

Philippines: Seizing Opportunities

Increasing Transparency and Accountability in the Extractive Industries

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Summary

The Philippines is endowed with vast amounts of mineral resources. It also has significant potential resources of oil and gas, mainly offshore and unexplored. Much of the potential oil and gas reserves are located in the disputed South China Sea, considered by some petroleum experts to be the next Persian Gulf. In spite of this potential, the country's extractive industry is beset by adverse environmental and social effects, weak transparency and accountability, and disputed economic benefits.

At the national level, there are already mechanisms for transparency, accountability and civic participation, as well as ongoing policy reforms. Globally, the Philippines' active engagement in the Open Government Partnership and its positive response to the Extractive Industry Transparency Initiative (EITI) could increase good governance in natural resource management.

The profitability of the Malampaya gas project has revitalized the oil and gas industry, though the legal battle between the local and national government over billions of dollars of revenue from the project is a prime example of governance and transparency challenges facing the reform efforts.

Advocates of transparency and accountability have a crucial ally in President Benigno Aquino, who was elected on a reform platform that focuses on transparency, accountability and the pursuit of the rule of law as preconditions for national development. Effective work with the Aquino government will require an understanding of the dynamics between the two key influence groups in the government, the pro-reform Balay group and the anti-reform Samar group. The Open Government Partnership and EITI provide immediate entry points for work with the national government on transparency and accountability. Another important step is strengthening the National Commission on Indigenous Peoples (NCIP).

Legislative levers for this work include the Freedom of Information Bill, the Minerals Management Bill and the National Land Use Management Bill. Other entry points are efforts by local officials and communities of local governments to assert their local autonomy and environmental

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The **Revenue Watch Institute** promotes the effective, transparent and accountable management of oil, gas and mineral resources for the public good. Through capacity building, technical assistance, research, funding and advocacy, we help countries to realize the development benefits of their natural resource wealth.

The **Transparency and Accountability Initiative** aims to expand the impact and scale of funding and activity in the transparency and accountability field, as well as explore applications of this work in new areas.

rights in the provinces of Quezon, Romblon, Zamboanga Del Norte, South Cotabato, Romblon, Albay and Marinduque.

Also important would be the creation of a platform for engagement and capacity building among stakeholders, including civil society and industry. This platform could start with a national conference on extractive industry transparency and accountability discussing transparency and accountability.

ACRONYMS

| | |
|--------|---|
| AER | Action for Economic Reform |
| ALG | alternative law groups |
| ATM | Alyansa Tigil Mina |
| BIR | Bureau of Internal Revenue |
| CADC | Certificate of Ancestral Domain Claim |
| CALC | certificate of ancestral land claim |
| CADT | Certificate of Ancestral Domain Title |
| CALT | certificate of ancestral land title |
| CAFGU | Citizens Armed Forces Geographical Units |
| CBCP | Catholic Bishops Conference of the Philippines |
| CERD | Committee on the Elimination of Racial Discrimination |
| CMRBs | City Mining Regulatory Board |
| COMP | Chamber of Mines of the Philippines |
| CRO | community relations officer |
| CSOs | civil society organizations |
| CSR | corporate social responsibility |
| DBM | Department of Budget and Management |
| DENR | Department of Environment and Natural Resources |
| DILG | Department of Interior and Local Government |
| DOE | Department of Energy |
| DOF | Department of Finance |
| DOTC | Department of Transportation and Communications |
| ECC | environmental clearance certificate |
| ECP | environmentally critical project |
| EEZ | Exclusive Economic Zone |
| EIA | environmental impact assessment |
| EITI | Extractive Industries Transparency Initiative |
| EMB | Environmental Management Bureau |
| EO | executive order |
| FPIC | free prior and informed consent |
| FTAA | financial and technical assistance agreements |
| GDP | gross domestic product |
| GIFMIS | Government Integrated Financial Management Information System |
| IDF | Investment Defense Forces |
| IFC | International Finance Corp. |
| IP | indigenous people |
| IPRA | Indigenous Peoples Rights Act |
| ITLOS | International Tribunal on the Law of the Seas |
| KAMP | Kalipunan ng mga Katutubong Mamamayan ng Pilipinas/National Federation of Indigenous Peoples Organizations in the Philippines |
| KASAPI | Koalisyon ng Katutubong Samahan ng Pilipinas |

| | |
|--------------------|--|
| KLM | Kilusan Love Malampaya |
| LGU | local government units |
| LRC-KsK/FoE Phils. | Legal Rights and Natural Resources Center-Kasama sa Kalikasan/ Friends of the Earth Philippines |
| MGB | Mines and Geosciences Bureau |
| MPSA | mineral production sharing agreement |
| NCIP | National Commission of Indigenous People |
| NIPAS | National Integrated Protected Areas System |
| OGP | Open Government Partnership |
| PAFID | Philippines Association for Intercultural Development Inc. |
| PAMALAKAYA | Pambansang Lakas ng Kilusang Mamamalakaya ng Pilipinas |
| PD | presidential decree |
| PhilDHRRRA | Philippine Partnership for the Development of Human Resources in Rural Areas |
| PMP | Philippine Misereor Partners |
| PMRB | provincial mining regulatory board |
| PMRC | Philippine Mineral Reporting Code |
| PNOC-EC | Philippine National Oil Company-Exploration Corp. |
| PSE | Philippine Stock Exchange |
| RA | Republic Act |
| R2KRN | Right to Know Right Now Network SC- Service Contract |
| SDMP | Social Development and Management Program |
| SEC | Securities and Exchange Commission |
| SLAPP | Strategic Lawsuits against Public Participation |
| SPEX | Shell Pilipinas Exploration B.V |
| TAN | Transparency and Accountability Network |
| TWG | Technical Working Group |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |

Country overview

Mining

The Philippines has a total land area of 30 million hectares. An estimated 9 million hectares are considered as having high mineral potential. This is expected to increase with continuing exploration and geological mapping. The Philippines is rich in gold, copper, nickel and chromite, with total mineral reserves valued at \$1.387 billion.² As of September 2011, there were 730 large-scale mining agreements and 1,818 applications being processed, with 27 operating metal mines and two processing plants.³ There are 400,000 small-scale mining companies.⁴ The top mineral exports in the Philippines are copper, gold and nickel. Major countries of destination are Japan, Australia, Canada and China.

Mining in the Philippines is limited to the extraction of mineral ores. Once extracted, the raw ores are processed mainly in China.

2 Joint Foreign Chambers, *Arangkada Philippines 2010: A Business Perspective*, December 2010, <http://www.scribd.com/doc/45388351/Arangkada-Philippines-2010>.

3 Mines and Geosciences Bureau, "Mining Industry Statistics," September 23, 2011, <http://mgb.gov.ph/Files/Statistics/MineralIndustryStatistics.pdf>.

4 Ryan Chua, "No such thing as responsible mining, say farmers," *ABS-CBN News*, December 8, 2011. Accessed December 6, 2011. <http://www.abs-cbnnews.com/-depth/12/08/11/no-such-thing-responsible-mining-say-farmers>.

