Ancestral Land and Mining Issues in Southern Philippines

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Introduction

Uses and abuses of the upland forest resources over the years have taken various forms. Some of these have ominous repercussions on the environment and human welfare. One case in point is mineral mining that destroys normal watershed and causes massive landslides and siltation of river and reef, which endangers potable water sources, and produces hazardous on- and off-site wastes and tailings. In so many instances, mining operations upset the livelihood activities, the cultural sensibilities and the serene life of tribal groups. For example, bauxite mining in what was considered as sacred tribal lands in the Baphlimali Hills in Eastern State of Orisa, India, took its toll on the lives of three men shot by policemen for joining anti-mining protests (WRM, 2001). At the other side of the globe, coal mining in Venezuelan Wayuu and Bari ancestral areas was met by active tribal protest (O’Donoghue, 2005). In both cases, there was violence or threat of violence.

Most of the mining areas in southern Philippines, especially in Mindanao, are also inside or are adjacent to the ancestral lands of cultural communities the abode of Indigenous Peoples (IPs). As expected, burning issues of the “cui bono?” variety abound. Since the Philippine government maintains dominium (the right to acquire) over “minerals, coal, and other mineral oils” (Sec. 2, Art. XII, 1987 Constitution), it is expected to derive revenues from mineral mining operations and use them in pursuit of human welfare because it is the duty bound to protect its polity and conserve and develop the national patrimony. This is how government perpetuates itself; for that reason, this duty is embodied in the Constitution of the Republic of the Philippines: the protection of the rights of all citizens including those of the cultural communities. The Constitution guarantees that “The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development” (Section 22 of Article II); and, “The State … shall protect the rights of indigenous cultural communities to their ancestral lands…..” (Section 5 of Article XII; Republic Act No. 7942, Mining Law of 1995).
This paper examines the ownership and use of ancestral lands along with the management of mineral mining for environmental sustainability and human welfare. It posits that: 1) the law along with the manner of its implementation is adequate to protect the sites of struggle (SOS, the term used to refer to communities in the mining areas); and, 2) the government of the country adheres to a principle of responsible governance, “salus populi est suprema lex” (the welfare of the people is the supreme law); a corollary of Lincoln’s oft quoted view on the government of the people, by the people and for the people. This paper argues that if these hypotheses were correct, the presence of mining activities in the SOS would be supportive of environmental sustainability and human welfare. This argument stems from the fact that mining produces billions of dollars, and if the government is doing what it is expected to do, the environment would be protected and the people especially the IPs would reap some benefits.

The IPs are among, if not the most, marginalized and deprived members of the Philippine society. Unfolding events relative to ancestral lands articulate the Thomas theorem: “situations that are defined as real are real in their consequences”. Filipinos are taught to believe that historical land ownership is inferior to a paper certificate. As a result, most upland IP groups are making a run for that piece of paper.

Similarly, lands with 18 percent slope came to be defined as timberland and therefore “public land”. As such it is neither alienable nor disposable. With this definition, all public land occupants should have paper certificates that would legalize their stay or they would face eviction for squatting (Presidential Decree 705, May 19, 1975).

Displacement from ancestral lands became a major issue in the country as settlers from congested lowland areas exploited the fact that the government land registration agencies were giving prominence to the filing date of the application for paper certificate over the date of occupancy or historical construction of the land under claim. This was exacerbated by the belief of non-IPs that a land of the public domain so defined had to be a resettlement area in relation to “amnesties” granted by the government to diffuse agrarian unrest. In many cases, the aggression of the lowlanders had the backing of government armed forces (Lynch, 1984).

For this reason, there are movements, some convulsive and violent which call for secession of the southern Philippines from the Republic. This call is interpreted as an expression of the intense desire for better social and economic conditions and for equitable access to resources that could make such conditions possible (Sealza, 2006; Banlaoi, 2010).

Discussions on mining and its effects on environmental sustainability and human welfare are extremely relevant for a number of reasons. First, they bring to the fore the common and poignant plight of the underprivileged and the underserved members of society, the tribal communities, all over the world vis-à-vis each country’s drive for economic development. The core value of development calls for equitable distribution of
the benefits of economic progress. There is no economic development if some sectors of society progress while others retrogress (Todaro, 2001:16-18; Bodley, 1988). Discussions like this should generate ideas on how to empower the IPs if only for humanitarian reasons.

