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Mining

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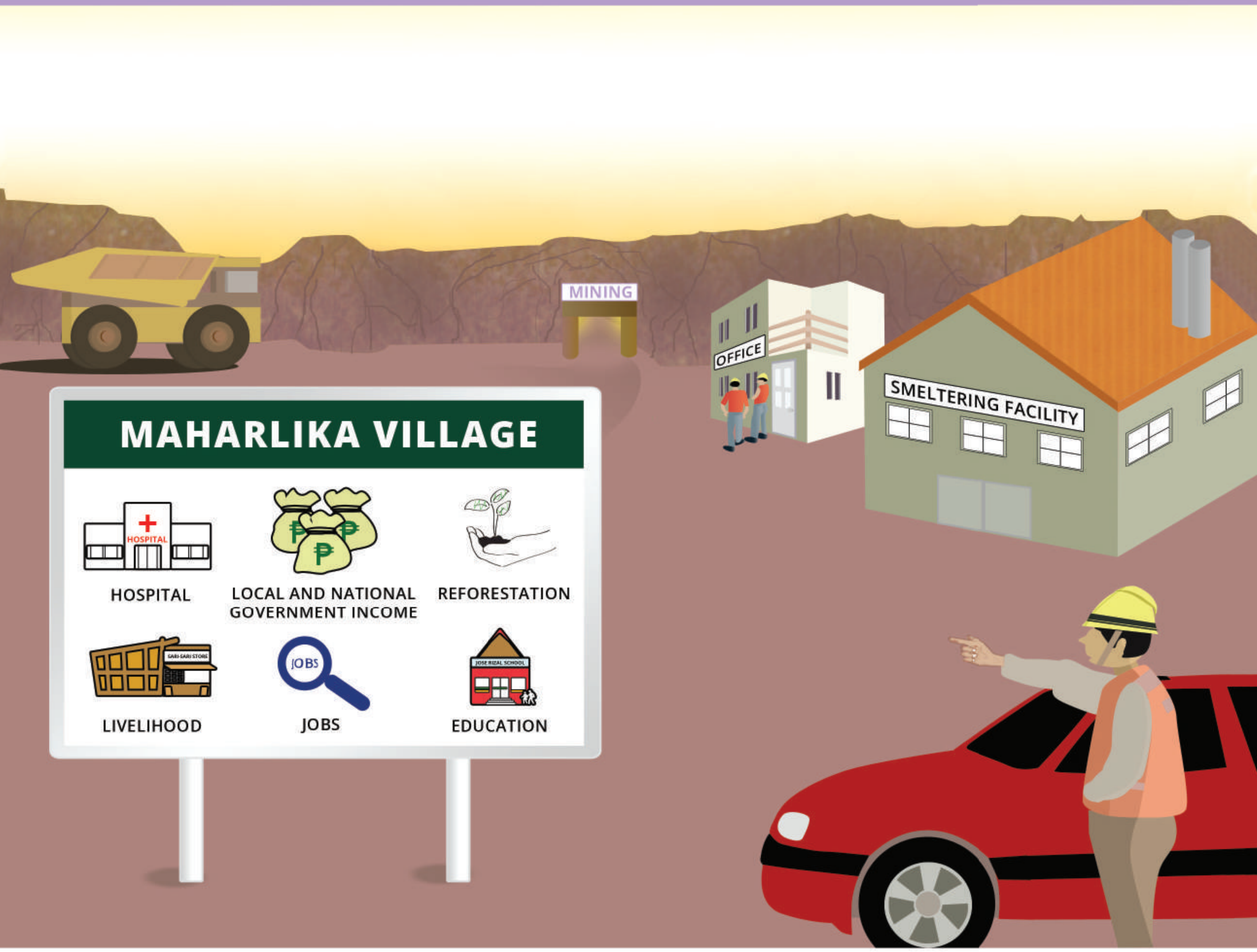

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Responsible Mining: Realizing its Potential

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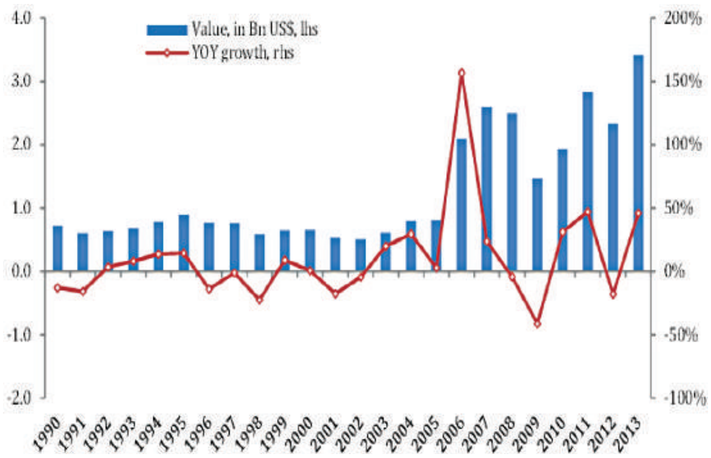
Responsible Mining: Realizing Its Potential

I. Background and Introduction

Thirty percent of the Philippine land area with a total of 9 million hectares has high mineral potential. Of this, only 60,000 hectares – about 35 percent the size of Quezon City – are occupied by large-scale mines.[1] The Fraser Institute of Canada has ranked the Philippines in the top 10 most attractive countries for mineral development based on mineral potential alone. However, the country ranks within the bottom 10 least attractive locations because of policy and bureaucratic obstructions and the lack of government support for mineral development.[2] Current government policy has imposed an official moratorium, following by two years of a *de facto* moratorium on the approval of new mining contracts. This has stalled the growth of the industry.

Before World War II, about 40 mining projects, largely American-owned, operated in the country. Throughout the 1970s and 1980s, the mining industry was at its peak and mineral products made up 21% of export revenues. However, a combination of high taxation and a decline in world market prices for minerals caused the industry to struggle throughout the 1990s. Although the Mining Act in 1995 (RA 7942) injected new life into the industry, the public image of mining was tarnished by the Marcopper spill in 1996, a constitutional challenge to the Mining Act, and passage of the Indigenous Peoples Rights Act,[3] which requires future mining projects to come to agreements with indigenous persons for the development of their land[4].

Figure 1: RP's Mineral Product Exports, 1991-2013



Source: Philippines Statistics Authority (PSA)

By 2003, mineral products were only 2% of total export revenue.[5] After the Supreme Court upheld the constitutionality of the Mining Act in 2005, the industry experienced an upsurge in export production, as seen in Figure 1. In 2012, mineral exports comprised 4.36% of exports.[6] However, inconsistent policy actions, moratoria on approvals for new production, designation of widespread proposal "no-go" zones, and a proposed, tougher fiscal regime that may be introduced by the government have left the future expansion of the industry highly uncertain.

The mining industry contributed only 0.7% of GDP to the economy in 2013 with an estimated value of P78 billion[7] and employed 250,000 people, about 0.7% of national employment.[8] By contrast, the Indonesian mining industry contributes 5% of total Indonesian GDP[9] and employs 1.5 million people, about 1.4% of total employment.[10] Development of the industry in a responsible manner can provide a significant boost to the GDP of the Philippines and to job growth. Sustainable mineral development provides inclusive growth in mineral-rich regions of the country by creating jobs, roadways, hospitals, and schools for local communities. This policy brief provides an overview of the mining industry and obstacles to its further development, along with eight recommendations that should be considered by Philippine policy makers.

