



MEMORANDUM

FOR : **The Bureau Directors**
Land Management Bureau
Environmental Management Bureau
Biodiversity Management Bureau
Forest Management Bureau

The Officer-in-Charge
Mines and Geosciences Bureau

FROM : **The Director**
Legislative Liaison Office

SUBJECT : **REQUEST FOR COMMENTS ON THE POSITION PAPER OF THE
LEGAL AFFAIRS SERVICE RE: BILLS OF THE COMMITTEE ON
NATURAL RESOURCES OF THE HOUSE OF
REPRESENTATIVES**

DATE : 23 March 2023

In reference to the Memorandum of this Office dated 01 February 2023, requesting for comments on National Bills on the Philippine Mining Industry, namely:

1. House Bill No. 2597, entitled "An Act Re-Orienting the Philippine Mining Industry Towards National Industrialization and Ensuring the Highest Industry Development Standards and for other Purposes," authored by Reps. Raoul Dannel A. Manuel, France L. Castro and Arlene D. Brosas;
2. House Bill No. 28933, entitled "An Act to Regulate the Rational Exploration, Development and Utilization of Mineral Resources, and to Ensure the Equitable Sharing of Benefits for the State, Indigenous Peoples and Local Communities, and for Other Purposes," authored by Reps. Luis Raymund "Lay" F. Villafuerte, Jr., Miguel Luis R. Villafuerte, Tsuyoshi Anthony G. Horibata, Nicholas C. Enciso VIII, and
3. House Bill No. 4844, entitled "An Act Prescribing Standards for Responsible Mining," by Rep. Gloria Macapagal-Arroyo.

The Legal Affairs Service (LAS) have submitted their position paper which includes comments relating to your functions. In this regard may we request your opinions, comments, or recommendations on the position paper of the LAS specifically on National Bills on the Philippine Mining Industry. Attached herewith is a copy of the position paper for your reference.

For information and action, please.

ROMIROSE B. PADIN

cc: *Undersecretary for Special Concerns and Legislative Affairs*



08 FEB 2023
MEMORANDUM

FOR : **The Director**
Legislative Liaison Office
denrlo@denr.gov.ph

FROM : **The Director**
Legal Affairs Service

SUBJECT : **COMMENTS ON SEVERAL DRAFT HOUSE BILLS FROM THE HOUSE OF REPRESENTATIVES COMMITTEE ON NATURAL RESOURCES**

This is with regard to the Memorandum¹ dated 01 February 2023 from your Office requesting the undersigned's comments on several House Bills. It was received by this Office on 06 February 2023, and copies of the House Bills are accessed through <https://bit.ly/3kSNVQh>.

The request for comment is on the following House Bills:

A. National Bills on the Philippine Mining Industry

1. House Bill No. 259², entitled "*An Act Re-Orienting the Philippine Mining Industry Towards National Industrialization and Ensuring the Highest Industry Development Standards and for other Purposes,*" authored by Reprs. Raoul Dannel A. Manuel, France L. Castro and Arlene D. Brosas;
2. House Bill No. 2893³, entitled "*An Act to Regulate the Rational Exploration, Development and Utilization of Mineral Resources, and to Ensure the Equitable Sharing of Benefits for the State, Indigenous Peoples and Local Communities, and for Other Purposes,*" authored by Reprs. Luis Raymund "Lray" F. Villafuerte, Jr., Miguel Luis R. Villafuerte, Tsuyoshi Anthony G. Horibata, Nicholas C. Enciso VIII; and
3. House Bill No. 484⁴, entitled "*An Act Prescribing Standards for Responsible Mining,*" by Rep. Gloria Macapagal-Arroyo.

B. Imposing a Total Ban on Logging Operations for 25 years

1. House Bill No. 1065⁵, entitled "*An Act Totally Banning Logging Operations for the Next Twenty Five Years ,*" by Rep. Lusía Lloren Cuaresma

C. Local Measures

1. House Bill No. 901⁶, entitled "*An Act Establishing the Forest Boundary of the Province of Tarlac,*" by Rep. Christian Tell A. Yap;

¹ Copy attached as Annex "A".

² Copy attached as Annex "B".

³ Copy attached as Annex "C".

⁴ Copy attached as Annex "D".

⁵ Copy attached as Annex "E".

