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TO : Partners in the Social Apostolate
Jesuit communities
RE : Talking Points on Mining

Dear Friends,

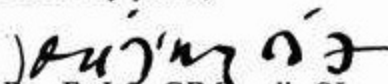
The Peace of Christ!

Mining is an issue that has spawned heated and contentious debate because of its far ranging effects on the lives of individuals and communities. It is also highly complex as it demands a good grasp of scientific and technical details. Across the wide expanse of our Jesuit ministries here in the Philippines, there have been attempts to begin to address some of the key critical mining issues, particularly in our universities and social institutes. One such effort was the mining colloquium organized by the Society of Jesus Social Apostolate (SJSA) network last June. In that gathering, the need for a set of guidelines on mining was expressed, to help our ministries engage the mining issue in an informed and effective manner.

In this regard, I would like to endorse for your consideration the attached document, "The Golden Mean in Mining: Talking Points" issued by the SJSA for its network partners. I make this available as well to our Jesuit communities. I encourage all to study and share the document, and more importantly, to use it to better understand and respond to the mining issue. I am especially grateful to Dean Antonio GM La Viña of the Ateneo de Manila School of Government and to the members of the Social Apostolate Commission for their work in drafting these Talking Points.

With assurances of prayer, I am,

Sincerely yours,


Rev Fr Jose C. Magadia SJ
Provincial

The Golden Mean in Mining: Talking Points

by the Society of Jesus Social Apostolate (SJSA)
Philippine Province of the Society of Jesus

In the Philippines, mining has become a contentious and controversial activity. On one hand, there are those who believe sincerely that mining offers a solution to poverty and that it can be done responsibly. On the other hand, many are of the opinion that mining, at least in the way we have experienced it in our country, has been destructive of the environment and has had principally negative impacts on rural communities. In the last ten years, the Catholic Church, through its Bishops, has consistently allied itself with the latter group.

As early as 1998, the Catholic Bishops Conference of the Philippines (CBCP) pointed out that the adverse social impact of mining on the affected communities, specially on our indigenous brothers and sisters far outweighs the gains promised by large-scale mining corporations. In the same statement, the Bishops called for the repeal of the Mining Act and for the stoppage of specific mining operations in several places in the Philippines. In 2006, the CBCP affirmed this call for the repeal of the mining act. In even stronger language, the Bishops stated:

We believe that the Mining Act destroys life. The right to life of people is inseparable from their right to sources of food and livelihood. Allowing the interests of big mining corporations to prevail over people's right to these sources amounts to violating their right to life. Furthermore, mining threatens people's health and environmental safety through the wanton dumping of waste and tailings in rivers and seas. Our experiences of environmental tragedies and incidents with the mining transnational corporations belie all assurances of sustainable and responsible mining that the Arroyo Administration is claiming. Increasing number of mining affected communities, Christians and non-Christians alike, are subjected to human rights violations and economic deprivations. We see no relief in sight. (*"A Statement on Mining Issues and Concerns"*)

Since the 2006 CBCP statement, profound changes have take place in the country. Gloria Macapagal Arroyo has been replaced by Benigno Aquino III who ran on a campaign promise and platform of good governance. President Aquino has taken bold steps to protect the environment, including the imposition of a national logging ban. In early July 2012 Aquino also issued an Executive Order establishing the mining policy of his administration. Executive Order No. 79 provides a unique opportunity for a meaningful dialogue and potentially effective engagement on mining with the government and the mining industry as well as affected communities and other concerned sectors.

It is in this context that these talking points on mining are proposed by the Society of Jesus Social Apostolate (SJSA) for members of its network and for other like-minded organizations and individuals. Its purpose is to identify "non-negotiables"—values and

bottom line positions—to guide these members, organizations and individuals in their engagement on mining with each other and with government agencies, mining companies, indigenous peoples, local communities, and others.

Catholic Social Teaching and Mining

In working and engaging on mining issues, it is useful to bear in mind the following ethical principles from Catholic social teaching:

- The principle of stewardship.
- The precautionary principle.
- The principle of the common good.
- The principle of subsidiarity.
- The principle of preferential option for the poor.
- The principle of the dignity of labor.
- The principle of association
- The principle of respect for human life.