1 Chamber of Mines of the Philippines. 2012. "Philippine Mining Footprint: Correcting Misconceptions." Chamber of Mines of the Philippines. February 6. Accessed August 11, 2014. http://www.chamberofmines.com.ph/download/advertisement/02102012.pdf
2 Wilson, Alana, and Jacky Cervantes. 2013. Survey of Mining Companies 2013. Vancouver: Fraser Institute
3 Halcon, Nelia C. 2005. "Towards an Achievable Manpower Action Plan for the Philippine Mining Industry." Bureau of Local Employment. Accessed July 22, 2014. http://www.ble.dole.gov.ph/download/Profile%20of%20the%20Mining%20Industry.pdf
4 Quintero, Dennis. 2011. "The Dynamics Between the IPRA and the Mining Act." Chamber of Mines of the Philippines. Accessed August 1, 2014 http://www.chamberofmines.com.ph/download/Mining%20Philippines%202011%20Presentation/Session%206/20%20-%20Dennis%20Quintero.pdf
5 Stratbase. 2012. "Making Sense of All The Controversies: The Philippine Mining Industry." SPARK, January: 1-14
6 Halcon, Nelia. 2014. "Presentation at Development Academy of the Philippines." The State of the Philippine Mining Industry. Pasig: Chamber of Mines of the Philippine, July 10.
7 Mines and Geosciences Bureau, 2014. Mining Industry Statistics. Manila, July 8.
8 Ibid.
9 Devi, Bernadetta, and Dody Prayogo. 2013. Mining and Development in Indonesia: An Overview of the Regulatory Framework and Policies. University of Indonesia, March.
10 Statistics Indonesia (Badan Pusat Statistik). 2014. Population 15 Years of Age and Over Who Worked by Main Industry, 2010-2013. Accessed July 31, 2014. http://www.bps.go.id/eng/tab_sub/view.php?kat=1&tabel=1&daftar=1&id_subyek=06&notab=2

II. Benefits of a Strong Mining Industry

With an estimated $1.4 trillion in mining reserves, Philippine mining potential has been ranked the fifth largest in the world, covering an estimated 9 million hectares. However, less than 2% of these reserve areas have mining permits. In 2012, there were 27 existing large-scale mines operating in the country, occuping only 0.2 percent of the total Philippine landmass.[11] After long stagnation, the sector began a resurgence following a 2005 Supreme Court decision affirming RA 7942, enacted in 1995 and considered a world-class legal framework for minerals development. With its high potential to create jobs and to increase public as well as private sector revenue, minerals development should be a top government priority. The government has identified over 60 priority mining projects that it encourages investors to develop.

Mining can support poor rural areas through a mixture of high quality jobs, as well as manual labor, training and education, local tax payments, and community development. The national government receives substantial royalty and tax payments from mining. Government revenue from mining more than doubled to PhP 22.2 billion in 2011 from PhP 10.4 billion in 2007.[12] Full development of the sector, however, continues to face significant challenges. Lengthy approvals for Exploration Permits (EPs) continue to impede investment. Several local government units (LGU) have closed their provinces to mining in clear violation of RA 7942. Industry is concerned that the Writ of Kalikasan, injudiciously applied, may disrupt local mining activities.

Minerals development in the Philippines has slowed dramatically since 2010 in response to an uncertain and even negative Philippine minerals policy environment, a lingering and flawed “no-go” mining map process, extended tenement granting moratoria and permitting issues, and national laws not being enforced in the face of provincial mining bans and rampant illegal small-scale mining. This negative policy toward mining has coincided with a major slowdown in international mining investment markets. The now-smaller pot of worldwide investment capital has been for the most part withdrawn from the Philippines, and is being spent elsewhere. Many of these issues are the result of national and local government departments operating independently of each other and not meaningfully engaging stakeholders.

The immediate future for growth of the mining sector is not positive. EO 79, issued July 6, 2012, imposes a moratorium on new mining permits, pending passage of a new law on the revenue sharing scheme between industry and government coming into effect.[13] In addition, designation of over 65% of the country as new “no-go” zones[14] may severely undervalue areas thereby closed to mining in favor of minimum tourist or agricultural value.

Additionally, the industry faces strong opposition from elements of the Catholic Church and local NGOs, which have long sought to incite anti-mining sentiment among the general populace. Reports of dangerous working conditions, child labor, and exploitation of resources by operations of small scale miners have been confused with responsible mining conducted by large firms, which are subject to international scrutiny, strict government monitoring, and the influence of shareholders. The industry also faces security concerns, as mining companies and employees have been the target of attacks from the New People’s Army, who are reported to operate small scale mines themselves and extort politicians to support their mines.[15]

Because the responsible mining industry is high-risk and highly capital intensive, the Philippines needs a competitive fiscal regime to encourage foreign as well as domestic capital to develop the country’s mining potential. According to Mines and

11 Chamber of Mines of the Philippines. 2012. “Philippine Mining Footprint: Correcting Misconceptions.” Chamber of Mines of the Philippines. February 6. Accessed August 11, 2014. http://www.chamberofmines.com.ph/download/advertisement/02102012.pdf

12 The Arangkada Project Philippines. 2014. “Third Anniversary Assessment.” More Reforms = More Jobs! Makati City. Joint Foreign Chambers of the Philippines. 160

13 See EO79 Section 4: Grant of Mineral Agreements Pending New Legislation.

14 See EO79 Section 1: Areas Closed to Mining Applications.

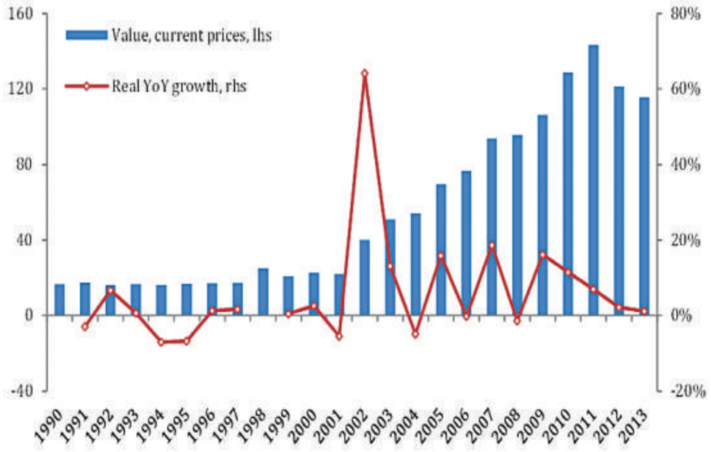
15 Raneses, RR. 2014. Whose Mine is It? July 13, Accessed July 24, 2014. http://www.rappler.com/thought-leaders/62988-npa-mining

Geosciences Bureau (MGB) estimates, aggregate domestic and foreign investment in the mining sector increased by 61 percent in 2013, totaling USD $1.311 billion. These investments were 60 percent greater than the government's target of USD $818 million. MGB expects a total of $1.3 billion USD in investments in 2014.[16] However, these investments are in projects already initiated and committed to in past years, highlighting the need to support the industry now in order to realize future growth.