Second, these discussions may open avenues for dialogue among different stakeholders. Often, conflict ensue because one group is extremely anti and the other extremely pro. Or laws are simply inadequate. For example, Truong and Genotiva (2010) argued that Vietnam does not have “legal recognition of ethnic minorities’ customary rights to land and other natural resources”. Dialogue and ventilation of issues (legal, social, cultural, economic) should result in happy compromise.

And third, missionaries, Non-Governmental Organizations (NGOs), People’s Organizations, and other advocates for mining regulations should be able to make the IPs realize that unity among them could provide better leverage in dialogues and negotiations.

The discussion below begins with a review of the literature, then proceeds with presentation of data on issues associated with mineral mining, and ends with recommendations on priorities for moving forward.

Review of the Literature

The Philippines was a Crown Colony that Spain ceded to the United States. Hence until now, the doctrine that dominates much of the legal provisions on land in the country is Jura Regalia. This doctrine holds that all lands in the Philippine archipelago have been passed on to the Philippine government by the Spanish Crown through the US colonial government. The untitled lands in the Regalian Doctrine are called “public lands” or lands of the public domain. In other words, any person claiming ownership over a piece of land must be able to show title granted by the Philippine government or its preceding State. The absence of a title means that the land is a public domain.

The Regalian Doctrine was put to the test in the celebrated case of Cariño vs Insular Government. Cariño had no land title; only a native claim. Bernas (2008) said,

“Whereupon the New Sovereign through Justice Holmes ruled in favor of Cariño and ordered the registration of the 148 hectares in Baguio municipality in his name.”

The decision of Justice Holmes, in effect, recognized the native right, or the validity of the native claim.

The precedent case of Cariño, notwithstanding, Jura Regalia continues to manifest itself in various types. Such manifestations are deemed necessary in the face of uncertainties associated with recognizing native rights. For example, there are arguments
which state that “land and natural resources that were never covered by the Spanish imperium were never part of the Philippine archipelago and therefore were never part of the territory that Spain ceded to the US. These lands and resources therefore were not part of the territory that the US subsequently entrusted to the Philippine State by virtue of its independence”. This frame of mind suggests that some 30% of existing territory does not belong to the Philippines but are independent entities with its own indigenous manner of governance (Cuasay, 2003; Cf, Malayang, 2001).

Cuasay (2003) made a very comprehensive historical account of the antecedents and legal groundings of the native title to land and resources; and, Malayang (2001) had an exhaustive review of the government’s efforts to forestall a “cataclysmic social upheaval” resulting from “extensive and intensive conflict over lands and resources”. Government efforts were shown by RA No. 8371, the Indigenous Peoples Rights Act (IPRA), and by awards like the Certificate of Ancestral Domain Claim (CADC) and the Certificate of Ancestral Domain Title (CADT) to recognized IP groups. The Mining Law of 1995 also recognized the rights of the IPs. These studies provided good background on what the government did or failed to do for the IPs, but did not cover issues on mineral mining and its effect upon the SOS.

Issues with Ancestral Land Ownership and Use. There are 18 major IP groups identified in southern Philippines. They have a distinctive concept of land and resources. For example, Dante Sinhayan (2008), a 34-year-old emerging upland tribal leader spoke of ritual areas and sacred places in the forest and of how their lives as Lumads (IPs) were tied to their natural habitat, thus

“Our aspirations to continue to care for the forest must not be lost, for as Lumad, once the forest is gone, so our being a Lumad go as well....forest is one of our real identities....The identity of the Lumad as a person is tied to ... ancestral domain. The forest marks our ancestral domain.”

