PAPER CHASE: MINING MINING DOCUMENTS

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Introduction

- Encouraging trend in environmental / local autonomy case law.
- This trend continues although national laws are involved.
- Mining companies are being shut down by the Supreme Court for violations of the Constitution and other statutes

The Cases

- SR METALS, INC. *v*. THE HONORABLE ANGELO T. REYES, G.R. No. 179669, June 4, 2014
- RESIDENT MARINE MAMMALS OF THE PROTECTED SEASCAPE TAÑON STRAIT, *v.* SECRETARY ANGELO REYES, G.R. No. 180771, April 21, 2015
- Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corp., G.R. No. 195580, April 21, 2014

SR Metals

- Two questions were raised before the Supreme Court. The first is the constitutionality of Section 1, PD 1899 which, according to the mining corporationsviolates the equal protection clause. They argue that there is no substantial distinction between the miners covered under RA 7076, who can extract as much ore as they can, and those covered under PD 1899 who were imposed an extraction limit.

- The second concerns the correct interpretation of the 50,000-MT limit. The mining corporations insist on their version of how to compute the extraction. To them, the computation of Ni-Co ore should be confined strictly to Ni-Co component from which they derive economic value.

Ruling

- Petitioners are governed by the annual production limit under Presidential Decree No. 1899. This was not repealed by Republic Act No. 7076.
  - The former covers persons, partnership, and companies.
  - The later covers cooperatives.

- The DENR, being the agency mandated to protect the environment and the country's natural resources, is authoritative on interpreting the 50,000- MT limit.

Resident Marine Mammals v. Reyes

Issues

- Procedural Issue: *Locus Standi* of the Resident Marine Mammals and Stewards, petitioners in G.R. No. 180771; and
- Main Issue: Legality of Service Contract No. 46.

- Recently, the Court passed the landmark Rules of Procedure for Environmental Cases, which allow for a "citizen suit," and permit any Filipino citizen to file an action before our courts for violations of our environmental laws:
  - SEC. 5. *Citizen suit*. — Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected *barangays* copies of said order.
  - Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions.

- In light of the foregoing, the need to give the Resident Marine Mammals legal standing has been eliminated by our Rules, which allow any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws. It is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species.
- The Stewards, Ramos and Eisma-Osorio, having shown in their petition that there may be possible violations of laws concerning the habitat of the Resident Marine Mammals, are therefore declared to possess the legal standing to file this petition.

- The petitioners insist that SC-46 is null and void for having violated Section 2, Article XII of the 1987 Constitution, which reads as follows:
  - Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

- The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.
- The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.
- The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.
- The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

- While the Court finds that Presidential Decree No. 87 is sufficient to satisfy the requirement of a general law, the absence of the two other conditions, that the President be a signatory to SC-46, and that Congress be notified of such contract, renders it null and void.
- As SC-46 was executed in 2004, its terms should have conformed to the provisions of Presidential Decree No. 87 and those of the 1987 Constitution.
- Paragraph 4, Section 2, Article XII of the 1987 Constitution requires that the President himself enter into any service contract for the exploration of petroleum. SC-46 appeared to have been signed only by DOE Secretary contrary to the said constitutional requirement.
- Moreover, public respondents have not shown or alleged that Congress was subsequently notified of the execution of such contract.

- While the requirements in executing service contracts in paragraph 4, Section 2 of Article XII of the 1987 Constitution seem like mere formalities, they, in reality, take on a much bigger role. They are the safeguards put in place by the framers of the Constitution to "eliminate or minimize the abuses prevalent during the martial law regime." They are not mere formalities; they are requirements placed, not just in an ordinary statute, but in the fundamental law, the non-observance of which will nullify the contract.

- These service contracts involving the exploitation, development, and utilization of our natural resources are of paramount interest to the present and future generations. Hence, safeguards were put in place to insure that the guidelines set by law are meticulously observed and likewise to eradicate the corruption that may easily penetrate departments and agencies by ensuring that the President has authorized or approved of these service contracts herself.

