Natural Resource Governance Institute

Diagnosing Corruption in the Extractives Sector:
Philippines Case Study

November 2023

NRGI launched the first version of <u>Diagnosing Corruption in the Extractive Sector: A Tool for Research and Action</u> in September 2021, with the support of GIZ. This project sought to create an interactive and adaptable tool that anti-corruption actors could use to structure research, engage key stakeholders, and ultimately develop an evidence-based action plan to improve integrity in their country.

The Philippines multi-stakeholder group (PH-MSG), and the Extractive Industries Transparency Initiative's (EITI) International Board, included anticorruption as one of its strategic priorities for 2021. The PH-EITI work plan included anticorruption activities that focus on data and information analysis and, as a result, the MSG decided to use NRGI's tool for diagnosing corruption under this workstream. The integrity study was carried out from April to December 2022 and examines issues around the decision to extract, licensing, and contracting in the large-scale nickel sector, a key mineral needed for the energy transition.

Due to the level of stakeholder participation (in a COVID-context where workshops had to be organized online) and the diverse views expressed during the consultations, the findings of the study are still subject to further discussions to enable broader views about the large-scale nickel mining sector in the Philippines to be represented. The study hopes to inform future work on extractives industry integrity and generate further opportunities for stakeholder engagement on anticorruption issues.

The process requires participants to follow six steps:

1 **Choose a sector and set goals:** The user identifies the sector or commodity that will be assessed and formulates a set of broad goals that describe the motivations for conducting the diagnosis.

2 **Review existing data:** Through desk research, the independent expert reviews a core set of existing data and analysis on corruption and governance in the country's extractive sector, flagging leading challenges and opportunities.

3 **Select the areas of focus:** Based on the Step 2 analysis and multi-stakeholder input, the user identifies the most relevant area of focus for in-depth analysis and eventual action planning.

4 **Diagnose corruption:** The independent expert then conducts in-depth research and analysis on the chosen area of focus to identify common forms of corruption, why they occur and how different actors might address them. Research methods include interviews, focus groups, desk research and surveys.

5 **Prioritize forms of corruption for action:** Drawing on the Step 4 findings and multi-stakeholder input, the user prioritizes which forms of corruption to address in the action planning.

6 **Develop an action plan:** With support from the independent expert, the user engages a relevant set of stakeholders to develop an action plan targeting the forms of corruption prioritized in Step 5. Dissemination, implementation and monitoring then ensue.

How was the process carried out in the Philippines?

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Step 1: Choose sector and set goals

The multi-stakeholder group (MSG) chose **large-scale nickel mining** for in-depth analysis using NRGI's tool because of the significance of the sector. Most active mines in the Philippines extract nickel, which is critical for the energy transition due to its use in EVs and the renewable energy sector. Integrity concerns in the sector include a lack of transparency over the ownership of many nickel operators, with indications that politically exposed persons (PEPs) may be involved, reports of questionable transfer pricing practices, and the association between local chief executives and some nickel mines.

The MSG established that the goals of the study were to:

- Surface risks of corruption along the extractives value chain, including any economic, social, regulatory, and environmental concerns associated with or that may arise from these risks.

- Develop policy recommendations to address identified risks of corruption; and

- Help improve resource governance, domestic resource mobilization, and the overall contribution of extractives to national development.

To support the implementation of these goals, an independent expert assisted in carrying out the following steps outlined in the diagnostic tool.

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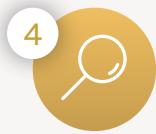## Step 2: Review existing data

The independent expert led a review of existing data using the guidance provided by NRGI as part of the diagnostic tool. The review took roughly 2 months and considered key government, EITI, CSOs and media reports. The review summarized the findings about corruption and governance challenges in nickel mining and answered questions related to the economic, social, political, and environmental significance of the area; the vulnerability of the area to corruption; and the opportunities for positive change across four extractive sector decision stages and two cross-cutting topics around state-owned enterprises and the energy transition.

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Step 3: Select area of focus

The MSG and independent expert held consultation meetings with government representatives, civil society organizations, and industry representatives to discuss the summary report in August 2022. This led to the decision to focus on the decision to extract, licensing and contracting for Step 4 research, although under-valuation, under-reporting, and transfer pricing within the area of 'revenue collection' were also highlighted as key issues of interest.

Step 4: Diagnose corruption

The independent expert prepared a report summarizing the findings of the in-depth research around corruption in the chosen area of focus, assessing what forms of corruption are of significant concern, their causes, and the steps that could help address these issues. The prepared report identified 5 leading forms of corruption in 'decision to extract, licensing and contracting' (see step 5 for more details on these forms identified):

1. Manipulation of community consultations
2. Manipulations of environmental and social impact assessments
3. Undue influence and favoritism in licensing processes and decisions
4. Bribery to influence awards
5. Undue private influence over laws and regulations

Some of the risk factors that lead to the listed forms of corruption in the Philippines included a lack of transparency, weak government institutions, weak oversight by government institutions, weak enforcement rules in practice, and weak integrity and accountability measures.

