

Philippine Governance Forum

14th to 17th Diliman Governance Forum & Philippine

Council for Islam & Democracy Forum

Part II

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TERMINAL REPORT

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of

16TH DILIMAN GOVERNANCE FORUM

**“THE CHALLENGES AND PROSPECTS
OF SUSTAINABLE MINING IN THE
PHILIPPINES”**

11 October 2006
Assembly Hall
National College of Public
Administration and Governance
University of the Philippines,
Diliman, Quezon City

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AIDE MEMOIRE

Aide Memoire on the
16th DILIMAN GOVERNANCE FORUM on

**“The Challenges and Prospects of Sustainable
Mining in the Philippines”**

11 October 2006, Wednesday, 1:00 pm- 5:00 pm
Assembly Hall, National College of Public Administration
University of the Philippines, Diliman, Quezon City

A. Introduction

Much has been said about sustainability in mining. Mining companies in their statements say that they are engaged in sustainable and environment friendly practices. On the other side of the spectrum, there are the disgruntled communities who in some way or another are affected— negatively, by the mining industry.

Furthermore, mining is said to increase the country's income through mineral exports. Mining is also said to create new jobs. As the government would say, “for each mining job, four to ten allied jobs are created”. The people in the country was said to be the major beneficiaries of the Philippine mining industry.

There, however are costs. These may be in terms of environmental degradation, displacement of communities, pollution, and destruction of lives and livelihoods.

These are very difficult matters to balance. Which outweighs what? Are the benefits worth the costs? Are the costs minuscule compared to the benefits— potential or material?

B. Objectives

To shed light to these relevant policy questions, the UP National College of Public Administration and Governance organized this forum. Generally, the forum aims to provide a venue for a continuing discourse, dialogue, dissemination of ideas, interactions and consultations with relevant publics on policy issues, reform initiatives, and recommendations of the Fostering Democratic Governance (FDG) programme. Specifically, it seeks to:

- Provide understanding of the concepts and complications of sustainable mining
- Analyze which factors, actors or conditions may facilitate or hinder sustainable mining
- Recommend what can be done to address the challenges of sustainable mining, and
- To make the mining industry really sustainable in the Philippines

C. Intended Outputs

At the end of the day, the forum on Sustainable Mining hopes to have helped raise the level of understanding of the relevant publics on the issues, lessons and complications of sustainable mining. The lessons that will be learned from this forum may be used to further enhance interactions between the concerned actors— the government, the people and the mining industry.

D. Programme

The programme of activities was as follows:

TIME	ACTIVITIES
1:00 – 1:30 pm	Registration
1:30 – 2:00 pm	Film Showing
2:00 – 2:30 pm	Opening Ceremonies Invocation National Anthem Opening Remarks Dr. Alex B. Brillantes Jr. Dean, UP NCPAG Overview of the Philippine Governance Forum and Introduction of Speakers Ms. Mars Mendoza Fair Trade Alliance (FTA)
3:00 – 3:20 pm	Usec. Demetrio L. Ignacio Undersecretary Planning, Policy Research and Legislative Affairs Department of Environment and Natural Resources (DENR)
3:20 – 3:40 pm	Engr. Rodolfo Velasco Jr. Mines and Geosciences Bureau Department of Environment and Natural Resources (DENR)
3:40– 4:00 pm	Atty. Marvic F. Leonen Executive Director Legal Rights and Natural Resources Center- Kasama sa Kalikasan Vice President, UP and Professor, UP College of Law

4:00 – 4:15 pm	Break/ Intermission
4:15 – 4:45 pm	Open Forum
4:45 – 5:00 pm	Synthesis Dr. Ma. Fe V. Mendoza Project Coordinator, PGF Professor, UP NCPAG Closing
	Master of Ceremonies/ Moderator: Dr. Ebinezer R. Florano Forum Officer, PGF Professor, UP NCPAG

E. Participants

Some 160+ stakeholders from the business sector, civil society organizations, government, FDG partners, academe, donor community, media, indigenous peoples, and other sectors were invited to seriously commit themselves in this forum in order to help make mining in the Philippines sustainable.

F. Organizers

This forum on sustainable mining is organized under the GOP- UNDP Fostering Democratic Governance Programme, Philippine Governance Forum and is subscribed under the Diliman Governance Forum, by the National College of Public Administration and Governance, University of the Philippines, Fair Trade Alliance (FTA) and the United Nations Development Programme (UNDP).

SPEAKERS



ENGR. GLEN MARCELO NOBLE is Chief of the Mineral Economics, Information, and Public Division of the Department of Environment and Natural Resources (DENR). Engr. Noble has a degree in Metallurgical Engineering.



ENGR. RODOLFO VELASCO, JR. is Mining Engineer of the Mines and Geosciences Bureau (MGB) of the DENR. Engr. Velasco obtained a Diploma in Urban and Regional Planning from the University of the Philippines-School of Urban and Regional Planning (UP SURP) (2003). He has a bachelor's degree in Mining Engineering from the Mapua Institute of Technology (1977).



ENGR. ROLANDO PEÑA is Regional Director of the DENR. He is also Head of the Mining Investments Assistance Center.



ATTY. RHIA MUHI is a staff lawyer of the Legal Rights and Natural Resources Center – *Kasama sa Kalikasan* (LRNRC-KsK). Before working for LRNRC-KsK, Atty. Muhi was University Legal Counsel of the University of the Philippines-Diliman (2005), and Court Attorney of the Court of Appeals in Manila (2004-2005). She obtained her bachelor's degree in Law from U.P. Diliman (1999).

PROCEEDINGS OF THE FORUM

WELCOME REMARKS AND INTRODUCTION OF SPEAKERS

Dr. Ma. Fe V. Mendoza

In behalf of UP-NCPAG Dean Alex B. Brillantes, Jr., Dr. Ma. Fe V. Mendoza welcomed the participants to the 16th DGF. Dr. Mendoza informed them that the DGF is a continuing effort of U.P.-NCPAG to initiate collective action for public administration reforms and better governance. It has tackled various policy issue concerns such as reengineering government, fiscal crisis, geo-informatics, electoral reforms, youth leaders of the past and present, Metro Manila governance, combating corruption, the Millennium Development Goals, impeachment of Pres. Gloria Arroyo, assessment of local governance in the Philippines, the Bangsa Moro issue, and most recently, trade on human terms.

According to Dr. Mendoza, the specific aims of the 16th DGF are to: provide understanding of the concept and complications of sustainable mining; debate on whether sustainable mining is an impossible or attainable development dream; analyze which factors, actors or conditions may facilitate or hinder sustainable mining; and recommend what can be done to address the challenges of sustainable mining.

The 16th DGF is dovetailed to the Philippine Governance Forum (PGF) which aims to provide a regular and bigger venue for a continuing consultation, discourse, dialogue, dissemination, exchange of ideas, interaction and consultation with the relevant publics on the activities, interventions, results and policy issues, concerns, reform initiatives, and recommendations of the FDG programme approved for implementation between 2005 and 2009 by the Government of the Philippines and the United Nations Development Programme for the realization of the Millennium Development Goals, and United Nations Conventions and Summits.

Dr. Mendoza introduced the speakers, namely: Engineers Glen Marcelo Noble and Rodolfo Velasco, Jr., Director Rolando Peña, and Atty. Rhia Muhi.¹ But before their turns, Dr. Mendoza invited Rep. Nereus Acosta, who volunteered to give a short speech, to come up the stage to address the audience.

¹ Engr. Noble and Atty. Muhi were not able to prepare papers for the forum. However, their PowerPoint presentations are attached in Annexes A and B.

INSPIRATIONAL SPEECH

Rep. Nereus H. Acosta

Mining should include the social cost and social heritage issues. Is there such a thing as sustainable mining? Maybe it is better to stop the use of the words "sustainable mining." The title of the forum which says "challenges and prospects" also gives the impression that we should really mine. We should be more careful on the use of words.

It is better to look at mining and the social costs and community heritage. The discussion on mining should be deeper. There should be an intelligent, rational and truly enlightening discussion on the issue.

The Department of Environment and Natural Resources (DENR) has a split personality. On one hand, it protects the environment, on the other hand, it also exploits the natural resources. But what usually wins is development exploitation. This is a challenge that needs to be addressed

SUSTAINABLE DEVELOPMENT THROUGH RESPONSIBLE MINING

Rodolfo L. Velasco, Jr.

The Principles of Sustainable Mining

The application of sustainable development to renewable resources, in terms of "meeting the needs of present generation without compromising the ability of the future generations to meet their own needs," can be clearly illustrated in the case of forest resources. The government by strictly implementing the selective logging and a logging ban in ecologically fragile areas ensure the maintenance and availability of forest resources.

If we apply the idea of sustainable development to the mineral resources, which are considered non-renewable resources, sustainability means that the mineral stocks should not decline nor be depleted. However, the use of minerals, at any positive rate of exploitation will eventually lead to exhaustion of this finite resource. This is a reality even if it is acknowledged that the mineral resources of the earth are naturally replenished over geologic time scales, long enough that we can say "not in our life time." Therefore, wise utilization should be the basis for mineral resources to be sustainable for the future generation.

Republic Act No. 7942, the Philippine Mining Act of 1995 and Department Administrative Order No. 96-40, its revised Implementing Rules and Regulations (IRR), are considered as the primary investment vehicle in the country's effort to revitalize the mining industry. Enshrined are the principles of sustainable mining and a new regime of mining that is both pro-people and pro-environment in sustaining wealth creation and improved quality of life.

The principles of sustainable mining operate under the following conditions:

Mining is a temporary land use for the creation of wealth, leading to an optimum land use in post mining stage as a consequence of progressive and engineered mine rehabilitation works done in cycle with mining operations.

The concept of land use planning should be considered in future rehabilitation and decommissioning plans to establish a land use capability that is functional and proximate to the land use prior to the disturbance of the area, unless other more beneficial land uses are predetermined and agreed upon in, consultation with local communities and the Local Government Units.

Mining activities must always be guided by current best practices in environmental management committed to reducing the impacts of mining while efficiently and effectively protecting the environment.

Best practices in mining means using the best available technologies, meeting the requirements of environmental quality standards, implementing proactive planning and research, doing independent evaluation of environmental performance leading to self-regulation and transparency in the operations.

The wealth accruing to the Government and the communities as a result of mining operation should also lead to other wealth-generating opportunities for the people and to other environment-responsible endeavors.

This principle emphasizes the fact that mining is not an end in itself and the benefits from it should be properly utilized as a means of creating other wealth-generating employment and livelihood activities for the improvement of the quality of life of the people and the enhancement of the environment.

Mining activities shall be undertaken with due and equal regard for economic and environmental considerations, as well as for health, social and cultural concerns.

Mining operations purely for economic gains is no longer acceptable. In so doing, a dictum is being adopted that says "projects that cannot absorb the environmental and social cost of modern mining shall not be allowed to proceed."

Conservation of minerals is effected not only through technological efficiencies of mining operations but also through the recycling of mineral based products, to effectively lengthen the usable life of mineral commodities.

This principle means not only the improvement of the technology for mining and mineral recovery to avoid wastage of the mineral resource but also for re-cycling technologies to reduce the demand and pressures for mineral extraction.

Operationalizing the Principles of Sustainable Development in Mining

Cognizant of the need for conservation strategies and as a response to the environment and development issues, the government has formulated projects, programs, and rules and regulations to tackle the multiple dimensions associated with sustainable development.

1. Mineral Reservations

The mineral reservations in the Philippines was established to enable the government to further promote the wise and efficient disposition, development, extraction, utilization and conservation of minerals in order to maximize national benefits for the present and future generations.

This mineral reservation system allows the government to have direct control in the development and extraction of the mineral resources in reservation areas. It authorizes the government to negotiate with private entities for the exploration and development of the minerals found therein: in return for greater royalties. In addition to the revenues that accrue to the government, the system eliminates unscrupulous idle-sitting on mineral lands by closing such areas to mining locations and leases, thus discouraging opportunistic claimants. It also prevents overlapping of claims which drags disposition and development of mineral resources and results in greater administrative costs to the government. It accelerates exploration and development of mineral lands either by direct government exploration initiatives or by any interested entity. It reduces bureaucratic tape in the processing of application for mining rights. The system promotes the implementation of more effective conservation and

judicious utilization of mineral resources by ensuring that mining operations are handled by most competent and responsible entities.

To date, there are eight (8) inland mineralized areas and all offshore areas of the archipelago that have been established as mineral reservations through various proclamations, orders and decrees. These are the following:

- Ilocos Norte Feldspar Mineral Reservation
- Zambales Chromite Mineral Reservation
- Siruma White Clay Mineral Reservation in Camarines Sur
- Samar Bauxite Mineral Reservation
- Surigao Mineral Reservation
- Zamboanga Mineral Reservation
- Biak-Na-Bato Mineral Reservation in Bulacan
- Diwalwal Mineral Reservation in Compostela Valley
- Offshore Mineral Reservation in all offshore areas within the Philippine territorial limits.

2. Mining Contracts/Agreements/Permits

The two (2) major mining contracts granted to mining proponents are the Financial or Technical Assistance Agreement (FTAA) and the Mineral Production Sharing Agreement (MPSA). The objective of these mining rights is to provide an equitable sharing among the Philippine Government (national and local), the communities and the investors of the benefits derived from the mineral resources to ensure the sustainable development of the mining industry.

a. Financial or Technical Assistance Agreements (FTAA)

This is a 25-year contract that allows the entry of up to 100% foreign owned corporations, which possess the qualifications, set forth in the Mining Act. It requires a minimum investment commitment of US\$50 million for infrastructure and mine development. The contractor in this agreement can hold up to 81,000 hectares for exploration and a maximum of 5,000 hectares for commercial production.

The formulation of the FTAA fiscal regime is based on the principle that the government expects real contributions to the economic growth and general welfare of the country while the contractor expects a reasonable return on its investment. After recovery of its initial investment, the contractor is then expected to pay the usual taxes and fees charged to a mining business and an additional share from the mining operations based on a negotiated scheme. The basic structure of an FTAA fiscal regime is represented by the following equation: FTAA Fiscal Contribution = Basic Share + Additional Share.

All taxes paid by the contractor during the term of the agreement comprise the basic government share. The additional government share is negotiated by the government and the contractor taking into consideration the following: capital investment in the project, risk involved, contribution of the project to the economy, contribution of the

project to community and local government, technical complexity of the project, and other factors that will provide for a fair and equitable sharing between the government and the contractor.

b. Mineral Production Sharing Agreement (MPSA)

This is a 25-year contract granted exclusively to Filipino-owned corporations (i.e. maximum of 40% is foreign-owned) for an exploration of a maximum of 16,200 hectares and subsequently for the commercial production of a maximum of 5,000 hectares of mineral land.

The fiscal contribution from an MPSA takes the form of a basic government share, which includes normal taxes and fees paid by the contractor. Briefly, it can be represented by the following equation: MPSA Fiscal Contribution = Basic Government Share + Normal Taxes and Fees.

c. Forms of Mining Permits

To have a direct charge in the administration and disposition of mineral lands and mineral resources, the government issues permits to mining proponents to explore and operate mineral lands. These permits are the following:

c.1 Exploration Permit (EP) - a permit that grants the proponent the right to conduct exploration work for all minerals within a specified area.

c.2 Quarry Permit (QP) - a mining permit for the extraction and removal of quarry resources on privately-owned lands and/or public lands for building and construction materials.

c.3 Sand and Gravel (SAG) Permit - a mining permit for the extraction and removal of sand and gravel or other loose or unconsolidated materials. The kinds of SAG permit are commercial SAG permit, industrial SAG permit, exclusive SAG permit, government gratuitous permit and private gratuitous permit.

c.4 Small-Scale Mining Permit - a permit to explore, develop and utilize small-scale mineral deposits in areas 20 hectares or less. Permits are issued by the Provincial Governor or City Mayor. These include guano permit, gemstone gathering permit and pebble gathering permit.

c.5 Mineral Processing Permit - permit granted for the milling, beneficiation, leaching, smelting, cyanidation, calcinations or upgrading of ores, minerals, rocks, mill tailings, mine waste and/or other metallurgical by-products or by similar means to convert the same into marketable products.

3. People's Small-Scale Mining Program

Republic Act No. 7076, known as "People's Small-Scale Mining Act of 1991," is a policy of the state to promote, develop, protect and rationalize viable small scale mining activities for the generation of more employment opportunities. It provides for an equitable sharing of the nation's wealth and natural resources. It provides for the creation of a People's Small-Scale Mining Program designed to achieve an orderly, systematic and rational scheme for the small-scale mining development and utilization of mineral resources in order to address the social, economic, technical and environmental problems connected with small-scale mining activities. It also includes

such features as identification, segregation and reservation of certain mineral lands as people's small-scale mining areas, encouragement on the formulation of cooperatives, generation of ancillary livelihood activities and efficient collection of government revenue.

Small-scale mining areas are less than 20 hectares with a capitalization of not more than ~10 million during the term of the permit and its renewal. It is projected to provide livelihood to millions of small-scale miners in rural areas, thus, alleviating their social and economic conditions.

Environmental Protection and Enhancement Requirements and Programs

The IRR of the Mining Act of 1995 provide for life-of-mine environmental protection and at the same time ensuring that adequate funds are available for their implementation.

Programs for environmental protection during exploration, extraction and decommissioning stages with minimum expenditure requirements are now integral to mining operations in the Philippines. These are the following:

Certificate of Environmental Management and Community Relations Record (CEMCRR) - Part of the mandatory requirements for a mining company applying for a mining tenement is a CEMCRR. It is a proof of the company's satisfactory relationship with local communities and the environmental and social acceptability of its resource management strategies in the past. Mining companies with no previous mining ventures are exempted from the issuance of a CEMCRR and, instead, a Certificate of Exemption is issued.

Environmental Work Program (EnWP) for Exploration - This details the environmental impact control and rehabilitation measures associated with exploration activities, including the costs (at least 10% of the exploration expenditures) to ensure that sufficient financial resources are available to meet the commitments in the EnWP. It shall include, among others, the environmental protection and enhancement strategies, post-exploration and use potential for disturbed lands, monitoring and reporting mechanisms. It shall also contain a public information component to educate the community about the project and to serve as a venue to address community concerns.

Environmental Protection and Enhancement Program (EPEP) - This is the operational link between the environmental management provisions of the revised IRR of the Mining Act and the conditions stipulated in the ECC. It details the methods and procedures that the company will use in attaining its environmental protection and management objectives. It also provides the description of the Mine Environmental Protection and Enhancement Office (MEPEO). MEPEOs shall be established in each operating mine to ensure attainment and implementation of the company's environmental management and protection objectives through the EPEP.

Final Mine Rehabilitation/Decommissioning Plan (FMRDP) - This shall be integrated in the EPEP submitted by the contractors/permit holders. It should identify the activities and research required to address on-going rehabilitation and should

consider all mine scenarios, i.e., planned closure, temporary closure and sudden or unplanned closure. It shall also contain cost estimates for the implementation of the FMRDP, taking into consideration expected inflation, technological advances, and the unique circumstances faced by the mining operation.

5. Social Development and Management Program (SDMP)

The SDMP is a tool for the development and implementation of community programs and projects, in consultation and in partnership with the host and neighboring communities in a mining area. Its objective is to create responsible, self-reliant and resource-based communities capable of developing, implementing and managing community development programs in a manner, consistent with the principle of sustainable development. The contractor/permit holder/lessee shall allot annually a minimum of one per cent (1%) of the direct mining and milling cost, 90% of which shall be for the SDMP and 10% is for the development of mining technology and geosciences.

6. Mine Safety and Health

Safety First! This is the first slogan an employee in any mining operation must learn, a proof of the importance placed by the industry to the safety of its mineworkers. Mine safety and health is a shared responsibility. The employer (mining company) must provide ways and means (training and personal protective equipment) for a safe work place; workers should learn how to perform their work safely; and government should be responsible for the development of regulations on safe working conditions. Mining companies are required to submit a Safety and Health Program (SHP) that elaborates the occupational safety and health, and emergency response programs that the company will implement during the operating life of the mine.

Conclusion

The compatibility of sustainable development and mineral development is always questioned by anti-mining groups and the local communities affected by mining operation. Mineral development has the connotation of non-renewability and the common notion is minerals are finite and once mined cannot be renewed. From the above premises the following factors have to be considered to attain sustainable development in mining:

The physical sustainability of mining includes geological knowledge, technology, and economics. Minerals cannot be considered wealth unless known and geological knowledge allows the discovery of mineral deposits and, therefore, increases or replaces minerals that have been transformed to productive use. Developments in mining technology have lowered production costs and made it possible for the processing of low grade deposits which were not considered ore previously and the mining of deeply buried deposits. The world has a large inventory of known mineral deposits not economically mineable today and future technological developments will turn these deposits into mines.

Protection and rehabilitation of the environment using best practices and focused on the life-of-mine management of the environment and safety and health impacts associated to every stage of a mining operation.

Promotion of social and community stability respecting the needs, values and decisions of the local and indigenous communities; fair-sharing of the benefits through direct employment and community services to health, education, recreation, etc.; participatory governance and cooperation among stakeholders; and support for local development initiatives,

Preservation of options for future generations using appropriate management strategies for the optimal use of mineral resources with minimal environmental and social impacts; maximum economic benefits through prioritization of minerals for extraction where the country has comparative advantage (gold, copper, nickel, chromite); efficiency in the use of mineral by reduction and substitution (use of non-mineral products, if possible), and reuse and recycling of mineral products and metals (metals derived from minerals are elements which are indestructible form of matter and do not lose their mechanical and metallurgical properties and therefore, can be recycled repeatedly). This also refers to the need to preserve certain areas with unique ecological and socio-cultural significance by harmonizing the policies on mining and biodiversity.

Competitiveness of the minerals industry. The government shall ensure the formulation of clear and well-defined policies that are necessary to balance the need to attract direct foreign investments without compromising the concerns of national patrimony/sovereignty, the demands for sustainability and the realities of economic and social development. The harmonization of the Philippine Mining Act of 1995 with the Fisheries Code, the Indigenous People's Rights Act, the Forestry Code, the National Integrated Protected Areas System, the Local Government Code, other environmental laws, and the proposed Land Use Code should be prioritized.

Having achieved sustainable development, the mining industry must:

Be dominated by new-generation, world-class mines that can absorb the social, cultural, and environmental costs through the application of best practices in mining operation and at the same time contributing to the economic development of the country in terms of foreign exchange earnings, government revenues, and countryside development.

Accept multinational corporations that are committed to environmental management and social concerns. The entry of these companies will introduce modern technology in mining. Their experience in modern exploration techniques will benefit the country in discovering new world-class mineral deposits and mining will be conducted using the latest and modern equipment in mineral extraction and implementing better approaches to manage environmental protection and social development of modern mining.

Be committed to retrofit old mines. Old existing mines and quarries that either stop or temporarily stop operation shall undergo retrofitting to keep pace with modern mining

techniques. Those that cannot follow will be bound to undergo decommissioning and rehabilitation and eventual phasing out.

Be socially-accepted. By developing partnership with stakeholders and by demonstrating a track record of good corporate practice, the minerals industry can gain the trust of the community and the public in general, even its most ardent critics.

Be self-regulating. This entails the industry's commitment and adherence to the terms of sustainable development and best practices in mining operation.

- Be value-added. Since mineral products are the building blocks of modern society, the industry must aim to export not only raw mineral products or raw materials but finished products vital to everyday life.

A DECADE OF THE MINING ACT: HOW THE RULES HAVE CHANGED

Rolando Peña

The Philippine Mining Act (RA 7942) was enacted in March 1995 and since then, the Implementing Rules and Regulations (IRR) have gone through several rounds of amendments.

DENR Administrative Orders Amending the IRRs

DAO 96-40 - The initial version of the IRR of the Mining Act was Department Administrative Order (DAO) 95-23 dated August 15, 1995. In the wake of the Marcopper Incident at Marinduque, a serious effort was undertaken to take a look at the IRR and improve it. Public hearings were conducted in Metro Manila, Cebu, Davao, and Baguio and based on the results of the hearings, a new IRR was drafted. The draft went through several discussion-meetings until it was finalized and issued as DAO 96-40.

Much of the text of the first IRR (**DAO 95-23**) was retained in the new IRR, but the order of topics was changed in a few places and the environmental provisions were further refined.

DAO 99-57 - The next round of amendments mainly concerned the chapters on Exploration Permit, Mineral Agreement, Financial Technical Assistance Agreement (FTAA), and Quarry Operations, in other words, matters relating to permits and mining operations.

DAO 2000-61 - The following year, the provision on final mining area for quarry operations was amended, allowing only smaller final mining areas for quarries.

DAO 2000-99 - In the same year Sections 134 to 136 of Chapter 14 on the Development of Mining Communities were amended. The requirement for a Social Development and Management Program (SDMP) was introduced here, necessitating additional provisions numbered as Sections 136-A to 136-E.

DAO 2003-46 - More wide-ranging amendments were instituted, covering provisions on Mineral Reservations, Exploration Permit, Mineral Agreements, FTAA, Quarry Operations, Small Scale Mining, Mineral Processing Permit, Transport of Minerals, Mine Safety and Health, Environmental Protection, Contingent Liability and Rehabilitation Fund (CLRF), and the Termination of Mineral Agreements.

DAO 2004-54 - Further amendments in the IRR as set forth in this DAO refer to provisions on Mineral Agreement, FTAA, Development of Mining Communities, Mine Safety and Health, and CLRF. A notable amendment in this DAO is the provision on institutionalizing public awareness and education on mining and geosciences as a component of the development of mining communities.

DAO 2005-07 - This set of amendments concerns mainly additional provisions (Sections 187-A to 187-F) regarding the Final Mine Rehabilitation and Decommissioning Plan (FMR/DP) and the fund for the purpose.

DAO 2005-15 - The amendments in this DAO provide for Exploration Permit (EP) or FTAA as the initial mode of entry in the conduct of mineral exploration.

How the Rules Have Changed

Chapter III: Mineral Reservations and Government Reservations

Authorization for Qualified Government Corporation to Undertake Mining Operations in Mineral and Government Reservations - Section 11 was amended by DAO 2003-46 allowing a qualified government corporation/ entity to enter into a Memorandum of Agreement with the DENR authorizing the said corporation to explore, develop and/or utilize the mineral resources within mineral and government reservations. This was occasioned by the creation of the Natural Resources Mining and Development Corporation as authorized through a Memorandum from the Office of the President in April 2003.

Chapter IV: Scope of Application

Consent Not Required for Sand and Gravel Permit Applications from FTAA, MA or EP Applicants - Section 15 b. 3 was amended by DAO 99-57 whereby sand and gravel permit applications are not anymore required to obtain consent from FTAA, EP or Mineral Agreement (MA) applicant except for MA or EP applications covering sand, gravel and/or alluvial gold.

Chapter V: Exploration Permit

Provisions in Chapter V (Exploration Permit) have been amended through DAO 99-57, DAO 2003-46, and DAO 2005-15. The substantive amendments are discussed below.

Mineral Exploration as a Mode of Entry - In DAO 96-40, mineral exploration may be conducted by obtaining an EP or a MA. Following the cancellation process initiated by the Secretary in relation to idle tenements in February 2005, DAO 2005-15 was issued stipulating Exploration Permit as the initial mode of entry for the conduct of exploration, subject to the provisions of Chapter VII on FTAA on the conduct of exploration.

Chapter VII: On the Conduct of Exploration.

Maximum Term of EP - DAO 96-40 allows a maximum period of six years for EP. However, DAO 99-57 allowed a maximum of six (6) years and eight (8) years, respectively, for non-metallic and metallic mineral exploration. This was reduced to four (4) and six (6) years, respectively, by DAO 2005-15. The conduct of feasibility study and filing of declaration of mining project feasibility shall be undertaken during the term of the EP. In case of failure to declare the mining feasibility within the term of the maximum term of the EP, a further renewal of the EP for another two (2) years

may be granted for the purpose of preparing or completing the feasibility study and filing of the declaration of mining project feasibility and pertinent MA or FTAA application.

Transfer or Assignment of EPA - An additional provision (Section 19-A) as provided in DAO 99-57 allows the transfer or assignment of EPA, provided such transfer or assignment shall be subject to eligibility requirements and shall not be allowed in cases involving speculation.

Conversion of EP to MA or FTAA - DAO 99-57 added a provision (Section 23-A) allowing the EP to be converted to a MA or FTAA subject to compliance to mandatory requirements. This provision was deleted by DAO 2005-15.

Approval of Exploration Permit - DAO 2005-15 stipulates that if all the mandatory and other requirements have been complied with and the EP is still awaiting approval five months after its date of filing, the EP, upon submission of an affidavit by the applicant attesting to the full compliance with all the pertinent requirements, shall be deemed approved and the Director shall issue the EP within five working days from receipt of said affidavit, for registration and release.

Chapter VI: Mineral Agreements

Amendments to provisions in Chapter VI (Mineral Agreements) were instituted through DAO 99-57, DAO 2003-46, DAO 2004-54, and DAO 2005-15. The salient amendments include the following:

Mandatory Requirements for MA Applications - Certain provisions in the section dealing with mandatory requirements for MA application have been deleted. More importantly, three items have been added, namely:

Three-year development/utilization work program
Mining project feasibility
Complete and final exploration report pertaining to the area.

These requirements are contingent on the results of exploration work undertaken within the period allowed by the EP.

Conversion of MA Application into EPA - A new provision allowing the conversion of MA application into an EP application was appended as Section 40-A by DAO 99-57. This was renumbered as Section 41 by DAO 2005-15.

Non-Issuance of Temporary EP - Section 42 of DAO 96-40 allowing for the issuance of Temporary Exploration Permit while awaiting the approval of application for Mineral Agreement was amended by DAO 99-57 and later entirely deleted by DAO 2005-15. (The original Section 41 was renumbered as Section 42.)

Approval of Mineral Agreement - After evaluation of the MA application and endorsement of the same to the Secretary, the application shall be deemed approved if not acted upon by the Secretary within 30 calendar days from official receipt of the application. Within five days thereafter, the Secretary shall then sign all the pertinent

documents for the approval of the application. This provision was added to Section 42 (originally Section 41) by DAO 2005-15.

Issuance of Special Permit - The provision for the issuance of Special Permit was amended by DAO 99-57 to read as follows:

An applicant for Mineral Agreement whose application is valid and existing, has been granted an Area Status and Clearance, NCIP Precondition Certification and endorsement from the concerned Sanggunian, and has no pending mining dispute/conflict as certified by the concerned Panel of Arbitrators/Mines Adjudication Board, may file an application for Special Mines Permit with the Bureau/concerned Regional Office. A Special Mines Permit (SMP) may be issued by the Director upon clearance by the Secretary. The SMP shall be for a period of one (1) year renewable once: Provided, That the SMP may be further renewed depending upon the nature of the deposit, the propriety of the mining operation, the environmental and community relations track record of the applicant, faithful compliance with the terms and conditions of the SMP and diligence of the applicant in pursuing the Mineral Agreement application, subject to the approval of the Secretary.

In cases where public welfare so requires, the Secretary may, after verification and evaluation of the Bureau, grant other form/s of Special Mines Permit so as to address the specific conditions in the area concerned. (The items on the conditions and requirements are retained).

Originally, those which may file applications for SMP were identified by DAO 96-40 as holders of lease contracts which are about to expire and Quarry Permit Licenses with pending MA applications.

Chapter VII: Financial or Technical Assistance Agreement (FTAA)

Evaluation of Mining Project Feasibility Study - A provision was injected by DAO 2004-54 into Section 52 identifying the parameters for strict consideration in the evaluation, namely, the expected life of mine, grade management, mining sequence, conservation measures and the capability of the project to pay the Government Share and absorb the environmental and social costs. It was further stipulated that there shall be a provision guaranteeing the payment of the Government Share notwithstanding the grant of any incentives by other government agency(ies); that the mine should have a profitable operating life of more than ten (10) years, to ensure the collection of the Government Share, given a maximum five (5) -year cost recovery period.

Mandatory Requirements for FTAA Applications. - The mandatory requirements for FTAA, (Section 53) was amended by DAO 99-57 and DAO 2004-54 and further amended by DAO 2005-15. In support of the application for approval of the declaration of mining project feasibility, the following are now required as provided for in DAO 2005-15:

- d.1. Mining Project: Feasibility Study;
2. Three (3)- Year Development/Utilization Work Program;

For marble granite.
And/ or construction
aggregates

Individual -- 81 Hectares

Corporation/
Partnership/
Association/
Cooperative -- 243 Hectares

For cement raw
Materials such as
Limestone, shale and silica

Individual -- 486 Hectares

Corporation/
Partnership/
Association/
Cooperative -- 1458 Hectares

Final mining area means the contract area or portion(s) thereof for development and actual quarrying/mining operation including sites for support/ancillary facilities.

Chapter IX: Small Scale Mining

Requirements for SSMP Applications - In DAO 96-40, Section 103 (General Provisions) only referred to the filing of applications through the PMRB for areas outside Mineral Reservations and through MGB for areas within Mineral Reservations. This was amended by DAO 2003-46 and DAD 2005-15 to include mandatory requirements for acceptance of SSMP applications and requirements for renewal of the SSMP Permit. The ECC, EPEP, and approved survey plan are also required from the applicant after acceptance of the application but prior to its approval.

Chapter XI: Mineral Processing Permits

Approval of Mineral Processing Permits - The approving authority for issuance of MPP was amended by DAD 2003-46 and further amended by DAD 2004-54.

Secretary	>500M pesos project cost
MGB Director	>200M pesos- 500M pesos project cost
Regional Director	200M pesos or less project cost

In the Feasibility Study there shall be a provision guaranteeing the payment of the Government Share notwithstanding the grant of any incentives by other government agency(ies)

Temporary Permit to Operate - The provision on the issuance of Temporary Permit to Operate for 30 days was deleted by DAO 2003-46.

Chapter XII: Transport of Minerals/Mineral Products.

Inclusion of By-Products, Including Gold Bullion - As amended by DAO 2003-46, Ore Transport Permit is required not only for minerals and mineral products but also for by-products, including gold bullion.

Samples for Assay and Pilot Testing - For ore samples exceeding two (2) metric tons to be transported exclusively for assay and pilot tests purposes, DAO 2003-46 stipulates that an OTP shall be issued by the Regional Director concerned for a limited amount based on the type of ore, metallurgical tests to be undertaken and other justifiable reasons as determined by the Regional Office concerned.

Basis of Arrests and Confiscations/Seizures - As amended by DAO 99-57, it shall be the primary responsibility of the Permittee, Contractor, or Permit Holder to police the permit/contract area from any illegal mining operations.

Filing of Complaint - To conform with the above stipulation, DAO 99-57 also amended Section 122 authorizing Permittee, Contractor, Permit Holder and/or other duly deputized personnel to file the complaint with the proper court for violation of Section 103 of the Act (Theft of Minerals).

Chapter XIV: Development of Mining Communities, Sciences, and Mining Technology

Provision for Social Development Management Program (SDMP) - In line with the development of mining communities, provisions regarding the requirements for a Social Development Management Program (SDMP) were added by DAO 2000-99, which were amended by DAO 2004-54. These new sections are numbered 136-A to 136-E. Pertinent sections of this chapter were also amended to incorporate SDMP in the provisions.

Provision for IEC Programs and Activities - The spate of anti-mining issues especially since the Marcopper incident in 1996 has prompted the MGB to give due importance to Information, Education and Communication (IEC), programs and activities and enjoin mining companies to do the same. Thus Section 134 was amended by DAO 2004-54 to include the institutionalization of public awareness and education in mining and geosciences. These programs and activities are now recognized as credited activities or expenditures in enhancing the development of the host and neighboring communities as part of the 10% of the 1 % of direct mining and milling costs.

Chapter XV: Mine Safety and Health

Adoption of DAO 2000-98 (Mine Safety and Health Standards) - Pertinent provisions in the Chapter were amended by DAO 2004-54 whereby the old Mine Safety and Health Standards stipulated in MAO No. MRD-51 was replaced by DAO 2000-98, the Mine Safety and Health Standards being implemented presently.

Revocation of Accreditation of Service Contractors - All Certificates of Accreditation issued to Service Contractors by the Bureau and its Regional Offices were revoked by DAO 2004-54. Henceforth all Service Contractors may provide

services in mining operations without undergoing the accreditation process, subject to compliance with applicable laws, rules, and regulations.

Amendments to Requirements of Safety and Health Program - Section 144 was amended by DAO 2004-54 whereby the standard operating procedures for mining and milling operations was deleted and two additional items were added, namely: 1) leadership and administration; and 2) organizational rules. The rest of the original items were retained.

Chapter XVI: Environmental Protection

Requirement for Certificate of Environmental Management and Community Relations Record - A new section (Section 167-A) was added by DAO 2003-46 requiring applicants of MA, FTAA, Quarry or Commercial/Industrial Sand and Gravel Permits, and Mineral Processing Permits to obtain a Certificate of Environmental Management and Community Relations Record. This stipulation amends provisions in pertinent sections of the IRR with respect to mandatory requirements of the above applications.

Chapter XVIII: Contingent Liability and Rehabilitation Fund

Guidelines on the Final Mine Rehabilitation/ Decommissioning Plan - Guidelines for the implementation of the Final Mine Rehabilitation/ Decommissioning Plan (FMR/DP) is provided by DAO 2005-07 as Sections 187-A to 187-F. Pertinent provisions relating to these guidelines such as the provision for the FMR/DP fund and compliance with the FMR/DP were amended, respectively, such as Sections 180, 182, 188, 193, 196, and 197.

Monitoring Trust Fund increased to P150,000 - As amended by DAO 2005-07, the Monitoring Trust Fund has been increased to no less than P150,000 to cover maintenance and of the operating expenses of the monitoring team, which may be increased when national interest and public welfare so require.

Chapter XXIV: Cancellation, Revocation and Termination of Mining Permit/Mineral Agreement/FTAA

Grounds Expanded - The grounds for cancellation, revocation, and termination of a mining permit, MA or FTAA were expanded by DAO 2003-46 to include the following:

Failure to perform all other obligations, including abandonment, under the permits or agreements; and

Violation of existing laws, policies, and rules and regulations.

Government to Undertake Mining Operations - Upon cancellation/revocation or termination of a mining permit/MA/ FTAA, the mining area covered thereby shall be open to mining applications. However, as amended by DAO 2003-46, mining operations may be undertaken by Government through one of its agencies or through a qualified independent Contractor. In the latter case, the contract shall be awarded to the highest bidder in a public bidding.

Summary and Conclusion

The Philippine Mining Act has been with us for a little over a decade. In the course of implementing its rules and regulations, we have realized that there is much room for improvement and these are reflected in the amendments to its IRR. The participation of the Bureau in various fora and dialogues with stakeholders has allowed us to take cognizance of relevant issues. In this respect, the public hearings occasioned by the preparation of a Minerals Action Plan have contributed in streamlining and improving the implementation of the Mining Act.

The last amendments to the IRR as discussed above are not the end of the process of improving the rules and regulations. We continue to learn and listen, and to engage in fruitful dialogue with stakeholders to better pave the way for the revitalization of the mineral industry in the context of responsible mining.

OPEN FORUM

The following are the summaries of discussions during the open forum.

On the DENR. For natural resources, police and permit-granting should be separated. Otherwise, the DENR Secretary will have conflict in managing the organization. There are two bills pending in Congress that creates two environmental agencies. But, it seems that nobody is looking at it.

On small-scale mining. The case of Mt. Diwalwal shows that there is total chaos even if there was no foreign investment.

On the issue of anti-mining. It is difficult to say that one is anti-mining, since mines are very important. The benefits of mining should be recognized. However, it is also important to see if the policy is pro-poor. How far are we going to push for mining? The question is on the framework and the provisions and policies that are not pro-people. It could be amended or done away with.

On processing minerals. It is better if a local industry is built to process the minerals in the country rather than exporting it. This is a good idea. However, mining does not enjoy full support, hence, no industry has been put up yet. During the time of then President Marcos, there was a grand plan for the iron and steel industry. However, policies changed and when Marcos left, everything was all watered down.

On capability building. It is the responsibility of local governments to train its constituents and prepare them to operate mining equipments. Local government units (LGUs) which train their people should be commended. The government should implement more capacity-building activities. Education is also still lacking. Moreover, there is no technology to transfer. On the issue whether the key to equipments should be given to locals, it was stated that it is just a question of trust.

On the issue of employment. It has only been two years and you do not see the effect of mining on employment in just two years. It is unfair to say that mining has not contributed to development. However, the employment that mining creates is temporary. Lives, communities and resources are what we are talking about in mining.

On the amount of share that goes to the LGUs. It is only the *barangay* where a mining company exists that is entitled to a share of about 30-40%.

On the policy of granting mining permits. Local laws should not contradict national laws. Resolutions do not have any effect unless they become ordinances. There should be transparency in the LGUs because they are responsible to inform the people about projects and where they will take place.

Challenges and Lessons Learned on the Forum on Sustainable Mining

The mining industry is a highly extractive industry as was presented in the papers and discussions of the speakers. In order to obtain the minerals from the ground, forests have to be cleared, tons of earth has to be moved, and these still have to be treated with various toxic chemicals in order to extract a small amount of the mineral.

One of the challenges that faces the mining industry and other actors concerned, i.e, the indigenous peoples, mining communities and the government is how to make the mining industry responsible in the sense that the earth is not overly extracted.