At the beginning of the Aquino Administration, the MGB embarked on a campaign to "cleanse" the tenement system, whereby all tenements in the country were reviewed with the intention of cancelling tenements on which there had been no activity and returning them back to the marketplace. But then all actions on tenements were put on hold under a moratorium. A large percentage of outstanding tenements were cancelled on grounds on non-activity (a positive move). Of those, a large number were appealed; but the appeals have not been acted on and the entire tenement system lies largely dormant. Although the moratorium was theoretically lifted after the publication of EO 79 and new applications allowed, in practice few applications are being made because all new contracts are on hold, pending new fiscal legislation. Few companies will invest without knowing the fiscal regime that will apply.

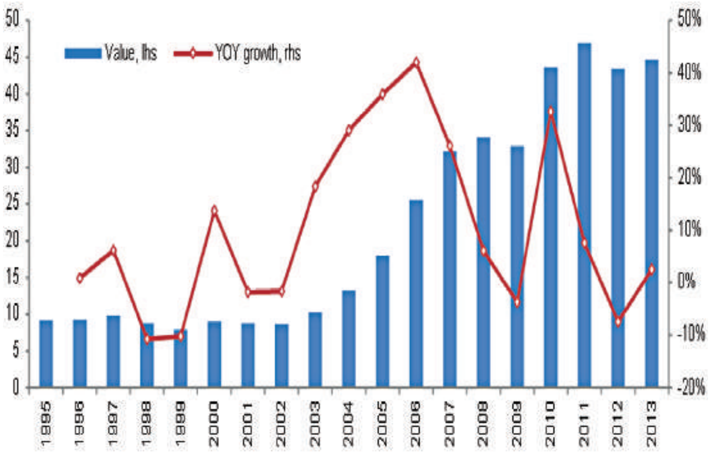
Despite this modest growth in investments, further development is threatened not only by the government's proposed fiscal regime that will reportedly raise taxes to uncompetitive levels and discourage investors, but also by the government's inconsistent policies and lack of support regarding the future of the industry. As the following graph illustrates, the Philippines is not realizing the potential economic gains from mining, as real year-on-year growth of sectoral GVA has collapsed since 2009, falling to near zero in 2012 and 2013, as international prices slumped and as the effects of EO 79 were felt.[17]

Figure 2: Mining and Quarrying Gross Value Added (GVA), Bn, Php, 1995-2013



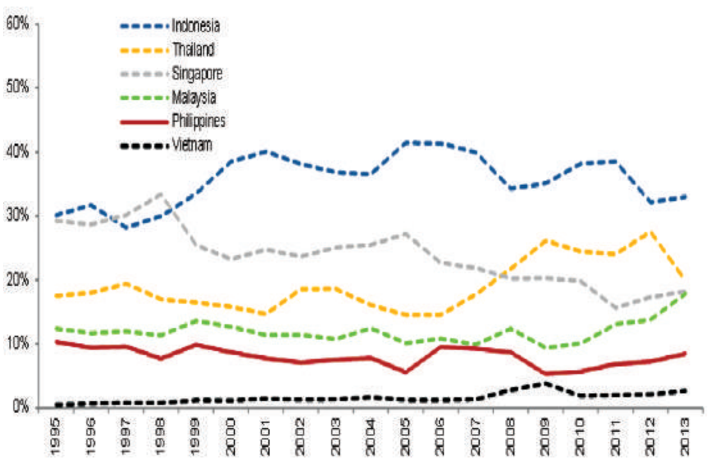
Source: PSA: Old series (1997-back) New series (1998-onwards)

Figure 3: ASEAN-6 Total Mineral Products Exports, Bn US$, 1995-2013



Source: UNCTAD; Includes ores, metals, prescious stones and non-monetary gold

Figure 4: Share in ASEAN-6 Total Mineral Products Exports, 1995-2013



Source: UNCTAD; Includes ores, metals, prescious stones and non-monetary gold

16 Philippine Resources. 2014. "Philippine Mining Briefs – with Jimbo Gulle." Philippine Resources, May-July. 36-37

17 YoY growth for 2013 in Figure 2 is at 1.1%. Data for graph gathered from Philippine Statistics Authority.

Figure 5: Estimated Value of Philippine Mineral Reserves, US$ Bn, 2013

Mineral	Tons (Mn)	Average Grade*	Value (US$ Bn)
Gold	3869.0	2.68	367.0
Copper	5051.0	0.90	318.0
Nickel	783.0	2.62	328.0
Chromite	38.0	24.55	1.0
Iron	483.0	42.05	103.0
Manganes	3.0	45.31	0.1
Aluminum	434.0	27.50	263.0
Zinc	11.4	2.66	1.0
Molybdenum	306.0	0.08	6.0
Total			**1367.0**

* grade values are shown as a percentage, with the exception of gold (g/mt)

Source: ANZCHAM

Figure 6: Number of Operating Mines; 2010 - 2014

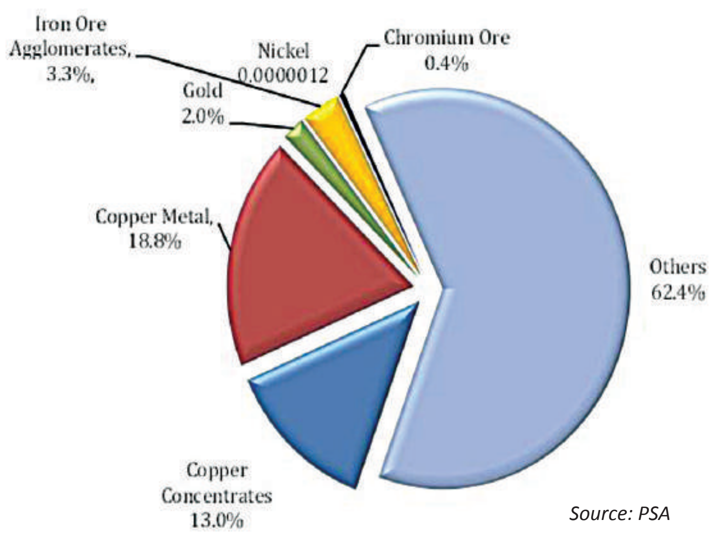
Number of Operating Metallic Mines	2010	2011	2012	2013	Q1 2014+
Copper (with gold)	0	0	0	1	1
Copper (with gold & silver)	3	3	3	2	3
Copper (with gold, silver, & zinc)	1	1	1	2	1
Gold (with silver)	8	5	6	6	6
Chromite	1	2	3	3	3
Nickel	15	18	21	24	27
Iron	0	1	2	3	5
Total Operating Metallic Mines	28	30	36	41	46

Source: Mines and Geosciences Bureau, 2014. Mining Industry Statistics. Manila, July 8.

Even though the Philippines has rich mineral reserves, exports of mineral products comprise only 8.5% of all minerals exported from the ASEAN-6 economies in 2013. Indonesia has developed its resources more successfully and leads in mineral exports with 33.6% of the ASEAN-6 total.[18] The ASEAN-6 countries have experienced very strong growth in the value of mineral exports over the past decade.[19]

Philippine mineral reserves largely comprise copper, estimated to be about 5 million tons of reserves, followed by gold with 4 million tons and nickel with 800,000 tons.[20] The number of nickel mines in operation exceeds the number of copper, gold, silver, chromite, and iron,[21] yet official statistics of nickel exports show a far smaller number,[22] because of both smuggling and inconsistent nomenclature in the gathering of statistics. Smuggling of mineral ores is a significant detriment to the industry, as the government loses billions of pesos in potential revenue. By law, gold should be sold to the Bangko Sentral, but sales declined by 98 percent in 2011 after a tax was levied on each sale.[23] Nonetheless, the output from production yielded a record high of $10.4 billion in 2012.[24] Illegal gold production would not likely have ceased overnight as it is widely reported to be smuggled out of the country.