In the following paragraphs, we elaborate on and apply these ethical principles to mining:

1. **The principle of stewardship.** This is perhaps the most pertinent principle of Catholic social teaching that applies to mining. God has gifted humanity with the vast wealth of creation. Thus all humans have the responsibility to care for it and to preserve it for future generations. The mineral wealth of the Philippines and the environment nestling this wealth should be primary subjects of such care. As Benedict XVI clearly states:

The Church has a responsibility towards creation and she must assert this responsibility in the public sphere. In so doing, she must defend not only earth, water and air as gifts of creation that belong to everyone. She must above all protect mankind from self-destruction. There is need for what might be called a human ecology, correctly understood. (*Caritas in Veritate*, 51)

Applied to mining, this principle means:

- In all stages of the mining process, from exploration, to extraction, and to final rehabilitation of the mining site, attention must be given to promote both natural and human ecology. Mining should never be at the expense of the environment.

- Prohibiting mining in no-go areas defined by the law, including the recently issued Aquino Executive Order, must be strictly followed. Other areas should be added to the current list as required by environmental and social considerations with a presumption in favor of inclusion so as to maximally protect the environment.
- The environmental impacts of mining, including on biological diversity, must be adequately measured and taken into consideration when mining decisions are made. While mitigation measures could be taken to minimize such impacts, mining should not be allowed where the impacts are serious and irreversible and especially if it threatens the physical security of affected communities.
- Climate change and the threat brought by it must be taken into account in approving mining projects. The Philippines already ranks high in the list of disaster-prone countries. Unabated mining will make us more vulnerable especially with climate change looming.
- Where mining can be done in an environmentally responsible way, global best practices in environmental management should be required of all mining companies.

2. **The precautionary principle.** Directly flowing from the principle of stewardship is the precautionary principle. Under this principle, decision makers addressing health and environmental risks sometimes confront situations where available scientific data are contradictory or inadequate. Precaution calls for prudent policies “based on a comparison of the risks and benefits foreseen for the various possible alternatives, including the decision not to intervene.” The principle is linked “with the need to encourage every effort for acquiring more thorough knowledge, in the full awareness that science is not able to come to quick conclusions about the absence of risk.” It acknowledges that “circumstances of uncertainty and provisional solutions make it particularly important that the decision-making process be transparent” (*Compendium of the Social Doctrine of the Church*, 469). A precautionary approach to mining has the following implications:

- Where there is serious risk to environment or to human health posed by a mining operation or mining activity, even if the risks are not clearly known or understood, the decision must always be in favor of protecting the environment and human health. In this case, the mining operation or activity must be disallowed at least temporarily.
- We must be careful in justifying trade-offs in mining. People and the environment should not be put at risk whenever mining decisions have to be made. Everything necessary to avoid or mitigate the risk must be done, including saying no to mining if warranted.
- Decisions on mining must be made on the basis of the best available scientific data and other relevant information. We encourage our institutions to build the capacity to gather and assess this information.

3. **The principle of the common good.** Closely allied with the above principle is the principle of common good. John Paul II, for instance, states that “Each person must have access to the level of well-being necessary for his full development. The right to the common use of goods is the first principle of the whole ethical and social order” (*Laborem Exercens*, 19). He also states that the “universal destination of goods” must be preserved in the mining process, for all wealth is under a “social mortgage” (*Sollicitudo Rei Socialis*, 42). In the context of mining, this principle implies that:

- All stakeholders in the process should receive benefits from the industry commensurate to need. Priority especially should be given to indigenous peoples and local communities, including local governments. In this respect, we find the current system of revenue distribution inadequate, being partial to the interest of mining companies.
- Benefits can be in the form of increased livelihood opportunities and community welfare services, but there should be direct compensation to indigenous peoples and local communities who bear the risk posed by mining operations. The preservation of the cultural patrimony should also accrue to communities affected directly by mining.
- Government should be able to collect the maximum revenue from mining operations and other forms of taxation for the good of the nation. This means fixing the fiscal regime so that distortions such as liberal investment incentives and tax-free or tax deferral schemes are rationalized and abolished if deemed inequitable.
- Corporations should derive reasonable profit to continue the responsible conduct of their operations. Such profits should not however be at the expense of increasing the environmental and social risks of mining.
- Small-scale miners must be given their proper place in the mining system. While recognizing the environmental impacts of small-scale mining, addressing such impacts must not violate the rights of small-scale miners to participate in the bounty of our mineral resources. We make however a distinction between authentic small-scale mining and medium-scale mining which purports to be small-scale so as to evade greater environmental and taxation responsibilities.