Next is that there is a need to impose or there is a need for the mining industry to adhere, observe, and promote best practices in mining. This has to be done in order to give a certain safeguard or protection to the environment. In addition, this may help lessen the impacts of mining on ecological balance.

In addition, to help conserve the environment and to ensure that minerals extracted are re- used and that their utility is maximized, downstream industries have to developed. These downstream industries will process and convert the minerals into usable products such as steel for car production, chips for computers, and others. This will not only help maximize the use of the mineral but will also help spur economic activity, growth and development by providing jobs and technological advancements particularly in the host communities.

In order to foster a balanced growth and in order to distribute the wealth generated by the mining industry, there should be a sharing of its social and economic benefits equitably.

The host communities should be vigilant at all times, protecting their rights and helping conserve the natural resources. On the part of the government, the regulators must use creative, and effective measures in protecting the environment and that they should implement more effectively regulatory safeguards already in place.

16th Diliiman Governance Forum

The Challenges and Prospects of Sustainable Mining in the Philippines

SUSTAINABLE
DEVELOPMENT

ECONOMIC

ENVIRONMENTAL

SOCIAL

11 October 2014

10:00 AM - 12:00 PM

Assembly Hall, 1st South Hall, College of
Public Administration, Ateneo de Manila University



PRIMER ON SUSTAINABLE MINING
Content Outline

I. Introduction on Sustainable Mining

- A. Definitions of Sustainable Mining
- B. Characteristics of Sustainable Mining in General
- C. Parties affected/ Involved in Sustainable Mining

II. Sustainable Mining: The Case of the Philippines

- A. Background
- B. Current trends and practices in mining
- C. Benefits that can be derived from mining
- D. Negative effects of Mining to the population and community

III. Government, civil society and mining corporation's roles.

- A. Roles of the government in sustainable mining.
- B. Roles of civil society group, NGOs and POs.
- C. Roles of the business/ mining sector.

IV. Possible Alternatives

- A. Adoption of Best Practices in Mining
- B. Setting up of mechanisms for a more holistic and tangible participation by concerned parties
- C. Adoption of international frameworks and standards
- D. Others

V. Summary and Conclusion

I. Introduction on Sustainable Mining

A. Definition

- The Brundtland Commission defines "sustainability, as the ability of the current generation to meet their own needs without compromising the ability of the future generations to meet their own needs."

This definition places much importance on the ability of the future generation to provide resources for themselves. This implies that there is a need for the present generation to put into consideration and that they have the obligation to think of the welfare and needs of the future generations. The future generations should be included in the present's decision-making.

- Sustainability is also defined as a "participatory process that creates and pursues a vision of community that respects and makes prudent use of all its resources- natural, human, human- created, social, cultural, scientific, etc". It ensures that the present generations enjoy a high degree of economic security, being able to realize democracy and popular participation in the control of their respective communities, while maintaining the integrity of the ecological systems, and while assuming responsibility to future generations to provide them with the where-with-all for their visions, hoping that they have the wisdom and intelligence to use what is provided in an appropriate manner".¹

- Dr. Patrick Moore, a former advocate for Greenpeace poses a seemingly similar definition. "Sustainability is not finding the ideal state that will last forever. It is about managing through the inevitable change so as to satisfy present day environmental, economic and social priorities while not foreclosing the options of future generations to do the same".

- There are three overarching goals of sustainability in general. They are economic prosperity; environmental health; and social equity.

These definitions of sustainability provides for a long-term view on sustainability in general. It puts stress and emphasis on the ability of the future generations to have access and utilize what the current generations are enjoying

Furthermore, these definitions did not call for preservation of natural resources; rather it is for a more responsible and sustainable use of them.

B. Characteristics of Sustainable Mining in General

- Sustainable mining can be characterized as one wherein the "benefits derived from the extraction of minerals is continuously reinvested in other sustainable undertakings and in community support such as health services, education, cultures promotion, etc"²
- This means that profits derived from the mining industries be channeled or used in developmental programmes or projects whose beneficiaries would be the future generation. Furthermore, the "minerals industry can contribute to Sustainable Development for as long as mineral resources development is undertaken with the primary objective of maximizing environmental, economic and social benefits"³
- John Strongman, a Mining Advisor of the World Bank Group provides five key elements on sustainable mining development. He says that for mining to be sustainable it has to be financially viable; environmentally sound; socially responsible; implemented with sound governance; and it must bring lasting benefits especially for local communities. This is very important if the mining company really wants to help in the effective and lasting poverty reduction and economic development at the local and regional levels.⁴

- In Australia, the Ecologically Sustainable Development Working Group on Mining has defined sustainable development for the mining sector as:
"...ensuring that the mineral raw materials needs of society are met, without compromising the ability either of future societies to meet their needs, or of the natural environment to sustain indefinitely the quality of environmental services (such as climate systems), biological diversity and ecological integrity"⁵ From the "Ecologically Sustainable Development Working Group (ESDWG), Final Report: Mining", Australian Government Publishing Service, November 1991.

- In Canada, Natural Resources Canada (NRCan) has defined sustainable development for the mining sector as:

"...finding, extracting, producing, adding-value to, using, re-using, recycling and, when necessary, disposing of mineral and metal products in the most efficient, competitive and environmentally responsible manner possible. NRCan recognizes that these activities must be carried out in consultation with, and respecting the needs and values of, other resource users and maintaining or improving environmental quality for present and future generations."

² Statement of the Mines and Geosciences Bureau, DENR, www.mgb.gov.ph

³ Statement of the Mines and Geosciences Bureau, DENR, www.mgb.gov.ph

⁴ John Strongman, Sustainable Mining Development: From Concept to Action: A presentation made in the mining and the community 2, Madang, Papua New Guinea, September 2002.

• In the Philippine Mining Industry, through RA 7942 or the Philippine Mining Act of 1995, adheres to the Brundtland Commission's definition of sustainable development. Furthermore, it is envisioned that the minerals industry should not depress the economic conditions in the host countries rather than decrease our mineral base through continuing mineral exploration; enhance rather than degrade the environment by managing the impacts of mining activities and the rehabilitation of mining affected lands to a productive state after mining and lengthen, through recycling and substitution, the usable life of mineral resources"⁵

• Mining, in addition plays different roles in sustainable development.

- It creates new wealth in terms of jobs and employment opportunities; government income in terms of taxes and it [may] serve[s] as a mechanism for economic development.
- It serves as a provider for mineral-based resources to meet the society's basic material and energy needs and demands.
- It has proven itself to be an indispensable tool for the advancement of civilization.

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C. Actors Involved

The issues on the sustainability of mining may be considered to be disputed on by four major actors.

1. Government
2. Mining Firms
3. Community living in or near the extraction site, Indigenous peoples
4. Non-governmental organizations and civil society organizations

⁵ Statement of the Mines and Geosciences Bureau, DENR, www.mgb.gov.ph

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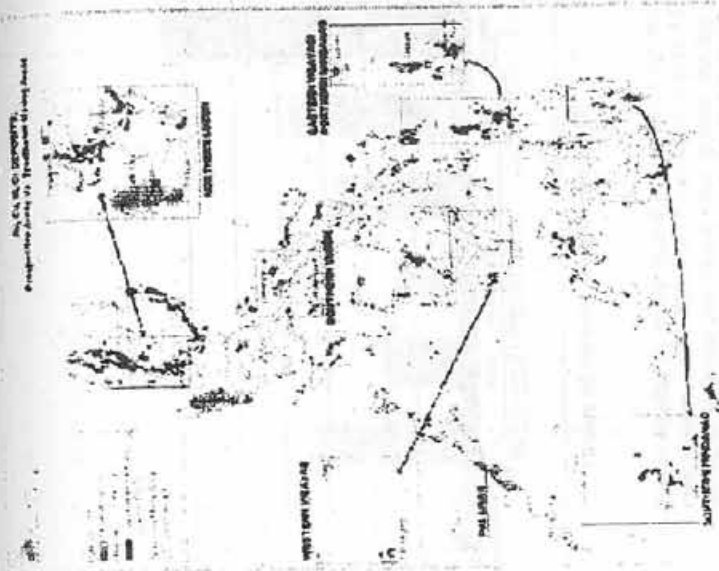
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⁵ Statement of the Mines and Geosciences Bureau, DENR, www.mgb.gov.ph

II. Sustainable Mining: The Philippine Case

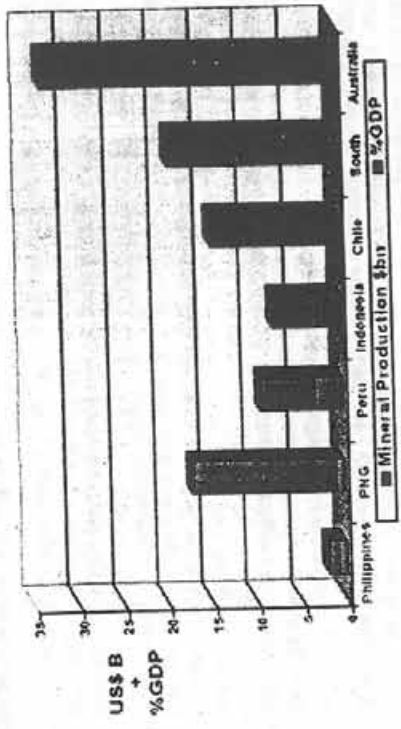
A. Background

- Mining in the Philippines governed by the implementing rules and regulations (IRR) of RA 7942 more commonly called as the Philippine Mining Act of 1995. The Supreme Court ruling on the constitutionality of the Mining Act of 1995 has put a closure [legally] on this issue. Or has it?
- Senator Sergio Osmeña filed Senate Bill 295, which seeks to repeal RA 7942 in order to prevent large-scale mining companies to inflict further damage on the environment. Similarly, lawyers representing local/indigenous people still continue their legal battles by filing motion for reconsideration on the constitutionality of the Supreme Court ruling last December of 2004.
- With the release of the Supreme Court ruling, came Executive Order 270, which placed mining as a flagship developmental program of the Arroyo administration. There was a policy shift from previous passive stance—tolerance of mining, it paved the way for a more active one—the promotion and placing of mining as one of the flagship programs aimed at serving as a mechanism for economic development.



Areas in the Philippines with Potential for Metallic Mineralization

- The Philippines is a well-endowed country in terms of mineral resources. With its long history and experience in mining, it has demonstrated its very rich potential for copper, gold, nickel, chromite and other metallic minerals through the commercial operation of numerous mines. It is also abundant in non-metallic and industrial minerals such as marble, limestone, clays, feldspar, rock aggregates, dolomite, guano, and other quarry resources. In terms of endowment (minerals resources per unit area), the Philippines ranks 3rd in the world for gold, 4th for copper, 5th for nickel, 6th for chromite.



Value of mineral production and GP

❖ The Philippine minerals industry is currently an industry below US\$ 1 Billion in annual sales (Figure 1) similar to Malaysia and Papua New Guinea, but lagging behind Indonesia (US\$ 3.6 Billion), Chile (US\$ 13 Billion) and Western Australia (US\$ 26 Billion). To make them useful to the economy, the rich mineral resources of the Philippines have to be explored and developed into commercial mines. However, there are not much local funds available for exploration.

Offshore Areas in The Philippine With Potential For Minerals

❖ The offshore area is another potential domain for mineral wealth of the country. The Philippine offshore area including the Exclusive Economic Zone (EEZ) covers a wide span of about 2.2 million square kilometers. By law, it is classified as a mineral reservation area by virtue of the 1987 Constitution. It is known to be potentially rich in placer minerals such as gold, chromite, magnetite and silica; polymetallic sulphide deposits containing gold, copper, cobalt, and other minerals; manganese nodules and encrustations with associated copper, gold, zinc, cobalt; and construction aggregates such as sand and gravel; and decorative

Current Trends and Practices of Mining in the Philippines

- There are three major modes of mining rights granted to mining companies: Exploration Permit (EP), Mineral Production Sharing Agreement (MPSA) and Financial or Technical Assistance Agreements (FTAA).

Major Modes of Mining Rights in the Philippine Mining Act of 1986

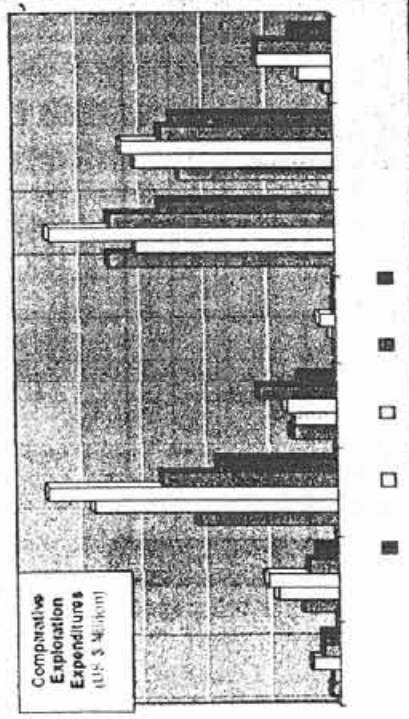
- **Co-Production Agreement (CA)** - an agreement between the Government and the Contractor wherein the Government shall provide inputs to the mining operations other than the mineral resources; and.
- **Joint Venture Agreement (JVA)** - an agreement where the Government and the Contractor organize a joint venture company with both parties having equity shares. Aside from earnings in equity, the Government shall be entitled to a share in the gross output.
- **Financial or Technical Assistance Agreements (FTAA)** - a mining contract for large-scale exploration, development and utilization of minerals which allows up to 100% foreign equity participation/ownership.
- **Sand and Gravel Permits** - are issued for the extraction, removal and disposal of sand and gravel and other loose or unconsolidated materials. Permits with areas not exceeding 5 hectares are issued by the Provincial Governor/City Mayor while those exceeding 5 hectares but not more than 20 hectares are issued by the MGB Regional Director. A Sand and Gravel Permit has a term of 5 years and renewable for like terms.

- **Quarry Resources Permits** - in accordance with the Local Government Code of 1991, mining permits with areas not more than 5 hectares have been devolved to the Provincial Governor or the City Mayor for approval upon recommendation of the Provincial/City Mining Regulatory Board. These include the Quarry Permit, Guano Permit, Gratuitous Permit and Gemstone Gathering Permit.

- **Small-Scale Mining Permits** - in consonance with the Local Government Code and RA No. 7076, small-scale mining permits are approved and issued by the City Mayor/Provincial Governor, upon recommendation of the Provincial/City Mining Regulatory Board.

- **Mineral Processing Permit** - a permit granting the right to process minerals. It is issued by the DENR Secretary with a term of 5 years and renewable for like terms.

- **Ore Transport Permit** - no minerals, mineral products and by-products shall be transported unless accompanied by an Ore Transport Permit. The OTP is issued by the MGB Regional Director concerned.



Comparative Exploration Expenditures (in US \$ Million)

❖ Over the past decade, and despite stiff competition with other countries for exploration funds, the Philippines has progressively expanded in exploration resulting in the discovery of a new generation of world-class high-profit potential deposits of gold and copper (about 1.5% copper equivalent) such as the Tampakan Copper Deposit, Far Southeast Copper Deposit, Boyungan Copper Prospect and many others. These deposits can be differentiated from previous discoveries which are low-grade and shallow-seated. They are relatively higher in value hence

• The granting of mining rights are subject to certain qualifications and selection criteria.

➤ **Qualified Person** - The Mining Act and its IRR specifically state that a mining permit or contract can only be granted to a **Qualified Person**, meaning, one must possess, among others, proofs of financial and technical capability as well as a satisfactory environmental management and community relation track record.

➤ **Land Use Priorities** - Areas classified as closed to mining are automatically excluded from mining applications while applied areas in conflict with other land uses and not covered by the required area clearance are automatically excluded. Thus, the applied area is either reduced or in some cases, denied; and

➤ **Economic Feasibility** - It is not automatic that a mining contractor shall proceed immediately to development and commercial operation after it has completed exploration. The Mining Project Feasibility Study shall consider market, financial and technical factors relevant to the project as well as all the minimum expenditures for social and environmental

TYPE OF MINING RIGHT	MAXIMUM AREA (has.)	TERM	QUALIFIED PERSON	BENEFIT SHARING
Exploration Permit	32,000 onshore 81,000	2 years; renewable to a maximum of 8 years	Individuals or Filipino or foreign corporations	none (research data collection)
Mineral Production Sharing Agreement	16,200 onshore 40,500	25 years; renewable for a like period	Individuals or Filipino corporations	40% company; 60% Govt.
Financial or Technical Assistance Agreement	81,000 onshore 324,000 offshore	25 years; renewable for a like period	Filipino or foreign corporations	40% company; 60% Govt. (to start after recovery of initial pre-operating

How Mining is conducted in the Philippines:

❖ Mining is a temporary land use for the creation of wealth, leading to an optimum land use in post-mining stage as consequence of progressive and engineered mine rehabilitation works done in cycle with mining operations;

• Mining activities must always be guided by current Best Practices in environmental management committed to reducing the impacts of mining while efficiently and effectively protecting the environment.

• Mining activities shall be undertaken with due and equal regard for economic and environmental considerations, as well as for health, safety, social and cultural concerns.

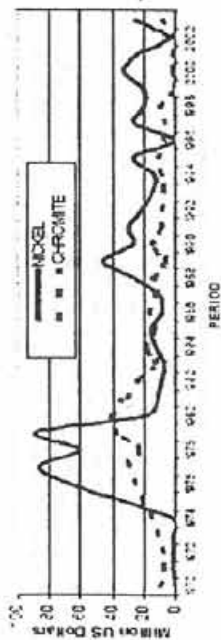
• Conservation of minerals is effected not only through technological efficiencies of mining operations but also through the recycling of mineral-based products, to effectively lengthen the usable life of mineral commodities.

• The granting of mining rights shall harmonize existing activities, policies and programs of the Government that directly or indirectly promote self-reliance, development and resource management. Activities, policies and programs that promote community-based, community-oriented and procedural development shall be encouraged, consistent with the principles of people empowerment and grassroots development.

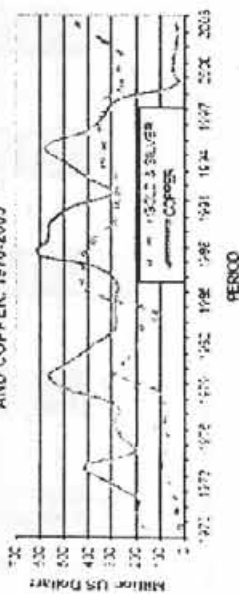
A. Economic Benefits of Mining

Minerals Trading

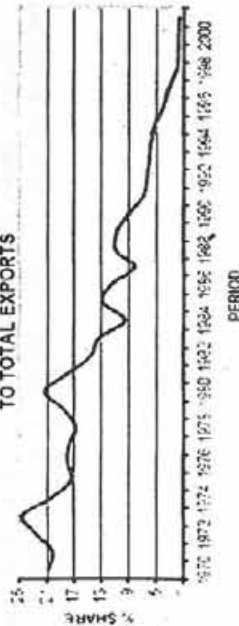
EXPORT VALUES OF NICKEL AND CHROMITE, 1970-2003



EXPORT VALUES OF GOLD & SILVER AND COPPER, 1970-2003



SHARE OF MINERAL EXPORTS TO TOTAL EXPORTS



Increase in National and Local Government Income [in terms of taxes]

Income tax – 32% of taxable income or minimum of 3% of sales
 Value-added tax – 10% of value added
 Royalty on mineral reservation – 5% of gross output of minerals
 Capital gains tax – 10 to 20% of value
 Customs duties – rate is set by the Tariff & Customs Code
 Tax on interest payments of foreign loans – 15% of interest
 Tax on foreign stockholders dividends – 15% of dividend
 Documentary stamp tax – rate depends on transaction
 Other national taxes & fees

Business tax – Rates vary among local governments
 Real property tax – 2% of the fair market value of the property based on an assessment level set by the local government during the year (plus a 1% special education levy)
 Registration fees – Rates depend on type and varies among local governments
 Occupation fees – P 50.00 per hectare per year. For mineral reservation areas, P 100.00 per hectare per year
 Community tax – Maximum of P 10,500.00 per year
 Other local taxes – Rate and type varies among local government

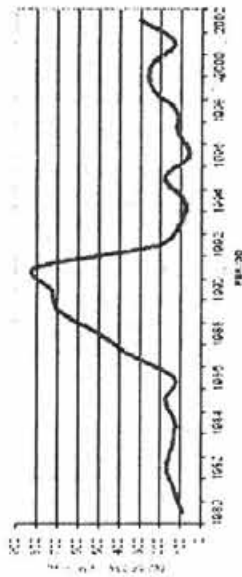
❖ Indirect taxes

- Fuel taxes
- Payments and fringe benefits of Filipinos directly employed
- Expenditures for development of host communities and for the development of geosciences and mining technology
- Withholding taxes on payroll, royalty payments to claim owners and surface owners and royalty payments for technology transfer

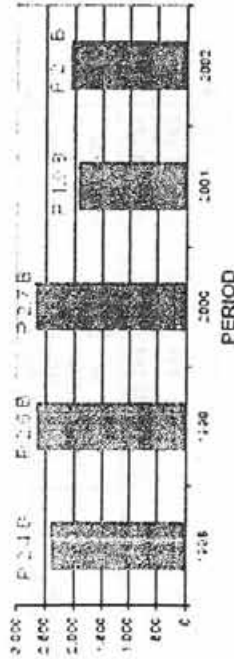
Payments to certain individuals or groups

- Special allowance as defined by the Mining Act – one-time payment to surface / claim owners for the transition from PD 463 and EO 279 to the effectivity of the Mining Act
- Royalties to Indigenous cultural communities – 1% of the

EXCISE TAX ON MINERALS, 1980-2003



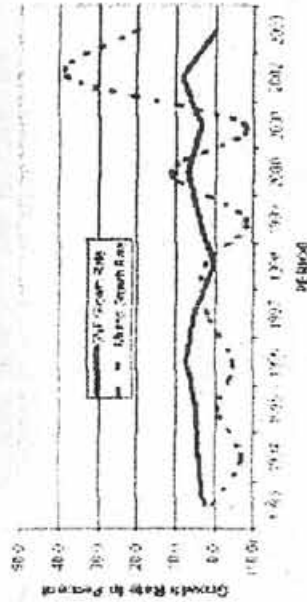
ESTIMATED TAXES & FEES FROM MINING



• Infrastructure development

It is said that the local mining communities are the ones who will greatly benefit from infrastructure development in mining projects. In order for the mining companies to efficiently extract and transport extracted minerals, they would have to create or improve road conditions in the area. Furthermore, the creation of health facilities, recreational facilities and other infrastructures for the companies' employees, can also be accessed by the affected local communities.

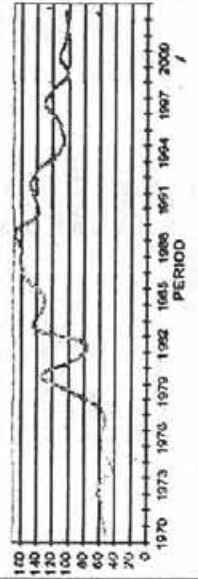
IMP AND MINERS' VALUE ADDED (GROWTH RATES, 1970-2003)



• Job Creation/ employment opportunities

Mining is said to be not an employment intensive industry. This is attributed to its being dependent on large machineries especially for the big mining corporations. There are, however, still significant employment opportunities in mining. Local employment in the mining industry has been increasing in number since the revitalization of the mining industry. Furthermore, if its multiplier effect is taken into consideration, for every job generated in mining, four other jobs are also created outside it.

EMPLOYMENT IN MINING, 1970-2003
(In Thousands)



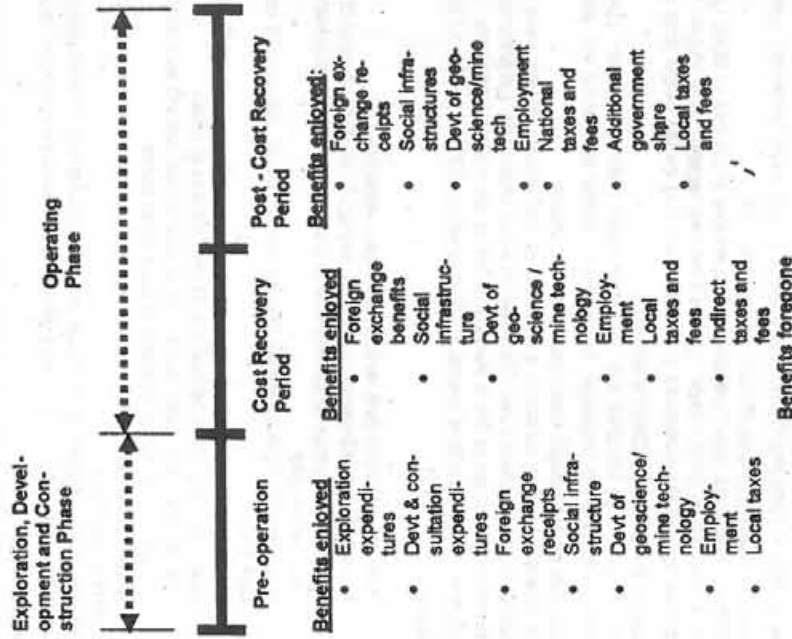
Employed Persons by Major Industry Group
January 2003 - October 2004
(in thousands)

Industry Group	Oct 2004	Jul 2004	Apr 2004	Jan 2004	Oct 2003	Jul 2003	Apr 2003	Jan 2003
Mining and Quarrying	96	114	138	123	101	112	105	98

Employed Persons by Major Industry Group
January 2004 - April 2006
(in thousands)

Industry Group	Apr 2006 /	Jan 2006 /	Oct 2005 /	Jul 2005 /	Apr 2005 /	Jan 2005 /
Total	33,024	32,384	32,876	32,521	32,217	31,834
Agriculture	11,420	11,834	12,175	11,990	10,992	11,359
Agriculture, Hunting	9,992	10,428	10,767	10,595	9,629	9,949
Fishing	1,427	1,405	1,407	1,395	1,363	1,410
Industry	6,236	4,882	4,886	4,999	5,236	4,977
Mining and Quarry-	174	120	116	111	135	129
Manufacturing	3,177	2,977	3,046	3,068	3,201	2,995
Electricity, Gas and	145	133	108	111	119	128

PHASES OF MINING PROJECT WHERE FINANCIAL BENEFITS ARE ENJOYED BY COMMUNITIES AND GOVERNMENT



ECONOMIC CONTRIBUTIONS OF THE MINERALS SECTOR (FY 2003)

Production Value	p 41.5 Billion or 19% increase from CY 2002
Value Added Contribution	p 18.0 Billion or 1.6% of Phil. GDP or 1.52% of the Phil. GNP (CY 2003)
Exports	US\$ 638 Million or 1.8% of total Phil. Exports
Spaid-up Investments	p 367 Million (CY 2002)
Employment	104,000
Wages and Benefits	P 4 to P5 Billion
Taxes and Fees Estimate	P 2.1 Billion (CY 2002)
Multiplier Effect	For each mining job, 4 to 10 allied jobs created upstream and downstream

C. Negative effects of Mining to the society in general, and to the community in particular

❖ The negative effects of mining can be sub-divided into categories. These may be divided into three major divisions— economic, environmental, and socio-cultural. Each of these may have two or more sub-divisions.

Economic

❖ Contrary to claims that mining was the main driver for growth and industrialization, it was documented that the extraction and exploitation of minerals may lead or be the "cause of a lower-than-expected level in the economic growth of a country. Furthermore, natural resource exploitation can exacerbate conflict, corruption, weak governance and poverty. Furthermore, while investments in mining poured in, with an increase in more than 50% between 1995 and 2001, with equivalents of \$980 million to \$1.5 billion, mine production was still higher twenty years ago.⁶ It was even found out that countries who depended solely in their mineral industries are faring worse now than in the past.

❖ The inability of the mining industries to create jobs is also another reason why it is not a good driver for development. The increasing mechanization and improvements in the methods of mining brought about the decline in the use of manual labor in mining.

❖ Another issue being raised is the displacement of individuals who are engaged in farming, fishing and other local forms of employment. With the onset of mining operations, they are deprived of their former livelihood. Worse is that once the mines have stopped operating, they have nowhere to go back to. This is because the farmlands and fishing areas are polluted. This displacement alone is one of the reasons why mining was said to be detrimental to development.

❖ Infrastructure development that was earlier considered as a positive effect of mining also has negative dimensions to it. Infrastructural developments can bring certain problems:

- Projects are very often heavily subsidized by the government and this causes the diversion of funds to from other areas
- The facilities are often under the control of the mining firm and more often than not, local people are denied access to these
- The infrastructures created lasts only as long as the mining companies last
- The existing infrastructures can be destroyed by the mining companies themselves
- The improvements in transportation [roads, bridges, pavements] can encourage unregulated migration, resulting in land-grabbing from local communities and uncontrolled deforestation⁷

Environmental

❖ Mining is a highly extractive industry. Tons of earth has to be moved, treated and processed in order to get a small quantity of the mineral. Because of this, mountains and hills have been quarries and were destroyed. Furthermore, for cases wherein mineral deposits are found in mountains, forests have to be cleared first before mining operations can commence.

❖ In order to extract the minerals, in the area, certain chemicals are being used. Cyanide, and mercury are the most often used chemicals. These chemicals are highly dangerous and toxic.

❖ A practice of mining companies in order to cut and defray costs is to improperly dispose of their waste. This has caused siltation and further destruction of farmlands. Also, the dumping of wastes in the sea or other river systems in or near the mining area causes pollution

❖ There is also a channeling that takes place in the water reservoir. Water reserves are being used to clean mineral ores. For cases where there is a water scarcity, this reserve water instead of being used by farmers for their irrigations, it is channeled to for the use of mining operations.

⁶ Christian Aid and PIPLinks. Breaking promises, making profits: Mining in the Philippines. December 2004.

⁷ Christian Aid and PIPLinks. December 2004.

- ❖ After mines have stopped operation, what are usually left behind are grim images and landscapes of the abandoned mine sites. Old mines can become reservoirs of acidic mine water. So, even after the mining company has stopped its operation, they may still be a cause for environmental hazards.

ENVIRONMENTAL IMPACTS OF MINERAL EXTRACTION	
ACTIVITY	POTENTIAL IMPACTS
Excavation and Ore Removal	<ul style="list-style-type: none"> • Destruction of plant and animal habitat, human settlements and other surface features • Land subsidence (underground mining) • Increased erosion; silt of lakes and streams • Waste generation (overburden) • Acid drainage (if ore or overburden contains sulfur compounds) and metal contamination of lakes, streams and groundwater
Ore Concentration	<ul style="list-style-type: none"> • Waste generation (mine tailings) • Organic chemical contamination (tailings often residues of chemicals used in concentrators) • Acid drainage and metal contamination
Smelting/ Refining	<ul style="list-style-type: none"> • Air pollution (substances emitted can include sulfur dioxide, arsenic, lead, cadmium and other toxic substances) • Waste generation (slag) • Impacts of producing energy (most of the energy used in extracting minerals goes into smelting and refining)

Original Source: Goudie, Andrew, *The Human Impact on the Environment* (1993)

Socio cultural

- ❖ There is an increasing tendency of mining companies to bypass the indigenous peoples in their mining decisions. At times the free prior and informed consent principle is not taken into consideration. Mining operations often leads to direct assaults on the cultures of the indigenous peoples. Although there are legislations and laws clearly stating that there is a need to consider the welfare of any indigenous community. At times, mining corporations' actions are opposing those that are in the Indigenous People's Rights Act.
- ❖ There are also certain nuisances in the implementation of the free prior and informed consent principle. At times, indigenous peoples are taken advantage of when it comes to this provision. Christian Aid and PIPLinks have documented instances and cases where this principle is said to be violated by mining corporations.
- ❖ In relation to the issue of indigenous peoples, there cultures are under assault. They are tied to their land, and removing them from their domains is taking something very important to them, not just because of its economic value, but also the age-old traditions and customs tied to it.
- ❖ In cases where there is resistance by the indigenous peoples concerned, they are being dealt with using the government's own instrumentalities—the police and the military. This further gives them or causes them insecurity.
- ❖ The increase in military presence in mining areas is also a cause for concern among many local inhabitants, both indigenous and not. There is always a looming threat making them unable to exert and push for the exercise of their rights.
- ❖ In Theodore Downing's study, he cites the World Bank findings that "involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social and environmental risks: productive systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost".⁸

⁸ Theodore E. Downing, *Avoiding new poverty: Mining-induced displacement and resettlement*. (58). April 2002 IED and WBCSD.

SOCIAL, ECONOMIC, AND CULTURAL IMPACTS OF LARGE-SCALE MINING

POTENTIAL IMPACT	AFFECTED SECTOR(S)
Communities and their sectors directly dependent on natural resources	<ul style="list-style-type: none"> • Farming Sector • Forestry Sector • Fisheries Sector • Small-Scale Mining Sector • Indigenous Peoples
Social and cultural repercussions of integrating the offices and operational units of a corporation owned and managed by people from urban centers as well as its labor force	<ul style="list-style-type: none"> • Host Communities and adjacent areas • Indigenous Peoples
Forced or involuntary relocation and many forms of social disruption caused by mining projects	<ul style="list-style-type: none"> • Host Communities and adjacent ones • Indigenous Peoples
Theaterized indigenous political systems of indigenous communities as the management of their traditional domains are effectively turned over to the mining contractor	<ul style="list-style-type: none"> • Indigenous communities
Commercial mining operations impact on ancestral domain rights - mining interests enjoy unrestricted access & exploitation rights over mineral resources found in ancestral domain areas	<ul style="list-style-type: none"> • Indigenous communities

Original Source: Leonora Marive and Begonia Francoelyn, Mining Legal Notes and Materials (1995)

Government's Role

- ❖ The government's primary role is to balance things up. How can it tap the resources and revenues that the minerals sector can give, while at the same time, minimizing or removing the economic, socio-cultural and environmental costs tied to it? This role may seem to be difficult, but then again, it is the government's duty in the first place. It should act as the bridge linking the business community on one hand and the involved local people on the other.
- ❖ The government also plays a very important role in sustainable development. The government has the power and authority to make relevant laws. Because of this authority it may set the atmosphere in order for sustainability in mining to take place. Furthermore, it has the power to impose sanctions to those who do not follow state laws.

- ❖ Section 8 of the Philippine Mining Act of 1995 states that the Department of Environment and Natural Resources "shall be the primary government agency responsible for the conservation, management, development, and proper use of the State's mineral resources including those in reservations, watershed areas, and lands of the public domain."
- ❖ Sec. 67 of the Act further gives the government greater power. "The mines regional director shall, in consultation with the Environmental Management Bureau, forthwith or within such time as specified in his order, require the contractor to remedy any practice connected with mining or quarrying operations, which is not in accordance with safety and anti-pollution laws and regulations, which is not in accordance with safety and anti-pollution laws and regulations. In case of imminent danger to life or property, the mines regional director may summarily suspend the mining or quarrying operations until the danger is removed, or appropriate measures are taken by the contractor or permittee."
- ❖ The Executive Order 270 given by Pres. Gloria Arroyo made sustainability as a guiding principle of the Minerals Action Plan. It highlights protection of the environment, safeguard of the ecological integrity of areas affected by mining including biodiversity and small-island ecosystem, multiple land use and sustainable utilization of minerals.

Civil society roles

- ❖ Civil society's role basically is to serve as watchdogs guarding whether the government and the mining sector are doing their share of promoting and observing sustainability in mining. They serve as interest aggregators and articulators demanding for tangible and effective mining policies that push for sustainability.

Mining Sector Roles

- ❖ The basic role that the mining sector should observe are the laws and rules spelled out in their agreements with the government and the other parties involved in mining i.e. indigenous peoples, mining communities, etc.
- ❖ To practice or promote sustainability for the mining sector, mining companies ought to police their own ranks, observing at least the minimum standard, if the best mining practice cannot be followed.

- ❖ The mining sector plays also a role in promoting development in the mining community. As such, it has the obligation to provide for alternatives to whatever damage or inconvenience it produces to the people in the community.
- ❖ The Mining industry has a potential role for poverty alleviation. Mining often constitutes a high percentage of foreign direct investments in developing countries.⁹ These investments if channeled properly to developmental projects may help the people directly or indirectly.
- ❖ Respect cultures, customs, and values of individuals and groups whose livelihoods may be affected by exploration, mining, and processing.
- ❖ Recognize local communities and other affected organizations and engage with them in an open, transparent, and effective process of consultation and communication, from exploration through production to closure.
- ❖ Assess the social, cultural, environmental, and economic impacts of proposed activities and engage with local communities and other affected organizations in the design of community development strategies.
- ❖ Contribute to and participate in the social, economic, and institutional development of the communities where operations are located, and encourage the establishment of sustainable local and regional business activities.
- ❖ Reduce to acceptable levels the adverse environmental and social impacts on communities of activities related to exploration, extraction, and closure of mining and processing facilities.
- ❖ Respect the authority of national and regional governments—take into account their development objectives, contribute information related to mining and metals processing activities, and support the sharing of the economic benefits generated by operations.

IV. Recommendations

(Most of the Recommendations were taken from "Breaking promises, making profits. Christian AID and PIPLinks Report. December 2004)

Recommendations for the Government

- ❖ The presence of indigenous populations should be assumed unless proven and independently verified otherwise. Where indigenous people occupy an area, the full recognition of their rights should be given priority over negotiation with outside bodies over those rights.

- ❖ Companies and the government should respect the structure of decision-making, and the leaders of the community recognised by the legitimate local population and by neighboring communities.
- ❖ Where a mining proponent exists, clear procedures for public notification should be followed. Information about the project and consultation period should be posted widely and made available in local languages.
- ❖ Adequate time should be allowed to determine local opinion. This should be sufficient to allow for information dissemination and discussion – say six months.
- ❖ Information sharing and consultation with a community or indigenous people should be conducted and concluded in public, in an accessible place within the affected area.
- ❖ Where companies are found to have deliberately divided communities, this should be sufficient ground for the denial or cancellation of a license.
- ❖ A local decision to reject mining should stand for a significant minimum period, say five years. This would reduce the threat of persistent harassment.
- ❖ The deployment of military or paramilitary forces in an area prior to or during consultation is unacceptable. It should constitute sufficient grounds for the termination of any negotiation or license.
- ❖ To ensure that these provisions are satisfactorily complied with, a monitoring body which enjoys the confidence of all parties – especially the affected community – should report independently on the process. It is clearly unsatisfactory that the government agencies NCIP and DENR are the main arbiters in determining local opinion on controversial decisions in which central government has a clear vested interest.
- ❖ Any legal contests to the granting of a Certificate of Ancestral Domain Title should be secondary and should not cause the displacement of the indigenous community while the suit is pending.
- ❖ Government should decisively investigate and prosecute any reported human rights violations. As the UN Commission on Human Rights has no power to prosecute, a specific government agency should be given the power to do so in a permanent, rather than merely an ad-hoc, manner.
- ❖ The government should ensure that Strategic Lawsuits Against Public Participation – SLAPP Suits – lodged against community members opposing the entry of mining are quickly disposed of by the lower courts.
- ❖ It must ensure that environmentally critical areas – especially watershed areas – are closed to mining.

It must ensure that food security is prioritised. Agricultural and fishing resources from which the community directly sources its food should be protected.

⁹ Sinking a better balance. Annex #3. Industry's views. Vol 3. Extractive Industries Review Reports. World Bank.

Investment Promotion

- ❖ The government should encourage increased transparency and reporting of CSR practices of firms operating in the Philippines.
- ❖ The BOI may also consider presenting information regarding the CSR enabling environment to potential investors.
- ❖ The government should keep a watching brief on the Extractive Industry Transparency Initiative.
- ❖ The government may wish to consider the merits of a new initiative from the Global Reporting Initiative which seeks to encourage greater public sector reporting.

For the Local Government

Stakeholders dialogue- Social Acceptance of mining projects

- ❖ LGUs need to strengthen public communication and consultation procedures in all phases of mining stages.
- ❖ As a bridge between the community and the company, LGUs should develop standards to improve the method and quality of feed backing information to all stakeholders concerned.
- ❖ LGUs should increase partnership agreements with mining companies during the Environmental Impact Assessment process.

Local Planning

- ❖ LGUs should incorporate and integrate mining development plans in the development plans of local government units.
- ❖ LGUs should have enhanced capacity in land-use planning, zoning and mapping technologies through cross-fertilization and the transfer of best practices in environmental and social management of mining projects.

Recommendations to the mining industry

- Companies should support improved regulation at both national and international level. Companies that operate ethically will benefit from minimum standards that prevent other companies undercutting them by following poor practice.
- The mining industry cannot disown its historical responsibilities. Communities live with the consequence of mining many years after a mining company has gone. Where mining has negatively impacted communities, those responsible should make full reparations.
- As a matter of policy, mining companies should desist from the use of paramilitary troops.

Mining companies should recognize and respect the right to free, prior informed consent and the right of communities to say no to a mining project.

Companies should operate to the same standards in other countries as they do in their home countries, except where host countries have higher standards – these should be respected. Home country governments should enforce these standards.

Others

International law should ensure that minimum environmental and social standards are made binding for all companies. This will prevent host countries lowering standards to attract investment.

There needs to be a radical shift in the investment regulation advice given to all developing countries. The international community, including the World Bank, is pressurising countries to reduce pro-poor regulations on foreign investment, such as legal requirements that foreign companies source goods and labour locally and reinvest a significant proportion of their profits. Individual countries find it very hard to resist this global trend.

