# Clarity in mining regulation

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In rejecting the 25-year moratorium on mining imposed by Occidental Mindoro and one of its municipalities in areas within their jurisdiction, the Supreme Court did not favor miners at the expense of environmentalists. It simply clarified the legal bounds of what local government units (LGUs) can do in relation to national laws.

The province’s blanket prohibition on all large-scale mining activities is too broad and therefore void, said the high court decision written by Senior Associate Justice Marvic Leonen. While it agreed that the exploration, development, and utilization of mineral resources necessarily affect the environment, it pointed out that the LGU’s exercise of its powers under the Local Government Code of 1991 must be consistent with the provisions of Republic Act No. 7942 (The Philippine Mining Act of 1995), a later legislative enactment specially regulating mining. The high tribunal explained that while LGUs enjoy local autonomy under the Constitution, this is “limited and confined within the extent allowed by the national government” and national laws.

Neither does the ruling signal the unrestricted implementation of mining projects in the province or elsewhere as the high tribunal emphasized that all companies are required to abide by environmental safeguards set by the Department of Environment and Natural Resources (DENR).

## Irresponsible mining

And while an LGU has no authority to ban all large-scale mining activities within its jurisdiction, it can do so for each mining application separately. “[The LGU] may or may not give its approval to the application based on its evaluation of the project’s social acceptability and impact on environment, livelihood, and land rights of its constituents. Consequently, within this sphere of authority, [an LGU] may prohibit a specific mining project to be conducted within its territorial jurisdiction,” the Supreme Court said. In her concurring opinion, Associate Justice Amy Lazaro-Javier said the province can still serve the best interests of its people by properly reviewing the mining application in its area.

The decision now puts the big burden of protecting the environment against irresponsible mining clearly on the shoulders of LGUs, the DENR, civil society groups, and the affected residents. As Occidental Mindoro Gov. Eduardo Gadiano said in reaction to the ruling, residents and local officials need to be proactive and establish their own rules to limit mining activities. “The people can still do something, if they don’t like a project, by putting pressure” on their local officials. This, in turn, will challenge mining companies to comply with stringent requirements imposed by the DENR and the mining law itself and prove that the mining project is sustainable.

## ‘Mining no-go zones’

Norman Novio, Sablayan municipal administrator and former program coordinator of the social action center of the Apostolic Vicariate of San Jose that strongly opposed mining, said the high court is simply entrusting LGUs with the responsibility to address and thoroughly review each application within their jurisdiction, which is now a significant challenge to newly elected officials in provinces and towns where there are pending mining applications. For example, “mining no-go zones” can be identified and established through local ordinances, especially in communities vulnerable to environmental destruction such as the fragile island ecosystem of Mindoro, particularly its key biodiversity areas, island ecosystems, critical watershed areas, geo-hazard areas, natural forests, ecotourism zones and agricultural lands.

In the case of Agusan Petroleum and Mineral Corp., whose case was the subject of the Supreme Court ruling, local officials, the DENR and civil society need to scrutinize the project’s impact on the environment and on tourism since the 46,050 hectares of its mining property are in the critical Oriental and Occidental Mindoro towns of Baco, San Teodoro, Puerto Galera, Mamburao, and Abra de Ilog. The island of Palawan can do the same since the high court ruling may also affect its imposition last March of a 50-year moratorium on new mining applications.

## Higher standard

The high court’s ruling should not be seen as a total loss for environmentalists. It reaffirmed the power of LGUs to assess and reject mining applications when the Supreme Court emphasized that “local governments have the authority to evaluate each application for a mining project … express their concerns or objections thereto, and/or withhold their approval, if these concerns are not addressed.’”

This will now require a higher standard of governance from local officials—the governors and mayors down to the councilors and residents who now bear the huge responsibility of ensuring that companies seeking permits to mine in their areas are compliant with all of the stringent requirements set by the mining law and the DENR. These are the people now accountable for the protection of the environment for the next generations to enjoy.