4. **The principle of subsidiarity.** Pope Pius XI has articulated the well-known principle of subsidiarity in this way: “Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do” (*Quadragesimo Anno*, 79). Subsidiarity speaks about the proper role of governments and other governing bodies. This has manifold applications to the mining issue in the Philippines, such as:

- The national government should be able to enact laws for responsible mining, while allowing local government units to make judgments on the tenability of mining operations within their jurisdictions. While national policies and local legislation need to be harmonized and made consistent, it should be done in an atmosphere of mutual respect and collaboration.
- Both large scale and small scale mining operations should be subject to the exigencies and conditions of responsible mining, even as they are given enough freedom to gainfully pursue their operations. Such freedom is always limited by what is required by the common good.
- Communities affected by mining must have a say in mining operations, for the preservation of their economic, social, and cultural interests. This is especially applicable to indigenous peoples whose right to give or withhold their free and prior informed consent to mining must at all times be respected.
- Subsidiarity challenges all stakeholders to balance regulation for responsible mining with individual and corporate enterprise and initiative to ensure that mining operations truly preserve the common good. Similarly, subsidiarity demands that all stakeholders observe the rule of law, avoiding corruption and crime in the process.

5. **The principle of preferential option for the poor.** John Paul II describes this principle as "... an option, or a special form of primacy in the exercise of Christian charity It applies equally to our social responsibilities and hence to our manner of living, and to the logical decisions to be made concerning the ownership and use of goods" (*Sollicitudo Rei Socialis*, 42). This applies to mining in the following way:

- For corporations, the preferential option for the poor will entail adjusting profit margins to ensure that benefits accrue to the affected communities, and more generally to nations hosting mining operations. Direct benefits should be provided to host communities who should have autonomy in deciding what those benefits should be. Benchmarks must be established to show that mining in fact transforms communities from being poor to becoming more prosperous. If research shows otherwise, such findings must be taken into account in the development, adoption, and implementation of a national strategy for mining.
- The principle will also require productively and transparently involving the community in the course of mining operations and looking out for their welfare at all stages of the operations. This is particularly applicable when an accident happens and poor communities are affected. In such an event, the latter must not be kept in the dark so they can get out of harm's way.
- Preferential option for the poor requires giving special attention to indigenous peoples who do not always have enough time and resources to sustain their leadership and systems. These are important for processing exploration and mine development applications in ways that do not tear the community apart and destroy their cultural

integrity given the fast pace of economic development.

- The principle of preferential option for the poor means that small-scale mining, as noted several times already, must be given a proper place in our mining system. The fact that their means of mining may be environmentally destructive should not be an excuse to further marginalize them, but is a reason to build their capacity to transition to more responsible mining.
- Finally, the principle will demand that rehabilitation of affected sites and communities are undertaken once mining operations are finished. This is critical because long after the operations cease, host communities, usually poor, will continue to be there to live with the consequences.

6. The principle of the dignity of labor. John Paul II clearly states, that “... the primary basis of the value of work is man himself, who is its subject” (*Laborem Exercens*, 6). In this light, efforts must be exerted by both the government and corporate sectors to ensure that basic labor rights are protected in every workplace. The principle implies that:

- The practice in mining where individuals, including children are subject to dangerous, degrading, and dehumanizing work conditions should be put aside and better work conditions ensured. Much progress, especially in safety, has been achieved on this issue but much still has to be done for safe practices to become the rule.
- Those who work in mining should have their dignity upheld, through fair and safe labor practices. The rights of workers to organize themselves, including their right to form unions and to strike in accordance with law, should be recognized.

7. The principle of association. Catholic social teaching has always protected the right to associate in “civil society.” This principle of association is well entrenched in Catholic social teaching. In the very first social encyclical, this principle is articulated by Leo XIII as follows: “A brother that is helped by his brother is like a strong city. It is this natural impulse which binds men together in civil society; and it is likewise this which leads them to join together in associations which are, it is true, lesser and not independent societies, but, nevertheless, real societies” (*Rerum Novarum*, 50). For mining, the principle means:

- Checks and balances are always beneficial in any undertaking, and it is no different for mining. Thus when various citizen organizations and concerned parties raise objections against mining, their grievances must be heard. Both government and the mining industry must be receptive to these concerns and institutionalize appropriate consensus building mechanisms that will enable their practical resolution.
- Citizen organizations in turn are encouraged to dialogue in good faith with government and industry actors to find solutions to problems and to find a middle ground where such exists.

8. The principle of respect for human life. Overarching all the principles applicable to mining is the very respect for human life, which is the most basic principle of Catholic social teaching as well. It stems from our being made *Imago Dei*: “God created man in his own image, in the image of God he created him; male and female he created them” (Gen 1: 27). Respect for human life requires ultimately that:

- Mining operations and those regulating it should aspire to respect human life above all, for individuals, communities, and nations. They should strive to protect the rights accruing to human beings, precisely because human dignity arises from our being made in the image of God.
- Human rights abuses and social conflict that frequently accompany mining operations must be curbed and mining zones should be declared and made zones of peace free from fear and discord. This will happen if mining is done only in the places where it can be implemented responsibly and if the mining company in fact adheres to best practices of responsible mining.