International norms exist regarding minimum labour, environmental and human rights standards. The international community should develop these norms into binding laws with effective monitoring and sanctions imposed on offending companies. The development of effective and credible monitoring is a vital component of such a regime. Free-trade agreements sometimes include clauses that make the lowest national standard the norm, but the opposite – the highest national standards – should apply. National and local governments should have the right to impose even higher environmental and social standards if they wish.

Influential organizations, such as the World Bank and other donors, should stop putting pressure on client countries to attract investment by reducing protective regulation and offering incentives, thus encouraging a race-to-the-bottom. Rather they should persuade developing-country governments that without certain conditions in place, investment in mining and similar sectors will not lead to poverty alleviation, as the EIR indicates.

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PROGRAMME/ INVITATION

The Challenges and

The Challenges and Prospects of Sustainable Mining in the Philippines

SUSTAINABLE
DEVELOPMENT

SOCIAL

ENVIRONMENTAL

ECONOMIC

11 October 2006

1:00- 5:00 pm

Assembly Hall, UP National College of
Public Administration and Governance

This serves as an invitation



Programme

Registration
Film Showing
Opening Ceremonies

Prayer
National Anthem
Welcome Remarks

Overview of the Philippine
Governance Forum and
Introduction of Speakers

Speaker

Speaker

Speaker

Break/ Intermission
Open Forum/ Discussion
Synthesis

Closing

Dean Alex B. Brillantes Jr.
Dean, UP NCPAG

Ms. Mars Mendoza, FTA

Usec. Demetrio Ignacio
Undersecretary
Planning, Policy Research and
Legislative Affairs
Department of Environment and
Natural Resources (DENR)

Engr. Rodolfo Velasco Jr.
Mines and Geosciences Bureau
DENR

Atty. Marvic F. Leonen
Executive Director
Legal Rights and Natural Resources Center-
Kasama sa Kalikasan
Vice President, UP and
Professor, UP College of Law

Dr. Ma. Fe V. Mendoza
Project Coordinator, PGF

Master of Ceremonies /Moderator: **Dr. Ebenezer R. Florano, UP NCPAG**

About the Philippine Governance Forum

The **Philippine Governance Forum (PGF)** is a series of consultative discourses on pressing policy and governance issues besetting the country. It is organized by the National College of Public Administration and Governance (NCPAG), University of the Philippines (UP), under the auspices of the GOP- UNDP Fostering Democratic Governance Programme. It aims to provide a venue for a continuing dialogue, exchange of ideas and consultation with relevant publics and to articulate recommendations, scenarios, and best practices for fostering democratic governance.

About the Diliman Governance Forum

The **Diliman Governance Forum (DGF)** is a continuing effort of the National College of Public Administration and Governance (NCPAG), University of the Philippines (UP) to initiate collective action for public administration reforms and better governance. Spinning off from the Policy Issues Forum conducted by the College in the past, the DGF has tackled various policy concerns, such as, reengineering government, fiscal crisis, geo- informatics, electoral reforms, youth leaders of the past and present, combating corruption, regulatory governance, policy options for the Bangsa Moro, trade on human terms, the 15 years of the Local Government Code. This 16th DGF tackles "The Challenges and Prospects of Sustainable Mining in the Philippines."

The Organizers



UP National College of Public
Administration and Governance



Fair Trade Alliance



United Nations Development
Programme (UNDP)

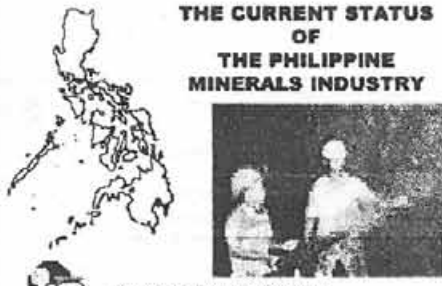
POWERPOINT PRESENTATIONS

Annex A

“The Current Status of the Philippines Mineral Industry”

Engr. Rolando Peña

**THE CURRENT STATUS
OF
THE PHILIPPINE
MINERALS INDUSTRY**



DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES

The Current Status of the Philippine Minerals Industry

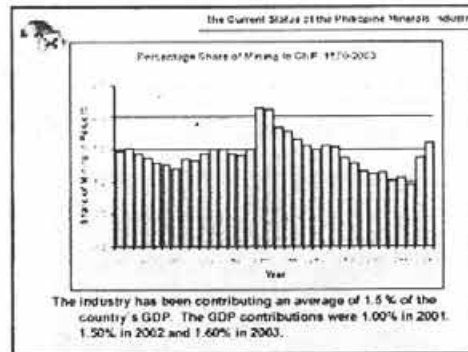
PART I
MINERALS INDUSTRY
PERFORMANCE

The Current Status of the Philippine Minerals Industry

Philippine Mining Industry Statistics

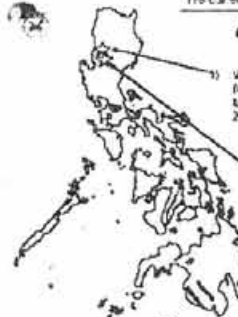
	2001	2002	2003	2004
Gross Production Value				
Metals Mining	153.2 M	129.8 M	118.2 M	142.5 M
SSM Gold Mining	195.1 M	277.2 M	288.7 M	352.5 M
Non-Metals	219.5 M	215.1 M	222.5 M	244.3 M
	567.8 M	622.1 M	629.4 M	739.3 M
Gross Value Added (incl. Energy Sector)	196.1 M	213.1 M	226.7 M	251.4 M
Contribution to GDP	1.0%	1.4%	1.5%	1.9%
Growth Rates in Mining	-3.1%	5.1%	12.5%	12.6%
Total Mineral Exports	527 M	518 M	635 M	917 M
Contribution to Total Philippine exports	1.6%	1.5%	1.8%	2.1%
Paid-up Local Investments	223.9 M	262.6 M	N.A.	N.A.
Paid-up Foreign Investments	39.1 M	61.8 M	N.A.	N.A.
Taxes Collectible	7.95 M	2.05 M	2.81 M	0.29 M
Employment in Mining/Quarrying	154,000	161,300	164,000	139,500
Contribution to Total PNA Employment	2.32%	2.30%	2.30%	2.38%

SOURCE: DENR - DOST, 2004



The Current Status of the Philippine Minerals Industry


**OPERATING MINES
Large-Scale**



- 1) Victoria Gold Project (Lepanto Consolidated Mining Co., Benguet)
2003 Production:
Gold - 2,781 tons (P 1.8 B)
Silver - 4,143 tons (P 35.5 M)
- 2) Sto. Tomas Mine (Phil. Alloy Corp.)
Padcal, Tuba, Benguet
2003 Production:
Copper - 89,917 DMT (P 1.83 B)
Gold - 2,230 Tons (P 1.57 B)
Silver - 3,148 Tons (P 26.4 M)

The Current Status of the Philippine Minerals Industry

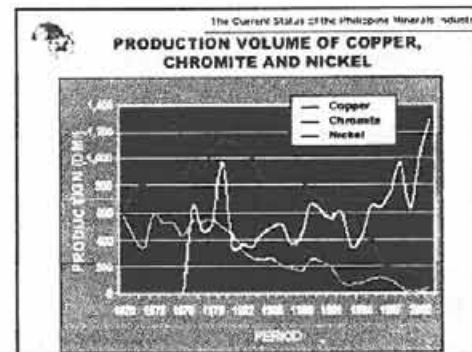
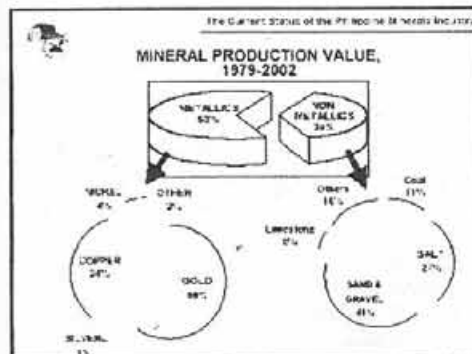
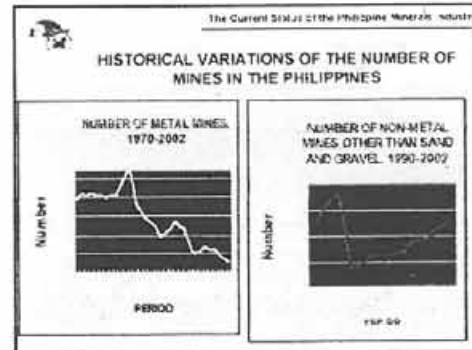
**OPERATING MINES
4 Mid-scale Nickel Mines**

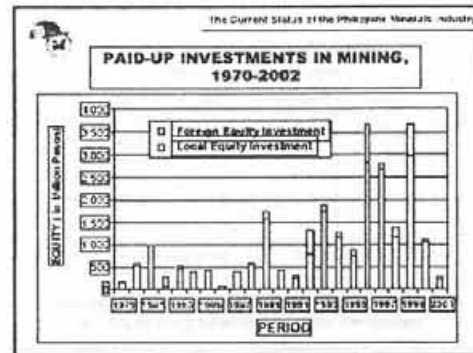
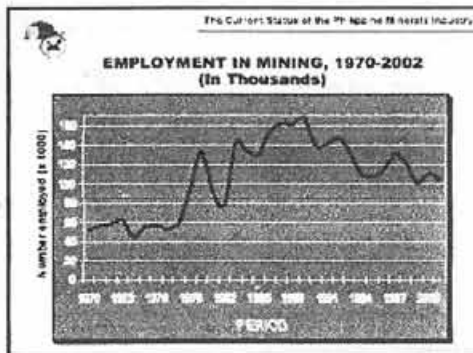
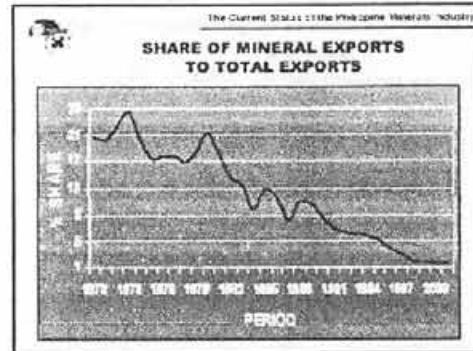
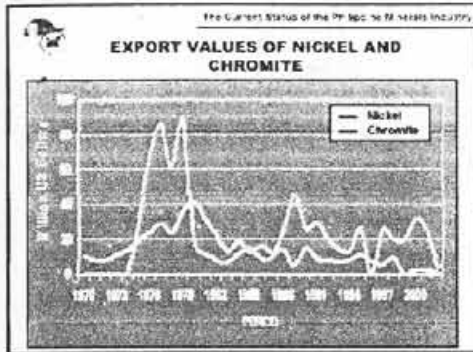
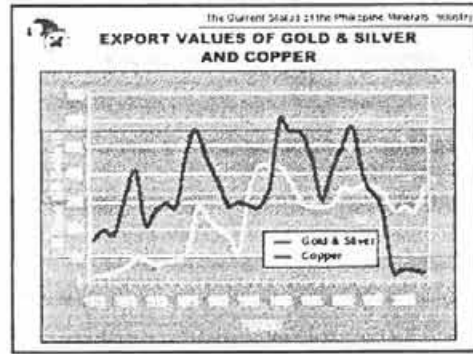
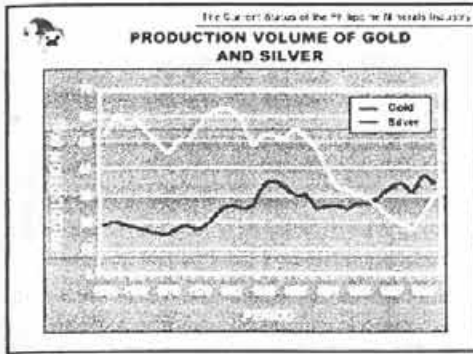


- 1) Rio Tuba (Rio Tuba Mining)-
Bataera, Palawan
2003: 205,694 DMT (P 6.5 M)
- 2) Cagthiao (East Coast Cagthiao)-
Dinagal Is., Surigao del Norte
2003: 290,363 DMT (P 132.9 M)
- 3) South Dinagal Proj. (Pacific
Nickel/Nippon)-
Surigao City
2003: 88,491 DMT (P 54.8 M)
- 4) Taganito (Taganito Mining)-
Taganito, Surigao del Norte
2003: 376,426 DMT (P 64.4 M)

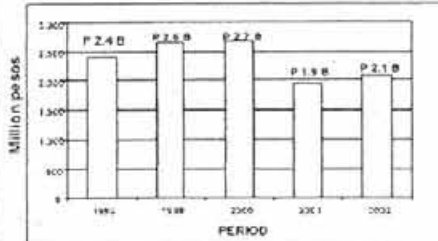


- The Current Status of the Philippine Minerals Industry
- ### OTHER OPERATING MINES
- 16 cement plants and quarries
 - 80 small to medium-scale limestone quarries 90 rock aggregate quarries and crushing plant
 - 245 sand and gravel quarries with industrial permits
 - 9 slaked lime producers
 - 22 small to medium-scale marble quarries; and
 - More than 2,000 quarries and small-scale mines of various commodities





ESTIMATED TAXES & FEES FROM MINING



EXCISE TAX ON MINERALS, 1980-2002



MINE DEVELOPMENT AND EXPLORATION PROJECTS



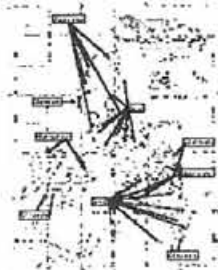
Mineral resources potential.....



Onshore:

- Only 1.4% of Phil. land area (30 million hectares) is covered by mining permits
- 9 million hectares more of potential sites for metallic minerals
- 5 million hectares for non-metallic minerals
- Resources valued at roughly US\$ 90 Billion for 23 projects representing 10% of possible total resource.

Mineral resources potential.....



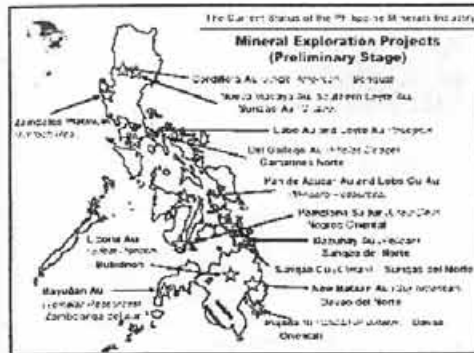
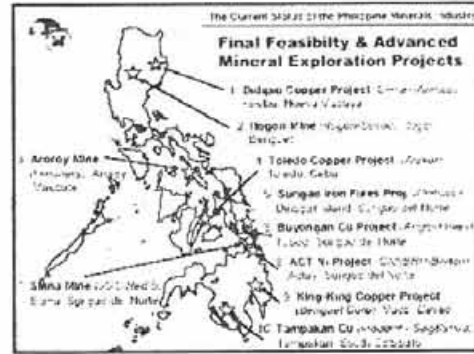
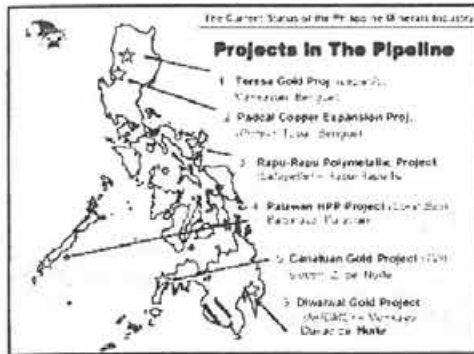
Offshore:

- Within Exclusive Economic Zone (EEZ) of 2.2 million km²
- Potential minerals:
 - Marine sand & gravel and decorative stones
 - Manganese nodules w/copper, gold, zinc & cobalt

Number of Mining Rights Issued by National Government

TYPE OF MINING RIGHT	NUMBER	AREA
Mineral Production Sharing Agreements (MPSA)	200	340,537 has.
Exploration Permits (EP)	13	54,177 has.
Financial or Technical Assistance Agreements (FTAA)	2	51,955 has.
Lease Contracts/ Patents	310	67,136 has.
TOTAL (As of 30 June 2004)	531	513,808 has.

The total area covered by these existing mining rights is 1.5% of the total land area of the Philippines.



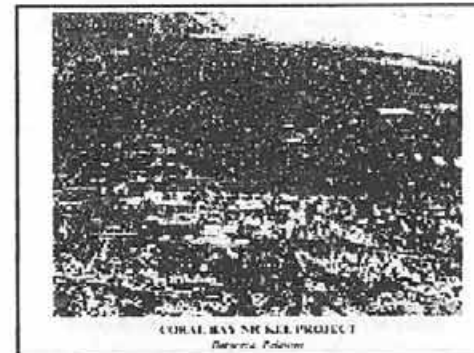
NEW OPERATING MINES

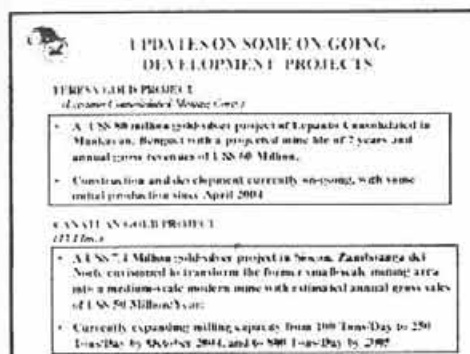
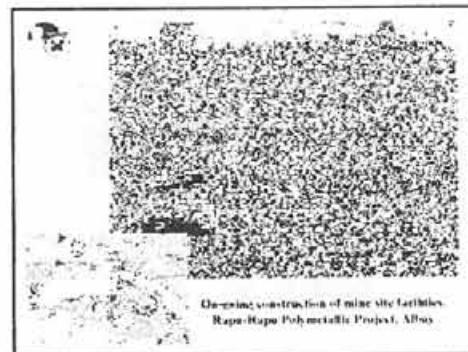
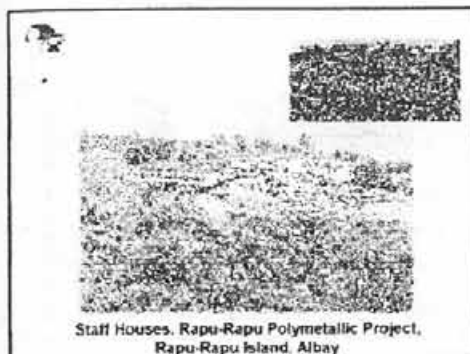
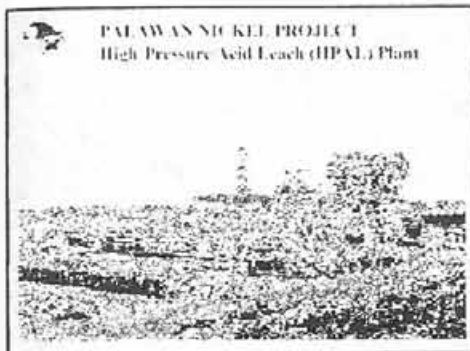
PROJECT COMPANY	STATUS	
1. South Dinagat Nickel Project	Location: Dinagat, Zamboanga del Norte SIPNA Pacific Nickel Operations, Huanan Mining	Normal operations on March 2003 Normal operations of Nickel on August 2003 valued at P 7.1 M
2. Canatuan Gold Proj.	Location: Canatuan, Zamboanga del Norte SIPNA, PFI Resources	Plant started 100,000 capacity by end of 2003 The mine expansion for a 250,000 tons operations.
3. Divulwal Direct State Dev't Project	Location: Marikina, Davao del Norte	Normal production at 100,000 tons/year Total cost value is of 22 Dec. 2003 at 52.4 M Value at 150,000 M

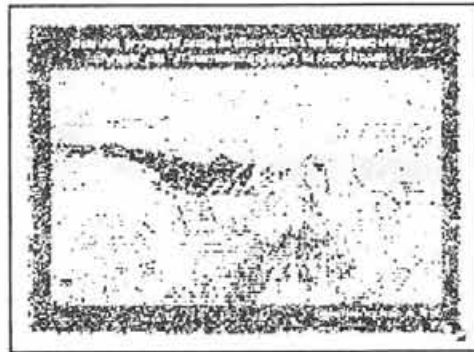
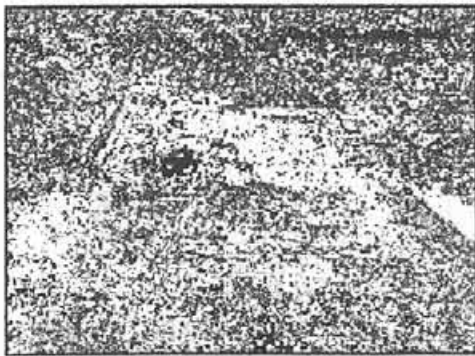
UPDATES ON SOME ONGOING DEVELOPMENT PROJECTS

A. KID TUBA NICKEL PROCESSING PLANT

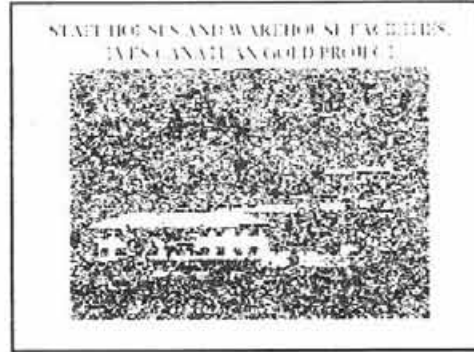
- ◆ A US\$ 100 million High-Pressure Acid Leach (HPAL) nickel processing plant in Bataraza, Palawan by Coral Bay Nickel Corporation a joint-venture company between Sandison Mining Corp., Mitsui Co., Ltd. and Nichi Toki Corp. of Japan and Rio Tuba Nickel Mining Corp. of the Phil.
- ◆ Currently in ongoing developmental operations. Scheduled full operation by end of 2003.
- ◆ Low-grade Nickel ores to be supplied by Rio Tuba Nickel, with sufficient ore reserves good for 20 years of operations.
- ◆ Projected to bring in Gross Revenues of US\$ 5.2 Million/Year with employment generation of 250 direct employees and about 1,000 indirect employees.







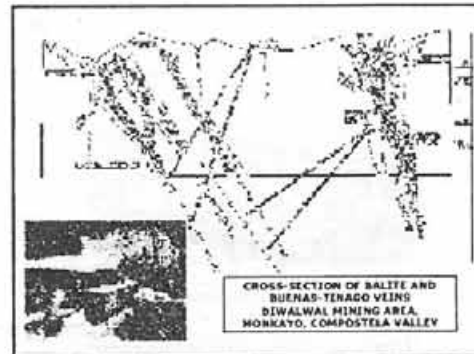
Former small-scale mining areas, Sison, Zamboanga del Norte



STATE HOUSES AND WAREHOUSE FACILITIES,
TAPAS CANAL, AN GOLD PROJECT



THE DIWALWAL GOLD RESERVE:
View of Nang District, Bulue Area
Dps. Mt. Diwata, Marikina, Compostela Valley



CROSS-SECTION OF BALITE AND
BUENAS-TENAGO VEINS
DIWALWAL MINING AREA,
MONKAYO, COMPOSTELA VALLEY

UPDATES ON SOME ON-GOING DEVELOPMENT PROJECTS

I. DIDIPLO COPPER-GOLD PROJECT
in Nueva Vizcaya, Cordillera Occidental

- ◆ A US\$ 120 million copper-gold mining project located in Kasibu, Nueva Vizcaya is projected to produce 100,000 ounces gold equivalent valued at US\$60 million per year.
- ◆ It has already spent a total of PNP3 billion in exploration expenditures, including PNP 100 million in preparation fees paid to local governments.
- ◆ A new feasibility and mine plan and design is now being completed for submission to and approval by the government.
- ◆ A legal problem has recently arisen with the filing of a case with the Supreme Court questioning the constitutionality legality of the DDC's Government Financial and Technical Assistance Agreement (FTAA) signed with the government in 1975.



DIDIPLO COPPER-GOLD PROJECT
Kasibu, Nueva Vizcaya



Dinkidi Resources



Year	1978	1979	1980	1981	1982
Production (oz)	0	0	0	0	0
Reserves (oz)	0	0	0	0	0

Year	1978	1979	1980	1981	1982
Production (oz)	0	0	0	0	0
Reserves (oz)	0	0	0	0	0

Geological Data
 100% Cu
 100% Au
 100% Ag
 100% Zn
 100% Pb
 100% Ni
 100% Co
 100% Mn
 100% Fe
 100% S
 100% Cl
 100% Br
 100% I

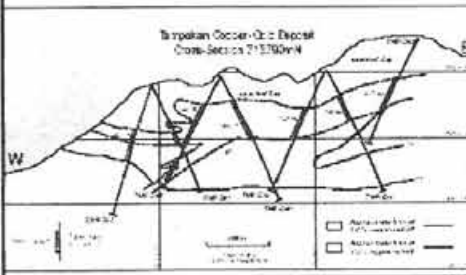


UPDATES ON SOME ON-GOING MAJOR EXPLORATION PROJECTS

- A. LAMPAKAN COPPER PROJECT, Samar Occidental**
- ◆ A joint venture project among Nippon Mining, Inc. and Indophil Resources of Australia (Lampakan Resources Selection, 10-Minute R.D.S.R. #).
 - ◆ Current mineral resource features of copper and gold with estimated value of US\$ 23 Billion.
 - ◆ Estimated capital investment requirement of US\$ 1 Billion.
 - ◆ Currently Bankable technical and bankable feasibility studies.
- B. MANABAT GOLD PROJECT, Misamis Occidental**
- ◆ A US\$ 20-Million project of Hinokawa Resources Corp., a joint venture between Nippon Mining (Nippon) President Mine Co. (Japan) & local investors, involves rehabilitation of old Manabat mine.
 - ◆ On the final bankable feasibility study of a possible US\$ 500 million.



TAMPAKAN HIC-I GRADE CROSS SECTION



AROROY GOLD PROJECT
Misamis Occidental

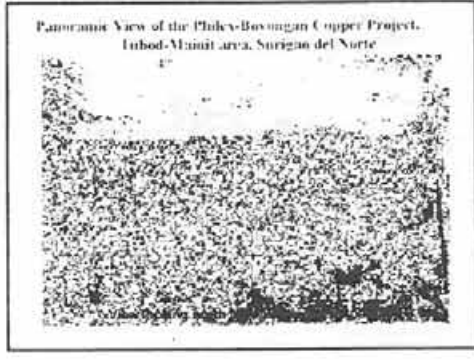
UPDATES ON SOME ON-GOING MAJOR EXPLORATION PROJECTS

A. BOILING AN COPPER GOLD COPPER PROJECT

- ▶ A joint venture copper-gold exploration in Surigao del Norte, by Anglo American (U.S.) Phils. Gold Phils., Inc.
- ▶ Initial mineral resource estimate of 1.5 billion ounces of copper-gold, with export potential of more than US\$ 200 million per year.

B. ADRIAN ADVANCE FUNDAMENTAL NICKEL PROJECT

- ▶ A US\$ 12 Million Nickel project in Surigao del Norte owned by U.S. Minerals and Development Corp. and U.P.S. (Construction and Mining Corporation), in cooperation Agreement with BHP's Australian Nickel Ltd. of Australia.
- ▶ FEI completed. Final feasibility study and mine plan details being completed with construction scheduled in early 2017 and full production by 2019.
- ▶ Projected mine life of 17 years with estimated reserves of US\$ 500 Million.



UPDATES ON SOME ON-GOING MAJOR EXPLORATION PROJECTS

A. SANSAN GOLD PROJECT, Surigao del Norte

- ▶ A gold exploration project of Greenstone Resources, Inc. and Red F. Limited of Australia.
- ▶ Existing ore reserves of 825,000 ounces held from previous mining operations.
- ▶ Additional drilling activities in mine.

B. CASATEAN COPPER-GOLD PROJECT, Agusan Zamboanga del Sur

- ▶ A US\$ 3 million copper-gold exploration project of USI Resources Development Corporation, with a potential to generate an annual US\$ 4 million per year in E-PER cashflow.
- ▶ Currently operating an 80-ton/day pilot plant to process ore tailings from small scale mining activities in the area.

LIST OF FOREIGN MINING COMPANIES CURRENTLY ACTIVE IN MINERALS EXPLORATION

Company	Project	Activities
1. Anglo American Exploration Phs. Ltd. (London, England)	Boilingan Copper Gold Project (Surigao del Norte)	Drilling activities; Initial feasibility studies; Metallurgical testing
2. Indophil Resources MIM (Canada)	Fampukan Copper Gold Project (Claver, Claver)	Initial mineral resources valued at US\$ 10; Feasibility study
3. OneWorld Nickel Ltd. BHP Billiton (Australia)	Surigao Nickel Project (Claver, Claver)	Feasibility study; Geological Mapping
4. Phelps Dodge Exploration Corp. (U.S.)	Adrianes Project (Claver, Claver)	Drilling activities; Scanning other project areas

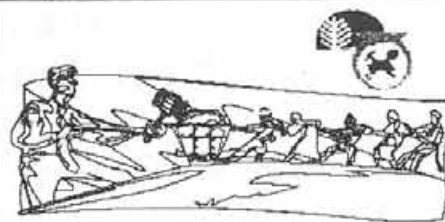
LIST OF FOREIGN MINING COMPANIES CURRENTLY ACTIVE IN MINERALS EXPLORATION

Company	Project	Activities
5. Red F Resources S.L. (Australia)	Sansan Gold Project (Surigao del Norte)	Drilling activities; Feasibility Studies
6. Mindoro Resources Ltd. (NRI) (Canada)	Floxy Copper Project (Bay de Agut, Bayongan, J. Bay)	Initial drilling; geochemical surveys
7. Verde Mining (Canada)	Adrianes Gold Project (Claver)	Feasibility study and mine plan design
8. Umax Mining Ltd. (Australia)	Adrianes Copper Project (Surigao del Norte)	Initial drilling activities; geochemical surveys



LIST OF FOREIGN MINING COMPANIES CURRENTLY
ACTIVE IN MINERAL EXPLORATION

Company	Project	Activities
9. Adcock Resources Inc. (Australia)	Zambales Nickel Platinum Project <i>Zambales</i>	Initial drilling activities Geological surveys
10. Crown Nickel Corp. (U.S. Canada)	Abundant Nickel Sulphide Sulphide Project <i>Abundant</i>	Drilling activities Feasibility studies
11. Cobalt Resources (Australia)	Gold Exploration Project in N. Luzon <i>Gold Sulphide</i>	Geological surveys Preparation for drilling activities
12. Sur American Corp. (Australia)	New Britain Cu Pb <i>Parasitic</i>	Initial drilling activities Geological surveys



For further information, please visit:

URL: www.mnh.gov.ph

Or contact us at: central@mnh.gov.ph

exploring/041015

Annex B "Philippine Mines" Atty. Rhia Muhi

23 Priority Projects

Mining in the Philippines

- Large-scale usually in large-scale mines Benguet, Lepanto, Palex
- Placer and small Gold Ilwaco
- Placer on a scale Devaluel

Part of Barangay Didipio in Kasibu, Nueva Vizcaya, where Dinkici ("pure gold") is located

Dinkici Hill: where Climax Anmco will mine


How Dinkici will look during Phase 1 of the mining operation

Mine waste: the case of Climax Anmco in Nueva Vizcaya


Climax Anmco plans to produce 205,000 ounces of gold and 30 million pounds of copper from Dinkici Hill every year for the first 5 years of operation

Open-Pit Mining in the Philippines


Marikina - A cyanide spill occurred here on Oct. 11 & 31.



Proposed Zinko Open Pit - In July 2006, the Kasaan Municipal Council voted against mining. In August 2006, the province passed a law to...



Canatuan Gold Slocan, Zamboanga del Norte



Canatuan Gold, Zamboanga del Norte - The mining company has successfully divided the indigenous Subanon over mining in the IP sacred Mt. Canatuan.





Open-Pit Mining in the Philippines

Marikina - A major tailings dam failure.



Tailings dams

CANATUAN - Zamboanga (gold)
 KASHIPUR LAKE in India (aluminum)
 ANTANNA in Peru

Major tailings dam disasters in the Philippines


2002: DIZON COPPER SILVER MINES, SAN MARCELINO, ZAMBALES - overflow and spillway failure of 2 abandoned tailings dams after heavy rains (Aug 27); tailings spilled into Mapanuepe Lake then into Sta. Tomas River (Sept 11); low-lying villages flooded with mine waste; 250 families evacuated.

April 26, 1989: MANILA MINING CORP., PLACER, SURIGAO DEL NORTE (gold) - 700,000 m³ cyanide tailings spilled from damaged concrete pipe of tailings pond; due to excessive rains, 17 homes buried, 51 ha of rice land...

Major tailings dam disasters in the Philippines

March 24, 1996: PLACER DOME INC., MARCOPPER, MARIKINA (copper) - 3 million m³ of tailings released from storage pit through old drainage tunnel; 1,200 residents evacuated; 13 km of river filled with tailings.

August 9, 1999: ATLAS, TOLEDO (CEBU) (copper) - pressure in clogged drainage of an open pit loosened accumulated silt, releasing approx. 5.7 million m³ of acidic water into the nearby river.



Sanaga River... into the ocean.

Major tailings dam disasters in the Philippines

- December 8, 1995: PHILEX MINING CORP. (BUJAWAN PROJECT), NEGROS OCCIDENTAL (gold) – failure of debris tower of pond excited by imponderable tailings
- September 2, 1995: MANILA MINING CORP., PLACER SURGADO DEL NORTE (gold) – tailings pond #75 collapsed due to heavier than normal rainfall, wave action and sector movement releasing 50,000 m³ of tailings. 12 people killed, coastal pollution
- June 28, 1993: TOGON-SLYOC MINES – overtopping at the height of a typhoon that clogged the dam's periscope and diversion tunnel

Major tailings dam disasters in the Philippines

- January 1992: PHILEX MINING CORP., PADCAL BENGUET (copper) – wall of tailings pond collapsed due to weakened dam structure caused by 1990 earthquake. 180 M metric tons of tailings released
- October 17, 1986: LEPANTO CONSOLIDATED (gold) – tailings pond collapsed due to weakened dam embankment caused by additional loading
- November 8, 1982: MARINDUQUE MINING AND INDUSTRIAL CORP., SPALAY, NEGROS OCCIDENTAL – dam failure due to slippage of foundation on clayey soil. 28 million metric tons of tailings released, resulted in widespread inundation of agriculture, lands up to 1.5 m high

Tailings dumped into the sea Marcopper-style

1971-1988: PLACER DOME AND MARCOPPER MINING – show no mine disposal of 200 million metric tons into Casuaran Bay, resulting in an area depositor of 80 has.



ACID MINE DRAINAGE: Pollution on a Millennial Scale



The Nagpoq River, Marinduque Island. The red-orange color and Oxfam's scientific studies indicate acid mine drainage and contamination by heavy metals (Oxfam).

Acid mine drainage (AMD), or acid rock drainage, is the acidic water that drains out of above-ground or underground coal and metal mines. It may form inside the mine or several kilometers downstream.

ACID MINE DRAINAGE: Pollution on a Millennial Scale

AMD can occur during mining operations or LONG AFTER A MINE HAS BEEN ABANDONED.

AMD impacts stream and river ecosystems by increasing acidity, depleting oxygen, and releasing heavy metals, such as aluminum, iron, manganese, and zinc.



Bags of mine waste tailings decomposing in the Boac River in March 2004 (Oxfam)

ACID MINE DRAINAGE

Acid mine drainage is one of the best-kept secrets of the mining industry.

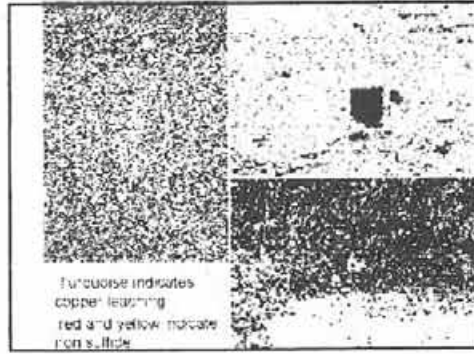


Why? Because it is the MOST DIFFICULT PROBLEM to solve. In fact, the industry has not yet found an effective solution to this problem which persists well into the future.

Impacts of ACID MINE DRAINAGE

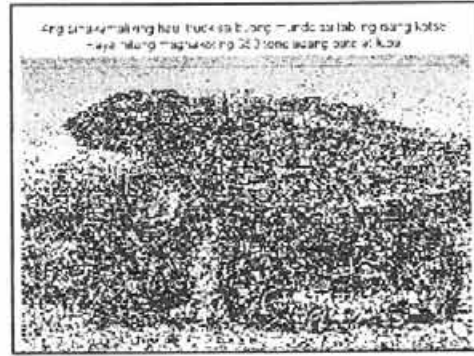
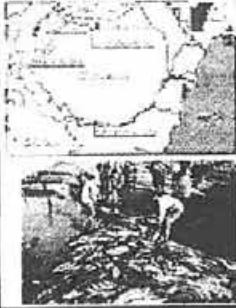


AMD harms aquatic life by increasing turbidity. The suspended solids in AMD reduce the amount of light that can penetrate the water, thus affecting photosynthesis by aquatic plants and visibility for aquatic animals.



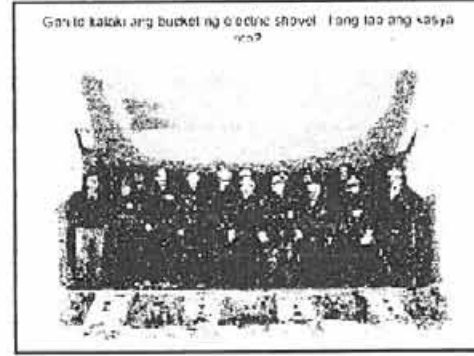
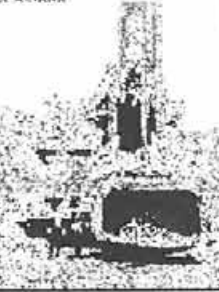
Ferrous indicates copper leaching
red and yellow indicate iron sulfide

Cyanide and Gold



Ang sinasagaling haul truck sa E. ang mundo sa labing pang kotse -
aya bilang magpapalig 200 tone sa ang sino at kaba

Ka kaliwa, driver sa tabi ng hauler truck. Sa kanan, isang electric shovel na kasintang ng 4 na giraffe na

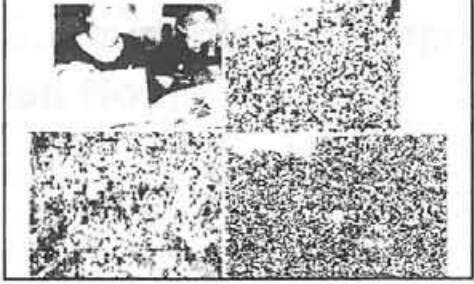


Gan to kalaki ang bucket ng electric shovel. Tang tap ang kasya

They say the metal companies say that people like mining. True or false?



The mining companies say that people like mining. True or false?



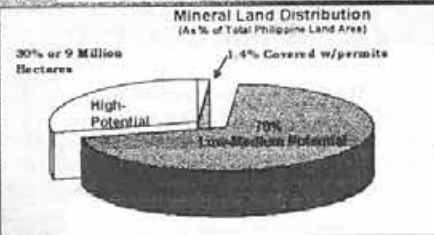
Annex C:

**“Responsible Mining for Sustainable Development”
Engr. Glen Noble**

Responsible Mining for Sustainable Development

Department of Environment and Natural Resources

MINERAL RESOURCES POTENTIAL



9 million hectares are high potential sites for copper, gold, nickel, chromite, etc.
Only 1.4% covered by mining permits
Has the potential to be one of the largest producer

ECONOMIC POTENTIAL

Medium- to Large-scale Mining projects:

- US \$ 90.8 B - Gross value of mineral deposits
- US \$ 6.5 B - Foreign direct investments
- US \$ 3.4 B - Annual sales/foreign exchange
- US \$ 61.4 M - Annual excise tax on minerals
- US \$ 432 M - Annual corporate income tax
- 200,000 - Additional direct & indirect employment

23 Priority Projects



Responsible Mining

"enhances economic growth, in a manner that adheres to the principles of sustainable development and with due regard for justice and equity, sensitivity to the culture of the Filipino people and respect for Philippine sovereignty"

- Executive Order No. 270

Sustainable Development = economic growth + environmental protection + equity

"We will make sure the reinvigorated mining industry comes hand in hand with the full protection of the environment and a sturdy umbrella of social and economic returns for host communities, especially the indigenous peoples."

- Pres. Gloria Macapagal-Arroyo

Responsible Mining

- "...require good environmental stewardship in all activities, from exploration and processing to decommissioning and reclamation." — United Nations*
- "...includes actions at all levels to: support efforts to address the environmental, economic, health & social impacts & benefits of mining; enhance the participation of stakeholders; and foster sustainable mining practices..." — WSSD**

Note:

Mining and Environment Guidelines - Berlin 1991
 Paragraph 16 of WSSD Plan of Implementation

Responsible Mining

- "...mining may be appropriate if implemented with the best practices and technologies available in a manner that contributes to local conservation and community development initiatives."