In the recent years, China and Korea emerged as the biggest markets for Philippine minerals. The increasing demand for minerals and metals such as iron ore, copper and nickel in China will encourage more Chinese mining investments in the Philippines. With the emergence of new markets and transnational companies from East Asian economies, the challenge for the Philippines is to guarantee that the supply chain of these companies follows environmental and human rights standards, as well as to ensure transparency and accountability.

The mining industry is dominated by large-scale mining companies, which are mostly foreign-owned. They are (1) Benguet Corp., which is 40 percent American; (2) Eldore Mining Corporation, which is 40 percent Australian; (3) Gold Fields Philippines Corp., which is 40 percent Australian; (4) Philippine Gold Processing & Refining Corp., which is 99.99 percent British; (5) TVI Resource Development Philippines Inc., which is 40 percent Hong Kong-owned; (6) Carrascal Nickel Corp., which is 40 percent Chinese; (7) Coral Bay Nickel Corp., which is 100 percent Japanese; (8) Platinum Group Metals Corp., which is 85.72 percent Malaysian; (9) Rio Tuba Nickel Mining Corp., which is 40 percent Japanese; and (10) Oriental Synergy Mining Corp., which is 31.3 percent Chinese.⁵

Oil and Gas

The Philippines has always been known as an oil-importing country, with 90 percent of its oil consumption sourced abroad, 80.8 percent coming from Middle East and 10.3 percent from Malaysia.⁶ This has made the Philippines highly vulnerable to volatility in the Middle East.

The prices of oil products were deregulated in 1998. Since then, there has been a pronounced public dismay over the perceived inability of the government to regulate oil price hikes. The Department of Energy (DOE) is now getting an outside audit team to investigate pricing by oil companies.⁷ This is a promising start for transparency in the downstream oil industry.

Exploring new and indigenous sources of oil and gas is crucial to attaining energy independence. Successes came in 2009 and 2010, when three of the four deepwater wells drilled by multinational oil giant Exxon Mobil in the Sulu Sea resulted in gas discoveries.⁸

At present, the most significant domestic source of gas is the Malampaya-Camago oil and gas reserves off Palawan Province. From 2001 to 2010, the Malampaya field located in northwest Palawan produced an estimated 970 billion cubic feet of gas, 43.9 million barrels of condensate, and 1.9 million barrels of oil.⁹ It provides 40 to 45 percent of the power generation requirements of Luzon, the largest island in the Philippines. This has reduced oil imports and provided a cleaner source of power.¹⁰ Service Contract 38, where the Malampaya gas field is, was signed in 1998 between the Philippine government and a consortium of companies: Shell Pilipinas Exploration B.V or SPEX (45 percent), Chevron Texaco (45 percent) and the Philippine National Oil Co.-Exploration

5 Board of Investments, *The Philippines' Mineral Potential*, June 21, 2011. Accessed December 6, 2011. <http://www.investphilippines.gov.ph/downloads/sector/Mining.pdf>.

6 Department of Energy, *Philippine Energy Sector Presentation*, October 4, 2011. Accessed December 6, 2011. <http://www.doe.gov.ph/>.

7 Amy Remo, "Energy dep't forming team to audit oil firms," *Philippine Daily Inquirer*, November 2, 2011. Accessed December 6, 2011. <http://business.inquirer.net/28039/energy-dep-percentE2-percent80-percent99t-forming-team-to-audit-oil-firms>.

8 Department of Energy, *Exploration Opportunities in the Philippines*. Accessed December 6, 2011. <http://www.doe.gov.ph/pecr4/petroleum.html>

Department of Energy Act of 1992, R.A.7638, section4 (1992).

Department of Energy, *Philippine Energy Contracting Round 4*. Accessed December 6, 2011. <http://www.doe.gov.ph/pecr4/petroleum.html>.

9 Department of Energy, *Philippine Energy Contracting Round 4*. Accessed December 6, 2011. <http://www.doe.gov.ph/pecr4/petroleum.html>.

10 Shell Exploration B.V. *Power from the Deep*. Accessed December 6, 2011. <http://malampaya.com/>.

Corp. (PNOC-EC, 10 percent). In 2001, Shell, Chevron and PNOC-EC invested around \$2.1 billion in the project and had recovered their investment by 2005. Annual gross revenue generated from the Malampaya project is estimated to be about \$1.3 billion.¹¹

The present administration is promoting the country's gas and oil potential. In June 2011, DOE opened bidding for blocks with a total area of more than 10 million hectares, the biggest offering to date.¹² The Philippines has contracted with British Forum Energy to explore Reed Bank, but drilling cannot start because of claims by China and Vietnam.¹³

Policy and Legal Framework

The 1987 Philippine Constitution dictates that the exploration, development and utilization of natural resources can be undertaken directly by the state or through co-production, joint venture or production-sharing arrangements with Filipinos or corporations in which Filipinos own at least 60 percent.¹⁴ The only exception is for financial or technical assistance agreements with foreign-owned corporations for large-scale exploration, development and utilization of minerals.¹⁵

A mineral production sharing agreement (MPSA) may only be granted to Filipinos or corporations at least 60 percent owned by Filipino citizens. While MPSAs are supposedly Filipino corporations, most have foreign partners. Based on past research, there is a high probability that several supposedly Filipino mining companies are in fact foreign, but use dummies to comply with the nationality requirement. The Securities and Exchange Commission (SEC)—which has jurisdiction over all corporations, partnerships or associations that are grantees of primary franchises, licenses or permits issued by the government—admitted that it has a difficult time monitoring this issue because of lack of resources. The SEC proposed creating a mining desk to be able to regulate and monitor the registration of mining corporations more effectively.¹⁶

Policy on Mining

The Mining Act of 1995 governs the exploration, development, utilization and conservation of mineral resources. The law was enacted during the time of President Fidel V. Ramos, when the government pursued an export-oriented industrialization supported by liberalization, privatization and regularization. The courts liberalized the Philippine mining industry, providing fiscal and nonfiscal incentives to mining.

The act was not fully implemented, however, until after its constitutionality was upheld in the 2004 case *La Bugal-B'laan Tribal Association Inc. et al. vs. Victor O. Ramos, et al.* The Supreme Court initially declared several provisions of the mining act as unconstitutional. Eleven months later, the court reversed itself, opening the Philippines for mining by foreign companies, as well as oil and gas exploration and development.

Under a mineral agreement, the state gives the mining contractor the exclusive right to conduct mining operations and to extract all mineral resources found in the contract area. Auxiliary rights

11 Department of Energy, Exploration Opportunities in the Philippines. Accessed December 6, 2011. <http://www.doe.gov.ph/pecr4/petroleum.html>.

12 Department of Energy, Petroleum Exploration History. Accessed December 6, 2011. <http://www.doe.gov.ph/ER/Oil.htm>.

13 Mars Buan, "Political Storms threatening South China Sea oil and gas," *Philippine Resources: Mining, Petroleum and Energy Journal* (August–October 2011): 8–16.

14 1987 Philippine Constitution, Art. XII, section 2.