The Aquino Executive Order on Mining

Given the ethical principles identified and elaborated above, the SJSA proposes the following general approach and specific responses to President Aquino’s mining policy:

1. Executive Order No. 79 (EO 79) is a mixed bag. It is not perfect but it contains good provisions which, if implemented, would make mining operations more responsible. We should work to implement these good provisions and to hold government accountable for its realization. At the same time, certain provisions in EO 79 assume that the Mining Act of 1995 establishes the right paradigm for mining in the Philippines. We should reject those provisions and work to have them changed.
2. The good provisions of EO 79, for which the President should be complimented and which all stakeholders should seek to implement properly are the following:
 - a. Its addition of three new groups of no-go areas for mining is a real advance from the Mining Act of 1995. Specifically, the inclusion of prime agricultural land, fishery areas, priority tourism sites, and environmentally critical areas (such as watersheds and small island ecosystems) represents progress.
 - b. Its provisions seeking to correct the revenue distribution from mining, which stems from the accurate understanding that the current system is inequitable, is praiseworthy. Referring this to Congress is the right step although we should encourage leadership by the executive branch on this issue. Imposing a moratorium on new mining agreements while awaiting new legislation is likewise welcome, as is the statement that the Philippines will join the Extractive Industries Transparency Initiative.

- c. Its provision encouraging the development of downstream industries is good in that it would ensure that we add and therefore will be able to extract more value from our mineral resources.
3. The following provisions of EO 79 need to be revisited and we should work to have them changed:
 - a. The provision that unconditionally exempts current mining agreements and operations from the application of the new policies on no-go areas and revenue distribution needs to be qualified. Such exemption should have been done on a case-to-basis where justified by the non-impairment of contracts clause of the Constitution and where the company involved has a good environmental and social record.
 - b. The provision that mandates consistency between national policy and local legislation is also problematic. While this is an improvement over the draft provision which stated that national policy was superior to local issuances, this provision still implies such superiority and could dampen efforts by local governments to take responsibility for mining in their respective areas.
 4. More than specific provisions, the reason why EO 79 is inadequate is its failure to question the paradigm that animated the mining act of 1995. This paradigm has the following elements: (a) Our minerals are there to be utilized and exploited; (b) Large-scale mining is the preferred approach for that utilization and exploitation; (c) Mining companies, including foreign ones, are encouraged with incentives to invest in the Philippines. At best, under this paradigm, the environmental and social costs of mining are underemphasized if not altogether ignored.

The Minerals Management Bill

Following the observation in the preceding paragraphs (3 and 4), it is imperative that any new legislation on mining must not be limited to increasing government revenue from mining. Such legislation should also address fundamental issues as the nature of mining contracts, the role of local governments and the overall strategy for mineral development in the Philippines. Towards this end, the Minerals Management Bill now pending before Congress might be a good starting point for the necessary legislative changes. The bill presents an alternative to the pro-industry Mining Act of 1995 and is more holistic, environmentally friendly, and consistent with national interest.

Having acknowledged the potential of the Minerals Management Bill to change the sector, we also recognize that compromises with the mining industry may be necessary to move the bill forward. Such compromises should be made transparently, in a participatory manner and ultimately should be based on the common good and the national interest.

Dialogue with the Industry and Mining Stakeholders

In engaging with the mining industry, whether on the Minerals Management Bill or on other contentious issues, we encourage the maintenance of an atmosphere of respectful dialogue. This applies as well to those who may see wisdom in using these talking points. Here we call to mind the exhortation of John XXIII:

Differences of opinion in the application of principles can sometimes arise even among sincere Catholics. When this happens, they should be careful not to lose their respect and esteem for each other. Instead, they should strive to find points of agreement for effective and suitable action, and not wear themselves out in interminable arguments, and, under pretext of the better or the best, omit to do the good that is possible and therefore obligatory. (*Mater et Magistra*, 238)

Within and among our institutions, we encourage critical thinking, academic freedom, and intellectual leadership in mining issues. But in engaging the mining industry and other stakeholders, we must keep our objectivity and independence. Thus we have to ask hard questions about our financial and other relationships with mining companies, environmental organizations and others who have a strong stake in mining issues. We must also be transparent about these relationships so there is no confusion about our institutions.

It is in this spirit of active engagement tempered by sincere self-examination that we offer these talking points for our communal consideration and discernment. May these serve as an aid for us to better understand the mining situation, to make appropriate judgments, and to carry out meaningful action.

St. Ignatius of Loyola exhorts us “to love and serve the Lord in all things.” May we accomplish the same in our care for God’s creation.