

Philippine Resources

Mining, Petroleum & Energy Journal
Issue 3 2012, August - October



Philippines' Golden Future

**EO 79 Puts
Mining in the
Limelight**

**Women Have
Their Say**

**Gas2Grid Ready
to Drill on Cebu**



Headlines in this issue

Front cover photo shows a typical gold pour. While the Philippines' gold production has fallen significantly this year, a string of new projects is expected to help turn that around.



Resources Commentary

- 8 *Legislative Initiatives Poised to Make Life More Difficult for Mineral Explorationists*
- 12 *An Afternoon Well Spent: A Dialogue with IPs and Women on EO79*
- 18 *Industry welcomes signing of new mining order*

Infrastructure Investment

- 22 *ADB pours US\$625 million into infrastructure support*

Mineral Resources

- 24 *Nickel the rising star for Philippines Mining*
- 28 *Masbate provides CGA with strong quarter*

Oil & Gas Resources

- 34 *Gas2Grid ready to start Cebu drilling campaign*
- 38 *Otto Energy has a busy schedule ahead of it*
- 40 *Site wins Shell training work*
- 42 *Shell confirms commitment to Philippines with major LNG plans*
- 42 *Total farms into Block SC56*



An Afternoon Well Spent: A Dialogue with IPs and Women on EO 79

By Patricia A. O. Bunye

Since the issuance of Executive Order No. 79, Series of 2012 (“Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources”), we have heard a cacophony of voices expressing divergent views on the so-called national mining policy, prompting DENR Secretary Ramon Paje to comment that, since no one group or sector was completely happy or completely unhappy with the EO, it must be a balanced policy.

Lost among these voices were those of “special mining stakeholders” – women and indigenous peoples who are among those who stand the most to gain (or lose) in the implementation of EO 79.

Recognizing the need to hear the



Patricia A. O. Bunye is a senior partner at Villaraza Cruz Marcelo & Angangco (website www.cvclaw.com). Her areas of specialization are mining and natural resources, power and energy and intellectual property (particularly IP commercialization). She may be reached at po.bunye@cvclaw.com.

thoughts, feelings and hopes of the women and indigenous peoples, Diwata-Women in Resource Development, Inc. (DIWATA), held a groundbreaking dialogue with them on 30 August 2012 entitled “EO 79: The IPs and Women’s Views”.

In the audience were National Commission on Indigenous Peoples (NCIP) Chairman Zenaida-Brigida Pawid; Director Edwin G. Domingo of the Foreign Assisted and Special Projects Office of the DENR; Mines and Geosciences Bureau (MGB) Assistant Director Elmer B. Billedo and Department of Agrarian Reform Undersecretary Rose Bistoyong, as well as representatives from the mining industry, academe and civil society.

Indeed, it was a rare opportunity to engage these women and indigenous peoples in a frank no-holds barred discussion that one of the IP panelists described as cathartic after not having sufficient opportunities to tell their story.

The tone and context of dialogue were set by the moderator, Atty. Jose Molintas, Member of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) of the United Nations Human Rights Council, and an Ibaloi, who underscored that the main concern of IPs is to have their rights to their ancestral domain and self determination, as well as economic development, to be upheld. The IPs are not simply “affected communities”, stressed Atty. Molintas, but the owners of the land who should be treated as partners in development.

The resource persons at the dialogue were Bai Dalina Samling, Chieftain of the B’laan in Tampakan, South Cota-

bato; Zenaida Anoy Dandana, Subanon Tribal Leader, Siocon, Zamboanga del Norte; and Nolda Querona of Bataraza, Palawan, all of whom spoke fearlessly and from the heart.

Although the resource persons belong to communities that are in different parts of the Philippines, and the mining projects located in their respective areas are run by companies in different stages of development, it was apparent from the stories they shared that their lives prior to the entry of the mining companies were very different from what they are experiencing today.