Figure 7: Mining Goods Exports Distribution, 2013



Source: PSA

18 See Figure 3 for ASEAN-6 total mineral exports. ASEAN-6 YoY growth peaked in 2006 at 42%

19 See Figure 4 for 2013 exports. Indonesia (33.6%), Malaysia (17.8%), Philippines (8.5%), Singapore (18.2%), Thailand (19.9%), Vietnam (2.6%)

20 See Figure 5. Figures may not add up because of rounding. Data from ANZCHAM but gathered from a study by Pavlova, Pavlina, and Joseph Hincks. 2013. “Mining in the Philippines: Revisiting the Rim.” Engineering and Mining Journal Global Business Reports (Engineering and Mining Journal Global Business Reports) 1-13

21 See Figure 6.

22 See Figure 7. Statistics for nickel production and exports are inconsistent because of smuggling and a lack of consistent nomenclature among statistical organizations. Data gathered from Philippine Statistics Authority. Other minerals include zinc and nonmetallic minerals such as bentonite clay, cement, coal, marble, sand and gravel, white clay, cement raw materials, limestone, shale clay, and others. Full list of other minerals can be found at http://www.nscb.gov.ph/secstat/d_natres.asp

23 Francisco, Rosemarie. 2012. Special Report: Philippines’ Black Market is China’s Golden Connection. August 12. Accessed August 7, 2014. http://www.reuters.com/article/2012/08/23/us-philippines-gold-idUSBRE87M02120120823

24 Ibid.

III. Proposed Fiscal Regime

In accordance with EO 79, for the moratorium on new mining production projects to be lifted the government requires enactment of legislation of a new fiscal regime for revenue sharing. Although not publicly available nor submitted to the Congress,[25] the proposed plan reportedly would levy either a 10% royalty on gross receipts, or 55% of adjusted net mining revenue, whichever is greater, plus either a windfall profits tax or surcharge on residual profits. The industry will be taxed annually whether it is profitable or not.[26]

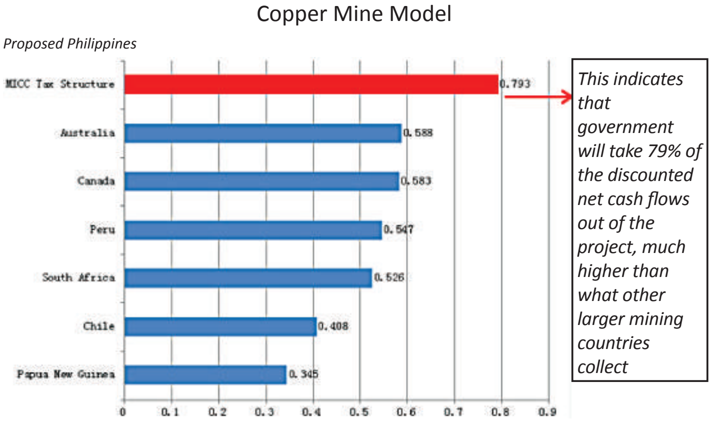
Currently, Mineral Product Sharing Agreements have an Average Effective Tax Rate (AETR) of 60%, which goes to the government. This government tax "take" is somewhat higher than Canada and Australia at 58% (these countries have higher tax structures but attract higher investments because of policy stability and infrastructure support); is significantly higher than Peru and South Africa at 50-55%; and is much higher than Chile (41%) and Papua New Guinea (35%).[27]

The proposed fiscal regime from the government-dominated Mining Industry Coordinating Council (MICC) has an even higher AETR of 79% of revenue going to the government, while the Internal Rate of Return (IRR) that businesses will receive is about 13% and does not meet the industry standard of 15%.[28] In short, under this proposal, a very high proportion of revenue will go to the government, and mining firms will not earn returns as high as they would investing outside the Philippines.[29] Clearly, this is not a competitive structure if it becomes law.

If the government tax rate on mining revenues is increased too much, interest of foreign investors will fall and the government will receive less total tax revenue, or possibly none despite higher taxes due to under investment. Conversely, if the government decreases its tax rate, the interest of foreign investors may increase and the government may actually get much more in total tax revenue (even when the tax rate is lower). If the government increases its tax rate too high there will be little new investment in mining, depressed mining production, and little or no revenue from mining.[30]

Figure 8: A Comparison of Tax Regimes for Mining with Proposed MICC Tax Structure AVERAGE EFFECTIVE TAX RATE (AETR)

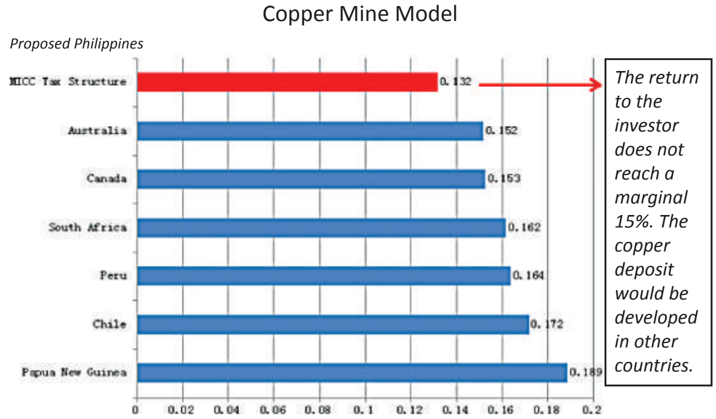
Copper Mine Model



Source: Chamber of Mines of the Philippines. 2014. "Proposed MICC Tax Structure." Tax Presentation

Figure 9: Comparison of Tax Regimes for Mining with Proposed MICC Tax Structure Internal Rate of Return (IRR)

Copper Mine Model



Source: Chamber of Mines of the Philippines. 2014. "Proposed MICC Tax Structure." Tax Presentation

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25 Sen. Ralph G. Recto filled a Bill in August 18 entitled "An Act Establishing the Fiscal Regime and Revenue Sharing arrangement from large-scale metallic mining.

26 Joint Foreign Chambers of the Philippines. 2014. JFC Letter to President Aquino on Mining Fiscal Regime. Manila, March 28.

27 Sunley, Emil M., Selcuk Caner, Richard Krever, and Oana Luca. 2012. Reform of the Fiscal Regimes for Mining and Petroleum. Washington, DC; International Monetary Fund. See Figure 8

28 Figure 8: Chamber of Mines of the Philippines. 2014. "Proposed MICC Tax Structure." Tax Presentation

29 See Figure 9: Ibid.

30 For more, see Payne, Julian. 2014. Speech by Julian Payne, President, Canadian Chamber of Commerce of the Philippines. Development Academy of the Philippines, Pasig City. July 10.