- Conservation International

Note:

Defining the Lode: A Guide to Responsible Large-Scale Mining
 by Andy Rosenfeld Sweeting and Andrea P. Clark
 © 2004 Conservation International, 2000

Parameters of Responsible Mining UN Guidelines

ECONOMIC

- Mining important to social, economic & material needs of society
- Avoid unnecessary environmental regulations that act as barriers to trade and investments
- Trade incentives for pollution reduction

Parameters of Responsible Mining UN Guidelines

ENVIRONMENTAL

- Environmental & economic considerations in the decision-making process
- Environmental impact assessments, risk analysis and risk management
- Best practices and environmentally sound technologies
- Environmental accountability
- Funding to improve environmental performance
- Strong environmental standards

Parameters of Responsible Mining UN Guidelines

SOCIAL

- Dialogues with stakeholders
- Social impact assessments

Economic Principles for Responsible Mining (ICMM)

- Critical role of investments
- Clear, stable & predictable investment & regulatory policies

Union Cement
La Union

Rio Tuba Nickel Processing Plant
Palawan



- Value-adding
- Promotion of small-scale mining as a formal sector
- Use of efficient technologies

Environmental Principles for Responsible Mining (EPRM)



Environmental Monitoring at Marcopper

- Protection of the environment
- Safeguarding the ecological integrity of areas affected by mining
- Multiple land use & sustainable utilization of minerals
- Remediation & rehabilitation of abandoned mines

Social Principles for Responsible Mining (SPRM)

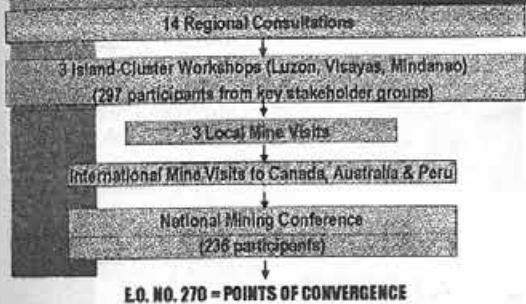
- Equitable sharing of economic & social benefits
- Sustained IEC campaign & respect for the rights of IPs & communities
- Continuous & meaningful consultations with stakeholders

Padcal Mine, Benguet



Stakeholder training at Canatuan, Misamis Occidental

9-MONTH ENGAGEMENT PROCESS



Executive Order No. 270

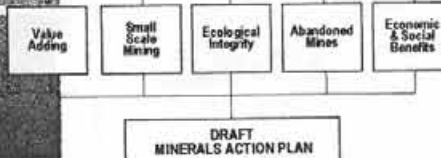
- Issued on 16 January 2004, with amendments on 20 April 2004 (containing stronger emphasis on IPs rights)
- Calls for formulation of Minerals Action Plan



Minerals Action Plan

- Inter-agency formulation in consultation with industries and NGOs
- Contains 57 strategies & 126 activities to address the problems of mining
- Approved by the President thru MC
- E.O. No. 270 issued on 13 Sept. 2004

INTER-AGENCY TWG



AGENCIES:

DOE, DENR, DTI, BOI, NEDA, DOST, NAPC, NCIP, DTA, LG, DBM, DOF-BIR, LEAGUES, NRDC, PMS

More than 30 meetings over 5 months

Implementing Responsible Mining in the Philippines

ECONOMIC: Resource Management

- To promote rational use of mineral resources
- Develop comprehensive mineral exploration program (DENR/EO 270)
- Produced 10,000 geologic maps covering 80% of entire country
- Inputs to geologic maps



ECONOMIC: Resource Management

- To promote rational land use:
 - Support National Land Use Act
 - Authored by Cong. De Venecia, Fua, Acosta, Solis & Rosales
 - To be endorsed by LEDAC to Congress



ECONOMIC: Resource Management

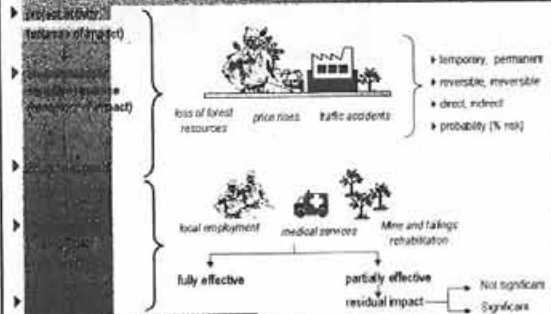
- To conserve mineral resources & ensure optimum use of mineral products
 - Develop downstream industries & promote value-adding, e.g. jewelry making, gold wires for semicon (EO 270)
 - Discussions with DTI/BOI and DOST ongoing
 - Promote use of efficient technologies, e.g. efficient gold recovery processes (EO 270)
 - Discussions with DOST ongoing



ENVIRONMENT

- To prevent/mitigate the negative impacts of mining
 - Identify possible impacts/measures on environment & biodiversity before operations (Mining Act/Phil. EIA Law)
 - Impacts & mitigating measures identified in Environmental Impact Assessment of mining company & Environmental Compliance Certificate (ECC) issued by DENR prior to mining operation

Environmental Impact Assessment & Management



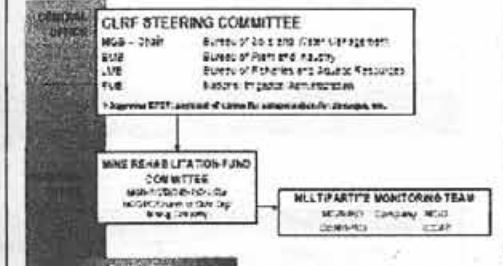
ENVIRONMENT

- To ensure environmental protection upon operation & during the life of the mine
 - Environmental work program for exploration projects (Mining Act)
 - Protection and enhancement of environment during mine life through EFEP (Mining Act/ EO 270)
 - Reforestation/slope stabilization/control of waste dumps/watershed dev't/water conservation required in all mining projects
 - Multi-stakeholder approach to monitoring
 - Total EFEP budget = PhP14.3B (Mining sector commitment)

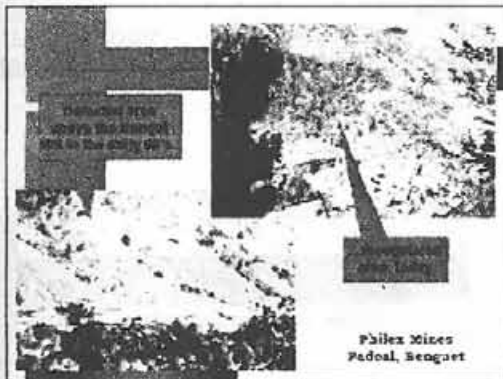
ENVIRONMENT

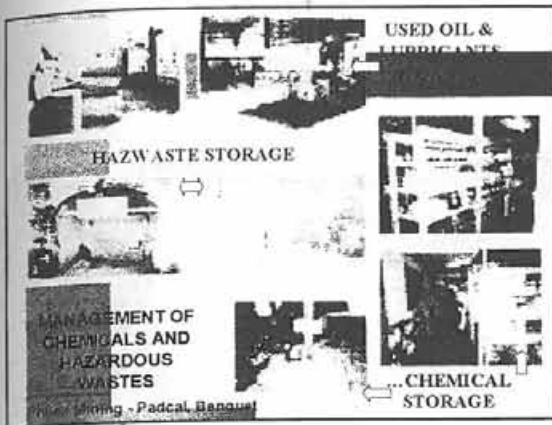
- To ensure environmental protection upon operation & during the life of the mine
 - Sufficient funding to mitigate social and environmental impacts through the Contingent Liability and Rehabilitation Fund (CLRF)
 - Deposited in government depository banks under company's name but can only be withdrawn with approval of multi-stakeholder committee
 - Total Deposited = P 233.8 Million
 - Multi-stakeholder approach to monitoring

CLRF MANAGEMENT



ENVIRONMENT





ENVIRONMENT

- To address environmental issues in existing/inactive problematic mines
 - Implement remediation measures (Mining Act/EO 270)
 - Dried up tailings pond of Maricalum planted with talahib, sugarcane cuttings and ipil-ipil to arrest dust pollution



Marcopper

Boac, Marinduque

- Options for rehabilitation of Marcopper recently identified by USGS-led team (funded from President's Social Fund)
 - Ensure integrity of certain infrastructure (e.g. silt dams, drainage tunnel)
 - Neutralize and rehabilitate waste dump sites to prevent acid generation
 - Clean-up remaining tailings in rivers and ensure safe storage
 - Conduct further study on health concerns

Marcopper directed by DENR to immediately implement USGS recommendations

ENVIRONMENT

- To compel permit holders to continue proper care & maintenance for other inactive mines

• Buhay Gold Mine	- Kalinga
• Mindanao Copper Project	- Davao del Norte
• Old Mine	- Benguet
• Copper Mine	- Pangasinan
• Suyoc Gold Mines	- Benguet
• Mining Copper Mine	- Surigao del Norte
• Sibutad Gold Mine	- Zamboanga del Norte
• Iron Mines	- Camarines Norte
• Paragon Gold Mine	- Camarines Norte
• Gold Mine	- Isabela
• Iron Chromite Mine	- Eastern Samar

ENR regularly monitoring these mines

ENVIRONMENT

- To address 7 abandoned mines:

(Responsible parties cannot be identified or are not financially/technically capable to undertake complete rehabilitation of mine sites)

• Copper Mine	- Negros Oriental
• Pyrite Mine	- Western Samar
• Giving Gold Mine	- Benguet
• Mountain Cu Mine	- Benguet
• Solidated Mine	- Marinduque
• Quick Silver Mine	- Puerto Princesa
• Lobo Copper Mine	- Benguet

Existing laws did not provide adequate requirements for rehabilitation

Abandoned mines under the Privatization Mgmt. Office

Abandoned Mines in Pre-Mining Act



BAGACAY MINES

ENVIRONMENT

ACTION PLAN FOR ABANDONED MINES

- > Compel permit holders to undertake remediation/rehabilitation
- > PMO and DENR will enter into a MOA by February 2005 to jointly address the 2 abandoned mines (Bagacay, Basay)
- > Undertake clean-up of mines within 2005 (Priority: Bagacay) and conduct assessment for rehabilitation/redevelopment options (other uses)

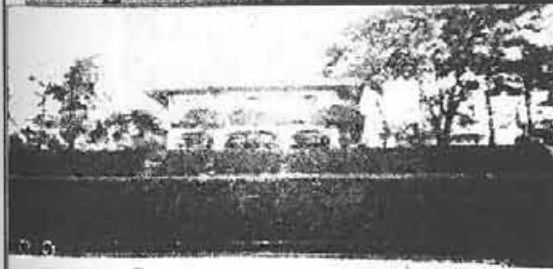
ENVIRONMENT

- To prevent future abandonment
 - > Approval of Mine Decommissioning Plan (MDP) 6 years before expected closure (Mining Act)
 - MDP ensures smooth transition from active mining operations to eventual closure
 - Formulated in consultation with stakeholders
 - Minimise social impact of mine closure on the community, LGU, employees, and dependents
 - Will transform the affected areas to alternative and final land use
 - Will ensure monitoring and maintenance fund for the next 10 years after mine closure

MINE DECOMMISSIONING



Mining is a temporary



After: Crushing plant & wastewater facilities converted into a clubhouse and swimming pool

ENVIRONMENT

- To protect biodiversity
 - Mining in old-growth, virgin & mossy forests & other proclaimed protected areas (Mining Act/NIPAS)
 - Mining activities not permitted in protected areas and virgin forests.



ENVIRONMENT

- To protect biodiversity
- Determine appropriate land use and incorporate biodiversity concerns through valuation tools (No. 270)
- Valuation tools being developed by DENR in consultation with other stakeholders
- Cost-benefit analysis



SOCIAL

- To assure economic & social benefits from mining for host communities & local governments
- Shares from mining accrue to national gov't, LGUs, Communities & IPs (Mining Act/Local Government Code)
- To assure timely remittance of LGU share
- House Bill 1445 by Cong. Demogagan on direct remittance of LGU share approved on 12 Jan 2003 by Committee on Local Government
- Sponsored by LEDAC to address delayed remittance
- Under Special GAA provision

IUCC - La Union

Benefits to Communities & Local Governments

- Share from the taxes and fees paid by contractors (Local Government Code)
- Local taxes and fees
- 30% of excise tax payment
- 2003 excise tax : P156-M (P 62.5 M to LGUs)
- P 24.5 Million out of US\$ 44 Million annual excise from 23 mining projects



Benefits to Communities & Local Governments

- Contributions covered by SDMP projects (Mining Act)
- At least 1% of total annual mining & milling costs
- Total private sector commitment of P 222 M from 27 approved SDMPs
- Direct financial contributions (voluntary)
- Used money for livelihood programs
- Contributions to various socio-economic and cultural activities
- To ensure sustainability of communities after mine closure

Benefits to Communities & Local Governments

- Royalty payments to IPs (Mining Act)
- At least 1% of gross output (subject to negotiation with IPs)



SOCIAL DEV



Mining - Padcal, Benguet

ENVIRONMENT

- To protect biodiversity
 - Determine appropriate land use and incorporate biodiversity concerns through valuation tools (EO 270)
 - Valuation tools being developed by DENR in consultation with other stakeholders
 - For cost-benefit analysis



SOCIAL

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- To ensure timely remittance of LGU share
 - House Bill 1445 by Cong. Domogan on direct remittance of LGU share approved on 12 Jan 2005 by Committee on Local Government
 - Endorsed by LEDAC to address delayed remittance
 - (Interim: Special GAA provision)

UCC - La Union

Benefits to Communities & Local Governments

- Share from the taxes and fees paid by contractors (Local Government Code)
 - Local taxes and fees
 - 40% of excise tax payment
 - 2003 excise tax : P156 M (P 62.5 M to LGUs)
- US\$ 24.5 Million out of US\$ 60.4 Million annual excise from 23 mining projects



Benefits to Communities & Local Governments

- Contributions covered by SDMP projects (Mining Act)
 - At least 1% of total annual mining & milling costs
 - Total private sector commitment of P 222 M from 27 approved SDMPs
- Direct financial contributions (voluntary)
 - Seed money for livelihood programs
 - Donations to various socio-economic and cultural activities
- To ensure sustainability of communities after mine closure

Benefits to Communities & Local Governments

- Royalty payments to IPs (Mining Act)
 - At least 1% of gross output (subject to negotiation with IPs)



SOCIAL DEV'T



...ing - Padcal, Benguet

SOCIAL DEV'T PROJECTS



Ita Taba Nickel Mining Corp. - Palawan

SOCIAL DEV'T PROJECTS



Tapanito Mining, Surigao del Norte



South Western Cement Corp. (Malabuyoc, Cebu) built new houses for affected residents prior to mining operations.

SOCIAL

RTW/MC NON-FORMAL EDUCATION FOR INDIGENOUS PALAWAN

Indigenous peoples and indigenous cultural communities

- Secure Free and Prior Informed Consent of IPs/ICCs (Mining Act/IPRA)
- Respect and preserve the culture and tradition of IPs

SOCIAL

To empower stakeholders to effectively participate in decision-making processes



STAKEHOLDER CONSULTATION PROCESSES (Mandated)

	Pre-Exp	Explore	Feasibil	Construct	Operate	Mine CL
Declaration of Mineral Reservation / Minahang Bayan						
Consultation of affected communities, etc. prior to entry (Mining Act)						
FPD or ICP (Mining Act / IPRA)						
FPD for small-scale miners (Mining Act)						
LOI or License (Mining Act / Local Gov't Code)						
ESMP (PD 1586 / LGC)						
Environmental social monitoring (Mining Act / LGC)						
Submission / implementation (Mining Act)						
Reclamation Plan formulation (Mining Act)						

SOCIAL

- To strengthen capability of small scale miners to address environmental and social concerns and standards

- Amend RA 7076 & PD 1899 through a Magna Carta for Small Scale Miners to enhance protection of rights and provide new benefits

Status: Proposal being formulated by DENR

- Conduct trainings/capability building to small scale miners on technologies, safety, health and environmental measures

Status: Ongoing implementation by DENR

"The apprehensions and fears can only be quelled with the collective effort of ensuring that we promote and advance sustainable

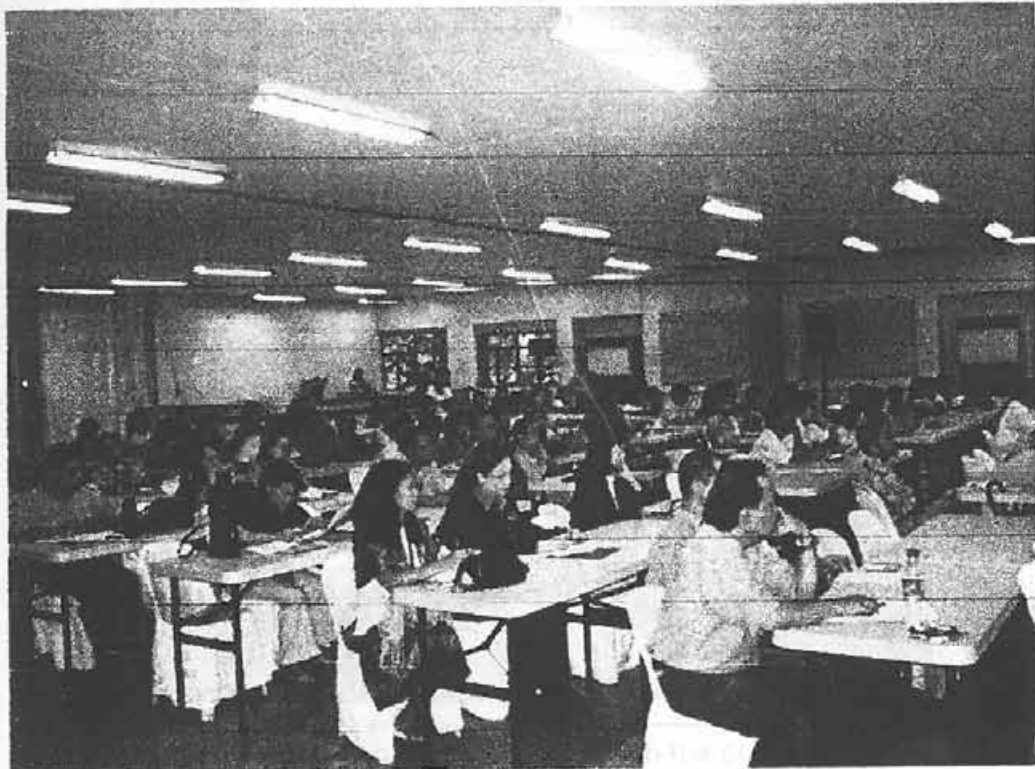
development. The three pillars of economic development, social responsibility and the protection of the environment are the binding principles for a harmonious and progressive community."

THANK YOU

**Department of
Environment and
Natural Resources**

PHOTO DOCUMENTATION

Annex C PHOTO DOCUMENTATION



Some 200 participants, representing the different sectors, took part in the half day affair.



The panel of experts for the 16th Diliman Governance Forum. L-R: Atty. Rhia Muhi, Engr. Glen Noble, Engr. Rolando Peña and Engr. Rodolfo Velasco Jr.



The resource persons together with the organizers.



OPEN FORUM

Members of the audience ask the panel enlightening questions and also practical insights.

16th DILIMAN GOVERNANCE FORUM (DGF) ON "THE CHALLENGES AND PROSPECTS OF SUSTAINABLE MINING IN THE PHILIPPINES"
 October 11, 2006; 1:00-5:00 P.M.
 NCPAG ASSEMBLY HALL

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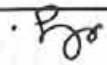
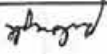
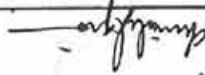
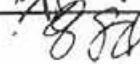



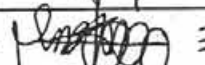

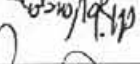
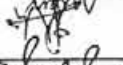


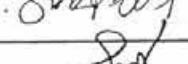
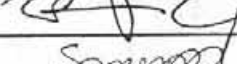

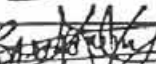
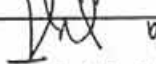
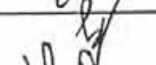
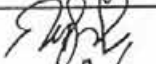
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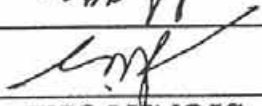
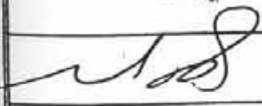
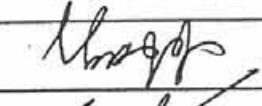
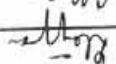
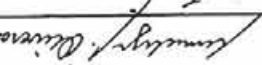
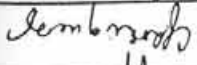
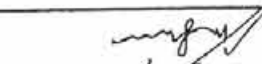
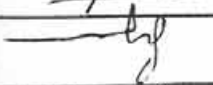

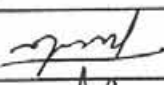
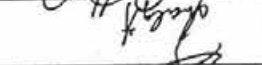


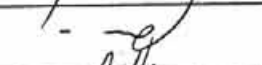
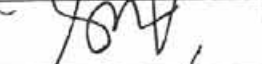
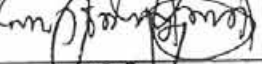
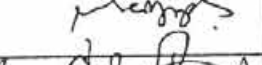
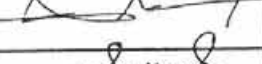
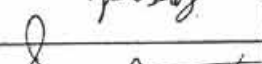
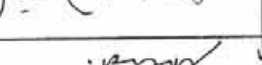
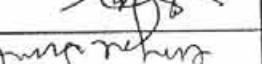

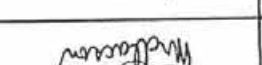
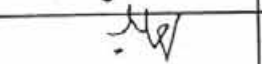
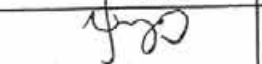
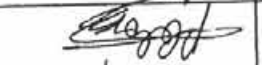
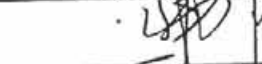
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Eireene Xina M. Acosta 			

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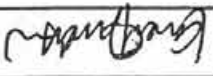
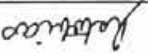

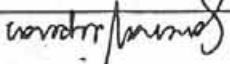
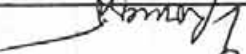
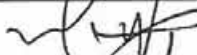
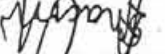

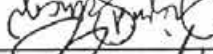
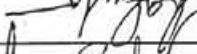
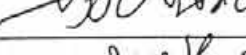
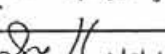
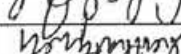
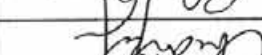
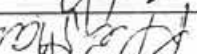
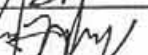

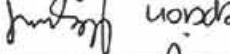
NAME	SIGNATURE	NAME	SIGNATURE
Ernesto Suda			
Ricard, Rector Kristina			
ROVINO, NICOLE DOMINIQUE			
Sagaki, Kent Michael			
Felipa, Beau Alambra			
Nabogo, Aum Irene			
Giron, Joel Rethank			
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VARRAS, MA. JENNIFER			
REGALIA, Michael Ross			
DAZ, Miguel Rold			
Lagason, Benedict			
GAEBLIG, KRISTOFFER			
GAELMONT, CRISTINA			
Perlas, Rainier M			
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OSAS, KATHLY JOY			
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FLORANO'S CLASS PA 141

NAME	SIGNATURE	NAME	SIGNATURE
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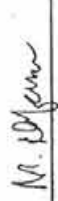




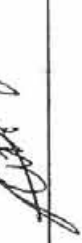
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Bandura, Jeanan			
BERNAL Maria Concepcion			
Callum, Chr 1 step			

Prof. Tabbara

16th DILIMAN GOVERNANCE FORUM (DGF) ON "THE CHALLENGES AND PROSPECTS OF SUSTAINABLE MINING IN THE PHILIPPINES" October 11, 2006; 1:00-5:00 P.M. NCPAG ASSEMBLY HALL

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MELANIE GASA 			
Marilyn DeJesus M. DeJesus 			
Prof. Maria Angelita 			
TUSCANO, UNIDOMAR 			
Carmiento - Arini 			
Arni Evangelista 			
Arte, Ariel Paolo 			
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16 DEMAN GOVERNANCE FORUM (DGF) ON THE CHALLENGES AND PROSPECTS OF SUSTAINABLE MINING IN THE PHILIPPINES
 October 11, 2006; 1:00-5:00 P.M.
 NCPAG ASSEMBLY HALL

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Nodres, Rachelle Ann S.	Novales	09159649877	

16th DILIMAN GOVERNANCE FORUM (DGF) ON "THE CHALLENGES AND PROSPECTS OF SUSTAINABLE MINING IN THE PHILIPPINES"
 October 11, 2006; 1:00-5:00 P.M.
 NCPAG ASSEMBLY HALL

Name/Designation	Office/Address	Tel/Fax	E-mail Address
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DR. CECILIA P. VELASCO	AVE PARTYLIST		

TERMINAL REPORT

17TH DILIMAN GOVERNANCE FORUM

**“SHEPHERDING REFORMS IN ACCESS
TO JUSTICE AND PARTICIPATION OF
THE DISADVANTAGED SECTORS”**

24 November 2006
Assembly Hall
National College of Public
Administration and Governance
University of the Philippines,
Diliman, Quezon City

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AIDE MEMOIRE

Aide Memoire on
the 17th DILIMAN GOVERNANCE FORUM on

"Shepherding Reforms in the Access to Justice and Participation of the Disadvantaged Sectors"

24 November 2006
12:30- 5:00 pm, Assembly Hall,
National College of Public Administration and Governance
University of the Philippines, Diliman, Quezon City

A. Introduction

Access to justice is one of the major determinants and components of a good and functioning justice system. A justice system that is accessible to all particularly the poor, marginalized, and disadvantaged sectors is the idealized system. Furthermore, an accessible justice system truly embodies its constitutional mandate of providing equality, regardless of cultural, economic and social status before the law.

To improve people's access to justice, countless reforms and programs have been implemented. These reforms may be categorized as institutional or procedural. These reforms may include the provision of legal aid or assistance and advice for the poor and marginalized, strengthening of the system of alternative dispute resolutions, and other forms of court reforms.

These actions not only by the primary actor, the judiciary, but also by law groups and other civil society organizations may have helped make justice more accessible to all. However, a question still remains. Are these reforms and efforts sufficient to make our justice system more accessible?

B. Objectives

To explore responses to this basic policy question and to another equally important collateral concern, e.g., shepherding reforms in access to participation of the disadvantaged sectors, the 17th Diliman Governance Forum (DGF) is planned to be conducted on 24 November 2006. It generally aims to provide a venue for the continuing discourse, dialogue, and dissemination of ideas, interactions and consultations with relevant publics on policy issues, reform initiatives, and recommendations of the Fostering Democratic Governance (FDG) Programme. Specifically, it aims to:

- ❖ Discuss recent policy and reforms and other in access to justice and participation of vulnerable sectors; the problems and challenges in shepherding and institutionalizing these reforms; and
- ❖ Explore ways to better promote and advance these reforms in our policy systems.

C. Intended Outputs

At the end of the day, the forum hoped to have helped raise the level of understanding of the relevant publics on the problems, challenges, issues, and complications in shepherding reforms in access to justice and participation of the basic sectors. The lessons learned from this Forum will be used as a basis and framework for future policy

reforms in making justice more accessible, and the disadvantaged sectors more participative in policy making and governance.

D. Programme

TIME	ACTIVITIES
12:30-1:00 p.m.	Registration
1:00-1:30 p.m.	Opening Ceremonies National Anthem Opening Remarks Dr. Sergio S. Cao Chancellor, UP Diliman Overview of the Forum and Introduction of Resource Speakers Dr. Alex B. Brillantes Jr. Dean, UP NCPAG Head IP, FDG Programme
1:30-2:00 p.m.	"The Problems and Challenges in Shepherding and Institutionalizing Reforms in the Justice System" Hon. Portia A. Hormachuelos Justice, Court of Appeals
2:00-2:30 p.m.	"The Alternative Reforms in Enhancing Access to Justice of the Basic Sectors" Atty. Marlon Manuel Project Director, Alternative Law Group
2:30-3:00 p.m.	"Policy Reforms and Other Initiatives on Enhancing Access to Participation of Vulnerable Sectors" Dr. Ledivina V. Cariño University Professor, UP NCPAG
3:00-3:15 p.m.	Working Break
3:15-4:15 p.m.	Open Forum Dr. Ebinezer R. Florano Forum Officer, PGF
4:15-4:30 p.m.	Synthesis and Closing Remarks Dr. Ma. Fe V. Mendoza Project Director, PGF

E. Participants

Some 200 participants/stakeholders from the business sector, civil society organizations, government, law groups, FDG partners, academe, donor community, media, and other sectors were invited to seriously commit themselves to help enhance the access to justice and participation of the poor, marginalized, and disadvantaged sectors.

ORGANIZERS

Dr. Ma. Fe V. Mendoza

Philippine Governance Forum Project Coordinator

Dr. Ebinezer R. Florano

Forum Officer

Allan Grand Sobrepeña

Technical Staff

Julita M. Sanchez

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Administrative Staff

SPONSORS

**United Nations Development Programme (UNDP)-
Philippines**

and

**U.P. National College of Public Administration
and Governance**

SPEAKERS



Justice PORTIA ALINO-HORMACHUELOS is chairman of the 3rd division of the Court of Appeals. An ardent advocate of speedy dispensation of justice, she holds the distinction of maintaining, since May 2001, a zero or single-digit pending docket of cases submitted for decision. She has written 1,730 ponencias since her promotion to the appellate Court in August 1995, after serving eight (8) years as Regional Trial Court judge where she was honored with the 1992 Cayetano Arellano Award for Judicial Excellence as Outstanding RTC Judge in the Philippines. In 2005, she was awarded as Outstanding Alumna in the field of Judicial Reforms and Legal Advocacy for Women by the University of the Philippines College Cebu, which Award made special mention of the quality of her decisions. She was recipient of the Alumni Achievement Award for Government Service by the University of the Philippines National College of Public Administration and Governance (UP-NCP AG) in its 50th Anniversary in June 2002.



Dr. LEDIVINA VIDALLON- CARIÑO is one of the distinguished University Professors of the University of the Philippines. She has held various positions not only within the University but outside the country as well. She is also former dean of the National College of Public Administration and Governance and adviser to the President of UP. In addition, Dr. Cariño has published a number of articles which appeared in local and international scholarly journals; and authored and edited a number of books.



Atty. MARLON MANUEL is the project director of the Alternative Law Groups. He is also the Executive Director of Sentro ng Alternatibong Lingap Panligal (SALIGAN). He has taught Law courses from the Ateneo de Manila University and Pamantasan ng Lungsod ng Maynila. He took up Legal Management and Law from the Ateneo. He ranked 5th in the 1994 Bar Examinations.

PROCEEDINGS OF THE FORUM

WELCOME REMARKS

Dr. Sergio S. Cao
Chancellor, UP Diliman

I welcome everyone to the 17th Diliman Governance Forum. Welcome to the University of the Philippines Diliman. Technically, my job is done, for I am just supposed to welcome you as Chancellor. Let me, however, say a few more words in my capacity as President of the Philippine Deaf Resource Center, a non-stock, non-profit corporation committed to helping the Filipino deaf Community. While I will speak for them, I am most certainly speaking for the other disadvantaged sectors.

The improvement of individual and collective access to law and justice contributes to social development. Legal and judicial reforms give marginalized sectors such as the Filipino deaf community, the opportunity and the power to assert themselves. With greater accessibility to law and justice, Deaf Filipinos can overcome the economic, psychological, informational and physical barriers they have faced for decades.

Our group is working on a project called Equal Access to Communication for the Deaf in Legal Proceedings. This project aims to provide access to, and ensure fairness in the justice system for the at least 121,000 Deaf Filipinos in the country (NSO 2000). In particular, it addresses a fundamental inequity in access to communication in legal proceedings by deaf women victims of abuse.

In a courtroom environment where a deaf client interacts with the hearing judge, lawyers and other legal professionals and officers of the court, adequate and impartial relaying of information is of paramount importance. At the core of this problem is a lack of understanding of deafness, deaf people, and their needs in communication.

1. There is no nationally mandated system for interpreting (whether general, or specific, to legal interpreting): for training, testing, evaluation and certification.
2. There are no comprehensive guidelines for authentic linguistic-based curricula or training components for sign language and voice interpreting.
3. No standards govern the selection of interpreters for court proceedings, their qualifications, or the quality of their interpreting during proceedings.

There is a high incidence of physical and sexual abuse among deaf women and children. They are vulnerable from two perspectives: as person with disability, and as women. Being both deaf, and a woman, multiplies the risk of vulnerability many times over. Poverty adds further to the already daunting obstacles. The Philippine Deaf Resource Center has a current project¹ under the Panibagong Paraan project funded by the Asia Foundation and USAID.

For the past decade, reported cases of rape and physical abuse to deaf women filed in court have been either dismissed or archived (CMDP, 2005)². Officials of the court such as

¹ Equal Access to Communication for the Deaf in Legal Proceedings

² Catholic Ministry of Deaf People

17th Diliman Governance Forum

"SHEPHERDING REFORMS IN ACCESS TO JUSTICE
AND PARTICIPATION OF THE DISADVANTAGED SECTORS"

judges, lawyers and court administrators are generally lacking in experience with the deaf, and awareness of Deaf issues. They may not recognize sign language as a true language, or even be convinced of the fundamental role of interpreting for deaf clients. This reflects the serious need for information and perhaps even attitudinal improvements in legal education and judicial training. A related activity is the recent Lawyer's Forum with the UP Law Center-Institute of Human Rights and the Philippine Deaf Resource Center, working additional provisions to Supreme Court Memo Order 59-2004 (by former Chief Justice Hilario Davide) on hiring of sign language interpreters, for submission to the office of the Court Administrator.

I hope you will have a lively and fruitful exchange of ideas in this forum.

REFORMS IN THE JUSTICE SYSTEM

Justice Portia Aliño-Hormachuelos
Chair, 3rd Division
Court of Appeals.

Dean Alex Brillantes, former Dean Ledivina Vidallon Cariño and other distinguished participants in this Forum, good afternoon. I am greatly honored to be here as a representative of Chief Justice Artemio V. Panganiban. I also come in my capacity as a judicial practitioner for 20 years, a participant in the justice system for 40 years and, like you, a student of judicial reform. I am also pleased to return to the school which gave me the degree of Master of Public Administration, under its earlier and shorter name, UP College of Public Administration.

The Supreme Court is rightly called the bulwark of democracy and the guardian of the Constitution and the Rule of Law. And it is well to mention that opinion polls on latest decisions of the Supreme Court on a number of high profile cases that they have decided show high acceptability by the public and is encouraging to us in the judiciary. This is encouraging as public confidence is a fundamental goal of judicial independence which in turn is a pre-requisite to the Rule of Law and a fundamental guarantee of justice and fairness.

In the history of the Supreme Court, the current Chief Justice Artemio V. Panganiban stands out as its most prolific writer. He has written a dozen books, one for each year of his incumbency as member of the Court along with numerous articles, essays, and commentaries. Although he has had only a year to sit as Chief Magistrate, he has done exceedingly well, including the successful hosting the recent International Global Forum on Liberty & Prosperity, the twin points of his judicial philosophy. He also worked very closely with his predecessor former Chief Justice Hilario G. Davide Jr., who is acknowledged as the progenitor or the father if u will of the Action Program for Judicial Reform (APJR).

To prepare for today's presentation, for which I was given all of two days, I have reviewed the thoughts of these two imminent eminent jurists and have liberally culled from their writings.

When Chief Justice Davide assumed office in November 1998 as 20th Chief Justice of the Philippines – an office he held for 7 years – he promulgated a vision-mission statement to serve as a roadmap for the Philippine Judiciary. It was entitled THE DAVIDE WATCH: Leading the Philippine Judiciary and the Legal profession Towards the Third Millenium. This is His vision: " A Judiciary that is independent, effective and efficient, and worthy of public trust and confidence; and a legal profession that provides quality, ethical, accessible, and cost effective legal service to our people and is ready and willing and able to answer the call to public service".

This vision and mission is articulated in the judiciary's Action Program for Judicial Reform or APJR. The APJR is a grand plan to build and strengthen confidence in judicial governance which, as Chief Justice Davide enunciates, is "the genuine bedrock of effective good governance in all democratic societies".

The Action Program for Judicial Reform (APJR) was crafted on the proposition that stability and predictability in the dispensation of justice is an indispensable requirement of good governance, which is in turn a precondition of economic development. The observance of the Rule of Law is necessary in a democracy to enable the government to improve the economic plight of the people. Indeed, speedy justice, democracy and the economy are intertwined into one tapestry of governance.

The APJR has received endorsements, grants, and loans from several international developmental agencies – including the United Nations Development Fund (UNDF), World Bank (WB), Asian Development Bank (ADB), and The Asia Foundation (TAF). It has also been assisted by several foreign governments like Canada, Japan, the Netherlands, Great Britain, the European Union, the United States, and Australia.

The APJR (spelled out) is a comprehensive and all-encompassing program that has six distinct components, namely: 1) Judicial Systems and Procedures, 2) Institutions Development, 3) Human Resource Development, 4) Integrity Infrastructure Development, 5) Access to Justice by the Poor, and 6) Reform Support Systems.

The first component, Judicial Systems and Procedures, concerns itself with the administration of cases and courts. Initiatives in alternative dispute resolution, computerized case management system, streamlined court rules, and similar activities are programmed under this section.

The second component, Institutions Development, seeks to establish mechanisms to strengthen the judiciary as an institution independent from other branches of government. Included in this component are systems to implement the constitutionally mandated fiscal autonomy of the judiciary, to improve judicial accountability, and to devise personnel and financial policy that will give the judiciary the flexibility needed to address the many demands upon it.

The third component, Human Resource Management Development, covers the selection, hiring, education, promotion and remuneration of justices, judges, and other judicial officials and employees. This is the field where Atty Manuel is involved in.

The fourth component, Institutional Integrity Development addresses concerns on graft and corruption and puts in place mechanisms to detect and punish corrupt practices of some judges and lawyers.

The fifth component, which is the subject of our forum today, Access to Justice by the Poor, ensures that the marginalized, disadvantaged, dispossessed and other vulnerable sectors will always have affordable and effective means of attaining justice.

The sixth and last component, Reform Support Systems, installs mechanisms to ensure the sustainability of the reform efforts. The focus here is public education, information and communication, on the assumption that public awareness of the functions and achievements of the judiciary would encourage people to support the courts.

Over 100 projects have been launched by the Judiciary to implement these 6 components. Some of these projects included in the justice reports. I have some copies which can be given to those interested. The projects are designed to address all the possible

concerns and problems of the Philippine judiciary which are: (1) case congestion and delay, 2) budget deficiency, 3) politicized system of judicial appointments, 4) lack of judicial autonomy, 5) human resource development, 6) defective administrative structure, 7) insufficient public information and collaboration with society, 8) perceived corruption in the judicial department, and 9) limited access to justice by the poor.

These concerns boil down to three major problems that the APJR seeks to solve which are: corruption, incompetence and delay in the delivery of justice. Along with (Inadequate) Access to Justice by the Poor, these constitute Chief Justice Panganiban's acronym ACID – i.e. (Inadequate) Access to Justice, Corruption, Incompetence and Delay which the APJR seeks to eradicate.

The programs and projects engendered by the APJR cover all areas of concern in the delivery of justice, starting with the judges – their education, their aptitude for the minutiae of decision-making, and their ethical character. These also include judicial tools, especially new computerized systems to speed up the delivery of quality justice, as well as the reform of the judicial disciplinary process. Finally, they extend to the improvement of judicial compensation, the construction of dignified courthouses, the provision of adequate equipment, and the use of alternative dispute resolution mechanisms.

As I have mentioned, several international agencies have been assisting in the Philippines' judicial reform program. This has prompted Chief Justice Panganiban to state in his address to the Consular Corps of the Philippines in August 2005: "I do not know of any other country that has enjoyed a similar amount of global assistance for the modernization of its justice system."

Foremost of these development partners is the United Nations Development Programme (UNDP) of which UP-NCPAG is an implementing partner. UNDP funded the preparation of the "Blueprint of Action for the Judiciary," to which our present and more comprehensive APJR owes its origin. UNDP followed through with a package of studies and technical assistance aimed at strengthening not just the judiciary itself, but also the other pillars of our criminal justice system like the Philippine National Police, and which are likewise geared to facilitating the poor's access to the justice system.

Dean Brillantes In his letter to Chief Justice Panganiban, specified that this present Forum aims to "debate on the best ways to promote and institutionalize reforms in access to justice and participation of vulnerable sectors. "We therefore focus on APJR's 5TH component, Access to Justice by the Poor and Disadvantaged. The 5th Component aims to empower the poor and other disadvantaged sectors of society to have equal access to justice, and equal treatment under the law, by:

- (a) Improving information for, and education of, the poor and other disadvantaged sectors on the justice system and its services;
- (b) Improving the capacity of judges and law practitioners in handling cases involving the poor; and
- (c) Improving the physical access and affordability of judicial services by the poor and other marginalized sectors of society.

Included in the "Access to Justice" aspect under UNDP sponsorship are the following: (a) a diagnostic study of the capabilities and limitations of the Department of Justice; (b) a

research on how penal institutions work; and (c) a participatory program to assess the strengths and weaknesses of our jails. To this should be added the jail decongestion project – undertaken by the private practitioners, the Integrated Bar of the Philippines (IBP) with UNDP funding – in the Manila, Pasay, Quezon City and Pasig City jails. Another UNDP concern is the elimination of gender bias and the equalization of political and civil opportunities for both men and women.