In the case of the B’laan, prior to the entry of Sagittarius Mines, Inc. (SMI) and its predecessor-in-interest, Western Mining Corporation, they had limited means of livelihood; their children could not go to school; health care, particularly prenatal and maternal care, were limited and the sick could not be brought to the hospitals due to the lack of roads.

The Subanon leader, Zenaida Anoy Dandana, related a similar experience. She related in their own language that, while she did not have the opportunity to go to school, with the entry of TVI Resource Development (Phils.), Inc. (TVI) into their area, she was able to send her children to school and they are now all professionals and gainfully employed. Her daughter, Gemma Dandana-Tolentino, who acted as her translator, is now a for-ester who works at TVI. Gemma is part of a team that spearheads the rehabilitation and revegetation of mined-out areas of Canatuan.

Continued on page 14 >



< Continued from page 12

Gemma expressed the Subanons' gratitude for TVI's presence in their community, which used to be isolated and unreachable even by government. The Subanons acknowledge that, over the years, TVI has been their partner in developing the community.

In the case of Nolda Querona, who hails from Bataraza, Palawan, she revealed that life prior to the entry of Rio Tuba Nickel Mining Corporation (Rio Tuba) had been difficult and they subsisted on cassava and bananas. Malaria, among other illnesses, was prevalent. Today, however, even the elderly who were once illiterate are now able to study under TVI's Indigenous Learning System.

The women's level of empowerment

was evident. Bai Dalina Samling gave credit to SMI's capability building activities for giving her the confidence in public speaking. They also displayed a good grasp of the technical aspects of the projects, such as on the merits of open pit mining, prompting the moderator to quip that they should be employed by the companies as consultants.

While many in the audience were already believers in responsible mining, the personal stories of these women touched them more powerfully than any statistics or documentation could. These women were living testaments of the positive change that responsible mining has brought to their day-to-day lives. Their smiles, fighting words and even tears reflected their gratitude, personal convictions and obvious apprehension over how things may change in future.

All three women expressed their communities' support for responsible mining and confirmed that the companies in their areas respect them, their ancestral domains and their aspirations. Zenaida Anoy Dandana, speaking through her daughter Gemma, was emphatic that they did not lose their dignity in allowing TVI to operate on their land. In fact, she said, that with the developments brought by TVI, their tribe became one of the most respected. In the past, before TVI came, she recalled that it was the age of illegal small scale mining. During that time, they felt that they had been reduced to slaves and women did not enjoy equal benefits.

With all these positive changes in their communities, these women understandably have mixed feelings about EO 79 and are apprehensive about changes that

Continued on page 16 >

Continued from page 10 >

and the LGUs where the mineral and quarry resources are extracted. In particular, revenues from the three and a half percent (3.5%) tax on minerals shall accrue to the National Treasury, while revenues from the other three and a half percent (3.5%) tax on minerals shall be remitted directly to the LGUs as support for their Special Education Fund.

Nevertheless, the IMF admitted that simply extending the royalty to mines outside a mineral reservation or increasing the rate of the mineral excise would increase production-based levies and would make the fiscal regime unattractive for mining projects of low profitability.

It has been reported that for the Mining Industry Coordinating Council, (MICC), created and deputized under EO 79 to prepare its implementing rules and regulations, the question of whether or not mining would continue to enjoy incentives depends on the proposed legislation being crafted by the Department of Finance (DOF) to rationalize the revenue and benefit sharing-schemes and incentives given to mining companies.

The DOF is also considering inputs from the IMF Report, which recommended among others, the repeal of the Board of Investments and Mining Act tax incentives. As reported, the MICC is inclined to strip prospective mining projects of incentives, a move that has to go through legislation, which the Aquino administration is expected to prioritize the passage of. However until the issue on government share is resolved by the MICC, the question on incentives cannot be tackled. The government cannot take away existing tax incentives given to mining projects but there will be no new incentives for mines opened in the future if Congress strips existing incentives.