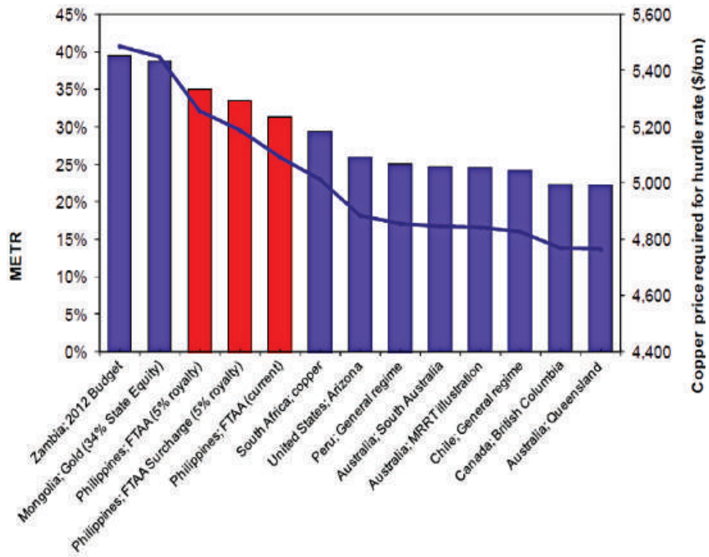
A greater burden is placed on investors in Philippine mines, in comparison to other countries with high mineral reserves.[31] Under the Financial and Technical Assistance Agreement (FTAA), which is the fiscal regime for foreign investors, the AETR has been calculated by the Chamber of Mines – using a comprehensive, exhaustively detailed financial model - at an enormous 96%, now that the government has unilaterally abrogated its previous commitment to allow a five-year cost recovery period,[32] through a Revenue Memorandum Circular of the Bureau of Internal Revenue.[33] This resultant AETR number is not even in the same order of magnitude as those for Chile, Papua New Guinea, Peru, and South Africa, and all countries competing with the Philippines for mining investment.

Foreign investors have invested in large-scale mining in the Philippines in the past because of the potential of the geology, despite a high AETR. While the 46 existing mines[34] will not be affected by the proposed fiscal regime, further new investment is unlikely given opportunities in other mining economies. It has reliably been reported that the MICC has recommended to President Aquino a new fiscal regime for large-scale mining that increases tax rates, taxes projects even when they become loss-making or when commodity prices are low, and imposes windfall-profit taxes when commodity prices are high.[35]

The proposed tax regime will make the Philippine fiscal regime even less competitive. What the Chamber of Mines calls a wrong interpretation of actual tax revenues led to the conclusion by the MICC that the industry was not paying its proper share of taxes. The numbers are considered to be skewed because the substantial production of gold by small-scale and illegal mining operations – which was sold to the Central Bank but generated minimal tax revenue – was combined with revenues from legitimate, industrial mining companies.[36]

Finally, the Philippines is preparing its first application to the Extractive Industry Transparency Initiative (EITI), which establishes international standards for mining and accurately measures how much revenue local and national governments should receive. This will be done by compiling relevant data from the BIR, MGB, BOC, LGUs, and mining companies and creating a standard for future fiscal policy.[37] Admission to the EITI will provide the Philippines with a guideline on how to proceed with mining in the future. Figure 11 below summarizes the provisions and impacts of the proposed fiscal regime.[38]

Figure 10: Fiscal Burden on Investor, Selected Countries, Philippines, 2013



Source: IMF Staff estimates using FARI modeling platform.

31 See Figure 10. METR is the Measured Effective Tax Rate

32 Payne, Julian. 2014. Speech by Julian Payne, President, Canadian Chamber of Commerce of the Philippines. Development Academy of the Philippines, Pasig City. July 10.

33 On this issue there is a disconnect between the government agency tasked with the granting of FTAAs, i.e. the DENR-MGB, and the tax authority, the Bureau of Internal Revenue, which, without consultation with the former, issued Revenue Memorandum Circular (RMC) No. 17-2013 withdrawing the incentive for the five-year recovery period from the FTAA.

34 See Figure 6.

35 For more, see Payne, Julian. 2014. Speech by Julian Payne, President, Canadian Chamber of Commerce of the Philippines. Development Academy of the Philippines, Pasig City. July 10.

36 Source: Chamber of Mines of the Philippines. 2014. “Proposed MICC Tax Structure.” Tax Presentation

37 Lopez, Edu. 2014. “Country Report on Mining Industry Readied for Submission to EITI.” The Manila Bulletin, July 15: B-2

38 Source: Chamber of Mines of the Philippines. 2014. “Proposed MICC Tax Structure.” Tax Presentation

Figure 11: Proposed MICC Tax Structure

Provision	Impact
a. Interest expenses, bank and financial charges not allowed as deductible expenses from gross revenue	No serious mining project can be financed without some level of debt. The Tax Code recognizes these items as tax deductible expenses, a standard feature in virtually all tax regimes.
b. No provision for net loss carry-over	Mining is cyclical and there are years of possible losses. The tax code allows the taxpayer to recoup losses by a net loss carry-over provision, a standard feature in virtually all tax regimes.
c. Perpetual liability insurance	There is no insurance policy that exists in perpetuity (i.e. forever), if that is what this provision means. A corporate charter only lasts for 50 years. This provision needs to be clarified.
d. Cap on general and administrative expenses up to 10% of direct mining, milling, and processing costs	There are actual costs incurred. In periods when mining activities are minimal (low metal price, temporary shut-down, etc.), this would result in the Contractor not recovering valid expenses.

Source: Chamber of Mines of the Philippines

> *"We believe such a fiscal regime will have an extremely negative impact on future investment in the minerals sector; and we urge the Administration to reconsider its proposals in this light. With an improved – rather than more penalizing – fiscal and regulatory environment, we believe the country could be the recipient of substantial investment and minerals growth."*
>
> ***– Statement by the Joint Foreign Chambers in a Letter to President Aquino, March 28, 2014***

IV. Other Key Obstacles to Sectoral Growth

"In addition to a negative fiscal environment, other important deterrents to investment include policy instability, an unpredictable legal system, illegal mining, security concerns, and extensive proposed "no-go" zones."

Policy instability. The current administration has not been proactive in developing the country's mining industry, making its future expansion uncertain. Under the status quo, the administration supports a proposed new fiscal regime that will not equitably generate revenue for government and investors, and would prevent growth of the industry from being internationally competitive.

When there are better investment choices elsewhere for large scale mining projects that require billions of US$ of capital, Philippine mining projects will receive little or no investment from foreign companies.

The government plans to introduce and pass a new fiscal regime that will significantly increase taxes on large scale mining at already high levels and discourage new business. The moratorium on the approval of mining projects has frozen any major progress in the industry.

Unpredictable legal systems. A major disincentive to investments in minerals development is the inefficient functioning of the judicial system. The resolution of legal challenges takes an excessive amount of time and investors attribute this to severe problems of governance.

The legal case filed in 2008 by political party members Baraquel, Hontiveros et al. vs. the DENR Secretary, Sagittarius Mining Inc., Oceanagold Corporation and TVI Resource Development (Phils) Inc, sought to challenge the constitutionality of certain sections of the Mining Act (Sections 80 and 81), alleging that these sections result in an inequitable sharing of revenue, which is contrary to Article XII of the Constitution. However, the Mining Act, along with these provisions, had previously been declared constitutional "with finality" in 2005 and the industry had proceeded to invest substantial funds on the strength of this decision.

This petition lay dormant in the Court until 2013, when the new Chief Justice suddenly elected to hear the case. The Chamber of Mines was granted leave to intervene in the case; and its lawyers, including former Chief Justice Puno, argued that there had been no material change since 2005 warranting a judicial review of the previous decision and that, pursuant to the doctrine of the separation of powers, the actual determination of equitable sharing rests with the Executive and Legislative branches of government. After hearing arguments, the Court recessed in order to reach its decision; which is still awaited.

