



PH-EITI



Discussion Paper on Responsible Mining

Consolidated notes from the 1st and 2nd Roundtable Discussions on Responsible Mining held in Astoria Plaza Hotel, Ortigas last November 27, 2018 and December 11, 2018.



Background

Central to this discussion paper is the question, “What is responsible mining?” For several years since the passage of Republic Act 7076, or the People’s Small-scale Mining Act of 1991, and Republic Act 7942, or the Philippine Mining Act of 1995, their policy vision of improving the quality of life of the Filipinos through wealth creation and its equitable distribution remain to be elusive. Most of the communities playing host to these mining operations are yet to lift themselves out of poverty and conflict. Allegedly, fingers point to the irresponsible practices surrounding the extractive industry, both large scale and small scale.

Responding to President Rodrigo R. Duterte’s challenge to promote responsible mining (RM), the Chamber of Mines of the Philippines (CoMP) recently signed a declaration to pursue responsible mining practices in November 2017. The idea of responsible mining also impelled the civil society organizations (CSOs) to raise questions on the viability of a framework that juxtaposes “responsible” with “mining” as it produces a seeming oxymoron, short of, an irreconcilable paradox for how can an industry that necessitates destruction of the environment to be able to develop and utilize the mineral resources be responsible to begin with. Given the dilemma, Bantay Kita (BK) invited the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR), the CoMP and the Philippine Extractive Industry Transparency

Initiative (PH-EITI) to undertake a series of consultations, in a safe space and respectful atmosphere, through a round table discussion (RTD) with key stakeholders in the hope of finding a common understanding and mutually acceptable articulation of what “responsible mining” is.

Two RTDs were held on November 27, 2018 and December 11, 2018 for the Large-scale Mining (LSM) and Small-scale Mining (SSM) operators, respectively. In each of the RTD, representatives from the extractive industry, government and the civil society organizations were also present to contribute in the exchanges. A total of 60 participated in the consultations with 38 males and 22 females. These RTDs were carried out to 1) provide a safe space to discuss the concept of responsible mining amongst multi-stakeholders; 2) foster a continuing dialogue on the topic; 3) build knowledge on the concept and practice of responsible mining; 4) find points of convergence and agree on the concept that may contribute to the legal definition of “responsible mining” to support the review of current mining and mining related policies ; and, 5) develop and build consensus on a set of standards to monitor agreed commitments to pursue responsible mining. These objectives were achieved in an environment of respect and openness with a commitment to find a common ground and to recognize differences in their views and opinions on RM. The RTDs commenced with presentations of the discussion points from each sector

represented and followed by an open forum for plenary discussions.

At the end of the two RTDs, concepts relative to the participants' understanding of responsible mining and approaches to monitor compliance with the measures of success were documented. Below is the summary of the RTD's results.

Exploring the idea of “responsible mining”

While defining responsible mining was fraught with many challenges, conceptually and in practice, some of its elements were prominent in the RTDs revolving around the ideas of the 1] “three P troika,” 2] “pagtataya” or shared responsibility, and 3] “intergenerationality” articulated in both the aspirational and programmatic realms.

Primarily, RM was defined as one which “contributes significantly to economic growth while at the same time ensuring that the impacts to the environment are remediated toward sustained productivity of the land after mining and the host and neighboring communities are developed into self-reliant communities beyond the life of the mine.”¹ This definition is founded on the threefold elements of economic viability, technical feasibility and social acceptability. Adjunct to these elements are the requirements, that for mining to be responsible, it has to meet the fundamental

tenets of economic growth, environmental protection and social development or loosely translated as “profit, planet and people,” all with the end goal of sustainable development. The three “Ps” are to be treated as equals, but with “planet” as the primus inter pares (first among equals) signifying that primordial consideration is to be given to mining's responsibility to protect the environment. Underscoring the 3Ps of RM is the need for good governance especially in the area of natural resource. Without a sound policy environment and clear enforcement of the relevant laws, RM remains to be illusory, an imagined reality. The RTD therefore expanded the 3P troika to include an additional P for “policy,” which says that RM should be legally compliant making it the 4P requirement of “planet, people, profit and policy.”