15 Ibid.

16 Commissioner Juanita Cueto, interview by Edna Maguigad and Ingrid Gorre, SEC Office, October 2011.

are likewise granted to the contractor, such as the right to cut trees within the mining area; water rights for mining operations; the right to possess and use explosives within the contract area; the right to enter and occupy mining area or lands owned, occupied or leased by other people upon payment of just compensation; and the right to enter private lands and concession areas upon compensation.

The Mines and Geosciences Bureau (MGB) is the government agency primarily responsible for the implementation of the mining act, and has direct charge in the administration and disposition of mineral lands and mineral resources, including offshore marine areas; it also undertakes research and exploration surveys. The director of the bureau recommends the granting of mining permits, monitors mining activities and compliance to the terms and conditions of mineral agreements, and also confiscates surety, performance and guaranty bonds.¹⁷ However, the MGB often has trouble enforcing rules and monitoring production and exports. The MGB is under the Department of Environment and Natural Resources (DENR), which is the primary agency responsible for the conservation, management, development and proper use of the government's mineral resources, as well as licensing and regulation of the Philippines' environment and natural resources.¹⁸

Mining projects must comply with environmental impact assessments (EIA), consult with local government units and local communities, and in areas covered by ancestral domains, they must secure the free and prior informed consent (FPIC) of the indigenous community concerned. If an FPIC is granted, the project must pay the indigenous community a royalty of at least 1 percent of the gross output. However, community development expenses may be charged against the said royalty.¹⁹

The mining industry is a Philippine priority investment area, entitling the industry with considerable tax exemptions and credits under the Omnibus Investments Code.²⁰

Small-scale mining is governed by the People's Small-Scale Mining Act of 1991. Local governments issue permits for small-scale mining and quarrying operations. Small-scale mining can only be undertaken by Filipinos, though this legal limitation is being skirted by foreign entities such as Chinese mining companies that want to avoid the long, strict process for large-scale mining.²¹ At present, there are 400,000 small-scale mining companies in the country.²²

Trends in mining policy

In 2004, President Gloria Macapagal Arroyo issued a pair of executive orders establishing mining revitalization as a national policy priority. The orders can be used to push for good governance in development, though their legal framework is unsound and their provisions provide only superficial changes. Throughout President Arroyo's term, the government actively solicited investments, further streamlined processes such as the EIA system, and allowed the military to provide security to mining companies through the creation of Investment Defense Forces (IDF).

17 Philippine Mining Act of 1995, R.A. 7942, section 9 (1995).

18 Executive Order No. 192, section 4 (1987); Philippine Mining Act of 1995, R.A. 7942, section 8 (1995).

19 DENR Administrative Order No. 96-40, section 16 (1996)

20 Board of Investments, "A New Day for Investment: Coherent, Consistent & Creative" (2011). Accessed December 6, 2011. <http://www.boi.gov.ph/pdf/IPP2011.pdf>.

21 Philippine Strategies and Assessment. "The China Factor: Bending the 'small scale' Mining Rules," *Philippine Resources: Mining, Petroleum and Energy Journal* (May- July 2011): 8-16.

22 Ryan Chua, "No such thing as responsible mining, say farmers," *ABS-CBN News*, Dec. 8, 2011. Accessed December 6, 2011. <http://www.abs-cbnnews.com/-depth/12/08/11/no-such-thing-responsible-mining-say-farmers>.

President Benigno Simeon Aquino III initially continued his predecessor's minerals revitalization policy. Reform in mining policy²³ commenced only in 2011, with the implementation of the "use it or lose it" policy of DENR.²⁴ The policy aims to open about 5 million hectares of potential mineralized areas for serious investors.²⁵

The debates on mining intensified in 2011 as extrajudicial killings of anti-mining advocates continued, and news of attacks by communist rebels on a mining company surfaced. In October 2011, the president approved a military proposal allowing mining companies to fund and organize auxiliary armed units for the protection of mining companies.²⁶ The government also ordered the formulation of a new mining policy strengthening environmental protections.²⁷ The government's push for reform in mining policy is consistent with the president's commitment to encourage sustainable use of resources to benefit the present and future generations.²⁸

Abuse of Small-scale Mining Rules by Large-scale Mining Operators

There is substantial evidence of the abuse of the People's Small-Scale Mining Act of 1991 by large-scale mining operators seeking to avoid the requirements of the Philippine mining law on capital requirements, fees and taxes. Many Chinese firms engage in small-scale mining to circumvent the expense and time required in complying with the provisions of the law on large-scale mining by bribing local officials and using the names and licenses of Filipino proxies.²⁹ As a result, Chinese firms have deprived the national and local government of billions of dollars in revenues. These firms also fail to adhere to environmental and safety standards, using explosives and heavy equipment prohibited in small-scale mining, exceeding the allowable land area limits and extracted mineral volumes, and causing large-scale impacts to communities.

Regulatory framework for oil and gas

In oil and gas, the governing law is the service contract system under the Oil Exploration and Development Act of 1972. Some portions were later amended by Presidential Decree No. 1857, which offers improved fiscal and contractual terms to service contractors of deepwater oil exploration. In addition, service contracts are bound by consultation, consent and benefit-sharing provisions of the Local Government Code and the Indigenous People Rights Act (IPRA).³⁰

A production-sharing regime is used in the country. The contractor is allowed to deduct costs of exploration and production up to 70 percent, against the gross proceeds of annual production. The remaining net proceeds are then shared between the contractor and DOE on a 40-to-60 ratio. Service Contract 38 (the Malampaya-Camago contract) is considered the foundation of the Philippine Gas Project and the model service contract.³¹

23 This research was conducted during the course of 2011 and does not reflect recent developments, such as the July 2012 execution of Executive Order 79, which established the government's commitment to implement EITI as part of broader reforms in the mining sector.

24 DENR Memorandum Order No. 2011-01 (2011).

25 Department of Environment and Natural Resources, *Mining Reforms in the Philippines* (2010). Accessed December 6, 2011. <http://www.denr.gov.ph/index.php/news-and-features/features/15-mining-reforms-in-the-philippines.html>.

26 Chichi Conde, "Aquino OKs special militias for mining firms," *InterAksyon*, October 12, 2011. Accessed December 6, 2011. <http://www.interaksyon.com/article/15026/aquino-oks-special-militias-for-mining-firms>.

27 Delon Porcalla, "P-Noy names Paje, Acosta, 2 others to craft Phl mining policy," *PhilStar*, October 21, 2011. Accessed December 6, 2011. <http://www.philstar.com/Article.aspx?articleId=739612&publicationSubCategoryId=->.

28 Benigno S. Aquino III, *A Social Contract with the Filipino People* (2010). Accessed December 6, 2011. <http://www.neda.gov.ph/PDP/2011-2016/socialcontract.pdf>.

29 Philippine Strategies and Assessment, "The China Factor: Bending the 'small scale' Mining Rules": 8-16.

30 National Integrated Protected Areas System, R.A. 7586, section 14 (1992).

31 Department of Energy, *The Philippine Energy Sector*. Accessed December 6, 2011. http://www.doe.gov.ph/Downloads/STUDY_ON_REGULATORY_FRAMEWORK.pdf.