The problem for investors in mining is that if the Supreme Court reverses it's previous "final" decision, all existing contracts entered between investors and the government could be rendered unconstitutional. That the case continues to be deliberated and that there is no decision upholding the constitutionality of the Act creates major uncertainty for any investor contemplating the Philippines.

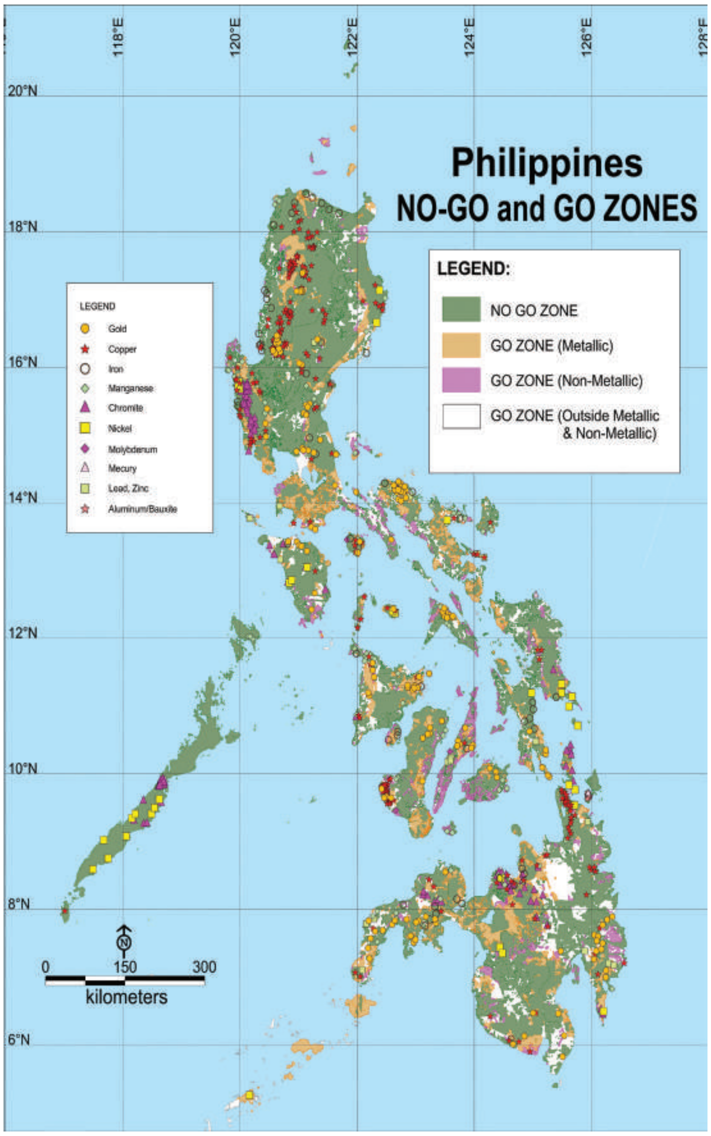
Illegal mining and security concerns. Small scale mining by domestic companies and illegal mining are not subject to the same international scrutiny as large scale mines and are responsible for environmental degradation. Security of mines is a prime concern as they are vulnerable to attacks from local New People's Army guerillas in some provinces.

"No-go" zones. Finally, the government has proposed a series of "no-go" zone maps prohibiting mineral exploration, which cover at least 65% of the country, as calculated by industry analysis. Encompassing the whole archipelago, Figure 12 shows these "no-go" zones shaded in green.[39] The "Go" zones include areas such as Metro Manila and the Sulu Archipelago, which are "no go" areas in practical reality. In addition, government officials have hinted that other areas may be added. Given the radical extent of the "no-go" zones, coupled with the fact that they overlay many of the highly mineralized parts of the country, it is highly likely that these maps will constitute a major obstacle to new mine development.

The Philippines policy model determining "no-go" zones for minerals exploration and development, yet to be enforced, is fatally flawed. A country with a small land area and high population such as the Philippines cannot fully maximize returns on its natural resources if the use of land and potential productivity are restricted in the manner proposed by the government.

The premise of seeking inputs as to which areas should be excluded based on worthy but specialized interests such as tourism, agriculture, and nature conservation rather than using a model based on "best land use" for the nation – such as those being used by other countries – is not recommended. It is also suggested that the executive process adopted by the Philippine government in adopting the "no-go" zone mapping would be more effective if it were done in conjunction with current efforts in the Philippine Congress to adopt a National Land Use legislation. The absence of coordination between the executive and the legislature may lead to further confusion and uncertainty in the actual coverage of the zones open for natural resources development.

Figure 12: Map of No-Go, Shaded in Green and Go Zones



Source: Map compiled from data gathered from MGB/DENR

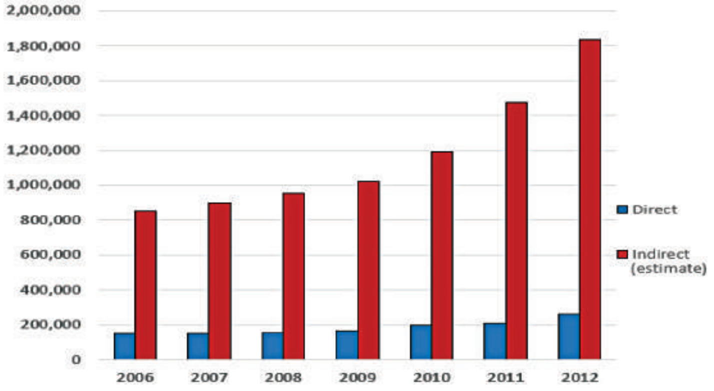
39 In the US, only 0.02% of total land area is being mined. In Canada 0.01% ; in Peru 0.08%; in Brazil less than 0.45%; and in Australia less than 0.26%. On the issue of "no-go" zones and some of its underpinning please see this article: http://www.miningfacts.org/economy/how-does-large-scale-mining-affect-agriculture/

V. Jobs and Local Value Added From Mining

Mining investments are highly capital-intensive, requiring new road, port, and power infrastructure, as well as purchase of costly machinery. Mining takes place in remote and mountainous interior areas, where mining firms also build other infrastructure for health and education. Large amounts of company funds are spent in local economies through operations and procurement. Table 1 shows a how much large scale mining operations contributed to social development programs, which often involves developing water systems, roadways, medical services, education, and technology in support of local mining communities. Mining results in more revenues at local levels of government, in addition to taxes paid directly to the national government.[40] LGUs receive 40% of mining taxes paid by mining firms to the national government. However, these arrive often 2-3 years after a tedious auditing process and would better be paid directly to the LGUs, which requires legislation.

In 2012, 250,000 people were directly employed by mining, while 1,800,000 were employed through the industries that support the mining industry. Every mining job is estimated to generate six jobs for the local population.[41] Mines have little impact directly outside their footprint other than significantly adding money, jobs and trees into the local economy and in providing infrastructure such as roads, bridges, schools, day-care centers and medical intervention that is not funded by the local or national government. In many cases mines drive development and services of the local economy as well as industry, forestry, and urbanization.