Private land ownership as shown for example by a Torrens Title (system of land registration in the Philippines) signifies personal (natural or juridical) possession. Under the Indigenous People’s Rights Act, ancestral land is also private but communal. On the individual level it is usufructuary. Commonly, people in the lowland speak about ancestral domain in terms of the pieces of paper called CADC or CADT or some other acronyms that signify ownership mainly in the legal and economic sense. But the ancestral domain concept as understood by the IPs means much more. This indigenous concept may be represented by what the Pulangiyan people (IPs along the Pulangi river in Bukidnon province) called gaup. Walpole (2010) noted,

“From the Indigenous People’s perspective, the gaup is the physical area where they live and carry out their way of life. This includes the village or settlement, and all rivers and surrounding forests...where they hunt, farm, gather materials for livelihood, settle their disputes, and conduct their rituals. Within the domain, land rights and clan relationships are
To the IP, ancestral domain is not just a source of livelihood. It is their life as individuals, and as community. It is therefore beyond the narrow confines of modern legislations.

There are issues the ability of the government to protect the IPs as component of polity. There is vague delineation of territorial boundaries. Numerous non-IPs have taken possession of ancestral lands because the boundaries between the ancestral lands and the disposable and alienable lands are not clear. The IPs therefore could not eject land grabbers using the machinery of the State.

Furthermore, the government has difficulty identifying who are the real IPs. Many people of the migrant descent claim to be IPs and are officially counted as such. These pseudo IPs do not have the governmentality of true IPs. Not only does this complicate ancestral land ownership, it also makes it easy for mining companies to obtain the “social acceptability” (the free, prior and informed consent) requirement of the application for a mining permit (e.g., Junio, 2008)

Ancestral Lands and Mineral Mining. Both the private and the ancestral lands are subject to State imperium (authority to govern possessed by the State) in the grant it provides for paper possession (e.g., Torrens Title for private lands and CADC/CADT for ancestral lands). This claim to possession entitles the claimant to the use of the surface of the land only. Cuasay (2003) observed,

“Once minerals are discovered in the land, whatever the use it is being devoted at the time, such use may be discontinued by the State to enable it to extract the minerals therein in the exercise of its sovereign prerogative. The land is thus converted to mineral land and may not be used by any private party, including the registered owner thereof, for any other purpose that will impede the mining operations to be undertaken therein.”

The idea of the surface-depth split regards ancestral land purely in economic terms and undermines the IPs’ rights to self determination. Even with the “just compensation” clause, or the compensation that the government deems to be fair, the land is still treated as just another commodity devoid of spiritual, historical, ceremonial, or in general, of ethno-cultural value. Apparently the IPs were also paying the price of development.

However, benefit was deemed to offset cost. Mining proved to have been very important to the economy of Europe during the Industrial Revolution. It propelled economic growth for Canada and Australia. It could work in the Philippines. Mining groups like the Australian Templar Gold NL and the Canadian TVI Resources Development have been in Mindanao. Apparently, there is promise for the economy so
much so that the then President Gloria Arroyo lauded the Supreme Court’s decision affirming the constitutionality of the 1995 Mining Act as, according to her, it upheld the liberal policy of the government on mining (Almirol, 2006).

**State of Mining in the Philippines.** According to a report, in the 1980s the Philippines ranked as the 5th biggest producer of gold and 9th biggest producer of copper in the world. These minerals constituted more than 2.0 percent of the country’s gross domestic product (GDP) and 21.3 percent of the country’s export total. In 2003 the same report (Agcaoili, 2004), said that

> “The mining industry contributed P42 billion [US$1.4B at PhP29 to the dollar in 2003] in production value, P18 billion [US$0.6B] in value-added contribution or 1.52 percent of the GDP... 1.8 percent of total Philippine exports, P2.1 billion [US$0.07B] in taxes and fees, P5 billion [US$0.2B] in wages and benefits, and provided more than 104,000 direct employment.”