The government has embarked on an energy reform agenda with a guiding vision of “Energy Access for More” through three pillars: (1) ensure energy security, (2) achieve optimal energy pricing, and (c) develop a sustainable energy system. Cross-cutting the three pillars is an over-arching strategy of promoting good governance, which includes transparency and making use of information technology.³² So far, transparency in this context has simply meant that data is made available online.

Existing mechanisms for transparency, accountability and participation

Right to Information

The right to information and access to official records is a constitutionally recognized right.³³ Restrictions to the right to information are limited to national security matters, trade secrets and banking transactions, law enforcement and other confidential matters.³⁴

In the case of information on mining projects, confidentiality is granted to mining companies as an incentive. The absence of a clear transparency mechanism limits access to information on mining. International best practices and corporate social responsibility are only voluntary mechanisms that do not guarantee access to information.

Individual income tax returns are likewise confidential under Philippine law, but transparency in revenue payments per sector can be accessed through the Bureau of Internal Revenue (BIR), which is in charge of assessment and collection of all national internal revenue taxes. Transparency in revenue payments can also be accessed through individual companies.

Mandatory disclosures from government bodies are at present limited to fiscal transparency and online accessibility of laws, jurisprudence and other government issuances. In its Action Plan for the Open Government Partnership, the government committed to institutionalizing transparency, accountability and public participation in governance as of January 1, 2012.

Participatory Mechanisms

Participation by people and civil society in all levels of social, political and economic decision-making is recognized and protected under the Constitution.³⁵ Laws have been promulgated to establish consultation mechanisms, including the Local Government Code, free and prior informed consent, and EIAs.

EIA

EIA is a process that involves evaluating and predicting the likely impacts of a project on the environment during construction, commissioning, operation and abandonment. It includes designing appropriate measures to protect the environment and the community’s welfare.³⁶ The Environmental Management Bureau (EMB) is the regulatory body under DENR in charge of the EIA process. Transparency and participation come in the form of scoping sessions, stakeholder consultations and monitoring. In the public scoping with stakeholders, the community sector raises issues that should be addressed in the EIA study. After completing the EIA process, the project

32 Department of Energy. *2010 Energy Accomplishment Report*. Accessed December 6, 2011. <http://www.doe.gov.ph/>.

33 1987 Philippine Constitution, Art. III, section 7; Art. II, section 28; Art. XII, section 21; Art. XI, section 17; Art. VI, sections 16 (4) and 20.

34 Joaquin G. Bernas, *The 1987 Philippine Constitution: A Comprehensive Reviewer*, (Manila: Rex Book Store Inc., 2006) 93.

35 1987 Philippine Constitution, Art. XIII, section 16.

36 DENR Memorandum Circular 2003-30. Art. I, section 3h (2003).

proponent will be issued an environmental clearance certificate (ECC). This will be the basis for the issuance of permits and clearances from other government agencies.

Some stakeholders believe that in practice, the EIA process falls far short of what it should be in principle. The process is subject to allegations of corruption, and it has been weakened by continuous streamlining under the previous administration: the public participation component was removed and then returned, and the EIA study is considered the confidential property of the proponent, which cannot be released without its consent.

Community Participation under the Mining Law

Community participation under the Social Development and Management Program (SDMP) covers both industry contribution to local economic development and corporate social responsibility. Expenditures for community development projects under the Mining Act of 1995 are allowable deductions to the royalty entitlements of indigenous people (IP). However, there is no well-functioning process that allows IP communities to meaningfully participate in identifying the community development projects. IP communities are often unaware that these amounts are advances on their royalty entitlements. Instead they feel beholden to the mining company for “bringing in” development.

Similarly, there is no reliable process by which local government units can secure meaningful community control over the community development plan. On the contrary, the mining company’s decisions take precedence. There is no guarantee of the cultural appropriateness of the plan, food security or long-term economic development options when the mine does not proceed or closes down.

FPIC

FPIC is a right guaranteed under Philippine law and is likewise guaranteed by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The Philippines has around 40 ethnic groups, and most mineral lands are located in the ancestral domain of IP.

The Philippines is one of the few countries that require FPIC of indigenous peoples before approval of any project affecting their lands or resources. In addition, the Indigenous Peoples Rights Act (IPRA) recognizes the ownership rights they have over natural resources found in their ancestral domain.

In a 2008 nationwide study involving 108 communities holding certificates of ancestral domain titles (CADT), more than 70 percent of the mining and logging operations on their lands were being conducted without their FPIC. In a majority of cases where an FPIC process had been conducted, not all the proper procedures had been undertaken to ensure a fair, unbiased outcome.³⁷ At present, there is a joint technical working group tasked with revising the FPIC guidelines, composed of the Committee on National Cultural Communities of the House of Representative, the National Commission of Indigenous People (NCIP) and civil society groups. In addition, a study examining around 20 percent of the FPICs issued is under way to identify problematic areas and propose revisions to the FPIC regulations.

37 Philippine Asset Reform Report Card (2008).

Prior Mandatory Consultations on National Projects Affecting Environment or Ecology

A national project that affects the environment and ecological balance of local communities requires prior consultation with the affected communities, as well as prior approval of the project by the appropriate *Sanggunian* (local executive council).³⁸ As held by the Supreme Court of the Philippines, absence of either of these requirements will make the project illegal.³⁹

The consultation must be a conference with affected communities. Consultation with nongovernmental and people's organizations is also required. While Section 27 of the Local Government Code requires these consultations, it does not give local officials the power to stop projects. At most, the failure to conduct the required consultations may lead to judicial intervention.

Key issues in the extractive sector

This portion discusses issues culled from interviews and relevant literature, mostly from civil society groups working on mining and transparency. Civil society organizations (CSOs) in the Philippines engaged in the extractives industry are mostly anti-mining because of environmental and social conflicts, as well as the current reality that government, indigenous peoples and local communities benefit little from the industry while suffering the most damage.

Human Rights and Social Justice

The Philippine developmental framework and the mining law have made investment attractive and lucrative for foreign investors. Thus at the onset, policies on mining put host communities at a disadvantage. Existing policies aimed at social justice do little to strengthen governance and institutions at the community level. In most cases, communities where mining takes place have a history of disempowerment and tenurial conflicts, further exacerbating these conflicts.

Extrajudicial Killings and the Culture of Impunity

Opposition to mining projects is met with human rights violations, strategic lawsuits against public participation (SLAPP suits) and militarization. The gravity of the human rights violations in the country has been highlighted in reports by national fact-finding bodies and international human rights bodies.⁴⁰ In 2011 alone there were seven extrajudicial killings related to mining.⁴¹ There is currently no protocol in the hiring and management of private security forces, and the lines of accountability are blurred when these forces commit violations.

Noncompliance with FPIC

In practice, indigenous peoples are far from being able to exercise FPIC meaningfully. FPIC for a two-year exploration permit is in effect an FPIC for the entire mining process. Also, information provided to indigenous communities is limited and often difficult to understand.