Figure 13: Mining Industry Employment Generation (Chamber of Mines of the Philippines)



Source: Chamber of Mines of the Philippines (COMP)

Table 1: Social Development and Management Programs (SDMP) of Large-Scale Mining/Quarry Operations, 2002-2009: Commitments vs Expenditures for the 1st 5-year Period (as of Dec. 31 2010)

Period of Coverage 1st 5-yr period	Total No. of Proponents	No. of Barangays Benefited	SDMP COMMITMENT Million Php	EXPENDITURE in Phl '000 as of December 2008	% EXPENDITURE vs. COMMITMENT
2002-2006	5	33	60	61	101%
2003-2007	14	59	112	138	123%
2004-2008	28	64	80	137	171%
2005-2009	18	40	133	242	181%
2006-2010	3	3	3	3	107%
Total	68	199	400	580	150%

Source: Extracted from the SDMP database, MGB-DENR, April 2011. Provided by COMP

40 For more, see Payne, Julian. 2014. Speech by Julian Payne, President, Canadian Chamber of Commerce of the Philippines. Development Academy of the Philippines, Pasig City. July 10.

41 See Figure 13. Stratbase. 2012. "Making Sense of All The Controversies: The Philippine Mining Industry." SPARK, January: 1-14.

VI. Conclusions and Recommendations

In conclusion, inconsistent policy actions, moratoria, designation of widespread "no-go" zones, and a proposed tougher fiscal regime that may be introduced by the government have made the future of the industry uncertain. The Philippine government would do well to consider a reevaluation of the present conditions governing the Philippine mineral industry. Towards this end, the Arangkada Philippines Project (TAPP, of the Joint Foreign Chambers in 2013 organized two roundtable discussions with industry leaders and developed the following recommendations for policy makers to consider in debating the future of the mining industry.

1. **Mining Is a Public Private Partnership, which Government should manage accordingly.**

Channels of communication between key government officials responsible for mining policy (DENR, DOF, DTI, and others) and the mining industry should be regular. The MICC and industry representatives should meet monthly to discuss implementation of EO 79 and the mining laws. The mining industry and other private sector organizations should be represented on the MICC.

2. **Fiscal Policy must be Competitive and Equitable.**

A competitive and equitable tax structure is required to attract mining investment and to compensate the Philippines fairly for the extraction of natural resources. By competitive, the structure must adequately reward mining investors for the large, high-risk investments they make, in line with the total tax impact of mining fiscal regimes in comparator countries at similar stages of economic development. By fairly, the structure should provide substantial total revenue to the government resulting from increased investment by responsible mining firms, and warranted in comparison to other mining regimes. It should have an element of continuous "rent" from the use and depletion of its resources, plus a share of the profitability of projects as prices rise (if they rise).

The current FTAA tax structure is uncompetitive in comparison with comparator countries and discourages investment. Set too high, new taxes will discourage and prevent new investment if the volatility of commodity prices is not considered. Proposals to tax solely or heavily on gross revenue are unrealistic, because they are insensitive to risk, price and profitability. Legislation required by EO79 should not make the fiscal regime for mining more uncompetitive.

3. **Respect and implement the Philippine Mining Act.**

Regarded as among the best mining laws in the world, RA 7942 should be respected and implemented evenly throughout the nation. Congress should be cautious in considering proposals to amend the law, while courts should be conservative when interpreting it. DENR and the OSG should ensure a vigorous defense of the law's constitutionality. The high potential of the country's minerals sector cannot be realized without a policy consensus among the three branches of government. Bans on mining, specific to provinces and cities, either proposed in the Congressor by provincial or city councils, are inconsistent with RA 7942 and should not be passed by Congress or local government nor allowed by the national government.

4. **Continue processing mining applications and begin issuing approvals for new projects.**

Having lifted its moratorium on applications for new exploration permits, the DENR should continue to process such applications and also all permits required for approved projects to proceed. The DENR should also process all permits required for the Tampakan Project to proceed. Tampakan is not only the largest mining project but also at USD $ 6 billion the largest investment ever in the country. In addition, DENR should signal that it is considering – and will approve – applications for new mining contracts. The National Commission for Indigenous Peoples should end its unofficial moratorium of not issuing required Free Prior Informed Consent licenses.

5. **Local government should respect national law but also should receive wealth taxes directly.**

EO 79 and a subsequent DILG order make clear the supremacy of national law. The Local Government Code RA 7160 should be amended to make such authority explicit. Special economic zones for large mining projects may be established to better differentiate that these are projects of national significance. Mining firms should be allowed to pay the 40% LGU share of national wealth taxes directly to local governments, or they could be paid through the mechanism of the special mining economic zones.

6. **Observe international practice in ensuring that all government agencies respect existing contracts.**

The BIR order that requires existing FTAA mining projects to pay excise tax from the start of operation rather than after cost recovery results in the Philippines reneging on contractual commitments made with investors prior to their decision to invest. This order runs contrary to the government's commitment to respect existing contracts and is also a violation of the Foreign Investment Protection Agreements signed between the Philippines and partner countries.

7. **"No-go" zones should not be declared without careful weighing of the relative value of the zone for mining or alternative uses.**

The "no-go" zones cover effectively more than 65% of the country and could prevent many new mining projects from being realized. In fact, there could be sound reasons for a mine, a tourism destination, and an agricultural area all to coexist, prosper, and contribute to a local economy in relative proximity if properly managed. "No-go" zones should only be confirmed when there is demonstrably high agriculture or tourist and little or no mining potential in the area and should be cancelled if agriculture and/or tourism potential has not been implemented within five years.[42] The No-Go map concept stands contrary to international practice; and it is recommended that other approaches will benefit the country more and conform to international expectations of Philippines Resource Management.[43]

8. **Improve resources, support and capacity for Indigenous Peoples (IPs).**

Additional resources, expert staffing, and capacity should be allocated to the National Commission on Indigenous Peoples (NCIP). Most access to the lands of IPs in the Philippines is determined by mandated interactions between mining companies and the NCIP. The Free Prior Informed Consent (FPIC) process with IPs, under management of an under-resourced NICP, has proved difficult and time-consuming beyond a reasonable period. Additional funding would create more efficiency in the granting of access to land.

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42 For more, see Payne, Julian. 2014. Speech by Julian Payne, President, Canadian Chamber of Commerce of the Philippines. Development Academy of the Philippines, Pasig City. July 10.

43 A more robust policy model used internationally is the Integrated Land Management System (ILUMS). The Philippines Government is already a signatory to international Land Management initiatives (WAVES – Wealth Accounting and Valuation of Ecosystem Services) and currently has land management legislation before Congress. Major mining countries, such as Australia and Canada, have several decades of experience in developing and implementing an ILUMS.

VII. Bibliography

Chamber of Mines of the Philippines. 2012. *"Philippine Mining Footprint: Correcting Misconceptions."* Chamber of Mines of the Philippines. February 6. Accessed August 11, 2014. http://www.chamberofmines.com.ph/download/advertisement/02102012.pdf.

— 2014. *"Proposed MICC Tax Structure."* Tax Presentation.

Congress of the Philippines. 1995. *"RA 7942." Mines and Geosciences Bureau*. Accessed July 25, 2014. http://www.mgb.gov.ph/Files/Policies/RA%207942.pdf.

Devi, Bernadetta, and Dody Prayogo. 2013. *Mining and Development in Indonesia: An Overview of the Regulatory Framework and Policies.* University of Indonesia, March.

