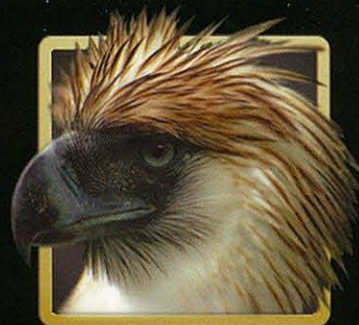
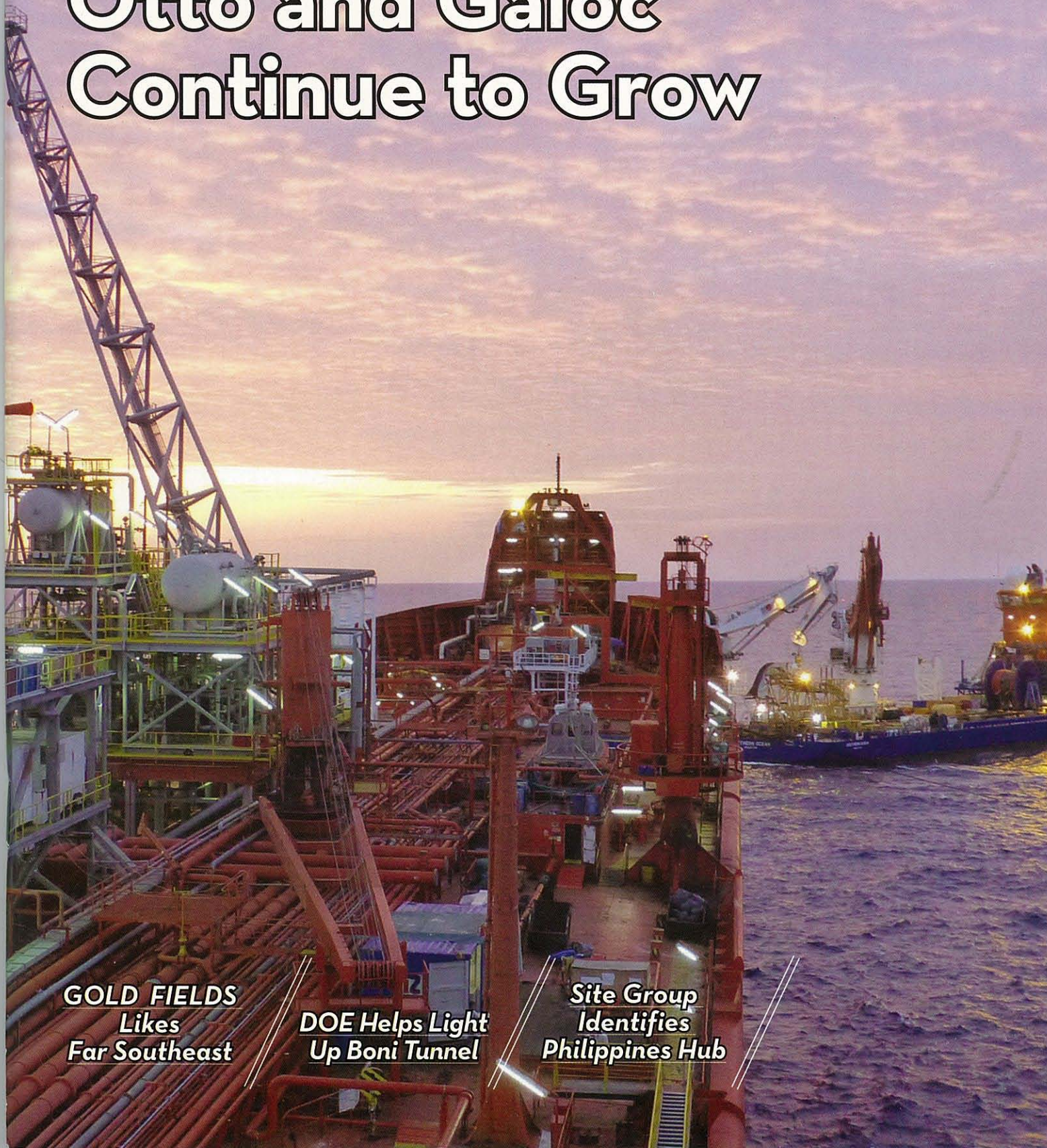


Philippine Resources

Mining, Petroleum & Energy Journal
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Otto and Galoc Continue to Grow



GOLD FIELDS
Likes
Far Southeast

DOE Helps Light
Up Boni Tunnel

Site Group
Identifies
Philippines Hub



Headlines in this issue

Front cover photo shows the reinstatement of the Galoc oil field Float Production, Storage and Offloading off the Philippines coast. Otto Energy and its Galoc partners have had a string of successes in recent months as they look to extend the important field's producing life. See story page 28.