To facilitate access to the judicial system by the poor and the disadvantaged, the Supreme Court recently inaugurated its "Justice on Wheels" program with the assistance of the World Bank.³ The Justice on Wheels Project is akin to the Mobile Court Project in Guatemala, which is similarly funded by the World Bank. Already, the first mobile courts have made an impact on decongesting jails and speedily resolving family problems in Metro Manila. I wonder if you ever saw those buses with JUSTICE ON WHEELS. It has a judge, a clerk, and they hear cases. It speeds up resolution of family cases because these is a family court.

Likewise, with a loan from the World Bank, the Supreme Court is building model electronic courts in selected areas as a preview of a future nationwide courtroom construction program. Just recently, the Bank has acceded to finance the rehabilitation of the old Government Service Insurance System (GSIS) building, located on Arroceros Street in Manila, for its eventual conversion into a modern Hall of Justice for Manila trial courts.⁴

Under the 5th Component, the Supreme Court has completed studies on how to strengthen access to justice by the disadvantaged sectors of society through the formulation of information, education, and communication plans and adequate legal assistance programs. In December 2004, the Supreme Court held a National Forum on Access to Justice Thru Reform in the 5 Pillars of the Criminal Justice System. Let me walk you briefly thru these pillars:

1. The Law Enforcement Pillar primarily refers to the investigation of crimes, collection of evidence, arrest of suspects, and referral of cases and suspects to the prosecution or lower courts either for preliminary investigation and/or filing of cases and adjudication. In the Philippines, law enforcement is the principal responsibility of the Philippine National Police (PNP), the civilian agency under the Department of Interior and Local Government; and the National Bureau of Investigation (NBI), which is under the Department of Justice. Strengthening access to justice in this pillar focuses on eliminating police practices that cause injustice or obstruct the poor and disadvantaged groups to access justice. It also involves the transformation to a democratic police service whereby all citizens are treated equal and provided equal protection of laws.
1. The Prosecution Pillar under the National Prosecution Service of the DOJ serves as the fulcrum of the criminal justice system since it is assigned with the delicate function of developing criminal actions and other proceedings for violation of laws with corresponding penal sanctions. Under the Constitutions, pillars are formerly called fiscals.

3 The first mobile court under the Justice on Wheels initiative was launched on December 21, 2004.

4 Through a property-for-building swap, the Philippine SC was able to acquire the GSIS building in exchange for a vacant lot it owns along Taft Avenue. This scheme was inspired by the example of the Supreme Court of Venezuela, which had successfully converted an unused or abandoned modern building (the former head office of a failed bank) to house its courts.

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3. The Corrections Pillar is responsible for imprisonment and rehabilitation of those found guilty of crimes. In the Philippines, responsibility for corrections belongs to the Department of Interior and Local Government's Bureau of Jail Management and Penology (BJMP) and the Department of Justice's Bureau of Corrections and Board of Pardons and Parole. The Philippine National Police is responsible for the administration of detention cells in their respective precincts for those arrested. And I am sure we will have a lively discussion on detention cells later in the forum. The Department of Social Welfare and Development (DSWD) and civil society organizations care for particularly vulnerable inmates, such as minors, women, and the mentally ill. The importance of securing prisoners' access to justice are especially underscored because they most often come from indigent, uneducated, poor, and politically powerless sections of society who, due to their imprisonment, are doubly marginalized. The capacity of penal systems to ensure prisoner's human rights is especially critical in countries such as ours where resources are scarce and where prisons are often closed and neglected. In such cases, prison reform is vital to ensure an effective criminal justice system and access to justice for prisoners.

4. The Community Pillar of the justice system refers to the barangay, or the smallest political unit, as well as society as a whole. It includes government, educational institutions, and religious and civil society organizations. It includes all which does not belong to the pillars earlier discussed. Strengthening access to justice in this pillar focuses on strengthening the capacity of ordinary people to seek justice remedies. When people have adequate capacities to seek justice, they are better able to hold government officials accountable for the implementation of the law, and to participate in governance processes.

Going now to the Court Pillar, a central assumption for its efficacy is judicial independence. Judicial Independence is a fundamental principle of the rule of law, and crucial in ensuring equal access to justice and the protection of human rights. Only an independent judiciary is able to render decisions impartially and without interference on the basis of facts and in accordance with the law, thereby protecting fundamental rights and freedoms of individuals. An independent judiciary is a check against corruption and abuse of power. It also contributes to fostering equality, fairness, predictability, transparency, accountability, public trust, and confidence in society. Stability in the rule of law and predictability in the rendition of decisions are indispensable to investor confidence, economic development and ultimately to good governance.

What are the abiding problems and challenges in shepherding and institutionalizing reforms under the 5th component of the APJR? Some of the problems have been discussed earlier, and some of those that have been manifested in dialogues with the various stakeholders are the following:

1. need for a strong and supportive leadership oriented towards access to justice by the poor and disadvantaged, particularly since it will entail increased spending and mobilization of resources for particular this sector.
2. need for supportive legislation towards this end;
3. need for greater consistency, cooperation, consultation and continuity

- among the pillars of the justice system which are perceived to be of competing interests and excessive regard for "turf" and power;
4. Need for prioritizing speedy dispensation of justice.

The speedy dispensation of justice is what I have been advocating.

I would like to quote Professor Arnab Kumor Hazra of India:

"An inefficient legal system – one that is characterized by a huge backlog of cases- undermines the effectiveness of legal reforms. Inefficiency in the justice system leads to an increase in litigation, as people who are aware of the slow pace of justice within the court system begin to file cases primarily to harass the other party. Such cases crowd out genuine litigants who are forced to seek solutions elsewhere.

Another challenge is inertia of institutional culture in these pillars of the justice system.

APJR seeks to address these problems and challenges. However, the ultimate challenge is for us as a people to work together to achieve a just and transformed society. In the words of Chief Justice Davide: "Civilization has secured the blessings of the judicial system as the best alternative to fraud and violence among men. Verily, good government depends on a good judiciary. Justice is the strong foundation for national, regional and even global progress, prosperity and stability."

Open Forum

Comment (name omitted): We would just want to inform this group that corrections as one pillar of the criminal justice systems is grouped into a) institutionalized (prisons/jails), and b) community-based correction to name the Parole and Probation Administration.

Question from Mr. Bing Pabilla, ASPAP PMO and Philippine Mediation Foundation Inc., addressed to Atty Manuel

Atty. Manuel: The nature and quality of legal education plays an important role in the process of reforming the bureaucracy. Access to justice by the poor is also a problem of prospector lawyers who are the sources of both the supply side and demand side. Where do you locate the lawyers in process of reforming the judiciary? Are they the end-users or middleman who usually are ones profiting from prolonged litigation?

Atty. Manuel: They are on both sides, because they are part of the litigations and also litigants.

Mr. Pabilla: Many perceive that since lawyers are in the middle, because they both belong to the supply and demand side. When we talk about the cost to litigation, lawyers account for most of the cost, and poor cannot pay the lawyers.

Atty. Manuel. I always relate the professional fees of lawyers to other professionals, only that lawyers ask for a fee for just accepting your case, compared to a doctor whom you pay after the consultation or treatment. Other lawyers address their issue on lack of representation for the poor. Many members of the coalition are involved in training paralegal to address legal representation. Yes, many lawyers contribute to the problems of the legal system. But also many do their work in helping poor litigants. But I admit that the lawyers sometimes form part of the problem.

Commissioner Gascon to Atty. Manuel:

Commissioner Chito Gascon: Atty Manuel mentioned about the role of lawyers. I am interested on more specific recommendations on where do we go from where we are now after 5 years of the APJR (Action Program for Judicial Reform), particularly on the service delivery side, specifically on the improving the capacity of the clients, and how do we do that?

Atty Manuel: Education is a key aspect, we talk about basic education for our citizens from elementary to high school, and legal/judicial education (at tertiary level). The problem on access to justice is caused largely by poor access to information. We need to break the barrier. It should not be limited to information on law but access to knowledge on redress. Our options include integration of human rights subjects on high school education, to inform Filipinos how the system can work for them. There are also collective actions which communities can do, addressing the need for capacity bldg in terms of skills, such as conducting

paralegal activities for farmers and workers to help them handle the cases themselves, such as before the DARAB, PARAB.

One suggestion in UNDP is to strengthen the public attorney's office providing legal assistance. And for Private legal practitioners (to be required to become) compulsory legal aides and to serve pro bono for poor litigants. There is also a need to (improve the quality of) education of lawyers (for law students) to make curriculum more responsive.

Justice Hormachuelos to Comm. Gascon:

Justice Hormachuelos: I am struck on the observance of Atty Gascon on the judiciary as one pillar, the other is community pillar. I am on the advocacy on speedy dispensation of cases and the protection of the environment. Like during the floods in Quezon, I advocated that the IBP (Integrated Bar of the Philippines) do something. I would like to know the involvement of Atty. Gascon during the floods in Quezon province.

Atty. Gascon: I admit that I am ignorant on the latest developments on involvements on ensuring access to justice. But yes it is good to rethink access to justice in the way Dr. Carino presented it. I do not actually (see) disadvantaged groups in the forefront of justice reform issues, (but them being) in other issues.

Cheska Montes to Atty. Manuel:

Cheska Montes, Philippine Collegian – UP GK, UP PA student – What are the mechanisms or already "holistic" programs with other groups in order to increase awareness of the disadvantaged with regard to their access to justice and the judicial sector's efforts to justice reforms?

Atty. Manuel: (This is done) through public programs, education activities (that address) issues in reforms, included the ones in the grassroots, in policy development at national and local levels. Also involved are partner communities in the reform of judicial system – e.g., the DAR, DOLE, labor unions. We are also currently working on expediting labor cases, the biggest chunk of cases are union related and illegal dismissals. We are working towards increasing efficiency of the system – a one-step agency (through which cases go through) before directed to the decision making bodies to improve the procedural / remedial side of the law. We are involving the partners not only on the user side but also in policy formulation and reforming the system of administration of justice. But again we can only cover so much municipalities even if you are working full time with many paralegals, we have to do more.

Kgd. Ed Lapira to Atty. Manuel:

Kgd. Ed Lapira, Barangay Council, D1 QC: On education, as member of the BC, let's have a planning on how to implement education at the level of the barangay. Like on terrorism, the PNP has seminars from small group of constituents to

explain what is terrorism. PNP also included in the program that UP is a breeding ground for future terrorists. Is there an organization extending programs to barangays?

Atty. Manuel: There is of course a law against the abuse of women and children. (Under this) Brgy Protection Order (for abused women and children), barangays have the power to hear before moving to the trial courts.

Kgd. Ed Lapira: Are there public services offered by SALIGAN? Where is the Manila Office and how to contact this office?

Atty. Manuel: We are into education (programa para sa komonidad), case handling (but not as a legal aide office). Limitado ang pag hawak ng kaso like eviction of poor families, not domestic cases, only sectoral and strategic cases. (We can also help on policy development at the local level (local policy development towards ordinances).

Sylvia Carvajal to Justice Hormachuelos:

Sylvia Carvajal, DILG: It has been observed that the prisoners are one of the most advantaged. What has the courts done in cooperation with the BJMP especially for those prisoners who are detained and whose case have been suffered for years, longer than the would-be number of years to serve the sentence if court hearings have been conducted? Also, at the present, the DILG is training on Katarungang Pambarangay. What does the court do (in these training)? (Justice Hormachuelos asked the representatives from DOJ to answer)

Atty Toledo, DOJ: Prisons those who are under the BJMP are those who have pending cases. Those who are under the Bureau of Prisons are those already accused. On the education of local government, you can request to DOJ. DOJ already has action centers for marginalized.

Comment: Sergis Nitapan, office of Manny Villar: There is lack of identification of senators who will oppose the measure (on bills increasing access to justice). We need to present arguments on opposing senators, to pacify political comments and possible oppositions.

Dr. Carino: That is a very good suggestion. The sponsor (of a bill) should know the possible opposition for the bill. In the study, the opponents are sometimes supporting a similar measure.

Dean Alex: On the number of wrongly imprisoned, do we have statistics on these?

Atty. Manuel: The DOJ should have data.

Dean Alex: How prevalent?

Atty. Manuel: The statistics should reveal the capacity of the detainee to access lawyer to review. If you have been detained longer than your penalty if you were convicted, then you can already be freed. The judges as supposed to be conducting regular jail visits, but because of the congestion, it is not regular anymore. Also dapat may inventory to be done by judges but a can be done already by the BJMP.

Dr. Carino: We used to do that with Pahinungod and the students were able to let free several inmates. But the problem sometimes is on asking the inmates who themselves do not know what they are charged with.

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LESSONS LEARNED AND RECOMMENDATIONS

Lessons Learned

- ❖ Disadvantaged sectors could transcend their state of "helplessness", "powerlessness" and "inadequateness" if they band together and unite for a common cause.
- ❖ Disadvantaged sectors could be a force to reckon with in policy making and reform as evidenced by some of the cases in "Access to Participation" study.
- ❖ Reforms in the justice system, particularly access to justice of the poor, could be shepherded and advocated if local institutions and other partners are harnessed.
- ❖ Ability of citizens to turn impartial arbiters to resolve disputes and seek remedies in legal and non-legal, informal or customary institutions of justice could be enhanced by proper education and information dissemination and respect for human rights and dignity.

POLICY BRIEF

**"SHEPHERDING REFORMS
IN ACCESS TO JUSTICE
AND PARTICIPATION OF
THE DISADVANTAGED
SECTORS"**

24 NOVEMBER 2006

12:30-5:00 pm

National College of Public
Administration and Governance
University of the Philippines
Diliman, Quezon City



Introduction

The line "justice delayed, is justice denied" may sound like a cliché, however this statement holds great truth in it. A corollary to it is the statement "inaccessibility of justice is no justice at all". These two statements may have a harsh tone to it however this is a common reality in the Philippine case.

There may be reforms initiated by the different Supreme Court Chief Justices, however, it is perceived that these reforms are not enough to ensure that justice in the Philippines is accessible. Reforms are not instituted in just the judicial system. The different agencies of the executive have also instituted a number of reforms to answer the problem of accessibility to justice. Even the legislature, through the creation of new laws to make justice more accessible, has helped improve the delivery of justice to all.

These efforts are not enough, however. It can still be observed that the judiciary has a large number of cases unsettled. There are still minors in conflict with the law which can be found in jails, them being in close contact with hardened criminals. Women are still maltreated and they still have limited options on what to do in cases of prostitution, trafficking, abuse and rape.

This policy brief will discuss the different dimensions of the problems in the access to justice. It will tackle the different constraints or impediments to access to justice and find alternatives or solutions to solve the problem. Proposals coming from the judiciary, government agencies, academe and even the best practices of other countries will be examined in the hope of finding ways to improve access to justice in the Philippines.

Definition of Access to Justice

Access to justice may be characterized as an elusive terminology in the sense that it does not have a direct formal definition. Rather, the definition of access to justice largely depends on the context to which it is being attributed. It is a process that has to be adapted to particular contexts and situations.

However, even if this is the case, the United Nations Development Programme (UNDP) gives a working definition of access to justice. UNDP defines access to justice as the "ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards".¹

1. UNDP, "Programming for Justice Access to All". (Bangkok: UNDP, 2005) 5.

Another common problem that most countries are facing are the court-associated delays. There are a lot of courts where they have an excessive number of backlogs. These delays in the dispensation of justice may be attributed to the lack of infrastructure, funding, personnel and even competent judges. This further removes the trust of the people in the judicial system thus making the way of seeking and pursuing litigations.

BARRIERS TO ACCESS TO JUSTICE

- From the case studies, the justice systems frequently weakened by:
- Long delays, particularly costs, draining the system, lack of available and affordable legal assistance from the state, relatives, and the ability, absence of authority and powers, resulting in delayed justice, legal expenses, identification and implementation, and weak enforcement of laws and regulations, and lack of checks and balances.
 - Severe limitations in seeking remedies provided either by law or practice. Most court systems fail to provide remedies that are powerful, timely, and comprehensive, and are just and balanced.
 - Gender bias and other barriers in the up and local courts systems, including the existing attitudes, lack of protection against gender, poor and other delays imposed people, in the procedure of the disabled, and the lack of literacy.
 - Lack of defer to protect an aspect of the system, and their quality, and the system.
 - Lack of adequate information about how to proceed to seek to get the law, which is difficult to navigate, and the related procedure, legal, and systems.
 - Limited public participation in reform programmes.
 - Excessive number of laws.
 - Financial and expertise related problems in implementation, and the quality of the law.
 - Application of the legal system to the economic persons that are not the reality of the poor.

UNDP, "Access to Justice: Practice Note" (UNDP, 2004) 4.

III. Access to Justice: The Philippine Case

In the previous discussions on access to justice, it was shown that the poor and the disadvantaged sectors (women, children, old people, indigenous peoples) are wanting when it comes to access to justice. The discussions above however tackled access to justice in a very general manner. Different cases were taken from different countries. However, it can be observed that the discussions above holds true in the Philippines.

The Philippines also suffers from an inaccessible justice system. There are also countless reforms being initiated by the different government agencies. These however are not enough based on the statistics being presented.

Causes of Delays in the Provision of Justice Remedies⁸

Lawyer attributed delay

- Notorious filing of petitions for extensions and postponements
- Absence, tardiness and ill preparedness of lawyers
- Lack of competence in discovery proceedings
- Abuse of procedures and provisional remedies (such as TROs)
- Heavy lawyer caseload and indiscriminate acceptance of caseload resulting in incompetence
- Protracting of cross examinations
- Propensity to elevate case by filing petitions for mandamus, prohibition or certiorari

Judge attributed delay

- Insufficient knowledge on developments in law and jurisprudence
- Deficient knowledge of court procedures
- Judge absenteeism and tardiness
- Trials are conducted on piece meal basis
- Leniency in granting of postponements by judges and laxity in enforcement of rules of procedures
- Lack of competence in judicial decision writing (decisions wanting in clarity, precision, coherence and depth)
- Poor administrative skills, poor case management, laziness, inefficiency and corruption

⁸ CPRM, "Conduct of Further Study on Operations and Linkages of the 5 Pillars of Justice". (Manila: UNDP-Supreme Court, 2006).

Percentage of civil and criminal case exceeding prescribed time limits. lower courts

COURT	CIVIL	CRIMINAL
RTC	57.6	46.1
METC	38.8	51.4
MTCC	57.0	27.4
MTC	35.1	51.2
MCTC	50.0	34.6

Original Source: Rosemary Hunter, CPRM, CDDRP, SC-WB, 2002.

In terms of children's access to justice, there are also certain problems. This basically is on what to do with children who are in conflict with the law or the juvenile delinquents

From 1995 to 2000 alone, more than 10,500 children were arrested and detained every year. In the first quarter of 2003, more than 4,500 children have been imprisoned, 441 of them are girls. What is more alarming is the fact that 5% of the total population of jails is made up of children.¹⁰

But what makes a juvenile offender? They are either male or females of ages between 14 and 17. They are said to be elementary school drop-outs coming from urban or rural poor families commonly living in the slums. UNICEF provides a more comprehensive and formal definition. Juvenile justice refers to all the offences committed by children and young people (below the age of 18) whether discovered or not; reported or not to the police or any other law enforcement agency; brought before a judicial, administrative or other body; sentenced or not. Children may also be considered an offender for acts that would not be punishable if committed by an adult (e.g. status offences; vagrancy). The terms "juvenile delinquents", "juvenile offenders", "children in conflict with the law" and "children in contact with the law" have the same meaning.¹¹ They are detained because of minor offenses like petty theft, sniffing of solvent (rugby), and vagrancy.

Law enforcement attributed delay

- Delay in transmittal of case to the Prosecutor's Office
- Protracted investigations and inquiries thus preliminary investigations remain unresolved
- Evidence not promptly submitted to court
- Non-appearance during trial
- Failure to effect a valid arrest
- Lack of internal coordination
- Poor case documentation
- **Poor coordination**
- **Weak coordination with prosecutor in case preparation**

Prosecutor attributed delay

- Protracted investigations and inquiries thus preliminary investigations remain unresolved
- Preliminary investigations are appealed to the secretary of justice
- Heavy prosecutor caseload
- Deficient prosecutor competencies

Delay caused by institutional weakness

- Lack of court resources and facilities
- Inefficiencies in the postal service particularly delays in the delivery of notices
- Delays in the filling up of judicial vacancies
- Weakness in the judicial appointment systems
- Complicated rules couched in complex language
- Insufficient training
- Lack of formal systems for ensuring inter-pillar coordination
- Deficient case management system and tools and information technology support across pillars

Republic Act 8493 (The Speedy Trial Act of 1998)

RA 8493 was made into law as an answer or solution to the increasing backlogs and case congestion in the court systems. The law states that in 11 months time from the filing of information to the issuance of decision by the lower courts, the case must take only 11 months or 330 days.

¹⁰ UNICEF, "Children in Conflict with the Law: Factsheet"

¹¹ UNICEF, "Justice for Children: Detention as a Last Resort."

The problem with access to justice of these children comes from their being children and that they should not be mixed with the hardened criminals in jail. Amnesty International found out that a common practice by the police is to mix these children in the same facilities where the adults are detained. Furthermore, the punishments for their offenses are oftentimes similar to those imposed on the adults. With them being children and in close contact with criminals, they are oftentimes subject to torture and abuse.

There is another problem that is being faced by children. These may come in the forms of abuse or harassment coming from their own homes. Since they are children, the persons who should be protecting them in the first place, their families oftentimes violate their rights.

Cases of Violence Against Children by Classification of Offenses and Year.	Year.				
	1999	2000	2001	2002	2003
Rape	2348	2354	2275	2732	3107
Physical Injuries/ Maltreatment	1225	1973	2274	2086	1947
Acts of Lasciviousness	786	1181	1312	1155	1090
Violation of 7610-Child Abuse	516	516	516	516	516
Attempted Rape	210	303	271	321	293
Maltreatment	139	139	139	139	139
Missing/Abduction	106	106	106	106	106
Child Labor/Exploitation	58	58	58	58	58
Grave Threats	32	32	32	32	32

LEGAL BASIS, STAGE IN THE PROCESS	DURATION SPECIFIED BY LAW		
	YRS	MONT HS	DAY S
SPEEDY TRIAL ACT			
From filing to arraignment			30
From time of arraignment to first day of trial			30
From the first day of trial to the termination of trial			180
From the termination of trial to the issuance of decision			90

Even with the passing of Republic Act (RA) 8493 or more commonly known as the Speedy Trial Act of 1998, the number of cases pending in the courts has not changed noticeably. From the period of 2000- 2004, the clearance rates of the courts are just averaging 42.94%.⁹

Annual Case Load and Clearance Rates of Lower Courts, 2000-20004

YEAR	TOTAL CASELOAD	TOTAL POSSED	DIS-CLEARANCE RATE (%)
2000	1,510,558	685,977	40.63
2001	1,416,667	575,699	37.15
2002	1,405,972	587,093	41.75
2003	1,352,452	529,553	39.15
2004	1,534,528	905,925	56.03

Original Source: OCA, Supreme Court of the Philippines

The disposition rates however during the years 200-2004 were relatively high considering that judges in the lower courts have case loads that range from 300-3,000. The disposition rate has a very high average of 104.09%. This means that there are still judges who are working hard.

Annual case flows and disposition rates of lower courts, 2000-2004

YEAR	INFLOWS	OUTFLOWS	DISPOSITION RATE (%)
2000	695,417	685,977	98.64
2001	592,086	575,699	97.23
2002	565,004	587,093	103.90
2003	533,573	529,553	99.24
2004	745,737	905,925	121.48

Original Source: OCA, Supreme Court of the Philippines

Furthermore, there is a high archival rate of the lower courts. It was seen that this high archival rate of the lower courts is attributed by the inability of the police to nab the suspects within the prescribed 6-month period.

Composition of judicial actions

YEAR	CASES RESOLVED/ DECIDED		ARCHIVAL RATE	
	% OF TOTAL CASE LOAD	% OF ALL CASES DISPOSED	% OF TOTAL CASELOAD	% OF ALL CASES DISPOSED
2000	23.42	51.56	15.64	34.43
2001	23.78	58.52	13.43	33.05
2002	24.79	59.38	14.58	39.91
2003	23.96	61.21	12.55	32.06
2004	29.60	50.15	14.67	24.86

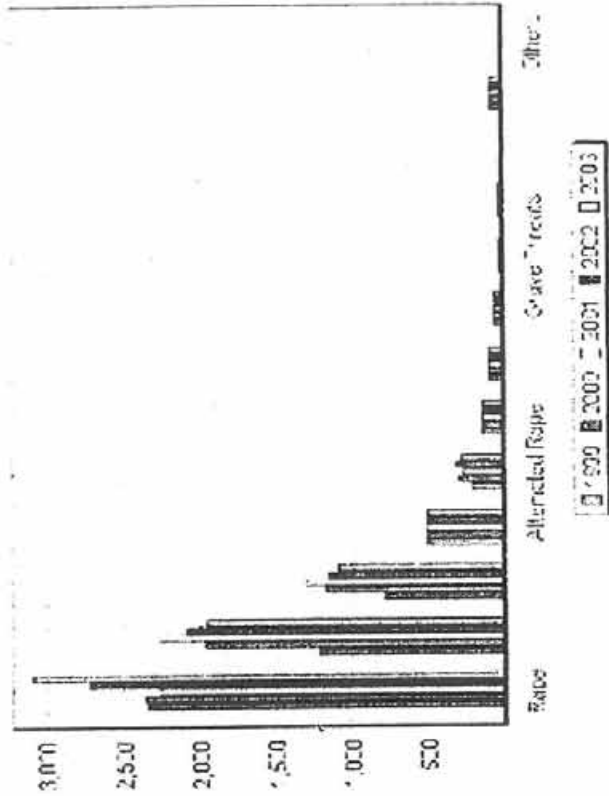
Original Source: OCA, Supreme Court of the Philippines

There are also cases that are still pending with the lower courts. These pending cases have already exceeded the prescribed time limit stated in the Speedy Trial Act of 1998.

Child Prostitution	31	31	31	31	31
Sexual Harassment	7	7	7	7	7
Neglect/Abandonment	79	79	79	79	79
Others	16	16	16	16	16

Source: Philippine National Police

Cases of Violence Against Children by Classification of Offenses and Year.



Reforms Initiated by the Different Agencies of the Government

There are several reforms initiated by the government to answer the increasing inaccessibility to justice. These reforms came from the judiciary, legislature, and the executive branch through its agencies concerned with access to justice.

The judiciary under the leadership of Chief Justice Hilario Davide Jr. came up with the Action Program for Judicial Reform (APJR). It is a comprehensive program for the judiciary with the purpose of making the judiciary work more efficiently and effectively. "The APJR's mission is to provide speedy and fair dispensation of justice to all, have judicial autonomy and independence from political interference, improve the people's access to judicial and legal services, install systems to improve quality of external inputs to the judicial process, promote efficient, effective and continuously improving judicial institutions, and conduct its business with dignity, integrity, accountability and transparency."¹² For the purpose of this document, the programs that are relevant to access to justice will be highlighted.

In order to ease the increasing number of backlogs of cases in the courts, the Supreme Court came up with a project called "Justice on Wheels". It was patterned from the Guatemalan Mobile Court System. The Mobile Court was initially assigned to hear cases involving juveniles in conflict with the law. The main purpose was to hear cases involving juveniles who wanted to plead guilty, or who wanted to be diverted or released on recognizance. More importantly, the Mobile Court prioritized the hearing of cases of those who have been in detention for more than the maximum penalty for their particular cases. This strategy was intended to help decongest the various youth reception and detention centers within the Metro Manila area, which were holding up to five times their designed capacities.¹³

66 days after it first operated on 20 December 2004 to 11 November 2005, the Justice on Wheels Project was able to visit quite a number of juvenile detention centers and jails within Metro Manila. It was able to hear a total of 1,126 cases and was able to secure the release of 391 detainees. This accounts for 35% of the total number of cases heard.

In addition to reforms that aim reduction in case backlogs, there are also reforms initiated by the judiciary to make Supreme Court decisions to be easily understood by ordinary people. In order to break the language barrier that inhibits people to participate or pursue litigations, the Supreme Court plans to translate its landmark decisions into Filipino and other major dialects. To facilitate this reform, the Supreme Court tasked Court of Appeals Justice Jose Dela Rama as Chairman.¹⁴

Alternative Justice and Dispute Resolutions

It was stated in the beginning paragraphs that the informal mechanisms of dispensation of justice are more accessible to the poor and the disadvantaged. The informal system can be seen as having the potential to help make justice more accessible.

The most prominent example of alternative dispute resolution is the Barangay Justice System (BJS). Indigenous justice practices of mediation and conciliation are now being formalized and institutionalized through the BJS. The BJS is seen by the government, Non governmental organizations and some development agencies as an effective mechanism to meet the justice needs of the disadvantaged and marginalized sectors. Furthermore, it can resolve issues of court backlogs. For the community, it enables them to resolve their own conflicts.¹⁵

The BJS can be viewed as a two way reform. It helps reform the supply side of justice by serving as a venue for dispensation of justice. For the demand side on the other hand, it serves as a mechanism for the empowerment of the poor and the disadvantaged sectors.

In addition to the above-mentioned reforms, there is also an increasing promotion and at the same time respect for indigenous judicial practices. The Republic Act 8371 or the Indigenous Peoples Rights Act recognizes the indigenous peoples conflict resolution institutions.

¹² Supreme Court. Matrix of Judicial Reforms.

¹³ Hon. Adolfo Accuna, "The Justice on Wheels of the Philippines". (Presented dur-

¹⁴ Supreme Court. (2006).

¹⁵ Restorative Justice Online, "Using Traditional Practices to Improve the Justice Sys-

Laws created for the Protection Of the Disadvantaged and Vulnerable Sector

There are also laws created in order to help prevent the violation of the disadvantaged sectors rights. These in certain ways give the disadvantaged sectors protection to their own rights. Furthermore, with the creation of such laws, the disadvantaged sectors are seen to be acknowledged that they indeed need protection.

Laws Created Particularly for the Protection of Vulnerable/ Disadvantaged Sectors

SECTOR	PHILIPPINE LAW	
Victims of unjust imprisonment/ detention and victims of crimes	RA 7309	An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes
Arrested persons/ detainees	RA 7438	Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties
Senior Citizens	RA 9257	Expanded Senior Citizen's Act of 2003
Women	RA 7877	Anti Sexual Harassment Act of 1995
	RA 6725	An Act Strengthening the Prohibition on Discrimination Against Women with Respect to Terms and Conditions of Employment, Amending for the Purpose Article 135 of the Labor Code as amended

Cont. (women)

RA 6955	An Act to Declare Unlawful the Practice of Matching for Marriage to Foreign Nationals on a Mail- Order Basis and for Other Similar Practices including the Advertisement, Publication, Printing or Distribution of Brochures, Flyers and Other Propaganda Materials in Furtherance Thereof and Providing Penalty Therefor	
RA 7192	An Act Promoting the Integration of Women as Full and Equal Partners in Development and Nation- Building and for Other Purposes	
RA 8353	An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code and for Other Purposes	
RA 9208	Women and Children	Anti Trafficking in Persons Act of 2003
RA 7277	Persons With Disabilities	Magna Carta for Disabled Persons
RA 9371	Indigenous Peoples	An Act Providing for the Rehabilitation, Self- development, and Self Reliance of Disabled Persons and their Integration into the Mainstream of Society and for Other Purposes of Indigenous Peoples Rights Act of 1997
RA 9344	Children in Conflict with the Law	An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes

The recently enacted Juvenile Justice Act is one of the landmark legislations that were made for the protection and enhancement of children's Access to Justice. This legislation calls for restorative justice to be incorporated into all laws, policies and programmes applicable to children in conflict with the law.

Restorative Justice under this law is defined as:

... a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies."

Under this new law, children who are under the age of 15 are not to be charged with crimes. Rather, these offenders would be subject to diversion programs. They will go through anger management trainings, participate in community services, make apologies, and strive for the reparation of the damage they have caused.

The Juvenile Justice Act gives protection and access to justice to CICL. They are not subjected to the trauma of having to spend in jail with criminals. Rather, they are subjected to psychological therapies, which seek to address the root cause of their delinquency. Furthermore, they are not subjected to physical, psychological and sexual abuse, unlike when they are kept and mixed with other criminals.

Discussion of Alternatives

There is a need first and foremost to improve the capacity of the primary actor, the judicial system, in promoting and championing access to justice and participation of disadvantaged sectors. The mere fact that they are tasked to promote and protect this right of the poor and disadvantaged puts them in a position wherein they have the ability to provide for a substantial change.

To answer the burgeoning problem of case backlogs, there is a need to upgrade the capacity of the staff and of the judges so that they may be able to utilize present technology to make dispensation of justice a lot speedier. In addition, and if not, the more important one, is to make their salaries competitive in order to attract private legal practitioners to serve as judges of courts

In addition to that, there is also a need to strengthen and "build justice values". These values must be incorporated into the work ethics of all court personnel. They must be trained to act in accordance to the promotion of access to justice and participation of all sectors.

To further improve the mechanisms of inter-agency communication, between and among government agencies in-charge of access to justice and participation of disadvantaged sectors, coalitions and

cooperation mechanisms must be established. There must also be a closer link-up and coordination of activities with law groups, NGOs and the media in order to avoid duplication of projects.

As stated above, the court personnel must develop work ethics in order to reduce delays in the dispensation of justice due to personnel absenteeism and tardiness. Likewise, judges must impose more stringent punishments or sanctions to lawyers who are causing delays.

In order to avoid the alienation of indigenous peoples, the disadvantaged sectors particularly the intellectually challenged and illiterate, court proceedings and laws must be translated into more easily digestible and comprehensible ways. The efforts of the Supreme Court to translate Supreme Court decisions in Filipino is a laudable move, however, there are still a number of indigenous peoples who do not understand Filipino. The only language they know of is their ethnic

In order to educate the common people of their rights, and in order to empower them and improve their justice demanding skills, they must first be taught the basics of the law. Information dissemination and campaigns must not stop at merely putting posters and giving out flyers, rather, there should be teach-ins and group discussions especially with the indigenous and disadvantaged people. This could be done in partnership with volunteer groups or NGOs and Law Groups.

Earlier, the ADR was said to have the potential to reach out to people who are seeking justice. It is faster than court settlements. It costs lower compared to expenses incurred in court litigations. This mechanism should be used to the fullest by the courts.

To fully realize the potentials that ADR possesses, there is also a need to strengthen people's trust to it as an alternative to court litigations. The benefits, processes and complexities of ADR must be fully known and explained to the people in the community for it to be accepted and trusted.

In addition, people will tend to trust and utilize ADR more if they know that the mediator is competent enough in his capacity to act. Therefore, there should be training programs designed to increase the capacity of these mediators.

The poor and the disadvantaged must also be empowered. Strengthening the supply side of justice is just the half side of the coin. People must also be empowered in order for them to demand justice.

Educating the poor and the disadvantaged, in addition to providing them with development programs to fully empower them is the key. This can be done in partnership with foreign organizations and local NGOs. The setting up of legal clinics and legal aid centers can be greatly helpful for the poor.

Summary and Conclusion

There are a lot of issues confronting access to justice and participation of the disadvantaged sectors. In order to address these issues, there is a need of a twofold reform. Reforms in access to justice must not be concentrated to the supply side of justice, but also to the demand side of justice.

Increasing the number of judges and personnel in the judiciary cannot solve the problem. People must also be educated and empowered in order for them to have the capacity to demand for their rights. Aside from strengthening the court systems through technological and personnel capacity upgrades, the poor and disadvantaged must also be given legal empowerment, awareness, and legal aid and counsel.

In order to facilitate for an impartial and equally accessible justice system, discriminatory acts aimed at women, indigenous peoples, children, old people, persons with disabilities, etc., must be eliminated. When these reforms are taken into consideration, applied into the justice system, then, it can be said that justice is not far at hand.

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About the Philippine Governance Forum

The Philippine Governance forum (PGF) is a series of consultative discourses on pressing policy and governance issues besetting the country. It is organized by the National College of Public Administration and Governance (NCPAG), University of the Philippines (UP) under the GOP-UNDP Fostering Democratic Governance Programme. It aims to provide a venue for continuing dialogue, exchange of ideas and consultation with relevant publics and for articulating and assessing alternative policy recommendations, scenarios and best practices for fostering democratic governance.

About the Diliman Governance Forum

The Diliman Governance Forum (DGF) is a continuing effort of the UP NCPAG to initiate collective action for public administration reforms and better governance. Spinning off from the Policy Issues Forum conducted by the college in the past, the DGF has tackled various policy concerns, such as, reengineering government, fiscal crisis, geo-informatics, electoral reforms, youth leaders, combating corruption, regulatory governance, policy options for the Bangsa Moro, international trade, sustainable mining and the Local Government Code of 1991. It is subscribed under the Philippine Governance Forum of the Fostering Democratic Governance Programme.

The 17th DGF focuses on shepherding reforms in access to justice and participation of the disadvantaged sectors. It aims to 1) discuss the reforms in these areas; and 2) explore ways to advance and institutionalize these reforms in our policy systems.



PROGRAMME/ INVITATION

POWERPOINT PRESENTATIONS

- 1. ATTY. MARLON MANUEL**
- 2. HON. PORTIA HORMACHUELOS**
- 3. DR. LEDIVINA CARIÑO**

THE POOR AS ACTIVE SEEKERS OF JUSTICE

"ALTERNATIVE " REFORM PROPOSITIONS IN ENHANCING ACCESS TO JUSTICE OF THE BASIC SECTORS

The APJR identified the following major factors that hinder access to quality judicial services by the basic sectors:

- Delays in judicial proceedings
- Erroneous decisions rendered by lower courts
- Prohibitive costs of litigation
- Inadequacy or lack of information about the judicial system

• Action Program for Judicial Reform 2001-2006 Supplement, August 2001

"Decisions rendered by the lower courts are not always accurate, and, therefore, not always just and fair. Upon review on appeal, the Supreme Court has had the opportunity to correct inadequacies in lower court decisions. By this time, however, a poor party may have already suffered from the penalties imposed by the lower courts."

• Action Program for Judicial Reform 2001-2006 Supplement

PROPOSITION

- The problem of limited access to justice is a relationship problem, i.e., how the administrator of justice relates to the end-user of the system, and, conversely, how the end-user relates to the administrator.

"Delays can also occur because the poor do not have adequate resources to hire lawyers. This condition protracts the litigation process as a handful of government defenders attempt to service the swelling ranks of the poor requiring their assistance."

• Action Program for Judicial Reform 2001-2006 Supplement

"The costs of litigation to the poor are many. Litigation involves the hiring of a competent lawyer who must be paid for every hearing attended. The poor, on the other hand, will be deprived of income for each day of hearing. And poor persons accused of crimes lose income during their detention."

• Action Program for Judicial Reform 2001-2006 Supplement

"The state of the basic sectors is aggravated by their ignorance of the law. This might be considered as a mixed result of their deficient appreciation of the law, their educational status which is oftentimes deplorable, and the inability of the judicial system, agencies of the government and even non-governmental organizations to provide information and improve the basic sectors' levels of understanding."

• Action Program for Judicial Reform 2001-2006 Supplement

In the June 2003 Report, "Strengthening the Other Pillars of Justice through Reforms in the Department of Justice", two major constraints to citizens' access to justice were identified:

- the high costs of litigation and legal services
- the lack of adequate knowledge about the law and institutions of the justice system

Illustrative case:

The PAO seeks to enhance access to legal services and knowledge of indigent persons who have no means of availing themselves of the services of private law practitioners. The PAO has a clientele base equivalent to 34.9% of the country's population, consisting of those who are considered living below the poverty threshold.

• *Strengthening the Other Pillars of Justice through Reforms in the Department of Justice, Diagnostic Report, June 2003*

Illustrative case:

Many qualified indigents do not avail of PAO services because they do not know that the PAO exists. Other clients who hear of PAO programs for indigents are not, however, aware of the means through which the agency services could be provided. Some clients seek PAO's assistance already at a late stage.

• *Strengthening the Other Pillars of Justice through Reforms in the Department of Justice, Diagnostic Report, June 2003*

CONSIDERATIONS

- Focusing the reform program at judicial and other governmental institutions is important.
- But the tendency to over-concentrate on governmental or state institutions must be avoided.

In addressing the issue of Access to Justice, the APJR focuses, and understandably so, on the judiciary. The Supplement to the APJR identifies the following major policies and strategies:

- Improvement in the overall institutional capacity of the Judiciary for improved efficiency
- Reforms in judicial systems and procedures
- Improving public information for the poor
- Initiatives that encourage reforms in judicial systems components outside of the Judiciary
- Legal and judicial education
- Assessment of the impact of judicial reform program on access to justice by the poor

• Action Program for Judicial Reform 2001-2006 Supplement

CONSIDERATIONS

- Strengthening the capacity of state institutions is certainly indispensable.
- But it is important that the efforts to enhance the capacity of state institutions should be complemented by parallel efforts to build "civilian" (as opposed to governmental) capacities.

CONSIDERATIONS

- Building the capacity of the people to access the justice system and to seek remedy for violation of rights should be a necessary component of any justice reform program.

CONSIDERATIONS

- Strengthening the end-user sector of the justice system must be considered as building and strengthening a reform constituency.
- This reform constituency will form an external pressure for the general reform efforts and will support the internal reform champions within state institutions.

CONSIDERATIONS

- The issue of capacity (especially if seen only from the perspective of the administrator) cannot be isolated from the issue of linkage.
- In fact, the capacity of one party must be seen as an indispensable component of the linkage between the parties.

