E X P L A N A T I O N

Today, 29 June 2010, I signed into Ordinance Resolution No. 84 “Enacting the Environment Code of the Province of South Cotabato”.

This is a landmark legislation; It marks the province’s maturing autonomy by owning up to the responsibility as environmental steward.

In congress, I voted for the passage of Republic Act NO. 7942 otherwise known as the “Philippine Mining Act pf 1995” in recognition of the state’s urgent need of the new revenue sources to ensure national growth in way that effectively safeguard the environment and protect the rights of affected communities. Therefore, in the controversy caused by the inclusion of Section 22 (b) banning Open-pit mining method in the Province of South Cotabato, I cannot be popish against mining.

A perusal of the Code shows that it adopted the existing national laws on environment and further strengthened them by laying down mechanisms, institutional linkages, meaningful community involvement, and defined the role and the dynamics of inter governmental relationships. These ensure a more balanced management of the province’s natural resources. A veto of the Code just because it contain a ban on open pit mining method, if not over-ridden by 2/3 of all numbers of the Sangguniang Panlalawigan, will render the whole Code a mere scrap of paper.

THE ANTECEDENT FACTS:

On May 14, 1996, through Resolution No. 74, the Sangguniang Panlalawigan passed a Resolution opposing the exploration permit granted to Western Mining Corporation (a predecessor of SMI-XSTRATA) on the ground of non-consultation, displacement of tribal groups and legitimate land owners, and environmental degradation. They also petitioned, thru Resolution No. 75, then President Fidel Ramos to abrogate and/or cancel the Financial and Technical Assistance Agreement (FTAA) executed between the Republic and Western Mining Corporation. The general sentiment of the people of South Cotabato as represented by their Sanggunian members was concretely expressed.

Despite these resolutions, active exploration for coal were pursued under the Department of Energy in Brgy. Ned, Lake Sebu, for gold in Brgy. Kematu, T’boli, and gold-copper in Tampakan.

Unfortunately, the Kematu exploration is a continuing headache with the overlapping declaration of the small-scale mining and the scale areas. The influx of marginal miners caused the mushrooming of squatter communities occupying danger zones. Their resettlement, alternative livelihood, regulation, particularly against illegal hydraulic miners, cost the provincial government while revenue from mining is almost nil. The Mines and Geoscience Bureau (MGB) largely rely on the local government even in the enforcement of ECC conditions against its big-scale mining operator.

The Department of Energy does not inform nor consult the LGUs nor the communities. They never attend meetings for the alleged reason that their office is located in Davao City and they

have few personnel. It is only thru DOE's letter dated 24 June 2010 that we learned that they intend to adopt the strip mining method and will tap the mine-mouth power plant. We do not know what these mean for our environment and the DAR Resettlement Areas. It was also last 22 June 2010 that the San Miguel Corporation informed us that they have acquired 100% of stockholder's equity in the Daguma Agro-Minerals. Inc. (DAMI) and Bonanza Energy Resources, Inc. (BERI) which have been awarded a Coal Operating Contract over ten (10) blocks in South Cotabato and a small portion in Sarangani. Where are they located, particularly, we do not know.

Unlike its predecessor-in-interest, Western Mining Corporation, SMI-XSTRATA is more community and LGU friendly. Their effort to do away with practices which tend to develop dole-out mentality and dependency and instead introduced program modules which encourage self-sufficiency and proper work culture are commendable. Their strength lies in effective information dissemination of their various community development programs and the projected economic and revenue windfall from the project. They are, however, greatly lacking in sharing technical information, particularly in the proposed open-pit, its location, depth and width, the forest cover affected by the support structures, the chemicals used, and the affected watersheds and catchments, among others. It was only after the passage of the Code, that they apprised the undersigned of their hydrology study result and their proposed mitigation plan. Unfortunately, the members of the SP and those who attended the briefing conducted last May 2010 at The Farm are adamant that the so-called study was never shown to them and therefore can no longer be validated or verified.

SMI-XSTRATA exploration areas are watersheds as identified by DENR-PENRO although there is no Congressional Approval as required by law. The proposed Open-Pit is within the Pulabato and Lawit Catchments which are tributaries to Taplan and Marbel rivers which in turn fed the Marbel 2 RIS which supplies the ricefields of Koronadal, Tantangan of South Cotabato, Lutayan of Sultan Kudarat and Lake Buluan of Maguindanao. Its highest peak towers 1, 200 feet above sea level. Creeks and rivers flow from the Altayan (Danlag, Pula Bato, Liberty) and Taplan (Tablu, Lampitak) catchments, face possible drying up and will greatly affect watersources for irrigation and aquifers are legitimate.

It took the Executive and Legislative, more or less, five (5) years doing preparatory study and formal legislative process to pass the code giving sufficient time for the advocates of mining to show proof that the general welfare of the majority of the inhabitants will be protected from destructive consequences.

Unfortunately, the conduct of national government agencies task to enforce regulatory measures left much to be desired.

THE CONTENDING POSITIONS:

The advocates of mining alleged that:

1. The Constitution and the national law repose upon the state the exclusive ownership of all natural and mineral resources. Its exploration, development. Utilization and conservation belongs to the national government. The local government, therefore, is limited to exercise jurisdiction on those specifically delegated to it. The national government agencies concern, are only required to

consult and get prior consent from the communities, particularly, the indigenous people;
2. Local economy will be benefited with the flow of billions of investments;
3. The national and local governments will tremendously increase its revenue and therefore will be in a better position to deliver basic services.