38 Local Government Code of 1991, R.A. 7160, sections 26-27 (1991).

39 *Province of Rizal v. Executive Secretary*, G.R. No. 129546 (December 13, 2005).

40 These reports include the following: (1) 2003 Report of the Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of the Philippines; (2) Task Force Usig Report; (3) Melo Commission Report; (4) 2006 Interim report of John Ruggie, Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises; (5) 2007 Report of the UN Special Rapporteur on Extrajudicial Killings; (6) 2007 Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; (7) 2007 Report of the Special Rapporteur on the promotion and protection of Human Rights and Fundamental Freedoms while encountering terrorism; (8) 2009 Philippines Indigenous Peoples ICERD Shadow Report, and (9) CHR Resolution (IV) A2011-004 dated January 10, 2011.

41 Clemente Bautista, Mining Forum, Quezon Memorial Circle, Quezon City, October 27, 2011.

Most alarming is when NCIP itself acts to restrict the rights of indigenous populations. It is not uncommon to hear such complaints from IPs. The current chairperson of the commission says she is working to clean it up as part of the anticorruption drive of the present administration, though there will likely be challenges in carrying out reforms at the regional and local level.⁴²

Ability of Communities to Negotiate a Fair Deal

When communities decide to exercise their priority rights over the mining area, their ability to contract with and negotiate with companies is crucial. Even when IP communities are receiving royalties from extractive projects, they are not necessarily getting a fair deal. Worse, some companies push IPs to assert their priority rights over a mining area in order to avoid the FPIC requirement.

CSOs and church-based groups helping mining communities include Alyansa Tigil Mina (ATM), Defend Patrimony, Philippine Misereor Partners (PMP), Alternative Law Groups (ALG), Bantay Kita; on IP Rights and Mining- Legal Rights and Natural Resources Center-Kasama sa Kalikasan/ Friends of the Earth Philippines (LRC-KsK/FoE Phils.), Tebtebba Foundation/Indigenous Peoples' International Center for Policy Research and Education, Cordillera Peoples Alliance, Samdhana Institute, Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KAMP)/National Federation of Indigenous Peoples Organizations in the Philippines, Philippines Association for Intercultural Development Inc. (PAFID), Koalisyon ng Katutubong Samahan ng Pilipinas (KASAPI)/National Coalition of Indigenous Organizations in the Philippines, Catholic Bishops Conference of the Philippines (CBCP) and Social Action Centers.

Environmental Concerns

Carrying Capacity of Fragile Ecosystems, Particularly Small Islands

The Philippines remains one of few biodiversity hotspots, and numerous proposed exploration or mining operations are to be conducted in protected areas or ancestral domains. These are also the de facto watersheds of rural communities. The damage these projects can do—especially to endangered species and food security—is irreversible.

Environmental Degradation due to Mining Remains Uncompensated

Many smaller mining companies are using “dirty” or outdated technology. Environmental guarantee funds and mine rehabilitation funds lack transparency, and are often too small. The worst mining disaster in the Philippines came in 1996, when the drainage tunnel of the Marcopper mine in Marinduque burst, filling the river with more than 3 million tons of mine tailings.⁴³ From 1975 to 1991, approximately 200 million tons of mine tailings were pumped at sea level into Calancan Bay—which 20,000 people relied on for their livelihood and food. The estimated total damages over a 10-year period range from 162 million PHP to 179 million PHP.⁴⁴

Mining in Protected and Biodiversity Areas

The “No to Mining in Palawan” campaign has popularized the debate on the environmental impact of mining.⁴⁵ It is headed by Gina Lopez, a philanthropist from the influential Lopez family,

42 Zenaida Brigada Hamada-Pawid, interview by Ingrid Gorre and Edna Maguigad. National Commission of Indigenous People, Quezon City, October 2011.

43 Sarah Lowe and Lisa Vettori, *Mining Ombudsman Case Report: Marinduque Island* (Australia: Oxfam Australia, March 2005), 3-11.

44 Ma. Eugenia Bennagen, *Estimation of Environmental Damages from Mining Pollution: The Marinduque Island Mining Accident* (Singapore: Economy and Environment Program for SouthEast Asia, 1998), 25.

45 Save Palawan Movement. Accessed December 6, 2011. <http://no2mininginpalawan.com/>.

who owns companies in media, telecommunications, energy and other industries. This campaign aims to raise 10 million votes to stop mining in Palawan, a province of more than 1,000 islands considered to be the Philippines' last frontier. The campaign has garnered 3.5 million votes.⁴⁶ This has greatly affected the perception of mining. The Chamber of Mines asserts that the campaign unfairly portrays all mining companies as environmentally destructive.⁴⁷ This campaign has also started a "media war": mining companies like Philex are investing in television and radio commercials to showcase their contribution to the community and corporate social responsibility.

The earlier draft of the National Minerals Policy makes reference to "sustainable mining." This was eventually dropped and changed to "responsible mining" because of the difficulty in operationalizing the concept. There is no widely accepted definition of responsible mining in the Philippines.

Business Environment

The industry is confident that the business environment will improve in 2012 and beyond, as demand for gold, copper, iron ore, chromite and coal remain strong. Investors from Korea, Japan, Australia, and China continue to look for joint venture projects, and new markets such as Russia are opening. The mining industry has welcomed new players from emerging East Asian economies, especially from mainland China. Banco de Oro and Bank of the Philippine Islands are major recipients of International Finance Corporation (IFC) funds, which are earmarked to stabilize the banking industry but may go toward investments in mining.

Oil, Gas and Mining Companies Are Largely Funded by Foreign Capital

Most oil, gas and mining companies are joint ventures between Filipino and foreign companies. These companies are seldom listed on the Philippine Stock Exchange (PSE) and depend largely on capital abroad. The adoption of the 2008 Philippine Mineral Reporting Code (PMRC) improved protections for the investing public and opened opportunity for mining companies to list. At present there are 11 mining companies listed on the exchange.⁴⁸ One of the main principles of the PMRC is transparency.⁴⁹

New Disclosure Rules for Energy Companies

The PSE, SEC and DOE have recently customized listing and disclosure rules for the stock exchange to benefit petroleum and renewable energy companies. This will expand investment areas for Filipinos who want to invest in these companies. However, to better implement these listing requirements, the SEC should recommend a special desk in the SEC that has technical expertise on the extractive industry to help assess the authenticity of service contracts, the nationality rule and "fly-by-night" corporations.

Review of Extractive Industry's Fiscal Regime

There are calls from civil society groups and some government officials to review whether the national government is getting a fair share of mining revenues. According to Bantay Kita, a national transparency network on extractives, the mining industry is plagued with under-declaration, tax

46 Sarah Hilomen-Velasco, "Palawan Anti mining campaign pushed," *Manila Bulletin*, December 7, 2011. Accessed December 6, 2011. <http://www.mb.com.ph/articles/343968/palawan-antimining-campaign-pushed>.

47 Philippine Mining Act of 1995, R.A. 7942, section 9 (1995), interview by Christine Antoniette Ramos, Chamber of Mines office, October 11, 2011.

