both the positive and negative environmental impacts.

6 IP CONSULTATIONS AND THE PROCESS OF OBTAINING FREE, PRIOR AND INFORMED CONSENT (FPIC)

Pursuant to DENR Special Order No. 2009-921, signed by former DENR Secretary Lito Atienza on 27 November 2009, which temporarily revoked ECC-CO-0904-007-2721 issued to Intex Resources for the Nickel Mining Project in the Provinces of Oriental and Occidental Mindoro “pending completion of a thorough and impartial investigation that will validate all the allegations”, the Investigation Team

initially included the free and prior informed consent (FPIC) from the Mangyans, the indigenous peoples (IP) in Mindoro, as one of the issues to be probed considering that the mining area is within ancestral domain. However, the Team found out that the EIA process did not include the FPIC process. Although there are questions regarding the validity of the FPIC, the consent either obtained prior or during the EIA is a separate and independent process governed by IPRA of 1997 and facilitated by a different government agency, in this case, the National Commission for the Indigenous Peoples.

The Investigation Team came up with independent investigation from the available data both from the government agencies and the documents submitted by the IP organizations on the ground.

In reviewing the process of consultation and of the company's manner of obtaining the FPIC from the IP communities, the team found out that the three-year investigation conducted by the Norwegian National Contact Point (NCP) for the complaint against Intex Resources has almost the same findings. Hence, we deem it necessary to also present the result of the parallel investigation of the OECD.

The complaint was filed by Norwegian-based civil society organization, Future in our Hands for violating the OECD (Organization for Economic Cooperation and Development) Guidelines for Multinational Enterprises concerning the Mindoro Nickel Project.¹ The NCP final statement was released on December 5, 2011. Among its findings, it reveals that Intex Resources had obtained a FPIC from the affected indigenous peoples of Mindoro through questionable procedures.²

The report raised particular concerns that a broad and inclusive approach had not been taken to consultations, leading to the exclusion of affected indigenous peoples from the process. It also found the legally required Free, Prior and Informed Consent (FPIC), purportedly obtained from the indigenous peoples, "was not sufficiently informed" and that reason exists to "to question the procedures by which the FPIC was obtained".

I.FACTS

Republic Act No. 8371 (RA 8371), also known as the Indigenous Peoples Rights Act of 1997, recognizes, protects and promotes the rights of indigenous cultural communities/indigenous people, creates the National Commission of Indigenous People, establishes implementing mechanisms, appropriate funds therefor, and for other purposes.

Section 3g of the IPRA of 1997 on *Free, Prior and Informed Consent* "as used in this Act shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community."

Free prior and informed consent (FPIC) are required on, but not limited to, the following sections of the IPRA of 1997: on rights to religious, cultural sites and ceremonies; on access to biological and genetic resources; on environmental consideration; on Certification Precondition (Sections 33a, 35, 58, 59, respectively).

The EIS (September 2009) presents the description of the project's EIA process and the project

1 The complaint was submitted on 26 January 2009. It can be viewed at: http://www.piplinks.org/system/files/Complaint%20OECD_Intex_2009-01-26.pdf.

2 The Final Statement of Norwegian Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises is found in: http://www.regjeringen.no/upload/UD/Vedlegg/ncp/intex_final.pdf.

description, indicating the geographic coordinates of individual mining tenements. Another section shows the development site, location map, and mine tenements of the Mindoro Nickel Project (Section 2, Figures 2-4, 2-5, & 2-6, respectively). It also contains maps and geographic coordinates showing the CADC application by the Mangyan Alangan Tribe.