This proposed description implies that mineral extraction is a community responsibility (personal, collective and agential) and must ensure the integrity of creation, uplift the quality of life of the people and assure a fair share for all in the benefits derived from mining. The primary consideration therefore is to keep at minimum the destruction of the natural environment and to attempt at optimal levels reconstruction and rehabilitation of affected habitats most especially after the end of mine life. As owners of the minerals, the people, especially those hosting the

¹ Initial definition provided by the MGB-DENR in their presentation and eventually affirmed during the discussions.

extractives, must be the principal beneficiaries of the rents derived from mining. This point is particularly amplified by the SSM RTD noting that SSM is driven largely by poverty and practitioners are generally poor. Hence, mining must not only be socially sensitive to the needs of the community but also to the culture, traditions and practices of the locals.

Furthermore, while it is unsettled as to who is responsible for the conflict in mining communities, the participants agreed that peace and security must be endeavored to keep the people away from all forms of conflict, armed or otherwise, especially when royalties will be downloaded in the future to the communities which lack the needed capacities to manage and govern these endowments. Ensuring safety and security necessitates the protection, respect and promotion of the rights of the host communities including of those who work in mining companies. Community well-being and empowerment, as an expression of social justice and the common good, are of paramount importance in promoting RM.

Similarly, the RTDs also underscored the need to foster the framework of a “shared responsibility,” one which requires a sense of “pagtataya”² to ensure that all key players including the government (national and local), the civil society organizations, the mining companies, small scale miners being recognized as a formal sector, the

host communities both in the upstream and downstream areas, the existing people’s organizations including the indigenous peoples and even the business sector in general, will all partake in crafting a common vision. This denotes that genuine representation and participation, in varying spaces of conversations and different phases of planning, implementation, monitoring and evaluation of the extractive operations, of all the stakeholders especially the civil society and the communities (including small scale miners), are requisite components of responsible mining.

A more nuanced understanding must be made in engaging the SSM practitioners owing to the observation that it is a “fractured sector,” which means that it is mostly unrecognized, their activities are generally done both inside and outside legally designated “minahang bayan,” poor knowledge of scientific environmentally sound mining practices and weak in terms of their social responsibility for community development. If the responsibility is to be shared, SSM must be integrated as a partner in achieving the shared goal. This shared responsibility commences from having a collective vision, reflected in a mineral extraction roadmap designed in solidarity by all the stakeholders. From here emanates a shared accountability to ensure that commitments are monitored quantitatively and qualitatively establishing

² A Filipino term which means more than staking, betting or wagering, it is investing in a commonly

agreed goal denoting part ownership of the outcomes.

a system of check and balance between and among players in the mining industry. This necessarily includes a more defined relationship between the LSM and the SSM especially in the delineation of mining areas.

While the responsibility is shared, it was recognized by the RTD participants that the state, through the government, is the primary duty bearer to deliver public goods and services to the people. Government should not rely on mining companies operating in far flung areas as substitutes in its obligation to provide the people employment, education, health and other basic social services especially in SSM areas. In the long run, the government is perceived as the custodian of this shared responsibility and as such, it is obligated to lead in the promotion of responsible mining through its regulatory and oversight functions. It was also emphasized that government should reduce bureaucratic red tapes to encourage registration of the SSM operators.

What was also glaring in the RTDs was the often repeated concept of “intergenerationality.” Responsible mining does not only take into account the resources as may be needed by the present generation, but more importantly, consideration must be made in the name of the generations yet unborn. The exploration, utilization and development of

natural resources has an intergenerational responsibility³ dimension to it in safeguarding the right of the future generation to a balanced and healthful ecology. This means that the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, offshore areas and other natural resources to the end that their exploration, development and utilization must be equitably accessible to the present as well as the future generations. Concretely and close to the ideals of national industrialization, the extractive activities must be rationalized so that mining responds to the actual needs of the people keeping enough for the future as opposed to giving in to the voracious demands of the global market. Natural resource valuation to determine ecology’s carrying capacity becomes integral therefore to the concept of RM.