Preliminary data in 2009 showed that the gross production value from large-scale metallic mining, small-scale gold mining and non-metallic mining in the Philippines was P82.1B (US$1.6B at PhP51 to the dollar in 2009). The gross value added (GVA) was P96.9B (US$1.9B) and the mining contribution to the GDP was 1.3 percent. Minerals and mineral products represented some 3.9 percent of the country’s total exports. From taxes, fees and royalties the total for 2008 collected by the Department of Natural Resources-Mining and Geosciences Bureau (DENR-MGB), by the Bureau of Internal Revenue (BIR) in excise tax, and taxes by national government agencies and local government units (LGUs) was more than P7.6M (US$0.1B). (Mines and Geosciences Bureau, 2010)

According to one report, there were 57 large-scale mining operations in the country, and 27 of them were in southern Philippines, particularly, Mindanao (Zarate, 2008). Seven of these along with four small-time groups are listed to have been operating in seven localities in the island (Table 1). The large mining groups that can individually operate upon a total of 16,200 hectares in the country include: the Xstrata Copper-Saguittarius Mines, Inc., TVI Resources Development, Inc. of Canada (TVIRD), Tagnito Mining Corporation, J B Mining, Blucor and Helica Group of Mining Operators, and, Southeast Mindanao Mining Corporation. They extract gold, iron, copper, zinc, silver and nickel. The operations affect twelve tribal groups.

Of the seven operations, only one was under the Financial or Technical Assistance Agreement (FTAA), the rest were under the Mineral Production Sharing Arrangements (MPSA). Under the FTAA, the government would get contractor’s corporate income tax, excise tax, special allowance, and withholding tax from dividends or interest payments of foreign stockholders, among others. Under the MPSA, the government would get 2% excise tax (Sec. 81, Ch. XIV, Republic Act no. 7942; Sec. 151, Republic Act no. 7729).
Table 1. Some Mining Areas, Sites of Struggle, in Mindanao

<table>
<thead>
<tr>
<th>Project Location</th>
<th>Reported Owner</th>
<th>Product</th>
<th>IPs Affected</th>
<th>Scale</th>
<th>Arrangement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small-scale mining, Dansolihon, Cagayan de Oro¹</td>
<td>Small-time miners some of whom are IPs</td>
<td>Gold, iron, copper,</td>
<td>Manobo/Higa-onon</td>
<td>Unknown</td>
<td>None</td>
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<tr>
<td></td>
<td></td>
<td>zinc</td>
<td></td>
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<tr>
<td>Tampakan Copper-Gold Project, Tampakan, South Cotabato;</td>
<td>Xstrata Copper-Saguittarius Mines, Inc. under the financial or technical</td>
<td>Copper, gold</td>
<td>B’la-an</td>
<td>Large</td>
<td>FTAA⁸</td>
</tr>
<tr>
<td>Columbio, Sultan Kudarat; Kiblawan, Davao del Sur²</td>
<td>assistance agreement (FTAA) with the government</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Balabag Project, Diplahan, Zamboanga Sibuguey³</td>
<td>Gold, silver</td>
<td>Subanon</td>
<td>Small; Large</td>
<td>MPSA⁹</td>
</tr>
<tr>
<td></td>
<td>Monte de Oro Small-Scale Mining Association (MOSSMA); TVI Resources</td>
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<td></td>
<td>Development, Inc. of Canada</td>
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<tr>
<td></td>
<td>TVIRD Gold Mine, Siocon, Zamboanga del Norte⁶</td>
<td>TVI Resources</td>
<td>Gold, silver</td>
<td>Large</td>
<td>MPSA</td>
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<td></td>
<td>Development (TVIRD, Canada)</td>
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<td></td>
<td>Nickle Mining, Claver, Surigao del Norte⁵</td>
<td>Tagnito Mining</td>
<td>Nickel</td>
<td>Large</td>
<td>MPSA</td>
</tr>
<tr>
<td></td>
<td>Corporation</td>
<td></td>
<td>Mamanua</td>
<td></td>
<td></td>
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<tr>
<td>Diwalwal Mines, Compostella Valley⁶</td>
<td>JB Mining, Blucoor and Helica Group of Mining Operators, Southeast</td>
<td>Gold</td>
<td>Mandaya, Manobo,</td>
<td>Large</td>
<td>MPSA and</td>
</tr>
<tr>
<td></td>
<td>Mindnao Mining Corporation, Upper Ulip Tribal Emancipation Coop; etc.</td>
<td></td>
<td>Manguangan, Dibabawon</td>
<td></td>
<td>varied</td>
</tr>
<tr>
<td></td>
<td>Small-Time Mining Operations, Tumpagon/Pigsag-an, Cagayan de Oro⁷</td>
<td>Unidentified groups</td>
<td>Gold</td>
<td>Manobo/Higa-onon</td>
<td>Unknown</td>
</tr>
</tbody>
</table>

