

RESOLVING CULTURAL HERITAGE ISSUES OF DEVELOPMENT PROJECTS THROUGH THE ENVIRONMENTAL IMPACT STATEMENT (EIS) SYSTEM

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ABSTRACT

Cultural heritage issues have been a major source of conflict in development projects involving exploitation of natural resources in the Philippines. Drawing from the Philippine National Oil Company Energy Development Corporation's experience in its Mindanao Geothermal Project (MGP), this paper makes a strong case for integrating the process of resolving cultural heritage issues into the existing Philippine Environmental Impact (EIS) system. It is shown that during the project review, cultural heritage issues were raised in conjunction with other social and environmental issues and were addressed through the conflict resolution process inherent within the Philippine EIS system, even as clear government rules on the issues were not yet available. The present laws and regulations governing cultural heritage issues in the Philippines have all benefited from the MGP experience. The requirements under these new laws can be subsumed within the EIS framework.

1.0 INTRODUCTION

Cultural heritage issues have been a major source of conflict for development projects in the Philippines, particularly those that entail exploitation of natural resources in areas inhabited by indigenous communities (ICs)¹. Indigenous communities refer the various groups of people sharing common bonds of language, customs, traditions and other cultural traits who because of their relative isolation or through resistance to cultural inroads of colonization have become historically differentiated from the mainstream population.

¹ Ethnologists listed 171 distinct ethnolinguistic groups in the Philippines (Grimes, 1996). Less than a dozen of them belong to the mainstream cultural groups.

Extant indigenous societies at various stages of acculturation are usually to be found in remote, mountainous areas of the Philippines.

Notable among the projects beset with cultural heritage issues were the Chico Hydroelectric Dam Project in the Cordillera Region in the 1970s and the Philippine National Oil Company's (PNOC) Mindanao Geothermal Project (MGP) in North Cotabato Province in the early 1990s. There were no clear government rules and regulations with regard to cultural heritage issues at the time when these projects were pursued. In the case of the Chico Dam Project, opposition by the local tribal group precipitated into violence and forced the government to abandon the project. However in MGP, innovations in Environmental Impact Statement (EIS) process were introduced that eventually led to the resolution of the issues and the general acceptance of the project. The EIS is the permitting process through which project proponents obtain environmental clearance of development projects. It usually consists of the conduct of the Environmental Impact Assessment (EIA) study and the preparation, submission and review of a document containing the EIA study report and proposed environmental management measures.

This paper discusses the innovations made in the EIS process and the strategies employed during the public review of MGP. A brief review of the present laws and regulations in the

² The 1000 MW Chico River Hydroelectric Dam in the Cordillera was proposed by the National Power Corporation in 1974. The plans were successfully opposed in the seventies by the local people. The mass movement against the project launched sustained campaigns locally and internationally and a number of local people resorted to armed struggle as a means of defending their ancestral lands. The struggle led to the killing of the tribal leader Pangat Maclijng Dulag in 1980 by the Philippines Constabulary and eventually brought an end to the Chico Dam project (FNAS (1994).

Philippines that are relevant to cultural heritage issues is also provided. Finally, the paper discusses how the requirements of the present laws can be integrated within the existing Philippine EIS process.

2.0 THE MT. APO GEOTHERMAL PROJECT

Exploration activities in the Mt. Apo geothermal prospect, which supports the Mindanao Geothermal Production Field (MGPF) commenced in 1987 but development of the prospect started only in 1992 when the environmental permit was secured after a prolonged and intense public scrutiny. At present, MGPF operates at a total generating capacity of 104 megawatts. The first 52MW plant was commissioned in 1997 and the additional 54MW in 1999.

The project is situated in the northwestern slope of Mt. Apo, an extinct volcano, which straddles an area considered as traditional homeland to at least three indigenous communities³. Known as Apo *Sandawa* among the ICs, the volcano occupies an important position in their traditional beliefs. The project also displaced about 62 hectares of forest and swidden farms. At 2,900 m asl, Mt. Apo is the highest peak in the Philippines and is home to diverse species of flora and fauna, including the endangered Philippine Eagle. The area has been declared a National Park and is listed as one of the ASEAN⁴ Natural Heritage Sites.