Aspirationally, responsible mining and in the case of SSM, a responsible miner, appeals to the lofty ideals of environmental preservation, ecological conservation, social justice, economic development and intergenerational responsibility through means that are economically viable, technically/environmentally feasible, socially acceptable and legally compliant. At the programmatic level, responsible mining necessitates the articulation of a “shared responsibility framework”

³ As defined by the Supreme Court in the case of Oposa v. Factoran, GR No. 101083, July 30, 1993.

underpinned by the requirements of good governance including transparency, accountability and respect for human rights.

Monitoring “Commitments” to Responsible Mining

Articulating the ideals of responsible mining necessitates the formulation of its metrics and measures. Along this line, the two RTDs yielded some proposals involving a pre-work to review existing policies, creating a structure for multi-stakeholder participation, crafting a harmonized roadmap, and outlining the standards of measures for the monitoring work to be carried out more effectively.

An inventory of the current laws, policies and rules surrounding mining is imperative in order to track what are available and what are wanting in the Philippine environmental governance. RTD participants assert that some laws need to be harmonized because there are conflicting provisions of law which contributes to a less effective and efficient compliance monitoring on account of corruption that is bred by these policy distortions. Towards this end, it is also important to revisit existing monitoring mechanisms utilized by government agencies like the MGB’s scorecard and NCIP’s monitoring tool. They must be conscientiously evaluated to determine the tools’ effectiveness and utility. The result of this review can be used as basis in reconciling the tools with current standards that are internationally recognized

eventually producing a contextually appropriate tool for the Philippine setting. In support of this assessment, a comparative review of economic data over the past years is also essential in understanding the contribution of mining to poverty reduction, if there is any.

From this review strategy, a working structure which can facilitate a multi-stakeholder participation needs to be created in support of the “shared responsibility framework” articulated in the concept of responsible mining. This multi-sectoral and inter-disciplinary structure requires representation from the key players in mining, to wit: government (national and local) agencies, civil society organizations with the church and the academe, large scale mining companies, small scale mining operators, the host communities through their existing people’s organizations including the indigenous people’s and even the business sector and other RM champions. This commission, composed of representatives from various stakeholders, is entrusted with the duty to formulate, carry out and monitor the implementation of the Philippine Minerals Management Roadmap. Intrinsic to this function is the obligation to ensure that all mining operations in the country, both LSM and SSM, are undertaken according to the fundamental principles of responsible mining. Their way of proceeding must be evidence-based, gender and culture-sensitive, rights-based, collegial, professional, and inclusive among others. This commission shall also have an

oversight function on local monitoring bodies to ensure compliance with the agreed metrics and measures of responsible mining. Embedded in this role is the obligation to capacitate local MMTs on the utilization of RM monitoring tools. The local MMTs are also vital in monitoring SSM activities and therefore must be inclusive, well-capacitated and transparent. Furthermore, this structure must act as a policy recommending body to bridge the gap between the reality of practices on the ground, and the ideals of policy in governance.

Having formed a structure for monitoring, all players must commit to a commonly agreed roadmap or plan, or framework articulating the rationalization of the Philippine mineral extractive activities to guarantee that the responsible mining framework is upheld at all times. This Philippine Mining Blueprint, containing among others the responsible mining framework, national industrialization plan, rational minerals extraction targets, fiscal regime governing shares and benefits, accountability mechanisms, rehabilitation and RM monitoring tools must be generated through rounds of national consultation involving sectors, as diverse as possible, from across segments of the Philippine population with emphasis on mining affected communities.

The guarantee to espouse responsible mining also depends on the do-ability, utility and context-specific formulations of the monitoring tools. Crafting a universal tool, flexible enough to be used either for LSM or

SSM, may take its inspiration from readily available instruments used by the government and those that are internationally adopted, meeting the standards of responsible mining. It was suggested that the tools must be able to capture not only quantitative assessment but also qualitative evaluation documenting thick descriptions, stories and narratives from the experiences on the ground. It may also be helpful to expand the scope of monitoring on an ecosystem-based assessment through the Environmental Impact System (EIS) noting the interconnectedness of the natural environment such as the ridge-to-reef framework and also to capture the upstream and downstream link in SSM areas especially when mining activities are done outside the “minahang bayan.”