¹Collantes and Jayme (2008)                                
²Tomas and Celebrado (2008)                                
³Junio (2008)                                              
⁴Tio (2008)                                                
⁵Macabuac-Ferolin (2008)                                   
⁶Canuday (2008)                                            
⁷Xavier University Reconnaissance Team (2010)               
⁸Financial or Technical Assistance Agreement               
⁹Mineral Production Sharing Arrangements

The promises of its positive effects notwithstanding, there are issues associated with mining: ancestral rights to land, human rights and welfare, environmental sustainability, employment and revenue sharing, and the various forms of corruption. These are discussed below.

The IPs get sustenance from and carry out their way of life in their ancestral land, as shown earlier. Unfortunately, they are losing much of it to mining. The inability of government to adequately regulate mining operations brings about the issue of human
welfare. Massive landslides have occurred in Diwalwal, in Bayog and other mining sites where lives were lost, and where health and safety standards were not observed. Human rights were violated as residential displacement and other types of “collateral damage” took their toll on life and property (PASAKA, 2008). These could happen in the upper Cagayan de Oro City and other mining sites (Collantes and Jayme, 2008).

The ancestral land often is home to endangered species of plants and animals. A typical example is the case of Davao Oriental province where a mining claim covers a mountain range declared as wildlife sanctuary (RA No. 9303 of 2004), habitat of the endangered Philippine Eagle and contains a “pygmy forest” with dwarf mosses, lichens, plants, orchids and trees that cannot be found anywhere in the world (Zarate, 2008). Likewise, the environmental effects of mining in a place like this are both on-site and off-site due for instance to massive soil erosion (resulting in the siltation of river and reef) that threatens water resource sustainability.

Mining is business and its conduct has import on the economy. However, employment in mining and quarrying based on preliminary data for 2009 was negligible at 166,000 jobs. Its contribution to total employment in the country was only 0.5 percent (Mines and GeoSciences Bureau, 2010).

The sought-after effect of mining on the life of the people and on the economy is obscure. Arch. Antonio Ledesma (Cagayan de Oro) said that “after fourteen years of the implementation of the Mining Act of 1995, no solid proof of progress especially in the SOS is evidenced” (Fabe, 2009).

With proceeds from mining, cui bono? A clue may be found in the guarantee that a Philippine embassy guarantees to mining investors: repatriation of investments and remittance of earnings (DTI, 2013). The SOS did not benefit from these earnings. In 2007, fiscal arrangements on FTAAAs were revised by Department Order (DAO) 2007-12 because the Environment Secretary said that the previous profit-sharing scheme was disadvantageous to the government whose share was “somewhere from zero to nil”. However, most of the sharing arrangements then were MPSAs which were described as highly disadvantageous since the government was only getting two percent in excise tax (Table 1).

Supreme Court Justice Antonio Carpio said,

“There are only two FTAAAs (at present), and both were signed before the effectivity of DAO 2007-12....The two existing FTAAAs will still be governed by the formula in the old DAO 99-56.

DAO 2007-12 applies only to FTAAAs and not to MPSAs... There is no law or DAO that gives the Filipino people any share, not even a single centavo, in the profits from MPSAs. And yet all the existing mining permits issued by the government are MPSAs (267 MPSAs approved as of July 31, 2007) except for the two FTAAAs.” (Zarate, 2008).
Finally, there are issues on corruption, ambient issues that cut across discussions on the matter of ancestral domain and mining. Civil society organizations had been active in many undertakings and had gained success in a number of activities, notably for ancestral domain mapping (Abeto, Calilung, Talubo and Cumatang, 2004; Cf. Mackay, 2013). There were at least 14 civil society organizations, including those of IPs, in the SOS. But there were IP organizations with mining stakes. In addition, small-scale miners organize into cooperatives. Citing the report of Pacific Strategies and Assessments, a company providing foreign embassies and corporations in Manila with intelligence and business climate information, Bergonia (2011) said that Chinese firms “circumvents a mining law that sets high standards for environmental protection and rightful compensation by using a law on small-scale mining by Filipino owned cooperatives…Chinese firms bribe their way into local government units to gain access to mining sites with the help of Philippine partners that operate as small-scale mining groups”. In fact, Chinese nationals sometimes do hands-on mining. Three of them were arrested due to illegal mineral extraction in Tumpagon, Cagayan de Oro in January 2013 (Malalis and Recalde, 2013; Fabe, 2013).