The public review of MGP happened at the time when the country was on a transition from an authoritarian to a democratic system of governance. In 1986, the 15-year old authoritarian government was ousted through a popular uprising. A new Constitution that guarantees freedom of expression, human rights, indigenous people's rights' and the

³ The EIA study identified about seven distinct but related tribes around Mt. Apo. These are the Manobo-Ata, B'laan, Bagobo-Jangan, Manobo-Obo, Manobo-Matigsalog, Manobo-Tagabawa and Manobo-Tagakaulo. Only three of these—Manobo-Ata, Manobo-Obo and Bagobo-Jangan—are found inside the National Park and only Manobo-Obo and Bagobo-Jangan are found inside the proposed project site.

⁴ Association of Southeast Asian Nations

⁵ Although the 1973 Philippine Constitution contained provisions that guarantee freedom of expression (e.g. Sec. 9, Art. IV), respect for the cultural communities (Section 11, Art. XV), the present Philippine Constitution is more explicit and categorical on provisions of freedom of expression and the rights of the indigenous communities.

recognition of the role of NGOs as partners in national development was drafted in 1987.

The decade preceding the MGP review also witnessed a series of socio-political events that heightened people's awareness of their right to participate directly in development project decision-making. In 1980, the Chico Dam Hydroelectric Project in the Cordillera Region was abandoned amid protracted struggle by local tribes (FIVAS, 1994). In 1987, the environmental regulatory functions of the government were strengthened with the reorganization of the Ministry of Natural Resources (MNR) into the Department of Environment and Natural Resources (DENR). By 1989, in preparation to the 1992 Earth Summit, environmental consultations and awareness campaigns were initiated countrywide via NGOs, which organized and received funding from international environmental programs and advocacy groups.

The first formal protest against the project appeared in July 1988 in a form of an open letter published in the local newspaper, alleging among others, that the project infringed on the ancestral land of the ICs. Sooner thereafter several ad hoc and umbrella organizations⁶ representing a number of NGOs opposed to the project were formed. In April 1989, representatives from nine tribes dramatized their opposition to the project by performing the traditional blood compact ritual known as *Dyandi*, pledging to oppose MGP at all cost. The opposition groups were also able to pool resources and send representations to university symposia and the Philippine Congress (Lee, 2000).

Due to the high profile controversy of MGP, the Department of Environment and Natural Resources (DENR) the agency charged with the issuance of environmental permit, required the conduct of a comprehensive environmental impact assessment (EIA) that included a socio-cultural impact study. It also imposed for the first time the somewhat vague requirement of "social acceptability".

⁶ For example, the *Tunay na Alyansa ng Bayan Alay sa Katutubo (TABAK)* or *Network of Indigenous Peoples Rights Advocates* convened a number of NGOs and formed the *Task Force Sandawa* whose primary mission is to work for the recognition of ancestral domain rights of indigenous peoples, using its protest action to the Mt Apo Geothermal Project as a rallying point.

3.0 CULTURAL HERITAGE ISSUES

The cultural heritage issues raised against the MGP include encroachment of projects into ancestral lands, desecration of sacred sites, loss of sources of livelihood and erosion of the traditional way of life of the indigenous communities.

The issue of the project's encroachment into an ancestral land was born out of the growing awareness that ICs constitute people who are distinct from the mainstream citizenry and who have territorial domains and right to self-determination. The Mt. Apo area allegedly is the ancestral homeland of at least three indigenous communities. As such, the ICs contend that they have primal rights Over the natural resources found therein and hence should, at the least, be consulted on any development project in the area. The proponent of MGP allegedly did not respect these rights.

The desecration of *Apo Sandawa* was perhaps the most potentially explosive among the issues raised because it touches on religion. Apo *Sandawa* is held in the traditional animistic beliefs of the tribes as the dwelling place of the god *Mamana or Mandarangan* who meted out punishments for wicked actions⁷.