The EIS, in presenting the information about the profile of the indigenous communities as the impact area of the mining project, has the following data:

1. "These mine tenements comprising the Project site have a total land area of 11,216.6066 hectares (ha). MPSA No. 167-2000-IVB and AMA No. IVB-97 are in Barangay Villa Cerveza Victoria, Oriental Mindoro while MPSA No. 277-2000-IVB and AMA No. IVB-101 are in Barangays Pag-asa and San Agustin, Sablayan, Occidental Mindoro" (EIS, Project Fact Sheet, page 2; EIS, Section Four, page 4-203).
2. "The mine site is within the claimed ancestral domain of the Manyan Alangan/Tadyawan Tribes (SADAKI Group) and the Bangon/ Ruwang Tribes (Kabilogan Group) covering more than 27,000 ha area. The proposed Project may affect 12 sitios of about 190 households in Barangay Villa Cerveza and about 330 households in Pola" (EIS, Project Fact Sheet, page 3).
3. "Identified direct impact areas are 13 Sitios where Mangyans of different tribes represented by the SADAKI and KABILOGAN groups are settled. Representing the SADAKI group are Alangan-Tadyawan tribes covering six sitios (Pamayanans): (1) Candido, (2) Maigat, (3) Alyanay, (4) Lipak Lakoy, (5) Malauan, and (6) Puting Bato. The KABILOGAN group represented by the Bangon-Ruwang tribes inside the mine site is settled in the Sitios of: (1) Tulalong, (2) Puting Bato, and (3) Malauan. Outside the mine site, are other KABILOGAN members who have farms (Kaingin) within the mine site but resides in: (i) Dangare, (2) Malayas, (3) Bungahan and (d) Biyakalan" (EIS, Section, page 4-212).
4. "As discussed earlier, the mine site covers about 11,216 has. and is located in Barangay Villa Cerveza, Victoria Oriental Mindoro and Barangay Pag-asa, Sablayan, Occidental Mindoro. It is within the claimed ancestral domain of the Alangan/Tadyawan Tribes (SADAKI Group) and the Bangon/ Ruwang Tribes (Kabilogan Group) covering more than 27,000 ha. The Mindoro Nickel Project is within the 13 Sitios of about 190 households in Barangay Villa Cerveza in Victoria, Oriental Mindoro and Barangay Pag-asa in Sablayan Occidental Mindoro. Table 4-60 gives the list of Sitios that will host mining operations, where both the SADAKI and KABILOGAN groups reside" (EIS, Section Four, page 4-212).

II. DISCUSSION OF FINDINGS

The team looked into the rationale behind the limited consultations with the two organizations. Were they consulted as part of the community, in this case, the barangay of Villa Cerveza, or were they consulted as part of indigenous cultural communities with ancestral domain claims?

If the indigenous peoples organizations, SADAKI and KABILOGAN, were considered as mere members of the barangay where they reside, the consultation in general is governed by Section 70 of RA 7942 and Section 27 of RA 7160 which both require consultation and prior approval by the Sanggunian concerned. The proposed mine site although within an ancestral domain claim, is within the jurisdiction of the local government units. The proof of consultation with the IP residents of Villa Cerveza cannot be a substitute to consent and approval of the sanggunian concerned.

On the other hand, if the consultations were conducted in compliance with the provisions of IPRA of 1997, the Team looked at these consultations as questionable, if not void, because it denied participation from all the affected IP communities, in this case SANAMA and SASSAMA of Alangan tribe and KAMTI of Tadyawan tribe. In a case where a project is within the ancestral domain claim, consultations should be done with the IP communities and not with a limited group in a community. The IP communities are the ones who should decide over activities within their communal ancestral domains.

The following issues are the major questionable defects in the FPIC issuance, and the questionable process identified:

1. Consultations and the process of securing FPIC were limited only to the SADAKI Group (representing Alangan/Tadyawan tribe) and KABIOLOGAN (representing Bangon/Ruang tribe) while the existing organization of SANAMA, SASSAMA and KAMTI, representing the tribes and the IP communities within the mining concession were excluded.

On 26 February 1996, prior to the granting of the exploration permit to Mindex (now Intex), CADC No. R4-CADC-024 was approved for the Samahan ng mga Nagkakaisang Mangyan Alangan, Inc. (SANAMA) and Samahan ng Sablayan at Sta. Cruz Mangyan Alangan (SASSAMA). Similarly, the Mangyan Tadyawan, through their organization, Kapyan Agpaysarigan Mangyan Tadyawan, Inc. (KAMTI), had been issued an approved application for CADC No. R4-CADC-085. The ancestral domain claims of the Mangyan Alangan Tribe covers the municipalities of Victoria in Oriental Mindoro and the municipalities of Sablayan and Sta. Cruz in Occidental Mindoro. Similarly, the CADC of the Tadyawan Tribe covers the municipalities of Victoria and Socorro, both in Oriental Mindoro.