Corruption had seeped into some non-government organizations (NGOs). Local politicians had generally been supportive of mining. And they had the support of the politician organized NGOs, the PONGOs. The businessmen who had stakes in mining had their own BONGOs (Businessmen Organized NGOs). With money to spend through the PONGOs and the BONGOs, those with big stakes in mining were able to obtain quite easily from among the IPs the social acceptability (or the Free and Prior Informed Consent) requirement of the application for mining operation permit.

The civil society organizations, including those of the IPs’ in the SOS, that were supposed to uphold the socio-cultural values of the community did not have a common stand (Junio, 2008). Some IPs had organized to push for their mining claims. Hence, they had become careless with their ancestral resources (Cf., Sinhayan, 2008).

Sources of Data

Aside from public records and published sources, data for this paper were taken from a study conducted among the residents of three barangays (villages) in SOS up the hinterlands of Cagayan de Oro. These SOS barangays were Tumpagon, Tuburan and Pagatpat. The methodology of the study included a survey of forty-five households, the three focus discussions with residents and local officials and six in-depth interviews with key informants in three SOS barangays. Questions about household expenditures, income, assets, mining and other livelihood activities, and similar questions were asked.
Findings

It may be recalled that this paper argues that if the following hypotheses were correct: 1) the law along with the manner of its implementation is adequate to protect the SOS, and, 2) the government of the country adheres to a principle of responsible governance for human welfare, the the presence of mining activities in the SOS would be supportive of environmental sustainability and human welfare. This argument stems from the fact that mining produces billions of dollars, and if the government is doing what it is expected to do, the environment would be protected and the people especially the IPs would reap some benefits.

The three SOS villages covered by the study are hilly and mountainous with some flatland along the river bank. The total population size was 8,805 in May 2010 (NSCB, 2013), distributed among a total of about 1,761 households mostly of ethnic Higao-onon and Manobo decent. Iponan River cuts across these villages.

In the past there were controversial ancestral land claims in the area. But because settlers kept coming in, legitimate claims were muddled and the government was hard put in protecting the native rights. One could hardly identify the real from the pseudo IPs.

In the SOS, the mining activities were producing gold; quarrying activities were extracting sand and gravel. These activities individually were small scale. But since there were many gold pits and quarry sites over a vast expanse the environmental impact was undoubtedly large scale.

Mining in the area was started in the late the 1970s by a Korean national, according to an FGD. The natives followed suit by doing manual excavation. Flushing the mountain and hillsides began in the late 1990s when they employed machines to speed up their activities.

Gold mining was by hydraulic pump. Gorra (2013) said, “This method involved blasting hillsides with huge volumes of water siphoned from the Iponan River through water hoses, then released through sluices where the gold got separated from the rocks and gravel.” The activity was commonly organized as joint venture of some ten to twenty people per gold pit. Each individual member of the group was entrusted with a specific function that served as basis of production share. The flushing and/or excavation activities would normally start at 5:00 o’clock in the morning and end at about 4:00 o’clock in the afternoon daily except Sunday, the day of rest.

The miners would look for reddish stones locally called tawasi to indicate the presence of gold and therefore the good site for mining. Mainly the labor was manual. For example, digging and hauling of dirt were assigned to male laborers while segregating rocks from the hauled dirt, panning and sand straining were done by women and children.
Each group would have team leader, the one providing for financial capital (e.g., for gas generator pump, water hose and fuel). And the rest would be laborers. In one month, a mining team of 20 people could tear up a one-fourth (¼) hectare piece of slopeland, dig six meters deep and create a 20-meter long tunnel. This activity would normally require two gas pumps, at least fifty meters of water hose and six drums of gasoline in one month, and produce some 400 grams of gold.