- Ruling of the Court on the legality of Service Contract No. 46 vis-à-vis Other Laws

- Sections 12 and 14 of the NIPAS Act read:
  - SECTION 12. *Environmental Impact Assessment*. — Proposals for activities which are outside the scope of the management plan for protected areas shall be subject to an environmental impact assessment as required by law before they are adopted, and the results thereof shall be taken into consideration in the decision-making process.
  - No actual implementation of such activities shall be allowed without the required Environmental Compliance Certificate (ECC) under the Philippine Environmental Impact Assessment (EIA) system. In instances where such activities are allowed to be undertaken, the proponent shall plan and carry them out in such manner as will minimize any adverse effects and take preventive and remedial action when appropriate. The proponent shall be liable for any damage due to lack of caution or indiscretion.

- SECTION 14. *Survey for Energy Resources*. — Consistent with the policies declared in Section 2 hereof, protected areas, except strict nature reserves and natural parks, may be subjected to exploration only for the purpose of gathering information on energy resources and only if such activity is carried out with the least damage to surrounding areas. Surveys shall be conducted only in accordance with a program approved by the DENR, and the result of such surveys shall be made available to the public and submitted to the President for recommendation to Congress. Any exploitation and utilization of energy resources found within NIPAS areas shall be allowed only through a law passed by Congress.

- The public respondents admitted that JAPEX only started to secure an ECC prior to the second sub-phase of SC-46, which required the drilling of an oil exploration well. This means that when the seismic surveys were done in the Tañon Strait, no such environmental impact evaluation was done. Unless seismic surveys are part of the management plan of the Tañon Strait, such surveys were done in violation of Section 12 of the NIPAS Act and Section 4 of Presidential Decree No. 1586.

Narra Nickel Mining v. Redmont

- The Court held that petitioners, being foreign corporations, are not entitled to Mineral Production Sharing Agreements (MPSAs). In reaching its conclusion, this Court upheld with approval the appellate court's finding that there was doubt as to petitioners' nationality since a 100% Canadian-owned firm, MBMI Resources, Inc. (MBMI), effectively owns60% of the common stocks of the petitioners by owning equity interest of petitioners' other majority corporate shareholders.

- I understand that many of us oppose the applications for licenses to exploit resources. Many times government agencies grant these licenses despite defects in the application.
- These cases tell us that the battle to stop irresponsible mining continues after the grant of the permits. Cases may be filed either because there were incipient defects in the licenses or subsequent violations committed by mining companies.

- The cases tell us that monitoring of mining activities, as difficult as it is, can lead to information that can cripple or end mining activities.
- Examining the facts surrounding an application as well as the terms of licenses in relation to the requirements of the law can provide the bases for challenging the validity of these licenses.

- What does this mean for the struggle to protect communities from the harmful effects of large scale mining?
- A new theatre has opened. This one is not on the ground but in court rooms.
- We need to revisit the legal options that are available.
- This may require investment in legal and paralegal training. We need to train ourselves in studying contracts and the basic rules of interpreting these documents.

- We may need to know what acts constitute crimes or offenses.
- Who do we turn to when we uncover violations of the law? Can we invoke the aid of the Ombudsman? May we go straight to court?
- How do we go about asking government to terminate a license? What do we do if government agencies ignore our correspondence?
- This may also require us to imagine new arrangements or alliances for he provision of legal services.

- I hesitate in making these recommendations because of my own bad experience with litigation. Legal remedies are only one theater of battle. They take time and are rarely guarantee success.
- When we use the legal remedies it cannot be done at expense of community action at the ground level.
- When courts rule incorrectly, their decisions reify the injustices that we seek to address. Ideally our judges are learned and fair. In our experience, unfortunately, they are only human who can be inept, careless, or decide to play politics. The approach has been to augment legal remedies with grassroots organization and training in the hopes that marginalized communities can learn to fight these battles on their own.