When plotted in a map, the mining area (Mining Permit No. 167-2000-IV, and AMA No. IVB-103) of Intex are clearly within the ancestral domain claims of the Alangan and Tadyawan Mangyan tribes represented by existing organizations, namely SANAMA, SASSAMA and KAMTI (Figure _____).

The NCP for the OECD Guidelines, in its Final Statement concludes that: "There are clear indications that the mining concession area of Intex overlaps with two officially recognised claims to the land. These belong to the Mangyan Sanama and Kamti organisations, representing the Alangan and Tadyawan indigenous tribes respectively."

In a situation where a project is within the ancestral domain claim, consultations should be done with all the affected IP communities and not with a limited or selected group in a community. The affected IP communities are the ones who should decide over activities within their communal ancestral domains. In this case, SANAMA, SASSAMA and KAMTI are the legitimate CADC holders. Unfortunately, their legitimate ancestral domain claims (CADC No. R4-CADC-024 and CADC No. R4-CADC-085) were not considered during the EIA process.

The consultation conducted by Intex Resources focused on the Kabilogan & Sadaki to the exclusion of other IP groups within the impacted ancestral domains. KABIOLOGAN gave their FPIC to mining activities covered by EP IVB-004 and AMA IVB-097 in Oriental Mindoro.

In 2008, another FPIC was granted by KABIOLOGAN and SADAKI for two more mining applications located in the Municipality of Sablayan, Occidental Mindoro, namely, AMA IVB-101 and IV-103. This FPIC was contested and subjected to investigation by the NCIP.

The EIS confirmed that the consultations were limited to the members of the Alangan and Tadyawan tribe represented by SADAKI and the members of the Bangon/Ruang tribe represented by

KABILOGAN. It is important to note that members of the two organizations reside in Barangay Villa Cerveza in the town of Victoria, Oriental Mindoro (Table 4-60. EIS, Section Four, page 4-212).

KABILOGAN and SADAKI were organized by Intex (formerly Mindex), with the support of the then Regional Director of the National Commission on the Indigenous Peoples. But they represent only the minority of the stakeholders.³ (Annex) The definition of “free and informed consent” according to Philippine law requires that a pre-requisite condition of “consensus of all members of the ICCs/IPs” should be obtained. The insignificant number of KABILOGAN and SADAKI is far from being such. The Mangyan communities in Occidental Mindoro (within mining tenements No. AMA No. IVB-101 and AMA No. IVB-103) are represented by its Alangan tribal organization, Samahan ng Sablayan at Sta. Cruz Mangyan Alangan (SASSAMA). It is highly irregular that only a handful of Mangyan communities in Occidental Mindoro were identified as stakeholders to the project, considering that both organizations from which Intex obtained consent, namely, SADAKI and KABILOGAN are mostly found in Oriental Mindoro, with very few member communities in Occidental side. Section 4c of IPRA explicitly requires that *‘when the policy, program, project or plan affects...a whole range of territories covering two or more ancestral domains, the consent of all affected ICCs/IP communities shall be secured.’* (emphasis added).

Moreover, most of the KABILOGAN and SADAKI members are residents of Sitio Puting Bato, Villa Cerveza, Oriental Mindoro. The member-communities, included in the NCIP list, namely, Biyakalan (or Viacalan), Malayas, Bodbod, Siaden, Muring, are all certainly outside AMA IVB-101 and IV-103.