The traditional way of life of the ICs has been severely eroded by inroads to modernization brought about Christian migrants from the Visayas and Luzon islands. Already the community hosting the project is named "Ilomavis" or short for Ilocano-Manobo-Visayan⁸ and 60% of the population is Visayan. The

⁷ To those who live further off the mountain - the Atas to the north, the Bagobos to the east and southeast, the Guiangans (or Jangans), the Tagakaulos and the B'laans, Mt. Apo was a dreaded mountain. The Bagobos believed that it is the home of the god *Mandaragen* who dwelt upon a throne of fire, forever thirsting for human blood (Togon, 1997). The Manobos believed in *Mamana* the god of justice who punishes all wicked actions of man and the main provider (EPAI, 1991). Members of the tribes who live near the mountain gave the mountain a respectful name Apo meaning "Lord" and "ancient ancestor". *Sandaya* or *Sandawa* is the name given to the white ash deposits near the peak of the volcano (Bernard, 1958 as cited by Togon, 1997).

⁸ The Ilocanos are dominant ethnolinguistic group in northern Luzon. The Manobos are one of the 3 related indigenous groups claiming to be natives in the area while the Visayans are either Cebuano- or Ilonggo-speaking immigrants from the Visayan Islands. The Ilocanos and the Visayans are considered to belong to the mainstream groups.

communities on the slopes of Mt. Apo are at the frontier of the migrant's influence. MGP was considered as the ultimate agent of change that could erase vestiges of tribal way of life in the area.

It should be noted that cultural heritage issues were raised in conjunction with environmental and other social issues by NGO groups who represented various stakeholder interests. Issues such as the dislocation of local residents, loss of livelihood, deforestation and loss of biological diversity especially the loss of one of the remaining habitats of the endangered Philippine Eagle, and the possible pollution of the waterways draining the project site were intertwined with issues on culture preservation, respect of traditional beliefs and rights to ancestral lands. The lumping together of cultural heritage, social, economic and environmental issues brought the opposition's campaign to wider audiences and earned greater attention.

4.0 INNOVATIONS IN THE EIS PROCESS

Established in 1978, the Philippine Environmental Impact Statement (EIS) system was intended to address environmental concerns associated with large development projects or with projects that are situated in environmentally critical areas. It requires the conduct of Environmental Impact Assessment (EIA) and the submission of the report in the form of an Environmental Impact Statement (EIS) to government for review. The result of the review will determine whether or not the project will be issued an environmental permit. Public involvement was very limited. Interested parties can submit comments on a brief description of the project published by the government. The early statutes also had provisions for the holding of public hearings but at the government's discretion (Alcances et al., 1983) and these were seldom resorted to.

During the review of MGP, major innovations in the EIS process were introduced. Firstly, public involvement in the EIA was effected through multisectoral scoping⁹ sessions. Secondly, the EIA was expanded to include a socio-cultural impact study in addition to the usual

⁹ Multisectoral Scoping is the delineation of the scope of the EIA study and identification of study parameters participated in by representatives of various sectors.

socioeconomic impact study. Thirdly, an independent review committee was formed to review the EIA report. Lastly, on top of environmental viability, social acceptability was added as a precondition for the issuance of environmental permit.

Increased public involvement in the EIS process and the precondition of social acceptability meant that the decision to issue environmental permit can no longer be based solely on the scientific findings and proposed management measures. Public perception of the project's impacts became a critical factor in appraisal of the project. This situation necessitated a new strategy consisting of public information campaign, consultation and negotiations with various stakeholders and interested parties, all to be conducted along with the EIA study.

5.0 RESOLVING THE ISSUES

5.1 A Framework for Resolving Issues

Oppositions to development projects are rooted on the perceived unjust distribution of costs and benefits among stakeholders. A project may be financially desirable with very high internal rate of return and net social benefit and yet it makes some groups worse off. According to the weak Pareto-efficiency principle such projects can be made viable if those who would be made worse off agree to some kind of compensation from those who would be made better off. This had been the guiding framework used by the proponent in the resolution of issues.

