

Bold Inclusive Reforms for Mining for the Next Decade

The abundance of mineral resources the Philippines has remained underdeveloped. As a result the potential to create millions of needed new jobs for the poor in rural areas and to generate billions of pesos in additional tax revenue required by the government to support, amongst other things, environmental management and social development has been foregone. Bold new policies and initiatives are required to support development of an environmentally and socially responsible large-scale mining industry in the Philippines. This policy note was prepared by the Canadian Chamber of Commerce of the Philippines.

Introduction and context

The Philippines has an abundance of high-value mineral resources that most other countries would welcome and develop, and, in the absence of having such resources, are potential markets for the Philippines to export its mineral ore, processed metal, and metallic products to as major markets for the Philippines. With its growing economy and domestic demand for metallic products, the Philippines could also benefit from mining and local processing of ore as import substitutes instead of importing processed metals as inputs for its manufacturing sector. In this context, mining remains a potential big winner¹ to contribute to the country's further development.

Sadly it still remains just a potential big winner. A national newspaper has described the performance of the Philippines in developing its mining industry as "...dismal, if not utterly disappointing." As a result, the value of opportunities lost by the Philippines has been incalculable in terms of foregone additional employment, foregone expansion of the tax base and tax revenue, and foregone development of an industrial sector in geographic areas where the poorest have not benefitted from recent urban-centered growth.

Further, as a result of a policy of suspending issuance of new mining permits in recent years when the mineral commodity price cycle was peaking with prices and return-on-investment high, the Philippines missed out on international and domestic investment looking for opportunities in mining. Now, with mineral commodity prices fallen dramatically and return-on-investment much lower, it will be much more difficult to attract large scale investment.

Finally, in the absence of developing a well-regulated large-scale mining industry that complies with international standards, the mineral wealth of the country is being ruthlessly exploited by illegal, small-scale mining. This illegal mining is unregulated, is desecrating the environment, is paying no taxes, and is using unhealthy and unsafe labor practices that put at risk the poor who often have no other employment opportunities. As collateral damage, this situation is breeding systemic corruption required to facilitate illegal mining, mocking progress to "Straight Path."

Looking forward, this wasted opportunity and dismal situation does not have to continue. While lost opportunities can never be regained, the Philippines can launch a new proactive policy framework to build and benefit in the future from environmentally and socially responsible large scale mining as other progressive countries are already doing and reaping benefits.

A new Administration will offer an opportunity to launch a new mining policy to proactively support the development of an environmentally and socially responsible mining industry to benefit the State and stakeholders. It will require leadership, political will, and bold new policies and initiatives in the face of ideologically opposed groups and others who misunderstand the realities of mining.

Underdevelopment of mining in the Philippines

According to the authoritative Extractive Industries Transparency Initiative Report 2014, "...the Philippines is one of the world's richest countries in mineral resources with its mineral reserves estimated to reach USD1.387 trillion" and with gold, nickel, and copper

1. The JFC in its initial Arangkada Report in 2010 identified Mining as one of the seven big winner sectors. It subsequently issued a detailed and comprehensive Policy Brief on mining that suggested policies and other actions necessary to realize the sector's potential.

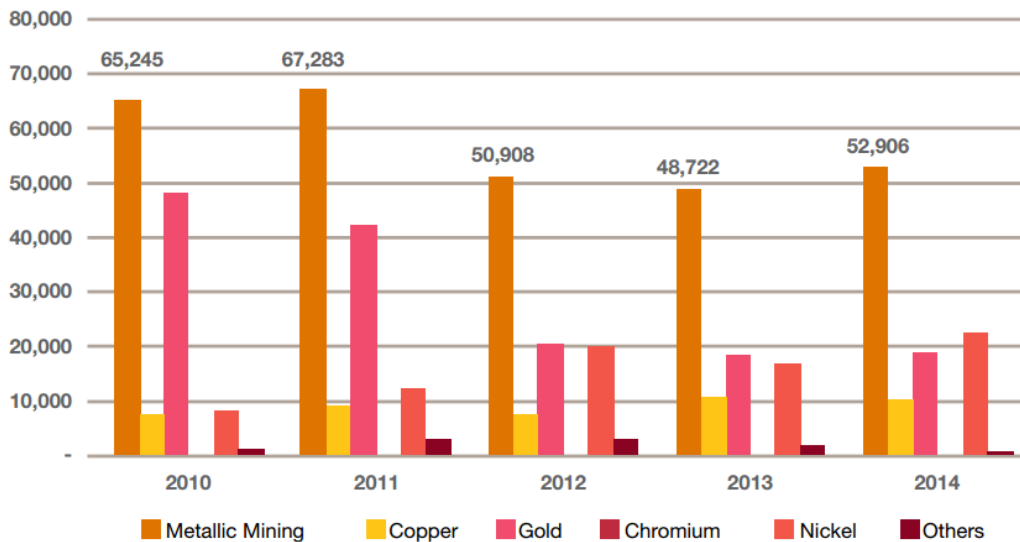
being 75% of this value. With this mineral wealth "... the Philippines has the potential to become one of the biggest players in the global metallic resource sector."