Francisco, Rosemarie. 2012. *Special Report: Philippines' Black Market is China's Golden Connection*. August 22. Accessed August 7, 2014. http://www.reuters.com/article/2012/08/23/us-philippines-gold-idUSBRE87M02120120823.

Halcon, Nelia C. 2005. *"Towards an Achievable Manpower Action Plan for the Philippine Mining Industry." Bureau of Local Employment*. Accessed July 22, 2014. http://www.ble.dole.gov.ph/download/profile%20of%20the%20mining%20industry.pdf.

Halcon, Nelia. 2014. *"Presentation at Development Academy of the Philippines." The State of the Philippine Mining Industry*. Pasig: Chamber of Mines of the Philippines, July 10.

Indino, Phoebe Jen. 2014. *Mining Firms' Social Development Programs Allotted P155 million*. May 11. Accessed August 7, 2014. https://ph.news.yahoo.com/mining-firms-social-development-programs-allotted-p155-million-155630807.html.

Joint Foreign Chambers of the Philippines. 2010. *Arangkada Philippines 2010: A Business Perspective*. Makati City: The American Chamber of Commerce of the Philippines, Inc.

Joint Foreign Chambers of the Philippines. 2014. *JFC Letter to President Aquino on Mining Fiscal Regime*. Manila, March 28.

Lopez, Edu. 2014. *"Country Report on Mining Industry Readied for Submission to EITI." The Manila Bulletin*, July 15: B-2.

Malacanang Palace. S. 2013. *Executive Order 147*. Manila.

Malacanang Palace. 2012. *Executive Order No. 79*, S. 2012. Manila.

Mendoza, Ronald U., and Tristan A. Canare. 2013. *Revenue Sharing in Mining: Insights from the Philippine Case*. Makati City, Philippines: Asian Institute of Management Policy Center.

Mines and Geosciences Bureau. 2014. *Mining Industry Statistics*. Manila, July 8.

Pavlova, Pavlina, and Joseph Hincks. 2013. *"Mining in the Philippines: Revisiting the Rim." Engineering and Mining Journal Global Business Reports* (Engineering amd Mining Journal Global Business Reports) 1-13.

Payne, Julian. 2014. *Speech by Julian Payne, President, Canadian Chamber of Commerce of the Philippines*. Development Academy of the Philippines, Pasig City. July 10.

Philippine Resources. 2014. *"Philippine Mining Briefs - with Jimbo Gulle." Philippine Resources*, May-July: 36.

Philippine Statistics Authority - National Statistics Coordination Board. 2006. *Natural Resource Statistics*. December 26. Accessed July 31, 2014. http://www.nscb.gov.ph/secstat/d_natres.asp.

Quintero, Dennis. 2011. *"The Dynamics Between the IPRA and the Mining Act." Chamber of Mines of the Philippines*. Accessed August 1, 2014. http://www.chamberofmines.com.ph/download/Mining%20Philippines%202011%20Presentation/Session%206/20%20-%20Dennis%20Quintero.pdf.

Raneses, RR. 2014. *Whose Mine is It?* July 13. Accessed July 24, 2014. http://www.rappler.com/thought-leaders/62988-npa-mining.

Statistics Indonesia (Badan Pusat Statistik). 2014. *Population 15 Years of Age and Over Who Worked by Main Industry, 2010 - 2013*. Accessed July 31, 2014. http://www.bps.go.id/eng/tab_sub/view.php?kat=1&tabel=1&daftar=1&id_subyek=06&notab=2.

Stratbase. 2012. *"Making Sense of all the Controversies: The Philippine Mining Industry."* SPARK, January: 1-14.

Sunley, Emil M., Selcuk Caner, Richard Krever, and Oana Luca. 2012. *Reform of the Fiscal Regimes for Mining and Petroleum*. Washington, DC: International Monetary Fund.

The Arangkada Project Philippines. 2014. *"Third Anniversary Assessment." More Reforms = More Jobs!* Makati City: Joint Foreign Chambers of the Philippines. 160.

Wilson, Alana, and Jacky Cervantes. 2013. *Survey of Mining Companies 2013*. Vancouver: Fraser Institute.

List of Participants at Roundtable Discussion on Mining, April 2013

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Mr. John D. Forbes	Senior Adviser, American Chamber of Commerce of the Philippines
Mr. Gerard Brimo	President and CEO, Nickel Asia Corporation
Ms. Nelia Halcon	Executive Vice President, Chamber of Mines of the Philippines
Mr. Ebb Hinchcliffe	Executive Director, American Chamber of Commerce of the Philippines
Mr. Michael Huehne	Business Manager - Asia, Freeport-McMoRan Copper and Gold
Mr. Colin Jenner	Director of Project Support, Orka Energy
Mr. Ho Ik Lee	Director/Mining Committee Member, Korean Chamber of Commerce of the Philippines
Mr. Joey P. Leviste, Jr.	Chair, OceanaGold Philippines, Inc.; Director, OceanaGold Corporation
Mr. Ian Porter	Managing Director, Cardno; President, Australia New Zealand Chamber of Commerce of the Philippines
Atty. Dennis Quintero	Partner & Head of Natural Resources Industry Group, Quisumbing Torres Law Office; Vice-Chairman, Philippines-Australia Business Council
Atty. Ronnie Recidoro	VP for Legal and Policy, Chamber of Mines of the Philippines
Mr. John Ridsdel	Chief Operating Officer, TVI Pacific Inc.
Mr. Philip Romualdez	President, Chamber of Mines of the Philippines; Chief Executive Officer, Benguet Corporation
Atty. Roderick Salazar	Co-Managing Partner, Fortun, Narvasa, and Salazar
Mr. Peter Wallace	President and Chair, Wallace Business Forum
Mr. Mark Williams	(former) General Manager, Sagittarius Mines Inc.

Disclaimer

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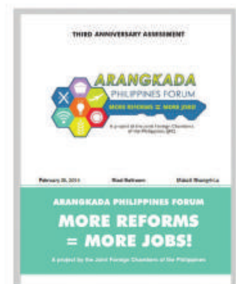
***Arangkada Philippines* 2010 Book Cover**

Arangkada Philippines 2010: A Business Perspective is a comprehensive advocacy paper describing 471 recommendations leading to the creation of $75 billion in new foreign investment, 10 million jobs, and over $1 trillion in tax revenue within this decade. In an increasingly interlinked and competitive world, accelerating growth is an imperative, not a choice, to achieve inclusive growth. The Joint Foreign Chambers of the Philippines (JFC) advocates that to achieve these results the country should focus on more rapid development of the Big Winner Sectors, with the theme "Move Twice as Fast!"

http://www.investphilippines.info/arangkada/ebook/

***Arangkada* Third Anniversary Assessment Book Cover**



On January 26, 2012, the JFC held its First Anniversary Forum with its theme *"Twice as Fast!"* and released the First Anniversary Assessment, which evaluated progress for the year 2011 towards completing 471 recommendations in the 2010 document. The advocacy coordinated some 40 experts—senior consultants, former public officials, business executives, and academics—who rated the recommendations.

A year after it was followed by the *Second Anniversary Assessment* with the theme "Realize the Potential!" on February 26, 2013 which reported substantial progress.

The *Third Anniversary Assessment*, evaluating the year 2013, was released at the Third Anniversary Forum on February 26, 2014 with its theme "More Reforms=More Jobs!" The assessment again reported good progress.

http://www.investphilippines.info/arangkada/third-anniversary-assessment/

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