The distribution of costs and benefits can be objectively assessed by a thorough a social cost-benefit study. However, in most development projects like MGP, perception plays a big role in the social acceptability of the project. In the stakeholder's own calculus, it is his perception of the costs imposed by the project on him, not the real or objective costs that count. An analysis of the initial distribution of perceived costs and benefits for MGP is presented in Table 1. It is easy to see from the lopsided distribution of costs and benefits why some stakeholders were bent on opposing the project.

5.2 Bringing Public Perception Closer to Reality

To minimize speculations and negative perceptions about the project, the proponent launched a massive information drive among residents of host and nearby communities, students and civic groups. The typical information campaign consisted of a lecture presentation on the nature and technology of the proposed project, the proposed environmental management measures and the benefits to the host communities. Each presentation was often followed by an open forum. Over 75 lecture presentations had been conducted involving more than 4,000 persons. This was also supplemented with radio and print media campaigns.

The public information campaigns helped eliminate unfounded fears about the project and hence brought the perceived social costs and benefits closer to the true social costs and benefits of the project.

5.3 Solicitation for Suitable Benefit-Transfer Schemes

The proponent conducted consultation meetings and dialogues with recognized stakeholder representatives, including congressional committees, national government agencies, local governments, tribal leaders and church leaders. By the time the environmental permit was issued, the proponent had secured the formal endorsements from 43 groups (Bernardo and Celi, 1993). More importantly these included the host community and the affected tribal group within the host community.

The consultation meetings had elicited viable schemes for redistributing social costs and benefits of the project in the form of mitigation and preventive measures, compensations, benefit-transfer and cost-sharing agreements among stakeholders.

5.4 Final Distribution of Project's Costs and Benefits

The agreed benefit-transfer and cost-sharing arrangements and other commitments made with the stakeholders during the consultations were documented in voluminous dialogue transcripts. These were eventually indicated in three binding documents viz., in the EIS as part

Table 1. Initial distribution of costs and benefits among stakeholders in Mindanao Geothermal Project.

Stakeholder	Benefit	costs
Project Owner	- Energy sales	- Development Cost - Maintenance and Operating Cost - Normal Environmental Management Measures - Normal Community Relations - Royalties and Taxes
National Government	- Royalties and Taxes - Foreign exchange savings - Reduced vulnerability to oil price shocks	- Reduced area of National Park
Directly affected residents	- Employment Opportunities - Increased Business Opportunities - Good Roads - Normal Community Relations Programs - Share of Royalties	- Loss of dwellings - Loss of livelihood sources - Alleged air and water pollution - Alleged increased risk of flood and volcanic eruption - Alleged health impacts
Host Local Governments	- Employment Opportunities - Increased Business Opportunities - Good Roads - Appreciation of real estate values - Normal Community Relations Programs - Share of Royalties	- Alleged air and water pollution
Indigenous Communities (ICs)		- Erosion/marginalization of indigenous culture - Desecration of a sacred sites - Non-recognition of rights to natural resources
Environmental groups		- Alleged environmental pollution - Loss of forests - Alleged impact on biodiversity

of the recommended environmental management measures, in the environmental permit as part of its conditionalities and in a memorandum of agreements with tribal leaders. The resulting distribution of project's casts and benefits is presented in Table 2. Items in italics are transferred benefits or compensations. Mitigation measures or programs commitments to address costs born by stakeholders are written as "f(measure)" to reflect the fact that it is the actual effect or success of the measure or the program that would compensate the cost, not the measure or the program itself. Note that some alleged costs items such as the alleged risk of flooding, earthquake and ground

subsidence do not appear in the final distribution of costs and benefits as they were successfully explained to be unfounded during the information drives and public hearing.

The project benefits transferred to the ICs included: (a) an Environmental Trust and Tribal Welfare Fund to be funded from **Php0.01** set aside for every kilowatt hour of electricity generated from the project and from 20% of the royalty share of **the local** government; (b) an expanded community relations programs that include communities within 10-kilometer radius **of** the project site and (d) preference in employment in the project.