CONSIDERATIONS

- Any attempt to enhance the capacity of the governmental institutions will have limited effect if not complemented by similar efforts to strengthen the capacity of the constituents of these governmental institutions.

CONSIDERATIONS

- Strengthening the institutions or parties individually is necessary.
- But institutional strengthening should include, as an indispensable component, linking the different institutions and stakeholders.

CONSIDERATIONS

- Any justice reform program must be holistic in approach. It cannot be unidirectional or limited in its reform objectives to a specific sector or area of the justice system, without any corresponding plan for the rest.
- This is especially necessary in the area of improving access to justice.

RECOMMENDATION

- Reform efforts must focus on the following:
 - Enhancing the capacity of the administrators of justice, the service-providers
 - Enhancing the capacity of the end-users, the constituents of the administrators
 - Strengthening the linkage between the administrators and the end-users

SALIGAN

Centro ng Alternatibong Lingap Pundigal

- Litigasyon, dahil ito fundamental and basic.
- Saligang trabaho sa mga lokal government, labor, and urban poor.
- In the Philippines, the attention of the government is on the development of the country.

The Institution

SALIGAN is a legal resource non-governmental organization doing developmental legal work. It promotes workers' rights, labor, urban poor, and legal communities.

The Institution

- SALIGAN operates in different areas throughout the Philippines.
- It has two branches. One branch is based in Naga City and operates in the Bicol Region, and another branch is based in Davao City and operates in Mindanao.
- SALIGAN plans to establish a branch in the Visayas within the next years.

SALIGAN's Mission

SALIGAN seeks to effect societal change by working towards the empowerment of women, the basic sectors, and local communities through the creative use of the law and legal resources.

SALIGAN's Programs

- **Women**
- **Labor** (workers and farm workers)
- **Peasant** (farmers, farm workers, and fisherfolk)
- **Urban Poor** (landless private and homeless citizens)
- **Local Governance**

SALIGAN's Programs

- **EDUCATION**
- **LITIGATION**
- **POLICY WORK**
- **RESEARCH & PUBLICATIONS**

Engaging Law Students and Lawyers

As part of IF and ILO's effect on social change, SALGAN promotes alternative lawyering and legal practice in the form of the ALG. SALGAN has established the SALGAN Law Student and Lawyer's Association (SALGAN Law Student and Lawyer's Association).

SALGAN has established the SALGAN Law Student and Lawyer's Association (SALGAN Law Student and Lawyer's Association).

The Alternative Law Groups (ALGs)

SALGAN is one of the oldest and largest members of the Alternative Law Groups, Inc. (ALGI).

SALGAN has recently been elected a member of the ALGI.



The Alternative Law Groups (ALGs)

The ALG is a coalition of lawyers, non-governmental organizations that are engaged in alternative or developmental legal practice.

Individually and collectively, ALG members have been working for the empowerment of the poor and marginalized sectors of Philippine Society.



The Alternative Law Groups (ALGs)

ALG members operate in a wide area of concerns involving justice issues of the marginalized sectors of Philippine society, including issues on women, labor, peasant, fisherfolk, children, urban poor, indigenous peoples, local governance, and environment.

THE JUDICIAL SYSTEM

Justice Portia Alino-Hormachuelos

**Chair, 3rd Division
Court of Appeals.**

1204/2008

**the bulwark of democracy
the Constitution and the**

• Uphold the latest decisions of the Supreme

...ental goal of judicial

Chief Justice Artemio V. Panganiban

Justice Hilario G. Davide

Vision Mission statement to serve as a roadmap for the
Philippine Judiciary

THE DAVIDE WATCH Leading the Philippine
Judiciary and the Legal profession Towards the
Third Millennium

1204/2008

... judiciary that is independent, effective and efficient, and worthy of
... and a legal profession that
... effective public service

... of Judicial Reform or APJR. The
... to build and strengthen
... performance

... position that stability and
... justice is an
... performance, which
... development

... necessary in a
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**Developmental
Agencies**

Components

... and Procedures,
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The first component, Judicial Systems and
 Component, Institutions Development
 Component, Human Resource Management
 Development
 The fourth component, Institutional Integrity
 Development
 The fifth component, Access to Justice by the Poor
 The final component, Informal Support
 System.

Over 100 projects have been launched by the
 Judiciary to implement these components.

of the Philippine Judiciary

- (1) Reducing litigation and delay
- (2) Improving efficiency
- (3) Modernizing system of judicial appointments
- (4) Improving judicial economy
- (5) Improving judicial management
- (6) Improving judicial infrastructure
- (7) Improving judicial administration and collaboration
- (8) Improving judicial administration
- (9) Improving access to justice by the poor

Component, Anganiban's acronym ACID –
 Access to Justice,
 Competence and Delay

international agencies have been
 assisting in the Philippines' judicial
 reform program

12/04/2008

APJR's 5TH component, Access to Justice by
 the Poor and Disadvantaged

- (a) Improving information and education of
 the poor
- (b) Improving the capacity of judges and law
 practitioners
- (c) Improving the physical access and
 affordability of judicial services

12/04/2008

of the Philippines' judicial reform program

- "Justice on Wheels" program
- model electronic courts

12/04/2008

Forum on Access to Justice
Program in the 5 Pillars of the Criminal Justice System

1. The Law Enforcement Pillar
2. The Prosecution Pillar
3. The Corrections Pillar
4. The Community Pillar

12/04/2008

The Court Pillar

Judicial Independence

... rule of law and predictability in the...
 ... decisions are indispensable to the...
 ... confidence, economic development and ultimately to...
 ... good governance.

12/04/2008

abiding problems and challenges in shepherding and institutionalizing reforms under the 5th component of the APJR?

1. need for a strong and supportive leadership oriented...
2. need to ensure access to justice by the poor and vulnerable...
3. need for... cooperation...
4. continuity among the pillars of the justice system
4. speedy dispensation of justice.
5. Inertia of institutional culture.
6. Ultimate challenge is for us to work together to achieve a just and transformed society.

12/04/2008

... has secured the blessings of the judicial...
 ... fraud and violence...
 ... depends on a...
 ... foundation for justice...
 ... even global progress, prosperity and stability.

12/04/2008

Disadvantaged Groups and Parliamentary Processes

Ledivina V. Cariño
Diliman Governance Forum
November 24, 2006

Theoretical Perspective

- State as arena of struggle, positioned between the power of power and the power of ideals and system preservation
- Could be more responsive to disadvantaged due to
 - Democratic space
 - State move for self-preservation and stability
 - Groups bearing interest believed to be public, not narrow self-interest
 - Group capacity for policy intervention

Case Studies

- Comprehensive Agrarian Reform Law
- Urban Development and Housing Act
- Fisheries Code
- Indigenous Peoples Rights Act
- Social Reform and Poverty Alleviation Act
- Anti-Rape Law of 1997
- Anti-Child Labor Law
- Anti-Terrorism Bills

Avenues of Access

- The electoral process (party-list, regular)
- Setting the public agenda
- Access to the legislative mill

Strategies

- Importance of strategic thinking and action
- Role of negotiation and compromise
- Parallel informal interventions through legislative track and mass action
- No neglect of second house
- Penetration of bicameral conf committee
- Role of executive in legislative process

Qualities for Successful Policy Advocacy

- Internal capacity
- External linkages

Qualities for Successful Policy Advocacy: Internal Capacity

- Organization (coalition, secretariat, professional staff)
- Management (quick decision making, effectiveness grassroots education, knowledge of advocacy processes)
- Vision and strategy
- Knowledge of policy process
- Willingness to compromise, unity and credibility

Qualities for Successful Policy Advocacy: External Linkages

- Finding strategic partners
- Mustering resources
- Collaboration with government
- Linkage with the people
 - Consultations and organizing
 - Mass action to unite a group's constituency and to show strength
- But: Strength of opposing forces

Conclusions

- Marked dominance of the elite, with compromises eating into the poor's non-negotiables
- Even sponsors can leave disadvantaged when outside public glare
- Perceptions of democratic space can change conditions, if people acted on them
- Some advances only to placate poor
- Opposing forces not omnipotent
- Implementation still a key arena

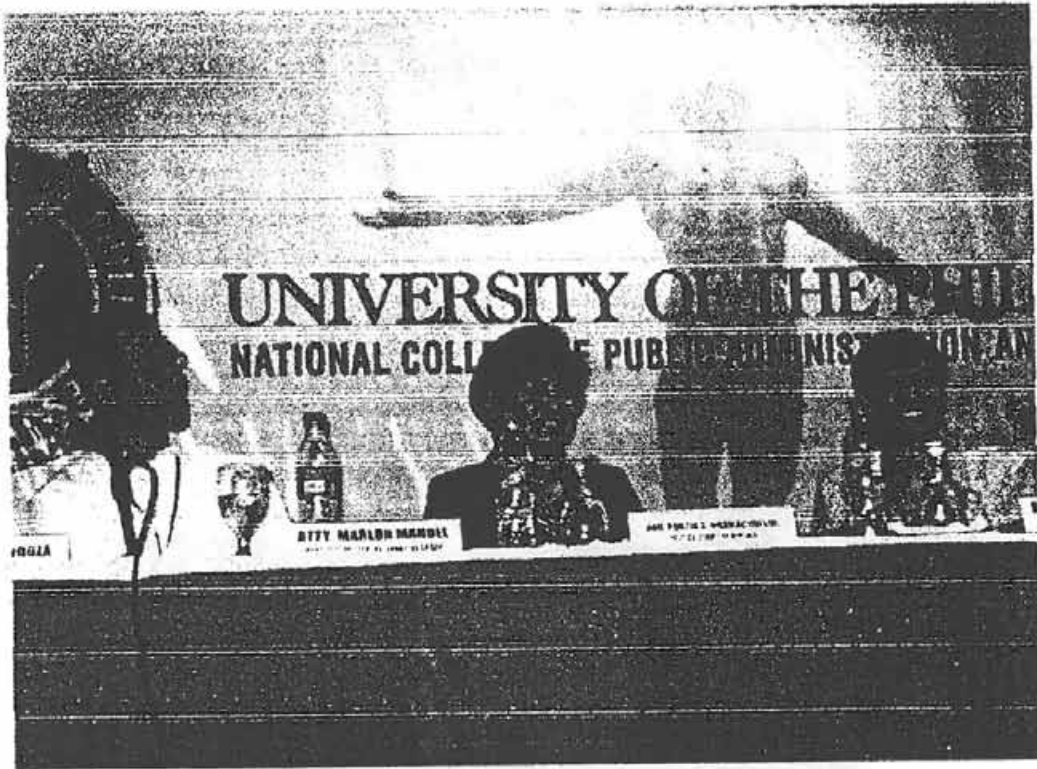
PHOTO DOCUMENTATION



The resource speakers: Atty. Marlon Manuel, Justice Portia Hormachuelos and Dr. Ledivina V. Cariño.



The organizers, Dr. Ebinezer Florano, Dr. Ma. Fe V. Mendoza, the resource speakers, Dean Alex Brillantes Jr. Included in the picture is Atty. Chito Gascon, Executive Director of Libertas.



The resource speakers: Atty. Marlon Manuel, Justice Portia Hormachuelos and Dr. Ledivina V. Cariño.



The organizers, Dr. Ebinezor Fiorano, Dr. Ma. Fe V. Mendoza, the resource speakers, Dean Alex Brillantes Jr. Included in the picture is Atty. Chito Gascon, Executive Director of

LIBERTAS.



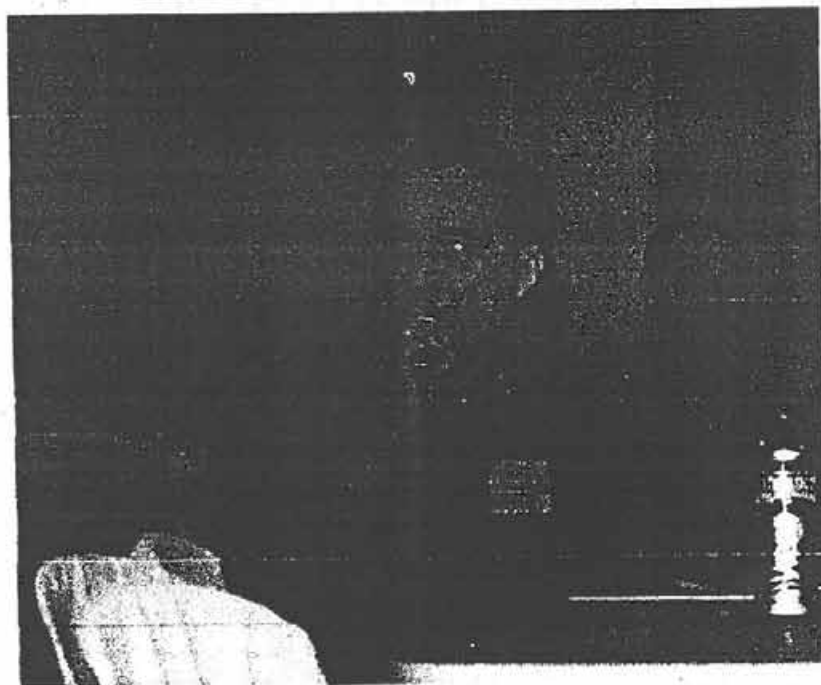
Dr. Sergio Cao, Chancellor of the Diliman Campus of UP in his Opening Remarks.



Registration



Some 150+ participants from different sectors took part in the half-day affair.



Open Forum

17th DILIMAN GOVERNANCE FORUM (DGFF) ON "THE PROMOTION OF ACCESS TO JUSTICE AND PARTICIPATION OF THE DISADVANTAGED SECTORS"
 NCPAG ASSEMBLY HALL
 November 24, 2006

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THE LAW OFFICE OF CAROLINE G. JIMENEZ
 ACCESS TO JUSTICE AND PARTICIPATION OF THE DISADVANTAGED SECTORS
 NCPAG ASSEMBLY HALL
 November 24, 2006

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ACCESS TO JUSTICE AND PARTICIPATION OF THE DISADVANTAGED SECTORS
 NCPAG ASSEMBLY HALL
 November 24, 2006

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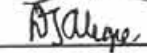
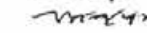
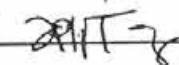
17th DILIMAN GOVERNANCE FORUM (GGF) ON "ENHANCING ACCESS TO JUSTICE AND PARTICIPATION OF THE DISADVANTAGED SECTORS"
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NCPAG

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17th DILIMAN GOVERNANCE FORUM (DGF) ON "SHEPHERDING REFORMS IN THE ACCESS TO JUSTICE AND PARTICIPATION OF THE DISADVANTAGED SECTORS"

NCPAG ASSEMBLY HALL
November 24, 2006

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17th DILIMAN GOVERNANCE FORUM (DGF) ON "SHEPHERDING REFORMS IN THE ACCESS TO JUSTICE AND PARTICIPATION OF THE DISADVANTAGED SECTORS"

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TERMINAL REPORT

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Diliman Governance Forum &
Philippine Council for Islam and Democracy Forum

**POLITICAL AND GOVERNANCE OPTIONS
FOR THE BANGSAMORO:**

AUTONOMY FEDERALISM and INDEPENDENCE

28 July 2006
NCPAG Assembly Hall
University of the Philippines



GOP-UNDP PROGRAMME
FOSTERING DEMOCRATIC GOVERNANCE

UNIVERSITY OF THE PHILIPPINES – NATIONAL COLLEGE OF PUBLIC
ADMINISTRATION AND GOVERNANCE (UP-NCPAG): IMPLEMENTING
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2006 PROJECT COMPLETION REPORT

Project Title: Philippine Governance Forum
Responsible: University of the Philippines-National College of Public
Administration and Governance

**I. The Philippine Governance Forum and the Fostering Democratic
Governance**

The **Philippine Governance Forum (PGF)** is a series of consultative dialogues and discourses on pressing policy and governance issues besetting the country. It is organized by the National College of Public Administration and Governance (NCPAG), University of the Philippines (UP) and subscribed into the on-going Diliman Governance Forum (DGF) of the College.

The PGF generally aims to provide a regular forum for the interaction, discussion, debate, review and appreciation of the various reform issues, agenda and initiatives under the Fostering Democratic Governance programme. It intends to contribute to the wider dissemination of the policy recommendations, reform agenda and findings of the 31 or so FDG initiatives, using the platform of the academe, a neutral arena for healthy consultation, dialogue, discourse and reflection of development and governance issues and concerns.

Specifically, it hopes to conduct regular forums for a) the dissemination, clarification, review, deliberation, discourse of FDG knowledge products, policy recommendations, reform agenda and findings; as well as for b) the consultation, dialogue, interaction and debate between and among relevant publics of governance.

As the PGF is regularly organized (envisioned ideally to be quarterly but for the initial year, on a pre-arranged months on the second semester of the year), it is expected to institutionalize the participation and engagement in policy dialogues of the relevant sectors in democratic governance, particularly the public and the policy and decision makers, and the FDG partners. Indirectly, it hopes to

contribute to the more responsive, transparent and accountable processes, policies, institutions and practices of good governance as studies, assessments and observations on the former are disseminated, deliberated, discussed, reviewed and appreciated by a wider public. It will be participatory and consultative, disseminating FDG results and knowledge products and generating feedbacks, interactions, reviews and appreciation from the broader lenses of relevant stakeholders.

II. Planned and Actual Activities

For 2006, the PGF originally planned to focus on the following thematic areas of the FDG partners:

- Discourses on Constitutional & Political Change (with PPSA)
- Globalization and the Vulnerable Industries (with FTA)
- International Anti-Corruption Commitments and the Role of Relevant Stakeholders (with the anti-corruption cluster)
- Access to Justice of Women and the Youth (with IBP, CHRP & WAGI)

As developments in the domestic and international policy arenas demanded other policy priorities and agenda, the project reconfigured its activities to include the following concerns:

- ❖ Charter Change
- ❖ Policy Options for the Bangsa Moro
- ❖ (International) Trade in Human Terms
- ❖ The 15th Year of Implementing the Local Government Code of 1991
- ❖ Sustainable Mining
- ❖ Access to Justice and Participation of the Disadvantaged Sectors
- ❖ Ratification of the UN Convention Against Corruption (UNCAC)

In the process of implementing the latter set of policy concerns, some partners however withdrew participation (PPSA on "Charter Change: Now or Never?" originally planned for 22 July); others backed out at the last minute (FTA on Sustainable Mining, which the NCPAG nevertheless implemented alone). In the last concern, the organizers mutually decided not to implement it anymore, for legitimate reasons (with the TAN on "Ratification of the UNCAC: Para Ba Sa Bayan?" scheduled on 8 December, which we cancelled as all speakers would be in Jordan to celebrate the ratification by the Philippine Senate of the UNCAC). Thus, as of November 30, 2006, only the following forums were implemented (see Table 1):

Table 1. Implemented PGF/DGFs, 2006

Date	DGF No.	Title
28 July	13	Political and Governance Options for the Bangsamoro: Autonomy, Federalism and Independence
17 August	14	Trade on Human Terms: Makatao Pa Ba? A Launch and Roundtable Discussion on Making Trade Work for the Poor
11 October	16	The Challenges and Prospects of Sustainable Mining in the Philippines
19 October	15	Fifteen Years of Decentralization in the Philippines: Lessons Learned and the Way Forward
24 October	17	Shepherding Reforms in Access to Justice and Participation of the Disadvantaged Sectors

In the conduct of these policy forums, the PGF is expected to produce the following deliverable outputs:

- 1) *Laymanized Policy Briefs (PB)*, which contain among others, a) a situationer on the policy concern, issue or problem at hand; b) policy responses and other interventions, reforms and solutions to address the problem; c) recommendations to further resolve the problem;
- 2) *Draft Working Paper (WP) Series*, which is a record of the proceedings of the forums with a section on some lessons learned and/or next steps in the reform/advocacy process.

III. Accomplishments and Performance

Table 2 presents some of the major features of these forums and a listing of some performance indicators, which may be material to the FDG. The latter includes the number of participants and some gender considerations.

Table 2. Description of the PGF/DGFs and Some Measures of Performance

PGF	Description			Assessment	
	Objectives	Organizer/s	Resource Persons	Participants	Gender Consideration
Bangsa Moro	Explore the rationale, principles and implications of each of the political and governance options for Bangsamoro: autonomy, federalism, and independence	UPNCPAG and the Philippine Council for Islam and Democracy (PCID) Forum	Atty. Randolph Parcasio (PCID fellow); Atty Musib Buat (Chair of the Technical Committee of the Mindanao Islamic Liberation Front) Peace Panel; Mr. Abhoud Syed Lingga (Executive Director of the Institute of Bangsamoro Studies)	Some 150 policymakers, students, advocates of Bangsamoro, donor agency representatives and others with keen interest on the plight of our Muslim brothers in Mindanao	All speakers were male although most of the key or focal persons among the organizers were female. Participants were a mix of genders.
Trade	Launch the 2006 Asia Pacific Human Development Report on Trade and initiate discussions on how to make	UPNCPAG, UP School of Economics, National Economic and Development Authority, Fair Trade Alliance,	Dr. Manuel Montes (Regional Coordinator, Asia Trade and Investment Initiative, UNDP Colombo); Dir.	Some 500 policymakers, students, advocates of pro-poor and fair trade, donor and civil society organization	The main speakers and discussants in the morning launch had 4 men and 2 women. In the roundtable

	trade work for the poor, particularly those in the agriculture, manufacturing and services sectors	UNDP, Human Development Network, Social Watch-Philippines	Serafin Juliano (DTI); Mr. Crisanto Frianeza (PCCI); Prof. Leonor Briones (UP NCPAG and Social Watch); Prof. Josefa Francisco (Miriam College); Dr. Rene Ofreneo (UP SOLAIR and FTA) plus a host of experts and advocates in the sectors identified in the roundtable discussions (please see draft WP Series)	(CSO)/agency representatives and others with keen interest on the making trade more manageable, fair and working for the disadvantaged sectors	discussions only 2 of 9 were women. Participants were a mix of genders with women comprising the majority. Women comprise the majority of the organizers.
Mining	Provide understanding of the concepts and complications of 'sustainable' or 'responsible mining'; analyze issues and concerns in	UP NCPAG (initially with the FTA who withdrew at the last minute because of work load problems)	Usec. Demetrio L. Ignacio's representative, Engr. Noble (DENR); Engr. Rodolfo Velasco Jr. (DENR); Engr. Rolando Pena (DENR);	Some 250 policymakers, students, advocates of responsible mining, donor and civil society organization (CSO)/agency	Three of four speakers were male although most of the key or focal persons among the organizers were female.

	sustainable mining; and recommend ways to make mining more responsible and sustainable		Atty. Rhia Muhi (LRNRC-Friends of the Earth)	representatives and others with keen interest on how to balance economic growth and responsible mining	Participants were a mix of genders with men comprising the majority.
Local Government Code (LGC)	Assess the 15 years of implementation of the LGC of 1991 and contribute to the proposed policy review of the Code	UPNCPAG	Ms. Marvel Sacendoncillo (LGA); Dir. Norberto Malvar (DOF); Dr. Nemesio Gako (DOH); Dir. Asterio Saliot (DA); Usec. Alicia Bala (DSWD) and a host of panel reactors from the academe, media, leagues of municipalities, CSOs	Some 350 policymakers, students, advocates of local and regional governance, donor agency/CSO representatives and others with keen interest on making the LG Code of 1991 work at the local or sub-national level of governance	Two of three main speakers were women; for the panel reactors, it was a 50-50% mix. Participants were a mix of genders with women comprising the majority.
Access to Justice and Participation	Discuss reforms and developments in access to justice and participation of the	UPNCPAG	Justice Portia Hormachuelos (CA); Atty. Marlon Manuel (ALG); Dr. Ledivina Carino	Some 150 policymakers, students, advocates of reforms in the justice and policy	Two of three speakers were women. Participants were a mix of genders.

	<p>disadvantaged sectors and explore ways to advance and institutionalize these reforms in our policy systems</p>		<p>(UP NCPAG)</p>	<p>systems, donor agency/CSO representatives and others with keen interest on shepherding reforms in the justice and policy systems, particularly access to justice and participation of disadvantaged sectors</p>	
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IV. Indicative Progress of Human Rights and Gender Mainstreaming

As can be gleaned from Table 2 above, the PGF attempted to mainstream gender equality by balancing the mix of experts/resource speakers and participants invited in each of the DGFs. Some policy concerns however attracted more men (Bangsamoro and Mining) because of the nature of the problem (and also the political culture) that may be involved. Otherwise, the forums attracted a balanced mix of stakeholders.

The forums on trade and access to justice and participation specifically targeted more women stakeholders as these issues adversely affect women than men. Human rights of service workers particularly in tourism, call centers and other related industries, in manufacturing and even agriculture had to be discussed within the wider concerns of fair trade and globalization. Women's (and men's) human rights guaranteed by UN conventions, treaties, and protocols, and national laws on access to justice and participation had to be clarified as well in the ambit of judicial and policy system reforms.

Hence, the forums "on making trade work for the poor," and on "access to justice and participation" were meant to address these concerns at the policy level. The government, as duty-bearers, should reform the justice, economic, policy and other systems so that the disadvantaged sectors of the Philippine society would have equal access to justice without being hampered by exorbitant lawyers' fees, unnecessary technicalities, complicated procedural systems, verbose court decisions, etc. They would also earn their keep in a more humane global economic environment. Their participation in decision making may also be enhanced.

In addition, some of the rights entitlements of claim holders and obligations of duty bearers were implicitly or explicitly discussed in the forums. These include:

- *Forum on trade* – the right to social security, the right to an adequate standard of living, the right to enjoy the highest standard of physical and mental health, the right to education, the right to just and favorable work conditions of work, and the right to work.
- *Forum on sustainable mining* – the right to life, the right to a healthful ecology, and the right to be informed
- *Forum on access to justice* – the rights of vulnerable groups, political rights and access to public service

V. Factors that Affected Implementation

There are at least two factors that facilitated the implementation of the PGF/DGFs. One is the competence of the UP NCPAG in holding policy forums backed up by policy research, which has been honed from holding of at least 12

DGFs since 2004 and a number of Policy Studies Forums in the past. Another is its network of partners in various sectors of the local and international arenas. Aside from this is the technical and financial assistance extended to the project by the UNDP-PMO.

One important factor that impeded the implementation of the PGF, on the other hand, is the inability of concerned RPs (PPSA and FTA) to do their assigned and previously agreed upon responsibilities because of resource and other constraints (the PPSA withdrew from the FDG because their focal persons left for advance studies and consulting work abroad; the FTA's Executive officers were bombarded by previous commitments they could not refuse at the time the DGF was supposed to be conducted, to the detriment of the mining forum. In the end, UP NCPAG implemented it alone.).

VI. Indicative Progress vis-à-vis CPAP Expected Outcome, if any

The forums have succeeded in opening the venues for policy dialogues between and among the relevant publics- policy makers, clients, basic sectors, advocates and oppositions. These have also contributed to sharing some of the knowledge products of the FDG and informing the students, the *intelligencia*, the academe, and other relevant stakeholders of the issues and possible solutions to these policy concerns. To a greater extent, the forums have laid the groundwork to popularize and make reforms, innovations and next steps in fostering democratic governance more widely known.

The forums have conscientized to some degree some concerned sectors and duty bearers- mining industries, the business sector, government regulators, the justice pillars, the implementers of the Local Government Code, the policy makers- and egged them to continue with their reform initiatives. Many of the invited resource speakers are policy makers and duty bearers; some came from the other side- the claim holders, as in the trade and Bangsa Moro forums. In sum, the PGF has contributed to facilitating an enabling environment for reforms and have forged south-south solutions and partnerships among stakeholders in the country, particularly in Metro-Manila and Mindanao.

However, the PGF has a long way to go in contributing to "make the national, local and other institutions more responsive and efficient in delivering social services" (CPAP outcome 2.2 for Public Administration Reform) and "make the justice system more accountable and rule-based for greater access of the poor" (CPAP outcome 2.1 for Justice Reform). The PGF is not a direct intervention to these outcomes and could not possibly achieve them. What it can do is to help facilitate, open doors or windows for policy dialogues, educate and inform the relevant publics and stakeholders.

Its built in advantage is in having the stakeholders with various interests and perspectives, e.g., policy makers, policy advocates, ordinary citizens, et al., to sit or stand up together to discuss a common cause. Among the policymakers who graciously participated in the various DGFs as resource speakers include a justice of the Court of Appeals, a legislator, undersecretaries/assistant secretaries of the departments of Trade and Industry, Agriculture, Social Work, Environment and Natural Resources, Interior and Local Government, and decision makers in the civil society organizations/academe. Experts and industry players also actively took on the task of promoting reforms in governance and development.

VII. Lessons Learned

Some of the lessons learned from the forums conducted this year include the following:

- ❖ *For the Bangsa Moro Policy and Governance Options-* Our brothers in Muslim Mindanao have three political and governance options: autonomy, federalism and independence. These options could be realized through peaceful and democratic means and not necessarily through civil wars or conflicts. Whatever best option may find conclusion in the next years would require more active engagements of and by the Muslims themselves. Educating them of these options and engaging them into more progressive actions are needed.
- ❖ *Trade Forum-* Trade could be 'tamed' or managed to work for the poor and vulnerable if countries across the globe adopt all or at least one of the 8 point agenda prescribed in the 2006 HDR, e.g., invest for competitiveness, adopt strategic trade policies, restore a focus on agriculture, combat 'jobless growth', prepare new tax regimes, maintain stable and realistic exchange rates, persist with multilateralism, and cooperate with neighbors.
- ❖ *Sustainable Mining-* "Sustainable mining" is an oxymoron and consists of two concepts "sustainable" and "mining" which could not possibly exist together. However, mining could be made more responsible if 1) government regulators would be more effective in protecting the environment and implementing regulatory safeguards already in place so that the earth is not overly extracted; 2) if business would adopt more modern business practices that are more ecology-friendly; 3) if host communities will be more vigilant in protecting their rights and conserving natural resources; and 4) if the mining industry would be more considerate in developing the downstream industries so that host communities are engaged and employed, minerals are enjoyed by host governments and business enhances other segments of the 'assembly line'. In addition, stakeholders need to address the issue of abandoned mines and of past

bad experiences of toxic mine tailings and ensure that everyone has an equitable share of the economic and social costs and benefits of responsible mining.

- ❖ **Local Governance-** The gains of the Local Government Code of 1991 in terms increasing access of the constituents to basic services, participation in decision making, increasing 'autonomy' of local government units (LGUs) and the like have to be revisited in the light of concerns related to among others, inadequacy in fiscal autonomy of most LGUs, particularly the municipalities; reconfiguration in central-local and inter-governmental relations (lack of interface between planners and personnel at various levels, lack of linkage between plans, investment programs and the budget or local financing, etc.), gerrymandering and the propensity to create LGUs despite clear criteria for creating them, and unfunded mandates for devolved services.
- ❖ **Access to Justice and Participation-** Disadvantaged sectors could transcend their state of "helplessness", "powerlessness" and "inadequateness" if they band together and unite for a common cause. Disadvantaged sectors could be a force to reckon with in policy making and reform as evidenced by some of the cases in "Access to Participation" study. Reforms in the justice system, particularly access to justice of the poor, could be shepherded and advocated if local institutions and other partners are harnessed. Ability of citizens to turn impartial arbiters to resolve disputes and seek remedies in both legal and non-legal, informal or customary institutions of justice, could be enhanced by proper education and information dissemination and respect for human rights and dignity.

Administratively, the forums could be more efficiently and effectively managed if FDG partners are more cooperative or are harnessed only for their "technical" inputs (as speakers or panelists). Responsible Parties (RPs) are important partners of UP NCPAG in conducting fora. However, the not-so-good experiences with the PPSA and the FTA are eye openers. In the future, if ever they will be invited again as partner-organizer, UP NCPAG may have to write a memorandum of agreement so that the details of cooperation will be formalized.

VIII. Use of Project Outputs

As earlier mentioned, the project outputs include the policy briefs and draft working paper series on the topics of the forums. These are appended below. These 'knowledge products' would be edited and readied for possible printing next year.

It is hoped that the educational value of the policy briefs and the many policy recommendations discussed at the five PGFs may be utilized by the participant-stakeholders who attended these forums. When printed and disseminated to a wider clientele, these products may find their way to libraries, academic institutions, policy and reform bodies and other offices that hopefully may use them as background materials for their more informed, enlightened policy and decision making.

Prepared by:



Maria Fe Villamejor-Mendoza
Project Director

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**Proceedings of the
DGF / PCID Forum**

DILIMAN GOVERNANCE FORUM AND
PHILIPPINE COUNCIL FOR ISLAM AND DEMOCRACY FORUM

*Political and Governance Options for the Bangsamoro:
Autonomy, Federalism, and Independence*

Assembly Hall, National College of Public Administration and Governance
University of the Philippines, Diliman, Quezon City
28 July 2006

I. Introduction

Continuing the tradition of providing a venue to discuss relevant and current issues confronting the country, the **Diliman Governance Forum (DGF) / Philippine Council for Islam and Democracy (PCID) Forum** with the theme *Political Governance Options for the Bangsamoro: Autonomy, Federalism, and Independence* was held at the NCPAG Assembly Hall of the University of the Philippines on July 28, 2006. It was organized by the Center for Local and Regional Governance of the National College of Public Administration and Governance, University of the Philippines Diliman (CLRG-NCPAG, UP) and PCID, in collaboration with the Asia Foundation, UP Institute of Islamic Studies, *Magbassa Kita* Foundation, Inc., and United Nations Development Programme (UNDP) Philippines.

The DGF/PCID Forum aimed to explore the rationale, principles and implications on each of the political and governance options, namely, autonomy, federalism and independence, in the continuing struggle for self-determination as a way towards lasting peace, stability and development of the Bangsamoro in Mindanao. Likewise, it aimed to provide a venue for the articulation of views, opinions, analysis and insights on the possible form and content of the enabling law and implementing guidelines governing any or a combination of these options. Moreover, it aimed to bring the proceedings and records of the forum to a wider audience, specifically the policymakers in the hope that they can use them as a reference in crafting policy solutions in Mindanao and the ordinary people who need authentic and unbiased information so that they can participate effectively in building a consensus towards their future.

Invited to provide an in-depth discussion on the issues were three resource persons whose expertise on and extensive exposure to the problems grappling Mindanao have rendered them qualified to speak on each of the options/alternatives being offered. They are Atty. Randolph Parcasio, a PCID fellow who discussed the *Autonomy as a Politico/Governance Option*; Atty. Musib Buat, Chairman of the Technical Committee of Mindanao Islamic Liberation Front (MILF) Peace Panel who presented the *Federalism as a Politico/Governance Option*; and Mr. Abhoud Syed Lingga, Executive Director of the Institute of Bangsamoro Studies who articulated on *Independence as a Politico/Governance Option*.

II. Opening Program

The opening program started at around 9:00 am with the singing of the Philippine National Anthem. Atty. Jose Lorena, the emcee for the event, went on to say that the raging conflict in the Middle East reminds us of how devastating a war can be and the need to come up with a political solution anchored on dialogue and reconciliation. The DGF hopes to present perspectives on some of the options to consider amidst the problem confronting Mindanao. He then expressed his gratitude to NCPAG and introduced its Dean, Dr. Alex B. Brillantes, Jr.

Welcome Remarks

Dr. Alex B. Brillantes, Jr.

Dean, NCPAG, UP

Dean Brillantes welcomed the invited speakers and guests to the College. He recalled that he felt privileged when Dr. Amina Rasul of PCID approached him on the possibility of jointly conducting a Forum concerning the situation in the Bangsamoro region. He said that the alternatives such as autonomy, federalism and independence really pose an important question that practitioners and students of governance and public administration should consider. He expressed his gratitude to those who attended the forum and looked forward to fruitful, and even controversial, discussions on the topic. He also mentioned the launching of the Moro Times after the Forum.

Message

Dr. Steven Rood

Country Representative, The Asia Foundation

In giving his message for the event, Dr. Steven Rood, Country Representative of the Asia Foundation, started by conveying his gladness in coming back to UP, since he and the Foundation have a long standing relationship with the University spanning more than 25 years. As a matter of fact, he mentioned that the Foundation and UP have just signed an agreement in North America for a fund-raising drive intended for the celebration of UP's centennial in 2008.

Dr. Rood briefly described the Foundation which is based in San Francisco, California and has 18 country offices throughout Asia. He said that the Foundation advocates for peace, justice, prosperity, and democracy by providing resources to partners who share those goals. He mentioned that the Foundation is currently involved in Mindanao, particularly in the Autonomous Region, with projects supported by the Asian Development Bank (ADB), United States Aid for International Development (USAID), and private donations from American publishers.

He also recalled the roundtable discussion held in Cebu on options for Mindanao, where most of the participants there were also present during the Forum. One of the striking questions brought during the discussions in Cebu was whether the civil society is an independent force or should course its influence through established institutions, namely, the governmental system, traditional elites, or even the revolutionary movement. Sharing his insights on his study on peace agreements, he related that 4 out of 12 peace agreements had civil society participation. He added that these four are still being kept after five years,

while only one out of the eight which did not have civil society participation was kept. He inferred that civil society involvement has an independent effect on the efficacy of peace.

Dr. Rood concluded by saying that a lot of things can be learned from the Forum. He looked forward to the presentations of the three invited speakers for the event and thanked everyone who was present that day.

Message

Dr. Santanina Tillah-Rasul

Chairperson, Magbassa Kita Foundation, Inc.

Next to give her message was former Senator Santanina Rasul and currently Chairperson of the *Magbassa Kita* Foundation, Inc. She began by acknowledging those who were seated at the presidential table and the participants and guests of the forum. She also shared that her family is loyal to UP since most, if not all, of the members of her immediate family were educated there.

Sen. Rasul went on to talk about the *Magbassa Kita* Foundation, Inc. She said that just recently, it organized a series of training workshops funded by the United States Embassy and intended to develop Muslim women as peace advocates. Along this line, it aimed to harness a local entity that would be sensitive and able to provide instantaneous response to conflict situations thus preventing them from escalating into armed confrontations. The strategy was to organize a barangay conflict management team that would involve key local community leaders composed of the barangay chairperson, Imam, youth leader, and two women trained in conflict transformation and peace building.

The participants of the training workshops were women leaders from nine barangays in Indanan, ten barangays in Patikul, and ten barangays in Jolo. She claimed that the target areas are considered to be the most troublesome municipalities in the Province of Sulu. During the workshop, the women cited selfish personal interest as the number one cause of conflicts in the area followed by lust for power, graft and corruption, militarization, ineffective governance, partisan politics, and poverty among others. Sen. Rasul noted that of the 62 participants, only one identified 'religion' as the cause of conflict.

In response to this situation, the women organized their respective barangay councils. In the launching of the councils, the women in Indanan advocated for "struggle for peace," while in Patikul, they promoted "unite for peace." Sen. Rasul said that the women's advocacy for peace is relevant to the Forum, as she herself who is one of the organizers, is pressing for the promotion of the collective belief and welfare of each individual Moro. She claimed that the word 'Bangsamoro' has been much abused and used in many ways not reflecting its real meaning. She defined Bangsamoro as a Muslim who (1) leads a clean, honest and a respectable life regardless of his position in society; (2) obeys the laws of man and God; (3) is sensitive to the needs of those around him; and (4) repelled by any act of injustice that he does not hesitate to fight for what is right in Islam. The women's observations in Sulu convey a message that not all is well in the Bangsamoro in the South. Sen. Rasul encouraged everyone to ask themselves the following questions:

1. Has autonomy improved the quality of life of the Bangsamoro?
2. Are we better off now after a decade of autonomy?

3. If autonomy did not serve the Bangsamoro well, how certain are we that federalism or independence will improve the lives of the people, particularly those at the grassroots level?

She ended her message by expressing hopes that the Forum would help in answering these key questions.

III. Forum Proper

Overview of the Forum

Dr. Amina Rasul

Lead Convenor, Philippine Council for Islam and Democracy

Dr. Amina Rasul of the PCID welcomed those who were at the presidential table who included friends from the diplomatic community, brothers and sisters in government and civil society, academe, and UP students. She remarked that the Forum would definitely have an impact on the lives of UP students who come from Muslim Mindanao.

As a backgrounder, Dr. Rasul explained that the PCID is a loose coalition of thinking men and women Muslims who wanted to meet regularly, think things through, assess the situation, find options, and articulate them to policymakers and businessmen, so that they will know that the power of the Muslims in the Philippines does not come from the barrel of a gun. After five years, this group is a testimony that the Muslims of this country are united in looking for peaceful solutions to conflict, in trying to strengthen the communities from within, in democratizing our communities, and in looking for ways to reform our systems.

Dr. Rasul expressed her gratitude to those who have supported the PCID, starting from Sen. Rasul for being a mother to them; Dr. Rood whom she referred to as an 'honorary brother;' representatives of the Royal Netherlands Embassy who have been working with the PCID in engaging the Ulama in looking at the human rights in Islam; brothers and colleagues at the US Embassy who brought Muslim scholars to the US to study the issues on Islam and democracy; and Dean Brillantes who will be working with the PCID to analyze the different political options that can become a path for peace for Muslim Mindanao.