Sand and gravel quarrying were being done in the middle of Iponan River. The laborers would dive into the middle of the river, scoop sand or gravel into a container, carry it on the shoulder, and deposit it in a stockpile at the river bank. Sand and gravel for sale were taken from the stockpile. Sometimes, organized groups of five members each would use mechanized payloaders to quarry. They were allowed to work in an area equivalent to one hectare.

Some mining and quarrying activities had permits issued by the local government; others did not (Lagsa, 2012). There were no available official records of mining and quarrying operations, so the extent of the activities across the mountainous landscape was unknown.

Environmental Sustainability

Heavy and steady soil erosion were the inevitable consequence of mining and quarrying, especially since there was no government monitoring or supervision over the activities, and some gold pits or quarry sites had no permits. The FGD participants identified the destruction of the environment as the major effect of these operations upstream (loss of marine life and the people must put up with murky water). People could no longer wash clothes in the river. All FGD respondents were unanimous in saying that “Mining causes destruction and has no benefit whatsoever to their community; it destroys the mountains and wastes and tailings go to the river”.

According to a study conducted by the College of Engineering of Xavier University, the areas are landslide risk: “Hydraulic mining has changed the natural landscape and stability of the mountain. Pits created from flush mining (about 50 of them) left craters of 100-500 cubic meters which could result in massive mudflows to the Iponan River. Silt deposits were estimated to be around 123 metric tons per year…The volume of bedload --- particles that flow through the stream along its bed --- is around 44,000 cubic meters.” (Gorra, 2011).

In short, there was no environmental sustainability to speak of.
Human Welfare

Undoubtedly, gold mining was more lucrative than farming, *ceteris paribus*. Human welfare, however, is hinged not only on productivity or profitability. Hence, this section dwells on earnings, expenditure, source of credit, and health.

**Earnings.** Income from farming was estimated to bring to the household some US$46-81 per month (at PhP43 to the dollar). If one farmer did gold mining he would get about US$165. Other members of the family also tended to participate in mining activities. Hence, household income from mining could easily go up to US$302 per month.

The average poverty threshold for years 2009 and 2012 was US$214 for a family of six members in Cagayan de Oro City. Consequently, the household would have been clear of the poverty threshold by about US$88 per month.

Closer examination of how mining benefits were distributed however revealed cases of exploitation. For one thing, the large percentage of the proceeds was going to the “owner” of the land and the financier (Table 2). Parenthetically, slopelands are generally non-alienable and non-disposable. Hence, no one could claim titled ownership over them.

| Table 2. Distribution of Mining Proceeds Per Month |
|-----------------------------------------------|------------------|
| Appropriation | Computation | Amount          |
|----------------|----------------|
| Land Cost (LC) | Land Owner (20% of the total Revenue) = Php 520,000.00 x .20 | Php 104,000.00 (US$2418.6) |
| Operational Cost (OC) | 6 drums of gasoline (220 liters in 1 drum at Php 46.00/liter) | Php 60,720 (US$1412.09) |
| Total Revenue (TR) | 400 grams of gold at 1,300 pesos per gram | Php 520,000 (US$12093.02) |
| Net Revenue (NR) | TR – (LC + OC) = NR 520,000.00 minus 104,000.00 minus 60,720.00 | Php 355,280.00 (US$8262.33) |
| Net Revenue Sharing | Gas Pump & Hose Owner (60% of net revenue) = Php 355,280.00 x .60 | Php 213,168.00 (US$4957.40) |
| | 20 laborers (40% of net revenue) = Php 142,112 ÷ 20 | Monthly Earnings: Php 7, 105.60/laborer (US$165.25) |
| | = Php 7,105.60 ÷ 24 days | Daily earnings Php 296.06/laborer (US$6.88) |
And for another, the lack of formal government protection increased the risk of exploitation of mine laborers by intermediaries or traders. For example, in the formal market, gold would sell at US$43.00 per gram, the price offered by the Central Bank of the Philippines. In the informal markets at the SOS, gold would trade at US$27.91 to 30.23 per gram.