48 Overseas Pinoy Investor, Mining Companies Listed in the Philippine Stock Exchange, August 25, 2011, <http://overseaspinoyinvestor.com/2011/08/25/mining-companies-listed-in-the-philippine-stock-exchange-pse/>.

49 Philippine Mineral Reporting Code for Reporting Exploration Results, Mineral Resources and Oil Reserves, Philippine Stock Exchange, Part II Scope (2007).

avoidance and tax evasion. Exports of mineral ores are higher than reported production. From 2000 to 2009, the under-collection of excise tax was a staggering 65.5 percent.⁵⁰

Mining and CSR

Mining companies and the Chamber of Mines are currently investing more on CSR to demonstrate their commitment to responsible mining and sustainable development. The COMP came out with guidelines on CSR for the industry.⁵¹

The existence of CSR policies has not prevented mining companies from being involved in severe ethical, environmental, human rights and occupational incidents. In a 2009 study, four of the 48 countries where corporate social responsibility violations took place are “hotspots”: India, Indonesia, Philippines and the Democratic Republic of Congo.⁵²

Transparency, Accountability and Political Environment

The Aquino administration has established clear anticorruption standards. What is lacking are the political will and independent judiciary to enforce these standards. The current president has thus far exemplified moral integrity, keeping politicians and public officers in check, while former president Gloria Macapagal Arroyo has been formally charged with plunder and electoral sabotage.

In the November 2011 survey, 72 percent of Filipinos expressed appreciation for President Aquino’s performance, and 74 percent said they trusted him. Disapproval of administration efforts at “reducing the poverty of many Filipinos,” however, went up from 21 percent in May to 36 percent in November.⁵³

Lack of Transparency in Executive Agreements

The Constitution requires international agreements entered by the president to be ratified by a two-thirds vote of Congress, though there is no such requirement for executive agreements.⁵⁴ On exploration, development and utilization of natural resources, the president is authorized to enter into financial or technical assistance agreements (FTAA) with foreign companies and must notify Congress 30 days from executing such agreements. There are no provisions on how Filipinos can access information on executive agreements, and there is no clear sanction if the government refuses to release it.

President Arroyo invoked executive privilege in the 2004 joint seismic undertaking between Philippine National Oil Corp. (PNOC) and the state-owned China National Offshore Corp. Vietnam initially opposed the undertaking but later agreed when the two countries invited Vietnam’s state-owned Petro Vietnam to join. The agreement expired in 2008, and findings were never released.⁵⁵

50 Maita Gomez, interview by Edna Maguigad and Ingrid Gorre, Quezon City, October 2011.

51 Chamber of Mines of the Philippines. Accessed on December 6, 2011. <http://www.chamberofmines.com.ph/b/index.html>.

52 Canadian Centre for the Study of Resource Conflict (CCSRC), *Corporate Social Responsibility: Movements and Footprints of Canadian Mining and Exploration Firms in the Developing World* (October 2009).

XX Philippine Mining Act of 1995, R.A. 7942, section 94 (f) (1995).

53 PulseAsia, *Performance and Trust Ratings of President Benigno S. Aquino III and the Performance Ratings of the Aquino Administration*, December 2011, <http://pulseasia.com.ph/pulseasia/story.asp?ID=742>.

54 Joaquin G. Bernas, *The 1987 Philippine Constitution: A Reviewer Primer* (Manila: Rex Book Store Inc., 2002), 363.

55 Mars Buan, “Political Storms threatening South China Sea oil and gas,” *Philippine Resources: Mining, Petroleum and Energy Journal* (August–October 2011): 8-16.

Similarly, in 2001, the president signed a Philippines-China Five-Year Development Program for Trade and Economic Cooperation (2012 to 2016), which includes mining and energy. The visit also produced four mineral agreements that are not yet publicly accessible. Hence civil society groups and legislative proponents are pushing the Freedom of Information Bill, which the president initially supported but now fears may be used against him.

Lack of Transparency and Accountability in Allocating Revenues from Extractive Sector

The most significant example of this is the government's revenue from the Malampaya gas project. The actual share received from April 2009 to 2011 was \$3,125,782,895 (146,911,796,087 PHP).⁵⁶ The amount represents 60 percent of net proceeds from the project. Out of this royalty share, the local government in Palawan was to receive 40 percent, through the national government has contested the original sharing agreements, leading to a legal battle.⁵⁷

Due to the legal battle, the questioned 40 percent royalty share was put in escrow. However, President Arroyo issued Executive Order No. 683, which allocated some 2.19 billion PHP to Palawan from the escrowed 40 percent in the form of a pork barrel fund. This move and the use of the pork barrel fund has been strongly criticized by Kilusan Love Malampaya (KLM), a local NGO campaigning for transparency and equitable allocation of royalties.⁵⁸

Revenue-sharing Scheme between National and Local Governments

Pursuant to the principles of local and fiscal autonomy, local governments are entitled to an equitable share of extractives revenue,⁵⁹ pegged at 40 percent of the gross revenue obtained by the national government. This is redistributed to the three levels of local government: 20 percent for the province, 45 percent for the city or municipality, and 35 percent for the *barangay*. These local units complain that they have to beg for their share from the national government, a process that usually takes three to five years. The Chamber of Mines has proposed that the Department of Budget and Management (DBM) guarantee the automatic release of local revenue.⁶⁰

Active Civil Society Engagement in Mining (not Oil and Gas)

There is a significant number of CSO working on mining issues. One such organization is Alyansa Tigil Mina (ATM), a broad coalition of environmental groups, human rights NGOs, local groups affected by mining and church-based groups. The core groups in this network are Legal Rights and Natural Resources Center-Kasama sa Kalikasan/Friends of the Earth Philippines (LRC-KsK/FoE Phils.), HARIBON and PhilDHRRRA. ATM is a member of Bantay Kita, the transparency network working on extractives.

There is no national organization that focuses on oil and gas. However, there is one local group in Palawan Province, the Kilusan Love Malampaya (KLM). One of its leaders, Gerry Ortega, was assassinated as a result of his advocacy. In September 2011, KLM filed a petition to recall the governor of the province for having accepted former president Arroyo's offer of a significantly smaller por-

56 Samdhana Institute, Malampaya Extractive Research (unpublished research, on file with author).

57 Administrative Order 381 issued by President Ramos, a Support, Assignment and Payment Agreement (SAPA) between Department of Energy and contractors recognizing Palawan 40 percent share; Territorial boundaries set by the Strategic Environmental Plan (SEP) Law which states the actual coordinates of the marine boundaries of the province.

58 Samdhana Institute, Malampaya Extractive Research.

59 Local Government Code of 1991, R.A. 7160 § 7 (1991).

60 Nelia Halcon et al., *Improving Transparency of Payments and Receipts in the Mining Industry* (Makati: EMERGE, 2007), <http://www.alyansatigilmina.net/files/PNADJ804.pdf>.

tion of the province's share of royalties, amounting to P60 billion.⁶¹

Another group that works on oil and gas is Defend Patrimony, the coordinator for Oil Watch in Southeast Asia. It is partners with Pambansang Lakas ng Kilusang Mamamalakaya ng Pilipinas, PAMALAKAYA, a fisheries network.⁶²

Developmental Framework and Industry Contribution to Economic Development

Civil society groups criticize the developmental framework of natural resource management governance for extractive and nonrenewable resources. The government has no clear national plan to utilize and develop the resources except to extract the minerals and export them raw. Natural resources are not being used as strategic resource that will contribute to the country's industrialization and support downstream industries. There are no clear plans to build the country's capacity to extract and manage these resources.