The Forum was conceptualized years ago. Dr. Rasul stated that in past events, there were groups who would say that the Muslims would be better off if they were independent. But in pushing for it, certain issues will arise such as where will the resources come from and who is going to support Mindanao. She said that these things were never really threshed out. On the other hand, those who are pushing for federalism suggest on dividing the Autonomous Region in Muslim Mindanao (ARMM) into two, the Islands and Central Mindanao. Dr. Rasul asked if this is going to be sustainable and where will the resource base come from if the ARMM is split. She said that the discussions fell short of addressing the real issues. As for autonomy, most Muslims in Mindanao are very critical about the impact of the ARMM government in their lives. However, many Muslim leaders would say that it is important to separate the organic ARMM Law from its implementation. Dr. Rasul said that the main question remains, "Have we really given autonomy a chance to work?" She noted that all of these have surfaced in most engagements that they had held. Hence, this Forum in NCPAG will provide a venue for the people to discuss the three options so that

they can come up with a roadmap or game plan which they will present to the different communities in the ARMM and find out their stand and concerns about it.

Finally, Dr. Rasul expressed her gratitude and hopes that the participants would be able to help in thinking things through and point out the light to be followed as they traverse the very dark road to peace and prosperity in Muslim Mindanao.

Paper Presentation No. 1: Autonomy as a Politico-Governance Option

Atty. Randolph Parcasio

Fellow, Philippine Council for Islam and Democracy

Atty. Lorena introduced the first speaker, Atty. Randolph Parcasio who presented his paper on *Autonomy as a Politico/Governance Option*. He is a practicing lawyer who obtained his Bachelor of Laws from the Ateneo de Davao University. He was a project consultant, team leader and part of a panel of consultants on public policy, taxation and revenue, human resources development, and communication and education at The Asia Foundation. He is also part of the legal team in the peace negotiations with the government panel.

Atty. Parcasio started by greeting everyone with peace. He narrated that autonomy in the Southern Philippines is a result of the peace process between the Moro National Liberation Front (MNLF) and the Government of the Republic of the Philippines (GRP), and the sacrifices of those who staked their lives to assert their right to self-determination. He went on to describe two major peace covenants, namely, the 1976 Tripoli Agreement which serves as the basis for autonomy, and its implementing mechanism, the 1996 Peace Agreement. Under these two international covenants, the Philippine government is obliged to deliver genuine autonomy, while the MNLF opted to set aside the quest for independence by agreeing to recognize the territorial integrity and sovereignty of the Republic of the Philippines. For the MNLF, the object of the two peace agreements is autonomy and the price exacted from them was to recognize Philippine sovereignty in the Bangsamoro homeland. For the government, the object was to preserve national territorial integrity and the price is autonomy in Southern Philippines.

The autonomy envisioned in the 1976 Agreement contains the following features or powers:

- To set up courts to implement the Shari'ah Law;
- To be represented in all courts including the Supreme Court;
- Autonomous Administrative, Financial and Economic Systems;
- Legislative Assembly and Executive Council; the latter is appointed by the Legislative Assembly;
- To have representation and participation in the central government and in all organs of the state;
- To set up schools, colleges and universities;
- To establish a Regional Security Force; and
- Reasonable share in the revenues from mines and minerals.

Immediately after the signing of the Tripoli Agreement, Atty. Parcasio said that a provisional government in Southern Philippines shall be established to prepare for the

elections of the Legislative Assembly and administer the areas of autonomy until a Government is formed by the elected Regional Assembly. Both parties also agreed to discuss other vital issues concerning a regional security force, mines and minerals, Shari'ah system, a Bangsamoro educational system, and administrative system. However, he lamented that this agreement to discuss vital issues never took place for the next 17 long and painful years. Instead of establishing the provisional government and hold further discussions as previously agreed, former President Marcos issued Proclamation 1628-A on March 26, 1977 to establish not one but two autonomous regions, namely, Regions 9 and 12. Consequently, the MNLF charged the government of breaching of and rigging the Tripoli Agreement with its surreptitious insertion of Paragraph 16 to tie down the implementation of the agreement to the constitutional process of the Philippines which was then under martial law.

Atty. Parcasio moved on to discuss Republic Act 6734 which created the Autonomous Region in Muslim Mindanao (ARMM) in 1989. He said that the Commission on Elections (COMELEC), as always, was suspected to have manipulated the results of the plebiscite to ensure that only four provinces, namely, Tawi-Tawi, Sulu, Maguindanao, and Lanao del Sur would constitute the ARMM. He also quoted former President Corazon Aquino who said that the ARMM was "purely a Philippine government's initiative." To the MNLF, this was the second breach of agreement by the Philippine Government. For the ARMM, it was unacceptable because it suffers from lack of authority and power envisioned in the Tripoli Agreement.

When Fidel V. Ramos was elected president, he pursued the peace talks with the MNLF by discussing the full implementation of the Tripoli Agreement both in letter and spirit. Atty. Parcasio mentioned that this was stipulated in the 1993 Citanas Statement of Understanding. The talks led to the signing of a win-win formula called the 1996 Peace Agreement on September 2 of the same year. The implementation of this Agreement has two stages. In Phase I, the parties agreed that instead of organizing the controversial provisional government, they would form a superbody called the Southern Philippines Council for Peace and Development (SPCPD) which would have the following mandate:

- exercise control and supervision over appropriate agencies engaged in peace and development activities in the area;
- monitor, promote and coordinate development efforts;
- attract foreign investment;
- cause the implementation of peace and development projects; and
- deputization of the COMELEC in the preparation and conduct of elections, referenda or plebiscite, and people's initiative.

To bolster this transitional mechanism, it was also agreed that the national government's primary role was to spur economic development in the area by channeling public and private investments in the Special Zone of Peace and Development (SZOPAD), an area encompassing 14 provinces and ten cities identified in the Tripoli Agreement. This was supposed to be guided by a *Darul Ifta*, an Islamic house of opinions and advisory council, and a consultative assembly, which will have the power to make rules and regulations, to the extent necessary for the effective and efficient administration of the areas.

Another feature of the transitory period pertains to the appointment by the President of qualified Moros to become members/justices of the Supreme Court and Court of Appeals,

and as a Cabinet Secretary. However, Atty. Parcasio remarked that none of these was complied.

The transitory mechanism, he said, also allowed the establishment of development task forces such as the Basilan Development Task Force, Central Mindanao Development Task Force, Sulu Development Task Force, and Special Development Planning Group. He lamented, however, that these were not funded sufficiently.

Moreover, the transitory period called for the integration of the MNLF forces with the Philippine National Police (PNP) and Armed Forces of the Philippines (AFP).

Atty. Parcasio noted that the transitory period was supposed to culminate with the enactment of an organic law to amend RA 6734 by expanding the coverage area as specified in the Tripoli Agreement and incorporating all the pertinent provisions of the 1996 Peace Agreement. The autonomy envisioned in the 1996 Peace Agreement has plenary powers in the area of autonomy. Its framework consists of an executive council, a legislative assembly, an autonomous administrative system, and the right to representation to the national government. It will also have a special security force for the region. It shall establish its own educational system to develop total spiritual, intellectual, social, cultural, scientific, and physical aspects of the Bangsamoro people to make them God-fearing, God-loving, productive, patriotic citizens, conscious of their Filipino values and Islamic cultural heritage. It will have the power to have its own economic and financial systems and exercise control of mines and minerals. Last but not the least; it will have its own Shariah legal system.

After presenting the significant features of the provisional government as embodied in the agreements, Atty. Parcasio shared the state of implementation of these agreements. As in post-1976 Tripoli Agreement, he realized that history repeated itself in the post-1996 Peace Agreement. In December 2000, MNLF Chairman Nur Misuari was slapped with rebellion case and detained until at present, which for him, is considered the monumental failure of the MNLF-GRP Peace Tract. The charge, according to him, was preceded by a series of complaints raised by the MNLF for continuing violation of the Peace Agreement by the GRP, coupled by demands for justice by various NGOs for alleged abuses on the humans rights of innocent Bangsamoro civilians in Sulu and other parts of Southern Philippines by erring elements of the PNP and AFP.

In revisiting the implementation of Phase I, particularly on peace and development, Atty. Parcasio mentioned that EO 371, signed on October 1996, did not grant the consultative assembly the powers to make rules and regulations to the extent necessary for the effective and efficient administration of the affairs of the area. The *Darul Ifta*, as specified in the Peace Agreement, was also not allowed to be organized. The GRP also held peace talks with the MILF, totally disregarding the authority of the SPCPD as if the latter was non-existent. In the 1998 synchronized elections and 2000 plebiscite, the SPCPD was not deputized to participate in the conduct of electoral exercises, violating the agreement that it would be deputized in the conduct of any electoral activity in the area.

Atty. Parcasio remarked that the GRP's solution like the all-out war policy of the Estrada Regime to address the deteriorating peace and order situation in the area and unabated criminal activities of lawless elements like the Abu Sayyaf, has in reality marginalized and rendered the SPCPD irrelevant. This was aggravated by the "business as usual attitude" of the national government in the preparation and enactment of the General

Appropriations Act from 1997 up to the present, resulting in insufficient funding of the projects intended for rehabilitation, reconstruction, reconciliation, social, economic and infrastructure development. This was contrary to the agreement that the central government shall channel public investments in the area to spur economic development. Moreover, he claimed that all the projects implemented through the SZOPAD amounting to about P30B as claimed by the government are regular government projects that would still be implemented even if there was no peace agreement. Furthermore, outside of the ARMM, the disbursement of funds and implementation of projects were all under the control of national line agencies.

Atty. Parcasio moved on to discuss the law that is supposed to be the culmination strategy in the transitory period and which was very critical to the establishment of an autonomous regional government. He said that the passage of RA 9054 was marked by certain irregularities. There are provisions that needed amendments to be consistent with the letter and spirit of the two agreements. Two of the most controversial provisions are the 1) elimination of the ancestral domain claims of the Bangsamoro people, and 2) reverting back from the autonomous government to the national government of the jurisdiction on the exploitation of strategic minerals such as uranium, coal, petroleum and other fossil fuels, all potential sources of energy like lakes, rivers, national reserves and marine parks, as well as forest and watershed reservations found within the autonomous areas. He added that even Lanao Lake is beyond the authority of the ARMM.

Before the passage of RA 9054 which amended RA 6734, Atty. Parcasio recalled that there was a petition for the Organization of Islamic Organization (OIC) and the GRP to convene a tripartite committee to review the then pending congressional bill, especially on its consistency with the agreement. However, during the critical stages of the deliberations in Congress, the lawmakers were concentrated on the impeachment proceedings of then President Estrada. He, together with Atty. Lorena, witnessed that the members of the bicameral committee were already exhausted with the impeachment when they approved RA 9054. The approval took place in December 2000, past midnight at that, when nobody was looking. It also coincided with the refusal of the Senate's majority to open the controversial Estrada envelope which brought the country in a state of pandemonium. The political convulsion arising from the impeachment trial and the ouster of former President Estrada left the passage of the questionable law unnoticed. The MNLF objections were drowned in the tumultuous EDSA II uprising and euphoria of succeeding events. He held that nobody was interested to listen to the MNLF because everybody then desired to give the new administration a chance. Unfortunately, the issues raised by the MNLF were left unresolved up to the present. He remarked that the kind of autonomy envisioned in the Tripoli Agreement and 1996 Peace Agreement remains in limbo. Aware of this predicament, the OIC on June 27, 2000 passed a resolution which commissioned anew the Chairman of the Committee of Eight to continue the necessary contacts with the GRP and MNLF in order to define a timetable for the implementation of all the articles of the 1996 Peace Agreement. However, Atty. Parcasio maintained that the new administration did not honor the resolution. Instead, it pushed for the plebiscite which was held on August 14, 2001. RA 9054 was ratified, thus, the expanded ARMM was created. In June 2006, he reported that the OIC's Secretary General declared in his report to the OIC Ministerial Conference in Azerbaijan that the biggest stumbling block to the peace process is RA 9054.

Referring to RA 9054, Atty. Parcasio countered by saying, "Dura lex sed lex", which means that the law is hard but that is the law. Despite its loopholes, he believed that RA

9054 should be implemented, as far as the government is concerned because it is the only constitutional and legal paradigm at hand to address the plight of the Moro for self-determination. Noting that the implementation of RA 9054 leaves much to be desired, he asserted that the ARMM must have full powers to respond to and execute the demands for self-rule and effective governance in accordance with the unique, distinct and indigenous character of the Bangsamoro people. As a corporate entity, he stated that the ARMM is governed by a regional government which shall exercise those powers and functions expressly granted to it by the Constitution and other laws in the Philippines.

He cited actual cases where the regional government have been prevented to exercise some of their powers. One is the lack of empowerment caused by the delay in the devolution of line agencies to the ARMM which in turn hampers effective service delivery. Full devolution is required to enable the ARMM to address all challenges of governance. Devolved agencies are not accorded corresponding authority, functions, budget and resources necessary to carry out peace and development programs and projects. He mentioned many departments and offices of the national government which were not devolved, or which do not have regional offices in the ARMM. As a consequence, people in the ARMM experience difficulties in accessing these offices. Moreover, he criticized Section 4, Article 18 of RA 9054, which states that, as soon as practical, the annual budgetary support for the line agencies or offices devolved to the regional government will be terminated. He recalled a draft proposal submitted to the President which pushed for more devolution of services to the region but this remained unsigned.

Another stumbling block to the exercise of autonomy powers refers to the non-implementation of civil and criminal cases as provided for in the Shariáh legal system, although he admitted that a bill on the matter is now being deliberated on in the Regional Assembly. He related that the Asia Foundation and ADB have given assistance in drafting this bill along with other bills such as the amendments to the ARMM Local Government Code, ARMM Administrative Code, and Commercial Law for the Muslims in the ARMM.

The third stumbling block is the non-establishment of the Regional Security Force (RSF). This is different from the integration program. Under the law and peace agreement, the RSF is composed of the regular PNP in the area, MNLF forces, and other qualified citizens.

He lamented that the 1996 peace agreement which until today remains as the only constitutionally and legally mandated peace formula that can arrest the conflict in Mindanao was not allowed to work. The success stories in the ARMM, he explained were mostly supported by foreign donors. Even former ARMM Governor Parouk Hussein expressed disgust on the lack of support from the central government. He recalled that the former governor attributed the inroads to development during his administration mainly to foreign donors /donor communities' intervention. In a recent OIC meeting, he said that the Secretary General reported that eight million Muslims from the Southern Philippines are still living under deteriorating political, social and economic conditions as evidenced by extreme backwardness and acute lack of educational and health services. These conditions are brought about by the central government control of natural resources in the Muslim areas, political marginalization of Muslims as shown by the absence of fair representation in the government and judiciary posts, as well as continued military operations resulting in displacements of Muslims from their villages and towns.

With all these predicaments, Atty. Parcasio reflected on the relevance of autonomy in solving the conflicts and problems of the Moros in the South. He still believes that autonomy did not fail the Moro, and that misgivings on autonomy stem from lack of implementation of real autonomy. He said that 30 years after the Tripoli Agreement and 10 years after the 1996 Peace Agreement, the negotiated autonomy envisioned in these two peace covenants are still to be implemented. Genuine autonomy therefore is not yet fully tested. He said that we have not yet failed since it has not been fully tested. Autonomy therefore remains an option for him. Due to unresolved issues, the GRP-MNLF peace tract has reached a deadlock, but not a dead-end. For him, the positive side is, despite conflicting positions, both parties express willingness to pursue fruition of the peace covenant. The MNLF's actions will be guided by the OIC resolutions. And two years ago, the GRP committed to fully implement the September 2, 1996 peace agreement. He concluded by posing a question, "The spirit is willing, but is the flesh ready?"

Paper Presentation No. 2: Federalism as a Bangsamoro Option

Atty. Musib Buat

Chairman, Technical Committee, MILF Peace Panel

Before proceeding to the next speaker, Atty. Lorena divulged some information regarding the oversight committee created under RA 9054 to complete the devolution. He said that it has not terminated its work yet. As mentioned by Atty. Parcasio, of the 17 executive orders submitted to the President, only four have been signed. He then asked the audience if non-execution by the President of a law that addresses vital issues in Mindanao is an impeachable offense.

The second speaker, Mohd. Musib M. Buat, talked about *Federalism as a Politico/Governance Option*. He used to be the Presiding Commissioner of the National Labor Relations Commission at Cagayan de Oro City and former Director of the Office of Muslim Affairs. Presently, he is the Chairman of the Technical Committee of the Moro Islamic Liberation Front (MILF) peace panel. Before starting his presentation, Mohd. Buat clarified to the audience that he was not there to represent the MILF. Rather, he was making the presentation upon the invitation of Dr. Rasul, and as a graduate of UP College of Public Administration when it was still in Padre Faura, Manila.

Mohd. Buat noted that there are various options that could respond to the Bangsamoro People's quest for freedom and self-determination. Autonomy is one of the solutions but, as presented earlier by Atty. Parcasio, the present autonomy is not what the MNLF has envisioned, which is genuine autonomy. For him, this is the trouble of many agreements. When it comes to the implementation phase, some things happen, perception changes, new leaders come, and new policy actions created. As a result, he said that the original vision would be lost and the perception is taken as the reality and the reality as the perception. He informed the audience that in many of the peace agreements, an international monitoring system usually by a third country has been institutionalized to see to it that the agreements are faithfully implemented. Likewise, it is tasked to recommend changes or modifications to address certain matters that have not been anticipated. He noted that in the MILF-GRP peace agreement signed in Tripoli on June 22, 2001, it stipulated the presence of an international monitoring team to check the enforcement of the ceasefire which in turn minimized the armed encounters between the AFP and the MILF. He clarified though that the present clashes going on in some towns in Maguindanao are more of *redu* or clan disputes. He added that in Lanao del Sur, clan wars are also common and

violent but the trouble escalates when the military take sides. There is an indigenous way of solving *redu* but when the military who do not know the peculiar customs and traditions of the Moro intervene, the trouble becomes unmanageable.

Going back to federalism, Mohd. Buat said that there are many models of a federal system. One model is that of the United States which he referred to as the classical model. Power comes from the states which then devolve it to the center or the federal authority/government. The other model is that of Canada where the federal government is the one which devolves power downward. In the federal system, devolution can be upward, downward or linear/horizontal. The ARMM could well qualify for a federal state, it being one step to federalism because it has already devolved powers from the center. As a matter of fact, he said that the autonomous regions in Spain, like Andalusia and the Basque are called regional autonomous states. He also quoted Sen. Miriam Santiago who considered regional autonomy as quasi-states. He added that another model is that of France where provinces are also states. However, in the Philippines, Mohd. Buat remarked that provinces are just administrative units as they are not really autonomous. In the 1987 Constitution, the autonomous region was classified under local governments. As a local government, he said that it is under the general supervision of the executive department. In other words, the local governments in the Philippines are carried over from the *provincia* of the Spanish colonial era. He regarded the imperial Manila as the colonial government which deals with the provinces as the Spanish colonial administration would. In fact, he claimed that during the American Period, the colonizers realized that the original Spanish model of administration was the best way to administer the Philippines.

On the other hand, Mindanao was different as it was governed separately from the rest of the country during the American Period. He claimed that Mindanao sultanates were really states which were similar to the *migri* of the Malay Peninsula where the British applied indirect rule during the colonial period. In the Philippines, there was a debate during the American period whether to apply direct or indirect rule on Moro land. The Republicans won over the proponents of indirect rule.

Mohd. Buat went on to say that there is a further step on federalism, that is, the commonwealth type. The Philippine Commonwealth was a transition government from an American colony to independent state. He claimed that Mindanao and Sulu were qualified as commonwealths because under the Bates Treaty, Sulu was a protectorate.

Another option mentioned by Mohd. Buat is the "free state," which he said is an improvement from the commonwealth. He cited as a model the Trust Territory of the Pacific Islands composed of the Marshall Islands, Micronesia, Northern Marianas, and Palau. He added that Cook Islands was a territory of Britain but has now entered into free association with New Zealand.

The other model described by Mohd. Buat is the United Nations (UN) Resolution 1541 of 1960 or the UN's decolonization policy which presents three options for self-governance, namely, integration with an independent state, free association, and independence. He remarked that the Bangsamoro qualifies under the UN's decolonization policy. On May 1, 1968, former Governor of Cotabato Datu Udtog Matalam issued a manifesto calling for the establishment of the Republic of Mindanao and Sulu. Copy of the manifesto was forwarded to U.N. Secretary-General U Thant who officially acknowledged receipt of the same.

An example of decolonization, Mohd. Buat told the audience, is the case of East Timor, a former colony of Portugal. After a coup in Portugal, the East Timorese declared independence but was immediately annexed by Indonesia as a province. The East Timorese leaders later withdrew their fight for independence and opted to go via decolonization under the auspices of the UN. He then revealed that during his discussions with ARMM Governor Misuari, he said that they were for decolonization. But the OIC prevailed to make them accept autonomy. But now, he disclosed that Misuari is again espousing for decolonization which he believes is the best way for seeking independence.

Mohd. Buat went on to talk about the MNLF-GRP relationship. He said that there's no difference between the two since both are pursuing the same objective, which is for the interest of the Bangsamoro people. Quoting the late Hashim Salamat, he said that the difference lies in the policy strategies. Misuari opted for autonomy, but there was this national policy of defeating the MNLF politically, and the MILF militarily. He reported that the government succeeded in crippling the MNLF politically. Fortunately, the OIC intervened and served as the guardian of the MNLF's interests. It brokered a meeting to merge the MNLF and MILF interests but it did not push through. In August 2002, the MNLF entered into a framework of unity with the MILF for joint representation in the OIC. In the peace talks between the MNLF and Philippine government, Chairman Salamat subscribed to a wait and see policy. The negotiations broke down because the MILF was dissatisfied at the GRP's failure to address the problems of the Bangsamoro people, particularly the 19 talking points which were mutually agreed upon by the joint technical committee of the MILF and GRP.

Mohd. Buat remarked that the policy of then President Ramos was for the complete resolution of the Mindanao conflict, which was why there were separate talks between the government and the MNLF, as well as between the government and the MILF. He said that this was not really to betray the MNLF as he believes that President Ramos just did not want any stone left unturned. However, while the policy solved one problem or autonomy as espoused by the MNLF, he claimed that it created another one with the MILF because Chairman Salamat said that it did not comply with the provisions in the 1976 Tripoli Agreement. He mentioned that this was the shortcoming of that strategy.

He continued to the third option, after autonomy and free association, which is independence, which he said, has been the main goal of the MNLF and the MILF. Mohd. Buat recounted that ironically, when the group of Salamat broke away from the MNLF, it was for autonomy while Misuari was for independence. This was reversed when the MNLF shifted for autonomy, while the MILF was way ahead on espousing for independence.

Mohd. Buat went on to enumerate some points for consensus published in Newsbreak by Carol Arguillas as follows:

- entrenchment of the Bangsamoro homeland as a territorial space aimed to secure the identity and posterity of the Bangsamoro people;
- protecting the propriety rights and resources, and establishing a system of governance suitable and acceptable to the Bangsamoro;
- respect for the freedom of choice of the indigenous people;
- popular consultation leading to a referendum as a mode to determine the future political status of the Bangsamoro people; and

- a transition period to allow institution-building simultaneous to the transfer of power of governance to the Bangsamoro juridical entity prior to the final political status.

He explained that the transitional government will be empowered to build, develop and maintain institutions such as the civil service, electoral, financial and banking, education, legislation, legal, economic, police and internal security force, judicial system and correctional institution, to develop a progressive Bangsamoro society. In all of these, Mohd. Buat said that a multinational third party is needed to monitor the actual implementation of the comprehensive compact.

Mohd. Buat then posed the question whether the present area under the ARMM could be a viable territory for a federal Mindanao. Again, he quoted a Newsbreak article in 2005 where local officials were complaining of their Internal revenue Allotment (IRA) which was not enough to solve their fiscal problems. In that article, many Muslims bemoaned the fact that their IRA is too small, and that of the Region was only P300M. Therefore, he asked, how can a region, which is one of the poorest in the country, fend for itself in a federal set-up? He quoted the Mindanao Business Council which stated that there should be a bigger base where the Region could be big enough to survive economically and independently to chart its own course. He added that this is the form of federalism that the council is advocating. As Ricardo Julian, an MBC member said, the ARMM will be too weak to start on its own. Mohd. Buat said that the better option is to adopt the area mentioned in the Tripoli Agreement composed of the original 13 provinces including parts of Davao and Zamboanga where Muslim indigenous people reside.

Finally, he told the audience that solving the Bangsamoro problem will redound to the benefit of the whole country, economically, socially, and politically. Funds spent for military operations which amount to billions could be used to help the poor Filipinos.

Paper Presentation No. 3: Independence as a Politico/Governance Option

Mr. Abhoud Syed Lingga

Executive Director, Institute of Bangsamoro Studies

Mr. Lingga started the discussion by underscoring the need for a Forum to raise solutions to the problem in Mindanao. The proposed solutions he said present the contrasting positions of the Bangsamoro people and the Government of the Republic of the Philippines on Bangsamoro's political status. He stressed that the issue is neither religious nor economic, but political in nature. The government denies the Moro people's assertion for their right to an independent state and uses force to do so resulting in a violent conflict that has been going on for decades.

He identified four reasons why the Bangsamoro are fighting for independence as follows:

1. The Moro people have a rich historical experience on governance as reflected by the booming economy even before the colonial period;
2. The Moro people want to ensure human security specifically in health, economy, environment, political, among others;
3. The Moro people want to ensure their welfare that the Philippine government it seems is not able to enhance; and
4. The Moro people want to preserve their identity as a people.

Moving on, he related the experiences of the Moro people in interacting with the Philippine Republic. He cited a recent study that showed the government's strong biases and prejudices for the Christian majority leading to their exclusion from job opportunities in the private sector, discrimination from banks, loss of lands to Christians, and poverty. Sadly, the Moros became the minority in their homeland. Likewise, they and their properties are not secured as human rights violations have been left unresolved and ignored.

On the other hand, he cited the possible gains that independence can bring them.

1. justice to the Bangsamoro people;
2. more money for the Filipinos out of savings from military operations in Mindanao which will go to education, infrastructure, health and other social services;
3. more business opportunities for the Filipino people since the government will give its undivided attention in spurring economic development for the archipelago. The case of Malaysia and Singapore was cited as basis for this argument; and
4. to the region, an independent Bangsamoro state will be a reliable partner in the war against terrorism.

No state, Mr. Lingga articulated, has maintained its boundaries for thousands of years. Even empires fall. States, he continued, are created by men for the purpose of their welfare and if it is not able to provide them that, then probably it is time to reinvent it. The main issue is whether the efforts of reinventing will boil down to the Bangsamoro welfare.

Democracy is not impotent, Mr. Lingga noted, as it offers solutions to the extreme option of secession. He maintains though that secession is a constitutional option as in the case of Ethiopia and Saint Kitts and Nevis where their constitutions allow it.

He stated that there are peaceful and democratic ways to resolve political issues or conflicts. Even terrorism, he believed, can be stopped since there are reasons to convince the Moros not to pick up arms. He pushed for an independent Bangsamoro state as a win-win solution to the problem of Mindanao. Besides, he argued that an independent Mindanao will not be a great loss to the Philippines. On the other hand, while he is pro-independence, he said that he is willing to give in to the option that the Moro people will choose for themselves.

IV. Launch of the Moro Times

Two important personalities who were instrumental in the birth of the Moro Times expressed messages of gratitude. Mr. Dante Ang, Chairman of the Commission on Filipino Overseas and former publisher of the Manila Times, said that the Manila Times is happy to partner with the PCID on the monthly publication of the Moro Times targeted specifically for the Moro people. He disclosed that there are plans of expanding the number of pages of the Moro Times with the goal of eventually making it an independent paper by itself. The Moro Times, he said, supports the right of the people to express their voice, sentiments and opinions in a non-violent, democratic and most importantly, rational way. He ended by expressing hope that the Moro Times will be able to live up to the expectations of their Muslim brothers and sisters.

Dr. Amina Rasul profusely thanked Mr. Ang and the Manila Times for providing a venue for the expression of the thoughts and inspirations of their brothers and sisters from Mindanao as well as an opportunity for airing a holistic view of the Moro issues. The majority view is always looked at through the political lens but the Moro Times has opened a window of opportunity for the people in Manila to feel that they can come safely to the Muslim homes and see their brothers and sisters for who they truly are.

The messages were followed by the symbolic signing of the Memorandum of Agreement between the two organizations. They were joined by members of the diplomatic community present in the Forum.

V. Open Forum

Issue No. 1: Reactions of the two other speakers on Mr. Lingga's proposal for independence

Councilor Carlo Fortuno, Secretary-General of the Union of Local Authorities in the Philippines (ULAP) and President of the Philippine Councilor's League asked Atty. Buat and Atty. Parcasio for their reactions on Mr. Lingga's proposal for independence in Mindanao.

Response:

Atty. Parcasio responded that independence can be an option if the Philippine government will not be true to its international commitment on implementing genuine autonomy. Echoing the reply of former ARMM Governor Misuari on a similar question, he said that autonomy will no longer be necessary if the Philippine government grants independence. However, he maintains that the constitutional legal formula of self-rule should be fully implemented first before the idea of independence among the hearts of the Moros will be erased. On the other hand, if the Moros continue to see no hope in continuing to be part of the Philippines, he predicted that the call for independence will be heightened. By aspiring to have an autonomous government, he believed that the Moro people will have a solution to inequity and lack of opportunities.

Atty. Buat countered that one should not settle for a slice of cake when he/she can have the whole. That same argument goes for independence and federalism he said.

Atty. Parcasio raised two valid concerns. One concern is the extent of willingness of the Philippine government to give up part of its territory. Another concern is on the acceptability of the independence option when the federalism option has not been realized yet.

Atty. Buat agreed that independence will not be accepted because the Philippines is a unitary state. The constitution does not allow it at all. For these reasons, the Moro group invoked the Tripoli Agreement and international humanitarian laws guaranteeing self-determination rather than the Philippine Constitution.

Issue No. 2: On the steps to be taken to achieve independence

Mr. Ali Al-Rashid asked Mr. Lingga on the steps to be undertaken to achieve independence for the Bangsamoro people.

Response:

Mr. Lingga suggested that the constitution should be amended to incorporate the right to secession. He related that there have been efforts now to use the international forum to advance the Moro's right to self-determination. On a positive note, he observed that before 1996, independence as an option has never been raised, much less discussed in venues such as the DGF, unlike now when the discourse on independence as an option is being held thus making it a viable option.

Issue No. 3: On looking for another political structure rather than working for full implementation of or even amendments to RA 9054

Atty. Ibañez, Instructor on Legal Foundations of National Security at the National Defense College raised the issue on looking for another political structure when it seems that only full implementation of RA 9054 or even amendments to it are necessary.

Response:

Atty. Parcasio explained that there are 10 provisions in RA 9054 that do not conform with full autonomy, but the law itself maybe considered as federalism in its infancy. In the Tripoli Agreement, fully autonomous regions will have the same powers as the federal states in other countries. He suggested that RA 9054 can be amended to make it consistent with the Tripoli Agreement and 1996 Peace Agreement, although he lamented that the government seems not interested. He said that former President Aquino did not even allow legislators from the Bangsamoro to contribute to the drafting of that bill.

Atty. Buat linked the whole conflict to the Philippine Constitution. He argued that until the unitary system is changed, the dream of transcending the present autonomy under RA 9054 would remain a dream. If the Constitution goes federal, there is no more need for RA 9054 since the Bangsamoro state will be able to enact its own federal constitution depending on the model it pursues either the Malaysian or German system whichever seems to deliver better services. He stated that the Bangsamoro problem cannot wait for another 25 years for by then, the alignment of world forces will already be different which may render what we are crafting now obsolete.

Issue No. 4: On the issue of territorial distribution under the federal system

Mr. Raphael Montes, Jr., Research Associate at CLRG-NCPAG, inquired on how the territorial distribution under the federal system will be carried out.

Atty. Buat replied that the conduct of territorial distribution would be a joint effort of the government and Moro group based on certain criteria, the specific delimitations of which have to be drawn out yet, and which he is not at liberty to divulge at the moment. He mentioned though the general terms of reference that will govern the territorial distribution to include: (1) taking back of the original ancestral domain; (2) non-Christian provinces under

the Mindanao and Sulu Code; and (3) other areas interested to join the Bangsamoro. The existing ARMM would form as the core of the territory. He is certain that the territorial configuration will not be far from what was defined in the 1976 Tripoli Agreement or 1996 Peace Agreement but could be more since other areas have already signified their interest of joining like the Manobos of Agusan and the Muslims in Davao Oriental.

Issue No. 5: On the implications of territorial distribution to a fairly mixed Muslim-Christian population and necessity of implementing the Islamic laws in the area

Mr. Montes inquired on the implications of territorial distribution to a fairly mixed Muslim-Christian population and the necessity of implementing the Islamic laws in the newly-formed areas.

Response:

With regard to the question on Islamic law, Atty. Buat replied that the Bangsamoro state framers would decide on their own whether or not to institute it and what model(s) to adopt although he assured the audience that it would not be of the Taliban or Wahhabi type. He said that there are other maps of creating institutions and the Shariah Law is one. He disclosed that the Philippines is actually more advanced politically since it already has a Code on Muslim Laws as well as Family Law and Inheritance compared with other Muslim states which do not have them yet.

Issue No. 6: On the possibility of cessation of terrorism once Mindanao become independent

The third question raised by Mr. Montes was the possibility of cessation of terrorism in what will be left of the Philippines after Mindanao becomes independent. He further asked if the Philippines will still be a target of international terrorist organizations even after it grants independence to Mindanao.

Response:

Mr. Lingga responded that providing security is a responsibility of the government. He said that nobody can read the minds of terrorists. However, he explained that it is possible to design new security arrangements whereby it is easier to engage state actors or change regimes believed to be responsive to the terrorism issue.

Atty. Buat countered that terrorism thrives in areas where there is dispute, but not in peaceful waters as there is nothing to feed the people's grievances.

Issue No. 7: On adopting referendum to avoid bloodshed and disseminate information on the three options

Mr. Jul Asirij inquired on the possibility of adopting referendum as an option to avoid bloodshed and inform the people of the advantages of the three possible options.

Response:

Mr. Lingga stated that advocacy initiatives should be pursued. He also agreed that there are peaceful alternatives to violence.

Issue No. 8: On quoting Quoranic verses supporting independence

A participant named Max asked for specific Quoranic verses that would support the fight of the Bangsamoro for independence.

Response:

In reaction to Mr. Max's earlier statement that the struggle in Mindanao should aim for liberation and not secession, Mr. Lingga asserted that the Bangsamoro deserves independence. The Moro struggle is in effect a liberation movement. The use of the term secession conforms with the common terminology used in political science literature to refer to a struggle similar to theirs. What is important, he argues, is that the resolution of the Bangsamoro problem will redound to the general welfare of the people.

With regard to specific Quoranic verses supporting the independence struggle, he explained that the concept of state is new. He added that to govern, one must have a state. He declared that the Moro people are a separate people who deserve a separate state. He declined to specify particular Quoranic verses saying that these should be shared among Muslims alone since there are Christians in the Forum who will not be able to understand them.

As a rejoinder, Atty. Buat cited the countries of Ethiopia, Russia and Saint Kitts and Nevis where the word secession is used. Applied to the Moro struggle for independence, what they are actually seeking for is the restoration of the state, the land that is theirs. He referred to the maps in the London Library which show the extent of the Muslim influence and spread of population in the early period stretching from Palawan to as far up to Ilocos.

VI. Closing Remarks

Dr. Carmen Abubakar

Dean, Institute of Islamic Studies, University of the Philippines

Dr. Abubakar first thanked the speakers for providing the participants insights on the three possible options. She expressed hope that the options were made clear. She then thanked the organizing institutions and sponsors for their initiative and efforts to come up with this activity. She took the opportunity to invite everyone to their upcoming forum on August 4 about the crisis in the Middle East. Lastly, she thanked everyone for coming and hoped that the forum has contributed in enlightening them on the Bangsamoro issue.

Dr. Alex B. Brillantes, Jr.
Dean, NCPAG, UP

Dean Brillantes closed the program by informing everyone that the papers of the presentors and the proceedings of the open forum will be compiled and uploaded to the NCPAG website. He thanked the organizing institutions for their collaboration this endeavor.

Annex 1
DGF / PCID Design

**DILIMAN GOVERNANCE FORUM /
PHILIPPINE COUNCIL FOR ISLAM AND DEMOCRACY FORUM**

*Political and Governance Options for the Bangsamoro:
Autonomy, Federalism and Independence*

Rationale

Bound by a common faith and distinct culture, the Bangsamoro people have long been engaged in the struggle for self-determination as a way to achieve lasting peace, stability and development in the Mindanao region. The struggle for self-determination dates back to the colonial period when the Bangsamoro resisted fiercely attempts at pacification and integration by the colonial masters. Unfortunately, after the country gained independence, the Bangsamoro's struggle has carried on in the form of armed conflict between the military and armed factions of the Bangsamoro resulting in a shaky peace and order situation and political and economic displacements of the people.

Amidst the tensions and widespread poverty in the south, the Bangsamoro are confronted with three possible political and governance options, namely, autonomy, federalism, and independence. Since the mid-1970s, the government and Bangsamoro through legislations and ensuing plebiscites have agreed on the autonomy option as a path towards self-determination. Yet, after years of experimenting with it, peace, stability and economic development have remained elusive. Current political developments, especially the looming possibility of a Charter Change have paved the way for federalism as another possible politico-governance option for the Bangsamoro. It promises yet expanded powers and authority to federated regions but still within the metes and bounds of the Constitution. The third option has remained to be independence especially for those who have firmly believed that only through a separate Bangsamoro Republic founded on the tenets of Islam can self-determination effectively prevail.

The 13th Diliman Governance Forum (DGF) with the theme *Political and Governance Options for the Bangsamoro: Autonomy, Federalism and Independence* is jointly organized by the National College of Public Administration and Governance (NCPAG) and Institute of Islamic Studies of the University of the Philippines (UP) and Philippine Council for Islam and Democracy, with sponsorship from the Asia Foundation and United Nations Development Programme, and in collaboration with the Magbasa Kita Foundation.

Objectives

The 13th DGF aims to explore the rationale, principles and implications on each of the political and governance options, namely, autonomy, federalism and independence, in the continuing struggle for self-determination as a way towards lasting peace, stability and development of the Bangsamoro in Mindanao. Likewise, it aims to provide a venue for the articulation of views, opinions, analysis and insights on the possible form and

content of the enabling law and implementing guidelines governing any or a combination of these options. Moreover, it aims to bring the proceedings and records of the forum to a wider audience, specifically the policymakers in the hope that they can use them as reference in crafting policy solutions in Mindanao and the ordinary people who need authentic and unbiased information so that they can participate effectively in building a consensus towards their future.

Methodology

Three distinguished scholars have been invited to speak on each of the three options. An open forum will follow the paper presentations. Invited participants include the government agencies, academe, civil society, private sector, political leaders, Islamic embassies, foreign funding institutions, private sector, and press.

Venue and Schedule

The 13th Diliman Governance Forum will be held at the Assembly Hall, NCPAG, UP Diliman, Quezon City on 28 July 2006 at 9-12 in the morning.

Expected Output

Proceedings of the paper presentations and ensuing open forum will be prepared and edited. They can be accessed as reference materials in classes, researches and other related undertakings as well as possible publication in the future.

Annex 2

Paper Presentations

AUTONOMY: More than a Quarter of a Century of Broken Promises

Atty. Randolph Parcasio, al-Haj

1976 Tripoli Agreement Autonomy

1. To set up courts to implement Shari'ah
2. To be represented in all courts including the Supreme Court
3. Autonomous Administrative, Financial and Economic Systems;
4. Legislative Assembly and an Executive Council appointed by the Legislative Assembly
5. To have representation and participation in the central government and in all organs of the state
6. To set up schools, colleges and universities
7. To establish a Regional Security Force
8. Reasonable share in the revenues from mines and minerals

Provisional Government

- Immediately after the signing of the Tripoli Agreement a provisional government in southern Philippines shall be established to prepare for the elections of the Legislative Assembly and administer the areas of autonomy until a Government is formed by the elected Regional Assembly

Other Stipulation

- The parties will hold further discussions on vital issues re:
 - Regional Security Force
 - Mines and Minerals
 - Shariáh
 - Bangsamoro Educational System
 - Administrative System

First Breach

- Instead of Establishing the provisional government and hold further discussions as agreed former President Marcos issued Proclamation 1628-A to establish two autonomous regions in Regions 9 and 12 in Southern Philippines
- Surreptitious insertion of Paragraph 16 to tie down the implementation of the agreement to the constitutional process of the Philippines which was then under martial law.

Second Breach

- Enactment of Republic Act 6734 creating the Autonomous Region in Muslim Mindanao (ARMM) which according to former President Corazon Aquino was "purely a Philippine government's initiative" contrary to the bilateral nature of the Tripoli Agreement.
- The ARMM suffers from lack powers agreed in the 1976 Tripoli Agreement

1993 Ciplanas Statement of Understanding

- In 1992 After 17 long years of procrastination the Philippine government (GRP) through former President Ramos decided to revive the GRP-MNLF peace process;
- In 1993 the GRP and MNLF signed the Ciplanas Statement of Understanding in Indonesia, which solely provides that the parties will "Hold Peace talks in order to implement the 1976 Tripoli Agreement in letter and spirit"

September 2, 1996 Peace Agreement

- Phase I: Two year transitory period employing a combination of political, economic, social and security measures to lay the foundations of the establishment of a regular autonomous government
- Phase II: Establishment of the regular autonomous government.