- Community consultations being conducted as a formality or in bad faith.
- Insider deals or payoffs influencing community consultation outcomes, with the community often divided during the consultation process.
- Abuse of authority in granting ancillary permits.
- Excessive (deliberate) delays in clearances and permits required for a mining agreement or exploration permit.
- Misleading statements and lack of verification of Environmental Impact Assessments (EIAs).
- Undue influence or interference in the award process.
- Abuse of office or authority in direct negotiations.
- Large campaign donations to PEPs with influence in rulemaking and excessive informal lobbying.
- Conflicts of interest due to financial interests or control of the mining companies.
- Capture of policy making.

Step 6: Develop an action plan

A national action plan was developed by the independent expert, using guidance provided by NRGI, with inputs from the constituencies. It was submitted as a recommendation to the PH-EITI MSG. The national action plan sets objectives and identifies proposed actions that should be undertaken for each of the prioritized forms of corruption, identifies the roles of the PH-EITI and the MSG, including naming the responsible entities for each action step, and demonstrates how civil society and other stakeholders could participate in the implementation process.

Step 5: Prioritize for action

A range of stakeholders attended an online workshop in September 2022, where the independent expert presented the Step 4 findings and participants identified priority issues for action based on the likelihood, impact, and feasibility of reform. This led to the following forms of corruption being prioritized for action (in order of priority):

The following list outlines a summary of key actions identified to address each form of corruption:

- **Community consultations being conducted as a formality or in bad faith:** Reviewing legal framework, enhancing resourcing for monitoring consultations, increased information about community consultations in annual EITI reporting, and awareness raising and outreach activities to the local community and civil society.

- **Insider deals or payoffs influencing community consultation outcomes:** Scaling up IO/CC functional capacities, and building capacity development sessions on royalty management.

- **Abuse of authority in granting ancillary permits:** Issuing clear guidance and rules, and including information about initiatives that aim to strengthen collaboration between PH-EITI, local government units, and the National Commission on Indigenous Peoples and subnational monitoring mechanisms in annual EITI reporting.

- **Excessive (deliberate) delays in clearances and permits required for a mining agreement or exploration permit:** Reviewing the current framework to identify the areas to be strengthened, setting durations and timeframes for the approval of each step of the award process, harmonizing the work of different departments, automating administrative services, and providing information on step-by-step permit approval or awarding process in annual EITI reporting.

- **Misleading statements and lack of verification of EIAs:** Mandate information dissemination in local languages, compile a list of EIA consultants in the region, ensure civil society participation in the process, undertake analysis on the gap between policy and actual practice in EIA process, review company reporting requirements, and include information on the local impacts of mining, environmental impacts of extractive activities, and environmental sanctions and monitoring reports in annual EITI reporting.

- **Undue influence or interference in the award process:** Publish more extensive licensing and award information, a comprehensive list of active contracts and licenses, and the full text of granted licenses, review the efficiency of license and contract processes, disclose information about the dates, award process, list of bidders, efficiency assessment, and audit and assurance procedures as part of annual EITI reporting, create project specific citizens' charters, and establish a publicly available cadastre.

- **Abuse of office or authority in direct negotiations:** Review the rules and procedures governing the choice of direct negotiations for the award of extraction rights.

- **Large campaign donations to PEPs with influence in rulemaking and excessive informal lobbying:** Review the current rules and regulations on disclosure of donations and lobbying activities by mining companies and introduce measures restricting and disclosing donations and lobbying by mining companies.

- **Conflicts of interest due to financial interests or control of the mining companies and capture of the policy making process:** Review the current legal and regulatory framework on collection, disclosure and vetting of beneficial ownership information in the extractives sector, fully implement beneficial ownership transparency, grant public access to asset declarations of PEPs, and enhance the knowledge and capabilities of relevant authorities to use this information.

The 2023 PH-EITI work plan identified Strengthening institutions and linkages as a key strategic objective, with one of the key result areas listed being "1.4. Strengthen the integrity of extractives governances (integrity)." Along this line was included a specific activity to "recommend and implement actions to address risks identified by the extractives integrity study" under the responsibility of all constituencies.

While the MSG has not formally signed on to the entire Study and its recommendations, given the need to include further consultations, the reference to the study in the 2023 work plan clearly indicates that the MSG continues to see the value of the study and the importance of strengthening extractives integrity.