ATM opposes the aggressive promotion of large-scale mining in the Philippines, and it asserts that large-scale mining is a misplaced priority for development.

The government recognizes the challenge of ensuring the equitable distribution of benefits from mining.⁶³ The mining industry's contribution to the country's gross domestic product (GDP) is an average of only 0.88 percent per year, and its contribution to total employment was only 0.45 percent from 2005 to 2010. The government's share is limited to fees and royalties amounting to 9,376.38 million PHP per year.⁶⁴ The mining industry neither contributes large economic benefits nor provides inclusive growth.⁶⁵ Benefits accrue only to a few people. The fiscal incentives granted to mining companies have effectively limited national government revenues. Bantay Kita has noted that if tax incentives are removed, the government will gain at least 30 percent of the current income from mining. There are three major reasons for under-collection: tax incentives, under-reporting of production (both volume and ore quality), and poor enforcement of contracts.

A recent study has shown increasing poverty among workers in the mining sector, together with poor health and education indicators relative to other industries.⁶⁶

Absence of Sufficient, Credible and Accurate Information

The government has admitted that there is no standard resource and environment valuation used in the country. This highlights the need to have a cost-benefit analysis and standard parameters that will consider all relevant values (including nonmarket values) in the mining sector. The absence of resource valuation makes it impossible to analyze the benefits of the extractive industry in regard to its costs.

61 "Palawan gov faces petition for recall," *GMA News Online*, September 16, 2011. Accessed December 6, 2011. <http://www.gmanetwork.com/news/story/232534/news/regions/palawan-gov-faces-petition-for-recall-election>.

62 Japan Petroleum Exploration Co. Ltd., "Relinquishment of SC 46 Block in The Philippines," (news release, May 13, 2008), http://www.japex.co.jp/english/newsrelease/pdf/20080513e_japexP.pdf.

63 National Economic and Development Authority, *Philippine Development Plan 2011-2016* (2011), 309. Accessed December 6, 2011. <http://www.neda.gov.ph/PDP/2011-2016/CHAPTER%20percent2010.pdf>.

64 Mines and Geosciences Bureau. "Mining Industry Statistics," September 23, 2011. Accessed December 6, 2011. <http://mgb.gov.ph/Files/Statistics/MineralIndustryStatistics.pdf>.

65 Cielito Habito, *An Agenda for High and Inclusive Growth in the Philippines* (Manila: Asian Development Bank, 2010), 54. <http://www.adb.org/documents/reports/agenda-high-inclusive-growth/agenda-high-inclusive-growth.pdf>.

66 Ateneo School of Government, *Is There a Future for Mining in the Philippines?* (2011) citing Arcenio Balisacan, *Multidimensional Poverty in the Philippines: New Measures, Evidence, and Policy Implications* (2011).

The debates between the mining industry and those against it are exacerbated by the absence of credible, accurate information on extractives, as well as a standardized resource for calculating the true costs and benefits of the industry.⁶⁷ Although the Mines and Geosciences Bureau is mandated to undertake research and exploration surveys, it relies heavily on information submitted by mining companies.⁶⁸

Key entry points

Executive Department

The president and his cabinet are the most strategic allies to push for transparency, accountability and participation in governance. Winning under a platform of reform, President Aquino reiterated this commitment to transformational change in a “Social Contract with the Filipino People,” and operationalized the Philippine Development Plan (2011-2016), which focuses on transparency, accountability and the pursuit of the rule of law as preconditions for national development.

However, decision-making in the Aquino government is polarized between two groups, informally referred to as the Balay and Samar groups. Both groups backed the presidential campaign of President Aquino but supported different vice presidential candidates. Closely identified with the Balay group are the members of the so-called “Hyatt 10,” high-level government officials who left the Arroyo administration amid allegations of election fraud.

Moves toward transparency are led by the Balay group but opposed by the Samar group. It is important for civil society groups, international organizations and lobby groups to understand this dynamic, which will likely continue until the presidential elections in 2016.

Open Government Partnership

The government’s 2012 Action Plan for the Open Government Partnership aims to institute transparency, accountability and public participation through an open government. The government’s commitment to open governance includes improving the transparency of government agencies by ensuring a 100 percent compliance rate on fiscal transparency, and broadening access to government information. The government’s plan to increase accountability for ethical and performance standards consists of harmonizing performance measurement systems in government, mainstreaming results-oriented budgeting, ensuring 100 percent compliance with citizen’s charters, rolling out internal audit and control manuals, and increasing compliance with Good Housekeeping standards. The government also plans to do the following: install a single portal for government information where citizens can access information and provide performance; develop a government integrated financial management information system (GIFMIS); pursue electronic bidding and procurement; establish a national justice information system; establish a manpower information system and central payroll system; develop a database registry of farmers and fisher folks; develop electronic transparency for congressional allocations and lump sum funds; and develop interactive fiscal transparency.

EITI Membership

The Philippine Development Plan identified EITI as a strategy to implement transparency

67 National Economic and Development Authority, *Philippine Development Plan 2011-2016*, 308. Accessed December 6, 2011. http://www.neda.gov.ph/PDP/2011-2016/CHAPTER_percent2010.pdf.

68 Con. Teddy Baguilat, interview by Christine Antoniette Ramos, October 21, 2011; Con. Kaka Bag-ao, interview by Christine Antoniette Ramos, October 18, 2011.

and accountability among mining companies and to curb graft and corruption in the natural resources sector.⁶⁹

Stakeholders are awaiting the issuance of guidelines by the executive department to firm up its commitment to EITI. The key players engaged in this are Ochoa, the Chamber of Mines, Bantay Kita and other civil society groups. Ochoa was quoted as saying: “[EITI] will be a strong manifestation of transparency if the payments and revenues received by the government from the development of the country’s mineral resources and how these are utilized are made public.”

A possible chokepoint for this initiative is the nature of EITI. The Chamber of Mines has recommended that EITI be marketed as a voluntary initiative, and be packaged as a joint initiative by government, NGOs and the private sector. This would include formulating the processes and instruments of local EITI initiatives through a consultative process involving key stakeholders, and managing the initiative via a dedicated private sector secretariat advised by a joint government-NGO-industry EITI advisory council.⁷⁰

EITI is an entry point for civil society groups and CMP to meet and could lead to discussion beyond EITI.

Strengthen NCIP

The key departments regulating the extractive industries are DENR, the Mines and Geosciences Bureau (MGB), the Department of Energy, NCIP and local government units. Engagement with DENR and DOE is limited since their leadership resists reforms.