⁶ Copy attached as Annex "F".

2. House Bill No. 981⁷, entitled "An Act Repealing Presidential Proclamation No. 414," by Rep. Mark O. Go;
 3. House Bill No. 982⁸, entitled "An Act Repealing Presidential Proclamation No. 572," by Rep. Mark O. Go; and
 4. House Bill No. 1066⁹, entitled "An Act Declaring the Province of Nueva Vizcaya a Mining Free Zone and Providing Penalties Therefor," by Rep. Luisa Lloren Cuaresma.
- This Office puts forward the following comments:

A. National Bills on the Philippine Mining Industry: HB Nos. 259, 2983 and 484

It seems that House Bill Nos. 259 and 2983 are cut from the same cloth. Aside from a few exceptions, they contain substantially the same provisions. The comments to the said HBs will be discussed jointly.

1. Ownership of mineral resources within ALs/ADs does not pertain to ICCs/IPs

Section 28 of HB 259 and Sec. 27 of HB 2983 are substantially the same. They provide that ownership of mineral resources within ancestral domains or ancestral lands are owned collectively by the indigenous cultural communities and indigenous peoples (ICCs/IPs)¹⁰.

Apropos to this, Sec. 31 of HB 259 and Sec. 30 of HB 2983 provide that notwithstanding the displacement of such ICCs/IPs, native title over such mineral resources persists with them and as such, legal title over the same belongs to the displaced ICCs/IPs¹¹.

This Office submits that the underlying premise of both provisions - that ICCs/IPs have ownership over mineral resources in ancestral domains or ancestral lands - is violative of the Regalian Doctrine under the 1987 Constitution, which provides, viz:

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.

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The Supreme Court has discussed this matter in its landmark Resolution in *Cruz v. DENR*¹² where the constitutionality of Republic Act (RA) No. 8371, or

⁷ Copy attached as Annex "G".

⁸ Copy attached as Annex "H".

⁹ Copy attached as Annex "I".

¹⁰ HB No. 259, p. 20; HB No. 2983, p. 18

¹¹ HB No. 259, p. 21; HB No. 2983, p. 19

¹² G.R. No. 135385, December 6, 2000.

the Indigenous People's Rights Act, was assailed. After deliberating on the petition, seven members of the Supreme Court voted to dismiss the petition, sustaining the validity of the challenged provisions or a part of them. Seven other members of the Court voted to grant the petition. As the votes were equally divided and the necessary majority was not obtained, the case was redeliberated upon. However, after re-deliberation, the voting remained the same. Therefore, the petition was dismissed.

Chief Justice Reynato Puno, in his separate opinion in the said case, discussed that:

The right of ICCs/IPs in their ancestral domains includes ownership, but this "ownership" is expressly defined and limited in Section 7 (a). **The ICCs/IPs are given the right to claim ownership over "lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains."** It will be noted that this enumeration does not mention bodies of water not occupied by the ICCs/IPs, minerals, coal, wildlife, flora and fauna in the traditional hunting grounds, fish in the traditional fishing grounds, forests or timber in the sacred places, etc. and all other natural resources found within the ancestral domains. Indeed, the right of ownership under Section 7 (a) does not cover "waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna and all other natural resources" enumerated in Section 2, Article XII of the 1987 Constitution-as belonging to the State. The non-inclusion of ownership by the ICCs/IPs over the natural resources in Section 7(a) complies with the Regalian doctrine.

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Instead, the law only grants the ICCs/IPs "priority rights" in the development or exploitation thereof. Priority means giving preference. Having priority rights over the natural resources does not necessarily mean ownership rights. The grant of priority rights implies that there is a superior entity that owns these resources and this entity has the power to grant preferential rights over the resources to whosoever itself chooses. Section 57 is not a repudiation of the Regalian doctrine.

In fine, this Office submits that the ownership of ancestral lands and domains by ICCs/IPs of ancestral domains and ancestral lands does not extend to the mineral resources which may be found therein.

As such, this Office expresses our objections to the above provisions and other related provisions that would recognize ownership of mineral resources in any entity other than the State.

**2. RA 7611 does not close
the whole of Palawan
province to mining**

Section 42 of HB 259 and Sec. 41 of HB 2983 declare that the Multi-sectoral Mineral Council shall have the power to determine areas to be opened to mining. In both HBs, the province of Palawan is categorically declared closed to mining¹³ purportedly as provided by Republic Act No. 7611 or the Strategic Environmental Plan for Palawan Act.