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The long and winding road

By Patricia A. O. Bunye

As this column is being written, the much vaunted national mining policy is in the process of being finalised and released.

Originally expected to be issued as a comprehensive Executive Order, it now appears that the national mining policy will be released as a policy statement which identifies a six-point agenda with corresponding action items.

Considering that, within the next few weeks and before the end of May 2012, the Mining Policy Study Group tasked to make recommendations to the President will still undertake consultations with national government agencies and the Chamber of Mines of the Philippines/large-scale mining companies, particularly on the fair, adequate, and equitably shared economic benefits from mining, it is possible that the national mining policy as currently drafted will still undergo further refinement before it is presented to the Cabinet Clusters on Economic Development and Climate Change.

These Cabinet Clusters will, in turn, conduct a final review before the proposed policy is submitted to the Executive Sec-



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retary, who shall then submit it to the President for approval.

In any event, the policy statement is expected to emphasize, among others:

- the utilisation of mineral resources has the potential to improve the economy and uplift the lives of many Filipinos
- the Government needs the support of various stakeholders, including the private sector, civil society, vulnerable and marginalized sectors, indigenous peoples and local government units (LGUs) to develop and utilize these resources
- the ecological richness of the Philippines must be properly valued and protected
- responsible mineral resource development, both large and small scale, has a role in sustainable development
- mining must be developed to ensure economic and social growth both at the national and local levels
- government shall endeavor to provide a good business environment for mining investors

The six-point agenda is as follows:

1. Ensure mining's contribution to the country's sustainable development (i.e. economic and social growth and environmental protection);
2. Adopt international best practices and promote good governance and integrity in the sector;
3. Ensure the protection of the environment by adopting technically and scientifically sound and generally accepted methods as well as indigenous best practices;
4. Enforce the primacy of national laws over local issuances and harmonise

laws, policies, and regulations;

5. Ensure a fair, adequate, and equitably shared economic benefit for the country and the people; and
6. Deliver efficient and effective management of the mining sector.

The action items corresponding to each of the six point agenda items are proposed to be implemented by means of both an Executive Order, with specific tasks being assigned to the relevant government agencies such as DENR, DOF, DBM, DILG, DA, DOT, DOJ, NEDA and others, and the filing within one year of the issuance of the national mining policy of bills covering additional proposed legislation.

Some of these action items include:

Agenda 1:

- Create an inter-agency council on mining and ensure participation and transparency in the mining industry to be modeled on the former Minerals Development Council
- Conduct public bidding/public auction of mining rights/tenements (abandon "first come, first serve" policy) for areas with known mineral resources, i.e., areas already explored and with value.

Agenda 2/Agenda 6:

- Creation of a Task Force Against Illegal Mining
- Implement a 'One-Stop-Shop' process for mining applications The 'One-Stop-Shop' process for mining applications, which will involve the clustering of similar activities
- Determine individual roles of agencies concerned and fix overlapping tasks and functions (i.e., MGB v. NCIP, MGB,

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v. LGUs, etc.). There will be a strong push to create Department of Environment separate from Department of Natural Resources, through legislation.

Agenda 3:

- Identify additional areas closed to mining (i.e., prime agricultural lands as determined by the Department of Agriculture, priority eco-tourism sites as determined by the National Ecotourism Council, critical areas and island ecosystems, among others). These additional areas include 78 ecotourism sites, whose polygons have been identified, but whose boundaries have not been determined. This identification will be subject to separate consultations.
- Adopt Programmatic and Sectoral Environmental Impact Assessment (EIA) in the Philippine Environmental Impact Statement System. In this connection, it appears that the DENR has re-imposed the provision that social acceptability

shall be a requirement for ECC approval.

- Use the geo-hazard maps/multi-hazard maps for the country and forecast of climate change impacts to determine "go" and "no-go" areas for mining based on areas reserved by law and executive issuances

Agenda 4:

The DENR/MGB have admittedly not proposed or adopted clear and specific measures to implement Agenda 4, "Enforce the primacy of national laws over local issuances and harmonize laws, policies, and regulation", notwithstanding that challenges to the primacy of national laws strike at the very heart of our Constitution, which provides the framework for the Mining Act, and the Mining Act itself.