Transitory Mechanism

- Establishment of Southern Philippines Council for Peace and Development (SPCPD)

Mandate and Role of SPCPD:

1. Exercise control and supervision over appropriate agencies engaged in peace and development activities in the area;
2. Monitor, Promote and coordinate development efforts;
3. Attract foreign investment;
4. Cause the implementation of peace and development projects; and
5. Deputy of COMELEC in the preparation of the conduct of elections, referenda or plebiscite and people's initiative

Other Transitory Mechanism

- Consultative Assembly which has the power to make rules and regulations to the extent necessary for the effective and efficient administration of the affairs of the area
- Central government shall channel public and private investment into the area to spur economic development
- Establishment of Darul Ifta or House of Opinions
- Right of representation in all departments and organs of the state
- Integration of MNLF forces with the PNP and AFP

AMENDMENT TO RA 6734

- The transitory period shall culminate with the enactment of a law to amend RA 6734 by incorporating all the pertinent provisions of the 1996 Peace Agreement

RA 9054

- The enactment of, RA 9054 which was done unilaterally without any consultation with the MNLF led to the present dead lock in the GRP-MNLF peace tract.
- In the most recent report of the OIC Secretary General last June 2006 in Baku, Azerbaijan, it declared that the biggest stumbling block to the implementation of the 1996 Peace Agreement is RA 9054

Implementation of RA 9054

- Dura lex sed lex- the law is hard but that is the law.
- RA 9054 is the only existing constitutional and legal paradigm to address the centuries old issue of Moro Self Rule;
- But 9054 is not also properly implemented as shown by the lack of devolution of ARMM already devolved agencies and insufficient public investment in the area of autonomy;
- The Shariáh legal system is not implemented;
- The establishment of the Regional Security Force is not implemented;

RA 9054 is inconsistent with the Peace Covenants

- Ancestral domain and Mines and Minerals
Among others, the most controversial provision of the law is it removed from the scope of ancestral domain and the jurisdiction of ARMM all natural and mineral resources found within the area covered by autonomy

Breach of Autonomy

- The utter disregard of the mandate of the SPCPD and Consultative Assembly and the enactment of RA 9054 broke the peace covenant.

AUTONOMY NOT FULLY TESTED

- In failing to fully implement the Autonomy envisioned in the 1976 Tripoli Agreement and the 1996 Peace Agreement, makes genuine autonomy not fully tested and therefore it remains an option.

FEDERALISM AS A BANGSAMORO OPTION

By Mohd. Musib M. Buat

The Federal Option

There are various options espoused in respond to the Bangsamoro People's quest for freedom and self-determination. One of them is federalism which is gaining ground as a "lasting solution to separatism" and as a final option in dealing with Filipino diversity. They argue that federalism will end unequal distribution of wealth by the national government. The most active advocate is Lihok Pideral (Federal Movement), a non-governmental organization that is spearheading the federalization proposal.

Under the proposed federal constitution, there will be a shift in the structure of government from the unitary system to a federal system and from a presidential type to a parliamentary form of government. There will be consolidation of the local governments in the existing 16 administrative regions, Metro Manila and the Autonomous Region of Muslim Mindanao into 11 states or autonomous regional governments. One of the component states or regional government is Bangsamoro.

According to the advocates of the federal constitution, the unitary system where there is more emphasis on national integration and assimilation rather than unity in diversity and pluralism have alienated the Bangsamoro People and other ethnic and cultural communities. They feel that they are neglected and discriminated by the national government which is dominated by the Christian Filipino majority.

The proponents also argue that the ineffective and irresponsible unitary system and the weakness of the rule of law have allowed political warlords and corrupt politicians and public employees to exist and prosper. These warlords and abusive leaders feel that they are above the law. They violate and often get away with it. They further observe that the same factors plus mass poverty, economic inequality and social injustice are the reasons why the communist and the Moro rebellion persist to the present. Whereas progressive countries like Singapore, Malaysia and Thailand have long solved the Communist insurgency.

They also claim that the Moro rebellion and secessionism coupled by government corruption have been aggravated by unresponsive and unaccountable governance under the present unitary system and presidential government. What is needed in response to this problem is by reforming political parties, strengthening the rule of law, empowering the people, improving governance, and holding leaders accountable. The federal system and parliamentary government will displace local warlords and reduce corruption in government.

There are many more pros and cons in the unitary and federal system, but we shall deal more on the Bangsamoro option. The federal alternative is a national alternative and not an exclusive Mindanao concern or advocacy. Mere decentralization, including the ARMM model is found to be inadequate. Thus, "Running an autonomy within a unitary and centralized presidential system apparently still limit that autonomy." The previous attempts to resolve the conflict between the Bangsamoro people and the Philippine state by offering autonomy for Muslim Mindanao have failed, largely because of the inadequate powers assigned to the autonomous government.

There are two essential things for Bangsamoro autonomy, namely: the capability to be adequately self-sustaining, not dependent on the central government; and some degree of compensatory justice for Muslims. The ARMM has only limited autonomy, mainly over the economic development of the region. The central government remains in control of defense, [mancial and foreign policies. Senator Aquilino Pimentel is quoted to have said that "unless the Philippine Constitution is drastically changed or amended, it is impossible to grant genuine autonomy to the Bangsamoro people."

Other Bangsamoro Options

During a committee hearing in the Senate presided over by ~r Senator Mariam Defensor Santiago two years ago when the Organic Act for the expanded ARMM was being deliberated, Senator John Osmena proposed the establishment of a Commonwealth of Moro Sultanates. Senators Biazon and Emile who were present concurred with the idea of Senator OSInena. There was no follow up of this proposal by the Senators present.

Why not? The Sultanate of Sulu and the Mindanao principalities were deemed protectorates of the United States of America under the Kiram Bates Treaty of August 20, 1899. Regrettably, the US President unilaterally abrogated the said treaty in 1904 thereby prompting protest from the Sultan of Sulu. The abrogation of the Kiram-Bates treaty by USA according to some legal scholars had the effect of restoring to the Sulu Sultan his *de jure* sovereignty over the Sulu dominion and its dependencies.

The restoration of the Bangsamoro sovereign statehood is well supported by historical records. It has historical and legal basis under the so-called Moro treaties. While the Philippine state make use of the Moro treaties for its claim over Sabah, it denies any historical right to the Bangsamoro people its claim for statehood over its ancestral territories or homeland. Far more ironic is the fact that while the Treaty of Paris of 1898 disregarded Philippine independence under the Malolos Constitution, it is used by an independent Philippines to justify its illegal inclusion of the Bangsamoro territories in the Philippine national territory.

On the other hand, the restoration of the date of Philippine independence on June 12, 1898 reaffirms President Emilio Aguinaldo's recognition of Bangsamoro sovereign status at the time the first Philippine Republic was proclaimed. As an unincorporated territory of the United States of America, the Bangsamoro people could well fall under the decolonization principle of the United Nations as a colonized people or nation.

On December 14, 1960, the United Nations General Assembly proclaimed the Declaration on the Granting of Independence to Colonial Countries and Peoples under resolution 1514 (XV). Also in 1960, the UN General Assembly approved resolution 1541, defining free association with an Independent State, integration into an independent State, or independence as the three legitimate options offering full self-government.

Under the first option, Gilles Fireagle proposed an Associated Free State of Mindanao (Philippine Star, June 13, 2002). Initially, he proposes that the Republic of the Philippines will give up sovereignty over the islands of Tawi-Tawi, Sulu and Basilan. The inhabitants of these islands will be free to create their own country. The only limitation is that the new country will have to be associated to the Republic of the Philippines. It will be self-

governing in all respects, except that it cannot declare war against the Republic of the Philippines. The Free State of Mindanao as conceptualized will exist for 15 years. On its 16th year, it must conduct a referendum among its citizens on whether or not to continue as an associated free state or return to the folds of the Republic of the Philippines. At the same time, a referendum will also be held, open to all administrative/political units, including the ARMM to determine if any additional citizens would vote to join the free state. Should 50 percent or more elect to join the Free State, then the new state will become an independent nation.

There are many models of free state association. An early model of association is that of the North American Indians who are considered dependent nations under treaty relations with the US Federal Government. Based on American Jurisprudence, "the settled doctrine of law of nations (e.g., the Cherokee Nation) is that a weaker power does not surrender its independence - its right to self-government, by associating with the stronger and taking its protection (through a treaty)." (*Worcester v. The State of Georgia*, 483,501 (1832).

The Treaty of 1878 between Spain and the Sultanate of Sulu recognized the Sulu realm as a protectorate rather than as a territorial possession of Spanish colonial administration. This was officially adopted as a policy by the United States of America in the Instruction of President William Mckinley to the First Philippine Commission of 1900. Thus, the Congress of the United States regarded the Moro Nation as dependent nation similar to the North American Indians under treaty relations with the US Federal Government. The Treaty entered into between Sultan Jamalul Kiram II of Sulu and General John C. Bates of the United States Army confirmed the protectorate status of the Sulu Sultanate under the Spanish Treaty of 1878. '

There are many models of free state association according to Fireagle. The most familiar model known to Filipinos was the former Commonwealth of the Philippines. Other examples are the Estado libre Asociado de Puerto Rico, the British Commonwealth countries of Austratia, New Zealand, Canada, and Zimbabue. The more recent trust territories of the Pacific islands that became self-governing in free state association with USA in 1990 are the Federated States of Micronesia, Republic of Marshall Islands and the Commonwealth of the Northern Marianas Islands. Another Pacific

Island, Palau became fully self-governing in free association with the USA in 1994.

Referendum and De-colonization

The East Timor experience which achieved independence through the 1999 referendum under the supervision of the United Nations has inspired many as a peaceful and democratic option to settling political conflict.

In an interview of Moro Islamic Liberation Front (MILF) Chairman Salamat Hashim by Noli de Castro at Camp Abubakar on February 16, 1999, he declared that "we want a civilized solution to the problem through a UN supervised referendum." He said that the Bangsamoro people should be given the opportunity to decide their political status similar to that in East Timor. MILF Vice Chair for Political Affairs Ghazali Jaafar similarly called for a UN sponsored referendum. He said that "the most effective formula" to end the Bangsamoro struggle is to ask them to express their political will on four (4) options through a referendum, either: (1) remain part of the Philippine state; (2) to establish a federal form of government; (3) pursue an autonomous government; and (4) set up an independent Bangsamoro state.

Moro National Liberation Front (MILF) Chairman Nur Misuari has similarly called for a UN sponsored referendum. In his speech before the 27th Islamic Conference of Foreign Ministers (ICFM) in May 2000 in Jeddah, he also expressed intention to follow the examples of East Timor and the independence movement of Quebec.

The clamor for Bangsamoro independence has gained support from the Bangsamoro masses and civil society. During the 1st Bangsamoro People's Consultative Assembly (BPCA) held on December 3-5, 1996 in Sultan Kudarat, Maguindanao, the delegates numbering about 1,070,697 were unanimous in calling for the reestablishment of the Bangsamoro state and government.

During the rallies for Peace and Justice attended by thousands of Moro participants held in Cotabato City and Davao City on October 24, 1999 and in Isabela, Basilan on December 7, 1999, they issued a manifesto declaring: "we believe that the only just, viable and lasting solution to the problem of our turbulent relationship with the Philippine government is the

restoration of our freedom, liberty and independence which were illegally and immorally usurped from us, and that we be given a chance to establish a government in accordance with our political culture, religious beliefs and social norms." (Abhoud Seyed M. Lingga, "Democratic Approach to Pursue the Bangsamoro People's Right to Self-Determination," July 17, 2002).

Traditional Bangsamoro leaders have equally expressed support of the Bangsamoro strong desire to regain their usurped independence. During a meeting of Moro leaders headed by Sultan Abdul Aziz Guiwan Mastura Kudraty IV of Maguindanao on January 28, 2001, they issued a petition which have been earlier circulated for signatures among the Bangsamoro People in October 2000 addressed to the US President and the Congress of the United States calling for a referendum on Bangsamoro independence. This document is known as the "Declaration of Intent and Manifestation of Direct Political Act" (DIMDP A). The declaration states:

"As sovereign individuals, we believe that the Bangsamoro people's political life, as matters stand, call for an OIC - sponsored or UN supervised referendum in the interest of political justice to decide once and for all:

- To remain as an autonomous region
- To form a state of federated union
- To become an independent state."

The Bangsamoro people have remained faithful in their political aspiration to be a free nation. They have never waived that right starting from the American regime up to the present as evidenced by the following historical documents issued by their leaders:

1. The Cotabato Memorial of Datus and important persons of 1916 acknowledging the benefits of the establishment of the new Government of Mindanao, including the right "to perform part of the work of the Government" and "to take part in the making of laws for us" (Bangsamoro).
2. The Petition of the People of Sulu of 1921 to the President of the United States, expressing their desire to be a separate territory for the failure of the Philippine Legislature to pass laws for their benefit and protesting their Filipinization and militarization.

3. The Dansalan Declaration of 1935, protesting the inclusion of the Moro Nation (Bangsamoro) in the grant of Philippine independence, and citing the discriminatory acts of the Filipinos under the Constitution of the Philippine Commonwealth, where there was "no provision whatsoever is made that would operate for the welfare of the Moros", and in the event the American People decide "to grant Philippine independence to the Philippine Islands, the Islands of Mindanao and Sulu should not be included in such independence."
4. The Zamboanga Declaration of 1924 of Moro leaders, concerning their rights and purposes addressed to the Congress of the United States of America, calling for a plebiscite to be held in the unorganized territories of Mindanao, Sulu and Palawan, fifty (50) years after the grant of Philippine independence on July 4, 1946, to decide by vote whether the proposed territory will be incorporated in the islands of Luzon and Visayas, or remain as a territory of the United State of America, or become an independent nation to be known as "Moro Nation" (Bangsamoro).

The right of the Bangsamoro people to self-determination matured in 1996, the year the Final Peace Agreement was signed between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF). The MILF did not take part in the signing of the said final-agreement and instead started to assert and call for a referendum.

5. On May 1, 1968, the Mindanao Independence Movement (MIM), founded by former Governor of Cotabato Datu U dtog Matalam, issued a Manifesto calling for the establishment of the Republic of Mindanao and Sulu. Copy of the Manifesto was forwarded to U.N. Secretary-General U Thant who officially acknowledged receipt of the same.

Other independent movements seeking to decolonize Sulu and Maguindanao through the affirmation of UN Resolutions recognizing indigenous nations have been initiated. They include Datu Amir Baraguir, an heir to the Maguindanao Sultanate and Prof. Limpasan Ijirani who authored the Sulu Archipelago Decolonization Movement (SADEM). The latter drafted a petition to the UN ahead of DIMDPA.

In 1971 shortly before the declaration of Martial law, Moro leaders met and came up with a consensus of unity, serving notice that no redress was possible under the prevailing genocidal campaign of the regime of former President Marcos on the Bangsamoro people. They pledged to preserve their community and land. They declared that to continue within the Philippine Nation State will be tantamount to condemning and debasing the very identity of the Bangsamoro people and other indigenous peoples of Mindanao, Sulu and Palawan. Towards this end, the Moro delegates to the 1971 Constitutional Convention reiterated the call for a referendum under C.R. No. 5830.

Prospects of Resolving the Mindanao Conflict.

As an aftermath of the "all-out-war" declared by former President Joseph Estrada against the MILF and the Bangsamoro people and the EDSA II People's Power that caused his downfall then Vice President Gloria Macapagal-Arroyo was installed as the new President. Upon her assumption to Office, one of her national policy was "all-out-peace". She talked to Malaysian Prime Minister Mohamed Mahathir to persuade the MILF leadership to return to the peace negotiating table. The Prime Minister immediately dispatched emissaries to see Chairman Salamat Hashim. On March 24, 2001, representatives from the Philippine Government and the MILF met in Kuala Lumpur, Malaysia and signed the Agreement on the General Framework for the Resumption of Peace Talks between the GRP and the MILF. In the opening preamble of the agreement the parties declared:

"Recognizing the need to resume their stalled peace talks in order to end the armed hostilities between them and achieve a negotiated political settlement of the conflict in Mindanao and of the Bangsamoro problem, thereby promoting peace and stability in this part of the world."

The preamble further declared "the need to create an atmosphere conducive to the resumption of the peace negotiation through the normalization of the situation ... " in the conflict affected areas; "to pursue a solution to the Bangsamoro problem with honor, justice and dignity for all concern(ed);" "Acknowledging the ascendancy of moral and spiritual development as the primary foundation of socio-economic and political development of all people in Mindanao;" and "Holding a common belief that the resumption of the peace negotiation should go hand in hand with relief, rehabilitation and development efforts in the areas affected by the armed conflict."

The foregoing preamble of the Kuala Lumpur Agreement of 2001 served as the terms of reference in the succeeding peace talks that were held in Tripoli, Libya and in Kuala Lumpur, Malaysia. The Agreement on Peace between the parties signed in Tripoli, Libya during the opening of the peace

talks on June 22, 2001 served as the mother agreement. The succeeding peace talks held in Kuala Lumpur, Malaysia came up with Guidelines providing the details of the Tripoli Accord. Two subsequent agreements on implementing guidelines were signed in the resumption of talks in Kuala Lumpur from 2001 to 2002, One was the Guidelines on Security Aspect and the second on Humanitarian, Rehabilitation and Developments Aspects. The Ancestral Domain Aspect was deferred for succeeding talks in view of its implications on the political aspect of the talks.

The parties are supposed to meet for the resumption of the peace talks by the last week of February llilli y~.(2003)1- We can only hope that the eruption of hostilities between the Bangsamoro Islamic Armed Forces (BIAF) and the Armed Forces of the Philippines (AFP) last Ytl.:s~ February 11, 2003 will not affect the resumption of the peace talks between the GRP and the MILF.

Federalism and Bangsamoro Statehood

Federalism presupposes the establishment of component states or selfgoverning regional governments comprising the federal union. It is not necessarily incompatible with the political aspiration of the Bangsamoro people for statehood. The basis of Bangsamoro "statehood is the administration of the Sultanate governments in Mindanao and Sulu, which entered into treaties with nations like Spain, Britain and the Dutch East India

Company." ("Political Options for Mindanao", MTC Peace Summit, September 10-12, 2002).

The establishment of Bangsamoro statehood will be a forward step towards the advocacy for a Federal Constitution. The Bangsamoro Nation may opt to federate with the Philippine state or enter into a free state association (or better known as Commonwealth like that of Puerto Rico, a self-governing commonwealth associated with the USA). The Bangsamoro state may enter into a treaty with the Philippine state to form a federal union like that of the State of Texas which federated with the American Union via treaty.

The Mindanao conflict cannot await the amendment of the Philippine Constitution restructuring the Philippine Islands into eleven (11) component states under a federal constitution. The timetable of the Federal Movement advocacy to amend the Philippine Constitution to shift from a unitary to a federal system is by the year 2010. The Mindanao conflict is one of urgency that would need immediate political solution. We have laid down the various options to resolve the Bangsamoro problem.

Under modern contemporary international law, a treaty device is one of the legal modalities in the resolution of political disputes. Another procedure in through decolonization and the conduct of referendum similar to the East Timor experience. The East Timorese have earlier declared their independence from Portugal being its former colony. But after Indonesia annexed their territory as one of the province of Indonesia, the East Timorese opted to withdraw their declaration of independence and sought for inclusion as trust territory for decolonization under the United Nation. The peaceful political settlement of the Bangsamoro problem will be to the best interest of both the Filipino Nation and the Bangsamoro People. The military option will not put an end to the Bangsamoro problem. Even if all the Moro fronts are vanquished today, there will always be new generation of Moros who will assert the right to self-determination. The Philippine Government have been spending billions of pesos for the pacification of the Moro rebellion. This is not to mention the loss of innocent lives and destruction of property. The Philippines has the highest rate of poverty in the world. What is uselessly spent for military campaign should instead be spent for the alleviation of poverty of poor Filipinos.

DAVAO CITY
February 16, 2003
Forum on Federalism sponsored by AFRIM

Understanding Bangsamoro Independence as a Mode of Self-Determination*

Abhoud Syed M. Lingga

Iwould like to thank the University of the Philippines on Mindanao, the Philippine Development Assistance Programme and the Association of Mindanao State University Alumni for the invitation to share with you some thoughts on the issue of Bangsamoro Independence. As a mode of self-determination, independence occupies, and will always occupy, space in the discourse on the Mindanao Problem since it is the core issue in the struggle of the Bangsamoro people for self-determination.

I am happy that this issue is given separate treatment in a forum like this outside the circle of the Bangsamoro people. Discussion on issues of independence, autonomy and federalism in the search for solution to the Mindanao Problem will certainly contribute positively in the quest for peace on Mindanao.

Right to Self-Determination

The right to self-determination is the collective right of a people to determine its own future, free of any outside interference or coercion. It includes the right to determine this people's political status and to freely pursue its economic, social, spiritual and cultural development.

In the exercise of that right, people at one end can demand and pursue within the nation state more political power, active participation in the decision-making and administration of government affairs, equitable redistribution of

* [Paper delivered at the Forum on Mindanao Peace sponsored by the University of the Philippines in Mindanao, Department of Social Sciences, the Philippine Development Assistance Programme and the Association of Mindanao State University Alumni on February 28, 2002 at its City Campus, Iñigo St., Davao City, Philippines] The author is the Chairman of the Bangsamoro People's Consultative Assembly.

economic benefits, and appropriate ways of preserving and protecting their culture and way of life. On the other end, they have the right to organize their own sovereign and independent state with the right to international recognition.

The United Nations declaration on decolonization states, "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

As a people, the Bangsamoro possesses the right to self-determination. Both the Philippine government and the MILF recognize that right. Paragraph B (1) of the *Agreement on Peace Between the Government of the Philippines and the Moro Islamic Liberation Front*, otherwise known as the Tripoli Agreement on Peace of 2001, signed on June 22, 2001 in Tripoli, Libya, provides:

The observance of international humanitarian law and respect for internationally recognized human rights instruments and the protection of evacuees and displaced persons in the conduct of their relations *reinforce the Bangsamoro people's fundamental right to determine their own future and political status* (Emphasis supplied).

The use of the word "reinforce" implies that "the Bangsamoro people's fundamental right to determine their future and political status" exists even before the signing of the agreement. Negotiated and signed in the presence of foreign dignitaries in a foreign country gave that recognition an international character.

The recognition of the "aspirations of the Bangsamoro people for freedom" (Paragraph B (2) of the abovesited document) substantiates the legitimacy of its right to self-determination.

Having also a long history of independence in the same territory they now occupy and possessing distinct identity and culture, in the assertion of their right of self-determination the Bangsamoro people choose to regain their independence. Both the liberation fronts and the civil society movement share the vision of reemergence of the Bangsamoro state and government in their homeland.

History of Independence

The historical experience of the Bangsamoro people in statehood and governance started as early as the middle of the 15th century when Sultan Sharif ul-Hashim established the Sulu Sultanate. This was followed by the establishment of the Magindanao Sultanate in the early part of the 16th century by

Sharif Muhammad Kabungsuwan. The Sultanate of Buayan and the *Pat a Pangampong ko Ranao* (Confederation of the Four Lake-based Emirates) and other political subdivisions were organized later.

By the time the Spanish colonialists arrived in the Philippines, the Muslims of Mindanao, Sulu – Tawi-Tawi archipelago and the islands of Basilan and Palawan had already established their own states and governments with diplomatic and trade relations with other countries including China. An administrative and political system based on the realities of the time existed in those states. In fact it was the existence of the well-organized administrative and political system that the Bangsamoro people managed to survive the military campaign against them by the Western colonial powers for several centuries and preserve their identity as a political and social organization.

For centuries the Spanish colonial government attempted to conquer the Muslim states to subjugate their political existence and to add the territory to the Spanish colonies in the Philippine Islands but history tells us that it never succeeded. The Bangsamoro state with their organized maritime forces and armies succeeded in defending the Bangsamoro territories, thus preserving the continuity of their independence.

That is why it is being argued, based on the logic that you cannot sell something you do not possess, that the Bangsamoro territories are not part of what were ceded by Spain to the United States in the Treaty of Paris of 1898, because Spain had never exercised sovereignty over these areas.

The Bangsamoro resistance against attempts to subjugate their independence continued even when US forces occupied some areas in Mindanao and Sulu. At this time the resistance of the Bangsamoro governments was not as fierce as during the Moro-Spanish wars but group-organized guerilla attacks against American forces and installations reinforced what remained of the sultanates' military power. Even individual Bangsamoro showed defiance against American occupation of their homeland by attacking American forces in operation called *prang sabil* (martyrdom seeking operation).

Opposition to Annexation

When the United States government promised to grant independence to the Philippine Islands, the Bangsamoro leaders registered their strong objection to be part of the Philippine republic. In a petition to the president of the United States dated June 9, 1921, the people of Sulu archipelago said that they would prefer being part of the United States rather than to be included in an independent Philippine nation.

In the Declaration of Rights and Purposes, the Bangsamoro leaders meeting in Zamboanga on February 1, 1924, proposed that the "Islands of Mindanao and Sulu, and the Island of Palawan be made an unorganized territory of the United States of America" in anticipation that in the event the US will decolonize its colonies and other non-self governing territories the Bangsamoro homeland would be granted separate independence. Had that happened, the Bangsamoro would have regained by now its independence under the UN declaration on decolonization. Its other proposal was that if independence were to be granted to the islands including the Bangsamoro territories, 50 years after Philippine independence, a plebiscite should be held in Mindanao, Sulu and Palawan to decide by vote whether the territory would be incorporated in the government of the Islands of Luzon and Visayas, remain a territory of the United States, or become independent. The 50 years period ended in 1996 the same year the Final Agreement on the Implementation of the Tripoli Agreement was signed by the MILF and the Philippine government. The leaders warned that if no provision of retention under the United States was made, they would declare an independent constitutional sultanate to known as the Moro Nation.

The opposition against annexation continued. On March 18, 1935, the datus of Lanao met in Dansalan (now Marawi) and appealed to the United States government and the American people not to include Mindanao and Sulu in the grant of independence to the Filipinos.

Continuing Assertion

Even after their territories were made part of the Philippine nation after it gained independence from the United States in 1946, the Bangsamoro people continued to assert their right to independence. They consider the annexation of their homeland as illegal and immoral since it was done without their plebiscitary consent.

The armed resistance of Kamlon was the manifestation of protest in response to the usurpation of their sovereign right as a people. And to show their strong desire to regain independence through all possible means, Congressman Ombra Amilbansa filed House Bill No. 5682 during the fourth session of the Fourth Congress that sought the granting and recognition of the independence of Sulu, even knowing that it would not pass Congress since there were only few Muslim members. Then on May 1, 1968, Governor Datu Udtog Matalam of Cotabato issued the Mindanao Independence Movement (MIM) manifesto calling for the independence of Mindanao and Sulu to be known and referred to as the Republic of Mindanao and Sulu.

When it became evident that it would not be possible to regain independence within the framework of the Philippine nation state system, the

Moro National Liberation Front (MNLF) was organized to compliment the political struggle with the military force. When the MNLF accepted autonomy within the framework of Philippine sovereignty, a faction of the MNLF separated and formed the Moro Islamic Liberation Front (MILF) to continue the struggle for independence.

Even the Bangsamoro civil society, through peaceful and democratic means, joined the campaign for independence. The 1,070,697 delegates to the First Bangsamoro People's Consultative Assembly (BCPA) held on December 3-5, 1996 in Sultan Kudarat, Maguindanao were unanimous in calling for reestablishment of the Bangsamoro state and government.

The Second Bangsamoro People's Consultative Assembly held on June 1-3, 2001 at the same place, this time attended by 2,627,345 delegates from all over the Bangsamoro homeland, including representatives of non-Muslim indigenous communities, unanimously declared that "the only just, meaningful, and permanent solution to the Mindanao Problem is the complete independence of the Bangsamoro people and the territories they now actually occupy from the Republic of the Philippines."

Bangsamoro leaders, headed by Sultan Abdul Aziz Mastura Kudarat IV of the Sultanate of Magindanao, meeting in Cotabato City on January 28, 2001 expressed their strong desire to regain the Bangsamoro independence. The Declaration of Intent and Manifestation of Direct Political Act they issued states:

As sovereign individuals, we believe that the Bangsamoro people's political life, as matters stand, call for an OIC-sponsored or UN-supervised referendum in the interest of political justice to decide once and for all:

- To remain as an autonomous region
- To form a state of federated union
- To become an independent state

Bangsamoro, Not Filipino

The feeling of having distinct identity and culture reinforces the political consciousness of being separate from the Filipinos. Historical documents show that the Bangsamoro people have a distinct identity. This was the reason why the US organized the Moro Province as a separate administrative unit to administer the Bangsamoro territories.

The MIM manifesto asserts that the Muslims' culture and history are distinct from that of the Filipinos. That a feeling of separateness is still strong as we can still read in placards and streamers during rallies and demonstrations saying, "We are not Filipinos, we are Bangsamoro."

Even the Philippine government acknowledges this distinct identity. The Tripoli Agreement on Peace of 2001 in several occasions refers to the Muslim inhabitants of Mindanao and Sulu – Tawi-Tawi archipelago and the islands of Basilan and Palawan as Bangsamoro people and that they occupy a definite territory referred to in the document as Bangsamoro homeland. This was a total departure from the usual reference to them as "Muslim Filipinos" or "Muslims in the Philippines," and Southern Philippines" when referring to their place of domicile.

Democratic Approach

It now becomes clear to all of us that the fundamental issue in the Mindanao Problem that has to be addressed is the continuing assertion of the Bangsamoro people of their right to independence. No doubt that the problems of mass poverty, neglect and underdevelopment and other social inequities should ultimately be addressed but it should be after the issue of the political status of the Bangsamoro people has been settled. It should be noted that all these economic and social problems had taken root when the Bangsamoro homeland was illegally annexed to the Philippine nation-state.

In addressing this issue, there is within the democratic space a mechanism that can be used. The decision whether to be free and independent or not has to be made by the Bangsamoro people themselves. This can be done through referendum, a universally accepted means of settling political conflicts, like the case of East Timor. It is also resorted to in determining the will of the people on certain political issues, as when the Province of Quebec organized a referendum to decide on the issue of sovereignty, which would pave the way for the separation of the province from Canada.

The Philippine government and the MILF, as well as countries that witnessed the signing of the Tripoli Agreement on Peace of 2001, recognized the need for referendum as a method of peaceful resolution of the Mindanao conflict. The agreement provides:

The negotiations and peaceful resolution of the conflict must involve *consultations* with the Bangsamoro people free of any imposition in order to provide chances of success and open new formulas that permanently respond to the aspirations of the Bangsamoro people for freedom. (*Emphasis supplied*)

The document mentions *consultations* and referendum is the universally accepted method of doing it. It is the peaceful and democratic way to conduct consultations free from imposition.

To address all issues, it is preferable to widen the range of choice, rather than confine the choice to "yes" or "no" to independence, to include questions on whether the Bangsamoro people want to be free and independent, have a federal relationship with the Philippines, have a federated relationship with the United States as earlier proposed by the leaders during the American occupation, have a federated relationship with any Muslim country in the region with whom it shares common cultural, religious, political and social ties in the past, or maintain the status quo of autonomous relationship.

The referendum should be held in areas that the Bangsamoro people presently occupies. These includes the provinces of Maguindanao, Lanao del Sur, Basilan, Sulu and Tawi-Tawi, and the cities of Cotabato Marawi and Isabel. There are also towns in the provinces of Cotabato, Sultan Kudarat, South Cotabato, Sarangani, Davao del Sur, Davao Oriental, Lanao del Norte, Zamboanga del Sur, Zamboanga del Norte, Zamboanga Sibugay and Palawan that should be included, subject for discussion with the people in the areas. Territories that will vote for independence shall constitute the separate independent Bangsamoro state.

The referendum has to be supervised by the UN in order to be credible in the eyes of the Bangsamoro people, the Filipino people and the international community. Common sense dictates that a party to a conflict cannot be credible to conduct or supervise such political exercise. The UN is the best body to oversee that the results of the referendum is respected and implemented. If there will be a need, the UN can organize its force to disarm those who will refuse to respect and implement the sovereign will of the Bangsamoro people.

Options for Christians and Indigenous Peoples of Mindanao

Although the whole of Mindanao, Sulu – Tawi-Tawi archipelago, the islands of Basilan and Palawan are the traditional homeland of the Bangsamoro people, the demographic reality is that they now share the territories with the Christian settler communities and the Indigenous People. In the spirit of justice and human brotherhood, the Bangsamoro people recognize the right of the two communities to self-determination. Should they opt to exercise that right and decide to secede from the Philippines and establish their own governments, the delegates to the Second Bangsamoro People's Consultative Assembly (BPCA) would be committed to recognize and support any peaceful and democratic efforts to achieve that.

Having three independent state in the Mindanao region – for the Bangsamoro, the Indigenous People and the Christian settler communities – may be better because each can address the specific and unique needs of their citizenry. But being independent from each other cannot prevent them from cooperating on areas of common concern and matters of mutual benefits, like development of shared resource, in the fields of international relations, trade, and regional security.

If the other two communities prefer to remain part of the Philippines then that decision has to be respected.

Independent Bangsamoro State

An independent Bangsamoro state is to be founded on the principles of freedom, democracy, equality of all men and women, respect to religious and political beliefs, and adherence to universal human rights.

System of Government

The system of government to be adopted will be determined by the Bangsamoro people themselves. A provisional government will see to the drafting of a constitution and to its adoption.

The constitution will include a bill of human rights and freedom, and recognition of every region's right of self-governance.

Rights of Citizens and Residents

Residents of the territory at the time of independence will be the citizens of the Bangsamoro state. They will enjoy equal rights, privileges

and obligations. They will have rights to suffrage, ownership of properties, practice of their religious beliefs and participation in public affairs.

Residents who will prefer to remain citizens of the Philippines after independence can choose whether to remain as permanent resident aliens or move to Philippine territory with the right to bring with them all their properties. For their immovable properties they can sell them to private individuals or opt for government compensation.

International Conventions and Agreements

The Bangsamoro government will assume the obligations and enjoy the rights out of international conventions to which the Philippines is a signatory, in accordance with the rules of international law. Multilateral and bilateral agreements signed by the Philippines that directly apply to the territories of the Bangsamoro state will be honored.

Special Relationship with the Philippines

Through treaties, the independent Bangsamoro state can have special relationship with the Philippines; for example, on development of shared resource, exploitation of resources to benefit from economy of scale, flow of goods and services, movements of their citizens, regional security, and other concerns.

Continuity of Laws

Laws passed by the Congress of the Philippines that specifically apply to the territory of the Bangsamoro state at the time of independence will remain in force until amended or repealed by the Bangsamoro legislative body.

Pensions payable to retirees will continue to be paid by the Bangsamoro government according to the same terms and conditions. Permits, franchises and authorizations that have been issued will remain in force until their expiry.

Apportionment of Properties and Debts

The Bangsamoro government may include agreements with the Philippines on matters relating to the apportionment of properties and debts of the Philippines.

Win-win Option

A political commitment on the part of the Philippine government to allow the holding of referendum under the supervision of the United Nations after an agreed period of time to finally decide on whether the Bangsamoro people want independence or not will be a win-win option. It will ultimately resolve the Mindanao Problem since it will put to rest the issue of political status of the Bangsamoro people. It will certainly redound to the good of the Filipinos and the Bangsamoro people because it will put an end to a war that causes the death of tens of thousands, displacement of millions from their homes, division of people and the drain of the economic resources of the Philippines.

If the budget spent to wage war in the Mindanao region is spent for infrastructures, education and other social services, there will be more farm to market roads, bridges, schoolbuildings for children, hospitals and health centers, and more teachers to teach in the rural areas, and doctors and nurses to attend to the sick.

It should be recommended that sovereignty and territorial boundaries are not so sacred that they cannot be re-configured. Historical events and contemporary realities tell us that sovereignty and territories shift from time to time whether through bloody wars of peaceful means. The experiences of the Soviet Union, Yugoslavia and other countries are recent enough to remind us that territorial boundaries can change to respond to people's political aspirations.

Countries that respond to this aspiration without resorting to war develop tremendously, as in the case of the separation of Singapore from the federation of Malaysia, while those who continuously deny the people's fundamental right to self-determination suffer economic stagnation and remain a nation divided.

Statesmanship of leaders are not measured on how bloody and how long they can suppress people's right to freedom and independence but how they see through that these people enjoy this fundamental human right. History has never been kind to leaders who do not hesitate to use the might of the state apparatus to repress people's aspirations to be free.

If the only road to peace will lead to political divisions, without hesitation we should bravely tread that road. It is better to live in peace under two nations rather than live in one nation without peace.

Annex 3
Invitation Program

Annex 4

Pictorials

THE FORUM IN PICTURES





Messages



Messages



Messages



Paper Presenters



The Attendees





The Attendees



Open Forum



MOA Signing



Closing





















Annex 5
Attendance Sheet


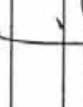
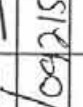
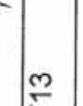

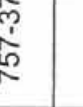
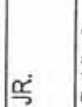
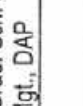
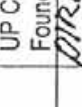



Political and Governance Options for the Bangsamoro:
Autonomy, Federalism, and Independence

Assembly Hall, National College of Public Administration and Governance
University of the Philippines, Diliman, Quezon City
July 28, 2006, 9:00 A.M. - 12:00 NOON

LIST OF GUESTS










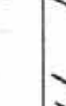
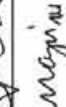
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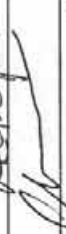






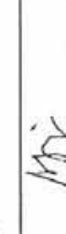
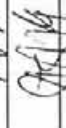

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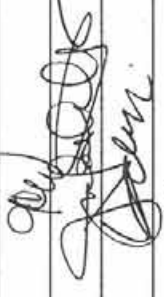

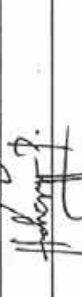
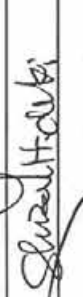
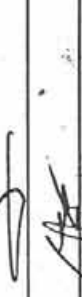



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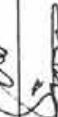


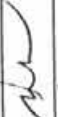




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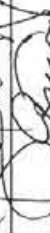



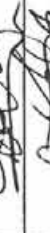




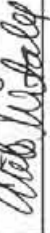


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










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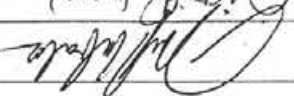
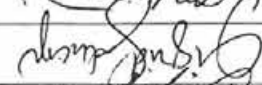
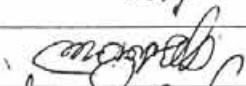


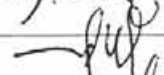
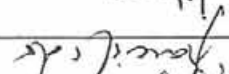
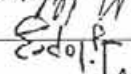
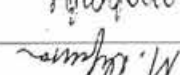
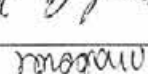
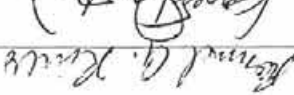
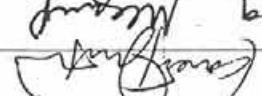
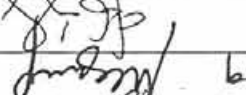
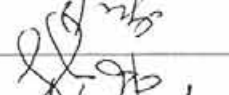
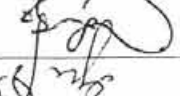
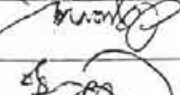
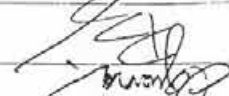







**DILIMAN GOVERNANCE FORUM ON
Political and Governance Options for the Bangsamoro:
Autonomy, Federalism, and Independence**

**Assembly Hall, National College of Public Administration and Governance
University of the Philippines, Diliman, Quezon City
July 28, 2006, 9:00 A.M. - 12:00 NOON**

List of Guests

Name	Position / Office	E-mail Address / Telephone #	Signature
Hadji Alnashar P. Uza	Asst. Reg'l. Dir. ^{NCR} DPA		
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MASLI A. GUILAMAN	Dir. IV OPR - NCIP	dirmg-nip@yahoo.com	
M. Gomer P. de la Rama	BSP Director	181 7th St. Ermita Manila	

Attendance: Dillman Governance Forum

Name	Student No.	Signature
XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
XXXXXXXXXX	XXXXXXXXXX	XXXXXXXXXX
Nerissa Dabalos	03-06306	
Sigid Hard Saluap	02-2755	
De Soriano	03-14188	
Ma. Lorea Torres	03-4525	
John Paul Estayelimon	05-69294	
Biglaren, Ma. Karen	02-53828	
Cuerdo, Francis G.	03-45956	
Lopez, Love Joy S.	102-6504	
Peterson, Martin I.	01-79971	
Renda, Estelle Ann	02-59471	
Rivero, Pamela X	02-08814	
Juanita, Karen I.	03-79894	
BERNAL, MARIA CONCEPCION	03-20879	
Bongaling, Cheanson Carl	02-72211	
Rastana, Grema Kay M.	03-30977	
Linga, Michael Dave S.	01-16892	
Givora, Desiree P.	03-32300	
Umanventura, Chastelle	03-08229	
Maza, Maricar	03-16879	
Bento, Sarah Jane	02-59017	
Pandayan, Jon Andre	02-09211	
Criz, John Paul	02-69294	
Mercado, Grece Lynn S.	02-89025	
Dr. Anna Marie F.	02-89025	
Faculle Ann S. Marie	01-00779	