This Office submits that nowhere in said statute is the province of Palawan declared closed to all mining activities. In fact, Section 12 thereof allows for the management and development of mineral resources outside environmentally critical areas, when provided in the Strategic Environmental Plan, *viz*:

SECTION 12. Management of Resources Outside of the Ecologically Critical Areas. – The SEP shall provide for the management of resources outside of the ECAN and shall include coastal resources, resources of the catchment areas, timber and mines, development in the lowlands, and settlement areas. It shall also provide for tourism planning. (Emphasis added)

In fact, the Mines and Geosciences Bureau has made available the maps¹⁴ of the mining tenements in the province of Palawan.

3. The wording [any member of the community], who may contest the proposal is overbroad

Section 53 of HB 259 and Sec. 54 of HB 2983 provides for the posting and publication requirements of an accepted proposal for a mineral agreement¹⁵. Both versions provide that any member of the community may contest a decision of the Council within six weeks upon posting and publication of the proposal.

This Office submits that the term [any member of the community] is vague and overbroad. The community referred to in this provision must be specifically identified.

4. The EMB is not authorized to issue an ESICC

Section 56 of HB 259¹⁶ refers to an Environmental and Social Impact Compliance Certificate (ESICC) that the Environmental Management Bureau (EMB) must issue to the proponent as approved by the Council. This is pursuant

¹³ HB No. 259, p. 24; HB No. 2983, p. 22

¹⁴ Accessed through MGB Website: Mining Tenement Control Map as of December 20222

1) North Palawan -

<http://databaseportal.mgb.gov.ph/mgb-public/api/attachments/download?key=2nUP22rubB0972EM5aTxNmrxn82h2JrotmmPmSkzORQxIskfyvtroZ7BhauUbjTx>

2) South Palawan -

<http://databaseportal.mgb.gov.ph/mgb-public/api/attachments/download?key=vL2UrndK2AgNTUsTvLd6oVb1cNXI47XWrlumXVA7KIT0dDcOyrl.29zgCEtorgoiX>

¹⁵ HB 259, p. 29; HB 2983, p. 28

¹⁶ HB 259, *ibid*.

to the Environmental and Social Impact Assessment and Mitigation Plan (ESIAMP) that is to be submitted by the proponent under Sec. 51 thereof¹⁷.

This Office submits that there is no law that authorizes the EMB to issue an ESICC or to conduct an Environmental and Social Impact Assessment. As it is, the EMB may only issue an Environmental Compliance Certificate (ECC) under Presidential Decree No. 1586 establishing the Environmental Impact Statement System and related laws, rules and regulations. Another law may be passed to give authority to the DENR or the EMB to grant those certificates.

5. Toxic chemicals such as mercury and cyanide must be outright prohibited in mining

Sections 28 and 29 of HB 484 refers to the responsible management of cyanide and mercury, perhaps in relation to artisanal mining. This Office submits that pursuant to the Republic of the Philippines' commitment to international agreements such as the Minamata Convention on Mercury¹⁸, our statutes must expressly prohibit the use of toxic chemicals in all mining operations. This Office concurs with the provisions of HBs 259 and 2983 which expressly prohibit their use.

Furthermore, prior to ratification of the country of the Minamata Convention in 2020, the Department had issued DENR Administrative Order (DAO) 2019-20¹⁹, which expressly prohibited the use of Mercury and Mercury compounds for Artisanal and Small-scale Gold Mining and other related mining activities, and allows only for a limited use of mercury in identified activities, *viz*:

SECTION 4. Prohibited Use. –

This Order prohibits the use of Mercury and Mercury compounds and Mercury added products for Artisanal and Small-scale Gold Mining (ASGM) and any other related mining activities and as regulated in Executive Order 79, "Institutionalizing and Implementing Reforms in the Philippines Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources.

SECTION 5. Allowable Use of Mercury. –

The following are governed by the general requirements and procedures, compliance monitoring procedures, penalty provisions and specific requirements and standards on the use of Mercury, Mercury compounds and Mercury-added products:

5.1 Mercury and Mercury Compounds

The use of Mercury and Mercury compounds in laboratory and research work may be allowed and should be consistent with the conditions and requirements of this Order.