However the underdevelopment of mining that EITI also reported is appalling. The government has stated that \$840B (more than 60%) of the potential value remains untapped. Of the total area known to be geologically prospective for metallic minerals, only 7.9% were in 2014 covered by mining permits. The absolute gross value-added of metallic mining fell from PhP65,245M in 2010 by nearly a third to PhP 42,772M in 2013. The value of metallic mining as a share of the country's GDP fell from 0.72% in 2010 by nearly half to 0.42% in 2013.

operations requires (ranging from construction to fast-food services); (e) the follow-on potential to develop ore processing and metallic fabrication industries once local mineral production has been established; and (f) import substitution possible with the availability of metallic products made in the Philippines from Philippine mineral resources.

A collateral tertiary benefit is that a well-regulated large scale mining industry will help preempt illegal small scale mining that is desecrating the environment, avoiding tax payments, risking life and limb of Filipino workers who have no other employment opportunities, and tormenting systemic corruption that also undermines the place of legitimate small scale mining.

PH Gross Value Added from Selected Metallic Mining Activities, 2010 to 2014
(in mln. PHP at current prices)



Source: PSA Chart lifted from Philippine Extractive Industries Transparency Initiative (PH-EITI) Report December 2015

The potential benefits to the Philippines to be realized

Three primary and major direct benefits for the Philippines in developing a mining industry are: (a) the strategic worth of high-value mineral resources in a world with dwindling supply with the value to the Philippines in having its own mineral resources readily available for its economic security; (b) the significant additional employment opportunities, particularly in remote areas where unemployment and poverty are the highest; and (c) a broadened tax base and total revenue without increasing tax rates (the latter which would further stunt the growth of the industry).

Three other secondary and also major indirect benefits for the Philippines in developing a mining industry are: (d) the parallel development of a wide range of new supporting businesses (and employers) that development of mining

The strategic benefit of the mineral resources for the Philippines is demonstrated by the list of the top nine minerals metals it has reserves in terms of estimated value: Gold (\$367B); Nickel (\$328B); Copper (\$318B); Aluminum (\$263B); (\$193B); Iron Molybdenum (\$6B); Chromite (\$1B); Zinc (\$1B); and Manganese (\$0.1B).

The direct employment benefit of mining is currently relatively small but has risen with the small increase in number of operating mines. The 28 operating mines in 2010 employed 197,000 (0.5% of the labor force) with this increasing by 49% with 33 operating mines in 2012 to employ 252,000 (0.7% of labor force). It is obvious that with more mining with an increased number of mines there will be more employment in significant increments. Further, while precise estimates are difficult, the indirect employment generated in other industries to support

mining has been cited as bringing total direct and indirect employment generated by mining to more than one million at current levels of mining activity. With a growing industry the employment potential will be a “game-changer” in terms of additional employment prospects in remote areas where badly needed.

The revenue benefit from mining at current rates has also been increasing both in absolute value and as a share of total government revenue (despite the falling share of GDP), with this increase reflecting both increased production and increased metal prices until recently. Total revenue from mining was PHP13M in 2010 (1.03% of total national and LGU revenue) increasing to PHP22.2M in 2011 before dropping to PHP 18.6M in 2012 (1.12% of total national and LGU revenue). Again, with a growing industry total revenue could be expected to also increase significantly (in contrast to increased tax rates imposed on a declining industry).

Major potential risks to be recognized

There are some major risks faced in developing mining that need to be recognized in any new policy framework. The main risks include (a) impact on the environment; (b) impact on interests of IPs; (c) impact on agriculture and tourism; and (d) social impact when mines are depleted.

The risk of adverse impact on the environment has been addressed in many countries in developing mining industries with up-dated technical solutions, and regulatory procedures. The most serious problem faced in the Philippines is not availability of such technical solutions (knowledge of which can be transferred from other countries) but in effectively implementing all the provisions of the current Mining Act and ensuring these are adhered to by the mine operators (including full restoration of depleted mining areas for post-mining use), not blocked by bureaucracy, not circumvented by corruption, and not thwarted by those ideologically opposed to mining using dubious emotive arguments and inappropriate harassment.