We can not brush aside the mining advocates' position, especially that of the concessionaries. They invested hundred of millions in exploratory work assured that our government policy will allow them to operate if they found viable deposits.

If they bend backwards to win the support of the communities through their tribal leaders or influential barangay and municipal officials, it is because they need to get their consent. Often only those with loud voices and strong influence reap the larger benefit. Dole-outs develop dependency culture. The influence of local government is weakened because it can not compete with the resources of the concessionaires. These are few of the unexpected consequence of the law. Government must evaluate its policy on this matter. It must play a more activist role if investors' entry become transformative rather than exploitative. They must capacitate their regulatory and supervisory agencies to conduct independent and credible studies on the destructive aspect of the projects and the preferred mitigating intervention as genuine partners of the local government to ensure that the greatest good is served.

Those who opposed open-pit mining contend that:

1. The ban on open-pit is within its authority to legislate;
2. It is the more destructive method because it strips the surface of top soil, forest cover and destroys biodiversity which is irreversible;
3. It destroys the area's capacity as water catchments and destroys aquifers; and
4. Depending on the depth, it may be beyond rehabilitation and restoration.

The actual field visits conducted by the Sangguniang Panlalawigan members confirmed their theoretical studies that open-pit is the more destructive method considering the province's geography, topography and the quality of its soil. They did not observe economic affluence in host localities. Instead, they saw squatter communities near the mining sites.

Personally, I favor the Technical Working Group's position to qualify the circumstances where open-pit mining or mining is banned. Unfortunately, a veto will not only render the whole code inoperative but will expose communities and resources to danger which will, with certainty, affect their health, security and economic sustainability. For example: The open-pit mining of SMI-XSTRATA straddles the highest peaks of Pula Bato and Tablu. A little below them are big water catchment areas with creeks feeding the Taplan and Marbel rivers. SM|I-STRATA claims that the effect of its operation to these rivers are minuscule and can be mitigated by building water catchments utilizing rain to replenish the water lost. They also claim that wastes will be safely disposed and will not seep through aquifers and waterways and that we have sufficient laws to ensure rehabilitation of the open-pits.

Unfortunately, they have failed to present technical studies for verification on the ground that the same has not been reviewed and approved by DENR's Central Office.

MGB, the Bureau tasks to ensure compliance with laws and rules to ensure the protection of the people from harm, economic dislocation and healthy balance of ecology for sustainability of natural resources for the incoming generation, has been sadly deficient in technical support to LGU's that they depend exclusively from studies presented by the mining companies. NCIP has closed its eyes from the fact that only a few are getting richer while the rest of the tribes remain poor and their resettlement for shelter and agriculture remain uncertain. We in the LGU's on the other hand, overcome our misgivings by comforting ourselves that we have no authority over the matter and, therefore, we can only petition the higher ups and hope they will respond and act.

When the rivers dry up, the aquifers no longer supply clean water, and pollution contaminate our waters, can we, in conscience, face the future generation? Is it not that we duty bound to actively ensure the sustainability of our natural resources for the next generation's survival?

Do we not have the inherent power to pressure that DOE and their concessionaires to submit to us with particularity what strip mining and mine-mouth power plants are all about so that we can intelligently decide whether the benefit outweighs the damage it may cause?

In the face of apparent disrespect for the LGU's capacity to absorb and understand the technical aspect of the projects, we have to call upon our inherent power for self-preservation and protection of the general welfare of our people.

Article XII Section 2 and 16 of the 1987 Constitution vests upon the state ownership of natural resources but also imposes upon it the obligation to protect them and advance the right of people to a balanced and healthy ecology in accord with the rhythm and harmony of nature.

Section 2, Republic Act No. 7942 otherwise known as the Philippine Mining Act of 1995 likewise provides that it shall be the responsibility of the state to promote rational exploration, development, utilization, and conservation of mineral resources in order to enhance national growth in a that effectively safeguards the environment and protects the right of affected communities.

How will we know if the rights of our communities are protected because DOE and its explorer has not been even informed us of their activities in the area and do not attend meetings (except once) called for the purpose?

The Constitution or the Mining Act of the Philippines of 1995 or any law on natural resources do not prohibit LGU's from choosing mining methods which to their judgment is less detrimental to the health of its people and the sustainability of its environment.

Section 5 (a)(c) of the Local Government Code mandates that provision on power of the LGU shall be interpreted in favor of devolution and its general welfare clause (Section 16) be liberally construed, to quote:

"Section 5 (a)(c) Rules of Interpretation – In the interpretation of the provisions of this Code, the following rules shall apply:

(a) – Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned;

(c)– The general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community.

Section 16 – General Welfare clause: Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare, within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants."

These principles were clearly upheld by the Supreme Court in the Cases of Province of Rizal, et.al., versus Executive Secretary et.al., G.R. No. 129546 Promulgated 15 December 2005 and Alfredo Tano, et.al., versus Hon. Gov. Salvador P. Socratos et.al., G.R. No. 110249 Promulgated 21 August 1997.

We can not leave to chance the welfare of the majority of our inhabitants neither can rely on other agencies which have macro-perspective and maybe tempted to belittle local concern and prefer the nation's "greater" good. Therefore, let the controversial ban stays until all data and studies are presented so that the political leadership of this province possesses sufficient knowledge to make an informed decision on the matter and ensure that the evils we fear do not visit our communities.

29 June 2010, Koronadal City, South Cotabato.

Original copy signed:

DAISY AVANCE FUENTES
Governor