Table 2. Final distribution of costs and benefits among stakeholders in the Mindanao Geothermal Project

Stakeholder	Benefit	costs
Project Owner	<ul style="list-style-type: none"> - Energy sales 	<ul style="list-style-type: none"> - Development Cost - Maintenance and Operating Cost - Normal Environmental Management Measures - Normal Community Relations - Royalties and Taxes - Resettlement Program - Crop Damage Compensation - Livelihood Assistance - Proponent Contribution to ETWTF - Pamaas Rites - Reforestation Program - Zero Discharge System - Expanded Community Relations Programs - Stricter Environmental Management Measures - Preference in Employment
National Government	<ul style="list-style-type: none"> - Royalties and Taxes - Foreign Exchange Savings - Reduced Vulnerability to Oil Price Shocks 	<ul style="list-style-type: none"> - Share of Royalties to Host Communities
Directly Affected Residents	<ul style="list-style-type: none"> - Employment Opportunities - increased Business Opportunities - Good Roads - Normal Community Relations Programs - Share of Royalties 	<ul style="list-style-type: none"> - Loss of Dwellings <i>less f(Resettlement Program)</i> - Loss of Crops <i>less f(Crop Damage Compensation)</i> - Loss of Livelihood <i>less f(Livelihood Assistance)</i>
Host Local Governments	<ul style="list-style-type: none"> - Employment Opportunities - Increased Business Opportunities - Good Roads - Appreciation of Real Estate Values - Normal Community Relations Programs - Share of Royalties 	<ul style="list-style-type: none"> - Alleged Environmental Pollution <i>less f(Zero Discharge System + additional environmental management measures)</i> - LGU Contribution to ETWTF
Indigenous Communities	<ul style="list-style-type: none"> - Environmental and Tribal Welfare Trust Fund (EMF) - Expanded Community Relations Programs - Preference in Employment 	<ul style="list-style-type: none"> - Erosion/marginalization of indigenous culture <i>less f(comprehensive baseline study on ICs' culture)</i> - Alleged desecration of Mt. Apo <i>less f(Pamaas Rites)</i> - Alleged environmental pollution <i>less f(Zero Discharge System + additional environmental management measures)</i>
Environmental Groups		<ul style="list-style-type: none"> - Alleged environmental pollution <i>less f(Zero Discharge System + Additional Environmental Management Measures + Multisectoral Monitoring Program)</i> - Loss of forest; reduced habitat for the Philippine Eagle <i>less f(Reforestation Program)</i> - Alleged impact on biodiversity <i>less f(Biodiversity Study)</i>

6.0 PRESENT RULES AND REGULATIONS ON CULTURAL HERITAGE ISSUES

Cultural heritage impacts of development projects are adequately covered by present laws and regulations. Below are the major laws relevant to cultural heritage issues. With the exception of the Cultural Properties Preservation and Protection Act, all these laws have been significantly influenced by the MGP experience.

1. **Cultural Properties Preservation and Protection Act (CPPPA).** This law provides for the conduct of "site surveys or investigations on land or seabed which may contain archaeological sites that are in danger of being damaged or destroyed". It also provides that "archeological sites may not be explored excavated or altered without prior written authority from the Director of the National Museum" (Ronquillo and Dizon, 1992). This law protects not only known or declared archeological sites but also sites that have potentials to contain archaeological resources.
2. **The DENR Department Administrative Order (DENR-DAO) No.21** - Issued in 1992, this Administrative Order strengthened the EIS system by adopting innovations tried during the MGP review. In its latest version, DAO 97-36 (DENR, 1997), social acceptability is a standard requirement for all projects that are subject to the EIS process. Social acceptability is being defined as a procedural requirement, which means that the project shall undergo public consultation process, beginning with the scoping session with stakeholders up to the public hearing. Other requirements that have been standardized from the MGP experience were: (1) the public scoping for the EIA study; (2) the commissioning of independent EIS reviewers; (3) substantive proofs of social acceptability such as endorsements by host local governments; (4) public hearing; (5) the formation of a Multisectoral Monitoring Team.
3. **The Department of Energy (DOE) Law** - Passed in 1992, this law grants, among others, benefits to the local communities in

the form of "missionary" electrification¹⁰, subsidized power rates, development and livelihood, reforestation, environmental and health funds (PNOC-EDC, 1993). Although not specifically targeted to indigenous communities, the law will enable local tribal communities to benefit directly from energy projects.