It appears that the confluence of these legislative and policy measures currently being undertaken by the Philippine government will cause investors in the industry to reevaluate their business strategies and cash flow analyses. As it is, mineral explorationists will face the inevitable task of telling their shareholders if it is worth spending further risk capital on the Philippines or it is time to pack their bags and leave for safer and stable havens.

Fernando "Ronnie" Penarroyo is the Managing Partner of Puno and Penarroyo Law Offices (www.punopenlaw.com). He specializes in Energy and Resources Law, Project Finance and Business Development. ■



< Continued from page 14

may be brought about by its implementation.

In the case of the B'laan, while they are pleased that EO 79 demonstrates the national government's support for mining, and underscores that local ordinances must be consistent with national laws, they continue to face a provincial ordinance banning open-pit mining in South Cotabato. They are bewildered that, simply due to the existence of the said ordinance, the DENR denied SMI's application for an environmental compliance certificate (ECC) notwithstanding the company's compliance with all the relevant requirements. The ECC's denial prevents SMI from proceeding to construction and operation and delays their timetable by at least two years.

Bai Dalina Samling sees it as a case of the provincial government trampling on their rights as IPs, particularly the right to self-determination, as their tribes

support for the Tampakan Project is vocal and unabashed. She says that it is only because it is not customary for tribe to show their dismay and disapproval over this setback by holding rallies or protest actions that they are not taking to the streets. However, they have made their sentiments known through manifestos which they hope the government will heed. She also called on the government representatives present at the dialogue to help them elevate their pleas all the way up to the President if necessary.

In the case of the Subanons and the community in Bataraza, Palawan, they are more concerned about the provisions of EO 79 on the moratorium on new mineral agreements pending the enactment of legislation defining a new revenue sharing regime, as well as the public bidding of mineral agreements which have expired.

As TVI and Rio Tuba are already operat-

ing, the communities in these areas are fearful that the implementation of the said provisions on the moratorium and public bidding would mean, among others, that when their current agreements expire, there is a possibility that new companies would be allowed to operate the mines in their area and that these would not provide the same opportunities to them as the current companies.

All three women expressed support and, yes, even love, for the companies that they are currently dealing with. Their apprehensions about any future change center on very basic human needs: education, livelihood, health and peace and order, all of which they expect government to provide, but which are provided instead by the companies, in this case, SMI, TVI and Rio Tuba.

They are one in the belief that responsible mining will sustain them, and are incredulous over how some unscrupulous groups claim to represent them and express opposition to the projects. Bai Dalina Samling says that the "datus", anti-mining NGOs and church groups who claim to speak for them are all outsiders.

She is adamant that it is her tribe living on their ancestral domain and the mine site, and therefore they know what is best for them. Zenaida Anoy Dandana and Nolda Querona joined her in inviting the audience to come and visit them to see for themselves the development that has flourished in their areas.

Not all mining is destructive, they declared, adding that God would not have given them bountiful mineral resources if He did not intend them to be utilized. ■

Who or what is DIWATA?

DIWATA is an NGO advocating the responsible development of the Philippines' wealth in resources. It is offered as a positive and productive platform for the discussion of issues in resource development.

The members of DIWATA are women involved in the different facets of resource development, representing a broad range of disciplines, with each one bringing to the table unique skills, talents and ideas.

DIWATA presents a unique voice and perspective. It has a special advocacy for the protection and upliftment of special mining stakeholders, particularly the women and our indigenous people – their livelihood, health, education, and culture.

As a result of its 30 August 2012 Dialogue, DIWATA will produce a White Paper to be submitted to the Mining Industry Coordinating Council (MICC), which it hopes will be a valuable input that would be appreciated and considered, not only by the MICC, but by all decision makers of the mining industry.

The next Diwata dialogue on Women in the Cordilleras will be on 14 November 2012 during PMSEA's Annual National Mine Safety and Environment Conference in Baguio City. ■