KABILOGAN, represented by their leaders, namely, Mario Haba, Bombay Baldo, Ruben Buesa, Ramil Baldo, Ador Matyas, among others had already signed a MOA with Mindex Resources Development for EP IVB-004 and AMA IVB-097, for sitios and areas located in Brgy. Villa Cerveza, Oriental Mindoro on June 29, 1999. This fact alone will prove that KABILOGAN are residents of Oriental Mindoro, and not of Occidental Mindoro, otherwise they could not in any way enter into the said MOA for being outsiders to the area. KABILOGAN is now being made stakeholders of two more mining tenements located at the other side of the provincial boundary in Occidental Mindoro, with the NCIP insisting on the possibility of KABILOGAN being in two different distant places at the same time.

On the other hand, SADAKI, which means, Samahang Apo Diya Alangan Kisluyan Inc., is a break-away organization from KABILOGAN, which is based in Kisluyan, a known sitio of Villa Cerveza, a Barangay of Oriental Mindoro. The list of SADAKI communities include Taluto, Malangis, Puting-Bato, Maigat, Alyanay, Shabo, Kisluyan are verifiably outside AMA IVB-101 and IV-103, the subject tenement for FPIC process.

How the two small IP organizations in Oriental Mindoro (with KABILOGAN already provided their consent for EP IVB-004 and AMA IVB-097) become stakeholders of two more mining tenements in Occidental Mindoro (AMA IVB-101 and IV-103), while excluding legitimate CADC claimants-organizations, is a clearly result of highly defective and questionable processes.

The NCP for the OECD Guidelines, in its Final Statement likewise finds the similar . The report mentioned the following irregular and highly questionable basis by which the legitimacy of the groups that represent the indigenous peoples communities is established:

- The report concludes that there is no available evidence that the Kabilogan and the Sadaki have been chosen as the representatives of the affected indigenous groups pursuant to their own

³ Report of Roberto Almonte, then NCIP Provincial Legal Officer of Oriental Mindoro on the MOA of Mindex-Aglubang Mining Corporation and Kabilogan, dated March 29, 2001.

decision-making processes. “There is no documentation that all the concerned indigenous peoples have agreed to allow the organisations to negotiate with the MNP on their behalf . . .” (NCP OECD Report, p. 22)

- “The NCP finds that the Kabilogan and the Sadaki represent some members of the indigenous peoples that would be affected by the MNP, but it is not clear that they constitute the legitimate representatives of all affected indigenous peoples. The NCP does not find evidence that they have been chosen by all the affected indigenous peoples to represent their interests. The uncertainty surrounding the selection of representatives for indigenous peoples should mobilise Intex to investigate further whether these groups indeed represent all affected indigenous peoples.” (NCP OECD Report, p.25)

Norway’s Ambassador Ståle T. Risa himself, in his investigation, reported that vast majority of the Mangyans are opposing the project, but the pro-mining groups, KABIOLOGAN and SADAKI, are fully supporting the mining project of Intex because of the benefits that they get.⁴

Then DENR Secretary Heherson Alvarez categorically asserted that: “The MPSA area is covered by ancestral domain claims of not only the Kabilogan tribe but of other Mangyan tribes. The pertinent rules and regulations of the Indigenous People’s Rights Act of 1997 provide that where a project affects a whole range of territories convening two or more ancestral domains, the consent of all affected Indigenous Cultural Communities Indigenous Peoples shall be secured. Aglubang (Intex local subsidiary) has not secured such consent.”⁵

It should also be noted that the EIS included in its study a newly-discovered tribe, “Ruang” which is not recognized to have a distinct tribal identity even by the other Mangyan tribes. The EIS states that “the mine site is within the claimed ancestral domain of the Mangyan Alangan/Tadyawan Tribes (SADAKI Group) and the Bangon/ Ruwang Tribes (Kabilogan Group)”. However the SADAKI group does not represent the Alangan and/or Tadyawan tribes.

Further, Bangon/Ruang is a newly established sub-group from the original Alangan and Tadyawan Mangyan tribes of Mindoro. This sub-group of Bangon/Ruang is unknown or not recognized by the original tribes as indicated in the letters from the SANAMA of the Alangan Mangyans dated 27 August 2007, from the Samahang NUB of Bangon Mangyans dated 18 December 2009, from the Mangyan Mission dated 07 July 2010, and the office of the Mayor of Victoria, Oriental Mindoro dated 05 July 2010. [Annexes XX, XXI, XXII & XXIII].