4. **The National Integrated Protected Area System (NIPAS)** - Passed in 1992, this law is designed to protect National Parks from further encroachment and to allow development projects which have compatible uses or which will enhance the preservation of the park. NIPAS includes specific provisions protecting the rights of the cultural communities to their ancestral domain. Under this new law, the indigenous people cannot be evicted from the National Park. However, if the energy project was not in the original management plan of the National Park, it can only be allowed through a congressional action (DENR, 1992).
5. **The Indigenous People's Rights Act (IPRA)** - Passed in 1997, this law is so far the most comprehensive piece of legislation on ICs. It spelled out in clear terms the rights of the indigenous communities to their ancestral lands. More importantly, it provides that ICs have the right to accept or reject certain development interventions in their particular communities (NCIP, 1998). For projects located within an ancestral domain, it requires the project developer to: (1) submit, apart from the EIS, a Socio-Cultural Impact Statement; (2) secure "Free and Prior Informed Consent" (FPIC); and, (3) enter into a written agreement regarding benefits and compensations to the IC.

The passage of the above laws does not eliminate the possibility of conflicts regarding cultural heritage issues. Even IPRA does not specify what and how much the ICs are entitled to. The amounts of compensations are still open to negotiations. The resolution of conflicts among different groups is one of the main benefits of public participation during project planning (Kweit and Kweit, 1987). As a planning tool, the EIS provides ample opportunities for

¹⁰Missionary electrification is the provision of power transmission and distribution lines in remote areas where the same would not be commercially viable.

genuine public participation. It thus remains the most suitable framework within which requirements from the cultural heritage laws can be pursued.

The requirement of the submission of Socio-cultural Impact Statement if the project is located within an ancestral domain claim can be addressed during the scoping sessions and the socio-cultural impact assessment study can be subsumed under the EIA study. This applies as well to the requirement of prior survey for areas potentially containing archaeological resources under CPPPA. The EIA study should be able to come up with mitigating measures including recommendations for contingency actions in cases of chance finds of artifacts. The strategies to be adopted in cases of "chance finds" can be stated in the EIS as part of the recommended management measures, or more formally, can be included as a condition in the environmental permit.

Both requirements of "social acceptability" under DAO 96-37 and the "free and prior informed consent" under IPRA can be achieved through public involvement in the EIA, the conduct of public information drives and holding of consultation meetings among community leaders, **LGUs**, NGOs and recognized representatives of the indigenous communities.

Finally, the benefits, compensations and measures mandated by present laws should enhance the acceptability of the project to the community. Other commitments can be contained in a written undertaking with the tribal community as required by IPRA, including full disclosure of information, damage compensation (e.g., Resettlement, Crop Damage, etc.) and benefit sharing arrangements (e.g. E M F , Priority Employment, Livelihood, etc.).

7.0 CONCLUDING REMARKS

Cultural heritage issues such as encroachment of development projects into ancestral lands, desecration of sacred sites and erosion of traditional culture can be addressed through the existing EIS system which requires (a) conduct of a participatory EIA study and (b) social acceptability. Social acceptability can be achieved through public information drive aimed at educating the public of the true social costs and benefits of the project and consultations

aimed at finding a viable scheme for sharing costs with, or redistributing benefits among stakeholders. The MGP experience proved that these strategies are effective in resolving socio-cultural issues of development projects even when rules and regulations did not yet exist.

The MGP experience has had significant influence in the Philippine legislation and regulatory efforts pertaining to the environment, cultural communities and natural resources. DENR Admin Order No. 96-37 has strengthened the EIS process by making standard requirements most of the innovations introduced in the MGP review. In regard to the resolution of cultural heritage issues, MGP experience has left its imprints in the various laws that have been passed in the intervening years, namely the Department of Energy Law (1992), the National Integrated Protected Area System (1992) and the Indigenous People's Rights Act (1997). Compliance with the requirements of these laws can be integrated within the existing EIS system.

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