Agenda 5:

- Ensure inter-agency coordination relative to Government share in mining revenues

- Study how LGUs can get direct access to their share (similar to PEZA)

Based on the presentation recently made by MGB Director Leo Jasareno to the Philippine Mineral Exploration Association, there are many proposals related to Agenda 5, such as declaring mine sites as the head offices of mining companies and pursuing the Domogan Bill (on the direct remittance of LGUs' shares in mining taxes), to ensure that benefits for LGUs are immediately enjoyed. With respect to mineral reservations which were originally proposed to be declared in earlier versions of the mining policy, Director Jasareno confirmed that these would only apply prospectively and existing FTAA/MPSA will be respected. The declaration of mineral reservations will also be subject to consultations on this matter.

Agenda 6:

- Establish a public, accessible, and comprehensible database which consolidates all relevant data from all con-

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only the right of preference or first consideration in the award of privileges provided by existing laws and regulations, with due regard to the needs and welfare of indigenous peoples living in the area.

There is also an added provision in the proposed rules to undertake a new FPIC process in case of mining activities after the exploration stage. However, the Supreme Court in *Cruz v Secretary of Environment and Natural Resources* noted that the right to negotiate terms and conditions granted under IPRA pertains only to the exploration of natural resources, which is merely a preliminary activity and cannot be equated with the entire process of 'exploration, development and utilisation' of natural resources which under the Constitution belong to the State.

'Free and prior informed consent' in all legal jurisdictions is often very hard to implement faithfully. Needless to say, the implications of a commitment to FPIC are financially costly for the resources company. Providing information is always an expensive operation and assessing whether consent has been given will be similarly difficult and costly.

The legal repercussions of the proposed amendments are clear – indigenous communities will now effectively have veto power over resources project design and implementation.

Could it be that this proposed amendments are nothing but an unreasonable regulation that would effectively kill the resources industry? Where then is the so-called "systematic, rational, transparent, participatory and fair decision-making process that will result in everyone winning" if the private industry is not allowed to be engaged in the drafting of these new rules.

Having been involved in numerous FPIC process for resource companies, I am of the opinion that the proposed rules are impractical and unworkable. Philippine Resources will continue to keep its readers updated on new developments related to these proposed FPIC rules. ■



Ready, Willing, and Able to Uphold Human Rights through VPSHR

By Mars Buan, Business Intelligence Manager and Senior Analyst for Pacific Strategies and Assessments (www.psagroup.com), based in Manila.

The Voluntary Principles on Security and Human Rights (VPSHR) is the only set of security and human rights guidelines designed specifically for extractive companies. The VPSHR recognizes the importance of the promotion and protection of human rights across the globe, alongside the constructive role the business sector and civil society play in achieving these goals.

Through the VPSHR, companies in the extractive industries are able to maintain

the safety and security of their business within an operating framework that ensures respect for human rights and fundamental freedoms of the communities where they operate.

Since the launch of the VPSHR in December 2000, more and more companies, governments, nongovernment organizations, financial institutions, and development agencies have joined the initiative and committed to apply the VPSHR as their global conduct and performance standard for operations. The VPSHR,

however, can be quite challenging to implement, especially for companies that want to apply the guidelines but are not part of the initiative; as well as for companies knowledgeable of the VPSHR but are operating in high-risk environments with weak governance.



Implementation Guidance Tools

Through the support and guidance of the International Finance Corporation (IFC), International Council on Mining and Metals (ICMM), the International Petroleum Industry Environmental Conservation Association (IPIECA), and International Committee of the Red Cross (ICRC), a team of VPSHR consultants led by Stratos and supported by Pacific Strategies and Assessments (PSA), the VPSHR Implementation Guidance Tools was officially released in 2011.

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cerned stakeholders and sources (which includes maps under the proposed one-map system for government of mining areas, protected areas, ancestral lands and domains, among others

With respect to the proposed legislative agenda for mining, the bills to be filed are expected to cover the:

- Enactment of a Comprehensive Mineral Code to cover the mining sector
- Crafting a definition of Medium Scale Mining and the rules that will govern its operations
- Amendment of provisions of the Mining Act on incentives for the mining industry in light of alleged abuses by some mining companies

Once the national mining policy is finally approved, the MGB, with the approval of the President, is expected to lift the moratorium on the processing and approval of exploration permits. Considering that the moratorium has been in place since 2010 and in light of the reported decrease in mining investments due to the negative signal sent by the moratorium to existing and prospective investors, its lifting is at least one of the anticipated positive effects of the impending issuance of the policy. ■