Indicators of responsible mining may also be identified from international standards and protocols like the Initiative for Responsible Mining Assurance (IRMA), and Towards Sustainable Mining (TSM) Framework, appropriating the same to the Philippine context. While the Responsible Mining Index 2018 (RMI) is not an international assessment protocol comparable to IRMA and TSM, the same can be used as a reference in drafting a Philippine-specific tool, especially that RMI uses an independent third-party audit of smelter/refiner management systems and sourcing practices formerly known as the Conflict Free Smelter Program. RMI is an independent benchmark comparing the largest mining companies in the world,

especially made for investors, end buyers, consumers or other third parties.

TSM can be a major source in formulating the indices for RM in the Philippines which is not only a self-assessment tool but involves a third party evaluation through the community of interests. This self-assessment is done annually but is verified every three years by an independent auditor to validate the claims made by the mining companies. It is a set of international protocols on how to implement mining activities in a sustainable manner, as practiced by Canada in their mining/extractive industries. The main objective of TSM is to enable mining companies to meet society's needs for minerals, metals, and energy products in the most socially, economically, and environmentally responsible way. There is promise seen in TSM Framework because it is performance driven and highlights accountability, transparency and credibility as core areas of its agenda.

IRMA on the other hand, defines good practices on how responsible mining should look like at the industrial scale. It provides the list of expectations that independent auditors will use as the benchmark for business integrity, planning and managing for positive legacies, social obligations and environmental responsibility of mining actors. IRMA as a self-assessment standard does not give mine sites the right to a certification but only indicates how prepared a mine is to certify. Certification happens only through independent third-

party audits. Apart from this, IRMA criteria are more elaborate and complete than TSM, combining the best criteria of the different standards available including some of the elements of TSM.

While the above protocols are good starting points, the RTD participants cautiously reminded all stakeholders that assessment must not only be limited to the economic and fiscal contributions of mining but more importantly, extractives must take to its core the bigger social impact of mining to the community and people in the light of issues arising from natural and human-induced disasters. In this same line of thought, a localized table of measures must be articulated to capture the challenges in regulating and monitoring SSMs since IRMA and TSM were specific to the LSM context. Over-all, it is still important that the tools to be developed must be shared in terms of commitment and ownership by all the stakeholders.

Some Notes for Further Consideration

On a definitional plane, alternatives to responsible mining have been offered. This includes, "sensible mining," "sustainable mining," "compassionate mining," and "rationalized mining."

Sensible mining, especially coming from the experiences of SSM operators, is proposed to mean that mining should be sensitive to the issues and needs of the people taking into consideration the ecological, political

and social conditions in the community. This necessitates the convergence of organizing, linking and partnership with good governance.

Another attempt to substitute responsible mining is the concept of sustainable mining, which recognizes that economic development is the overriding framework of responsible mining. Following the sustainable development goals, mining must not be isolated from the general developmental concerns of education, health, gender, water, urbanization and others. A key concept, that is, resiliency as an end goal, is also integrated in sustainable mining.

Taking off from the “compassionate gold” concept in the SSM RTD, it may be inferred that such is a result of a “compassionate mining” which recognizes SSM as part of the formal economy, legally operated with environmentally sound practices, decent work conditions, gender-fair and child-friendly environment preventing the escalation of conflict and establishing transparency in the supply chain.

The fourth proposition is “rational mining” as implied in the discussions. This means a calibrated extraction of minerals to serve the greater ends for the host communities with conscious commitment to its responsibility to provide for the future generations.

While “responsible mining” is particularly inspired by the issues and concerns of the

LSM experiences, the SSM RTD also asserts that the ideals of a “responsible miner” be articulated since most of them operate in an individual capacity and seldom in aggregates.

Lastly, there is also a recognition that the SSM activities require further analysis and study in order to formulate a comprehensive, inclusive, and effective roadmap towards a national minerals management framework founded on the precepts of responsible mining. Similarly, an expressed need to form a smaller and leaner Technical Working Group (TWG) to begin the writing of the details needed to articulate the idea of responsible mining and its monitoring tools was also raised – all of which will form part of an official document to be referred as the Philippine Responsible Mining Framework.