Budget Transparency

Budget transparency has been identified as an area for reform by DBM Secretary Abad, DILG Secretary Robredo, Hyatt 10 and the NGO International Center for Innovation, Transformation and Excellence in Governance (INCITEGov). Reforms can be undertaken in three areas. First, institute a public fiscal responsibility index to measure each department. Second, understand how government savings are used. Third, examine areas that can be opened up to civil society. Civil society groups also need more capacity building, as very few have the expertise and tenacity to scrutinize budgets and expenditures.

The NGO leading this reform is INCITEGov. The group is composed of the Hyatt 10 and uniquely positioned reform advocates and constituencies in business, civil society, communities and political formations, which are committed to strengthening the democratic agenda and national development. It includes 17 former cabinet secretaries, eight former heads of government agencies, and 11 former undersecretaries. An important and growing component of its membership body also includes young public servants and overseas Filipinos. Serving as an institutional nucleus for a reform-centered democratic movement, INCITEGov aims to link democratic politics, good governance and development outcomes in critical reform areas.

Legislative Department

Passage of Freedom of Information Bill

The bill provides a clear, uniform and speedy procedure for public access to information, and

69 National Economic and Development Authority. *Philippine Development Plan 2011-2016*, 328, 333. Accessed December 6, 2011. <http://www.neda.gov.ph/PDP/2011-2016/CHAPTER%20percent2010.pdf>.

70 Halcon et al.

would make government agencies disclose information on government transactions. The bill also provides remedies in cases of denial of access to information, and mechanisms for the active promotion of openness in government. The civil society groups supporting the include the Transparency and Accountability Network (TAN), Action for Economic Reform (AER), ATM, Bantay Kita and Right to Know Right Now Network (R2KRN).

Passage of the Minerals Management Bill/People's Mining Bill

This bill is now being studied by the technical working groups (TWG) of the Committee on Natural Resources at the House of Representatives. It proposes a framework of shared responsibility for the management of resources, ownership of IP of natural resources, priority for food security, local governance of natural resources, assurance that the benefits from mining outweigh the impacts, and an end to 100 percent foreign ownership of mining corporations. The bill requires a minerals utilization framework that will ensure that mineral resources contribute to the country's industrialization and address the needs of the domestic economy.

On transparency and accountability, the proposed bills state that all mining contractors shall provide information to affected IP, local communities and local governments, including: full disclosure of methods and processes of mining; full disclosure of environmental and social risks; full disclosure of ownership structure; and full disclosure of financial sources. By contrast, the present mining law mandates the confidentiality of information supplied by mining contractors.

Passage of National Land-Use Management Bill

Land-use policies can address current issues in mining and climate change, particularly on declaring environmental critical areas, protected areas, key biodiversity areas, cultural and historical sites, and prime agricultural lands closed to mining. There are also “No Go Zones to Mining” designated in the Mineral Management Bill, such as sacred grounds and burial sites of indigenous communities; areas inhabited and utilized by IP for their subsistence; communal forests of indigenous communities; watershed areas; international and local heritage sites; and indigenous communities with existing boundary disputes.

Local Governments/Sub-National Work

Officials and communities of local governments are asserting their local autonomy and environmental rights in the provinces of Quezon, Romblon, Zamboanga Del Norte, South Cotabato, Romblon, Albay and Marinduque—all of which provide key entry points. Department of Interior and Local Government (DILG) Secretary Robredo is an important actor with great potential to be a champion for transparency and accountability. Robredo is a former mayor who has championed good governance and community empowerment in practice, including transparency and accountability. The DILG under his leadership has initiated pioneering transparency and anticorruption efforts among local government units, including the disclosure of their budgets and finances.

Recommendations

Human Rights and Social Justice

- a. Create a Joint Task Force between the Commission on Human Rights, House Committee on National Cultural Communities, House Committee on Natural Resources, and National Commission on Indigenous Peoples to embark on a comprehensive assessment of the extrajudicial killings and human rights violations in mine-affected indigenous and other

local communities. Recommend ways to resolve cases and avoid future violations. The work of the task force can begin with the findings and recommendations of the international reports of Special Rapporteur John Ruggie and others. Final findings and recommendations can form part of new policy and the Philippines' report on compliance to the Committee on the Elimination of Racial Discrimination (CERD) and United Nations Declaration on the Rights of Indigenous People (UNDRIP).

- b. Improve the mechanism for imposing sanctions on extractive companies that have violated human rights. Establish a clear policy regarding the effect of human rights violations on the ability of extractive companies to mine.
- c. Build the capacity of NCIP Hearing Office and, the Regional Trial Courts-Green Courts in addressing cases of violations related to environmental issues.

Environment

- a. The government should establish a strategic natural resources management plan that clearly sets out what resources shall be prioritized for exploitation, conservation and rehabilitation. Exploitation of natural resources should not compromise food security, biodiversity, local livelihoods or essential services like water. Pending this master plan, government should stop issuing new mining, oil and gas concessions.
- b. There should be no mining in protected areas, key biodiversity areas or in the small island ecosystem. "No Go Zones" should also cover sacred grounds and burial sites of indigenous communities, areas inhabited and utilized by IP for their subsistence, communal forests of indigenous communities, watershed areas, international and local heritage sites, and indigenous communities with existing boundary disputes.
- c. The EIA process should be reformed to be transparent and rigorous, and to include meaningful public input.

Business and Finance Environment

- a. Revisit existing provisions of the National Internal Revenue Code (Tax Code) and the Omnibus Investments Code that prohibit disclosure of information on disaggregated tax collection.
- b. Review and rationalize fiscal and nonfiscal incentives granted to the extractive industry.
- c. To ensure transparency on tax collection, create a body with the authority to examine the production reports and account books of extractive companies;
- d. Provide technical support to the SEC to establish a special desk to deal with extractives company registration and monitoring;
- e. The Bureau of Internal Revenue (BIR), Department of Budget and Management (DBM) and the Department of Interior and Local Government (DILG) must ensure automatic release of LGU tax revenue. The NCIP and civil society also need to develop capacity (and willingness) to help communities sign effective MOAs and represent the interests of IPs. Lastly, the mining bureau simply needs to do its job and physically monitor production and exports.

Accountability, Transparency and Participation

- a. Impose sanctions against corrupt officials and employees. The ombudsman should take the lead and be supported by civil society groups, the Integrated Bar of the Philippines (IBP) and public interest law groups.
- b. Push for opportunities and new spaces for participation in policy formation.

- c. Provide a platform for engagement among stakeholders, including civil society and industry. It can start through a national conference on extractive industry transparency and accountability. Bantay Kita can move toward convening a national conference discussing transparency and accountability as a precursor to an EITI conference. The Samdhana Institute can act as a convener of this initiative, with the participation of IP and local communities.
- d. Build the capacity of civil society groups to understand the financial system of government and industry. Social and environmental networks by themselves or through other linkages can champion transparency and accountability if equipped with this expertise.
- e. Adopt EITI in the Philippines as a joint government, civil society and private sector undertaking through a consultative process involving key stakeholders, and with a dedicated private-sector secretariat advised by a multi-stakeholder council.
- f. Build the capacity of government offices to develop a database that is thorough and accurate.



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