The risk of adverse impact on IPs has also been faced and addressed in many countries with developed mining industries (with this experience also transferable). The most serious problems faced in the Philippines related to IPs include but are not limited to: (a) need for adequate consultation with legitimate representatives of the IPs about their specific interests to be protected; and (b) an equitable share of the benefits of mining accruing to the IPs.

The risk of incompatibility with agriculture and tourism has been largely exaggerated as very seldom do the areas for potential mines overlap good agricultural land and realistic sites for tourist development (in many cases, unrestricted urban sprawl being a greater risk to agricultural land and tourist sites). What is needed in the Philippines is a national land use plan with rigorous and objective analysis of the best use of land for the three sectors and the relative benefits.

The social risk after depletion of mines must be planned from the beginning with this provided for by government and industry working in partnership. A first key element is longer-term advance planning to build up other industrial and business activities to broaden the base of local economies where the mines are located. A second more fundamental element is using a portion of the revenue to create a Mineral Wealth Fund to develop follow-on industries and revenue.

The external challenges

There are a number of external challenges which the Philippines cannot control but which any new policy framework must recognize and take into account. The two that stand out are: (a) the reality of international competition for the large-scale long-term investment necessary to develop a large-scale mining industry; and (b) the longer term business cycle of mineral commodity prices. A new policy must be long-term to take into account both these two realities with a six-year administration term as framework much too short-sighted for large-scale mining.

The reality of international competition that has to be recognized in developing a new mining policy for the Philippines includes that: (a) some other countries have larger proven (not just estimated) reserves that offer competing mineral supply and mining opportunities; (b) some other countries have more open foreign investment regimes; (c) some other countries have lower tax rates applicable to mining, (d) some other countries have better reputations for respecting the sanctity of contracts; (e) some other countries have a more cost-effective labor forces, and (f) some other countries have better supporting infrastructure. A new policy will have to consider these realities and ensure that the Philippines is competitive.

With respect to the cycle of mineral commodity prices, the immediate problem faced is that the Philippines has recently missed out on a high-price point of a cycle. However, it would be dubious to revert to decisions

made on the basis of the current down-turn because without doubt global demand for metals will increase and prices will rise again sometime in the future.

Suggested bold steps for the mining industry in the Philippines to be a winner:

1. The national government declare that:

(a) Development of a major environmental and socially responsible large-scale mining industry as a national priority given the Philippines' strategic, economic and social development interests.

(b) It intends to ease restrictions of Foreign Direct Investment in large-scale mining to allow 100% foreign ownership of large-scale mines, excluding ownership of land.

(c) It intends to review and reset the fiscal framework for large-scale mining so that the Average Effective Tax Rate (as measured by the IMF) is not higher than the average AETR imposed by all APEC countries.

(d) It intends to guarantee contracts for mining concessions and conditions relating to FDI for fifty years with no changes except by mutual agreement.

(e) It intends to revise the revenue-sharing arrangements with LGUs and IPs with a reduced level of 50% to be retained by the national government and increased level of 50% to be paid within 6 months of receipt to LGUs and IPs.

(f) It intends to set up a new Mineral Wealth Fund with 50% of the revenue the national government receives (25% of total revenue) each year invested in his fund with interest income of the fund to available to support development of the mining industry.

2. The national government also declare that it intends:

(a) Within six months (by end of 2016) to prepare and approve a new large-scale mining policy in support of environmentally and socially responsible mining industry.

(b) Within one year (by mid-2017) to prepare amendments to the current Mining Act to implement the updated new mining policy and submit to the Congress for approval.

(c) Within eighteen months (by end of 2017, to prepare, approve and issue a new IRR, to implement the new policy on mining and the updated Mining Act.

(d) To prepare an integrated national land use policy covering agriculture, mining, and tourism as well as respect for IP land rights and protected species.

(e) To immediately establish a national consultative group on mining with equal representation of all major stakeholders (LGUs, IPs, mining industry, agriculture & tourist industries, national and foreign business associations, and environmental NGOs) to advise the government on preparation of the new mining, policy, land-use policy, and updated Mining Act.

3. Declare that the government also intends to respect small-scale mining:

(a) To apply the same environmental standards for small-scale mining as for large scale mining to avoid differentiation and double standard of environmental protection.

(b) To prohibit any foreign equity investment in small scale mining operations with foreign participation limited to provision of technical advisory and support services.

(c) To criminalize involvement in illegal small scale mining with this applicable to investors, operators, and traders in illegal small-scale mining activities as well as workers.