2. The ancestral domain is also within the watershed and under the jurisdiction of the local government.

Consultation with the IPs and FPIC are required under several sections of the IPRA of 1997 and under Section 16 of the Philippine Mining Act of 1995. Likewise, the ancestral domain overlaps with the watershed area. And the watershed includes both the upper watershed (the mountain) and the downstream watershed area (the flood plain). The consideration of the extent and influence of the watershed of Mag-asawang Tubig River covers the ancestral domain area of the Mangyans in the upper watershed with their respective barangays and municipalities of Victoria, Oriental Mindoro and Sablayan, Occidental Mindoro and the flood plain which is also composed of barangays and municipalities of Victoria, Naujan, and the city of Calapan in Oriental Mindoro. All these barangays

4 Report of Ambassador Ståle T. Risa to the Office of Secretary for Development, translated from Norwegian, September 26, 2007.

5 Press Statement of then DENR Secretary Heherson Alvarez, dated November 13, 2001.

and municipalities are within the respective provinces which represent the local government units. These local government units (barangay, municipality, province) have their respective legislative councils, the Sanggunian concerned.

Thus, while there is FPIC requirement in the ancestral domain in the upper watershed area, there is a requirement for the approval of the sanggunian in the flood plain. The decisions from the IPs and from the sanggunian concerned have to be considered and reconciled because the activities in the upstream areas affect the downstream areas. This shows that a project, like the Mindoro Nickel Project, which has adverse impacts to the environment and the ecology, requires an EIA process that is carefully designed, independent, and transparent.

III. SUMMARY OF FINDINGS

To summarize the findings:

1. Consultation with SADAKI and KABILOGAN members as residents of Villa Cerveza is within the jurisdiction of the local government unit and covered by section 70 of RA 7942 and section 27 of RA 7160. Consent that might come from SADAKI and KABILOGAN cannot represent the local government units much more be viewed as approval from the concerned sanggunian.
2. Our findings affirm and validate the report of the NCP for the OECD Guidelines, in its Final Statement, stating that: "For both the 1999 and 2008 FPIC consultations, the company appears to have defined the impact area as the mine site.⁶ The potential effect of the mining project on indigenous peoples beyond the mine site has not been documented. This includes the effect of the project on indigenous peoples possibly residing by access roads, transmission lines and other associated facilities, including along the proposed 42 km conveyor corridor and other transportation routes to the processing site. It appears that neither the MNP nor the NCIP undertook any anthropological study in 1999 or later to identify indigenous peoples other than those found living on the mine site."

The issue of only getting the consent of a small minority, while excluding the majority of the impacted Mangyan, is also at the root of the problems pertaining to the FPIC process. IPRA defines communal claims as referring 'to claims on land, resources and rights thereon, belonging to the whole community within a defined territory'.⁷ If any portion of this territory is impacted it has implications for the property rights and the constitutionally protected due process rights of the whole community within the territory and affects all members of the community.

Free Prior Informed Consent is clearly defined in Section 3g of IPRA as "the consensus of all members of the ICCs/IPs [Indigenous Cultural Communities / Indigenous Peoples] to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community".

3. The requirement of the IPRA for securing genuine FPIC from the IP stakeholder-communities was not complied with. FPIC should have been obtained from the consensus of the IP communities represented by their respective organizations - SANAMA, SASSAMA and KAMTI, which are the legitimate CADC holders of the ancestral domains, where the proposed mining project is located.

⁶ Shankleman et al. Fact finding mission to the Philippines (2011), p. 12.

⁷ IPRA, Section 3,e, Chapter II

IV. RECOMMENDATIONS

1. Implement the provisions of IPRA to make the FPIC process inclusive of all the direct and indirect IP stakeholders and communities.
2. Ensure that the EIA process is carefully designed, independent, and transparent.
3. Consider the flawed FPIC inoperative and non-binding.



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