**Expenditure.** One indication of economic upliftment is the low percentage of household income that goes to food. For instance, in countries like the US and the Netherlands the percent of income that goes to food was 11 percent or less. In countries like Pakistan and the Philippines, it was more than 40 percent. In the SOS, more than 65 percent of income was going to food.

**Sources of Credit.** Poor, powerless and vulnerable households often rely on informal money lenders for credit at usurious rates. This is mainly because formal lending institutions generally require collateral that poor households do not have. At the SOS, the mine laborers rely on their financier for their financial needs.

**Health and Safety.** The mine laborers and the children did not wear protective gears. Aside from skin diseases, the most common complaints were body pains from injuries. Like in other mining sites, there were deaths from accidents, although most of the time these were not reported (Gorra, 2013).

**Conclusion**

Indigenous peoples all over the world generally have strained relationships with the numerically and politically dominant groups as alluded to in the review of the literature. In the SOS being illustrated in this paper, the strain might have been because government had hitherto fallen short of expectations on responsible governance vis-à-vis mining, the environment, and human welfare in ancestral lands. The law has been rather inadequate. For example, there is no law that regulates sharing arrangements among partners in a small-scale mining venture. This is because small-scale mining ought not to demand huge capitalization. But joint venture is there, and it becomes an avenue for exploitation. Similarly, there is no law that regulates the cost of gold for example at the SOS level. This again is a question where poor mining hands get exploited.

Unless the law is implemented to the fullest, its adequacy cannot be fully assessed. The implementation of the law has been deficient. Many groups mine without permits, and the ancestral land boundaries are not well established. In the face of inadequacies in the law and the deficiencies in its implementation, human welfare was given little attention if at all.

There is no wonder why the condition of the people in the SOS remains unfortunate.
Discourses on mining in ancestral lands tend to concentrate on polar extremes: for or against, like the gluttony of one versus the avarice of the other. Some trade-off should be possible for something like the munificence of one and the benevolence of the other, such that mining becomes a factor for sustainable development for IPs and non-IPs alike. Much work is needed and the priorities may begin with the following: 1) the government should be able to identify who the real IPs are and delineate their ancestral land; 2) the government should have the political will to demand from the business sector engaged in mining its social responsibility; 3) the mining business sector should develop schemes to help the government and concerned groups in restoring the ridge, desilting the river, and rehabilitating the reef; and, 4) civil society, business and government should work together to contain corruption and restore decency in transactions.

One may painfully experience split sympathy for the IPs and their historical rights on the one hand, and for the need of the country to address poverty among majority of Filipinos, on the other. Reminiscence of the past should not smokescreen the practical needs of the majority. Hence, the search for a happy compromise should continue.

For a start, the government should identify who the IPs are in a domain, as mentioned earlier. The regular census count does not have this category. At the same time studies should be conducted on the extent and demarcation of the domain taking into account such considerations as the recorded reach of Spanish taxation (cf., Malayang, 2001), the demographic characteristics, the natural wealth of the domain and so on. These efforts should be able to address issues on ownership and security of tenure.

Then the government should have the political will to be stringent with corporate reporting and to require operators to be transparent with mining contracts and revenues. Subsequently, the fulfillment of social responsibility can be demanded of them to include human welfare services and sustainable livelihood sources to address poverty in the SOS.

Also, since the government maintains dominium over subsurface assets even of ancestral land, it should bring back revenues from mining operations to the indigenous SOS to enhance human security, protect the natural habitat of rare flora and fauna species and ensure renewable resource sustainability. Even small-scale mining should be regulated, monitored and supervised.

The social responsibility of operators extends to off-site impact of mining. And so, it should support research and development efforts for the ridge, river and reef, being advocated by civil society organizations.

Finally, corruption so flagrant and so systematized has been a big problem. Civil society organizations should close ranks and work with government and other concerned groups to plan out innovative strategies to contain it.
References