¹⁷ Id.

¹⁸ Ratified, 08 July 2020

¹⁹ Revised Chemical Control Order (CCO) for Mercury and Mercury Compounds (Revising DAO 1997-38), DENR Administrative Order No. 2019-20, [November 20, 2019].

5.2 Mercury-added products and Mercury used in processes

- a. Civil protection and military use;
- b. Research Laboratory;
- c. Where no feasible Mercury-free alternative for replacement is available, switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps (CFL and EEFL) for electronic displays and measuring devices; and
- d. Vaccines containing thiomersal as preservatives.

B. Imposing a Total Ban on Logging Operations for 25 years: HB No. 1065

House Bill No. 1065 seeks to impose a total log ban in the country for the next 25 years.

In essence, it seeks to prohibit this Department from issuing any logging agreement or contract in all natural and residual forests; to enjoin any person from cutting trees in any forest, except in commercial farms, or in any private land except with authority from this Department.

This Office finds laudable intentions of the draft legislation. Nevertheless, this is a policy measure that is best left to the wisdom of the legislature.

One notable objection that interested persons might raise with regard to HB 1065 is a violation of the non-impairment clause of the 1987 Constitution. On this matter, the Supreme Court has previously held in *Oposa v. Factoran*²⁰ that such a law could be passed by Congress in the exercise of police power, *viz*:

In the second place, even if it is to be assumed that the same are contracts, the instant case does not involve a law or even an executive issuance declaring the cancellation or modification of existing timber licenses. Hence, the non-impairment clause cannot as yet be invoked. **Nevertheless, granting further that a law has actually been passed mandating cancellations or modifications, the same cannot still be stigmatized as a violation of the non-impairment clause.** This is because by its very nature and purpose, such a law could have only been passed in the exercise of the police power of the state for the purpose of advancing the right of the people to a balanced and healthful ecology, promoting their health and enhancing the general welfare.

C. Local Measures

House Bill Nos. 901, 981, 982, and 1066 are bills of local import, to which this Office defers to the inputs of the concerned technical bureaus. Furthermore, we also defer to the considered wisdom of the Honorable Representatives on matters concerning their constituencies.

²⁰ G.R. No. 101083, July 30, 1993.

Albeit so, this Office submits that the following laws find relevance to the submitted House Bills:

House Bills	Relevant laws implemented by the DENR:	Office concerned
House Bill No. 901, entitled "An Act Establishing the Forest Boundary of the Province of Tarlac," by Rep. Christian Tell A. Yap	Presidential Decree 705, as amended; Commonwealth Act 141, as amended;	Forest Management Bureau; Land Management Bureau; National Mapping and Resource Information Authority; DENR Region III
House Bill No. 981, entitled "An Act Repealing Presidential Proclamation No. 414," by Rep. Mark O. Go	Commonwealth Act 141, as amended; Republic Act No. 7942; Republic Act No. 7076;	Mines and Geosciences Bureau; Land Management Bureau; DENR Cordillera Administrative Region;
House Bill No. 982, entitled "An Act Repealing Presidential Proclamation No. 572," by Rep. Mark O. Go	Commonwealth Act 141, as amended; Republic Act No. 7942; Republic Act No. 7076;	Mines and Geosciences Bureau; Land Management Bureau; DENR Cordillera Administrative Region;
House Bill No. 1066, entitled "An Act Declaring the Province of Nueva Vizcaya a Mining Free Zone and Providing Penalties Therefor," by Rep. Luisa Lloren Cuaresma.	Republic Act No. 7942; Republic Act No. 7076;	Mines and Geosciences Bureau; DENR Region II

This review is limited to the constitutionality of the subject bills, as well as their consistency with existing laws. Other than the foregoing comments, this Office finds the rest of the House Bills to be in order.

For your information and consideration.


NORLITO A. ENERAN, LLM., CESO III

Copy furnished:

The Undersecretary
Legal and Administration

The Undersecretary
Policy, Planning and International Affairs

The Undersecretary
Special Concerns and Legislative Affairs

The Assistant Secretary
Legal Affairs

The Director
Environmental Management Bureau

The Director
Mines and Geosciences Bureau

The Concurrent Director
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The Regional Executive Director
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DENR Region II
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